



BILLING CODE 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 327

RIN 3064-AE75

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its rules of practice and procedure to remove duplicative, descriptive regulatory language related to civil money penalty (CMP) amounts that restates existing statutory language regarding such CMPs; codify Congress's recent change to CMP inflation-adjustments in the FDIC's regulations; and direct readers to an annually published notice in the *Federal Register*—rather than the Code of Federal Regulations (CFR)—for information regarding the maximum CMP amounts that can be assessed after inflation adjustments. These revisions are intended to simplify the CFR by removing unnecessary and redundant text and to make it easier for readers to locate the current, inflation-adjusted maximum CMP amounts by presenting these amounts in an annually published chart. Additionally, the FDIC is correcting four errors and revising cross-references currently found in its rules of practice and procedure.

DATES: This rule is effective on January 15, 2019.

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SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the Rule is to simplify the presentation of maximum CMP amounts within 12 CFR Part 308 to support ease of reference and public understanding. The Rule will amend the presentation of maximum CMP limits to help ensure consistency with similar statutes of other federal financial regulators.¹ Additionally, the Rule will implement recent Office of Management and Budget (OMB) guidance on simplifying the publication of annual inflation adjustments.

II. Background

The FDIC assesses CMPs under section 8(i) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1818) and a variety of other statutes.² Congress has established maximum penalties that can be assessed under these statutes. In many cases, these statutes contain multiple penalty tiers, permitting the assessment of penalties at various levels depending on the severity of the misconduct at issue.³

Since 1990, Congress has required federal agencies with authority to impose CMPs to periodically adjust the maximum CMP amounts these agencies are authorized to

¹ See 12 CFR 19.240 (2018) and 83 FR 1657 (Jan. 12, 2018) (table containing the CMP adjustments published by the Office of the Comptroller of Currency); 12 CFR 263.65 (2018) (table containing the CMP adjustments published by the Board of Governors of the Federal Reserve System); 12 CFR 747.1001 (2018) (table containing the CMP adjustments published by the National Credit Union Association).

² See, e.g., 12 U.S.C. 1972(2)(F) (authorizing the FDIC to impose CMPs for violations of the Bank Holding Company Act of 1970 related to prohibited tying arrangements); 15 U.S.C. 78u-2 (authorizing the FDIC to impose CMPs for violations of certain provisions of the Securities Exchange Act of 1934); 42 U.S.C. 4012a(f) (authorizing the FDIC to impose CMPs for pattern or practice violations of the Flood Disaster Protection Act).

³ For example, 12 U.S.C. 1818(i)(2) provides for three tiers of CMPs, with the size of the CMP increasing with the gravity of the misconduct.

impose.⁴ These periodic updates have helped to “maintain the deterrent effect of civil monetary penalties and promote compliance with the law.”⁵ In 2015, Congress revised the process by which federal agencies adjust applicable CMPs for inflation.⁶ Under the 2015 Adjustment Act, the FDIC is required to make annual adjustments to its maximum CMP amounts to account for inflation.⁷ These adjustments apply to all CMPs covered by the 2015 Adjustment Act.⁸ The 2015 Adjustment Act requires annual adjustments be made by January 15 of each year.⁹ The FDIC’s 2018 adjustments were published on January 12, 2018.¹⁰

The 2015 Adjustment Act directs federal agencies to follow guidance issued by the OMB by December 15 of each year when calculating new maximum penalty amounts.¹¹ The OMB issued guidance for the 2018 CMP adjustments on December 15, 2017.¹² The OMB Guidance noted, “Some agencies have chosen to remove their specific penalty amounts from the CFR and have instead codified the statutory formula for

⁴ See The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410.

⁵ See section 2 of the Federal Civil Penalties Inflation Adjustment Act of 1990. Pub. L. 101-410, 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

⁶ See The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, sec. 701, 129 Stat. 584 (2015 Adjustment Act). Although the 2015 Adjustment Act increased the maximum penalty that may be assessed under each applicable statute, the FDIC still possesses discretion to impose CMP amounts below the maximum level in accordance with the severity of the misconduct at issue. When making a determination as to the appropriate level of any given penalty, the FDIC is guided by statutory factors set forth in 12 U.S.C. 1818(i)(2)(G) and those factors identified in the Interagency Policy Statement Regarding the Assessment of CMPs by the Federal Financial Institutions Regulatory Agencies. See 63 FR 30227 (June 3, 1998). Such factors include, but are not limited to, the gravity and duration of the misconduct and the intent related to the misconduct.

⁷ See 2015 Adjustment Act at sec. 701(b).

⁸ See Pub. L. 101-410, sec. 3(2), 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

⁹ Pub. L. 114-74, sec. 701(b), 129 Stat. 584.

¹⁰ See 83 FR 1519, <https://www.fdic.gov/news/board/2017/2017-12-19-notice-sum-b-fr.pdf>.

¹¹ See Pub. L. 114-74, sec. 701(b), 129 Stat. 584.

¹² OMB, Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-18-03 (OMB Guidance), <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>.

inflation adjustments. Agencies must still calculate and publish their penalty adjustments in the *Federal Register*.¹³

III. Description and Expected Effects of the Rule

The FDIC is amending its rules of practice and procedure to remove from the CFR descriptive regulatory language related to maximum CMP amounts that duplicates statutory language, codify the statutory formula for inflation adjustments to the maximum CMP amounts, and direct readers to a table published annually in the *Federal Register*, containing the inflation-adjusted maximum CMP amounts. These changes will be consistent with the OMB Guidance and the practices of other Federal regulators.

Currently, 12 CFR sections 308.116(b) and 308.132(d) contain the maximum CMP amounts that may be assessed for violations of various statutes, along with lengthy descriptions of these statutes. Rather than providing any interpretation of these statutes or providing guidance regarding the assessment of CMPs for violations of these statutes, the descriptive language contained in sections 308.116(b) and 308.132(d) merely restates the enabling statutory language. The FDIC's current format for identifying inflation-adjusted CMP figures differs significantly from the formats published by other prudential regulators¹⁴ and makes it more difficult for readers to locate applicable maximum CMP amounts. Accordingly, the FDIC is removing descriptive language found in sections 308.116(b) and 308.132(d). The FDIC believes that these changes will remove unnecessary and redundant language from the CFR and improve readability.

¹³ OMB Guidance at 4 (citing 81 FR 41438 (June 27, 2016) (Social Security Administration) (codified at 29 CFR 498.103(g) (2018))).

¹⁴ The OCC, the FRB, and the National Credit Union Association (NCUA) provide a simplified list in a tabular format, identifying each enabling statute and the associated maximum CMP amount, adjusted for inflation. *See* 12 CFR 19.240 (2018) and 83 FR 1657 (Jan. 12, 2018) (table containing the OCC's CMP adjustments); 12 CFR 263.65 (2018) (table containing the FRB's CMP adjustments); 12 CFR 747.1001 (2018) (table containing the NCUA's CMP adjustments).

A sample annual table containing the current maximum CMP amounts appears at the end of this section, for reference. Under the Rule, the FDIC will calculate and publish a similar chart with inflation-adjusted figures in the *Federal Register* on or before January 15 of each calendar year, beginning with the January 15, 2019, annual inflation adjustments.

The FDIC, however, will retain language in section 308.116(a), (c) and (d) concerning violations of the Change in Bank Control Act. These regulations, which the FDIC implemented in 1991, address requests for a hearing, mitigating factors, and the consequences of a respondent's failure to answer.¹⁵ The language in current section 308.116(b)(1)-(3), however, repeats the relevant statutory language of 12 U.S.C. 1817(j)(16)(A)-(D). Further, current section 308.116(b)(4) merely contains inflation adjustments. Therefore, the FDIC is removing current section 308.116(b) and instead directing readers to section 308.132(d) to determine current maximum CMP amounts.

The FDIC is also keeping language concerning the late filing of Call Reports at current section 308.132(d)(1) and (d)(3). 12 U.S.C. 1817(a) provides the maximum CMP amounts for the late filing of Call Reports. In 1991, however, the FDIC issued regulations that further subdivided these amounts based upon the size of the institution and the lateness of the filing.¹⁶ These regulations accordingly differ from other provisions found in section 308.132(d) that simply restate relevant statutory language regarding maximum CMP amounts. The Rule will merge language from current subsections 308.132(d)(1) and (d)(3) into a new section 308.132(e), since, aside from the differing penalty amounts, these two current subsections contain similar language. The

¹⁵ See 56 FR 37968 (Aug. 9, 1991).

¹⁶ See 56 FR 37968, 37992-93 (Aug. 9, 1991).

new section 308.132(e) will direct readers to the *Federal Register* to determine the applicable inflation-adjusted penalty amounts.

The FDIC is correcting four errors currently located at section 308.132(d)(1) and (d)(3) concerning the maximum amount that generally will be assessed for violations of 12 U.S.C. 1464(v) and 1817(a) regarding the late filing of Call Reports by certain small institutions. The current text contains the inadvertent overstatement of four fractions of an institution's total assets that are paired with correctly stated basis-point figures. These corrections will align the listed fractions of an institution's total assets with the listed basis-point calculations, and these corrections will be reflected in the annual *Federal Register* CMP notice.¹⁷

Lastly, the FDIC is revising cross-references found at 12 CFR 308.502(a)(6), 12 CFR 308.502(b)(4), 12 CFR 308.530, and 12 CFR 327.3(c) to reflect the revisions to 12 CFR 308.132(d).

Since the Rule will amend the presentation of maximum CMP levels in the *Federal Register*, the FDIC believes the Rule will not pose any regulatory costs to IDIs or cost to the public in general.

SAMPLE CIVIL MONEY PENALTY TABLE

U.S. Code Citation	Adjusted Maximum CMP¹⁸ (Beginning January 15, 2018)
12 U.S.C. 1464(v)	
Tier One CMP	\$3,928
Tier Two CMP	\$39,278
Tier Three CMP ¹⁹	\$1,963,870

¹⁷ For example, current section 308.132(d)(1)(i)(A) states, "the amount assessed shall be the greater of [an inflation-adjusted daily penalty] or 1/1,000th of the institution's total assets (1/10th of a basis point)" when it should read, "the amount assessed shall be the greater of [an inflation-adjusted daily penalty] or 1/100,000th of the institution's total assets (1/10th of a basis point)." (Emphasis added.)

¹⁸ The maximum penalty amount is per day, unless otherwise indicated.

12 U.S.C. 1467(d)	\$9,819
12 U.S.C. 1817(a)	
Tier One CMP ²⁰	\$3,928
Tier Two CMP	\$39,278
Tier Three CMP ²¹	\$1,963,870
12 U.S.C. 1817(c)	
Tier One CMP	\$3,591
Tier Two CMP	\$35,904
Tier Three CMP ²²	\$1,795,216
12 U.S.C. 1817(j)(16)	
Tier One CMP	\$9,819
Tier Two CMP	\$49,096
Tier Three CMP ²³	\$1,963,870
12 U.S.C. 1818(i)(2) ²⁴	
Tier One CMP	\$9,819
Tier Two CMP	\$49,096
Tier Three CMP ²⁵	\$1,963,870
12 U.S.C. 1820(e)(4)	\$8,977
12 U.S.C. 1820(k)(6)	\$323,027
12 U.S.C. 1828(a)(3)	\$122
12 U.S.C. 1828(h) ²⁶	
For assessments < \$10,000	\$122

¹⁹ The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

²⁰ 12 U.S.C. 1817(a) provides the maximum CMP amounts for the late filing of Call Reports. In 1991, however, the FDIC issued regulations that further subdivided these amounts based upon the size of the institution and the lateness of the filing. See 56 FR 37968, 37992-93 (Aug. 9, 1991), *to be re-codified at* 12 CFR 308.132(e)(1). These adjusted subdivided amounts are found at the end of this chart.

²¹ The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

²² The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

²³ The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

²⁴ These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2601, 2804(b), 3108(b), 3349(b), 4009(a), 4309(a), 4717(b); 15 U.S.C. 1607(a), 1681s(b), 1691(b), 1691c(a), 1693o(a); 42 U.S.C. 3601.

²⁵ The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

²⁶ The \$122-per-day maximum CMP under 12 U.S.C. 1828(h), for failure or refusal to pay any assessment, applies only when the assessment is less than \$10,000. When the amount of the assessment is \$10,000 or more, the maximum CMP under section 1828(h) is 1 percent of the amount of the assessment for each day that the failure or refusal continues.

12 U.S.C. 1829b(j)	\$20,521
12 U.S.C. 1832(c)	\$2,852
12 U.S.C. 1884	\$285
12 U.S.C. 1972(2)(F)	
Tier One CMP	\$9,819
Tier Two CMP	\$49,096
Tier Three CMP ²⁷	\$1,963,870
12 U.S.C. 3909(d)	\$2,443
15 U.S.C. 78u-2	
Tier One CMP (individuals)	\$9,239
Tier One CMP (others)	\$92,383
Tier Two CMP (individuals)	\$92,383
Tier Two CMP (others)	\$461,916
Tier Three CMP (individuals)	\$184,767
Tier Three penalty (others)	\$923,831
15 U.S.C. 1639e(k)	
First violation	\$11,279
Subsequent violations	\$22,556
31 U.S.C. 3802	\$11,181
42 U.S.C. 4012a(f)	\$2,133

CFR Citation	Adjusted Presumptive CMP (Beginning January 15, 2018)
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12 CFR 308.132(e)(1)(i)	
Institutions with \$25 million or more in assets	
1 to 15 days late	\$538
16 or more days late	\$1,078
Institutions with less than \$25 million in assets	
1 to 15 days late ²⁸	\$180
16 or more days late ²⁹	\$359

²⁷ The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

²⁸ The maximum penalty amount for an institution is the greater of this amount or 1/100,000th of the institution's total assets.

²⁹ The maximum penalty amount for an institution is the greater of this amount or 1/50,000th of the institution's total assets.

12 CFR 308.132(e)(1)(ii)		
Institutions with \$25 million or more in assets		
1 to 15 days late		\$897
16 or more days late		\$1,795
Institutions with less than \$25 million in assets		
1 to 15 days late	1/50,000th of the institution's total assets	
16 or more days late	1/25,000th of the institution's total assets	
12 CFR 308.132(e)(2)		
		\$39,278
12 CFR 308.132(e)(3)		
Tier One CMP		\$3,928
Tier Two CMP		\$39,278
Tier Three CMP ³⁰		\$1,963,870

IV. Alternatives Considered

During preliminary discussions regarding the Rule, the FDIC considered possible alternatives to issuing the Rule. The primary alternative the FDIC considered was to maintain the current statutory language in the CFR and *Federal Register* as well as the CMP presentation format. This alternative (1) keeps the redundant statutory language in the CFR and *Federal Register*, (2) does not improve the clarity and readability of the maximum CMPs, and (3) does not address the fact that the CMP presentation format is inconsistent with the other prudential regulators. Therefore, the FDIC believes the Rule will support ease of reference and public understanding more so than the alternative.

V. Request for Comment

The FDIC believes that these changes to Part 308 are ministerial and technical and that, therefore, notice-and-comment rulemaking is unnecessary. Nonetheless, in the interest of transparency, the FDIC invited comments on all aspects of the Rule in a Notice

³⁰ The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

of Proposed Rulemaking, dated August 3, 2018.³¹ Commenters were specifically encouraged to identify any technical issues raised by the Rule. The FDIC provided a 60-day comment period for this Rule, but the agency did not receive any comments.

VI. Regulatory Analysis

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994³² requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, in order to provide an adequate transition period, new regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The Rule will not impose any new or additional reporting, disclosures, or other requirements on insured depository institutions. Therefore, the Rule is not subject to the requirements of this statute.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a final

³¹ See 83 FR 38080, <https://www.gpo.gov/fdsys/pkg/FR-2018-08-03/pdf/2018-16548.pdf>.

³² 12 U.S.C. 4802.

regulatory flexibility analysis describing the impact of the rulemaking on small entities.³³ A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets less than or equal to \$550 million.³⁴ The FDIC supervises 3,575 depository institutions,³⁵ of which 2,763 are defined as small banking entities by the terms of the RFA.³⁶ For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the Rule will not have a significant economic impact on a substantial number of small entities.

The FDIC believes the amendments to 12 CFR parts 308 and 327 will have a negligible impact on small entities. For a detailed description of the Rule and its expected effects, please review Section III above. The revisions are intended to simplify the text of the CFR by removing unnecessary and redundant text in order to make it easier for readers to reference and understand the current maximum CMP amounts.

Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the Rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996

³³ 5 U.S.C. 601 *et seq.*

³⁴ The SBA defines a small banking organization as having \$550 million or less in assets, where “a financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” 13 CFR 121.201 n.8 (2018). “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . .” 13 CFR 121.103(a)(6) (2018). Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of RFA.

³⁵ FDIC-supervised institutions are listed in 12 U.S.C. 1813(q)(2).

³⁶ Call Report: June 30, 2018.

(SBREFA).³⁷ As required by the SBREFA, the FDIC will submit the Rule and other appropriate reports to Congress and the Government Accountability Office for review.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Assessment of Federal Regulations and Policies on Families

The FDIC determined that the Rule will not affect family wellbeing within the meaning of section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.³⁸

Paperwork Reduction Act

The Rule does not create any new, or revise any existing, collections of information under section 3504(h) of the Paperwork Reduction Act of 1980.³⁹ Consequently, no information-collection request will be submitted to the OMB for review.

Plain Language Act

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000.⁴⁰ Accordingly, the FDIC has attempted to write the Rule in clear and comprehensible language.

List of Subjects

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties.

12 CFR Part 327

³⁷ 5 U.S.C. 801 *et seq.*

³⁸ Pub. L. 105-277, 112 Stat. 2681 (1998).

³⁹ 44 U.S.C. 3501 *et seq.*

⁴⁰ Pub. L. 106-102, 113 Stat. 1338 (Nov. 12, 1999).

Bank deposit insurance, Banks, banking, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, the FDIC amends 12 CFR parts 308 and 327 to read as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831o, 1831p-1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o-4(c), 78o-5, 78q-1, 78s, 78u, 78u-2, 78u-3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104-134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109-351, 120 Stat. 1966; Pub. L. 111-203, 124 Stat. 1376; Pub. L. 114-74, sec. 701, 129 Stat. 584.

2. Amend § 308.116 by revising paragraph (b) to read as follows:

§ 308.116 Assessment of penalties.

* * * * *

(b) *Maximum penalty amounts.* Under 12 U.S.C. 1817(j)(16), a civil money penalty may be assessed for violations of change in control of insured depository institution provisions in the maximum amounts calculated and published in accordance with § 308.132(d).

* * * * *

3. Amend § 308.132 by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 308.132 Assessment of penalties.

* * * * *

(d) *Maximum civil money penalty amounts.* Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Board of Directors or its designee may assess civil money penalties in the maximum amounts using the following framework:

(1) *Statutory formula to calculate inflation adjustments.* The FDIC is required by statute to annually adjust for inflation the maximum amount of each civil money penalty within its jurisdiction to administer. 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) *Notice of inflation adjustments.* By January 15 of each calendar year, the FDIC will publish notice in the *Federal Register* of the maximum penalties that may be assessed after each January 15, based on the formula in paragraph (d)(1) of this section, for conduct occurring on or after November 2, 2015.

(e) *Civil money penalties for violations of 12 U.S.C. 1464(v) and 12 U.S.C. 1817(a)—(1) Late filing – Tier One penalties.* Where an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, but where the institution maintains procedures in place reasonably adapted to avoid inadvertent error

and the late filing occurred unintentionally and as a result of such error, or where the institution inadvertently transmitted a Call Report that is minimally late, the Board of Directors or its designee may assess a Tier One civil money penalty. The amount of such a penalty shall not exceed the maximum amount calculated and published annually in the *Federal Register* under paragraph (d)(2) of this section. Such a penalty may be assessed for each day that the violation continues.

(i) *First offense.* Generally, in such cases, the amount assessed shall be an amount calculated and published annually in the *Federal Register* under paragraph (d)(2) of this section. The *Federal Register* notice will contain a presumptive penalty amount per day for each of the first 15 days for which the failure continues, and a presumptive amount per day for each subsequent days the failure continues, beginning on the 16th day. The annual *Federal Register* notice will also provide penalty amounts that generally may be assessed for institutions with less than \$25,000,000 in assets.

(ii) *Subsequent offense.* The FDIC will calculate and publish in the *Federal Register* a presumptive daily Tier One penalty to be imposed where an institution has been delinquent in making or publishing its Call Report within the preceding five quarters. The published penalty shall identify the amount that will generally be imposed per day for each of the first 15 days for which the failure continues, and the amount that will generally be imposed per day for each subsequent day the failure continues, beginning on the 16th day. The annual *Federal Register* notice will also provide penalty

amounts that generally may be assessed for institutions with less than \$25,000,000 in assets.

(iii) *Lengthy or repeated violations.* The amounts set forth in this paragraph (e)(1) will be assessed on a case-by-case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(iv) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(2) *Late-filing - Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a Tier Two civil money penalty for each day the failure continues. The amount of such a penalty will not exceed the maximum amount calculated and published annually in the *Federal Register* under paragraph (d)(2) of this section.

(3) *False or misleading reports or information—(i) Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a Tier One civil money penalty for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error, or where the institution

inadvertently transmits a Call Report or information that is false or misleading. The amount of such a penalty will not exceed the maximum amount calculated and published annually in the *Federal Register* under paragraph (d)(2) of this section.

(ii) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a Tier Two civil money penalty for each day the information is not corrected. The amount of such a penalty will not exceed the maximum amount calculated and published annually in the *Federal Register* under paragraph (d)(2) of this section.

(iii) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a Tier Three civil money penalty for each day the information is not corrected. The penalty shall not exceed the lesser of 1 percent of the institution's total assets per day or the amount calculated and published annually in the *Federal Register* under paragraph (d)(2) of this section.

(4) *Mitigating factors.* The amounts set forth in paragraphs (e)(1) through (e)(3) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

4. Amend § 308.502 by revising paragraphs (a)(6) and (b)(4) to read as follows:

§ 308.502 Basis for civil penalties and assessments.

(a) * * *

(6) The amount of any penalty assessed under paragraph (a)(1) of this section will be adjusted for inflation in accordance with § 308.132(d).

* * * * *

(b) * * *

(4) The amount of any penalty assessed under paragraph (a)(1) of this section will be adjusted for inflation in accordance with § 308.132(d).

* * * * *

5. Amend § 308.530 by revising paragraph (d) to read as follows:

§ 308.530 Determining the amount of penalties and assessments.

* * * * *

(d) Civil money penalties that are assessed under this subpart are subject to annual adjustments to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74, sec. 701, 129 Stat. 584) (*see also* § 308.132(d)).

PART 327—ASSESSMENTS

6. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

7. Amend § 327.3 by revising paragraph (c) to read as follows:

§ 327.3 Payment of assessments.

* * * * *

(c) *Necessary action, sufficient funding by institution.* Each insured depository institution shall take all actions necessary to allow the Corporation to debit assessments from the insured depository institution's designated deposit account. Each insured depository institution shall, prior to each payment date indicated in paragraph (b)(2) of this section, ensure that funds in an amount at least equal to the amount on the quarterly certified statement invoice are available in the designated account for direct debit by the Corporation. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment. Penalties for failure to timely pay assessments will be calculated and published in accordance with 12 CFR 308.132(d).

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Dated at Washington, DC, on November 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2018-25660 Filed: 11/27/2018 8:45 am; Publication Date: 11/28/2018]