

submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents; and

(b) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. Hearings under this part shall be conducted in accordance with the Administrative Procedure Act pursuant to part 26, subpart B, of this chapter.

[61 FR 50213, Sept. 24, 1996, as amended at 73 FR 76831, Dec. 17, 2008]

§ 28.5 Definitions.

(a) The terms *ALJ* and *HUD* are defined in 24 CFR part 5.

(b) The terms *Claim*, *Knows or has reason to know*, *Person*, *Reviewing Official*, and *Statement* have the same meanings as defined in 31 U.S.C. 3801.

(c) *Ability to pay* is determined based on an assessment of the respondent's resources available both presently and prospectively from which the Department could ultimately recover the total award, which may be predicted based on historical evidence.

(d) *Benefit* means anything of value, including, but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan insurance or guarantee.

(e) *Respondent* means any person alleged to be liable for a civil penalty or assessment under § 28.25.

(f) The *reasonable prospect of collecting an appropriate amount of penalties and assessments* is determined based on a generalized assessment made by a Reviewing Official based on the limited information available in the Report of Investigation for purposes of determining whether the allocation of HUD's resources to any particular action is appropriate. This assessment is not the same as the assessment made when determining ability to pay, nor is the reasonable prospect of collecting a factor to be considered in determining the amount of any penalty or assessment in any particular case.

(g) *Report of Investigation* means a report containing the findings and conclusions of a Program Fraud Civil Remedies Act investigation by the In-

spector General or his or her designee, as described in § 28.15.

[73 FR 76831, Dec. 17, 2008]

§ 28.10 Basis for civil penalties and assessments.

(a) *Claims*. (1) A civil penalty of up to \$7,500 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by a 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 the omission; and

(C) Is a statement in which the person making, presenting, or submitting 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.

(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 HUD, to a recipient, or to a party when the claim actually is made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD, the recipient, or the party.

(4) Each claim for property, services, or money is subject to a civil penalty without regard to whether the property, services, or money actually is delivered or paid.

(5) Liability under this part shall not lie if the amount of money or value of property or services claimed exceeds \$150,000 as to each claim that a person submits. For purposes of paragraph (a) of this section, a group of claims submitted simultaneously as part of a single transaction shall be considered a single claim.

(6) If the Government has made any payment, transferred property, or provided services on a claim, then the Government may assess a person found