

## § 1003.110

chapter. The provisions of part 1005 of this chapter govern such appeals.

(c) If the respondent fails, within the time permitted, to exercise his or her right to a hearing under this section, any exclusion, penalty, or assessment becomes final.

[57 FR 3348, Jan. 29, 1992, as amended at 59 FR 32126, June 22, 1994; 64 FR 39429, July 22, 1999; 65 FR 24418, Apr. 26, 2000]

### § 1003.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 1003.109(a), the Inspector General may impose the proposed penalty, assessment, and exclusion, or any less severe penalty, assessment, and suspension. The Inspector General shall notify the respondent by certified mail, return receipt requested, of any penalty, assessment, and exclusion that has been imposed and of the means by which the respondent may satisfy the judgment. The respondent has no right to appeal a penalty, assessment, and exclusion, with respect to which he or she has not requested a hearing.

[51 FR 34777, Sept. 30, 1986, as amended at 57 FR 3348, Jan. 29, 1992]

### § 1003.114 Collateral estoppel.

(a) Where a final determination pertaining to the respondent's liability under § 1003.102 has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

(b) In a proceeding under this part that—

(1) Is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(2) Involves the same transactions as in the criminal action, the person is estopped from denying the essential elements of the criminal offense.

[57 FR 3348, Jan. 29, 1992, as amended at 64 FR 39429, July 22, 1999]

## 42 CFR Ch. V (10–1–03 Edition)

### § 1003.126 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without consent of the ALJ.

[65 FR 24418, Apr. 26, 2000]

### § 1003.127 Judicial review.

Section 1128A(e) of the Act authorizes judicial review of a penalty, assessment or exclusion that has become final. Judicial review may be sought by a respondent only with respect to a penalty, assessment or exclusion with respect to which the respondent filed an exception under § 1005.21(c) of this chapter unless the failure or neglect to urge such exception will be excused by the court in accordance with section 1128A(e) of the Act because of extraordinary circumstances.

[57 FR 3348, Jan. 29, 1992]

### § 1003.128 Collection of penalty and assessment.

(a) Once a determination by the Secretary has become final, collection of any penalty and assessment will be the responsibility of CMS, except in the case of the Maternal and Child Health Services Block Grant program, where the collection will be the responsibility of the PHS, and in the case of the Social Services Block Grant program, where the collection will be the responsibility of the Office of Human Development Services.

(b) A penalty or assessment imposed under this part may be compromised by the Inspector General, and may be recovered in a civil action brought in the United States district court for the district where the claim was presented, or where the respondent resides.

(c) The amount of a penalty and assessment when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States, or by a State agency, to the respondent.

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by