

## § 185.104

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.

### § 185.104 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 or she 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

(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.

### § 185.105 Review by the reviewing official.

If, based on the report of the investigating official under §185.104(b), the

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reviewing official determines that there is adequate evidence to believe that a person is liable under §185.103, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to have a complaint issued under §185.107. Such notice shall include:

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

(b) A statement specifying the evidence that supports the allegations of liability;

(c) A description of the claims or statements upon which the allegations of liability are based;

(d) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of §185.103;

(e) 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

(f) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

### § 185.106 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under §185.107 only if:

(1) The Department of Justice approves the issuance of a complaint in a written statement described in section 3803(b)(1) of title 31 of the United States Code, and

(2) In the case of allegations of liability under §185.103(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 §185.103(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.