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that an investigation be conducted. The appropriate Departmental office or primary operating unit shall designate an official to conduct the investigation, who shall prepare a file, obtain additional information as necessary, and prepare for the Assistant General Counsel's signature a proposed award or denial of the claim. If the investigation capabilities of the office or unit are insufficient for a proper and complete investigation, the office or unit shall consult with the Departmental Office of Investigations and Security to:

(1) Have that Office conduct the investigation or

(2) Request another Federal agency to conduct the investigation as necessary, pursuant to §14.8 of the regulations (28 CFR Part 14), all on a reimbursable basis.

(b) If the amount of the proposed award exceeds \$25,000 (in which case, approval by the Attorney General is required), or if consultation with the Department of Justice is desired or required pursuant to §14.6 of the regulations, the Assistant General Counsel for Finance and Litigation will prepare and compile the material required by the Department of Justice under §14.7 of the Regulations.

(c) Denial of a claim shall be communicated as provided by §14.9 of the regulations (28 CFR Part 14).

(d) Designees hereunder are responsible for the control over and expeditious handling of claims, bearing in mind the applicable statutory time limitations for adjudications of claims.

[32 FR 3769, Mar. 7, 1967, as amended at 48 FR 31636, July 11, 1983; 63 FR 29945, June 2, 1998]

§ 2.6 Payment of claims.

When an award is made, the file on the case shall be transmitted to the appropriate fiscal office for payment by the Department or for transmittal for payment as prescribed by §14.10 of the Regulations (28 CFR Part 14). Prior to payment appropriate releases shall be obtained, as provided in said section.

[32 FR 3769, Mar. 7, 1967]

§ 2.7 Supplementary regulations.

(a) The Assistant General Counsel for Finance and Litigation may from time

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to time issue such supplementary regulations or instructions as he/she deems appropriate to carry out the purpose of this part.

(b) Any designee mentioned in paragraph (a) of §2.3 may issue regulations or instructions covering his/her area of responsibility hereunder which are consistent with this part and with those issued under paragraph (a) of this section, such regulations and instructions to be approved by the Assistant General Counsel for Finance and Litigation.

[32 FR 3769, Mar. 7, 1967, as amended at 48 FR 31636, July 11, 1983. Redesignated and amended at 63 FR 29945, June 2, 1998]

PART 3—IMPLEMENTATION OF THE HAVANA ACT OF 2021

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3.1 Authority.

3.2 Definitions.

3.3 Eligibility for payments by the Department of Commerce.

3.4 Consultation with other agencies.

AUTHORITY: 22 U.S.C. 2680b.

SOURCE: 88 FR 23112, Apr. 19, 2023, unless otherwise noted.

§ 3.1 Authority.

(a) Under section 3 of the HAVANA Act of 2021 (Pub. L. 117–46), codified in 22 U.S.C. 2680b, the Secretary of Commerce or other agency heads may provide a payment for a qualifying injury to the brain to a covered employee or covered dependent, who incurred a qualifying injury to the brain on or after January 1, 2016. The authority to provide such payments is at the sole discretion of the Secretary or their designee.

(b) The regulations in this part are issued in accordance with 22 U.S.C. 2680b(i)(4) and also apply to former covered employees of the Department of Commerce and their covered dependents.

§ 3.2 Definitions.

(a) *Covered employee.* (1) An employee of the Department of Commerce who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain.

(2) The following are considered employees of the Department of Commerce for the purposes of this part: Department of Commerce employees in the Foreign Service, National Oceanic and Atmospheric Administration Commissioned Corps Officers, and Department of Commerce employees who meet the definition of “employee” set forth in 5 U.S.C. 2105(a), including students providing volunteer service under 5 U.S.C. 3111.

(3) The following are not considered employees of the Department of Commerce for purposes of this part: employees or retired employees of other agencies.

(b) *Covered dependent.* A family member of a Department of Commerce current or former employee who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while the dependent’s sponsor was an employee of the Department of Commerce as specified in paragraph (a)(2) of this section.

(c) *Covered individual.* A former employee of the Department of Commerce who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while they were an employee of the Department of Commerce as specified in paragraph (a)(2) of this section.

(d) *Family member.* For purposes of determining “covered dependent,” a family member is defined as follows:

(1) Children who are unmarried and under 21 years of age at the time of the qualifying injury or, regardless of age, are unmarried and due to mental and/or physical limitations are incapable of self-support. The term “children” must include natural offspring, step-children, adopted children, and those under permanent legal guardianship (at least until age 18), or comparable permanent custody arrangement, of the employee or spouse or domestic partner when dependent upon and normally residing with the guardian or custodial party, and U.S. citizen children placed for adoption if a U.S. court grants temporary guardianship of the child to the employee and specifically authorizes the child to reside with the employee in the country of assignment before the adoption is finalized;

(2) Parents (including stepparents and legally adoptive parents) of the employee or of the spouse or of the domestic partner;

(3) Sisters and brothers (including stepsisters or stepbrothers, or adoptive sisters or brothers) of the employee, or of the spouse when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are physically and/or mentally incapable of self-support; and

(4) Spouse.

(e) *Qualifying injury to the brain.* (1) The injury must have occurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State or the Secretary of Commerce, as permitted by law, and was not the result of the willful misconduct of the individual; and

(2) The individual must have:

(i) An acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies (to include computed tomography scan (CT), or magnetic resonance imaging scan (MRI)), or electroencephalogram (EEG); or

(ii) A medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or

(iii) Acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

(f) *Other incident.* A new onset of physical manifestations that cannot otherwise be readily explained.

§ 3.3 Eligibility for payments by the Department of Commerce.

(a) The Department of Commerce may provide a payment to covered individuals, as defined this section, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician

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from the American Board of Psychiatry and Neurology (ABPN), the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR), or the American Board of Physical Medicine and Rehabilitation (AOBPMR); and occurred on or after January 1, 2016, and while the individual was a covered employee of the Department of Commerce.

(b) The Department of Commerce may provide a payment to covered employees, as defined in this section, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from ABPN, AOBNP, ABPMR, or AOBPMR; and occurred on or after January 1, 2016, and while the employee was a covered employee of the Department.

(c) The Department of Commerce may provide a payment to a covered dependent, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the ABPN, AOBNP, ABPMR, or AOBPMR; and occurred on or after January 1, 2016, and while the dependent's sponsor was a covered employee of the Department.

(d) Payment for a qualifying injury to the brain will be a non-taxable, one-time lump sum payment.

(e) The Department will determine the amount paid to each eligible person based on the following factors:

(1) The responses on Form CD-350, "Eligibility Questionnaire for HAVANA Act Payments"; and

(2) Whether the Department of Labor has determined that the requestor has no reemployment potential, or the Social Security Administration has approved the requestor for Social Security Disability Insurance or Supplemental Security Insurance (SSI) benefits; or the requestor's ABPN, AOBNP, ABPMR, or AOBPMR-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

(3) The award thresholds are based on the Level III of the Executive Schedule: Base payment will be 75 percent of

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Level III pay, and Base Plus payment will be 100 percent of Level III pay. If the requestor meets any of the criteria listed in paragraph (e)(2) of this section, the requestor will be eligible to receive a Base Plus payment. Requestors who are otherwise eligible for payment for a qualifying injury to the brain (defined in §3.2(e)) but do not meet any of the criteria listed in paragraph (e)(2) of this section will be eligible to receive a Base payment. If a requestor who received a Base payment later meets any of the criteria listed in paragraph (e)(2) of this section, the requestor may apply for an additional payment that will be the difference between the Base and Base Plus payment.

(f) The Director, Office of Human Resources Management may approve payments under this section. The Office of Human Resources Management will notify individuals of the decision in writing.

(g) An appeal of a decision made by the Director, Office of Human Resources Management may be directed to the Deputy Assistant Secretary for Administration in writing. The Deputy Assistant Secretary for Administration is the final appeal authority. The Office of Human Resources Management will notify individuals of the decision in writing.

§ 3.4 Consultation with other agencies.

The Department may consult with the appropriate officials in other Federal agencies to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident. The Department will not process payment for employees, former employees, or dependents of current or former employees of other agencies.

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

Subpart A—Freedom of Information Act

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- 4.1 General provisions.
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