

### § 33.4

of those persons or jointly and severally 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))

### 34 CFR Subtitle A (7-1-03 Edition)

#### § 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.