

(i) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when that person(s) can be safely contacted by OSC;

(ii) The department or agency, location and organizational unit complained of; and

(iii) A statement as to whether the filer consents to the disclosure of his or her identity to the agency by OSC in connection with any referral to the appropriate agency.

Dated: October 25, 2000.

Elaine Kaplan,

Special Counsel.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064-AC45

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 requires all federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. The FDIC last adjusted its CMP statutes in 1996. The FDIC is issuing this final rule to implement the required adjustments to its CMP statutes.

EFFECTIVE DATE: October 31, 2000.

FOR FURTHER INFORMATION CONTACT: John T. Mahshie, Counsel, (202) 898-3503, Compliance and Enforcement Section, Legal Division, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Improvement Act (DCIA) (Pub. L. 104-134) amended section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note), to require the head of each Federal agency to enact regulations within 180 days of the enactment of the DCIA and at least once every four years thereafter, that adjust each CMP

provided by law within the jurisdiction of the agency (with the exception of certain specifically listed statutes) by the inflation adjustment formula set forth in section 5(b) of the Inflation Adjustment Act.

To satisfy the requirements of the DCIA, the FDIC is amending those sections of part 308 of its regulations pertaining to its Rules of Practice and Procedure which address CMPs. The amount of each CMP which the FDIC has jurisdiction to impose has been increased according to the prescribed formula. The penalties were last adjusted in 1996. (61 FR 57987). Any increase in penalty amounts under the DCIA shall apply only to violations which occur after the effective date of the increase.

Summary of Calculation

The Inflation Adjustment Act requires that each CMP amount be increased by the "cost of living" adjustment, which is defined as the percentage by which the Consumer Price Index (CPI-U)¹ for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Any increase is to be rounded to the nearest multiple of \$10 in the case of penalties less than or equal to \$100; multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and multiple of \$25,000 in the case of penalties greater than \$200,000. Under the DCIA, the first adjustment may not exceed ten percent of the current penalty amount.

Example

To explain the inflation adjustment calculation for CMP amounts that were last adjusted in 1996, we will use the following example. Under 12 U.S.C. 1818(i), as adjusted under 12 CFR 308.132(c), the FDIC may impose a daily

¹ The CPI-U is compiled by the Bureau of Statistics of the Department of Labor. To calculate the adjustment, the FDIC used the Department of Labor, Bureau of Labor Statistics B All Urban Consumers tables to get the CPI-U values.

maximum Tier Three CMP not to exceed \$1,100,000 for violating certain laws.

We first determine the appropriate CPI-U. The statute requires the FDIC to use the CPI-U for June of the calendar year preceding the year of adjustment. Because we are adjusting CMPs in 2000, we use the CPI-U for June 1999, which was 166.2. We must also determine the CPI-U for June of the year the CMP was last set by law or adjusted for inflation. Because the FDIC last adjusted the CMPs under 12 U.S.C. 1818 in 1996, we use the CPI-U for June 1996, which was 156.7.

We next calculate the cost of living adjustment or inflation factor. To do this, we divide the CPI-U for June 1999 (166.2) by the CPI-U for June 1996 (156.7). The result is 1.061 (*i.e.*, a 6.1 percent increase).

Third, we calculate the raw inflation adjustment. To do this, multiply the maximum penalty amounts by the inflation factor. In our example, \$1,100,000 multiplied by the inflation factor of 1.061 equals \$1,167,100.

Fourth, we round the raw inflation amounts according to the rounding rules in section 5(a) of the Inflation Adjustment Act. Since we round only the increased amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is \$67,100 (*i.e.*, \$1,167,100 less \$1,100,000). Under the rounding rules, if the penalty is greater than \$200,000, we round the increase to the nearest multiple of \$25,000. Therefore, the maximum penalty increase for our example is \$75,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, \$1,100,000 plus \$75,000 yields a maximum inflation adjusted penalty amount of \$1,175,000.

Summary of Adjustments

Under the Inflation Adjustment Act, the FDIC must adjust for inflation the civil monetary penalties in statutes that it administers. The following chart displays the adjusted civil money penalty amounts for the enumerated statutes. The amounts in this chart apply to violations that occur after October 31, 2000:

U.S. Code citation	Current maximum amount	New maximum amount
12 U.S.C. 1817(a):		
Tier One penalties	2,000	2,200
Tier Two penalties	22,000	22,000
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 1817(c):		
Tier One penalties	2,000	2,200
Tier Two penalties	22,000	22,000
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 1817(j):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 1818(i)(2):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 1820(e)(4)	5,500	5,500
12 U.S.C. 1828(a)(3)	110	110
12 U.S.C. 1828(h)	110	110
12 U.S.C. 1829b(j)	11,000	11,000
12 U.S.C. 1832(c)	1,100	1,100
12 U.S.C. 1884	110	110
12 U.S.C. 1972(2)(F):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 3108(b):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 3349(b):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
12 U.S.C. 3909(d)	1,100	1,100
12 U.S.C. 4717(b):		
Tier One penalties	5,500	5,500
Tier Two penalties	27,500	27,500
Tier Three penalties	1,100,000	1,175,000
15 U.S.C. 78u-2	5,500	5,500
	55,000	60,000
	55,000	60,000
	110,000	120,000
	275,000	300,000
	550,000	575,000
31 U.S.C. 3802	5,500	5,500
42 U.S.C. 4012a(f)	350/105,000	350/115,000

II. Section-by-Section Analysis

Section 308.116(b)

Section 308.116(b) pertains to the amount of any CMP that may be assessed for violations of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). This section has been amended by increasing the Tier Three penalty amount from \$1,100,000 for each day the violation continues to \$1,175,000 for each day the violation continues or, in the case of a depository institution, increasing the penalty from an amount not to exceed the lesser of \$1,100,000 or one percent of the total assets of the institution for each day the violation continues to the lesser of \$1,175,000 or one percent of the total assets of the institution for each day the violation continues.

Section 308.132

Section 308.132 pertains to the manner in which the FDIC assesses CMPs. Paragraph (c)(2) of that section pertains to the CMPs imposed pursuant to section 7(a) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1817(a)) for the late filing of a bank's Reports of Condition and Income (Call Reports) or for the submission of false or misleading Call Reports or information. Paragraph (c)(2)(i) has been amended to reflect the increase in the Tier One penalty amount from a maximum of \$2,000 per day to \$2,200 per day for each day the failure to file continues. Paragraph (c)(ii)(3)(C) has been amended to increase the Tier Three penalty amount from a maximum of the lesser of \$1,100,000 or one percent of the total assets of the

institution for each day the violation continues to a maximum of the lesser of \$1,175,000 or one percent of the total assets of the institution for each day the violation continues.

Paragraph (c)(2)(iii) pertains to penalties for the submission of false or misleading Call Reports or information. Paragraph (c)(2)(iii)(A) of that section has been amended to reflect the increase in Tier One penalty amounts from a maximum of \$2,000 per day for each day the information is not corrected to a maximum of \$2,200 per day for each day the information is not corrected. Paragraph (c)(2)(iii)(C) of that section reflects the increase in Tier Three penalties from an amount not to exceed the lesser of \$1,100,000 or one percent of the total assets of the institution for each day the information is not

corrected to an amount not to exceed the lesser of \$1,175,000 or one percent of the total assets of such institution for each day the information is not corrected. No change has been made to Tier Two penalty amounts by the DCIA.

Paragraph (c)(3)(i) sets forth the increases for CMPs assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). A Tier Three CMP which may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) will increase from an amount not to exceed, in the case of any person other than an insured depository institution \$1,100,000 or, in the case of any insured depository institution, the amount will increase from an amount not to exceed the lesser of \$1,100,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues to an amount not to exceed the lesser of \$1,175,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

Paragraph (c)(3)(i)(A) of § 308.132 lists a number of statutes which provide jurisdiction to the FDIC to assess CMPs under section 8(i)(2) of the FDIA for violation thereof, including, the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.*) and implementing Regulation C (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.*) and implementing Regulation X (24 CFR Part 3500), 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.*). Increases in the amount of any CMP which the FDIC may assess for violations of those statutes are the same as the increases for section 8(i)(2) penalties. Therefore, for the foregoing statutes, as in section 8(i)(2), only the Tier Three penalty amounts will increase.

Paragraph (c)(3)(ii) of § 308.132 reflects the increases in CMP amounts that may be assessed pursuant to section 7(c) of the FDIA for late filing or the submission of false or misleading certified statements. A Tier One CMP pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) will increase from an amount not to exceed \$2,000 per day to an amount not to exceed \$2,200 for each day during which the failure to file continues or the

false or misleading information is not corrected. A Tier Three CMP which may be assessed pursuant to section 7(c)(4)(C) of the FDIA (12 U.S.C.

1817(c)(4)(B)) will increase from an amount not to exceed the lesser of \$1,100,000 or one 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 to an amount not to exceed the lesser of \$1,175,000 or one 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. Tier Two penalties remain the same.

Paragraph (c)(3)(ix) of § 308.132 sets forth the increases in the CMP amounts that may be assessed pursuant to the Bank Holding Company Act of 1970 (12 U.S.C. 1841 *et seq.*) for prohibited tying arrangements. A Tier Three CMP which may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) will increase from an amount not to exceed, in the case of any person other than an insured depository institution \$1,100,000 for each day during which the violation, practice, or breach continues to an amount not to exceed \$1,175,000 for each day during which the violation, practice, or breach continues. In the case of any insured depository institution, Tier Three penalties will increase from an amount not to exceed the lesser of \$1,100,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues to an amount not to exceed the lesser of \$1,175,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. Tier One and Tier Two penalties remain the same.

Paragraph (c)(3)(x) of § 308.132 indicates that pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), a CMP 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)). Such CMP will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xi) of § 308.132 sets forth the increase in CMP that may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), as made applicable by 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. Such CMP amounts will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xiii) of § 308.132 indicates that pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a CMP 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)). Such CMP amounts will increase in the amounts set forth in paragraph (c)(3)(i) of § 308.132 which contains the increases for section 8(i)(2).

Paragraph (c)(3)(xiv) of § 308.132 sets forth that pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u-2), CMPs may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. The Tier One CMP amounts which may be assessed pursuant to 15 U.S.C. 78u-2(b)(1) will increase from an amount not to exceed \$5,500 for a natural person or \$55,000 for any other person for violations set forth in 15 U.S.C. 78u-2(a), to \$5,500 for a natural person or \$60,000 for any other person. The Tier Two CMP which may be assessed pursuant to 15 U.S.C. 78u-2(b)(2) for each violation set forth in 15 U.S.C. 78u-2(a) will increase from an amount not to exceed \$55,000 for a natural person to \$275,000 for any other person to an amount not to exceed \$60,000 for a natural person or \$300,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. The Tier Three CMP which 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 \$110,000 for a natural person or \$550,000 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 to an amount not to exceed \$120,000 for a natural person or \$575,000 for any other person.

Paragraph (c)(3)(xvi) of § 308.132 sets forth the CMP that may be assessed pursuant to the Flood Disaster Protection Act (FDPA)(42 U.S.C. 4012a(f)) against any regulated lending institution that engages in a pattern or practice of violations of the FDPA. The

amount of the penalty for each violation will remain at \$350; however, the annual amount which may be assessed will increase from an amount not to exceed a total of \$105,000 annually to an amount not to exceed a total of \$115,000 annually.

III. Exemption From Public Notice and Comment

Because the law requires the FDIC to amend its rules, provides the specific adjustments to be made and leaves the FDIC no discretion in calculating the amount of those adjustments, the changes are ministerial, technical and noncontroversial, and the law requires that the regulation implementing the adjustments be published in the **Federal Register** within 180 days of enactment of the DCIA, the FDIC has determined for good cause that public notice and comment is unnecessary and impracticable under the APA (5 U.S.C. 553(b)(3)(B)), and that the rule should be published in final form.

IV. Effective Date

For the same reasons that the FDIC for good cause has determined that public notice and comment is unnecessary, impractical and contrary to the public interest, the FDIC finds that it has good cause to adopt an effective date that is less than 30 days after the date of publication in the **Federal Register** pursuant to the APA (5 U.S.C. 553(d)), and therefore, the regulation is effective upon publication. Moreover, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994² states that a final rule imposing new requirements must take effect on the first day of a calendar quarter following its publication. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

Under the statute, agencies must make the required CMP inflation adjustments: (1) According to the formula in the statute; and (2) within four years of the last inflation adjustment, or by October 31, 2000. Agencies have no discretion as to the amount or timing of the adjustment. The regulation is ministerial, technical, and noncontroversial. Accordingly, the FDIC believes that notice and comment are unnecessary. For these same reasons, the FDIC believes that there is good cause to make this rule effective immediately upon publication.

V. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a general notice of proposed rulemaking.³ As already noted, the FDIC has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104-121) provides generally for agencies to report rules to Congress and for Congress to review such rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedures Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by the SBREFA.

The Office of Management and Budget has determined that this final revision to part 308 does not constitute a "major" rule as defined by the statute.

VII. The Treasury and General Government Appropriations Act, 1999 Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

VIII. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) is contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

IX. Authority for the Regulation

This regulation is authorized by the FDIC's general rulemaking authority and pursuant to its fundamental responsibilities to ensure the safety and soundness of insured depository institutions. Specifically, 12 U.S.C. 1819(a) Tenth provides the FDIC with general authority to issue such rules and

regulations as it deems necessary to carry out the statutory mandates of the Federal Deposit Insurance Act and other laws that the FDIC is charged with administering or enforcing.

List of Subjects in 12 CFR Part 308

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

For the reasons set out in the preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is amended as set forth below.

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831o, 1831p-1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3 and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; sec. 31001(s), Pub. L. 104-134, 110 Stat. 1321-358.

§ 308.116 [Amended]

2. In § 308.116, amend paragraphs (b)(4)(iii)(A) and (b)(4)(iii)(B) by removing \$1,100,000 and adding \$1,175,000 in its place.

§ 308.132 [Amended]

3. In § 308.132, amend:
- a. Paragraphs (c)(2)(i), (c)(2)(iii)(A), and (c)(3)(ii) by removing \$2,000 and adding \$2,200 in its place.
 - b. Paragraphs (c)(2)(iii)(C), (c)(3)(i), and (c)(3)(ix) by removing \$1,100,000 and adding \$1,175,000 in its place each time it appears.
 - c. Paragraph (c)(3)(xiv) by removing \$55,000 and adding in its place \$60,000 each time it appears; by removing \$110,000 and adding in its place \$120,000; by removing \$275,000 and adding in its place \$300,000; and by removing \$550,000 and adding in its place \$575,000.
 - d. Paragraph (c)(3)(xvi) by removing \$105,000 and adding in its place \$115,000.

Dated at Washington, D.C., this 17th day of October, 2000.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

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² 12 U.S.C. 4802.

³ 5 U.S.C. 603.