

Department of Justice

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(ii) Is false, fictitious, or fraudulent as a result of such omission; and

(iii) Is a statement in which the person making such a statement has a duty to include such material fact; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(c) A claim shall be considered made to the authority, recipient, or party when such claim 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 authority, recipient, or party.

(d) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(e) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(f) Any person 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 listed in paragraphs (f)(1) and (f)(2) of this section made before September 29, 1999, and not more than \$5,500 for each such statement made on or after September 29, 1999, if that person makes a written statement that:

(1) The person knows or has reason to know

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

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

(2) Contains, or is accompanied by, an express certification or affirmation

of the truthfulness and accuracy of the contents of the statement.

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

(h) A statement shall be considered made to the authority when such 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 authority.

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

(j) 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 under this section.

(k) 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.

[Order No. 1268-88, 53 FR 11646, Apr. 8, 1988, as amended by Order No. 2249-99, 64 FR 47103, Aug. 30, 1999]

§ 71.4 Investigation.

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

(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 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

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(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 within 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 appropriate component of the Department.

§ 71.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 71.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 71.3, the reviewing official shall transmit to the Assistant Attorney General, Civil Division, a written notice of the reviewing official's intention to have a complaint issued under § 71.7. Such notice shall include

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that support 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 § 71.3 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.

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§ 71.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 71.7 only if

(1) The Assistant Attorney General, Civil Division, 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 § 71.3(a) with respect to a claim, the reviewing official determines that, with respect to such 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, demanded or requested in violation of § 71.3(a) 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 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.

§ 71.7 Complaint.

(a) On or after the date the Assistant Attorney General, Civil Division, 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 § 71.8.

(b) The complaint shall state the following:

(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 such claims or statements;

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