

DEPARTMENT OF EDUCATION**34 CFR Part 36****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.

DATES: These regulations are effective January 4, 2005.

FOR FURTHER INFORMATION CONTACT: Lisa Kanter, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E205, 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 Department's initial adjustment to each CMP was published in the **Federal Register** on November 18, 2002 (67 FR 69654) and became effective on the date of publication. Although it has not been 4 years since the Department's last adjustments, had the Department published adjustments in 1996 and 2000, it would now be time to adjust its CMPs. Accordingly, the Department is now making any necessary adjustments.

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.

Four of the Department's CMP were adjusted in 2002. These CMPs are (1) 20 U.S.C. 1082(g), which provides for a fine of up to \$27,500 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; (2) 20 U.S.C. 1094(c)(3)(B), which provides for a fine of up to \$27,500 for an institution of higher education's violation of Title IV of the HEA, which authorizes various programs of student financial assistance; (3) 31 U.S.C. 1352(c)(1) and (c)(2)(A), which provide for a fine of \$11,000 to \$110,000 for recipients of Government grants, contracts, etc. that lobby Congress or the Executive Branch with respect to the award of Government grants and contracts; and (4) 31 U.S.C. 3802(a)(1) and (a)(2), which provide for a fine of up to \$5,500 for false claims and statements made to the Government. For these four CMPs, not enough inflation has occurred since 2002 to require an adjustment under the Inflation Adjustment Act.

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. In 2002, when the Department last adjusted its CMPs, not enough inflation had occurred to require an adjustment to these CMPs under the Inflation Adjustment Act. At this time, however, there has been more than 10 percent inflation, warranting an adjustment for each of these CMPs. By statute, the Department's first adjustment of a CMP may not exceed 10 percent of such a penalty, and, therefore, we are adjusting these CMPs by 10 percent.

Two additional points regarding the Department's adjustments are worth noting. First, the Department is using the following CPI-U figures as measures of inflation: 163 for June 1998; 179.9 for June 2002; and 183.7 for June 2003. 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. 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 in 34 CFR Part 36

Claims, Fraud, Penalties.

Dated: December 28, 2004.

Eugene W. Hickok,
Deputy Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 36 in title 34 of the Code of Federal Regulations as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 36 continues to read as follows:

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

■ 2. Section 36.2 is amended by revising Table I to read as follows:

§ 36.2 Penalty adjustment.

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TABLE I, SECTION 36.2.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5)	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.	\$27,500.
20 U.S.C. 1027(f)(3)	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.	\$27,500.
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.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 533 and 552

GSAR Amendment 2004-05; GSAR Case 2004-G501 (Change 13)

RIN 3090-AH98

General Services Administration Acquisition Regulation; Disputes and Appeals

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to add a clause that supplements the Disputes clause in the Federal Acquisition Regulation (see 48 CFR Chapter 1).

DATES: Effective Date: January 4, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Laurieann Duarte, Regulatory Secretariat

(VIR), Room 4035, GS Building, Washington, DC, 20405, (202) 501-4225, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775. Please cite Amendment 2004-05, GSAR case 2004-G501 (Change 13).

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation (FAR) Subpart 33.2 (48 CFR subpart 33.2) implements the requirements of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act), which establishes procedures and requirements for asserting and resolving claims subject to the Act. It is the Government's policy to resolve all contractual issues in controversy by mutual agreement at the contracting officer level. The Act provides for Agencies Boards of Contract Appeals (Boards) and the United States Court of Federal Claims (Court) to resolve appeals of a contracting officer's decision. However, the Boards and Court do not have authority to interpret tariffs or tariff-related matters established through public hearings in each jurisdiction for regulated utilities.

The authority pertaining to these matters lie with state public utility commissions.

A proposed rule was published in the **Federal Register** at 69 FR 40730, July 6, 2004. No comments were received from the public.

FAR section 33.215 requires that the clause 52.233-1, Disputes, be inserted in all solicitations and contracts, except those with a foreign government or agency of that government, or an international organization or subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest. GSA's Public Buildings Service awards contracts for public utility services. From time-to-time, disputes may arise from those contracts that involve tariffs and tariff-related matters. This rule provides for a supplement to FAR 52.233-1, Disputes, allowing for such disputes to be subject to the jurisdiction and regulation of the utility rate commission having jurisdiction. This rule also provides GSA contracting officers and contractors, acting under a utility service contract, with specific guidance regarding the resolution of disputes