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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Civil Monetary Penalty Inflation Adjustment

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of civil monetary penalties (CMPs) in regulations maintained and enforced by the Merit Systems Protection Board (MSPB) with an annual adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) and Office of Management and Budget (OMB) guidance.

DATES: This final rule is effective on March 4, 2020.

FOR FURTHER INFORMATION CONTACT: Jennifer Everling, Acting Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419; Phone: (202) 653–7200; Fax: (202) 653–7130; or email: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Public Law 101–410, provided for the regular evaluation of CMPs by Federal agencies. Periodic inflationary adjustments of CMPs ensure that the consequences of statutory violations adequately reflect the gravity of such offenses and that CMPs are properly accounted for and collected by the Federal Government. In April 1996, the 1990 Act was amended by the Debt Collection Improvement Act of 1996 (the 1996 Act), Public Law 104–134, requiring Federal agencies to adjust their CMPs at least once every four years. However, because inflationary adjustments to CMPs were statutorily capped at ten percent of the maximum penalty amount, but only required to be calculated every four years, CMPs in many cases did not correspond with the true measure of inflation over the preceding four-year period, leading to a decline in the real value of the penalty. To remedy this decline, the 2015 Act (section 701 of Pub. L. 114–74) requires agencies to adjust CMP amounts with annual inflationary adjustments through a rulemaking using a methodology mandated by the legislation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties.

A civil monetary penalty is ''any penalty, fine, or other sanction'' that: (1) ''is for a specific amount'' or ''has a maximum amount'' under Federal law; and (2) a Federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action in the Federal courts.'' 28 U.S.C. 2461 note.

The MSPB is authorized to assess CMPs pursuant to 5 U.S.C. 1215(a)(3) and 5 U.S.C. 7326 in disciplinary actions brought by the Special Counsel. The corresponding MSPB regulation for both CMPs is 5 CFR 1201.126(a). As required by the 2015 Act, and pursuant to guidance issued by the OMB, the MSPB is now making an annual adjustment for 2020, according to the prescribed formulas.

II. Calculation of Adjustment

The CMP listed in 5 U.S.C. 1215(a)(3) was established in 1978 with the enactment of the Civil Service Reform Act of 1978 (CSRA), Public Law 95–454, section 202(a), 92 Stat. 1121–30 (Oct. 13, 1978), and originally codified at 5 U.S.C. 1207(b). That CMP was last amended by section 106 of the Whistleblower Protection Enhancement Act of 2012, Public Law 112–199, 12 Stat. 1468 (Nov. 27, 2012), now codified at 5 U.S.C. 1215(a)(3), which provided for a CMP ''not to exceed $1,000.'' The CMP authorized in 5 U.S.C. 7326 was established in 2012 by section 4 of the Hatch Act Modernization Act of 2012 (Hatch Act), Public Law 112–230, 126 Stat. 1617 (Dec. 28, 2012), which provided for a CMP ''not to exceed $1,000.'' On February 22, 2019, the MSPB issued a final rule which increased the maximum CMP allowed under both 5 U.S.C. 1215(a)(3) and 5 U.S.C. 7326 to $1,093 for the year 2019. *See* 84 FR 5583 (Feb. 22, 2019). This increase reflected the annual increase for the year 2019 mandated by the 2015 Act.

On December 16, 2019, OMB issued guidance on calculating the annual inflationary adjustment for 2020. *See* Memorandum from Russell T. Vought, Acting Dir., OMB, to Heads of Executive Departments and Agencies re: Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–20–05 (Dec. 16, 2019). Therein, OMB notified agencies that the annual adjustment multiplier for 2020, based on the Consumer Price Index for All Urban Consumers (CPI–U), is 1.01764 and that the 2020 annual adjustment amount is obtained by multiplying the 2019 penalty amount by the 2020 annual adjustment multiplier, and rounding to the nearest dollar. Therefore, the new maximum penalty under the CSRA and the Hatch Act is $\$1{,}093 \times 1.01764 = \$1{,}112.28$, which rounds to $1,112.

III. Effective Date of Penalties

The revised CMP amounts will go into effect on March 4, 2020. All violations for which CMPs are assessed after the effective date of this rule will be assessed at the adjusted penalty level regardless of whether the violation occurred before the effective date.

IV. Procedural Requirements

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the MSPB has determined that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because Congress has specifically exempted agencies from these requirements when implementing the 2015 Act. The 2015 Act explicitly requires the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553, the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment. It is also in the public interest that the adjusted rates for CMPs under the CSRA and the Hatch Act become effective as soon as possible to maintain their effective deterrent effect.

B. Regulatory Impact Analysis: E.O. 12866

The MSPB has determined that this is not a significant regulatory action under E.O. 12866. Therefore, no regulatory impact analysis is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). As discussed above, the 2015 Act does not require agencies to first publish a proposed rule when adjusting CMPs within their jurisdiction. Thus, the RFA does not apply to this final rule.

D. Paperwork Reduction Act

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

E. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

For the reasons set forth above, 5 CFR part 1201 is amended as follows:

PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

§ 1201.126 [Amended]

■ 2. Section 1201.126 is amended in paragraph (a) by removing ''$1,093'' and adding in its place ''$1,112.''

Jennifer Everling,

Acting Clerk of the Board.

[FR Doc. 2020–03725 Filed 3–3–20; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AF09

Securitization Safe Harbor Rule

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its securitization safe harbor rule, which relates to the treatment of financial assets transferred in connection with a securitization transaction, in order to eliminate a requirement that the securitization documents require compliance with Regulation AB of the Securities and Exchange Commission in circumstances where Regulation AB by its terms would not apply to the issuance of obligations backed by such financial assets.

DATES: Effective May 4, 2020.

FOR FURTHER INFORMATION CONTACT: Phillip E. Sloan, Counsel, Legal Division, (703) 562–6137, *psloan@FDIC.gov;* George H. Williamson, Manager, Division of Resolutions and Receiverships, (571) 858–8199, *GeWilliamson@FDIC.gov.*

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of this final rule (final rule) is to remove an unnecessary barrier to securitization transactions, in particular the securitization of residential mortgages, without adverse effects on the safety and soundness of insured depository institutions (IDIs).

The FDIC is revising the Securitization Safe Harbor Rule by removing a disclosure requirement that was established by the Securitization Safe Harbor Rule when it was amended and restated in 2010.[1] As used in this final rule, ''Securitization Safe Harbor Rule'' refers to the FDIC's securitization safe harbor rule titled ''Treatment of financial assets transferred in connection with a securitization or participation'' and codified at 12 CFR 360.6.

The Securitization Safe Harbor Rule addresses circumstances that may arise if the FDIC is appointed receiver or conservator for an IDI that has sponsored one or more securitization transactions.[2] If a securitization satisfies one of the sets of conditions established by the Securitization Safe Harbor Rule, the Rule provides that, depending on which set of conditions is satisfied, either (i) in the exercise of its authority to repudiate or disclaim contracts, the FDIC shall not reclaim, recover or recharacterize as property of the institution or receivership the financial assets transferred as part of the securitization transaction, or (ii) if the FDIC repudiates the securitization agreement pursuant to which financial assets were transferred and does not pay damages within a specified period, or if the FDIC is in monetary default under a securitization for a specified period due to its failure to pay or apply collections received by it under the securitization documents, certain remedies will be available to investors on an expedited basis.

The FDIC is removing the requirement of the Securitization Safe Harbor Rule that the documents governing a securitization transaction require compliance with Regulation AB of the Securities and Exchange Commission, 17 CFR part 229, subpart 229.1100 (Regulation AB) in circumstances where, under the terms of Regulation AB itself, Regulation AB is not applicable to the transaction. As discussed below, Regulation AB imposes significant asset-level disclosure requirements in connection with registered securitization issuances. While the SEC has not applied the Regulation AB disclosure requirements to private placement transactions, the Securitization Safe Harbor Rule has required (except for certain grandfathered transactions) that these disclosures be required as a condition for eligibility for the Securitization Safe Harbor Rule's benefits. The net effect appears to have been a disincentive for IDIs to sponsor securitizations of residential mortgages that are compliant with the Rule.

The FDIC's rationale for establishing the disclosure requirements in 2010 was to reduce the likelihood of structurally opaque and potentially risky mortgage securitizations or other securitizations that could pose risks to IDIs. In the ensuing years, a number of other regulatory changes have been implemented that have also contributed to the same objective. As a result, it is no longer clear that compliance with the public disclosure requirements of Regulation AB in a private placement or in an issuance not otherwise required to be registered is needed to achieve the

[1] The prior version of the Securitization Safe Harbor Rule, which the Securitization Safe Harbor Rule amended and restated, was adopted in 2000.

[2] The Securitization Safe Harbor Rule also addresses transfers of assets in connection with participation transactions. Since the revision included in the Rule does not address participations, this release does not include further reference to participations.