

subject to a court or administrative order as discussed in § 890.301(g)(3) at the time he or she retired may not cancel or suspend his or her enrollment, change to self only, or change to a comprehensive medical plan that does not serve the area where his or her children live after retirement as long as the court or administrative order is still in effect and the annuitant has at least one child identified in the order who is still eligible under the FEHB Program, unless the annuitant provides documentation to the retirement system that he or she has other coverage for the child or children.

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■ 5. In § 890.502 revise the second sentence in paragraph (b)(2) and revise paragraph (b)(4)(ii) to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) * * *

(2) * * * *Exception:* An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) may not elect to terminate his or her enrollment as long as the court/administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child or children. * * *

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(4) * * *

(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage may not terminate. If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Government as discussed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

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PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

■ 6. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 26 U.S.C. 125.

■ 7. Revise § 892.207 to read as follows:

§ 892.207 Can I make changes to my FEHB enrollment while I am participating in premium conversion?

(a) Subject to the exceptions described in paragraphs (b) and (c) of this section, you can make changes to your FEHB enrollment for the same reasons and with the same effective dates listed in § 890.301 of this chapter.

(b) However, if you are participating in premium conversion there are two exceptions: you must have a qualifying life event to change from self and family enrollment to self only enrollment or to drop FEHB coverage entirely. (See § 892.209 and § 892.210.) Your change in enrollment must be consistent with and correspond to your qualifying life event as described in § 892.101. These limitations apply only to changes you may wish to make outside open season.

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, your employing agency can limit a change to your enrollment as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. *See also* § 892.208 and § 892.209.

■ 8. Add a new paragraph (c) to § 892.208 to read as follows:

§ 892.208 Can I change my enrollment from self and family to self only at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you may not change your enrollment to self only as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children. *See also* § 892.207 and § 892.209.

■ 9. Revise paragraph (c) to § 892.209 to read as follows:

§ 892.209 Can I cancel FEHB coverage at any time?

* * * * *

(c) If you are subject to a court or administrative order as discussed in § 890.301(g)(3) of this chapter, you may not cancel your coverage as long as the court or administrative order is still in effect and you have at least one child identified in the order who is still eligible under the FEHB Program, unless you provide documentation to your agency that you have other coverage for your child or children.

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FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. OP-1211]

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT:

Katherine H. Wheatley, Assistant General Counsel (202/452-3779), or Katrina P. Sukduang, Senior Attorney (202/452-3351), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202/263-4869.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 *note* (FCPIA Act), requires each Federal agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every four years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. The Board made its last adjustment in October 2000 (*see* 65 FR 60583).

The required cost-of-living adjustment formula is based on the difference between the Consumer Price Index (CPI) for June of the year preceding the adjustment (in this case, June 2003) and the CPI for June of the year when the CMP was last set or adjusted. To calculate the adjustment, the Board used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982–84 was equal to 100, to get the CPI values.

The calculations performed for the 2004 adjustment consisted of three categories, depending on the year in which the penalty was last set or adjusted. For penalties that changed in 2000, the relevant CPIs were June 2003 (183.7) and June 2000 (172.4), resulting in a CPI increase of 6.6 percent. For

penalties that were last changed in 1996, the relevant CPIs were June 2003 (183.7) and June 1996 (156.7), resulting in a CPI increase of 17.2 percent. Finally, for the one penalty that had not changed since its establishment in 1994, the relevant CPIs were June 2003 (183.7) and June 1994 (148.0), resulting in a CPI increase of 24.1 percent.

Section 5 of the FCPIA Act provides that the adjustment amount must be rounded before adding it to the existing penalty amount. The rounding provision depends on the size of the penalty being adjusted. For example, if the penalty is greater than \$100 but less than or equal to \$1,000, the increase is rounded to the nearest \$100; if it is greater than \$1,000 but less than or equal to \$10,000, the increase is rounded to the nearest \$1,000. Because of this rounding rule, five penalty amounts are not changing at this time. For example, the penalty under 12 U.S.C. 3909(d) prior to the 2004 adjustment was \$1,100. As this penalty was last changed in 1996, the 17.2 percent adjustment would be \$189. Rounding that increase to the nearest \$1,000 results in an increase of \$0. The penalties that are not adjusted at this time because of this rounding formula will be adjusted at the next adjustment cycle to take account of the entire period between the time of their last adjustment (either 1996 or 2000) and the next adjustment date. These unadjusted penalties include the inadvertently late or misleading reports under 12 U.S.C. 324; 12 U.S.C. 1832(c); Tier I penalty of 12 U.S.C. 1847(d), 3110(c); 12 U.S.C. 334, 374a, 1884; and 12 U.S.C. 3909(d).

Because the statute also prohibits initial increases that exceed 10 percent, the penalty for 42 U.S.C. 4012a(f)(5) will increase to only \$385 in 2004. This penalty was initially set at \$350 in 1994, and did not change in either the 1996 or 2000 adjustments. Accordingly, the 24.1 percent CPI increase from 1994 results in \$84, which is rounded to \$100 pursuant to the rounding rules. As that increase would exceed 10 percent, the penalty was adjusted to \$385.

In accordance with section 6 of the FCPIA Act, the increased penalties set forth in this amendment apply only to violations that occur after the date the increase takes effect.

Public Comment Not Required

This rule is not subject to the provisions of 5 U.S.C. 553 requiring notice, public participation, and deferred effective date. The FCPIA Act provides Federal agencies with no discretion in the adjustment of CMPs to the rate of inflation, and it also requires that adjustments be made at least every

four years. Moreover, this regulation is ministerial and technical. For these reasons, the 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(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the **Federal Register**, pursuant to the APA, 5 U.S.C. 553(d).

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601(2). Because the Board has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Lawyers, Penalties.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board of Governors amends 12 CFR part 263 as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p-1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, 78u-2; and 28 U.S.C. 2461 note.

■ 2. Section 263.65 is revised to read as follows:

263.65 Civil penalty inflation adjustments

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of

1990 (28 U.S.C. 2461 note), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraph (b) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and the previously-adjusted amounts adopted as of October 12, 2000 and October 24, 1996. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after the effective date of this rule.

(b) *Maximum civil money penalties.* The maximum civil money penalties as set forth in the referenced statutory sections are as follows:

- (1) 12 U.S.C. 324:
 - (i) Inadvertently late or misleading reports, inter alia—\$2,200.
 - (ii) Other late or misleading reports, inter alia—\$27,000.
 - (iii) Knowingly or recklessly false or misleading reports, inter alia—\$1,250,000.
- (2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(2)(F):
 - (i) First tier—\$6,500.
 - (ii) Second tier—\$32,500.
 - (iii) Third tier—\$1,250,000.
- (3) 12 U.S.C. 1832(c)—\$1,100.
- (4) 12 U.S.C. 1847(b), 3110(a)—\$32,500.
- (5) 12 U.S.C. 1847(d), 3110(c):
 - (i) First tier—\$2,200.
 - (ii) Second tier—\$27,000.
 - (iii) Third tier—\$1,250,000.
- (6) 12 U.S.C. 334, 374a, 1884—\$110.
- (7) 12 U.S.C. 3909(d)—\$1,100.
- (8) 15 U.S.C. 78u-2:
 - (i) 15 U.S.C. 78u-2(b)(1)—\$6,500 for a natural person and \$65,000 for any other person.
 - (ii) 15 U.S.C. 78u-2(b)(2)—\$65,000 for a natural person and \$325,000 for any other person.
 - (iii) 15 U.S.C. 78u-2(b)(3)—\$130,000 for a natural person and \$625,000 for any other person.
- (9) 42 U.S.C. 4012a(f)(5):
 - (i) For each violation—\$385.
 - (ii) For the total amount of penalties assessed under 42 U.S.C. 4012a(f)(5) against an institution or enterprise during any calendar year—\$125,000.

Dated: September 20, 2004.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,
Secretary of the Board.

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