

# Rules and Regulations

Federal Register

Vol. 70, No. 167

Tuesday, August 30, 2005

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. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1780

RIN 2550-AA17

#### Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight is issuing this final rule amending its rules of practice and procedure to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**DATES:** This rule is effective on August 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** David W. Roderer, Deputy General Counsel, at (202) 414-3804; Charlotte A. Reid, Associate General Counsel, at (202) 414-3810; or Frank R. Wright, Senior Counsel, at (202) 414-6439 (not toll-free numbers); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877-8339 (TDD only).

#### SUPPLEMENTARY INFORMATION

##### Background

The Office of Federal Housing Enterprise Oversight (OFHEO), an independent office within the Department of Housing and Urban Development (HUD), is the exclusive financial safety and soundness regulator of the Federal National Mortgage

Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act), as amended.<sup>1</sup> The Enterprises are government-sponsored corporations chartered to provide liquidity to the residential mortgage market and to promote the availability of mortgage credit by investing in residential mortgages and guaranteeing securities backed by residential mortgages.<sup>2</sup> OFHEO oversees the Enterprises to ensure that they remain adequately capitalized and operate in a safe and sound manner and in accordance with applicable laws, rules and regulations. To that end OFHEO is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.<sup>3</sup> In particular, section 1376 of the Act (12 U.S.C. 4636) empowers OFHEO to impose civil money penalties under specific conditions. OFHEO's Rules of Practice and Procedure (12 CFR part 1780) govern cease and desist proceedings, civil money penalty assessment proceedings and other administrative adjudications.<sup>4</sup>

##### The Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (the Inflation Adjustment Act) requires OFHEO, as well as other Federal agencies with the authority to issue civil money penalties (CMPs), to publish regulations to adjust the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.<sup>5</sup> The Inflation Adjustment Act required agencies to make an initial adjustment of their CMPs upon the statute's

enactment, and further requires agencies to make additional adjustments on an ongoing basis, every four years following the initial adjustment. The purpose of these periodic adjustments is to maintain the deterrent effect of CMPs and promote compliance with the law. Subpart E of OFHEO's Rules of Practice and Procedure sets forth the Civil Money Penalty Inflation Adjustment amounts and discusses their applicability. See 12 CFR parts 1780.80-81.

As required, OFHEO made the initial adjustment to the maximum civil money penalty amounts in 1997, and provided that such adjustments were applicable to any violation occurring after October 23, 1996 (the effective date of the Inflation Adjustment Act).<sup>6</sup> The last adjustment was made in 2000, effective January 4, 2001.<sup>7</sup> OFHEO again is amending the maximum civil money penalty amount for each tier that OFHEO has authority to impose under 12 U.S.C. 4636 in accordance with the Inflation Adjustment Act.

Under the Inflation Adjustment Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by a cost-of-living adjustment. As is described in detail below, the Inflation Adjustment Act provides that this cost-of-living adjustment is to reflect the percentage increase in the Consumer Price Index since the CMPs were last adjusted or established, and rounded in accordance with rules provided in the statute.<sup>8</sup>

##### Description of the Rule

This final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR part 1780.80 to reflect the new adjusted maximum penalty amount that OFHEO

<sup>6</sup> See 62 FR 68152, December 31, 1997.

<sup>7</sup> See 66 FR 709, Jan. 4, 2001.

<sup>1</sup> See Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. 102-550, Title XIII, Section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941-4012 (codified at 12 U.S.C. 4501 *et seq.*).

<sup>2</sup> See Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*; Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; Act at 12 U.S.C. 4561-67, 4562 note.

<sup>3</sup> See Pub. L. No. 102-550, Title XIII, Section 1313 and 1371-1379B (Subtitle C—Enforcement Provisions) (codified at 12 U.S.C. 4513 and 4631-4641, respectively).

<sup>4</sup> See 12 CFR 1780.1

<sup>5</sup> See 28 U.S.C. 2461 note.

<sup>8</sup> The Inflation Adjustment Act specifically identifies the Consumer Price Index for All Urban Consumers published by the United States Department of Labor (CPI-U). The Department of Labor (DOL) computes the CPI-U using two different base time periods, 1967 and 1982-1984. The Inflation Adjustment Act does not specify which of these base periods should be used to calculate the inflation adjustment. OFHEO calculated the initial adjustment of its CMPs using CPI-U data with the 1967 base period. OFHEO is using CPI-U data with the 1982-1984 base period for the adjustments adopted in this final rule, because such data now reflect the most current method of computing the CPI-U.

may impose upon an executive officer or director or an Enterprise within each tier. The increases in maximum penalty amounts contained in this final rule may not necessarily affect the amount of any CMP that OFHEO may seek for a particular violation; OFHEO would calculate each CMP on a case-by-case basis in light of a variety of factors.<sup>9</sup>

The Inflation Adjustment Act directs federal agencies to calculate each CMP adjustment as the percentage by which the CPI-U for June of the calendar year preceding the adjustment exceeds the CPI-U for June of the calendar year in which the amount of each CMP was last

adjusted. The CMP for Third Tier penalties by an Enterprise was adjusted in 2000, and every other CMP was last adjusted in 1997.<sup>10</sup> Since OFHEO is making this round of adjustments in calendar year 2005, and OFHEO made the last round of adjustments in calendar year 2000, the inflation adjustment amount for each CMP that was adjusted in 2000 was calculated by comparing the CPI-U for June 2000 (172.4) with the CPI-U for June 2004 (189.7), resulting in an inflation adjustment of 10.0 percent.<sup>11</sup> For each CMP that was last adjusted in 1997, the

inflation adjustment amount was calculated by comparing the CPI-U for June 1997 (160.3) with the CPI-U for June 2004 (189.7), resulting in an inflation adjustment of 18.3 percent. For each CMP, the product of this inflation adjustment and the previous maximum penalty amount was then rounded in accordance with the specific requirements of the Inflation Adjustment Act, and was then summed with the previous maximum penalty amount to determine the new adjusted maximum penalty amount.<sup>12</sup> The table below sets out these items accordingly.

| U.S. code citation   | Description                                 | Previous maximum penalty amount | Inflation increase | Rounded inflation increase | New adjusted maximum penalty amount |
|----------------------|---|---------------------------------|--------------------|----------------------------|-------------------------------------|
| 12 U.S.C. 4636(b)(1) | First Tier                                  | 5,500                           | 1,006.50           | 1,000                      | 6,500                               |
| 12 U.S.C. 4636(b)(2) | Second Tier (Executive Officer or Director) | 11,000                          | 2,013              | 0                          | 11,000                              |
| 12 U.S.C. 4636(b)(2) | Second Tier (Enterprise)                    | 27,500                          | 5,032.50           | 5,000                      | 32,500                              |
| 12 U.S.C. 4636(b)(3) | Third Tier (Executive Officer or Director)  | 110,000                         | 20,130             | 20,000                     | 130,000                             |
| 12 U.S.C. 4636(b)(3) | Third Tier (Enterprise)                     | 1,150,000                       | 115,000            | 125,000                    | 1,275,000                           |

Section 1780.81 states that the adjustments made in § 1780.80 apply only to violations that occur after the effective date, August 30, 2005.

**Public Notice and Comment and Delayed Effective Date Not Required**

OFHEO finds good cause that notice and an opportunity to comment on this document are unnecessary under the Administrative Procedure Act, 5 U.S.C. 551-559, as amended (APA). This rulemaking conforms with and is consistent with the statutory directive set forth in the Inflation Adjustment Act, with no issues of policy discretion, and public comment is impracticable and unnecessary. Accordingly, OFHEO is issuing the amendments as a final rule.

In addition, OFHEO finds good cause to make this rule effective upon publication of this document in the **Federal Register** under the APA. See 5 U.S.C. 553(d). This final rule does not impose any additional responsibilities on any entity. Instead, it simply adjusts the amount of each CMP tier as dictated by the Inflation Adjustment Act.

**Regulatory Impact**

*Executive Order 12866, Regulatory Planning and Review*

This final rule is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based Enterprises to compete with foreign-based enterprises in domestic or foreign markets.

Accordingly, no regulatory impact assessment is required and this final rule has not been submitted to the Office of Management and Budget for review.

*Unfunded Mandates Reform Act of 1995*

This final rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any

one year. As a result, the final rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) only applies to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) (see 5 U.S.C. 601(2)). OFHEO has determined for good cause that the APA does not require a general notice of proposed rulemaking for this regulatory action. The Regulatory Flexibility Act does not apply to this final rule.

*Paperwork Reduction Act of 1995*

The rule contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

**List of Subjects in 12 CFR Part 1780**

Administrative practice and procedure, Penalties.

■ Accordingly, for the reasons set out in the preamble, the Office of Federal

<sup>9</sup> See, e.g., 12 CFR part 1780.1(c).

<sup>10</sup> See 66 FR 709, Jan. 4, 2001; 62 FR 68152, Dec. 31, 1997.

<sup>11</sup> OFHEO's last round of adjustments in 2000 applied an inflation factor of 3.7 percent, calculated by comparing June 1997 data to June 1999 data. The 1997 data was used as the base period in accordance with the Inflation Adjustment Act's directive to use CPI-U data from the year of the CMP's previous adjustment. The resulting penalty

was then rounded in accordance with the statutory rules described below. 66 FR 709, January 4, 2001. Although the adjustment is being made in calendar year 2005, the resulting CMP increases do not take effect until publication of the rule, and will only apply to conduct occurring after such data.

<sup>12</sup> The statute's rounding rules require that each increase be rounded to the nearest multiple as follows: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater

than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000.

Housing Enterprise Oversight hereby amends 12 CFR part 1780 as follows:

**PART 1780—RULES OF PRACTICE AND PROCEDURE**

■ 1. The authority citation for part 1780 is revised to read as follows:

**Authority:** 12 U.S.C. 4501, 4513(b), 4517, 4521, 4631–4641.

■ 2. Revise Subpart E of part 1780 to read as follows:

**Subpart E—Civil Money Penalty Inflation Adjustments**

**§ 1780.80 Inflation adjustments.**

The maximum amount of each civil money penalty within OFHEO’s jurisdiction is adjusted in accordance

with 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) as follows:

| U.S. code citation   | Description                                 | New adjusted maximum penalty amount |
|----------------------|---|-------------------------------------|
| 12 U.S.C. 4636(b)(1) | First Tier                                  | 6,500                               |
| 12 U.S.C. 4636(b)(2) | Second Tier (Executive Officer or Director) | 11,000                              |
| 12 U.S.C. 4636(b)(2) | Second Tier (Enterprise)                    | 32,500                              |
| 12 U.S.C. 4636(b)(3) | Third Tier (Executive Officer or Director)  | 130,000                             |
| 12 U.S.C. 4636(b)(3) | Third Tier (Enterprise)                     | 1,275,000                           |

**§ 1780.81 Applicability.**

The inflation adjustments in § 1780.80 apply to civil money penalties assessed in accordance with the provisions of 12 U.S.C. 4636 for violations occurring after the effective date, August 30, 2005.

Dated: August 25, 2005.

**Stephen A. Blumenthal,**

*Acting Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 05–17232 Filed 8–29–05; 8:45 am]

**BILLING CODE 4220–01–U**

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Parts 121, 124, 125 and 126**

**RIN 3245–AF31**

**HUBZone, Government Contracting, 8(a) Business Development and Small Business Size Standard Programs**

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends SBA’s HUBZone, 8(a) Business Development, Government Contracting and Size Standard regulations to implement provisions of the Small Business Act including the Consolidated Appropriations Act, 2005, specifically, Subtitle E of Division K entitled the Small Business Reauthorization and Manufacturing Assistance Act of 2004. Consistent with the new statutory requirements under Subtitle E, this interim rule: Amends the definitions of the terms “business concern,” “affiliation,” “HUBZone small business concern” and “qualified HUBZone small business concern;” amends the HUBZone eligibility requirements for tribally-owned

HUBZone concerns; extends qualified HUBZone areas to include military base closure areas for a period of five years; revises the definition of a “qualified non-metropolitan county;” extends the redesignation period for HUBZone areas through the release of the 2010 census data; and provides a five percent HUBZone evaluation price preference for agricultural commodities in international food aid procurements. Pursuant to the Administrative Procedure Act, SBA has determined that there is good cause to issue this rule as an interim rule with an immediate effective date. However, SBA encourages and will consider all timely public comments in developing the final rule.

**DATES:** This interim rule is effective August 30, 2005. Comments must be received on or before October 31, 2005.

**ADDRESSES:** You may submit comments, identified by RIN #3245–AF31, by any of the following methods:

Internet: <http://www.regulations.gov>. Follow the instructions for submitting comments. E-mail: [hubzone@sba.gov](mailto:hubzone@sba.gov). Fax: (202) 481–5593.

Mail or Hand Deliver: Michael McHale, Associate Administrator for the HUBZone Program, 409 Third Street, SW., Washington, DC, 20416.

**FOR FURTHER INFORMATION CONTACT:** Sheryl J. Swed, Office of Government Contracting, at (202) 205–6413 or by e-mail at: [sheryl.swed@sba.gov](mailto:sheryl.swed@sba.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Statutory Authority**

On December 8, 2004, the President signed into law the Consolidated Appropriations Act, 2005, Public Law 108–447 which contained the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (the Reauthorization Act). Subtitle E of

the Reauthorization Act amended certain provisions of the Small Business Act, 15 U.S.C. 631 *et. seq.*, that govern the HUBZone program and the definition of small agricultural cooperative.

*1. Section 151 of the Reauthorization Act*

In particular, Section 151 of the Reauthorization Act relaxed the statutory requirement that a HUBZone small business concern (SBC) must be entirely owned by U.S. citizens. Congress concluded that this statutory mandate precluded small business owners from taking advantage of available forms of business organizations that limit the personal liability of business owners. It also precluded ownership by small agricultural cooperatives that operate in rural HUBZones, and thereby deprived those communities of the economic benefits of increased HUBZone contracting opportunities.

As a result, Section 151 of the Reauthorization Act amended the definition of “HUBZone SBC” in section 3(p)(3)(A) of the Small Business Act, 15 U.S.C 632(p)(3)(A), to require that SBCs eligible for HUBZone certification be 51 percent (instead of 100 percent) owned and controlled by U.S. citizens. It also added a new section 3(p)(3)(E) to the Small Business Act, 15 U.S.C 632(p)(3)(E), to include as HUBZone SBCs small agricultural cooperatives or SBCs wholly or partially-owned by small agricultural cooperatives organized and incorporated in the United States. Also in connection with agricultural cooperatives, Section 151 further amended Section 3(j) of the Small Business Act, 15 U.S.C. 632(j), to require that small agricultural cooperatives be treated as business concerns for purposes of the Small