

# Rules and Regulations

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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Parts 2634 and 2636

RIN 3209-AA69

#### 2024 Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

**AGENCY:** Office of Government Ethics.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the U.S. Office of Government Ethics is issuing this final rule to make the 2024 annual adjustments to the Ethics in Government Act civil monetary penalties.

**DATES:** This final rule is effective January 15, 2024.

**FOR FURTHER INFORMATION CONTACT:** Margaret Dylus-Yukins, Assistant Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In November 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410). The 2015 Act required Federal agencies to make annual inflationary adjustments to the civil monetary penalties (CMPs) within their jurisdiction, to be effective no later than January 15 of each year.

The Ethics in Government Act, as amended, Chapter 131, title 5 of the United States Code, provides for five CMPs.<sup>1</sup> Specifically, the Ethics in

<sup>1</sup> OGE has previously determined, after consultation with the Department of Justice, that the \$200 late filing fee for public financial disclosure reports that are more than 30 days

Government Act provides for penalties that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following five types of violations:

(1) knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report, 5 U.S.C. 13106(a)(1), 5 CFR 2634.701(b);

(2) knowing and willful breach of a qualified trust by trustees and interested parties, 5 U.S.C. 13104(f)(6)(C)(i), 5 CFR 2634.702(a);

(3) negligent breach of a qualified trust by trustees and interested parties, 5 U.S.C. 13104(f)(6)(C)(ii), 5 CFR 2634.702(b);

(4) misuse of a public report, 5 U.S.C. 13107(c)(2), 5 CFR 2634.703; and

(5) violation of outside employment/activities provisions, 5 U.S.C. 13145(a), 5 CFR 2636.104(a).

In compliance with the 2015 Act and guidance issued by the Office of Management and Budget (OMB), the U.S. Office of Government Ethics (OGE) made previous inflationary adjustments to the five Ethics in Government Act CMPs, and is issuing this rulemaking to effectuate the 2024 annual inflationary adjustments to those CMPs. In accordance with the 2015 Act, these adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the date of the adjustment, and the prior year's October CPI-U. Pursuant to OMB guidance, the cost-of-living adjustment multiplier for 2024, based on the CPI-U for October 2023, not seasonally adjusted, is 1.03241. To calculate the 2024 annual adjustment, agencies must multiply the most recent penalty by the 1.03241 multiplier, and round to the nearest dollar.

Applying the formula established by the 2015 Act and OMB guidance, OGE is amending the Ethics in Government Act CMPs through this rulemaking to:

(1) Increase the three penalties reflected in 5 CFR 2634.702(a),

overdue (see 5 U.S.C. 13106(d) and 5 CFR 2634.704 of OGE's regulations thereunder) is not a CMP as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted in this rulemaking (nor was it adjusted by OGE in previous CMP rulemakings). The late filing fee for public financial disclosure reports that are more than 30 days overdue will remain at its current amount of \$200.

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2634.703, and 2636.104(a)—which were previously adjusted to a maximum of \$23,727—to a maximum of \$24,496;

(2) Increase the penalty reflected in 5 CFR 2634.702(b)—which was previously adjusted to a maximum of \$11,864—to a maximum of \$12,249; and

(3) Increase the penalty reflected in 5 CFR 2634.701(b)—which was previously adjusted to a maximum of \$71,316—to a maximum of \$73,627.

These adjusted penalty amounts will apply to penalties for violations that occurred after November 2, 2015, and that are assessed after January 15, 2024 (the effective date of this final rule). OGE will continue to make future annual inflationary adjustments to the Ethics in Government Act CMPs in accordance with the statutory formula set forth in the 2015 Act and OMB guidance.

## II. Matters of Regulatory Procedure

### Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Acting Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 2015 Act, which specifies that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect.

### Regulatory Flexibility Act

As the Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply

because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

#### Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

#### Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget has determined that rulemakings such as this implementing annual inflationary adjustments under the 2015 Act are not significant regulatory actions under Executive Order 12866.

#### Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

#### List of Subjects

#### 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

#### 5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Dated: January 4, 2024.

#### Shelley Finlayson,

Acting Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the U.S. Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

## PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 is revised to read as follows:

**Authority:** 5 U.S.C. ch. 131; 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by sec. 31001, Pub. L. 104–134, 110 Stat. 1321 and sec. 701, Pub. L. 114–74; Pub. L. 112–105, 126 Stat. 291; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Section 2634.701 is amended by revising paragraph (b) to read as follows:

### § 2634.701 Failure to file or falsifying reports.

\* \* \* \* \*

(b) *Civil action.* The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by 5 U.S.C. 13106(a)(1), and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

## TABLE 1 TO § 2634.701(b)

Date of violation	Penalty
Violation occurring between Sept. 14, 2007 and Nov. 2, 2015 .....	\$50,000
Violation occurring after Nov. 2, 2015 .....	73,627

\* \* \* \* \*

■ 3. Section 2634.702 is revised to read as follows:

### § 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this paragraph (a), as provided by section 5 U.S.C. 13104(f)(6)(C)(i) and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

## TABLE 1 TO § 2634.702(a)

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 .....	\$11,000
Violation occurring after Nov. 2, 2015 .....	24,496

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 2 to this paragraph (b), as provided by 5 U.S.C. 13104(f)(6)(C)(ii) and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

## TABLE 2 TO § 2634.702(b)

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 .....	\$5,500
Violation occurring after Nov. 2, 2015 .....	12,249

■ 4. Section 2634.703 is revised to read as follows:

### § 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by 5 U.S.C. 13107(c)(1), as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by 5 U.S.C. 13107(c)(2) and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

## TABLE 1 TO § 2634.703(a)

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 .....	\$11,000
Violation occurring after Nov. 2, 2015 .....	24,496

(b) This remedy shall be in addition to any other remedy available under statutory or common law.

## PART 2636—LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

■ 5. The authority citation for part 2636 is revised to read as follows:

**Authority:** 5 U.S.C. ch. 131; Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by sec. 31001, Pub. L. 104-134, 110 Stat. 1321 and sec. 701, Pub. L. 114-74; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 6. Section 2636.104 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 2636.104 Civil, disciplinary, and other action.**

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103, an employee who engages in any conduct in violation of the prohibitions, limitations, and restrictions contained in this part may be subject to civil action under 5 U.S.C. 13145(a), and a civil monetary penalty of not more than the amounts set in Table 1 to this this paragraph (a), as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

TABLE 1 TO § 2636.104(a)

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015 .....	\$11,000
Violation occurring after Nov. 2, 2015 .....	24,496

\* \* \* \* \*

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**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 747**

**RIN 3133-AF58**

**Civil Monetary Penalty Inflation Adjustment**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is amending its regulations to adjust the maximum amount of each civil monetary penalty (CMP) within its jurisdiction to account for inflation. This action, including the amount of the adjustments, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties

Inflation Adjustment Act Improvements Act of 2015.

**DATES:** This final rule is effective January 10, 2024.

**FOR FURTHER INFORMATION CONTACT:** Gira Bose, Senior Staff Attorney, at 1775 Duke Street, Alexandria, VA 22314, or telephone: (703) 518-6562.

**SUPPLEMENTARY INFORMATION:**

- I. Legal Background
- II. Regulatory Procedures

**I. Legal Background**

*A. Statutory Requirements*

Every Federal agency, including the NCUA, is required by law to adjust its maximum CMP amounts each year to account for inflation. Prior to this being an annual requirement, agencies were required to adjust their CMPs at least once every four years. The previous four-year requirement stemmed from the Debt Collection Improvement Act of 1996,<sup>1</sup> which amended the Federal Civil Penalties Inflation Adjustment Act of 1990.<sup>2</sup>

The current annual requirement stems from the Bipartisan Budget Act of 2015,<sup>3</sup> which contains the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 amendments).<sup>4</sup> This legislation provided for an initial “catch-up” adjustment of CMPs in 2016, followed by annual adjustments. The catch-up adjustment reset CMP maximum amounts by setting aside the inflation adjustments that agencies made in prior years and instead calculated inflation with reference to the year when each CMP was enacted or last modified by Congress. Agencies were required to publish their catch-up adjustments in an interim final rule by July 1, 2016, and make them effective by August 1, 2016.<sup>5</sup> The NCUA complied with these requirements in a June 2016 interim final rule, followed by a November 2016 final rule to confirm the adjustments as final.<sup>6</sup>

The 2015 amendments also specified how agencies must conduct annual inflation adjustments after the 2016 catch-up adjustment. Following the catch-up adjustment, agencies must make the required adjustments and publish them in the **Federal Register** by

<sup>1</sup> Public Law 104-134, Sec. 31001(s), 110 Stat. 1321-373 (Apr. 26, 1996). The law is codified at 28 U.S.C. 2461 note.

<sup>2</sup> Public Law 101-410, 104 Stat. 890 (Oct. 5, 1990), codified at 28 U.S.C. 2461 note.

<sup>3</sup> Public Law 114-74, 129 Stat. 584 (Nov. 2, 2015).

<sup>4</sup> 129 Stat. 599.

<sup>5</sup> Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

<sup>6</sup> 81 FR 40152 (June 21, 2016); 81 FR 78028 (Nov. 7, 2016).

January 15 each year.<sup>7</sup> For 2017, the NCUA issued an interim final rule on January 6, 2017,<sup>8</sup> followed by a final rule issued on June 23, 2017.<sup>9</sup> For each of the years 2018 through 2023, the NCUA issued a final rule to satisfy the agency’s annual requirements.<sup>10</sup> This final rule satisfies the agency’s requirement for the 2024 annual adjustment.

The law provides that the adjustments shall be made notwithstanding the section of the Administrative Procedure Act (APA) that requires prior notice and public comment for agency rulemaking.<sup>11</sup> The 2015 amendments also specify that each CMP maximum must be increased by the percentage by which the consumer price index for urban consumers (CPI-U)<sup>12</sup> for October of the year immediately preceding the year the adjustment is made exceeds the CPI-U for October of the prior year.<sup>13</sup> Thus, for the adjustment to be made in 2024, an agency must compare the October 2022 and October 2023 CPI-U figures.

An annual adjustment under the 2015 amendments is not required if a CMP has been amended in the preceding 12 months pursuant to other authority. Specifically, the statute provides that an agency is not required to make an annual adjustment to a CMP if in the preceding 12 months it has been increased by an amount greater than the annual adjustment required by the 2015 amendments.<sup>14</sup> The NCUA did not make any adjustments in the preceding 12 months pursuant to other authority. Therefore, this rulemaking adjusts all of the NCUA’s CMPs pursuant to the 2015 amendments.

*B. Application to the 2024 Adjustments and Office of Management and Budget Guidance*

This section applies the statutory requirements and the Office of Management and Budget’s (OMB) guidance to the NCUA’s CMPs and sets forth the Board’s calculation of the 2024 adjustments.

<sup>7</sup> Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

<sup>8</sup> 82 FR 7640 (Jan. 23, 2017).

<sup>9</sup> 82 FR 29710 (June 30, 2017).

<sup>10</sup> 83 FR 2029 (Jan. 16, 2018); 84 FR 2052 (Feb. 6, 2019); 85 FR 2009 (Jan. 14, 2020); 86 FR 933 (Jan. 7, 2021); 87 FR 377 (Jan. 5, 2022); 88 FR 1323 (Jan. 10, 2023).

<sup>11</sup> Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 599 (Nov. 2, 2015).

<sup>12</sup> This index is published by the Department of Labor, Bureau of Labor Statistics, and is available at its website: <https://www.bls.gov/cpi/>.

<sup>13</sup> Public Law 114-74, Sec. 701(b)(2)(B), 129 Stat. 584, 600 (Nov. 2, 2015).

<sup>14</sup> Public Law 114-74, Sec. 701(b)(1), 129 Stat. 584, 600 (Nov. 2, 2015).