

32.804

indebted to the United States, the contracting officer should consider whether the inclusion of the no-setoff commitment in a particular contract is in the best interests of the United States. In such an event, the contracting officer should consult with the Government officer(s) responsible for collecting the debt(s).

(e) When an assigned contract does not include a no-setoff commitment, the Government may apply against payments to the assignee any liability of the contractor to the Government arising independently of the assigned contract if the liability existed at the time notice of the assignment was received even though that liability had not yet matured so as to be due and payable.

[48 FR 42328, Sept. 19, 1983, as amended at 60 FR 49730, Sept. 26, 1995; 61 FR 18921, Apr. 29, 1996]

32.804 Extent of assignee’s protection.

(a) No payments made by the Government to the assignee under any contract assigned in accordance with the Act may be recovered on account of any liability of the contractor to the Government. This immunity of the assignee is effective whether the contractor’s liability arises from or independently of the assigned contract.

(b) Except as provided in paragraph (c) below, the inclusion of a no-setoff commitment in an assigned contract entitles the assignee to receive contract payments free of reduction or setoff for—

(1) Any liability of the contractor to the Government arising independently of the contract; and

(2) Any of the following liabilities of the contractor to the Government arising from the assigned contract:

(i) Renegotiation under any statute or contract clause.

(ii) Fines.

(iii) Penalties, exclusive of amounts that may be collected or withheld from the contractor under, or for failure to comply with, the terms of the contract.

(iv) Taxes or social security contributions.

(v) Withholding or nonwithholding of taxes or social security contributions.

(c) In some circumstances, a setoff may be appropriate even though the as-

signed contract includes a no-setoff commitment, e.g.—

(1) When the assignee has neither made a loan under the assignment nor made a commitment to do so; or

(2) To the extent that the amount due on the contract exceeds the amount of any loans made or expected to be made under a firm commitment for financing.

32.805 Procedure.

(a) *Assignments.* (1) Assignments by corporations shall be—

(i) Executed by an authorized representative;

(ii) Attested by the secretary or the assistant secretary of the corporation; and

(iii) Impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation’s board of directors authorizing the signing representative to execute the assignment.

(2) Assignments by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(3) Assignments by an individual shall be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

(b) *Filing.* The assignee shall forward to each party specified in 32.802(e) an original and three copies of the notice of assignment, together with one true copy of the instrument of assignment. The true copy shall be a certified duplicate or photostat copy of the original assignment.

(c) *Format for notice of assignment.* The following is a suggested format for use by an assignee in providing the notice of assignment required by 32.802(e).

NOTICE OF ASSIGNMENT

TO: _____ [address to one of the parties specified in 32.802(e)].

This has reference to Contract No. _____ dated _____, entered into between _____ [contractor’s name and address] and _____ [government agency, name of office, and address], for _____ [describe nature of the contract].

Federal Acquisition Regulation

32.806

Moneys due or to become due under the contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

A true copy of the instrument of assignment executed by the Contractor on _____ [date], is attached to the original notice.

Payments due or to become due under this contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,

[name of assignee]

By _____
[signature of signing officer]

Title _____
[title of signing officer]

[address of assignee]

ACKNOWLEDGEMENT

Receipt is acknowledged of the above notice and of a copy of the instrument of assignment. They were received at ____ (a.m.) (p.m.) on _____, 20____.

[signature]

[title]

On behalf of

[name of addressee of this notice]

(d) *Examination by the Government.* In examining and processing notices of assignment and before acknowledging their receipt, contracting officers should assure that the following conditions and any additional conditions specified in agency regulations, have been met:

(1) The contract has been properly approved and executed.

(2) The contract is one under which claims may be assigned.

(3) The assignment covers only money due or to become due under the contract.

(4) The assignee is registered separately in the Central Contractor Registration unless one of the exceptions in 4.1102 applies.

(e) *Release of assignment.* (1) A release of an assignment is required whenever—

(i) There has been a further assignment or reassignment under the Act; or

(ii) The contractor wishes to reestablish its right to receive further payments after the contractor's obligations to the assignee have been satisfied and a balance remains due under the contract.

(2) The assignee, under a further assignment or reassignment, in order to establish a right to receive payment from the Government, must file with the addressees listed in 32.802(e) a—

(i) Written notice of release of the contractor by the assigning financing institution;

(ii) Copy of the release instrument;

(iii) Written notice of the further assignment or reassignment; and

(iv) Copy of the further assignment or reassignment instrument.

(3) If the assignee releases the contractor from an assignment of claims under a contract, the contractor, in order to establish a right to receive payment of the balance due under the contract, must file a written notice of release together with a true copy of the release of assignment instrument with the addressees noted in 32.802(e).

(4) The addressee of a notice of release of assignment or the official acting on behalf of that addressee shall acknowledge receipt of the notice.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986; 52 FR 9039, Mar. 20, 1987; 62 FR 237, Jan. 2, 1997; 64 FR 10533, Mar. 4, 1999; 65 FR 24325, Apr. 25, 2000; 68 FR 56673, Oct. 1, 2003]

32.806 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.232-23, Assignment of Claims, in solicitations and contracts expected to exceed the micro-purchase threshold, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of the clause is not required for purchase orders. However, the clause may be used in purchase orders expected to exceed the micro-purchase threshold, that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.