

**§ 1001.951**

**42 CFR Ch. V (10–1–20 Edition)**

(1) The nature and circumstances surrounding the actions that are the basis for liability, including the period of time over which the acts occurred, the number of acts, whether there is evidence of a pattern and the amount claimed;

(2) The degree of culpability;

(3) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral);

(4) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion; or

(5) Other matters as justice may require.

(c) *Limitations.* The OIG may not impose an exclusion under this section more than 10 years after the date when an act which is described in section 1128A of the Act occurred.

[57 FR 3330, Jan. 29, 1992, as amended at 63 FR 46689, Sept. 2, 1998; 82 FR 4114, Jan. 12, 2017]

**§ 1001.951 Fraud and kickbacks and other prohibited activities.**

(a) *Circumstance for exclusion.* (1) Except as provided for in paragraph (a)(2)(ii) of this section, the OIG may exclude any individual or entity that it determines has committed an act described in section 1128B(b) of the Act.

(2) With respect to acts described in section 1128B of the Act, the OIG—

(i) May exclude any individual or entity that it determines has knowingly and willfully solicited, received, offered or paid any remuneration in the manner and for the purposes described therein, irrespective of whether the individual or entity may be able to prove that the remuneration was also intended for some other purpose; and

(ii) Will not exclude any individual or entity if that individual or entity can prove that the remuneration that is the subject of the exclusion is exempted from serving as the basis for an exclusion.

(b) *Length of exclusion.* (1) The following factors will be considered in de-

termining the length of exclusion in accordance with this section—

(i) The nature and circumstances of the acts and other similar acts;

(ii) The nature and extent of any adverse physical, mental, financial or other impact the conduct had on program beneficiaries or other individuals or the Medicare, Medicaid and all other Federal health care programs;

(iii) Whether the individual or entity has a documented history of criminal, civil or administrative wrongdoing (The lack of any prior record is to be considered neutral);

(iv) The individual or entity has been the subject of any other adverse action by any Federal, State or local government agency or board, if the adverse action is based on the same set of circumstances that serves as the basis for the imposition of the exclusion; or

(v) Any other facts bearing on the nature and seriousness of the individual's or entity's misconduct.

(2) It will be considered a mitigating factor if—

(i) The individual had a documented mental, emotional, or physical condition before or during the commission of the prohibited act(s) that reduced the individual's culpability for the acts in question; or

(ii) The individual's or entity's cooperation with Federal or State officials resulted in the—

(A) Sanctioning of other individuals or entities, or

(B) Imposition of a civil money penalty against others.

(c) *Limitations.* The OIG may not impose an exclusion under this section more than 10 years after the date when an act which is described in section 1128B(b) of the Act occurred.

[57 FR 3330, Jan. 29, 1992, as amended at 63 FR 46689, Sept. 2, 1998; 67 FR 11933, Mar. 18, 2002; 82 FR 4114, Jan. 12, 2017]

**§ 1001.952 Exceptions.**

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

(a) *Investment interests.* As used in section 1128B of the Act, "remuneration" does not include any payment