

# Rules and Regulations

Federal Register

Vol. 83, No. 5

Monday, January 8, 2018

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 217

[Regulation Q; Docket Nos. R-1442; R-1460; and R-1535]

RIN 7100-AD 87; RIN 7100-AD 99; and 7100 AE-49

### Regulatory Capital Rules; Correction

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) published a final rule in the **Federal Register** on October 11, 2013, regarding Regulatory Capital Rules. This publication corrects a typographical error in those rules whereby a transition provision was unintentionally deleted. The Board also published inconsistent amendments to Regulation Q in final rules published in the **Federal Register** on May 1, 2014, and August 14, 2015, that pertain to firms identified as global systemically important bank holding companies (GSIBs). This publication resolves these inconsistencies.

**DATES:** These correcting amendments are effective January 8, 2018.

**FOR FURTHER INFORMATION CONTACT:** Benjamin McDonough, Assistant General Counsel, (202) 452-2036, or Mark Buresh, Senior Attorney, (202) 452-5270, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** The Board is correcting an error in the final rule that was published in the **Federal Register** on October 11, 2013.<sup>1</sup> The Board is correcting a typographical error in this final rule that caused the

unintended deletion of 12 CFR 217.300(c)(1)(i)-(iv), which was initially adopted by the Board on July 2, 2013. Through this correction, the provision pertaining to the grandfathering of certain non-qualifying capital instruments in tier 2 capital for depository institution holding companies with \$15 billion or more in total assets as of December 31, 2009, that are not advanced approaches banking organizations and for depository institution holding companies that are advanced approaches banking organization would be reflected in the rule.

The Board is also correcting conflicting amendments in final rules published in the **Federal Register** on May 1, 2014, (79 FR 24528) and August 14, 2015, (80 FR 49082). The May 1, 2014, final rule amended 12 CFR 217.11(a)(4)(ii) effective January 1, 2018. The August 14, 2015, final rule also amended 12 CFR 217.11(a)(4)(ii) effective December 1, 2015, and did not alter the amendments to that paragraph contained in the May 1, 2014, final rule, which are effective on January 1, 2018. As a result, without these corrections the revisions to 12 CFR 217.11(a)(4)(ii) that were effective December 1, 2015, would have been undone effective January 1, 2018. This would have been contrary to the Board's stated intent in the August 14, 2015, final rule that the GSIB surcharge augment the capital conservation buffer.<sup>2</sup> In addition, this would have created situations where 12 CFR 217.11(a)(4)(i) and 12 CFR 217.11(a)(4)(ii) were in conflict.

### List of Subjects in 12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended by the following correcting amendments.

### PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371.

■ 2. In § 217.11, paragraph (a)(4)(ii) is revised to read as follows:

#### § 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

(a) \* \* \*

(4) \* \* \*

(ii) A Board-regulated institution with a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer in accordance with paragraph (b) of this section, and 100 percent of its applicable GSIB surcharge, in accordance with paragraph (c) of this section, and, if applicable, that has a leverage buffer that is greater than 2.0 percent, in accordance with paragraph (d) of this section, is not subject to a maximum payout amount under this section.

\* \* \* \* \*

■ 3. In § 217.300, add paragraphs (c)(1)(i) through (iv) to read as follows:

#### § 217.300 Transitions.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) A depository institution holding company of \$15 billion or more may include in tier 1 and tier 2 capital non-qualifying capital instruments up to the applicable percentage set forth in Table 8 to § 217.300 of the aggregate outstanding principal amounts of non-qualifying tier 1 and tier 2 capital instruments, respectively, that are outstanding as of January 1, 2014, beginning January 1, 2014, for a depository institution holding company of \$15 billion or more that is an advanced approaches Board-regulated institution that is not a savings and loan holding company, and beginning January 1, 2015, for all other depository institution holding companies of \$15 billion or more.

(ii) A depository institution holding company of \$15 billion or more must apply the applicable percentages set forth in Table 8 to § 217.300 separately to the aggregate amounts of its tier 1 and tier 2 non-qualifying capital instruments.

(iii) The amount of non-qualifying capital instruments that must be excluded from additional tier 1 capital

<sup>1</sup> 78 FR 62018 (October 11, 2013).

<sup>2</sup> 80 FR 49082 (August 14, 2015).

in accordance with this section may be included in tier 2 capital without limitation, provided the instruments meet the criteria for tier 2 capital set forth in § 217.20(d).

(iv) Non-qualifying capital instruments that do not meet the criteria for tier 2 capital set forth in § 217.20(d) may be included in tier 2 capital as follows:

(A) A depository institution holding company of \$15 billion or more that is not an advanced approaches Board-regulated institution may include non-qualifying capital instruments that have been phased-out of tier 1 capital in tier 2 capital, and

(B) During calendar years 2014 and 2015, a depository institution holding company of \$15 billion or more that is an advanced approaches Board-regulated institution may include non-qualifying capital instruments in tier 2 capital that have been phased out of tier 1 capital in accordance with Table 8 to § 217.300. Beginning January 1, 2016, a depository institution holding company of \$15 billion or more that is an advanced approaches Board-regulated institution may include non-qualifying capital instruments in tier 2 capital that have been phased out of tier 1 capital in accordance with Table 8, up to the applicable percentages set forth in Table 9 to § 217.300.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 29, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2018-00062 Filed 1-5-18; 8:45 am]

**BILLING CODE 6210-01-P**

## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### 15 CFR Part 6

[Docket No. 171219999-7999-01]

RIN 0605-AA48

### 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 2017 adjustments for inflation to CMPs to the Department of Commerce's CMPs were published in the **Federal Register** on December 28, 2016 and became effective January 15, 2017. The revised annual methodology provides for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. Agencies' annual adjustments for inflation to CMPs shall take effect not later than January 15. The Department of Commerce's 2018 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 2018 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, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Stephen 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](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. On October 24, 1996, November 1, 2000, December 14, 2004, December 11, 2008, and December 7, 2012, the Department of Commerce published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law.

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 initial catch up adjustments for inflation to CMPs were published in the **Federal Register** on June 7, 2016, and the new CMP levels became effective July 7, 2016. The Department of Commerce's 2017 adjustments for inflation to CMPs were published in the **Federal Register** on December 28, 2016, and the new CMP levels became effective January 15, 2017.

The Department of Commerce's 2018 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 2018 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.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of the Department of Commerce. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing