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**United States General Accounting Office**
**Washington, DC 20548**

August 26, 2002

The Honorable Roderick R. Paige
The Secretary of Education

Subject: *The Department of Education's Compliance with the Inflation Adjustment Act*

Dear Mr. Secretary:

Earlier this year, we initiated a governmentwide review of the implementation of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act).[1] The Inflation Adjustment Act required each federal agency to issue a regulation adjusting its covered maximum and minimum civil monetary penalties for inflation by October 23, 1996, and requires them to make necessary adjustments at least once every 4 years thereafter. During our review, the Department of Education's (Education) Office of General Counsel indicated that at least eight of the agency's civil penalties are covered by the act, but the agency had not adjusted any of them for inflation. This report is intended to bring this matter to your attention and to recommend corrective action.

## The Department of Education Identified at Least Eight Civil Penalties That Are Covered by the Inflation Adjustment Act

Section 3 of the Inflation Adjustment Act defines a covered civil penalty as any "penalty, fine, or other sanction that … is for a specific monetary amount as provided by Federal law" or "has a maximum amount provided for by Federal law," and "is assessed or enforced by an agency pursuant to Federal law" and "is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts." Education's Office of General Counsel provided us with a list of civil penalties that it considered covered by the Inflation Adjustment Act. Table 1 lists those penalties as well as their maximum penalty amounts, assessment methods, and the years that the penalties were last set or adjusted.

[1]The Inflation Adjustment Act is codified at 28 U.S.C. 2461 note. The 1990 act was amended in 1996 by the Debt Collection Improvement Act, which added the requirement for agencies to adjust their civil penalties by regulation (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321-373).

**Table 1: Department of Education's Civil Penalties Covered by the Inflation Adjustment Act**

| U.S.C. citation | Description of violation | Maximum penalty amount | Assessment method | Year penalty was last set or adjusted |
|---|---|---|---|---|
| 20 U.S.C. 1015(c)(5) | Failure by an institution of higher education to provide information on the cost of higher education to the Commissioner of Education Statistics. | $25,000 | For each failure. | 1998 |
| 20 U.S.C. 1027(f)(3) | Failure by an institution of higher education to provide information to the state and the public regarding its teacher-preparation programs in a timely or accurate manner. | $25,000 | For each failure. | 1998 |
| 20 U.S.C. 1082(g) | Violations by lenders and guaranty agencies of Title IV-B of the Higher Education Act, which authorizes the Federal Family Education Loan Program. | $25,000 | For each violation, failure, or misrepresentation. | 1986 |
| 20 U.S.C. 1094(c)(3)(B) | Violations of Title IV of the Higher Education Act, which authorizes various programs of student financial assistance. | $25,000 | For each violation or misrepresentation. | 1986 |
| 31 U.S.C. 1352(c)(1) | Violations regarding the limitation on the use of appropriated funds to influence certain federal contracting and financial transactions. | $100,000[a] | For each expenditure. | 1989 |
| 31 U.S.C. 1352 (c)(2)(A) | Violations regarding the failure to file or to amend declarations relating to lobbying activities. | $100,000[a] | For each failure to file or amend a required declaration. | 1989 |
| 31 U.S.C. 3802 (a)(1) | Violation of the Program Fraud Civil Remedies Act. | $5,000 | For each false claim. | 1986 |
| 31 U.S.C. 3802 (a)(2) | Violation of the Program Fraud Civil Remedies Act. | $5,000 | For each false written statement. | 1986 |

[a]The statutory minimum penalty for these violations is $10,000.

Source: Department of Education's Office of General Counsel.

## The Department of Education Has Not Adjusted Its Covered Civil Penalties for Inflation

Under the Inflation Adjustment Act, Education (like other covered federal agencies) was required to publish a regulation by October 23, 1996, adjusting its maximum civil penalties for inflation. The amount of this adjustment was to be based on changes in the Consumer Price Index (CPI) from June of the calendar year in which Education's penalties were last set or adjusted through June of the year prior to the adjustment (i.e., June 1995 for adjustments made in October 1996). However, the statute limited the first adjustments of an agency's penalties to 10 percent of the penalty amounts. Six of the penalties in table 1 were enacted before 1996, and the CPI had increased by more than 10 percent since those six penalties were last set or adjusted. Therefore, Education should have published a regulation in the *Federal Register* by October 23, 1996, increasing those six penalties by 10 percent.[2]

The Inflation Adjustment Act also required Education to examine its civil penalties by October 23, 2000, and, if necessary, make additional inflation adjustments. The calendar year 2000 adjustments were to be based on changes in the CPI from June of the year in which the penalties were last adjusted (e.g., June 1996 for the six penalties that should have been adjusted by 10 percent) through June of the year prior to the adjustment (June 1999). If Education had adjusted six of its penalties in 1996, the department could have increased those penalties again in 2000.

However, our review of the *Federal Register* for calendar years 1996 through 2001 did not reveal any Education regulations that increased the agency's civil penalties for inflation. Education's Deputy General Counsel for Departmental and Legislative Service confirmed that Education had not published any penalty adjustment regulations pursuant to the Inflation Adjustment Act.

## Recommendation for Executive Action

We recommend that the Secretary of Education initiate a regulatory action to adjust for inflation all of the agency's civil penalties that are covered by the Inflation Adjustment Act.

## Agency Comments and Our Evaluation

On August 15, 2002, we provided a draft of this report to the Secretary of Education for his review and comment. On August 21, 2002, the Department of Education's General Counsel provided GAO with written comments on the draft report, which are reproduced in the enclosure. The General Counsel said that Education had benefited greatly from the information we have provided on this issue and that it will soon initiate the appropriate regulatory process to adjust for inflation all of its civil penalties that are covered by the Inflation Adjustment Act. The General Counsel also indicated that the time to adjust two 1998 penalties has not expired, and that our report should indicate that the Department has not failed to comply with the Inflation Adjustment Act concerning these two penalties. We deleted the sentences that

[2]As of August 2002, not enough inflation had occurred to allow Education to adjust its two penalties that were established in 1998.

referred to these penalties and added a footnote to the report indicating that not enough inflation had occurred to permit Education to adjust those penalties.

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We are sending copies of this report to the appropriate congressional committees, and it will be available at no charge on GAO's website at http://www.gao.gov. If you or your staff have any questions on the matters discussed in this letter, you may contact Curtis Copeland or me at (202) 512-6806. Major contributors to this report include John Tavares and Oliver Walker.

Sincerely yours,

Victor S. Rezendes
Managing Director
Strategic Issues

Enclosure

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

August 20, 2002

Mr. Victor S. Rezendes
Managing Director
Strategic Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Rezendes:

We appreciate the opportunity to comment on your report concerning the Department of Education's compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act). We have benefited greatly from the information your office provided us regarding the Department's obligations under the Inflation Adjustment Act.

As your report notes, there are several civil penalties that we consider to be covered by the Inflation Adjustment Act which have not been adjusted for inflation. Six of the penalties were enacted before 1996 and should have been adjusted by regulation by October 23, 1996. Those same six penalties should have been examined and adjusted again by October 23, 2000 – four years after the prior adjustment. An additional two penalties that were enacted in 1998 should be adjusted for the first time this year. Because the time in which the Department has to adjust these two additional penalties has not yet expired, we ask that the following sentences on page 3 of the report be deleted, as they imply that the Department has failed to comply with the Inflation Adjustment Act with respect to these two additional penalties: "In addition, Education could have also adjusted two penalties in table 1 that were established in 1998. The CPI increased by 2 percent between June 1998 and June 1999."

The Department takes very seriously its obligation to abide by statutory requirements and, therefore, regrets that it did not take action required of it in 1996 and 2000. We have taken action to remedy our oversight and will soon initiate the appropriate regulatory process to adjust for inflation all of the Department's civil penalties that are covered by the Inflation Adjustment Act.

Sincerely,

Brian W. Jones by KAJ.

Brian W. Jones

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