



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DATE & TIME OF TRANSMITTAL: Wednesday, January 04, 2017 4:00

BALLOT DEADLINE: Thursday, January 05, 2017 4:00

COMMISSIONER: GOODMAN, HUNTER, PETERSEN, RAVEL, WALTHER, WEINTRAUB

SUBJECT: **REG 2016-05 (Civil Monetary Penalties Inflation
Adjustments 2017)**
Memorandum to the Commission dated January 4, 2017

- I approve the recommendation(s).
- I object to the recommendation(s).
- I object for the record.
- I am recused from voting.
- No vote by ballot.

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2017 JAN -4 PM 1:09

January 4, 2017

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
Acting General Counsel

Adav Noti *AN*
Associate General Counsel

Neven F. Stipanovic *NFS*
Acting Assistant General Counsel

Eugene J. Lynch *NFS for EJC*
Paralegal

SUBJECT: REG 2016-05 (Civil Monetary Penalties Inflation Adjustments 2017)

Attached is a proposed draft of the subject final rules. As explained below, we request that this draft be placed on a 24-hour tally vote ending on January 5, 2017 at 4:00 pm.

According to the extended voting deadlines the Commission adopted on December 5, 2016, "any items that in the ordinary course would have a voting deadline after December 28, 2016 and on or before January 6, 2017, the voting deadline will be extended to January 13, 2017." Because this matter requires Commission's consideration before January 13, we ask that the Commission suspend the extended voting deadlines in this instance.¹

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires the Commission to publish the 2017 civil penalty adjustments in the Federal Register no later than January 15, 2017. Because January 15 falls on a Sunday, the actual

¹ Although the Commission excepted certain matters from the extended voting deadlines, none of the exceptions apply here.

publication deadline in this instance is Friday, January 13, 2017. And as a practical matter, the final approved version of this document must be submitted to the Federal Register at a minimum three to four days before the publication deadline to ensure timely publication. Accordingly, given the statutory deadline, we request that, notwithstanding the extended voting deadlines, the Commission consider this matter on a 24-hour tally vote per usual voting procedures under Directive 52. *See* Directive 52 ¶ II.A.

Attachment

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2016-xx]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: The final rules are effective on [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. Neven F. Stipanovic, Acting Assistant General Counsel, or Mr. Eugene J. Lynch, Paralegal, Office of General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the “Inflation Adjustment Act”),¹ as amended by the Federal Civil Penalties Inflation

¹ Pub. L. 101-410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), amended by Debt Collection Improvement Act of 1996, Pub. L. 104-134, sec. 31001(s)(1), 110 Stat. 1321, 1373; Federal Reports Elimination Act of 1998, Pub. L. 105-362, sec. 1301, 112 Stat. 3280.

1 Adjustment Act Improvements Act of 2015 (the “2015 Act”),² requires federal agencies,
2 including the Commission, to adjust for inflation the civil monetary penalties within their
3 jurisdiction according to prescribed formulas. A civil monetary penalty is “any penalty, fine, or
4 other sanction” that (1) “is for a specific amount” or “has a maximum amount” under federal
5 law; and (2) that a federal agency assesses or enforces “pursuant to an administrative proceeding
6 or a civil action” in federal court.³ Under the Federal Election Campaign Act, 52 U.S.C. 30101-
7 46 (“FECA”), the Commission may seek and assess civil monetary penalties for violations of
8 FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001-13, and the Presidential
9 Primary Matching Payment Account Act, 26 U.S.C. 9031-42.

10 As required by the 2015 Act,⁴ the Commission recently instituted a one-time “catch-up”
11 inflation adjustment to its civil monetary penalties. Civil Monetary Penalties Inflation
12 Adjustments, 81 FR 41196 (June 24, 2016). Starting in 2017, the Inflation Adjustment Act
13 requires federal agencies to adjust their civil penalties annually, and the adjustments must take
14 effect no later than January 15 of every year.⁵ Pursuant to guidance issued by the Office of
15 Management and Budget,⁶ the Commission is now adjusting its civil monetary penalties for
16 2017.⁷

² Pub. L. 114-74, § 701, 129 Stat. 584, 599.

³ Inflation Adjustment Act § 3(2).

⁴ Inflation Adjustment Act § 4(b)(1).

⁵ Inflation Adjustment Act § 4(a).

⁶ See Inflation Adjustment Act § 7(a) (requiring OMB to “issue guidance to agencies on implementing the inflation adjustments required under this Act”); see also Memorandum from Shaun Donovan, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M-17-11 (Dec. 16, 2016), https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf (“OMB Memorandum”).

⁷ Inflation Adjustment Act § 5.

1 The Commission must adjust for inflation its civil monetary penalties “notwithstanding
2 Section 553” of the Administrative Procedures Act (“APA”).⁸ Thus, the APA’s notice-and-
3 comment and delayed effective date requirements in 5 U.S.C. 553(b)-(d) do not apply because
4 Congress has specifically exempted agencies from these requirements.⁹

5 Furthermore, because the inflation adjustments made through these final rules are
6 required by Congress and involve no Commission discretion or policy judgments, these rules do
7 not need to be submitted to the Speaker of the House of Representatives or the President of the
8 Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA’s
9 notice-and-comment procedures do not apply to these final rules, the Commission is not required
10 to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2),
11 604(a). Nor is the Commission required to submit these revisions for congressional review
12 under FECA. *See* 5 U.S.C. 3011(d)(1), (4) (providing for congressional review when
13 Commission “prescribe[s]” a “rule of law”).

14 The new penalty amounts will apply to civil monetary penalties that are assessed after the
15 date the increase takes effect, even if the associated violation predated the increase.¹⁰

16 **Explanation and Justification**

17 As amended by the 2015 Act, the Inflation Adjustment Act requires the Commission to
18 annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment

⁸ Inflation Adjustment Act § 4(b)(2).

⁹ *See, e.g., Asiana Airlines v. FAA*, 134 F.3d 393, 396-99 (D.C. Cir. 1998) (finding APA “notice and comment” requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

¹⁰ Inflation Adjustment Act § 6.

1 (“COLA”) ratio.¹¹ The COLA ratio is the percentage that the Consumer Price Index (“CPI”)¹²
2 “for the month of October preceding the date of the adjustment” exceeds the CPI for October of
3 the previous year.¹³ To calculate the adjusted penalty, the Commission must increase the most
4 recent civil monetary penalty amount by the COLA ratio.¹⁴ According to the Office of
5 Management and Budget, the COLA ratio for 2017 is 0.01636, or 1.636%; thus, to calculate the
6 new penalties, the Commission must multiply the most recent civil monetary penalties in force
7 by 1.01636.¹⁵

8 The Commission assesses two types of civil monetary penalties that must be adjusted for
9 inflation. First are penalties that are either negotiated by the Commission or imposed by a court
10 for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential
11 Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR
12 111.24. Second are the civil monetary penalties assessed through the Commission’s
13 Administrative Fines Program for late filing or non-filing of certain reports required by FECA.
14 See 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring
15 political committee treasurers to report receipts and disbursements within certain time periods).
16 The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and
17 111.44.

18 1. 11 CFR 111.24 Civil Penalties

¹¹ The COLA ratio must be applied to the most recent civil monetary penalties, which include the recent catch-up adjustments. Inflation Adjustment Act, § 4(a); see also OMB Memorandum at 2.

¹² The Inflation Adjustment Act, sec. 3, uses the CPI “for all-urban consumers published by the Department of Labor.”

¹³ Inflation Adjustment Act, § 5(b)(1).

¹⁴ Inflation Adjustment Act, § 5(a), (b)(1).

¹⁵ OMB Memorandum at 1.

1 FECA establishes the civil monetary penalties for violations of FECA and the other
 2 statutes within the Commission’s jurisdiction. See 52 U.S.C. 30109(a)(5), (6), (12).
 3 Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for
 4 each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the
 5 Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure
 6 to the nearest dollar.

7 The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most Recent Civil Penalty	COLA	New Civil Penalty
11 CFR 111.24(a)(1)	\$18,750	1.01636	\$19,057
11 CFR 111.24(a)(2)(i)	\$40,000	1.01636	\$40,654
11 CFR 111.24(a)(2)(ii)	\$65,593	1.01636	\$66,666
11 CFR 111.24(b)	\$5,609	1.01636	\$5,701
11 CFR 111.24(b)	\$14,023	1.01636	\$14,252

8

9 2. 11 CFR 111.43, 111.44 — Administrative Fines

10 FECA authorizes the Commission to assess civil monetary penalties for violations of the
 11 reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules “established
 12 and published by the Commission.” 52 U.S.C. 30109(a)(4)(C)(i). The Commission has
 13 established two such schedules: The schedule in 11 CFR 111.43(a) applies to reports that are not
 14 election sensitive, and the schedule in 11 CFR 111.43(b) applies to reports that are election

1 sensitive.¹⁶ Each schedule contains two columns of penalties, one for late-filed reports and one
2 for non-filed reports, with penalties based on the level of financial activity in the report and, if
3 late-filed, its lateness.¹⁷ In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for
4 situations in which a committee fails to file a report and the Commission cannot calculate the
5 relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure
6 to file timely reports of contributions received less than 20 days, but more than 48 hours, before
7 an election. See 52 U.S.C. 30104(a)(6).

8 To determine the adjusted civil monetary penalty amount for each level of activity, the
9 Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure
10 to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule
11 text, below.

¹⁶ Election sensitive reports are certain reports due shortly before an election. See 11 CFR 111.43(d)(1).

¹⁷ 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).

DRAFT

1 **List of Subjects**

2 11 CFR Part 111

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

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 (52 U.S.C. 30109, 30107(a))**

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

5 Authority: 52 U.S.C. 30102 (i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 nt.

6 **§ 111.24 [Amended]**

7 2. Section 111.24 is amended as follows:

8 In the table below, for each section indicated in the left column, remove the number
9 indicated in the middle column, and add in its place the number indicated in the right column.

10 Section	Remove	Add
11 111.24(a)(1)	\$18,750	\$19,057
12 111.24(a)(2)(i)	\$40,000	\$40,654
13 111.24(a)(2)(ii)	\$65,593	\$66,666
14 111.24(b)	\$5,609	\$5,701
15 111.24(b)	\$14,023	\$14,252

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

17 **§ 111.43 What are the schedules of penalties?**

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

21

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 ^a	[\$33 + (\$6 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$326 x [1 + (.25 x Number of previous violations)]
\$5,000 - 9,999.99	[\$65 + (\$6 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$392 x [1 + (.25 x Number of previous violations)]
\$10,000 - 24,999.99	[\$139 + (\$6 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$654 x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	[\$277 + (\$26 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$1176 x [1 + (.25 x Number of previous violations)]
\$50,000 - 74,999.99	[\$417 + (\$105 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$3751 x [1 + (.25 x Number of previous violations)]
\$75,000 - 99,999.99	[\$556 + (\$139 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$4862 x [1 + (.25 x Number of previous violations)]
\$100,000 - 149,999.99	[\$833 + (\$174 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$6252 x [1 + (.25 x Number of previous violations)]

\$150,000 - 199,999.99	$[\$1112 + (\$208 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$7641 \times [1 + (.25 \times \text{Number of previous violations})]$
\$200,000 - 249,999.99	$[\$1389 + (\$243 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9030 \times [1 + (.25 \times \text{Number of previous violations})]$
\$250,000 - 349,999.99	$[\$2084 + (\$277 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,114 \times [1 + (.25 \times \text{Number of previous violations})]$
\$350,000 - 449,999.99	$[\$2779 + (\$277 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$12,503 \times [1 + (.25 \times \text{Number of previous violations})]$
\$450,000 - 549,999.99	$[\$3473 + (\$277 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$13,197 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000 - 649,999.99	$[\$4168 + (\$277 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$13,893 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000 - 749,999.99	$[\$4862 + (\$277 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$14,587 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000 - 849,999.99	$[\$5557 + (\$277 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$15,282 \times [1 + (.25 \times \text{Number of previous violations})]$

	of previous violations)]	violations)]
\$850,000 - 949,999.99	[\$6252 + (\$277 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$15,976 x [1 + (.25 x Number of previous violations)]
\$950,000 or over	[\$6946 + (\$277 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$16,671 x [1 + (.25 x Number of previous violations)]

1 ^{a/}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 ^a	[\$65 + (\$13 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$654 x [1 + (.25 x Number of previous violations)]
\$5,000 - \$9,999.99	[\$131 + (\$13 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$784 x [1 + (.25 x Number of previous violations)]
\$10,000 - 24,999.99	[\$196 + (\$13 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$1176 x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	[\$417 + (\$33 x Number of days	\$1829 x [1 + (.25 x Number

	late)) x [1 + (.25 x Number of previous violations)]	of previous violations)]
\$50,000 - 74,999.99	[\$625 + (\$105 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$4168 x [1 + (.25 x Number of previous violations)]
\$75,000 - 99,999.99	[\$833 + (\$139 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$5557 x [1 + (.25 x Number of previous violations)]
\$100,000 - 149,999.99	[\$1250 + (\$174 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$6946 x [1 + (.25 x Number of previous violations)]
\$150,000 - 199,999.99	[\$1667 + (\$208 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$8335 x [1 + (.25 x Number of previous violations)]
\$200,000 - 249,999.99	[\$2084 + (\$243 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$10,420 x [1 + (.25 x Number of previous violations)]
\$250,000 - 349,999.99	[\$3126 + (\$277 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$12,503 x [1 + (.25 x Number of previous violations)]
\$350,000 - 449,999.99	[\$4168 + (\$277 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$13,893 x [1 + (.25 x Number of previous violations)]

\$450,000 - 549,999.99	$[\$5210 + (\$277 \times \text{Number of days late}) \times [1 + (.25 \times \text{Number of previous violations})]]$	$\$15,282 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000 - 649,999.99	$[\$6252 + (\$277 \times \text{Number of days late}) \times [1 + (.25 \times \text{Number of previous violations})]]$	$\$16,671 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000 - 749,999.99	$[\$7293 + (\$277 \times \text{Number of days late}) \times [1 + (.25 \times \text{Number of previous violations})]]$	$\$18,061 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000 - 849,999.99	$[\$8335 + (\$277 \times \text{Number of days late}) \times [1 + (.25 \times \text{Number of previous violations})]]$	$\$19,449 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000 - 949,999.99	$[\$9378 + (\$277 \times \text{Number of days late}) \times [1 + (.25 \times \text{Number of previous violations})]]$	$\$20,838 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$10,420 + (\$277 \times \text{Number of days late}) \times [1 + (.25 \times \text{Number of previous violations})]]$	$\$22,228 \times [1 + (.25 \times \text{Number of previous violations})]$

1 ^{a/}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 (c) If the respondent fails to file a required report and the Commission cannot
4 calculate the level of activity under paragraph (d) of this section, then the civil
5 money penalty shall be \$7,641.

DRAFT

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2 **§ 111.44 [Amended]**

3 4. Amend paragraph (a)(1) of § 111.44 to remove "\$137" and add, in its place, "\$139".

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On behalf of the Commission,

Steven T. Walther,
Chairman,
Federal Election Commission.

DATED: _____