

member of a deposit placement network.

(v) *Reciprocal deposits* means deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks.

\* \* \* \* \*

Dated at Washington, DC, on December 18, 2018.

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

**Valerie Best,**

*Assistant Executive Secretary.*

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 622

RIN 3052-AD33

#### Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (Reform Act), and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act).

**DATES:** *Effective date:* This regulation is effective on February 4, 2019.

*Applicability date:* The inflation-adjusted CMP were applicable beginning January 15, 2019.

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#### SUPPLEMENTARY INFORMATION:

##### I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation

through a final rulemaking to retain the deterrent effect of such penalties.

## II. Background

### A. Introduction

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (1996 Act) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (collectively, 1990 Act, as amended), requires all Federal agencies with the authority to enforce CMPs to evaluate and adjust, if necessary, those CMPs each year to ensure that they continue to maintain their deterrent value and promote compliance with the law. Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty<sup>1</sup> as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (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.<sup>2</sup>

The FCA imposes and enforces CMPs through the Farm Credit Act<sup>3</sup> and the Flood Disaster Protection Act of 1973, as amended. FCA's regulations governing CMPs are found in 12 CFR parts 622 and 623. Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA, and to formal investigations conducted under the Farm Credit Act. Part 623 prescribes rules regarding persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

### B. CMPs Issued Under the Farm Credit Act

The Farm Credit Act provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of a cease-and-desist order that has become final pursuant to section 5.25 or 5.26 of the Farm Credit Act must pay up to a maximum daily

<sup>1</sup> Note: While the 1990 Act, as amended by 1996 and 2015 Acts, uses the term "civil monetary penalties" for these penalties or other sanctions, the Farm Credit Act and the FCA Regulations use the term "civil money penalties." Both terms have the same meaning. Accordingly, this rule uses the term civil money penalty, and both terms may be used interchangeably.

<sup>2</sup> See 28 U.S.C. 2461 note.

<sup>3</sup> Public Law 92-181, as amended.

amount of \$1,000<sup>4</sup> during which such violation continues. This CMP maximum was set by the Farm Credit Amendments Act of 1985, which amended the Farm Credit Act. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) of the Farm Credit Act provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or 4.14A(i) of the Farm Credit Act "shall be treated" as a final order issued under section 5.25 of the Farm Credit Act for purposes of assessing a CMP.

Section 5.32(a) of the Farm Credit Act also states that "[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more than \$500<sup>5</sup> per day for each day during which such violation continues." This CMP maximum was set by the Agricultural Credit Act of 1987, which was enacted in 1988, and amends the Farm Credit Act. Current, inflation-adjusted CMP maximums are set forth in existing § 622.61 of FCA regulations.<sup>6</sup>

The FCA also enforces the Flood Disaster Protection Act of 1973,<sup>7</sup> as amended by the National Flood Insurance Reform Act of 1994,<sup>8</sup> which requires FCA to assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. The existing maximum CMP for a violation under the Flood Disaster Protection Act of 1973 is \$2,000.<sup>9</sup><sup>10</sup>

### C. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

#### 1. In General

The 2015 Act required all Federal agencies to adjust the CMPs yearly, starting January 15, 2017.

Under Section 4(b) of the 1990 Act, as amended, annual adjustments are to be

<sup>4</sup> The inflation-adjusted CMP in effect on January 15, 2018, for a violation of a final order is \$2,269 per day, as set forth in § 622.61(a)(1) of FCA regulations.

<sup>5</sup> The inflation-adjusted CMP in effect on January 15, 2018, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is \$1,026 per day, as set forth in § 622.61(a)(2) of FCA regulations.

<sup>6</sup> Prior adjustments were made under the 1990 Act.

<sup>7</sup> 42 U.S.C. 4012a.

<sup>8</sup> Public Law 103-325, title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

<sup>9</sup> Public Law 112-141, 126 Stat. 405 (July 6, 2012).

<sup>10</sup> The inflation-adjusted CMP in effect on January 15, 2018, for a flood insurance violation is \$2,133, as set forth in § 622.61(b) of FCA regulations.

made yearly no later than January 15 of each year.<sup>11</sup> Section 6 of the 1990 Act, as amended, states that any increase to a civil monetary penalty under this 1990 Act applies only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

Section 5(b) of the 1990 Act, as amended, defines the term “cost-of-living adjustment” as the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index (CPI) for the month of October of the calendar year preceding the adjustment, exceeds (2) the CPI for the month of October 1 year before the month of October referred to in (1) of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.<sup>12</sup>

The increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the 1990 Act, as amended, by the 2015 Act.<sup>13</sup>

## 2. Other Adjustments

If a civil monetary penalty is subject to a cost-of-living adjustment under the 1990 Act, as amended, but is adjusted to an amount greater than the amount of the adjustment required under the Act within the 12 months preceding a required cost-of-living adjustment, the agency is not required to make the cost-of-living adjustment to that CMP in that calendar year.<sup>14</sup>

## III. Yearly Adjustments

### A. Mathematical Calculations of 2019 Adjustments

The adjustment requirement affects two provisions of section 5.32(a) of the Farm Credit Act. For the 2019 yearly adjustments to the CMPs set forth by the Farm Credit Act, the calculation required by the 2018 White House Office of Management and Budget (OMB) guidance<sup>15</sup> is based on the percentage by which the CPI for October 2018 exceeds the CPIs for October 2017. The OMB set forth guidance, as required by the 2015 Act,<sup>16</sup> with a multiplier for

<sup>11</sup> Public Law 114–74, sec. 701(b)(1).

<sup>12</sup> The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its website: [ftp://ftp.bls.gov/pub/special.requests/cpi/cpiatxt](http://ftp.bls.gov/pub/special.requests/cpi/cpiatxt).

<sup>13</sup> Pursuant to section 5(a)(3) of the 2015 Act, any increase determined under the subsection shall be rounded to the nearest \$1.

<sup>14</sup> Pursuant to section 4(d) of the 1990 Act, as amended.

<sup>15</sup> OMB Circular M–19–04, Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

<sup>16</sup> 28 U.S.C. 2461 note, section 7(a).

calculating the new CMP values.<sup>17</sup> The OMB multiplier for the 2019 CMPs is 1.02522.

The adjustment also affects the CMPs set by the Flood Disaster Protection Act of 1973, as amended. The adjustment multiplier is the same for all FCA enforced CMPs, set at 1.02522. The maximum CMPs for violations were created in 2012 by the Biggert-Waters Act, which amended the Flood Disaster Protection Act of 1973.

### 1. New Penalty Amount in § 622.61(a)(1)

The inflation-adjusted CMP currently in effect for violations of a final order occurring on or after January 15, 2017, is a maximum daily amount of \$2,269.<sup>18</sup> Multiplying the \$2,269 CMP by the 2018 OMB multiplier, 1.02522, yields a total of \$2,326.22. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the inflation-adjusted maximum increases to \$2,326. Thus, the new CMP maximum is \$2,326.

### 2. New Penalty Amount in § 622.61(a)(2)

The inflation-adjusted CMP currently in effect for violations of the Farm Credit Act or regulations issued under the Farm Credit Act occurring on or after January 15, 2018, is a maximum daily amount of \$1,026.<sup>19</sup> Multiplying the \$1,026 CMP maximum by the 2018 OMB multiplier, 1.02522, yields a total of \$1,051.88. When that number is rounded as required by section 5(a) of the 1990 Act, as amended the inflation-adjusted maximum increases to \$1,052. Thus, the new CMP maximum is \$1,052.

### 3. New Penalty Amounts for Flood Insurance Violations Under § 622.61(b)

The existing maximum CMP for a pattern or practice of flood insurance violations pursuant to 42 U.S.C. 4012a(f)(5) is \$2,133. Multiplying \$2,133 by the 2018 OMB multiplier, 1.02522, yields a total of \$2,186.79. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the new maximum assessment of the CMP for violating 42 U.S.C. 4012a(f)(5) is \$2,187. Thus, the new CMP maximum is \$2,187.

## IV. Notice and Comment Not Required by Administrative Procedure Act

The 1990 Act, as amended, gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. Further, these revisions are ministerial, technical, and

<sup>17</sup> OMB Circular M–19–04, Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

<sup>18</sup> 12 CFR 622.61(a)(1).

<sup>19</sup> 12 CFR 622.61(a)(2).

noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in final form.

## V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not “small entities” as defined in the Regulatory Flexibility Act.

## List of Subjects in 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

## PART 622—RULES OF PRACTICE AND PROCEDURE

### ■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

### ■ 2. Revise § 622.61 to read as follows:

#### **§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.**

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

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: The maximum daily amount is \$2,326 for violations that occur on or after January 15, 2019.

(2) Amount of civil money penalty for violation of the Act or regulations: The maximum daily amount is \$1,052 for each violation that occurs on or after January 15, 2019.

(b) The maximum civil money penalty amount assessed under 42 U.S.C.

4012a(f) is \$2,187 for each violation that occurs on or after January 15, 2019, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

Dated: January 29, 2019.

**Dale Aultman,**

*Secretary, Farm Credit Administration Board.*

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1026

**RIN 3170-AA93**

#### Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretation.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect a change in the asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Based on the 2.6 percent increase in the average of the CPI-W for the 12-month period ending in November 2018, the exemption threshold is adjusted to increase to \$2.167 billion from \$2.112 billion. Therefore, creditors with assets of less than \$2.167 billion (including assets of certain affiliates) as of December 31, 2018, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2019.

**DATES:** *Effective date:* This rule is effective February 4, 2019. *Applicability date:* This rule is applicable on January 1, 2019, consistent with relevant statutory or regulatory provisions.

**FOR FURTHER INFORMATION CONTACT:** Monique Chenault, Paralegal Specialist, 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

Section 129D of the Truth in Lending Act (TILA) contains a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. TILA section 129D also generally permits an exemption from the higher-priced mortgage loan escrow requirement for a creditor that meets certain requirements, including any asset-size threshold the Bureau may establish.

In the 2013 Escrows Final Rule,<sup>1</sup> the Bureau established such an asset-size threshold of \$2 billion, which would adjust automatically each year, based on the year-to-year change in the average of the CPI-W for each 12-month period ending in November, with rounding to the nearest million dollars.<sup>2</sup> In 2015, the Bureau revised the asset-size threshold for small creditors and how it applies. The Bureau included in the calculation of the asset-size threshold the assets of the creditor's affiliates that regularly extended covered transactions secured by first liens during the applicable period and added a grace period to allow an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.<sup>3</sup> For 2018, the threshold was \$2.112 billion.

During the 12-month period ending in November 2018, the average of the CPI-W increased by 2.6 percent. As a result, the exemption threshold is increased to \$2.167 billion for 2019. Thus, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2018 are less than \$2.167 billion on December 31, 2018, and it meets the other requirements of § 1026.35(b)(2)(iii), it will be exempt from the escrow-accounts requirement for higher-priced mortgage loans in 2019 and will also be exempt from the escrow-accounts requirement for higher-priced mortgage loans for purposes of

any loan consummated in 2020 with applications received before April 1, 2020. The adjustment to the escrows asset-size exemption threshold will also increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at

§ 1026.43(e)(5)(i)(D) reference the asset threshold in § 1026.35(b)(2)(iii)(C).

Likewise, the requirements for balloon-payment qualified mortgages at § 1026.43(f)(1)(vi) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Under § 1026.32(d)(1)(ii)(C), balloon-payment qualified mortgages that satisfy all applicable criteria in § 1026.43(f)(1)(i) through (vi) and (f)(2), including being made by creditors that have (together with certain affiliates) total assets below the threshold in § 1026.35(b)(2)(iii)(C), are also excepted from the prohibition on balloon payments for high-cost mortgages.

#### II. Procedural Requirements

##### A. Administrative Procedure Act

Under the Administrative Procedure Act (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. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 35(b)(2)(iii)-1 in Regulation Z is amended to update the exemption threshold. The amendment in this final rule is technical and merely applies the formula previously established in Regulation Z for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is 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. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on February 4, 2019. The amendment in this final rule is technical and non-discretionary, and it applies the method previously established in the agency's regulations

<sup>1</sup> 78 FR 4726 (Jan. 22, 2013).

<sup>2</sup> See 12 CFR 1026.35(b)(2)(iii)(C).

<sup>3</sup> See 80 FR 59943, 59951 (Oct. 2, 2015). The Bureau also issued an interim final rule in March 2016 to revise certain provisions in Regulation Z to effectuate the Helping Expand Lending Practices in Rural Communities Act's amendments to TILA (Pub. L. 114-94, section 89003, 129 Stat. 1312, 1800-01 (2015)). The rule broadened the cohort of creditors that may be eligible under TILA for the special provisions allowing origination of balloon-payment qualified mortgages and balloon-payment high-cost mortgages, as well as for the escrow exemption. See 81 FR 16074 (Mar. 25, 2016).