

**BILLING CODE: 4810-AM-P**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1083**

**[Docket No. CFPB-2018-0034]**

**RIN 3170-AA62**

**Civil Penalty Inflation Adjustments**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is amending its rule that specifies the time period for which adjusted civil penalty amounts would be applied to conduct within its jurisdiction and is also adjusting specific civil penalty amounts in that rule to account for inflation. On June 14, 2016, the Bureau issued an interim final rule (IFR) to implement 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 (Inflation Adjustment Act). On October 12, 2018, the Bureau sought notice and comment on a proposed amendment to the IFR to specify that the adjusted civil penalties only apply to assessments whose associated violations occurred on, or after, November 2, 2015 (the date the 2015 Inflation Adjustment Act amendments were signed into law). This rule finalizes the IFR and proposed amendment; it also adjusts for inflation the maximum amount of each civil penalty within the Bureau's jurisdiction.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Shelley Thompson, Counsel or Monique

Chenault, Paralegal Specialist, Office of Regulations, at (202) 435-7700 or

<https://reginquiries.consumerfinance.gov>. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>1</sup> as amended by the Debt Collection Improvement Act of 1996<sup>2</sup> and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act),<sup>3</sup> 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.<sup>4</sup> 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 (IFR) to make the initial catch-up adjustments to civil penalties within the Bureau's jurisdiction.<sup>5</sup> The June 2016 IFR created a new part 1083 and in § 1083.1 established the inflation-adjusted maximum amounts for each civil penalty within the Bureau's jurisdiction.<sup>6</sup> The Bureau received no comments in response to the IFR, which became effective on July 14, 2016.

The Inflation Adjustment Act also requires subsequent adjustments to be made annually and notwithstanding section 553 of the Administrative Procedure Act (APA).<sup>7</sup> The Bureau

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<sup>1</sup> Public Law 101-410, 104 Stat. 890.

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

<sup>3</sup> Public Law 114-74, section 701, 129 Stat. 584, 599.

<sup>4</sup> 28 U.S.C. 2461 note. 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.

<sup>5</sup> 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.

<sup>6</sup> See 12 CFR 1083.1.

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

annually adjusted its civil penalty amounts, as required by the Act, through rules issued in January 2017 and January 2018.<sup>8</sup>

Specifically, the Act directs Federal agencies to adjust annually each civil penalty provided by law within the jurisdiction of the agency by the “cost-of-living adjustment.”<sup>9</sup> 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.<sup>10</sup> The Director of the Office of Management and Budget (OMB) is required to issue guidance (OMB Guidance) every year by December 15 to agencies on implementing the annual civil penalty inflation adjustments. 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.<sup>11</sup> The adjustments are designed to keep pace with inflation so that civil penalties retain their deterrent effect and promote compliance with the law.<sup>12</sup>

In 2017, OMB issued guidance stating that, “[f]or the 2018 annual adjustment, the new penalty amounts should apply to penalties assessed after the effective date of the 2018 annual adjustment – which will be no later than January 15, 2018 – including, if consistent with agency

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<sup>8</sup> 82 FR 3601 (Jan. 12, 2017); 83 FR 1525 (Jan. 12, 2018).

<sup>9</sup> Inflation Adjustment Act sections 4 and 5, *codified* at 28 U.S.C. 2461 note.

<sup>10</sup> Inflation Adjustment Act sections 3 and 5, *codified* at 28 U.S.C. 2461 note.

<sup>11</sup> Inflation Adjustment Act section 5, *codified* at 28 U.S.C. 2461 note; *see also* Memorandum to the Exec. Dep’ts & Agencies from Mick Mulvaney, Director, Office of Mgmt. & Budget (Dec. 14, 2018), *available at* [https://www.whitehouse.gov/wp-content/uploads/2017/11/m\\_19\\_04.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf).

<sup>12</sup> *See* Inflation Adjustment Act section 2, *codified* at 28 U.S.C. 2461 note.

policy, assessments whose associated violations occurred on, or after, November 2, 2015” (i.e., the date the 2015 Amendments were signed into law).<sup>13</sup>

On October 12, 2018, the Bureau proposed to finalize the IFR consistent with the 2017 OMB Guidance. Specifically, the Bureau proposed to revise §1083.1(b) to provide that the adjustments in paragraph (a) of the section shall apply to civil penalties assessed after January 15, 2019, whose associated violations occurred on or after November 2, 2015. The Bureau received one relevant comment, from an individual commenter, which was supportive of the proposal. This rule makes final the 2016 IFR with language consistent with the 2017 OMB Guidance.

For the 2019 annual adjustment, the multiplier reflecting the “cost-of-living adjustment” is 1.02522.<sup>14</sup> 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.<sup>15</sup>

The new penalty amounts that apply to civil penalties assessed after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], are as follows:

| <b>Law</b>   | <b>Penalty Description</b> | <b>Penalty Amounts Established Under 2018 Final Rule</b> | <b>OMB “Cost-of-Living Adjustment” Multiplier</b> | <b>New Penalty Amount</b> |
|--|----------------------------|--|---|---------------------------|
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A) | Tier 1 penalty             | \$5,639  | 1.02522   | \$5,781                   |

<sup>13</sup> Memorandum to the Exec. Dep’ts & Agencies from Mick Mulvaney, Director, Office of Mgmt. & Budget, at 4 (Dec. 15, 2017), available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>. OMB’s guidance issued in December 2016 ([https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-11\\_0.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-11_0.pdf)) contained similar language.

<sup>14</sup> Memorandum to the Exec. Dep’ts & Agencies from Mick Mulvaney, Director, Office of Mgmt. & Budget (Dec. 14, 2018), available at [https://www.whitehouse.gov/wp-content/uploads/2017/11/m\\_19\\_04.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf).

<sup>15</sup> 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.

|  |                                |             |         |             |
|--|--------------------------------|-------------|---------|-------------|
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B)       | Tier 2 penalty                 | \$28,195    | 1.02522 | \$28,906    |
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C)       | Tier 3 penalty                 | \$1,127,799 | 1.02522 | \$1,156,242 |
| Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2) | Per violation                  | \$1,964     | 1.02522 | \$2,014     |
| Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2) | Annual cap                     | \$1,963,870 | 1.02522 | \$2,013,399 |
| Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)      | Per failure                    | \$92        | 1.02522 | \$94        |
| Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)      | Annual cap                     | \$184,767   | 1.02522 | \$189,427   |
| Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A)   | Per failure, where intentional | \$185       | 1.02522 | \$190       |
| SAFE Act, 12 U.S.C. 5113(d)(2)                                   | Per violation                  | \$28,474    | 1.02522 | \$29,192    |
| Truth in Lending Act, 15 U.S.C. 1639e(k)(1)                      | First violation                | \$11,279    | 1.02522 | \$11,563    |
| Truth in Lending Act, 15 U.S.C. 1639e(k)(2)                      | Subsequent violations          | \$22,556    | 1.02522 | \$23,125    |

## II. Legal Authority

The Bureau issues this final rule pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>16</sup> as amended by the Debt Collection Improvement Act of 1996<sup>17</sup> and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,<sup>18</sup> which requires the Bureau to adjust for inflation the civil penalties within its jurisdiction according to a statutorily prescribed formula.

## III. Administrative Procedure Act

### A. Notice and Comment

<sup>16</sup> Public Law 101-410, 104 Stat. 890.

<sup>17</sup> Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373.

<sup>18</sup> Public Law 114-74, section 701, 129 Stat. 584, 599.

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.<sup>19</sup> The Bureau so finds with respect to the annual adjustment portion of the amendments in § 1083.1(a). These 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 agencies to adjust civil penalties annually notwithstanding section 553 of the APA,<sup>20</sup> and OMB Guidance reaffirms that agencies need not complete a notice-and-comment process before making the annual adjustments for inflation.<sup>21</sup> For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary with respect to the annual inflation adjustment portion of this rulemaking. Therefore, that portion of the amendment is adopted in final form without public comment.

As noted above, the Bureau sought notice and comment to finalize the IFR with amended language in § 1083.1(b) to specify that the adjusted civil penalties only apply to assessments whose associated violations occurred on, or after, November 2, 2015 (the date the 2015 amendments to the Inflation Adjustment Act were signed into law).

#### B. *Effective Date*

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

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<sup>19</sup> 5 U.S.C. 553(b)(B).

<sup>20</sup> Inflation Adjustment Act section 4, *codified* at 28 U.S.C. 2461 note.

<sup>21</sup> Memorandum to the Exec. Dep'ts & Agencies from Mick Mulvaney, Director, Office of Mgmt. & Budget (Dec. 14, 2018), *available at* [https://www.whitehouse.gov/wp-content/uploads/2017/11/m\\_19\\_04.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf).

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.<sup>22</sup>

At a minimum, the Bureau believes the annual adjustments to the civil penalty amounts in § 1083.1(a) fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The amendments to § 1083.1(a) 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 each year. Moreover, the Inflation Adjustment Act directs agencies to adjust the civil penalties annually notwithstanding section 553 of the APA,<sup>23</sup> and OMB Guidance reaffirms that agencies need not provide a delay in effective date for the annual adjustments for inflation.<sup>24</sup>

The amendment to § 1083.1(b), to finalize the IFR with language to specify that the adjusted civil penalties only apply to assessments whose associated violations occurred on, or after, November 2, 2015 (the date the 2015 amendments to the Inflation Adjustment Act were signed into law), similarly satisfies the requirements of section 553(d) and thus may become effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Because the amendment limits penalties that potentially could have been assessed, it relieves a restriction against affected parties by potentially decreasing the amount of civil penalties an affected party may have to pay. The Bureau also finds that there is good cause to make this amendment effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The amendment does not establish any requirement but instead ensures that penalties are not assessed

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<sup>22</sup> 5 U.S.C. 553(d).

<sup>23</sup> Inflation Adjustment Act section 4, *codified* at 28 U.S.C. 2461 note.

<sup>24</sup> Memorandum to the Exec. Dep'ts & Agencies from Mick Mulvaney, Director, Office of Mgmt. & Budget (Dec. 14, 2018), *available at* [https://www.whitehouse.gov/wp-content/uploads/2017/11/m\\_19\\_04.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf).

in a manner inconsistent with OMB guidance. Effectuating the amendment to § 1083.1(b) on the same day as § 1083.1(a) will also minimize confusion among affected parties as to which penalty amounts apply. The Bureau received no comments on its proposal to make the amendment to § 1083.1(b) effective no sooner than January 15, 2019.

#### **IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act (the RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small nonprofit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements. An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>25</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.<sup>26</sup>

At the proposed rule stage, the Bureau determined that an IRFA was not required because the proposal, if adopted, would not have had a significant economic impact on a substantial number of small entities. No comments were received with respect to that determination. For this final rule, the Bureau continues to believe that that determination is accurate. The rule simply specifies that increased penalty amounts apply only to violations that occurred on or after

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<sup>25</sup> See 5 U.S.C. 601 *et seq.*

<sup>26</sup> See 5 U.S.C. 609.

November 2, 2015, rather than also to violations that occurred prior to November 2, 2015.

Because it would limit the civil penalties covered persons may pay, the rule would not impose any additional costs on them. Nor does the rule impose any new, affirmative duty on any small entity or change any existing requirements on small entities, and thus no small entity who is currently complying with the laws that the Bureau enforces will incur any expense from the final rule.

Accordingly, the Bureau's Director, by signing below, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### **V. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. According to the PRA, the Bureau 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 currently a valid control number assigned by OMB. The Bureau has determined that this policy contains no information collections and that the revisions to this Policy do not create any new collections of information.

#### **VI. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Bureau will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

## 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 Bureau of Consumer Financial Protection 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:

Table 1 to Paragraph (a)

| U.S. Code Citation      | Civil Penalty Description      | Adjusted Maximum Civil Penalty Amount |
|-------------------------|--------------------------------|---------------------------------------|
| 12 U.S.C. 5565(c)(2)(A) | Tier 1 penalty                 | \$5,781                               |
| 12 U.S.C. 5565(c)(2)(B) | Tier 2 penalty                 | \$28,906                              |
| 12 U.S.C. 5565(c)(2)(C) | Tier 3 penalty                 | \$1,156,242                           |
| 15 U.S.C. 1717a(a)(2)   | Per violation                  | \$2,014                               |
| 15 U.S.C. 1717a(a)(2)   | Annual cap                     | \$2,013,399                           |
| 12 U.S.C. 2609(d)(1)    | Per failure                    | \$94                                  |
| 12 U.S.C. 2609(d)(1)    | Annual cap                     | \$189,427                             |
| 12 U.S.C. 2609(d)(2)(A) | Per failure, where intentional | \$190                                 |
| 12 U.S.C. 5113(d)(2)    | Per violation                  | \$29,192                              |
| 15 U.S.C. 1639e(k)(1)   | First violation                | \$11,563                              |
| 15 U.S.C. 1639e(k)(2)   | Subsequent violations          | \$23,125                              |

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whose associated violations occurred on or after November 2, 2015.

Dated: January 6, 2019.

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**Kathleen L. Kraninger,**

*Director, Bureau of Consumer Financial Protection.*

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