



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

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1083**

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

**Civil Penalty Inflation Adjustments**

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

**ACTION:** Proposed rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is proposing to amend its rule adjusting for inflation the maximum amount of each civil penalty within the Bureau's jurisdiction pursuant to 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 Bureau is proposing an amendment to specify that the adjusted civil monetary 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). The Bureau requests public comment on all aspects of this proposal.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2018-0034 or RIN 3170-AA62, by any of the following methods:

- *eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB-2018-0034 or

RIN 3170-AA62 in the subject line of the email.

- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.

*Instructions:* All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5:30 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Monique Chenault, Paralegal Specialist or Shelley Thompson, Counsel, 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, as amended by the Debt Collection Improvement Act of 1996 and further amended in 2015 (Inflation Adjustment Act or

Act), requires federal agencies to adjust the civil penalty amounts within their respective jurisdictions for inflation not later than July 1, 2016, and then not later than January 15 every year thereafter.<sup>1</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>2</sup>

In June 2016, the Bureau issued an interim final rule (IFR) to create 12 CFR part 1083 and adjust the Bureau's civil penalty amounts.<sup>3</sup> The Bureau did not receive comments in response to the IFR, which became effective on July 14, 2016. The Bureau annually adjusted its civil penalty amounts, as required by the Act, through rules issued in January 2017 and January 2018.<sup>4</sup>

Section 6 of the Inflation Adjustment Act states that the increased civil penalty amounts “shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.”<sup>5</sup> 12 CFR 1083.1(b) as implemented by the IFR states that the Bureau's adjusted penalty amounts “shall apply to civil penalties assessed after July 14, 2016, regardless of when the violation for which the penalty is assessed occurred.”<sup>6</sup>

The Director of the Office of Management and Budget (OMB) is required to issue guidance every year by December 15 to agencies on implementing the annual civil penalty inflation adjustments.<sup>7</sup> In 2017, the Office of Management and Budget 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

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<sup>1</sup> See 28 U.S.C. 2461 note.

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

<sup>3</sup> 81 FR 38569 (June 14, 2016).

<sup>4</sup> 82 FR 3601 (Jan. 12, 2017); 83 FR 1525 (Jan. 12, 2018).

<sup>5</sup> Inflation Adjustment Act section 6, *codified* at 28 U.S.C. 2461 note.

<sup>6</sup> The subsequent annual adjustments have retained this general language other than updating the date to reflect the effective date of the particular annual adjustment.

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

January 15, 2018 – including, if consistent with agency policy, assessments whose associated violations occurred on, or after, November 2, 2015” (i.e., the date the 2015 Amendments were signed into law).<sup>8</sup>

Consistent with the OMB guidance, the Bureau proposes to finalize the IFR with changes that specify that adjusted penalties will apply only to violations that occurred on or after November 2, 2015. The Bureau proposes to revise §1083.1(b) to read as follows: “The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after January 15, 2019, whose associated violations occurred on or after November 2, 2015.” The Bureau requests comment on this proposed change and all aspects of this proposal.

## **II. Legal Authority and Proposed Effective Date**

The Bureau issues this proposal under the Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>9</sup> as amended by the Debt Collection Improvement Act of 1996<sup>10</sup> and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,<sup>11</sup> which requires the Bureau to adjust for inflation the civil penalties within its jurisdiction according to a statutorily prescribed formula.

The Bureau proposes to issue a final rule with an effective date no sooner than January 15, 2019. The Bureau believes the effective date would coincide with, or occur after, the

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<sup>8</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>9</sup> Public Law 101-410, 104 Stat. 890.

<sup>10</sup> Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373.

<sup>11</sup> Public Law 114-74, section 701, 129 Stat. 584, 599.

effective date of a 2019 annual adjustment by the Bureau under the Act.<sup>12</sup> The Bureau seeks comment on whether this proposed approach is appropriate.

### **III. Regulatory Flexibility Act (RFA)**

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>13</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>14</sup>

An IRFA is not required for this proposal because if adopted it would not have a significant economic impact on a substantial number of small entities. If adopted as proposed, the rule simply specifies that increased penalty amounts apply only to violations that occurred on or after 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 proposed 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 amended rule.

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<sup>12</sup> The Administrative Procedure Act generally requires an agency to publish a rule at least 30 days before its effective date. *See* 5 U.S.C. 553(d).

<sup>13</sup> *See* 5 U.S.C. 601 *et seq.*

<sup>14</sup> *See* 5 U.S.C. 609.

Accordingly, the Bureau’s Acting Director, by signing below, certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

#### **IV. Paperwork Reduction Act**

The Bureau has determined that the proposed 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 OMB under the Paperwork Reduction Act (PRA).<sup>15</sup> The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA.

#### **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 proposes to amend 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(b) is revised to read as follows:

#### **§ 1083.1 Adjustments of civil penalty amounts.**

\* \* \* \* \*

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after January 15, 2019, whose associated violations occurred on or after November 2, 2015.

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<sup>15</sup> 44 U.S.C. 3501 *et seq.*

Dated: October 5, 2018.

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**Mick Mulvaney,**

*Acting Director, Bureau of Consumer Financial Protection.*

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