

The Office of the Ombudsman for the Elderly

Regulations for the Imposition of Fines and Sanctions

Article 1. Title

These regulations will be known, and henceforth referred to, as the “*Regulations for the Imposition of Fines and Sanctions*”.

Article 2. Legal Authority

These regulations are enacted under the power bestowed upon the Office of the Ombudsman for the Elderly under Act No. 203 of August 7, 2004, known as “*Office of the Ombudsman for the Elderly Act*”; Act No. 170 of August 12, 1988, as amended, known as “*Uniform Administrative Procedure Act*”; Public Act 89-73 of July 14, 1965, as amended, known as the “*Older Americans Act of 1965*”; and Act No. 121 of July 12, 1986, as amended, known as the “*Bill of Rights for the Elderly*”.

Article 3. Scope of these Rules

When used by the agency’s employees and functionaries, these regulations will define the rules for, and provide the necessary guidance in, administrative procedures that impose fines for violating laws and regulations under our jurisdiction.

Article 4. Purpose of these Rules

These regulations are enacted with the purpose of establishing clear parameters that allow the imposition of uniform administrative fines to persons that violate one or more laws and regulations under the jurisdiction of the Office of the Ombudsman for the Elderly.

Article 5. Definitions

The following terminology is defined as follows:

- a. **Office-** Office of the Ombudsman for the Elderly, created in accordance with Act No. 203 of August 7, 2004.
- b. **Ombudsman-** Ombudsman or Ombudswoman for the Elderly, by virtue of Act No. 203 of August 7, 2004.
- c. **Agency** - Any department, board, commission, office, division, bureau, administration, public corporation or its subsidiary, authority, entity of the Commonwealth of Puerto Rico, including any of its officers, employees, or members acting or under the appearance of having power to act in the fulfillment of their duties.
- d. **Elderly** - Any person sixty (60) years of age or older.
- e. **Person-** Any natural or judicial person, of private or public nature or character whatsoever, including but not limited to government instrumentalities, municipalities, partnerships, public corporations, and trusts.
- f. **Institution or Entity** - Any association, corporation, organization, institute or natural or judicial person, public or private that lends, offers, or renders any service or activity, or administrates or develops any program related to elderly persons, as such term is defined in this regulation, and/or that receives financial funding from the government of the Commonwealth of Puerto Rico or that receives funding from the government of the United States of America, for the benefit, care, and protection of such people as foreseen and contemplated in federal and state laws.
- g. **Infraction Notice-** Document issued by the Office of the Ombudsman for the Elderly in which a person or institution is charged with the commission or omission of actions or inactions that constitute a violation of a law or regulation under the authority of the Office and the fine to be imposed.

- h. Orientation Notice** - Document issued by the Office of the Ombudsman for the Elderly in which a person or institution is informed of practices or actions or omissions which could constitute infractions to any of the laws and regulations under the authority of the Office or to the Orders issued by it, including a warning notifying the possible fine or sanction that fits that practice, action or inaction if it is committed again.
- i. Defendant** - Any person accused by the Office or other person (or persons), of having infringed or violated a law or regulation under the jurisdiction of the Office. It shall also mean any person being investigated by the Office.
- j. Trial Examiner** - Functionary whose duties will be to preside over the administrative hearing and who, upon concluding the adjudicative procedure, will submit a report that includes the findings, judicial conclusions, and recommendations before the Ombudsman for its approval.
- k. Services Coordinator or Intercessor** - Employee or functionary of the Office with delegated faculties by the Ombudsman to investigate and/or verify that any and all persons, natural or judicial comply with the laws and regulations administered by this Office.
- l. Laws and Regulations** - Any and all legal statutes and norms under the jurisdiction of this Office, including but not limited to, our Organic Statute, Act No. 203 of August 7, 2004, as amended; the Older Americans Act of 1965, Public Law 89-73, as amended; Act No. 121 of July 12, 1986, as amended, and Regulation 7099, *Regulations for the Procedure and Adjudication of Complaints*.
- m. Repeated transgressor** - Person who has committed two (2) or more infractions or fined for the same or similar violation to the laws, regulations or orders issued under this Office's authority, over a period of five (5) years.

n. **Complaint** - A claim presented by a person, against another person, requesting acknowledgement of his/her rights recognized by law or regulation, and that a remedy be granted, including the imposition of a fine or sanction, as applicable . It also means the process initiated by the Office for infringements to the laws, regulations, or established procedures under its jurisdiction.

Article 6. Jurisdiction

The Office, of its own volition and initiative, or as the result of a complaint presented by an elderly person or authorized representative, will investigate and/or process all situations under its jurisdiction and of any alleged acts or omissions that may constitute an infringement of its laws and regulations, or which may constitute a noncompliance with any order which has been issued by the Office or any of the functionaries discharging their official duties.

Article 7. Investigation

The investigative process that the Office carries out includes, without limitation, field inspections, requirements, study and or review of information in any form, and of documents furnished by, or required of the defendant or fined person, registered or filed in, or in the custody of any person or any institution, be it governmental or private, for profit or not for profit.

The Office may remand any request or findings to the corresponding public agency or private entity that is legally obliged, be it to address the matter jointly, or so that the agency or entity attends to the situation on its own.

Article 8. Orientation and Infraction Notices, Contents. -

Intercissors and/or Services Coordinators or any other functionary of the Office of the Ombudsman for the Elderly, to whom the Ombudsman has delegated the necessary powers, will be the

persons with authority to investigate and issue notices of orientation and/or infraction.

A. The **Orientation Notice** will have the purpose of informing:

1. Personal circumstances of violator, including without limitation, full name of person or institution, physical and mailing address, all available telephone numbers. Regarding corporations, partnerships or juridical entities, the name of its President, officer in charge or resident agent will be expressed.
2. Description of the circumstances in which the inspection or intervention is carried out, including the place, date and hour in which the orientation notice is issued; name of the person who receives the orientation notice and his/her job title in the business or entity under investigation or inquiry.
3. The act or omission which may constitute infraction to the laws or regulations administered by the Office, or violation to orders issued by the Office or any functionaries duly authorized to that effect.
4. The law or regulatory violation that might have been breached by the defendant, for which reason the Orientation Notice is issued.
5. The maximum amount of the fine which might be imposed for the infraction identified in the Orientation Notice.
6. An indication to the effect that the violation must be corrected within the period specified in the notice.
7. A warning to the effect that if the infraction to the law or regulations is committed again, or if the stated deficiency is not corrected within the specified time frame stated in the notice, it could be subject to the imposition of an administrative fine.

8. Basic information about the employee that issues the Orientation Notice, including his/her full name in print, the Regional Office in which he/she works and his/her signature.

B. The **Infraction Notice** will contain the following:

1. Personal circumstances of violator, including without limitation, full name of person or institution, physical and mailing address, all available telephone numbers. Regarding corporations, partnerships or juridical entities, the name of its President, officer in charge or resident agent will be expressed.
2. Description of the circumstances in which the inspection or intervention is carried out, including the place, date and time in which the infraction notice is issued; name of the person who receives the orientation notice and his/her job title in the business or entity under investigation or inquiry.
3. The act or omission that constitutes a violation to the laws or regulations administered by the Office, or noncompliance with orders issued by the Office or any functionaries duly authorized to that effect.
4. The law or regulatory violation that serves as basis for the imposition of the fine.
5. An indication to the effect that the transgressor can accept the imposed fine, and inform of its acceptance and payment or, in the alternative, of his/her right to question the fine and to file a request for an administrative hearing within twenty (20) days starting from the date of the entering and filing in the file of the case of the notice of

infraction, and the procedure to be followed in said request for hearing.

6. A warning to the transgressor that if he/she does not comply with the payment of the imposed fine; or indicates its intention of correcting the violation, if applicable; or negotiates the amount indicated in the notice of infraction; or questions the fine and requests a hearing within twenty (20) days starting from the date of the entering and filing of the notice of infraction in the file of the case, the Office could, once said term is over, issue a Resolution against said defendant to notify him formally the imposition of an administrative fine and the maximum amount that could be imposed.

Article 9. Notice and Imposition of Administrative Fine

If the imposition of the fine is not questioned, the Office will impose the administrative fine to the person, business, or institution, at the conclusion of the twenty (20) days term, starting from the date of the entering and filing of the notice of infraction in the file of the case.

The Office could notify the imposition of the administrative fine using the United States Postal Service (USPS) by ordinary mail, certified mail, by personal delivery to the transgressor or its representative, or by any electronic method including without limitation, e-mail or fax.

The imposition of an administrative fine by Resolution of the agency will include findings of fact and conclusions of law, which could include, among others:

1. A description of the personal circumstances of violator, including without limitation, full name of person or institution, physical and mailing address, all available telephone numbers. Regarding corporations, partnerships or juridical entities, the name of its

President, officer in charge or resident agent will be expressed.

2. The act or omission that constitutes a violation to the laws or regulations administered by the Office, or noncompliance with orders issued by the Office or any functionaries duly authorized to that effect.
 3. The law or regulatory violation that serves as basis for the imposition of the fine.
 4. The sanction or fine imposed to transgressor.
 5. A mailing certification containing the date and filing of the copy of the infraction notice, duly complimented by authorized personnel.
 6. A warning that the fined party can request to the agency reconsideration or review of the Resolution imposing the fine within twenty (20) days starting from the date of the entering and filing of the notice of infraction in the file of the case; and if the reconsideration or review procedure is not followed, the imposition of the fine could be challenged before the Court of Appeals by a Revision Recourse within thirty (30) days starting from the date of the entering and filing of the Resolution imposing the fine.
- Fines will be imposed by Resolution signed by the Ombudsman, or functionary with delegated authority to that effect.

Article 10. Criteria to establish the amount of the fine

The fine will be imposed with the purpose of penalizing illicit conduct in violation of legal norms and regulations under the jurisdiction of the Office, taking into account the objective of trying to avoid that the transgressor commits the same or a different offense again. The Office could impose and charge administrative fines up to a maximum of TEN THOUSAND DOLLARS (\$10,000.00) for actions or omissions that infringe

the rights of elderly persons under the Constitutions of the United States and Puerto Rico, and federal and local laws and regulations.

The Office can take into consideration as extenuating or aggravating circumstances, among others, the following criteria to determine the amount of the fine:

1. Defendant's disposition to correct the actions or omissions that motivated the violation;
2. The amount of time invested by the defendant to correct the actions or omissions that motivated the violation;
3. Repeated transgressions;
4. The nature of the violation and if the action or omission represents danger for elderly persons in particular or for them as a group in society.
5. The history of infractions of the same or different nature incurred by the defendant;
6. Any other reasonable factors which could be taken into account at the time of determining the amount of the fine.
7. The amount of the fine could be reduced:
 - a. Up to **100%** if the violation is corrected in a period of **no more that thirty (30) days**, starting from the date of the entering and filing of the notice of infraction containing the amount of the fine, in the file of the case; and if it is established to the satisfaction of the Office, that the money to be paid for the fine was used to correct the violation, be it by sworn declaration, photographs or any other means or evidence mechanisms.
 - b. If the correction of the violation takes **more that thirty (30) days**, starting from the date of the entering and filing of the notice of infraction containing the amount of the

fine, in the file of the case, the Office could reduce up to 65% of the fine, and if it is established to the satisfaction of the Office, that the money to be paid for the fine was used to correct the violation. Correction must be completed within **ninety (90) days**, unless an Act of God or very exceptional and/or meritorious circumstances occur, out of the control of defendant, and they are duly established and evidenced. In no case must the correction take **more than one hundred and twenty (120) days**. If the 120 days period is exceeded, the reduction fine scheme will be suspended, and the fine must be paid in its entirety.

c. The amount of the fine will be limited, or eliminated in its entirety, if the violation is discovered during a routine audit of the facilities or assistance visit to verify compliance with the law, in which the establishment has participated voluntarily and in good faith, not as a result of a complaint filed by a particular person.

d. The amount of the fine will be limited, according to sections a. and b. aforementioned, if the facility can establish with trustworthy evidence that, after it was notified of the imposition of the fine, it undertook a genuine effort in good faith to uphold the law or regulation in question.

e. The amount of the fine will be limited if the facility can establish with trustworthy evidence that, the matter that motivated the imposition of the fine was accidental in nature, with no intention (a result is intended if it is desired by the perpetrator) nor significant risk to the health, safety, or environment, nor criminal conduct.

f. If the fine or infraction is modified or eliminated, the facts that warranted its imposition in the first place, will

not be erased or eliminated, and will be taken into account to determine if the entity can use or benefit from the fine reduction scheme, contained in sections a. and b. aforementioned.

g. Finally, in appropriate circumstances, the Office can take into account the capacity of payment of the entity, when it decides to impose a fine, and/or to establish a payment schedule or compliance.

The aforementioned fine reduction scheme does not apply to actions that are criminal in nature; or are intentional, or represent a serious or significant threat to the health, safety or environment; and entities that commit repeated transgressions, that is, received two (2) or more Final Notices of Infraction, for violations of law or regulations; during a period of the last five (5) years, starting from the imposition of the last infraction.

Article 11. Penalized Conduct, Obstruction of Office Investigatory Powers

If perpetrator obstructs access to information required by the Office, as part of the investigation, it will be presumed that perpetrator is in violation of law, regulation or order, and the corresponding fine will be notified to the person or entity, as stated in and according to law or regulation.

Article 12. Criteria to settle or negotiate administrative fines

At any time before filing an Answer to the Notice of Infraction, or after filing it and having requested an administrative hearing, with at least **five (5) days** of anticipation before the day scheduled for the hearing, the defendant could request a meeting to establish a dialogue conducted to explore the possibility to settle the case. If no settlement or transaction agreement is

reached, the administrative processes will continue as scheduled.

As a result of the negotiations, the Office could reduce the amount of the fine, if the amount of the fine after the reduction, continues to have the effect of dissuading the defendant in the incurrence of future violations of the law or regulations. The amount of the fine could be transacted if, after the meeting, the defendant has furnished sufficient and convincing evidence that puts the Office in adequate condition to transact and reduce the amount of the fine originally imposed. In addition to the evidence received, the Office can take into account the totality of the circumstances surrounding the imposition of the fine, in order to reach its decision to reduce the fine.

To this end, the Office can designate any officer or functionary, as the Ombudsman so indicates by administrative order or designation. The Officer with this delegated faculty, will take into consideration, among other factors, the protection and well being of elderly persons, justice and balancing of interests considerations between elderly persons and the institutions that serve them; the relation of respect, loyalty and trust existing among elderly persons and providers of services; the nature of the infraction and the complexity of the case.

The Office could require, at the time of settling a fine:

- a. The acceptance of the defendant of the facts and/or the imputed violation.
- b. The agreement of not incurring in the same or similar violations.
- c. A compliance plan to correct in a satisfactory manner the circumstances that caused the imposition of the fine,

within a reasonable time frame, if they have not been corrected already.

d. The agreement of paying attorney's fees and/or the costs of the proceedings, or any other sanction that has the purpose to recoup for the Office its time, efforts and expenses incurred in its proceedings.

e. The noncompliance of any of the terms of a settlement, will cause the cancellation of the reduction and the request for payment of the originally imposed fine for its full amount, and the costs incurred in the proceedings, with the additional imposition of legal interests accumulated from the date in which the fine was originally imposed up to the date in which it is paid in full.

Maximum term for payment of a fine subjected to a settlement or transaction process will be **thirty (30) days**, beginning from the date in which the settlement agreement is reached, establishing the new amount of the fine.

Article 13. Forms of payment

Payment of fines will be effected using manager's checks, or postal or bank money order. Payments will be made to the Head Cashier of the Office. No other employee is authorized to receive payments for administrative fines or sanctions.

Article 14. Repeated transgressors

A repeated transgressor is a defendant who, in separate and distinct times incurs in two (2) or more violations of law, regulations or order administered by the Office, evidenced by the emission of Notices of Infraction, during a period of the last five (5) years, starting from the imposition of the last infraction.

In cases involving repeated transgressors, the corresponding fine will be imposed (base fine), which could

be increased (additional fine), in an amount equal to half of the previously imposed fine for the previous infraction, up to a maximum of TEN THOUSAND DOLLAR (\$10,000.00) (sum of base and additional fines); or the maximum fine imposed in Special Acts, whichever is greater.

Article 15. Objections or questioning, request for administrative hearing

Any person, business or institution that does not agree with the imposition of an administrative fine, or requires a settlement audience, can request an administrative hearing, which will be governed by the *Regulation for the Procedure and Adjudication of Complaints*. The hearing shall be petitioned to the Office of the Ombudsman, within **twenty (20) days** starting from the date of the entering and filing of the notice of infraction in the file of the case.

Article 16: Resolution

According to the Uniform Administrative Procedure Act, and regulations, at the end of the twenty (20) day period from the date of the entering and filing of the notice of infraction in the file of the case, without receiving from the defendant a petition to question its imposition, the Office can emit a Resolution imposing the fine. The affected party can request Reconsideration [of the Resolution] and/or Judicial Review, as stated and within the terms expressed in the Uniform Administrative Procedure Act¹. If none of these mechanisms are used, the fine becomes

Reconsideration - The party adversely affected by a final Resolution or Order of the Ombudsman may submit a motion for reconsideration within a term of twenty (20) days from the date of the filing of the on record of the notification of the resolution or order. The motion shall be documented and notified simultaneously to the parties.

Once submitted, the motion shall be considered. If rejected or did not acted upon it within fifteen (15) days, the period to request a revision will begin anew from the date the rejection is notified or from the time of the expiration of those fifteen (15) days, whichever the case. If a determination is made on the motion, the period to request a revision will begin from the date a copy of the notification of the resolution from the Office is filed on record, resolving definitely the motion for reconsideration. Said resolution should be issued and filed on record within ninety (90) days following the submittal of the motion for reconsideration. If the Office accepts the motion for reconsideration, but does not take any action within ninety (90) days of its submittal, it will loose jurisdiction over the matter, and the period to request a judicial revision will begin upon the expiration of said term of ninety (90) days, except if the Office, for a just cause and within those ninety (90) days, extends the term to resolve on the matter for a period that should not exceed thirty (30) additional days.

Revision

A party adversely affected by an final order or resolution of the Office, and that has exhausted all remedies provided by the Office, may submit a review application before the Court of Appeals within thirty (30) days from the date the copy of the Office's final order or resolution was filed on record or according to the applicable date set forth in Rule 12.1 of these Regulations; when the period to request a judicial review has been interrupted by the timely submittal of a motion for reconsideration. The party will notify the submittal of the review application to the Office and to all concerned parties within the period to request the revision.

final and firm. The inaction of defendant by not objecting to the imposition of the fine within the time periods established for that purpose, will be interpreted as an acceptance of the facts that motivated its imposition, the violation of law or regulation and the amount imposed.

The Resolution or order will concede a term of twenty (20) days from the date of the filing on record of the notification of the resolution or order to request reconsideration, and of thirty (30) days from the date of the filing on record of the notification of the resolution or order to request judicial review or to pay the fine. If no judicial review is requested, or if payment is not received within thirty (30) days, the fine will be firm and final, and the Office could proceed with collection proceedings as stated in corresponding legal and procedural norms, including without limitation the procedure stated in Regulation No. 44 of the Department of the Treasury, *Non-Taxable Existing Debts Owed to the Government of Puerto Rico*², or any applicable regulation.

Article 17. Sanctions and/or fine for noncompliance

The Office can impose, in addition to the fine, economic sanctions up to a maximum of two hundred dollars (\$200.00), per each separate imposition, according to Rule 13.4 of the *Regulations for the Procedure and Adjudication of Complaints* when a defendant fails to abide with any Resolution or Order issued by the Ombudsman or authorized functionary.

It must be considered also, that the Office, out of its own volition or by request of a party, can emit an Order to Show Cause why the sanctions should not be imposed. Defendant could file an answer to the same, having the

² In Spanish, “Reglamento Num. 44. Departamento de Hacienda, *Deudas no contributivas existentes a favor del Gobierno de Puerto Rico.*”

opportunity to present evidence of compliance, or sufficient cause for its noncompliance.

If the defendant does not comply with the Resolution or Order issued by the Ombudsman or authorized functionary, or if the conclusion is reached that there was no justification for the noncompliance, the economic sanction or fine for noncompliance could be imposed in favor of the Office or any party. If noncompliance persists after the imposition of the sanction, other remedies could be ordered.

Article 18. Attorney's fees and costs

Attorney's costs and fees can also be imposed for the same cases provided in Rule 44 of Civil Procedure, and Rule 13.4 of the *Regulation for the Procedure and Adjudication of Complaints*, for the payment of the expenses incurred by the Office during the procedure, including time expended and efforts made during said event.

Article 19. Separability

In the event that a Court with proper venue and jurisdiction declares invalid, null, or ineffective any provision in these rules, the remainder will continue to be in effect with all its force of law.

Article 20. Effectivity

These regulations shall become effective thirty (30) days after the filing at the State Department.

In San Juan, Puerto Rico, on _____, 2007.

Rossana López León, MSG
Ombudswoman

