FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2022–25]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: The final rules are effective on December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, Mr. Joseph P. Wenzinger, Attorney, or Ms. Terrell D. Stansbury, Paralegal, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act''),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act''),[2] requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is ''any penalty, fine, or other sanction'' that (1) ''is for a specific monetary amount'' or ''has a maximum amount'' under federal law; and (2) that a federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action'' in federal court.[3] Under the Federal Election Campaign Act, 52 U.S.C. 30101–45 (''FECA''), the Commission may seek

and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

The Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.[4] Pursuant to guidance issued by the Office of Management and Budget,[5] the Commission is now adjusting its civil monetary penalties for 2023.

The Commission must adjust for inflation its civil monetary penalties ''notwithstanding Section 553'' of the Administrative Procedures Act (''APA'').[7] Thus, the APA's notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do not apply because Congress has specifically exempted agencies from these requirements.[8]

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the United States House of Representatives or the President of the United States Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA's notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law'').

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.[9]

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[4] Inflation Adjustment Act section 4(a).

[5] *See* Inflation Adjustment Act § 7(a) (requiring OMB to ''issue guidance to agencies on implementing the inflation adjustments required under this Act''); *see also* Memorandum from Shalanda D. Young, Acting Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M–23–05, Dec. 15, 2022, *https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf* (''OMB Memorandum'').

[6] Inflation Adjustment Act section 5.

[7] Inflation Adjustment Act section 4(b)(2).

[8] *See, e.g., Asiana Airlines* v. *FAA,* 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA ''notice and comment'' requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

[9] Inflation Adjustment Act section 6.

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (''COLA'') ratio.[10] The COLA ratio is the percentage that the Consumer Price Index (''CPI'')[11] ''for the month of October preceding the date of the adjustment'' exceeds the CPI for October of the previous year.[12] To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.[13] According to the Office of Management and Budget, the COLA ratio for 2023 is 0.017745, or 1.7745%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.07745.[14]

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

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[10] The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, section 4(a); *see also* OMB Memorandum at 2.

[11] The Inflation Adjustment Act, § 3, uses the CPI ''for all-urban consumers published by the Department of Labor.''

[12] Inflation Adjustment Act, section 5(b)(1).

[13] Inflation Adjustment Act, section 5(a), (b)(1).

[14] OMB Memorandum at 1.

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[1] Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, 1301, 112 Stat. 3280.

[2] Public Law 114–74, 701, 129 Stat. 584, 599.

[3] Inflation Adjustment Act section 3(2).

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	$21,805	1.07745	23,494
11 CFR 111.24(a)(2)(i)	46,517	1.07745	50,120
11 CFR 111.24(a)(2)(ii)	76,280	1.07745	82,188
11 CFR 111.24(b)	6,523	1.07745	7,028
11 CFR 111.24(b)	16,307	1.07745	17,570

2. 11 CFR 111.43, 111.44— Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules ''established and published by the Commission.'' 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two penalty schedules: The penalty schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the penalty schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.[15] Each penalty schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.[16] In addition, 11 CFR 111.43(c)

establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 nt.

§ 111.24 [Amended]

■ 2. Section 111.24 is amended as follows:

In the table below, for each section indicated in the left column, remove the number indicated in the middle column, and add in its place the number indicated in the right column.

Section	Remove	Add
111.24(a)(1)	$21,805	$23,494
111.24(a)(2)(i)	46,517	50,120
111.24(a)(2)(ii)	76,280	82,188
111.24(b)	6,523	7,028
111.24(b)	16,307	17,570

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed,

except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

TABLE 1 TO PARAGRAPH (a)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99 [a]	[$41 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$402 × [1 + (.25 × Number of previous violations)].
$5,000–9,999.99	[$80 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$483 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$172 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$806 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$342 + ($32 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,450 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$515 + ($129 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4,624 × [1 + (.25 × Number of previous violations)].

[15] Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

[16] A report is considered to be ''not filed'' if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

TABLE 1 TO PARAGRAPH (a)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$75,000–99,999.99	[$684 + ($172 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5,994 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99 ...	[$1,026 + ($214 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7,708 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99 ...	[$1,373 + ($256 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9,420 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99 ...	[$1,712 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,132 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99 ...	[$2,570 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,702 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99 ...	[$3,426 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,414 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99 ...	[$4,282 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,271 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99 ...	[$5,137 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,128 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99 ...	[$5,994 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,984 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99 ...	[$6,850 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,839 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99 ...	[$7,708 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$ 19,696 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$8,564 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,552 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

TABLE 2 TO PARAGRAPH (b)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99 [a]	[$80 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$806 × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$162 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$966 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$241 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,450 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$515 + ($41 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2,255 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$771 + ($129 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5,137 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$1,026 + ($172 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6,850 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99 ...	[$1,542 + ($214 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8,564 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99 ...	[$2,056 + ($256 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,276 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99 ...	[$2,570 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,845 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99 ...	[$3,853 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,414 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99 ...	[$5,137 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,128 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99 ...	[$6,423 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,839 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99 ...	[$7,708 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,552 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99 ...	[$8,992 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$22,266 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99 ...	[$10,276 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$23,979 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99 ...	[$11,560 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$25,690 × [1 + (.25 × Number of previous violations)].

TABLE 2 TO PARAGRAPH (b)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$950,000 or over	[$12,845 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$27,404 × [1 + (.25 × Number of previous violations)].

ᵃ The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $9,420.

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§ 111.44 [Amended]

■ 4. Amend § 111.44(a)(1) by removing ''$160'' and adding, in its place, ''$172''.

Dated: December 22, 2022.

On behalf of the Commission,

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–28287 Filed 12–28–22; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1209, 1217, and 1250

RIN 2590–AB26

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

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* December 29, 2022, and applicable beginning January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Frank R. Wright, Assistant General Counsel, at (202) 649–3087, *Frank.Wright@fhfa.gov* (not a toll-free number); Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

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).[1] 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.[2] 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.[3] FHFA's Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the Enterprises.[4] 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.[5]

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.[6] The Adjustment Improvements Act required agencies to make an initial ''catch-up'' adjustment of their CMPs upon the statute's enactment,[7] and further requires agencies to make additional adjustments on an annual basis following the initial adjustment.[8]

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.

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

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[1] *See* Safety and Soundness Act, 12 U.S.C. 4513 and 4631–4641.

[2] *Id.*

[3] *See* 12 CFR part 1209.

[4] *See* 12 CFR part 1250.

[5] *See generally,* 31 U.S.C. 3801 *et seq.*

[6] *See* 28 U.S.C. 2461 note.

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

[8] FHFA promulgated its most recent annual adjustment of its CMP with a final rule published January 12, 2022. 87 FR 1659.