

**SUMMARY OF MAJOR CHANGES TO
DoD 7000.14.R, VOLUME 10, CHAPTER 3
“CONDITIONS AFFECTING CONTRACTUAL CLAIMS”**

All changes are denoted by blue font

Substantive revisions are denoted by a ★ preceding the section,
paragraph, table or figure that includes the revision

Hyperlinks are denoted by *underlined, bold, italic, blue font*

PARAGRAP H	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Reworded and reformatted chapter for clarity. Revised references, eliminated duplicative references, and added references. Added electronic links.	Revision
All	Chapter 3 has been renamed from “Claims” to “Conditions Affecting Contractual Claims”.	Revision
0301	Added an Overview section to provide purpose and general information.	Addition
0302	Updated information concerning Assignment of Claims.	Revision
0303	Added novation and name change agreement section.	Addition
0304	Changed “Doubtful Claims” to “Contract Disputes”.	Revision
0304	Expanded on Contract Disputes.	Revision
030403	Added section on Interest due Contractor.	Addition
030404	Added section on Questionable and Fraudulent claims.	Addition
030205 (Old version)	Deleted section concerning “Amounts Due Deceased or Mentally Incompetent Creditors”.	Deletion

TABLE OF CONTENTS

CONDITIONS AFFECTING CONTRACTUAL CLAIMS

- ★ 0301 Overview
- ★ 0302 Assignment of Claims
- ★ 0303 Novation and Change of Name Agreements
- ★ 0304 Contract Disputes

CHAPTER 3

CONDITIONS AFFECTING CONTRACTUAL CLAIMS★0301 OVERVIEW

030101. This chapter prescribes policy relating to miscellaneous claims against the United States, which must be adjudicated by the responsible government agency before payment is made or denied. It includes the assignment of claims, name change agreements and claims that fall under the Contract Disputes Act involving government contracts. It also includes the regulatory authority, required documentation, and the responsibilities of the agencies involved.

030102. Section 15 of Title 41, United States Code (USC) (41 USC 15), 41 USC 604 and 605 and 31 USC 3727 provide information concerning the assignment of claims and contracts in dispute. Federal Acquisition Regulation (FAR) Parts 32 “Contract Financing” and 42 “Contract Administration and Audit Services” govern claims for monies due, or to become due, under government contracts. There are specific criteria and required documentation for payment of valid claims.

030103. Internal controls need to be in place to ensure that duplicative or erroneous payments don’t occur. These controls will ensure that sufficient management control mechanisms are available so that Department of Defense (DoD) funds are spent appropriately and in accordance with all applicable laws and regulations. See Appendix C to Office of Management and Budget (OMB) Circular A-123 for additional guidance.

★0302 ASSIGNMENT OF CLAIMS

030201. Per FAR 2.1, assignment of claims refers to the transfer by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the government for contract performance.

A. The authorities contained in 41 USC 15 and 31 USC 3727(c) authorize assignments to banks, trust companies, or any financing institution (including federal lending agencies) of monies due, or to become due, under government contracts totaling \$1,000 or more, if not prohibited in the contract and the remaining requirements of 31 USC 3727(c) are met.

B. A contract may prohibit the assignment of claims if the agency determines the prohibition to be in the government’s interest per FAR 32.803 (b).

C. Per FAR 52.212-4(b), when a contractor is paid by the government purchase card, the contractor may not assign their rights under the contract.

D. Unless otherwise expressly permitted in the contract, the assignment must:

1. Cover all amounts payable under the contract and not already paid;

2. Not be made to more than one party, except that it may be made to a party as agent or trustee for more than one party participating in the financing.

E. If an agency pays a party other than the assignee when an assignment has been properly filed, it pays at its peril.

1. When such an error occurs, the agency remains liable to the assignee for the amount of the payment, subject to potential defenses.

2. The agency will assert a claim and collect the erroneous payment from the assignor.

F. See FAR 32.8 and the *Defense Federal Acquisition Regulation Supplement (DFARS) 232.8* for additional guidance concerning the assignment of claims.

030202. The following actions are required in connection with assignments.

A. The assignee will forward a true copy, which is a certified duplicate or photo copy of the document with no alterations or changes, of the instrument of assignment and an original and one copy of the notice of assignment to the entitlement office designated in the contract to make payment.

B. The surety, if any, will return acknowledged copy of the notice to the assignee, who will forward copy to the entitlement office cited in the contract.

C. The entitlement office designated in the contract will:

1. Acknowledge and return to the assignee the copy of the instrument of assignment and file the true copy of the instrument and the original notice of assignment,

2. Pay assignees only after receipt of these assignment documents:

a. Copy of the notice of assignment acknowledged by the contracting officer,

b. Copy of the signed notice and a true copy of the instrument of assignment from the assignee, and

c. Copy of the notice acknowledged from the surety or sureties, if any. Copy is received from the surety or sureties via the assignee.

D. If the contracting officer rejects the assignment, then the entitlement office returns the acknowledged notice and copy of the assignment to the assignee. The office advises that the assignment cannot be recognized for the reasons stated by the contracting officer.

E. If the contracting officer **determines** that the assignment is valid, **then** the **entitlement** office acknowledges the notice of assignment and takes the required action as detailed in paragraph **030202.C**.

030203. When assignments of claims under letter contracts are made, notices (with copies of assignments) are given to contracting officers and **entitlement** offices.

A. If a letter contract is assigned, **then** that assignment is not voided by a subsequent definitization of the contract.

B. Contracting officers and **entitlement** offices accept, receipt for, and honor the assignment of the proceeds of a definitive contract superseding a letter contract.

030204. Open-End, Call-Type, or Indefinite Delivery-Type Contracts **assignments are authorized**, provided orders placed **before** assignment obligate the **United States** Government to pay \$1,000 or more or provided the basic contract imposes a minimum obligation of \$1,000 or more. When the **entitlement** office questions whether an assignment of claims applies to an individual call or order under indefinite delivery-type contracts, **the office withholds** payments **until the contracting office determines** the status and validity of the assignment. See **FAR 16.1** for information concerning contract types.

030205. A notice of assignment will not be acknowledged **based solely** on a basic ordering agreement **because the basic ordering agreement is not a contract between the government and contractor**. The contracting office returns the notice and a copy of the assignment to the assignee and advises that assignments may be acknowledged on individual orders of \$1,000 **or more**. It should be noted that Basic Ordering Agreements require a notice of assignment for each delivery order/supplemental procurement identification number. If there is any doubt on any of these types of contracts, **then the contracts** should be referred to your legal office for determination.

030206. **The following are** special considerations:

A. Two assignments of the same contract **cannot** exist since the second assignment without release from the first assignment would be null and void. A second assignment may be made after **releasing** the first assignment and **notifying** the original parties. **See FAR 32.805 for further guidance.**

B. If the amount of the contract is increased, **then** it is not necessary to execute an additional assignment.

C. Date of assignment **will** not be before **the** date of contract.

030207. A release of an assignment is required whenever there has been a further assignment or reassignment or 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 on the contract.

A. If the assignee releases the contractor from an assignment of claims under a contract, the contractor must file a written notice of release together with a true copy of the release of assignment notice to the same offices noted in 030202.A.

B. The contracting office:

1. Signs and returns a copy of the release notice to the contractor.
2. Files the true copy of the instrument of release of assignment and the original release notice with its office copy of the contract. The contracting officer's and surety's acknowledgment are not required. See FAR 32.805(e) for additional guidance.
3. Signs, dates, and returns the receipt, if applicable, to the assignee.

C. The entitlement office makes remaining payments to the contractor once it receives these release documents:

1. A true copy of the instrument of release of assignment.
2. The original and two copies of the release notice.

★0303 NOVATION AND CHANGE OF NAME AGREEMENTS

030301. The following are considered legal considerations:

A. A novation agreement is a legal instrument executed by all of the following: the contractor (transferor), the successor in interest (transferee), and the United States Government. The transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the government recognizes the transfer of the contract and related assets.

B. A change of name agreement is a legal instrument executed by the contractor and the government that recognizes the legal name change of the contractor without disturbing the original contractual rights and obligations of the parties.

C. Title 41, U.S.C. section 15 prohibits transfer of government contracts. However, the government may, in its interest, recognize a third party as the successor in interest to a government contract when the third party's interest in the contract arises out of the transfer of all the contractor's assets or the entire portion of the assets involved in performing the contract. Examples include, but are not limited to:

1. Sale of these assets with a provision for assuming liabilities.
2. Transfer of these assets incident to a merger or corporate consolidation.

3. Incorporation of a proprietorship or partnership, or formation of a partnership.

D. See [FAR 42.12](#) for additional information.

030302. The contractor provides evidence of this to the Administrative Contracting Officer (ACO) and the ACO's legal office reviews the information for sufficiency.

A. The ACO then issues a modification to the contract, which changes the name of the contractor.

B. Questions regarding the novation and change of name agreements are referred to the ACO.

030303. When a contracting officer approves the transfer of a contract to another contractor, the transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee).

A. A transferee assumes all the transferor's obligations under the contract and the transferor waives all rights under the contract against the government. See FAR 42.1204 for additional guidance.

B. When it is in the government's interest not to concur with the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the government.

★0304 [CONTRACT DISPUTES](#)

030401. [The Contract Disputes Act of 1978 \(CDA\), 41 USC Chapter 9](#) allows federal government contractors to file a claim with the United States Government for monetary damages related to their contractual dealings.

A. The CDA waives the government's sovereign immunity, permitting contractors to appeal contracting officer final decisions to the agency's board of contract appeals or file suit in the Court of Federal Claims.

B. A voucher, invoice, or other routine request for payment that is not in dispute when submitted, is not a claim under the CDA. The submission may be converted to a claim, by written notice to the contracting officer as provided in [FAR 33.206\(a\)](#), if it is disputed either as to liability amount or is not acted upon in a reasonable time.

030402. All claims by a contractor against the United States Government relating to a contract must be in writing and submitted to the contracting officer for a decision. A claim is a written demand for payment of money in a sum certain (but it cannot be an invoice or routine request for payment). As per FAR 2.101, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the CDA until certified.

030403. Interest on amounts due the contractor on claims under the CDA will be paid to the contractor from the date the contracting officer receives the claim or payment would otherwise be due, whichever is later" (see FAR 33.208(a)). The interest rate is established by the Secretary of the Treasury pursuant to the 41 USC 611. Interest rates applicable to CDA claims may be found on the Department of the Treasury's website. Under the CDA, only simple interest is paid, as noted in FAR 33.208(b). Compound interest (interest on interest) is not paid under the CDA.

030404. The following information pertains to questionable and fraudulent claims:

A. If a contractor is unable to support any part of a claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, they will be liable to the government for an amount equal to such unsupported part of the claim in addition to all costs to the government attributable to the cost of reviewing the claim.

B. Fraudulent and questionable claims should not be paid. See Volume 5 Chapter 25 of this Regulation for additional information concerning fraudulent and questionable claims.