

**§ 109.103 Civil money penalties.**

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(c) *Maximum amount of civil money penalties*—(1) *Statutory formula.* The OCC is required by statute to annually adjust for inflation the maximum amount of each civil money penalty within its jurisdiction to administer. The inflation adjustment is calculated by multiplying the maximum dollar amount of the civil money penalty for the previous calendar year by the cost-of-living inflation adjustment multiplier provided annually by the Office of Management and Budget and rounding the total to the nearest dollar.

(2) *Notice of inflation adjustments.* The OCC will publish notice in the **Federal Register** of the maximum penalties which may be assessed on an annual basis on, or before, January 15 of each calendar year based on the formula in paragraph (a) of this section, for penalties assessed on, or after, the date of publication of the most recent notice related to conduct occurring on or after November 2, 2015.

Dated: January 9, 2018.

**Karen Solomon,**

*Acting Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.*

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**FEDERAL DEPOSIT INSURANCE CORPORATION**
**12 CFR Part 308**
**RIN 3064–AE71**
**Rules of Practice and Procedure**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC is adjusting the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act).

**DATES:** This rule is effective January 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** Seth P. Rosebrock, Supervisory Counsel, Legal Division (202) 898–6609, or Graham N. Rehrig, Senior Attorney, Legal Division (202) 898–3829.

**SUPPLEMENTARY INFORMATION:**
**I. Policy Objectives**

The Final Rule changes the maximum limit for CMPs according to inflation as mandated by Congress in the 2015

Adjustment Act.<sup>1</sup> The intended effect of annually adjusting maximum civil money penalties in accordance with changes in the Consumer Price Index is to minimize any distortion in the real value of those maximums due to inflation, thereby promoting a more consistent deterrent effect in the structure of CMPs.

**II. Background**

The FDIC assesses CMPs under section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818, and a variety of other statutes.<sup>2</sup> Congress established maximum penalties that could be assessed under these statutes. In many cases, these statutes contain multiple penalty tiers, permitting the assessment of penalties at various levels depending upon the severity of the misconduct at issue.<sup>3</sup>

In 1990, Congress determined that the assessment of CMPs plays “an important role in deterring violations and furthering the policy goals embodied in such laws and regulations” and concluded that “the impact of many civil monetary penalties has been and is diminished due to the effect of inflation.”<sup>4</sup> Consequently, Congress required federal agencies with authority to impose CMPs to periodically adjust by rulemaking the maximum CMPs which these agencies were authorized to impose in order to “maintain the deterrent effect of civil monetary penalties and promote compliance with the law.”<sup>5</sup> Under the 1990 Adjustment Act, the FDIC adjusted its CMP amounts every four years.<sup>6</sup>

In 2015, Congress revised the process by which federal agencies adjust applicable CMPs for inflation.<sup>7</sup> Under the 2015 Adjustment Act, the FDIC is required to make annual adjustments for inflation.<sup>8</sup> These adjustments apply to all CMPs covered by the 2015

<sup>1</sup> Public Law 114–74, sec. 701, 129 Stat. 584.

<sup>2</sup> See, e.g., 12 U.S.C. 1972(2)(F) (authorizing the FDIC to impose CMPs for violations of the Bank Holding Company Act of 1970 related to prohibited tying arrangements); 15 U.S.C. 78u–2 (authorizing the FDIC to impose CMPs for violations of certain provisions of the Securities Exchange Act of 1934); 42 U.S.C. 4012a(f) (authorizing the FDIC to impose CMPs for pattern or practice violations of the Flood Disaster Protection Act).

<sup>3</sup> For example, Section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), provides for three tiers of CMPs, with the size of such CMPs increasing with the gravity of the misconduct.

<sup>4</sup> Section 2 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act). Public Law 101–410, 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., 77 FR 74573 (Dec. 17, 2012).

<sup>7</sup> See Public Law 114–74, sec. 701, 129 Stat. 584.

<sup>8</sup> See *id.* at sec. 701(b).

Adjustment Act.<sup>9</sup> The 2015 Adjustment Act requires annual adjustments to be made by January 15 of each year.<sup>10</sup>

Although the 2015 Adjustment Act increases the maximum penalty that may be assessed under each applicable statute, the FDIC possesses discretion to impose CMP amounts below the maximum level in accordance with the severity of the misconduct at issue. For example, when making a determination as to the appropriate level of a penalty assessed under section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), the FDIC is guided by statutory factors set forth in section 8(i)(2)(G) of the FDIA, 12 U.S.C. 1818(i)(2)(G), and those factors identified in the *Interagency Policy Statement Regarding the Assessment of CMPs by the Federal Financial Institutions Regulatory Agencies*.<sup>11</sup> Such factors include, but are not limited to, the gravity and duration of the misconduct, and the intent related to the misconduct.

The 2015 Adjustment Act notes that the FDIC “shall adjust [CMPs] and shall make the adjustment *notwithstanding section 553 of title 5, United States Code*” (the Administrative Procedure Act).<sup>12</sup> The FDIC, therefore, is not obligated to publish the adjustments through notice-and-comment rulemaking, and the FDIC is publishing the adjustments through a final rule.

**III. Description and Expected Effects of the Final Rule**

The Final Rule modifies the maximum limit for CMPs according to inflation as mandated by Congress in the 2015 Adjustment Act. The 2015 Adjustment Act directs federal agencies to follow guidance issued by the Office of Management and Budget (OMB) on December 15, 2017 (OMB Guidance), when calculating new maximum penalty levels.<sup>13</sup> The adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U)<sup>14</sup> for October 2016 and the October 2017 CPI-U.

<sup>9</sup> See Public Law 101–410, sec. 3(2), 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

<sup>10</sup> Public Law 114–74, sec. 701(b), 129 Stat. 584.

<sup>11</sup> 63 FR 30227 (June 3, 1998).

<sup>12</sup> Public Law 114–74, sec. 701(b), 129 Stat. 584 (emphasis added).

<sup>13</sup> See OMB, Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–18–03 (Dec. 15, 2017), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf> (noting that the applicable 2018 CMP-adjustment multiplier is 1.02041).

<sup>14</sup> The CPI-U is compiled by the Bureau of Labor Statistics of the Department of Labor.

*Summary of the FDIC's Calculations*

During the 12-month period ending October 2017, the CPI-U was reported to have increased by 2.041 percent. In keeping with the OMB Guidance, the FDIC adjusted each of its CMP maximum penalty levels by the inflation factor.<sup>15</sup> After applying the adjustment, the FDIC rounded each penalty level to the nearest dollar. In making these calculations, the FDIC consulted with

staff from the Office of the Comptroller of the Currency, the Board of Governors for the Federal Reserve System, the National Credit Union Administration, and the Bureau of Consumer Financial Protection to ensure that the FDIC's adjusted figures were consistent with these regulators' respective amounts.

*The Adjusted CMP Amounts*

The following chart displays the adjusted CMP amounts for each CMP identified in 12 CFR part 308.<sup>16</sup> The following chart reflects the maximum CMP amounts that may be assessed after January 15, 2018—the effective date of the 2018 annual adjustment—including assessments whose associated violations occurred on or after November 2, 2015.<sup>17</sup>

**MAXIMUM CIVIL MONEY PENALTY AMOUNTS**

U.S. Code citation	Current maximum CMP (through January 14, 2018)	Adjusted maximum CMP (beginning January 15, 2018)
12 U.S.C. 1464(v):		
Tier One CMP .....	\$3,849	\$3,928
Tier Two CMP .....	38,492	39,278
Tier Three CMP .....	1,924,589	1,963,870
12 U.S.C. 1467(d) .....	9,623	9,819
12 U.S.C. 1817(a):		
Tier One CMP .....	3,849	3,928
Tier Two CMP .....	38,492	39,278
Tier Three CMP .....	1,924,589	1,963,870
12 U.S.C. 1817(c):		
Tier One CMP .....	3,519	3,591
Tier Two CMP .....	35,186	35,904
Tier Three CMP .....	1,759,309	1,795,216
12 U.S.C. 1818(i)(2):		
Tier One CMP .....	9,623	9,819
Tier Two CMP .....	48,114	49,096
Tier Three CMP .....	1,924,589	1,963,870
12 U.S.C. 1820(e)(4) .....	8,797	8,977
12 U.S.C. 1820(k)(6) .....	316,566	323,027
12 U.S.C. 1828(a)(3) .....	120	122
12 U.S.C. 1828(h):		
For assessments <\$10,000 .....	120	122
12 U.S.C. 1829b(j) .....	20,111	20,521
12 U.S.C. 1832(c) .....	2,795	2,852
12 U.S.C. 1884 .....	279	285
12 U.S.C. 1972(2)(F):		
Tier One CMP .....	9,623	9,819
Tier Two CMP .....	48,114	49,096
Tier Three CMP .....	1,924,589	1,963,870
12 U.S.C. 3909(d) .....	2,394	2,443
15 U.S.C. 78u-2:		
Tier One CMP (individuals) .....	9,054	9,239
Tier One CMP (others) .....	90,535	92,383
Tier Two CMP (individuals) .....	90,535	92,383
Tier Two CMP (others) .....	452,677	461,916
Tier Three CMP (individuals) .....	181,071	184,767
Tier Three penalty (others) .....	905,353	923,831
15 U.S.C. 1639e(k):		
First violation .....	11,053	11,279
Subsequent violations .....	22,105	22,556
31 U.S.C. 3802 .....	10,957	11,181
42 U.S.C. 4012a(f) .....	2,090	2,133
CFR Citation	Current maximum amount (through January 14, 2018)	New maximum amount (beginning January 15, 2018)
12 CFR 308.132(c)—Late or Misleading Reports of Condition and Income (Call Reports):		
First Offense:		
\$25 million or more assets:		
1 to 15 days late .....	527	538
16 or more days late .....	1,056	1,078

<sup>15</sup> Under the 1990 Adjustment Act, adjustments have been made only to CMPs that are for specific dollar amounts or maximums. CMPs that are assessed based upon a fixed percentage of an

institution's total assets are not subject to adjustment.

<sup>16</sup> As noted previously, the FDIC retains discretion to impose CMPs in amounts below the referenced maximums.

<sup>17</sup> See OMB Guidance at 4.

CFR Citation	Current maximum amount (through January 14, 2018)	New maximum amount (beginning January 15, 2018)
Less than \$25 million assets		
1 to 15 days late .....	176	180
16 or more days late .....	352	359
Subsequent Offenses:		
\$25 million or more assets:		
1 to 15 days late .....	879	897
16 or more days late .....	1,759	1,795

### *The Expected Effects of the CMP Adjustments*

These CMP adjustments are expected to minimize any year-to-year distortions in the real value of the CMP maximums. Additionally, these adjustments will promote a more consistent deterrent effect in the structure of CMPs. As previously noted, the FDIC retains discretion to impose CMP amounts below the maximum level. The actual number and size of CMPs assessed in the future will depend on the propensity and severity of the violations committed by banks and institution-affiliated parties, as well as the particular statute that is at issue. Such future violations cannot be reliably forecast. It is expected that the FDIC will continue to exercise its discretion to impose CMPs that are appropriate to their severity.

The 2015 Adjustment Act will likely result in a minimal increase in administrative costs for the FDIC in order to establish new inflation-adjusted maximum CMPs each year. Because these calculations are relatively simple, the number of labor hours necessary to perform this task is likely to be insignificant relative to total enforcement labor hours for the Corporation.

### **IV. Alternatives Considered**

The 2015 Adjustment Act mandates the frequency of the inflation adjustment and the measure of inflation to be used in making these adjustments. This statute also provides that the FDIC is not required to proceed through notice-and-comment rulemaking under the Administrative Procedure Act in making annual CMP adjustments. Therefore, the FDIC has not considered alternatives to the CMP Adjustments.

### **V. Request for Comment**

The 2015 Adjustment Act requires the FDIC to adjust its maximum CMP amounts “notwithstanding section 553 of title 5, United States Code,”<sup>18</sup> and provides the specific adjustments to be made. Moreover, the CMP Adjustments and the revisions to the CFR are

ministerial and technical; therefore, the FDIC is not required to complete a notice-and-comment rulemaking process prior to making the adjustments.

### **VI. Regulatory Analysis**

#### *Riegle Community Development and Regulatory Improvement Act*

Section 302 of the Riegle Community Development and Regulatory Improvement Act<sup>19</sup> generally requires that regulations prescribed by federal banking agencies which impose additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter unless the regulation is required to take effect on another date pursuant to another act of Congress or the agency determines for good cause that the regulation should become effective on an earlier date.

This Final Rule does not impose any new or additional reporting, disclosures, or other requirements on insured depository institutions. Therefore, the Final Rule is not subject to the requirements of this statute.

#### *Regulatory Flexibility Act*

An initial regulatory flexibility analysis under the Regulatory Flexibility Act<sup>20</sup> (RFA) is required only when an agency must publish a general notice of proposed rulemaking. As noted above, the FDIC determined that publication of a notice of proposed rulemaking is not necessary for the Final Rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC considered the likely impact of Final Rule on small entities. From 2011 through 2016, on average, only 1.4 percent of FDIC-supervised institutions were ordered to pay a CMP each year. Accordingly, the FDIC believes that the Final Rule will not have a significant impact on a substantial number of small entities.

#### *Small Business Regulatory Enforcement Fairness Act*

The OMB has determined that the Final Rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA).<sup>21</sup> As required by SBREFA, the FDIC will submit the Final Rule and other appropriate reports to Congress and the Government Accountability Office for review.

#### *The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Assessment of Federal Regulations and Policies on Families*

The FDIC determined that the Final Rule will not affect family wellbeing within the meaning of section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.<sup>22</sup>

#### *Paperwork Reduction Act*

The Final Rule does not create any new, or revise any existing, collections of information under section 3504(h) of the Paperwork Reduction Act of 1980.<sup>23</sup> Consequently, no information collection request will be submitted to the OMB for review.

#### *Plain Language Act*

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000.<sup>24</sup> Accordingly, the FDIC has attempted to write the Final Rule in clear and comprehensible language.

### **List of Subjects in 12 CFR Part 308**

Administrative practice and procedure, Banks, Banking, Claims, Crime, Equal access to justice, Ex parte communications, Hearing procedure, Lawyers, Penalties, State nonmember banks.

<sup>21</sup> 5 U.S.C. 801 *et seq.*

<sup>22</sup> Public Law 105-277, 112 Stat. 2681 (1998).

<sup>23</sup> 44 U.S.C. 3501 *et seq.*

<sup>24</sup> Public Law 106-102, 113 Stat. 1338 (Nov. 12, 1999).

<sup>18</sup> Public Law 114-74, sec. 701(b), 129 Stat. 584.

<sup>19</sup> 12 U.S.C. 4802.

<sup>20</sup> 5 U.S.C. 603.

For the reasons set forth in the preamble, the FDIC amends 12 CFR part 308 as follows:

## PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 continues to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

■ 2. Revise § 308.116(b)(4) to read as follows:

### § 308.116 Assessment of penalties.

\* \* \* \* \*

(b) \* \* \*

(4) *Adjustment of civil money penalties by the rate of inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* After January 15, 2018, for violations that occurred on or after November 2, 2015:

(i) Any person who has engaged in a violation as set forth in paragraph (b)(1) of this section shall forfeit and pay a civil money penalty of not more than \$9,819 for each day the violation continued.

(ii) Any person who has engaged in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(2) of this section, shall forfeit and pay a civil money penalty of not more than \$49,096 for each day such violation, practice or breach continued.

(iii) Any person who has knowingly engaged in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(3) of this section, shall forfeit and pay a civil money penalty not to exceed:

(A) In the case of a person other than a depository institution—\$1,963,870 per day for each day the violation, practice or breach continued; or

(B) In the case of a depository institution—an amount not to exceed the lesser of \$1,963,870 or one percent of the total assets of such institution for each day the violation, practice or breach continued.

\* \* \* \* \*

■ 3. Revise § 308.132(d) to read as follows:

### § 308.132 Assessment of penalties.

\* \* \* \* \*

(d) *Maximum civil money penalty amounts.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, after January 15, 2018, for violations that occurred on or after November 2, 2015, the Board of Directors or its designee may assess civil money penalties in the maximum amounts as follows:

(1) *Civil money penalties assessed pursuant to 12 U.S.C. 1464(v) for late filing or the submission of false or misleading certified statements by State savings associations.* Pursuant to section 5(v) of the Home Owners' Loan Act (12 U.S.C. 1464(v)), the Board of Directors or its designee may assess civil money penalties as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than \$3,928 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report that is minimally late. For penalties assessed after January 15, 2018, for violations of this paragraph (d)(1)(i) that occurred on or after November 2, 2015, the following maximum Tier One penalty amounts contained in paragraphs (d)(1)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$538 per day for each of the first 15 days for which the failure continues, and \$1,078 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$180 per day or 1/1000th of the institution's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and \$359 or 1/500th of the institution's total assets, 1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be \$897 per day for each of the first 15 days for which the failure continues, and \$1,795 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than

\$25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the institution's total assets.

(C) *Lengthy or repeated violations.* The amounts set forth in this paragraph (d)(1)(i) will be assessed on a case-by-case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(D) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$39,278 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$3,928 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information that is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$39,278 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of \$1,963,870 or 1 percent of the institution's total assets per day for each day the information is not corrected.

(iv) *Mitigating factors.* The amounts set forth in this paragraph (d)(1) may be reduced based upon the factors set forth in paragraph (b) of this section.

(2) *Civil money penalties assessed pursuant to 12 U.S.C. 1467(d) for refusal by an affiliate of a State savings association to allow examination or to provide required information during an*

examination. Pursuant to section 9(d) of the Home Owners' Loan Act (12 U.S.C. 1467(d)), civil money penalties may be assessed against any State savings association if an affiliate of such an institution refuses to permit a duly-appointed examiner to conduct an examination or refuses to provide information during the course of an examination as set forth 12 U.S.C. 1467(d), in an amount not to exceed \$9,819 for each day the refusal continues.

(3) *Civil money penalties assessed pursuant to 12 U.S.C. 1817(a) for late filings or the submission of false or misleading reports of condition.* Pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)), the Board of Directors or its designee may assess civil money penalties as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than \$3,928 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report that is minimally late. For penalties assessed after January 15, 2018, for violations of this paragraph (d)(3)(i) that occurred on or after November 2, 2015, the following maximum Tier One penalty amounts contained in paragraphs (d)(3)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$538 per day for each of the first 15 days for which the failure continues, and \$1,078 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$180 per day or 1/1000th of the institution's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and \$359 or 1/500th of the institution's total assets, (1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be \$897 per day for each of the first 15 days for which the failure continues, and \$1,795 per day for each subsequent day the failure continues, beginning on the sixteenth

day. For institutions with less than \$25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the institution's total assets.

(C) *Lengthy or repeated violations.* The amounts set forth in this paragraph (d)(3)(i) will be assessed on a case-by-case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(D) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$39,278 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$3,928 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information that is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$39,278 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of \$1,963,870 or 1 percent of the institution's total assets per day for each day the information is not corrected.

(iv) *Mitigating factors.* The amounts set forth in this paragraph (d)(3) may be reduced based upon the factors set forth in paragraph (b) of this section.

(4) *Civil money penalties assessed pursuant to 12 U.S.C. 1817(c) for late filing or the submission of false or misleading certified statements.* Tier

One civil money penalties may be assessed pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) in an amount not to exceed \$3,591 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Two civil money penalties may be assessed pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) in an amount not to exceed \$35,904 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Three civil money penalties may be assessed pursuant to section 7(c)(4)(C) in an amount not to exceed the lesser of \$1,795,216 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected.

(5) *Civil money penalties assessed pursuant to section 8(i)(2) of the FDIA.* Tier One civil money penalties may be assessed pursuant to section 8(i)(2)(A) of the FDIA (12 U.S.C. 1818(i)(2)(A)) in an amount not to exceed \$9,819 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to section 8(i)(2)(B) of the FDIA (12 U.S.C. 1818(i)(2)(B)) in an amount not to exceed \$49,096 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,963,870 or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,963,870 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(i) Pursuant to 7(j)(16) of the FDIA (12 U.S.C. 1817(j)(16)), a civil money penalty may be assessed for violations of change in control of insured depository institution provisions pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in this paragraph (d)(5).

(ii) Pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), civil money penalties may be assessed for failure to comply with the requirements of the IBA pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amounts set forth in this paragraph (d)(5).

(iii) Pursuant to section 1120(b) of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3349(b)), where a financial institution seeks, obtains, or gives any

other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally related transaction, a civil money penalty may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in this paragraph (d)(5).

(iv) Pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a civil money penalty may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amount set forth in this paragraph (d)(5).

(v) Civil money penalties may be assessed pursuant to section 8(i)(2) of the FDIA in the amounts set forth in this paragraph (d)(5) for violations of various consumer laws, including, but not limited to, the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.* and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*), the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*), the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*).

(6) *Civil money penalties assessed pursuant to 12 U.S.C. 1820(e) for refusal to allow examination or to provide required information during an examination.* Pursuant to section 10(e)(4) of the FDIA (12 U.S.C. 1820(e)(4)), civil money penalties may be assessed against any affiliate of an insured depository institution that refuses to permit a duly-appointed examiner to conduct an examination or to provide information during the course of an examination as set forth in section 20(b) of the FDIA (12 U.S.C. 1820(b)), in an amount not to exceed \$8,977 for each day the refusal continues.

(7) *Civil money penalties assessed pursuant to 12 U.S.C. 1820(k) for violation of one-year restriction on Federal examiners of financial institutions.* Pursuant to section 10(k) of the FDIA (12 U.S.C. 1820(k)), the Board of Directors or its designee may assess a civil money penalty of up to \$323,027 against any covered former Federal examiner of a financial institution who, in violation of section 10(k) of the FDIA

(12 U.S.C. 1820(k)) and within the one-year period following termination of government service as an employee, serves as an officer, director, or consultant of a financial or depository institution, a holding company, or of any other entity listed in section 10(k) of the FDIA (12 U.S.C. 1820(k)), without the written waiver or permission by the appropriate Federal banking agency or authority under section 10(k)(5) of the FDIA (12 U.S.C. 1820(k)(5)).

(8) *Civil money penalties assessed pursuant to 12 U.S.C. 1828(a) for incorrect display of insurance logo.* Pursuant to section 18(a)(3) of the FDIA (12 U.S.C. 1828(a)(3)), civil money penalties may be assessed against an insured depository institution that fails to correctly display its insurance logo pursuant to that section, in an amount not to exceed \$122 for each day the violation continues.

(9) *Civil money penalties assessed pursuant to 12 U.S.C. 1828(h) for failure to timely pay assessment—(i) In general.* Subject to paragraph (d)(9)(iii) of this section, any insured depository institution that fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(ii) *Exception in case of dispute.* Paragraph (d)(9)(i) of this section shall not apply if—

(A) The failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) The insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(iii) *Special rule for small assessment amounts.* If the amount of the assessment that an insured depository institution fails or refuses to pay is less than \$10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (d)(9)(i) of this section shall not exceed \$122 for each day that such violation continues.

(iv) *Authority to modify or remit penalty.* The Corporation, in the sole discretion of the Corporation, may compromise, modify, or remit any penalty that the Corporation may assess or has already assessed under paragraph (d)(9)(i) of this section upon a finding that good cause prevented the timely payment of an assessment.

(10) *Civil money penalties assessed pursuant to 12 U.S.C. 1829b(j) for recordkeeping violations.* Pursuant to section 19b(j) of the FDIA (12 U.S.C.

1829b(j)), civil money penalties may be assessed against an insured depository institution and any director, officer or employee thereof who willfully or through gross negligence violates or causes a violation of the recordkeeping requirements of that section or its implementing regulations in an amount not to exceed \$20,521 per violation.

(11) *Civil money penalties pursuant to 12 U.S.C. 1832(c) for violation of provisions regarding interest-bearing demand deposit accounts.* Pursuant to 12 U.S.C. 1832(c), any depository institution that violates the prohibition regarding interest-bearing demand deposit accounts shall be subject to a fine of \$2,852 per violation.

(12) *Civil penalties for violations of security measure requirements under 12 U.S.C. 1884.* Pursuant to 12 U.S.C. 1884, an institution that violates a rule establishing minimum security requirements as set forth in 12 U.S.C. 1882, shall be subject to a civil penalty not to exceed \$285 for each day of the violation.

(13) *Civil money penalties assessed pursuant to 12 U.S.C. 1972(2)(F) for prohibited tying arrangements.* Pursuant to the Bank Holding Company Act of 1970, Tier One civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(i) in an amount not to exceed \$9,819 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(ii) in an amount not to exceed \$49,096 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,963,870 for each day during which the violation, practice, or breach continues or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,963,870 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(14) *Civil money penalties assessed pursuant to 12 U.S.C. 3909(d).* Pursuant to the International Lending Supervision Act (ILSA) (12 U.S.C. 3909(d)), civil money penalties may be assessed against any institution or any officer, director, employee, agent or other person participating in the conduct of the affairs of such institution is an amount not to exceed \$2,443 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues.

(15) *Civil money penalties assessed for violations of 15 U.S.C. 78u-2.*

Pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u–2), civil money penalties may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. Tier One civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(1) in an amount not to exceed \$9,239 for a natural person or \$92,383 for any other person for violations set forth in 15 U.S.C. 78u–2(a). Tier Two civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(2) in an amount not to exceed—for each violation set forth in 15 U.S.C. 78u–2(a)—\$92,383 for a natural person or \$461,916 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Tier Three civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(3) for each violation set forth in 15 U.S.C. 78u–2(a), in an amount not to exceed \$184,767 for a natural person or \$923,831 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(16) *Civil money penalties assessed pursuant to 15 U.S.C. 1639e(k) for appraisal independence violations.* Pursuant to section 1472(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Appraisal Independence Rule) (15 U.S.C. 1639e(k)), civil money penalties may be assessed for an initial violation of the Appraisal Independence Rule in an amount not to exceed \$11,279 for each day during which the violation continues and, for subsequent violations, \$22,556 for each day during which the violation continues.

(17) *Civil money penalties assessed for false claims and statements pursuant to 31 U.S.C. 3802.* Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than \$11,181 per claim or statement may be assessed for violations involving false claims and statements.

(18) *Civil money penalties assessed for violations of 42 U.S.C. 4012a(f).* Pursuant to the Flood Disaster Protection Act (FDPA) (42 U.S.C. 4012a(f)), civil money penalties may be assessed against any regulated lending institution that engages in a pattern or practice of violations of the FDPA in an amount not to exceed \$2,133 per violation.

Dated at Washington, DC on December 19, 2017.

By order of the Board of Directors.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2018–00403 Filed 1–11–18; 8:45 am]

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## **BUREAU OF CONSUMER FINANCIAL PROTECTION**

### **12 CFR Part 1083**

#### **Civil Penalty Inflation Adjustments**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is adjusting for inflation the maximum amount of each civil penalty within the Bureau’s jurisdiction. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). The inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

**DATES:** This final rule is effective January 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** Monique Chenault, Paralegal Specialist, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552, at (202) 435–7700.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>1</sup> as amended by the Debt Collection Improvement Act of 1996<sup>2</sup> and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act),<sup>3</sup> directs Federal agencies to adjust for inflation the civil penalty amounts within their jurisdiction not later than July 1, 2016, and then not later than January 15 every year thereafter.<sup>4</sup> 28

<sup>1</sup> Public Law 101–410, 104 Stat. 890.

<sup>2</sup> Public Law 104–134, section 31001(s)(1), 110 Stat. 1321, 1321–373.

<sup>3</sup> Public Law 114–74, section 701, 129 Stat. 584, 599.

<sup>4</sup> Section 1301(a) of the Federal Reports Elimination Act of 1998, Public Law 105–362, 112 Stat. 3293, also amended the Inflation Adjustment Act by striking section 6, which contained annual

U.S.C. 2461 note. Each agency was required to make the 2016 one-time catch-up adjustments through an interim final rule published in the **Federal Register**. On June 14, 2016, the Bureau published its interim final rule to make the initial catch-up adjustments to civil penalties within the Bureau’s jurisdiction.<sup>5</sup> The June 2016 interim final rule created a new part 1083 and in § 1083.1 established the inflation-adjusted maximum amounts for each civil penalty within the Bureau’s jurisdiction.<sup>6</sup> The Inflation Adjustment Act also requires subsequent adjustments to be made annually, not later than January 15, and notwithstanding section 553 of the Administrative Procedure Act (APA).<sup>7</sup>

Specifically, Federal agencies are directed to adjust annually each civil penalty provided by law within the jurisdiction of the agency by the “cost-of-living adjustment.”<sup>8</sup> For annual adjustments after the initial catch up adjustments, the “cost-of-living adjustment” is defined as the percentage (if any) by which the Consumer Price Index for All Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, exceeds the CPI–U for October of the prior year.<sup>9</sup> The Director of the Office of Management and Budget (OMB) is required to issue guidance (OMB Guidance) every year by December 15 to agencies on implementing the annual civil penalty inflation adjustments.<sup>10</sup> Pursuant to the Inflation Adjustment Act and OMB Guidance, agencies must apply the multiplier reflecting the “cost-of-living adjustment” to the current penalty amount and then round that amount to the nearest dollar to determine the annual adjustments.<sup>11</sup>

For the 2018 annual adjustment, the multiplier reflecting the “cost-of-living

reporting requirements, and redesignating section 7 as section 6, but did not alter the civil penalty adjustment requirements.

<sup>5</sup> 81 FR 38569 (June 14, 2016). Although the Bureau was not obligated to solicit comments for the interim final rule, the Bureau invited public comment and received none.

<sup>6</sup> See 12 CFR 1083.1.

<sup>7</sup> Inflation Adjustment Act section 4, *codified* at 28 U.S.C. 2461 note.

<sup>8</sup> Inflation Adjustment Act sections 4 and 5, *codified* at 28 U.S.C. 2461 note.

<sup>9</sup> Inflation Adjustment Act sections 3 and 5, *codified* at 28 U.S.C. 2461 note.

<sup>10</sup> Inflation Adjustment Act section 7, *codified* at 28 U.S.C. 2461 note.

<sup>11</sup> Inflation Adjustment Act section 5, *codified* at 28 U.S.C. 2461 note; Memorandum to the Exec. Dep’t & Agencies from Mick Mulvaney, Director, Office of Mgmt. & Budget (Dec. 15, 2017), *available* at <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>.