

(2) Program fraud cases initiated by any component of the Department of Homeland Security before October 12, 2005, but not completed before October 12, 2005, will continue to completion under the rules and procedures in effect before this part.

§ 13.2 Definitions.

The following definitions have general applicability throughout this part:

(a) *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. An ALJ will preside at any hearing convened under the regulations in this part.

(b) *Authority* means the Department of Homeland Security.

(c) *Authority Head* means the Deputy Secretary, Department of Homeland Security, or another officer designated by the Deputy Secretary.

(d) *Benefit* means, in the context of a Statement, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(e) *Claim* means any request, demand, or submission:

(1) Made to the Authority for property, services, or money (including money representing grants, loans, insurance, or Benefits);

(2) Made to a recipient of property, services, or money from the Authority or to a party to a contract with the Authority:

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

(A) Provided such property or services;

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

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

(ii) For the payment of money (including money representing grants, loans, insurance, or Benefits) if the United States:

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

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

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

(f) *Complaint* means the administrative Complaint served by the Reviewing Official on the Defendant under § 13.7.

(g) *Defendant* means any Person alleged in a Complaint under § 13.7 to be liable for a civil penalty or assessment under § 13.3.

(h) *Government* means the Government of the United States.

(i) *Individual* means a natural Person.

(j) *Initial Decision* means the written decision of the ALJ required by § 13.10 or § 13.37, and includes a revised Initial Decision issued following a remand or a motion for reconsideration.

(k) *Investigating Official* means the Inspector General of the Department of Homeland Security or an officer or employee of the Office of the Inspector General designated by the Inspector General and eligible under 31 U.S.C. 3801(a)(4)(B).

(l) *Knows or Has Reason to Know*, means that a Person, with respect to a Claim or Statement:

(1) Has actual knowledge that the Claim or Statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the Claim or Statement; or

(3) Acts in reckless disregard of the truth or falsity of the Claim or Statement.

(m) *Makes* includes presents, submits, and causes to be made, presented, or submitted. As the context requires, Making or Made will likewise include the corresponding forms of such terms.

(n) *Person* means any Individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(o) *Representative* means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. This definition is not intended to foreclose *pro se* appearances. That is, an Individual may appear for himself or herself, and a corporation or other entity may appear by

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an owner, officer, or employee of the corporation or entity.

(p) *Reviewing Official* means the General Counsel of the Department of Homeland Security, or other officer or employee of the Department who is designated by the General Counsel and eligible under 31 U.S.C. 3801(a)(8).

(q) *Statement* means any representation, certification, affirmation, Document, record, or accounting or book-keeping entry Made:

(1) With respect to a Claim or to obtain the approval or payment of a Claim (including relating to eligibility to Make a Claim); or

(2) With respect to (including relating to eligibility for):

(i) A contract with, or bid or proposal for a contract with 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 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; or

(ii) 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 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.

§ 13.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, a Person will be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500 for each Claim (as adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–140), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104–134)) if such Person Makes a Claim that such Person Knows or Has Reason to Know:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written Statement that asserts a material fact that 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 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 will 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.

(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 will 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) of this section. Such assessment will 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, a Person will be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,500 (as adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–140), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104–134)) if such Person Makes a written Statement that:

(i) The Person Knows or Has Reason to Know: