

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: Interim final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the “Board”) is issuing an interim final rule amending its rules of practice and procedure to adjust the amount of each civil monetary 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 interim final rule is effective on August 1, 2016. Comments on the interim final rule must be received on or before August 30, 2016.

ADDRESSES: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, D.C. area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R-1543 and RIN 7100 AE 55, by any of the following methods:

- *Agency Web site:* www.federalreserve.gov. Follow the instructions for submitting comments at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.

- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax: (202) 452-3819 or (202) 452-3102.*
- *Mail: Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D.C. 20551.*

All public comments will be made available on the Board's Web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street, NW (between 18th and 19th Streets), Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Katherine H. Wheatley, Associate General Counsel (202/452-3779), or Mehrnoush Bigloo, Senior Attorney (202/475-6361), 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” or the “Act”)¹ amended the FCPIA to require the adjustment to be made annually rather than every four years, and to direct federal agencies to make the “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, 2016.² The Board is issuing this interim final rule to set the new civil monetary penalty levels pursuant to the required catch-up adjustment. The Board will apply these adjusted maximum penalty levels to any penalties assessed on or after August 1, 2016. Penalties assessed prior to August 1, 2016, will be subject to the amounts set in the Board’s last adjustment pursuant to the FCPIA.³

Under the 2015 Act, the initial catch-up adjustment is the percentage for each civil monetary penalty by which the Consumer Price Index for the month of October 2015 exceeds the Consumer Price Index for the month of October of the calendar year during which the amount of the penalty was established or adjusted other than pursuant to the FCPIA. On February 24, 2016, as directed by the 2015 Act, the Office of Management and Budget (OMB) issued guidance to agencies on implementing the required catch-up adjustment which included the relevant inflation multipliers per calendar year.⁴ Using OMB’s multipliers, the Board calculated the adjusted penalties for

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).

⁴ OMB Memorandum M-16-06, *Implementation of the Federal Civil Penalties Inflation*

its civil monetary penalties, rounding the penalties to the nearest dollar. Under the 2015 Act, the amount of any increase may not exceed 150 percent of the amount of the penalty on the date of the enactment of the 2015 Act, which is November 2, 2015.⁵ Accordingly, in a few cases where the calculated penalties exceeded the statutory maximum, the Board adjusted the respective penalty amount to 250 percent of the prior penalty. The Board also determined that none of the increases resulting from application of the 2015 Act's formula would have a negative economic impact and that any social costs of increasing those penalty limits would not outweigh the benefits of the increase. For this reason, the Board did not seek an exception from the application of the formula as permitted by section 4(c) of the 2015 Act.

Administrative Procedure Act

Pursuant to the Administrative Procedure Act (the "APA"), notice of proposed rulemaking and opportunity for public comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."⁶ As discussed above, the Board calculated the initial catch-up adjustment strictly in accordance with the requirements of the 2015 Act and OMB's implementing guidance. Moreover, the 2015 Act expressly requires the Board to publish the new catch-up penalty levels through an

Adjustment Act Improvements Act of 2015 (Feb. 24, 2016).

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

⁶ 5 U.S.C. 553(b)(3)(B).

interim final rule, meaning that the rule can become effective prior to the receipt of public comments.⁷ For these reasons, the Board finds good cause to determine that publishing a notice of proposed rulemaking and providing opportunity for public comment prior to adopting a final rule are unnecessary.⁸ Nevertheless, because the Board is required to publish the catch-up penalty levels through an interim final rulemaking, the Board is inviting comments on this interim final rule. In view of the fact that the Board has calculated the catch-up adjustments strictly in accordance with OMB's implementing guidance, the Board specifically encourages comments identifying any issues with the Board's calculations under that guidance. The Board also invites comments regarding its determination that the bases for an exception under section 4(c) of the 2015 Act were not met.

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 requires agencies' catch-up adjustments to be made through an interim final rule, the Board is not publishing a notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act does not apply.

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

⁸ 5 U.S.C. 553(b).

Paperwork Reduction Act

There is no collection of information required by this interim 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 of Governors amends 12 CFR part 263 to read as follows:

PART 263--RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised 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 monetary 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 monetary penalty provided by law within the Board’s jurisdiction. The authorizing statutes contain the complete provisions under which the Board may seek a civil monetary penalty. The adjusted civil monetary penalties apply only to penalties assessed on or after August 1, 2016.

(b) Maximum civil monetary penalties. The maximum civil monetary penalties as set forth in the referenced statutory sections are set forth in the table in this paragraph (b).

Statute	Adjusted civil monetary penalty
12 U.S.C. 324	
	<i>Inadvertently late or misleading reports, inter alia</i>
	\$3,787
	<i>Other late or misleading reports, inter alia</i>
	\$37,872
	<i>Knowingly or reckless false or misleading reports, inter alia</i>
	\$1,893,610
12 U.S.C. 334	\$275
12 U.S.C. 374a	\$275
12 U.S.C. 504	
	<i>First Tier</i>
	\$9,468
	<i>Second Tier</i>
	\$47,340
	<i>Third Tier</i>
	\$1,893,610
12 U.S.C. 505	
	<i>First Tier</i>
	\$9,468
	<i>Second Tier</i>
	\$47,340
	<i>Third Tier</i>
	\$1,893,610
12 U.S.C. 1464(v)(4)	\$3,787
12 U.S.C. 1464(v)(5)	\$37,872
12 U.S.C. 1464(v)(6)	\$1,893,610
12 U.S.C. 1467a(i)(2)	\$47,340
12 U.S.C. 1467a(i)(3)	\$47,340
12 U.S.C. 1467a(r)	
	<i>First Tier</i>
	\$3,787

Statute		Adjusted civil monetary penalty
	<i>Second Tier</i>	\$37,872
	<i>Third Tier</i>	\$1,893,610
12 U.S.C. 1817(j)(16)		
	<i>First Tier</i>	\$9,468
	<i>Second Tier</i>	\$47,340
	<i>Third Tier</i>	\$1,893,610
12 U.S.C. 1818(i)(2)		
	<i>First Tier</i>	\$9,468
	<i>Second Tier</i>	\$47,340
	<i>Third Tier</i>	\$1,893,610
12 U.S.C. 1820(k)(6)(A)(ii)		\$311,470
12 U.S.C. 1832(c)		\$2,750
12 U.S.C. 1847(b)		\$47,340
12 U.S.C. 1847(d)		
	<i>First Tier</i>	\$3,787
	<i>Second Tier</i>	\$37,872
	<i>Third Tier</i>	\$1,893,610
12 U.S.C. 1884		\$275
12 U.S.C. 1972(2)(F)		
	<i>First Tier</i>	\$9,468
	<i>Second Tier</i>	\$47,340
	<i>Third Tier</i>	\$1,893,610
12 U.S.C. 3909(d)		\$2355
12 U.S.C. 3110(a)		\$43,275
12 U.S.C. 3110(c)		
	<i>First Tier</i>	\$3,462
	<i>Second Tier</i>	\$34,620
	<i>Third Tier</i>	\$1,730,990
15 U.S.C. 78u-2(b)(1)		
	<i>For a natural person</i>	\$8,908
	<i>For any other person</i>	\$89,078
15 U.S.C. 78u-2(b)(2)		
	<i>For a natural person</i>	\$89,078
	<i>For any other person</i>	\$445,390

Statute		Adjusted civil monetary penalty
15 U.S.C. 78u-2(b)(3)		
	<i>For a natural person</i>	\$178,156
	<i>For any other person</i>	\$890,780
15 U.S.C. 1639e(k)(1)		\$10,875
15 U.S.C. 1639e(k)(2)		\$21,749
42 U.S.C. 4012a(f)(5)		\$2056

By order of the Board of Governors of the Federal Reserve System, July 13, 2016.

**Robert deV. Frierson,
Secretary of the Board.**

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