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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1083

Civil Penalty Inflation Adjustments

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

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

DATES: This final rule is effective January 15, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Ross, Attorney-Advisor; Kristen Phinnessee, Senior Counsel, Office of Regulations, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990,¹ as amended by the Debt Collection Improvement Act of 1996² and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act),³ directs Federal agencies to adjust for inflation the civil penalty amounts within their jurisdiction not later than July 1, 2016, and then not later than January 15 every year thereafter.⁴ 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.⁵ 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.⁶ The Bureau finalized the IFR on January 31, 2019.⁷

The Inflation Adjustment Act also requires subsequent adjustments to be made annually, not later than January 15, and notwithstanding section 553 of the Administrative Procedure Act (APA).⁸ The Bureau annually adjusted its civil penalty amounts, as required by the Act, through rules issued in January 2017, January 2018, and January 2019.⁹

¹ Public Law 101-410, 104 Stat. 890.

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

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

⁴ Section 1301(a) of the Federal Reports Elimination Act of 1998, Public Law 105-362, 112 Stat. 3293, also amended the Inflation Adjustment Act by striking section 6, which contained annual reporting requirements, and redesignating section 7 as section 6, but did not alter the civil penalty adjustment requirements; 28 U.S.C. 2461 note.

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

⁶ See 12 CFR 1083.1.

⁷ 84 FR 517 (Jan. 31, 2019).

⁸ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note. As discussed in guidance issued by the Director of the Office of Management and Budget (OMB), the APA generally requires notice, an opportunity for comment, and a delay in effective date for certain rulemakings, but the Inflation Adjustment Act provides that these procedures are not required for agencies to issue regulations implementing the annual adjustment. *See*

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.”¹⁰ 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.¹¹ 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.¹² The adjustments are designed to keep pace with inflation so that civil penalties retain their deterrent effect and promote compliance with the law.¹³

For the 2020 annual adjustment, the multiplier reflecting the “cost-of-living adjustment” is 1.01764.¹⁴

Memorandum to the Exec. Dep'ts & Agencies from Russell T. Vought, Acting Director, Office of Mgmt. & Budget at 4 (Dec. 16, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf>.

⁹ 82 FR 3601 (Jan. 12, 2017); 83 FR 1525 (Jan. 12, 2018); 84 FR 517 (Jan. 31, 2019).

¹⁰ Inflation Adjustment Act sections 4 and 5, codified at 28 U.S.C. 2461 note.

¹¹ Inflation Adjustment Act sections 3 and 5, codified at 28 U.S.C. 2461 note.

¹² Inflation Adjustment Act section 5, codified at 28 U.S.C. 2461 note; see also Memorandum to the Exec. Dep'ts & Agencies from Russell T. Vought, Acting Director, Office of Mgmt. & Budget (Dec. 16, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf>.

¹³ See Inflation Adjustment Act section 2, codified at 28 U.S.C. 2461 note.

¹⁴ Memorandum to the Exec. Dep'ts & Agencies from Russell T. Vought, Acting Director, Office of Mgmt. & Budget (Dec. 16, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf>.

II. Adjustment

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.¹⁵ The new penalty amounts that apply to civil penalties assessed after January 15, 2020, are as follows:

| Law | Penalty Description | Penalty Amounts Established Under 2019 Final Rule | OMB "Cost-of-Living Adjustment" Multiplier | New Penalty Amount |
|--|----------------------------|--|---|---------------------------|
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A) | Tier 1 penalty | \$5,781 | 1.01764 | \$5,883 |
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B) | Tier 2 penalty | \$28,906 | 1.01764 | \$29,416 |
| Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C) | Tier 3 penalty | \$1,156,242 | 1.01764 | \$1,176,638 |
| Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2) | Per violation | \$2,014 | 1.01764 | \$2,050 |
| Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2) | Annual cap | \$2,013,399 | 1.01764 | \$2,048,915 |
| Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1) | Per failure | \$94 | 1.01764 | \$96 |
| Real Estate Settlement Procedures Act, | Annual cap | \$189,427 | 1.01764 | \$192,768 |

¹⁵ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

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|--|--------------------------------|----------|---------|----------|
| 12 U.S.C. 2609(d)(1) | | | | |
| Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A) | Per failure, where intentional | \$190 | 1.01764 | \$193 |
| SAFE Act, 12 U.S.C. 5113(d)(2) | Per violation | \$29,192 | 1.01764 | \$29,707 |
| Truth in Lending Act, 15 U.S.C. 1639e(k)(1) | First violation | \$11,563 | 1.01764 | \$11,767 |
| Truth in Lending Act, 15 U.S.C. 1639e(k)(2) | Subsequent violations | \$23,125 | 1.01764 | \$23,533 |

III. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act, 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.¹⁶ The 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,¹⁷ and OMB Guidance reaffirms that agencies need not complete a notice-and-comment process before making the annual adjustments for inflation.¹⁸ For these

¹⁶ 5 U.S.C. 553(b)(B).

¹⁷ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

¹⁸ Memorandum to the Exec. Dep'ts & Agencies from Russell T. Vought, Acting Director, Office of Mgmt. & Budget (Dec. 16, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf>.

reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. The amendments therefore are adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.¹⁹ At 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 January 15, 2020. 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,²⁰ and OMB Guidance reaffirms that agencies need not provide a delay in effective date for the annual adjustments for inflation.²¹

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²²

¹⁹ 5 U.S.C. 553(d).

²⁰ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

²¹ Memorandum to the Exec. Dep'ts & Agencies from Russell T. Vought, Acting Director, Office of Mgmt. & Budget (Dec. 16, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf>.

²² 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

The Bureau has determined that this final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.²³

D. 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 in the preamble, 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 Adjustment of civil penalty amounts.

²³ 44 U.S.C. 3501-3521.

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

Table 1 to Paragraph (a)

| Law | Penalty Description | Adjusted maximum civil penalty amount |
|-------------------------|--------------------------------|--|
| 12 U.S.C. 5565(c)(2)(A) | Tier 1 penalty | \$5,883 |
| 12 U.S.C. 5565(c)(2)(B) | Tier 2 penalty | \$29,416 |
| 12 U.S.C. 5565(c)(2)(C) | Tier 3 penalty | \$1,176,638 |
| 15 U.S.C. 1717a(a)(2) | Per violation | \$2,050 |
| 15 U.S.C. 1717a(a)(2) | Annual cap | \$2,048,915 |
| 12 U.S.C. 2609(d)(1) | Per failure | \$96 |
| 12 U.S.C. 2609(d)(1) | Annual cap | \$192,768 |
| 12 U.S.C. 2609(d)(2)(A) | Per failure, where intentional | \$193 |
| 12 U.S.C. 5113(d)(2) | Per violation | \$29,707 |

| | | |
|-----------------------|-----------------------|----------|
| 15 U.S.C. 1639e(k)(1) | First violation | \$11,767 |
| 15 U.S.C. 1639e(k)(2) | Subsequent violations | \$23,533 |

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after January 15, 2020, whose associated violations occurred on or after November 2, 2015.

Dated: January 8, 2020.

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Policy Associate Director, Bureau of Consumer Financial Protection.

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