

Chapter 11

CLAIMS

Section A--General

11-1. General. Claims against and by the government can arise out of virtually any aspect of federal government operations. Generally, claims are requests for payment for goods and services received or for travel associated expenses incurred by military members and civilian employees. Most claims are paid as a matter of routine because justification and verification information are readily available or presented at the same time as the request for payment. However, some claims require special treatment and research. This chapter provides information and procedures for:

- a. False claims.
- b. Advance decision from the Comptroller General on a question involved in a voucher that the AFO/OPLOC has for payment.
- c. Claims required to be settled by GAO.
- d. Reclaim vouchers.
- e. Collection, compromise, suspension, or termination of collection action on civil claims for money or property.
- f. Accounting procedures for claims.

11-2. Claims. A claim presented to the AFO/OPLOC for payment, about which there is some uncertainty, must be thoroughly researched in accounting and finance regulations and other legal authorities. If uncertainty remains, contact MAJCOM for assistance.

Section B--False Claims

11-3. Exceptions. This section does not apply to tort claims or loss and damage claims for personal property. For those claims, follow AFI 51-501 and AFI 51-502.

11-4. Definition:

- a. A claim is considered false when there is evidence of a deliberate misrepresentation of facts by the claimant. An honest mistake or error does not constitute a false claim.
- b. The burden of establishing that a claim is false is on the party alleging the claim is false. It must be proved by enough evidence to overcome the existing presumption of honesty and fair dealing. Circumstantial evidence is enough if it clearly implies a false claim and consists of more than a suspicion or conjecture. If circumstances indicate honesty and good faith equally with dishonesty, decide in favor of honesty.
- c. Generally, where discrepancies are minor, small in total dollar amounts, or infrequent, do not determine possible falsification without convincing evidence. Where discrepancies are glaring, large sums are involved, or are made frequently, a finding of possible misrepresentation is more likely if there is no satisfactory explanation by the claimant (Comp. Gen. B-189072, 11 Aug 1978).
- d. These situations indicate a possible false claim:
 - (1) Apparent conflicting statement of fact in material presented by the claimant to support the claim.
 - (2) Altered or forged documents.
 - (3) Reliable information the AFO/OPLOC has that conflicts with information shown on vouchers or supporting documents presented by claimant.
- e. The AFO/OPLOC should consult with the local Staff Judge Advocate for help to determine if available facts are enough to warrant denial or recoupment action on a suspected false claim. Vague hunches, whims, or intuition do not suffice.
- f. An AFO/OPLOC determines action to be taken on a suspected false claim whether or not the claimant is prosecuted. The AFO/OPLOC should consult with the responsible commander and DFAS-DE in making the determination. Absence of prosecution or even acquittal in a criminal proceeding are factors to be considered by the AFO/OPLOC in the determination of a false claim. However, they are not necessarily controlling in the AFO/OPLOC's decision.

11-5. Immediate Action To Be Taken on Suspected False Claims. The AFO/OPLOC has the authority and responsibility to challenge any suspicious or doubtful claim whether or not the individual is prosecuted. The following actions must be initiated by the AFO/OPLOC when either a suspected false claim is presented for payment or a paid claim is later discovered to have been supported by false information:

- a. Conduct preliminary research into the reasonableness and accuracy of the claim. Consult the claimant's commander for assistance, review, and determination of possible disciplinary action.
- b. If the AFO/OPLOC is still not satisfied with the reasonableness of the claim based on the indicators present, the AFO/OPLOC should deny payment or pay only that portion that appears to be reasonable.
- c. After consideration of the points raised in paragraph 11-4, the AFO/OPLOC may request a formal AFOSI investigation or an informal discussion with the AFOSI unit, action commander, and Staff Judge Advocate. If the AFO/OPLOC believes repetitiveness or criminal activity exists, the AFO/OPLOC will request the base/wing commander to notify the AFOSI to perform a formal investigation regardless of the amount of the claim. The AFO/OPLOC will notify the MAJCOM. Notification may be given by phone or message with consideration given to the rights of individuals and integrity of the investigation.
- d. If unusual situations or improper actions involve a Do-It-Yourself (DITY) move, ensure DFAS-DE 7010.3-R procedures for processing improper DITY moves have been accomplished.
- e. Under no circumstance should a claimant be permitted to withdraw the original claim and submit a substitute claim that eliminates the false or misrepresented items.
- f. If collusion is suspected within the accounting and finance office or payment is made to a suspected impostor, the AFO/OPLOC must take additional action specified in DoDFMR, vol. 5, chapter 25.

11-6. Denying Payment--Claims Submitted On or After 11 Aug. 1978. Only those items misrepresented or falsified on a claim may be denied or recouped. Other items submitted on the same claim that are not misrepresented by a false statement or action are payable to the claimant. Examples:

- a. Where a claim for travel allowances contains a separate item for per diem or actual subsistence expense, and that item is determined to be false or misrepresented, separate the voucher according to individual days, so each day comprises a separate item. The false statement nullifies the entire per diem or actual subsistence claim for that day. Claims for similar expenses on other days that are not misrepresented may be paid if otherwise correct (Comp. Gen. B-189072, 11 Aug. 1978).
- b. When an employee receives a travel advance and then submits a false final settlement voucher, the separable items on the settlement voucher associated with a false statement can be denied or recouped. Any additional amount claimed should be denied or recouped only insofar as it is a separate item that has been misrepresented.

11-7. Recourse Available to Claimant. If a claimant wants to contest the denial or recoupment of all or part of a claim, he or she may do so by filing the claim with the General Accounting Office (GAO). This is the claimant's lawful right and the AFO/OPLOC must inform the claimant of this. Process the claim through Air Force channels to the GAO per paragraph 11-13 to speed processing.

***11-8. Deleted. (Consolidated into DoD FMR, Volume 5, chapter 6, paragraph 0607.)**

Section C--Comptroller General Decisions

11-9. General Information. The SAF or an AFO/OPLOC maintaining a Treasury account may ask the Comptroller General for a decision on any question involving payments of more than \$100 for which the AFO/OPLOC is responsible. The Comptroller General does not consider questions on payments of amounts of \$100 or less. Decisions are given only when the question is supported with appropriate documents. Do not send a hypothetical question for an advance decision.

11-10. Type of Decisions. The Comptroller General makes four types of decisions. They are:

- a. **Review of GAO Actions.** This type of decision is requested after a payment was made and acted on by the GAO, and is given in response to an effort to overcome the GAO action. Included in this type are claims by contractors for items of cost initially allowed and paid to the contractors, but later deducted from monies due or refunded by the contractor, following the issuance of GAO NOEs.
- b. **Advance Decision.** This type of decision is requested when there is a question involving payments to be made and is given before payment by the AFO/OPLOC.

DFAS-DE 7010.1-R

c. Disallowed Claims. Decisions following reviews of GAO actions in disallowing claims submitted to them for direct settlement.

d. Motion of Comptroller General. Decisions by the Comptroller General upon its own motion related to some question about the work of that office.

11-11. Advance Decision Requests:

a. An AFO/OPLOC is entitled to an advance decision on any question involving a voucher presented for payment. Prepare and submit the request for a decision per this paragraph.

(1) Amounts of more than \$100:

(a) Prepare the request in letter form addressed to the Comptroller General of the US, US General Accounting Office, 441 G Street NW, Washington DC 20548.

1. State in the first paragraph that the request is made under authority in 31 U.S.C. 3529.

2. Give a clear and brief presentation of the question at issue, including all facts causing doubts concerning the validity of the proposed payment. Personal views of the AFO/OPLOC concerned should be excluded.

3. State that an AFO/OPLOC is requesting a decision and that the voucher or military pay order submitted was presented to the AFO/OPLOC for payment.

(b) Sign the request. If the requesting AFO/OPLOC does not, the Comptroller General is not required or authorized to give a decision on the question.

(c) Attach a properly prepared payment voucher extended to show the amount payable. Include supporting copies of contracts or other papers that relate to the question. If applicable, a DD Form 114, Military Pay Order, and necessary supporting papers may be used in place of a voucher.

(d) Submit the original and two copies of the request for advance decision through MAJCOM channels to DFAS-DE/AN by a separate transmittal letter. Military Pay entitlement issues should be referred to DFAS-DE/FJEE.

(2) Amounts of \$100 or less. Requests for advance decisions for payment of \$100 or less are made up and processed the same as for amounts of more than \$100. However, instead of addressing the letter to the Comptroller General, address and send it to DFAS-DE/AN, 6760 E. Irvington Place, Denver CO 80279-8000.

b. Approval or Disapproval. If a decision is given that payment is proper, the original voucher or DD Form 114 is returned to the AFO/OPLOC for payment. If payment is disapproved, the AFO/OPLOC is notified and the original voucher or DD Form 114 together with supporting documents is kept by GAO or DFAS-DE.

c. Processing for Payment. The AFO/OPLOC records the number and date of the Comptroller General decision on, or attaches a copy of the DFAS-DE decision to, each voucher or DD Form 114 approved for payment.

d. Effective Dates. An advance decision in a particular case takes effect from the date the decision is given by the Comptroller General or DFAS-DE. A delay by DFAS-DE or a MAJCOM in notifying an AFO/OPLOC of a decision does not defer the effective date of the decision.

e. Agent Requests. An agent of an AFO/OPLOC is not authorized to ask for an advance decision from the Comptroller General or DFAS-DE. Any agent who believes that a decision is necessary sends the required documents and any related data to his or her principal for preparation and submission of the case.

f. Decisions of the Armed Services Board of Contract Appeals (ASBCA). Notwithstanding the above, an AFO/OPLOC who questions the validity of any payment directed by a decision of the ASBCA follows the procedures in DFAS-DE 7010.2-R.

11-12. Restrictions. The following abstracts are from advance decisions of the Comptroller General and pertain to AFO/OPLOC actions regarding advance decisions.

a. Subject Awaiting Decision. No action may be taken by an AFO/OPLOC toward payment of a voucher when the subject is before the Comptroller General for advance decision.

b. Subject Pending in Court of Claims. It is not the practice of the Comptroller General to render advance decision on identical matters pending in the Court of Claims.

c. Reconsideration. The Comptroller General may not reconsider a final decision of a former Comptroller General unless new and material evidence is furnished or unless a mistake, fraud, or collusion is involved.

d. Informal Opinions. The expression of an informal opinion by an officer or employee of GAO is not an official action and is not controlling in any matter that may come before the Comptroller General for an official determination.

Section D--Claims for Settlement by General Accounting Office

11-13. General Information:

a. Title 4, section 4, GAO Policy and Procedures Manual, sets forth general procedures applicable to claims against the US that an AFO/OPLOC submits to GAO for settlement before payment is made or denied. Detailed procedures for preparation and processing of claims for payment, either locally or by higher authority, are in the applicable A&F directives (for example, military pay matters--DoDFMR, volume 7; civilian pay matters--DoDFMR, volume 8; commercial services matters--DFAS-DE 7010.2-R, etc.). Prepare administrative report per paragraph 11-15 on all claims sent to higher authority or GAO for settlement. The AFO/OPLOC promptly processes claims that have been properly certified and returned for payment, either by GAO or by claims approving authorities in the Air Force.

b. The GAO settles claims based on the facts presented by the government agency and from evidence submitted by the claimant. The settlement of claims is based on the written record only. Therefore, the claim file furnished to the GAO must be complete and accurate.

c. A claim will not necessarily be denied because a part of the claim contains an element of doubt. Process the part not in question per instructions in applicable A&F directives. When partial settlement is made, the AFO/OPLOC states in writing the amount of the partial settlement and that no further payments will be made except after certification in the name of the Comptroller General.

d. Every personal claim against the US forwarded to Claims Division, GAO, and all related correspondence, should contain the individual's SSN. If the claim involves a business entity, the employer's identification number should be on the claim and correspondence. When the SSN or employer's identification or any other personal information is solicited from the individual concerned for use in the administrative report, provide to the individual the following Privacy Act statement.

(1) AUTHORITY: 31 U.S.C. 3526; Executive Order 9397, Nov 1974.

(2) PRINCIPAL PURPOSE(S): To summarize relevant facts pertaining to a doubtful claim submitted to the General Accounting Office for resolution.

(3) ROUTINE USES: Evaluators with the General Accounting Office use the administrative report to evaluate the merits of a doubtful claim. This information may also be used for other lawful purposes, including law enforcement and litigation. The SSN, or if a business entity, the employer's identification number, is used for positive identification.

(4) DISCLOSURE IS VOLUNTARY: If information is not provided, the General Accounting Office may not have positive identification of the claimant.

11-14. Submission. US statutes, Air Force regulations, and GAO directives assign the Air Force authority to dispose of certain claims. Claims must be annotated or stamped with the date the claim was first received in the Air Force. Submit claims that cannot be settled at base to higher authority to GAO for settlement. The AFO/OPLOC also sends all claims that fall into the following general categories through command channels to the Claims Division, GAO, for settlement:

a. Claims that involve doubtful questions of law or fact, except those which have been the subject of an advance decision of the Comptroller General; in the latter case, refer to the decision on the voucher supporting payment. A doubtful claim exists when a person having final responsibility for deciding appropriate administrative action is unable with reasonable prudence to decide that the claim is or is not payable.

b. Claims that are required by statute, regulation, or decision of the Comptroller General to be settled by GAO before payment is made. This includes all claims rendered as final judgments against the government by a District Court or by state and foreign courts (28 U.S.C. 2414) and cases approved by the Court of Claims (28 U.S.C. 2517).

c. Reclaims of items previously denied by the Air Force, unless it is determined administratively that the action taken was in error and can be properly corrected by the Air Force.

d. Claims that appear to be barred by an applicable statute of limitations at the time of receipt.

e. Meritorious-type claims (see AFI 51-501 and AFI 51-502).

11-15. Format. Although there is no particular form or format for filing a claim, the AFO/OPLOC uses pertinent vouchers, when useful, to present a claim to GAO for settlement. Also, the AFO/OPLOC prepares an administrative report in letter form, as shown in figure 11-1, and attaches it to the claim. Do not sign the administrative report and do not list the supporting documents as attachments. Place tabbed blank sheets in front of each supporting document that is itemized in the body of the letter. Those parts of the illustrated administrative

DFAS-DE 7010.1-R

report not in parentheses are to be used in the report as shown in figure 11-1. Instructions on how to complete the items are in parentheses.

11-16. Signatures. Claims will be considered for processing only when presented in writing over the signature and address of the claimant or over the signature of the claimant's authorized agent or attorney. A claim filed by an agent or attorney must be supported by a power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant.

11-17. Transmittal. Send claims for proceeds of noncurrent limited depository checks direct to Claims Division, US General Accounting Office, Wash DC 20548. Send all other claims to be settled by GAO or the Air Force to; DFAS-DE/D through channels, per subject matter directives.

11-18. Informing Claimant. The AFO/OPLOC tells the claimant that the claim was sent to the GAO for settlement. Do not furnish any information to the claimant or his or her representative as to the legality of the claim or about the administrative report relating to it. Once claims are sent to the GAO, the jurisdiction of that office rules out further settlement action by the Air Force.

11-19. General Accounting Office Action:

a. Notification. The GAO sends word of disposition of claims, through channels, to the AFO/OPLOC.

(1) Allowed. The GAO certifies claims for payment either by use of a GAO Form 39, Certificate of Settlement, or by certificate of allowance placed on the voucher, if a voucher is sent with the claim for settlement. Claims for the proceeds of unnegotiated checks may be disposed of by an authorization for payment placed on the back of the check. All certificates of settlement or individual vouchers that show approval of allowance of claims in whole or part, and the supporting documents, are sent to the AFO/OPLOC, through channels, to allow prompt payment. The AFO/OPLOC promptly acknowledges receipt on a copy of the transmittal letter and returns it to the Claims Division, GAO. The AFO/OPLOC sends the claimant's notice copy with the check in payment of the claim.

(2) Disallowed. The GAO issues a GAO Form 44, Settlement Certificate, to notify the claimant when a claim is disallowed in full. A copy of the disallowance notification is sent to the AFO/OPLOC through channels. If GAO allows part of a claim and disallows part, GAO will include a statement relating to the disallowed portion on GAO Form 39, Certificate of Settlement, or the voucher.

b. Review. GAO reviews and reconsiders claim settlements when:

(1) The Comptroller General directs.

(2) The Secretary of the Air Force asks for this action and the Comptroller General agrees.

(3) The claimant points out errors believed to be made in the settlement and asks for review. If helpful to the review, AFO/OPLOC furnishes additional administrative reports.

11-20. Liability. Settlements made by the GAO are final and conclusive, unless revised by or at the direction of the Comptroller General. Certifying officers and AFO/OPLOCs are not held pecuniarily liable for payments made under certificates of settlement issued in the name of the Comptroller General. However, they must make sure there is a sufficient balance in the appropriation or fund to cover the payment involved.

11-21. Restrictions:

a. Assistance. Members and employees of the Air Force cannot act as agents or attorneys for prosecuting any claim against the US nor aid or assist in the prosecution or support of any such claim, other than in the proper discharge of their official duties. However, AFO/OPLOCs should give any assistance considered necessary to the claimant to ensure proper completion and submission of the claim.

b. Precedent. Do not regard settlement of an individual claim by the Claims Division, GAO, as a precedent for the guidance of AFO/OPLOCs.

c. Statutory Limitations--Generally:

(1) Every claim or demand (except a claim or demand by any state, territory, possession, or the District of Columbia) against the US that is proper for determination by GAO under 31 U.S.C. 3702, is forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, reaches GAO, or the agency out of whose activities the claim arose, within 6 full years after the date the claim first accrued.

Exception: When a claim of any person serving in the military or naval forces of the US accrues in time of war, or

when war intervenes within 5 years after its accrual, present such claim within 5 years after establishment of peace (31 U.S.C. 3702).

(2) Whenever GAO receives any claim barred by (1) above, it returns the claim to the claimant, with a copy of the act. Consider this a complete response without further communication (31 U.S.C. 3702).

(3) Do not include the period of military service in computing any period limited by any law, regulation, or order for bringing any action in any court, board, or other agency of the government by or against any person in military service or his or her heirs, executors, administrators, or assigns. This is true whether the cause of action or the right or privilege to institute such action accrued before or during the period of such service (50 U.S.C. App. 525).

(4) Under the limited payability provisions of section 1002 of the Competitive Equality Banking Act of 1987 (Public Law 100-86, 10 August 1987), treasury checks issued on or after the effective date of this section (1 October 1989) must be negotiated to a financial institution within twelve months after the date on which the check was issued. Checks issued before September 30, 1989 must be negotiated no later than 30 September 1990. This act also amended 31 U.S.C. 3702 to provide a one-year limit for check claims. Section 3702(C) now reads: "Any claim on account of a treasury check shall be barred unless it is presented to the agency that authorized the issuance of such check within one year after the date of issuance of the check or the effective date (1 October 1989) of this subsection, whichever is later." These provisions do not affect the underlying obligation of the United States or any agency thereof, for which a treasury check was issued. A recent unpublished Comptroller General decision B-244431, dated 8 October 1991, ruled that any claim on the underlying obligation (basis of entitlement) of a check that has been canceled pursuant to the limited payability provisions now in 31 U.S.C. 3328 is time barred unless presented to the agency within six years after the claim accrued. For example:

(a) A claim on the underlying obligation of a check that was issued on or before 30 September 1984, and not negotiated prior to 1 October 1990, is automatically barred.

(b) A claim on an underlying obligation for a check issued 1 November 1988, which was not negotiated prior to 1 October 1990, will be time barred if not received by the agency within six years after the claim accrued.

(c) A check issued on 1 November 1991, is negotiable through 31 October 1992; if it is not negotiated by that date, a claim for the underlying obligation must be received by the agency within six years of the date the claim accrued. For military members, the period of military service is not included in computing the six-year statute of limitations.

(5) Rightful owners, their heirs or next of kin, or their legal representatives may file claims with the GAO for the net proceeds of certain lost, abandoned, or unclaimed personal property coming into the possession of the Air Force, at any time within 5 years from the date of disposal of the property. The GAO allows or disallows the claim. Claims not filed within 5 years from the date of disposal of the property are barred from being acted on by the courts or the GAO (10 U.S.C. 2575).

(6) Statutes of limitation are not necessarily limited to those referenced above. Claimants should inform themselves about other possible statutory limitations.

d. Contract Claims--Foreign Governments and Foreign Nationals. Where the AFO/OPLOC or MAJCOM cannot properly settle any purchase or sales contracts or transactions implying contract and involving foreign governments or foreign nationals, forward a complete file on the matter to DFAS-DE/CF for disposition. Include the signed claim of the contractor, where applicable, and a full explanation of the matter. See DFAS-DE 7010.2-R for further details on contract claims.

Section E--Reclaim Vouchers

11-22. Reclaim Vouchers. If a claimant desires to contest the denial or recoupment of all or part of a claim, that person may do so by filing a reclaim with the General Accounting Office (GAO). This is the claimant's lawful right and it is the AFO/OPLOC's responsibility to inform the claimant accordingly. Process the claim through Air Force channels to the GAO per paragraph 11-13. The appropriate officer certifies and attaches the signed claim from the claimant stating in detail the basis on which the item(s) involved is considered to be reimbursable. Support the voucher with documentary evidence of exceptions and replies, revisions to the exceptions and replies (if any), and any additional evidence not previously submitted in support of the claim for reimbursement. Do not withdraw original supporting documents from government files after audit by the GAO. The documentary evidence supporting reclaim vouchers may consist of photostat or true copies of original documents. In each case include a

DFAS-DE 7010.1-R

statement by the certifying officer that the original documents are in the government files and that the amount for which reclaim is now being made was deducted or collected on:

Voucher No. _____ dated _____, accounts of _____.

Place the words "Reclaim Voucher" in the lower part of the original and all copies of the public voucher form and supporting papers.

Section F--Collection, Compromise, Suspension, or Termination of Collection Action on Civil Claims for Money or Property

11-23. General Information:

a. The Federal Claims Collection Act (31 U.S.C. 3701-3711) provided statutory authority to the head of an executive agency to act on claims of the United States. Under the Act, GAO and the Department of Justice issued the Federal Claims Collection Standards (4 CFR 101-105). The law (31 U.S.C. 3701-3711) does not affect prior statutes (such as 10 U.S.C. 9837(d)--Remission and 10 U.S.C. 1552--Correction of Records) which give the Air Force authority to forgive debts or otherwise correct harsh legal results. The decision as to which statutory authority is used depends initially on the choice of the debtor.

b. The more common types of losses and administratively determined debts for which the Air Force may later establish a claim against an individual are identified below. Cross-references indicated provide procedures to use in seeking relief from an established claim. They also indicate who is eligible for relief, the available remedies, and the circumstances under which such relief procedures apply.

(1) Physical loss, deficiency of public funds, or illegal or improper certification on vouchers or documents--see DoDFMR, vol. 5, appendix C.

(2) Accommodation and exchange transactions losses--DoDFMR, vol. 5, chap 13.

(3) Losses of money in shipment--DoDFMR, vol. 5, paragraph 050505.

(4) Report of Survey:

(a) Losses of or damage to Air Force property through negligence, misconduct, or carelessness of Air Force military or civilian personnel--AFR 177-1.

(b) Discrepancies incident to shipment of property via common or contract carrier--AFR 75-35.

(5) Nonappropriated fund and base exchange losses--AFI 65-107 (formerly AFR 176-10) and AFR 147-14.

(6) Erroneous, Illegal, or Improper Payments:

(a) Travel and transportation, military members--DFAS-DE 7010.3-R.

(b) Travel and transportation, civilian employees--Joint Travel Regulations, volume 2, chapter 11.

(c) Pay and allowances, military members--DoD FMR, vol. 7A (formerly DoDPM, part seven).

(d) Pay and allowances, civilian personnel--DoD FMR, vol. 8.

11-24. Purpose. This section prescribes Air Force policies and procedures to be followed by Comptroller organizations and related activities with collection responsibilities when they administer the provisions of the Act and prescribed standards. It includes delegation of authority and related responsibilities. The procedures relating to claims for which the Judge Advocate General, HQ USAF/JA, has administrative responsibility are in AFI 51-501 and AFI 51-502; and, regarding patent and copyright claims, in other directives of HQ USAF/JA. Do not compromise any claim arising out of an exception made by the GAO in the account of an accountable officer. However, the Air Force may suspend or end collection action. See DoDFMR, vol. 5, chapter 29.

11-25. Delegation of Authority:

a. Collection:

(1) Base Level. The officer servicing the account or the AFO/OPLOC assigned first collection responsibility demands payment per DoDFMR, vol. 5, chapter 29, as implemented by regulations of the creditor organization. Accept full cash payment or an effective deferred payment arrangement. If payment in full is not received or a satisfactory arrangement is not made after required demands are issued and/or within the periods specified in DFAS-DE 7010.2-R, refer the account to higher authority for further action.

(2) Higher Authority. DFAS-DE/D is authorized to compromise, suspend, or terminate collection action, then makes additional demands per DoDFMR, vol. 5, chapter 29. If the debtor does not make a lump-sum payment, enter into a deferred payment agreement with the debtor (DoDFMR, vol. 5, chapter 29). When a confess-

judgment note (see figure 11-2 for an example of a confess-judgment format) is used, make it for the agreed amount of the debt.

(3) Interest and Debt Reporting. Initial demands for payment of a debt should inform the debtor that interest at the rate specified in DFAS-DE 7010.2-R will accrue from the date of the initial demand (DoDFMR, vol. 5, part II) and that unpaid delinquent debts will be reported to commercial credit bureaus (DoDFMR, vol. 5, part I). Interest will be charged in the absence of a different rule prescribed by statute, contract, or regulation.

b. Compromise, Termination, or Suspension of Collection Action:

(1) By Defense Finance and Accounting Service Regulation (DFASR) Number 005, enclosure 8, the Director, Defense Finance and Accounting Service-Denver Center may compromise claims of \$100,000 (excluding interest) or less, and end or suspend collection action on claims of \$100,000 or less, arising out of the activities of, or referred to the Denver Center in the following categories:

- (a) Person is liable for loss or damage to government or nonappropriated fund property.
- (b) Illegal or erroneous payments or overpayments to Air Force members or civilian employees.
- (c) The sale of supplies or services by the US to an Air Force member or civilian employee.
- (d) The damage or loss of US property assigned to the Air Force shipped on a bill of lading.

(2) Under SAFO 350.20, the commanders of Pacific Air Forces, United States Air Forces in Europe, Third Air Force, and Sixteenth Air Force are authorized to process claims for the US government. They may compromise, end, or suspend collection action on claims involving damage to or loss or destruction of US property.

This authority applies to claims that meet these conditions:

- (a) The property is assigned to the Air Force.
- (b) The bill of lading originated within or was referred to their command for handling.
- (c) The claim is for \$5000 or less, not including interest.
- (d) The shipment did not move directly from the CONUS.
- (e) The Military Sealift Command did not provide the carrier.

(3) The Comptroller of the Air Force, the Deputy Comptroller of the Air Force, and the Deputy Comptroller (Financial Policy and Banking) are authorized to process claims for the US government. They may compromise, end, or suspend collection action on claims listed in SAFO 350.20, paragraph 1b.

11-26. Responsibilities. The person designated in paragraph 11-25 to collect or compromise, suspend, or end collection does so per DoDFMR, vol. 1 & 5.

a. Unusual Cases. In addition to and notwithstanding the delegations in paragraph 11-25, send the following categories of claims through channels to DFAS-DE/FYCC for referral to the Office of the Secretary of the Air Force (include in the claim files full supporting data and a recommended course of action):

(1) Any controverted claim that is one of a substantial number of claims arising out of the same or like circumstances.

(2) Any claim involving a significant issue of policy that cannot be readily resolved under existing guidance.

(3) Any claim which current regulations call for processing but which the collecting officer feels is proper for compromise, suspension, or termination.

b. Uncollected Claims. AFO/OPLOCs refer uncollected claims (paragraph 11-25a(1)) to DFAS-DE/FY for further processing per this chapter. Include with the claim pertinent documents, including evidence of past collection efforts and correspondence (DFAS-DE 7010.2-R). Commands designated in paragraph 11-25b(2) develop internal procedures for bases within their commands. NOTE: Hereafter, every claim by the US forwarded to the GAO for settlement and every debt reported to the GAO for collection per the Federal Claims Collection Standards, as well as all related correspondence, should contain the SSN or, if a business entity, the employer's identification number on the claim and correspondence.

c. Cost of Collection. See DFAS-DE 7010.2-R, table 29-1.

d. Temporary Suspension of Collection. Collection may be suspended pending review of requests for compromise, termination, remission, correction of records, or avoidance of hardship when facts indicate that the debtor is unable to pay or ability to pay must be decided.

e. Inability to Pay:

(1) Consider the debtor's ability to pay and the cost of collection in each case. Stop collection action when the government cannot collect or enforce collection of any significant sum from the debtor. A claim may be compromised if the debt exceeds the debtor's present and prospective ability to pay the amount. Suspend collection

DFAS-DE 7010.1-R

temporarily if the debtor is unable to pay installment payments or make a compromise, but future prospects (for example, an anticipated promotion, inheritance, or general pay increase) justify periodic review and action.

(2) If the debtor states he or she is unable to pay, or such facts come to the collecting officer's attention, ask the debtor to fill out a financial statement, for example, AF Form 2451, Financial Statement--Remission of Indebtedness. When feasible, the collecting officer interviews the debtor. Collection may be suspended per d above while the debtor's ability to pay is decided.

(3) An Air Force civilian, active duty member, or retired member who is unable to pay because of lack of funds may submit a financial statement for consideration. In determining a debtor's ability to pay, consider age, health, present and potential income of the debtor and spouse, and the prospects of inheritance or promotion. Also consider the availability of assets for the satisfaction of the debt, and the possibility that assets may have been concealed. In establishing installment payments or making a compromise, do not require Air Force retired and active duty military and civilian personnel:

(a) To allocate too large a portion of their incomes. They should keep enough to provide themselves and their dependents with necessities; such as food, clothing, shelter, and medical care; or

(b) To sell or stop paying on a family dwelling or apartment, one automobile, a reasonable amount of furniture, or tools and equipment used in a trade or profession.

f. Probabilities If Legal Action Is Taken. If it appears that collection might require or involve litigation, the collecting officer and legal advisors assess the probability of obtaining a judgment and of collection. Factors to consider are: age of the claim (which can affect the availability and reliability of witnesses and the availability of other evidence); whether the legal issues are in doubt or the facts complex or difficult to prove; the relative fault of the debtor and the government (which, while in some cases such as overpayment of pay is not legally relevant, nevertheless can affect the attitude of the finders of fact in a judicial proceeding); and other legal and equitable considerations that might affect the outcome of the trial or the ability to collect the judgment.

g. Combination of Factors. In deciding the action to take, consider the probability of collecting the full amount. An action may be taken for a combination of two or more reasons, none of which is sufficient individually to support that action. For example, if the debtor is only marginally able and unwilling to pay, the claim might be legally valid but equitably unappealing to a jury.

h. Statute of Limitations. Complete the final actions permitted under this chapter in time to prevent the statute of limitations on enforced collection from running out (Public Law 89-505; 28 U.S.C. 2415-2416).

11-27. Relief From Liability for Amounts Compromised. No AFO/OPLOC or other accountable officer is liable for any amount paid or for the value of property lost, damaged, or destroyed, where such amount of value may not be recovered because of a compromise with a person primarily responsible for the debt which gave rise to the claim compromised (Public Law 89-508, section 3(c); 31 U.S.C. 3611). Any compromise made under the Act is final and conclusive on the debtor and all officials, agencies, and courts of the US, except if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

Section G--Accounting Procedures for Claims

11-28. Introduction:

a. Purpose. This section prescribes the appropriation accounting procedures to follow when processing claims:

(1) For other than liquidated damages.

(2) For withheld liquidated damages.

(3) For unclaimed wages and unclaimed checks and savings bond, balances on cost-plus-fixed-fee contracts.

(4) Chargeable to Air Force O&M, EEIC 672, claims, non-contractual.

(5) In favor of the US.

b. Applicability. These procedures apply to cases that cannot be processed under FAR, part 33.1. Be informed of the FAR procedures before using this chapter. For GAO requirements, see sections C and D this chapter.

11-29. Procedures for Processing Claims Other Than for Liquidated Damages:

a. This paragraph covers claims to be sent to higher authority for disposition. It does not refer to vouchers paid locally as the result of request for advance decision by the Comptroller General; claims for refund of liquidated

damages withheld or claims involving matters other than payments for supplies or equipment furnished or for personal or nonpersonal services rendered. When a claim is forwarded for disposition, include a statement that funds have not been reserved to cover the claim when:

- (1) Administrative approval has not been given, or:
- (2) Funds for payment of the claim are not available.

b. If the claim is recommended for payment, DFAS-DE requests a fund certification from the base. The base reserves funds and replies to DFAS-DE, Denver CO 80279-5000. If funds are not available, the base obtains additional funds and then replies to DFAS-DE. For procurement claims, AFMC (instead of DFAS-DE) requests the fund certification from the base.

c. When vouchers (as prescribed for particular types of claims) accompany forwarded claims, the administratively approved amounts show the applicable accounting classification. Include a statement that funds to cover the cost of the claim have been reserved.

d. These provisions do not apply to supplemental transportation bills involving Air Force appropriations. Process such supplemental transportation bills under DFAS-DE 7010.3-R.

11-30. Claims for Withheld Liquidated Damages. The term "liquidated damages" is defined as the amount, determinable from stipulations in a contract between a contractor and the government, to be paid to or withheld by the government instead of actual damages, as a result of failure or delay by the contractor in complying with the contract provisions.

a. Deductions for Liquidated Damages. Prepare and process all disbursement vouchers that require deductions for liquidated damages as follows:

(1) Show the gross amount of the voucher (before deduction of the liquidated damages) as the first item in the Description block of the form.

(2) Enter the amount of the deduction for liquidated damages under the same appropriation in the Description block and identify as a deduction from the gross amount shown. The remainder is the net amount to be certified, approved, and paid. Show this figure as the final amount in the Description block and identify as "Net Amount of Voucher." The AFO/OPLOC pays the net amount of the voucher. The amount deducted remains reserved on the allotment records as an unpaid obligation.

b. Claims and Protests of Contractors. Process claims or protests of contractors and vendors arising from the deduction of amounts for liquidated damages per FAR, part 33.1 and AFFARS part 5333.1.

c. Claim Settlement. Upon authorization by the Comptroller General, DFAS-DE sends the approved claim to the applicable AFO/OPLOC for payment and/or liquidation of the obligation.

d. Erroneous Collections of Liquidated Damages. Amounts withheld for liquidated damages, later found to be due the contractor because of changes in the contract or procedures, may be paid.

e. Rights and Privileges. This chapter does not limit the powers of the operating officials or contracting officer to extend the time for performance of contracts. Also, this chapter does not modify the policy in procurement regulations regarding the use of liquidated damages, or affect the rights of contractors to appeal the determination of the contracting officer to higher authority.

11-31. Unclaimed Wages, Other Unclaimed Checks, and Unclaimed Savings Bond Balances on Cost-Plus-Fixed-Fee Contracts. When cost-plus-fixed-fee contracts are completed or terminated, the contracting officer disposes of unclaimed wages, other unclaimed checks, and unclaimed savings bond balances of employees of such contractors. Responsibilities of the AFO/OPLOC are:

a. If an agreement between the contracting officer and the contractor as to settlement for unclaimed amounts cannot be reached, the AFO/OPLOC makes sure unclaimed wages, other unclaimed checks, and unclaimed savings bond balances of cost-plus-fixed-fee contractors are deposited in deposit fund account 57X6090. These amounts are held in the centrally maintained deposit fund pending adjudication by GAO.

b. The AFO/OPLOC sends to DFAS-DE/ADR a register of unclaimed wages, a list of other unclaimed checks, and unclaimed savings bond balances which result from a disagreement with the contractor or if the whereabouts of creditors of the contractor cannot be determined. If a claim is received for an amount deposited to 57X6090, the AFO/OPLOC sends it to DFAS-DE/ADR, with all pertinent information for final disposition.

11-32. Claims Chargeable to Air Force O&M, EEIC 672, Claims, Non-Contractual. Process claims against the US arising from Air Force activities authorized by law per AFI 51-501 and AFI 51-502. Obligations are incurred and posted when claims are approved per DFAS-DE 7000.4-R, paragraph 31a (formerly AFR 170-8).

11-33. Recovery Claims in Favor of the US:

a. Recoveries Under the National Defense Authorization Act for Medical Care (Public Law 101-189, 10 U.S.C. 1095). Credit third party claim recovery amounts received for the cost of hospital and medical care made per AFI 41-120, to the Air Force Operation and Maintenance (O&M) appropriation (EEIC 599, Sales Code 94). All third party claim recovery amounts are retained by each local medical treatment facility (MTF) and made available as a budgetary resource to the local MTF to enhance the level of health care services provided.

b. Collections from Third Parties for Damage to Government Property. Credit these collections to the applicable receipt, trust, or other fund depending upon the type of property involved. Credit the applicable AFIF accounting classification pertaining to loss, damage, or destruction of AFIF property.

c. Recoveries To Be Credited to Air Force O&M, EEIC 672, Claims, Non-Contractual. Credit recoveries collected from insurance companies, carriers, members, private parties to the Air Force O&M, EEIC 672 account current at the time the collection is processed without regard to the account from which the related claim was paid under paragraph 11-32. Process the collection as an appropriation refund. Anticipated refunds are not available for obligation until actually received. AFI 51-501, Tort Claims, and AFI 51-502, Personnel and Government Recovery Claims, provides procedures for prorating recoveries.

Sample Administrative Report to GAO

Claim for (name of claimant, claimant's agency, SSN or, if a business entity, employer's identification number)

Claims Division
United States General Accounting Office
Wash DC 20545

1. Claim of (name and address of claimant) is forwarded under GAO directive 4 GAO section 8.2.
2. Reason for Forwarding Claim: (A statement of the facts out of which the claim arose, and the amount.)
3. Supporting Documents: (Statement of doubt, law, or other reason for forwarding the claim.)
4. (Citation of pertinent supporting documents, such as contracts, vouchers, etc.; attach to claim.
5. No Pay Statement: (use the appropriate statement below)
 - a. Claim has not been paid and will not be paid except following certification in the name of the Comptroller General.
 - b. Partial settlement has been made of (amount). No further payments will be made except following certification in the name of the Comptroller General.

Funds:

6. (If approval is recommended, state: "See attached SF 1034, Public Voucher for Purchases Other Than Personal" or cite other applicable voucher. If disapproval is recommended, state: "No funds reserved." Cite the appropriation from which payment will be made if claim is allowed by the GAO. Funds will be reserved for all administratively approved claims. See this regulation, chapter 11, and AFRs 170-8 and 170-13.)

Recommendation:

7. (Type the heading but do not include the recommendation. The recommendation will be included in the letter transmitting the claim to DFAS-DE (paragraph 11-17). DFAS-DE completes the administrative report using the facts submitted. DFAS-DE does not change the administrative recommendation submitted, but resolves any differences of opinion with the submitting activity.)

Figure 11-1. Sample Administrative Report to GAO.

Account Name: _____

Account Number: _____

PROMISSORY NOTE TO PAY IN INSTALLMENTS

For value received, I promise to pay the United States the principal amount of \$ _____, with simple interest at the rate of _____ percent per annum, in monthly installments of at least \$ _____ per month, to commence immediately and to continue every month thereafter until the entire debt, including interest, administrative charges, and any late payment penalties, as defined below, are paid in full.

I will make payment by check or money order payable to DFAS-DE. I will send each payment to DFAS-DE, P O Box 955417, St. Louis MO 63195-5417, unless the United States notifies me to make payments to another place.

I understand that if I do not make a payment within 30 days after the date I am sent a monthly statement, the United States will consider me to be in default; if that happens, I understand that the United States will have the option of declaring my entire debt, including unpaid principal, interest, administrative charges, and penalties, to be immediately payable in one lump sum without further notice or demand upon me.

I understand that United States can charge me a penalty fee of not more than 6 percent per annum on any amount which is more than 90 days past due.

I understand that I may prepay the entire debt or any part thereof without penalty.

I agree that the provisions of this note may not be changed except by a written agreement between myself and an authorized representative of the United States, and that such agreement will be in the form of a new promissory note to replace the one I am signing today.

I certify that I have read and understand the terms of this note.

Signature_____
Date_____
Address

Figure 11-2. DFAS-DE/FYDC Promissory Note Format.