



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 28, 30, 87, 180, and 3282

[Docket No. FR-5942-F-02]

RIN 2501-AD79

**Inflation Catch-up Adjustment of Civil Monetary Penalty Amounts Final Rule and
Adjustment of Civil Monetary Penalty Amounts for 2017**

AGENCY: Office of the General Counsel, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the interim final rule, published on June 15, 2016, to amend HUD's civil monetary penalty (CMP) regulations. The interim final rule applied a new methodology to calculate civil money penalties as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, starting with a "catch up" adjustment to correct previous inaccuracies; removed three obsolete civil monetary penalty provisions; and made a technical change to the existing codified regulation implementing the Program Fraud Civil Remedies Act. The changes from the interim final rule made final by this final rule continue to be effective as of August 16, 2016.

In addition, this rule provides for 2017 inflation adjustments of civil monetary penalty amounts required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and makes three technical amendments and a conforming statutory change.

DATES: Effective date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

Applicability date: The applicability date for catch-up adjustment was August 16, 2016.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Associate General Counsel, Office of Program Enforcement, Department of Housing and Urban Development, 1250 Maryland Avenue, SW, Suite 200, Washington, DC 20024; telephone number 202-245-4141 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The June 15, 2016, Interim Rule

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (Pub. L. 114-74) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) requiring all Federal agencies to issue an interim final rule implementing changes to their civil money penalties. On June 15, 2016, pursuant to the requirements of the 2015 Act, HUD published an interim final rule for public comment, entitled “Inflation Catch-Up Adjustment of Civil Monetary Penalty Amounts” (81 FR 38931). The 2015 Act required agencies to make an initial catch-up adjustment by interim final rule, using a new methodology designed to correct inaccuracies in the previous method of computing inflation adjustments. In order to address these inaccuracies, the 2015 Act excluded adjustments made under the law prior to its amendment, and it provided that the initial catch-up adjustment was the percentage by which the Consumer Price Index (CPI) for the month of October 2015 exceeded that of the month of October of the calendar year during which the amount of the CMP was originally established or otherwise adjusted under a provision of law other than the Federal Civil Money Penalties Inflation Adjustment Act of 1990. Increases in the initial catch-up adjustment were capped at 150 percent of the amount of the CMP in effect as of the date of enactment of the 2015 Act.

The interim final rule established the new adjusted penalty amount for each provision under which HUD is authorized to assess a CMP (81 FR 38935-38936); removed the obsolete CMP provisions that were codified at 24 CFR 30.30, 30.55, and 30.69 (81 FR 38935); and made a correction to 24 CFR 28.10 to include liability for causing a false claim or statement to be made, in addition to liability for making a false claim or statement (81 FR 38935).

The public comment period for the interim final rule closed on August 15, 2016. The interim final rule became effective on August 16, 2016. The August 16, 2016, effective date for the amendments made by the interim final rule is unchanged. HUD received one comment in response to the interim final rule, but it was not actually relevant to any issue in the interim final rule.¹

B. This 2017 Inflation Adjustment

After the catch-up adjustment, the 2015 Act requires agencies to make subsequent annual adjustments for inflation “notwithstanding section 553 of title 5, United States Code.” Section 553 refers to the Administrative Procedure Act, which might otherwise require a delay for advance notice and opportunity for public comment on future annual inflation adjustments. The first of these subsequent adjustments is for 2017.

The annual adjustment is based on the percent change between the U.S. Department of Labor’s Consumer Price Index for All Urban Consumers (“CPI-U”) for the month of October preceding the date of the adjustment, and the CPI-U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2017 is 1.01636.² Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.³

¹ The comment is available for public inspection at: <https://www.regulations.gov/docket?D=HUD-2016-0062>.

² Office of Management and Budget, M-17-11, Memorandum for the Heads of Executive Departments and Agencies, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation

II. This Final Rule

This rule makes final the June 15, 2016, interim rule. In addition, this rule makes the required 2017 inflation adjustment. Since HUD is not applying these adjustments retroactively, the 2016 increases being finalized apply to violations occurring prior to the effective date of this final rule (and on and after the effective date of the 2016 interim rule) and the 2017 increases apply to violations occurring on or after this rule's effective date.

Along with the 2017 inflation adjustment in this final rule, HUD also makes conforming and technical amendments to §§ 30.5, 30.10, 30.35, 30.36, and 30.80. Specifically, references to the former mortgage assignment procedures (in § 30.35), Urban Homesteading program (in §§ 30.5 and 30.80), and the Loan Correspondent program (in § 30.36) are removed, as those programs have been ended and are no longer active. In addition, the Helping Families Save Their Homes Act of 2009 (Pub. L. 111-22) amended the HUD Reform Act of 1989 (12 U.S.C. 1735f-14(a)(2)) definition for “knowing or knowingly” as it applies to civil money penalties against mortgagees, lenders, and other participants in FHA programs. This rule amends the definition for “knowing or knowingly” in § 30.10 to include the 2009 statutory definition.

For each component, HUD provides a table showing how the penalties are being adjusted for 2017 pursuant to the 2015 Act. In the first column, HUD provides a description of the penalty. In the second column (“Statutory Citation,”) HUD provides the United States Code statutory citation providing for the penalty. In the third column (“Regulatory citation”), HUD provides the Code of Federal Regulations citation under title 24 for the penalty. In the fourth column (“Previous Amount”), HUD provides the amount of the penalty pursuant to the interim

Adjustment Act. (https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf). (October 2016 CPI-U (241.729) - October 2015 CPI-U (237.838) = 1.01636.)

³ 28 U.S.C. 2461 note.

rule implementing the “catch-up” adjustment (81 FR 38931, June 15, 2016). In the fifth column, (“2017 Adjusted Amount”) HUD lists the penalty after applying the 2017 inflation adjustment.

Description	Statutory Citation	Regulatory Citation (24 CFR)	Previous Amount	2017 Adjusted Amount
False Claims & Statements	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(1))	§ 28.10	\$10,781	\$10,957
Advance Disclosure of Funding	Department of Housing and Urban Development Act (42 U.S.C. 3537a(c))	§ 30.20	\$18,936	\$19,246
Disclosure of Subsidy Layering	Department of Housing and Urban Development Act (42 U.S.C. 3545(f))	§ 30.25	\$18,936	\$19,246
FHA Mortgagees and Lenders Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-14(a)(2))	§ 30.35	Per Violation: \$9,468 Per Year: \$1,893,610	Per Violation: \$9,623 Per Year: \$1,924,589
Other FHA Participants Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-14(a)(2))	§ 30.36	Per Violation: \$9,468 Per Year: \$1,893,610	Per Violation: \$9,623 Per Year: \$1,924,589
Indian Loan Mortgagees Violations	Housing Community Development Act of 1992 (12 U.S.C. 1715z-13a(g)(2))	§ 30.40	Per Violation: \$9,468 Per Year: \$1,893,610	Per Violation: \$9,623 Per Year: \$1,924,589
Multifamily & Section 202 or 811 Owners Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f-15(c)(2))	§ 30.45	\$47,340	\$48,114
Ginnie Mae Issuers & Custodians Violations	HUD Reform Act of 1989 (12 U.S.C. 1723i(b))	§ 30.50	Per Violation: \$9,468 Per Year: \$1,893,610	Per Violation: \$9,623 Per Year: \$1,924,589

Title I Broker & Dealers Violations	HUD Reform Act of 1989 (12 U.S.C. 1703)	§ 30.60	Per Violation: \$9,468 Per Year: \$1,893,610	Per Violation: \$9,623 Per Year: \$1,924,589
Lead Disclosure Violation	Title X—Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d(b)(1))	§ 30.65	\$16,773	\$17,047
Section 8 Owners Violations	Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437z-1(b)(2))	§ 30.68	\$36,794	\$37,396
Lobbying Violation	The Lobbying Disclosure Act of 1995 (31 U.S.C. 1352)	§ 87.400	Min: \$18,936 Max: \$189,361	Min: \$19,246 Max: \$192,459
Fair Housing Act Civil Penalties	Fair Housing Amendments Act of 1988 (42 U.S.C. 3612(g)(3))	§180.671(a)	No Priors: \$19,787 One Prior: \$49,467 Two or More Priors: \$98,935	No Priors: \$20,111 One Prior: \$50,276 Two or More Priors: \$100,554
Manufactured Housing Regulations Violation	Housing Community Development Act of 1974 (42 U.S.C. 5410)	§ 3282.10	Per Violation: \$2,750 Per Year: \$3,437,500	Per Violation: \$2,795 Per Year: \$3,493,738

III. Justification for Final Rulemaking for the 2017 Adjustments

HUD generally publishes regulations for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is “impractical, unnecessary, or contrary to the public interest” (see 24 CFR 10.1). As discussed, this final rule adopts without change the amendments offered for public comment in the June 15, 2106, interim final rule. In addition, this rule makes the required 2017 inflation

adjustment, which HUD does not have discretion to change. Moreover, the 2015 Act specifies that a delay in the effective date under the Administrative Procedure Act is not required for subsequent annual adjustments under the 2015 Act. HUD has determined, therefore, that it is unnecessary to delay the effectiveness of the 2017 inflation adjustments to solicit prior public comments.

As discussed in the preamble to the June 15, 2016, interim final rule, section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that any HUD regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days. HUD met this separate 60-day delay requirement for implementing civil money penalties when HUD implemented the new 2015 Act penalty calculation in its June 16, 2016, interim final rule.

Moreover, and as noted above, the 2017 inflation adjustments are made in accordance with a statutorily prescribed formula that does not provide for agency discretion. Accordingly, a delay in the effectiveness of the 2017 inflation adjustments in order to provide the public with an opportunity to comment is unnecessary because the 2015 Act exempts the adjustments from the need for delay and, in any event, HUD would not have the discretion to make changes as a result of any comments.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to

analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. As discussed above in this preamble, this final rule adjusts existing civil monetary penalties for inflation by a statutorily required amount.

As a result of this review, OMB determined that this rule was not significant under Executive Order 12866 and Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)⁴ requires that an agency prepare a budgetary impact statement before promulgating a rule that includes 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 in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and

⁴ 2 U.S.C. 1532.

consider a reasonable number of regulatory alternatives before promulgating a rule.⁵ However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Environmental Review

This interim final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

⁵ 2 U.S.C. 1534.

24 CFR Part 30

Administrative practice and procedure, Grant programs-housing and community development, Loan programs-housing and community development, Mortgage insurance, Penalties.

24 CFR Part 87

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD adopts as final the interim final rule published on June 15, 2016, at 81 FR 38931, and further amends 24 CFR parts 28, 30, 87, 180, and 3282 as follows:

**PART 28 – IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL
REMEDIES ACT OF 1986**

1. The authority citation for part 28 continues to read as follows:

AUTHORITY: 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812; 42 U.S.C. 3535(d).

2. In § 28.10, revise the introductory text of paragraphs (a)(1) and (b)(1), to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) * * *

(1) A civil penalty of not more than \$10,957 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know:

* * * * *

(b) * * *

(1) A civil penalty of not more than \$10,957 may be imposed upon any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that:

* * * * *

PART 30 – CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

3. The authority citation for part 30 continues to read as follows:

AUTHORITY: 12 U.S.C. 1701q-1, 1703, 1723i, 1735f-14, and 1735f-15; 15 U.S.C. 1717a; 28 U.S.C. 1 note and 2461 note; 42 U.S.C. 1437z-1 and 3535(d).

§ 30.5 [Amended]

4. In § 30.5, remove paragraph (c) and redesignate paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively.

§ 30.10 [Amended]

5. In § 30.10, add at the end of the definition of “Knowing or Knowingly” the sentence “For purposes of §§ 30.35 and 30.36, knowing or knowingly is defined at 12 U.S.C. 1735f-14(g).”

6. In § 30.20, revise paragraph (b) to read as follows:

§ 30.20 Ethical violations by HUD employees.

* * * * *

(b) Maximum penalty. The maximum penalty is \$19,246 for each violation.

7. In § 30.25, revise paragraph (b) to read as follows:

§ 30.25 Violations by applicants for assistance.

* * * * *

(b) Maximum penalty. The maximum penalty is \$19,246 for each violation.

8. In § 30.35, remove the words “§§ 203.650 through 203.664” in paragraph (a)(7) and add in their place “§ 203.664”; and revise the first sentence in paragraph (c)(1) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(c)(1) Amount of penalty. The maximum penalty is \$9,623 for each violation, up to a limit of \$1,924,589 for all violations committed during any one-year period. * * *

* * * * *

9. In § 30.36, remove the words “or correspondent” in paragraph (b)(3) and revise the first sentence in paragraph (c) to read as follows:

§ 30.36 Other participants in FHA programs.

* * * * *

(c) Amount of penalty. The maximum penalty is \$9,623 for each violation, up to a limit of \$1,924,589 for all violations committed during any one-year period. * * *

10. In § 30.40, revise the first sentence in paragraph (c) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(c) Amount of penalty. The maximum penalty is \$9,623 for each violation, up to a limit of \$1,924,589 for all violations committed during any one-year period. * * *

11. In § 30.45, revise paragraph (g) to read as follows:

§ 30.45 Multifamily and section 202 or 811 mortgagors.

* * * * *

(g) Maximum penalty. The maximum penalty for each violation under paragraphs (c) and (f) of this section is \$48,114.

* * * * *

12. In § 30.50, revise the first sentence in paragraph (c) to read as follows:

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) Amount of penalty. The maximum penalty is \$9,623 for each violation, up to a limit of \$1,924,589 during any one-year period. * * *

13. In § 30.60, revise paragraph (c) to read as follows:

§ 30.60 Dealers or sponsored third-party originators.

* * * * *

(c) Amount of penalty. The maximum penalty is \$9,623 for each violation, up to a limit for any particular person of \$1,924,589 during any one-year period.

14. In § 30.65, revise paragraph (b) to read as follows:

§ 30.65 Failure to disclose lead-based paint hazards.

* * * * *

(b) Amount of penalty. The maximum penalty is \$17,047 for each violation.

15. In § 30.68, revise paragraph (c) to read as follows:

§ 30.68 Section 8 owners.

* * * * *

(c) Maximum penalty. The maximum penalty for each violation under this section is \$37,396.

* * * * *

§ 30.80 [Amended]

16. In §30.80, add the word “and” after paragraph (h); remove paragraph (i); and redesignate paragraphs (j), (k), and (l) as paragraphs (i), (j), and (k), respectively.

PART 87 – NEW RESTRICTIONS ON LOBBYING

17. The authority citation for part 87 continues to read as follows:

AUTHORITY: 28 U.S.C. 1 note; 31 U.S.C. 1352; 42 U.S.C. 3535(d).

18. In § 87.400, revise paragraphs (a), (b), and (e) to read as follows:

§ 87.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$19,246 and not more than \$192,459 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$19,246 and not more than \$192,459 for each such failure.

* * * * *

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$19,246, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$19,246 and \$192,459, as determined by the agency head or his or her designee.

* * * * *

PART 180 – CONSOLIDATED HUD HEARING PROCEDURES

FOR CIVIL RIGHTS MATTERS

19. The authority citation for part 180 continues to read as follows:

AUTHORITY: 28 U.S.C. 1 note; 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601-3619, 5301-5320, and 6103.

20. In § 180.671, revise paragraphs (a)(1), (2), and (3) to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(1) \$20,111, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local governmental agency, to have committed any prior discriminatory housing practice.

(2) \$50,276, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the 5-year period preceding the date of filing of the charge.

(3) \$100,554, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the 7-year period preceding the date of filing of the charge.

* * * * *

**PART 3282 – MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT
REGULATIONS**

21. The authority citation for part 3282 continues to read as follows:

AUTHORITY: 28 U.S.C. 1 note; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 5424.

22. Revise § 3282.10 to read as follows:

§ 3282.10 Civil and criminal penalties.

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum

amount of penalties imposed under section 611 of the Act shall be \$2,795 for each violation, up to a maximum of \$3,493,738 for any related series of violations occurring within one year from the date of the first violation.

Date: May 22, 2017

Bethany A. Zorc,
Principal Deputy General Counsel

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