



DEPARTMENT OF JUSTICE

28 CFR Part 106

[JMD Docket No. 157; A.G. Order No. 5922-2024]

RIN: 1105-AB71

Implementation of HAVANA Act of 2021

AGENCY: Department of Justice.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule provides implementation by the Department of Justice of the HAVANA Act of 2021. The HAVANA Act authorizes agency heads to provide payments to certain individuals who have incurred qualifying injuries to the brain. This rule covers current and former Department of Justice employees and their dependents.

DATES: This interim final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments: Electronic comments must be submitted, and written comments must be postmarked, on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: If you wish to provide comments regarding this interim final rule, you must submit comments, referencing RIN 1105-AB71 or JMD Docket No. 157, by one of the two methods below:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the website instructions for submitting comments.
- Mail: Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of an electronic submission, please direct the

mail/shipment to: General Counsel, Justice Management Division, U.S. Department of Justice, Two Constitution Square (2CON), 145 N St. NE, Suite 8E.500, Washington, DC 20530. To ensure proper handling, please reference the agency name and RIN 1105-AB71 or JMD Docket No. 157 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Morton J. Posner, General Counsel, Justice Management Division, (202) 514-3452.

SUPPLEMENTARY INFORMATION:

This rule implements the HAVANA Act of 2021, Public Law 117-46, 135 Stat. 391 (2021) (codified at 22 U.S.C. 2680b(i)).

Background and Authority—§ 106.1

In 2016, Department of State employees stationed in Havana, Cuba, began reporting a sudden onset of symptoms, including headaches, pain, nausea, disequilibrium, and hearing loss, in conjunction with sensory events. Federal agencies have called such incidents Anomalous Health Incidents (“AHIs”). Since 2016, Federal employees in numerous countries reported suspected AHIs. On December 20, 2019, Congress authorized the Department of State to pay benefits to employees and their dependents for injuries suffered after January 1, 2016, in the Republic of Cuba, the People’s Republic of China, or other foreign countries designated by the Secretary of State, in connection with war, insurgency, hostile acts, or terrorist activity, or in connection with other incidents designated by the Secretary of State. *See* Further Consolidated Appropriations Act, 2020, Public Law 116-94, div. J, title IX, section 901, 133 Stat. 2534, 3079–81 (2019) (codified as amended at 22 U.S.C. 2680b). These benefits were limited to State Department employees only (i.e., not other employees under Chief of Mission (“COM”) authority).

On January 1, 2021, Congress amended this law to authorize other Federal Government agencies to provide benefits to their own employees under COM authority if

they suffered similar injuries. National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, section 1110, 134 Stat. 3388, 3892–93 (2021).

On October 8, 2021, Congress passed the Helping American Victims Affected by Neurological Attacks or the HAVANA Act of 2021, Pub 117-46, 135 Stat. 391 (2021) (“HAVANA Act”). In the HAVANA Act, Congress authorized Federal Government agencies to compensate affected current employees, former employees, and their dependents for qualifying injuries to the brain. The HAVANA Act also omitted the previous law’s requirement that the qualifying injury must occur in the Republic of Cuba, the People’s Republic of China, or another foreign country designated by the Secretary of State. The scope of coverage now includes a qualifying injury that occurs in any foreign or domestic location. The HAVANA Act requires Federal agencies who make payments under the HAVANA Act to prescribe implementing regulations not later than 180 days after the effective date of the Act. Section 9216 of the National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, 136 Stat. 2395, 3877 (2022) (codified at 22 U.S.C. 2680b(j)), provided agencies with authority to designate incidents affecting employees or dependents who are not under the security responsibility of the Secretary of State.

This rule implements section 3 of the HAVANA Act as it applies to the Department of Justice (the “Department”). This rule only applies to current and former employees of the Department and their dependents, as defined in § 106.2 of this rule.

On June 30, 2022, the Department of State published an interim final rule to implement its requirements under the HAVANA Act, with an effective date of August 15, 2022. 87 FR 38981 (June 30, 2022) (codified at 22 CFR part 135). The Department of State subsequently published a final rule that became effective on January 25, 2023. 88 FR 4722 (Jan. 25, 2023) (codified at 22 CFR part 135). The Department of Justice has independently reviewed the approach implemented by the Department of State in these

rules and has determined that its approach is reasonable and well considered.

Accordingly, the Department of Justice plans to adopt that approach as appropriate in its regulations to ensure consistency of benefits among Federal employees and their dependents. In particular, the Department has based its interim final rule on the Department of State's definitions and process for the payment of benefits.

Definitions—§ 106.2

The rule defines those who are eligible to receive payments: covered employees (including current and former employees) and covered dependents who on or after January 1, 2016, experience a qualifying brain injury. A "covered employee" includes all Department employees, including employees on Limited Non-Career Appointments, employees on Temporary Appointments, personnel hired on Personal Services Contracts, and students providing volunteer services under 5 U.S.C. 3111.

An employee's family member is a covered dependent if, on or after January 1, 2016, the family member experiences a qualifying injury. The rule defines the family members who are eligible as certain children, parents residing with the employee sponsor, dependent siblings, or spouses.

For the purposes of this rule, the Department also adopts the Department of State's definition of "qualifying injury to the brain." 22 CFR 135.2. The Department has determined that the Department of State definition is reasonable and well considered. The Department of State consulted with the chief medical officers at other Federal agencies and experts at civilian medical centers of excellence. There is no diagnostic code or criteria for AHIs in the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM). Because of the varied symptoms and still nascent understanding of how to test or otherwise screen for AHI impacts, the standard adopted is broadly inclusive of the types of injuries that have been reported to date.

The definition of “qualifying injury to the brain” is based on current medical practices related to brain injuries. The individual must have: (1) an acute injury to the brain such as a concussion, a penetrating injury, or an injury as the consequence of an event that leads to permanent alterations in brain function as demonstrated by confirming correlative findings on imaging studies or electroencephalogram (“EEG”); (2) a medical diagnosis of a traumatic brain injury that required active medical treatment for 12 months or more; or (3) the acute onset of new, persistent, disabling neurologic symptoms, as demonstrated by confirming correlative findings on imaging studies, EEG, a physical exam, or other appropriate testing, that required active medical treatment for 12 months or more.

The first component of the definition of “qualifying injury to the brain” set forth in § 106.2(d)(2)(i) accounts for a variety of observable impacts to an individual, including a concussion or a penetrating injury or, absent either of those, permanent alterations in brain function as confirmed by a board-certified physician’s review of a variety of forms of medical imaging evidence. The goal with this standard is to ensure there is some documented evidence of impact to the brain, while minimally circumscribing what that impact entails. The second and third components of the definition (paragraphs (d)(2)(ii) and (iii)) are intended to provide alternative avenues for demonstrating sustained, long-term impact to the individual. This benefit is intended for individuals who experience long-term consequences, potentially including an inability to gainfully work, as a result of a suspected AHI.

The standard is consistent with that employed by other agencies, including the Department of State. A 12-month threshold of active medical treatment is indicative of a long-term injury. For example, the Centers for Disease Control and Prevention (“CDC”) broadly defines chronic diseases “as conditions that last 1 year or more and require ongoing medical attention or limit activities of daily living or both.” CDC, *About*

Chronic Diseases, <https://www.cdc.gov/chronicdisease/about/index.htm> (last reviewed July 21, 2022). The Department notes that applicants who have suffered kinetic or external, physically caused injuries to the brain such as the head striking an object, the brain undergoing an acceleration or deceleration movement, or brain injuries from events such as a blast or explosion, including penetrating injuries, may be eligible if the injuries satisfy the other requirements of this rule.

Under the HAVANA Act, the injury must have occurred “in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State,” and cannot have been “the result of the willful misconduct” of the covered individual. 22 U.S.C. 2680b(e)(4)(A)(ii)–(iii), (e)(4)(B)(ii)–(iii), (i)(1)(D). The Department will work with an applicant upon the applicant’s submission of the DS-4316, “Eligibility Questionnaire for HAVANA Act Payments,” to determine whether their alleged incident qualifies.

The definition of “other incident” is a new onset of physical manifestations that cannot otherwise be readily explained and that is designated under 22 U.S.C. 2680b. The Department will review available information on the reported incident. If a physician does not indicate that there is a credible alternative explanation for the individual’s symptoms, and if the information the Department has regarding the incident does not provide a credible alternative explanation for the incident, that incident will be recommended for designation. Incidents for which an alternative explanation has been identified will not be recommended for designation. For incidents affecting employees or dependents who are not under the security responsibility of the Secretary of State, the Department will determine whether to designate such incidents.

Eligibility for Payments—§ 106.3

The Department will make available to its workforce information on the regulations and the process to apply for HAVANA Act payments. Current employees,

former employees, and dependents (as defined in this rule) can apply for consideration. Applicants will be required to provide the necessary documentation so the Department may determine whether they qualify for payment. The DS-4316, “Eligibility Questionnaire for HAVANA Act Payments,” is the form associated with developing the necessary evidence to submit a claim, and it will be available upon request with instructions on how to apply for a HAVANA Act payment. A portion of the form must be filled out by a qualified physician; the rule specifies certain board certification requirements for physicians who can evaluate a qualifying injury to the brain.

The Department has determined that the payment scheme set forth in the Department of State’s HAVANA Act regulations, 22 CFR 135.3, is well reasoned and provides an effective means of compensating covered employees. Accordingly, the Department has adopted it for purposes of this rulemaking. Pursuant to this interim final rule, the Department, in its discretion, may authorize a one-time, non-taxable, lump sum payment based on Level III of the Executive Schedule. *See* 5 U.S.C. 5311 *et seq.* The payment is non-taxable pursuant to 22 U.S.C. 2680b(g). Payment eligibility and the amount of the payment will be at the Department’s discretion. The maximum should only be awarded where a condition has a consistent, sustained, and exceptionally severe impact on a victim’s quality of life or prevents a victim from successfully performing their work-related duties. The purpose is to compensate individuals only for qualifying brain injuries that meet the criteria set forth in this rule. The following factors will be taken into account to determine the amount of the payment to be authorized: (1) the applicant’s responses on the eligibility form; and (2) whether the Department of Labor (Office of Workers’ Compensation Programs) has determined that the applicant has no reemployment potential, the Social Security Administration (“SSA”) has approved the applicant for Social Security Disability Insurance or Supplemental Security Income benefits, or the applicant’s board-certified physician has certified that the individual

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

The award thresholds are based on Level III of the Executive Schedule. A Base payment will be 75 percent of Level III pay, and a Base+ payment will be 100 percent of Level III pay. The specific use of Level III of the Executive Schedule sets the compensation at the maximum annual salary potentially available to most of the Federal workforce. The Department believes this amount is the most it can reasonably compensate each applicant while ensuring funds for the total number of applicants it believes will likely receive payments. If the applicant meets any of the criteria for severe impacts, the applicant will be eligible to receive a Base+ payment. Applicants whose board-certified physician confirms that the definition of qualifying injury to the brain has been met, but who have not met any of the criteria for severe impacts, will be eligible to receive a Base payment.

The criteria established for severe impacts are reflective of the Department's objective of ensuring that the individuals most severely affected by AHIs (as indicated by a lack of reemployment potential, an inability to engage in substantial gainful activity, or the need for a full-time caregiver) receive additional payment. The use of the Department of Labor's or the SSA's determination is to ensure that both Federal employees as well as their dependents have access to a mechanism for this determination. The Department recognizes that the criteria the Department of Labor and SSA use in their determinations are distinct, as well as the fact that the procedural timelines for seeking and receiving approval may be different between these agencies. The third option, that a board-certified physician certify that the individual requires a full-time caregiver for activities of daily living, provides an alternative mechanism for all individuals. Finally, the Department notes that if an applicant who received a Base payment later meets any of the criteria listed for severe impacts, the applicant may apply for an additional payment

that will be the difference between the Base and Base+ payment. As the payments are tied to the Executive Schedule payment levels, the amounts will change over time based on changes to the Federal salary schedule. Payments will be based on the Executive Schedule in effect at the time the payment was approved.

While payments under the HAVANA Act may be in addition to other leave benefits, disability benefits, or workers' compensation payments that the applicant may be receiving or may be entitled to receive that also help augment any loss of income, the Department believes this is an appropriate additional payment. This payment scheme is also consistent with what is being offered by other Federal agencies and will ensure consistency of benefits among affected individuals.

The Department notes that payments may only be made using amounts appropriated in advance specifically for this purpose in the relevant fiscal year, unless Congress specifies otherwise. Therefore, payments are contingent on appropriated funds, and all payments will be paid out on a first-come, first-served basis.

Consultations with the Department of State—§ 106.4

Under the rule, the Department's procedures for determining whether an incident has been designated under 22 U.S.C. 2680b include, where appropriate, consultation with the Secretary of State. *See* 22 U.S.C. 2680b(i)(1)(D) (cross-referencing subparagraph 2680b(e)(4)).

Procedures—§ 106.5

Each Federal agency is responsible for (1) processing applications for the HAVANA Act payments; (2) determining or, as necessary, consulting with the Secretary of State to determine, whether the incident causing the injury may be deemed a designated incident under the statute, *see* 22 U.S.C. 2680b(j); *id.* 2680b(i)(1)(D) (cross-referencing subparagraph 2680b(e)(4)); (3) determining eligibility for the benefit, determining the amount of the benefit, and processing payment of the benefit; and (4)

notifying applicants upon receipt of their applications and when a decision has been made whether to authorize payment.

The Executive Assistant Director, Human Resources Branch, Federal Bureau of Investigation (“FBI”), is authorized to approve HAVANA Act payments to FBI employees or their dependents. The Deputy Assistant Attorney General, Human Resources and Administration, Justice Management Division (“JMD”), is authorized to approve HAVANA Act payments for all other Department employees or their dependents. If payment is denied by the designated FBI or JMD official, the applicant may direct an appeal to the Assistant Attorney General for Administration within 60 days of the notification of denial, but decisions on the amount of payment are not appealable.

Regulatory Analysis

Administrative Procedure Act

This rule is being published as an interim final rule. Because this rule is a matter relating to public benefits, it is exempt from requirements for notice-and-comment rulemaking. *See* 5 U.S.C. 553(a)(2). Because the rule is exempt from section 553 of title 5 of the United States code, the provisions of section 553(d) do not apply. Nevertheless, the rule will go into effect 30 days after publication. However, the Department is seeking comment from interested persons on the provisions of this rule and will consider all relevant comments in determining whether additional rulemaking is warranted under the provisions of the HAVANA Act.

Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act: Small Business

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the Department was not required to issue a notice of proposed rulemaking.

Executive Order 12866 and Executive Order 13563

The Department provided this interim final rule to the Office of Management and Budget for its review. The Office of Information and Regulatory Affairs has designated this rule as “significant” under Executive Order 12866. The Department has also reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and finds that the benefits of the rule (in providing mechanisms for individuals to obtain compensation for certain injuries) outweigh any costs to the public, which are limited, given the anticipated small number of individuals with qualifying injuries. The Department has also considered this rulemaking in light of Executive Order 13563 and affirms that this proposed regulation is consistent with the guidance therein.

Executive Order 12988

The Department has reviewed this rule in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationships between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rulemaking is related to an information collection for the DS-4316, “Eligibility Questionnaire for HAVANA Act Payments,” OMB Control Number 1405-0250.

List of Subjects in 28 CFR Part 106

Government employees, Federal retirees, Health care.

Accordingly, for the reasons stated in the preamble, the Department adds part 106, title 28, Code of Federal Regulations, to read as follows:

PART 106—IMPLEMENTATION OF THE HAVANA ACT OF 2021

Sec.

106.1 Authority.

106.2 Definitions.

106.3 Eligibility for payments by the Department of Justice.

106.4 Consultation.

106.5 Procedures.

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

§ 106.1 Authority.

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

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

§ 106.2 Definitions.

For purposes of this part, the following definitions apply:

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

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

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

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

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

- (1) Children who at the time of the injury are unmarried and under 21 years of age or, regardless of age, are unmarried and due to mental or physical limitations are incapable of self-support. The term “children” includes natural offspring; stepchildren; adopted children; those under permanent legal guardianship, or comparable permanent custody arrangement, of the employee, spouse, or domestic partner as defined in 5 CFR 875.101 when dependent upon and normally residing with the guardian or custodial party; and U.S. citizen children placed for adoption if a U.S. court grants temporary guardianship of the child to the employee and specifically authorizes the child to reside with the employee in the country of assignment before the adoption is finalized;
- (2) Parents (including stepparents and legally adoptive parents) of the employee or of the spouse or of the domestic partner as defined in 5 CFR 875.101, when normally residing with the employee at the time of the injury;
- (3) Sisters and brothers (including stepsisters or stepbrothers, or adoptive sisters or brothers) of the employee or the spouse when at the time of the injury such sisters and brothers are at least 51 percent dependent on the employee or spouse for support, unmarried and under 21 years of age, or, regardless of age, are physically or mentally incapable of self-support; and
- (4) Spouse or domestic partner at the time of the injury.

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

- (2) The individual must have:

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

(ii) A medical diagnosis of a traumatic brain injury that required active medical treatment for 12 months or more; or

(iii) Acute onset of new, persistent, disabling neurologic symptoms, as demonstrated by confirming correlative findings on imaging studies (including CT or MRI), EEG, physical exam, or other appropriate testing, that required active medical treatment for 12 months or more.

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

§ 106.3 Eligibility for payments by the Department of Justice.

(a) The Department may, in its discretion, provide a payment to an employee, covered dependent, or former employee if that person suffered a qualifying injury to the brain that was assessed and diagnosed in person by a physician who is currently a neurologist certified by the American Board of Psychology and Neurology (ABPN) or a physician certified by the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR), or the American Osteopathic Board of Physical Medicine and Rehabilitation (AOBPMR); occurred on or after January 1, 2016; and, for an employee or former employee, occurred while the employee or former employee was a covered employee of the Department or, for a covered dependent, occurred while the covered dependent's relative was an employee of the Department in a position listed in § 106.2(a)(2).

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

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

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

(2) Whether the Department of Labor (Office of Workers' Compensation Programs) has determined that the applicant has no reemployment potential, or the Social Security Administration has approved the applicant for Social Security Disability Insurance or Supplemental Security Income benefits, or the applicant's ABPN-certified neurologist or the applicant's AOBNP-, ABPMR-, or AOBPMR-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence in Activities of Daily Living.

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

§ 106.4 Consultation.

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

§ 106.5 Procedures.

(a) *Application.* (1) A covered employee or covered dependent may apply for a HAVANA Act payment if the covered individual has sustained a qualifying injury to the brain on or after January 1, 2016. To apply for the benefit, the applicant must submit the “Eligibility Questionnaire for HAVANA Act Payments” claim form to the appropriate email address or fax number set forth in this paragraph (a). The claim form must be completed by a person eligible to file a claim under the HAVANA Act or by that person’s legal guardian and must be signed by a currently certified physician as listed in § 106.3(a) of this part. The claim form must be emailed or faxed to the following address: HRD_AHI_QUESTIONNAIR@FBI.GOV or fax number (202) 323–9420 (covered FBI employees and dependents) or HavanaActClaims@usdoj.gov or fax number (202) 616–3200 (covered DOJ employees and dependents).

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

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

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

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

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

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

Dated: April 15, 2024.

Merrick B. Garland,
Attorney General.

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