

DEPARTMENT OF EDUCATION**34 CFR Parts 36 and 668****Adjustment of Civil Monetary Penalties for Inflation****AGENCY:** Department of Education.**ACTION:** Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. These are the first such adjustments made by the Department, and all of the increases are limited to 10 percent.

DATES: These regulations are effective November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, Washington, DC 20202-2241. Telephone: (202) 401-8300.

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SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701 note), provides for the regular evaluation of CMPs to ensure that they continue to maintain their deterrent value. As amended by the DCIA, the Inflation Adjustment Act requires that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every 4 years thereafter. The first adjustment of any CMP is limited to 10 percent of the amount of the penalty.

A CMP is defined in the statute as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, 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 pursuant to an administrative proceeding or a civil action in the Federal courts.

The formula for the amount of a CMP inflation adjustment is prescribed by law and is not subject to the exercise of discretion by the Secretary of the Department of Education (Secretary). The adjustment reflects the percentage

increase in the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor from June of the calendar year in which the amount was last set or adjusted pursuant to law, to June of the calendar year preceding the adjustment.

The Department did not adjust its CMPs for inflation in 1996 and since then has not adjusted the CMPs that were in effect in 1996. By statute the Department's first adjustment of a CMP may not exceed 10 percent of such a penalty, and, therefore, we are adjusting those CMPs by no more than 10 percent. The Department is precluded from making subsequent adjustments to these CMPs until 2004, and even then, the Department may adjust these CMPs only for percentage increases in the CPI-U after June 2002.¹

Two of the Department's CMPs were enacted as part of the Higher Education Amendments of 1998 (Pub. L. 105-244). These CMPs are 20 U.S.C. 1015(c)(5), which provides for a fine of up to \$25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics, and 20 U.S.C. 1027(f)(3), which provides for a fine of up to \$25,000 for failure by an IHE to provide information to the State and the public regarding its teacher preparation programs. Although 4 years have passed since enactment of these penalties, not enough inflation has occurred to require an adjustment under the Inflation Adjustment Act.

Two additional points regarding the Department's adjustments are worth noting. First, the Department is using the following CPI-U figures: 109.5 for June 1986; 124.1 for June 1989; 163 for June 1998; and 178 for June 2001. And second, the increases to the Department's CMPs due to these inflation adjustments apply only to violations that occur after the effective date of the adjustments.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely implement the statutory mandate to adjust CMPs for inflation.

¹ It will be 2004 before the Department can determine whether the percentage of the CPI-U for June of the calendar year preceding the adjustment exceeds that for June of 2002, which would be the June of the calendar year in which the CMPs' amount was last set or adjusted pursuant to law. Until 2004, any adjustment by the Department would be unable to compare the CPI-U for June of 2002 with that for a subsequent year.

The regulations reflect administrative computations performed by the Department as prescribed by the statute and do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that public notice and comment are impracticable, unnecessary, and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The formula for the amount of the inflation adjustments is prescribed by statute and is not subject to the exercise of discretion by the Secretary. These CMPs are infrequently imposed by the Secretary, and the regulations do not involve any special considerations that might affect the imposition of CMPs on small entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects**34 CFR Part 36**

Administrative practice and procedure, Claims, Fraud, Penalties.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Student aid.

Dated: November 12, 2002.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary establishes a new part 36 and amends part 668 in title 34 of the Code of Federal Regulations as follows:

1. A new part 36 is added to title 34 to read as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.

36.1 Purpose.

36.2 Penalty adjustment.

Authority: 28 U.S.C. 2461 note and 31 U.S.C. 3701 note, unless otherwise noted.

§ 36.1 Purpose.

The purpose of this part is to make inflation adjustments to the civil monetary penalties within the

jurisdiction of the Department of Education. These penalties are subject to review and adjustment as necessary at least once every 4 years in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(Authority: 28 U.S.C. 2461 note and 31 U.S.C. 3701 note)

§ 36.2 Penalty adjustment.

The citations for the adjusted penalty provisions, a brief description of the penalty, and the adjusted maximum (and minimum, if applicable) penalty amounts are listed in Table I.

TABLE I, SECTION 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

| Statute | Description | New maximum (and minimum, if applicable) penalty amount |
|-------------------------------------|---|---|
| 20 U.S.C. 1082(g) | Provides for a civil penalty of up to \$25,000 for violations by lenders and guaranty agencies of Title IV-B of the Higher Education Act of 1965, as amended (HEA), which authorizes the Federal Family Education Loan Program. | \$27,500. |
| 20 U.S.C. 1094(c)(3)(B) | Provides for a civil penalty of up to \$25,000 for an institution of higher education's violation of Title IV of the Higher Education Act of 1965, as amended, which authorizes various programs of student financial assistance. | \$27,500. |
| 31 U.S.C. 1352(c)(1) and (c)(2)(A). | Provides for a civil penalty of \$10,000 to \$100,000 for recipients of Government grants, contracts, etc. that lobby Congress or the Executive Branch with respect to the award of Government grants and contracts. | \$11,000 to \$110,000. |
| 31 U.S.C. 3802(a)(1) and (a)(2) .. | Provides for a civil penalty of up to \$5,000 for false claims and statements made to the Government. | \$5,500. |

(Authority: 28 U.S.C. 2461 note and 31 U.S.C. 3701 note)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

2. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

3. Section 668.84 is amended by removing "\$25,000" in paragraph (a)(1) introductory text, and adding, in its place, "\$27,500¹" and adding footnote 1 following the section to read as follows:

§ 668.84 Fine proceedings.

* * * * *

As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note).

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