

***VOLUME 5, CHAPTER 12: “QUESTIONABLE AND FRAUDULENT CLAIMS”**

SUMMARY OF MAJOR CHANGES

All changes are in **blue font**.

Substantive revisions are identified by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are in ***bold, italic, blue and underlined font***.

†The previous version dated April 2011 is archived.

| PARAGRAPH | EXPLANATION OF CHANGE/REVISION | PURPOSE |
|---------------------|--|----------------|
| All | † As part of the Under Secretary of Defense Comptroller) Volume 5 streamline initiative, this revision incorporated the archived version of Chapter 25 (December 2010) and the section on “Claims” and “Advance Decisions” of Appendix E (January 2011). The content of the archived version of Chapter 12 was incorporated into the new Chapter 13 (February 2015). | Revision |
| Title | Changed Chapter title to “Questionable and Fraudulent Claims.” | Revision |
| 120103 | Added the statutory basis for requesting advance decisions on prospective payments and for settling claims against the U.S. Government. | Addition |
| 120401 and 120402.A | Added cross-reference to Chapter 6 for report of investigation guidance. | Addition |
| Table 12-1 | Added “Claims” and “Advance Decisions” sections of former Appendix E, to include updated addresses. “Relief of Liability” and “Waiver of Erroneous Payments” sections moved to Chapter 6. | Addition |

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CHAPTER 12

QUESTIONABLE AND FRAUDULENT CLAIMS

1201 GENERAL

120101. Overview

This chapter establishes policy for processing questionable and fraudulent claims presented for certification or payment that a certifying or disbursing officer (DO) believes to be illegal or improper. Determination of potentially fraudulent claims is the responsibility of the certifying officer and/or DO. The certifying officer and/or DO **must research claims and** base **their** determinations on the criteria in this **chapter** and the legal opinions of the supporting Staff Judge Advocates (SJA) or other legal counsel. A fraudulent claim is any intentional deception designed to deprive the United States (U.S.) unlawfully of something of value or to secure from the U.S. a benefit, privilege, allowance, or consideration to which a claimant is not entitled. When determining **appropriate actions to take**, a commander or equivalent civilian manager **should** consult with representatives of their appropriate Human Resources Office in coordination with the supporting legal staff. This chapter also discusses a certifying officer's, DO's, and/or head of agency's right to request an advance decision from the appropriate authority.

120102. Purpose

This chapter addresses the determinations of fraud, advance decisions on the propriety of any prospective payment from an authorized official, and actions required when a suspected fraudulent claim is presented for payment or upon discovery that a fraudulent claim has been paid.

*120103. Statutory Basis

A. Under **31 U.S.C. 3529**, a certifying officer, DO, or head of an agency may request an advance decision on the propriety of any prospective payment from an authorized official (see Table 12-1). This authority does not cover the rendering of decisions on questions of law pertaining to payments already made or for hypothetical cases.

B. See **31 U.S.C. 3702** for the authority for settling claims against the U.S.

1202 DETERMINATIONS OF FRAUD

120201. Discrepancies

Inaccuracy on a claim is not proof of intent to defraud the government. When minor discrepancies exist **because** of clerical or computation errors, misunderstanding of procedure, or failure to properly document, the intent to deceive is less likely, thus decreasing the probability of a finding of fraud without evidence. The claimant's supervisor should discuss these errors with the claimant, and require that the claimant correct them.

120202. Claims

A claimant must complete a claim accurately to ensure proper payment. A claim may be unauthorized for payment, but not considered fraudulent. This may occur if a claim is prohibited by law or is otherwise not authorized, but lacks wilful intent by the claimant. A certifying officer or DO may refer these claims to the appropriate authority for an advance decision (see Table 12-1). Additionally, a claim is not necessarily fraudulent because it is not prepared following the requirements of regulations (e.g., the [Joint Travel Regulations](#) Uniformed Service Members and DoD Civilian Employees). It may be due to claimant error, misinformation, or lack of knowledge.

1203 ADVANCE DECISIONS

120301. Application for Decision

The submitter of an [application](#) states the facts and evidence to support the reason(s) for the request and upon which to base the decision. An application must generally include a specific claim or voucher. Send applications through the General Counsel of the Department of Defense (DoD) Component or the Defense Finance and Accounting Service (DFAS) to the DoD Deputy General Counsel (Fiscal) (DoD DGC(F)) for determination. The affected Component or DFAS General Counsel must attach a legal memorandum that discusses the legality of the proposed payment under the circumstances. The responsible activity, DFAS site, or appropriate General Counsel may return cases involving entitlement questions that have been clearly decided authoritatively, with a determination that no advance decision is necessary. A submitter may resubmit such a determination through the responsible activity for reconsideration.

120302. Decisions Rendered

An advance decision is conclusive for the specific payment involved on the question presented. Although an advance decision is conclusive for the specific payment reviewed, certifying officers should use the principles cited in the decision when making future entitlement decisions.

1204 FALSE, FICTITIOUS, OR FRAUDULENT CLAIMS

*120401. Fraudulent Claim Presented for Payment

If there is reason to suspect that a claim presented for certification or payment contains fraudulent information, the certifying officer must request their commander or comparable authorized civilian to initiate an investigation into the suspected fraud. A DO that suspects that a certified voucher is fraudulent must return it to the certifying officer. The requirement to request an investigation applies regardless of the dollar value. Once the investigation and legal review by the supporting SJA or other legal counsel are complete, the investigating officer (IO) gives a copy of the completed report of investigation (ROI) to the certifying officer and DO. See [Chapter 6 for ROI guidance](#).

A. If the ROI does not support a finding of fraud, the certifying officer may certify the voucher for payment for all amounts to which the claimant is entitled. The certifying officer documents the reasons for the determination and maintains documentation for the certifying officer's records.

B. If the ROI confirms that some items of the claim are fraudulent, the claimant may submit a new claim for the items that the report identified as not fraudulent to the certifying officer. A claimant who protests the determination of fraud and insists on payment of the entire claim may submit a new claim for the items denied because of fraud. The certifying officer processes the reclamation for the items denied as prescribed in paragraph 120503.

*120402. Fraudulent Claim Paid

A certifying officer or DO who suspects that a claim was paid based on fraudulent information or documents reviews the retained copy of the claim to determine if it contains false information.

* A. A certifying officer or DO who suspects that a claim is fraudulent must inform his or her commander or comparable authorized civilian, who initiates an investigation of the suspected fraud regardless of the dollar value involved. See Chapter 6 for ROI guidance. Following the investigation, the supporting SJA or Office of General Counsel reviews the investigation for legal sufficiency. The IO then gives the certifying officer and DO each a copy of the final ROI.

B. Upon learning of an improper payment based on suspected fraud, the certifying officer or DO sends a report to the supporting DFAS site through their commander or comparable authorized civilian equivalent. Include in the report a basic statement of the irregularity and the date, amount, and identification of the individual(s) involved. Upon completion of the final recovery, investigative, or other negative action, the certifying officer or DO advises the supporting DFAS site.

C. A certifying officer who determines that items of a claim are fraudulent may not certify any of the items for payment. The certifying officer or DO includes in the second report:

1. The applicable contract or travel order number,
2. The voucher number,
3. The date of payment,
4. The appropriation charged,
5. A description of the supporting documentation,
6. A description of how the fraud was committed,

7. A description of procedural deficiencies in the disbursing office,
8. The action taken to correct the deficiencies, and
9. The amounts recovered or scheduled for repayment from the recipient of the fraudulent payment.

D. No report is required if the fraud is detected before payment. A certifying officer may not certify a reclamation claim for any or all of an amount recovered by the government **due to** an illegal or improper payment of any voucher item obtained by fraud or misrepresentation processed under paragraph [120403](#).

1. **Civilian Employees.** The certifying officer or DO must send paid fraudulent claims to the appropriate pay office and local Office of General Counsel (OGC) or SJA for referral to the Defense Criminal Investigative Service or military criminal investigative organization. Recover payments based on substantiated claims of fraud by direct repayment from the employee through salary offset or by other procedures in Volume 8. The certifying officer or DO may take no further action on the fraudulent claim until OGC or SJA gives the DO specific processing and disposition instructions. Hearings may be required under [5 U.S.C. 5514](#).

2. **Military Members.** Under [37 U.S.C. 1007\(c\)](#) and this Regulation, the certifying officer or DO collects debts owed by military members. When a debtor requests reconsideration of a fraud determination, the creditor organization submits evidence or statements from the debtor to the local SJA to review (see Volume 7A, Chapter 50).

E. Losses resulting from the fraudulent acts of other than disbursing office personnel are improper payments, not physical losses. The DO leaves them charged to the appropriations cited on the payment vouchers (see Chapter 6).

[120403](#). **Reclamations** of Items Disallowed or Recovered Due to Fraud

The certifying officer sends **reclamations** for items disallowed or recouped due to fraud to the appropriate office through his/her chain of command **to the** DoD OGC(F) (see [Table 12-1](#)). For a claim denied in its entirety, submit the original claim. Send the completed claim with a cover letter or memorandum from the certifying officer stating why the claim is fraudulent, with the statement: "I have not certified and will not certify this claim for payment unless authorized by competent authority." Include the original and two copies of all supporting documents and the orders with all endorsements for a travel claim, and a copy of the paid voucher for the items free of fraud. If applicable, provide a copy of the ROI and a statement by the claimant supporting his or her belief that the claim is not fraudulent. The claimant's commander may submit a statement at the claimant's option. When endorsing the certifying officer's letter or memorandum, the certifying officer's commander may state an opinion on the case supporting either the certifying officer or the claimant.

*Table 12-1 Responsible Offices for Claims and Advance Decisions

| FUNCTION | RESPONSIBLE OFFICE |
|--|--|
| CLAIMS AND ADVANCE DECISIONS | |
| Federal civilian employees' compensation and leave | Program Manager Office of Merit Systems Oversight and Effectiveness Office of Personnel Management 1900 E Street NW, Room 6484 Washington, DC 20415 (202) 606-7948 |
| Federal civilian employees' travel, transportation and relocation expenses and allowances | The Civilian Board of Contract Appeals 1800 F Street, NW Washington, DC 20405-0002 (202) 606-8800 FAX (202) 606-0019 www.cbca.gsa.gov |
| CLAIMS | |
| Military members' pay, allowances, travel, transportation, retired pay, and survivor benefits Amounts collected from transportation carriers for damage or loss of property shipped at government expense | Defense Office of Hearings and Appeals Defense Legal Services Agency P.O. Box 3656 Arlington, VA 22203-1995 (703) 696-1876 |
| ADVANCE DECISIONS | |
| Military members' pay, allowances, travel, transportation, retired pay, and survivor benefits | Deputy General Counsel (P&HP) Office of the Secretary of Defense Room 3B688 1600 Defense Pentagon Washington, DC 20301-1600 (703) 571-2663 |
| Use of appropriated funds | Deputy General Counsel (Fiscal) Office of the Secretary of Defense Room 3B688 1600 Defense Pentagon Washington, DC 20301-1600 (703) 571-9343 |