

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).

[71 FR 28580, May 17, 2006]

**§ 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;

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(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 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; 71 FR 28581, May 17, 2006]

**§ 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, other actions (as described in § 498.102(a) and (b)), 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.

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(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, as amended at 71 FR 28581, May 17, 2006]

**§ 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; 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, as amended at 71 FR 28581, May 17, 2006]

**§§ 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.