

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



September 7, 1999
DO-99-033

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts, Director

SUBJECT: Inflation Adjustments of Civil Monetary Penalties under the Ethics in Government Act

The Office of Government Ethics (OGE) and the Department of Justice (Justice) have issued coordinated rulemakings to increase by 10% the maximum civil monetary penalties that may be imposed for certain violations of the Ethics in Government Act. The increases adjust for inflation, as prescribed under the 1996 Debt Collection Improvement Act amendments to the 1990 Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note). See OGE's final rule amendments at 64 Federal Register 47095-47097 (8/30/99) and Justice's final rule amendments at 64 Federal Register 47099-47104 (8/30/99), both of which become effective on September 29, 1999.

OGE's amendments affect our executive branchwide financial disclosure and outside employment regulations at 5 C.F.R. parts 2634 and 2636. Four of the Ethics Act civil monetary penalties (CMPs) which are being adjusted, from a maximum of \$10,000 to a maximum of \$11,000, are those for: (1) knowing and willful falsification of, failure to file, or failure to report required information on, an SF 278 public financial disclosure report (5 C.F.R. § 2634.701(b); 5 U.S.C. app., § 104(a)); (2) knowing and willful breach of a qualified trust by trust fiduciaries and interested parties (5 C.F.R. § 2634.702(a); 5 U.S.C. app., § 102(f)(6)(C)(i)); (3) misuse of an SF 278 public report (5 C.F.R. § 2634.703; 5 U.S.C. app., § 105(c)(2)); and (4) violation of the outside earned income, employment and affiliations provisions for covered noncareer employees (5 C.F.R. § 2636.104(a); 5 U.S.C. app., § 504(a)). In the case of the fourth listed CMP and the one under 18 U.S.C. § 216(b) that is noted in the next paragraph of this memorandum, there is an alternative penalty (if greater), which is not being adjusted, of the amount of any compensation received (or, under the § 216(b) provision, offered) for the prohibited conduct. In addition, a fifth Ethics Act CMP, for negligent breach of a qualified trust by trust fiduciaries and interested parties (5 C.F.R. § 2634.702(b); 5 U.S.C. app., § 102(f)(6)(C)(ii)), is being adjusted from a maximum of \$5,000 to a maximum of \$5,500. After consultation with the Justice Department, we determined that the late filing fee for public reports is not a civil monetary penalty as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Thus, that fee will remain at \$200 (5 C.F.R. § 2634.704; 5 U.S.C. app., § 104(d) (not § 105(d) as inadvertently miscited in the preamble to the OGE rulemaking)).

The Justice Department amendments add a new part 85 to their 28 C.F.R. regulations to adjust the same Ethics Act CMPs by the same amount, as enforced in district court actions brought by the Civil Division. In addition, Justice is adjusting, from \$50,000 to \$55,000, the maximum CMP that may be imposed under 18 U.S.C. § 216(b) for violation of various conflicts laws.

Under the amended Federal civil monetary penalties inflation law, OGE and Justice will henceforth adjust the same Ethics Act CMPs at least once every four years.