

### § 1.336

(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 judi-

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cial 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 aggravating factors described in § 1.335 of this part.

(c) The ALJ shall serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall include with the initial decision a statement describing the right of any respondent determined to be liable for a civil penalty or assessment to file notice of appeal with the judicial officer. The ALJ may extend the time period for serving the initial decision on the parties.

(d) Unless the initial decision of the ALJ is timely appealed to the judicial officer, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Secretary and shall be final and binding on the parties 30 days after it is issued by the ALJ.

#### § 1.337 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.