

§ 438.400

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 438.400 Penalties.

(a) Any person who makes an expenditure prohibited by this part is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each prohibited expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B to this part) to be filed or amended if required by this part is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is begun does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action begins with respect to a failure when an investigating official determines in writing to begin an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, SSA will consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of the person to continue in business, any prior violations by the person, the degree of culpability of the person, the ability of the person to pay the penalty, and any other matters that may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section are subject to a civil penalty of \$10,000, absent aggra-

vating circumstances. Second and subsequent offenses by persons are subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the Commissioner or his or her designee.

(f) Imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of the civil penalty.

§ 438.405 Penalty procedures.

We will impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, to the extent these provisions are not inconsistent with the requirements in this part.

§ 438.410 Enforcement.

The Commissioner of Social Security will take any actions necessary to ensure that the provisions in this part are vigorously implemented and enforced.

Subpart E—Exemptions

§ 438.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 438.600 Semi-annual compilation.

(a) The Commissioner of Social Security will collect and compile the disclosure reports (see Appendix B to this part) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports