

## § 28.30

(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

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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) Any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

(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 upon receipt of the written authorization of the Attorney General.

### § 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.

### 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 set forth in 24 CFR part 26, subpart B.

#### § 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