

May 27, 2021

The Honorable Dick Durbin
Chairman
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Chairman
The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
House of Representatives

Civil Monetary Penalties: Federal Agencies' Compliance with the 2020 Annual Inflation Adjustment Requirements

Civil monetary penalties provide federal agencies with the ability to punish willful and egregious violators, deter future violations, and enforce regulatory policies government-wide. However, if agencies do not periodically adjust these penalties for the effects of inflation, the penalties may lose their effectiveness and agencies may lose opportunities to collect significant federal receipts. Thus, Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 to allow for agencies to adjust their covered civil monetary penalties for inflation, to promote compliance, and to improve the collection of penalties.¹ The act, as amended,² hereinafter referred to as the Inflation Adjustment Act (IAA),³ includes a provision added in 2015 for GAO to annually submit to Congress a report assessing the compliance of agencies with the required civil monetary penalty adjustments.⁴

¹The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (Oct. 5, 1990).

²The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act, 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, Pub. L. No. 114-74, title VII, § 701, 129 Stat. 584, 599–601 (Nov. 2, 2015), is referred to as the Inflation Adjustment Act or IAA and is codified as amended at 28 U.S.C. § 2461 note. The IAA 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, provided for 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.

³As provided by IAA amendments made in 2015, 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.

⁴We reported on the results of our review of agencies' compliance with the 2019 annual inflation adjustment of the civil monetary penalty amounts as required by the IAA in GAO, *Civil Monetary Penalties: Review of Federal Agencies' Compliance with the 2019 Annual Inflation Adjustment Requirements*, [GAO-20-538R](#) (Washington, D.C.: June 10, 2020).

This fifth annual review responds to the statutory provision for us to assess agencies' compliance with the civil monetary penalty adjustments for inflation as required by the IAA. Specifically, our objective was to determine if each agency subject to the IAA published 2020 civil monetary penalty inflation adjustments in the *Federal Register* as of December 31, 2020, and reported information about civil monetary penalties within the agency's jurisdiction in its 2020 agency financial report (AFR) submitted under Office of Management and Budget (OMB) Circular A-136.⁵ This circular provides guidance to agencies that produce either AFRs or performance and accountability reports and government corporations that produce annual management reports.⁶ For purposes of this report, AFR refers to all three types of agency reports.

To address our objective, we used the list of 48 agencies from our prior report representing the population of agencies that could be subject to the IAA's applicable provisions.⁷ To assess completeness of the list, we searched the *Federal Register* for calendar year 2020 to determine whether any agencies published civil monetary penalty inflation adjustments that were not on the list.⁸ We concluded that the list was reliable for our purposes. We reviewed agencies' inflation adjustments published in the *Federal Register* as of December 31, 2020, and related information reported in the 2020 AFRs to determine whether the agencies reported information about civil monetary penalties within their jurisdictions, including the 2020 annual inflation adjustment of the civil monetary penalty amounts, pursuant to the IAA and OMB Circular A-136, as applicable.⁹ We did not verify the accuracy of agencies' inflation adjustments or reported civil monetary penalty information. We contacted officials at agencies that had not, in whole or in part, published civil monetary penalty inflation adjustments in the *Federal Register* or reported civil monetary penalty information in their AFRs to confirm our findings.

We conducted this performance audit from January 2021 to May 2021 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 based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objective.

In summary, 46 of the 48 agencies that we reviewed for 2020 that could be subject to certain requirements of the IAA have complied with the applicable provisions. They published the 2020 annual inflation adjustment of the civil monetary penalty amounts within their agencies'

⁵Office of Management and Budget, *Financial Reporting Requirements*, OMB Circular A-136 (Washington, D.C.: August 2020).

⁶Agencies and government corporations generally operate on a fiscal year that ends on September 30 and issue their annual reports in accordance with OMB Circular A-136 (generally mid-November of the same calendar year), while some operate on a different fiscal year basis and may issue their reports on a different date. OMB Circular A-136 does not require government corporations to report civil monetary penalty information in their annual management reports; however, some do include this information.

⁷This list of agencies includes some government corporations; therefore, in this report, "agency" includes government corporations. See [GAO-20-538R](#).

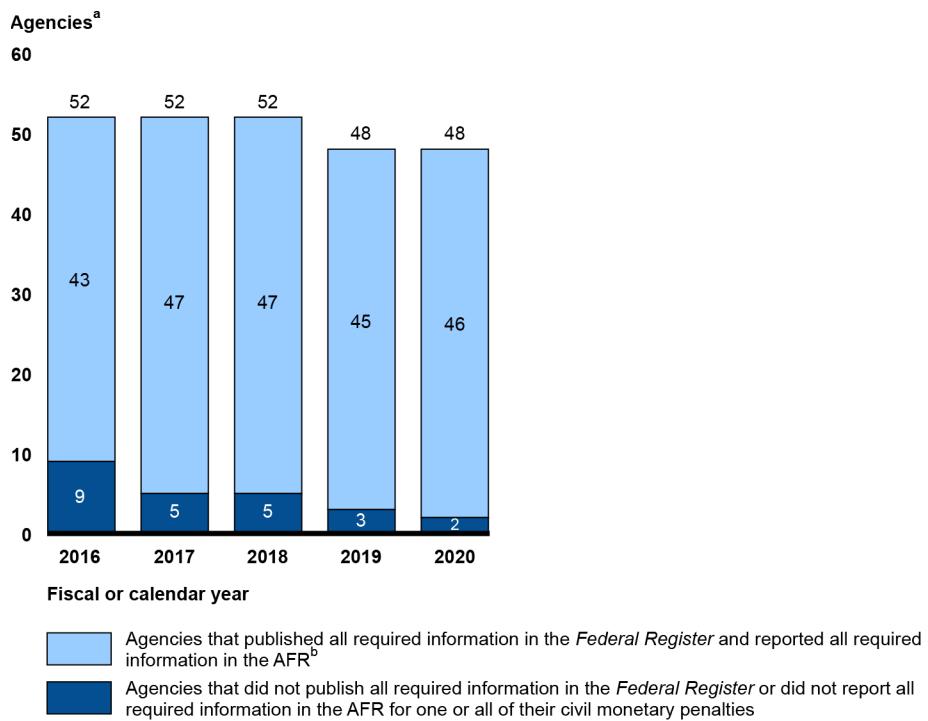
⁸Because there is no current, comprehensive database that identifies each agency with civil monetary penalty authority subject to the IAA's applicable provisions, we cannot be sure that we have identified all of the agencies or penalties covered by the act.

⁹Two agencies reported information about their civil monetary penalties, including the 2020 annual inflation adjustment, in their calendar year 2019 AFRs. For these two agencies, we reviewed the 2019 AFRs.

jurisdictions in the *Federal Register* as of December 31, 2020, and reported related information about civil monetary penalties in their 2020 AFRs, as required by the IAA and OMB Circular A-136. However, two agencies—the Department of the Treasury and the General Services Administration (GSA)—did not publish inflation adjustments in the *Federal Register* as of December 31, 2020, and did not report in their 2020 AFRs the required information for one or more of their civil monetary penalties. For further details on each agency's reporting status for 2020, see enclosure I.

Figure 1 summarizes the status of the required reporting since we issued our first report in August 2017.¹⁰ As shown in the figure, our assessments have found that the majority of the agencies that could be subject to the IAA's provisions have complied with the provisions of the act.

Figure 1: Federal Agencies Reporting Civil Monetary Penalty Information, Including the Annual Inflation Adjustments, in the *Federal Register* as of December 31, and in Agency Financial Reports (AFR), 2016–2020



Source: GAO analysis of civil monetary penalty adjustment reporting. | GAO-21-488R

^aFor years 2016 through 2018, our review included 52 agencies that could be subject to applicable provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. In our 2019 review, we removed four agencies—the Department of Homeland Security/Department of Labor (DHS/DOL) joint rulemaking, International Trade Commission (ITC), Postal Regulatory Commission (PRC), and Tennessee Valley Authority (TVA). Specifically, we determined that (1) the DHS/DOL joint rulemaking was not applicable to the 2019 annual inflation adjustment and both departments reported the required information separately, (2) ITC and TVA had determined that they were not subject to the IAA's applicable provisions, and (3) PRC was not considered an agency under the definition applicable to the act. Thus, our 2019 and 2020 reviews included a total of 48 agencies.

¹⁰GAO, *Civil Penalties: Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements*, GAO-17-634 (Washington, D.C.: Aug. 31, 2017).

^bResults reported for 2017 only include our assessment of whether agencies reported all required information in the AFR. Our review was limited to agencies' 2017 AFRs and not the *Federal Register* publications for purposes of their 2017 annual inflation adjustment reporting.

Agency Comments

We provided a draft of this report to OMB, GSA, and Treasury for review. OMB informed us that it had no comments on the draft report. GSA informed us that it published up-to-date inflation adjustments in the *Federal Register* on April 26, 2021, and had no additional comments on the draft report. We verified this information and updated enclosure I. Treasury did not provide comments.

We are sending copies of this report to the appropriate congressional committees, the Acting Director of the Office of Management and Budget, the Acting Administrator of the General Services Administration, the Secretary of the Treasury, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-9816 or rasconap@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. In addition to the contact named above, Carrie Morrison (Assistant Director), Vincent Gomes (Auditor-in-Charge), Nabor Cuevas Jr., Diana Lee, and Anne Thomas made key contributions to this report.

A handwritten signature in black ink that reads "Paula M Rascona". The signature is fluid and cursive, with "Paula" and "Rascona" being the most prominent parts.

Paula M. Rascona
Director
Financial Management and Assurance

Enclosure

Enclosure I: Federal Agencies' Reporting of Required Civil Monetary Penalty Information, Including the 2020 Annual Inflation Adjustment

Table 1 summarizes federal agencies' civil monetary penalty 2020 annual inflation adjustments published in the *Federal Register* as of December 31, 2020, and reported in their 2020 agency financial reports, pursuant to Office of Management and Budget Circular A-136 and as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (IAA). The agencies are those included in the list of the 48 agencies that could be subject to the IAA's applicable provisions for 2020.

Table 1: Federal Agencies' Reporting of Civil Monetary Penalty Information, Including the 2020 Annual Inflation Adjustment in the *Federal Register* as of December 31, 2020, and in 2020 Agency Financial Reports (AFR)

Agency	Reported civil monetary penalty information		
	Federal Register	AFR	Remarks
1. Commodity Futures Trading Commission	✓	✓	N/A
2. Consumer Financial Protection Bureau	✓	✓	N/A
3. Corporation for National and Community Service	✓	✓	N/A
4. Department of Agriculture	✓	✓	N/A
5. Department of Commerce	✓	✓	N/A
6. Department of Defense	✓	✓	N/A
7. Department of Education	✓	✓	N/A
8. Department of Energy	✓	✓	N/A
9. Department of Health and Human Services	✓	✓	N/A
10. Department of Homeland Security	✓	✓	N/A
11. Department of Housing and Urban Development	✓	✓	N/A
12. Department of Justice	✓	✓	N/A
13. Department of Labor	✓	✓	N/A
14. Department of State	✓	✓	N/A
15. Department of the Interior (DOI) ^a	✓	✓	N/A

**Reported civil monetary penalty
information**

Agency	Federal Register	AFR	Remarks
16. Department of the Treasury (Treasury)	X	X	Treasury did not publish the 2020 annual inflation adjustment amounts for two of the 64 civil monetary penalties within its jurisdiction in the <i>Federal Register</i> as of December 31, 2020 and did not report related information for those penalties in its fiscal year 2020 AFR. In its fiscal year 2020 AFR, Treasury disclosed that it was in the process of updating the regulations for these two civil monetary penalties. On March 4, 2021 and April 30, 2021, Treasury published the most current annual inflation adjustment effective through 2021, which included the 2020 adjustment, for these two civil monetary penalties in the <i>Federal Register</i> .
17. Department of Transportation	✓	✓	N/A
18. Department of Veterans Affairs	✓	✓	N/A
19. Environmental Protection Agency	✓	✓	N/A
20. Equal Employment Opportunity Commission	✓	✓	N/A
21. Farm Credit Administration	✓	✓	N/A
22. Farm Credit System Insurance Corporation (FCSIC) ^b	✓	✓	N/A
23. Federal Communications Commission	✓	✓	N/A
24. Federal Deposit Insurance Corporation (FDIC) ^c	✓	N/A	N/A
25. Federal Election Commission	✓	✓	N/A
26. Federal Energy Regulatory Commission	✓	✓	N/A
27. Federal Housing Finance Agency	✓	✓	N/A
28. Federal Maritime Commission	✓	✓	N/A
29. Federal Reserve Board of Governors (FRB) ^d	✓	N/A	N/A
30. Federal Trade Commission	✓	✓	N/A

Reported civil monetary penalty information			
Agency	Federal Register	AFR	Remarks
31. General Services Administration (GSA)	X	X	GSA did not publish the 2020 annual inflation adjustment amount for the civil monetary penalty within its jurisdiction in the <i>Federal Register</i> as of December 31, 2020, and did not report related information for that penalty in its fiscal year 2020 AFR. On April 26, 2021, GSA published the most current annual inflation adjustment effective through 2021, which included the 2020 adjustment, for this civil monetary penalty in the <i>Federal Register</i> .
32. Merit Systems Protection Board	✓	✓	N/A
33. National Aeronautics and Space Administration	✓	✓	N/A
34. National Credit Union Administration (NCUA) ^b	✓	✓	N/A
35. National Endowment for the Arts	✓	✓	N/A
36. National Indian Gaming Commission (NIGC) ^a	✓	N/A	N/A
37. National Science Foundation	✓	✓	N/A
38. National Transportation Safety Board	✓	✓	N/A
39. Nuclear Regulatory Commission	✓	✓	N/A
40. Office of Government Ethics	✓	✓	N/A
41. Office of Personnel Management	✓	✓	N/A
42. Pension Benefit Guaranty Corporation (PBGC) ^c	✓	N/A	N/A
43. Railroad Retirement Board	✓	✓	N/A
44. Securities and Exchange Commission	✓	✓	N/A
45. Small Business Administration	✓	✓	N/A
46. Social Security Administration	✓	✓	N/A
47. Surface Transportation Board	✓	✓	N/A
48. United States Postal Service (USPS) ^e	✓	N/A	N/A

Number of agencies that did not publish all required information in the *Federal Register* as of December 31, 2020, and did not report all required information in the 2020 AFR for one or more of their civil monetary penalties

2

Legend:
✓: Yes

X: No

N/A: Not applicable: The agency was not subject to reporting civil monetary penalty information or there are no remarks.

Source: GAO's analysis of civil monetary penalty adjustment reporting. | GAO-21-488R

^aNIGC officials previously 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.

^bFCSIC and NCUA reported information about their civil monetary penalties, including the 2020 annual inflation adjustment, in their calendar year 2019 annual reports, issued in July 2020 and February 2020, respectively.

^cFDIC and PBGC are listed under the definition of "government corporation" under 31 U.S.C. § 9101, and Office of Management and Budget (OMB) Circular A-136 does not require government corporations to report civil monetary penalty information in an AFR.

^dFRB officials previously 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 under OMB Circular A-136.

^eUSPS officials previously 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 an AFR.

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