

§ 78.3 Benefits not denied to rehabilitated offenders.

(a) No individual convicted of any Federal or State offense involving the distribution of controlled substances shall be denied Federal benefits relating to long-term drug treatment programs for addiction under 21 U.S.C. 853a(a)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

(b) No individual convicted of any Federal or State offense involving the possession of controlled substances shall be denied any Federal benefit, or otherwise subject to penalties and conditions, under 21 U.S.C. 853a(b)(2) if:

(1) The individual declares himself or herself to be an addict and submits to a long-term treatment program for addiction as defined by § 78.2(b), provided that in the determination of the sentencing court there is a reasonable body of evidence to substantiate the individual's declaration that such individual is an addict; or

(2) The individual is, in the determination of the sentencing court, deemed to be rehabilitated as defined by § 78.2(a).

PART 79—PROGRAM FRAUD CIVIL REMEDIES

Sec.

- 79.1 Basis and purpose.
- 79.2 Definitions.
- 79.3 Basis for civil penalties and assessments.
- 79.4 Investigation.
- 79.5 Review by the reviewing official.
- 79.6 Prerequisites for issuing a complaint.
- 79.7 Complaint.
- 79.8 Service of complaint.
- 79.9 Answer.
- 79.10 Default upon failure to file an answer.
- 79.11 Referral of complaint and answer to the ALJ.
- 79.12 Notice of hearing.

- 79.13 Parties to the hearing.
- 79.14 Separation of functions.
- 79.15 Ex parte contacts.
- 79.16 Disqualification of reviewing official or ALJ.
- 79.17 Rights of parties.
- 79.18 Authority of the ALJ.
- 79.19 Prehearing conferences.
- 79.20 Disclosure of documents.
- 79.21 Discovery.
- 79.22 Exchange of witness lists, statements and exhibits.
- 79.23 Subpoenas for attendance at hearing.
- 79.24 Protective order.
- 79.25 Fees.
- 79.26 Form, filing and service of papers.
- 79.27 Computation of time.
- 79.28 Motions.
- 79.29 Sanctions.
- 79.30 The hearing and burden of proof.
- 79.31 Determining the amount of penalties and assessments.
- 79.32 Location of hearing.
- 79.33 Witnesses.
- 79.34 Evidence.
- 79.35 The record.
- 79.36 Post-hearing briefs.
- 79.37 Initial decision.
- 79.38 Reconsideration of initial decision.
- 79.39 Appeal to authority head.
- 79.40 Stays ordered by the Department of Justice.
- 79.41 Stay pending appeal.
- 79.42 Judicial review.
- 79.43 Collection of civil penalties and assessments.
- 79.44 Right to administrative offset.
- 79.45 Deposit in Treasury of United States.
- 79.46 Compromise or settlement.
- 79.47 Limitations.

AUTHORITY: 31 U.S.C. 3801–3812.

SOURCE: 53 FR 11659, Apr. 8, 1988, unless otherwise noted.

§ 79.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 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.

(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 authorities or to their agents, and (2) specifies the hearing and appeal rights

§79.2

of persons subject to allegations of liability for such penalties and assessments.

§79.2 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 Department of Health and Human Services.

Authority head means the Departmental Grant Appeals Board of the Department of Health and Human Services.

Benefit means, in the context of *statement*, anything of value, including but 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, insurance, or benefits);

(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 §79.7.

Defendant means any person alleged in a complaint under §79.7 to be liable

45 CFR Subtitle A (10–1–06 Edition)

for a civil penalty or assessment under §79.3.

Department means the Department of Health and Human Services.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§79.10 or 79.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Health and Human Services or an officer or employee of the Office of the Inspector General designated by the Inspector General and 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.

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, 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