



BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1083

Civil Penalty Inflation Adjustments

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is adjusting for inflation the maximum amount of each civil penalty within the Bureau's jurisdiction. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

DATES: This final rule is effective January 15, 2017.

FOR FURTHER INFORMATION CONTACT: Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act,¹ as amended by the Debt Collection Improvement Act of 1996² and further amended by the Federal Civil Penalties Inflation Adjustment Act

¹ Public Law 101-410, 104 Stat. 890.

² Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373.

Improvements Act of 2015,³ directs Federal agencies to adjust for inflation the civil penalty amounts within their jurisdiction not later than July 1, 2016, and then not later than January 15 every year thereafter.⁴ 28 U.S.C. 2461 note. Each agency was required to make the 2016 one-time catch-up adjustments through an interim final rule published in the *Federal Register*. On June 14, 2016, the Bureau published its interim final rule to make the initial catch-up adjustments to civil penalties within the Bureau's jurisdiction.⁵ The June 2016 interim final rule created a new part 1083 and in § 1083.1 established the inflation-adjusted maximum amounts for each civil penalty within the Bureau's jurisdiction.⁶ The Inflation Adjustment Act also requires subsequent adjustments to be made annually, not later than January 15, and notwithstanding section 553 of the Administrative Procedure Act (APA).⁷

Specifically, Federal agencies are directed to adjust annually each civil penalty provided by law within the jurisdiction of the agency by the “cost-of-living adjustment.”⁸ For annual adjustments after the initial catch up adjustments, the “cost-of-living adjustment” is defined as the percentage (if any) by which the Consumer Price Index for All Urban Consumers (CPI-U) for the month of October preceding the date of the adjustment, exceeds the CPI-U for October of the prior year.⁹ The Director of the Office of Management and Budget (OMB) is required to issue guidance (OMB Guidance) to agencies on implementing the annual civil penalty inflation

³ Public Law 114-74, section 701, 129 Stat. 584, 599.

⁴ Section 1301(a) of the Federal Reports Elimination Act of 1998, Public Law 105-362, 112 Stat. 3293, also amended the Inflation Adjustment Act by striking section 6, which contained annual reporting requirements, and redesignating section 7 as section 6, but did not alter the civil penalty adjustment requirements.

⁵ 81 FR 38569 (June 14, 2016). Although the Bureau was not obligated to solicit comments for the interim final rule, the Bureau invited public comment and received none.

⁶ See 12 CFR 1083.1.

⁷ Inflation Adjustment Act section 4, *codified* at 28 U.S.C. 2461 note.

⁸ Inflation Adjustment Act sections 4 and 5, *codified* at 28 U.S.C. 2461 note.

⁹ Inflation Adjustment Act sections 3 and 5, *codified* at 28 U.S.C. 2461 note.

adjustments by December 15, 2016, and December 15 every subsequent year.¹⁰ Pursuant to the Inflation Adjustment Act and OMB Guidance, agencies must apply the multiplier reflecting the “cost-of-living adjustment” to the current penalty amount and then round that amount to the nearest dollar to determine the annual adjustments.¹¹

For the 2017 annual adjustment, the multiplier reflecting the “cost-of-living adjustment” is 1.01636.¹² Pursuant to the Inflation Adjustment Act and OMB Guidance, the Bureau multiplied each of its civil penalty amounts by the “cost-of-living adjustment” multiplier and rounded to the nearest dollar.¹³

The new penalty amounts that apply to civil penalties assessed after January 15, 2017 are as follows:

| Law | Penalty Description | Penalty Amounts Established Under June 2016 Interim Final Rule | OMB “Cost-of-Living Adjustment” Multiplier | New Penalty Amount |
|--|----------------------------|---|---|---------------------------|
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A) | Tier 1 penalty | \$5,437 | 1.01636 | \$5,526 |
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B) | Tier 2 penalty | \$27,186 | 1.01636 | \$27,631 |
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C) | Tier 3 penalty | \$1,087,450 | 1.01636 | \$1,105,241 |
| Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2) | Per violation | \$1,894 | 1.01636 | \$1,925 |

¹⁰ Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Dec. 16, 2016), https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

¹¹ Inflation Adjustment Act section 5, *codified* at 28 U.S.C. 2461 note; Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Dec. 16, 2016), https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

¹² Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Dec. 16, 2016), https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf. The multiplier reflecting the “cost-of-living adjustment” that OMB provides is rounded to five decimal places.

¹³ In rounding to the nearest dollar, the Bureau has rounded down where the digit immediately following the decimal point is less than 5 and has rounded up where the digit immediately following the decimal point is 5 or greater.

| | | | | |
|--|--------------------------------|-------------|---------|-------------|
| Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2) | Annual cap | \$1,893,610 | 1.01636 | \$1,924,589 |
| Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1) | Per failure | \$89 | 1.01636 | \$90 |
| Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1) | Annual cap | \$178,156 | 1.01636 | \$181,071 |
| Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A) | Per failure, where intentional | \$178 | 1.01636 | \$181 |
| SAFE Act, 12 U.S.C. 5113(d)(2) | Per violation | \$27,455 | 1.01636 | \$27,904 |
| Truth in Lending Act, 15 U.S.C. 1639e(k)(1) | First violation | \$10,875 | 1.01636 | \$11,053 |
| Truth in Lending Act, 15 U.S.C. 1639e(k)(2) | Subsequent violations | \$21,749 | 1.01636 | \$22,105 |

II. Legal Authority

The Bureau issues this final rule under the Inflation Adjustment Act,¹⁴ as amended by the Debt Collection Improvement Act of 1996¹⁵ and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,¹⁶ which requires the Bureau to adjust for inflation the civil penalties within its jurisdiction according to a statutorily prescribed formula.

III. Procedural Requirements

A. Administrative Procedure Act

Under the APA, notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.¹⁷ Pursuant to this final rule, § 1083.1 is amended to update the civil penalty amounts. The 2017 adjustments to the civil penalty amounts are technical and non-discretionary, and they merely apply the statutory method for adjusting civil penalty amounts. These adjustments are required by the Inflation Adjustment Act. Moreover, the Inflation Adjustment Act directs

¹⁴ Public Law 101-410, 104 Stat. 890.

¹⁵ Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373.

¹⁶ Public Law 114-74, section 701, 129 Stat. 584, 599.

¹⁷ 5 U.S.C. 553(b)(B).

agencies to adjust the civil penalties annually notwithstanding section 553 of the APA,¹⁸ and OMB Guidance reaffirms that agencies need not complete a notice-and-comment process before making the annual adjustments for inflation.¹⁹ For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.²⁰ At a minimum, the Bureau believes the annual adjustments to the civil penalty amounts in § 1083.1 fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 15, 2017. The amendments to § 1083.1 in this final rule are technical and non-discretionary, and they merely apply the statutory method for adjusting civil penalty amounts and follow the statutory directive to make annual adjustments by January 15 of each year. Moreover, the Inflation Adjustment Act directs agencies to adjust the civil penalties annually notwithstanding section 553 of the APA,²¹ and OMB Guidance reaffirms that agencies need not provide a delay in effective date for the annual adjustments for inflation.²²

B. Regulatory Flexibility Act

¹⁸ Inflation Adjustment Act section 4, *codified* at 28 U.S.C. 2461 note.

¹⁹ Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Dec. 16, 2016), https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

²⁰ 5 U.S.C. 553(d).

²¹ Inflation Adjustment Act section 4, *codified* at 28 U.S.C. 2461 note.

²² Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Dec. 16, 2016), https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²³

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,²⁴ the Bureau reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 1083

Administrative practice and procedure, Consumer protection, Penalties.

Authority and Issuance

For the reasons set forth above, the Bureau amends 12 CFR part 1083, as set forth below:

PART 1083—CIVIL PENALTY ADJUSTMENTS

1. The authority citation for part 1083 continues to read as follows:

Authority: 12 U.S.C. 2609(d); 12 U.S.C. 5113(d)(2); 12 U.S.C. 5565(c); 15 U.S.C. 1639e(k); 15 U.S.C. 1717a(a); 28 U.S.C. 2461 note.

2. Section 1083.1 is revised to read as follows:

§ 1083.1 Adjustments of civil penalty amounts.

(a) The maximum amount of each civil penalty within the jurisdiction of the Consumer Financial Protection Bureau to impose is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, (28 U.S.C. 2461 note) as follows:

| U.S. Code Citation | Civil Penalty Description | Adjusted Maximum Civil Penalty Amount |
|---------------------------|----------------------------------|--|
|---------------------------|----------------------------------|--|

²³ 5 U.S.C. 603(a), 604(a).

²⁴ 44 U.S.C. 3506; 5 CFR 1320.

| | | |
|-------------------------|--------------------------------|-------------|
| 12 U.S.C. 5565(c)(2)(A) | Tier 1 penalty | \$5,526 |
| 12 U.S.C. 5565(c)(2)(B) | Tier 2 penalty | \$27,631 |
| 12 U.S.C. 5565(c)(2)(C) | Tier 3 penalty | \$1,105,241 |
| 15 U.S.C. 1717a(a)(2) | Per violation | \$1,925 |
| 15 U.S.C. 1717a(a)(2) | Annual cap | \$1,924,589 |
| 12 U.S.C. 2609(d)(1) | Per failure | \$90 |
| 12 U.S.C. 2609(d)(1) | Annual cap | \$181,071 |
| 12 U.S.C. 2609(d)(2)(A) | Per failure, where intentional | \$181 |
| 12 U.S.C. 5113(d)(2) | Per violation | \$27,904 |
| 15 U.S.C. 1639e(k)(1) | First violation | \$11,053 |
| 15 U.S.C. 1639e(k)(2) | Subsequent violations | \$22,105 |

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after January 15, 2017, regardless of when the violation for which the penalty is assessed occurred.

Dated: January 4, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.