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United States General Accounting Office
Washington, DC 20548

July 26, 2002

The Honorable Rita R. Colwell
Director
National Science Foundation

Subject: *National Science Foundation's Compliance With the Inflation
Adjustment Act*

Dear Dr. Colwell:

Earlier this year, we initiated a governmentwide review of the implementation of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Inflation Adjustment Act).¹ The Inflation Adjustment Act required each federal agency to issue a regulation adjusting its covered maximum civil monetary penalties for inflation by October 23, 1996, and to make necessary adjustments at least once every 4 years thereafter. During our review, we determined that the National Science Foundation (NSF) had adjusted its maximum civil penalties more than the act permits. This report is intended to bring this matter to your attention and to recommend corrective action.

NSF Adjusted Its Civil Penalties More Than The Inflation Adjustment Act Permitted

The Inflation Adjustment Act defines a “cost-of-living adjustment” as the percentage change in the Consumer Price Index (CPI) between June of the calendar year in which the penalty was “last set or adjusted pursuant to law” and June of the calendar year preceding the adjustment (i.e., June 1995 for the first adjustment required in October 1996). The statute limited an agency’s first round of civil penalty adjustments to 10 percent, and any subsequent adjustments to changes in the CPI since the last adjustment.

On November 20, 1996, NSF published a final rule that adjusted its civil monetary penalties under the Antarctic Conservation Act of 1978 (16 U.S.C. 2407) in two steps.² First, the agency adjusted the civil penalties by 10 percent, which increased the

¹The Inflation Adjustment Act is codified at 28 U.S.C. 2461 note. The 1990 act was amended in 1996 by the Debt Collection Improvement Act, which added the requirement for agencies to adjust their civil penalties by regulation (Pub. Law 104-134, Sec. 31001, 110 Stat. 1321-373).

²NSF did not submit this rule to the Congress and the Comptroller General as required by 5 U.S.C. 801(a), so it did not take effect. NSF published another rule on June 16, 1998, that replaced the 1996 rule and made the same adjustments, except that the \$23,000 penalty for intentional violations was increased to \$25,000.

penalty for an unintentional violation of the statute from \$5,000 to \$5,500 and increased the penalty for an intentional violation from \$10,000 to \$11,000. The rule provided that these penalties would go into effect for violations occurring between January 1, 1997, and December 31, 1997. Second, the rule noted that for violations occurring after December 31, 1997, the maximum civil penalty would be \$12,000 for unintentional violations and \$23,000 for intentional violations. This second adjustment essentially accounted for all of the changes in the CPI between June 1978 and June 1995 that had not been accounted for by the initial 10 percent increase.

Although we understand NSF's desire to fully adjust its civil penalties for inflation, the Inflation Adjustment Act does not authorize the agency to do so. The act limited the agency's first penalty adjustment to 10 percent and limited any subsequent adjustment to the amount of change in inflation since the last adjustment. Therefore, NSF's second adjustment is inconsistent with the act's requirements.

Recommendation for Executive Action

We recommend that NSF publish a regulation amending its civil penalties under the Antarctic Conservation Act of 1978 to be consistent with the requirements in the Inflation Adjustment Act.

Agency Comments and Our Evaluation

On July 16, 2002, we provided a draft of this report to the Director of NSF for her review and comment. On July 24, 2002, the NSF General Counsel provided oral and written comments stating that the Foundation was grateful for pointing out the flaw in its second adjustment of its civil penalties under the Antarctic Conservation Act. He said that a corrective amendment had already been prepared and would soon be sent to the *Federal Register*. He also provided some other suggested changes, which were incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees, and it will be available on GAO's homepage at <http://www.gao.gov>. If you or your staff have any questions on the matters discussed in this letter, you may contact Curtis Copeland or me at (202) 512-6806. Major contributors included John Tavares and Oliver Walker.

Sincerely yours,



Victor S. Rezendes
Managing Director
Strategic Issues

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