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April 27, 2023

The Honorable Dick Durbin
Chairman
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate

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

Civil Monetary Penalties: Federal Agencies' Compliance with the 2022 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, the penalties may lose their effectiveness, and the government may lose opportunities to collect significant receipts, if agencies do not periodically adjust them to account for inflation. Congress enacted the Federal Civil Penalties Inflation Adjustment Act of 1990 (IAA)¹ to allow for agencies to adjust their covered civil monetary penalties for inflation, promote compliance, and improve penalty collection.² The act, as amended,³ includes a provision added in 2015 for GAO to submit a report annually to Congress assessing agency compliance with the required civil monetary penalty adjustments.⁴

¹Pub. 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.

³IAA amendments in 2015 made the penalties under the Occupational Safety and Health Act of 1970 and the Social Security Act subject to the inflation adjustment requirements, although 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 2021 annual inflation adjustment of the civil monetary penalty amounts as the IAA requires in GAO, *Civil Monetary Penalties: Federal Agencies' Compliance with the 2021 Annual Inflation Adjustment Requirements*, [GAO-22-105596](#) (Washington, D.C.: Apr. 28, 2022).

This seventh annual review responds to that statutory requirement. Our objective was to determine how many agencies subject to the IAA published 2022 civil monetary penalty inflation adjustments in the *Federal Register* as of December 31, 2022, and reported information about civil monetary penalties within each agency’s jurisdiction in the 2022 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 to government corporations that produce annual management reports.⁶ For purposes of this report, AFR refers to all three types of 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 civil monetary penalty inflation adjustments that agencies not on the list published in calendar year 2022.⁸ We determined that we should add no agencies and concluded that the list was complete for our purposes.

We reviewed agencies’ inflation adjustments published in the *Federal Register* as of December 31, 2022, and related information reported in the 2022 AFRs. We determined whether the agencies reported information about civil monetary penalties within their jurisdictions, including the 2022 annual inflation adjustment of the civil monetary penalty amounts, pursuant to the IAA and OMB Circular A-136, as applicable.⁹ We verified neither the accuracy of agencies’ inflation adjustments nor reported civil monetary penalty information. We contacted officials at any agency 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 its AFR in order to confirm our findings.

We conducted this performance audit from December 2022 to April 2023 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives.

In summary, 47 of the 48 agencies we reviewed for 2022 that could be subject to certain requirements of the IAA have complied with the applicable provisions. These agencies

⁵Office of Management and Budget, *Financial Reporting Requirements*, OMB Circular A-136 (Washington, D.C.: June 2022).

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), although 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.

⁷This list of agencies includes some government corporations; therefore, in this report, “agency” includes government corporations. See [GAO-22-105596](#).

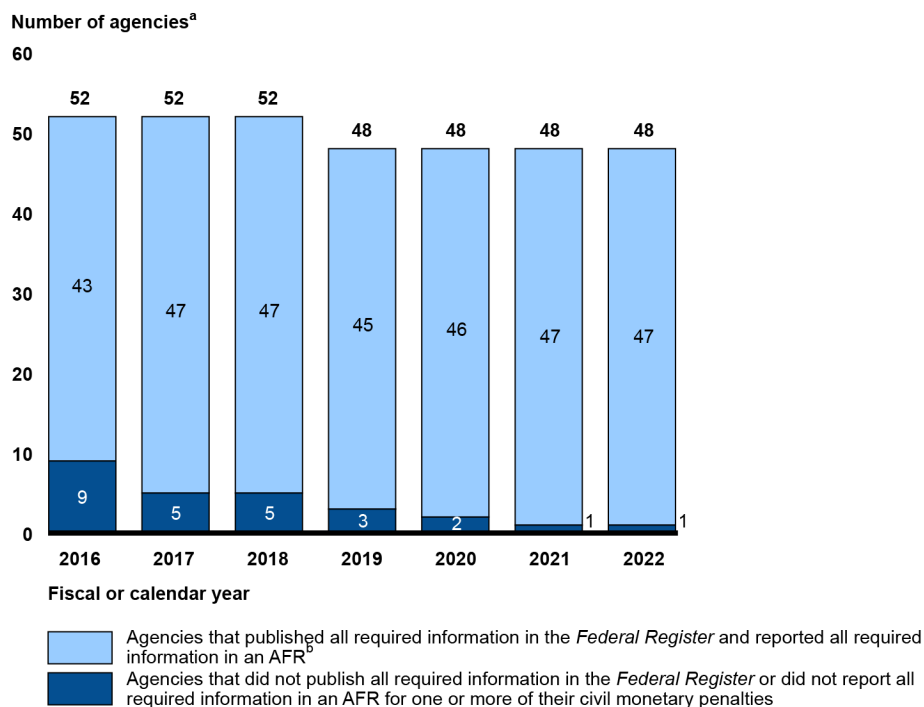
⁸Because there is no current, comprehensive database that identifies each agency with civil monetary penalty authority subject to the IAA’s applicable provisions, we cannot be sure that we have identified all of the agencies or penalties the act covers.

⁹Two agencies reported information about their civil monetary penalties, including the 2022 annual inflation adjustment, in their calendar year 2021 AFRs. For these two agencies, we reviewed the 2021 AFRs.

published the 2022 annual inflation adjustment of the civil monetary penalty amounts within their jurisdictions in the *Federal Register* as of December 31, 2022, and reported related information about civil monetary penalties in their 2022 or 2021 AFRs, as the IAA and OMB Circular A-136 require. However, one agency—the Department of the Treasury—did not publish the inflation adjustment in the *Federal Register* as of December 31, 2022, and did not report in its 2022 AFR the required information for four of its civil monetary penalties. For further details on each agency’s reporting status for 2022, 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 applicable IAA provisions have published the inflation adjustment information and reported all required information in the AFR.

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), 2016–2022



Source: GAO analysis of civil monetary penalty adjustment reporting. | GAO-23-106485

^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 (IAA). 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). 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. Therefore, our review for years 2019 through 2022 included a total of 48 agencies.

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

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).

Agency Comments

We provided a draft of this report to OMB and Treasury for review. OMB and Treasury informed us that they had no comments on the draft report.

We are sending copies of this report to the appropriate congressional committees, the Director of the Office of Management and Budget, 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. Staff members who made key contributions to this report include Stephanie Chen (Assistant Director), Vincent Gomes (Auditor-in-Charge), Dakota Hunt, Diana Lee, and Anthony Clark.



Paula M. Rascona
Director
Financial Management and Assurance

Enclosure

Enclosure I: Federal Agencies' Reporting of Required Civil Monetary Penalty Information, Including the 2022 Annual Inflation Adjustment

Table 1 summarizes federal agencies' civil monetary penalty 2022 annual inflation adjustments published in the *Federal Register* as of December 31, 2022, and reported in their 2022 agency financial reports, pursuant to Office of Management and Budget Circular A-136 and as the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (IAA), requires. The agencies are those included in the list of the 48 agencies that could be subject to the IAA's applicable provisions for 2022.

Table 1: Federal Agencies' Reporting of Civil Monetary Penalty Information, Including the 2022 Annual Inflation Adjustment in the *Federal Register* as of December 31, 2022, and in 2022 Agency Financial Reports (AFR)

Agency	Reported civil monetary penalty information		Remarks
	<i>Federal Register</i>	AFR	
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	<i>Federal Register</i>	AFR	Remarks
16. Department of the Treasury	X	X	Treasury did not publish the 2022 annual inflation adjustment amounts for four of the 70 civil monetary penalties within its jurisdiction in the <i>Federal Register</i> and did not report related information for those penalties in its fiscal year 2022 AFR. In its fiscal year 2022 AFR, Treasury disclosed that the regulation for the inflation adjustment to those penalties will be updated in 2023. On March 21, 2023, Treasury published the most current annual inflation adjustment effective through 2023, which included the 2022 adjustment, for these four 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
31. General Services Administration	✓	✓	N/A
32. Merit Systems Protection Board	✓	✓	N/A
33. National Aeronautics and Space Administration	✓	✓	N/A
34. National Credit Union Administration (NCUA) ^b	✓	✓	N/A

Reported civil monetary penalty information			
Agency	Federal Register	AFR	Remarks
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 (OPM)	✓	✓	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, 2022, and did not report all required information in the 2022 AFR for one or more of their civil monetary penalties		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's analysis of civil monetary penalty adjustment reporting. | GAO-23-106485

^aNIGC officials previously stated that NIGC is an independent federal regulatory agency within DOI and that NIGC's financial information is consolidated and reported in DOI's AFR.

^bFCSIC and NCUA reported information about their civil monetary penalties, including the 2022 annual inflation adjustment, in their calendar year 2021 annual reports, issued in June 2022 and February 2022, 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 the Federal Reserve Act (12 U.S.C. § 248b) requires FRB to prepare financial statements, and as such, the OMB Circular A-136 requirement to submit an AFR does not apply.

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

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