

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON



ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

December 27, 1940

Dear Sir:

There is enclosed for your information a copy of a decision (B-13852) rendered by the Comptroller General of the United States to the Secretary of War, under date of December 10, 1940, with reference to the procedure under the Assignment of Claims Act of 1940. This decision did not come to our attention until today.

Copies of the Circular No. 1417 of the Director of Procurement and of the decision of the Comptroller General (B-13700) dated December 2, 1940, which are referred to in the enclosed decision, were sent to you in Mr. Morrill's circular letter of December 11, 1940.

Very truly yours,

A handwritten signature in cursive script, appearing to read "E. L. Smead". The signature is written in dark ink and is positioned above the typed name and title.

E. L. Smead, Chief,  
Division of Bank Operations.

Enclosure

## COMPTROLLER GENERAL OF THE UNITED STATES

Washington

B-13852

December 10, 1940

The Honorable,

The Secretary of War.

Sir:

I have your letter of December 5, 1940, as follows:

"In order that appropriate instructions may be issued to disbursing officers of the War Department in connection with payments to be made to assignees of moneys due or to become due from the United States, or from any agency or department thereof under contracts with the United States, in accordance with the authority contained in the Assignment of Claims Act of 1940, Public 811, Chapter 779, 76th Congress, 3d Session, approved October 9, 1940, your decision is requested on the question hereinafter propounded under the authority contained in the Act of July 31, 1894, 28 Stat. 208, U. S. C. 31:74.

"Under subparagraph 4 of the proviso to Section 1 of the Assignment of Claims Act of 1940, and, as understood by this Department, as a condition precedent to the validity of the assignment provided for therein, the assignee of moneys due or to become due from the United States, or from any agency or department thereof, is required to furnish to certain designated persons or agencies specified in said subparagraph a written notice of the assignment, together with a true copy of the instrument of assignment.

"Your decision is requested on the question whether under the above cited subparagraph of said proviso a disbursing officer making payment under such assignment, copy of which has been furnished him, may accept an affidavit executed by the assignee to the effect that written notice of the assignment and a true copy of the instrument of assignment have been furnished the persons or agencies with whom the Act in question requires such filing, as adequate evidence as to compliance with the requirements of said subparagraph of the Act in question, to justify payment to said assignee.

"In order that current procurements in the field of National Defense may be properly and expeditiously obtained, your early decision in the premises is requested."

Section 4 of the Assignment of Claims Act of 1940, provides in pertinent part as follows:

"That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with--

"(a) the General Accounting Office,

"(b) the contracting officer or the head of his department or agency,

"(c) the surety or sureties upon the bond or bonds, if any, in connection with such contract, and

"(d) the disbursing officer, if any, designated in such contract to make payment."

This office will accept an affidavit such as mentioned in your letter as establishing prima facie, for audit purposes, that there has been a compliance with section 4 of the act, but should it subsequently develop that there has not been a compliance with said section 4 the disbursing officer would in no way be relieved of responsibility for the payment based on such false affidavit. That is to say, if the disbursing officer elects to accept such affidavit for purposes of making payment to the assignees this office will require no additional evidence to establish the fact of compliance with section 4 of the act unless the affidavit proves to be false, but the acceptance of such affidavit will not relieve the disbursing officer of his responsibility.

The matter of assignments, notices thereof, and payments thereunder has been considered by the Director of Procurement who has issued general instructions in that regard by Circular Letter No.

447, December 3, 1940, which provides, insofar as concerns the question you have presented, as follows:

"In the event that any moneys due or to become due from the United States under any contract are assigned pursuant to the terms of the Assignment of Claims Act of 1940, the assignee is required to forward a true copy of the assignment, together with written notice thereof, to each of the parties specified in proviso 4 of the Act. This notice of said assignment in the form attached hereto should be furnished to each of such parties in quadruplicate. Three of the four copies of each notice of assignment should be returned to the assignee under the contract with the receipt form at the end thereof properly executed. One of these copies is for the assignee. The other two copies should be attached to the first voucher, invoice, or other similar document submitted for payment. One copy of each receipt should be furnished to the General Accounting Office with the first voucher and the other copy of each receipt retained by the appropriate officer of the Department making payment. Reference as to the previously filed receipts should be made on subsequent vouchers,

"This procedure is designed to afford the assignee and the appropriate officers of the Government convenient evidence that there has been compliance with the requirements of the statute with the reference to the filing of notice of such assignments. However, rigid adherence to this procedure should not be insisted upon if satisfactory evidence of compliance with the statute is provided by other means."

It would appear that if the procedure suggested therein be followed there would be available to the disbursing officer evidence in the form of receipts that the notices and copies of assignment had been filed as required, which evidence should afford him ample protection insofar as concerns section 4 of the act in question. It is suggested that the procedure therein outlined, or a similar procedure, well might be adopted by the War Department.

As having a bearing on the responsibility of a disbursing officer in making payments under assignments permitted by the Assignment of Claims Act of 1940, attention is invited to decision of this office

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dated December 2, 1940 (B-13700), a copy of which is attached to and forms a part of Circular Letter No. 447, supra, wherein it is stated:

"There would appear to be no necessity for a specific claim from an assignee under a valid assignment for an amount established to be due and payable under a particular contract. However, it is to be recognized that disputes unknown to the Government may exist between the contractor and its assignee in connection with the assignment, the consideration or a condition of the assignment may have failed etc. Also, it is to be noted that the assignee, and not the contractor, is required to supply to the Government information as to the assignment, and that a 'true copy' of the assignment is required to be furnished. Having regard therefor, in order to insure that payments are properly made, to prevent frauds upon the United States, and to protect the rights of all parties involved, it would appear that the voucher, invoice, or other data in support of a payment direct to the assignee should clearly indicate that the contractor recognizes the assignment, its validity, and the right of the assignee to receive the payment. The form or means of indicating such recognition is not material insofar as this office is concerned. For instance, the contractor's certification on a voucher in which the name of the assignee is shown would suffice for audit purposes."

Should the disbursing officer make a **payment** based on an affidavit such as mentioned in your letter under a voucher which shows that the contractor recognizes the assignment, its validity, and the right of the assignee to receive the payment, the Government might have a valid defense to any subsequent claim from the contractor for the said amount should the contractor base such claim on the fact notices and copies had not been furnished as required by the act. However, should the payment be made in connection with a contract supported by bonds the interests of the Government might be unduly prejudiced in the event the surety had not been furnished a notice and copy of the assignment. Consequently, it would appear

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advisable in such cases, for the protection of the disbursing officer, that no payment be made to the assignee until it be established that the surety had received a notice and copy of the assignment.

Respectfully,

(Signed) LINDSAY C. WARREN

Comptroller General  
of the United States.