



# Suing the United States for Negligence: Expanding Liability

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# What is the FTCA

- The Federal Government has immunity from suit except where Congress has authorized liability
- The Federal Tort Claims Act (FTCA) permits suits against the federal government for negligence
- Statute of Limitations
  - Administrative claim must be brought within 2 years of accident
  - Suit must be brought within 2 months of denial of administrative claim
- Administrative Claim
  - Administrative claim is brought using Standard Form 95
  - The Claim is presented to the agency who employed the negligent employee

# Substantive/Procedural Issues

- Exceptions to Tort Liability Substantive
  - Discretionary Function
- Applicable Law
  - Court applies the substantive law of the state where the negligent act occurred
- Jurisdiction
  - Federal Courts have exclusive jurisdiction over FTCA suits
- Recoverable Damages
  - No punitive damages are recoverable
- Non-jury – In all FTCA cases the judge acts as the finder of fact

# Primary Areas of FAA Liability Exposure

- Air traffic control
- Violation of FAA ATC procedures FAA Order 7110.65 BB (Eff. 2-20-25)
- Errors in communications/clearances
- Any other negligence for which a private citizen would be liable in tort under state law

# Exceptions to FAA Liability

- Discretionary function 28 USC § 2680(a)
- Policy decisions v. Operational or ministerial decisions and conduct

# Discretionary Function Exception to Liability

- **Discretionary Nature:** The exception applies when the actions involve discretion or choice; Can include decisions related to planning, policy-making, or resource allocation
- **Policy Considerations:** The decision-making process must be grounded in social, economic, or political policy considerations; Courts look for the presence of these policy decisions to determine if the exception applies
- **Scope of Protection:** The exception is designed to protect government officials from liability when making decisions involving significant policy judgments; Includes decisions related to public safety, resource management, and regulatory enforcement
- **Regulatory Decisions:** If an agency decides how to allocate resources for safety inspections, this may fall under the discretionary function exception
- **Air Traffic Control:** Decisions made by air traffic controllers regarding flight paths or delays based on safety assessments may also be protected under this exception

# Liability or No-Liability?

- Staffing of towers
- Training, fatigue and stress
- Outdated equipment
- Slow modernization i.e., NextGen
- System overload/outages

# Thank You

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