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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Contribution Elections and Contribution Allocations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is announcing the effective date of its regulation published on June 19, 2009 (74 FR 29111) pertaining to the timing of agency contributions.

DATES: *Effective Date:* The Agency's interim final rule published on June 19, 2009 (74 FR 29111) took effect on June 22, 2009 when President Obama signed HR 1256 (Pub. L. 111-31) which contained the Thrift Savings Plan Enhancement Act of 2009 (Act).

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at (202) 942-1645.

SUPPLEMENTARY INFORMATION: The Act provides that Agency Automatic (1%) Contributions and Agency Matching Contributions shall commence immediately. The regulatory amendment is necessary because FRTIB regulations follow current law, which provides that Agency Automatic (1%) Contributions and Agency Matching Contributions shall not commence until the equivalent of the second open season that begins after the employee commenced employment. The FRTIB is setting a August 1, 2009 effective date for this regulation to allow employing agencies sufficient time to make the necessary computer programming changes to implement it. The regulation took effect on June 22, 2009, and employing agencies must implement

this change as soon as practicable but no later than the first pay period in August.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2009-09]

Civil Monetary Penalties Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the Federal Election Commission is adopting final rules to apply inflation adjustments to certain civil monetary penalties under the Federal Election Campaign Act of 1971, as amended ("FECA"), the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil penalties being adjusted are for certain violations of these statutes that are not knowing and willful, involving contributions and expenditures; knowing and willful violations of the prohibition against the making of a contribution in the name of another; knowing and willful violations of the confidentiality provisions of FECA; certain penalties for late filed or non-filed reports under the administrative fines program; and failure to file timely 48-hour notices. The adjusted civil monetary penalties are calculated according to the formula set forth in the law and will be effective for violations occurring on or after the effective date of these rules. Further information is provided in the supplementary information that follows.

DATES: Effective on July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, or Ms. Jessica Selinkoff, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation

Adjustment Act of 1990, as amended,¹ (the "Inflation Adjustment Act") requires Federal agencies to adjust for inflation the civil monetary penalties within their jurisdiction at least once every four years according to detailed formulae. A civil monetary penalty ("civil penalty") is defined in the Inflation Adjustment Act as any penalty, fine, or other sanction that is for a specific amount, or has a maximum amount, as provided by Federal law, and is assessed or enforced by an agency in an administrative proceeding or by a Federal court pursuant to Federal law.² Further, the Inflation Adjustment Act contains a 10% penalty cap on the first adjustment of any civil penalty. That is, the first adjustment made to the civil penalty may not exceed 10% of the starting civil penalty.³ Under the Federal Election Campaign Act of 1971 ("FECA"), as amended, 2 U.S.C. 431 *et seq.*, the Federal Election Commission ("Commission") has jurisdiction over several civil penalties for respondents who violate FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* ("chapters 95 and 96 of Title 26"). These rules fulfill the Commission's non-discretionary obligation under the Inflation Adjustment Act to adjust for inflation, according to the prescribed formula, the civil monetary penalties ("civil penalties") within its jurisdiction.

Immediate Effectiveness of Final Rule

The Commission is required by statute to adjust the civil penalties under its jurisdiction by a Cost of Living Adjustment ("COLA") formula. This application of the COLA does not involve Commission discretion or any policy judgments. Thus, the Commission finds that the "good cause" exception to the notice and comment requirement in section 553 of the Administrative Procedures Act applies to these rules because notice and comment are unnecessary. 5 U.S.C. 553(b)(B) and (d)(3).

For the same reasons, these rules do not need to be submitted to the Speaker

¹ 28 U.S.C. 2461 note, as amended by Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321-73, sec. 31001(s)(1) (1996); Public Law 105-362, 112 Stat. 3293 (1998).

² 28 U.S.C. 2461 note (3)(2).

³ 28 U.S.C. 2461 note (7).

of the House of Representatives or the President of the Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.*, and these rules are effective upon publication. 5 U.S.C. 808(2). Accordingly these amendments are effective on July 1, 2009. The new civil penalties are applicable only to violations that occur after this effective date.

Explanation and Justification

Under the Inflation Adjustment Act, the Commission must adjust civil penalties by a COLA defined as the percentage by which the U.S. Department of Labor's Consumer Price Index for all urban consumers ("CPI") for June of the year preceding the adjustment exceeds the CPI for June of the year in which each civil penalty was last set or adjusted.⁴ The amount of the resulting increase is then subject to rounding rules based on the size of the civil penalty.⁵ The Inflation Adjustment Act imposes a 10% cap on the first adjustment under its rules, but no cap on subsequent adjustments.

The Commission has previously applied the Inflation Adjustment Act formulae to its civil penalties in 1997,

2002, and 2005.⁶ As explained in more detail below, the Commission has determined that the Inflation Adjustment Act now requires the Commission to adjust all civil penalties in 11 CFR 111.24 and some civil penalties in 11 CFR 111.43. The civil penalties in 11 CFR 111.44 will not change because of the rounding rules.

1. 111.24—Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.)

FECA provides for civil penalties for any person who violates any portion of FECA or chapters 95 and 96 of Title 26. FECA's civil penalties, found at 2 U.S.C. 437(g)(a)(5), (6), and (12), are organized into two tiers: One tier of civil penalties for violations of FECA or chapters 95 and 96 of Title 26, and a higher tier of civil penalties for "knowing and willful" violations of FECA or chapters 95 and 96 of Title 26. Commission regulations in section 111.24 set forth each civil penalty established by section 437g(a)(5), (6), and (12), as adjusted pursuant to the Inflation Adjustment Act.

Example

The following is a detailed example of the application of the Inflation

Adjustment Act formulae to FECA civil penalties. The \$5,000 civil penalties provided for in 2 U.S.C. 437g(a)(5)(A), (6)(A), and (6)(B) are implemented by the regulations at 11 CFR 111.24(a)(1) at their 2005 level of \$6,500. *See* 2005 Adjustment, 70 FR at 34634; 1997 Adjustment, 62 FR at 11316. To determine the 2009 adjustment, the CPI for June 2008 (218.815) is divided by the CPI for June 2005, the year the civil penalty was last adjusted (194.5), for a COLA of 1.125. Next, the raw inflation adjustment is determined by multiplying the present civil penalty (\$6,500) by the COLA increase (0.125) for a raw increase of \$812.50. The result is rounded to \$1,000. Finally, the rounded increase is added to the civil penalty, for a new section 111.24(a)(1) civil penalty of \$7,500.

Using the same Inflation Adjustment Act formulae, the Commission must also adjust other civil penalties in 11 CFR 111.24. Since each of these civil penalties has been previously adjusted, the 10% cap for first time adjustments does not apply to any of them. The complete list of all civil penalty adjustments in section 111.24 is as follows:

Section	Previous civil penalty	Last adjusted	COLA increase	Raw increase	Rounded to	New civil penalty
11 CFR 111.24(a)(1)	\$6,500	2005	0.125 (218.815/194.5)	\$812.50	\$1,000	\$7,500
11 CFR 111.24(a)(2)(i)	11,000	1997	0.365 (218.815/160.3)	4,015	5,000	16,000
11 CFR 111.24(a)(2)(ii)	55,000	2005	0.125 (218.815/194.5)	6,875	5,000	60,000
11 CFR 111.24(b)	2,200	1997	0.365 (218.815/160.3)	803	1,000	3,200
11 CFR 111.24(b)	6,500	2005	0.125 (218.815/194.5)	812.50	1,000	7,500

Note that the civil penalties in 11 CFR 111.24(a)(2)(i) and (b) have not been adjusted since 1997 because application of the rounding rules resulted in no change when adjustments were examined in 2002 and 2005.

2. 11 CFR 111.43—Schedule of Penalties

FECA permits the Commission to assess civil penalties for violations of the reporting requirements of 2 U.S.C. 434(a) in accordance with schedules of penalties established and published by the Commission. 2 U.S.C. 437g(a)(4)(C). Each schedule contains two columns, one for penalties for late-filed reports and one for penalties for non-filed

reports. Reports are considered to be late-filed if they are filed after their due date under 11 CFR 104.5 but before a date certain which is determined by whether the reports are election-sensitive or not.⁷ Reports are considered not filed if they either are filed after that date certain or are not filed at all. *See* 11 CFR 111.43(e).

The Commission first promulgated two schedules of penalties for late filing violations in 2000 in 11 CFR 111.43(a) and (b), for non-election-sensitive reports and election-sensitive reports, respectively. Explanation and Justification for Final Rules on Administrative Fines, 65 FR 31787 (May

19, 2000). The penalty calculations were based on the "level of activity," as defined in the 2000 regulations at 11 CFR 111.43(d), reported by the late-filing committee. Additionally, the Commission promulgated a civil penalty of \$5,500 at 11 CFR 111.43(c) for situations in which a committee fails to file a report and there is no "estimated level of activity," on which the Commission can base a civil penalty thereby making it impossible for the Commission to calculate the level of activity.

In 2003, the Commission reevaluated the administrative fines program and decided to reduce the civil penalties in

⁴ 28 U.S.C. 2461 note (5)(b).

⁵ 28 U.S.C. 2461 note (5)(a). The rounding rules applicable to the Commission's civil penalties require that if the existing penalty is less than or equal to \$100, the increase is rounded to the nearest \$10; if the existing penalty is greater than \$100 but less than or equal to \$1,000, the increase is rounded to the nearest \$100; if the existing penalty is greater than \$1,000 but less than or equal to \$10,000, the increase is rounded to the nearest \$1,000; and if the

existing penalty is greater than \$10,000 but less than or equal to \$100,000, the increase is rounded to the nearest \$5,000.

⁶ *See* Explanation and Justification for Final Rules on Inflation Adjustments for Civil Monetary Penalties, 70 FR 34633 (June 15, 2005) ("2005 Adjustment"); Explanation and Justification for Final Rules on Adjustments to Civil Monetary Penalty Amounts, 62 FR 11316 (Mar. 12, 1997) ("1997 Adjustment"). In January 2002, the rounding

rules resulted in no adjustments. Agenda Doc. 02-06 (Jan. 17, 2002).

⁷ Election-sensitive reports are those due just before an election. *See* 11 CFR 111.43(d)(1). The dissemination of information in these reports has the most meaningful impact because they are filed in proximity to an election. Accordingly, the schedule of penalties imposes a higher civil penalty for these reports than for all other reports, which are non-election-sensitive.

section 111.43(a) and (b) applicable to reports containing under \$50,000 in activity. It also repromulgated the remaining civil penalties. *See* Explanation and Justification for Final Rules on Administrative Fines, 68 FR 12572 (Mar. 17, 2003) (“2003 Rules”). Accordingly, the civil penalties for reports due on or after April 16, 2003 were set forth in new schedules at 11 CFR 111.43(a)(2) (non-election-sensitive) and 11 CFR 111.43(b)(2) (election-sensitive). The penalty schedules for previous reports were located in 11 CFR 111.43(a)(1) (non-election-sensitive) and 111.43(b)(1) (election-sensitive). The Commission also revised its definitions for “level of activity” and “estimated level of activity” for reports due on or after April 16, 2003.

The Commission has now determined that there is no need to retain the pre-April 2003 schedules at 11 CFR 111.43(a)(1) and (b)(1). Because the statute of limitations for enforcement of civil fines and penalties is five years from the date when the claim first accrued, a proceeding to enforce a civil penalty for a report due before April 16, 2003 would need to have been commenced before April 16, 2008. *See* 28 U.S.C. 2462. Accordingly, the Commission is removing paragraphs (a)(1) and (b)(1) from 11 CFR 111.43, including both the old schedules and the definitions for “level of activity” and “estimated level of activity” applicable to those schedules. Former 11 CFR 111.43(a)(2) and 11 CFR 111.43(b)(2) are being renumbered as 11 CFR 111.43(a) and 111.43(b), respectively. Additionally, because the removal of the old schedules at 11 CFR 111.43(a)(1) and (b)(1) obviates the need to distinguish between different definitions of “level of activity” and “estimated level of activity” for time periods before or after the 2003 Rules, the Commission is also moving, but not changing the substance of, those definitions from section 111.43(a)(2) and (b)(2) to the general definition section at 11 CFR 111.43(d). Finally, the Commission is numbering each of the definitions in section 111.43(d) for clarity.

In addition to these technical changes, the Commission must adjust the civil penalties schedules in section 111.43(a) and (b) pursuant to the Inflation Adjustment Act. These civil penalties schedules were set when the Commission repromulgated them in the 2003 rulemaking. In 2005, the Commission applied the Inflation Adjustment Act formulae to the civil penalties in section 111.43. Because of the rounding rules, however, none of

the penalties was adjusted. *See* 2005 Adjustment, 70 FR at 34635. Accordingly, this is the first adjustment of these civil penalties under the Inflation Adjustment Act and the 10% cap applies to any adjustments made.

To make the adjustments, the Inflation Adjustment Act formula is applied to each civil penalty in the schedules to determine what, if any, adjustment must be made. First, the CPI for 2008 is divided by the CPI for June of 2003 (218.815/183.7) to determine the applicable COLA of 0.191. Then, each civil penalty is multiplied by the COLA to determine the amount of the unrounded raw increase. Next, the statutory rounding formula is applied to that raw increase amount. The resulting rounded increase is then added to the current civil penalty to determine the new raw civil penalty. Finally, the statutory 10% penalty cap is applied as necessary. Accordingly, if the new raw civil penalty is larger than 110% of the current civil penalty, the raw penalty is adjusted downward to conform to that penalty cap. The actual adjustment to each civil penalty is shown in the schedules in the rule text, below.

The Commission must also adjust the \$5,500 civil penalty provided for in 2000 in 11 CFR 111.43(c), and repromulgated in 2003, which has not been adjusted pursuant to the Inflation Adjustment Act. To determine this year's adjustment, the CPI for June 2008 is divided by the CPI for June 2003 (218.815/183.7) for a COLA increase of 0.191. Next the \$5,500 is multiplied by the COLA for a raw increase of \$1,050.50, which is then rounded to \$1,000. Again, this first adjustment pursuant to the Inflation Adjustment Act is capped at 10 percent of the original penalty (\$5,500), for a new section 111.43(c) civil penalty of \$6,050.

3. 11 CFR 111.44—Schedule of Penalties for 48-Hour Notices

Principal campaign committees are required to report, within 48 hours of receipt, any contributions of \$1,000 or more that are received after the 20th day, but more than 48 hours before any election. 2 U.S.C. 434(a)(6). FECA permits the Commission to assess civil penalties for violations of the 48-hour notice reporting requirement. 2 U.S.C. 437g(a)(4)(C). The Commission last adjusted the civil penalty for these reporting violations in 2005 to \$110 + (.10 x amount of contribution(s) not timely reported). *See* 2005 Adjustment, 70 FR at 34635; Explanation and Justification for Final Rules on Administrative Fines, 65 FR 31787, 31793 (May 19, 2000). To determine this year's adjustment, The CPI for June 2008

is divided by the CPI for June 2005 (218.815/194.5) for a COLA increase of 0.125. The civil penalty is then multiplied by the COLA for a raw increase of \$13.75, which is then rounded to \$0. Accordingly, the civil penalty in section 111.44 remains at \$110 + (.10 x amount of contribution(s) not timely reported).

While the Commission is not making any adjustments to the civil penalty in 11 CFR 111.44, it is correcting an incorrect phrase in section 111.44(b). Specifically, the phrase “civil money penalty” is incomplete and is being changed to “final civil money penalty.”

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The provisions of the Regulatory Flexibility Act are not applicable to this final rule because the Commission was not required to publish a notice of proposed rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a). Therefore, no regulatory flexibility analysis is required.

List of Subjects in 1 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

■ For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

■ 2. Section 111.24 is amended by revising paragraphs (a)(1), (a)(2)(i), (a)(2)(ii) and (b) to read as follows:

§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, in the case of a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.), the civil penalty shall not exceed the greater of \$7,500 or an amount equal to any contribution or expenditure involved in the violation.

(2) * * *

(i) In the case of a knowing and willful violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.), the civil penalty shall not exceed the greater of \$16,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

(ii) Notwithstanding paragraph (a)(2)(i) of this section, in the case of a knowing and willful violation of 2 U.S.C. 441f, the civil penalty shall not be less than 300% of the amount of any contribution involved in the violation and shall not exceed the greater of \$60,000 or 1,000% of the amount of any contribution involved in the violation.

(b) Any Commission member or employee, or any other person, who in violation of 2 U.S.C. 437g(a)(12)(A)

makes public any notification or investigation under 2 U.S.C. 437g without receiving the written consent of the person receiving such notification, or the person with respect to whom such investigation is made, shall be fined not more than \$3,200. Any such member, employee, or other person who knowingly and willfully violates this provision shall be fined not more than \$7,500.

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1–4,999.99 ^a	[\$25 + (\$5 x Number of days late)] × [1 + (.25 × Number of previous violations)].	\$250 × [1 + (.25 × Number of previous violations)].
\$5,000–9,999.99	[\$55 + (\$5 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$330 × [1 + (.25 × Number of previous violations)].
\$10,000–24,999.99	[\$110 + (\$5 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$550 × [1 + (.25 × Number of previous violations)].
\$25,000–49,999.99	[\$200 + (\$20 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$990 × [1 + (.25 × Number of previous violations)].
\$50,000–74,999.99	[\$330 + (\$82.50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$2,970 × [1 + (.25 × Number of previous violations)].
\$75,000–99,999.99	[\$440 + (\$110 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$3,850 × [1 + (.25 × Number of previous violations)].
\$100,000–149,999.99	[\$660 + (\$125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$4,950 × [1 + (.25 × Number of previous violations)].
\$150,000–199,999.99	[\$880 + (\$150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$6,050 × [1 + (.25 × Number of previous violations)].
\$200,000–249,999.99	[\$1,100 + (\$175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$7,150 × [1 + (.25 × Number of previous violations)].
\$250,000–349,999.99	[\$1,500 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$8,800 × [1 + (.25 × Number of previous violations)]
\$350,000–449,999.99	[\$2,000 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$9,900 × [1 + (.25 × Number of previous violations)].
\$450,000–549,999.99	[\$2,500 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$10,450 × [1 + (.25 × Number of previous violations)].
\$550,000–649,999.99	[\$3,300 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$11,000 × [1 + (.25 × Number of previous violations)].
\$650,000–749,999.99	[\$3,850 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$10,500 × [1 + (.25 × Number of previous violations)].
\$750,000–849,999.99	[\$4,400 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$11,000 × [1 + (.25 × Number of previous violations)].
\$8,50,000–949,999.99	[\$4,950 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$11,500 × [1 + (.25 × Number of previous violations)].
\$950,000 or over	[\$5,500 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$12,000 × [1 + (.25 × Number of previous violations)].

^a The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in

accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1–4,999.99 ^a	[\$55 + (\$10 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$550 × [1 + (.25 × Number of previous violations)].
\$5,000–9,999.99	[\$110 + (\$10 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$660 × [1 + (.25 × Number of previous violations)].
\$10,000–24,999.99	[\$150 + (\$10 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$990 × [1 + (.25 × Number of previous violations)].
\$25,000–49,999.99	[\$330 + (\$25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$1,400 × [1 + (.25 × Number of previous violations)].
\$50,000–74,999.99	[\$495 + (\$82.50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$3,300 × [1 + (.25 × Number of previous violations)].
\$75,000–99,999.99	[\$660 + (\$110 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$4,400 × [1 + (.25 × Number of previous violations)].

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$100,000–149,999.99	$[\$990 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$5,500 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$150,000–199,999.99	$[\$1,200 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$6,600 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$200,000–249,999.99	$[\$1,500 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$8,250 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$250,000–349,999.99	$[\$2,250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$9,900 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$350,000–449,999.99	$[\$3,300 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$450,000–549,999.99	$[\$4,125 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$550,000–649,999.99	$[\$4,950 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$650,000–749,999.99	$[\$5,775 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$13,000 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$750,000–849,999.99	$[\$6,600 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$15,400 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$850,000–949,999.99	$[\$7,425 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$16,500 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$950,000 or over	$[\$8,250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$17,600 \times [1 + (.25 \times \text{Number of previous violations})]$.

^aThe civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be \$6,500.

(d) *Definitions.* For this section only, the following definitions will apply:

(1) *Election Sensitive Reports* means third quarter reports due on October 15th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); monthly reports due October 20th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); and pre-election reports for primary, general, and special elections under 11 CFR 104.5.

(2) *Estimated level of activity* means:

(i) For an authorized committee, total receipts and disbursements reported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity for an authorized committee means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

(ii)(A) For an unauthorized committee, estimated level of activity is calculated as follows: [(Total receipts and disbursements reported in the current two-year cycle)—(Transfers received from non-Federal account(s) as

reported on Line 18(a) of FEC Form 3X Disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X)] ÷ Number of reports filed to date covering the activity in the current two-year election cycle.

(B) If the unauthorized committee has not filed a report covering activity in the current two-year election cycle, the estimated level of activity is calculated as follows: [(Total receipts and disbursements reported in the prior two-year election cycle)—(Transfers received from non-Federal account(s) as reported on Line 18(a) of FEC Form 3X Disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X)] ÷ Number of reports filed covering the activity in the prior two-year election cycle.

(3) *Level of activity* means:

(i) For an authorized committee, the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (d)(2)(i) of this section.

(ii) For an unauthorized committee, the total amount of receipts and disbursements for the period covered by the late report minus the total of: Transfers received from non-Federal account(s) as reported on Line 18(a) of FEC Form 3X and disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X for the

period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (d)(2)(ii) of this section.

(4) *Number of previous violations* means all prior final civil money penalties assessed under this subpart during the current two-year election cycle and the prior two-year election cycle.

* * * * *

§ 111.44 [Amended]

■ 4. In paragraph (b) of § 111.44, remove the words “civil money penalty” and add, in their place, the words “final civil money penalty.”

: March 25, 2009.

On behalf of the Commission.

Steven T. Walther,
Chairman, Federal Election Commission.

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