

institution may incur daylight overdrafts of up to 40 percent of its capital measure if the institution submits a board of directors resolution.

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c. Exempt-From-Filing

Institutions that only rarely incur daylight overdrafts in their Federal Reserve accounts that exceed the lesser of \$10 million or 20 percent of their capital measure are excused from performing self-assessments and filing board of directors resolutions with their Reserve Banks.⁶⁸ This dual test of dollar amount and percent of capital measure is designed to limit the filing exemption to institutions that create only low-dollar risks to the Reserve Banks and that incur small overdrafts relative to their capital measure. * * *

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3. Capital Measure

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b. U.S. Branches and Agencies for Foreign Banks

For U.S. branches and agencies of foreign banks, net debit caps on daylight overdrafts in Federal Reserve accounts are calculated by applying the cap multiples for each cap category to the FBO's U.S. capital equivalency measure.⁶⁹ U.S. capital equivalency is equal to 10 percent of worldwide capital for FBOs.⁷⁰

standards. These FBOs must submit an assessment of creditworthiness with their board of directors resolution requesting a de minimis cap category. U.S. branches and agencies of FBOs that are based in jurisdictions that have implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision are not required to complete an assessment of creditworthiness, but Reserve Banks will assess such an FBO's creditworthiness based on the FBO's supervisory rating and its FBO PSR capital category.

⁶⁸The Reserve Bank may require U.S. branches and agencies of FBOs that are based in jurisdictions that have not implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision to perform a full assessment of creditworthiness to determine whether the FBO meets reasonable safety and soundness standards. U.S. branches and agencies of FBOs that are based in jurisdictions that have implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision will not be required to complete an assessment of creditworthiness, but Reserve Banks will assess such an FBO's creditworthiness based on the FBO's supervisory rating and the FBO PSR capital category.

⁶⁹The term "U.S. capital equivalency" is used in this context to refer to the particular measure calculate net debit caps and does not necessarily represent an appropriate for supervisory or other purposes.

⁷⁰FBOs that wish to establish a non-zero net debit cap must report their worldwide capital on the Annual Daylight Overdraft Capital Report for U.S.

An FBO that is highly capitalized⁷¹ may be eligible for a streamlined procedure (see section II.E.) for obtaining additional collateralized intraday credit under the maximum daylight overdraft capacity provision.

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Revisions to Section II.E of the PSR Policy

The Board will revise Section II.E of the PSR policy as follows:

E. Maximum Daylight Overdraft Capacity

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1. General Procedure

An institution with a self-assessed net debit cap that wishes to expand its daylight overdraft capacity by pledging collateral should consult with its administrative Reserve Bank. The Reserve Bank will work with an institution that requests additional daylight overdraft capacity to determine the appropriate maximum daylight overdraft capacity level. In considering the institution's request, the Reserve Bank will evaluate the institution's rationale for requesting additional daylight overdraft capacity as well as its financial and supervisory information. The financial and supervisory information considered may include, but is not limited to, capital and liquidity ratios, the composition of balance sheet assets, and CAMELS or other supervisory ratings and assessments. An institution approved for a maximum daylight overdraft capacity level must submit at least once in each twelve-month period a board of directors resolution indicating its board's approval of that level. * * *

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2. Streamlined Procedure for Certain FBOs

An FBO that is highly capitalized⁷² and has a self-assessed net debit cap may request from its Reserve Bank a streamlined procedure to obtain a maximum daylight overdraft capacity. These FBOs are not required to provide documentation of the business need or obtain the board of directors' resolution for collateralized capacity in an amount that exceeds its current net debit cap (which is based on 10 percent worldwide capital times its cap multiple), as long as the requested total

Branches and Agencies of Foreign Banks (FR 2225). The instructions for FR explain how FBOs should calculate their worldwide capital. See <https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYj+5BzDZ1kLYTc+ZpEQ==>.

⁷¹ See n. 63, *supra*.

⁷² See n. 63, *supra*.

capacity is 100 percent or less of worldwide capital times a self-assessed cap multiple.⁷⁶ In order to ensure that intraday liquidity risk is managed appropriately and that the FBO will be able to repay daylight overdrafts, eligible FBOs under the streamlined procedure will be subject to initial and periodic reviews of liquidity plans that are analogous to the liquidity reviews undergone by U.S. institutions.⁷⁷ If an eligible FBO requests capacity in excess of 100 percent of worldwide capital times the self-assessed cap multiple, it would be subject to the general procedure.

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By order of the Board of Governors of the Federal Reserve System, March 26, 2019.

Ann E. Misback,
Secretary of the Board.

[FR Doc. 2019-06063 Filed 3-29-19; 8:45 am]

BILLING CODE 6210-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107, 120, 142, and 146

RIN 3245-AH03

Civil Monetary Penalties Inflation Adjustments

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to adjust for inflation the amount of certain civil monetary penalties that are within the jurisdiction of the agency. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties. The rule also makes a technical amendment to ensure that a reference to the penalty amount imposed on SBA Supervised Lenders for failure to file reports is consistent with current and future adjustments.

DATES: *Effective Date:* This rule is effective April 1, 2019.

⁷⁶ For example, an FBO that is well capitalized is eligible for uncollateralized capacity of 10 percent of worldwide capital times the cap multiple. The streamlined max cap procedure would provide such an institution with additional collateralized capacity of 90 percent of worldwide capital times the cap multiple. As noted above, FBOs report their worldwide capital on the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225).

⁷⁷ The liquidity reviews will be conducted by the administrative Reserve Bank, in consultation with each FBO's home country supervisor.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Improvements Act), Public Law 114-74, 129 Stat. 584, was enacted. This Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890 (the 1990 Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect (hereinafter, both collectively referred to as “the Act”). The Act required agencies to issue a final rule by August 1, 2016, to adjust the level of civil monetary penalties with an initial “catch-up” adjustment, and to annually adjust these monetary penalties for inflation by January 15 of each subsequent year. The Act also authorizes agencies to implement the annual adjustments without regard to the requirements for public notice and comment or delayed effective date under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) and (d)(3), respectively.

In addition, based on the definition of a “civil monetary penalty” in the 1990 Inflation Adjustment Act, agencies are to make adjustments only to the civil penalties that (i) are for a specific monetary amount as provided by Federal law or have a maximum amount provided for by Federal law; (ii) are assessed or enforced by an agency; and (iii) are enforced or assessed in an administrative proceeding or a civil action in the Federal courts. Therefore, penalties that are stated as a percentage of an indeterminate amount or as a function of a violation (penalties that encompass actual damages incurred) are not to be adjusted.

On May 19, 2016, SBA published its initial adjustments to the civil monetary penalties, including an initial “catch-up” adjustment. 81 FR 31489. These adjusted penalties became effective on August 1, 2016. SBA published its most recent annual adjustments to the monetary penalties in the **Federal Register** on February 21, 2018 (83 FR 7361), with an immediate effective date. This rule will establish the penalty amounts required to be adjusted in 2019.

The formula for calculating the annual adjustments is based on the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the adjustment, and

specifically on the change between the October CPI-U preceding the date of adjustment and the prior year’s CPI-U. Based on this methodology, the 2019 civil monetary penalty adjustment formula is October 2018 CPI-U (252.885)/October 2017 CPI-U (246.663) = 1.02522. See, OMB memorandum, M-19-04, Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, (December 14, 2018).

II. Civil Money Penalties Adjusted by This Rule

This rule makes adjustments to civil monetary penalties authorized by the Small Business Act, the Small Business Investment Act of 1958 (SBIAct), the Program Fraud Civil Remedies Act, and the Byrd Amendment to the Federal Regulation of Lobbying Act. These penalties and the implementing regulations are discussed below.

1. 13 CFR 107.665—Civil Penalties

SBA licenses, regulates and provides financial assistance to financial entities called small business investment companies (SBICs). Pursuant to section 315 of the SBIAct, 15 U.S.C. 687g, SBA may impose a penalty on any SBIC for each day that it fails to comply with SBA’s regulations or directives governing the filing of regular or special reports. The penalty for non-compliance is incorporated in § 107.665 of the SBIC program regulations.

This rule amends § 107.665 to adjust the current civil penalty from \$259 to \$266 per day of failure to file. The current civil penalty of \$259 was multiplied by the multiplier of 1.02522 to reach a product of \$266, rounded to the nearest dollar.

2. 13 CFR 120.465—Civil Penalty for Late Submission of Required Reports

According to the regulations at § 120.465, any SBA Supervised Lender, as defined in 13 CFR 120.10, that violates a regulation or written directive issued by the SBA Administrator regarding the filing of any regular or special report is subject to the civil penalty amount stated in § 120.465(b) for each day the lender fails to file the report, unless the SBA Supervised Lender can show that there is reasonable cause for its failure to file. This penalty is authorized by section 23(j)(1) of the Small Business Act, 15 U.S.C. 650(j)(1).

This rule amends § 120.465(b) to adjust the current civil penalty from \$6,460 to \$6,623 per day of failure to file. The current civil penalty of \$6,460 was multiplied by the multiplier of

1.02522 to reach a product of \$6,623, rounded to the nearest dollar.

3. 13 CFR 120.1500—Types of Enforcement Actions—SBA Lenders

Currently, the regulation in 13 CFR 120.1500(c)(4), references the penalty amount in § 120.465 and identifies it as \$5,000. However, due to multiple inflation adjustments the amount has increased, and after publication of this rule, it will be further increased to \$6,623. To resolve the inconsistency between §§ 120.1500 and 120.465, and to avoid future confusion, SBA is amending § 120.1500(c)(4) to remove the reference to the amount of the penalty.

4. 13 CFR 142.1—Overview of Regulations

SBA has promulgated regulations at 13 CFR part 142 to implement the civil penalties authorized by the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–3812. Under the current regulations at § 142.1(b), a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than \$11,181, for each statement or claim. The adjusted civil penalty amount was calculated by multiplying the current civil penalty of \$11,181 by the multiplier of 1.02522 to reach a product of \$11,463, rounded to the nearest dollar.

5. 13 CFR 146.400—Penalties

SBA’s regulations at 13 CFR part 146 govern lobbying activities by recipients of federal financial assistance. These regulations implement the authority in 31 U.S.C. 1352 to impose penalties on any recipient that fails to comply with certain requirements in the part. Specifically, under § 146.400(a) and (b), penalties may be imposed on those who make prohibited expenditures or fail to file the required disclosure forms or to amend such forms, if necessary.

This rule amends § 146.400(a) and (b) to adjust the current civil penalty amounts to “not less than \$20,134 and not more than \$201,340.” The current civil penalty amounts of \$19,639 and \$196,387 were multiplied by the multiplier of 1.02522 to reach a product of \$20,134 and \$201,340, respectively, rounded to the nearest dollar.

This rule also amends § 146.400(e) to adjust the civil penalty that may be imposed for a first-time violation of § 146.400(a) and (b) to a maximum of \$20,134, and for second and subsequent offenses, to “not less than \$20,134 and not more than \$201,340.” The current civil penalty amounts of \$19,639 and \$196,387 were multiplied by the multiplier of 1.02522 to reach a product

of \$20,134 and \$201,340 respectively, rounded to the nearest dollar.

III. Justification for Final Rule

The Act provides that agencies shall annually adjust civil monetary penalties for inflation notwithstanding Section 553 of the APA. The Act also provides a non-discretionary cost-of-living formula for adjusting the annual civil monetary penalties. For these reasons, the requirements in sections 553(b) and (c) of the APA relating to notice and comment are inapplicable.

IV. Justification for Immediate Effective Date

Section 553(d) of the APA requires agencies to publish their rules at least 30 days before their effective dates, except if the agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest. By expressly exempting this rule from section 553, the Act has provided SBA with the good cause justification for this rule to become effective on the date it is published in the **Federal Register**.

Compliance With Executive Orders 12866, 12988, 13132, 13771, and the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this final rule is not a significant regulatory action under Executive Order 12866. This is also not a major rule under the Congressional Review Act, 5 U.S.C. 801.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this final rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Paperwork Reduction Act

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements.

Regulatory Flexibility Act (RFA)

The RFA requires agencies to consider the effect of their regulatory actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of such small entities. However, the RFA requires such analysis only where notice and comment rulemaking are required. As stated above, SBA has express statutory authority to issue this rule without regard to the notice and comment requirement of the Administrative Procedure Act. Since notice and comment is not required before this rule is issued, SBA is not required to prepare a regulatory analysis.

List of Subjects

13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 120

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 142

Administrative practice and procedure, Claims, Fraud, Penalties.

13 CFR Part 146

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, SBA amends 13 CFR parts 107, 120, 142, and 146 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681, 683, 687(c), 687b, 687d, 687g, 687m.

§ 107.665 [Amended]

■ 2. In § 107.665, remove “\$259” and add in its place “\$266”.

PART 120—BUSINESS LOANS

■ 3. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3) and 7, and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115, Pub. L. 111–240, 124 Stat. 2504.

§ 120.465 [Amended]

■ 4. In § 120.465, amend paragraph (b) by removing “\$6,460” and adding in its place “\$6,623”.

§ 120.1500 [Amended]

■ 5. In § 120.1500, amend paragraph (c)(4) by removing the words “of not more than \$5,000 a day”.

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 6. The authority citation for part 142 continues to read as follows:

Authority: 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

§ 142.1 [Amended]

■ 7. In § 142.1, amend paragraph (b) by removing “\$11,181” and adding in its place “\$11,463”.

PART 146—NEW RESTRICTIONS ON LOBBYING

■ 8. The authority citation for part 146 continues to read as follows:

Authority: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); 15 U.S.C. 634(b)(6).

§ 146.400 [Amended]

■ 9. In § 146.400, amend paragraphs (a), (b), and (e) by removing “\$19,639” wherever it appears and adding in its place “\$20,134” and by removing “\$196,387” and adding in its place “\$201,340”.

Dated: March 25, 2019.

Linda E. McMahan,
Administrator.

[FR Doc. 2019–06260 Filed 3–29–19; 8:45 am]

BILLING CODE 8025–01–P