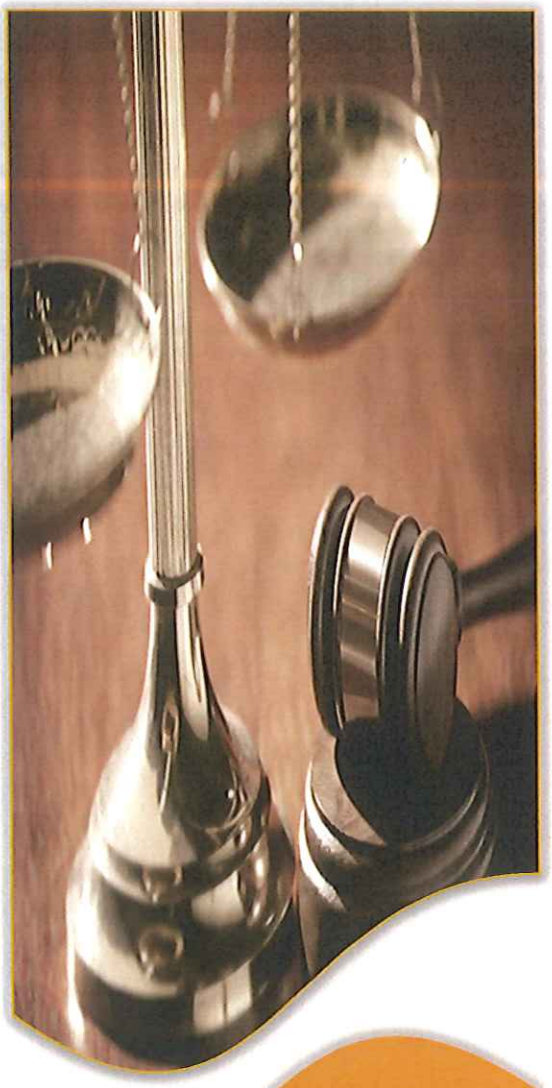


OFFICE OF EXAMINING OFFICERS

DEPARTMENT OF STATE
No: 8977
Date: June 19, 2017
Approved . Hon. Luis G. Rivera Marín
Secretary of State

By Eduardo Arosemena Muñoz
Assistant Secretary

Regulations for the Imposition of Fines and Sanctions



2016

AUXILIARY OMBUDSMAN OF PROTECTION AND DEFENSE

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OFFICE OF THE OMBUDSMAN FOR THE ELDERLY PEOPLE

REGULATIONS FOR SANCTIONS AND FINES

OFFICE OF EXAMINING OFFICERS

RULE 1. TITLE

These Regulations will be known as *Regulations for the Imposition of Fines and Sanctions from the Office of the Ombudsman for the Elderly People.*

RULE 2. LEGAL BASE

These rules are enacted under the protection of the powers conferred to the Office of the Ombudsman for the Elderly People under Act. No. 76 of July 24, 2013, known as the *"Act of the Office of the Ombudsman for the Elderly People"* that authorizes to regulate and monitor the compliance of the public policy in public or private entities Act No. 170 of August 12, 1988, as amended, known as *"Law of Uniform Administrative Procedure";* Public Act No. 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 of the Elderly People"; and the

"Regulations for Awarding Proceedings of the Office of the Ombudsman for the Elderly People".

RULE 3. SCOPE

These rules will govern the administrative and awarding proceedings for the imposition of administrative fines and sanctions, for infractions of the laws and regulations under the jurisdiction of the Office.

RULE 4. PURPOSE

These Regulations are issued with the purpose of establishing clear parameters that allow to impose administrative fines uniform to the people who infringe one or more legal and regulating dispositions under the jurisdiction of the Office of the Ombudsman for the Elderly People.

RULE 5. DEFINITIONS

The *following* terms will have the meaning that is expressed below:

5.1 **Agency** Will mean any department, board, commission, office, division, bureau, administration, public corporation, or its subsidy, authority, instrumentality of the Commonwealth of Puerto Rico including any of its officials, employees, or members that act or appear to

act in the performance of their duties.

5.2	**Infringement Notice**	Notice issued by the Ombudsman for the Elderly People and/or an authorized representative, in which the person is accused of committing or omitting some actions that constitute a violation of a law or regulation under the authority of the Office and the fine to be imposed.
5.3	**Orientation Notice**	Written notice issued by the Office in which people are informed about practices or acts that can constitute violations of any of the laws and regulations under the authority of the Office or the orders that have been issued, as well as a warning to the effect of notifying which would be the fine or sanction that entails that practice, act, or omission, if it is incurred again.
5.4	**Coordinator of Services**	Office Employee or Officer with the power delegated by the Ombudsman to investigate and/or verify that every natural or legal person meets the dispositions of the laws and regulations administered by this Office. As well as, require information, documents, and other evidence to the Persons and/or Institutions or Entities providers of services. This term includes the Auxiliary Ombudsman for Protection and Defense and the

		Ombudsman for the Resident of Long-Term Care Facility.
5.5	**Offender**	Person who has been accused of violating any of the laws and/ or regulations under the jurisdiction of the Office, as well as any order issued by it.
5.6	**Institution or Entity**	Is any association, corporation, organization, institution, or natural or legal person, public or private, that offers, or provides a service or activity, or administers, or develops a program related with the elderly people, as such term is defined in these regulations and/or that receives a financial contribution from the government of the Commonwealth of Puerto Rico or that receives funds from the programs of the government of the United States of America that for the benefit, attention, and protection of such persons are contemplated in the federal and state laws.
5.7	**Fine**	Sanction of monetary type that is imposed when a party does not comply with a resolution or order issued by the Ombudsman for the Elderly People and or authorized representative, or when the party is notified of an orientation notice for having incurred in a violation of a law or regulation under the authority of

		the Office.
5.8	**Examining Officer**	Officer who presides the administrative hearing and who will present the Ombudsman a report containing the finding of facts, legal conclusions, and recommendations for approval at the end of the awarding proceeding.
5.9	**Office**	Office of the Ombudsman for the Elderly People.
5.10	**Persona**	Every natural or legal person of private o public nature, including but not limited to, government instrumentalities, municipalities, partnerships, public or private corporations, and trusts, profit or non-profit.
5.11	**Elderly Person**	Any person who is sixty (60) years or older in age.
5.12	**Ombudsman**	Ombudsman for the Elderly People or authorized representative, under Act No. 76 of July 24, 2013.
5.13	**Complaint**	Claim presented by a natural person or by the Office, against another natural or legal person, requesting that his right is acknowledged and a remedy is granted, including fines. Also, it means the process initiated by the Office for violation to the established laws, regulations, or procedures.

5.14 **Repeat Offender** Person who has incurred in two (2) or more infringements or fines for the same violation or similar violations to the laws and regulations or orders issued under the authority of the Office, within a period of five (5) years.

5.15 **Sanction** Consequence or effect that constitutes an violation to a party not complying with any resolution or order issued by the Ombudsman and/or authorized representative.

RULE 6. INITIATING THE ACTION

The Office, by its own initiative or, as a product of a complaint presented by an elderly person or authorized representative under its jurisdiction, may impose administrative fines or sanctions in those situations that constitute a violation to any of the laws or regulations under the authority of the Office, or that can constitute failure to comply with any order or resolution that has been issued by the Office or any of its employees in their performance of their official duties.

RULE 7. INVESTIGATION

7.1 The investigation that the Office carries out, includes, but it is not limited to, field inspections; requirements, study and revision of information, documents submitted or required to complainant, defendant or offender or, registered in

any Agency, institution or entity, or in any other government or private institution, profit or non-profit, by any intercessor or service coordinator, therefore including the Auxiliary Ombudsman for Protection and Defense and the State Ombudsman of Long-Term Care.

7.2 The Office may refer any statement or finding to the corresponding public agencies or entities, when it legally proceeds, to jointly address the matter or for the agency to where is referred to address it in a primary and/or exclusive manner.

RULE 8. OBSTRUCTION TO INFORMATION

If the offender obstructs access to the information requested by the Office as part of its investigation, or if the destruction of previously requested information or material is discovered, it will be presumed that the offender is in violation of the law, regulation, order, or resolution, and will be notified of the appropriate fine, in accordance to what it is stated in the applicable laws and regulations.

RULE 9. ORIENTATION NOTICES

9.1 The Auxiliary Ombudsman for Protection and Defense, the State Ombudsman of Long-Term Care or any other employee of the Office of the Ombudsman for the Elderly People to which the Ombudsman has granted such power, will be the people with the authority to investigate and issue the orientation notices.

9.2 The orientation notice will fulfill the purpose of informing:

1. The personal circumstances of the offender, including but not limited to, name of person, institution or entity, physical address, as well as all the telephone numbers available. In the case of a corporation, partnership, or legal entity, it will state the name and address of the President or resident agent.
2. The description of the circumstances in which the inspection or intervention takes place; the location, date, and time in which the orientation notice was issued, the name of the person who receives the orientation and their position within the business or institution that is being investigated.
3. The act or omission that could be constitutive of a violation to the laws or regulations under the authority of the Office or of non-compliance or violation to the orders that have been issued by the Office or by any of its duly authorized staff members.
4. The legal or regulatory dispositions that the defendant could be violating and for which the orientation notice is issued.
5. The maximum amount of the fine that the Office could impose on the defendant for the offense identified in the notice.
6. An indication to the effects that the defendant should correct the deficiency indicated in the period of time specified in the notice.

7. A warning to the effects that if they incur again in a violation to our order or do not correct the indicated deficiency in the period of time specified in the notice, they may be sanctioned with an administrative fine.
8. Basic information of the employee who issues the orientation notice, including their complete name in print.

RULE 10. INFRINGEMENT NOTICE

10.1 The Ombudsman for the Elderly People and/or authorized representative, will be the persons with the authority to investigate and issue infringement notices.

10.2 Infringement Notices will contain the following:

1. A description of the personal circumstances of the offender or defendant, including but not limited to, name of the person, intervened or investigated institution or entity, physical and postal addresses, and the telephone numbers available. In the case of a corporation, partnership, or legal entity it will state the name and address of the President or resident agent;
2. The description of the circumstances in which the inspection is performed: location, date, time that notice was issued, name of person or persons who receive the infraction, and their position within the organizational structure of the institution or entity being investigated;

3. The description of the action or omission constituting the violation;
4. The legal and regulatory dispositions for which the defendant is notified of the infringement notice;
5. A warning note that the offender or defendant can accept the fine and inform its compliance and payment or, alternatively, of their right to object the fine and submit a request for an administrative hearing within a term of twenty (20) days starting from filing a copy in record of the notification of the infringement notice and the procedure to request it;
6. A warning to the offender or defendant to the effect that, if they do not accept the fine and comply with the payment; indicate of their intention to correct the violation that motivates this infringement notice; negotiates the amount indicated in the infringement notice or objects the fine and requests a hearing within the twenty (20) days starting from filing a copy in record of the notification of the infringement notice. The Office may, once such term has passed, issue a Resolution against you to formally notify the imposition of an administrative fine and the maximum monetary amount that could be imposed.

RULE 11. NOTIFICATION AND IMPOSITION OF ADMINISTRATIVE FINE

11.1 When a party does not comply with a resolution or order issued by the Ombudsman for the Elderly People and/or authorized representative, an

administrative fine will be imposed on the offender person, business, or institution, at the end of the twenty (20) day term starting from the date in which a copy of the notification of the order or resolution was filed in record.

11.2 The Office may notify of the imposition of the administrative fine using regular mail, certified mail with acknowledgement of receipt, personal deliver to the offender or to their authorized representative, or by e-mail or fax.

11.3 The fines will be imposed by a Resolution signed by the Ombudsman for the Elderly People and/or authorized representative.

11.4 The notification of the administrative fine by Resolution will have the findings of fact and the conclusions of law, that may include, among others:

1. Description of personal circumstances of the offender or defendant, including but not limited to: name of intervened person, business, or institution, and their postal address.
2. Description of the action or omission that constitutes the offense and motivates the fine.
3. Legal or regulatory dispositions applicable for being fined or penalized, and that have been infringed by the offender.
4. The sanction or fine imposed on the offender.
5. Warning that the party may request the Office, a reconsideration of the notification of the fine within twenty (20) days starting form the filing in record of a copy of the notification of the official resolution that imposed the fine and that, also, if the procedure for reconsideration stated above is

not chosen, the imposition of the fine may be questioned before the Court of Appeals thorough a resource of revision within thirty days starting from the filing in record of a copy of the official resolution that imposed the fine.

RULE 12. SANCTION OR FINE FOR INFRINGEMENT OF AN ORDER OR RESOLUTION

12.1 The Ombudsman and/ or authorized representative may impose monetary fines of two hundred dollars ($200.00) in accordance with the Regulations of the Awarding Proceedings, when an offender does not comply with a resolution or order issued by the Ombudsman and/or authorized representative.

12.2 Likewise, we must understand that the Office at its own initiative, or when requested by a party, may issue an Order to show cause for why such sanctions should not be imposed. The offender party may respond to it, where they have the opportunity of presenting evidence of their compliance or of the cause, if any, that justified the infringement.

12.3 If the order or resolution issued was not complied or if it is determined that there was no cause to justify the infringement, then a sanction or administrative fine may be imposed for infringement in favor of the Office or any party that it applies to.

RULE 13. SANCTION OR FINE FOR INFRINGEMENT OF LAW OR REGULATION; CRITERIA FOR SETTING AMOUNT OF FINE

The fine will be imposed with the purpose of penalizing an illicit conduct in violation of the legal and regulatory norms under the jurisdiction of the Office and may take into consideration the objective of trying to avoid that the offender incurs in the same violation or similar violations. The Office may impose and charge administrative fines up to a maximum of TEN THOUSAND DOLLARS ($10,000.00) for actions or omissions that undermine the rights of the elderly people covered by the Constitution of the United States of America, in the Constitution of the Commonwealth of Puerto Rico, and the laws and regulations of the Commonwealth of Puerto Rico and the United States of America.

RULE 14. AGRAVATING AND MITIGATING CIRCUMSTANCES

14.1 The Office may take in consideration mitigating or aggravating circumstances when determining the amount of the fine.

14.2 The following facts will be considered aggravating circumstances for the fine:

1. Reoccurrence.
2. If the nature of the violation and the action or omission itself of the offender or defendant represents an imminent danger to the health, wellbeing, or safety of the elderly person.
3. The history of offenses of equal or similar nature incurred by the offender.

4. Any other criteria that results reasonable and that must be taken into consideration at the time of signing the amount of the fine.

14.3 A mitigating circumstance to the fine will be considered in the following facts:

1. The disposition of the offender or defendant to correct the actions or omissions that provoked the violation.
2. The time invested by the offender to correct the actions or omissions that provoked the violation.
3. The history of offenses of equal or similar nature incurred by the offender.
4. Any other criteria that result reasonable and that must be taken into consideration at the time of setting the amount of the fine.

RULE 15. FLEXIBILITY IN THE IMPOSITION OF FINES FOR CORRECTIVE ACTIONS

15.1 The office may be flexile in the imposition of fines if:

1. The violation is corrected in a period less than fifteen (15) days, starting from the date in which a copy is filed in record of the notification of the fine, sanction, and/or infringement, containing the amount of the fine and if there is credible evidence to the satisfaction of the Office that the money to be paid by concept of a fine was used to correct the violation, it can be through a sworn statement, pictures, and any other mechanism of proof, the fine may be reduced up to one hundred percent (100%).
2. The violation is corrected in a period not grater that thirty (30) days,

starting from the date in which a copy is filed in record of the notification of the fine, sanction, and/ or infringement notice, containing the amount of the fine and if there is credible evidence to the satisfaction of the office that the money to be paid by concept of the fine was used to correct the violation, through sworn statement, pictures, or any other mechanism of proof, the fine may be reduced to up to fifty percent (50%).

3. If correcting the violation takes more than thirty (30) days, but does not exceed the ninety (90) days, starting form the date that a copy of the notification of the fine, sanction, and/or infringement notice is filed, the agency may condone up to (25%) of the fine, if there is credible evidence to the satisfaction of the office that the money to be paid by concept of fine will be used to correct the violation
4. In no case the correction must take more than one hundred twenty (120) days, counting from the date that a copy of the notification of the fine, sanction and/or infringement notice is filed, unless they are cases in which mayor force or very exceptional and deserving circumstances intervene, outside the control of the entity, which must be duly evidenced. If the offender exceeds the term of one hundred twenty (120) days without having concluded the necessary correction, the scheme to reduce the fines will become ineffective, and must satisfy the fine in its totality.

15.2 Excluded form the flexibility scheme are those actions that constitute a crime, intentionally or not; those that represent a serious or significant threat to the

health, safety, environment, as well as those natural or legal entities or persons that have been repeat offenders, in other words, object of two (2) or more final notifications (infringement notice of violations to the law or regulations or infringement of any administrative order or resolution), all during the period of the last five (5) years, starting form the date that a copy of the notification of the last infringement notice was filed in record, which will constitute the base period for the effects of calculations and of these regulations.

RULE 16. OBJECTION OR CHALLENGE TO A FINE, SANCTION, OR INFRINGEMENT NOTICE; REQUEST FOR ADMINISTRATIVE HEARING

The person, business, or institution that does not agree with the imposition of a fine, sanction, and/or infringement notice, may request a celebration of an administrative hearing to the Office of the Examining Officers of the Office of the Ombudsman for the Elderly People within a term of twenty (20) days starting from the filing in record of a copy of the notification of the fine, sanction and/or infringement notice, in accordance with the dispositions of the *"Regulations for Awarding Procedures of the Office of the Ombudsman for the Elderly People"*.

RULE 17. CRITERIA TO COMPROMISE THE IMPOSITION OF AN ADMINISTRATIVE FINE

17.1 The fines, sanctions, and/or infringement notices may be compromised as long as, the affected party has presented sufficient and convincing evidence that places the officer in the condition of compromising the originally imposed penalty.

17.2 At the time of compromising a fine the Office may require:

1. The acceptance on behalf for the offender about the facts and/or violation that they are accused.
2. The commitment of not incurring in the same violation o similar violations.
3. A compliance plan to correct in a satisfactorily manner the circumstances that provoked the imposition of the fine, within a reasonable time, if it has not been corrected.
4. The commitment of paying, in favor of the Office, attorney fees and/or the costs of the proceeding or any other sanction that has as an objective to compensate the Office for the time, effort, and expenses incurred in its procedures.
5. Infringement of any of the terms of a transaction, will entail the cancellation of the agreement and the requirement of immediate and total payment of the fine for the originally imposed amount, with the additional imposition of the corresponding legal interests accumulated since the date in which it was originally imposed until total payment of it.

17.3 The amount of the fine will be limited or the obligation to pay it will be completely eliminated, if the violation is discovered during a routine audit or in

a visit for assistance to verify the compliance with the law, in which the facility has voluntarily participated and in good faith, not as a result of a complaint submitted by a particular.

1. The amount will be limited in accordance to what it is stated before, if the entity can establish through credible evidence that after the notification of the infringement notice a genuine effort and of good faith was carried out to comply with the law or regulation in question.
2. The amount of the fine will be limited if the facility can establish through credible evidence that the matter for which the fine was imposed was merely an accident, without mediating intentions, nor significant risk to the health, safety, and environment, nor criminal conduct.
3. If the fine or offense is modified or eliminated, the facts that prompted their imposition they will not be eliminated, and they will be taken into account to determine if the entity can benefit from the scheme for reduction or flexibility of fines.
4. Finally, in the appropriate circumstances, the agency may take into account the possibility of payment that the facility has, at the time of determining the amount of the fine, and/or establish payment or compliance plans.

17.4 In the cases in which the offender is interested in compromising the infringement notice, they can request a meeting with the Office and/or Program to talk about the possibility of a transaction under the following terms:

1. The request for the meeting for transaction may be done at any time after answering the infringement notice, or after having answered and having requested an administrative hearing.
2. The meeting must be requested with at least five (5) days of anticipation to the administrative hearing.
3. The authorized employee or staff member from the Office will submit the agreement in writing, to the Examining Officer, which will include the action committed by the offender, the law or regulation that was violated, the basis that motivated the infringement notice, the amount of the original fine, the basis presented in the meeting that motivated the transaction and the new amount or transaction to which the parties agreed. The agreement must be signed by both parties.
4. The Examining Office will evaluate the recommendations of the agreement, the evidence received, the totality of the circumstances of the case, and may accept the agreement as long as it keeps having the effect to discourage incurring in the same violations or similar violations.
5. If a transaction is not arrived, the process will continue as indicated.

17.5 Before accepting a Transactional Agreement, the Office will take into consideration, among other factors, the protection and wellbeing of the elderly people; legal considerations, and balance of interests between the elderly people, and the institutions or entities that provide services to them; the relation of respect, loyalty, and trust existing between the elderly people and

the service providers; the nature of the offense, as well as the complexity of the case.

17.6 The maximum term for paying the fine that was object of a transaction process will be thirty (30) days starting form the date that the transaction was completed establishing the new negotiated amount of the fine.

17.7 The offender may not benefit of compromising a fine, if they have incurred in two or more offenses or fines for the same violation or similar violations to the laws, regulations, or orders issued by the authority of the Office, within a period of five (5) years.

RULE 18. FORMS OF PAYMENT

The payments of the fines will be made with manager's check, bank or money order to the Secretary of Treasury. Such payments will be delivered to the Administrative Office of OPPEA. No other Office and/or Program is authorized to receive the payments for the concept of imposition of administrative fines or monetary sanctions.

RULE 19. REOCCURANCE

A repeat offender will be that offender that incurs in different and independent times, in two (2) or more violations of an act, regulation, or order administered by the Office, proven by the issuance of several infringement

notices within a period of the last five (5) years, starting form the date in which a copy of the notification of the last infringement notice is filed.

19.1 In the case of being a repeat offender the fine that proceeds (base fine) will be imposed, which may increase, also, in an amount equal to half of the fine already imposed for the offense committed before (added fine), up to to a maximum of TEN THOUSAND DOLLARS ($10,000.00) (the sum of the base fines and added fines); or the maximum fine allowed in the cases of the special laws, whichever is higher.

RULE 20. RESOLUTION

20.1 Under Act No. 170 of August 12, 1988, as amended, known as the Act for Uniform Administrative Procedure and these Regulations, once the term of twenty (20) days have passed since the filing in record of the notification of fine, and/or infringement notice, without the offender challenging or objecting, the Office may issue a Resolution to impose it. The affected party or offender may request a reconsideration of the notification of fine to the agency and/or go to the Court of Appeals with a resource of judicial revision, in accordance to what it is stated in the Act of Uniform Administrative Procedure. If those mechanisms are not used, having the terms stated by the law expired, the fine will remain final and firm. The inaction on behalf of the offender to not object the fine within the period of time established for that, will be

interpreted as an acceptance of the facts that motivated the imposition of the fine, the violation of the Regulation, and the amount imposed.

20.2 The Resolution will grant a term of twenty (20) days starting form the filing a copy of it to request reconsideration, and of thirty (30) days starting form the filing a copy of the Resolution to request judicial revision, or for paying the fine. If no judicial revision is requested or if no payment is received within the thirty (30) days starting form the filing a copy of the Resolution, the fine will become final and firm, and it will be proceeded to request payment of it in accordance to the corresponding legal and process norms including, but not limited to, the process indicated in the current Regulations of the Department of Treasury about Existent Debts Not from Taxes Payable to the Government of Puerto Rico, or whichever results applicable.

RULE 21. FEES AND COSTS

According to what it is stated in the valid Rules of Civil Procedure and the *Regulations for Awarding Proceedings* of the Office of the Ombudsman for the Elderly People, the attorney's fees and/or the cost of the proceeding may be imposed, to compensate the Office for the time, effort, and costs incurred in their proceedings.

RULE 22. SEPARABILITY

In the case that a competent Court declares invalid, null, ineffective any disposition of these rules, the rest will keep governing with all the force of the law.

RULE 23. DEROGATORY CLAUSE

Herby these regulations prevail over Regulation No. 7445, *Regulations for the Imposition of Fines and Sanctions, approved on December 21, 2007 by the Department of State.*

RULE 24. VALIDITY

24.1 These rules will start to govern thirty (30) days after being submitted in the Department of State.

24.2 With the approval of this Regulation all previous Regulations related to this topic will be repealed.

SIGNED

In San Juan, Puerto Rico, Today, October 10, 2016.

Carmen D. Sánchez Salgado, Ph.D.
Ombudsman