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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: Congress, in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required all federal agencies with the authority to impose civil monetary penalties (CMPs) to regularly evaluate those CMPs to ensure that they continue to maintain their deterrent value. As a result of these acts, the head of each agency was required, by October 23, 1996, and at least once every four years thereafter, to adjust its CMPs for inflation. In 1996, the National Credit Union Administration (NCUA) issued a final rule to implement the required adjustments to certain CMPs authorized by the Federal Credit Union Act. Since that time, NCUA has discovered several more CMPs that should also be adjusted for inflation. In order to comply with Congress' mandate to adjust CMPs for inflation at least every four years, NCUA is issuing this final rule to implement the required adjustments to those CMPs.

EFFECTIVE DATE: October 23, 2000.

FOR FURTHER INFORMATION CONTACT:

Allan Meltzer, Associate General Counsel, or Jon Canerday, Trial Attorney, Office of General Counsel, NCUA, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background:

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 civil monetary penalty (CMP)³ provided by law under its jurisdiction by the rate of inflation pursuant to the inflation adjustment formula in section 5(b) of the FCPIA Act. Each Federal agency was required to issue these implementing regulations by October 23, 1996, and at least once every 4 years thereafter. Section 6 of the amended FCPIA Act specifies that inflation-adjusted CMPs will only apply to violations that occur after the effective date of the adjustment. The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI).⁴ Specifically, section 5(b) of the FCPIA Act defines "the term 'cost-of-living adjustment' [to] mean the percentage (if any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law." Furthermore, each CMP that has been adjusted for inflation must be rounded to a number prescribed by section 5(a) of the FCPIA Act.⁵

¹ Pub. L. 104-134, § 31001(s), 110 Stat. 1321-373, (Apr. 26, 1996). The provision 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 Section 3(2) of the amended FCPIA Act defines a CMP as any penalty, fine, or other sanction that: (1) either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

⁴ The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its website: www.bls.gov/top20.html.

⁵ NCUA recognizes that the rounding provision of the FCPIA Act is capable of differing interpretations. As an example, the provision states, in part, that an increase "shall be rounded to the nearest * * * multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000." Section 5(a)(3), FCPIA Act. NCUA understands that some agencies have chosen to determine which rounding rule to follow based upon the amount of the increase, rather than the amount of the penalty. In other words, the forgoing rounding provision would only be applied if the

CMPs Previously Adjusted

Calculation of the Adjustment

With respect to the CMPs authorized by 12 U.S.C. 1786(k)(2), the last adjustment for inflation occurred in 1996. Therefore, the current adjustment will be the percentage by which the CPI for the month of June 1999 exceeds the CPI for the month of June 1996. According to the Bureau of Labor Statistics, the CPI for the month of June 1999 was 166.2 and the CPI for the month of June 1996 was 156.7. When 166.2 is divided by 156.7, the result is 1.06. Thus, the CMPs authorized by 12 U.S.C. 1786(k)(2) should be multiplied by a factor of 1.06 to arrive at the new adjusted amounts (before required rounding).

Section 206(k)(2) of the Federal Credit Union Act, 12 U.S.C. 1786(k)(2), authorizes NCUA to impose three levels or tiers of CMPs upon insured credit unions or institution-affiliated parties.

First Tier CMPs

First tier CMPs, 12 U.S.C. 1786(k)(2)(A), may be imposed for the violation of any law or regulation, the violation of certain final orders or temporary orders, the violation of conditions imposed in writing by the NCUA Board, or the violation of any written agreement between the credit union and NCUA. The statute provides that first tier CMPs shall not be more than \$5,000 for each day the violation continues. After the required adjustment for inflation in 1996, the maximum penalty was increased to \$5,500 for each day.⁶ Multiplying the current penalty of \$5,500 by the factor of 1.06 results in \$5,830, an increase of \$330. When that number is rounded as required by the FCPIA Act,⁷ the inflation-adjusted maximum for a first tier CMP remains \$5,500.

amount of the adjustment was more than \$1,000 but less than \$10,000. NCUA has chosen to follow the language in the statute and therefore has adopted an interpretation that selects the appropriate rounding rule based upon the amount of the penalty.

⁶ The FCPIA Act limited the first adjustment of a CMP to a maximum of 10%.

⁷ "Any increase determined under this subsection shall be rounded to the nearest— * * * (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000." Section 5(a), FCPIA Act. Therefore, \$330 is rounded to the nearest multiple of \$1,000 or to \$0.

Second Tier CMPs

Second tier CMPs, 12 U.S.C. 1786(k)(2)(B), are authorized for violations described in first tier CMPs, the reckless engaging in an unsafe or unsound practice in conducting the affairs of a credit union, or the breach of any fiduciary duty, when the violation, practice or breach is part of a pattern of misconduct, or causes or is likely to cause more than a minimal loss to the credit union, or results in pecuniary gain or other benefit. The statute provides a maximum second tier CMP of \$25,000 for each day the violation, practice or breach continues. After the required 1996 adjustment for inflation, the maximum penalty was increased to \$27,500 per day. Multiplying the current penalty of \$27,500 by the factor of 1.06 results in \$29,150, an increase of \$1,650. When that number is rounded as required by the FCPIA Act,⁸ the inflation-adjusted maximum for a second tier CMP remains \$27,500.

Third Tier CMPs

Third tier CMPs, 12 U.S.C. 1786(k)(2)(C), may be imposed for any of the acts described in second tier CMPs that cause a substantial loss to the credit union or a substantial pecuniary gain or other benefit. The amount of third tier CMPs depends upon the status of the respondent required to pay the CMP, 12 U.S.C. 1786(k)(2)(D). For a person other than an insured credit union, under the statute the current maximum third tier CMP is \$1,000,000 for each day the violation, practice or breach continues. For an insured credit union, the statute provides a current daily maximum CMP of the lesser of \$1,000,000 or 1 percent of the total assets of the credit union. In 1996, the maximum CMP for a person other than an insured credit union was increased for inflation to \$1,100,000 per day. At the same time, the maximum CMP for an insured credit union was increased to the lesser of \$1,100,000 or 1 percent of the total assets of the credit union. Multiplying the current penalty of \$1,100,000 by the factor of 1.06 results in \$1,166,000, an increase of \$66,000. When that number is rounded as required by the FCPIA Act,⁹ the new

inflation-adjusted third tier CMP becomes \$1,175,000.

CMPs Not Previously Adjusted For Inflation

NCUA has determined that several additional provisions authorize penalties that meet the definition of CMPs. These provisions were not previously adjusted for inflation in 1996.

12 U.S.C. 1782(a)(3)

NCUA is authorized to require credit unions to provide reports of condition. The failure to submit a required report or the submission of a false or misleading report subjects a credit union to three levels of CMPs, depending upon the reasons for noncompliance. For an inadvertent failure to submit a report or the inadvertent submission of a false or misleading report, the credit union is subject to a penalty of not more than \$2,000 for each day the failure continues or such false or misleading information is not corrected. For a non-inadvertent failure to submit a report or for the non-inadvertent submission of a false or misleading report, the credit union is subject to a penalty of not more than \$20,000 for each day the failure continues or such false or misleading information is not corrected. Lastly, for a failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard, the credit union is subject to a penalty of not more than \$1,000,000 or 1 percent of the total assets of the credit union, whichever is less, for each day the failure continues or such false or misleading information is not corrected.

Calculation of the Adjustment

The CMPs authorized by 12 U.S.C. 1782(a)(3) were created by Congress in 1989. Therefore, the current adjustment will be the percentage by which the CPI for the month of June 1999 exceeds the CPI for the month of June 1989. According to the Bureau of Labor Statistics, the CPI for the month of June 1999 was 166.2 and the CPI for the month of June 1989 was 124.1. When 166.2 is divided by 124.1, the result is 1.34. Thus, the CMPs authorized by 12 U.S.C. 1782(a)(3) should be multiplied by a factor of 1.34 to arrive at the new adjusted amounts (before required rounding). However, another provision of the FCPIA Act limits the first adjustment of a CMP to an amount not to exceed 10 percent of the original

penalty.¹⁰ The amount of increase to these CMPs in the final regulation would have been more if this limit did not exist.

The maximum CMP authorized by 12 U.S.C. 1782(a)(3) for an inadvertent failure to submit a report or the inadvertent submission of a false or misleading report is currently \$2,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation, the maximum penalty is increased by 10%, or \$200, to \$2,200 per day.

The maximum CMP authorized by 12 U.S.C. 1782(a)(3) for a non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report is currently \$20,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation, the maximum penalty is increased by 10%, or \$2,000, to \$22,000 per day.

The maximum CMP authorized by 12 U.S.C. 1782(a)(3) for a failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard is currently \$1,000,000 or 1 percent of the total assets of the credit union, whichever is less, for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation, the maximum penalty is increased by 10%, or \$100,000, to \$1,100,000 or 1 percent of the total assets of the credit union, whichever is less, per day.

12 U.S.C. 1782(d)(2)

In a provision similar to the authority discussed above, NCUA is authorized to require each credit union to provide periodic certified statements of the amount of insured shares in the credit union, as well as to pay required deposits into the National Credit Union Share Insurance Fund (NCUSIF). The failure to submit a required certified statement or the submission of a false or misleading statement subjects a credit union to three tiers of CMPs, depending upon the reasons for noncompliance.

Calculation of the Adjustment

The CMPs authorized by 12 U.S.C. 1782(d)(2) were created by Congress in 1991. Therefore, the current adjustment will be the percentage by which the CPI for the month of June 1999 exceeds the CPI for the month of June 1991. According to the Bureau of Labor

¹⁰ "The first adjustment of a civil monetary penalty made pursuant to [the FCPIA Act] may not exceed 10 percent of such penalty." Section 6, FCPIA Act (originally designated as Section 7).

⁸ "Any increase determined under this subsection shall be rounded to the nearest— * * * (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000." Section 5(a), FCPIA Act. Therefore, \$1,650 is rounded to the nearest multiple of \$5,000 or to \$0.

⁹ "Any increase determined under this subsection shall be rounded to the nearest— * * * (6) multiple of \$25,000 in the case of penalties greater than \$200,000." Section 5(a), FCPIA Act. Therefore, \$66,000 is rounded to the nearest multiple of \$25,000 or to \$75,000.

Statistics, the CPI for the month of June 1999 was 166.2 and the CPI for the month of June 1991 was 136. When 166.2 is divided by 136, the result is 1.22. Thus, the CMPs authorized by 12 U.S.C. 1782(d)(2) should be multiplied by a factor of 1.22 to arrive at the new adjusted amounts (before required rounding). However, as noted previously, another provision of the FCPIA Act limits the first adjustment of a CMP to an amount not to exceed 10 percent of the original penalty. The amount of increase to these CMPs in the final regulation would have been more if this limit did not exist.

First Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782(d)(2)(A) for an inadvertent failure to timely submit a certified statement or an inadvertent submission of a false or misleading certified statement, is currently \$2,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation, the maximum penalty is increased by 10%, or \$200, to \$2,200 per day.

Second Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782(d)(2)(B) for a non-inadvertent failure to timely submit a certified statement, or a non-inadvertent submission of a false or misleading certified statement, or the failure or refusal to pay any required deposit or premium for insurance is currently \$20,000 for each day the failure continues, such false or misleading information is not corrected, or the deposit or premium is not paid. After the required adjustment for inflation, the maximum penalty is increased by 10%, or \$2,000, to \$22,000 per day.

Third Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782(d)(2)(C) for a failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard is currently \$1,000,000 or 1 percent of the total assets of the credit union, whichever is less, for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation, the maximum penalty is increased by 10%, or \$100,000, to \$1,100,000 or 1 percent of the total assets of the credit union, whichever is less, per day.

12 U.S.C. 1785(e)(3)

Pursuant to 12 U.S.C. 1785(e)(1), NCUA is authorized to promulgate

regulations to provide minimum standards with which each insured credit union must comply with respect to security devices and procedures to discourage robberies, burglaries and larcenies and to assist in the identification and apprehension of persons who commit such acts. A credit union that violates such a regulation is subject to a CMP of up to \$100 for each day the violation continues. 12 U.S.C. 1785(e)(3).

Calculation of the Adjustment

The CMP authorized by 12 U.S.C. 1785(e)(3), originally passed by Congress in 1970, was not adjusted for inflation in 1996. Therefore, the current adjustment will be the percentage by which the CPI for the month of June 1999 exceeds the CPI for the month of June 1970. According to the Bureau of Labor Statistics, the CPI for the month of June 1999 was 166.2 and the CPI for the month of June 1970 was 38.8. When 166.2 is divided by 38.8, the result is 4.28. Thus, the CMP authorized by 12 U.S.C. 1785(e)(3) should be multiplied by a factor of 4.28 to arrive at the new adjusted amounts (before required rounding). However, as discussed previously, the FCPIA Act limits the first adjustment of a CMP to an amount not to exceed 10 percent of the original penalty. The amount of increase to this CMP in the final regulation would have been more if this limit did not exist.

The maximum CMP authorized by 12 U.S.C. 1785(e)(3) for non-compliance with NCUA security regulations is currently \$100 for each day the violation continues. After the required adjustment for inflation, the maximum penalty is increased by 10%, or \$10, to \$110 per day.

42 U.S.C. 4012a(f)

Pursuant to 42 U.S.C. 4012a(f), NCUA is authorized to impose CMPs against a credit union that is found to have a pattern or practice of committing certain specified actions in violation of the National Flood Insurance Program. A credit union that engages in such violations is subject to a CMP of up to \$350 for each violation. The total amount of penalties assessed against any credit union during any calendar year may not exceed \$100,000. 42 U.S.C. 4012a(f)(5).

Calculation of the Adjustment

The CMP authorized by 42 U.S.C. 4012a(f), originally passed by Congress in 1994, was not adjusted for inflation in 1996. Therefore, the current adjustment will be the percentage by which the CPI for the month of June 1999 exceeds the CPI for the month of

June 1994. According to the Bureau of Labor Statistics, the CPI for the month of June 1999 was 166.2 and the CPI for the month of June 1994 was 148.0. When 166.2 is divided by 148.0, the result is 1.12. Thus, the CMP authorized by 42 U.S.C. 4012a(f) should be multiplied by a factor of 1.12 to arrive at the new adjusted amounts (before required rounding). However, as discussed previously, the FCPIA Act limits the first adjustment of a CMP to an amount not to exceed 10 percent of the original penalty. The amount of increase to this CMP in the final regulation would have been more if this limit did not exist.

The maximum CMP authorized by 42 U.S.C. 4012a(f) for certain violations of the National Flood Insurance Program is currently \$350 for each violation, up to a maximum of \$100,000 per calendar year. After the required adjustment for inflation, the maximum penalty is increased by 10%, or \$35, to \$385 per violation. The annual maximum penalty is also increased by 10%, or \$10,000, to \$110,000 per calendar year.

The NCUA Board now adopts this final rule to adjust the forgoing CMPs for the rate of inflation, as required by the FCPIA Act. The FCPIA Act provides federal agencies with no discretion in the adjustment of CMPs for inflation, and it also requires such adjustments for inflation to occur at least every four years. Further, the regulation is ministerial and technical and, for these reasons, the NCUA Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(3)(B).

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed regulation will not have a significant economic impact on a substantial number of small credit unions. Small credit unions are defined by NCUA, pursuant to its authority to define "small organizations," as those credit unions with assets of \$1 million or less. 5 U.S.C. 601(4), (6); NCUA IRPS 81-4, 46 FR 29248 (1981); NCUA IRPS 87-2, 12 CFR 791.8(a). Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the rule. Consequently, no information has been submitted to the

Office of Management and Budget for review.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory 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 final rule will apply to all federally-insured credit unions, but it 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. NCUA has determined the final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the

Treasury and General Government Appropriations Act, 1999, Pub. L. No. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-21) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

List of Subjects in 12 CFR Part 747

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on September 6, 2000.

Becky Baker,
Secretary to the Board.

Accordingly, the NCUA amends 12 CFR part 747 as follows:

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

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

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787; 42 U.S.C. 4012a; Pub. L. 101-410; Pub.L. 104-134.

2. Part 747, Subpart K is revised to read as follows:

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 Adjustment of civil money 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 money penalty within its jurisdiction by the rate of inflation. The following chart displays those adjustments, 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.	\$2,200
(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.	\$22,000
(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.	\$1,100,000 or 1 percent of the total assets of the credit union, whichever is less
(4) 12 U.S.C. 1782(d)(2)(A)	First tier	\$2,200
(5) 12 U.S.C. 1782(d)(2)(B)	Second tier	\$22,000
(6) 12 U.S.C. 1782(d)(2)(C)	Third tier	\$1,100,000 or 1 percent of the total assets of the credit union, whichever is less
(7) 12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security regulations	\$110
(8) 12 U.S.C. 1786(k)(2)(A)	First tier	\$5,500
(9) 12 U.S.C. 1786(k)(2)(B)	Second tier	\$27,500
(10) 12 U.S.C. 1786(k)(2)(C)	Third tier	For a person other than an insured credit union: \$1,175,000; For an insured credit union: \$1,175,000 or 1 percent of the total assets of the credit union, whichever is less
(11) 42 U.S.C. 4012a(f)	Per violation	\$385
	Per calendar year	\$110,000

(b) The adjustments displayed in paragraph (a) of this section apply to acts occurring beginning on October 23, 2000.

[FR Doc. 00-24431 Filed 9-21-00; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-SW-41-AD; Amendment 39-11898; AD 2000-17-52]

RIN 2120-AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2000-17-52, which was sent previously to all known U.S. owners and operators of Agusta S.p.A. (Agusta) Model A109E helicopters by individual letters. This AD requires, before further flight, visually inspecting any main rotor rotating scissors assembly for correct installation and replacing any unairworthy part with an airworthy