

FDA Staff Manual Guides, Volume III – General Administration

Procurement and Supply Management – Procurement

Assignment of Claims

Effective Date: 10/23/2023

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1. Purpose.

The purpose of this guide is to outline FDA's policy on Assignment of Claims.

2. Definition.

Assignment of claims includes both the transfer or assignment of a claim by the contractor to a bank, trust company, or other financing institution. This action secures the contractor's right to be paid by the Government for contract performance.

3. Reference/Authority.

This guide supplements policy and procedure set forth in the following directives:

- A. Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727
(<https://www.govinfo.gov/content/pkg/USCODE-2014-title31/html/USCODE-2014-title31-subtitleIII-chap37.htm>)
- B. Federal Acquisition Regulation (FAR) Subpart 32.8 – Assignment of Claims
(<https://www.acquisition.gov/far/subpart-32.8>)

4. Policy.

Under the Assignment of Claims Act (referred to as “Act” for the remainder of this Staff Manual Guide (SMG), a contractor may assign moneys due or to become due under a contract, provided all the following conditions are met:

- A. The contractor 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. This can happen if FDA determines the prohibition to be in the Government’s interest,
- 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 (1) party, except any assignment may be made to one (1) party as agent or trustee for two (2) or more entities 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, Office of Acquisitions and Grant Services (OAGS),
 - 2. Surety on any bond applicable to the contract, and
 - 3. Disbursing office designated in the contract to make payment(s) within the Office of Financial Management (OFM).

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.

Any assignment of claims that has been made under the Act to any type of financing institution listed in 3.b. may, thereafter, be further assigned and reassigned to any such institution if the conditions in 3.d. and 3.e. continue to be met.

FDA requires a release of assignment when there has been a further assignment or reassignment under the Act, 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 under the contract.

5. Responsibilities.

- A. OAGS Contracting Officers should verify the following conditions have been met before acknowledging receipt of the notice of assignment:
 1. The contract has been properly approved and executed,
 2. The contract specifies payments aggregating \$1,000 or more,
 3. The contract does not prohibit assignment of claims,
 4. The assignment covers only money due or to become due under the contract,
 5. The assignee is registered separately in the System of Award Management (SAM), unless one (1) of the exceptions applies:
 - a. Purchases that use a government-wide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card only as a payment method,
 - b. Classified contracts when registered in the SAM Entity Registration database, or use of SAM Entity Registration data, could compromise the safeguarding of classified information or national security,
 - c. Contracts awarded by:
 - 1) Deployed Contracting Officers in the course of military operations, including, but not limited to, contingency operations; or
 - 2) Contracting Officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies,
 - d. Contracts to support unusual or compelling needs,
 - e. Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain SAM Entity Registration; and
 - f. Micro-purchases that do not use the electronic funds transfer (EFT) method for payment and are not required to be reported.
 6. For assignment of claims submitted by contractors that are corporations, OAGS should verify the assignment is:
 - a. Executed by an authorized representative,

- b. Attested by the secretary or the assistant secretary of the corporation, and
 - c. 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.
- 7. In cases when an assignment of claims is submitted by a partnership and is signed by one (1) partner, OAGS should verify that enough evidence was provided that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership;
- 8. For assignment of claims submitted by contractors that are individuals, OAGS should verify that the assignment is signed by that individual and that the signature is acknowledged before a notary public.

B. The OAGS Contracting Officer should sign the assignment instrument and send it to the contractor to acknowledge receipt of the notice of assignment.

C. Before executing the assignment of claims, the OAGS Contracting Officer should review the award file to ensure the requisite clauses permitting the assignment of claims to be processed have been incorporated into the contract/purchase order. If the contract/purchase order does not include the requisite clauses, and the contract terms and conditions do not, otherwise, prohibit an assignment of claims to be processed, the Contracting Officer should incorporate the appropriate clause specified in FAR subpart 32.8, via bilateral contract/purchase order modification.

D. Once all of the above steps have been executed, and the Contracting Officer agrees that an assignment of claims is both permissible and appropriate, the OAGS Contracting Officer should execute the assignment of claims via a modification to the contract/purchase order, entered in the procurement system, that interfaces with FDA's financial system.

E. The modification should include the following information and should match the information in the assignment of claims notice:

1. Name of the third party/assignee,
2. Data Universal Numbering System (DUNS) number of the third party/assignee,
3. Tax identification number of the third party/assignee,
4. Any terms included in the assignment of claims notice.

Note: Terms usually includes the assignee bank account

F. Once the contract/purchase order modification for the assignment of claims has been executed, the Contracting Officer should email a copy of the contract/purchase order modification, along with the assignment of claims notice, to the OFM Payments Office Claims Assignment mailbox at (DPSClaimAssignments@fda.hhs.gov) and the OFM Supplier Site mailbox at (SupplierSiteForms@fda.hhs.gov).

G. The payments office should ensure the following information on the contract/purchase order modification matches the information in the assignment of claims notice:

1. Name of the third party/assignee,
2. DUNS number of the third party/assignee,
3. Tax identification number of the third party/assignee, and
4. Any terms included in the assignment of claims notice.
Note: Terms usually includes the assignee bank account

H. Once the payments office receives an invoice on this contract/purchase order, the payer should ensure that the third-party assignee information, listed in bullet point 4.G. is listed on the invoice, and this information matches the information on the assignment of claims notice.

I. The supplier site team should set-up the third party in Unified Financial Management System (UFMS). This should include creating a new site for the third party and entering this site in the third-party assignment function in UFMS.

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K. The payments office should ensure that name, DUNS, tax identification number, and banking information for the assignee in UFMS are accurate.

L. In the case of further assignment or reassignment, OAGS and the OFM payments office should ensure they have received the following documents:

1. Written notice of release of the contractor by the assigning financing institution,
2. Copy of the release instrument,
3. Written notice of the further assignment or reassignment, and

4. Copy of the further assignment or reassignment instrument.
- M. For the assignee to be released from the assignment of claims, OAGS and the OFM payments office should ensure they receive from the contractor a written notice of release together with a true copy of the release of assignment instrument.

6. Approval Authority.

Only the FDA's OFM Director or designee has the authority to approve exceptions.

7. Effective Date.

This guide is effective October 23, 2023.

8. Document History - SMG 2610.19, "Assignment of Claims"

Status (I, R, C)	Date Approved	Location of Change History	Contact	Approving Official
Initial	07/03/2014	N/A	OFM	William Collinson, Director, Office of Financial Management
Change	11/04/2019	Updated URL for Attachment A	OFM	Sahra Torres-Rivera, Deputy Chief Financial Officer (DCFO), Director Office of Financial Management (OFM)
Change	08/18/2020	Updated references URLs, Appendix, mailboxes	OFM	Sahra Torres-Rivera, Deputy Chief Financial Officer (DCFO), Director Office of Financial Management (OFM)
Revision	10/13/2023	N/A	OFM	Sahra Torres-Rivera, Deputy Chief Financial Officer (DCFO), Director Office of Financial Management (OFM)

Appendix A – FAR Subpart 32.8-Assignment of Claims

<https://www.acquisition.gov/far/subpart-32.8>

Appendix B – Job Aid P2P094_Third Party Claims- Create a Site and Assignment

https://fda.sharepoint.com/:w/r/sites/OC-Intranet-OC-OO-OFBA-FMM/_layouts/15/Doc.aspx?sourcedoc=%7B38314933-34CF-432C-B381-5A0D5A9608CF%7D&file=Third%20Party%20Claims%20-%20Create%20a%20Site%20and%20Assignment%20v1.docx&action=default&mobileredirect=true&DefaultItemOpen=1

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