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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 Consumer Financial Protection Bureau (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 (Inflation Adjustment Act), 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. 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, 2023.

FOR FURTHER INFORMATION CONTACT: Adrien Fernandez, Counsel, Thomas Dowell, 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 Inflation Adjustment Act,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 2015,³ directs Federal agencies to

adjust the civil penalty amounts within their jurisdiction for inflation 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, January 2019, January 2020, January 2021, and January 2022.⁹

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 Memorandum for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 15, 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>.

⁹ 82 FR 3601 (Jan. 12, 2017); 83 FR 1525 (Jan. 12, 2018); 84 FR 517 (Jan. 31, 2019); 85 FR 1012 (Jan. 14, 2020); 86 FR 3767 (Jan. 15, 2021).

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 2023 annual adjustment, the multiplier reflecting the "cost-of-living adjustment" is 1.07745.

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.¹⁴ The new penalty amounts that apply to civil penalties assessed after January 15, 2023, are as follows:

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 for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 15, 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>.

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

¹⁴ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

¹ Public Law 101-410, 104 Stat. 890.

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

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

Law	Penalty description	Penalty amounts established under 2021 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	\$6,323	1.07745	\$6,813
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	31,616	1.07745	34,065
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,264,622	1.07745	1,362,567
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Per violation	2,203	1.07745	2,374
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Annual cap	2,202,123	1.07745	2,372,677
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1) ...	Per failure	103	1.07745	111
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1) ...	Annual cap	207,183	1.07745	223,229
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A).	Per failure, where intentional.	207	1.07745	223
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	31,928	1.07745	34,401
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	12,647	1.07745	13,627
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	25,293	1.07745	27,252

III. Procedural Requirements

A. Administrative Procedure Act

Under the APA, 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.¹⁵ 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,¹⁶ and OMB Guidance reaffirms that agencies need not complete a notice-and-comment process before making the annual adjustments for inflation.¹⁷ For these 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.¹⁸ 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, 2022. 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,¹⁹ and OMB Guidance reaffirms that agencies need not provide a delay in effective date for the annual adjustments for inflation.²⁰

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.²¹ As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirement relating to an initial and final regulatory flexibility analysis do not apply.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,²² the Bureau reviewed this final rule. The Bureau has determined that this rule does not create

any new information collections or substantially revise any existing collections.

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).

IV. Signing Authority

Senior Advisor Brian Shearer, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

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:

¹⁵ 5 U.S.C. 553(b)(B).

¹⁶ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

¹⁷ Memorandum for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 15, 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>.

¹⁸ 5 U.S.C. 553(d).

¹⁹ Inflation Adjustment Act section 4, codified at 28 U.S.C. 2461 note.

²⁰ Memorandum for the Heads of Exec. Dep'ts & Agencies from Shalanda D. Young, Director, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Off. of Mgmt. & Budget (Dec. 15, 2022), available at <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>.

²¹ 5 U.S.C. 603(a), 604(a).

²² 44 U.S.C. 3506; 5 CFR part 1320.

§ 1083.1 Adjustment of civil penalty amounts.

(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	\$6,813
12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	34,065
12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,362,567
15 U.S.C. 1717a(a)(2)	Per violation	2,374
15 U.S.C. 1717a(a)(2)	Annual cap	2,372,677
12 U.S.C. 2609(d)(1)	Per failure	111
12 U.S.C. 2609(d)(1)	Annual cap	223,229
12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	223
12 U.S.C. 5113(d)(2)	Per violation	34,401
15 U.S.C. 1639e(k)(1)	First violation	13,627
15 U.S.C. 1639e(k)(2)	Subsequent violations	27,252

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after January 15, 2023, whose associated violations occurred on or after November 2, 2015.

Laura Galban,

Federal Register Liaison, Consumer Financial Protection Bureau.

[FR Doc. 2022–28442 Filed 12–30–22; 8:45 am]

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DEPARTMENT OF COMMERCE**Office of the Secretary****15 CFR Part 6**

[Docket No. 221222–0281]

RIN 0605-AA65

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, required the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a

revised methodology that was effective for 2016 which provided for initial catch up adjustments for inflation in 2016, and requires adjustments for inflation to CMPs under a revised methodology for each year thereafter. The Department of Commerce's 2023 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. The Department of Commerce's 2023 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

DATES: This rule is effective January 15, 2023.

FOR FURTHER INFORMATION CONTACT:

Stephen M. Kunze, Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482–1207, Department of Commerce, 1401 Constitution Avenue NW, Room D200, Washington, DC 20230. The Department of Commerce's Civil Monetary Penalty Adjustments for Inflation are available for downloading from the Department of Commerce, Office of Financial Management's website at the following address: http://www.osec.doc.gov/ofm/OFM_Publications.html.

SUPPLEMENTARY INFORMATION:**Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), provided for agencies' adjustments for inflation to

CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,

2. Is assessed or enforced by an agency pursuant to Federal law; and,

3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment (1) required agencies to adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through a final rulemaking to take effect no later than August 1, 2016; and (2) requires agencies to make subsequent annual adjustments for inflation to CMPs that shall take effect not later than January 15. The Department of Commerce's 2022 adjustments for inflation to CMPs were published in the **Federal Register** on January 4, 2022, and the new CMP levels became effective January 15, 2022.

The Department of Commerce's 2023 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These 2023