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**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Parts 1209, 1217, and 1250**

**RIN 2590-AB07**

**Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is adopting this final rule amending its Rules of Practice and Procedure and other agency regulations to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** Effective January 28, 2020, and is applicable beginning January 15, 2020.

**FOR FURTHER INFORMATION CONTACT:** Stephen E. Hart, Deputy General Counsel, at (202) 649-3053, [Stephen.Hart@fhfa.gov](mailto:Stephen.Hart@fhfa.gov), or Frank R. Wright, Assistant General Counsel, at (202) 649-3087, [Frank.Wright@fhfa.gov](mailto:Frank.Wright@fhfa.gov) (not toll-free numbers); Federal Housing Finance Agency, 400 7<sup>th</sup> Street, SW., Washington, DC 20219. The

telephone number for the Telecommunications Device for the Deaf is: (800) 877-8339 (TDD only).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

FHFA is an independent agency of the Federal government, and the financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), as well as the Federal Home Loan Banks (collectively, the Banks) and the Office of Finance under authority granted by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).<sup>1</sup> FHFA oversees the Enterprises and Banks (collectively, the regulated entities) and the Office of Finance to ensure that they operate in a safe and sound manner and maintain liquidity in the housing finance market in accordance with applicable laws, rules and regulations. To that end, FHFA is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.<sup>2</sup> Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) empowers FHFA to impose civil money penalties under specific conditions. FHFA's Rules of Practice and Procedure (12 CFR part 1209) (the Enforcement regulations) govern cease and desist proceedings, civil money penalty assessment proceedings, and other administrative adjudications.<sup>3</sup> FHFA's Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the Enterprises.<sup>4</sup>

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<sup>1</sup> See Safety and Soundness Act, 12 U.S.C. 4513 and 4631-4641.

<sup>2</sup> *Id.*

<sup>3</sup> See 12 CFR part 1209.

<sup>4</sup> See 12 CFR part 1250.

FHFA's Implementation of the Program Fraud Civil Remedies Act of 1986 regulation (12 CFR part 1217) sets forth procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act (31 U.S.C. 3801 *et seq.*) on any person that makes a false claim for property, services or money from FHFA, or makes a false material statement to FHFA in connection with a claim, where the amount involved does not exceed \$150,000.<sup>5</sup>

### **The Adjustment Improvements Act**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Adjustment Improvements Act), requires FHFA, as well as other federal agencies with the authority to issue civil money penalties (CMPs), to adjust by regulation the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.<sup>6</sup> The Adjustment Improvements Act required agencies to make an initial "catch-up" adjustment of their CMPs upon the statute's enactment,<sup>7</sup> and further requires agencies to make additional adjustments on an annual basis following the initial adjustment.<sup>8</sup>

The Adjustment Improvements Act sets forth the formula that agencies must apply when making annual adjustments, based on the percent change between the October Consumer Price Index for All Urban Consumers (the CPI-U) preceding the date of the last adjustment and the October CPI-U for the year before that.

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<sup>5</sup> See generally, 31 U.S.C. 3801 *et seq.*

<sup>6</sup> See 28 U.S.C. 2461 note.

<sup>7</sup> FHFA promulgated its catch-up adjustment of its CMPs with an interim final rule published July 1, 2016. 81 FR 43028.

<sup>8</sup> FHFA promulgated its most recent annual adjustment of its CMP with a final rule published March 18, 2019. 84 FR 9702.

## II. Description of the Rule

This final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR 1209.80 of the Enforcement regulations to reflect the new adjusted maximum penalty amount that FHFA may impose upon a regulated entity or any entity-affiliated party within each tier. The increases in maximum penalty amounts contained in this final rule may not necessarily affect the amount of any CMP that FHFA may seek for a particular violation, which may not be the maximum that the law allows; FHFA would calculate each CMP on a case-by-case basis in light of a variety of factors.<sup>9</sup> This rule also adjusts the maximum penalty amounts for violations under the FHFA Flood Insurance regulation by amending the text of 12 CFR 1250.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation. This rule also adjusts the maximum amounts for civil money penalties under the Program Fraud Civil Remedies Act by amending the text of 12 CFR 1217.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation.

The Adjustment Improvements Act directs federal agencies to calculate each annual CMP adjustment as the percent change between the CPI-U for the previous October and the CPI-U for October of the calendar year before.<sup>10</sup> The maximum CMP amounts for FHFA penalties were last adjusted in 2019.<sup>11</sup> Since FHFA is making this round of adjustments in calendar year 2020, and the maximum CMP amounts were last set in calendar year 2019, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI-U for October 2018 with the CPI-U for

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<sup>9</sup> See, e.g., 12 CFR 1209.7(c); FHFA Enforcement Policy, AB 2013-03 (May 31, 2013).

<sup>10</sup> 28 U.S.C. 2461 note.

<sup>11</sup> See 84 FR 9702 (March 18, 2019).

October 2019, resulting in an inflation factor of 1.01764. For each maximum CMP calculation, the product of this inflation adjustment and the previous maximum penalty amount was then rounded to the nearest whole dollar as required by the Adjustment Improvements Act, and was then summed with the previous maximum penalty amount to determine the new adjusted maximum penalty amount.<sup>12</sup> The tables below set out these items accordingly.

*Enforcement regulations*

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	11,677	206	11,883
12 U.S.C. 4636(b)(2)	Second Tier	58,383	1030	59,413
12 U.S.C. 4636(b)(4)	Third Tier (Entity-affiliated party or Regulated entity)	2,335,323	41,195	2,376,518

*Program Fraud Civil Remedies regulation*

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
31 U.S.C. 3802(a)(1)	Maximum penalty per false claim	11,463	202	11,665
31 U.S.C. 3802(a)(2)	Maximum penalty per false statement	11,463	202	11,665

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<sup>12</sup> 28 U.S.C. 2461 note.

*Flood Insurance regulation*

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
42 U.S.C. 4012a(f)(5)	Maximum penalty per violation	568	10	578
42 U.S.C. 4012a(f)(5)	Maximum total penalties assessed against an Enterprise in a calendar year	163,772	2889	166,661

**III. Differences between the Federal Home Loan Banks and the Enterprises**

When promulgating any regulation that may have future effect relating to the Banks, the Director is required by section 1313(f) of the Safety and Soundness Act to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability (12 U.S.C. 4513(f)).<sup>13</sup> The Director considered the differences between the Banks and the Enterprises, as they relate to the above factors, and determined that this final rule is appropriate. The inflation adjustments effected by the final rule are mandated by law, and the special features of the Banks identified in section 1313(f) of the Safety and Soundness Act can be accommodated, if appropriate, along with any other relevant factors, when determining any actual penalties.

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<sup>13</sup> So in original; no paragraphs (d) and (e) were enacted. *See* 12 U.S.C.A. 4513 n 1.

#### **IV. Regulatory Impact**

##### *Administrative Procedure Act*

FHFA finds good cause that notice and an opportunity to comment on this final rule are unnecessary under section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). The Adjustment Improvements Act states that the annual civil money penalty adjustments shall be made notwithstanding the rulemaking provisions of 5 U.S.C. 553.<sup>14</sup> Furthermore, this rulemaking conforms with and is consistent with the statutory directive set forth in the Adjustment Improvements Act. As a result, there are no issues of policy discretion about which to seek public comment. Accordingly, FHFA is adopting these amendments as a final rule.

##### *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (RFA),<sup>15</sup> an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have “a significant economic impact on a substantial number of small entities.” However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA.<sup>16</sup> As discussed above, FHFA has determined for good cause that the APA does not require a general notice of proposed rulemaking for this rule. Thus, the RFA does not apply to this final rule.

##### *Congressional Review Act*

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the

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<sup>14</sup> 28 U.S.C. 2461 note, section 4(b)(2).

<sup>15</sup> 5 U.S.C. 603.

<sup>16</sup> 5 U.S.C. 603(a), 604(a).

economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies.<sup>17</sup>

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

#### **Lists of Subjects**

##### *12 CFR Part 1209*

Administrative practice and procedure, Penalties.

##### *12 CFR Part 1217*

Civil remedies, Program fraud.

##### *12 CFR Part 1250*

Flood insurance, Government-sponsored enterprises, Penalties, Reporting and record keeping requirements.

Accordingly, for the reasons stated in the **SUPPLEMENTARY INFORMATION** and under the authority of 12 U.S.C. 4513b and 12 U.S.C. 4526, the Federal Housing Finance Agency hereby amends subchapters A and C of chapter XII of Title 12 of the Code of Federal Regulations as follows:

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<sup>17</sup> 5 U.S.C. 804(2).

**Subchapter A—Organization And Operations**

**PART 1209 —RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 1209 continues to read as follows:

**Authority:** 5 U.S.C. 554, 556, 557, and 701 *et seq.*; 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581-4588, 4631-4641; and 28 U.S.C. 2461 note.

2. Revise § 1209.80 to read as follows:

**§ 1209.80 Inflation adjustments.**

The maximum amount of each civil money penalty within FHFA’s jurisdiction, as set by the Safety and Soundness Act and thereafter adjusted in accordance with the Inflation Adjustment Act, is as follows:

U.S. Code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	\$11,883
12 U.S.C. 4636(b)(2)	Second Tier	\$59,413
12 U.S.C. 4636(b)(4)	Third Tier (Regulated Entity or Entity-Affiliated party)	\$2,376,518

3. Revise § 1209.81 to read as follows:

**§ 1209.81 Applicability.**

The inflation adjustments set out in § 1209.80 shall apply to civil money penalties assessed in accordance with the provisions of the Safety and Soundness Act, 12 U.S.C. 4636, and subparts B and C of this part, for violations occurring after January 15, 2020.

**PART 1217—PROGRAM FRAUD CIVIL REMEDIES ACT**

4. The authority citation for part 1217 continues to read as follows:

**Authority:** 12 U.S.C. 4501; 12 U.S.C. 4526; 28 U.S.C. 2461 note; 31 U.S.C. 3801-3812.

5. Amend § 1217.3 by revising paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

**§ 1217.3 Basis for civil penalties and assessments.**

(a) \* \* \*

(1) A civil penalty of not more than \$11,665 may be imposed upon a person who makes a claim to FHFA for property, services, or money where the person knows or has reason to know that the claim:

\* \* \* \* \*

(b) \* \* \*

(1) A civil penalty of up to \$11,665 may be imposed upon a person who makes a written statement to FHFA with respect to a claim, contract, bid or proposal for a contract, or benefit from FHFA that:

\* \* \* \* \*

**Subchapter C—Enterprises**

**PART 1250 —FLOOD INSURANCE**

6. The authority citation for part 1250 continues to read as follows:

**Authority:** 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

7. Amend § 1250.3 by revising paragraph (c) to read as follows:

**§ 1250.3 Civil money penalties.**

\* \* \* \* \*

(c) *Amount.* The maximum civil money penalty amount is \$568 for each violation that occurs before January 15, 2020, with total penalties not to exceed \$163,772. For violations that occur on or after January 15, 2020, the civil money penalty under this section may not exceed \$578 for each violation, with total penalties assessed under this section against an Enterprise during any calendar year not to exceed \$166,661.

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Dated: January 16, 2020.

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Mark A. Calabria,  
*Director, Federal Housing Finance Agency.*

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