

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R-1543 RIN 7100 AE-55]

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 15, 2017.

FOR FURTHER INFORMATION CONTACT: Patrick M. Bryan, Assistant General Counsel (202-974-7093), or Thomas O. Kelly, Senior Attorney (202-974-7059), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW, Washington, D.C. 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 a “catch-up” adjustment—the first inflation adjustment after the date of enactment of the 2015 Act—through an interim final rulemaking, to take effect no later than August 1, 2016, and to make adjustments not later than January 15 of every year thereafter.² On July 20, 2016, the Board issued an interim final rule setting the CMP levels pursuant to the required catch-up adjustment. The Board is now issuing a new final rule to set the CMP levels pursuant to the required annual adjustment for 2017. The Board will apply these adjusted maximum penalty levels to any penalties assessed on or after January 15, 2017, 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 2017 is the percentage by which the Consumer Price Index for the month of October 2016 exceeds the Consumer Price Index for the month of October 2015. On December 16, 2016, 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

¹ Pub. L. No. 114–74, 129 Stat. 599 (2015) (codified at 28 U.S.C. 2461 note).

² 28 U.S.C. 2461 note, section 4(b)(1).

³ 77 FR 68,680 (Nov. 16, 2012).

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

Comment Received in Response to the July 20, 2016 Interim Final Rule

The Board received one comment letter on behalf of International Bancshares Corporation (“IBC”) in response to the July 20, 2016 interim final rule. IBC expressed disappointment that the Board published the new penalty levels through an interim final rule without engaging in prior notice and comment proceedings. As IBC itself acknowledged, however, the 2015 Act required the Board to adjust the penalties for the catch-up adjustment through an interim final rulemaking to take effect no later than August 1, 2016. IBC also expressed concern with many of the new maximum penalty amounts, urging the Board to exercise its discretion to “withhold using its maximum penalty authority.” Again, as IBC acknowledged, the Board calculated the new penalty amounts strictly in accordance with the 2015 Act and OMB’s implementing guidance. Moreover, setting the new upper limits on penalties does not require the Board in any particular case to assess the maximum amounts.

⁴ OMB Memorandum M-17-11, *Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 16, 2016).

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.

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 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 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, 78l(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 15, 2017, 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 referenced statutory sections are set forth in the table in this paragraph (b).

Statute		Adjusted civil money penalty
12 U.S.C. 324		
	<i>Inadvertently late or misleading reports, inter alia</i>	\$3,849
	<i>Other late or misleading reports, inter alia</i>	\$38,492
	<i>Knowingly or reckless false or misleading reports, inter alia</i>	\$1,924,589
12 U.S.C. 334		\$279
12 U.S.C. 374a		\$279
12 U.S.C. 504		
	<i>First Tier</i>	\$9,623
	<i>Second Tier</i>	\$48,114
	<i>Third Tier</i>	\$1,924,589
12 U.S.C. 505		
	<i>First Tier</i>	\$9,623
	<i>Second Tier</i>	\$48,114
	<i>Third Tier</i>	\$1,924,589
12 U.S.C. 1464(v)(4)		\$3,849
12 U.S.C. 1464(v)(5)		\$38,492
12 U.S.C. 1464(v)(6)		\$1,924,589
12 U.S.C. 1467a(i)(2)		\$48,114
12 U.S.C. 1467a(i)(3)		\$48,114
12 U.S.C. 1467a(r)		
	<i>First Tier</i>	\$3,849
	<i>Second Tier</i>	\$38,492
	<i>Third Tier</i>	\$1,924,589
12 U.S.C. 1817(j)(16)		
	<i>First Tier</i>	\$9,623
	<i>Second Tier</i>	\$48,114
	<i>Third Tier</i>	\$1,924,589
12 U.S.C. 1818(i)(2)		
	<i>First Tier</i>	\$9,623

Statute		Adjusted civil money penalty
	<i>Second Tier</i>	\$48,114
	<i>Third Tier</i>	\$1,924,589
12 U.S.C. 1820(k)(6)(A)(ii)		\$316,566
12 U.S.C. 1832(c)		\$2,795
12 U.S.C. 1847(b)		\$48,114
12 U.S.C. 1847(d)		
	<i>First Tier</i>	\$3,849
	<i>Second Tier</i>	\$38,492
	<i>Third Tier</i>	\$1,924,589
12 U.S.C. 1884		\$279
12 U.S.C. 1972(2)(F)		
	<i>First Tier</i>	\$9,623
	<i>Second Tier</i>	\$48,114
	<i>Third Tier</i>	\$1,924,589
12 U.S.C. 3110(a)		\$43,983
12 U.S.C. 3110(c)		
	<i>First Tier</i>	\$3,519
	<i>Second Tier</i>	\$35,186
	<i>Third Tier</i>	\$1,759,309
12 U.S.C. 3909(d)		\$2,394
15 U.S.C. 78u-2(b)(1)		
	<i>For a natural person</i>	\$9,054
	<i>For any other person</i>	\$90,535
15 U.S.C. 78u-2(b)(2)		
	<i>For a natural person</i>	\$90,535
	<i>For any other person</i>	\$452,677
15 U.S.C. 78u-2(b)(3)		
	<i>For a natural person</i>	\$181,071
	<i>For any other person</i>	\$905,353
15 U.S.C. 1639e(k)(1)		\$11,053
15 U.S.C. 1639e(k)(2)		\$22,105
42 U.S.C. 4012a(f)(5)		\$2,090

By order of the Board of Governors of the Federal Reserve System, January 9, 2017.

/s/

Robert deV. Frierson,
Secretary of the Board.