

**PART 28—IMPLEMENTATION OF THE
PROGRAM FRAUD CIVIL REM-
EDIES ACT OF 1986**

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AUTHORITY: 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812; 42 U.S.C. 3535(d).

SOURCE: 61 FR 50213, Sept. 24, 1996, unless otherwise noted.

§ 28.1 Purpose.

This part:

(a) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents; and

(b) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. Hearings under this part shall be conducted in accordance with the Administrative Procedure Act pursuant to part 26, subpart B, of this chapter.

[61 FR 50213, Sept. 24, 1996, as amended at 73 FR 76831, Dec. 17, 2008]

§ 28.5 Definitions.

(a) The terms *ALJ* and *HUD* are defined in 24 CFR part 5.

(b) The terms *Claim*, *Knows or has reason to know*, *Person*, *Reviewing Official*, and *Statement* have the same meanings as defined in 31 U.S.C. 3801.

(c) *Ability to pay* is determined based on an assessment of the respondent's resources available both presently and prospectively from which the Department could ultimately recover the total award, which may be predicted based on historical evidence.

(d) *Benefit* means anything of value, including, but not limited to, any ad-

vantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan insurance or guarantee.

(e) *Respondent* means any person alleged to be liable for a civil penalty or assessment under § 28.25.

(f) The *reasonable prospect of collecting an appropriate amount of penalties and assessments* is determined based on a generalized assessment made by a Reviewing Official based on the limited information available in the Report of Investigation for purposes of determining whether the allocation of HUD's resources to any particular action is appropriate. This assessment is not the same as the assessment made when determining ability to pay, nor is the reasonable prospect of collecting a factor to be considered in determining the amount of any penalty or assessment in any particular case.

(g) *Report of Investigation* means a report containing the findings and conclusions of a Program Fraud Civil Remedies Act investigation by the Inspector General or his or her designee, as described in § 28.15.

[73 FR 76831, Dec. 17, 2008]

§ 28.10 Basis for civil penalties and assessments.

(a) *Claims*. (1) A civil penalty of up to \$7,500 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by a written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that:

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of the omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

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

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

(3) A claim shall be considered made to HUD, to a recipient, or to a party when the claim actually is made to an agent, fiscal intermediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD, the recipient, or the party.

(4) Each claim for property, services, or money is subject to a civil penalty without regard to whether the property, services, or money actually is delivered or paid.

(5) Liability under this part shall not lie if the amount of money or value of property or services claimed exceeds \$150,000 as to each claim that a person submits. For purposes of paragraph (a) of this section, a group of claims submitted simultaneously as part of a single transaction shall be considered a single claim.

(6) If the Government has made any payment, transferred property, or provided services on a claim, then the Government may assess a person found liable up to twice the amount of the claim or portion of the claim that is determined to be in violation of paragraph (a)(1) of this section.

(b) *Statements.* (1) A civil penalty of up to \$7,500 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

(i) The person knows or has reason to know:

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

(B)(1) Omits a material fact; and

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

(ii) In the case of a statement described in (b)(1)(A)(ii) of this section, is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; and

(iii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

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

(3) A statement shall be considered made to HUD when the statement is actually made to an agent, fiscal inter-

mediary, or other entity, including any State or political subdivision of a State, acting for or on behalf of HUD.

(c) *Limit on liability.* If the claim or statement relates to low-income housing benefits or housing benefits for the elderly or handicapped, then a person may be held liable only if he or she has made the claim or statement in the course of applying for such benefits, with respect to his or her eligibility, or family's eligibility, to receive such benefits. For purposes of paragraph (c) of this section, "housing benefits" means any instance wherein funds administered by the Secretary directly or indirectly permit low-income families or elderly or handicapped persons to reside in housing that otherwise would not be available to them.

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

(e) *Joint and several liability.* A civil penalty or assessment may be imposed jointly and severally if more than one person is determined to be liable.

[61 FR 50213, Sept. 24, 1996, as amended at 68 FR 12787, Mar. 17, 2003; 72 FR 5588, Feb. 6, 2007; 73 FR 76831, Dec. 17, 2008]

§ 28.15 Investigation.

(a) *General.* HUD may initiate a Program Fraud Civil Remedies Act (31 U.S.C. 3801) case against a respondent only upon an investigation by the Inspector General or his or her designee.

(b) *Subpoena.* Pursuant to 31 U.S.C. 3804(a), the Inspector General or designee may require by subpoena the production of records and other documents. The subpoena shall state the authority under which it is issued, identify the records sought, and name the person designated to receive the records. The recipient of the subpoena shall provide a certification that the documents sought have been produced, that the documents are not available and the reasons they are not available, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) *Investigation report.* If the Inspector General or designee concludes that an action under the Program Fraud Civil Remedies Act may be warranted, her or she shall submit a report containing the findings and conclusions of

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the investigation to the General Counsel or his or her designee.

(d) The Inspector General may refer allegations directly to the Department of Justice for suit under the False Claims Act (31 U.S.C. 3730) or for other civil relief, or may postpone submitting a report to the General Counsel to avoid interference with a criminal investigation or prosecution. The Inspector General shall report violations of criminal law to the Attorney General.

§ 28.20 Request for approval by the Department of Justice.

(a) If the General Counsel or designee determines that the Report of Investigation supports an action under this part, he or she must submit a written request to the Department of Justice for approval to issue a complaint under § 28.25.

(b) The request shall include a description of the claims or statements at issue; the evidence supporting the allegations; an estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 28.10; any exculpatory or mitigating circumstances that may relate to the claims or statements; and a statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

[73 FR 76831, Dec. 17, 2008]

§ 28.25 Complaint.

(a) *General.* Upon obtaining approval from the Department of Justice, the General Counsel or designee may issue a complaint to the respondent. The complaint shall be mailed, by registered or certified mail, or shall be delivered through such other means by which delivery may be confirmed. The complaint shall also be filed simultaneously with the Office of Administrative Law Judges in accordance with § 26.30(a) of this chapter.

(b) *Complaint.* The complaint shall include:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the claims or statements at issue, and the reasons why liability arises from those claims or statements;

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(2) A statement that the required approval to issue the complaint was received from the Department of Justice as required by 24 CFR 28.20;

(3) The amount of penalties and assessments for which the respondent may be held liable;

(4) A statement that the respondent may request a hearing by submitting a written response to the complaint;

(5) The addresses to which a response must be sent in accordance with § 26.38 of this title; and

(6) A statement that failure to submit an answer within 30 days of receipt of the complaint may result in the imposition of the maximum amount of penalties and assessments sought without right of appeal.

(c) *Parts 26 and 28.* A copy of this part 28 and part 26, subpart B of this chapter, shall be included with the complaint.

(d) *Obligation to preserve documents.* Upon receipt of the complaint, the respondent is required to preserve and maintain all documents and data, including electronically stored data, within their possession or control that may relate to the allegations in the complaint. The Department shall also preserve such documents or data upon the issuance of the complaint.

[73 FR 76832, Dec. 17, 2008]

§ 28.30 Response.

(a) The respondent may file a written response to the complaint, in accordance with § 26.30 of this title, within 30 days of service of the complaint. The response shall be deemed to be a request for a hearing. The response must include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the penalties and assessments should be less than the amount set forth in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Failure to respond.* If no response is submitted, HUD may file a motion for default judgment in accordance with § 26.41 of this chapter.

[73 FR 76832, Dec. 17, 2008]

§ 28.35 Statute of limitations.

The statute of limitations for commencing hearings under this part shall be tolled:

- (a) If the hearing is commenced in accordance with 31 U.S.C. 3803(d)(2)(B) within 6 years after the date on which the claim or statement is made; or
- (b) If the parties agree to such tolling.

[73 FR 76832, Dec. 17, 2008]

§ 28.40 Hearings.

(a) *General.* Hearings under this part shall be conducted in accordance with the procedures in part 26, subpart B, of this chapter, governing actions in accordance with the Administrative Procedure Act.

(b) *Factors to consider in determining amount of penalties and assessments.* In determining an appropriate amount of civil penalties and assessments, the ALJ and, upon appeal, the Secretary or designee, shall consider and state in his or her opinion any mitigating or aggravating circumstances. Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily twice the amount of the claim as alleged by the government, and a significant civil penalty, should be imposed. The amount of penalties and assessments imposed shall be based on the ALJ's and the Secretary's or designee's consideration of evidence in support of one or more of the following factors:

- (1) The number of false, fictitious, or fraudulent claims or statements;
- (2) The time period over which such claims or statements were made;
- (3) The degree of the respondent's culpability with respect to the misconduct;
- (4) The amount of money or the value of the property, services, or benefit falsely claimed;
- (5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the cost of investigation;
- (6) The relationship of the civil penalties to the amount of the Government's loss;
- (7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public con-

fidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) If the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude the misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly;

(16) The need to deter the respondent and others from engaging in the same or similar misconduct; and

(17) The respondent's ability to pay, and

(18) Any other factors that in any given case may mitigate or aggravate the seriousness of the false claim or statement.

(c) *Stays ordered by the Department of Justice.* If at any time the Attorney General of the United States or an Assistant Attorney General designated by the Attorney General notifies the Secretary in writing that continuation of HUD's case may adversely affect any pending or potential criminal or civil action related to the claim or statement at issue, the ALJ or the Secretary shall stay the process immediately. The case may be resumed only

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upon receipt of the written authorization of the Attorney General.

[61 FR 50213, Sept. 24, 1996, as amended at 73 FR 76832, Dec. 17, 2008]

§ 28.45 Settlements.

(a) HUD and the respondent may enter into a settlement agreement at any time prior to the issuing of a notice of final determination under § 26.50 of this title.

(b) Failure of the respondent to comply with a settlement agreement shall be sufficient cause for resuming an action under this part, or for any other judicial or administrative action.

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

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AUTHORITY: 12 U.S.C. 1701q-1, 1703, 1723i, 1735f-14, and 1735f-15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z-1 and 3535(d).

SOURCE: 61 FR 50215, Sept. 24, 1996, unless otherwise noted.

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Subpart A—General

§ 30.1 Purpose and scope.

Unless provided for elsewhere in this title or under separate authority, this part implements HUD's civil money penalty provisions. The procedural rules for hearings under this part are those applicable to hearings in accordance with the Administrative Procedure Act, as set forth in 24 CFR part 26.

[74 FR 2751, Jan. 15, 2009]

§ 30.5 Effective dates.

(a) Under § 30.20, a civil money penalty may be imposed for violations occurring on or after May 22, 1991.

(b) Under §§ 30.25, 30.35, 30.45, 30.50, 30.55, and 30.60, a civil money penalty may be imposed for any violations that occur on or after December 15, 1989.

(c) Under § 30.30, a civil money penalty may be imposed with respect to any property transferred for use under section 810 of the Housing and Community Development Act of 1974, as amended (12 U.S.C. 1706e), after January 1, 1981, to a state, a unit of general local government, or a public agency or qualified community organization designated by a unit of general local government, or a transferee of any such entity.

(d) Under § 30.40, concerning loan guarantees for Indian housing, a civil money penalty may be imposed for violations occurring on or after October 28, 1992.

(e) Under § 30.65, a civil money penalty may be imposed for violations occurring on or after the following dates:

(1) September 6, 1996, for owners of more than four residential dwellings; or

(2) December 6, 1996, for owners of one to four residential dwellings.

(f) Under § 30.68, a civil money penalty may be imposed for violations, or for those parts of continuing violations, occurring on or after January 7, 2002.

[61 FR 50215, Sept. 24, 1996, as amended at 66 FR 63441, Dec. 6, 2001]

§ 30.10 Definitions.

Since this part is primarily procedural, terms not defined in this section shall have the meanings given them in