

§ 33.4

subject to an assessment of not more than twice the amount of that claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. The assessment is in lieu of damages sustained by the Government because of that claim.

(Authority: 31 U.S.C. 3802(a)(1))

(b) *Statements.* (1) Any person who makes a written statement that:

(i) The person knows or has reason to know:

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement; shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement is considered made to the Department when the statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Department.

(Authority: 31 U.S.C. 3802(a)(2))

(c) No proof of specific intent to defraud is required to establish liability under this section.

(Authority: 31 U.S.C. 3801(5))

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each of those persons may be held liable for a civil penalty under this section.

(Authority: 31 U.S.C. 3802(a))

(e) In any case in which it is determined that more than one person is liable for making a claim under this section of which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any of those persons or jointly and sever-

34 CFR Subtitle A (7-1-97 Edition)

ally against any combination of those persons.

(Authority: 31 U.S.C. 3802(a)(1); 3809)

§33.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3604(a) is warranted:

(1) The subpoena so issued must notify the person to whom it is addressed of the authority under which the subpoena is issued and must identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving the subpoena is required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that the documents are not available and the reasons therefore, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(Authority: 31 U.S.C. 3804(a))

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of the investigation to the reviewing official.

(Authority: 31 U.S.C. 3803(a)(1))

(c) Nothing in this section precludes or limits an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(Authority: 31 U.S.C. 3809)

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

(Authority: 31 U.S.C. 3803(a)(1))

§ 33.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 33.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 33.3 of this part, the reviewing official transmits to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 33.7.

(b) The notice must include—

- (1) A statement of the reviewing official's reasons for issuing a complaint;
- (2) A statement specifying the evidence that supports the allegations of liability;
- (3) A description of the claims or statements upon which the allegations of liability are based;
- (4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 33.3;
- (5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and
- (6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

(Authority: 31 U.S.C. 3803(a)(2); 3809(2))

§ 33.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 33.7 only if—

- (1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and
- (2) In the case of allegations of liability under § 33.3(a) with respect to a claim, the reviewing official determines that, with respect to that claim or a group of related claims submitted at the same time the claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 33.3(a) does not exceed \$150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time includes only those claims arising from the same transaction (*e.g.*, grant, cooperative agreement, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section may be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

(Authority: 31 U.S.C. 3803(b), (c))

§ 33.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 33.8.

(b) The complaint must state:

- (1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from those claims or statements;
- (2) The maximum amount of penalties and assessments for which the defendant may be held liable;
- (3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and
- (4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 33.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of the regulations in this part.

(Authority: 31 U.S.C. 3803(a))