

Inflation Adjustment of Civil Money Penalty Amounts

[Federal Register: February 6, 2007 (Volume 72, Number 24)]

[Rules and Regulations]

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[DOCID:fr06fe07-8]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
24 CFR Parts 28, 30, 81, 180, 3282, and 3500
[Docket No. FR-5104-F-01]
RIN 2501-AD30

Inflation Adjustment of Civil Money Penalty Amounts

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's civil money penalty regulations to make inflation adjustments to the civil money penalties imposed by HUD, as required by statute. The applicable statute mandates the adjustments and the formula used to calculate them. HUD also takes this opportunity to delete duplicative language in its regulation for hearing procedures in civil rights matters.

DATES: Effective Date: March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, Department of Housing and Urban Development, 1250 Maryland Avenue, SW., Suite 200, Washington, DC 20024; telephone (202) 708-2350 (this is not a toll-free number). For information regarding the correction to HUD's regulation for hearing procedures in civil rights matters, contact Joseph Pelletier, Deputy Assistant General Counsel for Fair Housing Enforcement, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10270, Washington, DC 20410; telephone (202) 708-0570 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. This Final Rule

A. Inflation Adjustment of Civil Money Penalty Amounts

The changes made by this rule increase the amount of civil money penalties, consistent with statutory authority.

The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) (FCPIA Act), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701), requires each federal agency to make inflation adjustments to its maximum civil money penalties. This rule raises the maximum penalties that HUD may impose upon violators with

respect to several HUD regulations found in 24 CFR parts 28, 30, 81, 180, 3282, and 3500. For civil money penalties found in some HUD regulations (e.g., 24 CFR 30.55, 30.68, 3282.10, and 3500.17(m)(2)), no amendment is necessary because application of the statute's formula results in no increase to the penalty. The FCPIA Act provides for a "rounding-off," using multiples from \$10 to \$25,000, of the increase calculated based on the change in the Consumer Price Index (CPI). (See 28 U.S.C. 2461(5)(a).) Consequently, in those instances in which the increased dollar amount is determined to be less than the applicable multiple, the existing penalty is unchanged. The following regulations are revised by this rule.

In Sec. 28.10, the maximum penalties for making a false claim or written statement, as described in the regulation, are increased from \$6,500 to \$7,500.

In Sec. 30.20(b), the maximum penalty that HUD may impose upon its employees who improperly disclose funding decisions is increased from \$11,000 to \$16,000.

In Sec. 30.25(b), the maximum penalty that HUD may impose upon applicants for assistance who fail to disclose required information is increased from \$11,000 to \$16,000.

In Sec. 30.35(c)(1), the maximum penalties that the Mortgagee Review Board may impose for a series of violations identified in the regulations are increased from \$6,500 to \$7,500 per violation, and from \$1.25 million to \$1.375 million for all violations committed during any one-year period.

In Sec. 30.36(c), the maximum penalty that HUD may impose upon other participants in Federal Housing Administration programs for violations identified in the regulation is increased from \$5,500 to \$6,050, and from \$1.1 million to a maximum of \$1.21 million for all violations committed during any one-year period.

In Sec. 30.40, the maximum penalty that HUD may impose upon a mortgagee or a holder of a guarantee certificate who violates the statutory provisions concerning loan guarantees for Indian housing is increased from \$6,000 to \$7,000 per violation, and from \$1.25 million to a maximum of \$1.375 million for all violations committed during any one-year period.

In Sec. 30.45(g), the maximum penalty that may be imposed upon a mortgagor of a multifamily property or on any person in a relationship with the mortgagor, as described in the regulations at paragraph (c) of Sec. 30.45, is increased to \$37,500 per violation. In addition, paragraph (g) is corrected to provide expressly for imposition of the same maximum penalty per violation of paragraph (f), which relates to section 202 and section 811 projects.

In Sec. 30.50(c), the maximum penalty that may be imposed against a Government National Mortgage Association issuer or custodian for a violation of any provision of 12 U.S.C. 1723i(b) or other authorities cited in the regulations is increased from \$6,500 to \$7,500 per violation, and from \$1.25 million to \$1.375 million for all violations committed during any one-year period.

In Sec. 30.55(c), the maximum penalty for each violation of any provision of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) remains unchanged at \$1,100, but the one-year maximum per person increases from \$1.25 million to \$1.375 million.

In Sec. 30.60(c), the maximum penalty that HUD may impose upon any dealer or loan correspondent for, among other things, falsifying statements or making false representations in violation of section 2(b)(7) of the National Housing Act (12 U.S.C. 1703(b)(7)), is increased from \$6,500 to \$7,500 for each violation, and from \$1.25 million to a maximum of \$1.375 million during any one-year period.

In Sec. 81.83(b)(1), the maximum penalty that HUD may impose upon a Government Sponsored Enterprise (GSE) is increased from \$30,000 to \$35,000 for each day the GSE fails to submit a timely housing plan.

In Sec. 81.83(b)(2), the maximum penalty that HUD may impose upon a GSE that fails to submit information required by the Fannie Mae Charter Act (12 U.S.C. 1716-1723h) or Freddie Mac Act (12 U.S.C. 1451-59), or that fails to make a good faith effort to comply with its approved housing plan, is increased from \$11,000 to \$16,000 for each day the failure occurs.

In Sec. Sec. 180.671(a)(1), (2), and (3), the maximum penalty that the Administrative Law Judge may impose upon a respondent who is found to have engaged in a discriminatory housing practice is increased from \$11,000 to \$16,000, from \$32,500 to \$37,500, and from \$60,000 to \$65,000.

In Sec. 3282.10, the maximum penalty for each violation of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.) remains unchanged at \$1,100. The one-year maximum for any related series of violations occurring within one year from the date of the first

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violation is increased from \$1.25 million to \$1.375 million.

In Sec. 3500.17(m)(1), the penalty for a servicer's failure to submit to a borrower an initial or annual escrow account statement is increased from \$65 to \$75 for each such violation. The total of assessed penalties may not exceed \$130,000 (increased from the existing total of \$120,000) for violations not shown to be intentional that occur during any consecutive 12-month period. However, in Sec. 3500.17(m)(2), the penalty for failure to submit an escrow statement when the servicer intentionally disregarded the requirement remains unchanged at \$110 for each violation.

B. Correction to 24 CFR 180.670

On December 18, 1997, HUD published a proposed rule (62 FR 66488) to amend its regulations governing hearing procedures for civil rights matters. The proposed rule provided for imposition of multiple penalties for multiple acts of discrimination. In addition, HUD intended the rule to make clarifying changes by moving paragraphs governing civil money penalties from the existing Sec. 180.670 to a new Sec. 180.671 and by updating the penalty paragraphs' text. HUD received and responded to public comments on the proposed rule and published an interim rule on February 10, 1999 (64 FR 6744). However, a typographical error in the amendatory language of the interim rule caused the penalty paragraphs to remain in Sec. 180.670 while also establishing the updated paragraphs in the new Sec. 180.671, creating the appearance of two distinct sets of penalties. After an additional round of public comment and HUD response, the interim rule was then adopted as final without change on December 28, 1999 (64 FR 72726). HUD takes this opportunity to correct this error by deleting the old paragraphs (b)(3)(iii)(A) through (C) in Sec. 180.670, as intended in the interim and final rules. The corresponding paragraphs in Sec. 180.671 remain unchanged.

II. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking

at 24 CFR part 10. Part 10, however, provides in Sec. 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ``impracticable, unnecessary or contrary to the public interest.''

HUD finds that good cause exists to publish this rule for effect without soliciting public comment in that prior public procedure is unnecessary. The primary purpose of this final rule is merely to implement the statutory directive in the FCPIA Act to make periodic increases in HUD's civil money penalties by applying the adjustment formula established in the statute. Accordingly, because calculation of the increases is formula-driven, HUD has no discretion in updating the regulations to reflect the maximum allowable penalties derived from application of the formula. HUD emphasizes that this rule addresses only the matter of the calculation of the maximum civil money penalties for the respective violations described in the regulations. This rule does not address the issue of the Secretary's discretion to impose or not to impose a penalty, nor the procedures that HUD must follow in initiating a civil money penalty action.

The second purpose of this rule is to make corrections to Sec. 180.670 by deleting paragraphs inadvertently left in it as a result of a typographical error in the 1999 interim rule. The preambles of the proposed and interim rules made clear that the intent was to update and move these paragraphs to Sec. 180.671, thereby deleting the old paragraphs from Sec. 180.670. The specific changes were detailed in both the proposed and interim rules, and HUD provided two opportunities for public comment on the changes before adopting the final rule. This rule merely implements those changes by correcting the typographical error that prevented deletion of the old paragraphs in Sec. 180.670. Since HUD is merely correcting a typographical error, public comment is unnecessary.

III. Findings and Certifications

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not establish special procedures that would need to be complied with by small entities. All entities, small or large, will be subject to the same penalties as established by statute and implemented by this rule. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule involves a statutorily required rate or cost determination that does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ``Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs--housing and community development, Loan programs--housing and community development, Mortgages, Penalties.

24 CFR Part 81

Accounting, Mortgages, Reporting and recordkeeping requirements, Securities.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil Rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

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24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Mortgages, Reporting and recordkeeping requirements.

24 CFR Part 3500

Consumer protection, Housing, Mortgages, Reporting and recordkeeping requirements.

- Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 28, 30, 81, 180, 3282, and 3500 to read as follows:

PART 28--IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

- 1. The authority citation for part 28 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801; 42 U.S.C. 3535(d).

- 2. Revise Sec. Sec. 28.10 (a)(1) introductory text and (b)(1) introductory text to read as follows:

Sec. 28.10 Basis for civil penalties and assessments.

(a) Claims. (1) A civil penalty of not more than \$7,500 may be imposed upon a person who makes a claim that the person knows or has reason to know:

* * * * *

(b) Statements. (1) A civil penalty of up to \$7,500 may be imposed upon a person who makes a written statement that:

* * * * *

PART 30--CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

- 3. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q-1, 1703, 1723i, 1735f-14, 1735f-15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z-1 and 3535(d).

- 4. Revise Sec. 30.20(b) to read as follows:

Sec. 30.20 Ethical violations by HUD employees.

* * * * *

(b) Maximum Penalty. The maximum penalty is \$16,000 for each violation.

- 5. Revise Sec. 30.25(b) to read as follows:

Sec. 30.25 Violations by applicants for assistance.

* * * * *

(b) Maximum penalty. The maximum penalty for each violation is \$16,000.

- 6. Revise Sec. 30.35(c)(1) to read as follows:

Sec. 30.35 Mortgagees and lenders.

* * * * *

(c) Amount of penalty--(1) Maximum penalty. Except as provided in paragraph (c)(2) of this section, the maximum penalty is \$7,500 for each violation, up to a limit of \$1,375,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

* * * * *

- 7. Revise Sec. 30.36(c) to read as follows:

Sec. 30.36 Other participants in FHA programs.

* * * * *

(c) Amount of penalty. The maximum penalty is \$6,050 for each violation, up to a limit of \$1,210,000 for all violations committed during any one-year period. Each violation shall constitute a separate

violation as to each mortgage or loan application.

- 8. Revise Sec. 30.40(c) to read as follows:

Sec. 30.40 Loan guarantees for Indian housing.

* * * * *

(c) Amount of penalty. The maximum penalty is \$7,000 for each violation, up to a limit of \$1,375,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

- 9. Revise Sec. 30.45(g) to read as follows:

Sec. 30.45 Multifamily and Section 202 or 811 mortgagors.

* * * * *

(g) Maximum penalty. The maximum penalty for each violation under paragraphs (c) and (f) of this section is \$37,500.

* * * * *

- 10. Revise Sec. 30.50(c) to read as follows:

Sec. 30.50 GNMA issuers and custodians.

* * * * *

(c) Amount of penalty. The maximum penalty is \$7,500 for each violation, up to a limit of \$1,375,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

- 11. Revise Sec. 30.55(c) to read as follows:

Sec. 30.55 Interstate Land Sales violations.

* * * * *

(c) Amount of penalty. The maximum penalty is \$1,100 for each violation, up to a limit for any particular person of \$1,375,000 during any one-year period. Each violation shall constitute a separate violation as to each sale or lease or offer to sell or lease.

- 12. Revise Sec. 30.60(c) to read as follows:

Sec. 30.60 Dealers or loan correspondents.

* * * * *

(c) Amount of penalty. The maximum penalty is \$7,500 for each violation, up to a limit for any particular person of \$1,375,000 during any one-year period.

PART 81--THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

- 13. The authority citation for part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 et seq., 1716-1723h, and 4501-4641; 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 3601-3619.

- 14. Revise Sec. Sec. 81.83 (b) (1) and (b) (2) to read as follows:

Sec. 81.83 Civil money penalties.

* * * * *

(b) * * *

(1) For any failure described in paragraph (a) (1) of this section, \$35,000 for each day that the failure occurs; and

(2) For any failure described in paragraphs (a) (2) or (a) (3) of this section, \$16,000 for each day that the failure occurs.

* * * * *

PART 180--CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

- 15. The authority citation for part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601-3619, 5301-5320, and 6103.

- 16. Revise Sec. 180.670 (b) (3) (iii) to read as follows:

Sec. 180.670 Initial Decision of ALJ.

* * * * *

(b) * * *

(3) * * *

(iii) Assessing a civil penalty against any respondent to vindicate the public interest in accordance with Sec. 180.671.

* * * * *

- 17. Revise Sec. Sec. 180.671 (a) (1), (2), and (3) to read as follows:

Sec. 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(1) \$16,000, if the respondent has not been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act or any state or local fair housing law, or in any licensing or regulatory proceeding

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conducted by a federal, state, or local governmental agency, to have committed any prior discriminatory housing practice.

(2) \$37,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the five-year period preceding the date of filing of the charge.

(3) \$65,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the seven-year period preceding the date of filing of the charge.

* * * * *

PART 3282--MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

- 18. The authority citation for part 3282 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 5424; and 42 U.S.C. 3535(d).

- 19. Revise Sec. 3282.10 to read as follows:

Sec. 3282.10 Civil and criminal penalties.

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410. The maximum amount of penalties imposed under section 611 of the Act shall be \$1,100 for each violation, up to a maximum of \$1,375,000 for any related series of violations occurring within one year from the date of the first violation.

PART 3500--REAL ESTATE SETTLEMENT PROCEDURES ACT

- 20. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 et seq.; 42 U.S.C. 3535(d).

- 21. Revise Sec. 3500.17(m)(1) to read as follows:

Sec. 3500.17 Escrow accounts.

* * * * *

(m) Penalties. (1) A servicer's failure to submit to a borrower an initial or annual escrow account statement meeting the requirements of this part shall constitute a violation of section 10(d) of RESPA (12 U.S.C. 2609(d)) and this section. For each such violation, the Secretary shall assess a civil penalty of 75 dollars (\$75), except that the total of the assessed penalties shall not exceed \$130,000 for any one servicer for violations that occur during any consecutive 12-month period.

* * * * *

Dated: January 26, 2007.

Roy A. Bernardi,
Deputy Secretary.

[FR Doc. E7-1941 Filed 2-5-07; 8:45 am]

BILLING CODE 4210-67-P