

RESCINDED



OCC 2008-35

**Subject: Civil Money Penalty — Inflation
Adjustment Amendment
Date: December 2, 2008**

**To: Chief Executive Officers to All National
Banks, Federal Branches and Agencies,
Department and Division Heads, and All
Examining Personnel**

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Description: Final Rule

On November 10, 2008, the Office of the Comptroller of the Currency (OCC) published in the *Federal Register* the attached final rule amending its rules of practice and procedure to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction. The adjustments apply only to violations or practices that occur after December 10, the effective date of this rule.

The Inflation Adjustment Act requires federal agencies with CMP authority to publish regulations to adjust each CMP authorized by law that the agency has jurisdiction to administer. These adjustments maintain the deterrent effect of CMPs and promote compliance with the law. The Inflation Adjustment Act requires the adjustments to be made at least once every four years. The OCC's prior adjustment to each CMP was published in the *Federal Register* on November 10, 2004, and became effective on December 10, 2004. This rule revises the table that appears at 12 CFR 19.240 and modifies the chart format to make it more readable. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

In addition to adjusting the amounts of the OCC's current CMPs, the final rule adds a new penalty to the list, as authorized by 12 USC 1820(k)(6)(A)(ii). Section 1820(k), which took effect after the OCC's last CMP adjustment, prohibits an OCC senior examiner (or a functionally equivalent position), for one year following that person's departure as an employee from the OCC, from knowingly accepting compensation as an employee, officer, director of, or consultant for certain depository institutions or depository institution-holding companies that he or she examined, or from certain related entities.

For further information, contact Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division at (202) 874-5090.

Julie L. Williams
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Related Links

- [Final Rule 73 FR 66493](#)

action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996. The OCC is also amending part 19 to add to our list of penalties a new CMP, which was authorized after the OCC last adjusted its CMPs.

DATES: *Effective Date:* December 10, 2008.

FOR FURTHER INFORMATION CONTACT:

Michele Meyer, Assistant Director, or Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, or David Weber, Counsel, Enforcement and Compliance Division, (202) 874-4800, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The Inflation Adjustment Act, 28 U.S.C. 2461 note, requires the OCC, as well as other Federal agencies with CMP authority, periodically to publish regulations adjusting for inflation each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on November 10, 2004, 69 FR 65067, and became effective on December 10, 2004.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the year in which the adjustment will be made and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor.¹ See 28 U.S.C. 2461 note. In addition, the Inflation Adjustment Act provides rules for rounding off increases,² and requires that any

increase in a CMP apply only to violations that occur after the date of the adjustment. Finally, section 2 of the Debt Collection Improvement Act amended the Inflation Adjustment Act by limiting the initial adjustment of a CMP pursuant to the Inflation Adjustment Act to no more than 10 percent of the amount set by statute. See 28 U.S.C. 2461 note.

Description of the Final Rule

Inflation Adjustment

This final rule adjusts the amount for each CMP that the OCC has jurisdiction to impose in accordance with the statutory requirements by revising the table contained in subpart O of 12 CFR part 19. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The Act requires that we compute the inflation adjustment by comparing the CPI-U for June of the calendar year preceding the adjustment with the CPI-U for June of the year in which the CMPs were last set or adjusted. See 28 U.S.C. 2461 note. The majority of CMPs were adjusted in 2004. For those CMPs, we compared the CPI-U for June 2007 (208.352) with the CPI-U for June 2004 (189.7). This resulted in an inflation adjustment of 9.8 percent. Two penalties were last adjusted in 2000.³ For those penalties, we compared the CPI-U for June 2007 (208.352) with the CPI-U for June 2000 (172.4). This resulted in an inflation increase of 20.9 percent. Three penalties were last adjusted in 1997.⁴ For those penalties, we compared the CPI-U for June 2007 (208.352) with the CPI-U for June 1997 (160.3) with the CPI-U for June 2007 (208.352). This resulted in an inflation increase of 30.0 percent.

We multiplied the amount of each CMP by the appropriate percentage inflation adjustment, added that amount to the current penalty, and rounded the

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. See 28 U.S.C. 2461 note.

³ Those penalties last adjusted in 2000 are authorized by 12 U.S.C. 164 and 3110(c), Tier 1. See 65 FR 66250 (Dec. 11, 2000).

⁴ Those penalties last adjusted in 1997 are authorized by 12 U.S.C. 1832(c), 12 U.S.C. 3909(d)(1), and 12 U.S.C. 1884. See 62 FR 3199 (Jan. 22, 1997).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket ID OCC-2008-0020]

RIN 1557-AD11

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure, set forth at 12 CFR part 19, to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to administer to account for inflation. This

¹ The Department of Labor computes the CPI-U using two different base time periods, 1967 and 1982-1984, and the Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC, consistent with the other Federal banking agencies, has used the CPI-U with 1982-84 as the base period. Data on the CPI-U is available at <http://bls.gov>.

² The Act's rounding rules require that an increase be rounded to the nearest multiple of: \$10

resulting dollar amount up or down according to the rounding requirements of the Act. In some cases, rounding resulted in no adjustment to the CMP. The following table shows both the present CMPs and the inflation adjusted

CMPs. The table published in § 19.240(a) is shorter and shows only the adjusted CMPs, not the calculations.

Section 19.240(b) is amended, consistent with the statute, to state that the adjustments made in § 19.240(a)

apply only to violations that occur after the effective date of this final rule.

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U.S. Code Citation	Tier (if applicable)	Maximum Penalty (in Dollars)	Percentage Increase	Amount of Increase (in Dollars)	Amount of Increase – Rounded (in Dollars)	Adjusted Maximum Penalty (in Dollars)
12 U.S.C. 93(b)	Tier 1	6,500	9.8%	\$637	\$1,000	\$7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 164	Tier 1	2,200	20.9%	460	0	No Change
	Tier 2	27,000	9.8%	2,646	5,000	32,000
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 504	Tier 1	6,500	9.8%	637	1,000	7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 1817(j)(16)	Tier 1	6,500	9.8%	637	1,000	7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 1818(i)(2)	Tier 1	6,500	9.8%	637	1,000	7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 1820(k)(6)(A)(ii)		250,000	7.1%	17,750	25,000	275,000
12 U.S.C. 1832(c)		1,100	30.0%	330	0	No Change
12 U.S.C. 1884		110	30.0%	33	0	No Change
12 U.S.C. 1972(2)(F)	Tier 1	6,500	9.8%	637	\$1,000	7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 3110(a)		32,500	9.8%	3,185	5,000	37,500
12 U.S.C. 3110(c)	Tier 1	2,200	20.9%	460	0	No Change
	Tier 2	27,000	9.8%	2,646	5,000	32,000
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 3909(d)(1)		1,100	30.0%	330	0	No Change
15 U.S.C. 78u-2(b)	Tier 1 (natural person)	6,500	9.8%	637	1,000	7,500
	Tier 1 (other person)	65,000	9.8%	6,370	5,000	70,000
	Tier 2 (natural person)	65,000	9.8%	6,370	5,000	70,000
	Tier 2 (other person)	325,000	9.8%	31,850	25,000	350,000
	Tier 3 (natural person)	130,000	9.8%	12,740	10,000	140,000
	Tier 3 (other person)	625,000	9.8%	61,250	50,000	675,000
42 U.S.C. 4012a(f)(5)	Per violation	385	9.8%	38	0	No Change
	Per year	125,000	9.8%	12,250	10,000	135,000

New CMP

The OCC is adding to its list of penalties a new CMP, as authorized by 12 U.S.C. 1820(k).⁵ Section 1820(k) applies to senior examiners, or functionally equivalent positions, at a Federal banking agency or Federal Reserve Bank. It prohibits a senior examiner from knowingly accepting compensation as an employee, officer, director, or consultant, from certain depository institutions or depository institution holding companies he or she examined, or from certain related entities, for one year after the examiner leaves the employment or service of the Federal banking agency or Federal Reserve Bank. The statute and its implementing regulation⁶ permit the OCC to assess a penalty of not more than \$250,000 for a violation of the one-year restriction. Section 1820(k) became effective on December 17, 2005.⁷ To adjust this CMP, we compared the CPI-U for June 2007 (208.352) with the CPI-U for June 2005 (194.5). This resulted in an inflation increase of 7.1 percent.

Clarifying Change

The OCC is revising the chart format at 12 CFR 19.240(a) to be more readable. The revised chart separately identifies each statute and the different tiers of penalties provided in each statute (as applicable) rather than combining multiple statutes that assess identical CMPs.

Procedural Issues

1. Notice and Comment Procedure

Under the Administrative Procedure Act (APA), an agency may dispense with public notice and an opportunity for comment if the agency finds, for good cause, that these procedural requirements are impracticable,

unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The Act provides the OCC no discretion in calculating the amount of the civil penalty adjustment. The OCC, accordingly, cannot vary the methodology used to calculate the adjustment or the amount of the adjustment to reflect any views or suggestions provided by commenters. For this reason, the OCC has concluded that notice and comment procedures are unnecessary and that good cause exists for dispensing with them.

2. Delayed Effective Date

The Riegle Community Development and Regulatory Improvement Act of 1994 requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. See 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601(2). Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$133 million or more in any one year.⁸ Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1532(a).

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

Authority and Issuance

■ For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

■ 2. Section 19.240 is revised to read as follows:

§ 19.240 Inflation adjustments.

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

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⁵ Pub. L. 108–458, Title VI, section 6303(b), 118 Stat. 3638, 3751 (Dec. 17, 2004).

⁶ See 12 U.S.C. 1820(k)(6)(A)(ii); 12 CFR part 4, subpart E.

⁷ See 12 U.S.C. 1820 note and 12 CFR 4.75.

⁸ The Unfunded Mandates Reform Act of 1995 sets a threshold of \$100 million and requires that threshold to be adjusted annually for inflation. See 2 U.S.C. 1532(a). The OCC has calculated that the inflation-adjusted amount for 2009 is \$133 million.

U.S. Code Citation	Tier (if applicable)	Adjusted Maximum Penalty (in Dollars)
12 U.S.C. 93(b)	Tier 1	\$7,500
	Tier 2	37,500
	Tier 3	1,375,000
12 U.S.C. 164	Tier 1	2,200
	Tier 2	32,000
	Tier 3	1,375,000
12 U.S.C. 504	Tier 1	7,500
	Tier 2	37,500
	Tier 3	1,375,000
12 U.S.C. 1817(j)(16)	Tier 1	7,500
	Tier 2	37,500
	Tier 3	1,375,000
12 U.S.C. 1818(i)(2)	Tier 1	7,500
	Tier 2	37,500
	Tier 3	1,375,000
12 U.S.C. 1820(k)(6)(A)(ii)		275,000
12 U.S.C. 1832(c)		1,100
12 U.S.C. 1884		110
12 U.S.C. 1972(2)(F)	Tier 1	7,500
	Tier 2	37,500
	Tier 3	1,375,000
12 U.S.C. 3110(a)		37,500
12 U.S.C. 3110(c)	Tier 1	2,200
	Tier 2	32,000
	Tier 3	1,375,000
12 U.S.C. 3909(d)(1)		1,100
15 U.S.C. 78u-2(b)	Tier 1 (natural person)	7,500
	Tier 1 (other person)	70,000
	Tier 2 (natural person)	70,000
	Tier 2 (other person)	350,000
	Tier 3 (natural person)	140,000
	Tier 3 (other person)	675,000
42 U.S.C. 4012a(f)(5)	Per violation	385
	Per year	135,000

(b) The adjustments in paragraph (a) of this section apply to violations that occur after December 10, 2008.

Dated: October 31, 2008.

John C. Dugan,

Comptroller of the Currency.

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BILLING CODE 4810-33-C
