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to employment in a locker room or toilet facility used only by members of one sex.

PROCEDURES

**§ 113.600 Notice of covered programs.**

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

**§ 113.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 13 CFR part 112.

[65 FR 52876, Aug. 30, 2000]

**PART 114—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND REPRESENTATION AND INDEMNIFICATION OF SBA EMPLOYEES**

**Subpart A—Administrative Tort Claims**

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**Subpart B—Representation and Indemnification of SBA Employees**

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- 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?

AUTHORITY: 15 U.S.C. 634 (b)(1), (b)(6); 28 U.S.C. 2672; 28 CFR 14.11.

SOURCE: 61 FR 2401, Jan. 26, 1996, unless otherwise noted.

**Subpart A—Administrative Tort Claims**

**§ 114.100 Definitions.**

As used throughout this part 114, *date of accrual* means the date you know or reasonably should have known of your injury. The date of accrual will depend on the facts of each case. *Site* means the geographic location where the incident giving rise to your claim occurred.

**§ 114.101 What do these regulations cover?**

This part applies only to monetary claims you assert under the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, for injury to or loss of property, personal injury, or death arising from the negligent or wrongful act or omission of any SBA employee acting within the scope of his or her employment.

**§ 114.102 When, where and how do I present a claim?**

(a) *When.* You must present your claim within 2 years of the date of accrual.

(b) *Where.* You may present your claim at the SBA District Office nearest to the site of the action giving rise to the claim and within the same state as the site. If your claim is based on the acts or omissions of an employee of SBA's Disaster Assistance Program, you may present your claim either to the appropriate SBA District Office or to the Disaster Assistance Office nearest to the site of the action giving rise to the claim.

(c) *How.* You must use an official form which can be obtained from the SBA office where you file the claim or give other written notice of your claim, stating the specific amount of your alleged damages and providing enough information to enable SBA to investigate your claim. You may present your claim in person or by

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mail, but your claim will not be considered presented until SBA receives the written information.

[64 FR 40283, July 26, 1999]

**§ 114.103 Who may file a claim?**

(a) If a claim is based on factors listed in the first column, then it may be presented by persons listed in the second column.

Claim factors	Claim presenters
Injury to or loss of property ...	The owner of the property, his or her duly authorized agent, or legal representative.
Personal injury .....	The injured person, his or her duly authorized agent, or legal representative.
Death .....	The executor, administrator, or legal representative of the decedent's estate, or any other person entitled to assert the claim under applicable state law.
Loss wholly compensated by an insurer with rights as a subrogee.	The parties individually, as their interests appear, or jointly.

(b) An agent or legal representative may present your claim in your name, but must sign the claim, state his or her title or legal capacity, and include documentation of authority to present the claim on your behalf.

**§ 114.104 What evidence and information may SBA require relating to my claim?**

(a) For a claim based on injury to or loss of property:

- (1) Proof you own the property.
- (2) A specific statement of the damage you claim with respect to each item of property.
- (3) Itemized receipts for payment for necessary repairs or itemized written estimates of the cost of such repairs.
- (4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.
- (5) Full information about potential insurance coverage and any insurance claims or payments relating to your claim.
- (6) Any other information that may be relevant to the government's alleged liability or the damages you claim.

(b) For a claim based on personal injury, including pain and suffering:

- (1) A written report from your health care provider stating the nature and

extent of your injury and treatment, the degree of your temporary or permanent disability, your prognosis, period of hospitalization, and any diminished earning capacity.

(2) A written report following a physical, dental or mental examination of you by a physician employed by SBA or another Federal Agency. If you want a copy of this report, you must request it in writing, furnish SBA with the written report of your health care provider, if SBA requests it, and make or agree to make available to SBA any other medical reports relevant to your claim.

(3) Itemized bills for medical, dental and hospital expenses you have incurred, or itemized receipts of payment for these expenses.

(4) Your health care provider's written statement of the expected expenses related to any necessary future treatment.

(5) A statement from your employer showing actual time lost from employment, whether you are a full or part-time employee, and the wages or salary you actually lost.

(6) Documentary evidence showing the amount of earnings you actually lost if you are self-employed.

(7) Information about the existence of insurance coverage and any insurance claims or payments relating to the claim in question.

(8) Any other information that may be relevant to the government's alleged liability or the damages you claim.

(c) For a claim based on death:

- (1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.
- (2) Evidence of decedent's employment or occupation at the time of death, including monthly or yearly salary or earnings, and the duration of such employment or occupation.
- (3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent upon the decedent for support at the time of his or her death.
- (4) Evidence of the support provided by the decedent to each dependent survivor at the time of his or her death.

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(5) A summary of the decedent's general physical and mental condition before death.

(6) Itemized bills or receipts for payments for medical and burial expenses.

(7) For pain and suffering damage claims, a physician's detailed statement specifying the injuries suffered, the duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other information that may be relevant to the government's alleged liability or the damages claimed.

### **§ 114.105 Who investigates and considers my claim?**

(a) SBA may investigate, or ask another Federal agency to investigate, your claim. SBA also may request any Federal agency to conduct a physical examination of you and provide a report to SBA. SBA will reimburse the Federal agency for the costs of that examination when authorized or required by statute or regulation.

(b) In those cases in which SBA investigates your claim, and which arise out of the acts or omissions of employees other than employees of the Disaster Assistance Program, the SBA District Counsel in the office with jurisdiction over the site where the action giving rise to the claim occurred will investigate and make recommendations or determination with respect to your claim. In those cases in which SBA investigates your claim, and which arise out of acts or omissions of Disaster Assistance Program employees, the SBA Disaster Area Counsel in the office with jurisdiction over the site where the action giving rise to the claim occurred will investigate and make recommendations or a determination with respect to your claim. The District Counsel, or Disaster Area Counsel, where appropriate, may negotiate with you, and is authorized to use alternative dispute resolution mechanisms, which are non-binding on SBA, when they may promote the prompt, fair and efficient resolution of your claim.

(c) If your claim is for \$5,000 or less, the District Counsel or Disaster Area Counsel who investigates your claim may deny the claim, or may rec-

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ommend approval, compromise, or settlement of the claim to the Associate General Counsel for Litigation, who will in such a case take final action.

[61 FR 2401, Jan. 26, 1996, as amended at 64 FR 40283, July 26, 1999]

### **§ 114.106 What if my claim exceeds \$5,000?**

The District Counsel or Disaster Area Counsel, as appropriate, must review and investigate your claim and forward it with a report and recommendation to the Associate General Counsel for Litigation, who may approve or deny an award, compromise, or settlement of claims in excess of \$5,000, but not exceeding \$25,000.

[64 FR 40283, July 26, 1999]

### **§ 114.107 What if my claim exceeds \$25,000 or has other special features?**

(a) The U.S. Attorney General or designee must approve in writing any award, compromise, or settlement of a claim in excess of \$25,000. For this purpose, a principal claim and any derivative or subrogated claim are considered a single claim.

(b) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever the General Counsel or designee determines:

(1) The claim involves a new precedent or a new point of law; or

(2) The claim involves or may involve a question of policy; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and SBA is unable to adjust the third party claim; or

(4) Approval of a claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever SBA learns that the United States, or any of its employees, agents, or cost-plus contractors, is involved in litigation based on a claim arising out of the same incident or transaction.

(d) SBA, acting through its General Counsel or designee, must make any referrals to the Department of Justice

for approval or consultation by transmitting them in writing to the Assistant Attorney General, Civil Division.

(1) The referral must contain a short and concise statement of the facts and the reason for the request or referral, copies of the relevant portions of the claim file, and SBA's views and recommendations.

(2) SBA may make this referral at any time after a claim is presented.

**§ 114.108 What if my claim is approved?**

SBA will notify you in writing if it approves your claim. The District Counsel or Disaster Area Counsel investigating your claim will forward to you, your agent or legal representative the forms necessary to indicate satisfaction of your claim and your acceptance of the payment. Acceptance by you, your agent or your legal representative of any award, compromise or settlement releases all your claims against the United States under the Federal Tort Claims Act. This means that it binds you, your agent or your legal representative, and any other person on whose behalf or for whose benefit the claim was presented. It also constitutes a complete release of your claim against the United States and its employees. If you are represented by counsel, SBA will designate you and your counsel as joint payees and will deliver the check to counsel. Payment is contingent upon the waiver of your claim and is subject to the availability of appropriated funds.

[64 FR 40283, July 26, 1999]

**§ 114.109 What if my claim is denied?**

SBA will notify you or your agent or legal representative in writing by certified or registered mail if it denies your claim. You have a right to file suit in an appropriate U.S. District Court not later than six months after the date the notification was mailed.

**Subpart B—Representation and Indemnification of SBA Employees**

**§ 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?**

(a) If an SBA employee engages in conduct, within the scope of his or her employment, which gives rise to a claim, and the SBA Administrator or designee determines that any of the following actions relating to the claim are in SBA's interest, SBA may:

(1) Indemnify the employee after a verdict, judgment, or other monetary award is rendered personally against the employee in any civil suit in state or federal court or any arbitration proceeding;

(2) Settle or compromise the claim; and/or

(3) Pay for, or request that the Department of Justice provide, legal representation to the employee once personally named in such a suit.

(b) If you are an SBA employee, you may ask SBA to settle or compromise your claim, provide you with legal representation, or provide you with indemnification for a verdict, judgment or award entered against you in a suit. To do so, you must submit a timely, written request to the General Counsel, with appropriate documentation, including copies of any pleadings, verdict, judgment, award, or settlement proposal. The General Counsel will decide all requests for representation or settlement, and will forward to the Administrator, with the accompanying documentation and a recommendation, any requests for indemnification.

(c) Any payments by SBA under this section will be contingent upon the availability of appropriated funds.

**§ 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?**

When attorneys employed by SBA participate in any process in which SBA seeks to determine whether SBA should request the Department of Justice to provide representation to an SBA employee sued, subpoenaed, or charged in his or her individual capacity, or whether attorneys employed by

SBA should provide representational assistance for such an employee, those attorneys undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. If representation is authorized, SBA attorneys who assist in the representation of an SBA employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Unless authorized by the employee, the attorney must not disclose to anyone other than attorneys also responsible for the employee's representation information communicated to the attorney by the client-employee during the course of the attorney-client relationship. The attorney-client privilege will continue with respect to that information whether or not representation is provided, and even if the employee's representation is denied or discontinued.

## PART 115—SURETY BOND GUARANTEE

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AUTHORITY: 5 U.S.C. app 3; 15 U.S.C. 636i, 687b, 687c, 694a, and 694b note.

SOURCE: 61 FR 3271, Jan. 31, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 115 appear at 72 FR 50038, Aug. 30, 2007.

#### § 115.1 Overview of regulations.

The regulations in this part cover the SBA's Surety Bond Guarantee Programs under Part B of Title IV of the Small Business Investment Act of 1958, as amended. Subpart A of this part contains regulations common to both the program requiring prior SBA approval of each bond guarantee (the Prior Approval Program) and the program not requiring prior approval (the PSB Program). Subpart B of this part contains the regulations applicable only to the Prior Approval Program. Subpart C of this part contains the regulations applicable only to the PSB Program.

#### § 115.2 Savings clause.

Transactions affected by this part 115 are governed by the regulations in effect at the time they occur.

#### § 115.3 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any person, entity, or circumstance shall be construed so as to continue to give the maximum effect to such provision as permitted by law, including as