



August 2017

# CIVIL PENALTIES

## Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements

Accessible Version

# GAO Highlights

Highlights of [GAO-17-634](#), a report to congressional committees

## Why GAO Did This Study

The IAA includes a provision for GAO to annually submit to Congress a report assessing the compliance of agencies with the inflation adjustments required by the act. Specifically, GAO's objectives were to determine to what extent federal agencies subject to the IAA have complied with the requirements to (1) publish in the *Federal Register* their initial catch-up inflation adjustments and (2) report in the 2016 AFRs information about civil monetary penalties, including the catch-up inflation adjustment of the civil monetary penalty amounts. GAO obtained the population of 52 federal agencies identified by OMB that could be subject to the applicable provisions of the IAA and, for those subject to the requirements, electronically searched the *Federal Register* and reviewed the 2016 AFRs.

## What GAO Recommends

GAO recommends that (1) six federal agencies take the necessary actions to meet IAA requirements and (2) OMB clarify its guidance regarding federal agencies' reporting on civil monetary penalties in AFRs. Two of the agencies did not comment on their respective recommendations, while the remaining four all indicated that they were taking actions to address the recommendations made to them. OMB generally agreed with the recommendation addressed to it but suggested a revision to use more broad terms. GAO modified the recommendation accordingly to allow OMB flexibility to meet the intent of the recommendation.

View [GAO-17-634](#). For more information, contact J. Lawrence Malenich at (202) 512-9399 or [malenichj@gao.gov](mailto:malenichj@gao.gov).

August 2017

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# Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements

## What GAO Found

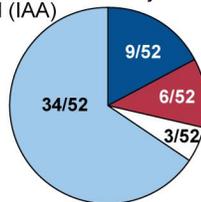
The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (the IAA) calls for federal agencies to (1) adjust civil monetary penalties for inflation with an initial catch-up inflation adjustment published in the *Federal Register* and (2) report in the 2016 agency financial reports (AFR) civil monetary penalty information, including the catch-up inflation adjustment. The act also requires the Office of Management and Budget (OMB) to issue implementation guidance.

Most federal agencies subject to the IAA complied with the provisions of the act to publish their initial catch-up inflation adjustments in the *Federal Register* no later than July 1, 2016. However, certain federal agencies with civil monetary penalties covered by the IAA did not comply with the statutory requirement. GAO found that six federal agencies did not publish their civil monetary penalty initial catch-up inflation adjustment amounts by December 31, 2016. As a result of GAO inquiries, three of these six subsequently published their catch-up adjustments for inflation in the *Federal Register*.

In addition, most federal agencies subject to the IAA complied with the provisions of the act to report civil monetary penalty information in the 2016 AFRs, including the catch-up inflation adjustment. However, certain federal agencies with civil monetary penalties covered by the IAA did not comply with the statutory requirements. Specifically, three federal agencies did not report, in the 2016 AFRs, required information about the civil monetary penalty catch-up inflation adjustment in the 2016 AFRs.

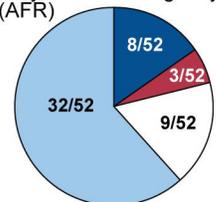
### Agency Compliance with Inflation Adjustment Requirements for Civil Monetary Penalties

Number of agencies that published civil monetary penalty initial catch-up inflation adjustments per the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (IAA)



- Agency published adjustments by the July 1, 2016, deadline required by the IAA
- Agency published adjustments after the July 1, 2016, and by December 31, 2016
- Agency did not publish adjustments as of December 31, 2016
- Agency determined that it was not subject to the IAA provision or determined that it had no civil monetary penalties to enforce

Number of agencies that reported civil monetary penalty information, including catch-up inflation adjustments in agency financial reports (AFR)



- Agency reported required information in its 2016 AFR
- Agency did not report required information in its 2016 AFR because of interpretation of OMB guidance
- Agency did not report required information in 2016 AFR
- Agency was not subject to reporting requirement

Source: GAO analysis. | GAO-17-634

GAO also found that OMB had not provided clear guidance regarding federal agencies' reporting on civil monetary penalty information in the AFRs. As a result, officials from federal agencies had different interpretations, which could result in inconsistent AFR reporting of such information.

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**Abbreviations**

1990 Act	Federal Civil Penalties Inflation Adjustment Act of 1990
2015 Act	Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015
AFR	agency financial report
CFPB	Consumer Financial Protection Bureau
CNCS	Corporation for National and Community Service
DCIA	Debt Collection Improvement Act
DHS	Department of Homeland Security
DOI	Department of the Interior
DOL	Department of Labor
DOT	Department of Transportation
FCA	Farm Credit Administration
FCSIC	Farm Credit System Insurance Corporation
FDIC	Federal Deposit Insurance Corporation
FEC	Federal Election Commission

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FHFA	Federal Housing Finance Agency
FMC	Federal Maritime Commission
FRB	Federal Reserve Board
GSA	General Services Administration
HUD	Department of Housing and Urban Development
IFR	interim final rulemaking
Inflation Adjustment Act	Federal Civil Penalties Inflation Adjustment Act of 1990, as amended
ITC	International Trade Commission
MSPB	Merit Systems Protection Board
NASA	National Aeronautics and Space Administration
NEA	National Endowment for the Arts
NIGC	National Indian Gaming Commission
NTSB	National Transportation Safety Board
OGE	Office of Government Ethics
OMB	Office of Management and Budget
PAR	performance and accountability report
PBGC	Pension Benefit Guaranty Corporation
PRC	Postal Regulatory Commission
RRB	Railroad Retirement Board
STB	Surface Transportation Board
TVA	Tennessee Valley Authority
USDA	U.S. Department of Agriculture
USPS	U.S. Postal Service

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August 31, 2017

The Honorable Charles E. Grassley  
Chairman  
The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable Robert W. Goodlatte  
Chairman  
The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
House of Representatives

Civil monetary penalties are a key method of regulatory enforcement, providing federal agencies authority to punish violators and serving as a deterrent to future violations.<sup>1</sup> Civil monetary penalties prescribed by statute, which includes maximum penalties and specific monetary amounts that are timely adjusted for inflation, allow agencies to punish willful and egregious violators appropriately. However, civil monetary penalties can lose their effectiveness to punish and deter if they are not timely adjusted for inflation.

In 2016, federal agencies assessed and collected millions of dollars in civil monetary penalties for violations of statutory requirements, such as opening deposit accounts and issuing and activating debit cards without

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<sup>1</sup>The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), as amended, defines a civil monetary penalty as any penalty, fine, or other sanction that is (1) for a specific monetary amount, or has a maximum amount, as provided by federal law; (2) assessed or enforced by an agency pursuant to federal law; and (3) assessed or enforced by an agency in an administrative proceeding or a civil action in the federal courts. The 1990 Act, Pub. L. No. 101-410, 104 Stat. 890 (Oct. 5, 1990). Civil monetary penalties inflation adjustment requirements were established in the 1990 Act, as amended by the Debt Collection Improvement Act (DCIA), Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (Apr. 26, 1996), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Pub. L. No. 114-74, title VII, § 701, 129 Stat. 584, 599-601 (Nov. 2, 2015) (the 1990 Act, as amended, is hereinafter referred to as the Inflation Adjustment Act). The Inflation Adjustment Act is codified as amended at 28 U.S.C. § 2461 note.

consumers' authorization. Congress generally establishes specific monetary amounts or maximums for civil monetary penalties in statutes, and those maximum penalties are generally reserved for the worst violations of a particular statutory requirement.

In 1996, Congress amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act) to require agencies to adjust covered civil monetary penalties established in statute for inflation.<sup>2</sup> In 2003, we assessed federal agencies' implementation of the 1990 Act, as amended by the Debt Collection Improvement Act (DCIA), and found that several provisions in the act prevented some agencies from fully adjusting their penalties for inflation, including a cap on initial adjustments and exemptions of certain penalties from adjustments.<sup>3</sup> Subsequently, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 was enacted, further amending the 1990 Act.<sup>4</sup> The statute as amended (Inflation Adjustment Act) requires (1) covered agencies to adjust civil monetary penalties for inflation through an initial catch-up adjustment and annually thereafter; (2) agencies to include in the annual agency financial reports (AFR), submitted under Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*, information about the civil monetary penalties within the agencies' jurisdiction, including catch-up inflation adjustment of the civil monetary penalty amounts; (3) OMB to issue guidance to federal agencies for implementing inflation adjustments; and (4) GAO to annually submit to Congress a report assessing federal agencies' compliance with the required adjustments for inflation.

Specifically, our objectives were to determine to what extent federal agencies, subject to the Inflation Adjustment Act, complied with the requirements to (1) publish in the *Federal Register* their initial catch-up inflation adjustments and (2) report in the 2016 AFRs information about the civil monetary penalties within the agencies' jurisdiction, including the catch-up inflation adjustment of the civil monetary penalty amounts, consistent with OMB guidance.

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<sup>2</sup>The 1990 Act, as amended by DCIA, § 31001(s)(1), 110 Stat. 1321–373.

<sup>3</sup>GAO, *Civil Penalties: Agencies Unable to Fully Adjust Penalties for Inflation Under Current Law*, [GAO-03-409](#) (Washington, D.C.: Mar. 14, 2003).

<sup>4</sup>Pub. L. No. 114-74, title VII, § 701, 129 Stat. 584, 599-601 (Nov. 2, 2015), *codified* at 28 U.S.C. § 2461 note.

To address our objectives, we reviewed federal agencies' documents published in the *Federal Register* and the AFRs<sup>5</sup> to determine whether the agencies adjusted and reported their civil monetary penalty information in compliance with the Inflation Adjustment Act and consistent with OMB guidance.<sup>6</sup> We met with OMB staff and made inquiries of selected agencies' staff regarding the agencies' compliance with the Inflation Adjustment Act. We reviewed OMB's summary list of the 52 federal agencies that could be subject to the applicable provisions of the Inflation Adjustment Act,<sup>7</sup> agencies' publications in the *Federal Register* from 2012 through 2016, and the agencies' 2016 AFRs to determine whether the agencies reported their civil monetary penalty information in compliance with the Inflation Adjustment Act and consistent with OMB guidance.

We conducted this performance audit from December 2016 to August 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I provides additional information on our objectives, scope, and methodology.

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## Background

Prior to 1996, agencies generally did not have the authority to adjust civil monetary penalty maximums that were established in statute. Congress would occasionally adjust individual penalties or specific groups of penalties through various statutes but not all civil penalties. As a result, many penalties had not been changed for decades. When the Federal

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<sup>5</sup>Agencies may choose either to produce a separate AFR or a consolidated performance and accountability report (PAR) under OMB Circular No. A-136. For the purposes of this report, the term "AFR" refers to an agency's AFR or PAR, as applicable.

<sup>6</sup>We did not attempt to verify the accuracy of federal agencies' reported civil monetary penalty information published in the *Federal Register* or the AFRs.

<sup>7</sup>This OMB summary list identified federal agencies with civil monetary penalty authority that could be subject to the provisions of the Inflation Adjustment Act. Because there is no current comprehensive database that identifies each agency with civil monetary penalty authority subject to the provisions of the Inflation Adjustment Act, we cannot be sure that we have identified all of the agencies or penalties covered by the act.

Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act) was enacted, Congress noted in the “Findings” section of the legislation that inflation had weakened the deterrent effect of many civil monetary penalties. The stated purpose of the 1990 Act was “to establish a mechanism that shall (1) allow for regular adjustments for inflation of civil monetary penalties; (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and (3) improve the collection by the federal government of civil monetary penalties.” However, the act did not give agencies the authority to adjust their civil monetary penalties for inflation.

In 1996, Congress enacted section 31001(s)(1) of DCIA, amending the 1990 Act to require agencies to issue regulations adjusting their covered penalties for inflation.<sup>8</sup> The 1990 Act as amended by DCIA required agencies with covered penalties to adjust them by regulation published in the *Federal Register* by October 23, 1996, and at least once every 4 years thereafter. The 1996 Inflation Adjustment Act amendment limited the first such adjustment to 10 percent of the penalty amount. It required specific calculation and rounding procedures to be followed and excluded penalties under certain statutes (e.g., the Occupational Safety and Health Act of 1970, the Social Security Act, the Internal Revenue Code of 1986, and the Tariff Act of 1930).<sup>9</sup> However, as we reported in March 2003, the 10 percent cap on initial adjustments prevented some agencies from fully adjusting for inflation in the hundreds of percentages since last set or adjusted by Congress.<sup>10</sup>

The 1990 Act was further amended in 2015 to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Specifically, the Inflation Adjustment Act requires:<sup>11</sup>

1. agencies to adjust each civil monetary penalty with an initial catch-up adjustment through an interim final rulemaking (IFR) in the *Federal*

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<sup>8</sup>See the 1990 Act, as amended by DCIA, § 31001(s)(1), which added the requirement for agencies to adjust their civil monetary penalties by regulation.

<sup>9</sup>Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321–373.

<sup>10</sup>[GAO-03-409](#).

<sup>11</sup>Under the amended act, the penalties under the Occupational Safety and Health Act of 1970 and the Social Security Act are now subject to the inflation adjustment requirements, whereas those under the Internal Revenue Code of 1986 and the Tariff Act of 1930 remain excluded from coverage.

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*Register*, no later than July 1, 2016, and to take effect no later than August 1, 2016;<sup>12</sup>

2. agencies to include in the annual AFRs, submitted under OMB Circular A-136, *Financial Reporting Requirements*, information about the civil monetary penalties within the agencies' jurisdiction, including the inflation adjustment of the civil monetary penalty amounts; and
3. OMB to issue guidance to agencies for implementing the inflation adjustments.

In response to the Inflation Adjustment Act, in February 2016, OMB issued OMB Memorandum M-16-06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*, for agencies implementing the civil monetary penalty inflation adjustment requirements of the Inflation Adjustment Act and, in October 2016, revised OMB Circular A-136 to include guidance to federal agencies for including inflation adjustments in annual financial reporting.

Consistent with OMB guidance for implementing inflation adjustments, federal agencies are responsible for identifying the civil monetary penalties that fall under the statutes and regulations they enforce. Agencies with questions on the applicability of the inflation adjustment requirement to an individual penalty should first consult with their offices of general counsel and then seek clarifying guidance from OMB if necessary. In addition, agencies may request OMB concurrence that they be allowed to adjust the amount of a civil monetary penalty by less than the amount required under the Inflation Adjustment Act (a reduced catch-up adjustment determination), if they demonstrate that the otherwise required increase of the penalty or penalty range would have a negative economic effect or that the social costs would outweigh the benefits. Consistent with the Inflation Adjustment Act, agencies should consult with OMB before proposing a reduced catch-up adjustment determination. We confirmed with OMB that it did not receive any requests from agencies to be allowed to adjust the amount of a civil monetary penalty by less than the required amount in 2016.

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<sup>12</sup>The Inflation Adjustment Act requires federal agencies to make annual adjustments for inflation no later than January 15, beginning in 2017. In December 2016, OMB issued OMB Memorandum M-17-11, *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties inflation Adjustment Act Improvements Act of 2015*.

## Six Federal Agencies Did Not Publish Initial Catch-up Inflation Adjustments through IFRs in the *Federal Register* as of December 31, 2016

Of the 52 federal agencies reviewed, we determined that 49 federal agencies were required to publish IFRs with the initial catch-up inflation adjustment amounts in the *Federal Register*. We excluded three agencies—the International Trade Commission and Postal Regulatory Commission based on their determination that they are not subject to the Inflation Adjustment Act provisions, and the Tennessee Valley Authority based on its determination that it currently has no civil monetary penalties to assess or enforce.

We found that 34 of the 49 federal agencies subject to the Inflation Adjustment Act published IFRs with the initial catch-up inflation adjustment amounts in the *Federal Register* by the July 1, 2016, deadline. In addition, 9 of the 15 remaining agencies made the required publication after the July 1, 2016, deadline set by the Inflation Adjustment Act and by December 31, 2016. The remaining 6 agencies had not made the required publication as of December 31, 2016.

Because of the complex nature of the initial catch-up inflation adjustments, OMB staff from the Office of Federal Financial Management, and the Labor Branch emphasized to us that its preference was for federal agencies to take the necessary time to publish accurate and complete initial catch-up inflation adjustments through IFRs, even if agencies were not able to meet the Inflation Adjustment Act publication deadline. In light of the challenges agencies faced in publishing on time and their efforts to publish accurate and complete initial catch-up adjustments, we are reporting on agencies that published these adjustments as of December 31, 2016; however, we do not consider these agencies to be in compliance with the July 1, 2016, deadline set by the Inflation Adjustment Act.

The remaining 6 agencies subject to the Inflation Adjustment Act that did not publish IFRs with the initial catch-up inflation adjustment amounts by December 31, 2016, in the *Federal Register* were the

1. Merit Systems Protection Board (MSPB),
2. National Aeronautics and Space Administration (NASA),

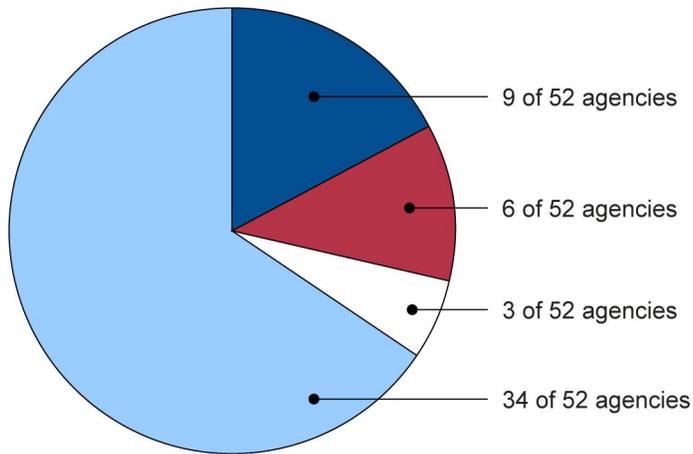
3. National Endowment for the Arts (NEA),
4. General Services Administration (GSA),
5. National Transportation Safety Board (NTSB), and
6. U.S. Department of Agriculture (USDA).

As a result of our inquiries, 3 of these federal agencies, MSPB, NASA, and NEA, subsequently published their initial catch-up inflation adjustment amounts in the *Federal Register* in June 2017. GSA officials told us that GSA had difficulties coordinating internally to timely submit its IFR and that, as of July 31, 2017, the projected timeframe to publish the initial catch-up inflation adjustment amounts in the *Federal Register* is within the next 90 days. In addition, NTSB officials stated that although NTSB has the statutory authority to assess civil penalties for violations, it has never sought to impose civil penalties. Thus, NTSB originally determined that it did not have to publish an initial catch-up inflation adjustment. However, as a result of our inquiries, NTSB officials told us that NTSB now plans to publish its initial catch-up inflation adjustment amounts in October 2017. USDA officials stated that USDA is in the process of preparing and reviewing a draft rulemaking and plans to begin its clearance process to submit an initial catch-up inflation adjustment rulemaking for publication in the *Federal Register* in 2017.

Although GSA, NTSB, and USDA state that they plan to publish catch-up inflation adjustments in the *Federal Register*, it has now been over a year since the July 1, 2016, publication deadline set by the Inflation Adjustment Act. Without timely adjustments of their civil monetary penalties, there is an increased risk that agencies' civil monetary penalties are not keeping pace with inflation. Civil monetary penalties are a key method of regulatory enforcement, providing federal agencies authority to punish violators and serving as a deterrent to future violations. Civil monetary penalties can lose their ability to punish willful and egregious violators appropriately and to serve and protect the public as a deterrent to future violations if not timely adjusted for inflation.

Figure 1 summarizes the status as of December 31, 2016, of the publication of the initial catch-up inflation adjustments for civil monetary penalties for the 52 federal agencies that we reviewed. Further details of each federal agency's status are provided in appendix II.

**Figure 1: Federal Agencies' Publication of Initial Catch-up Inflation Adjustments for Civil Monetary Penalties, as of December 31, 2016**



- The agency published initial catch-up inflation adjustments for fiscal year 2016 through IFR(s) in the *Federal Register*, by the July 1, 2016, deadline in the Inflation Adjustment Act.
- The agency published initial catch-up inflation adjustments for fiscal year 2016 through IFR(s) in the *Federal Register*, however, its IFR publication date was after the July 1, 2016, deadline in the Inflation Adjustment Act and by December 31, 2016.
- The agency did not publish initial catch-up inflation adjustments for fiscal year 2016 through IFR(s), in the *Federal Register*, as of December 31, 2016.
- The agency determined that it was not subject to the Inflation Adjustment Act provision or determined that it had no civil monetary penalties to enforce.

IFR: interim final rulemaking

Inflation Adjustment Act: Federal Civil Penalties Inflation Adjustment Act of 1990, as amended

Source: GAO analysis of the Office of Management and Budget's data and individual agencies' *Federal Register* publications. | GAO-17-634

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## Three Federal Agencies Did Not Report Civil Monetary Penalty Information, Including the Catch-up Inflation Adjustment of the Civil Monetary Penalty Amounts, in 2016 AFRs

Under the Inflation Adjustment Act and OMB Circular A-136, section II.5.11, Civil Monetary Penalty Adjustment for Inflation, federal agencies are directed to report in the 2016 AFRs information about the civil monetary penalties within agencies' jurisdiction, including the catch-up inflation adjustment of the civil monetary penalty amounts, and federal agencies must report this information if the agencies, or their subbureaus or divisions, enforce any civil monetary penalties.<sup>13</sup>

Of the 52 federal agencies that we reviewed, we found that 9 agencies are not subject to the requirements to report civil monetary penalties information in the AFR.<sup>14</sup> Of the remaining 43 agencies, we found that 32 agencies reported information in the 2016 AFRs about their civil monetary penalties, including the catch-up inflation adjustment of the civil monetary penalty amounts, as directed by OMB guidance. The other 11 federal agencies did not report civil monetary penalty catch-up inflation adjustment information in the 2016 AFRs, as required by the Inflation Adjustment Act and consistent with OMB guidance.

Officials from 8 of the 11 federal agencies told us that although their agencies had the authority to assess or enforce penalties within their jurisdictions, they had not actually assessed or enforced any civil monetary penalties during the reporting period. Some of these officials indicated that they interpreted the terms "assess" and "enforce" in the implementing guidance, and "enforce" in the reporting guidance, to mean that they imposed a civil monetary penalty. Therefore, they took the position that their agencies did not need to report civil monetary penalties

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<sup>13</sup>We defined an "agency" to be each organizational unit that was separately listed in OMB's summary of reported agencies.

<sup>14</sup>We excluded these nine agencies from further review because (1) four agencies met the definition of a "government corporation" and OMB Circular A-136 does not require government corporations to report civil monetary penalty information in the AFRs and (2) the remaining five agencies told us that they were not subject to reporting civil monetary penalty information in the AFRs for various other reasons, such as exemptions provided in other statutes. See app. III for additional details.

information in the 2016 AFRs because they did not impose any civil monetary penalties during the reporting period.<sup>15</sup> However, as a result of our inquiries, other agencies informed us that they plan to report civil monetary penalty information in the 2017 AFRs despite not having imposed civil monetary penalties during the reporting period. OMB staff stated that it is the agencies' responsibility to determine whether they "assessed" or "enforced" civil monetary penalties. The standards for internal control in the federal government state that the agency's management should externally communicate the necessary quality information to achieve its objectives.<sup>16</sup> In addition, the Inflation Adjustment Act requires that the Director of OMB issue guidance to federal agencies on implementing the inflation adjustments required under the act. With clarified OMB guidance, the risk of agencies' inconsistent AFR reporting of civil monetary penalty adjustment information would be reduced.

The remaining 3 federal agencies—the Federal Election Commission (FEC), Federal Maritime Commission (FMC), and National Indian Gaming Commission (NIGC)—did not report in the 2016 AFRs information about the civil monetary penalties, including the catch-up inflation adjustment of the civil monetary penalty amounts. Officials from FEC, FMC, and NIGC indicated that they inadvertently omitted the information on civil monetary penalty adjustments in the 2016 AFRs and that they should have reported civil monetary penalty information. All three agencies informed us that they plan to report the required civil monetary penalty information in the annual AFRs, starting with fiscal year 2017.

Without timely and complete reporting of civil monetary penalty information in the AFRs, OMB and other decision makers may not have the information needed to help ensure the effectiveness of civil monetary penalties in enforcing statutes and preventing violations. Accordingly, it is important that agencies report such information in the AFRs.

Figure 2 summarizes the status of reporting civil monetary penalties information in the AFRs of the 52 federal agencies that we reviewed for fiscal or calendar year 2016 (as applicable, as agencies may have

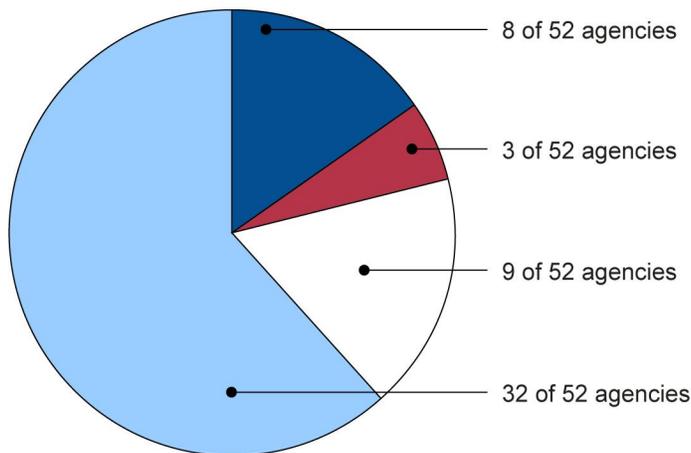
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<sup>15</sup>The term enforce was referenced in OMB Circular A-136 with regard to the agencies' AFR reporting. The terms assess and enforce were referenced in OMB Memorandum M-16-06 with regard to how OMB directs agencies to identify their respective applicable civil monetary penalties within the agencies' jurisdiction.

<sup>16</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

different year-end reporting dates). Further details of each federal agency's reporting status are provided in appendix III.

**Figure 2: Federal Agencies' Reporting of Civil Monetary Penalty Information, Including the Catch-up Inflation Adjustment of the Civil Monetary Penalty Amounts, in AFRs, Fiscal or Calendar Year 2016**



- The agency reported required information in its 2016 AFR.
- The agency did not report civil monetary penalty information in its 2016 AFR. The agency took the position that it did not need to report the information because it did not impose any civil monetary penalties during the reporting period.
- The agency did not report required civil monetary penalty information in its 2016 AFR.
- The agency was not subject to reporting the civil monetary penalty inflation adjustments in the AFR.

AFR: agency financial report

Source: GAO analysis of the Office of Management and Budget's data and individual agencies' fiscal or calendar year 2016 AFRs. | GAO-17-634

## Conclusions

Civil monetary penalties prescribed by statute that are timely adjusted for inflation allow agencies to punish violators appropriately and serve as a deterrent to future violations. While most federal agencies subject to the Inflation Adjustment Act have followed the act's requirements and OMB's guidance, some agencies did not timely publish their civil monetary penalty catch-up inflation adjustments in the *Federal Register* or report their civil monetary penalty information in the 2016 AFRs. Specifically, three federal agencies have taken more than a year since the publication deadline set by the Inflation Adjustment Act to publish inflation catch-up adjustments in the *Federal Register*, and three other federal agencies have not yet reported civil monetary penalty information in the AFRs. In

addition, agencies had differing interpretations of OMB's guidance related to civil monetary penalty inflation adjustment implementation that could result in inconsistent AFR reporting of civil monetary penalty adjustment information. Without timely adjustments of their civil monetary penalty amounts and their publication in the *Federal Register*, there is an increased risk that agencies' civil monetary penalties are not keeping pace with inflation. In addition, without timely and complete reporting of their civil monetary penalties in AFRs, decision makers may not have the information needed to help ensure the effectiveness of civil monetary penalties in enforcing statutes and preventing violations.

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## Recommendations for Executive Action

To help ensure that agencies' civil monetary penalties are adjusted timely and keep pace with inflation, we are making the following three recommendations.

1. The Acting Administrator of the General Services Administration (GSA) should publish the initial catch-up inflation adjustment in the *Federal Register*.
2. The Acting Chairman of the National Transportation Safety Board (NTSB) should publish the initial catch-up inflation adjustment in the *Federal Register*.
3. The Secretary of Agriculture (USDA) should publish the initial catch-up inflation adjustment in the *Federal Register*.

To help ensure timely and complete reporting of agencies' civil monetary penalty information in agency financial reports (AFR) and to provide the Office of Management and Budget (OMB) and other decision makers with the information needed to help ensure the effectiveness of civil monetary penalties in enforcing statutes and preventing violations, we are making the following four recommendations.

4. The Chairman of the Federal Election Commission (FEC) should publish civil monetary penalties within its jurisdiction, including any penalty adjustments, in FEC's 2017 AFR.
5. The Acting Chairman of the Federal Maritime Commission (FMC) should publish civil monetary penalties within its jurisdiction, including any penalty adjustments, in FMC's 2017 AFR.
6. The Chairman of the National Indian Gaming Commission (NIGC) should publish civil monetary penalties within its jurisdiction, including

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any penalty adjustments, in the Department of the Interior's 2017 AFR.

7. The Director of OMB should clarify its guidance related to civil monetary penalty inflation adjustment information that agencies are required to report in the AFRs.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the six federal agencies to which we directed recommendations—FEC, FMC, GSA, NIGC, NTSB, and USDA—and to OMB. FMC, GSA, and NIGC provided written comments, which are reprinted in appendixes IV through VI, respectively.

- FMC neither agreed nor disagreed with our recommendation, but stated that FMC plans to publish updates to its civil monetary penalty information in its 2017 performance and accountability report.
- GSA agreed with our recommendation and stated that it is developing a comprehensive plan to address it.
- NIGC generally agreed with our findings and recommendations and provided a technical comment, which we incorporated as appropriate.

Officials from FEC, NTSB, and USDA provided e-mail responses to our draft report.

- The Director of Congressional, Legislative and Intergovernmental Affairs at FEC stated in an e-mail that FEC had no comments.
- In an e-mail, the Governmental Affairs Liaison at NTSB neither agreed nor disagreed with our recommendation, but stated that NTSB plans to publish the initial catch-up inflation adjustment in October 2017, which we incorporated in the report.
- The Attorney-Advisor in the Office of General Counsel at USDA stated in an e-mail that USDA did not have any comments.

OMB staff from the Office of Federal Financial Management, the Labor Branch, and General Counsel met with us to provide oral comments. OMB staff generally agreed with our recommendation; however, they suggested that we revise the recommendation to use more broad terms. We agreed with this suggestion and modified the report accordingly to allow OMB more flexibility to meet the intent of our recommendation.

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OMB staff also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Chairman of the Federal Election Commission, the Acting Chairman of the Federal Maritime Commission, the Acting Administrator of the General Services Administration, the Chairman of the National Indian Gaming Commission, the Acting Chairman of the National Transportation Safety Board, the Secretary of Agriculture, the Director of the Office of Management and Budget, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9399 or [malenichj@gao.gov](mailto:malenichj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VII.



J. Lawrence Malenich  
Director  
Financial Management and Assurance

# Appendix I: Objectives, Scope, and Methodology

This report addresses to what extent federal agencies subject to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act), have complied with the requirement to (1) publish their initial catch-up inflation adjustments in the *Federal Register* and (2) report in the 2016 agency financial reports (AFR) information about the civil monetary penalties within the agencies' jurisdiction, including the inflation adjustment of the penalty amounts, as directed by the Office of Management and Budget's (OMB) guidance.<sup>1</sup>

To address our first objective, we obtained the population of 52 federal agencies that could be subject to the applicable provisions of the Inflation Adjustment Act from OMB's summary list.<sup>2</sup> To assess the completeness of the population of the federal agencies identified by OMB,<sup>3</sup> we compared OMB's summary with GAO's previously identified list of federal agencies reporting civil monetary penalties.<sup>4</sup> We performed a broader electronic search in the *Federal Register* to identify any other federal agencies that published civil monetary penalty information from January 1, 2012, through December 31, 2016.<sup>5</sup> Of the 52 federal agencies identified by OMB, we excluded three federal agencies—the International Trade Commission, Postal Regulatory Commission, and the Tennessee

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<sup>1</sup>See 28 U.S.C. § 2461 Note, Sec. 7.

<sup>2</sup>We defined an "agency" to be each organizational unit that was separately listed in OMB's summary of reported agencies.

<sup>3</sup>This OMB summary list identified federal agencies with civil monetary penalty authority that could be subject to the provisions of the Inflation Adjustment Act.

<sup>4</sup>GAO, *Civil Penalties: Agencies Unable to Fully Adjust Penalties for Inflation Under Current Law*, [GAO-03-409](#) (Washington, D.C.: Mar. 14, 2003).

<sup>5</sup>Because the 1990 Act, as amended by the Debt Collection Improvement Act, required agencies to make the adjustments every 4 years, we set the date range beginning in the year 2012, to cover the last 4-year period agencies should have made their inflation adjustments before the 2015 Act was enacted. We set the date range ending on December 31, 2016, to determine whether any agencies published their interim final rulemakings in the *Federal Register* later than the July 1, 2016, publication deadline set by the 2015 Act, but within the calendar year 2016.

Valley Authority (TVA)—based on their determinations about the applicability of the Inflation Adjustment Act to their agencies. For the remaining 49 federal agencies, we electronically searched the *Federal Register* to determine whether the required interim final rulemakings (IFR) with civil monetary penalties, including catch-up inflation adjustments, were published from February 24, 2016 (issuance date of the OMB implementation guidance for fiscal year 2016), through August 1, 2016 (effective date established in the Inflation Adjustment Act for the new penalty levels).

We conducted meetings with OMB staff from the Office of Information and Regulatory Affairs, the Office of Federal Financial Management, and the Labor Branch to gather information on federal agencies' activities and reporting in compliance with the Inflation Adjustment Act and in accordance with OMB guidance. We categorized federal agencies for our first objective by determining (1) whether the agency complied with the Inflation Adjustment Act to publish its initial catch-up inflation adjustments by July 1, 2016, and to take effect no later than August 1, 2016; (2) whether the agency published its initial catch-up inflation adjustments in calendar year 2016 (i.e., no later than December 31, 2016);<sup>6</sup> (3) whether the agency is subject to the catch-up adjustment provisions of the Inflation Adjustment Act; and (4) whether the agency had applicable civil monetary penalties to assess or enforce.

Some agencies stated that they were not required to publish any catch-up inflation adjustment of the civil monetary penalty amounts through an IFR because (1) they were not subject to the catch-up adjustment provisions of the Inflation Adjustment Act, (2) the authority under which they assess and enforce civil monetary penalties was expressly excluded by the act, or (3) they determined that they had no applicable civil monetary penalties under the act. We relied on the agencies' determinations regarding applicability and did not independently verify the information they provided. Also, we followed up with agencies that had not published their initial catch-up inflation adjustments through IFRs in the *Federal Register*. We contacted the appropriate officials within these agencies for explanations as to why their agencies did not publish the required IFRs

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<sup>6</sup>In light of the challenges agencies faced in publishing on time and their efforts to publish accurate and complete initial catch-up adjustments, we are reporting on agencies that published these adjustments as of December 31, 2016; however, we do not consider those that published IFRs after July 1, 2016, and by December 31, 2016, to be in compliance with the July 1, 2016, deadline set by the Inflation Adjustment Act.

with civil monetary penalty catch-up inflation adjustments and whether they believed that their agencies should have published the IFRs with this information.

To address our second objective, we reviewed the 2016 AFRs of the 52 federal agencies identified by OMB staff to determine whether the information presented was in compliance with provisions of the Inflation Adjustment Act and consistent with the guidance in OMB Circular A-136, *Financial Reporting Requirements*. We conducted meetings with OMB staff and discussed the various formats agencies used to present the civil monetary penalty inflation adjustment information. OMB staff explained to us that their emphasis was on federal agencies reporting accurate and complete inflation adjustment information rather than strictly following the format in OMB Circular A-136. Further, OMB staff considered the civil monetary penalty inflation adjustment information table in OMB Circular A-136 only to be used as an illustrative example by federal agencies to facilitate their AFR reporting. Therefore, we considered agencies that reported civil monetary penalties, including catch-up inflation adjustment of the civil monetary penalty amounts, as being in compliance with the act, even if they did not strictly follow the OMB Circular A-136 table format example.

Of the 52 federal agencies identified by OMB, we determined that certain agencies were not required to follow OMB Circular A-136 AFR reporting guidance. For example, we identified agencies established as government corporations (e.g., Corporation for National and Community Service, Federal Deposit Insurance Corporation, Pension Benefit Guaranty Corporation, and TVA) that were not required by OMB Circular A-136 to report civil monetary penalty information in the AFRs. Officials at the U.S. Postal Service, Consumer Financial Protection Bureau, Federal Reserve Board, International Trade Commission, and Postal Regulatory Commission stated that pursuant to certain laws or regulations, their agencies have determined that they are not required to report civil monetary penalty information in the AFRs. In total, we found 9 federal agencies that were not applicable for our analysis of the AFRs. For the remaining 43 federal agencies, we reviewed the agencies' 2016 AFRs to review civil monetary penalty inflation adjustment information.

The Inflation Adjustment Act requires agencies to include in the AFRs submitted under OMB Circular A-136 information about the civil monetary penalties within the agencies' jurisdiction, including the inflation adjustment of civil monetary penalty amounts. OMB Circular A-136 states that agencies' AFRs must include a Civil Monetary Penalty Adjustment for

Inflation section “if there is a civil monetary penalty enforced by the agency, subbureau, or division.” Further, according to OMB Memorandum M-16-06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*, “a civil monetary penalty is any monetary assessment levied for a violation of a Federal civil statute or regulation, assessed or enforceable through a civil action in Federal court or an administrative proceeding.” We identified 8 federal agencies that stated that they did not impose a civil monetary penalty during the 2016 AFR reporting period. Based on our inquiries with OMB staff and responses from these 8 federal agencies, some agencies interpreted OMB’s reporting requirements as applying only to those federal agencies that have assessed or enforced civil monetary penalties during the reporting periods. The selected federal agencies’ staff confirmed to us that their agencies did not report the civil monetary penalty adjustment for inflation information in the 2016 AFRs because their agencies did not assess or enforce any civil monetary penalties during the 2016 AFR reporting period, as defined in the OMB Circular A-136 and OMB Memorandum M-16-06 guidance. As a result, we did not make any determination on these 8 federal agencies regarding compliance with the AFR reporting requirement provisions of the Inflation Adjustment Act.

Additionally, we inquired with officials at federal agencies that had not reported the civil monetary penalties information in the AFRs consistent with OMB guidance. We contacted the appropriate official for explanations as to why their agencies did not report civil monetary penalties information, including the inflation adjustment of the penalty amounts, as directed by OMB guidance, and whether they believed their agencies should have reported such information in the agencies’ AFRs.

We focused our review on the extent to which agencies followed the IFR publication and the AFR reporting requirements of the Inflation Adjustment Act. We did not attempt to verify whether a penalty adjusted for inflation by an agency appropriately met the definition of a covered civil monetary penalty in the Inflation Adjustment Act or that the adjustment was the correct amount.

We conducted this performance audit from December 2016 to August 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Status of Agencies' Publishing of Required Civil Monetary Penalty Information

Table 1 summarizes the status for the interim final rulemaking (IFR) requirement of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act), for each agency as of December 31, 2016, provided in the Office of Management and Budget's summary list of 52 federal agencies that could be subject to the applicable provisions of the Inflation Adjustment Act.

**Table 1: Agencies' Publication of Civil Monetary Penalty Catch-up Inflation Adjustments through an Interim Final Rulemaking (IFR) in the *Federal Register*, as of December 31, 2016**

Agency	Published an IFR by July 1, 2016, with an effective date	Published an IFR after July 1, 2016, and by December 31, 2016	Remarks
1. Commodity Futures Trading Commission	✓		
2. Consumer Financial Protection Bureau	✓		
3. Corporation for National and Community Service	✓		
4. Department of Agriculture (USDA)	X	X	USDA officials stated that USDA has been working with the Office of Management and Budget (OMB) to publish its initial catch-up adjustment for inflation through an IFR in the <i>Federal Register</i> since August 2016 and expects to finalize the publication in 2017.
5. Department of Commerce	✓		
6. Department of Defense	✓		
7. Department of Education	X	✓	Publication date: August 1, 2016 Effective date: August 1, 2016
8. Department of Energy	✓		

**Appendix II: Status of Agencies' Publishing of  
Required Civil Monetary Penalty Information**

<b>Agency</b>	<b>Published an IFR by July 1, 2016, with an August 1, 2016, effective date</b>	<b>Published an IFR after July 1, 2016, and by December 31, 2016</b>	<b>Remarks</b>
9. Department of Health and Human Services	X	✓	Publication date: September 6, 2016 Effective date: September 6, 2016
10. Department of Homeland Security (DHS)	✓		
11. Department of Housing and Urban Development (HUD) <sup>a</sup>	✓		Publication date: June 15, 2016 Effective date: August 16, 2016
12. Department of Justice	✓		
13. Department of Labor (DOL)	✓		
14. Department of State	✓		
15. Department of the Interior (DOI) <sup>b</sup>	X	✓	<b>Bureau of Indian Affairs</b> Publication date: June 30, 2016 Effective date: August 1, 2016 <b>Bureau of Ocean Energy Management</b> Publication date: July 1, 2016 Effective date: August 1, 2016 <b>Office of the Secretary</b> Publication date: June 28, 2016 Effective date: June 28, 2016 <b>Office of Surface Mining Reclamation and Enforcement</b> Publication date: July 8, 2016 Effective date: August 1, 2016
16. Department of the Treasury	✓		

**Appendix II: Status of Agencies' Publishing of  
Required Civil Monetary Penalty Information**

Agency	Published an IFR by July 1, 2016, with an August 1, 2016, effective date	Published an IFR after July 1, 2016, and by December 31, 2016	Remarks
17. Department of Transportation (DOT) <sup>b</sup>	X	✓	<p><b>Federal Aviation Administration</b> Publication date: July 5, 2016 Effective date: August 5, 2016</p> <p><b>Federal Motor Carrier Safety Administration</b> Publication date: June 27, 2016 Effective date: August 1, 2016</p> <p><b>Federal Railroad Administration</b> Publication date: July 1, 2016 Effective date: August 1, 2016</p> <p><b>Maritime Administration</b> Publication date: June 30, 2016 Effective date: August 1, 2016</p> <p><b>National Highway Safety Administration</b> Publication date: July 5, 2016 Effective date: August 4, 2016</p> <p><b>Office of the Secretary of Transportation</b> Publication date: August 10, 2016 Effective date: August 10, 2016</p> <p><b>Pipeline and Hazardous Materials Safety Administration</b> Publication date: June 29, 2016 Effective date: August 1, 2016</p> <p><b>Saint Lawrence Seaway Development Corporation</b> Publication date: June 28, 2016 Effective date: July 28, 2016</p>
18. Department of Veterans Affairs	✓		
19. Department of Homeland Security/Department of Labor joint rulemaking	✓		DHS and DOL jointly published catch-up adjustment for inflation through IFR for the H-2B Temporary Non-agricultural Worker Program.
20. Environmental Protection Agency	✓		
21. Equal Employment Opportunity Commission	✓		
22. Farm Credit Administration	✓		
23. Farm Credit System Insurance Corporation	✓		

**Appendix II: Status of Agencies' Publishing of  
Required Civil Monetary Penalty Information**

<b>Agency</b>	<b>Published an IFR by July 1, 2016, with an August 1, 2016, effective date</b>	<b>Published an IFR after July 1, 2016, and by December 31, 2016</b>	<b>Remarks</b>
24. Federal Communications Commission	✓		
25. Federal Deposit Insurance Corporation	✓		
26. Federal Election Commission	✓		
27. Federal Energy Regulatory Commission	X	✓	Publication date: July 6, 2016 Effective date: July 6, 2016
28. Federal Housing Finance Agency	✓		
29. Federal Maritime Commission	✓		
30. Federal Reserve Board of Governors	X	✓	Publication date: July 20, 2016 Effective date: August 1, 2016
31. Federal Trade Commission	✓		
32. General Services Administration (GSA)	X	X	GSA officials stated that GSA plans to publish its catch-up adjustment for inflation through an IFR in the <i>Federal Register</i> within 90 days after July 31, 2017.
33. International Trade Commission (ITC) <sup>c</sup>	N/A		
34. Merit Systems Protection Board (MSPB)	X	X	As a result of our inquiries, MSPB published its catch-up adjustment for inflation through a final rule in the <i>Federal Register</i> on June 5, 2017.
35. National Aeronautics and Space Administration (NASA)	X	X	As a result of our inquiries, NASA published its catch-up inflation adjustment through an IFR in the <i>Federal Register</i> on June 26, 2017.
36. National Credit Union Administration	✓		
37. National Endowment for the Arts (NEA)	X	X	As a result of our inquiries, NEA published its catch-up inflation adjustment through an IFR in the <i>Federal Register</i> on June 15, 2017.
38. National Indian Gaming Commission	X	✓	Publication date: July 6, 2016 Effective date: August 1, 2016
39. National Science Foundation	✓		
40. National Transportation Safety Board (NTSB)	X	X	NTSB officials stated that NTSB plans to publish its catch-up adjustment for inflation in the <i>Federal Register</i> in October 2017.

**Appendix II: Status of Agencies' Publishing of  
Required Civil Monetary Penalty Information**

<b>Agency</b>	<b>Published an IFR by July 1, 2016, with an August 1, 2016, effective date</b>	<b>Published an IFR after July 1, 2016, and by December 31, 2016</b>	<b>Remarks</b>
41. Nuclear Regulatory Commission	✓		
42. Office of Government Ethics	✓		
43. Office of Personnel Management	X	✓	Publication date: July 19, 2016 Effective date: August 1, 2016
44. Pension Benefit Guaranty Corporation	✓		
45. Postal Regulatory Commission (PRC) <sup>d</sup>	N/A		
46. Railroad Retirement Board	✓		
47. Securities and Exchange Commission	✓		
48. Small Business Administration	✓		
49. Social Security Administration	✓		
50. Surface Transportation Board	X	✓	Publication date: October 20, 2016 Effective date: October 20, 2016
51. Tennessee Valley Authority (TVA) <sup>e</sup>	N/A		
52. U.S. Postal Service	✓		
<b>Total number of federal agencies that did not publish inflation adjustments as of December 31, 2016</b>		<b>6</b>	

Legend:

✓: Yes

X: No

N/A: Not applicable: The agencies stated that they were not required to publish any catch-up inflation adjustment through an IFR because (1) they were not subject to the catch-up adjustment provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act); (2) the authority under which they assess and enforce civil monetary penalties was expressly excluded by the act; or (3) they determined that they had no applicable civil monetary penalties under the act. We relied on the agencies' responses regarding applicability and did not independently verify the information they provided.

Source: GAO analysis of OMB's data and individual agencies' *Federal Register* publications. | GAO-17-634

<sup>a</sup>HUD stated that it delayed the effective date of its IFR to August 16, 2016, because 42 U.S.C. § 3535(o)(3) requires that "Any regulation implementing any provision of the Department of Housing and Urban Development Reform Act of 1989 that authorizes the imposition of a civil money penalty may not become effective until after the expiration of a public comment period of not less than 60 days."

<sup>b</sup>Because DOI and DOT are each listed as an organizational unit in OMB's summary list, we categorized the publishing status of these units as a whole rather than listing each component separately. While some components published IFRs by July 1, 2016, with an August 1, 2016, effective date, we categorized DOI and DOT as having published after the required date because at least one component for each of these units published its IFR after July 1, 2016; had an effective date after August 1, 2016; or both. We provided the publication date and effective date for each component in the remarks column.

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**Appendix II: Status of Agencies' Publishing of  
Required Civil Monetary Penalty Information**

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<sup>9</sup>ITC officials stated that the Tariff Act, the authority under which ITC assesses and enforces civil monetary penalties, is expressly excluded from the catch-up adjustment provisions of the Inflation Adjustment Act, and ITC is therefore not required to publish an IFR.

<sup>10</sup>PRC officials stated that PRC is not subject to catch-up adjustment provisions of the Inflation Adjustment Act as it is not considered to be a federal agency under 5 U.S.C. § 105, the definition applicable to the Inflation Adjustment Act. In addition, PRC officials stated that PRC had no applicable civil monetary penalties under the act because its civil monetary penalties do not have a specific monetary amount or a maximum amount.

<sup>11</sup>TVA officials stated that TVA determined that it had no applicable civil monetary penalties under the act. Because TVA no longer receives appropriations as of 1999, TVA concluded that with its self-funding status, it would be impossible for recipients of TVA funds to incur penalties.

# Appendix III: Status of Agencies' Reporting of Required Civil Monetary Penalty Information

Table 2 summarizes federal agencies' reporting of civil monetary penalty information in 2016 agency financial reports as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act), provided in the Office of Management and Budget's summary list of the 52 federal agencies that could be subject to the applicable provisions of the Inflation Adjustment Act, for fiscal or calendar year 2016 (as applicable, as agencies may have different year-end reporting dates).

**Table 2: Agencies' Reporting of Civil Monetary Penalty Information, Including the Catch-up Inflation Adjustment of the Civil Monetary Penalty Amounts, in Fiscal or Calendar Year 2016 Agency Financial Reports (AFR)**

Agency	Reported civil monetary penalty inflation adjustments in the AFR	Did not report civil monetary penalty inflation adjustments in the AFR because no such penalties were assessed or enforced	Remarks
1. Commodity Futures Trading Commission	✓		
2. Consumer Financial Protection Bureau (CFPB) <sup>a</sup>	N/A		
3. Corporation for National and Community Service (CNCS) <sup>b</sup>	N/A		
4. Department of Agriculture (USDA)	✓		In its fiscal year 2016 AFR, USDA disclosed that it has not finalized and published a final rule to make inflation adjustments as of November 2016 and thus did not include any current catch-up inflation adjustment information.
5. Department of Commerce	✓		
6. Department of Defense	✓		
7. Department of Education	✓		

**Appendix III: Status of Agencies' Reporting of  
Required Civil Monetary Penalty Information**

<b>Agency</b>	<b>Reported civil monetary penalty inflation adjustments in the AFR</b>	<b>Did not report civil monetary penalty inflation adjustments in the AFR because no such penalties were assessed or enforced</b>	<b>Remarks</b>
8. Department of Energy	✓		
9. Department of Health and Human Services	✓		
10. Department of Homeland Security (DHS)	✓		
11. Department of Housing and Urban Development	✓		
12. Department of Justice	✓		
13. Department of Labor (DOL)	✓		
14. Department of State	✓		
15. Department of the Interior (DOI) <sup>c</sup>	✓		
16. Department of the Treasury	✓		
17. Department of Transportation	✓		
18. Department of Veterans Affairs	✓		
19. Department of Homeland Security/Department of Labor joint rulemaking	✓		DHS and DOL separately reported the civil monetary penalties information in their respective AFRs.
20. Environmental Protection Agency	✓		
21. Equal Employment Opportunity Commission	✓		
22. Farm Credit Administration (FCA)		✓	FCA officials stated that FCA did not assess or enforce any civil monetary penalties during the reporting period and therefore did not report this information in its AFR.
23. Farm Credit System Insurance Corporation (FCSIC)	✓		FCSIC included civil monetary penalty information in its 2016 annual report issued on June 9, 2017.
24. Federal Communications Commission	✓		
25. Federal Deposit Insurance Corporation (FDIC) <sup>b</sup>	N/A		
26. Federal Election Commission	X		

**Appendix III: Status of Agencies' Reporting of  
Required Civil Monetary Penalty Information**

<b>Agency</b>	<b>Reported civil monetary penalty inflation adjustments in the AFR</b>	<b>Did not report civil monetary penalty inflation adjustments in the AFR because no such penalties were assessed or enforced</b>	<b>Remarks</b>
27. Federal Energy Regulatory Commission	✓		
28. Federal Housing Finance Agency (FHFA)		✓	FHFA officials stated that FHFA did not assess or enforce any civil monetary penalties during the reporting period and therefore did not report this information in its AFR.
29. Federal Maritime Commission	X		
30. Federal Reserve Board (FRB) of Governors <sup>d</sup>	N/A		
31. Federal Trade Commission	✓		
32. General Services Administration	✓		
33. International Trade Commission (ITC) <sup>e</sup>	N/A		
34. Merit Systems Protection Board (MSPB)		✓	MSPB officials stated that MSPB did not assess or enforce any civil monetary penalties during the reporting period and therefore did not report this information in its AFR.
35. National Aeronautics and Space Administration	✓		
36. National Credit Union Administration	✓		
37. National Endowment for the Arts (NEA)		✓	NEA officials stated that NEA did not assess or enforce any civil monetary penalties during the reporting period and therefore did not report this information in its AFR.
38. National Indian Gaming Commission (NIGC)	X		NIGC officials stated that NIGC is an independent federal regulatory agency within DOI. NIGC's financial information is consolidated and reported in DOI's AFR. <sup>c</sup>
39. National Science Foundation	✓		

**Appendix III: Status of Agencies' Reporting of  
Required Civil Monetary Penalty Information**

<b>Agency</b>	<b>Reported civil monetary penalty inflation adjustments in the AFR</b>	<b>Did not report civil monetary penalty inflation adjustments in the AFR because no such penalties were assessed or enforced</b>	<b>Remarks</b>
40. National Transportation Safety Board (NTSB)		✓	NTSB officials stated that NTSB did not assess or enforce any civil monetary penalties during the reporting period and therefore did not report this information in its AFR.
41. Nuclear Regulatory Commission	✓		
42. Office of Government Ethics (OGE)		✓	OGE officials stated that OGE did not assess or enforce any civil monetary penalties during the reporting period and therefore did not report this information in its AFR.
43. Office of Personnel Management	✓		
44. Pension Benefit Guaranty Corporation (PBGC) <sup>b</sup>	N/A		
45. Postal Regulatory Commission (PRC) <sup>f</sup>	N/A		
46. Railroad Retirement Board (RRB)		✓	RRB officials stated that RRB did not assess or enforce any civil monetary penalties during the reporting period and therefore did not report this information in its AFR.
47. Securities and Exchange Commission	✓		
48. Small Business Administration	✓		
49. Social Security Administration	✓		
50. Surface Transportation Board (STB)		✓	STB officials stated that STB did not assess or enforce any civil monetary penalties during the reporting period and therefore did not report this information in its AFR.
51. Tennessee Valley Authority (TVA) <sup>b</sup>	N/A		
52. U.S. Postal Service (USPS) <sup>g</sup>	N/A		

**Appendix III: Status of Agencies' Reporting of  
Required Civil Monetary Penalty Information**

Agency	Reported civil monetary penalty inflation adjustments in the AFR	Did not report civil monetary penalty inflation adjustments in the AFR because no such penalties were assessed or enforced	Remarks
<b>Total number of federal agencies that did not report civil monetary penalties inflation adjustments in AFRs</b>	3		

Legend:

✓: Yes

X: No

N/A: The agency was not subject to reporting civil monetary penalty inflation adjustments in its AFR.

Source: GAO analysis of the Office of Management and Budget's (OMB) data and individual agencies' fiscal or calendar year 2016 AFRs. | GAO-17-634

<sup>a</sup>CFPB officials stated that CFPB is not required to follow OMB Circular A-136 under Section 1017(a)(4)(E) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

<sup>b</sup>These agencies are listed under the definition of "government corporation" (FDIC) or "wholly owned government corporation" (CNCS, PBGC, and TVA) under 31 U.S.C. § 9101, and Circular A-136 does not require government corporations to report civil monetary penalty information in the AFR.

<sup>c</sup>NIGC officials stated that NIGC is an independent federal regulatory agency within DOI and that NIGC's financial information is consolidated and reported under DOI's AFR. However, NIGC did not report its civil monetary penalty information, including the catch-up inflation adjustment of the civil monetary penalty amounts, in DOI's AFR.

<sup>d</sup>FRB officials stated that FRB is required to prepare financial statements under the Federal Reserve Act (12 U.S.C. § 248b) and as such is not required to submit an AFR to OMB under Circular A-136.

<sup>e</sup>ITC officials stated that the Tariff Act, ITC's source of authority to assess and enforce civil monetary penalties, is expressly excluded from the catch-up adjustment provisions of Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act), and thus would have no civil monetary penalties information to report in the AFR.

<sup>f</sup>PRC officials stated that PRC is not subject to the AFR reporting provision of the Inflation Adjustment Act as it is not considered to be a federal agency under 5 U.S.C. § 105, the definition applicable to the act. In addition, PRC officials stated that PRC had no applicable civil monetary penalties under the act because its civil monetary penalties do not have a specific monetary amount or a maximum amount.

<sup>g</sup>USPS officials stated that pursuant to statute under Title 39, USPS does not submit an AFR to OMB under Circular A-136 and therefore is not required to report civil monetary penalties information in the AFR.

## Appendix IV: Comments from the Federal Maritime Commission



Federal Maritime Commission  
Washington, D.C. 20573 - 0001

Office of the Chairman

August 8, 2017

Ms. Shirley Abel  
Assistant Director  
Government Accountability Office  
441 G St, NW  
Washington, DC 20548  
[AbelS@gao.gov](mailto:AbelS@gao.gov)

Dear Ms. Abel,

Thank you for forwarding a draft of GAO-17-634, Report to Congressional Committees, Civil Penalties. I appreciate the opportunity to respond to the issues that you have researched and are prepared to report to Congress.

As your Report notes in Appendix II,<sup>1</sup> the Federal Maritime Commission timely published an interim final rule adjusting civil penalties pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act). The agency did so in concert with, and after receiving guidance from, the Office of Management and Budget.

While you correctly note that the FMC's Performance Accountability Report (PAR) for 2016 did not report that the agency had timely updated its civil penalties under former leadership, the 2015 Inflation Adjustment Act instructed agencies to report updates to civil penalties only as to the Annual Financial Report (AFR), if an AFR is required. To meet the intent of GAO's concern, the FMC will endeavor to provide the updated information in the PAR in the future.

The Federal Maritime Commission takes seriously its obligations to report its compliance with regulatory updates. Toward this end, as Acting Chairman, I will ensure that the FMC will continue to work closely with policy officials both at the Office of Management and Budget and in the Congress. In closing, I am happy to relay that the Commission again updated its regulations regarding civil penalties in 2017, 82 F.R. 10719-10720.

Sincerely,

Michael A. Khouri  
Acting Chairman

<sup>1</sup> Appendix II: Status of Agencies' Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 Interim Final Rulemaking Requirement.

# Appendix V: Comments from the General Services Administration



The Administrator

July 31, 2017

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Mr. Dodaro:

The U.S. General Services Administration (GSA) appreciates the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report entitled *Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements*, (GAO-17-634). GAO recommends that the Acting Administrator of GSA should publish the initial catch-up inflation adjustment in the Federal Register.

GSA has reviewed this report, agrees with the recommendation, and is developing a comprehensive plan to address the recommendation made to GSA. GSA's projected time frame for publishing this ruling is within the next 90 days, after completing intra-agency reviews and concurrences, and reviews and concurrences from the Office of Management and Budget. We are confident that these actions will satisfactorily remedy the concern raised by GAO.

If you have any questions, please contact me at (202) 501-0800 or Mr. P. Brennan Hart III, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501-0563.

Sincerely,

A handwritten signature in blue ink that reads "Timothy O. Horne".

Timothy O. Horne  
Acting Administrator

cc: J. Lawrence Malenich, Director, Financial Management and Assurance, GAO

1800 F Street NW  
Washington, DC 20405

[www.gsa.gov](http://www.gsa.gov)

# Appendix VI: Comments from the National Indian Gaming Commission



August 8, 2017

*Via E-Mail only*

J. Lawrence Malenich, Director  
U.S. Government Accountability Office  
Financial Management and Assurance

Dear Mr. Malenich:

The National Indian Gaming Commission is grateful for the opportunity to review and provide comments on the draft report entitled *Civil Penalties: Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements*. The National Indian Gaming Commission reviewed the report and generally agrees with its findings and recommendations.

As you are aware, the NIGC is an independent federal regulatory agency within the Department of the Interior and functions independently in performance of its substantive duties. Because of the Agency's small size, the NIGC utilizes DOI's financial reporting system and its financial information is consolidated as a component of DOI's AFR. Although the NIGC adjusted its civil monetary penalties for inflation and published that adjustment in the federal register independently, the civil monetary penalty information was inadvertently left out of the DOI's AFR. As the report notes, the Agency has informed you that the NIGC and the DOI have developed procedures to ensure that the required civil monetary penalty information will be reported to DOI for its annual AFR purposes starting with fiscal year 2017.

Thank you for the opportunity to review the draft report. If you have any questions, please contact the Commission at 202-632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonodev O. Chaudhuri".

Jonodev O. Chaudhuri  
Chairman

NEW MAILING ADDRESS: NIGC/DEPARTMENT OF THE INTERIOR 1849 C Street NW, Mail Stop # 1621 Washington, DC 20240 Tel: 202.632.7003 Fax: 202.632.7066  
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[www.nigc.gov](http://www.nigc.gov)

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# Appendix VII: GAO Contact and Staff Acknowledgments

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## GAO Contact

J. Lawrence Malenich, (202) 512-9399 or [malenichj@gao.gov](mailto:malenichj@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Shirley Abel (Assistant Director), Jeremy Choi (Auditor-in-Charge), Vincent Gomes, Maxine Hattery, Jason Kelly, Vivian Kim, and Diana Lee made key contributions to this report.

# Appendix VIII: Accessible Data

## Data Tables

### Accessible Data for Agency Compliance with Inflation Adjustment Requirements for Civil Monetary Penalties

Number of agencies that published civil monetary penalty initial catch-up inflation adjustments per the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (IAA)

Number of agencies	Description
34 of 52 agencies	Agency published adjustments by the July 1, 2016, deadline required by the IAA
9 of 52 agencies	Agency published adjustments after the July 1, 2016, and by December 31, 2016
6 of 52 agencies	Agency did not publish adjustments as of December 31, 2016
3 of 52 agencies	Agency determined that it was not subject to the IAA provision or determined that it had no civil monetary penalties to enforce

Number of agencies that reported civil monetary penalty information, including catch-up inflation adjustments in agency financial reports (AFR)

Number of agencies	Description
32 of 52 agencies	Agency reported required information in its 2016 AFR
8 of 52 agencies	Agency did not report required information in its 2016 AFR because of interpretation of OMB guidance
3 of 52 agencies	Agency did not report required information in 2016 AFR
9 of 52 agencies	Agency was not subject to reporting requirement

**Accessible Data for Figure 1: Federal Agencies' Publication of Initial Catch-up Inflation Adjustments for Civil Monetary Penalties, as of December 31, 2016**

Number of agencies	Description
9 of 52 agencies	The agency published initial catch-up inflation adjustments for fiscal year 2016 through IFR(s) in the <i>Federal Register</i> ; however, its IFR publication date was after the July 1, 2016, deadline in the Inflation Adjustment Act and by December 31, 2016.
34 of 52 agencies	The agency published initial catch-up inflation adjustments for fiscal year 2016 through IFR(s) in the <i>Federal Register</i> , by the July 1, 2016, deadline in the Inflation Adjustment Act.
6 of 52 agencies	The agency did not publish initial catch-up inflation adjustments for fiscal year 2016 through IFR(s), in the <i>Federal Register</i> , as of December 31, 2016.
3 of 52 agencies	The agency determined that it was not subject to the Inflation Adjustment Act provision or determined that it had no civil monetary penalties to enforce.

IFR: interim final rulemaking

Inflation Adjustment Act: Federal Civil Penalties Inflation Adjustment Act of 1990, as amended

Source: GAO analysis of the Office of Management and Budget's data and individual agencies' Federal Register publications. | GAO-17-634

**Accessible Data for Figure 2: Federal Agencies' Reporting of Civil Monetary Penalty Information, Including the Catch-up Inflation Adjustment of the Civil Monetary Penalty Amounts, in AFRs, Fiscal or Calendar Year 2016**

Number of agencies	Description
32 of 52 agencies	The agency reported required information in its 2016 AFR.
8 of 52 agencies	The agency did not report civil monetary penalty information in its 2016 AFR. The agency took the position that it did not need to report the information because it did not impose any civil monetary penalties during the reporting period.
3 of 52 agencies	The agency did not report required civil monetary penalty information in its 2016 AFR.

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Number of agencies	Description
9 of 52 agencies	The agency was not subject to reporting the civil monetary penalty inflation adjustments in the AFR.

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## Agency Comment Letter

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### Accessible Text for Comments from the Federal Maritime Commission

Federal Maritime Commission

Washington, D.C 20573 - 0001

Office of the Chairman

August 8, 2017

Ms. Shirley Abel Assistant Director

Government Accountability Office 441 G St, NW

Washington, DC 20548

AbelS@gao.gov.

Dear Ms. Abel,

Thank you for forwarding a draft of GAO-17-634, Report to Congressional Committees, Civil Penalties. I appreciate the opportunity to respond to the issues that you have researched and are prepared to report to Congress.

As your Report notes in Appendix 11,1 the Federal Maritime Commission timely published an interim final rule adjusting civil penalties pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act). The agency did so in concert with, and after receiving guidance from, the Office of Management and Budget.

While you correctly note that the FMC's Performance Accountability Report (PAR) for 2016 did not report that the agency had timely updated

its civil penalties under former leadership, the 2015 Inflation Adjustment Act instructed agencies to report updates to civil penalties only as to the Annual Financial Report (AFR), if an AFR is required. To meet the intent of GAO's concern, the FMC will endeavor to provide the updated information in the PAR in the future.

The Federal Maritime Commission takes seriously its obligations to report its compliance with regulatory updates. Toward this end, as Acting Chairman, I will ensure that the FMC will continue to work closely with policy officials both at the Office of Management and Budget and in the Congress. In closing, I am happy to relay that the Commission again updated its regulations regarding civil penalties in 2017, 82 F.R. 10719-10720.

Sincerely,

Michael A. Khouri Acting Chairman

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### Accessible Text for Comments from the General Services Administration

The Administrator

July 31, 2017

The Honorable Gene L. Dodaro Comptroller General of the United States

U.S. Government Accountability Office

Washington, DC 20548

Dear Mr. Dodaro:

The U.S. General Services Administration (GSA) appreciates the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report entitled Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements, (GAO-17-634). GAO recommends that the Acting Administrator of GSA should publish the initial catch-up inflation adjustment in the Federal Register.

GSA has reviewed this report, agrees with the recommendation, and is developing a comprehensive plan to address the recommendation made to GSA. GSA's projected time frame for publishing this ruling is within the next 90 days, after completing intra- agency reviews and concurrences, and reviews and concurrences from the Office of Management and Budget. We are confident that these actions will satisfactorily remedy the concern raised by GAO.

If you have any questions, please contact me at (202) 501-0800 or Mr. P. Brennan Hart III, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501-0563.

Sincerely,

Acting Administrator

cc: J. Lawrence Malenich, Director, Financial Management and Assurance, GAO

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## Accessible Text for Comments from the National Indian Gaming Commission

National Indian Gaming Commission

August 8, 2017

Via E-Mail only

J. Lawrence Malenich, Director

U.S. Government Accountability Office Financial Management and Assurance

Dear Mr. Malenich:

The National Indian Gaming Commission is grateful for the opportunity to review and provide comments on the draft report entitled Civil Penalties: Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements . The National Indian Gaming Commission reviewed the report and generally agrees with its findings and recommendations.

As you are aware, the NIGC is an independent federal regulatory agency within the Department of the Interior and functions independently in performance of its substantive duties. Because of the Agency's small size, the NIGC utilizes DOI's financial reporting system and its financial information is consolidated as a component of DOI's AFR. Although the NIGC adjusted its civil monetary penalties for inflation and published that adjustment in the federal register independently, the civil monetary penalty information was inadvertently left out of the DOI's AFR. As the report notes, the Agency has informed you that the NIGC and the DOI have developed procedures to ensure that the required civil monetary penalty information will be reported to DOI for its annual AFR purposes starting with fiscal year 2017.

Thank you for the opportunity to review the draft report. If you have any questions, please contact the Commission at 202-632-7003.

Sincerely,

Jonodev O. Chaudhuri

NEW MAILING ADDRESS: NIGC/DEPARTMENT OF THE INTERIOR  
1849 C Street NW, Mail Stop # 1621 Washington, DC 20240 Tel:  
202.632.7003 Fax: 202.632.7066

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