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June 10, 2020

The Honorable Lindsey Graham
Chairman
The Honorable Dianne Feinstein
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: Review of Federal Agencies' Compliance with the 2019 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 enacted the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act) 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 1990 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 federal agencies with the required civil monetary penalty adjustments. Since we issued our first report in August

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

²The 1990 Act, 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 collectively 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.

2017, our assessments have found that a majority of the agencies that could be subject to the IAA's provisions have complied with the provisions of the act.⁴

This fourth 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 federal agency subject to the IAA published civil monetary penalty inflation adjustments in the *Federal Register* and reported information about civil monetary penalties within the agency's jurisdiction in its 2019 agency financial report (AFR) submitted under Office of Management and Budget (OMB) Circular A-136.⁵ Under OMB Circular A-136, an agency may choose to produce either a separate AFR or a performance and accountability report (PAR); government corporations produce annual management reports (AMR).⁶ For purposes of this report, AFR refers to an agency's AFR, PAR, or AMR.

To address our objective, we used the list from our prior year report representing the population of federal agencies that could be subject to the IAA's applicable provisions. From this list, we determined that 48 agencies could be subject to the IAA's applicable provisions for purposes of this review.⁷ To assess completeness of the population, we conducted a search of the *Federal Register* for calendar year 2019 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 federal agencies' inflation adjustments published in the *Federal Register* and related information reported in the 2019 AFRs to determine whether the agencies reported information about civil monetary penalties within their jurisdictions, including the 2019 annual inflation adjustment of the civil monetary penalty amounts, pursuant to the IAA and OMB

⁴GAO, *Civil Monetary Penalties: Review of Federal Agencies' Compliance with the 2018 Annual Inflation Adjustment Requirements*, [GAO-19-567R](#) (Washington, D.C.: July 24, 2019); *Civil Penalties: Certain Federal Agencies Need to Improve Inflation Adjustment Reporting*, [GAO-18-519](#) (Washington, D.C.: July 18, 2018); and *Civil Penalties: Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements*, [GAO-17-634](#) (Washington, D.C.: Aug. 31, 2017).

⁵Office of Management and Budget, *Financial Reporting Requirements*, OMB Circular A-136 (Washington, D.C.: June 2019).

⁶Agencies and government corporations generally operate on a fiscal year that ends on September 30 and issue their AFRs, PARs, or AMRs, as applicable, 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 at a different date. OMB Circular A-136 does not require government corporations to report civil monetary penalty information in their AMRs; however, some AMRs do include this information.

⁷In prior years, our review included 52 agencies that could be subject to the IAA's applicable provisions. This year, we omitted four agencies—the Department of Homeland Security/Department of Labor joint rulemaking (DHS/DOL joint rulemaking), International Trade Commission (ITC), Postal Regulatory Commission (PRC), and Tennessee Valley Authority (TVA). Specifically, we determined (1) DHS/DOL joint rulemaking is not applicable to the 2019 annual inflation adjustment and both departments reported the required information separately, (2) ITC and TVA determined that they were not subject to the IAA's applicable provisions, and (3) PRC is not considered a federal agency under the definition applicable to the act. Thus, we reviewed a total of 48 agencies that could be subject to the IAA's applicable provisions. This list of agencies includes some government corporations; therefore, in this report, "agency" includes government corporations. See [GAO-19-567R](#).

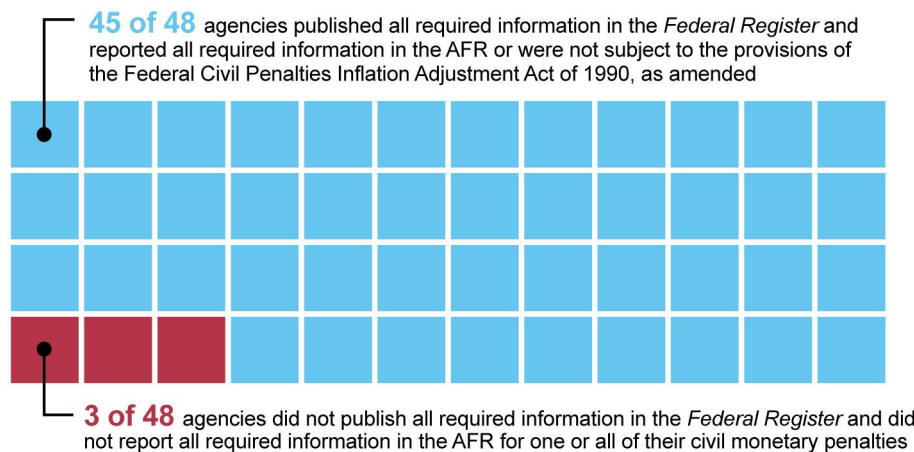
⁸Because there is no current, comprehensive database that identifies each agency with civil monetary penalty authority subject to the IAA's applicable provisions, we cannot be sure that we have identified all of the agencies or penalties covered by the act.

Circular A-136, as applicable.⁹ We did not verify the accuracy of federal 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 2020 to June 2020 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, most of the 48 agencies that we reviewed for fiscal or calendar year 2019 that could be subject to certain requirements of the IAA have complied with the applicable provisions. They published the 2019 annual inflation adjustment of the civil monetary penalty amounts within their agencies' jurisdictions in the *Federal Register* and reported related information about civil monetary penalties in their 2019 AFRs, as required by the IAA and OMB Circular A-136. However, three agencies did not publish inflation adjustments in the *Federal Register* and did not report in their 2019 AFRs the required information for one or all of their civil monetary penalties. Figure 1 summarizes the status of the required reporting. For further details on each federal agency's reporting status, see enclosure I.

Figure 1: Federal Agencies Reporting Civil Monetary Penalty Information, Including the 2019 Annual Inflation Adjustment, in the *Federal Register* and in Agency Financial Reports (AFR), Fiscal or Calendar Year 2019



Source: GAO's analysis of the *Federal Register* and the individual agencies' fiscal or calendar year 2019 AFRs for the 48 federal agencies that could be subject to the applicable provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. | GAO-20-538R

⁹Two agencies reported information about their civil monetary penalties, including the 2019 annual inflation adjustment, in their calendar year 2018 AFRs. For these two agencies, we reviewed the 2018 AFRs.

Agency Comments

We provided a draft of this report to OMB, the Department of Agriculture (USDA), the Department of Justice (DOJ), and the Department of the Treasury (Treasury) for review. DOJ informed us that they had no comments on the draft report. OMB, Treasury, and USDA did not provide comments.

We are sending copies of this report to the appropriate congressional committees, 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 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, Lynda Downing (Assistant Director), Brian Harechmak (Auditor-in-Charge), Vincent Gomes, Diana Lee, and Anne Thomas made key contributions to this report.



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Director
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Enclosure

Enclosure I: Status of Agencies' Reporting of Required Civil Monetary Penalty Information, Including the 2019 Annual Inflation Adjustment

Table 1 summarizes federal agencies' civil monetary penalty 2019 annual inflation adjustments published in the *Federal Register* and reported in their 2019 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 federal agencies that could be subject to the IAA's applicable provisions for fiscal or calendar year 2019.¹

Table 1: Agencies' Reporting of Civil Monetary Penalty Information, Including the 2019 Annual Inflation Adjustment of the Civil Monetary Penalty Amounts in the *Federal Register* and in Their Fiscal or Calendar Year 2019 Agency Financial Reports (AFR)

Agency	Reported civil monetary penalty information		Remarks
	<i>Federal Register</i>	AFR	
1. Commodity Futures Trading Commission	Yes	Yes	N/A
2. Consumer Financial Protection Bureau (CFPB) ^a	Yes	N/A	N/A
3. Corporation for National and Community Service (CNCS) ^b	Yes	N/A	N/A
4. Department of Agriculture (USDA)	NO	NO	USDA did not publish the 2019 annual inflation adjustment amounts for the 107 civil monetary penalties within its jurisdiction in the <i>Federal Register</i> and did not report related information in its fiscal year 2019 AFR.
5. Department of Commerce	Yes	Yes	N/A
6. Department of Defense	Yes	Yes	N/A
7. Department of Education	Yes	Yes	N/A
8. Department of Energy	Yes	Yes	N/A
9. Department of Health and Human Services	Yes	Yes	N/A
10. Department of Homeland Security	Yes	Yes	N/A
11. Department of Housing and Urban Development	Yes	Yes	N/A

¹This list represents the population of 48 federal agencies that could be subject to the IAA's applicable provisions. We omitted four agencies included in the list of 52 agencies from our prior year report that could be subject to the IAA's applicable provisions—the Department of Homeland Security/Department of Labor joint rulemaking (DHS/DOL joint rulemaking), International Trade Commission (ITC), Postal Regulatory Commission (PRC), and Tennessee Valley Authority (TVA). Specifically, the DHS/DOL joint rulemaking is not applicable to the 2019 annual inflation adjustment and both departments reported the required information separately. ITC and TVA previously determined that they were not subject to the IAA's applicable provisions. PRC is not considered a federal agency under the definition applicable to the act. Thus, we reviewed a total of 48 agencies that could be subject to the IAA's applicable provisions. To assess completeness of the population, we conducted a search of the *Federal Register* for calendar year 2019 to determine whether any agencies published civil monetary penalty inflation adjustments that were not on the list. See *Civil Monetary Penalties: Review of Federal Agencies' Compliance with the 2018 Annual Inflation Adjustment Requirements*, [GAO-19-567R](#) (Washington, D.C.: July 24, 2019).

**Reported civil monetary
penalty information**

Agency	Federal Register	AFR	Remarks
12. Department of Justice (DOJ)	NO	NO	DOJ did not publish the 2019 annual inflation adjustment amounts for the 52 civil monetary penalties within its jurisdiction in the <i>Federal Register</i> and did not report related information in its fiscal year 2019 AFR.
13. Department of Labor	Yes	Yes	N/A
14. Department of State	Yes	Yes	N/A
15. Department of the Interior (DOI) ^d	Yes	Yes	N/A
16. Department of the Treasury (Treasury)	NO	NO	Treasury did not publish the 2019 annual inflation adjustment amounts for one of the 64 civil monetary penalties within its jurisdiction in the <i>Federal Register</i> and did not report related information for that penalty in its fiscal year 2019 AFR.
17. Department of Transportation	Yes	Yes	N/A
18. Department of Veterans Affairs	Yes	Yes	N/A
19. Environmental Protection Agency	Yes	Yes	N/A
20. Equal Employment Opportunity Commission	Yes	Yes	N/A
21. Farm Credit Administration	Yes	Yes	N/A
22. Farm Credit System Insurance Corporation (FCSIC) ^c	Yes	Yes	N/A
23. Federal Communications Commission	Yes	Yes	N/A
24. Federal Deposit Insurance Corporation (FDIC) ^b	Yes	N/A	N/A
25. Federal Election Commission	Yes	Yes	N/A
26. Federal Energy Regulatory Commission	Yes	Yes	N/A
27. Federal Housing Finance Agency	Yes	Yes	N/A
28. Federal Maritime Commission	Yes	Yes	N/A
29. Federal Reserve Board of Governors (FRB) ^e	Yes	N/A	N/A
30. Federal Trade Commission	Yes	Yes	N/A
31. General Services Administration	Yes	Yes	N/A
32. Merit Systems Protection Board	Yes	Yes	N/A
33. National Aeronautics and Space Administration	Yes	Yes	N/A
34. National Credit Union Administration (NCUA) ^c	Yes	Yes	N/A
35. National Endowment for the Arts	Yes	Yes	N/A
36. National Indian Gaming Commission (NIGC) ^d	Yes	N/A	N/A
37. National Science Foundation	Yes	Yes	N/A

**Reported civil monetary
penalty information**

Agency	<i>Federal Register</i>	AFR	Remarks
38. National Transportation Safety Board	Yes	Yes	N/A
39. Nuclear Regulatory Commission	Yes	Yes	N/A
40. Office of Government Ethics	Yes	Yes	N/A
41. Office of Personnel Management	Yes	Yes	N/A
42. Pension Benefit Guaranty Corporation (PBGC) ^b	Yes	N/A	N/A
43. Railroad Retirement Board	Yes	Yes	N/A
44. Securities and ENochange Commission	Yes	Yes	N/A
45. Small Business Administration	Yes	Yes	N/A
46. Social Security Administration	Yes	Yes	N/A
47. Surface Transportation Board	Yes	Yes	N/A
48. United States Postal Service (USPS) ^f	Yes	N/A	N/A
Number of federal agencies that did not publish the 2019 annual inflation adjustment of the civil monetary penalties in the <i>Federal Register</i> and did not report related information in their 2019 AFRs			3

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 the *Federal Register* and the individual agencies' fiscal or calendar year 2019 AFRs for the 48 federal agencies that could be subject to the applicable provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. | GAO-20-538R

^aCFPB officials previously stated that CFPB is not required to follow Office of Management and Budget (OMB) Circular A-136 under Section 1017(a)(4)(E) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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

^cFCSIC and NCUA report annually on a calendar year basis. FCSIC and NCUA reported information about their civil monetary penalties, including the 2019 annual inflation adjustment in their calendar year 2018 annual reports, issued in July 2019 and February 2019, respectively.

^dNIGC 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.

^eFRB 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 to OMB under Circular A-136.

^fUSPS 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.

(Job Code 103989)