

Pt. 33

(b) Installment deductions must be made over a period not greater than the anticipated period of employment, except as provided under paragraph (d) of this section. If possible, the installment payment must be sufficient in size and frequency to liquidate the debt in, at most, three years. Installment payments of less than \$25 may be accepted only in the most unusual circumstances.

(c) Deductions must begin:

(1) After the employee has entered a voluntary repayment schedule;

(2) If a waiver is requested under §32.4(b), after the employee has been denied a waiver by the Secretary; or

(3) If a hearing is requested under §32.5, after a written decision.

(d) If the employee retires or resigns or his or her employment ends before collection of the debt is completed, the amount necessary to liquidate the debt must be offset from subsequent payments of any nature (for example, final salary payment and/or lump sum annual leave payment) due the employee on the date of separation. If the debt cannot be liquidated by offset from any such final payment due the employee on the date of separation, the debt must be liquidated by administrative offset pursuant to 31 U.S.C. 3716 from later payments of any kind due the employee, where appropriate. After the Secretary has complied with the procedures in this part, the Secretary may refer the debt to a paying agency for collection by offset under 5 CFR 550.1108.

(e) Interest, penalties and administrative costs on debts collected under this part must be assessed, in accordance with the provisions of 4 CFR 102.13.

(f) An employee's payment, whether voluntary or involuntary, of all or any portion of an alleged debt collected pursuant to this part may not be construed as a waiver of any rights which the employee may have under this part or any other provision of law, except as otherwise provided by law.

(g) Amounts paid or deducted pursuant to this part by an employee for a debt that is waived or otherwise found not owing to the United States or which the Secretary is ordered to re-

34 CFR Subtitle A (7-1-06 Edition)

fund must be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

PART 33—PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

- 33.1 Basis and purpose.
- 33.2 Definitions.
- 33.3 Basis for civil penalties and assessments.
- 33.4 Investigation.
- 33.5 Review by the reviewing official.
- 33.6 Prerequisites for issuing a complaint.
- 33.7 Complaint.
- 33.8 Service of complaint.
- 33.9 Answer.
- 33.10 Default upon failure to file an answer.
- 33.11 Referral of complaint and answer to the ALJ.
- 33.12 Notice of hearing.
- 33.13 Parties to the hearing.
- 33.14 Separation of functions.
- 33.15 Ex parte contacts.
- 33.16 Disqualification of reviewing official or ALJ.
- 33.17 Rights of parties.
- 33.18 Authority of the ALJ.
- 33.19 Prehearing conferences.
- 33.20 Disclosure of documents.
- 33.21 Discovery.
- 33.22 Exchange of witness lists, statements and exhibits.
- 33.23 Subpoenas for attendance at hearing.
- 33.24 Protective order.
- 33.25 Fees.
- 33.26 Form, filing and service of papers.
- 33.27 Computation of time.
- 33.28 Motions.
- 33.29 Sanctions.
- 33.30 The hearing and burden of proof.
- 33.31 Determining the amount of penalties and assessments.
- 33.32 Location of hearing.
- 33.33 Witnesses.
- 33.34 Evidence.
- 33.35 The record.
- 33.36 Post-hearing briefs.
- 33.37 Initial decision.
- 33.38 Reconsideration of initial decision.
- 33.39 Appeal to Department head.
- 33.40 Stays ordered by the Department of Justice.
- 33.41 Stay pending appeal.
- 33.42 Judicial review.
- 33.43 Collection of civil penalties and assessments.
- 33.44 Right to administrative offset.
- 33.45 Deposit in Treasury of United States.
- 33.46 Compromise or settlement.
- 33.47 Limitations.

AUTHORITY: 31 U.S.C. 3801-3812.

Office of the Secretary, Education

§ 33.2

SOURCE: 53 FR 15675, May 3, 1988, unless otherwise noted.

§ 33.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99-509, 6101 through 6104, 100 Stat. 16674 (October 21, 1986), to be codified at 31 U.S.C. 3801 through 3812. This law (31 U.S.C. 3809) requires each Federal department head to promulgate regulations necessary to implement the provisions of the statute.

(Authority: 31 U.S.C. 3809)

(b) *Purpose.* This part:

(1) 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 the Department or to its agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for those penalties and assessments.

(Authority: 31 U.S.C. 3809)

§ 33.2 Definitions.

As used in this part:

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

(Authority: 31 U.S.C. 3801(a)(7)(A))

Benefits, as used in the definition of "statement," means anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(Authority: 31 U.S.C. 3809)

Claim means any request, demand, or submission:

(a) Made to the Department for property, services, or money (including money representing grants, cooperative agreements, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Department or to a party to a contract or agreement with the Department:

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

(i) Provided the property or services;

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

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

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

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

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

(iii) Will guarantee or reinsure any portion of a loan made by the party; or

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

(Authority: 31 U.S.C. 3801(a)(3))

Complaint means the administrative complaint served by the reviewing official on the defendant under § 33.7.

(Authority: 31 U.S.C. 3809)

Defendant means any person alleged in a complaint under § 33.7 to be liable for a civil penalty or assessment under § 33.3.

(Authority: 31 U.S.C. 3809)

Department means the United States Department of Education.

(Authority: 31 U.S.C. 3809)

Department head means the Secretary or Under Secretary of the United States Department of Education.

(Authority: 31 U.S.C. 3801(a)(2))

Government means the United States Government.

(Authority: 31 U.S.C. 3809)

Individual means a natural person.

(Authority: 31 U.S.C. 3809)

Initial decision means the written decision of the ALJ required by § 33.10 or § 33.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(Authority: 31 U.S.C. 3803(h))