

§ 79.3

(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, wherever it appears, 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 a member 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 General Counsel of the Department or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) 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.

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

45 CFR Subtitle A (10–1–20 Edition)

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.

§ 79.3 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 \$5,500¹ 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 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.

(4) 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.

¹The amounts specified in this section are updated annually, as adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101-140), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of Pub. L. 114-74). Annually adjusted amounts are published at 45 CFR part 102.

(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). 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 person who makes a written statement that—

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

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

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

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents 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 \$5,500² for each such statement.

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

(3) A statement shall be considered made to the 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 the authority.

(c) *Applications for certain benefits.* (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 state-

ment 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 paragraph (c) of this section, the term *benefits* means—

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

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

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

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

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

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

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

(viii) 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.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section 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.

[53 FR 11659, Apr. 8, 1988, as amended at 61 FR 52301, Oct. 7, 1996; 81 FR 61565, Sept. 6, 2016]

§ 79.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

²The amounts specified in this section are updated annually, as adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101-140), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of Pub. L. 114-74). Annually adjusted amounts are published at 45 CFR part 102.