

(3) A statement shall be considered made to HUD when the statement is actually 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.

(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]

§ 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 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 investigation report supports an action under this part, he or she must submit a written request to the Department of Justice for approval to issue a notice under § 28.25.

(b) The request shall include a description of the claims or statements at issue; the evidence supporting the notice; 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.

§ 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 sent by certified mail, return receipt requested, or shall be personally served.

(b) 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;

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

(3) That the respondent may request a hearing by submitting a written response to the complaint;

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(4) The address to which a response must be sent; and

(5) 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) A copy of this part 28 and of 24 CFR part 26, subpart B shall be included with the complaint.

§ 28.30 Response.

(a) The respondent may submit a written response to HUD within 30 days of service of the complaint. The response shall be deemed to be a request for hearing. The response should 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) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Chief Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.37 of this title. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with § 26.39 of this title.

§ 28.35 Disclosure of documents.

Upon receipt of a complaint, the respondent may, upon written request to the General Counsel or designee, review any relevant and material non-privileged documents, including any exculpatory documents, that relate to the allegations set out in the complaint. Exculpatory information that is contained in a privileged document must be disclosed.

§ 28.40 Hearings.

(a) *General.* Hearings under this part shall be conducted in accordance with the procedures in 24 CFR part 26, subpart B.

(b) *Factors to consider in determining amount of penalties and assessments.* In determining an appropriate amount of

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civil penalties and assessments, the administrative law judge (ALJ) and, upon appeal, the Secretary shall consider and state in their opinions any mitigating or aggravating circumstances. Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily double damages and a significant civil penalty should be imposed. The ALJ and the Secretary shall consider the following factors in determining the amount of penalties and assessments to be imposed:

(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 confidence 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