

## § 28.10

Government, purchased with Government funds, or for which the Government will reimburse the recipient or party; or

(3) Made to HUD that has the effect of decreasing an obligation to pay or account for property, services, or money.

*Knows or has reason to know* means that a person has actual knowledge that a claim or statement is false, fictitious, or fraudulent; acts in deliberate ignorance of the truth or falsity of the claim or statement; or acts in reckless disregard of the truth or falsity of the claim or statement.

*Person* means any individual, partnership, corporation, association, private organization, or entity.

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

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

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

(2) With respect to or relating to eligibility for a contract, bid, or proposal for a contract with; or a grant or cooperative agreement, loan, or benefit from; HUD, any State, any political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or the grant or cooperative agreement, loan, or benefit, or if the Government will reimburse the State, political subdivision, or party for any portion of the money or property under the contract or for the grant or cooperative agreement, loan, or benefit.

### § 28.10 Basis for civil penalties and assessments.

(a) *Claims.* A civil penalty of not more than \$6,500 may be imposed upon a 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 a written statement that either contains a material fact that is false, fictitious, or fraudulent; or omits a material fact that the person has a duty to include

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and is false, fictitious, or fraudulent as a result of the omission; or

(iii) Is for payment for the provision of property or services that 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 liable up to twice the amount of the claim or portion of the claim that is determined to be in violation of paragraph (a)(1) of this section.

(b) *Statements.* (1) A civil penalty of up to \$6,500 may be imposed upon a person who makes a written statement that:

(i) The person knows, or has reason to know, contains a material fact that is false, fictitious, or fraudulent; or omits a material fact that the person has a duty to include and is false, fictitious, or fraudulent because of that omission; and

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

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

(3) A statement shall be considered made to HUD when the statement is

actually 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.

(c) *Limit on liability.* If the claim or statement relates to low-income housing benefits or housing benefits for the elderly or handicapped, then a person may be held liable only if he or she has made the claim or statement in the course of applying for such benefits, with respect to his or her eligibility, or family's eligibility, to receive such benefits. For purposes of paragraph (c) of this section, "housing benefits" means any instance wherein funds administered by the Secretary directly or indirectly permit low-income families or elderly or handicapped persons to reside in housing that otherwise would not be available to them.

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

(e) *Joint and several liability.* A civil penalty or assessment may be imposed jointly and severally if more than one person is determined to be liable.

[61 FR 50213, Sept. 24, 1996, as amended at 68 FR 12787, Mar. 17, 2003]

#### § 28.15 Investigation.

(a) *General.* HUD may initiate a Program Fraud Civil Remedies Act (31 U.S.C. 3801) case against a respondent only upon an investigation by the Inspector General or his or her designee.

(b) *Subpoena.* Pursuant to 31 U.S.C. 3804(a), the Inspector General or designee may require by subpoena the production of records and other documents. The subpoena shall state the authority under which it is issued, identify the records sought, and name the person designated to receive the records. The recipient of the subpoena shall provide a certification that the documents sought have been produced, that the documents are not available and the reasons they are not available, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) *Investigation report.* If the Inspector General or designee concludes that an action under the Program Fraud Civil Remedies Act may be warranted, her or she shall submit a report containing the findings and conclusions of

the investigation to the General Counsel or his or her designee.

(d) The Inspector General may refer allegations directly to the Department of Justice for suit under the False Claims Act (31 U.S.C. 3730) or for other civil relief, or may postpone submitting a report to the General Counsel to avoid interference with a criminal investigation or prosecution. The Inspector General shall report violations of criminal law to the Attorney General.

#### § 28.20 Request for approval by the Department of Justice.

(a) If the General Counsel or designee determines that the investigation report supports an action under this part, he or she must submit a written request to the Department of Justice for approval to issue a notice under § 28.25.

(b) The request shall include a description of the claims or statements at issue; the evidence supporting the notice; an estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 28.10; any exculpatory or mitigating circumstances that may relate to the claims or statements; and a statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

#### § 28.25 Complaint.

(a) *General.* Upon obtaining approval from the Department of Justice, the General Counsel or designee may issue a complaint to the respondent. The complaint shall be sent by certified mail, return receipt requested, or shall be personally served.

(b) The complaint shall include:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the claims or statements at issue, and the reasons why liability arises from those claims or statements;

(2) The amount of penalties and assessments for which the respondent may be held liable;

(3) That the respondent may request a hearing by submitting a written response to the complaint;

(4) The address to which a response must be sent; and