

§ 42.5

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.

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

§ 42.5 Review by the reviewing official.

(a) The report of the investigating official will be examined by the reviewing official to determine if there is adequate evidence to believe a person is liable under § 42.3 of this part. The review will be completed within 90 days.

(b) If, based on the report of the investigating official under § 42.4(b) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 42.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 42.7 of this part.

(c) The 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 § 42.3 of this part;

(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.

(d) If the reviewing official finds that there is not adequate evidence that a person is liable, the reviewing official will inform the department or office of the Department of Veterans Affairs concerned with the claim or statement and the investigating official.

38 CFR Ch. I (7–1–10 Edition)

§ 42.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 42.7 of this part 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 § 42.3 of this part with respect to a claim, the reviewing official determines that, with respect to the claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services, or both, demanded or requested in violation of § 42.3(a) of this part does not exceed \$150,000.

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

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's 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.

§ 42.7 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 § 42.8 of this part.

(b) The complaint shall 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 the claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;