

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 30

[Docket No. FR-5490-F-01]

RIN 2501-AD52

**Adjustment of Civil Money Penalty
Amount for Inflation**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD is issuing this final rule to adjust for inflation the civil money penalty for failure to disclose lead-based paint hazards. This adjustment for inflation is required by the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Robert F. Weisberg, Acting Director, Lead Programs Enforcement Division, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW., Room 8236, Washington, DC 20410-3000, telephone number 202-402-7687 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note) (DCIA), each federal agency is required to adjust, by regulation, each civil money penalty provided by law within the jurisdiction of that agency. Each such regulation must be published in the **Federal Register**.

Section 1018 of Title X of the Housing and Community Development Act of 1992 (42 U.S.C. 4852d) (Title X) and its implementing regulations at 24 CFR part 35, subpart A, requires disclosure of lead-based paint in certain sale and leasing transactions of pre-1978 housing ("Lead Disclosure Rule"). Section 1018(b)(1) of Title X (42 U.S.C. 4852d(b)(1)), referencing Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545), provides a monetary penalty for violations of the Lead Disclosure Rule. HUD's regulations at 24 CFR 30.65(b) currently set the maximum penalty for such violations at \$11,000.

The formula for determining the specific adjustment of civil money penalties for inflation is nondiscretionary and is determined by

section 5 of the FCPIAA. The adjustment is based on the change in the cost-of-living increase, which is defined in the statute as based on the percentage change, if any, in the Consumer Price Index from June of the calendar year in which the civil money penalty was last set to June of the calendar year preceding the adjustment. The statute also states specific rules for rounding, and provides that adjusted civil money penalties can only be applied prospectively; that is, only to violations that occur after the date the increase takes effect.

II. This Final Rule

This final rule applies the statutory formula to the current \$11,000 maximum penalty to arrive at the updated maximum penalty. Applying the statutory formula to determine the amount of the adjustment is a four-step process. The first step entails determining the inflation adjustment factor. This is done by calculating the percentage increase by which the Consumer Price Index for all urban consumers (CPI-U) for the month of June of the calendar year preceding the adjustment (*i.e.*, June 2010) exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted (*i.e.*, June 1996) (the civil monetary penalty for the Lead Disclosure Rule was last set on September 24, 1996, at 61 FR 50207). CPI-U values are available at a Department of Labor, Bureau of Labor Statistics file transfer protocol site, <ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.txt>. For June 2010 and June 1996, the CPI-U values are 217.965 and 156.7, respectively. Applying these values, the inflation factor is $(217.965/156.7) - 1 = 0.39097$ or 39.097 percent.

Once the inflation adjustment factor is determined, the second step is to multiply the inflation adjustment factor by the current civil penalty amount to calculate the inflation increase. The inflation increase is \$4,301 (*i.e.*, $0.39097 \times \$11,000$). The third step is to round the inflation increase according to Section 5(a) of the FCPIAA as amended by the DCIA. Under Section 5(a), for penalties greater than \$10,000 but less than or equal to \$100,000, the increase must be rounded to the nearest multiple of \$5,000. As such, the inflation increase here of \$4,301 must be rounded to \$5,000.

Once the inflation increase has been rounded, the last step is to add the rounded inflation increase to the current civil penalty amount to obtain the new, inflation-adjusted civil penalty amount. In this case, that new amount is \$16,000

(*i.e.*, the current \$11,000, plus \$5,000 to account for inflation).

Accordingly, this rule amends 24 CFR 30.65(b) to raise the maximum penalty that HUD may impose upon those individuals or entities who violate the Lead Disclosure Rule, from \$11,000 to \$16,000.

Section 1018(b)(5) of Title X also authorizes the Environmental Protection Agency (EPA) to enforce Section 1018 (42 U.S.C. 4852d) requirements pursuant to Section 409 of the Toxic Substance and Control Act (TSCA) (15 U.S.C. 2689). This final rule sets the HUD penalty at the level already established by EPA (see 40 CFR 19.4).

III. Findings and Certifications

Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."

HUD finds that good cause exists to publish this rule for effect without soliciting public comment, on the basis that prior public procedure is unnecessary. This final rule merely follows the statutory directive in the FCPIAA to make periodic increases in HUD's civil money penalties by applying the adjustment formula established in the statute. Accordingly, because calculation of the increases is mandated by statute, HUD exercises no discretion or any policy judgment in updating the regulations to reflect the maximum allowable penalties derived from application of the statutory instructions. HUD emphasizes that this rule addresses only the matter of the calculation of the maximum civil money penalty for the violations described in the regulations. This rule does not address the issue of the Secretary's discretion to impose or not to impose a penalty, nor the procedures that HUD must follow in initiating a civil money penalty action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements. Since this rule is published under an exception to notice

and comment rulemaking requirements, the Regulatory Flexibility Act does not apply.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Furthermore, this rule is a statutorily required establishment of a rate and cost determination and related external administrative requirements or procedures that do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(1) and (c)(6), this rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from

publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments and does not preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects in 24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and community development, Loan

programs-housing and community development, Mortgages, Penalties.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 30 as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 1. The authority citation for 24 CFR part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, and 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 2. Revise § 30.65(b) to read as follows:

§ 30.65 Failure to disclose lead-based paint hazards.

* * * * *

(b) *Amount of penalty.* The maximum penalty is \$16,000 for each violation.

Dated: June 11, 2011.

Shaun Donovan,

Secretary.

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