

(2) Any employee who has authority to take, direct others to take, recommend or approve a personnel action is prohibited from threatening, taking, failing to take, recommending, or approving any personnel action as reprisal against another employee for providing information to investigating officials.

§ 4.32 Investigation by Office of Inspector General.

The Office of Inspector General shall review every alleged violation of Section 103. If after a review the Office of Inspector General determines that further investigation is not warranted, it shall notify the Ethics Law Division of that determination. If, after a review, the Office of Inspector General determines that additional investigation is warranted, it shall conduct the investigation and upon completion issue a report of the investigation to the Ethics Law Division as to each alleged violation.

§ 4.34 Review of Inspector General's report by the Ethics Law Division.

After receipt of the Inspector General's report, the Ethics Law Division shall review the facts and circumstances of the alleged violations. In addition, the Ethics Law Division may:

- (a) Return the report to the Inspector General with a request for further investigation;
- (b) Discuss the violation with the employee alleged to have committed the violation; or
- (c) Interview any other person, including employees who it believes will be helpful in furnishing information relevant to the inquiry.

§ 4.36 Action by the Ethics Law Division.

(a) After review of the Inspector General's report, the Ethics Law Division shall determine whether or not there is sufficient information providing a reasonable basis to believe that a violation of Section 103 or this subpart B has occurred.

(b) If the Ethics Law Division determines that there is no reasonable basis to believe that a violation of Section 103 or this subpart B has occurred, it

shall close the matter and send its determination to the Office of Inspector General.

(c) If the Ethics Law Division determines that there is sufficient information to provide a reasonable basis to believe that a violation of Section 103 or this subpart B has occurred, it shall:

- (1) Send its determination to the Office of Inspector General; and
- (2) Refer the matter to the appropriate official for review as to whether to impose a civil money penalty in accordance with 24 CFR part 30; provided, however, that the Ethics Law Division shall not make a civil money penalty recommendation unless it finds the violation to have been knowing and material. The decision to impose a civil money penalty in a particular matter may be made only upon referral from the Ethics Law Division.

(d) In determining whether a violation is material, the Ethics Law Division shall consider the following factors, as applicable:

- (1) The content of the disclosure and its significance to the person to whom the disclosure was made;
- (2) The time during the selection process when the disclosure was made;
- (3) The person to whom the disclosure was made;
- (4) The dollar amount of assistance requested by the person to whom the disclosure was made;
- (5) The dollar amount of assistance available for a given competition or program;
- (6) The benefit, if any, received or expected by the employee, the employee's relatives or friends, or any other person with whom the employee is affiliated;
- (7) The potential injury to the Department.

(e) If the Ethics Law Division determines that there is sufficient information to provide a reasonable basis to believe that a violation of Section 103 or this subpart B has occurred, it may, in addition to referring the matter under 24 CFR part 30, refer the matter to an appropriate HUD official for consideration of any other available disciplinary action. Any referral authorized by this paragraph (e) shall be reported to the Inspector General and

§ 4.38

may be reported to the employee's supervisor.

§ 4.38 Administrative remedies.

(a) If the Department receives or obtains information providing a reasonable basis to believe that a violation of Section 103 has occurred, the Department may impose a sanction, as determined to be appropriate, upon an applicant for or a recipient of assistance who has received covered selection information.

(b) In determining whether a sanction is appropriate and if so which sanction or sanctions should be sought, the Secretary shall give consideration to the applicant's conduct with respect to the violation. In so doing, the Secretary shall consider the factors listed at § 4.36(d), as well as any history of prior violations in any HUD program, the benefits received or expected, deterrence of future violations and the extent of any complicity in the violation.

(c) The Secretary may impose a sanction authorized by this section whether or not the Ethics Law Division refers a case under 24 CFR part 30, and whether or not a civil money penalty is imposed.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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