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United States General Accounting Office
Washington, DC 20548

September 24, 2002

The Honorable Michael M. Reyna
Chairman of the Board and
Chief Executive Officer
Farm Credit Administration

Subject: *Farm Credit Administration: Compliance with the
Inflation Adjustment Act*

Dear Mr. Reyna:

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, we determined that the Farm Credit Administration (FCA) had adjusted its civil penalties in a manner inconsistent with the requirements of the statute. This report is intended to bring this matter to your attention and to recommend corrective action.

FCA's Method of Rounding Is Inconsistent with the Requirements of the Inflation Adjustment Act

Under the Inflation Adjustment Act, FCA (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 FCA'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.

On October 22, 1996, FCA published a final rule adjusting its civil penalties for inflation.² In the rule, the agency noted that two provisions of section 5.32(a) of the

¹The 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).

²See 61 Fed. Reg. 54728.

Farm Credit Act of 1971, as amended (12 U.S.C. 2268(a)), authorize FCA to impose civil penalties on Farm Credit System institutions and their related parties.

- Any Farm Credit System institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of an institution who violates the terms of a temporary or permanent cease and desist order that has become final “shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues.”
- Any such institution or person who violates any provision of the Farm Credit Act or any regulation issued under the act “shall forfeit and pay a civil penalty of not more than \$500 per day for each day during which such violation continues.”

FCA adjusted each of the penalties by the 10 percent maximum permitted under the Inflation Adjustment Act—the first from \$1,000 to \$1,100, and the second from \$500 to \$550.

The Inflation Adjustment Act also required FCA 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 (i.e., June 1996 for the penalties that were adjusted by 10 percent) through June of the year prior to the adjustment (i.e., June 1999). The statute also includes a mechanism for rounding penalty increases, setting out penalty ranges from amounts less than or equal to \$100 to amounts greater than \$200,000, and providing different dollar multiples for rounding the increase in each penalty range. For example, subsection 5(a) of the Inflation Adjustment Act provides that increases determined under that subsection must be rounded to the nearest “multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000.” (Emphasis added.) Similarly, it provides that increases should be rounded to the nearest “multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000.” (Emphasis added.)

On July 27, 2000, FCA published a final rule implementing a second round of penalty adjustments to account for the approximately 6 percent change in the CPI between June 1996 and June 1999.³ However, in determining the amount of adjustments to be made, FCA used an incorrect approach. Specifically, FCA calculated the prerounded adjustments by multiplying the penalties by 1.06, increasing the \$1,100 penalty by \$66.69 to \$1,166.69 and increasing the \$550 penalty by \$33.34 to \$583.34. FCA then used the size of the increase to determine the applicable category of rounding. As a result, the \$1,166.69 penalty was rounded to the nearest multiple of \$10 (\$1,170), and the \$583.34 penalty was also rounded to the nearest multiple of \$10 (\$580). However, as noted previously, the Inflation Adjustment Act clearly states that the appropriate category of rounding for the increase should be determined by the size of the penalty, not the size of the increase.

Had FCA used the size of the penalty to determine the appropriate category of rounding for the increase, the agency would not have been able to increase its

³See 65 Fed. Reg. 46087.

penalties in July 2000.⁴ The Inflation Adjustment Act states that, for penalties greater than \$1,000 but less than or equal to \$10,000, any increase should be rounded to the nearest multiple of \$1,000. The nearest multiple of \$1,000 for the \$166.69 increase in the \$1,100 penalty is zero. Therefore, the \$1,100 penalty could not have been increased. Similarly, the act states that, for penalties greater than \$100 but less than or equal to \$1,000, any increase should be rounded to the nearest multiple of \$100. Because the nearest multiple of \$100 for the \$33.34 increase in the \$550 penalty was zero, that penalty also could not have been increased.

Recommendation for Executive Action

Although we recognize some advantages to rounding on the basis of the size of the increase rather than the size of the penalty, such a determination does not comport with the plain language of the statute. Therefore, we recommend that the FCA Board initiate a regulatory action to adjust the agency's civil penalties in a manner consistent with the requirements of the Inflation Adjustment Act.

Agency Comments and Our Evaluation

On September 11, 2002, we provided a draft of this report to the FCA Chairman of the Board and Chief Executive Officer for his review and comment. On September 18, 2002, he responded by letter indicating FCA agreed that, under a literal interpretation of the rounding rules in the Inflation Adjustment Act, the two civil penalties that FCA adjusted in July 2000 should not have been increased. Therefore, he said he would recommend that the FCA Board undertake a rulemaking to make appropriate adjustments to comply with the statute. However, he also indicated that the rounding rule in the Inflation Adjustment Act should relate to the size of the increase instead of the size of the penalty.

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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 Web site 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.

Sincerely yours,



Victor S. Rezendes
Managing Director
Strategic Issues

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⁴We took a similar position earlier this year with regard to a direct final rule published by the Environmental Protection Agency. See B-290021, July 15, 2002.