FARM CREDIT ADMINISTRATION

12 CFR Part 622
RIN 3052–AD49

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, and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) (collectively FDPA, as amended).

DATES: Effective date: This regulation is effective on January 15, 2022.

FOR FURTHER INFORMATION CONTACT: Brian Camp, Accountant, Office of Regulatory Policy, Farm Credit Administration, (703) 254–3004, TTY (703) 883–4056, Or Heather LoPresti, Senior Counsel, Office of General Counsel, Farm Credit Administration, (703) 883–4318, TTY (703) 883–4056.

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 Improvements Act of 2015 (2015 Act) 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 as any penalty, fine, or other 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.

The FCA imposes and enforces CMPs through the Farm Credit Act and the FDPA, 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 a maximum daily amount of $1,000, for each day 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(b) 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 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(f) of FCA regulations.

The FCA also enforces the FDPA, as amended, 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.

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 made no later than January 15. 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 instances in which an associated violation predated the annual 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 one 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.

The increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the

Footnotes:

1. 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.

5. The inflation-adjusted CMP in effect on January 15, 2021, for a violation of a final order is $2,395 per day, as set forth in § 622.61(a)(1) of FCA regulations.
6. The inflation-adjusted CMP in effect on January 15, 2021, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is $1,084 per day for each violation, as set forth in § 622.61(a)(2) of FCA regulations.
7. Prior adjustments were made under the 1990 Act and continue to be made each year.
9. The inflation-adjusted CMP in effect on January 15, 2021, for a flood insurance violation is $2,252, as set forth in § 622.61(b)(3) of FCA regulations.
11. The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its website: https://www.bls.gov/cpi/.
of $2,544.02. When that number is
OMB multiplier, 1.06222, yields a total
Multiplying the $2,395 CMP by the 2021
(OMB) guidance14 is based on the
required by the 2021 White House
adjustments to the CMPs set forth by the
Farm Credit Act. For the 2022 yearly
two provisions of section 5.32(a) of the
A. Mathematical Calculations of 2022
Adjustments
The adjustment requirement affects
two provisions of section 5.32(a) of the
Farm Credit Act. For the 2022 yearly
adjustments to the CMPs set forth by the
Farm Credit Act, the calculation required by the 2021 White House
Office of Management and Budget (OMB) guidance14 is based on the
percentage by which the CPI for October 2021 exceeds the CPI for October 2020.
The OMB set forth guidance, as required by the 2015 Act,15 with a multiplier for
calculating the new CMP values.16 The 2021 OMB multiplier for the 2022 CMPs
is 1.06222.
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 1.06222. The
maximum CMPs for violations were
created in 2012 by the Biggert-Waters
Improvements Act of 2015.
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, 2021,
is a maximum daily amount of $2,395.17
Multiplying the $2,395 CMP by the 2021
OMB multiplier, 1.06222, yields a total
of $2,544.02. When that number is
rounded as required by section 5(a) of
the 1990 Act, as amended, the inflation-
adjusted maximum increases to $2,544. Thus, the new CMP maximum is $2,544,
for violations that occur on or after
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, 2021, is a maximum
daily amount of $1,084.18 Multiplying
the $1,084 CMP maximum by the 2021
OMB multiplier, 1.06222, yields a total
of $1,151.45. When that number is
rounded as required by section 5(a) of
the 1990 Act, as amended the inflation-
adjusted maximum increases to $1,151.
Thus, the new CMP maximum is $1,151,
for violations that occur on or after
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) occurring on or after January
15, 2021, is $2,252. Multiplying $2,252
by the 2021 OMB multiplier, 1.06222,
yields a total of $2,392.12. 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 $2,392. Thus, the
new CMP maximum is $2,392, for
violations that occur on or after January
15, 2022.
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
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 $2,544
for violations that occur on or after
(2) Amount of civil money penalty for
violation of the Act or regulations: The
maximum daily amount is $1,151 for
each violation that occurs on or after
(b) The maximum civil money penalty
amount assessed under 42 U.S.C.
4012a(f) is $2,392 for each violation that
occurs on or after January 15, 2022, with
no cap on the total amount of penalties
that can be assessed against any single
institution during any calendar year.
Dated: January 6, 2022.
Ashley Waldron,
Secretary, Farm Credit Administration Board.
[FR Doc. 2022–00307 Filed 1–10–22; 8:45 am]