



DRAMATIC INCREASES IN FEDERAL CIVIL FINES TAKE EFFECT

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The Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 (2015 Act) (§ 701 of Public Law 114-74) has dramatically increased civil fines across federal agencies, with some more than doubling. Companies violating the Hart-Scott-Rodino (HSR) Improvements Act, the Securities Exchange Act, or the Occupational Safety and Health Act (OSHA), among others, could soon face civil monetary penalties that are up to 150% higher than the existing levels.

The increases took effect on **August 1, 2016**. Agencies are now applying the new penalty levels determined through interim final rulemaking to any penalties *assessed* on or after that date.¹ Accordingly, they can apply to ongoing investigations of conduct that occurred long before August 1 (if the relevant agency decides to assess penalties on or after August 1), but do not apply to any previously assessed or enforced penalties.² Penalties under the Internal Revenue Code and the Tariff Act are exempt from the 2015 Act's inflation adjustment.³

Agencies have taken slightly varied approaches to determining their respective fine increases under the 2015 Act. For instance, the Federal Trade Commission and the Financial Crimes Enforcement Network of the Department of Treasury, among others, published their finalized fine increases in June and early July. Other agencies, such as the Department of Justice and the Securities and Exchange Commission, have invited public comment on their published increases with comment periods variously closing from mid-July to early September. Notably, these published fine increases have taken effect notwithstanding the comment period remaining open at some agencies.

The following chart provides some of the notable increases in federal civil fines under the 2015 Act:

¹ As an exception, the Consumer Financial Protection Bureau (CFPB) published its interim final rule on June 14, 2016 to adjust the relevant civil monetary penalties under the 2015 Act with an effective date of *July 14, 2016*. Civil Penalty Inflation Adjustments, 81 Fed. Reg. 38,569 (June 14, 2016), *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-06-14/pdf/2016-14031.pdf>. The CFPB's new adjustments apply to penalties assessed *after* July 14, 2016, regardless of when the underlying violation occurred. *Id.* at 38572.

² OMB Memorandum M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Feb. 24, 2016, at 3-4, *available at* <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>. Notably, the Department of Justice specifically provided that the new penalty levels will apply only to penalties assessed after August 1, 2016, whose associated violations occurred *after* November 2, 2015, the date of the former inflation adjustments regulations (or as set forth by statute if the amount has not yet been adjusted by regulation). Civil Monetary Penalties Inflation Adjustment, 81 Fed. Reg. 42,491 (June 30, 2016), *available at* <https://www.healthlawpolicymatters.com/wp-content/uploads/sites/8/2016/06/DOJ-FCA-Interim-Final-Rule.pdf>.

³ OMB Memorandum M-16-06, at 1. Penalties under OSHA and the Social Security Act (which were previously exempt) are now subject to the 2016 and subsequent inflation adjustments under the 2015 Act. *Ibid.*

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Agency	Relevant Law	Underlying Violations	Current Penalty	Adjusted Penalty	Increase (%)
FTC	Federal Trade Commission (FTC) Act, 15 USC § 45(l)	Violations of § 5(b) cease and desist orders	Max. \$16,000	Max. \$40,000	↑ 150%
	FTC Act, 15 USC § 45(m)(1)	Unfair or deceptive acts or practices in violation of FTC Act § 5(m)(1)	Max. \$16,000	Max. \$40,000	↑ 150%
	Hart-Scott-Rodino (HSR) Improvements Act, 15 USC § 18a(g)(1)	Violations of HSR premerger reporting and waiting requirements	Max. \$16,000/day	Max. \$40,000/day	↑ 150%
	Clayton Act, 15 USC § 21(l)	Violations of cease and desist orders issued under § 11(b)	Max. \$8,500	Max. \$21,250	↑ 150%
DOJ	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), 12 USC § 1833a(b)(1)	Violations of FIRREA (<i>e.g.</i> , financial fraud “affecting a federally insured financial institution”)	Max. \$1.1 M	Max. \$1,893,610	↑ 72%
	FIRREA, 12 USC § 1833a(b)(2)	Continuing violations of FIRREA	Max. \$1.1 M/day or \$5.5 M	Max. \$1,893,610/day or \$9,468,050	↑ 72%
	Anti-Kickback Act, 41 USC § 8706(a)(1)(B)	Violations involving kickbacks	Max. \$11,000	Max. \$21,563	↑ 96%
SEC	Securities Act of 1933, 15 USC § 77t(d)	Regulatory violations with <ul style="list-style-type: none"> • fraud, deceit, or manipulation; <i>or</i> • deliberate intent or reckless disregard; <i>and</i> • results in substantial losses or significant risk of such losses to others 	Max. \$775,000	Max. \$890,780	↑ 15%
	Securities Exchange Act of 1934, 15 USC § 78ff(c)(1)(B)	Foreign corrupt practices for issuer	Max. \$16,000	Max. \$19,787	↑ 24%
	Securities Exchange Act of 1934, 15 USC § 78u-1(a)(3)	Insider trading for controlling person	Max. \$1,525,000	Max. \$1,978,690	↑ 30%

Agency	Relevant Law	Underlying Violations	Current Penalty	Adjusted Penalty	Increase (%)
OCC	Federal Deposit Insurance (FDI) Act, 12 USC § 1818(i)(2)	Violations of various statutes and standards, including FIRREA, unfair, deceptive, or abusive acts and practices, unsafe or unsound practices, breach of fiduciary duty	Max. Daily \$7,500 (Tier1); \$37,500 (Tier2); \$1,425,000 (Tier3)* *lesser of \$1,425,000 or 1% of total assets for a national bank	Max. Daily \$9,468 (Tier1); \$47,340 (Tier2); \$1,893,610 (Tier3)* *lesser of \$1,893,610 or 1% of total assets for a national bank	↑ 26% ↑ 26% ↑ 33%
	Dodd-Frank Act, 15 USC § 1639e(k)	Violations of the appraisal independence regulations from § 1472 of the Act	Max. Daily \$10,000 (for 1st violation); \$20,000 (for subsequent)	Max. Daily \$10,875 (for 1st violation); \$21,749 (for subsequent)	↑ 9%
	FDI Act, 12 USC § 481	Refusals by any national bank affiliate to permit an examination or to provide any information required in that examination	Max. \$5,000/day	Max. \$9,468/day	↑ 89%
	FDI Act, 12 USC § 1832(c)	National banks' violations of withdrawal restrictions	\$1,100	\$2,750	↑ 150%
	FDI Act, 12 USC § 1972(2)(F)	National banks' violations of anti-tying restrictions regarding correspondent accounts, unsafe or unsound practices, or breach of fiduciary duty	Max. Daily \$7,500 (Tier1); \$37,500 (Tier2); \$1,425,000 (Tier3)* *lesser of \$1,425,000 or 1% of total assets	Max. Daily \$9,468 (Tier1); \$47,340 (Tier2); \$1,893,610 (Tier3)* *lesser of \$1,893,610 or 1% of total assets	↑ 26% ↑ 26% ↑ 33%
	Dodd-Frank Act, 15 USC § 78u-2(b)	National banks' violations of various provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, and the Investment Advisers Act	<i>For individuals:</i> Max. \$7,500 (Tier1); \$70,000 (Tier2); \$140,000 (Tier3) <i>For other persons:</i> Max. \$70,000 (Tier1); \$350,000 (Tier2); \$700,000 (Tier3)	<i>For individuals:</i> Max. \$8,908 (Tier1); \$89,078 (Tier2); \$178,156 (Tier3) <i>For other persons:</i> Max. \$89,078 (Tier1); \$445,390 (Tier2); \$890,780 (Tier3)	↑ 19% ↑ 27% ↑ 27% ↑ 27%

Agency	Relevant Law	Underlying Violations	Current Penalty	Adjusted Penalty	Increase (%)
CFPB	Interstate Land Sales Full Disclosure Act, 15 USC § 1717a(a)(2)	Knowing and material violations of the Interstate Land Sales Full Disclosure Act	Max. \$1,000/violation; \$1 M/year	Max. \$1,894/violation; \$1,893,610/year	89%
	Consumer Financial Protection Act, 12 USC § 5565(c)(2)	Violations of Federal consumer financial laws, including rules or orders prescribed thereunder	Max. \$5,000 (Tier1); \$25,000 (Tier2); \$1 M (Tier3)	Max. \$5,437 (Tier1); \$27,186 (Tier2); \$1,087,450 (Tier3)	9%
	Truth in Lending Act (TILA), 15 USC § 1639e(k)	Violations of TILA's appraisal independence provision or regulations, in extending credit or providing any services for a consumer-credit transaction secured by the consumer's principal dwelling	Max. \$10,000 (for 1st violation); \$20,000 (for subsequent)	Max. \$10,875 (for 1st violation); \$21,749 (for subsequent)	9%
FinCEN (Treasury)	Bank Secrecy Act (BSA), 12 USC § 1829b(j)	Recordkeeping violations for funds transfers	Max. \$10,000	Max. \$19,787	98%
	BSA, 31 USC § 5330(e)	Failure to register as money-transmitting business	Max. \$5,000	Max. \$7,954	59%
	BSA, 31 USC § 5321(a)(1)	Willful violations of BSA requirements	\$25,000 – \$100,000	\$53,907 – \$215,628	116%
DOL	Occupational Safety and Health Act (OSH Act), 29 CFR 1903.15(d)(3)	"Serious" violations of OSH Act	Max. \$7,000	Max. \$12,471	78%
	OSH Act, 29 CFR 1903.15(d)(1), and 29 CFR 1903.15(d)(2)	"Willful" or repeated violations of OSH Act	\$5,000 – \$70,000	\$8,908 – \$124,709	78%
FCC	Telecomm'ns Act of 1996, 47 USC § 214(d)	Failure to comply with any FCC order issued under § 214	Max. \$1,320/day	Max. \$2,272/day	72%
	Telecomm'ns Act of 1996, 47 USC § 223(b)	Making obscene or harassing interstate calls in violation of § 223	Max. \$80,000	Max. \$117,742	47%