

Presiding officer means an administrative law judge appointed in the authority pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to section 3344 of such title.

Representative means an attorney designated in writing by a defendant to appear on his or her behalf in administrative hearings before the Department and to represent a defendant in all other legal matters regarding a complaint made pursuant to these regulations.

Reviewing official means the General Counsel, or another individual in the Legal Division of the Department designated by the General Counsel, who is—

(a) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16; and

(b) Is not subject to supervision by, or required to report to, the investigating official; and

(c) Is not employed in the organization unit of the authority in which the investigating official is employed.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the government will reimburse such State, political subdivision, or party of any portion of the money or property under such contract or for such grant, loan, or benefit, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954.

§ 16.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty under these regulations regardless of whether such property, services, or money is actually delivered or paid.

(5) If the government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any

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person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the content of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c)(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section, received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term *benefits* means—

(i) Benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);

(ii) Benefits under Chapters 11, 13, 15, 17, and 21 of Title 38;

(iii) Benefits under the Black Lung Benefits Act;

(iv) Any authority or other benefit under the Railroad Retirement Act of 1974;

(v) Benefits under the National School Lunch Act;

(vi) Benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Sec-

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retary of Housing and Urban Development or the Secretary of Agriculture;

(vii) Benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(viii) Benefits under part A of the Energy Conservation in Existing Buildings Act of 1976;

(ix) Benefits under the supplemental security income program under title XVI of the Social Security Act;

(x) Old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(xi) Benefits under title XVIII of the Social Security Act;

(xii) Aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(xiii) Medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(xiv) Benefits under title XX of the Social Security Act;

(xv) Benefits under section 336 of the Older Americans Act; or

(xvi) Benefits under the Low-Income Home Energy Assistance Act of 1981, which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section, and on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 16.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the