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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, as amended, requires all Federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. The Federal Deposit Insurance Corporation (FDIC) last adjusted the maximum amounts of CMPs under its jurisdiction in 2004. The FDIC is issuing this final rule to implement the required adjustments to its CMPs, in consultation with the other Federal banking agencies and the National Credit Union Administration.

DATES: This rule is effective on December 31, 2008.

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SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Improvement Act of 1996 (DCIA) amended section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note), to require the head of each Federal agency to enact regulations within 180 days of the enactment of the DCIA and at least once every four years thereafter, to adjust each CMP provided by law within the jurisdiction of the agency (with the exception of certain specifically listed statutes) by the inflation adjustment formula set forth in section 5(b) of the Inflation Adjustment Act.

To satisfy the requirements of the DCIA, the FDIC is amending 12 CFR 308 of its regulations pertaining to its Rules of Practice and Procedure which address CMPs. The amount of each CMP which the FDIC has jurisdiction to impose has been increased according to the prescribed formula. The penalties were last adjusted in 2004 (71 FR 65713). Any increase in penalty amounts under the DCIA shall apply only to violations which occur after the effective date of the increase.

The 2004 CMP adjustment incorrectly listed the maximum Tier Two CMPs in paragraphs (c)(2)(ii) and (c)(2)(iii)(B) of section 308.132 (implementing 12 U.S.C. 1817(a) and 1817(c) and relating to false or misleading reports of condition and income and statements and other information regarding insurance premium assessments, respectively) as $27,500 per-day, rather than $27,000 per-day. No CMP assessed under either sections 1817(a) or (c) since the 2004 CMP adjustments went into effect has exceeded $27,000 per-day. This 2008 correction and adjustment of those two Tier Two CMPs for violation of §§ 1817(a) and (c) are based on the now-corrected 2004 maximum CMP amount of $27,000, with the 2008 increases limited to maximum CMPs of $32,000 rather than the higher maximum CMPs of $32,500 that would have resulted using the incorrect 2004 amounts. These corrections and adjustments are being made simultaneously and prospectively.

This rulemaking shall become a final rule on publication in the **Federal Register** and shall be effective as of December 31, 2008.

Summary of Calculation

The Inflation Adjustment Act requires that each CMP amount be increased by the ''cost of living'' adjustment, which is defined as the percentage by which the Consumer Price Index (CPI–U) [1] for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Any increase is to be rounded to the nearest multiple of: (A) $10 in the case of penalties less than or equal to $100; (B) $100 in the case of penalties greater than $100 but less than or equal to $1,000; (C) $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; (D) $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; (E) $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and (F) $25,000 in the case of penalties greater than $200,000.

Under the DCIA, the first time that a CMP was adjusted following implementation of the DCIA in 1996, the increase could not exceed ten percent of the then-current original penalty amount, even though the intervening cost-of-living exceeded ten percent. As a general matter, under the DICA, a particular CMP will not be increased for inflation or cost-of-living when the ''rounding'' process fails to reach the level warranting adjustment, as shown in the Summary of Adjustments chart below. In those cases, a particular CMP might be increased at a subsequent future quadrennial adjustment, when the level of inflation for the years since the last prior adjustment is taken into account. An example of the computation steps is found at 71 FR 65713 (Nov. 9, 2004) which published the FDIC's adjustments of CMPs in 2004.

Summary of Adjustments

Under the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), the FDIC must adjust for inflation the civil monetary penalties in statutes under which it has authority to assess penalties. The following chart displays the adjusted civil money penalty amounts for the enumerated statutes. The amounts in this chart apply to violations that occur after December 31, 2008:

[1] The CPI–U is compiled by the Bureau of Statistics of the Department of Labor. To calculate the adjustment, the FDIC used the Department of Labor, Bureau of Labor Statistics B All Urban Consumers tables to arrive at the CPI–U values.

U.S. Code citation	Current maximum amount	New maximum amount
12 U.S.C. 1817(a)		
Tier One CMP	2,200	2,200
Tier Two CMP	27,500	32,000
Tier Three CMP	1,250,000	1,375,000
12 U.S.C. 1817(c)		
Tier One CMP	2,200	2,200
Tier Two CMP	27,500	32,000
Tier Three CMP	1,250,000	1,375,000
12 U.S.C. 1817(j)		
Tier One CMP	6,500	7,500
Tier Two CMP	32,500	37,500
Tier Three CMP	1,250,000	1,375,000
12 U.S.C. 1818(i)(2)		
Tier One CMP	6,500	7,500
Tier Two CMP	32,500	37,500
Tier Three CMP	1,250,000	1,375,000
12 U.S.C. 1820(e)(4)	6,500	7,500
12 U.S.C. 1820(k)(6) (enacted December 2004)	250,000	275,000
12 U.S.C. 1828(a)(3)	110	110
12 U.S.C. 1828(h) (amended February 2006)[2]	100	100
12 U.S.C. 1829b(j)	11,000	16,000
12 U.S.C. 1832(c)	1,100	1,100
12 U.S.C. 1884	110	110
12 U.S.C. 1972(2)(F)		
Tier One CMP	6,500	7,500
Tier Two CMP	32,500	37,500
Tier Three CMP	1,250,000	1,375,000
12 U.S.C. 3108(b)		
Tier One CMP	6,500	7,500
Tier Two CMP	32,500	37,500
Tier Three CMP	1,250,000	1,375,000
12 U.S.C. 3349(b)		
Tier One CMP	6,500	7,500
Tier Two CMP	32,500	37,500
Tier Three CMP	1,250,000	1,375,000
12 U.S.C. 3909(d)	1,100	1,100
12 U.S.C. 4717(b)		
Tier One CMP	6,500	7,500
Tier Two CMP	32,500	37,500
Tier Three CMP	1,250,000	1,375,000
15 U.S.C. 78u–2		
Tier One CMP (individuals)	6,500	7,500
Tier One CMP (others)	65,000	70,000
Tier Two CMP (individuals)	65,000	70,000
Tier Two CMP (others)	130,000	140,000
Tier Three CMP (individuals)	325,000	350,000
Tier Three penalty (others)	625,000	675,000
31 U.S.C. 3802	6,500	7,500
42 U.S.C. 4012a(f)		
Maximum CMP per violation	385	385
Maximum CMPs per year	125,000	135,000

[2] The $100 per-day maximum CMP under 12 U.S.C. 1828(h) for failure or refusal to pay any assessment, applies only when the assessment is less than $10,000. When the amount of the assessment is $10,000 or more, the maximum CMP under section 1828(h) is 1% of the amount of the assessment, for each day that the failure or refusal continues. The ''1% of the assessment'' CMP amount or formula is not subject to a periodic cost-of-living adjustment.

CFR citation	Current maximum amount	New maximum amount
First Offense—Reports of Condition & Income (Call Reports)		
$25 million or more assets; 1 to 15 days late	300	330
$25 million or more assets; 16 or more days late	600	660
Under $25 million assets; 1 to 15 days late	100	110
Under $25 million assets; 16 or more days late	200	220
Subsequent Offenses—Reports of Condition & Income (Call Reports)		
$25 million or more assets; 1 to 15 days late	500	550
$25 million or more assets; 16 or more days late	1,000	1,100

II. Section-by-Section Analysis

As noted, these increases in maximum CMP amounts will apply to violations and other acts and omissions covered by the various laws and regulations cited herein, that occur after December 31, 2008.

Section 308.116(b)

Section 308.116(b) pertains to the amount of CMPs that may be assessed for violations of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). This section has been amended by increasing the: (A) Tier One CMP amount from $6,500 for each day the violation continues to $7,500 for each day that the violation continues; (B) Tier Two CMP amount from $32,500 for each day that the violation continues to $37,500 for each day that the violation continues; and (C) Tier Three CMP amount from $1,250,000 to $1,375,000 for each day that the violation continues or, in the case of a depository institution, increasing the CMP from an amount not to exceed the lesser of $1,375,000 or one percent of the total assets of the institution for each day that the violation continues. Section 308.116(b)(4) has also been amended by revising the date after which the adjusted CMPs will apply to violations covered by § 308.116 by deleting ''December 31, 2004'' and replacing it with ''December 31, 2008.''

Section 308.132

Section 308.132 pertains to the manner in which the FDIC assesses CMPs. Paragraph (c)(2) of that section pertains to the CMPs imposed pursuant to section 7(a) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1817(a)) for the late filing of a bank's Reports of Condition and Income (Call Reports) or for the submission of false or misleading Call Reports or information. With respect to late filings of Call Reports, paragraph (c)(2)(i) of section 308.132 has been amended to reflect the increase in the Tier One CMPs by a legally mandated maximum of 10% for first-time adjustments, since those CMPs have not been adjusted since the FDIC first implemented quadrennial cost-of-living adjustments in 1996 under the DCIA, as stated in the ''C.F.R. Citation'' section of the Summary of Adjustments above. Had the Tier One CMPs been adjusted for the full intervening cost-of-living rather than limited to the 10% mandated maximum increase when a CMP is adjusted for the first time, the increases would have been considerably higher. Also, the heading of paragraph (c)(2)(i)(B) is being changed from ''Second offense'' to ''Subsequent offenses'' to clarify the scope of that paragraph and eliminate or minimize and potential confusion as to any and all subsequent offenses other than a second offense.

Tier Two CMPs for failure to file call reports under paragraph (c)(2)(ii) of section 308.132 have been adjusted from $27,500 per day to $32,000 per day for each day the violation or failure to file continues. Paragraph (c)(2)(ii) of § 308.132 has also been amended by revising the date after which the adjusted CMPs will apply to violations covered by that paragraph by deleting ''December 31, 2004'' and replacing it with ''December 31, 2008.''

Paragraph (c)(2)(iii) of section 308.132 pertains to CMPs for the submission of false or misleading Call Reports or information. Paragraph (c)(2)(iii)(B) of that section has been amended to reflect the increase in Tier Two CMP amounts from a maximum of $27,000 per day for each day that the information is not corrected to a maximum of $32,000 per day for each day that the information is not corrected. Paragraph (c)(2)(iii)(C) of that section reflects the increase in Tier Three CMPs from an amount not to exceed the lesser of $1,250,000 or one percent of the total assets of the institution for each day the information is not corrected to an amount not to exceed the lesser of $1,375,000 or one percent of the total assets of such institution for each day the information is not corrected. No change has been made to the Tier One CMP amount. Paragraphs (c)(2)(iii)(B) and (C) have also been amended by revising the date after which the adjusted CMPs will apply to violations covered by paragraph (c)(2)(iii) by deleting ''December 31, 2004'' in both paragraphs and replacing it in both paragraphs with ''December 31, 2008.''

Paragraph (c)(3)(i) of section 308.132 sets forth the increases for CMPs assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). A Tier One CMP will increase from a maximum of $6,500 per day to a maximum of $7,500 per day for each day that the violation continues. A Tier Two CMP will increase from a maximum of $32,500 per day to a maximum of $37,500 per day for each day that the violation, practice, or breach of fiduciary duty continues. A Tier Three CMP will increase from an amount not to exceed, in the case of any person other than an insured depository institution, $1,250,000 to a maximum of $1,375,000 or, in the case of any insured depository institution, the amount will increase from a maximum of $1,250,000 to $1,375,000 or an amount not to exceed the lesser of $1,375,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

Paragraph (c)(3)(i)(A) of section 308.132 lists a number of statutes which grant jurisdiction to the FDIC to assess CMPs under section 8(i)(2) of the FDIA, including the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.* and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*), the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.* and 12 CFR 3500), the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*), and the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Increases in the amount of any CMP which the FDIC may assess for violation of those statutes are the same as the increases for CMPs under section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) cited above. As in section 8(i)(2) of the FDIA, Tier One, Tier Two, and Tier Three CMP amounts will increase accordingly.

Paragraph (c)(3)(ii) of section 308.132 reflects the increases in CMP amounts that may be assessed pursuant to section 7(c) of the FDIA (12 U.S.C. 1817(c)) for late filing or the submission of false or misleading certified statements. A Tier Two CMP pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) will increase from an amount not to exceed $27,000 per day to an amount not to exceed $32,000 for each day during which the failure to file continues or the false or misleading information is not corrected. A Tier Three CMP will increase from an amount not to exceed, in the case of any person other than an insured depository institution, $1,250,000 to a maximum of $1,375,000 or, in the case of any insured depository institution, the amount will increase from a maximum of $1,250,000 to $1,375,000 or an amount not to exceed the lesser of $1,375,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. No change has been made to the Tier One CMP amount.

Paragraph (c)(3)(iii) of section 308.132 sets forth the increases in the CMP amounts that may be assessed pursuant to section 10(e)(4) of the FDIA (12 U.S.C. 1820(e)(4)) for an affiliate's refusal to allow an examination or to provide required information during an examination. The maximum CMP

amount will increase from $6,500 to $7,500.

Paragraph (c)(3)(v) of section 308.132 was amended in November 2006 to reflect the 2006 amendment of section 18(h) of the FDIA (12 U.S.C. 1828(h)) by Congress. Congress' amendment established a maximum CMP of $100 per day for failure or refusal to pay any assessment, when the assessment was less than $10,000. Prior to Congress' amendment, the penalty was $100 per day, regardless of the amount of the assessment, a maximum CMP that was increased to $110 before Congress statutorily imposed a new maximum of $100 in 2006. This $100 maximum CMP is not being adjusted, since the cost-of-living data for the relevant periods in 2006 and 2007 do not warrant an increase now. The CMP of 1% for unpaid assessments of $10,000 or more for each day the failure or refusal continue, remains unchanged and in effect as well.

Paragraph (c)(3)(vi) of section 308.132 sets forth the increases in the CMP amounts that may be assessed pursuant to section 19b(j) of the FDIC (12 U.S.C. 1829b(j)) for the willful or grossly negligent violation of the recordkeeping requirements of section 19b(j). The maximum CMP will increase from $11,000 to $16,000 to reflect the cost-of-living since this CMP was last adjusted in 1996.

Paragraph (c)(3)(ix) of § 308.132 sets forth the increases in the CMP amounts that may be assessed pursuant to the Bank Holding Company Act of 1970 for prohibited tying arrangements. A Tier One CMP which may be assessed pursuant to 12 U.S.C. 1972(2)(F)(i) will increase from a maximum of $6,500 to a maximum of $7,500. A Tier Two CMP which may be assessed under 12 U.S.C. 1972(2)(F)(ii) will increase from a maximum of $32,500 to a maximum of $37,500. A Tier Three CMP which may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) will increase from an amount not to exceed, in the case of any person other than an insured depository institution, $1,250,000 for each day during which the violation, practice, or breach continues to an amount not to exceed $1,375,000 for each day during which the violation, practice, or breach continues. In the case of any insured depository institution, a Tier Three CMP will increase from an amount not to exceed the lesser of $1,375,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues to an amount not to exceed the lesser of $1,375,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

Paragraph (c)(3)(x) of § 308.132 pertains to the assessment of CMPs under the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), for failure to comply with the requirements of the IBA, pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). For each day that a violation continues, the amount of a Tier One CMP will increase from $6,500 to $7,500, a Tier Two CMP will increase from $32,500 to $37,500, and a Tier Three CMP will increase from $1,250,000 to $1,375,000 as to violations occurring after December 31, 2008.

Paragraph (c)(3)(xi) of § 308.132 sets forth the increase in CMP amounts that may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), as made applicable by 12 U.S.C. 3349(b), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally-related transaction. For each day that a violation continues, the amount of a Tier One CMP will increase from $6,500 to $7,500, a Tier Two CMP will increase from $32,500 to $37,500, and a Tier Three CMP will increase from $1,250,000 to $1,375,000 as to violations occurring after December 31, 2008.

Paragraph (c)(3)(xiii) of § 308.132 states that pursuant to the Community Development Banking and Financial Institution Act (CDBA) (12 U.S.C. 4717(b)) a CMP may be assessed for violation of the CDBA pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). For each day that a violation continues, the amount of a Tier One CMP will increase from $6,500 to $7,500, a Tier Two CMP will increase from $32,500 to $37,500, and a Tier Three CMP will increase from $1,250,000 to $1,375,000 as to violations occurring after December 31, 2008.

Paragraph (c)(3)(xiv) of § 308.132 states that pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u–2), CMPs may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. The Tier One CMP amounts which may be assessed pursuant to 15 U.S.C. 78u–2(b)(1) will increase from an amount not to exceed $6,500 for a natural person or $65,000 for any other person for violations set forth in 15 U.S.C. 78u–2(a), to $7,500 for a natural person or $70,000 for any other person. The Tier Two CMP which maybe assessed pursuant to 15 U.S.C. 78u–2(b)(2) for each violation set forth in 15 U.S.C. 78u–2(a) will increase from an amount not to exceed $65,000 for a natural person to $130,000 for any other person to an amount not to exceed $70,000 for a natural person or $140,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. The Tier Three CMP which may be assessed pursuant to 15 U.S.C. 78u–2(b)(3) for each violation set forth in 15 U.S.C. 78u–2(a), in an amount not to exceed $325,000 for a natural person or $625,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission, will be increased to an amount not to exceed $350,000 for a natural person or $675,000 for any other person.

Paragraph (c)(3)(xv) of § 308.132 states that a CMP may be assessed for violation of the Program Fraud Civil Remedies Act (31 U.S.C. 3802) for violations involving false claims and statements. The maximum CMP amount will increase from $6,500 to $7,500.

Paragraph (c)(3)(xvi) of § 308.132 states that CMPs may be assessed pursuant to the Flood Disaster Protection Act (FDPA)(42 U.S.C. 4012a(f)) against any regulated lending institution that engages in a pattern or practice of violations of the FDPA. The amount of the maximum penalty for each violation will remain in an amount not to exceed $385. The maximum amount of CMPs which may be assessed annually against a regulated lending institution will increase from an amount not to exceed a total of $125,000 to an amount not to exceed a total of $135,000.

A new CMP of up to $250,000 was enacted by Congress on December 17, 2004, by section 10(k) of the Federal Deposit Insurance Act (12 U.S.C. 1820(k)), which imposes a one-year restriction on Federal examiners of financial institutions knowingly accepting compensation as an employee, officer, director, or consultant from depository institution and holding companies, among other entities listed therein, following termination of service or employment with a federal banking agency or Federal reserve bank, subject to a CMP of $250,000. A new paragraph (c)(3)(xvii) has been added to include this CMP in section 308.132. This CMP has been

adjusted by $25,000 to $275,000, given the cost-of-living since enactment of section 10(k), which also equals the 10% maximum imposed by law when CMPs are adjusted for the first time.

Paragraph (c)(3) of section 308.132 has also been amended by revising the date after which the adjusted CMPs will apply to violations covered by that paragraph by deleting ''December 31, 2004'' and replacing it with ''December 31, 2008.''

III. Exemption From Public Notice and Comment

Since the law requires the FDIC to amend its rules, provides the specific adjustments to be made and leaves the FDIC no discretion in calculating the amount of those adjustments, the changes are ministerial, technical, and noncontroversial. The FDIC has thus determined for good cause that public notice and comment is unnecessary and impracticable under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)), and that the rule should be published in the **Federal Register** as a final rule.

IV. Effective Date

For the same reasons that the FDIC for good cause has determined that public notice and comment is unnecessary and impractical, the FDIC also finds that it has good cause to adopt an effective date that would be less than 30 days after the date of publication in the **Federal Register** pursuant to the APA (5 U.S.C. 553(d)). In the interest of fairness, however, the increase in the maximum amount of civil money penalties in this regulation applies only to violations that occur after December 31, 2008, rather than to violations that occurred after the date of publication of this rule in the **Federal Register**. Moreover, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802) states that a final rule imposing new requirements must take effect on the first day of a calendar quarter following its publication. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

The FDIC also finds that the increase in the maximum amounts of CMPs under the FDIC's jurisdiction should be effective as of December 31, 2008, since the rule is ministerial, technical, and noncontroversial. Under the statute, agencies must make the required CMP inflation adjustments: (A) According to the formula in the statute and (B) within four years of the last inflation adjustment. Federal agencies have no discretion as to the amount or timing of the adjustment.

V. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 603) is required only when an agency must publish a general notice of proposed rulemaking. As already noted, the FDIC has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857) provides generally for agencies to report rules to Congress and for Congress to review such rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the APA (5 U.S.C. 551 *et seq.*). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by the SBREFA.

The Office of Management and Budget has determined that this final revision to 12 CFR 308 does not constitute a ''major'' rule as defined by the statute.

VII. The Treasury and General Government Appropriations Act, 1999 Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681 (1998)).

VIII. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) is contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

IX. Authority for the Regulation

This regulation is authorized by the FDIC's general rulemaking authority and pursuant to its fundamental responsibilities to ensure the safety and soundness of insured depository institutions. Specifically, 12 U.S.C. 1819(a)(Tenth) provides the FDIC with general authority to issue such rules and regulations as it deems necessary to carry out the statutory mandates of the FDIA and other laws that the FDIC is charged with administering or enforcing.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, Banking, Claims, Crime, Equal access to justice, Ex parte communications, Hearing procedure, Lawyers, Penalties, State nonmember banks.

■ For the reasons set out in the preamble, the FDIC amends 12 CFR part 308 as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

§ 308.116 [Amended]

■ 1. Section 308.116 is amended as follows:

■ a. Paragraph (b)(4) introductory text is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ b. Paragraph (b)(4)(i) is amended by removing $6,500 and adding $7,500 in its place.

■ c. Paragraph (b)(4)(ii) is amended by removing $32,500 and adding $37,500 in its place.

■ d. Paragraph (b)(4)(iii)(A) is amended by removing $1,250,000 and adding $1,375,000 in its place.

■ e. Paragraph (b)(4)(iii)(B) is amended by removing $1,250,000 and adding $1,375,000 in its place.

§ 308.132 [Amended]

■ 2. Section 308.132 is amended as follows:

■ a. Paragraph (c)(2)(i) introductory text is amended by adding a sentence at the end of the paragraph to read as set forth below.

■ b. Paragraph (c)(2)(i)(A) is amended by removing $300 and adding $330 in its place, by removing $600 and adding $660 in its place, by removing $100 and adding $110 in its place, and by removing $200 and adding $220 in its place.

■ c. Paragraph (c)(2)(i)(B) is amended by removing $500 and adding $550 in its place, and by removing $1,000 and adding $1,100 in its place.

■ d. Paragraph (c)(2)(i)(B) is amended by removing the italicized heading

''Second offense.'' and adding ''Subsequent offenses.'' in its place.

■ e. Paragraph (c)(2)(ii) is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ f. Paragraph (c)(2)(ii) is amended by removing $27,500 and adding $32,000 in its place.

■ g. Paragraph (c)(2)(iii)(B) is amended by removing $27,500 and adding $32,000 in its place.

■ h. Paragraph (c)(2)(iii)(B) is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ i. Paragraph (c)(2)(iii)(C) is amended by removing $1,250,000 and adding $1,375,000 in its place.

■ j. Paragraph (c)(2)(iii)(C) is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ k. Paragraph (c)(3) introductory text is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ l. Paragraph (c)(3)(i) introductory text is amended by removing $6,500 and adding $7,500 in its place, by removing $32,500 and adding $37,500 in its place, and by removing $1,250,000 wherever it appears and adding $1,375,000 in its place.

■ m. Paragraph (c)(3)(ii) is amended by removing $27,000 and adding $32,000 in its place and by removing $1,250,000 and adding $1,375,000 in its place.

■ n. Paragraph (c)(3)(iii) is amended by removing $6,500 and adding $7,500 in its place.

■ o. Paragraph (c)(3)(vi) is amended by removing $11,000 and adding $16,000 in its place.

■ p. Paragraph (c)(3)(ix) is amended by removing $6,500 and adding $7,500 in its place, by removing $32,500 and adding $37,500 in its place, and by removing $1,250,000 wherever it appears and adding $1,375,000 in its place.

■ q. Paragraph (c)(3)(xiv) is amended by removing $6,500 and adding $7,500 in its place, by removing $65,000 wherever it appears and adding $70,000 in its place, by removing $325,000 and adding $350,000 in its place, by removing $130,000 and adding $140,000 in its place, and by removing $625,000 and adding $675,000 in its place.

■ r. Paragraph (c)(3)(xv) is amended by removing $6,500 and adding $7,500 in its place.

■ s. Paragraph (c)(3)(xvi) is amended by removing $125,000 and adding $135,000 in its place.

■ t. A new paragraph (c)(3)(xvii) is added as set forth below:

§ 308.132 Assessment of penalties.

* * * * *

(c) * * *

(2) * * *

(i) * * * Pursuant to the Debt Collection Improvement Act of 1996, for violations of paragraph (c)(2)(i) which occur after December 31, 2008, the following maximum Tier One penalty amounts contained in paragraphs (c)(2)(i)(A) and (B) of this section shall apply for each day that the violation continues.

* * * * *

(3) * * *

(xvii) *Civil money penalties assessed for violation of one-year restriction on Federal examiners of financial institutions.* Pursuant to section 10(k) of the Federal Deposit Insurance Act (12 U.S.C. 1820(k)), the Board of Directors or its designee may assess a civil money penalty of up to $250,000 against any covered former Federal examiner of a financial institution who, in violation of section 1820(k) and within the one-year period following termination of government service as an employee, serves as an officer, director, or consultant of a financial or depository institution, a holding company, or of any other entity listed in section 10(k), without the written waiver or permission by the appropriate Federal banking agency or authority under section 1820(k)(5). Pursuant to the Debt Collection Improvement Act of 1996, for any violation of section 10(k) which occurs after December 31, 2008, the maximum penalty amount will increase to $275,000.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD27

Assessment Dividends

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule to implement the assessment dividend requirements in the Federal Deposit Insurance Reform Act of 2005 (the Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (the Amendments Act). The final rule will take effect on January 1, 2009. It is the follow-up to the temporary final rule on assessment dividends that the FDIC issued in October 2006, which expires on December 31, 2008.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Munsell W. St.Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; Missy Craig, Senior Program Analyst, Division of Insurance and Research, (202) 898–8724; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167; Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349; or Sheikha Kapoor, Senior Attorney, Legal Division, (202) 898–3960.

SUPPLEMENTARY INFORMATION:

I. Background

A. Reform Act Requirements

Section 7(e)(2) of the Federal Deposit Insurance Act (the FDI Act), as amended by the Reform Act, requires the FDIC, under most circumstances, to declare dividends from the Deposit Insurance Fund (the fund or the DIF) when the DIF reserve ratio (the Reserve Ratio) at the end of a calendar year equals or exceeds 1.35 percent. When the Reserve Ratio equals or exceeds 1.35 percent, and is not higher than 1.50 percent, the FDIC generally must declare one-half of the amount in the DIF in excess of the amount required to maintain the Reserve Ratio at 1.35 percent as dividends to be paid to insured depository institutions. The FDIC Board of Directors (the Board) may suspend or limit dividends to be paid, however, if it determines in writing, after taking a number of statutory factors into account, that: [1]

1. The DIF faces a significant risk of losses over the next year; and

2. It is likely that such losses will be sufficiently high as to justify a finding by the Board that the Reserve Ratio should temporarily be allowed to grow without requiring dividends when the

[1] The statutory factors that the Board must consider are:

1. National and regional conditions and their impact on insured depository institutions;

2. Potential problems affecting insured depository institutions or a specific group or type of depository institution;

3. The degree to which the contingent liability of the Corporation for anticipated failures of insured institutions adequately addresses concerns over funding levels in the Deposit Insurance Fund; and

4. Any other factors that the Board determines are appropriate.

12 U.S.C. 1817(e)(2)(F).