

the current NRC dose terminology. On the other hand, one commenter indicated that terminology should be adopted in order to be consistent with the terminology used by the U.S. Department of Energy, as revised in 2007, but use of the updated methodology should be delayed until the updated dose coefficients are published by ICRP. Finally, one commenter supported revision of 10 CFR part 20 to align more closely with ICRP Publication 103 methodology and terminology, but acknowledged that the realignment may result in little, if any, improvement in occupational or public safety.

As explained in SECY-16-0009, the additional resource expenditure in this area did not result in a recommendation for a revised rule. The current NRC regulatory framework continues to provide adequate protection of the health and safety of workers, the public, and the environment. In addition, a majority of the comments submitted and meeting feedback from stakeholders did not support the proposed changes. Therefore, the NRC staff believes that there is minimal adverse impact on the NRC's mission, principles, or values by discontinuing this rulemaking. In the SRM for SECY-16-0009, the Commission approved the NRC staff's recommendation to discontinue this rulemaking.

IV. Reactor Effluents (RIN 3150-AJ38; NRC-2014-0044)

The NRC published an ANPR in the *Federal Register* (80 FR 25237; May 4, 2015), to obtain input from members of the public and other stakeholders on the development of a regulatory basis for a potential revision to 10 CFR part 50, appendix I, the NRC's regulations for licensees of light water cooled reactors to meet the ALARA standard with respect to radioactive effluents from such reactor sites. The publication of the 10 CFR part 50, appendix I, ANPR was also in response to the Commission's direction in the SRM for SECY-12-0064, which stated that the NRC staff should, along with the development of the draft regulatory basis for the 10 CFR part 20 regulations, engage in a parallel effort to develop a draft regulatory basis for aligning the 10 CFR part 50, appendix I, design objectives with the most recent terminology and dose-related methodology published in ICRP Publication 103. In the ANPR, the NRC staff identified specific questions and issues with respect to a possible revision of 10 CFR part 50, appendix I, and related guidance. The NRC staff planned to consider public and other

stakeholder input on these questions and issues to develop the regulatory basis.

The NRC received 20 comment letters on the 10 CFR part 50, appendix I, ANPR. The comments, in addition to feedback from the August 24, 2015, NRC public meeting held in Rockville, MD, included the following: (1) The potential revisions will result in intangible benefits such as transparency in the regulatory process, consistent terminology and methodology, and comparison of technologies and operations across international borders and environmental media; (2) implementation of the potential revisions will result in a resource burden; (3) the potential revisions are unlikely to be cost-beneficial with little to no incremental improvement in the health and safety of occupational workers, the public, or the environment; (4) in lieu of the potential revisions, limited changes in the NRC guidance to address changes in methodology and terminology would require fewer licensee resources; and (5) should the NRC proceed with rulemaking, consideration of on-going work on the accuracy of the effluent doses to members of the public could further inform the proposed rulemaking.

Overall, the commenters recognized a need to update the NRC's regulations based on the advances in science and technology; however, the implementation costs would be a significant burden to the industry that would not be justified by improvements in public and occupational protection. In addition, some commenters provided additional options for the NRC to consider, should it continue with rulemaking, including limited scope updates to existing NRC guidance.

As explained in SECY-16-0009, the staff recommended that this rulemaking activity be discontinued because during the development of the regulatory basis for the proposed rule change, the staff determined that the regulations do not require changes at this time. Therefore, based on this determination and consideration of the comments received, the NRC staff believes that there is minimal adverse impact on the NRC's mission, principles, or values by discontinuing this rulemaking. In the SRM for SECY-16-0009, the Commission approved the NRC staff's recommendation to discontinue this rulemaking.

V. Conclusion

The NRC is no longer pursuing the revisions to regulations in 10 CFR part 20 and 10 CFR part 50, appendix I, for the reasons discussed in this document.

In the next edition of the Unified Agenda, the NRC will update the entry for these rulemaking activities and reference this document to indicate that they are no longer being pursued. These rulemaking activities will appear in the completed actions section of that edition of the Unified Agenda but will not appear in future editions. If the NRC decides to pursue similar or related rulemaking activities in the future, it will inform the public through new rulemaking entries in the Unified Agenda.

Dated at Rockville, Maryland, this 14th day of December 2016.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Acting Executive Director for Operations.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064-AE52

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adjusting the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act). The FDIC is also amending its rules of practice and procedure to correct a technical error from the previous inflation-adjustment rulemaking.

DATES: This rule is effective on January 15, 2017.

FOR FURTHER INFORMATION CONTACT: Seth P. Rosebrock, Supervisory Counsel, Legal Division (202) 898-6609, or Graham N. Rehrig, Senior Attorney, Legal Division (202) 898-3829.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The Final Rule changes the maximum limit for CMPs according to inflation as mandated by Congress in the 2015 Adjustment Act.¹ The intended effect of annually adjusting maximum civil money penalties in accordance with changes in the Consumer Price Index is

¹ Public Law 114-74, sec. 701, 129 Stat. 584.

to minimize any distortion in the real value of those maximums due to inflation, thereby promoting a more consistent deterrent effect in the structure of CMPs. The Final Rule also amends the FDIC's rules of practice and procedure under 12 CFR part 308 to remove a technical error found at 12 CFR 308.132(c).

II. Background

The FDIC assesses CMPs under section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818, and a variety of other statutes.² Congress established maximum penalties that could be assessed under these statutes. In many cases, these statutes contain multiple penalty tiers, permitting the assessment of penalties at various levels depending upon the severity of the misconduct at issue.³

In 1990, Congress determined that the assessment of CMPs plays "an important role in deterring violations and furthering the policy goals embodied in such laws and regulations" and concluded that "the impact of many civil monetary penalties has been and is diminished due to the effect of inflation."⁴ Consequently, Congress required federal agencies with authority to impose CMPs to periodically adjust by rulemaking the maximum CMPs which these agencies were authorized to impose in order to "maintain the deterrent effect of civil monetary penalties and promote compliance with the law."⁵ Under the 1990 Adjustment Act, the FDIC adjusted its CMP amounts every four years.⁶

In 2015, Congress revised the process by which federal agencies adjust applicable CMPs for inflation.⁷ Under the 2015 Adjustment Act, the FDIC is required to (1) adjust the CMP levels with an initial catch-up adjustment through an interim final rulemaking and (2) make subsequent annual adjustments for inflation.⁸ The initial and

subsequent adjustments apply to all CMPs covered by the 2015 Adjustment Act.⁹ The FDIC published its interim final rulemaking—containing the initial catch-up adjustments—on June 29, 2016.¹⁰ The 2015 Adjustment Act requires subsequent annual adjustments to be made by January 15 of each year.¹¹

Although the 2015 Adjustment Act increases the maximum penalty that may be assessed under each applicable statute, the FDIC possesses discretion to impose CMP amounts below the maximum level in accordance with the severity of the misconduct at issue. When making a determination as to the appropriate level of any given penalty, the FDIC is guided by statutory factors set forth in section 8(i)(2)(G) of the FDIA, 12 U.S.C. 1818(i)(2)(G), and those factors identified in the *Interagency Policy Statement Regarding the Assessment of CMPs by the Federal Financial Institutions Regulatory Agencies*.¹² Such factors include, but are not limited to, the gravity and duration of the misconduct, and the intent related to the misconduct.

While the 2015 Adjustment Act required the FDIC to initially adjust its maximum CMP amounts through an interim final rulemaking, for subsequent adjustments, the FDIC "shall adjust [CMPs] and shall make the adjustment notwithstanding section 553 of title 5, United States Code" (the Administrative Procedure Act).¹³ The FDIC, therefore, is not obligated to publish the subsequent adjustments through notice-and-comment rulemaking, and the FDIC

is publishing the adjustments through a final rule.

Moreover, the FDIC is correcting a technical error found at 12 CFR 308.132(c). During the last CMP-adjustment process, the FDIC sought to revise 12 CFR 308.132(c) to articulate the FDIC Board's authority to assess CMPs. The FDIC also intended to transfer the substance of current 12 CFR 308.132(c)(2) through 12 CFR 308.132(c)(3)(xvii) to current 12 CFR 308.132(d), and to remove the now-duplicative language of 12 CFR 308.132(c)(2) through 12 CFR 308.132(c)(3)(xvii). The Final Rule amends 12 CFR 308.132(c) accordingly by removing 12 CFR 308.132(c)(2) through 12 CFR 308.132(c)(3)(xvii) and retitling current 12 CFR 308.132(c)(1).

The FDIC believes that all of these changes are technical and ministerial in character, and therefore, the FDIC is not soliciting public comment on the changes.

III. Description and Expected Effects of the Final Rule

The Final Rule modifies the maximum limit for CMPs according to inflation as mandated by Congress in the 2015 Adjustment Act. The 2015 Adjustment Act directs federal agencies to follow guidance issued by the Office of Management and Budget (OMB) on December 16, 2016 (OMB Guidance), when calculating new maximum penalty levels.¹⁴ The adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U)¹⁵ for October 2015 and the October 2016 CPI-U.

Summary of the FDIC's Calculations

In keeping with the OMB Guidance, the FDIC multiplied each of its CMP amounts by the relevant inflation factor.¹⁶ After applying the multiplier, the FDIC rounded each penalty level to the nearest dollar. In making these calculations, the FDIC consulted with staff from the Office of the Comptroller of the Currency, the Board of Governors for the Federal Reserve System, the National Credit Union Administration,

² See, e.g., 12 U.S.C. 1972(2)(F) (authorizing the FDIC to impose CMPs for violations of the Bank Holding Company Act of 1970 related to prohibited tying arrangements); 15 U.S.C. 78u-2 (authorizing the FDIC to impose CMPs for violations of certain provisions of the Securities Exchange Act of 1934); 42 U.S.C. 4012a(f) (authorizing the FDIC to impose CMPs for pattern or practice violations of the Flood Disaster Protection Act).

³ For example, Section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), provides for three tiers of CMPs, with the size of such CMPs increasing with the gravity of the misconduct.

⁴ Section 2 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act), Public Law 101-410, 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

⁵ *Id.*

⁶ See, e.g., 77 FR 74573 (Dec. 17, 2012).

⁷ See Public Law 114-74, sec. 701, 129 Stat. 584.

⁸ See *id.* at sec. 701(b).

⁹ See Public Law 101-410, sec. 3(2), 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

¹⁰ 81 FR 42235. Although the FDIC was not obligated to solicit comments for the interim final rule, the FDIC asked for comments from the public and received one comment. See https://www.fdic.gov/regulations/laws/federal/2016/2016_3064%E2%80%933064%93AE43.html. The comment noted that the FDIC interim final rule was issued according to a statutory mandate, but expressed disappointment that the FDIC "did not promulgate [its] interim final CMP rules pursuant to the normal administrative process, whereby interested stakeholders among the public have an opportunity to comment on a 'Proposed Rule' before it is finalized." *Id.* The commenter made no specific request that the final rule be amended or changed, however, but requested that the FDIC exercise its "discretion to impose CMP amounts below the maximum level in accordance with the severity of the misconduct at issue." *Id.* As noted above, the FDIC followed an explicit statutory mandate in creating the interim final rule. Moreover, the FDIC intends to continue to exercise its discretion—in accordance with statutory requirements—in imposing appropriate CMP amounts. See 12 U.S.C. 1818(i)(2)(G).

¹¹ Public Law 114-74, sec. 701(b), 129 Stat. 584.

¹² 63 FR 30227 (June 3, 1998).

¹³ Public Law 114-74, sec. 701(b), 129 Stat. 584 (emphasis added).

¹⁴ See OMB, Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-17-11 (Dec. 16, 2016), available at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf (noting that the applicable 2017 CMP-adjustment multiplier is 1.01636).

¹⁵ The CPI-U is compiled by the Bureau of Statistics of the Department of Labor.

¹⁶ Under the 1990 Adjustment Act, adjustments have been made only to CMPs that are for specific dollar amounts or maximums. CMPs that are assessed based upon a fixed percentage of an institution's total assets are not subject to adjustment.

and the Bureau of Consumer Financial Protection to ensure that the FDIC's calculations and adjustments are consistent with those being proposed by other federal financial regulators for the same statutes.

The Adjusted CMP Amounts

The following chart displays the adjusted CMP amounts for each CMP identified in 12 CFR part 308.¹⁷ The following chart reflects the maximum

CMP amounts that may be assessed after January 15, 2017—the effective date of the 2017 annual adjustment—including assessments whose associated violations occurred on or after November 2, 2015.¹⁸

MAXIMUM CIVIL MONEY PENALTY AMOUNTS

U.S. Code citation	Current maximum CMP (through January 14, 2017)	Adjusted maximum CMP (beginning January 15, 2017)
12 U.S.C. 1464(v)		
Tier One CMP	\$3,787	\$3,849
Tier Two CMP	37,872	38,492
Tier Three CMP	1,893,610	1,924,589
12 U.S.C. 1467(d)	9,468	9,623
12 U.S.C. 1817(a)		
Tier One CMP	3,787	3,849
Tier Two CMP	37,872	38,492
Tier Three CMP	1,893,610	1,924,589
12 U.S.C. 1817(c)		
Tier One CMP	3,462	3,519
Tier Two CMP	34,620	35,186
Tier Three CMP	1,730,990	1,759,309
12 U.S.C. 1818(i)(2)		
Tier One CMP	9,468	9,623
Tier Two CMP	47,340	48,114
Tier Three CMP	1,893,610	1,924,589
12 U.S.C. 1820(e)(4)	8,655	8,797
12 U.S.C. 1820(k)(6)	311,470	316,566
12 U.S.C. 1828(a)(3)	118	120
12 U.S.C. 1828(h)		
For assessments < 10,000	118	120
12 U.S.C. 1829b(j)	19,787	20,111
12 U.S.C. 1832(c)	2,750	2,795
12 U.S.C. 1884	275	279
12 U.S.C. 1972(2)(F)		
Tier One CMP	9,468	9,623
Tier Two CMP	47,340	48,114
Tier Three CMP	1,893,610	1,924,589
12 U.S.C. 3909(d)	2,355	2,394
15 U.S.C. 78u-2		
Tier One CMP (individuals)	8,908	9,054
Tier One CMP (others)	89,078	90,535
Tier Two CMP (individuals)	89,078	90,535
Tier Two CMP (others)	445,390	452,677
Tier Three CMP (individuals)	178,156	181,071
Tier Three penalty (others)	890,780	905,353
15 U.S.C. 1639e(k)		
First violation	10,875	11,053
Subsequent violations	21,749	22,105
31 U.S.C. 3802	10,781	10,957
42 U.S.C. 4012a(f)	2,056	2,090

CFR citation	Current maximum amount (through January 14, 2017)	New maximum amount (beginning January 15, 2017)
12 CFR 308.132(c)—Late or Misleading Reports of Condition and Income (Call Reports)		
First Offense		
25 million or more assets		
1 to 15 days late	\$519	\$527
16 or more days late	1,039	1,056
Less than 25 million assets		
1 to 15 days late	173	176
16 or more days late	346	352

¹⁷ As noted previously, the FDIC retains discretion to impose CMPs in amounts below the referenced maximums.

¹⁸ See OMB Guidance at 4.

CFR citation	Current maximum amount (through January 14, 2017)	New maximum amount (beginning January 15, 2017)
Subsequent Offenses		
25 million or more assets		
1 to 15 days late	865	879
16 or more days late	1,731	1,759

The Expected Effects of the CMP Adjustments

The CMP Adjustments are expected to more precisely adjust CMP maximums relative to inflation. These adjustments are expected to minimize any year-to-year distortions in the real value of the CMP maximums. These adjustments will promote a more consistent deterrent effect in the structure of CMPs. As previously noted, the FDIC retains discretion to impose CMP amounts below the maximum level. The actual number and size of CMPs assessed in the future will depend on the propensity and severity of the violations committed by banks and institution-affiliated parties, as well as the particular statute that is at issue. Such future violations cannot be reliably forecast. It is expected that the FDIC will continue to exercise its discretion to impose CMPs that are appropriate to their severity.

The 2015 Adjustment Act will likely result in a minimal increase in administrative costs for the FDIC in order to establish new inflation-adjusted maximum CMPs each year. Because these calculations are relatively simple, the number of labor hours necessary to perform this task is likely to be insignificant relative to total enforcement labor hours for the Corporation.

IV. Alternatives Considered

The 2015 Adjustment Act mandates the frequency of the inflation adjustment and the measure of inflation to be used in making these adjustments. This statute also provides that the FDIC is not required to proceed through notice-and-comment rulemaking under the Administrative Procedure Act in making annual CMP adjustments. Therefore, the FDIC has not considered alternatives to the CMP Adjustments.

V. Request for Comment

The 2015 Adjustment Act requires the FDIC to adjust its maximum CMP amounts “notwithstanding section 553 of title 5, United States Code,”¹⁹ and

provides the specific adjustments to be made. Moreover, the CMP Adjustments and the revisions to the CFR are ministerial and technical; therefore, the FDIC is not required to complete a notice-and-comment rulemaking process prior to making the adjustments.

VI. Regulatory Analysis

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act²⁰ generally requires that regulations prescribed by federal banking agencies which impose additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter unless the regulation is required to take effect on another date pursuant to another act of Congress or the agency determines for good cause that the regulation should become effective on an earlier date.

This Final Rule does not impose any new or additional reporting, disclosures, or other requirements on insured depository institutions. Therefore, the Final Rule is not subject to the requirements of this statute.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act²¹ (RFA) is required only when an agency must publish a general notice of proposed rulemaking. As noted above, the FDIC determined that publication of a notice of proposed rulemaking is not necessary for the Final Rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC considered the likely impact of Final Rule on small entities. From 2011 through 2015, on average, only 1.6 percent of FDIC-supervised institutions were ordered to pay a CMP each year. Accordingly, the FDIC believes that the Final Rule will not have a significant impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the Final Rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA).²² As required by SBREFA, the FDIC will submit the Final Rule and other appropriate reports to Congress and the Government Accountability Office for review.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Assessment of Federal Regulations and Policies on Families

The FDIC determined that the Final Rule will not affect family wellbeing within the meaning of section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.²³

Paperwork Reduction Act

The Final Rule does not create any new, or revise any existing, collections of information under section 3504(h) of the Paperwork Reduction Act of 1980.²⁴ Consequently, no information collection request will be submitted to the OMB for review.

Plain Language Act

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000.²⁵ Accordingly, the FDIC has attempted to write the Final Rule in clear and comprehensible language.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, Banking, Claims, Crime, Equal access to justice, Ex parte communications, Hearing procedure, Lawyers, Penalties, State nonmember banks.

²² 5 U.S.C. 801 *et seq.*
²³ Public Law 105-277, 112 Stat. 2681 (1998).
²⁴ 44 U.S.C. 3501 *et seq.*
²⁵ Public Law 106-102, 113 Stat. 1338 (Nov. 12, 1999).

¹⁹ Public Law 114-74, sec. 701(b), 129 Stat. 584.

²⁰ 12 U.S.C. 4802.
²¹ 5 U.S.C. 603.

For the reasons set forth in the preamble, the FDIC amends 12 CFR part 308 as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78o(c)(4), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

■ 2. Revise § 308.116(b)(4) to read as follows:

§ 308.116 Assessment of penalties.

* * * * *

(b) * * *

(4) *Adjustment of civil money penalties by the rate of inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* After January 15, 2017, for violations that occurred on or after November 2, 2015:

(i) Any person who has engaged in a violation as set forth in paragraph (b)(1) of this section shall forfeit and pay a civil money penalty of not more than \$9,623 for each day the violation continued.

(ii) Any person who has engaged in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(2) of this section, shall forfeit and pay a civil money penalty of not more than \$48,114 for each day such violation, practice or breach continued.

(iii) Any person who has knowingly engaged in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(3) of this section, shall forfeit and pay a civil money penalty not to exceed:

(A) In the case of a person other than a depository institution—\$1,924,589 per day for each day the violation, practice or breach continued; or

(B) In the case of a depository institution—an amount not to exceed the lesser of \$1,924,589 or one percent of the total assets of such institution for each day the violation, practice or breach continued.

* * * * *

■ 3. Revise § 308.132(c) and (d) to read as follows:

§ 308.132 Assessment of penalties.

* * * * *

(c) *Authority of the Board of Directors.* The Board of Directors or its designee may assess civil money penalties under section 8(i) of the FDIA (12 U.S.C. 1818(i)), and § 308.1(e) of the Uniform Rules (this part).

(d) *Maximum civil money penalty amounts.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, after January 15, 2017, for violations that occurred on or after November 2, 2015, the Board of Directors or its designee may assess civil money penalties in the maximum amounts as follows:

(1) *Civil money penalties assessed pursuant to 12 U.S.C. 1464(v) for late filing or the submission of false or misleading certified statements by State savings associations.* Pursuant to section 5(v) of the Home Owners’ Loan Act (12 U.S.C. 1464(v)), the Board of Directors or its designee may assess civil money penalties as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than \$3,849 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report that is minimally late. For penalties assessed after January 15, 2017, for violations of this paragraph (d)(3)(i) that occurred on or after November 2, 2015, the following maximum Tier One penalty amounts contained in paragraphs (d)(1)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$527 per day for each of the first 15 days for which the failure continues, and \$1,056 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$176 per day or 1/1000th of the institution’s total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and \$352 or 1/500th of the institution’s total assets, ½ of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current

failure shall generally be \$879 per day for each of the first 15 days for which the failure continues, and \$1,759 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank’s total assets and 1/250th of the institution’s total assets.

(C) *Lengthy or repeated violations.* The amounts set forth in this paragraph (d)(1)(i) will be assessed on a case by case basis where the amount of time of the institution’s delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(D) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$38,492 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$3,849 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information that is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$38,492 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of \$1,924,589 or 1 percent of the institution’s total assets per day for each day the information is not corrected.

(iv) *Mitigating factors.* The amounts set forth in this paragraph (d)(1) may be

reduced based upon the factors set forth in paragraph (b) of this section.

(2) *Civil money penalties assessed pursuant to 12 U.S.C. 1467(d) for refusal by an affiliate of a State savings association to allow examination or to provide required information during an examination.* Pursuant to section 9(d) of the Home Owners' Loan Act (12 U.S.C. 1467(d)), civil money penalties may be assessed against any State savings association if an affiliate of such an institution refuses to permit a duly-appointed examiner to conduct an examination or refuses to provide information during the course of an examination as set forth 12 U.S.C. 1467(d), in an amount not to exceed \$9,623 for each day the refusal continues.

(3) *Civil money penalties assessed pursuant to 12 U.S.C. 1817(a) for late filings or the submission of false or misleading reports of condition.* Pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)), the Board of Directors or its designee may assess civil money penalties as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than \$3,849 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report that is minimally late. For penalties assessed after January 15, 2017, for violations of this paragraph (d)(3)(i) that occurred on or after November 2, 2015, the following maximum Tier One penalty amounts contained in paragraphs (d)(3)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$527 per day for each of the first 15 days for which the failure continues, and \$1,056 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$176 per day or 1/1000th of the institution's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and \$352 or 1/500th of the institution's total assets, (1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report

within the preceding five quarters, the amount assessed for the most current failure shall generally be \$879 per day for each of the first 15 days for which the failure continues, and \$1,759 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than \$25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the institution's total assets.

(C) *Lengthy or repeated violations.* The amounts set forth in this paragraph (d)(3)(i) will be assessed on a case by case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(D) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$38,492 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$3,849 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information that is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$38,492 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of \$1,924,589 or 1 percent of the institution's total assets per day for each day the information is not corrected.

(iv) *Mitigating factors.* The amounts set forth in this paragraph (d)(3) may be reduced based upon the factors set forth in paragraph (b) of this section.

(4) *Civil money penalties assessed pursuant to 12 U.S.C. 1817(c) for late filing or the submission of false or misleading certified statements.* Tier One civil money penalties may be assessed pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) in an amount not to exceed \$3,519 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Two civil money penalties may be assessed pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) in an amount not to exceed \$35,186 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Three civil money penalties may be assessed pursuant to section 7(c)(4)(C) in an amount not to exceed the lesser of \$1,759,309 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected.

(5) *Civil money penalties assessed pursuant to section 8(i)(2) of the FDIA.* Tier One civil money penalties may be assessed pursuant to section 8(i)(2)(A) of the FDIA (12 U.S.C. 1818(i)(2)(A)) in an amount not to exceed \$9,623 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to section 8(i)(2)(B) of the FDIA (12 U.S.C. 1818(i)(2)(B)) in an amount not to exceed \$48,114 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,924,589 or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,924,589 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(i) Pursuant to 7(j)(16) of the FDIA (12 U.S.C. 1817(j)(16)), a civil money penalty may be assessed for violations of change in control of insured depository institution provisions pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in this paragraph (d)(5).

(ii) Pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), civil money penalties may be assessed for failure to comply with the requirements of the IBA pursuant to

section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amounts set forth in this paragraph (d)(5).

(iii) Pursuant to section 1120(b) of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3349(b)), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally related transaction, a civil money penalty may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in this paragraph (d)(5).

(iv) Pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a civil money penalty may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amount set forth in this paragraph (d)(5).

(v) Civil money penalties may be assessed pursuant to section 8(i)(2) of the FDIA in the amounts set forth in this paragraph (d)(5) for violations of various consumer laws, including, but not limited to, the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.* and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*), the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*), the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*).

(6) *Civil money penalties assessed pursuant to 12 U.S.C. 1820(e) for refusal to allow examination or to provide required information during an examination.* Pursuant to section 10(e)(4) of the FDIA (12 U.S.C. 1820(e)(4)), civil money penalties may be assessed against any affiliate of an insured depository institution that refuses to permit a duly-appointed examiner to conduct an examination or to provide information during the course of an examination as set forth in section 20(b) of the FDIA (12 U.S.C. 1820(b)), in an amount not to exceed \$8,797 for each day the refusal continues.

(7) *Civil money penalties assessed pursuant to 12 U.S.C. 1820(k) for violation of one-year restriction on*

Federal examiners of financial institutions. Pursuant to section 10(k) of the FDIA (12 U.S.C. 1820(k)), the Board of Directors or its designee may assess a civil money penalty of up to \$316,566 against any covered former Federal examiner of a financial institution who, in violation of section 10(k) of the FDIA (12 U.S.C. 1820(k)) and within the one-year period following termination of government service as an employee, serves as an officer, director, or consultant of a financial or depository institution, a holding company, or of any other entity listed in section 10(k) of the FDIA (12 U.S.C. 1820(k)), without the written waiver or permission by the appropriate Federal banking agency or authority under section 10(k)(5) of the FDIA (12 U.S.C. 1820(k)(5)).

(8) *Civil money penalties assessed pursuant to 12 U.S.C. 1828(a) for incorrect display of insurance logo.* Pursuant to section 18(a)(3) of the FDIA (12 U.S.C. 1828(a)(3)), civil money penalties may be assessed against an insured depository institution that fails to correctly display its insurance logo pursuant to that section, in an amount not to exceed \$120 for each day the violation continues.

(9) *Civil money penalties assessed pursuant to 12 U.S.C. 1828(h) for failure to timely pay assessment—(i) In general.* Subject to paragraph (d)(9)(iii) of this section, any insured depository institution that fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(ii) *Exception in case of dispute.* Paragraph (d)(9)(i) of this section shall not apply if—

(A) The failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) The insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(iii) *Special rule for small assessment amounts.* If the amount of the assessment that an insured depository institution fails or refuses to pay is less than \$10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (d)(9)(i) of this section shall not exceed \$120 for each day that such violation continues.

(iv) *Authority to modify or remit penalty.* The Corporation, in the sole discretion of the Corporation, may compromise, modify, or remit any penalty that the Corporation may assess

or has already assessed under paragraph (d)(9)(i) of this section upon a finding that good cause prevented the timely payment of an assessment.

(10) *Civil money penalties assessed pursuant to 12 U.S.C. 1829b(j) for recordkeeping violations.* Pursuant to section 19b(j) of the FDIA (12 U.S.C. 1829b(j)), civil money penalties may be assessed against an insured depository institution and any director, officer or employee thereof who willfully or through gross negligence violates or causes a violation of the recordkeeping requirements of that section or its implementing regulations in an amount not to exceed \$20,111 per violation.

(11) *Civil money penalties pursuant to 12 U.S.C. 1832(c) for violation of provisions regarding interest-bearing demand deposit accounts.* Pursuant to 12 U.S.C. 1832(c), any depository institution that violates the prohibition regarding interest-bearing demand deposit accounts shall be subject to a fine of \$2,795 per violation.

(12) *Civil penalties for violations of security measure requirements under 12 U.S.C. 1884.* Pursuant to 12 U.S.C. 1884, an institution that violates a rule establishing minimum security requirements as set forth in 12 U.S.C. 1882, shall be subject to a civil penalty not to exceed \$279 for each day of the violation.

(13) *Civil money penalties assessed pursuant to 12 U.S.C. 1972(2)(F) for prohibited tying arrangements.* Pursuant to the Bank Holding Company Act of 1970, Tier One civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(i) in an amount not to exceed \$9,623 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(ii) in an amount not to exceed \$48,114 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) in an amount not to exceed, in the case of any person other than an insured depository institution \$1,924,589 for each day during which the violation, practice, or breach continues or, in the case of any insured depository institution, an amount not to exceed the lesser of \$1,924,589 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(14) *Civil money penalties assessed pursuant to 12 U.S.C. 3909(d).* Pursuant to the International Lending Supervision Act (ILSA) (12 U.S.C. 3909(d)), civil money penalties may be assessed against any institution or any officer, director, employee, agent or

other person participating in the conduct of the affairs of such institution is an amount not to exceed \$2,394 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues.

(15) *Civil money penalties assessed for violations of 15 U.S.C. 78u-2.* Pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u-2), civil money penalties may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. Tier One civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(1) in an amount not to exceed \$9,054 for a natural person or \$90,535 for any other person for violations set forth in 15 U.S.C. 78u-2(a). Tier Two civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(2) in an amount not to exceed—for each violation set forth in 15 U.S.C. 78u-2(a)—\$90,535 for a natural person or \$452,677 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Tier Three civil money penalties may be assessed pursuant to 15 U.S.C. 78u-2(b)(3) for each violation set forth in 15 U.S.C. 78u-2(a), in an amount not to exceed \$181,071 for a natural person or \$905,353 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(16) *Civil money penalties assessed pursuant to 15 U.S.C. 1639e(k) for appraisal independence violations.* Pursuant to section 1472(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Appraisal Independence Rule) (15 U.S.C. 1639e(k)), civil money penalties may be assessed for an initial violation of the Appraisal Independence Rule in an amount not to exceed \$11,053 for each day during which the violation continues and, for subsequent violations, \$22,105 for each day during which the violation continues.

(17) *Civil money penalties assessed for false claims and statements pursuant to 31 U.S.C. 3802.* Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than \$10,957 per claim or statement may be assessed for violations involving false claims and statements.

(18) *Civil money penalties assessed for violations of 42 U.S.C. 4012a(f).*

Pursuant to the Flood Disaster Protection Act (FDPA) (42 U.S.C. 4012a(f)), civil money penalties may be assessed against any regulated lending institution that engages in a pattern or practice of violations of the FDPA in an amount not to exceed \$2,090 per violation.

Dated at Washington, DC, this 21st day of December, 2016.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AG67

Small Business Investment Companies: Passive Business Expansion and Technical Clarifications

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is revising the regulations for the Small Business Investment Company (SBIC) program to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended (Act). SBIC program regulations provide for two exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through. The first exception provides conditions under which an SBIC may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The second exception, prior to this final rule, enabled a partnership SBIC, with SBA's prior approval, to provide financing to a small business through a passive, wholly-owned C corporation (commonly known as a blocker corporation), but only if a direct financing would cause the SBIC's investors to incur Unrelated Business Taxable Income (UBTI). This final rule clarifies several aspects of the first exception and in the second exception eliminates the prior approval requirement and expands the purposes for which a blocker corporation may be

formed. The final rule also adds new reporting and other requirements for passive investments to help protect SBA's financial interests and ensure adequate oversight and makes minor technical amendments. Finally, this rule makes a conforming change to the regulations regarding the amount of leverage available to SBICs under common control. This change is necessary for consistency with the Consolidated Appropriations Act, 2016, which increased the maximum amount of such leverage to \$350 million.

DATES: This rule is effective January 27, 2017.

FOR FURTHER INFORMATION CONTACT:

Theresa Jamerson, Office of Investment and Innovation, (202) 205-7563 or sbic@sga.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The SBIC Program is an SBA financing program authorized under Title III of the Small Business Investment Act of 1958, 15 U.S.C. 681 *et seq.* Congress created the Small Business Investment Company (SBIC) program to “stimulate and supplement the flow of private equity capital and long-term loan funds, which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply” 15 U.S.C. 661. Congress intended that the program “be carried out in such manner as to insure the maximum participation of private financing sources.” *Id.* In accordance with that policy, SBA does not invest directly in small businesses. Rather, through the SBIC Program, SBA licenses and provides debenture leverage (Leverage) to SBICs. SBICs are privately-owned and professionally managed for-profit investment funds that make loans to, and investments in, qualified small businesses using a combination of privately raised capital and Leverage guaranteed by SBA. SBA will guarantee the repayment of debentures issued by an SBIC based on the amount of qualifying private capital raised by an SBIC up to a maximum amount of \$150 million in Leverage.

SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958. Prior to this final rule, the SBIC program regulations provided for the following two exceptions that allowed an SBIC to structure an investment utilizing a passive small business as a pass-through:

A. “*Holding company exception*”—§ 107.720(b)(2): This exception provides