

Rules and Regulations

Federal Register

Vol. 85, No. 9

Tuesday, January 14, 2020

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R-1693]

RIN 7100AF-69

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the “Board”) is issuing a final rule amending its rules of practice and procedure to adjust the amount of each civil money penalty (“CMP”) provided by law within its jurisdiction to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective on January 14, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas O. Kelly, Senior Counsel (202-974-7059), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202-263-4869.

SUPPLEMENTARY INFORMATION:

Federal Civil Penalties Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (“FCPIA Act”), requires Federal agencies to adjust, by regulation, the CMPs within their jurisdiction to account for inflation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “2015 Act”) ¹ amended the FCPIA Act to require Federal agencies to make annual adjustments not later than January 15 of every year.² The Board is now issuing a

new final rule to set the CMP levels pursuant to the required annual adjustment for 2020. The Board will apply these adjusted maximum penalty levels to any penalties assessed on or after January 14, 2020, whose associated violations occurred on or after November 2, 2015. Penalties assessed for violations occurring prior to November 2, 2015 will be subject to the amounts set in the Board’s 2012 adjustment pursuant to the FCPIA Act.³

Under the 2015 Act, the annual adjustment to be made for 2020 is the percentage by which the Consumer Price Index for the month of October 2019 exceeds the Consumer Price Index for the month of October 2018. On December 16, 2019, as directed by the 2015 Act, the Office of Management and Budget (OMB) issued guidance to affected agencies on implementing the required annual adjustment which included the relevant inflation multiplier.⁴ Using OMB’s multiplier, the Board calculated the adjusted penalties for its CMPs, rounding the penalties to the nearest dollar.⁵

Administrative Procedure Act

The 2015 Act states that agencies shall make the annual adjustment “notwithstanding section 553 of title 5, United States Code.” Therefore, this rule is not subject to the provisions of the Administrative Procedure Act (the “APA”), 5 U.S.C. 553, requiring notice, public participation, and a deferred effective date.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires a regulatory flexibility analysis only for rules for which an agency is required to publish a general notice of proposed rulemaking. Because the 2015 Act states that agencies’ annual adjustments are to be made notwithstanding section 553 of title 5 of United States Code—the APA

³ 77 FR 68680 (Nov. 16, 2012).

⁴ OMB Memorandum M-20-05, *Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 16, 2019).

⁵ Under the 2015 Act and implementing OMB guidance, agencies are not required to make an adjustment to a CMP if, during the 12 months preceding the required adjustment, such penalty increased due to a law other than the 2015 Act by an amount greater than the amount of the required adjustment. No other laws have adjusted the CMPs within the Board’s jurisdiction during the preceding 12 months.

section requiring notice of proposed rulemaking—the Board is not publishing a notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act

There is no collection of information required by this final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 263 to read as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 334, 347a, 504, 505, 1464, 1467, 1467a, 1817(j), 1818, 1820(k), 1829, 1831o, 1831p–1, 1832(c), 1847(b), 1847(d), 1884, 1972(2)(F), 3105, 3108, 3110, 3349, 3907, 3909(d), 4717; 15 U.S.C. 21, 781(i), 78o–4, 78o–5, 78u–2; 1639e(k); 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 2. Section 263.65 is revised to read as follows:

§ 263.65 Civil money penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, the Board has set forth in paragraph (b) of this section the adjusted maximum amounts for each civil money penalty provided by law within the Board’s jurisdiction. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The adjusted civil money penalties apply only to penalties assessed on or after January 14, 2020, whose associated violations occurred on or after November 2, 2015.

(b) *Maximum civil money penalties.* The maximum (or, in the cases of 12 U.S.C. 334 and 1832(c), fixed) civil money penalties as set forth in the

¹ Public Law 114–74, 129 Stat. 599 (2015) (codified at 28 U.S.C. 2461 note).

² 28 U.S.C. 2461 note, sec. 4(b)(1).

referenced statutory sections are set forth in the table in this paragraph (b).

TABLE 1 TO PARAGRAPH (b)

| Statute | Adjusted civil money penalty |
|--|------------------------------|
| 12 U.S.C. 324: | |
| <i>Inadvertently late or misleading reports, inter alia</i> | \$4,098 |
| <i>Other late or misleading reports, inter alia</i> | 40,979 |
| <i>Knowingly or recklessly false or misleading reports, inter alia</i> | 2,048,915 |
| 12 U.S.C. 334 | 297 |
| 12 U.S.C. 374a | 297 |
| 12 U.S.C. 504: | |
| <i>First Tier</i> | 10,245 |
| <i>Second Tier</i> | 51,222 |
| <i>Third Tier</i> | 2,048,915 |
| 12 U.S.C. 505: | |
| <i>First Tier</i> | 10,245 |
| <i>Second Tier</i> | 51,222 |
| <i>Third Tier</i> | 2,048,915 |
| 12 U.S.C. 1464(v)(4) | 4,098 |
| 12 U.S.C. 1464(v)(5) | 40,979 |
| 12 U.S.C. 1464(v)(6) | 2,048,915 |
| 12 U.S.C. 1467a(i)(2) | 51,222 |
| 12 U.S.C. 1467a(i)(3) | 51,222 |
| 12 U.S.C. 1467a(r): | |
| <i>First Tier</i> | 4,098 |
| <i>Second Tier</i> | 40,979 |
| <i>Third Tier</i> | 2,048,915 |
| 12 U.S.C. 1817(j)(16): | |
| <i>First Tier</i> | 10,245 |
| <i>Second Tier</i> | 51,222 |
| <i>Third Tier</i> | 2,048,915 |
| 12 U.S.C. 1818(i)(2): | |
| <i>First Tier</i> | 10,245 |
| <i>Second Tier</i> | 51,222 |
| <i>Third Tier</i> | 2,048,915 |
| 12 U.S.C. 1820(k)(6)(A)(ii) | 337,016 |
| 12 U.S.C. 1832(c) | 2,976 |
| 12 U.S.C. 1847(b) | 51,222 |
| 12 U.S.C. 1847(d): | |
| <i>First Tier</i> | 4,098 |
| <i>Second Tier</i> | 40,979 |
| <i>Third Tier</i> | 2,048,915 |
| 12 U.S.C. 1884 | 297 |
| 12 U.S.C. 1972(2)(F): | |
| <i>First Tier</i> | 10,245 |
| <i>Second Tier</i> | 51,222 |
| <i>Third Tier</i> | 2,048,915 |
| 12 U.S.C. 3110(a) | 46,825 |
| 12 U.S.C. 3110(c): | |
| <i>First Tier</i> | 3,747 |
| <i>Second Tier</i> | 37,458 |
| <i>Third Tier</i> | 1,872,957 |
| 12 U.S.C. 3909(d) | 2,549 |
| 15 U.S.C. 78u-2(b)(1): | |
| <i>For a natural person</i> | 9,639 |
| <i>For any other person</i> | 96,384 |
| 15 U.S.C. 78u-2(b)(2): | |
| <i>For a natural person</i> | 96,384 |
| <i>For any other person</i> | 481,920 |
| 15 U.S.C. 78u-2(b)(3): | |
| <i>For a natural person</i> | 192,768 |
| <i>For any other person</i> | 963,837 |
| 15 U.S.C. 1639e(k)(1) | 11,767 |
| 15 U.S.C. 1639e(k)(2) | 23,533 |
| 42 U.S.C. 4012a(f)(5) | 2,226 |

By order of the Board of Governors of the Federal Reserve System, under delegated authority, January 6, 2020.

Margaret McCloskey Shanks,
Deputy Secretary of the Board.

[FR Doc. 2020-00161 Filed 1-13-20; 8:45 am]

BILLING CODE 6210-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

RIN 3133-AF09

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustments, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective January 14, 2020.

FOR FURTHER INFORMATION CONTACT: Gira Bose, Staff Attorney, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518-6562.

SUPPLEMENTARY INFORMATION:

- I. Legal Background
- II. Calculation of Adjustments
- III. Regulatory Procedures

I. Legal Background

A. Statutory Requirements

Every Federal agency, including the NCUA, is required by law to adjust its maximum CMP amounts each year to account for inflation. Prior to this being an annual requirement, agencies were required to adjust their CMPs at least once every four years.

The four-year requirement stemmed from the Debt Collection Improvement Act of 1996,¹ which amended the Federal Civil Penalties Inflation Adjustment Act of 1990.²

The annual requirement stems from the Bipartisan Budget Act of 2015,³

which contains the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 amendments).⁴ This legislation provided for an initial “catch-up” adjustment of CMPs in 2016, followed by annual adjustments. The catch-up adjustment reset CMP maximum amounts by setting aside the inflation adjustments that agencies made in prior years and instead calculated inflation with reference to the year when each CMP was enacted or last modified by Congress. Agencies were required to publish their catch-up adjustments in an interim final rule by July 1, 2016 and make them effective by August 1, 2016.⁵ The NCUA complied with these requirements in a June 2016 interim final rule, followed by a November 2016 final rule to confirm the adjustments as final.⁶

The 2015 amendments also specified how agencies must conduct annual inflation adjustments after the 2016 catch-up adjustment. Following the catch-up adjustment, agencies must make the required adjustments and publish them in the **Federal Register** by January 15 each year.⁷ For 2017, the NCUA issued an interim final rule on January 6, 2017,⁸ followed by a final rule issued on June 23, 2017.⁹ For 2018 and 2019, the NCUA issued a final rule in each year to satisfy the agency’s requirement for the 2018 and 2019 annual adjustments.¹⁰ This final rule satisfies the agency’s requirement for the 2020 annual adjustment.

The law provides that the adjustments shall be made notwithstanding the section of the Administrative Procedure Act (APA) that requires prior notice and public comment for agency rulemaking.¹¹ The 2015 amendments also specify that each CMP maximum must be increased by the percentage by which the consumer price index for urban consumers (CPI-U)¹² for October of the year immediately preceding the year the adjustment is made exceeds the CPI-U for October of the prior year.¹³

⁴ 129 Stat. 599.

⁵ Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

⁶ 81 FR 40152 (June 21, 2016); 81 FR 78028 (Nov. 7, 2016).

⁷ Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

⁸ 82 FR 7640 (Jan. 23, 2017).

⁹ 82 FR 29710 (June 30, 2017).

¹⁰ 83 FR 2029 (Jan. 16, 2018); 84 FR 2055 (Feb. 6, 2019).

¹¹ Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

¹² This index is published by the Department of Labor, Bureau of Labor Statistics, and is available at its website: <http://www.bls.gov/cpi/>.

¹³ Public Law 114-74, Sec. 701(b)(2)(B), 129 Stat. 584, 600 (Nov. 2, 2015).

For example, for the adjustment to be made in 2020, an agency must compare the October 2018 and 2019 CPI-U figures.

An annual adjustment under the 2015 amendments is not required if a CMP has been amended in the preceding 12 months pursuant to other authority. Specifically, the statute provides that an agency is not required to make an annual adjustment to a CMP if in the preceding 12 months it has been increased by an amount greater than the annual adjustment required by the 2015 amendments.¹⁴ The NCUA did not make any adjustments in the preceding 12 months pursuant to other authority, therefore, this rulemaking adjusts the NCUA’s CMPs pursuant to the 2015 amendments.

B. Application to the 2020 Adjustments and Office of Management and Budget Guidance

This section applies the statutory requirements and the Office of Management and Budget’s (OMB) guidance to the NCUA’s CMPs, and sets forth the Board’s calculation of the 2020 adjustments.

The 2015 amendments directed OMB to issue guidance to agencies on implementing the inflation adjustments.¹⁵ OMB is required to issue its guidance each December and, with respect to the 2020 annual adjustment, did so on December 16, 2019.¹⁶ For 2020, Federal agencies must adjust the maximum amounts of their CMPs by the percentage by which the October 2019 CPI-U (257.346) exceeds the October 2018 CPI-U (252.885). The resulting increase can be expressed as an inflation multiplier (1.01764) to apply to each current CMP maximum amount to determine the adjusted maximum. The OMB guidance also addresses rulemaking procedures and agency reporting and oversight requirements for CMPs.¹⁷

The table below presents the adjustment calculations. The current maximums are found at 12 CFR 747.1001, as adjusted by the final rule that the Board approved in January 2019. This amount is multiplied by the inflation multiplier to calculate the new maximum in the far right column. Only these adjusted maximum amounts, and not the calculations, will be codified at

¹⁴ Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 600 (Nov. 2, 2015).

¹⁵ Public Law 114-74, Sec. 701(b)(4), 129 Stat. 584, 601 (Nov. 2, 2015).

¹⁶ See OMB Memorandum M-20-05, Implementation of Penalty Inflation Adjustments for 2020, pursuant to the 2015 amendments (Dec. 16, 2019).

¹⁷ Id.

¹ Public Law 104-134, Sec. 31001(s), 110 Stat. 1321-373 (Apr. 26, 1996). The law is codified at 28 U.S.C. 2461 note.

² Public Law 101-410, 104 Stat. 890 (Oct. 5, 1990), codified at 28 U.S.C. 2461 note.

³ Public Law 114-74, 129 Stat. 584 (Nov. 2, 2015).