



Department of Defense INSTRUCTION

NUMBER 1340.21

May 12, 2004

GC, DoD

SUBJECT: Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests

References: (a) [DoD Directive 1340.20](#), "Settling Personnel and General Claims and Processing Advance Decision Requests," July 14, 2003
(b) Section 3702 of title 31, United States Code
(c) Section 2575 of title 10, United States Code
(d) Section 2771 of title 10, United States Code
(e) through (l), see enclosure 1

1. PURPOSE

This Instruction implements policy under reference (a) and prescribes procedures for processing and settling personnel and general claims under references (b) through (i) and for processing requests for an advance decision under reference (j).

2. APPLICABILITY AND SCOPE

This Instruction applies to:

2.1. The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as "the DoD Components").

2.2. The Coast Guard, when it is not operating as a Service in the Navy under agreement with the Department of Homeland Security, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric

Administration (NOAA), under agreements with the Departments of Health and Human Services and Commerce (hereafter referred to collectively as "the non-DoD Components").

3. DEFINITIONS

Terms used in this Instruction are defined at enclosure 2.

4. POLICY

It is DoD policy that:

4.1. Claims shall be settled and advance decisions rendered in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

4.2. This Instruction applies to certain claim settlement and advance decision functions that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense. Enclosure 4 describes the claims included under these functional authorities.

5. RESPONSIBILITIES

5.1. The General Counsel of the Department of Defense (GC, DoD), or designee, shall:

5.1.1. Upon the request of the Director, Defense Office of Hearings and Appeals (DOHA), consult on, or render legal opinions concerning, questions of law that arise in the course of the performance of the Director's responsibilities under paragraph 5.2.

5.1.2. Render advance decisions under reference (j) and oversee the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to the Director of the Office of Personnel Management or the Administrator of General Services in accordance with this Instruction.

5.2. The Director, Defense Office of Hearings and Appeals (DOHA), or designee, under the GC, DoD (as the Director, Defense Legal Services Agency), shall:

5.2.1. Consider, and grant or deny, a request by the Secretary concerned under 31 U.S.C. 3702(e) (reference (b)) to waive the time limit for submitting certain claims in accordance with reference (a) and this Instruction.

5.2.2. Consider appeals from an initial determination, and affirm, modify, reverse, or remand the initial determination in accordance with reference (a), this Instruction, and relevant DoD Office of General Counsel opinions.

5.3. The Heads of the DoD Components, or designees, shall:

5.3.1. Process claims under references (b) through (i) in accordance with this Instruction.

5.3.2. Ensure that requests for an advance decision that originate in their organizations are prepared and submitted in accordance with this Instruction.

5.3.3. Pay claims as provided in a final action in accordance with this Instruction.

5.4. The Heads of the Non-DoD Components, or designees, shall:

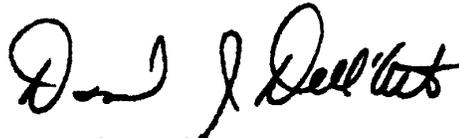
5.4.1. Process claims under references (b), (c), (d), or (h) in accordance with this Instruction.

5.4.2. Ensure that requests for an advance decision that originate in their organizations are prepared and submitted in accordance with this Instruction.

5.4.3. Pay claims as provided in a final action in accordance with this Instruction.

6. EFFECTIVE DATE

This Instruction is effective immediately.



Daniel J. Dell'Orto
Principal Deputy General Counsel

Enclosures - 8

- E1. References, continued
- E2. Definitions
- E3. Guidance
- E4. Claims Description
- E5. Submitting a Claim
- E6. Processing a Claim
- E7. Appeals
- E8. Requests for an Advance Decision

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Section 420 of title 24, United States Code
- (f) Section 4712 of title 10, United States Code
- (g) Section 9712 of title 10, United States Code
- (h) Section 554 of title 37, United States Code
- (i) Section 714 of title 32, United States Code
- (j) Section 3529 of title 31, United States Code
- (k) Section 552 of title 5, United States Code
- (l) Section 501 et seq. of title 50 Appendix, United States Code

E2. ENCLOSURE 2

DEFINITIONS

E2.1. DEFINED TERMS

E2.1.1. Armed Forces. The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

E2.1.2. Claim. A demand for money or property under references (b) through (i).

E2.1.3. Committee. The person or persons invested, by order of a proper court, with the guardianship of a minor or incompetent person and/or the estate of a minor or incompetent person.

E2.1.4. Component Concerned. The agency/activity (as well as the official designated by the Head of the agency/activity) required to perform the function or take the action indicated or from whose activity a claim arose.

E2.1.5. Final Action. A finding by the appropriate official under this Instruction concerning a claim from which there is no right to appeal or request reconsideration, or concerning which the time limit prescribed in this Instruction for submitting an appeal or request for reconsideration has expired without such a submission.

E2.1.6. Member. A member or former member of the Uniformed Services.

E2.1.7. Secretary Concerned. The Secretary of the Army, addressing matters concerning the Army. The Secretary of the Navy, addressing matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a Service in the Navy. The Secretary of the Air Force, addressing matters concerning the Air Force. The Secretary of Homeland Security, addressing matters concerning the Coast Guard when it is not operating as a Service in the Navy. The Secretary of Health and Human Services, addressing matters concerning the PHS. The Secretary of Commerce, addressing matters concerning the NOAA.

E2.1.8. Settlement. A claim and the amount due that is administratively determined to be valid.

E2.1.9. Uniformed Services. The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

E3. ENCLOSURE 3
GUIDANCE

E3.1. SUBMITTING A CLAIM

The procedures a claimant must follow to submit a claim are at enclosure 5.

E3.2. PROCESSING A CLAIM

The procedures a DoD Component must follow in processing a claim are at enclosure 6.¹

E3.3. APPEALS

The procedures for appealing initial determinations are at enclosure 7.

E3.4. DISPOSITION OF CLAIMS UPON SETTLEMENT IN GENERAL

E3.4.1. The appropriate official for the Component concerned shall pay a claim in accordance with the final action concerning the claim.

E3.4.2. Where State law requires, a committee must be appointed for a minor or incompetent person in accordance with State law before payment may be made.

E3.5. REQUESTS FOR AN ADVANCE DECISION

Procedures for requesting an advance decision under reference (j) concerning the propriety of a payment or voucher certification related to claims addressed in this Instruction are at enclosure 8.

¹ Contact the appropriate non-DoD Component for the procedures it follows in processing a claim.

E3.6. PUBLICATION

In accordance with reference (k), the Director, DOHA, or designee, shall make redacted copies of responses to requests for reconsideration and advance decisions by the GC, DoD, or designee, available for public inspection and copying at the DOHA's public reading room and on the worldwide web.

E4. ENCLOSURE 4
CLAIMS DESCRIPTION

The Secretary of Defense is authorized to perform the claims settlement and advance decision functions for claims under the following statutes:

E4.1.1. Reference (b) concerning claims in general when there is no other settlement authority specifically provided for by law.²

E4.1.2. Reference (c) concerning the disposition of unclaimed personal property on a military installation.

E4.1.3. Reference (d) concerning the final settlement of accounts of deceased members of the Armed Forces (but not the National Guard).³

E4.1.4. References (e), (f), and (g) concerning the disposition of the effects of a deceased person who was subject to military law at a place or Command under the jurisdiction of the Army or the Air Force or of a deceased resident of the Armed Forces Retirement Home.

E4.1.5. Reference (h) concerning the sale of personal property of members of the Uniformed Services who are in a missing status.

E4.1.6. Reference (i) concerning the final settlement of accounts of deceased members of the National Guard.³

² This includes claims involving Uniformed Services members' pay, allowances, travel, transportation, payment for unused accrued leave, retired pay, and survivor benefits, and claims for refund by carriers for amounts collected from them for loss or damage to property they transported at Government expense; also included are other claims arising from the activity of a DoD Component. However, the Director of the Office of Personnel Management performs these functions for claims involving civilian employees' compensation and leave; and the Administrator of General Services performs these functions for claims involving civilian employees' travel, transportation, and relocation expenses.

³ Claims under this statute are actually settled under the authority in reference (b) because there is no specific settlement authority in the statute.

E5. ENCLOSURE 5
SUBMITTING A CLAIM

E5.1. WHO MAY SUBMIT A CLAIM

Any person ("claimant") may submit a claim who has a demand for money or property against the Government under references (b) through (i).

E5.2. WHERE TO SUBMIT A CLAIM

A claimant must submit a claim to the Component concerned in accordance with guidance provided by that Component. A claim that is submitted somewhere other than to the Component concerned does not stop the running of the time limit in section E5.6. It is the claimant's responsibility to submit a claim properly.

E5.3. FORMAT OF A CLAIM

A claimant must submit a claim in the format prescribed by the Component concerned. It must be written and be signed by the claimant (in the case of a claim on behalf of a minor or incompetent person, there are additional requirements explained at section E5.5.) or by the claimant's authorized agent or attorney (there are additional requirements explained at section E5.4.). In addition, it should:

E5.3.1. Provide the claimant's mailing address;

E5.3.2. Provide the claimant's telephone number;

E5.3.3. State the amount claimed;

E5.3.4. State the reasons why the Government owes the claimant that amount;

E5.3.5. Have attached copies of documents referred to in the claim; and

E5.3.6. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the claimant or other persons in support of the claim.

E5.4. CLAIM SUBMITTED BY AGENT OR ATTORNEY

In addition to the requirements in section E5.3., a claim submitted by the claimant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant.

E5.5. CLAIM SUBMITTED ON BEHALF OF A MINOR OR INCOMPETENT PERSON

In addition to the requirements in section E5.3.:

E5.5.1. If a guardian or committee has not been appointed, a claim submitted on behalf of a minor or incompetent person must:

E5.5.1.1. State the claimant's relationship to the minor or incompetent person;

E5.5.1.2. Provide the name and address of the person having care and custody of the minor or incompetent person; and

E5.5.1.3. Include an affirmation that any moneys received shall be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

E5.5.2. If a guardian or committee has been appointed, a claim submitted on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee.

E5.6. WHEN TO SUBMIT A CLAIM

A claimant must submit a claim so that it is received by the Component concerned within the time limit allowed by statute.

E5.6.1. Claimants must submit claims within these statutory time limits:⁴

E5.6.1.1. Claims on account of Treasury checks under 31 U.S.C. 3702(c) (reference (b)) must be received within 1 year after the date of issuance.

⁴ Under reference (l), periods of active military service are not included in calculating whether a claim has been received within these statutory time limits.

E5.6.1.2. Claims under 31 U.S.C. 3702(b) (reference (b)), reference (d), and reference (i) must be received within 6 years of the date the claim accrued. (A claim accrues on the date when everything necessary to give rise to the claim has occurred.) The time limit for claims of members of the Armed Forces that accrue during war or within 5 years before war begins, is 6 years from the date the claim accrued or 5 years after peace is established, whichever is later.

E5.6.1.3. Claims under 10 U.S.C. 2575(d)(3) (reference (c)) must be received within 5 years after the date of the disposal of the property to which the claim relates.

E5.6.1.4. Claims under 24 U.S.C. 420(d)(1) (reference (e)), reference (f), and reference (g) must be received within 6 years after the death of the deceased resident.

E5.6.1.5. Claims under 37 U.S.C. 554(h) (reference (h)) must be received before the end of the 5-year period from the date the net proceeds from the sale of the missing person's personal property are covered into the Treasury.

E5.6.2. The time limits set by statute may not be extended or waived.⁵ Although the issue of timeliness normally shall be raised upon initial submission (as explained at enclosure 6, section E6.2.), the issue may be raised at any point during the claim settlement process.

E5.7. CLAIMANT MUST PROVE THE CLAIM

The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. All relevant evidence to prove the claim should be presented when a claim is first submitted. In the absence of compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered.

⁵ There is an exception for certain claims described in 31 U.S.C. 3702(e) (reference (b)). In those cases, the Secretary of Defense may waive the time limits in subparagraph E5.6.1.2. Enclosure 6, section E6.4., explains which claims qualify and the procedures that apply.

E6. ENCLOSURE 6
PROCESSING A CLAIM

E6.1. INITIAL COMPONENT PROCESSING

Upon receipt of a claim, the Component concerned must:

E6.1.1. Date stamp the claim on the date received;

E6.1.2. Determine whether the claim was received within the required time limit (time limits are summarized at enclosure 5, section E5.6.) and follow the procedures in section E6.2. if the claim was not timely;

E6.1.3. Investigate the claim;

E6.1.4. Decide whether the claimant provided clear and convincing evidence that proves all or part of the claim;

E6.1.5. Issue an initial determination that grants the claim to the extent proved or denies the claim, as appropriate. The initial determination must state how much of the claim is granted and how much is denied, and must explain the reasons for the determination; and

E6.1.6. Notify the claimant of the initial determination. The Component must send the claimant a copy of the initial determination and a notice that explains:

E6.1.6.1. The action the Component shall take on the claim, if the initial determination is or becomes a final action (the finality of an initial determination is explained at section E6.3.); and

E6.1.6.2. The procedures the claimant must follow to appeal an initial determination that denies all or part of the claim (those appeal procedures are explained at enclosure 7), if applicable.

E6.2. UNTIMELY CLAIMS

When the Component concerned determines that a claim was not received within the statutory time limit, the Component must make an initial determination of untimely receipt. (The statutory time limits are explained in section E5.6.)

E6.2.1. The initial determination must cite the applicable statute and explain the reasons for the finding of untimely receipt. The Component must send the initial determination to the claimant with a notice that:

E6.2.1.1. States the claim was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed on appeal, and explains how the claimant may appeal the finding (those appeal procedures are explained at enclosure 7); and either

E6.2.1.2. If the claim does not qualify under 31 U.S.C. 3702(e) (reference (b)), states that the statutory time limit may not be extended or waived; or

E6.2.1.3. If the claim does qualify under 31 U.S.C. 3702(e) (reference (b)), states that the claim may be further considered only if the time limit is waived, and explains how the claimant may apply for a waiver. (Section E6.4. explains which claims qualify and the procedures for applying for a waiver).

E6.2.2. Except in cases where a claimant has applied under section E6.4. to request a waiver of the time limit, the Component must return the claim to the claimant when the initial determination becomes a final action with a notice that the finding in the initial determination is final and, therefore, the claim may not be considered. If the claim qualifies under 31 U.S.C. 3702(e) (reference (b)), the notice must also state that the claimant may resubmit the claim with an application under section E6.4.

E6.3. FINALITY OF AN INITIAL DETERMINATION

An initial determination that grants all of a claim is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action if the Component concerned does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the Component concerned for good cause shown).

E6.4. WAIVER OF CERTAIN TIME LIMITS

When the Component concerned determines that a claim was not received within the statutory time limit in 31 U.S.C. 3702(b) or (c) (reference (b)), the claimant may request a waiver of the time limit. Waiver is permitted only for those claims that satisfy the requirements of 31 U.S.C. 3702(e).⁶ This provision confers no right or entitlement on a claimant. It is solely within the discretion of the Secretary of Defense whether to grant such a waiver in a particular case.

E6.4.1. The claim must contain the information and documents that are generally required for claims (those requirements are explained at enclosure 5, section E5.3.).

E6.4.2. The Component concerned must investigate the claim and make an initial determination concerning the merits of the claim.

E6.4.3. If the initial determination grants all or part of the claim, and if the Secretary concerned agrees with the determination, the Secretary may request or recommend that the time limit be waived.⁷ Requests and recommendations must be in writing and signed by the Secretary concerned. (This authority may not be delegated below the level of an Assistant Secretary.)

E6.4.3.1. The Secretary concerned shall forward the request or recommendation to the following address:

Defense Office of Hearings and Appeals
Claims Division
P.O. Box 3656
Arlington, VA 22203-1995

E6.4.3.2. The entire record concerning the claim, including the initial determination, must be attached to the request.

⁶ When this Instruction was issued, 31 U.S.C. 3702(e) (reference (b)) allowed time limit waivers only for claims up to \$25,000 for Uniformed Service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. Since 31 U.S.C. 3702 (e) could be amended at any time to modify these restrictions, always consult the current provisions of that Section to determine which claims are included.

⁷ 31 U.S.C. 3702 (e) (reference (b)) currently requires a Secretarial request only in the case of a claim by or with respect to a member of the Uniformed Services who is not under the jurisdiction of the Secretary of a Military Department. As a matter of policy, the Department of Defense currently requires a Secretarial recommendation in all other cases.

E6.4.4. The Director, DOHA, must review the request and the written record and must:

E6.4.4.1. Grant the request and waive the statutory time limit, if the Director finds that all or part of the claim has been proven. The Director may also modify the finding concerning the amount of the claim that has been proven.

E6.4.4.2. Deny the request, if the Director finds that no part of the claim has been proven.

E6.4.4.3. Notify the Secretary concerned and the claimant of the decision and the reasons for the findings.

E6.4.5. In the event the Director, DOHA, denies the request, or grants the request but modifies the finding concerning the amount of the claim proven, the Secretary concerned or the claimant may request reconsideration (the procedures are explained at enclosure 7). The Director's decision is a final action if the Director does not receive a request for reconsideration within 30 days of the date of the Director's decision (plus any extension of up to 30 additional days granted by the Director for good cause shown).

E7. ENCLOSURE 7

APPEALS

E7.1. WHO MAY APPEAL

A claimant may appeal if an initial determination denies all or part of a claim or finds that the claim was not received by the Component concerned within the time limit required by statute; however, the decision of the Secretary concerned not to request or recommend waiver of the time limit is not appealable except to the Secretary concerned, if the Secretary as a matter of discretion provides for such appeals.

E7.2. WHEN AND WHERE TO SUBMIT AN APPEAL

A claimant's appeal must be received by the Component concerned within 30 days of the date of the initial determination. The Component may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. An appeal sent directly to the DOHA is not properly submitted.

E7.3. CONTENT OF AN APPEAL

No specific format is required; however, the appeal must be written and be signed by the claimant, the claimant's authorized agent, or the claimant's attorney. In addition, it should:

E7.3.1. Provide the claimant's mailing address;

E7.3.2. Provide the claimant's telephone number;

E7.3.3. State the amount claimed on appeal, or that the appeal is from a finding of untimely receipt, whichever applies;

E7.3.4. Identify specific:

E7.3.4.1. Errors or omissions of material and relevant fact;

E7.3.4.2. Legal considerations that were overlooked or misapplied; and

E7.3.4.3. Conclusions that were arbitrary, capricious, or an abuse of discretion;

E7.3.5. Present evidence of the correct or additional facts alleged;

E7.3.6. Explain the reasons the findings or conclusions should be reversed or modified;

E7.3.7. Have attached copies of documents referred to in the appeal; and

E7.3.8. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the appeal.

E7.4. COMPONENT'S REVIEW

The Component concerned must review a claimant's appeal, and affirm, modify, or reverse the initial determination.

E7.4.1. If the appeal concerns the denial of all or part of the claim and the Component grants the entire claim, or grants the claim to the extent requested in the appeal, the Component must notify the claimant in writing and explain the action the Component shall take on the claim. This is a final action.

E7.4.2. If the appeal concerns the untimely receipt of the claim and the Component determines that the claim was received within the time limit required by statute, the Component must notify the claimant in writing and process the claim on the merits.

E7.4.3. In all other cases, the Component must forward the appeal to the DOHA in accordance with section E7.5. If the appeal concerns an initial determination of untimely receipt, the Component should not investigate, or issue an initial determination concerning, the merits of the claim before forwarding the appeal. The Component must prepare a recommendation and administrative report (as explained in section E7.6.). The Component must send a copy of the administrative report to the claimant, with a notice that the claimant may submit a rebuttal to the Component (as explained in section E7.7.).

E7.5. SUBMISSION OF APPEAL TO THE DOHA

No earlier than 31 days after the date of the administrative report, or the day after the claimant's rebuttal period, as extended, expires, the Component must send the entire record along with the recommendation and the administrative report required by section E7.6. to the following address:

Defense Office of Hearings and Appeals
Claims Division
P.O. Box 3656
Arlington, Virginia 22203-1995

The record sent to the DOHA shall include specific identification of any major policy issue(s) and a statement as to whether the amount in controversy exceeds \$100,000 either in the instant claim or in the aggregate for directly related claims. If the amount in controversy exceeds \$100,000, a full description of the financial impact shall be provided.

E7.6. RECOMMENDATION AND ADMINISTRATIVE REPORT

The recommendation and administrative report required by section E7.5. must include the following:

E7.6.1. The name of the claimant;

E7.6.2. The Component's file reference number;

E7.6.3. The Component's recommendation (and the reasons for it) for the disposition of the claim;

E7.6.4. Relevant and material documents (such as correspondence, business records, and witness statements), as attachments; and

E7.6.5. Complete copies of regulations, instructions, memorandums of understanding, tariffs and/or tenders, solicitations, contracts, or rules cited by the claimant or the Component, if a copy has not been previously provided, or is not available readily via electronic means.

E7.7. CLAIMANT'S REBUTTAL

A claimant may submit a written rebuttal, signed by the claimant or the claimant's agent or attorney, in response to the recommendation and administrative report. The rebuttal must be submitted to the Component within 30 days of the date of the recommendation and administrative report. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

E7.7.1. An explanation of the points and reasons for disagreeing with the report;

E7.7.2. The Component's file reference number;

E7.7.3. Any documents referred to in the rebuttal; and

E7.7.4. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the rebuttal.

E7.8. ACTION BY THE COMPONENT

The Component must:

E7.8.1. Date stamp the claimant's rebuttal on the date it is received;

E7.8.2. Send the entire record to the DOHA, but no earlier than 31 days after the date of the report, or the day after the claimant's rebuttal period, as extended, expires (as explained in section E7.5.).

E7.9. DOHA APPEAL DECISION

Except as provided in section E7.16., the DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the claimant. The DOHA shall coordinate its decision in advance with the GC, DoD when the appeal decision affects major policy issues; involves a claim that is quasi-contractual in nature and arises from the activity of a DoD Component, but the claim was not settled under usual acquisition procedures; or when the amounts in controversy exceed \$100,000, either for the instant claim or in the aggregate for directly related claims. The written decision must:

E7.9.1. Affirm, modify, reverse, or remand the Component's determination (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);

E7.9.2. State the amount of the claim that is granted and the amount that is denied and/or state that the claim was or was not received within the statutory time limit, as appropriate; and

E7.9.3. Explain the reasons for the decision.

E7.10. PROCESSING AFTER THE APPEAL DECISION

After issuing an appeal decision, the DOHA must:

E7.10.1. Send the claimant the decision and notify the claimant of:

E7.10.1.1. The appropriate Component action on the claim as a consequence of the decision, if it is or becomes a final action (as explained in section E7.11.); and

E7.10.1.2. The procedures under this enclosure to request reconsideration (as explained in sections E7.12. through E7.14.), if the decision does not grant the claim to the extent requested, or does not contain a finding of timely receipt, as the case may be.

E7.10.2. Notify the Component concerned of the decision, and of the appropriate Component action on the claim as a consequence of the decision.

E7.11. FINALITY OF A DOHA APPEAL DECISION

An appeal decision that finds that the claim was timely received is a final action when issued. Otherwise, an appeal decision is a final action if the DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by the DOHA for good cause shown).

NOTE: In the case of a DOHA appeal decision issued before the effective date of this Instruction that denied all or part of the claim, a request for reconsideration by the GC, DoD may be submitted within 60 days of the effective date of this Instruction. The GC, DoD shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the GC, DoD received more than 60 days after the effective date of this Instruction shall not be accepted. Requests must be submitted to the address in section E7.5. The provisions of section E7.14. apply.

E7.12. WHO MAY REQUEST RECONSIDERATION

A claimant or the Component concerned, or both, may request reconsideration of a DOHA appeal decision.

E7.13. WHEN AND WHERE TO SUBMIT A REQUEST FOR RECONSIDERATION

The DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.⁸ The DOHA may extend this period for up to an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to the DOHA at the address in section E7.5.

E7.14. CONTENT OF A REQUEST FOR RECONSIDERATION

The requirements of section E7.3., concerning the contents of an appeal, apply to requests for reconsideration.

⁸ With respect to appeal decisions issued before the effective date of this Instruction, the request for reconsideration by the GC, DoD must be received by the DOHA within 60 days of the effective date of this Instruction as explained in section E7.11.

E7.15. DOHA'S REVIEW OF A REQUEST FOR RECONSIDERATION

E7.15.1. No earlier than 31 days after the date of the appeal decision, or the day after the last period for submitting a request, as extended, expires, the DOHA must:

E7.15.1.1. Consider a request or requests for reconsideration;

E7.15.1.2. Affirm, modify, reverse, or remand the appeal decision (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);

E7.15.1.3. Prepare a response that explains the reasons for the finding; and

E7.15.1.4. Send the response to the claimant and the Component concerned and notify both of the appropriate action on the claim.

E7.15.2. The response is a final action. It is precedent in the consideration of all claims covered by this Instruction unless otherwise stated in the document.

E7.16. CONSIDERATION OF APPEALS AND REQUESTS FOR RECONSIDERATION

When considering an appeal or request for reconsideration, the DOHA may:

E7.16.1. Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.

E7.16.2. Remand a matter to the Component with instructions to provide additional information.

E8. ENCLOSURE 8
REQUESTS FOR AN ADVANCE DECISION

E8.1. WHO MAY REQUEST AN ADVANCE DECISION

A disbursing or certifying official or the Head of a Component may request an advance decision on a question involving:

- E8.1.1. A payment the disbursing official or Head of the Component shall make; or
- E8.1.2. A voucher presented to a certifying official for certification.

E8.2. WHO MAY RENDER AN ADVANCE DECISION

The following officials are authorized to render an advance decision concerning the matters indicated:

E8.2.1. The Secretary of Defense for requests involving claims under:

E8.2.1.1. Reference (b) for Uniformed Services members' pay, allowances, travel, transportation, retired pay, and survivor benefits, and by carriers for amounts collected from them for loss or damage to property they transported at Government expense.

E8.2.1.2. Reference (b) that are not described in subparagraph E8.2.1.1. and that arise from the activity of a DoD Component, when there is no other settlement authority specifically provided by law.

E8.2.1.3. References (c) through (i). Enclosure 4 describes these claims.

E8.2.2. The Director of the Office of Personnel Management for requests involving claims for civilian employees' compensation and leave.

E8.2.3. The Administrator of General Services for requests involving claims for civilian employees' travel, transportation, and relocation expenses.

E8.3. WHERE TO SUBMIT A REQUEST

All requests described in paragraph E8.2.1. and all other requests arising from the activity of a DoD Component (even if addressed to an official outside the Department of Defense) must be sent through the General Counsel of the Component concerned to the following address:

General Counsel
Department of Defense
1600 Defense Pentagon
Washington, DC 20301-1600

E8.4. CONTENT OF A REQUEST

Requests for an advance decision must:

- E8.4.1. Specifically request an advance decision pursuant to reference (j);
- E8.4.2. Describe all the relevant facts;
- E8.4.3. Explain the reasons (both factual and legal) the requester considers the proposed payment to be questionable;
- E8.4.4. Have attached vouchers, if any, and copies of all other relevant documents relating to the proposed payment;
- E8.4.5. Have attached a legal memorandum from the General Counsel of the Component concerned that discusses the legality of the proposed payment under the circumstances presented in the request; and
- E8.4.6. Comply with any other requirements established by the Director of the Office of Personnel Management or the Administrator of General Services.

E8.5. ADVANCE DECISIONS.

The GC, DoD, must take action under paragraphs E8.5.1., E8.5.2., or E8.5.3., whichever applies.

E8.5.1. If the request is described in paragraph E8.2.1., the GC, DoD must review the request and issue an advance decision, unless the GC, DoD elects to proceed under paragraph E8.5.3.

E8.5.1.1. The GC, DoD must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the Director, DOHA for publication according to section E3.6.

E8.5.1.2. The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.

E8.5.1.3. An advance decision is precedent in similar claims under this Instruction unless otherwise stated in the decision.

E8.5.2. If the request is not described in paragraph E8.2.1., the GC, DoD must review the request and either:

E8.5.2.1. Forward the request to the appropriate advance decision authority and notify the requester of that action; or

E8.5.2.2. Return the request, through the General Counsel of the Component concerned, to the requester, with a memorandum explaining that under existing legal authorities a request for an advance decision is not necessary. After considering the memorandum, the requester may resubmit the request, through the General Counsel of the Component concerned, to the GC, DoD. The GC, DoD must forward the request to the appropriate advance decision authority, and notify the requester of that action.

E8.5.3. If the request is described in paragraph E8.2.1., and the claim is for not more than \$250, the GC, DoD may refer the request to the General Counsel, Defense Finance and Accounting Service (DFAS). The General Counsel, DFAS, shall review the request and issue an advance decision.

E8.5.3.1. The General Counsel, DFAS, must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the GC, DoD.

E8.5.3.2. The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.

E8.5.3.3. An advance decision issued by the General Counsel, DFAS, under this paragraph is not precedent in similar claims under this Instruction.