

# Rules and Regulations

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 263

[Docket No. R-1083]

### Rules of Practice for Hearings

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

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (the Board) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**EFFECTIVE DATE:** October 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Katherine H. Wheatley, Assistant General Counsel (202/452-3779), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, please contact Janice Simms (202/452-4984).

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 *note* (FCPIA Act), requires each Federal agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every four years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. The Board made its last adjustment in October 1996 (see 61 FR 56407).

The required cost-of-living adjustment formula is based on the difference between the Consumer Price Index (CPI)

for June of the year preceding the adjustment (in this case, June 1999) and the CPI for June of the year when the CMP was last set or adjusted (generally, June 1996).<sup>1</sup> To calculate the adjustment, the Board used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982–84 was equal to 100, to get the CPI values. In this case, the CPI was 156.7 for June 1996 and was 166.2 for June 1999, resulting in an increase of 6.1 percent.

Section 5 of the FCPIA Act provides that the adjustment amount must be rounded before adding it to the existing penalty amount. The rounding provision depends on the size of the penalty being adjusted. For example, if the penalty is greater than \$100 but less than or equal to \$1000, the increase is rounded to the nearest \$100; if it is greater than \$1000 but less than or equal to \$10,000, the increase is rounded to the nearest \$1000. Because of this rounding rule, several penalty amounts are not changing at this time. For example, because the Tier I penalty under 12 U.S.C. 1818(i)(2) is currently \$5,500, the 6.1 percent adjustment would be \$336. Rounding that increase to the nearest \$1000 results in an increase of \$0. The penalties that are not adjusted at this time because of this rounding formula will be adjusted at the next adjustment cycle to take account of the entire period between the time of their last adjustment (generally, 1996) and the next adjustment date. These unadjusted penalties are identified in the amended regulation at subparagraphs 263.65(b)(1)(ii), (b)(2)(i) and (ii), (b)(3), (b)(4), (b)(5)(ii), (b)(6), (b)(7), (b)(8)(i), and (b)(9)(i).

When the regulation was adopted in 1996, several statutory penalty provisions that should have been identified for adjustment were inadvertently omitted. Those provisions, which have maximum statutory penalties that are identical to provisions that were adjusted, are 12 U.S.C. 334, 374a, 3110(a), and 3110(c). In order to comply with the statutory intent and to provide for uniformity in penalty amounts for similar violations, the Board is treating those provisions as

though they had been previously adjusted in accordance with the FCPIA Act, and adjusting them for the second time in this cycle if such adjustment is warranted under the calculation called for by the FCPIA.

In addition, when the regulation was adopted in 1996, several penalty amounts did not change from their original statutory values because of the effect of the rounding rules in the FCPIA Act. Specifically, the penalty for inadvertently late or misleading reports under 12 U.S.C. 324, and the Tier I penalties under 12 U.S.C. 1847(d) and 3110(c), all of which were set by Congress in 1989 at \$2000, were unchanged in the initial FCPIA adjustment. Accordingly, these penalties must be adjusted in this cycle in a manner that captures inflation from 1989 to the present. The CPI increase between June 1989 and June 1999 was 33.9 percent, which when applied to the \$2000 penalty amount and rounded in accordance with the applicable rounding rule would result in an increase of \$1000. Because such an increase would exceed the 10 percent limit imposed by the statute for the initial increase in any penalty, these penalties were increased to \$2,200. The per-violation penalty under 42 U.S.C. 4012a(f)(5) was enacted in 1994 and was also not adjusted in 1996 due to the application of the rounding rule. The CPI increase of 12.3 percent from June 1994 to June 1999 was used to calculate the increase for this penalty; due to the rounding rules, the penalty was not adjusted in this cycle either, and remains \$350 for each violation.

In accordance with section 6 of the FCPIA Act, the increased penalties set forth in this amendment apply only to violations that occur after the date the increase takes effect.

### Public Comment Not Required

This rule is not subject to the provisions of 5 U.S.C. 553 requiring notice, public participation, and deferred effective date. The FCPIA Act provides Federal agencies with no discretion in the adjustment of CMPs to the rate of inflation, and it also requires that adjustments be made at least every four years. Moreover, this regulation is ministerial and technical. For these reasons, the Board finds good cause to determine that public notice and comment for this new regulation is

<sup>1</sup> The 1996 adjustment was based on the June 1995 CPI. In calculating the new adjustments, the FCPIA Act requires us to use the 3-year period from June 1996 to June 1999 for those penalties that were adjusted in 1996.

unnecessary, impractical, and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the **Federal Register**, pursuant to the APA, 5 U.S.C. 553(d).

*Regulatory Flexibility Act:* No significant impact.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

#### List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Federal Reserve System, Lawyers, Penalties.

For the reasons set forth in the preamble, the Board of Governors amends 12 CFR part 263 to read as follows:

#### PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 continues to read as follows:

**Authority:** 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p-1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, 78u-2; and 28 U.S.C. 2461 note.

2. Section 263.65 is revised to read as follows:

#### § 263.65 Civil penalty inflation adjustments

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraph (b) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and the previously-adjusted amounts adopted as of October 24, 1996. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after the effective date of this rule.

(b) *Maximum civil money penalties.* The maximum civil money penalties as set forth in the referenced statutory sections are adjusted as follows:

- (1) 12 U.S.C. 324:
  - (i) Inadvertently late or misleading reports, *inter alia*—\$2200.
  - (ii) Other late or misleading reports, *inter alia*—\$22,000.
  - (iii) Knowingly or recklessly false or misleading reports, *inter alia*—\$1,175,000.
- (2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(F):
  - (i) First tier—\$5,500.
  - (ii) Second tier—\$27,500.
  - (iii) Third tier—\$1,175,000.
- (3) 12 U.S.C. 1832(c)—\$1,100.
- (4) 12 U.S.C. 1847(b), 3110(a)—\$27,500.
- (5) 12 U.S.C. 1847(d), 3110(c):
  - (i) First tier—\$2,200.
  - (ii) Second tier—\$22,000.
  - (iii) Third tier—\$1,175,000.
- (6) 12 U.S.C. 334, 374a, 1884—\$110.
- (7) 12 U.S.C. 3909(d)—\$1,100.
- (8) 15 U.S.C. 78u-2:
  - (i) 15 U.S.C. 78u-2(b)(1)—\$5,500 for a natural person and \$60,000 for any other person.
  - (ii) 15 U.S.C. 78u-2(b)(2)—\$60,000 for a natural person and \$300,000 for any other person.
  - (iii) 15 U.S.C. 78u-2(b)(3)—\$120,000 for a natural person and \$575,000 for any other person.
- (9) 42 U.S.C. 4012a(f)(5):
  - (i) For each violation—\$350.
  - (ii) For the total amount of penalties assessed under 42 U.S.C. 4012a(f)(5) against an institution or enterprise during any calendar year—\$115,000.

By order of the Board of Governors of the Federal Reserve System, October 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00-26080 Filed 10-11-00; 8:45 am]

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#### SOCIAL SECURITY ADMINISTRATION

#### 20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

#### Revised Medical Criteria for Evaluating Mental Disorders and Traumatic Brain Injury; Correction

**AGENCY:** Social Security Administration.

**ACTION:** Final rules; correction.

**SUMMARY:** We published in the **Federal Register** of August 21, 2000, a document concerning revising our regulations for evaluating mental impairments. Inadvertently §§ 404.1520a and 416.920a each contains a word from the

prior rules that we had revised in the final rules. This document corrects that oversight.

**DATES:** Effective on September 20, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Deborah Barnes, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, deborah.barnes@ssa.gov, (410) 965-4171 or TTY (410) 966-5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet web site, *SSA Online*, at [www.ssa.gov](http://www.ssa.gov).

**SUPPLEMENTARY INFORMATION:** We published a document in the **Federal Register** of July 18, 1991 (56 FR 33130), proposing revisions to §§ 404.1520a and 416.920a. In the final rules we published in the **Federal Register** of August 21, 2000 (65 FR 50746), we inadvertently used the word “slight” from the prior rules for the second point of the five-point scale in §§ 404.1520a(c)(4) and 416.920a(c)(4). We intended to use the word “mild,” as we had proposed. This correction makes §§ 404.1520a(c)(4) and 416.920a(c)(4) consistent with the remainder of the final rules.

In the **Federal Register** of August 21, 2000, make the following corrections. On page 50775, in the first column, in § 404.1520a(c)(4), the first sentence, correct “slight” to read “mild.” On page 50783, in the first column, in § 416.920a(c)(4), the first sentence, correct “slight” to read “mild.”

#### § 404.1520a Evaluation of Mental Impairments.

\* \* \* \* \*

(c) \* \* \*

(4) When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, mild, moderate, marked, and extreme. \* \* \*

#### § 416.920a Evaluation of Mental Impairments.

\* \* \* \* \*

(c) \* \* \*

(4) When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, mild, moderate, marked, and extreme. \* \* \*

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