

State, 2201 C Street, NW., Washington, DC 20520. The Department of State will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

### PART 135—IMPLEMENTATION OF THE HAVANA ACT OF 2021

Sec.

135.1 Authority.

135.2 Definitions.

135.3 Eligibility for payments by the Department of State.

135.4 Consultation with other agencies.

AUTHORITY: 22 U.S.C. 2651a; 22 U.S.C. 2680b.

SOURCE: 87 FR 38984, June 30, 2022, unless otherwise noted.

#### § 135.1 Authority.

(a) Under section 3 of the HAVANA Act of 2021 (Pub. L. 117–46), codified in 22 U.S.C. 2680b(i), the Secretary of State 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) These regulations are issued in accordance with 22 U.S.C. 2680b(i)(4) and also apply to former covered employees of the Department of State and their covered dependents.

(c) For current employees of the Department of State (hereinafter, “the Department”), applicable procedures are located in the Foreign Affairs Manual (3 FAM 3660 and its subchapters).

#### § 135.2 Definitions.

For purposes of this part, the following definitions apply:

*Covered employee.* (1) An employee of the Department 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 (see procedures in 3 FAM 3660 and its subchapters) for the purposes of this part: Department of State Foreign Service Officers; Department of State Foreign

Service Specialists; Department of State Civil Service employees; Consular Affairs—Appointment Eligible Family Member Adjudicator positions; Expanded Professional Associates Program members; Family Member Appointments; Foreign Service Family Reserve Corps; employees on Limited Non-Career Appointments; Temporary Appointments; students providing volunteer services under 5 U.S.C. 3111; personnel on a Personal Services Contract; Locally Employed Staff, whether employed on a Personal Services Agreement, Personal Services Contract, or appointed to the position; and Embassy Science Fellows, unless they are an employee of another Federal agency.

(3) The following are not considered employees of the Department for purposes of these regulations (see § 135.4): employees or retired employees of other agencies.

*Covered dependent:* A family member of a Department 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 a covered employee of the Department.

*Covered individual:* A former employee of the Department who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while they were a covered employee of the Department.

*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 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 (as defined in 3 FAM 1610) 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

## Department of State

## § 135.3

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 as defined in 3 FAM 1610.

(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.

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

*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, and that was not the result of the willful misconduct of the covered 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.

[87 FR 38984, June 30, 2022, as amended at 88 FR 4726, Jan. 25, 2023]

### § 135.3 Eligibility for payments by the Department of State.

(a) The Department of State may provide a payment to covered individ-

uals, as defined in this part, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician 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 Osteopathic Board of Physical Medicine and Rehabilitation (AOBPMR); occurred on or after January 1, 2016; and while the individual was a covered employee of the Department.

(b) The Department of State may provide a payment to covered employees, as defined in this part, 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; occurred on or after January 1, 2016; and while the employee was a covered employee of the Department.

(c) The Department of State 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; occurred on or after January 1, 2016; and the dependent's sponsor was a covered employee of the Department at the time of the dependent's injury.

(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 the DS-4316, "Eligibility Questionnaire for HAVANA Act Payments"; and

(2) Whether the Department of Labor (Workers' Compensation) has determined that the requester has no reemployment potential; or the Social Security Administration has approved the requester for either Social Security Disability Insurance or Supplemental Security Insurance (SSI) benefits; or the requester's ABPN, AOBNP, ABPMR, or AOBPMR board-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined

## § 135.4

by the Katz Index of Independence of Daily Living.

(3) The award thresholds are based on Level III of the Senior Executive Schedule: Base will be 75 percent of Level III pay, and Base+ 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+ payment. Requestors whose neurologists confirm that the definition of “qualifying injury to the brain” has been met but have not met any of the criteria listed 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+ payment.

(f) The Under Secretary of State for Management may approve payments under the rule. The Bureau of Global Talent Management (GTM) will notify individuals of the decision in writing.

(g) An appeal of a decision made by the Under Secretary of State for Management may be directed to the Deputy Secretary of State for Management and Resources in writing. The Deputy Secretary of State for Management and Resources is the final appeal authority. GTM will notify individuals of the decision in writing.

[87 FR 38984, June 30, 2022, as amended at 87 FR 48444, Aug. 9, 2022; 88 FR 4726, Jan. 25, 2023]

### § 135.4 Consultation with other agencies.

(a) The Department of State will, to the extent possible, 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 while working under Chief of Mission authority. This consultation is solely to assist the other agencies in determining who might be initially eligible for payment under the HAVANA Act. The Department of State will not process payment for employees, former employees, or dependents of current or former employees of other agencies.

## 22 CFR Ch. I (4–1–25 Edition)

(b) Under the HAVANA Act, the heads of other employing federal agencies are responsible for prescribing regulations to carry out the HAVANA Act, including regulations for approving any payment.

### PART 136—PERSONAL PROPERTY DISPOSITION AT POSTS ABROAD

Sec.

136.1 Purpose.

136.2 Authority.

136.3 Definitions.

136.4 Restrictions on dispositions of personal property.

136.5 Chief of mission policies, rules or procedures.

136.6 Contractors.

AUTHORITY: 22 U.S.C. 4341.

SOURCE: 53 FR 23188, June 20, 1988, unless otherwise noted.

#### § 136.1 Purpose.

The primary purpose of these regulations is to ensure that employees and members of their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes.

#### § 136.2 Authority.

Section 303(a) of the State Department Basic Authorities Act of 1956 authorizes the Secretary of State to issue regulations to carry out the purposes of title III of that Act.

#### § 136.3 Definitions.

(a) *Basis* of an item shall include the initial price paid (or retail value at the time of acquisition if acquired by gift), inland and overseas transportation costs (if not reimbursed by the United States Government), shipping insurance, taxes, customs fees, duties or other charges, and capital improvements, but shall not include insurance on an item while in use or storage, maintenance, repair or related costs, or financing charges.

(b) *Charitable contribution* means a contribution or gift as defined in section 170(c) of the Internal Revenue Code, or other similar contribution or gift to a bona fide charitable foreign