

(b) The Office of the Inspector General may impose a penalty and assessment, as applicable, against any representative payee who receives a payment under title II, title VIII, or title XVI for the use and benefit of another individual and who converts such payment, or any part thereof, to a use that such representative payee knew or should have known was other than for the use and benefit of such other individual.

(c) The Office of the Inspector General may impose a penalty against any person who it determines in accordance with this part has made use of certain Social Security program words, letters, symbols, or emblems in such a manner that the person knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that a solicitation, advertisement or other communication was authorized, approved, or endorsed by the Social Security Administration, or that such person had some connection with, or authorization from, the Social Security Administration.

(1) Civil monetary penalties may be imposed for misuse, as set forth in paragraph (c) of this section, of—

(i) The words “Social Security,” “Social Security Account,” “Social Security Administration,” “Social Security System,” “Supplemental Security Income Program,” “Death Benefits Update,” “Federal Benefit Information,” “Funeral Expenses,” “Final Supplemental Program,” or any combination or variation of such words; or

(ii) The letters “SSA,” or “SSI,” or any other combination or variation of such letters; or

(iii) A symbol or emblem of the Social Security Administration (including the design of, or a reasonable facsimile of the design of, the Social Security card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Social Security Administration) or any other 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 words, letters, symbols or em-

blems of the Social Security Administration or instrumentality of the State or political subdivision.

(d) The Office of the Inspector General may impose a penalty against any person who offers, for a fee, to assist an individual in obtaining a product or service that the person knew or should have known the Social Security Administration provides free of charge, unless:

(1) The person provides sufficient notice before the product or service is provided to the individual that the product or service is available free of charge and:

(i) In a printed solicitation, advertisement or other communication, such notice is clearly and prominently placed and written in a font that is distinguishable from the rest of the text;

(ii) In a broadcast or telecast such notice is clearly communicated so as not to be construed as misleading or deceptive.

(2) Civil monetary penalties will not be imposed under paragraph (d) of this section with respect to offers—

(i) To serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

(ii) To prepare, or assist in the preparation of, an individual’s plan for achieving self-support under title XVI.

(e) 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.

[71 FR 28580, May 17, 2006]

**§ 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, omission, or receipt of payment or benefit while withholding disclosure of a material fact.

(b) Under § 498.102(b), the Office of the Inspector General may impose a penalty of not more than \$5,000 against a representative payee for each time the

representative payee receives a payment under title II, title VIII, or title XVI of the Social Security Act for the use and benefit of another individual, and who converts such payment, or any part thereof, to a use that such representative payee knew or should have known was other than for the use and benefit of such other individual.

(c) Under § 498.102(c), 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 for each violation in the case that such misuse related to a broadcast or telecast.

(d) Under § 498.102(d), the Office of the Inspector General may impose a penalty of not more than \$5,000 for each violation resulting from insufficient notice relating to printed media regarding products or services provided free of charge by the Social Security Administration and a penalty of not more than \$25,000 for each violation in the case that such insufficient notice relates to a broadcast or telecast.

(e) For purposes of paragraphs (c) and (d) of this section, a violation is defined as—

(1) In the case of a mailed solicitation, advertisement, or other communication, each separate piece of mail which contains one or more program words, letters, symbols, or emblems or insufficient notice related to a determination under § 498.102(c) or (d); 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(c) or (d).

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**§ 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 under title II, title VIII or title XVI of the Social Security Act as a result of the statement, representation, omission, or withheld disclosure of a material fact which was the basis for the penalty. A representative payee subject to a penalty deter-

mined under § 498.102(b) may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments received by the representative payee for the use and benefit of another individual and converted to a use other than for the use and benefit of such other individual. An assessment is in lieu of damages sustained by the United States because of such statement, representation, omission, withheld disclosure of a material fact, or conversion, as referred to in § 498.102(a) and (b).

[71 FR 28581, May 17, 2006]

**§ 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 (b) and 498.104, the Office of the Inspector General will take into account:

(1) The nature of the statements, representations, or actions referred to in § 498.102(a) and (b) 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(c) and (d), 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;