

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

RIN: 3133-AE59

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA Board (Board) is amending its regulations to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustments, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This interim final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site: <https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx>. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on “Civil Monetary Penalty Inflation Adjustment” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: All public comments are available on the agency’s website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Ian Marena, Senior Trial Attorney, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Legal Background

II. Calculation of Adjustments

III. Regulatory Procedures

I. Legal Background

A. Statutory Requirements and Overview of Changes Enacted in 2015

The Debt Collection Improvement Act of 1996¹ (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990² (FCPIA Act) to require every federal agency to enact regulations that adjust each CMP provided by law under its jurisdiction by the rate of inflation at least once every four years. The Board most recently adjusted CMPs within its jurisdiction in September 2015.³

In November 2015, Congress further amended the CMP inflation requirements in the Bipartisan Budget Act of 2015,⁴ which contains the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 amendments).⁵ This legislation provides for an initial “catch-up” adjustment of CMPs in 2016, followed by annual adjustments. The catch-up adjustment will generally re-set CMP maximum amounts by setting aside the inflation

¹ Pub. L. 104-134, § 31001(s), 110 Stat. 1321-373 (Apr. 26, 1996). The law is codified at 28 U.S.C. 2461 note.

² Pub. L. 101-410, 104 Stat. 890 (Oct. 5, 1990), also codified at 28 U.S.C. 2461 note.

³ 80 FR 57284 (Sept. 23, 2015).

⁴ Pub. L. 114-74, 129 Stat. 584 (Nov. 2, 2015).

⁵ 129 Stat. 599.

adjustments that agencies made in prior years and instead calculating inflation with reference to the year when each CMP was enacted or last modified by Congress.

The 2015 amendments made several procedural changes including: (1) starting in 2016, each agency must adjust its CMPs for inflation annually by the date set forth in the 2015 amendments; (2) the rounding ranges and procedure that applied before the 2015 amendments no longer apply, and agencies instead must round increases to the nearest dollar; (3) the ten percent cap on the first adjustment of any CMP has been eliminated; (4) the amount of the 2016 adjustment is limited to 150 percent of the amount of each CMP on the date that the 2015 amendments were enacted; and (5) October, rather than June, will be the relevant month for determining the percentage increase in inflation between relevant years.⁶

The legislation also modified the process by making the following additional changes: (1) in 2016, agencies will make the required adjustments through an interim final rule by July 1, 2016, to be effective by August 1, 2016; (2) in 2017 and subsequent years, agencies will make the required adjustments through direct final rules published and effective by January 15 of each year; (3) the adjusted maximum amounts will apply to CMPs issued after the adjustment takes effect, including cases in which the associated violation predates the adjustment; (4) the Office of Management and Budget (OMB) will publish annual guidance for agencies; (5) agencies must publish information regarding CMPs in their annual financial reports; and (6) the Government Accountability Office will report to Congress annually on agencies' compliance with the statute.⁷

⁶ Pub. L. 114-74, 129 Stat. 584 (Nov. 2, 2015).

⁷ Id.

The basic framework for the inflation calculation process remains the same in that agencies must calculate the increase in inflation according to a cost-of-living index and apply this percentage to each CMP to establish a new maximum amount. The resulting adjustment permits but does not require assessment at the new maximum level. Agencies must publish the adjusted maximum amounts in the Federal Register, as they did prior to the 2015 amendments.

However, the 2015 amendments do make a significant change to the calculations for the first year by requiring an initial catch-up adjustment to re-set penalty levels.⁸ In 2016, agencies must measure inflation by comparing the cost-of-living index for the year in which each CMP was established or last adjusted under a provision other than the FCPIA Act with the index for 2015.⁹ That is, agencies must disregard the inflation adjustments that they have made under the FCPIA Act since 1996, determine when Congress initially established or last modified each CMP, and adjust for inflation between that year and 2015. This calculation is based on the amount of the CMP as Congress set it, not the adjustments that agencies have made since 1996 under the FCPIA Act. The amount of the catch-up adjustment is separately limited to 150 percent of the CMP maximum in effect as of November 2, 2015, when the 2015 amendments became effective.¹⁰

The next section provides more detail on the revised inflation procedures.

⁸ Pub. L. 114-74, § 701(b)(2)(B), 129 Stat. 600, codified at 28 U.S.C. 2461 note.

⁹ Id.

¹⁰ Id.

B. Statutory Procedures for Calculating Adjustments and OMB Guidance

This section provides a detailed explanation of the inflation adjustment procedures under the 2015 amendments, including the 150 percent cap on the 2016 adjustment, the discretionary exception that agencies may invoke to limit the required increases based on negative economic impact or social costs, and an exception that agencies may apply when a CMP has been increased by a greater amount than the current calculation within the preceding 12 months. The 150 percent cap applies to one CMP within NCUA's jurisdiction, namely the CMP for violating NCUA security requirements.¹¹ The Board does not seek to invoke the discretionary exception based on negative economic impact or social costs or the exception for greater increases in the preceding 12 months.

In the FCPIA Act, the term "this Act" is used throughout to refer to the entire FCPIA Act as amended, not merely the 2015 amendments or prior amendments. In 2016, agencies must determine the percentage increase in inflation by comparing the October 2015 CPI-U with the CPI-U for October in the year "during which the amount of such civil monetary penalty was established or adjusted pursuant to a provision of law other than this Act."¹² Also, the 2015 amendments provide that the percentage increase in inflation must be applied to the CMP "as it was most recently established or adjusted under a provision of law other than this Act."¹³ The increase must be rounded to the nearest dollar.¹⁴ The new maximum CMP is calculated by dividing the October 2015 CPI-U by the CPI-U for October of the year when Congress

¹¹ 12 U.S.C. 1785(e)(3).

¹² Pub. L. 114-74, § 701(b)(2)(A), 129 Stat. 600, codified at 28 U.S.C. 2461 note. The CPI-U is published by the Department of Labor, Bureau of Labor Statistics, and is available at its website: <http://www.bls.gov/cpi/>.

¹³ Pub. L. 114-74, § 701(b)(2)(B), 129 Stat. 600, codified at 28 U.S.C. 2461 note.

¹⁴ Pub. L. 114-74, § 701(b)(2)(A), 129 Stat. 600, codified at 28 U.S.C. 2461 note.

established or last modified the CMP. The resulting multiplier is applied to the original or modified maximum amount set by Congress to find the new maximum amount.

In making the calculations, the Board refers to the year in which the statute establishing the CMP was enacted, even if the statute provided that the CMP would not go into effect until a later year.

In 2015, the Board referred to the year in which the statutes establishing the CMPs became effective.¹⁵ The Board has determined that disregarding delayed effective dates is more consistent with the FCPIA Act's language, as well as OMB's guidance.¹⁶

After completing this calculation for each CMP, agencies must also consider the 150 percent cap, the exception based on a greater increase within the preceding 12 months of the required adjustment, and the exception based on negative economic impact or social costs. These considerations are described in detail below.

First, "the amount of the increase in a civil monetary penalty . . . shall not exceed 150 percent of the amount of that civil monetary penalty on the date of enactment" of the 2015 amendments.¹⁷

This mandatory cap applies only to the 2016 initial catch-up adjustment. The 150 percent cap applies to the amount of the increase in the CMP. Accordingly, the final maximum amount for each CMP is capped at 250 percent of its current level.¹⁸ Based on the Board's calculations, this cap applies only to NCUA's security requirements CMP.¹⁹

¹⁵ The CMPs for senior examiner conflicts of interest, appraisal independence standards, and display of the NCUA insurance logo were enacted with delayed effective dates.

¹⁶ Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, at 3, 6 (2016).

¹⁷ Pub. L. 114-74, § 701(b)(2)(B), 129 Stat. 600, codified at 28 U.S.C. 2461 note.

¹⁸ For consistency, the Board refers to this limitation as the 150 percent cap throughout this rule.

¹⁹ 12 U.S.C. 1785(e)(3).

Second, if a CMP “is, during the 12 months preceding a required cost-of-living adjustment, increased by an amount greater than the amount of the adjustment required . . . , the head of the agency is not required” to make the adjustment.²⁰ The Board has compared the projected increases with the increases that it made in 2015.²¹ The only CMP that was increased by a greater amount in 2015 than it would be under the current adjustments is the appraisal independence standards CMP.²² The Board will not invoke the exception in this case because: (1) the difference between the existing maximum and the new maximum under the current adjustments is immaterial; and (2) setting the new maximum without invoking this exception will place NCUA’s CMP at the same level as the federal banking regulators and the Consumer Financial Protection Bureau, which will be adjusting this CMP for the first time this year.

Third, only for the 2016 adjustment, an agency may seek to limit the amount of an adjustment if it determines that the otherwise-required adjustment would have a “negative economic impact” or that “the social costs” of the increase “outweigh the benefits.”²³ To invoke this discretionary exception in 2016, an agency must first publish a notice of proposed rulemaking with an opportunity to comment on the proposed invocation of the exception, and the Director of OMB must concur with the agency’s determination.²⁴ OMB’s guidance states that agencies should consult with OMB before proposing to invoke this limitation and must submit the proposal to

²⁰ Pub. L. 114-74, § 701(b)(1)(D), 129 Stat. 600, codified at 28 U.S.C. 2461 note.

²¹ The Board notes that this exception is not limited to the initial catch-up adjustment and could apply in the future.

²² 15 U.S.C. 1639e(k).

²³ Pub. L. 114-74, § 701(b)(1)(D), 129 Stat. 599-600, codified at 28 U.S.C. 2461 note.

²⁴ *Id.*

OMB by May 2, 2016.²⁵ The memorandum also states that OMB expects “determination concurrences” to be rare.²⁶

The statute does not define “negative economic impact” or “social costs.” Given these statutory criteria and historical trends in NCUA’s CMP assessments, the Board will not seek to invoke this exception for any of its CMP authorities.

In addition to the statute, the Board has reviewed OMB’s guidance. On February 24, 2016, as required by the 2015 amendments, OMB published guidance for agencies to implement the new procedures, including the 2016 catch-up adjustment.²⁷ OMB’s guidance covers the following issues: (1) identifying CMPs to which the law applies; (2) completing the 2016 catch-up adjustment; (3) making future inflation adjustments; and (4) performing agency oversight of inflation adjustments. The Board has reviewed the guidance and finds that the Board’s calculations of the increases and the 150 percent cap are wholly consistent with the guidance. Further, the Board finds that it has appropriately identified CMPs subject to adjustment under the FCPIA Act. All of the adjusted CMPs are set by federal law at specific maximums, are assessed by NCUA under the Federal Credit Union Act or other federal statutes, and are assessed or enforced through agency proceedings or civil actions in the federal courts.²⁸ The Board will also review OMB’s guidance in connection with future adjustments and its annual financial reporting requirement.

²⁵ Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, at 3 (2016).

²⁶ *Id.*

²⁷ Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2016).

²⁸ 28 U.S.C. 2461 note, § 3(2).

In sum, under the statute, the Board must determine: (1) when Congress established or most recently modified each CMP; (2) the amount of each CMP as set by Congress at that time; (3) the increase in each CMP based on the CPI-U; (4) whether the increase must be limited by the 150 percent cap; (5) whether the Board will invoke the exception based on a greater increase in a CMP maximum amount in the preceding 12 months; and (6) whether the Board will seek to invoke the exception to limit the increases based on negative economic impact or social costs.

Accordingly, the Board has reviewed the CMPs within its jurisdiction to determine when Congress established or last modified each CMP and to determine the amount set by Congress. Next, the Board applied the appropriate inflationary multiplier to the maximum amount of each CMP as it was established or last modified by Congress in order to determine the new maximum. Finally, the Board considered the 150 percent cap, the exception based on greater increases in the preceding 12 months, and the exception based on negative economic impact or social costs. The next section presents the calculations and applies the 150 percent cap and the two exceptions in detail to arrive at the new maximum CMP amounts to be published in the Federal Register.

II. Calculation of Adjustments

A. Penalty Adjustment Calculations

Consistent with the NCUA's September 2015 CMP adjustments, the Board provides the inflation calculations in table format immediately below. The separate table included in the regulatory text section to be published at 12 C.F.R. 747.1001 shows only the adjusted CMPs, not the

calculations leading to the adjusted levels. The table below calculates the projected increase by carrying out the steps described above. The multiplier, which is the quotient of the October 2015 CPI-U divided by the CPI-U for October of the year noted in parentheses, is applied to the maximum amount as originally established or last modified by Congress to calculate the new maximum. The final maximum amount is the lesser of the calculated maximum and the 150 percent cap.

Table: Calculation of Maximum CMP Adjustments

<u>Citation</u>	<u>Description/Tier</u> ²⁹	<u>Original Maximum (\$)</u>	<u>Multiplier</u>	<u>Projected New Maximum</u>	<u>150 Percent Cap (\$)</u> ³⁰	<u>Adjusted Maximum (\$) (Lesser of Projected New Maximum and 150 Percent Cap)</u>
12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report	2,000	1.89631 (1989)	3,787	8,000	3,787
12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report	20,000	1.89631 (1989)	37,872	80,000	37,872
12 U.S.C. 1782(a)(3)	Failure to submit a report or the	Lesser of 1,000,000 or 1% of	1.89631 (1989)	1,893,610	3,562,500	Lesser of 1,893,610 or 1% of

²⁹ The table uses condensed descriptions of CMP tiers. Refer to the U.S. Code citations for complete descriptions.

³⁰ This column displays 250 percent of the current maximums found at 12 C.F.R. 747.1001.

	submission of a false or misleading report done knowingly or with reckless disregard	total CU assets				total CU assets
12 U.S.C. 1782(d)(2)(A)	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to NCUSIF, or inadvertent submission of false or misleading statement	2,000	1.73099 (1991)	3,462	8,000	3,462
12 U.S.C. 1782(d)(2)(B)	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement	20,000	1.73099 (1991)	34,620	80,000	34,620
12 U.S.C. 1782(d)(2)(C)	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done	Lesser of 1,000,000 or 1% of total CU assets	1.73099 (1991)	1,730,990	3,562,500	Lesser of 1,730,990 or 1% of total CU assets

	knowingly or with reckless disregard					
12 U.S.C. 1785(a)(3)	Non-compliance with insurance logo requirements	100	1.17858 (2006)	118	275	118
12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security requirements	100	6.03650 (1970)	554	275	275
12 U.S.C. 1786(k)(2)(A)	Tier 1 CMP for violations of law, regulation, and other orders or agreements	5,000	1.89631 (1989)	9,468	21,250	9,468
12 U.S.C. 1786(k)(2)(B)	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe or unsound practices or breaches of fiduciary duty	25,000	1.89631 (1989)	47,340	106,250	47,340
12 U.S.C. 1786(k)(2)(C)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person)	1,000,000	1.89631 (1989)	1,893,610	3,812,500	1,893,610

12 U.S.C. 1786(k)(2)(C)	Tier 3 (same) (CU)	Lesser of 1,000,000 or 1% of total CU assets	1.89631 (1989)	1,893,610	3,812,500	Lesser of 1,893,610 or 1% of total CU assets
12 U.S.C. 1786(w)(5)(A)(ii)	Non- compliance with senior examiner post- employment restrictions	250,000	1.24588 (2004)	311,470	687,500	311,470
15 U.S.C. 1639e(k)	Non- compliance with appraisal independenc e standards (first violation)	10,000	1.08745 (2010)	10,875	27,500	10,875
15 U.S.C. 1639e(k)	Subsequent violations of the same	20,000	1.08745 (2010)	21,749	50,000	21,749
42 U.S.C. 4012a(f)(5)	Non- compliance with flood insurance requirements	2,000	1.02819 (2012)	2,056	5,000	2,056

B. Application of the 150 Percent Cap and Two Exceptions

This section describes in detail the Board’s consideration of the 150 percent cap, the exception based on greater increases in the preceding 12 months, and the exception based on negative economic impact or social costs.

First, as shown in the table above, the Board has applied the 150 percent cap on the amount of the increase of the initial adjustments and has determined that it must limit the increase in the security requirements CMP.³¹ The other CMPs are not affected.

Second, the Board has compared the increases calculated above with the increases that it made in September 2015³² to determine whether any of those increases are greater than the increases calculated for 2016. In September 2015, the Board adjusted this CMP to \$11,000.³³ This occurred because under the pre-2015 amendments procedures, the Board rounded the amount of the increase to the nearest multiple of \$1,000. Under the amended FCPIA Act, the Board could leave this adjustment in place because “during the 12 months preceding [the] required cost-of-living adjustment,” the Board increased the CMP “by an amount greater than the amount of the adjustment required” by the new calculation.³⁴ Under these circumstances, the Board is “not required” to make the otherwise-required adjustment.³⁵ The Board has determined that it will not invoke this exception, which is not mandatory. First, the difference between the maximum set in 2015 and the maximum calculated above is immaterial. Second, the Board expects the federal banking regulators and the Consumer Financial Protection Bureau, which also have jurisdiction to enforce this CMP, to make their first adjustment of this CMP this year. By declining to invoke this exception, the Board will set the maximum at the same level as those agencies, which means that parties subject to this CMP will not face differing maximums based

³¹ 12 U.S.C. 1785(e)(3).

³² These increases are set forth at 80 FR 57285-286 (Sept. 23, 2015).

³³ 80 FR 57285 (Sept. 23, 2015).

³⁴ Pub. L. 114-74, § 701(b)(1)(D), 129 Stat. 600, codified at 28 U.S.C. 2461 note.

³⁵ *Id.*

on which agency has jurisdiction. This exception does not apply to the other CMPs because the adjustments required in 2016 exceed those made in 2015.

Finally, the Board does not seek to invoke the discretionary limitation tied to “negative economic impact” or “social costs” posed by the otherwise-required increases. The statute and the OMB guidance do not define these terms. In applying these criteria, the Board has considered the overall amount of its CMP assessments and their likely impact on credit unions and individuals.

NCUA historically has not assessed CMPs frequently. They have averaged 10.6 a year, or less than one a month, over the past quarter century. Furthermore, when NCUA has assessed CMPs it has not usually assessed them at or near the maximum levels allowed by law, which would be most likely to invoke economic impact or social cost concerns. The Board reviewed the 281 CMP orders that it has issued since 1990 and found that they total approximately \$665,000, with an average (mean) value of approximately \$2,400. The table at the end of this section summarizes this information. Based on historical trends, third tier CMPs appear likely to remain rare. Moreover, NCUA considers the size of the credit union in determining the amount of a CMP assessment. These factors indicate that the increased maximums will not cause a negative economic impact or social costs. Also, for most of its CMPs, the Board is required by statute to consider potential mitigating factors in determining a CMP assessment amount.³⁶ These considerations include the party’s financial resources.³⁷ Interagency policy on CMP assessments includes this consideration.³⁸ This requirement applies to all of the CMPs that have maximum

³⁶ 12 U.S.C. 1786(k)(2)(G).

³⁷ 12 U.S.C. 1786(k)(2)(G)(i).

³⁸ Federal Financial Institutions Examination Council, Assessment of Civil Money Penalties, 63 FR 30226 (June 3, 1998).

levels above \$1,000,000. Thus, by their own terms, these CMPs account for the financial impact on the penalized party, which guards against negative economic impact or social costs. In addition, the Board is not required to assess at the new maximum amounts. Accordingly, the Board finds that the economic and social considerations under the statute do not warrant seeking to invoke this exception.

Table: NCUA CMP Assessments (1990-2016)

Number of CMPs	281
Aggregate Amount of CMP Assessments	\$665,208
Average (Mean) Amount of Assessments	\$2,367

C. Effective Date for Adjusted Maximum Amounts

Finally, the 2015 amendments changed the effective date provision for adjusted CMPs. Before the 2015 amendments, the statute provided: “Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.”³⁹

Under that standard, the new maximums could only be assessed for violations that occurred after the date the adjustment took effect. The 2015 amendments changed this provision to read: “Any increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.”⁴⁰ The OMB guidance notes this change.⁴¹ The adjusted maximums now apply to CMPs assessed after the effective date of the adjustment, even if the

³⁹ Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (Apr. 26, 1996).

⁴⁰ Pub. L. 114-74, 129 Stat. 600 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

⁴¹ Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, at 4 (2016).

associated violation occurred before the adjustment took effect. The Board is amending 12 C.F.R. 747.1001(b) to reflect this change.

III. Regulatory Procedures

A. Interim Final Rule under the Administrative Procedure Act

In the 2015 amendments to the FCPIA Act, Congress directed agencies to issue an interim final rule for the 2016 inflation adjustments.⁴² OMB's guidance reiterated this requirement and stated that agencies therefore do not need to solicit comments prior to promulgating the rule.⁴³ The legislative directive provides an exception to the APA's ordinary notice-and-comment requirement.⁴⁴ In addition, the Board finds that notice-and-comment procedures would be impracticable and unnecessary under the APA because of: (1) the legislative directive to issue an interim final rule; (2) the largely ministerial and technical nature of the rule, which affords agencies limited discretion in promulgating the rule; and (3) the statutory deadlines for publishing and making the interim final rule effective.⁴⁵ In these circumstances, the Board finds good cause to issue an interim final rule without issuing a notice of proposed rulemaking. Accordingly, this interim final rule is issued without prior notice. However, the Board invites comments on all aspects of the interim final rule. The interim final rule will become effective 30

⁴² Pub. L. 114-74, 129 Stat. 600 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.

⁴³ Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, at 3 (2016).

⁴⁴ See 5 U.S.C. 559; *Asiana Airlines v. Fed. Aviation Admin.*, 134 F.3d 393, 396-99 (D.C. Cir. 1998).

⁴⁵ 5 U.S.C. 553(b)(3)(B); see *Mid-Tex Elec. Co-op., Inc. v. Fed. Energy Regulatory Comm'n*, 822 F.2d 1123, 1133-34 (D.C. Cir. 1987).

days from publication in the Federal Register.⁴⁶ The Board will review and consider all comments before issuing a final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Board to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.⁴⁷ For purposes of this analysis, the Board considers small credit unions to be those having under \$100 million in assets.⁴⁸ This interim final rule would not have a significant economic impact on a substantial number of small credit unions because it only affects the maximum amounts of CMPs that may be assessed in individual cases, which are not numerous and generally do not involve assessments at the maximum level. In addition, several of the CMPs are limited to a percentage of a credit union's assets. Finally, in assessing CMPs, the Board generally must consider a party's financial resources.⁴⁹ Because this interim final rule would affect few, if any, small entities, the Board certifies that the interim final rule will not have a significant economic impact on small entities.

⁴⁶ See 5 U.S.C. 553(d).

⁴⁷ 5 U.S.C. 603(a).

⁴⁸ Interpretive Ruling and Policy Statement 15-1, 80 FR 57512 (Sept. 24, 2015).

⁴⁹ 12 U.S.C. 1786(k)(2)(G)(i).

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden.⁵⁰ For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This interim final rule adjusts the maximum amounts of certain CMPs that the Board may assess against individuals, entities, or credit unions but does not require any reporting or recordkeeping. Therefore, this interim final rule will not create new paperwork burdens or modify any existing paperwork burdens.

D. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This interim final rule adjusts the maximum amounts of certain CMPs that the Board may assess against individuals, entities, and federally insured credit unions, including state-chartered credit unions. However, the interim final rule does not create any new authority or alter the underlying statutory authorities that enable the Board to assess CMPs. Accordingly, this interim final rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has determined that this

⁵⁰ 44 U.S.C. 3507(d); 5 CFR part 1320.

interim final rule does not constitute a policy that has federalism implications for purposes of the executive order.

E. Assessment of Federal Regulations and Policies on Families

The Board has determined that this interim final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.⁵¹

F. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996⁵² (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the Board issues a final rule as defined by Section 551 of the Administrative Procedure Act.⁵³ The Board has submitted this interim final rule to OMB for it to determine whether it is a “major rule” within the meaning of the relevant sections of SBREFA.

List of Subjects in 12 CFR Part 747

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on _____, 2016.

⁵¹ Pub. L. 105–277, 112 Stat. 2681 (Oct. 21, 1998).

⁵² Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996).

⁵³ 5 U.S.C. 551.

Gerard S. Poliquin

Secretary of the Board

For the reasons stated above, the NCUA Board amends 12 CFR part 747 as follows:

PART 747 — ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority for Part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 15 U.S.C. 1639e; 42 U.S.C. 4012a; Pub. L. 101-410; Pub. L. 104-134; Pub. L. 109-351; Pub. L. 114-74.

2. Revise § 747.1001 to read as follows:

Subpart K – Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 – Adjustment of civil monetary penalties by the rate of inflation.

- (a) NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)) to adjust the maximum amount of each civil monetary penalty within its jurisdiction by the rate of

inflation. The following chart displays those adjusted amounts, as calculated pursuant to the statute:

U.S. Code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report	\$3,787
(2) 12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report	\$37,872
(3) 12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard	\$1,893,610 or 1 percent of the total assets of the credit union, whichever is less
(4) 12 U.S.C. 1782(d)(2)(A)	Tier 1 CMP for inadvertent failure to submit certified statement of insured shares and charges due to NCUSIF, or inadvertent submission of false or misleading statement	\$3,462

(5) 12 U.S.C. 1782(d)(2)(B)	Tier 2 CMP for non-inadvertent failure to submit certified statement or submission of false or misleading statement	\$34,620
(6) 12 U.S.C. 1782(d)(2)(C)	Tier 3 CMP for failure to submit a certified statement or the submission of a false or misleading statement done knowingly or with reckless disregard	\$1,730,990 or 1 percent of the total assets of the credit union, whichever is less
(7) 12 U.S.C. 1785(a)(3)	Non-compliance with insurance logo requirements	\$118
(8) 12 U.S.C. 1785(e) (3)	Non-compliance with NCUA security requirements	\$275
(9) 12 U.S.C. 1786(k)(2)(A)	Tier 1 CMP for violations of law, regulation, and other orders or agreements	\$9,468
(10) 12 U.S.C. 1786(k)(2)(A)	Tier 2 CMP for violations of law, regulation, and other orders or agreements and for recklessly engaging in unsafe	\$47,340

		or unsound practices or breaches of fiduciary duty	
(11)	12 U.S.C. 1786(k)(2)(A)	Tier 3 CMP for knowingly committing the violations under Tier 1 or 2 (natural person)	For a person other than an insured credit union: \$1,893,610; For an insured credit union: \$1,893,610 or 1 percent of the total assets of the credit union, whichever is less
(12)	12 U.S.C. 1786(w)(5)(ii)	Non-compliance with senior examiner post-employment restrictions	\$311,470
(13)	15 U.S.C. 1639e(k)	Non-compliance with appraisal independence requirements	First violation: \$10,875 Subsequent violations: \$21,749
(14)	42 U.S.C. 4012a(f)(5)	Non-compliance with flood insurance requirements	\$2,056

(b) The adjusted amounts displayed in paragraph (a) of this section apply to civil monetary penalties that are assessed after the date the increase takes effect, including those whose associated violation or violations predate the increase.