

# Subpart 32.8 - Assignment of Claims

Parent topic: [Part 32 - Contract Financing](#)

## 32.800 Scope of subpart.

This subpart prescribes policies and procedures for the *assignment of claims* under the *Assignment of Claims Act* of 1940, as amended, ([31 U.S.C.3727](#), [41 U.S.C.6305](#)) (hereafter referred to as "the Act").

## 32.801 Definitions.

*Designated agency*, as used in this subpart, means any department or agency of the executive branch of the *United States Government* (see [32.803\(d\)](#)).

*No-setoff commitment*, as used in this subpart, means a contractual undertaking that, to the extent permitted by the Act, payments by the *designated agency* to the assignee under an *assignment of claims* will not be reduced to *liquidate* the indebtedness of the contractor to the Government.

## 32.802 Conditions.

Under the *Assignment of Claims Act*, a contractor *may* assign moneys due or to become due under a contract if all the following conditions are met:

- (a) The contract specifies payments aggregating \$1,000 or more.
- (b) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency.
- (c) The contract does not prohibit the assignment.
- (d) Unless otherwise expressly permitted in the contract, the assignment-
  - (1) Covers all unpaid amounts payable under the contract;
  - (2) Is made only to one party, except that any assignment *may* be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and
  - (3) Is not subject to further assignment.
- (e) The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the-
  - (1) *Contracting officer* or the *agency head*;
  - (2) *Surety* on any bond applicable to the contract; and

(3) Disbursing officer designated in the contract to make payment.

## **32.803 Policies.**

(a) Any *assignment of claims* that has been made under the Act to any type of financing institution listed in 32.802(b) *may* thereafter be further assigned and reassigned to any such institution if the conditions in 32.802(d) and (e) continue to be met.

(b) A contract *may* prohibit the *assignment of claims* if the agency determines the prohibition to be in the Government's interest.

(c) Under a requirements or indefinite quantity type contract that authorizes ordering and payment by multiple Government activities, amounts due for individual orders for \$1,000 or more *may* be assigned.

(d) Any contract of a *designated agency* (see FAR 32.801), except a contract under which full payment has been made, *may* include a *no-setoff commitment* only when a determination of need is made by the *head of the agency*, in accordance with the Presidential delegation of authority dated October 3, 1995, and after such determination has been published in the *Federal Register*. The Presidential delegation makes such determinations of need subject to further guidance issued by the Office of Federal *Procurement* Policy. The following guidance has been provided:

Use of the no-setoff provision *may* be appropriate to facilitate the *national defense*; in the event of a national *emergency* or natural disaster; or when the use of the no-setoff provision *may* facilitate private financing of contract performance. However, in the event an *offeror* is significantly 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.

## **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) of this section, 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 assigned 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].

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.6305).

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 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 \_\_\_\_ (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 *System for Award Management* 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.

## **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.

(2) If a *no-setoff commitment* has been authorized (see 32.803(d)), the *contracting officer shall* use the clause with its Alternate I.

(b) The *contracting officer shall* insert the clause at 52.232-24, *Prohibition of Assignment of Claims*, in *solicitations* and contracts for which a determination has been made under agency regulations that the prohibition of *assignment of claims* is in the Government's interest.