

the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 1.335 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the judicial officer, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the judicial officer in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

- (1) The number of false, fictitious, or fraudulent claims or statements;
- (2) The time period over which such claims or statements were made;
- (3) The degree of the respondent's culpability with respect to the misconduct;
- (4) The amount of money or the value of the property, services, or benefit falsely claimed;
- (5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;
- (6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;
- (7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;
- (8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude such misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the government of the United States or of a State, directly or indirectly; and

(16) The need to deter the respondent and others from any engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the judicial officer from considering any other factors that in any given case may mitigate or aggravate the acts for which penalties and assessments are imposed.

§ 1.336 Initial decision of the ALJ.

(a) The ALJ shall issue an initial decision, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues for every claim or statement with respect to which a penalty or assessment was proposed:

(1) Whether any claim or statement identified in the complaint violates § 1.303 of this part;

(2) If the respondent is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or