

## Social Security Administration

## § 498.127

Security Administration or its programs will not be considered as a mitigating factor in determining the amount of a penalty in accordance with § 498.106.

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

### § 498.107 [Reserved]

### § 498.108 Penalty and assessment not exclusive.

Penalties and assessments, as applicable, imposed under this part are in addition to any other penalties prescribed by law.

[61 FR 18080, Apr. 24, 1996]

### § 498.109 Notice of proposed determination.

(a) If the Office of the Inspector General seeks to impose a penalty and assessment, as applicable, it will serve written notice of the intent to take such action. The notice will include:

(1) Reference to the statutory basis for the proposed penalty and assessment, as applicable;

(2) A description of the false statements, representations, and incidents, as applicable, with respect to which the penalty and assessment, as applicable, are proposed;

(3) The amount of the proposed penalty and assessment, as applicable;

(4) Any circumstances described in § 498.106 that were considered when determining the amount of the proposed penalty and assessment, as applicable; and

(5) Instructions for responding to the notice, including

(i) A specific statement of respondent's right to a hearing; and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty and assessment, as applicable, without right of appeal.

(b) Any person upon whom the Office of the Inspector General has proposed the imposition of a penalty and assessment, as applicable, may request a hearing on such proposed penalty and assessment.

(c) If the respondent fails to exercise the respondent's right to a hearing within the time permitted under this section, and does not demonstrate good

cause for such failure before an administrative law judge, any penalty and assessment, as applicable, becomes final.

[61 FR 18080, Apr. 24, 1996]

### § 498.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 498.109(a), the Office of the Inspector General may seek the proposed penalty and assessment, as applicable, or any less severe penalty and assessment. The Office of the Inspector General shall notify the respondent by certified mail, return receipt requested, of any penalty and assessment, as applicable, that has been imposed and of the means by which the respondent may satisfy the amount owed.

[61 FR 18080, Apr. 24, 1996]

### § 498.114 Collateral estoppel.

In a proceeding under section 1129 of the Social Security Act that—

(a) 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 or State crime charging fraud or false statements; and

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

[61 FR 18080, Apr. 24, 1996]

### §§ 498.115–498.125 [Reserved]

### § 498.126 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without the consent of the administrative law judge or the Commissioner, at any time prior to a final determination. Thereafter, the Commissioner or his or her designee has such exclusive authority.

### § 498.127 Judicial review.

Sections 1129 and 1140 of the Social Security Act authorize judicial review of any penalty and assessment, as applicable, that has become final. Judicial review may be sought by a respondent only in regard to a penalty and assessment, as applicable, with respect to which the respondent requested a hearing, unless the failure or

## § 498.128

neglect to urge such objection is excused by the court because of extraordinary circumstances.

[61 FR 18080, Apr. 24, 1996]

### § 498.128 Collection of penalty and assessment.

(a) Once a determination has become final, collection of any penalty and assessment, as applicable, will be the responsibility of the Commissioner or his or her designee.

(b) In cases brought under section 1129 of the Social Security Act, a penalty and assessment, as applicable, imposed under this part may be compromised by the Commissioner or his or her designee, and may be recovered in a civil action brought in the United States District Court for the district where the statement or representation referred to in § 498.102(a) was made, or where the respondent resides.

(c) In cases brought under section 1140 of the Social Security Act, a penalty imposed under this part may be compromised by the Commissioner or his or her designee and may be recovered in a civil action brought in the United States district court for the district where, as determined by the Commissioner, the:

(1) Violation referred to in § 498.102(b) occurred; or

(2) Respondent resides; or

(3) Respondent has its principal office; or

(4) Respondent may be found.

(d) As specifically provided under the Social Security Act, in cases brought under section 1129 of the Social Security Act, the amount of a penalty and assessment, as applicable, when finally determined, or the amount agreed upon in compromise, may also be deducted from:

(1) Monthly title II or title XVI payments, notwithstanding section 207 of the Social Security Act as made applicable to title XVI by section 1631(d)(1) of the Social Security Act;

(2) A tax refund to which a person is entitled to after notice to the Secretary of the Treasury under 31 U.S.C. § 3720A;

(3) By authorities provided under the Debt Collection Act of 1982, as amended, 31 U.S.C. 3711, to the extent applica-

## 20 CFR Ch. III (4-1-04 Edition)

ble to debts arising under the Social Security Act; or

(4) Any combination of the foregoing.

(e) Matters that were raised or that could have been raised in a hearing before an administrative law judge or in an appeal to the United States Court of Appeals under sections 1129 or 1140 of the Social Security Act may not be raised as a defense in a civil action by the United States to collect a penalty and assessment, as applicable, under this part.

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

### § 498.129 Notice to other agencies.

As provided in section 1129 of the Social Security Act, when a determination to impose a penalty and assessment, as applicable, with respect to a physician or medical provider becomes final, the Office of the Inspector General will notify the Secretary of the final determination and the reasons therefore.

[61 FR 18081, Apr. 24, 1996]

### § 498.132 Limitations.

The Office of the Inspector General may initiate a proceeding in accordance with § 498.109(a) to determine whether to impose a penalty and assessment, as applicable—

(a) In cases brought under section 1129 of the Social Security Act, after receiving authorization from the Attorney General pursuant to procedures agreed upon by the Inspector General and the Attorney General; and

(b) Within 6 years from the date on which the violation was committed.

[61 FR 18081, Apr. 24, 1996]

### § 498.201 Definitions.

As used in this part—

*ALJ* refers to an Administrative Law Judge of the Departmental Appeals Board.

*Civil monetary penalty cases* refer to all proceedings arising under any of the statutory bases for which the Inspector General, Social Security Administration has been delegated authority to impose civil monetary penalties.