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POINT PAPER

16 June 2000

SUBJECT: Professional Liability Insurance

PURPOSE: Provide information about new requirement for agencies to share cost of professional liability insurance.

FACTS:

- The Treasury and General Government Appropriations Act for FY 2000, Public Law 106-58, requires agencies to pay "up to half" the cost incurred by covered employees for professional liability insurance.
- Covered employees include DoD management officials, executives, supervisors and law enforcement officers.
- Service members and NAF employees are not covered.
- Effective date was 1 Oct 99, but DoD has not yet implemented.
 - ñ The U.S. Office of Personnel Management (OPM) is not expected to issue guidance.
 - ñ DoD's draft guidance gives personnel the responsibility for confirming the eligibility of interested employees, and requires employees to submit insurance policies and proof of payment to DFAS.
 - ñ DoD expects to issue implementing guidance "soon."
- Some agencies already voluntarily share costs for professional liability insurance under a 1997 law that gave federal agencies that option.
- We have only identified one company that issues professional liability policies; it provides \$500,000.00 of coverage for approximately \$225.00 or \$1 million coverage for approximately \$300.00.

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DISCUSSION:

- If an employee is sued in his or her official capacity, the Army will be substituted as the defendant.
- If an employee is sued in his or her individual capacity, the Department of Justice decides whether or not the employee was acting within the scope of employment and whether or not it is in the best interests of the government to provide legal representation.
 - According to the U.S. Army Litigation Division, OTJAG, the Department of Justice has rejected only 150 of 7,000 requests for representation filed during a five year period.
 - Of 15 federal employees found liable in civil suits during a five year period, 11 of the employees were reimbursed by their agencies.
- The availability of coverage for administrative proceedings is not clearly defined in the policies we've seen. Professional liability insurance should cover the legal costs an employee would incur as the subject of disciplinary charges imposed by the employing agency. There is no clear indication that legal advice would be available to an insured employee who is merely the subject of an agency investigation or who is named as a principal agency witness in a discrimination complaint against the agency.
- Careful review of any policy prior to payment is essential. Broadly worded exemptions may mean that the policy provides no real protection even in the unlikely event of a finding of personal liability.

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