

**VOLUME 10, CHAPTER 3: “CONTRACTUAL CLAIMS”****SUMMARY OF MAJOR CHANGES**

All changes are denoted by **blue font**.

Substantive revisions are denoted 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 denoted by **bold, italic, blue and underlined font**.

The previous version dated **January 2016** is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
0303	Revised policy reference to the Department of Defense Financial Management Regulation Volume 1, Chapter 9, Figure 9-1, and Title 44, United States Code, section 2909, which provide for a change in retention requirements.	Revision
030402	Added language to provide clarity for assignment of claims as prescribed by the Defense Federal Acquisition Regulation Supplement, subpart 232.8.	Revision

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## CHAPTER 3

CONTRACTUAL CLAIMS

## 0301 GENERAL

## 030101. Purpose

This chapter prescribes financial management policy relating to contractual claims against the United States, which must be adjudicated by the responsible party before payment is made or denied. This chapter also addresses the assignment of claims, name change agreements and claims that fall under the Contract Disputes Act (CDA). It also includes the regulatory authority, required documentation, and the responsibilities of the agencies involved.

## 030102. Authoritative Guidance

[Title 31, United States Code \(U.S.C.\), section 3727](#) provides statutory requirements concerning the assignment of claims, and [41 U.S.C. § 7101-7109](#) provide statutory requirements for contracts in dispute. The [Federal Acquisition Regulation \(FAR\), part 32](#), Contract Financing, and [FAR, part 42](#), Contract Administration and Audit Services, govern claims for monies due, or to become due, under Government contracts. Specific criteria and required documentation for payment of valid claims are identified in these provisions and included in this chapter.

## 0302 INTERNAL CONTROLS

Internal controls must be in place to ensure that duplicative or erroneous payments do not occur (for regulatory compliance, refer to Chapter 1). Managers with responsibilities for determining entitlements, authorizing or executing payments, and collections must perform periodic (minimum annual) risk assessments to ensure that sufficient management control mechanisms are [in place to ensure](#) that Department of Defense (DoD) funds are spent appropriately, and in accordance with all applicable laws and regulations. Refer to Volume 4, Chapter 14 for additional guidance related to improper payments and related risk assessments.

## \*0303 RETENTION

The retention of payment documentation, both paper and electronic records, is the responsibility of the certifying officer. Electronic record storage requires adequate controls to ensure that integrity of the digital images accurately represents the corresponding paper documentation and detects [changes to an original digital image](#). Refer to Volume 1, Chapter 9, [Figure 9-1](#) for DoD financial records retention policy. [Title 44, U.S.C. § 2909](#) prescribes the [authority to retain records for a longer period than specified in the](#) U.S. National Archives and Records Administration, [General Records Schedules](#).

## 0304 ASSIGNMENT OF CLAIMS

## 030401. Conditions for Assignment of Claims

The [FAR, subpart 32.8](#) prescribes policy for the assignment of **contractual** claims, which refers to the transfer by the contractor of its right to be paid by the Government for contract performance to a bank, trust company, or other financing institution, as security for a loan made to the contractor.

A. The authorization to assign claims 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 is prescribed by [41 U.S.C. § 6305](#) and 31 U.S.C. § 3727, if not prohibited in the contract.

B. A contract may prohibit the assignment of claims if the agency determines the prohibition to be in the Government's interest prescribed by FAR, [subpart 32.803\(b\)](#).

C. When a contractor receives payment by the Government Purchase Card, the contractor may not assign their rights under the contract **when the contract is for commercial items and includes the FAR clause [52.212-4](#)**.

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

1. Cover all amounts payable under the contract not already paid; **and**
2. Not be made to more than one party, except that it may be payable to a party acting as the agent or trustee for more than one party participating in the financing.

E. If an agency pays a party other than the assignee when a properly filed and approved assignment of claims is on record, it may result in Government liability to the assignee.

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 initiate collection against the payee for any erroneous payment.

F. Refer to the Defense Federal Acquisition Regulation Supplement (DFARS), [subpart 232.8](#) for additional guidance concerning the assignment of claims.

## \*030402. Actions Required for Assignment of Claims

A. **As prescribed by DFARS, subpart 232.8, the assignee will:**

1. Forward to the Administrative Contracting Officer (ACO), a true copy of the instrument of assignment, which is a certified duplicate, and an original and three copies of the notice of assignment.

2. Forward to the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety will return three acknowledged copies of the notice to the assignee, who will forward two copies to the disbursing officer of the payment office designated in the contract; and

3. Forward to the disbursing officer of the payment office cited in the contract, a copy of the instrument of assignment and an original and copy of the notice of assignment.

B. The ACO will acknowledge receipt by signing and dating all copies of the notice of assignment and will:

1. File the true copy of the instrument of assignment and the original of the notice in the contract file;

2. Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

3. Return a copy of the notice to the assignee; and

4. Advise the contracting officer of the assignment.

C. If the ACO determines that the assignment is valid, the disbursing officer of the designated payment office must acknowledge the notice of assignment and take the required actions as follows:

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

2. Authorize payment to assignees only after receipt of the following assignment documents:

a. A copy of the notice of assignment acknowledged by the contracting officer;

b. A copy of the signed notice and a true copy of the instrument of assignment from the assignee; and

c. A copy of the notice acknowledged from the surety or sureties, if any, or a copy received from the surety or sureties via the assignee; and

3. Ensure the payment office designated in the contract is provided a copy of the instrument of assignment and the signed notice of assignment.

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

E. Components and agencies must maintain procedures to ensure the appropriate payment office is provided a copy of the instrument of assignment and the signed notice of assignment.

#### 030403. Letter Contracts

When entering into an assignment of claims under letter contracts, notices (with copies of assignments) are forwarded, by the assignee, to the contracting officer and the designated disbursing officer of the payment office cited in the contract.

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

B. Contracting officers, and the disbursing officer of the designated payment offices, accept receipt for, and honor the assignment of the proceeds of a definitive contract superseding a letter contract.

#### 030404. Open-End, Call-Type, or Indefinite-Delivery Type Contracts

Assignment of claims under open-end, call-type, or indefinite-delivery type contracts are authorized, provided orders of \$1,000 or more are placed prior to the assignment, or the basic contract imposes a minimum obligation of \$1,000 or more. When the designated payment office cannot determine whether an assignment of claims applies to an individual call or order under indefinite-delivery type contracts, the designated payment office must withhold payments until the ACO determines the status and validity of the assignment. Refer to [FAR, subpart 16.1](#) for information concerning contract types.

#### 030405. Basic Ordering Agreements

Basic ordering agreements require a notice of assignment for each delivery order/supplemental procurement identification number. 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 ([FAR, subpart 16.703\(a\)](#)). The contracting officer must return the notice, and a copy of the assignment, to the assignee and advise that assignments may be acknowledged on individual orders of \$1,000 or more. Consult the agency legal office for determination if there is any doubt on any of these types of contracts.

## 030406. Special Considerations for Assignments of Claims

The following are special considerations:

A. Two assignments of the same contract cannot exist without a release from the first assignment (41 U.S.C. § 6305). An authorization of a second assignment may only occur upon releasing the first assignment and notifying the original parties. Refer to FAR, [subpart 32.805](#) for further guidance.

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

C. The date of assignment cannot be before the date of the contract.

D. The transfer of contracts, or any interest in the contract to another party, is prohibited (41 U.S.C. § 6305(a)).

E. Payments to the assignee are not subject to reduction or setoff for an assignor's liability, unless departments/agencies decide it is in the Government's interest, or if the contracting officer makes a determination prescribed by [DFARS, subpart 232.803\(d\)](#).

## 030407. Release of Assignment of Claims

A release of an assignment is required prior to a further assignment or reassignment. A release of an assignment is also required when the contractor wishes to establish a right to receive 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 [subparagraph 030402.A](#).

B. The ACO:

1. Signs and returns a copy of the release notice to the contractor;

2. Files the true copy of the instrument of the release of assignment and the original release notice with the contracting office's copy of the contract. The ACO and surety's acknowledgment are required. Refer to FAR, [subpart 32.805\(e\)](#) for additional guidance; and

3. Signs, dates, and returns the release notices to the assignee.

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

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

030408. Electronic Funds Transfer

If a contractor attempts to change the identity of the payee by changing Electronic Funds Transfer (EFT) or other information in [System for Award Management \(SAM\)](#), without complying with the rules governing novation agreements and assignment of claims, the payment information will be incorrect within the meaning of the “Suspension of Payment” paragraph of the EFT clause in the contract ([FAR, subpart 4.1102\(c\)](#)). Assignees must be registered separately in SAM to ensure the financial institution identified in the assignment meets the requirement for EFT.

0305 NOVATION AND CHANGE OF NAME AGREEMENTS

030501. 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 U.S. Government. The transferor guarantees the performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets. Refer to [FAR, subpart 42.12](#) for additional information.

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 affecting the original contractual rights and obligations of the parties.

C. Title 41 U.S.C. § 6305 prohibits the transfer of Government contracts. However, as prescribed by [FAR, subpart 42.1204\(a\)](#), the Government may recognize another 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 the assets with a provision for assuming liabilities;
2. Transfer of the assets incident to a merger or corporate consolidation; or
3. Incorporation of a proprietorship or partnership, or formation of a partnership.

030502. Contractor and Contracting Officer Responsibilities

The contractor provides evidence to the contracting officer responsible for processing and executing novation and change of name agreements.

A. The contracting officer enters into a bilateral modification to the contract, which changes the name of the contractor.

B. Refer all questions regarding the novation and change of name agreements to the contracting officer.

030503. Transfer of Contractual Obligation

When a contracting officer approves the transfer of a contractual obligation to another contractor, the transferor guarantees the 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 with the Government. Refer to the FAR, [subpart 42.1204](#) for additional guidance.

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

0306 CONTRACT DISPUTES

030601. Contractor Claims

The CDA waives the Government's sovereign immunity, permitting contractors to appeal a contracting officer's final decision to the appropriate board of contract appeals, or file suit in the Court of Federal Claims.

A. [\*The Armed Services Board of Contract Appeals\*](#) is an independent tribunal that presides over disputes under the CDA of 1978, codified at 41 U.S.C. §§ 7101-7109, which allows Federal Government contractors to file a claim with the DoD for monetary damages, and other legal remedies related to their contractual dealings.

B. Routine submissions for payment are not considered claims under the CDA. The submission may be converted to a claim by written notice to the contracting officer as provided in [FAR, subpart 33.206\(a\)](#).

C. All claims by contractors against the U.S. Government must be a written demand or assertion submitted to the contracting officer for a decision. A contractor asserting a claim exceeding \$100,000 must provide a certification as required by, [FAR subpart 33.207\(c\)](#).

030602. Claims Settlement and Final Judgement

The Bureau of [the](#) Fiscal Service administers and certifies payments from the Judgment Fund for the settlement and final judgment [in a CDA case](#) (Treasury Financial Manual, Part

6, Volume 1, [Chapter 3100](#), [28 U.S.C. § 2517](#), and [31 U.S.C. § 1304](#)). Reimbursement of the Judgment Fund is payable from funds current at the time the award is made by the activity accountable for the contract obligation.

030603. Interest Penalties

Interest on amounts due the contractor, on claims under the CDA, are payable to the contractor from the date the contracting officer receives the claim, or the date payment would otherwise be due, whichever is later, [to the date paid](#) (FAR, [subpart 33.208\(a\)](#)). Title [41 U.S.C. § 7109](#) provides the authority for the Secretary of the Treasury to establish the interest rate. Refer to the [Department of the Treasury's website](#) for interest rates applicable to CDA claims. Under the CDA, only simple interest is paid, as noted in [FAR, subpart 33.208\(b\)](#); compound interest (interest on interest) is not payable under the CDA.

030604. Questionable and Fraudulent Claims

A. If any part of a claim is attributable to misrepresentation of fact or fraud on the part of the contractor, the contracting officer will refer the matter to the agency official responsible for investigating fraud in accordance with [FAR, subpart 33.209](#).

B. Fraudulent and questionable claims should not be paid. For additional information concerning fraudulent and questionable claims refer to Volume 5, Chapter 12.