

§ 79.4

(ii) Old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) Benefits under title XVIII of the Social Security Act;

(iv) Aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(v) Medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(vi) Benefits under title XX of the Social Security Act;

(vii) Benefits under section 336 of the Older Americans Act; or,

(viii) Benefits under the Low-Income Home Energy Assistance Act of 1981, which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

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

(e) 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 such person may be held liable for a civil penalty.

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

[53 FR 11659, Apr. 8, 1988, as amended at 61 FR 52301, Oct. 7, 1996]

§ 79.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall 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 such subpoena shall be required to tender to the

45 CFR Subtitle A (10–1–99 Edition)

investigating official, or the person designated to receive the documents, a certification that—

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents suitably identified, have been withheld based upon the assertion of an identified privilege.

(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 such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit 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.

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

§ 79.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 79.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 79.3, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's attention to issue a complaint under § 79.7.

(b) Such notice shall 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 § 79.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known