

PART 756—PROCEDURES FOR PROCESSING CLAIMS INVOLVING NON-APPROPRIATED FUND ACTIVITIES AND THEIR EMPLOYEES

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 5013 and 5148.

SOURCE: 57 FR 4736, Feb. 7, 1992, unless otherwise noted.

§ 756.1 Scope.

This part explains how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operation of non-appropriated fund activities (NAFI).¹

[72 FR 53425, Sept. 19, 2007]

§ 756.2 Definitions.

(a) *Nonappropriated-fund instrumentality (NAFI)*. An instrumentality of the Federal Government established to generate and administer non-appropriated-funds for programs and services contributing to the mental and physical well-being of Department of Defense personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

(b) *Nonappropriated-funds*. Funds generated through the use and patronage of NAFI's, not including funds appropriated by Congress.

(c) *Employees of NAFIs*. Personnel employed by NAFIs whose salaries are paid from non-appropriated funds.

[57 FR 4736, Feb. 7, 1992, as amended at 72 FR 53425, Sept. 19, 2007]

¹DoD Directive 5515.6 establishes policy governing the administrative processing of claims arising out of the operation of non-appropriated fund activities.

§ 756.3 Notification.

(a) Some NAFI's, such as flying clubs, carry private commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Commander, Naval Supply Systems Command determine whether NAFI's within their cognizance shall carry liability insurance or become self-insurers, in whole or in part.

(b) The Marine Corps requires mandatory participation in the Morale, Welfare and Recreation (MWR) Composite Insurance Program by the following operations: MWR operations and retail services, food and hospitality, recreation; and special NAFI activities including flying clubs, rod and gun clubs, Interservice Rifle Fund, Marine Corps Marathon and Dependent Cafeteria Fund. The following organizations may also participate in the MWR Composite Insurance Program, if desired: Child welfare centers, billeting funds, chapel funds, and civilian welfare funds.

(c) When the operations of NAFI's result in property damage or personal injury, the insurance carrier, if any, should be given immediate written notification. Notification should not be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability by the activity.

§ 756.4 Responsibility.

(a) All claims resulting from NAFIs should be submitted to the command having cognizance over the NAFI involved. The claim will then be forwarded to the Tort Claims Unit (TCU) Norfolk located at the following address: Department of the Navy, Office of the Judge Advocate General, Tort Claims Unit Norfolk, 9620 Maryland Avenue, Suite 100, Norfolk, VA 23511-2989.

(b) The TCU Norfolk has cognizance over all DoN claims. Normally, the TCU Norfolk has primary responsibility for the negotiation and settlement of NAFI claims. This is because NAFIs are Federal agencies within the meaning of the Federal Tort Claims Act (FTCA) if the NAFI is charged with an essential function of the DoN and if

the degree of control and supervision by the Navy is more than casual or perfunctory. Compare *United States v. Holcombe*, 277 F.2d 143 (4th Cir. 1960) and *Scott v. United States*, 226 F. Supp. 846, (D. Ga. 1963). Consequently, to the extent sovereign immunity is waived by the FTCA, 28 U.S.C. 1346(b), 2671-2672, 2674-2680, the United States remains ultimately liable for payment of NAFI claims.

[72 FR 53425, Sept. 19, 2007]

§ 756.5 Investigation.

Claims arising out of the operation of NAFIs, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated fund activities. The Manual of the Judge Advocate General (JAGMAN), Chapter II² provides guidance in conducting an investigation of an incident or event likely to result in claims or civil litigation against or for DoN or the United States.

[72 FR 53425, Sept. 19, 2007]

§ 756.6 Negotiation.

(a) *General.* Claims from NAFIs should be processed primarily through procedures, regulations, and statutes applicable to similar appropriated fund activity claims.

(b) *When the NAFI is insured.* When a NAFI is insured, the insurer or the contracted third-party claims administrator (TPA) will normally conduct negotiations with claimants. The TCU Norfolk shall monitor the negotiations conducted by the insurer or TPA. Monitoring is normally limited to ascertaining that someone has been assigned to negotiate, to obtain periodic status reports, and to close files on settled claims. Any dissatisfaction with the insurer's or TPA's handling of the negotiations should be referred directly to the Judge Advocate General (Claims and Tort Litigation) for appropriate action. If requested by the insurer or TPA, the TCU Norfolk may conduct negotiations. If TCU Norfolk

negotiates a final settlement, however, request for payment will be forwarded to the insurer or TPA for payment. Concurrence by the insurer or TPA in the amount of the settlement is not necessary.

(c) *When the NAFI is not insured.* When there is no private commercial insurer and the NAFI has made no independent arrangements for negotiations, the TCU Norfolk is responsible for conducting negotiations. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the NAFI for payment from non-appropriated funds.

[72 FR 53425, Sept. 19, 2007]

§ 756.7 Payment.

(a) *Claims that can be settled for less than 1,500.00.* A claim not covered by insurance (or not paid by the insurer), that can be settled for \$1,500.00 or less, may be adjudicated by the TCU Norfolk or single-service authority and forwarded to the commanding officer of the activity concerned or designee for payment out of funds available to the commanding officer. The TCU Norfolk or single-service authority will obtain the required release from the claimant.

(b) *Claims that cannot be settled for less than \$1,500.00.* A claim negotiated by the Navy, not covered by insurance, that is for more than \$1,500.00 will be forwarded to the appropriate non-appropriated fund headquarters command for payment from its non-appropriated funds.

(c) *When payment is possible under another statute.* In some cases, neither the NAFI nor its insurer may be legally responsible. In those instances when there is no negligence, and payment is authorized under some other statute, such as the Foreign Claims Act, 10 U.S.C. 2734-2736, the claim may be considered for payment from appropriated funds or may be referred to the TCU Norfolk for appropriate action.

(d) *Other claims.* A NAFI's private insurance policy is usually not available to cover losses that result from some act or omission of a mere participant in a non-appropriated fund activity. In the event the NAFI declines to pay the

²JAGMAN Chapter II (JAG Instruction 5800.7E) is available at the Web site of the Navy Judge Advocate General's Corps at <http://www.jag.navy.mil>.

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claim, the file shall be forwarded to the TCU Norfolk for determination.

[72 FR 53426, Sept. 19, 2007]

§ 756.8 Denial.

Claims resulting from non-appropriated fund activities may be denied only by the TCU Norfolk. The denial will begin the six-month limitation on filing suit against the United States for claims filed under the FTCA. Denial of a claim shall be in writing and in accordance with subparts A and B of part 750 of this chapter, as appropriate. The TCU Norfolk should not deny claims that have initially been processed and negotiated by a non-appropriated fund activity, its insurer, or TPA, until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend the claim in court.

[72 FR 53426, Sept. 19, 2007]

§ 756.9 Claims by employees.

(a) *Property.* Claims by employees of NAFIs for loss, damage, or destruction of personal property incident to their employment shall be processed and adjudicated in accordance with subparts A or B of part 751 of this chapter, as appropriate. The claims will then be forwarded to the appropriate NAFI for payment from non-appropriated funds.

(b) *Personal injury or death*—(1) *Personal injury or death of citizens or permanent residents of the United States employed anywhere, or foreign nationals employed within the United States.* Compensation is provided by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901-950) for employees of NAFIs who have suffered injury or death arising out of, and in the course of, their employment (5 U.S.C. 8171). That Act is the exclusive basis for Government liability for such injuries or deaths that are covered (5 U.S.C. 8173). A claim should first be made under that Act if there is a substantial possibility the injury or death is covered under the Act's provisions.

(2) *Personal injury or death of foreign nationals employed outside of the continental United States.* Employees who are not citizens or permanent residents, and who are employed outside the continental United States, may be pro-

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tected by private insurance of the NAFI or by other arrangements. When a non-appropriated fund activity has elected not to obtain insurance coverage or to make other arrangements, compensation is separately provided by Federal statute, military regulations, and agreements with foreign countries. See 5 U.S.C. 8172, DoD 1401.1-M, Personnel Policy Manual for Non-appropriated Fund Instrumentalities and BUPERINST 5300.10A, NAF Personnel Manual.

[72 FR 53426, Sept. 19, 2007]

PART 757—AFFIRMATIVE CLAIMS REGULATIONS

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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5013, and 5148; E.O. 11476, 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

SOURCE: 57 FR 5072, Feb. 12, 1992, unless otherwise noted.

Subpart A—Property Damage Claims

§ 757.1 Scope of subpart A.

Subpart A describes how to assert, administer, and collect claims for damage to or loss or destruction of Government property through negligence or wrongful acts.