

§ 498.103

combination or variation of such symbols or emblems.

(2) Civil monetary penalties will not be imposed against any agency or instrumentality of a State, or political subdivision of a State, that makes use of any symbol or emblem, or any words or letters which identify that agency or instrumentality of the State or political subdivision.

(c) The use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs, or any other agency or instrumentality of the United States Government, will not be considered as a defense in determining a violation of section 1140 of the Social Security Act.

[60 FR 58226, Nov. 27, 1995, as amended at 61 FR 18079, Apr. 24, 1996]

§ 498.103 Amount of penalty.

(a) Under § 498.102(a), the Office of the Inspector General may impose a penalty of not more than \$5,000 for each false statement or representation.

(b) Under section § 498.102(b), the Office of the Inspector General may impose a penalty of not more than \$5,000 for each violation resulting from the misuse of Social Security Administration program words, letters, symbols, or emblems relating to printed media, and a penalty of not more than \$25,000 in the case of such misuse related to a broadcast or telecast.

(c) For purposes of paragraph (b) of this section, a violation is defined as—

(1) In the case of a direct mailing solicitation or advertisement, each separate piece of mail which contains one or more program words, letters, symbols, or emblems related to a determination under § 498.102(b); and

(2) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 498.102(b).

[60 FR 58226, Nov. 27, 1995, as amended at 61 FR 18080, Apr. 24, 1996]

§ 498.104 Amount of assessment.

A person subject to a penalty determined under § 498.102(a) may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments paid as a result of the

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statement or representation which was the basis for the penalty. An assessment is in lieu of damages sustained by the United States because of such statement or representation.

[61 FR 18080, Apr. 24, 1996]

§ 498.105 [Reserved]

§ 498.106 Determinations regarding the amount or scope of penalties and assessments.

(a) In determining the amount or scope of any penalty and assessment, as applicable, in accordance with §§ 498.103(a) and 498.104, the Office of the Inspector General will take into account:

(1) The nature of the statements and representations referred to in § 498.102(a) and the circumstances under which they occurred;

(2) The degree of culpability of the person committing the offense;

(3) The history of prior offenses of the person committing the offense;

(4) The financial condition of the person committing the offense; and

(5) Such other matters as justice may require.

(b) In determining the amount of any penalty in accordance with § 498.103(b), the Office of the Inspector General will take into account—

(1) The nature and objective of the advertisement, solicitation, or other communication, and the circumstances under which they were presented;

(2) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(3) The prior history of the individual, organization, or entity in their willingness or refusal to comply with informal requests to correct violations;

(4) The history of prior offenses of the individual, organization, or entity in their misuse of program words, letters, symbols, and emblems;

(5) The financial condition of the individual or entity; and

(6) Such other matters as justice may require.

(c) In cases brought under section 1140 of the Social Security Act, the use of a disclaimer of affiliation with the United States Government, the Social