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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 19 and 109**

**[Docket ID OCC-2017-0002]**

**RIN 1557-AE14**

**Rules of Practice and Procedure;  
Rules of Practice and Procedure in Adjudicatory Proceedings;  
Civil Money Penalty Inflation Adjustments**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure for national banks and its rules of practice and procedure in adjudicatory proceedings for Federal savings associations to adjust the maximum amount of each civil money penalty within its jurisdiction to administer to account for inflation. These actions implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and is applicable to penalties assessed after January 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Jean Campbell, Counsel, Legislative and Regulatory Activities Division, (202) 649-5490, or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, or Alexander Abramovich, Attorney, Enforcement and

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The final rule changes the maximum amount for each civil money penalty (CMP) within the OCC's jurisdiction to administer to account for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Adjustment Act),<sup>1</sup> as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Adjustment Act).<sup>2</sup> The 1990 Adjustment Act had required the OCC and other Federal agencies with CMP authority to publish by regulation the inflation-adjusted maximum amount for each CMP authorized by a law that the agency has jurisdiction to administer. Key features of the 1990 Adjustment Act included requiring such agencies to make inflation adjustments at least once every four years following any initial adjustment, capping the initial inflation adjustment increase at 10 percent, and imposing rounding rules that limited increases based on the amount of the penalty.

The purpose of the 2015 Adjustment Act was to establish a mechanism to regularly adjust CMPs for inflation; maintain the deterrent effect of CMPs and promote compliance with the law; and improve the collection of CMPs by the Federal government.<sup>3</sup> The 2015 Adjustment Act revised the process by which each Federal agency must adjust its CMPs for inflation. Under the 2015 Adjustment Act, agencies

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<sup>1</sup> Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890, codified at 28 U.S.C. 2461 note.

<sup>2</sup> Pub. L. 114-74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599, codified at 28 U.S.C. 2461 note.

<sup>3</sup> 28 U.S.C. 2461 note, section 2(b).

were required to adjust the amount of their CMPs<sup>4</sup> for inflation with an initial catch-up adjustment through an interim final rule published by July 1, 2016, and to make subsequent adjustments for inflation by January 15 of each year, beginning in 2017. In addition, the 2015 Adjustment Act simplified the process for calculating the inflation increase and eliminated the complex rounding rules in the 1990 Adjustment Act.

The 2015 Adjustment Act also required the Office of Management and Budget (OMB) to issue initial guidance to Federal agencies no later February 29, 2016, and subsequent guidance not later than December 15 of each year, beginning on December 15, 2016, on implementing the required inflation adjustments.

In accordance with the 2015 Adjustment Act and OMB's initial guidance, issued on February 29, 2016,<sup>5</sup> the OCC increased the amount of each maximum CMP with an initial catch-up adjustment by publishing an interim final rule in the **Federal Register** on July 1, 2016, with an effective date of August 1, 2016.<sup>6</sup> The OCC did not receive any comments on this interim final rule.

On December 16, 2016, the OMB published additional guidance to assist Federal agencies in calculating the 2017 annual inflation adjustment pursuant to the 2015 Adjustment Act (2016 OMB Guidance).<sup>7</sup> The 2016 OMB guidance provided the cost-of-living inflation adjustment multiplier (i.e., the inflation adjustment factor agencies must

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<sup>4</sup> The 2015 Adjustment Act defined a “civil monetary penalty” to mean “any penalty, fine, or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.” 28 U.S.C. 2461 note, section 3(2). Thus, a penalty based on another measure, such as a percentage of total assets, need not be adjusted.

<sup>5</sup> Office of Management and Budget Memorandum, M-16-06 (February 24, 2016), available at: <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

<sup>6</sup> 81 FR 43021 (July 1, 2016).

<sup>7</sup> Office of Management and Budget Memorandum, M-17-11 (December 16, 2016), available at: [https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11\\_0.pdf](https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf).

use to adjust their penalties) for 2017, step-by-step instructions on how agencies should calculate the annual inflation adjustments, and other relevant information.

## **II. Description of the Final Rule**

### **A. 2017 Inflation Adjustment**

The 2015 Adjustment Act required Federal agencies to make annual adjustments no later than January 15 of each year, beginning on January 15, 2017<sup>8</sup> and to publish such adjustments in the **Federal Register**. This final rule amends the OCC's rules of practice and procedure for national banks at 12 CFR 19.240 and its rules of practice and procedure in adjudicatory proceedings for Federal savings associations at 12 CFR 109.103 to adjust for inflation the maximum amount of each CMP that the OCC has jurisdiction to impose in accordance with the 2015 Adjustment Act and the 2016 OMB Guidance.

First, the final rule describes the formula used by the OCC to calculate the new maximum inflation-adjusted amount of each CMP. It states that the inflation adjustment is calculated by multiplying the maximum dollar amount of the CMP for the previous calendar year by the cost-of living inflation adjustment multiplier provided annually by OMB and rounding the total to the nearest dollar.<sup>9</sup>

Next, the rule adjusts each CMP that the OCC has jurisdiction to administer in accordance with the formula described above. The OCC calculated the adjusted amounts in the national bank chart at 12 CFR 19.240(b) (national bank chart) and Federal savings association chart at 12 CFR 109.103(c)(2) (Federal savings association chart) by applying

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<sup>8</sup> 28 U.S.C. 2461 note, section 4(a).

<sup>9</sup> The formula that OMB must use is described in the 2015 Adjustment Act at 28 U.S.C. 2461 note, section 5.

the cost-of living inflation adjustment multiplier provided by OMB<sup>10</sup> to each maximum CMP and rounding all penalty amounts to the nearest dollar. Each chart identifies the statutes that authorize the OCC to assess CMPs, describes the different tiers of penalties provided in each statute (as applicable), and sets out the maximum inflation-adjusted penalty that the OCC may impose pursuant to each statutory provision.<sup>11</sup>

The final rule also makes clear that the adjustments in each chart apply to penalties assessed after January 15, 2017, for violations that occurred on or after November 2, 2015, which is the date of enactment of the 2015 Adjustment Act.

The final rule also states that future annual inflation adjustments to the maximum penalty amounts will be published as a notice in the **Federal Register**. The 2015 Adjustment Act required Federal agencies to annually adjust their CMPs for inflation beginning on January 15, 2017, and each year thereafter, and to publish the adjusted CMPs in the **Federal Register**. While the 2015 Adjustment Act required the OCC to initially adjust its maximum CMP amounts through an interim final rulemaking, the 2015 Adjustment Act specifically stated that subsequent adjustments shall be made “notwithstanding section 553 of title 5, United States Code” (i.e., the Administrative Procedure Act or APA).<sup>12</sup> The 2016 OMB Guidance clarifies that this means “the public

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<sup>10</sup> The 2016 OMB Guidance states that the 2017 cost-of-living inflation adjustment multiplier is 1.01636. 2016 OMB Guidance, at 1. In accordance with the 2015 Adjustment Act, OMB based this multiplier on the percent change between the Consumer Price Index for October 2016 and October 2015. 28 U.S.C. 2461 note, section 5(b)(1).

<sup>11</sup> Although the 2015 Adjustment Act required agencies to increase the maximum penalty that may be assessed under each applicable statute to account for inflation, the OCC generally retains discretion to impose lesser penalties after consideration has been given to the financial resources and good faith of the institution or institution-affiliated party (IAP), the gravity of the violations, the history of previous violations by the institution or IAP, and such other matters as justice may require. 12 U.S.C. 1818(i)(2)(G) and Interagency Policy Statement Regarding the Assessment of CMPs by the Federal Financial Institutions Regulatory Agencies, 63 FR 30227 (June 3, 1998).

<sup>12</sup> 28 U.S.C. 2461 note, section 4(b)(2).

procedure the APA generally requires--notice, an opportunity for comment, and a delay in effective date--is not required for agencies to issue regulations implementing the annual adjustment.”<sup>13</sup> Accordingly, the OCC will publish its future inflation adjustments as a notice. This process is specifically described in the 2016 OMB Guidance.<sup>14</sup> In addition, we note that this is similar to the OCC’s semiannual fee assessment process at 12 CFR part 8, which sets forth a chart describing the formula to calculate the semiannual assessment fee and states that the OCC will publish a notice providing the fees for the upcoming year.<sup>15</sup>

Furthermore, because the 2015 Adjustment Act does not require annual adjustments to be published in accordance with the APA, the OCC is amending 12 CFR 19.240 and 12 CFR 109.103 by issuing a final rule rather than a notice of proposed rulemaking.

B. Technical Change to the National Bank Chart and Federal Savings Association Chart

The OCC is correcting a minor technical error in footnote 3 of the national bank chart and Federal savings association chart. Footnote 3 explains that statutes cross-referencing 12 U.S.C. 1818 are adjusted automatically when the penalty in section 1818 is adjusted for inflation. Fifteen U.S.C. 1649e(k) was inadvertently included as an example of a penalty that cross-references 12 U.S.C. 1818. Accordingly, the final rule deletes reference to 15 U.S.C. 1649e(k) in the footnotes, but retains the reference to this statute in the national bank chart and Federal savings association chart.

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<sup>13</sup> 2016 OMB Guidance, at 3.

<sup>14</sup> 28 U.S.C. 2461 note, section 4(b)(2) and 2016 OMB Guidance, at 3.

<sup>15</sup> 12 CFR 8.2 and 8.8.

### **III. Regulatory Analysis**

#### **A. Delayed Effective Date**

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994<sup>16</sup> (RCDRIA) required that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

#### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).<sup>17</sup> Because the 2015 Adjustment Act specifically exempted agencies' annual adjustments from the requirements of the APA,<sup>18</sup> the OCC is issuing a final rule, rather than a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

#### **C. Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995<sup>19</sup> required that an agency prepare a budgetary impact statement before promulgating any rule likely to

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<sup>16</sup> 12 U.S.C. 4802.

<sup>17</sup> 5 U.S.C. 601(2).

<sup>18</sup> 28 U.S.C. 2461 note, section 4(b)(2) and 2016 OMB Guidance, at 3.

<sup>19</sup> 2 U.S.C. 1532.

result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more, as adjusted for inflation, in any one year. The Unfunded Mandates Reform Act only applies when an agency issues a general notice of proposed rulemaking. Because the OCC is not publishing a notice of proposed rulemaking, this final rule is not subject to section 202 of the Unfunded Mandates Reform Act.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),<sup>20</sup> the OCC may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The final rule contains no information collection requirements under the PRA.

**List of Subjects**

**12 CFR Part 19**

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

**12 CFR Part 109**

Administrative practice and procedure, Federal savings associations, Penalties.

**Authority and Issuance**

For the reasons set out in the preamble, parts 19 and 109 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

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<sup>20</sup> 44 U.S.C. 3501 et seq.



## **PART 19 – RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 19 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 93a, 164, 481, 504, 1817, 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108(a), 3110, 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3, 78w, and 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. Section 19.240 is revised to read as follows:

### **§ 19.240 Inflation adjustments.**

(a) Statutory formula to calculate inflation adjustments. The maximum amount of each civil money penalty in the chart in paragraph (b) of this section is adjusted annually for inflation. The inflation adjustment is calculated by multiplying the maximum dollar amount of the civil money penalty for the previous calendar year by the cost-of-living inflation adjustment multiplier provided annually by the Office of Management and Budget and rounding the total to the nearest dollar.

(b) 2017 Inflation adjustment. The maximum amount of each civil money penalty in the following chart applies to penalties assessed after January 15, 2017, for violations that occurred on or after November 2, 2015:

<u>U.S. Code Citation</u>	<u>Description and Tier (if applicable)</u>	<u>Maximum Penalty Amount (in Dollars)<sup>1</sup></u>
12 U.S.C. 93(b)	Violation of Various Provisions of the National Bank Act: Tier 1 Tier 2 Tier 3	9,623 48,114 1,924,589 <sup>2</sup>
12 U.S.C. 164	Violation of Reporting Requirements: Tier 1 Tier 2 Tier 3	3,849 38,492 1,924,589 <sup>2</sup>
12 U.S.C. 481	Refusal of Affiliate to Cooperate in Examination (national bank)	9,623
12 U.S.C. 504	Violation of Various Provisions of the Federal Reserve Act: Tier 1 Tier 2 Tier 3	9,623 48,114 1,924,589 <sup>2</sup>
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act: Tier 1 Tier 2 Tier 3	9,623 48,114 1,924,589 <sup>2</sup>
12 U.S.C. 1818(i)(2) <sup>3</sup>	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty: Tier 1 Tier 2 Tier 3	9,623 48,114 1,924,589 <sup>2</sup>
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions: Per violation	316,566
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instrument for Transfers to Third Parties: Per violation	2,795
12 U.S.C. 1884	Violation of the Bank Protection Act	279
12 U.S.C. 1972(2)(F)	Violation of Anti-Tying Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty: Tier 1 Tier 2 Tier 3	9,623 48,114 1,924,589 <sup>2</sup>

<sup>1</sup> The maximum penalty amount is per day, unless otherwise indicated.

<sup>2</sup> The maximum penalty amount for a national bank is the lesser of this amount or 1 percent of total assets.

<sup>3</sup> These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1693o, 1681s, 1691c, and 1692l.

<u>U.S. Code Citation</u>	<u>Description and Tier (if applicable)</u>	<u>Maximum Penalty Amount (in Dollars)<sup>1</sup></u>
12 U.S.C. 3110(a)	Violation of Various Provisions of the International Banking Act (Federal Branches and Agencies):	43,983
12 U.S.C. 3110(c)	Violation of Reporting Requirements of the International Banking Act (Federal Branches and Agencies): Tier 1 Tier 2 Tier 3	3,519 35,186 1,759,309 <sup>2</sup>
12 U.S.C. 3909(d)(1)	Violation of International Lending Supervision Act	2,394
15 U.S.C. 78u-2(b)	Violation of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act: Tier 1 (natural person) – Per violation Tier 1 (other person) – Per violation Tier 2 (natural person) – Per violation Tier 2 (other person) – Per violation Tier 3 (natural person) – Per violation Tier 3 (other person) – Per violation	9,054 90,535 90,535 452,677 181,071 905,353
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements: First violation Subsequent violations	11,053 22,105
42 U.S.C. 4012a(f)(5)	Flood Insurance: Per violation	2,090

(c) Future inflation adjustments. Notice of the maximum penalty which may be assessed for the penalties enumerated in paragraph (b) of this section for calendar years after 2017 will be published in the **Federal Register** on an annual basis on or before January 15 of each calendar year based on the formula in paragraph (a) of this section.

**PART 109 – RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS**

3. The authority citation for part 109 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554-557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817, 1818, 1820(k), 1829(e), 1832, 1884, 1972, 3349, 4717, 5412(b)(2)(B); 15 U.S.C. 78(l), 78o-5, 78u-2, 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

4. Section 109.103 is amended by revising paragraph (c) to read as follows:

**§ 109.103 Civil money penalties.**

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(c) Maximum amount of civil money penalties-(1) Statutory formula. The maximum amount of each civil money penalty in the chart in paragraph (c)(2) of this section is adjusted annually for inflation. The inflation adjustment is calculated by multiplying the maximum dollar amount of the civil money penalty for the previous calendar year by the cost-of-living inflation adjustment multiplier provided annually by the Office of Management and Budget and rounding the total to the nearest dollar.

(2) 2017 Inflation adjustment. The maximum amount of each civil money penalty in the following chart applies to penalties assessed after January 15, 2017, for violations that occurred on or after November 2, 2015:

<u>U.S. Code Citation</u>	<u>CMP Description</u>	<u>Maximum Penalty Amount (in Dollars)<sup>1</sup></u>
12 U.S.C. 1464(v)	Reports of Condition: 1 <sup>st</sup> Tier 2 <sup>nd</sup> Tier 3 <sup>rd</sup> Tier	3,849 38,492 1,924,589 <sup>2</sup>
12 U.S.C. 1467(d)	Refusal of Affiliate to Cooperate in Examination	9,623
12 U.S.C. 1467a(r)	Late/Inaccurate Reports: 1 <sup>st</sup> Tier 2 <sup>nd</sup> Tier 3 <sup>rd</sup> Tier	3,849 38,492 1,924,589 <sup>2</sup>
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act: Tier 1 Tier 2 Tier 3	9,623 48,114 1,924,589 <sup>2</sup>
12 U.S.C. 1818(i)(2) <sup>3</sup>	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty Tier 1 Tier 2 Tier 3	9,623 48,114 1,924,589 <sup>2</sup>
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions: Per violation	316,566
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instruments for Transfers to Third Parties: Per violation	2,541
12 U.S.C. 1884	Violation of the Bank Protection Act	279
12 U.S.C. 1972(2)(F)	Violation of Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty: Tier 1 Tier 2 Tier 3	9,623 48,114 1,924,589 <sup>2</sup>
15 U.S.C. 78u-2(b)	Violations of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act: 1 <sup>st</sup> Tier (natural person) – Per violation 1 <sup>st</sup> Tier (other person) – Per violation 2 <sup>nd</sup> Tier (natural person) – Per violation 2 <sup>nd</sup> Tier (other person) – Per violation 3 <sup>rd</sup> Tier (natural person) – Per violation 3 <sup>rd</sup> Tier (other person) – Per violation	9,054 90,535 90,535 452,677 181,071 905,353

<sup>1</sup> The maximum penalty amount is per day, unless otherwise indicated.

<sup>2</sup> The maximum penalty amount for a national bank is the lesser of this amount or 1 percent of total assets.

<sup>3</sup> These amounts also apply to statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1681s, 1691c, and 1692l.

<u>U.S. Code Citation</u>	<u>CMP Description</u>	Maximum Penalty Amount <u>(in Dollars)</u> <sup>1</sup>
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements: First violation Subsequent violations	11,053 22,105
42 U.S.C. 4012a(f)(5)	Flood Insurance: Per violation	2,090

(3) Future inflation adjustments. Notice of the maximum penalty which may be assessed for the penalties enumerated in paragraph (c)(2) of this section for calendar years after 2017 will be published in the **Federal Register** on an annual basis on or before January 15 of each calendar year based on the formula in paragraph (c)(1) of this section.

Dated: January 9, 2017.

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**Thomas J. Curry,**  
*Comptroller of the Currency.*

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