



July 2018

CIVIL PENALTIES

Certain Federal Agencies Need to Improve Inflation Adjustment Reporting

GAO Highlights

Highlights of [GAO-18-519](#), a report to congressional committees

Why GAO Did This Study

The IAA includes a provision for GAO to annually submit to Congress a report assessing agencies' compliance with the inflation adjustments required by the act. Specifically, GAO's objective was to determine to what extent federal agencies subject to the IAA have complied with the requirement to report, in their 2017 AFRs submitted under OMB guidance, information about civil monetary penalties within the jurisdiction of the agency, including the 2017 annual inflation adjustment of the civil monetary penalty amounts.

GAO obtained the population of 52 OMB-identified federal agencies that could be subject to the applicable provisions of the IAA and, for those subject to the requirements, reviewed their 2017 AFRs for compliance with the IAA and consistency with OMB guidance.

What GAO Recommends

GAO recommends that five federal agencies report information about civil monetary penalties in their 2018 AFRs, including the inflation adjustment of the civil monetary penalties. One agency—the Department of Transportation—concurred with GAO's recommendation. Two agencies—the Federal Housing Finance Agency and National Endowment for the Arts—indicated that they will take actions to address the recommendations made to them. Two agencies—the Department of the Treasury and National Transportation Safety Board—indicated that they had no comments.

View [GAO-18-519](#). For more information, contact Paula M. Rascona at (202) 512-9816 or rasconap@gao.gov.

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What GAO Found

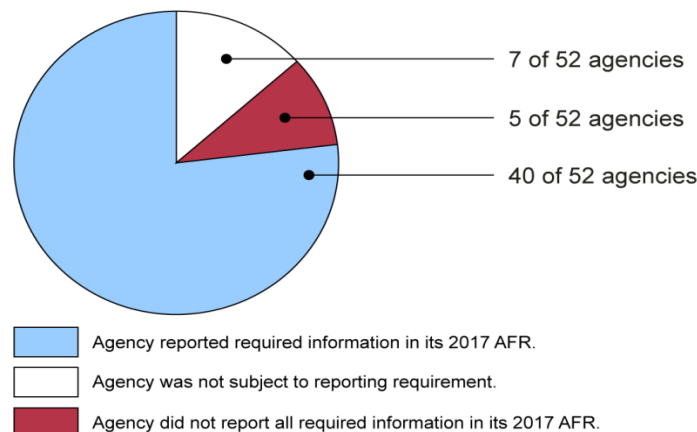
The authority of federal agencies to assess and collect civil monetary penalties is a powerful method for enforcing regulatory policies and deterring violations. In 2017, federal agencies assessed millions of dollars in civil monetary penalties for violations of statutory requirements, such as phone calls that violated federal telemarketing law and failure to report suspicious orders for controlled substances.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (IAA) calls for federal agencies to (1) annually adjust the level of civil monetary penalties and (2) report in their agency financial reports (AFR) civil monetary penalty information, including the adjustment of the civil monetary penalties. The act also requires the Office of Management and Budget (OMB) to issue implementation guidance.

In August 2017, GAO issued its first annual report assessing agencies' compliance with the IAA's requirements, and recommended that (1) three agencies publish their initial catch-up inflation adjustments in the *Federal Register*; (2) three agencies publish civil monetary penalties within their jurisdictions, including any penalty adjustments, in their 2017 AFRs; and (3) OMB clarify its guidance regarding federal agencies' reporting on civil monetary penalties. OMB and the six agencies have addressed GAO's recommendations.

In this second annual review, GAO found that most federal agencies subject to the IAA have complied with the provision of the act to report in their 2017 AFRs information on civil monetary penalties within their jurisdiction, including the 2017 annual inflation adjustment of the civil monetary penalties. However, five federal agencies did not report, in their 2017 AFRs, all required information about the civil monetary penalties.

Federal Agencies' Reporting of Civil Monetary Penalty Information in 2017 Agency Financial Reports (AFR): Number of Agencies That Reported Civil Monetary Penalty Information in Their 2017 AFRs, Including the Annual Adjustment of the Civil Monetary Penalties



Source: GAO analysis of agencies' 2017 AFRs. | GAO-18-519

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Abbreviations

1990 Act	Federal Civil Penalties Inflation Adjustment Act of 1990
2015 Act	Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015
AFR	agency financial report
AMR	annual management report
CFPB	Consumer Financial Protection Bureau
DCIA	Debt Collection Improvement Act
DHS	Department of Homeland Security
DOL	Department of Labor
DOT	Department of Transportation
FCC	Federal Communications Commission
FCSIC	Farm Credit System Insurance Corporation
FDIC	Federal Deposit Insurance Corporation
FHFA	Federal Housing Finance Agency
FRB	Federal Reserve Board of Governors
IAA	Federal Civil Penalties Inflation Adjustment Act of 1990, as amended
ITC	International Trade Commission
NEA	National Endowment for the Arts
NTSB	National Transportation Safety Board
OMB	Office of Management and Budget
PAR	performance and accountability report
PBGC	Pension Benefit Guaranty Corporation
PRC	Postal Regulatory Commission
Treasury	Department of the Treasury
TVA	Tennessee Valley Authority
USDA	U.S. Department of Agriculture
USPS	U.S. Postal Service
VA	Department of Veterans Affairs

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July 18, 2018

The Honorable Charles E. Grassley
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Robert W. Goodlatte
Chairman
The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

The Congressional Budget Office estimated that an increase of approximately \$590 million in government-wide revenues can be attributed to the timely inflation adjustment of civil monetary penalties in fiscal years 2018 through 2022. The authority of federal agencies to assess and collect civil monetary penalties is a powerful method for enforcing regulatory policies and deterring violations. Civil monetary penalties prescribed by statute include maximum penalties and specific monetary amounts that are to be timely adjusted for inflation.

Congress generally establishes specific monetary amounts or maximums for civil monetary penalties in statutes, and the maximum penalties are generally reserved for the worst violations of a particular statutory requirement. In 2017, federal agencies assessed millions of dollars in civil monetary penalties for violations of statutory requirements, such as making phone calls that violated federal telemarketing law and failing to report suspicious orders for controlled substances distributed to pharmacy customers.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended,¹ hereinafter referred to as the Inflation Adjustment Act (IAA)² requires

1. agencies to annually adjust the level of civil monetary penalties;
2. agencies to include in their agency financial reports (AFR)—submitted under Office of Management and Budget (OMB) Circular A-136, Financial Reporting Requirements, or any successor thereto—information about the civil monetary penalties within the jurisdiction of the agency, including the adjustment of the civil monetary penalties;
3. OMB to issue guidance to agencies on implementing the inflation adjustments; and
4. GAO to annually submit to Congress a report assessing the compliance of federal agencies with the required adjustments for inflation.

In August 2017, we issued our first annual report³ assessing the compliance of agencies with the requirements of the IAA and recommended that (1) three agencies publish their initial catch-up inflation adjustments in the *Federal Register*; (2) three agencies publish civil monetary penalties within their jurisdictions, including any penalty adjustments, in their 2017 AFRs; and (3) OMB clarify its guidance regarding federal agencies' reporting on civil monetary penalties in their AFRs. OMB and the six agencies have addressed these recommendations.

¹The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (Oct. 5, 1990), as amended by the Debt Collection Improvement Act (DCIA), 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 (2015 Act), Pub. L. No. 114-74, title VII, § 701, 129 Stat. 584, 599–601 (Nov. 2, 2015) (collectively referred to as the Inflation Adjustment Act or IAA), 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.

²As provided by the 2015 Act amendments, 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.

³GAO, *Civil Penalties: Certain Federal Agencies Need to Improve Efforts to Comply with Inflation Adjustment Requirements*, [GAO-17-634](#) (Washington, D.C.: Aug. 31, 2017).

This second annual review responds to the statutory provision for GAO to assess agencies' compliance with the civil monetary penalty adjustments for inflation required by the IAA. Specifically, our objective was to determine to what extent federal agencies subject to the IAA have complied with the requirement to report, in their 2017 AFRs submitted under OMB Circular A-136,⁴ information about civil monetary penalties within the jurisdiction of the agency, including the 2017 annual inflation adjustment of the civil monetary penalty amounts. 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).⁵ For the purposes of this report, "AFR" refers to an agency's AFR or consolidated PAR.

To address our objective, we reviewed OMB's summary list of 52 federal agencies⁶ that could be subject to the IAA's applicable provisions and the agencies' 2017 AFRs to determine whether the agencies identified by OMB reported their civil monetary penalty information in compliance with the IAA and consistent with OMB guidance. We met with OMB staff and made inquiries of selected agencies' officials regarding the agencies' reporting of civil monetary penalty information.

We conducted this performance audit from January 2018 to July 2018 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 and conclusions based on our audit objectives. We believe that

⁴Office of Management and Budget, *Financial Reporting Requirements*, OMB Circular A-136 (Washington, D.C.: August 2017).

⁵Agencies 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 of the fiscal year following the fiscal year that is being reported, although some operate on a calendar year basis and may issue their reports at a different date.

⁶We defined an "agency" to be each organizational unit that was separately listed in OMB's summary of reported agencies. This list of agencies includes some government corporations; therefore, our definition of agency includes those government corporations. OMB Circular A-136 does not require government corporations to report civil monetary penalty information in their AMRs. In addition, as further explained in apps. I and II, some other agencies were not required to report civil monetary penalties information in an AFR. However, some government corporations and other agencies not subject to civil monetary penalty information reporting may have reported civil monetary penalty information in their 2017 annual reports. For example, the Corporation for National and Community Service is a government corporation and therefore is not subject to the IAA reporting requirement but nevertheless reported civil monetary penalties information.

the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I provides additional information on our objectives, scope, and methodology.

Background

In 1996, Congress amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act) to require agencies to adjust for inflation covered civil monetary penalties that were established in statute.⁷ Subsequently, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 was enacted, further amending the 1990 Act, now referred to as the IAA.⁸ In response to the IAA, in February 2016, OMB issued Memorandum M-16-06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*, and, in December 2016, issued OMB Memorandum M-17-11, *Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*.⁹ These OMB memorandums provide detailed guidance to agencies on how to implement the civil monetary penalty annual adjustment requirement of the IAA. In addition, in August 2017, OMB revised its Circular A-136 to clarify guidance to federal agencies for including inflation adjustments in their AFRs. The revised OMB Circular A-136 states that federal agencies must make annual inflation adjustments to civil monetary penalties, report on the adjustments in their AFRs, and include information about the civil monetary penalties within their jurisdictions in the “Other Information” section of the AFR.

Consistent with OMB guidance for implementing inflation adjustments, federal agencies are responsible for identifying the civil monetary penalties that pertain to the statutes and regulations they enforce. OMB guidance instructs agencies with questions on whether the inflation adjustment requirement applies to an individual penalty to first consult with their offices of general counsel and then seek clarifying guidance from OMB, if necessary. In addition, the IAA states that agencies may

⁷The 1990 Act, as amended by DCIA, § 31001(s)(1), 110 Stat. 1321–373.

⁸Pub. L. No. 114-74, title VII, § 701, 129 Stat. 584, 599-601 (Nov. 2, 2015), *codified at* 28 U.S.C. § 2461 note.

⁹In December 2017, OMB issued OMB Memorandum M-18-03, *Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*, which applies to fiscal year 2018 AFRs for agencies reporting on a fiscal year basis.

determine and request OMB concurrence that the initial catch-up adjustment to the amount of a civil monetary penalty be less than the amount required under the IAA (a reduced catch-up adjustment determination), if they demonstrate that the otherwise required increase of the penalty or penalty range would have a negative economic effect or that the social costs would outweigh the benefits. According to OMB staff, OMB did not receive any agency requests for its concurrence to adjust the amount of a civil monetary penalty by less than the required amount in 2016 or 2017.

Five Federal Agencies Did Not Report All Required Civil Monetary Penalty Information in Their 2017 AFRs

Under the IAA and OMB Circular A-136 (revised in August 2017), Section II.5.9, Civil Monetary Penalty Adjustment for Inflation, federal agencies were directed to report in their 2017 AFRs information about the civil monetary penalties within their jurisdictions, including the 2017 annual inflation adjustment of the civil monetary penalty amounts.

Of the 52 federal agencies that we reviewed, we found that 7 agencies were not subject to the IAA reporting requirements and therefore did not report civil monetary penalties information.¹⁰ Of the remaining 45 agencies, we found that 40 agencies reported in their 2017 AFRs information about their civil monetary penalties, including the 2017 annual inflation adjustment of the civil monetary penalty amounts, as directed by OMB guidance. The remaining 5 agencies subject to the IAA reporting requirement that did not properly report their civil monetary penalty information were the

1. Department of Transportation (DOT),
2. Federal Housing Finance Agency (FHFA),
3. National Endowment for the Arts (NEA),
4. National Transportation Safety Board (NTSB), and
5. Department of the Treasury (Treasury).

¹⁰We excluded these seven agencies from further review because (1) three agencies met the definition of a “government corporation” and, as such, are not required to follow OMB Circular A-136 AFR reporting guidance and (2) the remaining four agencies told us that they were not subject to reporting civil monetary penalty information in the AFR for various other reasons, such as exemptions provided in other statutes and regulations. See apps. I and II for additional details.

In its fiscal year 2017 AFR, DOT reported all of the civil monetary penalties within its jurisdiction but did not report the 2017 annual inflation adjustment amounts for 27 of its civil monetary penalties.¹¹ A DOT official acknowledged that the agency did not publish the inflation adjustments in the *Federal Register*¹² for 27 civil monetary penalties in its jurisdiction because of various issues, including the change in administration and petitions received from several organizations during the public comment period to reconsider the increase in certain civil penalties. A DOT official stated that DOT intends to report on the inflation adjustment amounts in its fiscal year 2018 AFR and that it plans on addressing the civil monetary penalties related to the petitions separately.

FHFA reported information about civil monetary penalties within its jurisdiction but did not include the 2017 annual inflation adjustment of the civil monetary penalty amounts in its fiscal year 2017 AFR. An FHFA official stated that FHFA's inflation adjustment amounts for the civil monetary penalties were not published in the *Federal Register* because of an administrative oversight. FHFA stated that it intends to report on the inflation adjustment amounts in its fiscal year 2018 AFR.

NEA did not report civil monetary penalties within its jurisdiction, including the annual inflation adjustment of the civil monetary penalty amounts, in its fiscal year 2017 AFR. An NEA official stated that NEA did not timely finalize the inflation adjustment of the civil monetary penalty amounts in the *Federal Register* until after its fiscal year 2017 AFR had been issued. NEA stated that it intends to report the required civil monetary penalty information, including the annual inflation adjustment amounts, in its fiscal year 2018 AFR.

NTSB did not report civil monetary penalties within its jurisdiction, including the annual inflation adjustment of the civil monetary penalty amounts, in its fiscal year 2017 AFR. An NTSB official indicated that NTSB inadvertently omitted the information on civil monetary penalties in the fiscal year 2017 AFR. NTSB stated that it intends to report the required civil monetary penalty information, including the annual inflation adjustment amounts, in its fiscal year 2018 AFR.

¹¹DOT reported the 2017 annual inflation adjustment amounts for 91 of the 118 civil monetary penalties within its jurisdiction in its fiscal year 2017 AFR.

¹²Under the IAA and OMB Memorandum M-17-11, beginning in 2017, agencies are required to publish the annual inflation adjustment of the civil monetary penalty amounts in the *Federal Register* each year.

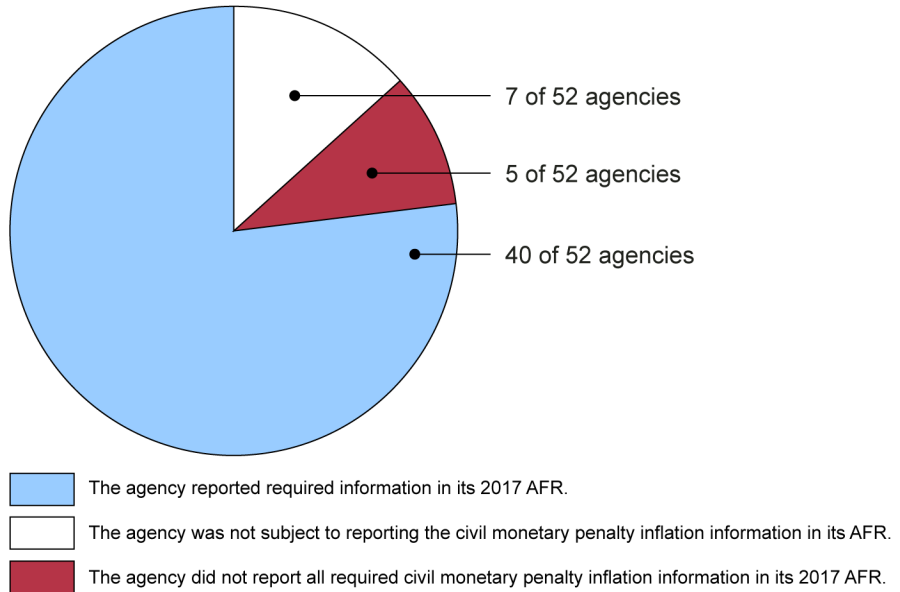
In its fiscal year 2017 AFR, Treasury reported all of the civil monetary penalties within its jurisdiction but did not report the 2017 annual inflation adjustment for two of its civil monetary penalties.¹³ A Treasury official acknowledged that the agency did not publish the inflation adjustment updates to two civil monetary penalties in its jurisdiction in the *Federal Register*. Treasury stated that it intends to report on the status of its inflation adjustment of civil monetary penalties in its fiscal year 2018 AFR.

Without timely and complete reporting of civil monetary penalty information in the AFRs, OMB and other decision makers may lack the information needed to help ensure the effectiveness of civil monetary penalties in enforcing statutes and preventing violations.

Figure 1 summarizes the status of reporting civil monetary penalties information in the AFRs of the 52 federal agencies that we reviewed for fiscal or calendar year 2017 (as applicable, as agencies may have different year-end reporting dates). Further details on each federal agency's reporting status are provided in appendix II.

¹³Treasury reported the 2017 annual inflation adjustment amounts for 63 of the 65 civil monetary penalties within its jurisdiction in its fiscal year 2017 AFR.

Figure 1: Federal Agencies' Reporting of Civil Monetary Penalty Information, Including the 2017 Annual Inflation Adjustment in AFRs, Fiscal or Calendar Year 2017



AFR: agency financial report or performance and accountability report

Source: GAO analysis of the Office of Management and Budget's data and individual agencies' fiscal or calendar year 2017 AFRs. | GAO-18-519

Conclusions

Civil monetary penalties prescribed by statute and timely adjusted for inflation allow agencies to punish violators appropriately and serve as a deterrent to future violations. While most federal agencies subject to the IAA's reporting requirement followed the requirement and OMB's guidance, five agencies did not report all required civil monetary penalty information in their 2017 AFRs. Without timely and complete reporting of civil monetary penalties information in agencies' AFRs, decision makers may not have the information needed to help ensure the effectiveness of civil monetary penalties in enforcing statutes and preventing violations.

Recommendations for Executive Action

We are making a total of five recommendations to the following five agencies—DOT, FHFA, NEA, NTSB, and Treasury.

The Secretary of Transportation should include in DOT's fiscal year 2018 AFR information about all civil monetary penalties within its jurisdiction, including the inflation adjustment of the civil monetary penalties. (Recommendation 1)

The Director of FHFA should include in FHFA's fiscal year 2018 AFR information about all civil monetary penalties within its jurisdiction, including the inflation adjustment of the civil monetary penalties. (Recommendation 2)

The Acting Chairman of NEA should include in NEA's fiscal year 2018 AFR information about all civil monetary penalties within its jurisdiction, including the inflation adjustment of the civil monetary penalties. (Recommendation 3)

The Chairman of NTSB should include in NTSB's fiscal year 2018 AFR information about all civil monetary penalties within its jurisdiction, including the inflation adjustment of the civil monetary penalties. (Recommendation 4)

The Secretary of the Treasury should include in Treasury's fiscal year 2018 AFR information about all civil monetary penalties within its jurisdiction, including the inflation adjustment of the civil monetary penalties. (Recommendation 5)

Agency Comments and Our Evaluation

We provided a draft of this report for comment to the five federal agencies to which we directed recommendations, DOT, FHFA, NEA, NTSB, and Treasury. We also provided a draft of this report to OMB. OMB did not provide comments on our draft report.

DOT, FHFA, NTSB, and Treasury provided email responses to our draft report.

- DOT stated that it concurred with our recommendation.
- FHFA stated that it will implement our recommendation.
- NTSB and Treasury told us that they had no comments on the draft report.

NEA provided written comments, which are reprinted in appendix III. In its comments, NEA stated that it is prepared to accept and act on our findings, including our recommendation. NEA also stated that it published up-to-date inflation adjustments in the *Federal Register* in January 2018 consistent with statutory requirements, and it had neither assessed nor had occasion to assess any civil penalties in fiscal year 2017. The objective of our work was focused on the extent to which agencies

followed the reporting requirement of the IAA in their 2017 AFRs. Thus, we note that NEA's publication of its annual inflation adjustments in the *Federal Register* in 2018 and its assessment of civil penalties in fiscal year 2017 were not within the scope of this report.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Transportation, the Director of the Federal Housing Finance Agency, the Acting Chairman of the National Endowment for the Arts, the Chairman of the National Transportation Safety Board, the Secretary of the Treasury, 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 staffs have any questions about 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. GAO staff who made key contributions to this report are listed in appendix IV.



Paula M. Rascona
Director
Financial Management and Assurance

Appendix I: Objectives, Scope, and Methodology

This report addresses to what extent federal agencies subject to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, hereinafter referred to as the Inflation Adjustment Act (IAA) have complied with the requirement to report, in their 2017 agency financial reports (AFR) submitted in accordance with Office of Management and Budget (OMB) Circular A-136, *Financial Reporting Requirements*, information about civil monetary penalties within the jurisdiction of the agency, including the 2017 annual inflation adjustment of the civil monetary penalty amounts.¹ 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). For the purposes of this report, “AFR” refers to an agency’s AFR or consolidated PAR.

To address our objective, we obtained the population of 52 federal agencies from OMB’s summary list² that could be subject to the IAA’s provisions.³ To assess the completeness of the population of OMB-identified agencies, we compared OMB’s summary with our previously identified list of agencies reporting civil monetary penalties.⁴ We concluded that the list was reliable for our purposes. We reviewed the agencies’ 2017 AFRs and AMRs to determine whether the information presented was in compliance with IAA provisions and consistent with the guidance in OMB Circular A-136. We did not verify the accuracy of federal agencies’ reported civil monetary penalty information. Because there is no current comprehensive database that identifies each agency with civil monetary penalty authority subject to the IAA’s provisions, we cannot be sure that we have identified all of the agencies or penalties covered by the act.

¹See 28 U.S.C. § 2461 Note, Sec. 7.

²This OMB summary list identified, as of December 2016, federal agencies with civil monetary penalty authority that could be subject to the IAA’s provisions. OMB staff stated that OMB had not subsequently updated it or compiled another summary list.

³We defined an “agency” to be each organizational unit that was separately listed in OMB’s summary of reported agencies. As noted earlier in this report, this list of agencies includes some government corporations; therefore, our definition of agency includes those government corporations. OMB Circular A-136 does not require government corporations to report civil monetary penalty information in their AMRs.

⁴GAO, *Civil Penalties: Agencies Unable to Fully Adjust Penalties for Inflation Under Current Law*, [GAO-03-409](#) (Washington, D.C.: Mar. 14, 2003).

Of the 52 agencies that OMB identified, 7 federal agencies were not subject to the IAA requirements to report civil monetary penalties information in an AFR and therefore did not report civil monetary penalties information. Specifically, 3 agencies established as government corporations—the Federal Deposit Insurance Corporation, the Pension Benefit Guaranty Corporation, and the Tennessee Valley Authority—are not required by OMB Circular A-136 to report civil monetary penalty information in an AFR.⁵ In addition, 2 agencies, the International Trade Commission and the Postal Regulatory Commission, determined that the IAA was not applicable to them. Further, officials at the Federal Reserve Board and the U.S. Postal Service previously stated that pursuant to certain laws or regulations, their agencies have determined that they were not required to submit AFRs under OMB Circular A-136.⁶

We met with OMB staff from the Office of Information and Regulatory Affairs, the Office of Federal Financial Management, and the Labor Branch to gather information on agencies' activities and reporting in compliance with the IAA and consistency with OMB guidance. We also inquired with officials at agencies that had not reported, in whole or in part, civil monetary penalty information in their AFRs consistent with OMB guidance for explanations as to why the agencies did not report certain civil monetary penalty information consistent with OMB guidance.

We focused our review on the extent to which agencies followed the AFR reporting requirement of the IAA. We did not attempt to verify whether a reported penalty that an agency adjusted for inflation appropriately met the definition of a covered civil monetary penalty in the IAA or whether the adjustment was in the correct amount.

We conducted this performance audit from January 2018 to July 2018 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

⁵While the Corporation for National and Community Service meets the definition of a government corporation and is not required to report civil monetary penalty information in an AFR, it did report in its fiscal year 2017 annual report information about the civil monetary penalties within its jurisdiction, including the 2017 annual inflation adjustment of the civil monetary penalty amounts.

⁶The Consumer Financial Protection Bureau (CFPB) officials previously stated that CFPB is not required to follow OMB Circular A-136 AFR reporting guidance, but it did report in its fiscal year 2017 AFR information about the civil monetary penalties within its jurisdiction, including the 2017 annual inflation adjustment of the civil monetary penalty amounts.

findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Status of Agencies' Reporting of Required Civil Monetary Penalty Information

Table 1 summarizes federal agencies' reporting of civil monetary penalty information, including the 2017 annual inflation adjustment of the civil monetary penalty amounts, in their 2017 agency financial reports (AFR) as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act or IAA). The agencies are those included in the Office of Management and Budget's (OMB) summary list of the 52 federal agencies that could be subject to the applicable provision of the IAA for fiscal or calendar year 2017 as applicable (as agencies may have different year-end reporting dates).

Table 1: Agencies' Reporting of Civil Monetary Penalty Information, Including the 2017 Annual Inflation Adjustment of the Civil Monetary Penalty Amounts, in Their Fiscal or Calendar Year 2017 Agency Financial Reports (AFR)

	Agency	Reported civil monetary penalty information (including the 2017 annual inflation adjustment) in its 2017 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 (USDA)	✓	In its fiscal year 2017 AFR, issued in November 2017, USDA reported anticipated penalty levels and stated that it had not finalized and published a final rule to make its 2017 civil monetary penalty annual inflation adjustment. USDA subsequently published its inflation adjustments, consistent with the anticipated levels, in the <i>Federal Register</i> on December 5, 2017.
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 (DHS)	✓	N/A
11.	Department of Housing and Urban Development	✓	N/A
12.	Department of Justice	✓	N/A

**Appendix II: Status of Agencies' Reporting of
Required Civil Monetary Penalty Information**

	Agency	Reported civil monetary penalty information (including the 2017 annual inflation adjustment) in its 2017 AFR?	Remarks
13.	Department of Labor (DOL)	✓	As a result of our inquiries, DOL officials confirmed three typographical errors in its civil monetary penalties information in its fiscal year 2017 AFR. DOL officials stated that DOL will review this section more stringently for its fiscal year 2018 AFR.
14.	Department of State	✓	N/A
15.	Department of the Interior	✓	N/A
16.	Department of the Treasury (Treasury)	X	Treasury did not report the 2017 annual inflation adjustment amounts for 2 of the 65 civil monetary penalties within its jurisdiction in its fiscal year 2017 AFR.
17.	Department of Transportation (DOT)	X	DOT did not report the 2017 annual inflation adjustment amounts for 27 of the 118 civil monetary penalties within its jurisdiction in its fiscal year 2017 AFR.
18.	Department of Veterans Affairs (VA)	✓	VA reported in its fiscal year 2017 AFR information about civil monetary penalties. It explicitly stated its intention to publish the 2017 inflation adjustment amounts for the civil monetary penalties within its jurisdiction in the <i>Federal Register</i> by December 2017. VA published the 2017 annual inflation adjustment to its civil monetary penalties in the <i>Federal Register</i> on March 2, 2018.
19.	Department of Homeland Security/Department of Labor joint rulemaking	✓	DHS and DOL separately reported civil monetary penalties information, including the 2017 annual inflation adjustment, in their respective fiscal year 2017 AFRs.
20.	Environmental Protection Agency	✓	N/A
21.	Equal Employment Opportunity Commission	✓	N/A
22.	Farm Credit Administration	✓	N/A
23.	Farm Credit System Insurance Corporation (FCSIC)	✓	As of June 2018, FCSIC had not issued its calendar year 2017 annual report. However, in its calendar year 2016 annual report, issued in June 2017, FCSIC reported information about its civil monetary penalties, including the 2017 annual inflation adjustment.

**Appendix II: Status of Agencies' Reporting of
Required Civil Monetary Penalty Information**

	Agency	Reported civil monetary penalty information (including the 2017 annual inflation adjustment) in its 2017 AFR?	Remarks
24.	Federal Communications Commission (FCC)	✓	As a result of our inquiries, FCC officials stated that the fiscal year 2016 information reported in its fiscal year 2017 AFR section "Schedule of Civil Monetary Penalties" was erroneous and that FCC should have reported the year as 2017 instead of 2016.
25.	Federal Deposit Insurance Corporation (FDIC) ^a	N/A	N/A
26.	Federal Election Commission	✓	N/A
27.	Federal Energy Regulatory Commission	✓	N/A
28.	Federal Housing Finance Agency (FHFA)	X	FHFA reported information about civil monetary penalties within its jurisdiction but did not include the 2017 annual inflation adjustment of the civil monetary penalty amounts in its fiscal year 2017 AFR.
29.	Federal Maritime Commission	✓	N/A
30.	Federal Reserve Board of Governors (FRB) ^b	N/A	N/A
31.	Federal Trade Commission	✓	N/A
32.	General Services Administration	✓	N/A
33.	International Trade Commission (ITC) ^c	N/A	N/A
34.	Merit Systems Protection Board	✓	N/A
35.	National Aeronautics and Space Administration	✓	N/A
36.	National Credit Union Administration	✓	N/A
37.	National Endowment for the Arts (NEA)	X	NEA did not report civil monetary penalties within its jurisdiction, including the annual inflation adjustment of the civil monetary penalty amounts, in its fiscal year 2017 AFR.
38.	National Indian Gaming Commission	✓	N/A
39.	National Science Foundation	✓	N/A
40.	National Transportation Safety Board (NTSB)	X	NTSB did not report civil monetary penalties within its jurisdiction, including the annual inflation adjustment of the civil monetary penalty amounts, in its fiscal year 2017 AFR.
41.	Nuclear Regulatory Commission	✓	N/A

**Appendix II: Status of Agencies' Reporting of
Required Civil Monetary Penalty Information**

Agency	Reported civil monetary penalty information (including the 2017 annual inflation adjustment) in its 2017 AFR?	Remarks
42. Office of Government Ethics	✓	N/A
43. Office of Personnel Management	✓	N/A
44. Pension Benefit Guaranty Corporation (PBGC) ^a	N/A	N/A
45. Postal Regulatory Commission (PRC) ^d	N/A	N/A
46. Railroad Retirement Board	✓	N/A
47. Securities and Exchange Commission	✓	N/A
48. Small Business Administration	✓	N/A
49. Social Security Administration	✓	N/A
50. Surface Transportation Board	✓	N/A
51. Tennessee Valley Authority (TVA) ^a	N/A	N/A
52. United States Postal Service (USPS) ^e	N/A	N/A
Total number of federal agencies that did not report required civil monetary penalties inflation information, including the 2017 annual inflation adjustment of the civil monetary penalty amounts, in their AFRs	5	N/A

Legend:

N/A: Not applicable: The agency was not subject to reporting civil monetary penalty information or did not provide remarks.

X: No

✓: Yes

Source: GAO analysis of the Office of Management and Budget's (OMB) data and individual agencies' fiscal or calendar year 2017 AFRs. | GAO-18-519

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

^bFRB 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.

^cITC 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 Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, and thus would have no information on civil monetary penalties to report in its AFR.

^dPRC officials previously stated that PRC is not subject to the AFR reporting provision 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.

^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.

Appendix III: Comments from the National Endowment for the Arts



**National
Endowment
for the Arts**
arts.gov

June 19, 2018

Jeremy J. Choi, *CPA, CFE*
Senior Auditor
U.S. Government Accountability Office
Financial Management & Assurance
350 S. Figueroa Street, Suite 1010
Los Angeles, CA 90071

RE: GAO's Engagement on Civil Monetary Penalty Inflation Adjustments (102539)

Dear Mr. Choi:

Thank you for reaching out about this report. I have been designated by the Acting Chairman of the National Endowment for the Arts (NEA), Mary Anne Carter to respond to GAO's findings. We have reviewed the report, and we are prepared to accept and act on its findings, including recommendation 3.

We express concern, however, that the report does not show (1) that the NEA's regulations are presently finalized and up-to-date; and (2) that the NEA has not assessed, nor had occasion to assess, any civil penalties subject to the inflation adjustments during the period covered by the report or earlier.

For example, the following text would be accurate (changes are noted in bold):

NEA did not report civil monetary penalties within its jurisdiction, including the annual inflation adjustment of the civil monetary penalty amounts, in the NEA's fiscal year 2017 AFR. An NEA official stated that NEA did not timely finalize the inflation adjustment of the civil monetary penalty amounts in the Federal Register until after its fiscal year 2017 AFR had been issued. NEA stated that it **published up to date inflation adjustments on January 16, 2018 consistent with statutory requirements, has neither assessed nor had occasion to assess any civil penalties in fiscal year 2017, and that it will** report the required civil monetary penalty information, including the inflation adjustment amounts, in its fiscal year 2018 AFR.

This proposed language, or other language reflective of those facts, would provide a more complete picture of the agency's actions, the circumstances surrounding our actions, and our commitment to compliance moving forward.

Thank you for the opportunity to comment on this report, and please let me know if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "India Pinkney".

India Pinkney,
General Counsel

cc: Mary Anne Carter, Acting Chairman
Ronald Stith, Inspector General

400 7th Street, SW • Washington DC 20506

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Paula M. Rascona, (202) 512-9816 or rasconap@gao.gov

Staff Acknowledgments

In addition to the contact named above, Shirley Abel (Assistant Director), Jeremy Choi (Auditor-in-Charge), Destiny Bowie, Vincent Gomes, Maxine Hattery, and Diana Lee made key contributions to this report.

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