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FEDERAL RESERVE SYSTEM

12 CFR Part 263

Docket No. R-1451

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is amending its rules of practice and procedure to adjust the amount of each civil money penalty (CMP) provided by law within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

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

FOR FURTHER INFORMATION CONTACT: Katherine H. Wheatley, Associate General Counsel (202) 452-3779, or Mehrnoush Bigloo, Attorney (202) 475-6361, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

Federal Civil Penalties Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 *note* (“FCPIA Act” or the “Act”), as amended by the Debt Collection Improvement Act of 1996, requires Federal agencies to adjust, by regulation, the CMPs within their jurisdiction by a

prescribed inflation adjustment at least once every four years. The Board made its last adjustment to its CMPs on October 6, 2008, *see* 73 FR 58,032, and on September 13, 2011, it incorporated into its regulation the penalties applicable to savings and loan holding companies over which it obtained supervisory authority pursuant to section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, *see* 76 FR 56,604. The Board is issuing this final rule pursuant to the FCPIA Act to set forth the newly-adjusted CMPs which will apply to violations that occur after the rule's effective date.

The FCPIA Act defines the inflation adjustment as a cost-of-living adjustment based on the percentage change in the Consumer Price Index between June of the calendar year in which the particular CMP was last set or adjusted and June of the calendar year preceding the current adjustment (in this case, June 2011). The Act specifies the use of the Consumer Price Index for All Urban Consumers (CPI-U) published by the Department of Labor.

Accordingly, to obtain the percent inflation adjustment for each CMP within the Board's jurisdiction, we calculated the percent change in the CPI-U between June of the year in which the CMP was last adjusted and June 2011.¹ Then, using the relevant percent inflation adjustment, we calculated the inflation increase for each CMP.² The Act requires the rounding of any calculated increase pursuant to the method prescribed in Section 5(a) of the

¹ This resulted in a 3.2 percent inflation adjustment for penalties that were last adjusted in 2008, a 19 percent inflation adjustment for penalties that were last adjusted in 2004, a 30.9 percent inflation adjustment for penalties that were last adjusted in 2000, and a 44 percent inflation adjustment for penalties that were last adjusted in 1996.

² Because the Biggert-Waters Flood Insurance Reform Act of 2012, Pub. L. No. 112-141, 126 Stat. 405, amended 42 U.S.C. 4012a(f)(5) by increasing the CMP for each violation under 42 U.S.C. 4012a(f) to \$2,000, the Board did not calculate an inflation adjustment for this CMP. It should also be noted that the amendment to 42 U.S.C. 4012a(f)(5) removed the \$100,000

Act.³ In the case of the majority of the Board's CMPs, the calculated increase was rounded down to zero, resulting in no adjustment to the CMP. These unadjusted penalties include the penalty for certain late, false or misleading reports under 12 USC 324, the first and second tier penalties under 12 USC 504, 505, 1817(j)(16), 1818(i)(2), and 1972(2)(F), the penalties under 12 USC 1820(k)(6)(A)(ii), 1832(c), 1847(b), 3110(a), 334, 374a, 1884, 3909(d), 1467a(i)(2), 1467a(i)(3), and 1467a(r)(2), the second tier penalties under 12 USC 1847(d) and 3110(c), the penalties under 15 USC 78u-2(b)(1) and (2), and the penalty for a natural person under 15 USC 78u-2(b)(3). The penalties that are not adjusted at this time because of this rounding formula will be subject to adjustment at the next adjustment cycle to take account of the entire period since their last adjustment.

The following is an example of the methodology for adjusting CMPs, using the penalty for a first tier violation of 12 U.S.C. 1847(d). First, because that CMP was last adjusted in 2000, we calculated the percent increase between the CPI-U for June 2000 (172.4) and the CPI-U for June 2011 (225.72). We then took that percentage (30.9%) and multiplied it by the current CMP amount of \$2,200 to obtain an inflation increase of \$679.80. Because the current CMP amount is greater than \$1,000 but less than \$10,000, the Act requires us to round the inflation increase to the nearest multiple of \$1,000.

Rounding \$679.80 to the nearest multiple of \$1,000 yields \$1,000. Accordingly, the

calendar-year limit on penalties assessed against any regulated lending institution or enterprise.

³ Section 5(a) of the Act requires that any calculated increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. 28 U.S.C. 2461 *note*, Sec. 5(a).

increase to the \$2,200 penalty for a first tier violation of 12 U.S.C. 1847(d) is \$1,000, resulting in an adjusted CMP of \$3,200.

Administrative Procedure Act

This rule is not subject to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, requiring notice, public participation, and deferred effective date. The FCPIA Act provides Federal agencies with no discretion in the adjustment of CMPs to the rate of inflation, and it also requires that adjustments be made at least every four years. Moreover, this regulation is ministerial and technical. For these reasons, the Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impracticable, and contrary to the public interest, pursuant to the APA, 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the *Federal Register*, pursuant to the APA, 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies only to rules for which an agency publishes a general notice of proposed rulemaking. Because the Board has determined for good cause that a notice of proposed rulemaking for this rule is unnecessary, the Regulatory Flexibility Act does not apply to this final rule.

Paperwork Reduction Act

There is no collection of information required by this final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Lawyers, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors amends 12 CFR part 263 as follows:

PART 263--RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 248, 324, 504, 505, 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 1828(c), 1829(e), 1831o, 1831p-1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3349, 3907, 3909, 4717; 15 U.S.C. 21, 78(1), 78o-4, 78o-5, 78u-2; 28 U.S.C. 2461 *note*; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

2. Section 263.65 is revised to read as follows:

§ 263.65 Civil penalty inflation adjustments.

(a) *Inflation Adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 *note*, the Board has set forth in paragraph (b) of this section the adjusted maximum amounts for each civil money penalty provided by law within the Board's jurisdiction. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The adjusted civil money penalties apply only to violations occurring after the effective date of this rule.

(b) *Maximum civil money penalties.* The maximum civil money penalties as set forth in the referenced statutory sections are as follows:

- (1) 12 U.S.C. 324:

- (i) Inadvertently late, false or misleading reports, *inter alia* - \$3,200.
 - (ii) Other late, false or misleading reports, *inter alia* - \$32,000.
 - (iii) Knowingly or recklessly false or misleading reports, *inter alia* - \$1,425,000.
- (2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(2)(F):
- (i) First tier -- \$7,500.
 - (ii) Second tier -- \$37,500.
 - (iii) Third tier -- \$1,425,000.
- (3) 12 U.S.C. 1820(k)(6)(A)(ii) -- \$275,000.
- (4) 12 U.S.C. 1832(c) -- \$1,100.
- (5) 12 U.S.C. 1847(b), 3110(a) -- \$37,500.
- (6) 12 U.S.C. 1847(d), 3110(c):
- (i) First tier -- \$3,200.
 - (ii) Second tier -- \$32,000.
 - (iii) Third tier -- \$1,425,000.
- (7) 12 U.S.C. 334, 374a, 1884 -- \$110.
- (8) 12 U.S.C. 3909(d) -- \$1,100.
- (9) 15 U.S.C. 78u-2:
- (i) 15 U.S.C. 78u-2(b)(1) -- \$7,500 for a natural person and \$70,000 for any other person.
 - (ii) 15 U.S.C. 78u-2(b)(2) -- \$70,000 for a natural person and \$350,000 for any other person.
 - (iii) 15 U.S.C. 78u-2(b)(3) -- \$140,000 for a natural person and \$700,000 for any other person.
- (10) 42 U.S.C. 4012a(f)(5) -- \$2,000.
- (11) 12 U.S.C. 1467a(i):

(i) 12 U.S.C. 1467a(i)(2) -- \$32,500.

(ii) 12 U.S.C. 1467a(i)(3) -- \$32,500.

(12) 12 U.S.C. 1467a(r):

(i) 12 U.S.C. 1467a(r)(1) -- \$3,200.

(ii) 12 U.S.C. 1467a(r)(2) -- \$32,500.

(iii) 12 U.S.C. 1467a(r)(3) -- \$1,425,000.

By order of the Board of Governors of the Federal Reserve System, November 9, 2012.

Robert deV. Frierson,
Secretary of the Board.

Billing Code: 6210-01-P

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