



FEDERAL ELECTION COMMISSION  
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**AGENDA ITEM**

July 10, 2013

For Meeting of 7-11-13

**MEMORANDUM**

**SUBMITTED LATE**

TO: The Commission

FROM: Lisa Stevenson *LJS*  
Deputy General Counsel

Adav Noti *AN*  
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SUBJECT: Draft Final Rules and Explanation and Justification on Civil Monetary Penalties Inflation Adjustments

Attached is a draft Final Rules and Explanation and Justification on Civil Monetary Penalties Inflation Adjustments. We have been asked that this draft be placed on the agenda for July 11, 2013.

Attachment

**DRAFT**

**FEDERAL ELECTION COMMISSION**

**11 CFR Part 111**

**[Notice 2013 - \_\_]**

**Civil Monetary Penalties Inflation Adjustments**

**AGENCY:** Federal Election Commission.

**ACTION:** Final Rules.

**SUMMARY:** In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the Federal Election Commission is adopting final rules to apply inflation adjustments to certain civil monetary penalties under the Federal Election Campaign Act of 1971, as amended, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil penalties being adjusted are for (1) a knowing and willful violation of the prohibition against making a contribution in the name of another; and (2) certain late filed or non-filed reports under the Commission's administrative fines program. The adjusted civil monetary penalties are calculated according to a statutory formula and will be effective for violations occurring after the effective date of these rules. Further information is provided in the supplementary information that follows.

**EFFECTIVE**

**DATE:** These penalty adjustments are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION**

**CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, or Ms. Jessica Selinkoff, Attorneys, 999 E Street NW., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

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1 **SUPPLEMENTARY**

2 **INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended  
3 (“Inflation Adjustment Act”),<sup>1</sup> requires Federal agencies to adjust for inflation the civil monetary  
4 penalties within their jurisdiction at least once every four years according to detailed formulas.  
5 The Inflation Adjustment Act defines a civil monetary penalty as any penalty, fine, or other  
6 sanction that is for a specific amount, or has a maximum amount, as provided by Federal law,  
7 and that a Federal agency assesses or enforces in an administrative proceeding or in a civil action  
8 in Federal court.<sup>2</sup> Under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431  
9 et seq. (“FECA”), the Federal Election Commission has jurisdiction over several civil penalties  
10 for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 et seq.,  
11 and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 et seq. These  
12 rules fulfill the Commission’s non-discretionary obligation under the Inflation Adjustment Act to  
13 adjust for inflation, according to the prescribed formulas, the civil penalties within its  
14 jurisdiction.

15 **Immediate Effectiveness of Final Rules**

16 The Inflation Adjustment Act requires the Commission to adjust the civil penalties under  
17 its jurisdiction by using a cost-of-living adjustment (“COLA”) formula. The application of this  
18 COLA does not involve any Commission discretion or policy judgments. Thus, the Commission  
19 finds that the “good cause” exception to the notice and comment requirement of the  
20 Administrative Procedure Act applies to these rules because notice and comment are  
21 unnecessary. 5 U.S.C 553(b)(B), (d)(3).

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<sup>1</sup> Pub. L. No. 101-410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), as amended by Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, sec. 31001(s)(1), 110 Stat. 1321, 1373; Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, sec. 1301, 112 Stat. 3280.

<sup>2</sup> Inflation Adjustment Act sec. 3(2).

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1 For the same reasons, these rules do not need to be submitted to the Speaker of the House  
2 of Representatives or the President of the Senate under the Congressional Review Act,  
3 5 U.S.C. 801 et seq., and these rules are effective upon publication. 5 U.S.C. 808(2).  
4 Accordingly, these amendments are effective on [INSERT DATE OF PUBLICATION IN THE  
5 FEDERAL REGISTER]. The new civil penalties are applicable only to violations that occur  
6 after this effective date.<sup>3</sup>

7 **Explanation and Justification**

8 Under the Inflation Adjustment Act, the Commission must adjust civil penalties by a  
9 COLA defined as the percentage by which the U.S. Department of Labor’s Consumer Price  
10 Index for all urban consumers (“CPI”) for June of the year preceding the adjustment exceeds the  
11 CPI for June of the year in which each civil penalty was last set or adjusted.<sup>4</sup> The amount of the  
12 resulting increase is then subject to rounding rules based on the size of the civil penalty.<sup>5</sup> The  
13 Inflation Adjustment Act imposes a 10% cap on the first adjustment under its rules, but no cap  
14 on subsequent adjustments.<sup>6</sup> That is, the first adjustment of a civil penalty may not exceed 10%  
15 of the starting civil penalty.

16 The Commission has previously applied the Inflation Adjustment Act formulas to its civil  
17

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<sup>3</sup> Id. sec. 6.

<sup>4</sup> Id. sec. 5(b).

<sup>5</sup> Id. sec. 5(a). The rounding rules applicable to the Commission’s civil penalties require that if the existing penalty is less than or equal to \$100, the increase is rounded to the nearest \$10; if the existing penalty is greater than \$100 but less than or equal to \$1,000, the increase is rounded to the nearest \$100; if the existing penalty is greater than \$1,000 but less than or equal to \$10,000, the increase is rounded to the nearest \$1,000; and if the existing penalty is greater than \$10,000 but less than or equal to \$100,000, the increase is rounded to the nearest \$5,000.

<sup>6</sup> Pub. L. No. 104-134, sec. 31001(s)(2), 110 Stat. 1321, 1373.

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1 penalties in 1997, 2002, 2005, and 2009.<sup>7</sup> As explained below, the Inflation Adjustment Act  
2 now requires the Commission to adjust one civil penalty in 11 CFR 111.24 and some civil  
3 penalties in 11 CFR 111.43. Because of the rounding rules, the other civil penalties within the  
4 Commission's jurisdiction will not change.

### 5 1. 11 CFR 111.24 — General Civil Penalties

6 FECA establishes civil penalties for violations of FECA or the other statutes within the  
7 Commission's jurisdiction. Those statutory civil penalties are found at 2 U.S.C. 437g(a)(5), (6),  
8 and (12). Commission regulations in 11 CFR 111.24 set forth each such civil penalty, as  
9 adjusted pursuant to the Inflation Adjustment Act.

10 These final rules adjust only one statutory civil penalty: the \$50,000 civil penalty  
11 established by 2 U.S.C. 437g(a)(5)(B), which is currently at the 2009 level of \$60,000. 11 CFR  
12 111.24(a)(2)(ii).<sup>8</sup> To determine the 2013 COLA, the CPI for June 2012 (229.478)<sup>9</sup> is divided by  
13 the CPI for June 2009 (215.693), the year the civil penalty was last adjusted, for an increase of  
14 6.4%. Next, the raw inflation adjustment is determined by multiplying the present civil penalty  
15 (\$60,000) by the COLA (0.064) for a raw increase of \$3,840, which is rounded to \$5,000.  
16 Finally, the rounded increase is added to the civil penalty, for a new section 111.24(a)(2)(ii) civil  
17 penalty of \$65,000.

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<sup>7</sup> See Explanation and Justification for Final Rules on Civil Monetary Penalties Inflation Adjustments, 74 FR 31345 (July 1, 2009), amended by Explanation and Justification for Final Rules on Civil Monetary Penalties Inflation Adjustments; Correction, 74 FR 37161 (July 28, 2009) (collectively, "2009 Adjustment"), Explanation and Justification for Final Rules on Inflation Adjustments for Civil Monetary Penalties, 70 FR 34633 (June 15, 2005) ("2005 Adjustment"), Explanation and Justification for Final Rules on Adjustments to Civil Monetary Penalty Amounts, 62 FR 11316 (Mar. 12, 1997). In January 2002, the rounding rules resulted in no adjustments. Agenda Doc. 02-06 (Jan. 17, 2002).

<sup>8</sup> See 2009 Adjustment, 74 FR at 31347.

<sup>9</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, Consumer Price Index: All Urban Consumers (May 16, 2013), available at <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>.

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1 Using the same Inflation Adjustment Act formulas, the Commission has also reviewed  
2 the other civil penalties in 11 CFR 111.24. None of those other civil penalties will change this  
3 year because of the rounding rules.

Section	Previous Civil Penalty	Last Adjusted	COLA	Raw Increase	Rounded Increase	New Civil Penalty
11 CFR 111.24(a)(1)	\$7,500	2009	0.064	\$480.00	\$0	unchanged
11 CFR 111.24(a)(2)(i)	\$16,000	2009	0.064	\$1,024.00	\$0	unchanged
11 CFR 111.24(a)(2)(ii)	\$60,000	2009	0.064	\$3,840.00	\$5,000	\$65,000
11 CFR 111.24(b)	\$3,200	2009	0.064	\$204.80	\$0	unchanged
11 CFR 111.24(b)	\$7,500	2009	0.064	\$480.00	\$0	unchanged

4

5 2. 11 CFR 111.43, 111.44 — Administrative Fines

6 FECA permits the Commission to assess civil penalties for violations of the reporting  
7 requirements of 2 U.S.C. 434(a) in accordance with schedules of penalties established and  
8 published by the Commission. 2 U.S.C. 437g(a)(4)(C)(i). The penalty schedule in 11 CFR  
9 111.43(a) applies to reports that are not election sensitive, and the schedule in 11 CFR 111.43(b)  
10 applies to reports that are election sensitive.<sup>10</sup> Each schedule contains two columns of penalties,  
11 one for late-filed reports and one for non-filed reports, with penalties based on the level of  
12 financial activity in the report and its lateness (where applicable).<sup>11</sup> In addition, 11 CFR  
13 111.43(c) establishes a civil penalty for situations in which a committee fails to file a report and

<sup>10</sup> Election sensitive reports are certain reports due shortly before an election. See 11 CFR 111.43(d)(1).

<sup>11</sup> A report is considered to be “not filed” if it is never filed or is filed more than a certain number of days after its due date. See 11 CFR 111.43(e).

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1 the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44  
2 establishes a civil penalty for failure to file timely reports of contributions received less than 20  
3 days, but more than 48 hours, before an election. See 2 U.S.C. 434(a)(6).

4 The schedules in 11 CFR 111.43 were set in 2003 when the Commission re-promulgated  
5 its Administrative Fines program, which implements 2 U.S.C. 437g(a)(4)(C). See Explanation  
6 and Justification for Final Rules on Administrative Fines, 68 FR 12572 (Mar. 17, 2003). In  
7 2005, the Commission applied the Inflation Adjustment Act formulas to the civil penalties in  
8 section 111.43 but did not adjust any of the penalties because of the rounding rules. See 2005  
9 Adjustment, 70 FR at 34635. Under the same procedures, the Commission adjusted some, but  
10 not all, of these civil penalties in 2009. See 2009 Adjustment, 74 FR at 31348-49 (renumbering  
11 schedules and adjusting some penalties for inflation).

12 For purposes of the current adjustments, the Commission multiplies each civil penalty  
13 that was raised in 2009 by a COLA of 0.064. For those civil penalties set in 2003 and unchanged  
14 in 2009, the Commission multiplies each civil penalty by a COLA of 0.249.<sup>12</sup> Next, the  
15 Commission applies the statutory rounding formula to each of these raw increases. The resulting  
16 rounded increase is then added to the current civil penalty to determine the new raw civil  
17 penalty. Finally, the statutory 10% penalty cap is applied as necessary, i.e., to penalties that the  
18 Commission is adjusting this year for the first time. The actual adjustment to each civil penalty  
19 is shown in the schedules in the rule text, below.

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<sup>12</sup> The CPI for June 2012 (229.478) divided by the CPI for June 2003 (183.7) equals an increase of 24.9%.

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1           The \$6,050 civil penalty in 11 CFR 111.43(c) was adjusted in 2009,<sup>13</sup> so the Commission  
2 multiplies it by a COLA of 0.064. Because of the rounding rules, this civil penalty will not  
3 change this year.

4           The penalty in 11 CFR 111.44 was last adjusted in 2005,<sup>14</sup> so the Commission multiplies  
5 it by a COLA of 0.18.<sup>15</sup> Because of the rounding rules, this civil penalty will not change this  
6 year.

7 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

8           The provisions of the Regulatory Flexibility Act are not applicable to this final rule  
9 because the Commission was not required to publish a notice of proposed rulemaking or to seek  
10 public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a), 604(a). Therefore, no  
11 regulatory flexibility analysis is required.

12

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<sup>13</sup> See 2009 Adjustment, 74 FR at 37161 (correcting amount to \$6,050).

<sup>14</sup> See 2005 Adjustment, 70 FR at 34635; Explanation and Justification for Final Rules on Administrative Fines, 65 FR 31787, 31793 (May 19, 2000); see also 2009 Adjustment, 74 FR at 31347 (not adjusting this penalty due to rounding rules).

<sup>15</sup> The CPI for June 2012 (229.478) divided by the CPI for June 2005 (194.5) equals an increase of 18%.



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1 **List of Subjects**

2 11 CFR Part 111

3 Administrative practice and procedures, Elections, Law enforcement, Penalties.

4

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1 For the reasons set out in the preamble, the Federal Election Commission amends  
2 subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

3 **PART 111 – COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))**

4 1. The authority citation for part 111 continues to read as follows:

5 Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

6 2. Section 111.24 is amended by revising paragraph (a)(2)(ii) to read as follows:

7 **§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).**

8 (a) \* \* \*

9 (2) \* \* \*

10 (ii) Notwithstanding paragraph (a)(2)(i) of this section, in the case of a  
11 knowing and willful violation of 2 U.S.C. 441f, the civil penalty  
12 shall not be less than 300% of the amount of any contribution  
13 involved in the violation and shall not exceed the greater of  
14 \$~~60,000~~65,000 or 1,000% of the amount of any contribution  
15 involved in the violation.

16 \* \* \* \* \*

17 3. Section 111.43 is amended by revising paragraphs (a) and (b) to read as follows:

18 **§ 111.43 What are the schedules of penalties?**

19 (a) The civil money penalty for all reports that are filed late or not filed, except  
20 election sensitive reports and pre-election reports under 11 CFR 104.5, shall be  
21 calculated in accordance with the following schedule of penalties:  
22

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If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1-4,999.99 <sup>a</sup>	[ <del>\$25</del> <u>27.50</u> + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)].	<del>\$250</del> <u>275</u> x [1 + (.25 x Number of previous violations)]
\$5,000-9,999.99	[\$55 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$330 x [1 + (.25 x Number of previous violations)]
\$10,000 - 24,999.99	[\$110 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$550 x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	[\$200 + (\$20 x Number of days late)] x [1 + (.25 x Number of previous violations)]	<del>\$990</del> <u>1090</u> x [1 + (.25 x Number of previous violations)]
\$50,000 - 74,999.99	[\$330 + ( <del>\$82.50</del> <u>92.50</u> x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$2970 x [1 + (.25 x Number of previous violations)]
\$75,000 - 99,999.99	[\$440 + (\$110 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$3850 x [1 + (.25 x Number of previous violations)]
\$100,000 - 149,999.99	[\$660 + (\$125 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$4950 x [1 + (.25 x Number of previous violations)]

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\$150,000 - 199,999.99	<del>[\$880]</del> + (\$150 x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$6050 x [1 + (.25 x Number of previous violations)]
\$200,000 - 249,999.99	[\$1100 + (\$175 x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$7150 x [1 + (.25 x Number of previous violations)]
\$250,000 - 349,999.99	[\$1500 + (\$200 x Number of days late)) x [1 + (.25 x Number of previous violations)]	<del>\$8800</del> 9800 x [1 + (.25 x Number of previous violations)]
\$350,000 - 449,999.99	[\$2000 + (\$200 x Number of days late)) x [1 + (.25 x Number of previous violations)]	<del>\$9900</del> 10,900 x [1 + (.25 x Number of previous violations)]
\$450,000 - 549,999.99	<del>[\$2500]</del> 2750 + (\$200 x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$10,450 x [1 + (.25 x Number of previous violations)]
\$550,000 - 649,999.99	[\$3300 + (\$200 x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$11,000 x [1 + (.25 x Number of previous violations)]
\$650,000 - 749,999.99	[\$3850 + (\$200 x Number of days late)) x [1 + (.25 x Number of previous violations)]	<del>\$10,500</del> 11,550 x [1 + (.25 x Number of previous violations)]
\$750,000 - 849,999.99	[\$4400 + (\$200 x Number of days late)) x [1 + (.25 x Number of previous violations)]	<del>\$11,000</del> 12,100 x [1 + (.25 x Number of previous violations)]

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	of previous violations)]	violations)]
\$850,000 - 949,999.99	[\$4950 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	<del>\$11,500</del> <u>12,650</u> x [1 + (.25 x Number of previous violations)]
\$950,000 or over	[\$5500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	<del>\$12,000</del> <u>13,200</u> x [1 + (.25 x Number of previous violations)]

1 <sup>a</sup>The civil money penalty for a respondent who does not have any previous violations will not  
 2 exceed the level of activity in the report.

3 (b) The civil money penalty for election sensitive reports that are filed late or not  
 4 filed shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1-\$4,999.99 <sup>a</sup>	[\$55 + (\$10 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$550 x [1 + (.25 x Number of previous violations)]
\$5,000-\$9,999.99	[\$110 + (\$10 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$660 x [1 + (.25 x Number of previous violations)]
\$10,000 - 24,999.99	[\$150 + (\$10 x Number of days late)] x [1 + (.25 x Number of previous violations)]	<del>\$990</del> <u>1090</u> x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	[\$330 + ( <del>\$25</del> <u>27.50</u> x Number of	\$1,400 x [1 + (.25 x Number

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	days late)) x [1 + (.25 x Number of previous violations)]	of previous violations)]
\$50,000 - 74,999.99	[\$495 + ( <del>\$82,500</del> <u>92,500</u> x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$3300 x [1 + (.25 x Number of previous violations)]
\$75,000 - 99,999.99	[\$660 + (\$110 x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$4400 x [1 + (.25 x Number of previous violations)]
\$100,000 - 149,999.99	[ <del>\$990</del> <u>1090</u> + (\$125 x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$5500 x [1 + (.25 x Number of previous violations)]
\$150,000 - 199,999.99	[\$1200 + (\$150 x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$6600 x [1 + (.25 x Number of previous violations)]
\$200,000 - 249,999.99	[\$1500 + (\$175 x Number of days late)) x [1 + (.25 x Number of previous violations)]	<del>\$8250</del> <u>9250</u> x [1 + (.25 x Number of previous violations)]
\$250,000 - 349,999.99	[ <del>\$2250</del> <u>2475</u> + (\$200 x Number of days late)) x [1 + (.25 x Number of previous violations)]	<del>\$9900</del> <u>10,900</u> x [1 + (.25 x Number of previous violations)]
\$350,000 - 449,999.99	[\$3300 + (\$200 x Number of days late)) x [1 + (.25 x Number of previous violations)]	\$11,000 x [1 + (.25 x Number of previous violations)]

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\$450,000 - 549,999.99	[\$4125 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	<del>\$11,000</del> <u>12,100</u> x [1 + (.25 x Number of previous violations)]
\$550,000 - 649,999.99	[\$4950 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	<del>\$12,000</del> <u>13,200</u> x [1 + (.25 x Number of previous violations)]
\$650,000 - 749,999.99	[\$5775 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	<del>\$13,000</del> <u>14,300</u> x [1 + (.25 x Number of previous violations)]
\$750,000 - 849,999.99	[\$6600 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$15,400 x [1 + (.25 x Number of previous violations)]
\$850,000 - 949,999.99	[\$7425 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$16,500 x [1 + (.25 x Number of previous violations)]
\$950,000 or over	<del>[\$8250</del> <u>9250</u> + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$17,600 x [1 + (.25 x Number of previous violations)]

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1    <sup>u</sup>The civil money penalty for a respondent who does not have any previous violations will not  
2    exceed the level of activity in the report.

3    \*       \*       \*       \*       \*

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On behalf of the Commission,

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\_\_\_\_\_  
Ellen L. Weintraub  
Chair  
Federal Election Commission

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13    DATED \_\_\_\_\_  
14    BILLING CODE: 6715-01-P