

PART 71—IMPLEMENTATION OF THE PROVISIONS OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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SOURCE: Order No. 1268–88, 53 FR 11646, Apr. 8, 1988, unless otherwise noted.

Subpart A—Implementation for Actions Initiated by the Department of Justice

§ 71.1 Purpose.

This subpart implements the Program Fraud Civil Remedies Act of 1986, Public Law 99–509, 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute. The subpart establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 71.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the United States Department of Justice, including all offices, boards, divisions and bureaus.

Authority head means the Attorney General or his designee. For purposes of these regulations, the Deputy Attorney General is designated to act on behalf of the Attorney General.

Benefit means in the context of *state-ment*, anything of value, including but

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not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans or insurance);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States:

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under §71.7.

Defendant means any person alleged in a complaint under §71.7 to be liable for a civil penalty or assessment under §71.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §71.10 or §71.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating Official means the Inspector General.

Knows or has reason to know means that a person, with respect to a claim or statement:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

Representative means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Reviewing Official means the Assistant Attorney General for Administration. For purposes of §71.5 of these rules, the Assistant Attorney General for Administration, personally or through his immediate staff, shall perform the functions of the reviewing official provided that such person is 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 under the General Schedule. All other functions of the reviewing official, including administrative prosecution under these rules, shall be performed with respect to the components listed below by the individuals listed below acting on behalf of the Assistant Attorney General for Administration:

(a) For the offices, boards, divisions and any other components not covered below, the General Counsel, Justice Management Division;

(b) For the Bureau of Prisons (BOP), the General Counsel, BOP;

(c) For the Drug Enforcement Administration (DEA), the Chief Counsel, DEA;

(d) For the Federal Bureau of Investigation (FBI), the Assistant Director, Legal Counsel Division;

(e) For the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Chief Counsel, ATF;

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(f) For the Immigration and Naturalization Service (INS), the General Counsel, INS; and

(g) For the United States Marshals Service (USMS), the Associate Director for Administration.

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 for any portion of the money or property under such contract or for such grant, loan, or benefit.

[Order No. 1268-88, 53 FR 11646, Apr. 8, 1988, as amended by Order No. 1444-90, 55 FR 38318, Sept. 18, 1990; Order No. 2650-2003, 68 FR 4929, Jan. 31, 2003]

§ 71.3 Basis for civil penalties and assessments.

(a) Any person 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 claim listed in paragraphs (a)(1) through (a)(4) of this section made before September 29, 1999, and not more than \$5,500 for each such claim made on or after September 29, 1999, if that person makes a claim that the person knows or has reason to know:

(1) Is false, fictitious, or fraudulent;

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

(3) Includes or is supported by, any written statement that

(i) Omits a material fact;

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

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

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

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

(c) A claim shall be considered made to the 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 the authority, recipient, or party.

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

(e) 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.

(f) Any person 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 statement listed in paragraphs (f)(1) and (f)(2) of this section made before September 29, 1999, and not more than \$5,500 for each such statement made on or after September 29, 1999, if that person makes a written statement that:

(1) The person knows or has reason to know

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

(ii) 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

(2) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.