

checks under the regulations in this subpart.

(2) A participating State agreeing to process checks under this subsection will discontinue doing so if thereafter the State of the employee's employment establishes a process State and national fingerprint-based criminal history checks of prospective and current private security officers.

(b) *FBI fees for national check.* The fee imposed by the FBI to perform a fingerprint-based criminal history record check is that routinely charged for noncriminal justice fingerprint submissions as periodically noticed in the FEDERAL REGISTER.

(c) *Penalties for misuse.* (1) In addition to incarceration for a period not to exceed two years, one who knowingly and intentionally misuses information (including a State's notification) received pursuant to the Act may be subject to a fine pursuant to 18 U.S.C. 3571.

(2) Consistent with State law, a violation of these regulations may also result in the divestiture of "authorized employer" status, thereby precluding an employer which provides security services from submitting fingerprints for a State and national criminal history record check.

(d) *Exclusion from coverage.* [Reserved]

## PART 106—IMPLEMENTATION OF THE HAVANA ACT OF 2021

Sec.

106.1 Authority.

106.2 Definitions.

106.3 Eligibility for payments by the Department of Justice.

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

SOURCE: A.G. Order No. 5922–2024, 89 FR 28636, Apr. 19, 2024, unless otherwise noted.

### § 106.1 Authority.

(a) Under section 3 of the HAVANA Act of 2021, Public Law 117–46, 135 Stat. 391 (2021) (codified at 22 U.S.C. 2680b(i)), the Attorney General or other agency heads may provide a payment to a covered employee or covered dependent who experiences a qualifying injury to the brain on or after January 1, 2016. The authority to provide such payments is at the discretion of the Attor-

ney General or the Attorney General's designees.

(b) These regulations are issued in accordance with 22 U.S.C. 2680b(i)(4) and apply to covered employees (current and former employees) and covered dependents.

[A.G. Order No. 5922–2024, 89 FR 28636, Apr. 19, 2024; 89 FR 36671, May 3, 2024]

### § 106.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Covered employee.* (1) A current or former employee of the Department who, on or after January 1, 2016, became injured by reason of a qualifying injury while they were employed by the Department.

(2) The following are considered covered employees for the purposes of this rule: Department of Justice employees as defined in 5 U.S.C. 2105, including employees on Limited Non-Career Appointments, employees on Temporary Appointments, personnel hired on Personal Services Contracts, and students providing volunteer services under 5 U.S.C. 3111.

(3) The following are not considered employees of the Department for purposes of this rule: employees or retired employees who were employed by other agencies at the time of the injury.

(b) *Covered dependent.* A family member, as defined in paragraph (c) of this section, of a current or former employee of the Department who, on or after January 1, 2016, became injured by reason of a qualifying injury while their relative was an employee of the Department in a position listed in paragraph (a)(2) of this section.

(c) *Family member.* For purposes of determining who is a "covered dependent," a family member is defined as follows:

(1) Children who at the time of the injury are unmarried and under 21 years of age or, regardless of age, are unmarried and due to mental or physical limitations are incapable of self-support. The term "children" includes natural offspring; stepchildren; adopted children; those under permanent legal guardianship, or comparable permanent custody arrangement, of the employee, spouse, or domestic partner as

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defined in 5 CFR 875.101 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 as defined in 5 CFR 875.101, when normally residing with the employee at the time of the injury;

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

(4) Spouse or domestic partner at the time of the injury.

(d) *Qualifying injury to the brain.* (1) An injury to the brain that occurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated under 22 U.S.C. 2680b, and that was not the result of the willful misconduct of the covered employee or covered dependent.

(2) The individual must have:

(i) An acute injury to the brain such as a concussion, a penetrating injury, or an injury as the consequence of an event that leads to permanent alterations in brain function where such alterations are demonstrated by confirming correlative findings on imaging studies (including computed tomography scan (CT) or magnetic resonance imaging scan (MRI)), or electroencephalogram (EEG);

(ii) A medical diagnosis of a traumatic brain injury 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 (including CT or MRI), EEG, physical exam, or other appropriate testing,

that required active medical treatment for 12 months or more.

(e) *Other incident.* A new onset of physical manifestations that cannot otherwise be readily explained and that is designated under 22 U.S.C. 2680b.

### § 106.3 Eligibility for payments by the Department of Justice.

(a) The Department may, in its discretion, provide a payment to an employee, covered dependent, or former employee if that person suffered a qualifying injury to the brain that was assessed and diagnosed in person by a physician who is currently a neurologist certified by the American Board of Psychology and Neurology (ABPN) or a physician certified by 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, for an employee or former employee, occurred while the employee or former employee was a covered employee of the Department or, for a covered dependent, occurred while the covered dependent's relative was an employee of the Department in a position listed in § 106.2(a)(2).

(b) Payment for a qualifying injury to the brain will be a non-taxable, one-time lump sum payment, unless a second payment is authorized under paragraph (d) of this section.

(c) The amount of the payment is at the Department's discretion. The Department will determine the amount paid to each eligible person based on the following factors:

(1) The responses on the "Eligibility Questionnaire for HAVANA Act Payments" form; and

(2) Whether the Department of Labor (Office of Workers' Compensation Programs) has determined that the applicant has no reemployment potential, or the Social Security Administration has approved the applicant for Social Security Disability Insurance or Supplemental Security Income benefits, or the applicant's ABPN-certified neurologist or the applicant's AOBNP-, ABPMR-, or AOBPMR-certified physician has certified that the individual

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requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence in Activities of Daily Living.

(d) The award thresholds are based on Level III of the Executive Schedule: Base will be 75 percent of Level III pay, and Base+ will be 100 percent of Level III pay. If the applicant meets any of the criteria listed in paragraph (c)(2) of this section, the applicant will be eligible to receive a Base+ payment. Applicants whose board-certified physician (as described in paragraph (a) of this section) confirms that the definition of “qualifying injury to the brain” has been met, but who have not met any of the criteria listed in paragraph (c)(2) of this section, will be eligible to receive a Base payment. If an applicant who received a Base payment later meets any of the criteria listed in paragraph (c)(2) of this section, the applicant may apply for an additional payment that will be the difference between the Base and Base+ payment.

#### § 106.4 Consultation.

When a covered employee or covered dependent seeks payment for an incident that occurred overseas under Chief of Mission security responsibility, the Department will coordinate with the Department of State as appropriate in evaluating whether the incident is an “other incident” under the HAVANA Act or should be so designated.

#### § 106.5 Procedures.

(a) *Application.* (1) A covered employee or covered dependent may apply for a HAVANA Act payment if the covered individual has sustained a qualifying injury to the brain on or after January 1, 2016. To apply for the benefit, the applicant must submit the “Eligibility Questionnaire for HAVANA Act Payments” claim form to the appropriate email address or fax number set forth in this paragraph (a). The claim form must be completed by a person eligible to file a claim under the HAVANA Act or by that person’s legal guardian and must be signed by a currently certified physician as listed in § 106.3(a) of this part. The claim form must be emailed or faxed to the following address: *HRD\_AHI\_*

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*QUESTIONNAIR@FBI.GOV* or fax number (202) 323–9420 (covered FBI employees and dependents) or *HavanaActClaims@usdoj.gov* or fax number (202) 616–3200 (covered DOJ employees and dependents).

(2) The applicant must furnish additional documentation upon request.

(3) Copies of the claim form, as well as the regulations and other information, may be obtained by requesting the document or publications via an email to *HRD\_AHI\_QUESTIONNAIR@FBI.GOV* (covered FBI employees and dependents) or *HavanaActClaims@usdoj.gov* (covered DOJ employees and dependents).

(b) *Review.* For FBI covered employees and dependents, the Human Resources Division (HRD) of the FBI is responsible for reviewing the applications to determine their completeness. For other DOJ covered employees and dependents, the Justice Management Division (JMD) is responsible for reviewing the applications to determine their completeness.

(c) *Other incident.* The Department will determine whether a covered employee or covered dependent has a qualifying injury to the brain as set forth in § 106.2, and whether the incident causing the injury was in connection with war, insurgency, hostile act, or terrorist activity. The Department will as appropriate or necessary make a recommendation to the Secretary of State that the incident should be deemed an “other incident designated by the Secretary of State” for purposes of 22 U.S.C. 2680b(i)(1)(D) (cross-referencing subparagraph 2680b(e)(4)); or, for incidents affecting employees or dependents who are not under the security responsibility of the Secretary of State, the Department will as appropriate or necessary designate such incidents, under authority set forth in 22 U.S.C. 2680b(j).

(d) *Decisions.* For FBI covered employees and covered dependents, the Executive Assistant Director, Human Resources Branch, FBI, in their discretion may approve payments under the HAVANA Act. For all other Departmental covered employees and covered dependents, the Deputy Assistant Attorney General, Human Resources and

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Administration, JMD, in their discretion may approve payments under the HAVANA Act.

(e) *Appeals.* In the event of a decision to deny an application for payment under the HAVANA Act, the Department will notify the applicant in writing. Applicants may direct an appeal to the Assistant Attorney General for Administration within 60 days of the date of the notification of the denial. However, decisions concerning the amount paid are not subject to appeal. The Department will notify the applicant in writing of the decision on appeal.

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