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Washington, DC 20548

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July 24, 2019

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 Doug Collins
Ranking Member
Committee on the Judiciary
House of Representatives

Civil Monetary Penalties: Review of Federal Agencies' Compliance with the 2018 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 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 federal agencies' compliance 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 most of the 52 agencies that could be subject to the IAA's provisions have complied with the provisions of the act.⁴

This third 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 2018 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 representing the population of 52 federal agencies that could be subject to the IAA's applicable provisions from our prior year audit.⁷ To assess completeness of the population, we searched the *Federal Register* for calendar year 2018 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 AFRs to determine whether the agencies reported information about civil monetary penalties within their jurisdictions, including the 2018 annual inflation adjustment of the civil monetary penalty amounts, pursuant to the IAA and OMB Circular A-136, as applicable. We did not verify the accuracy of federal agencies' inflation adjustments or reported civil monetary penalty information.

We met with OMB staff from the Office of Information and Regulatory Affairs, the Office of Federal Financial Management, and the Office of General Counsel to gather information on agencies' civil monetary penalty reporting pursuant to the IAA and OMB Circular A-136. We also contacted officials at agencies that had not published, in whole or in part, 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 2019 to July 2019 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.

⁴GAO, *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 (July 2018).

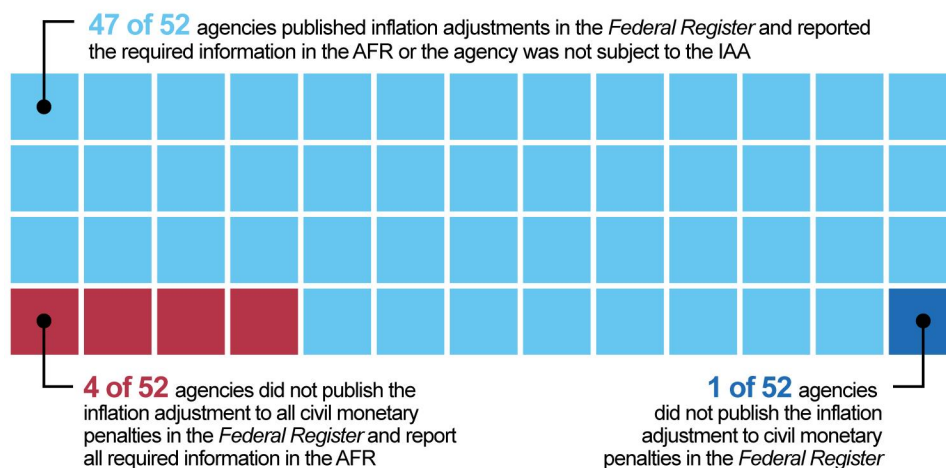
⁶Agencies and government corporations generally operate on a fiscal year that ends on September 30 and issue their AFRs, PARs, or AMRs, as applicable, by November 15, while some operate on a different fiscal year basis and may issue their reports on different dates. OMB Circular A-136 does not require government corporations to report civil monetary penalty information in their AMRs; however, some AMRs do include this information.

⁷This list of agencies includes some government corporations; therefore, this report uses "agency" to include those government corporations. See [GAO-18-519](#).

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.

In summary, most of the 52 agencies that we reviewed for fiscal or calendar year 2018 that could be subject to certain requirements of the IAA have complied with the applicable provisions. They have published the 2018 annual inflation adjustment of the civil monetary penalty amounts within their jurisdictions in the *Federal Register* and reported related information about civil monetary penalties in the 2018 AFRs, as required by the IAA and OMB Circular A-136. However, four agencies did not publish inflation adjustments in the *Federal Register* and did not report in their 2018 AFRs the required information for a few civil monetary penalties, and one agency did not publish inflation adjustments for its civil monetary penalties in the *Federal Register*. 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 2018 Annual Inflation Adjustment in the *Federal Register* and in Agency Financial Reports, Fiscal or Calendar Year 2018



AFR: agency financial report, performance and accountability report, or annual management report
 IAA: Federal Civil Penalties Inflation Adjustment Act of 1990, as amended

Source: GAO analysis of the individual agencies' *Federal Register* publications and individual agencies' fiscal or calendar year 2018 AFRs for the 52 federal agencies that could be subject to the IAA's applicable provisions. | GAO-19-567R

Agency Comments

We provided a draft of this report to OMB for review and comment. OMB did not provide comments on our draft report. We also provided a copy of the draft report to the Department of the Treasury, Department of Transportation (DOT), Environmental Protection Agency, National Transportation Safety Board, and United States Postal Service (USPS). DOT and USPS provided technical comments, which we incorporated as appropriate.

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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. Shirley Abel (Assistant Director), Vincent Gomes, Maxine Hattery, Diana Lee, Taya R. Tasse, Anne Thomas, and Jingxiong Wu made key contributions to this report.



Paula M. Rascona
Director
Financial Management and Assurance

Enclosure – 1

Enclosure I: Status of Agencies' Reporting of Required Civil Monetary Penalty Information, Including the 2018 Annual Inflation Adjustment

Table 1 summarizes federal agencies' civil monetary penalty 2018 annual inflation adjustments published in the *Federal Register* and related reporting in their 2018 agency financial reports, pursuant to the Office of Management and Budget's 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 52 federal agencies that could be subject to the IAA's applicable provisions for fiscal or calendar year 2018.¹

Table 1a: Agencies' Reporting of Civil Monetary Penalty Information, Including the 2018 Annual Inflation Adjustment of the Civil Monetary Penalty Amounts in the *Federal Register* and in their Fiscal or Calendar Year 2018 Agency Financial Reports (AFR)

n/a	Agency	Reported civil monetary penalty information (Federal Register)	Reported civil monetary penalty information (AFR)	Remarks
1.	Commodity Futures Trading Commission	yes	yes	N/A
2.	Consumer Financial Protection Bureau	yes	yes	N/A
3.	Corporation for National and Community Service	yes	yes	N/A
4.	Department of Agriculture	yes	yes	N/A
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 (DHS)	yes	yes	N/A
11.	Department of Housing and Urban Development	yes	yes	N/A
12.	Department of Justice	yes	yes	N/A
13.	Department of Labor (DOL)	yes	yes	N/A
14.	Department of State	yes	yes	N/A
15.	Department of the Interior	yes	yes	N/A

¹This list, from our prior year audit, represents the population of 52 federal agencies that could be subject to the IAA's applicable provisions. To assess completeness of the population, we searched the *Federal Register* for calendar year 2018 to determine whether any agencies published civil monetary penalty inflation adjustments that were not on the list. See GAO, *Civil Penalties: Certain Federal Agencies Need to Improve Inflation Adjustment Reporting*, [GAO-18-519](#) (Washington, D.C.: July 18, 2018).

n/a	Agency	Reported civil monetary penalty information (Federal Register)	Reported civil monetary penalty information (AFR)	Remarks
16.	Department of the Treasury (Treasury)	no	no	Treasury did not publish the 2018 annual inflation adjustment amounts for two of the 65 civil monetary penalties within its jurisdiction in the <i>Federal Register</i> and did not report related information in its fiscal year 2018 AFR.
17.	Department of Transportation (DOT)	no	no	DOT officials stated that DOT has issued a notice of proposed rulemaking concerning whether three civil penalty amounts within its jurisdiction are 'civil monetary penalties' subject to inflation adjustment. As DOT indicated in its 2018 annual inflation adjustment published in the <i>Federal Register</i> and related information reported in its fiscal year 2018 AFR, it did not include the three civil penalty amounts subject to the rulemaking among the 132 civil monetary penalties that it adjusted for inflation.
18.	Department of Veterans Affairs	yes	yes	N/A
19.	DHS/DOL joint rulemaking ^a	yes	yes	N/A
20.	Environmental Protection Agency (EPA)	no	no	EPA did not publish the 2018 annual inflation adjustment amounts for one of the 69 civil monetary penalties within its jurisdiction in the <i>Federal Register</i> and did not report related information in its fiscal year 2018 AFR.
21.	Equal Employment Opportunity Commission	yes	yes	N/A
22.	Farm Credit Administration	yes	yes	N/A
23.	Farm Credit System Insurance Corporation (FCSIC) ^b	yes	yes	N/A
24.	Federal Communications Commission	yes	yes	N/A
25.	Federal Deposit Insurance Corporation (FDIC) ^c	yes	N/A	N/A
26.	Federal Election Commission	yes	yes	N/A
27.	Federal Energy Regulatory Commission	yes	yes	N/A
28.	Federal Housing Finance Agency	yes	yes	N/A
29.	Federal Maritime Commission	yes	yes	N/A
30.	Federal Reserve Board of Governors (FRB) ^d	yes	N/A	N/A

n/a	Agency	Reported civil monetary penalty information (Federal Register)	Reported civil monetary penalty information (AFR)	Remarks
31.	Federal Trade Commission	yes	yes	N/A
32.	General Services Administration	yes	yes	N/A
33.	International Trade Commission (ITC) ^e	N/A	N/A	N/A
34.	Merit Systems Protection Board	yes	yes	N/A
35.	National Aeronautics and Space Administration	yes	yes	N/A
36.	National Credit Union Administration (NCUA) ^b	yes	yes	N/A
37.	National Endowment for the Arts	yes	yes	N/A
38.	National Indian Gaming Commission	yes	yes	N/A
39.	National Science Foundation (NSF) ^f	yes	yes	N/A
40.	National Transportation Safety Board (NTSB)	no	no	NTSB did not publish civil monetary penalties within its jurisdiction, including the annual inflation adjustment of the civil monetary penalty amounts, in the <i>Federal Register</i> and did not report related information in its fiscal year 2018 AFR.
41.	Nuclear Regulatory Commission	yes	yes	N/A
42.	Office of Government Ethics	yes	yes	N/A
43.	Office of Personnel Management	yes	yes	N/A
44.	Pension Benefit Guaranty Corporation (PBGC) ^c	yes	N/A	N/A
45.	Postal Regulatory Commission (PRC) ^g	N/A	N/A	N/A
46.	Railroad Retirement Board	yes	yes	N/A
47.	Securities and Exchange Commission	yes	yes	N/A
48.	Small Business Administration	yes	yes	N/A
49.	Social Security Administration	yes	yes	N/A
50.	Surface Transportation Board	yes	yes	N/A
51.	Tennessee Valley Authority (TVA) ^c	N/A	N/A	N/A
52.	United States Postal Service (USPS) ^h	no	N/A	USPS did not publish the 2018 annual inflation adjustment to the civil monetary penalties within its jurisdiction in the <i>Federal Register</i> .

Table 1b: Agencies' Reporting of Civil Monetary Penalty Information, Including the 2018 Annual Inflation Adjustment of the Civil Monetary Penalty Amounts in the *Federal Register* and in their Fiscal or Calendar Year 2018 Agency Financial Reports (AFR)

Category	Category total
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Category	Category total
Number of federal agencies that did not publish the 2018 annual inflation adjustment of the civil monetary penalties in the <i>Federal Register</i> and did not report related information in their 2018 AFRs	4
Number of federal agencies that did not publish the 2018 annual inflation adjustment in the <i>Federal Register</i>	1

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 analysis of the individual agencies' *Federal Register* publications and individual agencies' fiscal or calendar year 2018 AFRs for the 52 federal agencies that could be subject to the IAA's applicable provisions. | GAO-19-567R

^aDHS and DOL separately reported civil monetary penalties information, including the 2018 annual inflation adjustment in the *Federal Register* and in their respective fiscal year 2018 AFRs.

^bThese agencies (FCSIC and NCUA) report annually on a calendar year basis. FCSIC and NCUA reported information about their civil monetary penalties, including the 2018 annual inflation adjustment in their calendar year 2017 annual reports, issued in June 2018 and March 2018, respectively.

^cThese agencies are government corporations (FDIC, PBGC, and TVA) 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 AFRs. Additionally, TVA officials previously stated that TVA determined that it had no applicable civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (IAA). TVA concluded that with its self-funding status, it would be impossible for recipients of TVA funds to incur penalties. Therefore, we also excluded TVA from our review of whether it reported civil monetary penalty information in the *Federal Register*.

^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 to OMB under OMB Circular A-136.

^eITC officials previously stated that the Tariff Act, ITC's source of authority to assess and enforce civil monetary penalties, is expressly excluded from the inflation adjustment provisions of the IAA and thus would have no information on civil monetary penalties to report in its AFR.

^fNSF reported the civil monetary penalty adjustment information in the Management's Discussion and Analysis section of its fiscal year 2018 AFR. However, the guidance in OMB Circular A-136 requires agencies to report this information in the Other Information section of the AFR.

^gPRC officials previously stated that PRC is not subject to the reporting provisions of the IAA as it is not considered to be a federal agency under 5 U.S.C. § 105, which is 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.

^hUSPS officials previously stated that pursuant to statute under Title 39, USPS does not submit an AFR to OMB under OMB Circular A-136 and therefore is not required to report civil monetary penalties information in an AFR. (103295)