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##### Background

Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (“FCPIA Act”) (Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (“DCIA”) (Pub. L. 104–134, 110 Stat. 1321–373; 31 U.S.C. 3701 note)), requires each Federal agency with statutory authority to assess civil monetary penalties (“CMPs”) to adjust those CMPs for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments. The DCIA amended the FCPIA Act to require that each agency, to the extent necessary, issue regulations at least every four years to adjust its CMPs for inflation.

Section 5 of the FCPIA Act requires that each CMP having a specified or maximum monetary amount provided for by Federal law be increased by the percentage by which the Consumer Price Index for all urban consumers (“CPI”), published by the Department of Labor, 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. The statute includes a mechanism for rounding penalty increases and limits the first inflation adjustment of a CMP to 10 percent of such penalty.

With regard to rounding, the FCPIA Act sets out penalty ranges, from amounts less than or equal to \$100 to amounts greater than \$200,000, and provides different dollar multiples for rounding the increase in each penalty range. Specifically, section 5(a) of the FCPIA Act requires that any increase in a CMP be rounded to the nearest multiple of:

1. \$10 in the case of penalties less than or equal to \$100;
2. \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
3. \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
4. \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
5. \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and
6. \$25,000 in the case of penalties greater than \$200,000.

OFAC currently is authorized to impose CMPs pursuant to five statutes: The Trading with the Enemy Act (“TWEA”) (50 U.S.C. App. 16); the International Emergency Economics Powers Act (“IEEPA”) (50 U.S.C. 1705); the Iraq Sanctions Act of 1990 (“ISA”) (Pub. L. 101–513, 104 Stat. 2049; 50 U.S.C. 1701 note); the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) (18 U.S.C. 2339B); and the Foreign Narcotics Kingpin Designation Act (“FNKDA”) (21 U.S.C. 1906). The current maximum CMP for each of the first four statutes was last adjusted or set by statute in 1996. The current maximum CMP under the FNKDA was set when the statute was enacted in 1999 and has not yet been adjusted for inflation.

With regard to those CMPs last adjusted or set by statute in 1996, the CPI value increased from 156.7 for June 1996 to 179.9 for June 2002, resulting in an inflation factor of 1.148 (*i.e.*, a 14.8 percent increase). The CMP inflation factor for the FNKDA is 1.082 (*i.e.*, an 8.2 percent increase), calculated using the CPI values of 166.2 for June 1999 and 179.9 for June 2002.

The original maximum CMP of \$50,000 under TWEA was adjusted for inflation to \$55,000 in 1996. Multiplying the current penalty of \$55,000 by the factor of 1.148 results in \$63,140, an increase of \$8,140. When that number is rounded to the nearest multiple of \$5,000, as required by the FCPIA Act, the maximum TWEA-based CMP per violation is increased to the inflation-adjusted amount of \$65,000.

The original maximum CMP of \$10,000 under IEEPA was adjusted for

inflation to \$11,000 in 1996.

Multiplying the current penalty of \$11,000 by the factor of 1.148 results in \$12,628, an increase of \$1,628. When that number is rounded to the nearest multiple of \$5,000, as required by the FCPIA Act, the maximum IEEPA-based CMP per violation remains \$11,000.

The original maximum CMP of \$250,000 under ISA was adjusted for inflation to \$275,000 in 1996. Multiplying the current penalty of \$275,000 by the factor of 1.148 results in \$315,700, an increase of \$40,700. When that number is rounded to the nearest multiple of \$25,000, as required by the FCPIA Act, the maximum ISA-based CMP per violation is increased to the inflation-adjusted amount of \$325,000.

The maximum CMP of \$50,000 under AEDPA was set by statute in 1996 and has not previously been adjusted for inflation. Multiplying the current penalty of \$50,000 by the factor of 1.148 results in \$57,400, an increase of \$7,400. When that number is rounded to the nearest multiple of \$5,000, as required by the FCPIA Act, the maximum AEDPA-based CMP per violation is increased to the inflation-adjusted amount of \$55,000.

The maximum CMP of \$1,000,000 under FNKDA was set by statute in 1999 and has not previously been adjusted for inflation. Multiplying the current penalty of \$1,000,000 by the factor of 1.082 results in \$1,082,000, an increase of \$82,000. When that number is rounded to the nearest multiple of \$25,000, as required by the FCPIA Act, the maximum FNKDA-based CMP per violation is increased to the inflation-adjusted amount of \$1,075,000.

##### Executive Order 12866, Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

Because the regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Additionally, advance notice, public comment, and delayed effectiveness are unnecessary because the regulations merely reflect adjustments in penalty rates required by law and do not substantively alter the existing regulatory framework or in any way affect the terms under which civil penalties are assessed by OFAC. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.