

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

#### *Executive Order 12988*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

#### **List of Subjects in Part 1274a**

Administrative practice and procedure, Immigration.

■ Accordingly, for the foregoing reasons, part 1274a of chapter V of title 8 of the Code of Federal Regulations is amended as follows:

#### **PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS**

■ 1. The authority citation for part 1274a continues to read as follows:

*Authority:* 8 U.S.C. 1101, 1103, 1324a.

■ 2. Revise § 1274a.1 to read as follows:

##### **§ 1274a.1 Employer requirements.**

(a) *Applicable regulations.* The regulations of the Department of Homeland Security (DHS) relating to the implementation of the employment eligibility and verification provisions of section 274A of the Immigration and Nationality Act (Act) are contained in 8 CFR part 274a.

(b) *Adjudication of civil penalty proceedings.* The procedures for hearings before an administrative law judge relating to civil penalties sought by DHS under section 274A of the Act are contained in 28 CFR part 68. The regulations governing employment eligibility and verification in 8 CFR part 274a are applicable to hearings before an administrative law judge and, to the extent relevant, to cases before an immigration judge or the Board of Immigration Appeals.

##### **§§ 1274a.2, 1274a.3, 1274a.4, 1274a.5, 1274a.6, 1274a.7 and 1274a.8 [Removed]**

■ 3. Remove sections 1274a.2 through 1274a.8.

■ 4. Section 1274a.9 is amended by:

■ a. Removing and reserving paragraphs (a) through (d);

■ b. Amending paragraph (e) by removing the terms “the INS” and “the Service” and adding in their place the term “DHS”; and by

■ c. Revising paragraph (f), to read as follows:

##### **§ 1274a.9 Enforcement procedures.**

\* \* \* \* \*

(f) *Failure to file a request for a hearing.* If the respondent does not file a request for a hearing in writing within thirty days of the date of service of a Notice of Intent to Fine (thirty-five days if served by ordinary mail), the final order issued by DHS shall not be subject to a hearing before an administrative law judge under 28 CFR part 68.

#### **Subpart B [Removed and reserved]**

■ 5. Remove and reserve subpart B.

Dated: January 7, 2009.

**Michael B. Mukasey,**  
*Attorney General.*

[FR Doc. E9–526 Filed 1–14–09; 8:45 am]

**BILLING CODE 4410–30–P**

#### **FARM CREDIT ADMINISTRATION**

##### **12 CFR Part 622**

##### **RIN 3052–AC47**

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

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** This regulation implements cost-of-living adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose under the Farm Credit Act of 1971, as amended (Farm Credit Act), and under the National Flood Insurance Reform Act of 1994 (Reform Act). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (FCPIA Act), requires all Federal agencies with the authority to impose CMPs to evaluate those CMPs periodically to ensure that they continue to maintain their deterrent value.

**DATES:** *Effective Date:* The regulation will become effective on January 16, 2009.

#### **FOR FURTHER INFORMATION CONTACT:**

Michael T. Wilson, Policy Analyst,  
Office of Regulatory Policy, Farm  
Credit Administration, McLean, VA  
22102–5090, (703) 883–4124, TTY  
(703) 883–4434,

or

Howard I. Rubin, Senior Counsel, Office  
of General Counsel, Farm Credit  
Administration, McLean, VA 22102–  
5090, (703) 883–4029, TTY (703) 883–  
4020.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Objective**

The objective of this regulation is to recalculate the CMP inflation adjustments consistent with the FCPIA Act.

##### **II. Background**

##### *A. Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended*

The FCPIA Act requires every Federal agency with authority to issue CMPs to enact regulations that adjust its CMPs pursuant to the inflation adjustment formula in section 5(b) of the FCPIA Act.<sup>1</sup> Each Federal agency was required to issue these regulations by October 23, 1996, and adjust them when necessary at least once every 4 years thereafter. Section 6 of the amended FCPIA Act specifies that inflation-adjusted CMPs will apply only to violations that occur after the effective date of the adjustment. The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI).<sup>2</sup> Specifically, section 5(b) of the FCPIA Act defines the term “cost-of-living adjustment” as “the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.” Furthermore, the increase for each CMP that is adjusted for inflation must be rounded using a method prescribed by section 5(a) of the FCPIA Act.

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

Section 5.32(a) of the Farm Credit Act provides that any FCS institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of an FCS institution who violates the terms of a final order issued under section 5.25 or 5.26 of the Farm Credit Act must pay up to \$1,000 per day for each day during which such violation continues. Orders issued by FCA under section 5.25 or 5.26 of the Farm Credit Act include

<sup>1</sup> See 28 U.S.C. 2461 note. Section 3(2) of the amended FCPIA Act defines a CMP 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 CPI is published by the Department of Labor, Bureau of Statistics, and is available at its Web site: <http://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>.

temporary and permanent cease-and-desist orders. In addition, section 5.32(h) 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 for purposes of assessing a CMP. Section 5.32(a) 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.”

#### 1. Mathematical Calculation

In general, the adjustment calculation is based on the percentage by which the CPI for June 2008 exceeds the CPI for June of the calendar year the CMP was last adjusted. The CMP for violation of the terms of a final order issued under section 5.25 or 5.26 of the Farm Credit Act was last adjusted in 1996. The CMP for a violation of the Farm Credit Act, or a regulation issued under the Farm Credit Act, was last adjusted in 2005. According to the Bureau of Labor Statistics, the CPI for June 1996 and June 2005 was 156.7 and 194.5, respectively. The CPI for June 2008 was 218.815, resulting in a percentage change of 39.64 percent from June 1996 and 12.50 percent from June 2005.

#### 2. Penalty Amount Remains the Same in § 622.61(a)(1)

The maximum CMP in § 622.61(a) for a violation of a final order issued under section 5.25 or 5.26 of the Farm Credit Act is currently \$1,100.<sup>3</sup>

Multiplying \$1,100 by 39.64<sup>4</sup> percent results in an increase of \$436.04. When that number is rounded as required by section 5(a) of the FCPIA Act, the inflation-adjusted maximum remains \$1,100.

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

The maximum CMP in existing § 622.61(a)(2) for a violation of the Farm Credit Act or regulations issued under the Farm Credit Act is \$650. When multiplying the existing CMP amount by 12.50 percent, this results in an increase of \$81.25. This increase is rounded to \$100 as required by section 5(a) of the FCPIA Act, and the inflation-adjusted maximum increases to \$750.

#### C. CMPs Issued Under the Reform Act

The Flood Disaster Protection Act of 1973, as amended by the Reform Act, requires that FCA assess a CMP for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program.<sup>5</sup> Under the Reform Act, which became law in 1994, these CMPs were not to exceed \$350 for each violation, and the total amount of penalties assessed for certain violations of the program against any single regulated entity during any calendar year was not to exceed \$100,000.<sup>6</sup>

#### 1. Mathematical Calculation

The adjustment calculation for these CMPs is based on the percentage by which the CPI for June 2008 exceeds the CPI for June 2005, the calendar the CMPs were last adjusted. As stated above, the CPI for June 2005 was 194.5, and the CPI for June 2008 was 218.815, resulting in a percentage change of 12.50.

#### 2. New Penalty Amounts in § 622.61(b)

Multiplying \$385 by 12.50 percent yields a \$48.13 increase. This amount is rounded downward to \$0.00 under the FCPIA rounding formula. Accordingly, the CMP maximum for each violation will remain \$385. Similarly, multiplying the \$110,000 total cap by 12.50 percent yields a \$13,750 increase. This increase is rounded to \$10,000 under the FCPIA rounding formula, bringing the new cap to \$120,000 in total penalties that may be assessed under the Reform Act against any single regulated entity during any calendar year.

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

The FCPIA Act 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. For all of the foregoing reasons, the FCA also finds good cause to determine that this regulation should become effective immediately, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d).

<sup>5</sup> See 42 U.S.C. 4012a.

<sup>6</sup> 42 U.S.C. 4012a(f).

#### IV. 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 the 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 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 to read 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).

#### Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

■ 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 \$1,100.

(2) Amount of civil money penalty for violation of the Act or regulations: The maximum daily amount is \$550 for each violation that occurs before March 16, 2005, \$650 for each violation that occurs on or after March 16, 2005, but before January 16, 2009, and \$750 for each violation that occurs on or after January 16, 2009.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is \$350 for each violation that

<sup>3</sup> See 70 FR 12583 (March 15, 2005).

<sup>4</sup> As a result of the mathematical calculation for the year 2005 and the required rounding application, the penalty amount remained the same and did not reset. Therefore, in accordance with the FCPIA Act, the calculation for the 2009 adjustment was determined by using the June 1996 CPI of 156.7 and the June 2008 CPI of 218.815 resulting in a percentage change of 39.64 percent.

occurs before March 16, 2005, with total penalties under such statute not to exceed \$110,000 for any single institution during any calendar year. For violations that occur on or after March 16, 2005, but before January 16, 2009, the maximum civil money penalty is \$385 for each violation, with total penalties under such statute not to exceed \$110,000 for any single institution during any calendar year. For violations that occur on or after January 16, 2009, the maximum civil money penalty is \$385 for each violation, with total penalties under such statute not to exceed \$120,000 for any single institution during any calendar year.

Date: January 9, 2009.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E9-656 Filed 1-14-09; 8:45 am]

BILLING CODE 6705-01-P

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1202

RIN 2590-AA05

#### Freedom of Information Act

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) issues this regulation hereby implementing the Freedom of Information Act (FOIA) (U.S.C. 552), establishing procedures for public disclosure of information required to be disclosed under the FOIA and procedures to protect from disclosure business confidential and trade secret information, as appropriate.

**DATES:** This final regulation is effective January 15, 2009. For additional information, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:**

Mark D. Laponsky, Deputy General Counsel, telephone (202) 414-3832, (not a toll free number), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Federal Housing Finance Regulatory Reform Act of 2008 (Act) (Pub. L. 110-289), established FHFA as an independent agency of the Federal Government to ensure that the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal Home Loan Banks (collectively, the Regulated Entities) are capitalized adequately and operate safely and soundly and in compliance with applicable laws, rules and regulations.

On October 10, 2008, the Federal Housing Finance Agency (FHFA) published a proposed rule implementing the Freedom of Information Act (FOIA) (U.S.C. 552) in the **Federal Register**, establishing procedures for public disclosure of information required to be disclosed under the FOIA and procedures to protect from disclosure business confidential and trade secret information, as appropriate. See 73 FR 60192, October 10, 2008. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The comment period closed on November 10, 2008. Though the FHFA received one comment during the 30-day comment period, a modification to the proposed regulation is not necessary. The FHFA's final regulations in this part are identical to those in the proposed rule. This final rule addresses electronically available documents, procedures for making requests, agency handling of requests, records not disclosed, fees, and public reading rooms as well as other related provisions.

#### II. Analysis of Comment Received and Final Rule

In response to the proposed rule, the FHFA received one comment from a Bank. The Bank suggested modifying section 1202.7 to shorten FHFA's response time from 20 working days for standard track requests to 10 working days, further stating, 10 days will best satisfy the twin objectives of providing needed information within a reasonable timeframe while allowing ample time to the FHFA to respond to routine requests.

Due consideration has been given to the comment received. The 20 working days period is a statutory maximum limit in 5 U.S.C. 552. The FHFA anticipates that many standard track requests will be processed within 10 working days. The full statutory period accounts for unforeseen complications that can arise during request review and

analysis. Therefore, to provide for the efficient operation of the rule, the FHFA is not adopting the modification suggested by the commenter.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities 5 U.S.C. 605(b). The FHFA has considered the impact of the final regulations of this part under the Regulatory Flexibility Act and certifies they are not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the internal operations and legal obligations of the FHFA.

#### Paperwork Reduction Act

The final regulations in this part do not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 12 CFR Part 1202

Appeals, Confidential commercial information, Disclosure, Exemptions, Fees, Final action, Freedom of Information Act, Judicial review, Records, Requests.

■ For the reasons stated in the preamble, the FHFA amends 12 CFR chapter XII by adding part 1202 to subchapter A.

#### PART 1202—FREEDOM OF INFORMATION ACT

##### Sec.

- 1202.1 Why did FHFA issue this part?
- 1202.2 What do the terms in this part mean?
- 1202.3 What information can I obtain through FOIA?
- 1202.4 What information is exempt from disclosure?
- 1202.5 How do I request information from FHFA under FOIA?
- 1202.6 What if my request does not have all the information FHFA requires?
- 1202.7 How will FHFA respond to my FOIA request?
- 1202.8 If the records I request contain confidential commercial information, what procedures will FHFA follow?
- 1202.9 How do I appeal a response denying my FOIA request?
- 1202.10 Will FHFA expedite my request or appeal?