

FEDERAL ELECTION COMMISSION  
COMMUNICATIONS SECTION

2005 JUN -1 P 12: 01



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**JUN -1 2005**

**AGENDA ITEM**

For Meeting of: 6-09-05

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence H. Norton  
General Counsel

Rosemary C. Smith  
Associate General Counsel

Mai T. Dinh  
Assistant General Counsel

Albert J. Kiss  
Attorney

**SUBJECT:** Final Rules and Explanation and Justification on Inflation Adjustments  
for Civil Penalties (11 CFR 111.24 and 111.44)

Attached are draft final rules and their explanation and justification that would apply inflation adjustments to some of FECA's civil penalties but not others. Certain inflation adjustments are required at this time by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 nt., as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, section 31001(s).

**Recommendation**

The Office of General Counsel recommends that the Commission approve the attached final rules at 11 CFR 111.24 and 111.44 and their explanation and justification for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 111**

3 **[Notice 2005 - \_\_]**

4 **Inflation Adjustments for Civil Monetary Penalties**

5  
6 **AGENCY:** Federal Election Commission

7 **ACTION:** Final Rules.

8 **SUMMARY:** The Federal Election Commission (“Commission”) is adopting final  
9 rules to apply inflation adjustments to certain civil monetary penalties  
10 under the Federal Election Campaign Act of 1971, as amended  
11 (“FECA”), the Presidential Election Campaign Fund Act and the  
12 Presidential Primary Matching Payment Account Act. The civil  
13 penalties being adjusted are for (1) certain violations of these statutes  
14 that are not knowing and willful, involving contributions and  
15 expenditures; (2) knowing and willful violations of the prohibition  
16 against the making of a contribution in the name of another; (3) knowing  
17 and willful violations of the confidentiality provisions of FECA; and  
18 (4) failure to file timely 48-hour notices. No other civil penalties are  
19 being adjusted. These adjustments are required by the Federal Civil  
20 Penalties Inflation Adjustment Act of 1990, as amended by the Debt  
21 Collection Improvement Act of 1996. Further information is provided in  
22 the supplementary information that follows.  
23

1 **EFFECTIVE**  
2 **DATE:** These penalty adjustments are effective on [INSERT DATE OF  
3 PUBLICATION IN THE FEDERAL REGISTER].

4 **FOR FURTHER**  
5 **INFORMATION**  
6 **CONTACT:**

Ms. Mai T. Dinh, Assistant General Counsel, or Mr. Albert J. Kiss,  
7 Attorney, 999 E Street N.W., Washington, D.C. 20463, (202) 694-1650  
8 or (800) 424-9530.

9 **SUPPLEMENTARY**

10 **INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>1</sup> as  
11 amended by the Debt Collection Improvement Act of 1996,<sup>2</sup> (“Inflation Adjustment Act”)  
12 requires Federal agencies to adopt regulations at least once every four years adjusting for  
13 inflation the civil monetary penalties within the jurisdiction of the agency.

14 A civil monetary penalty (“civil penalty”) is defined in the Inflation Adjustment Act as  
15 any penalty, fine, or other sanction that is for a specific amount, or has a maximum amount, as  
16 provided by Federal law, and is assessed or enforced by an agency in an administrative  
17 proceeding or by a Federal court pursuant to Federal law.<sup>3</sup> This definition covers the civil  
18 penalties provided for in the Federal Election Campaign Act of 1971 (“FECA”), as amended,  
19 2 U.S.C. 431 et seq., for respondents who violate FECA, or violate the Presidential Election  
20 Campaign Fund Act, 26 U.S.C. 9001 et seq., or the Presidential Primary Matching Payment  
21 Account Act, 26 U.S.C. 9031 et seq. (collectively “chapters 95 and 96 of Title 26”). Under the  
22 Inflation Adjustment Act, a civil penalty is adjusted by a cost-of-living adjustment (“COLA”),

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<sup>1</sup> 28 U.S.C. 2461 note (2005).

<sup>2</sup> Public Law 104-134, 110 Stat. 1321-358, 1321-373, section 31001(s) (1996).

<sup>3</sup> 28 U.S.C. 2461 note (3)(2).

1 determined by multiplying the amount of the civil penalty by the percentage (if any) by which  
2 the U.S. Department of Labor's Consumer Price Index for all urban consumers ("CPI") for the  
3 month of June for the year preceding the year of adjustment exceeds the CPI for the month of  
4 June for the year in which the amount of the civil penalty was last set or adjusted.<sup>4</sup> The amount  
5 of the inflation adjustment is subject to rounding rules.<sup>5</sup>

6 In March 1997, the Commission promulgated new rules to adjust FECA's then-current  
7 civil penalties pursuant to the Inflation Adjustment Act. Final Rules and Explanation and  
8 Justification for Adjustments to Civil Monetary Penalty Amounts, 62 FR 11316 (Mar. 12,  
9 1997) ("1997 Civil Penalty Adjustment E&J"). In January 2002, the Commission again  
10 examined its civil penalty rules under the Inflation Adjustment Act, but did not adjust any civil  
11 penalty rules because the operation of the Inflation Adjustment Act's rounding rules did not  
12 result in increases in any of the civil penalties. Agenda Doc. 02-06 (Jan. 17, 2002). As  
13 explained in more detail below, the Commission has determined that certain civil penalties in  
14 11 CFR 111.24 and 111.44 must be increased again in 2005 due to the increases in the CPI and  
15 the application of the Inflation Adjustment Act's rounding rules to these civil penalties.  
16 However, other civil penalties in 11 CFR 111.24 and 111.43 are not being changed because the  
17 rounding rules negate any increases in the civil penalties that would have resulted from the  
18 increases in the CPI.

19 The Commission is required by statute to adjust the civil penalties under its jurisdiction  
20 by a COLA formula. This application of the COLA does not involve Commission discretion or  
21 any policy judgments. Thus, the Commission finds that the "good cause" exception to the

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<sup>4</sup> 28 U.S.C. 2461 note (3)(3) and (5)(b).

<sup>5</sup> 28 U.S.C. 2461 note (5)(a).

1 notice and comment requirement in section 553 of the Administrative Procedure Act applies to  
2 these rules because notice and comment are unnecessary. 5 U.S.C. 553(b)(B) and (d)(3). For  
3 the same reasons, these rules do not need to be submitted to the Speaker of the House of  
4 Representatives or the President of the Senate under the Congressional Review Act, 5 U.S.C.  
5 801 et seq., and these rules are effective upon publication. 5 U.S.C. 808(2). Accordingly, these  
6 amendments are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL  
7 REGISTER]. The new civil penalty amounts are applicable only to violations that occur after  
8 this effective date.

## 9 **EXPLANATION AND JUSTIFICATION**

### 10 11 CFR 111.24 – Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.)

11 FECA provides for civil penalties for any person who violates any portion of FECA or  
12 chapters 95 and 96 of Title 26. FECA's civil penalties, found at 2 U.S.C. 437g(a)(5), (6), and  
13 (12), are organized into two tiers; one tier of civil penalties for violations of FECA or chapters  
14 95 and 96 of Title 26, and a higher tier of civil penalties for "knowing and willful" violations of  
15 FECA or chapters 95 and 96 of Title 26. Commission regulations in section 111.24 set forth  
16 each civil penalty established by section 437g(a)(5), (6) and (12), as adjusted pursuant to the  
17 Inflation Adjustment Act.

#### 18 1. 11 CFR 111.24(a)(1) Violations That Are Not Knowing and Willful

19 Under the core statutory provisions, the Commission may negotiate a civil penalty, or  
20 may institute an action for a civil penalty, or a court may impose a civil penalty, for a violation  
21 of FECA or of chapters 95 or 96 of Title 26 that does not exceed the greater of \$5,000 or an  
22 amount equal to any contribution or expenditure involved in the violation. 2 U.S.C.  
23 437g(a)(5)(A), (6)(A) and (6)(B). The \$5,000 civil penalty amount was increased to \$5,500

1 when section 111.24(a) was promulgated in 1997.<sup>6</sup> 1997 Civil Penalty Adjustment E&J at  
2 11316.

3 At this time, to determine the appropriate COLA to apply to the \$5,500 amount, the  
4 Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 1997,  
5 which is 160.3.<sup>7</sup> The COLA is determined by dividing the CPI for June of 2004 (189.7) by the  
6 CPI for June of 1997 (160.3), which equals 1.183 ( $189.7 / 160.3 = 1.183$ ). To obtain the  
7 inflation-adjusted civil penalty amount, the \$5,500 amount is multiplied by the COLA of 1.183,  
8 which equals \$6,507 ( $\$5,500 \times 1.183 = \$6,507$ ). Thus, the increase is \$1,007 ( $\$6,507 - \$5,500$   
9  $= \$1,007$ ). The amount of the increase is subject to the Inflation Adjustment Act rounding  
10 rules. Under the rounding rules, where the existing civil penalty is greater than \$1,000 but less  
11 than or equal to \$10,000, the increase is rounded to the nearest multiple of \$1,000. Therefore,  
12 the amount of the civil penalty increase is rounded to \$1,000. Consequently, section  
13 111.24(a)(1) is amended by adding \$1,000 to the \$5,500 civil penalty to obtain the new  
14 inflation-adjusted civil penalty of \$6,500.

15 2. 11 CFR 111.24(a)(2)(i) – Knowing and Willful Violations

16 The Commission may seek, or a court may impose, a civil penalty for a “knowing and  
17 willful” violation of FECA or of chapters 95 or 96 of Title 26 that does not exceed the greater  
18 of \$10,000 or an amount equal to 200% of any contribution or expenditure involved in the  
19 violation. 2 U.S.C. 437g(a)(5)(B) and (6)(C). The \$10,000 civil penalty amount was increased

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<sup>6</sup> The Inflation Adjustment Act provides that the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the 1997 increase to the \$5,000 civil penalty was limited to ten percent of \$5,000, or \$500, and this penalty was increased to \$5,500.

<sup>7</sup> The base period for the CPI figures is 1982 to 1984. Thus, the price of a basket of goods and services that would have cost \$100 in 1982-1984, rose to \$160.30 in June 1997, and to \$189.70 in June 2004.

1 to \$11,000 when section 111.24(a) was promulgated in 1997.<sup>8</sup> 1997 Civil Penalty Adjustment  
2 E&J at 11316.

3 At this time, to obtain the inflation-adjusted civil penalty, \$11,000 is multiplied by the  
4 same COLA calculated above, i.e., 1.183. The resulting amount equals \$13,013 ( $\$11,000 \times$   
5  $1.183 = \$13,103$ ). Thus, the increase is \$2,013 ( $\$13,013 - \$11,000 = \$2,013$ ). Under the  
6 rounding rules, where the existing civil penalty is greater than \$10,000 but less than or equal to  
7 \$100,000, the increase is rounded to the nearest multiple of \$5,000. Therefore, the amount of  
8 the civil penalty increase is rounded to zero, and the \$11,000 civil penalty is not changed.  
9 Because no changes are being made at this time, the next adjustment will reflect inflationary  
10 changes since 1997 rather than 2005.

11 3. 11 CFR 111.24(a)(2)(ii) – Knowing and Willful Contributions Made In The  
12 Name of Another

13 The Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81, 108,  
14 section 315 (2002) (“BCRA”), increased minimum and maximum civil penalties for knowing  
15 and willful violations of the prohibition on contributions made in the name of another in 2  
16 U.S.C. 441f. As revised by BCRA, the civil penalty for such a violation is not less than 300  
17 percent of the amount involved in the violation, and is not more than the greater of \$50,000 or  
18 1,000 percent of the amount involved in the violation. 2 U.S.C. 437g(a)(5)(B) and (6)(C); 11  
19 CFR 111.24(a)(2)(ii). To determine the appropriate COLA to apply to the \$50,000 amount, the  
20 Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 2002,

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<sup>8</sup> As discussed above, the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the 1997 increase to the \$10,000 civil penalty was limited to ten percent of \$10,000, or \$1,000, and this penalty was increased to \$11,000.

1 which is 179.9. The COLA is determined by dividing the CPI for June of 2004 (189.7) by the  
2 CPI for June of 2002 (179.9), which equals 1.054 ( $189.7 / 179.9 = 1.054$ ). To obtain the  
3 inflation-adjusted civil penalty, \$50,000 is multiplied by the COLA of 1.054, which equals  
4 \$52,700 ( $\$50,000 \times 1.054 = \$52,700$ ). Thus, the increase is \$2,700 ( $\$52,700 - \$50,000 =$   
5  $\$2,700$ ). Under the rounding rules described above, \$2,700 is rounded to \$5,000.  
6 Consequently, section 111.24(a)(2)(ii) is amended by adding \$5,000 to the \$50,000 civil  
7 penalty to obtain the new inflation-adjusted civil penalty of \$55,000.

8 4. 11 CFR 111.24(b) – Violations of Confidentiality

9 Any Commission member or employee, or any other person, who makes public any  
10 notification or investigation under 2 U.S.C. 437g without receiving the written consent of the  
11 person receiving such notification, or the person with respect to whom such investigation is  
12 made, shall be fined not more than \$2,000, except that any such member, employee, or other  
13 person who knowingly and willfully violates this provision shall be fined not more than \$5,000.  
14 2 U.S.C. 437g(a)(12)(B). In 1997, the Commission promulgated 11 CFR 111.24(b) to increase  
15 the \$2,000 civil penalty to \$2,200, and to increase the \$5,000 civil penalty to \$5,500.<sup>9</sup> 1997  
16 Civil Penalty Adjustment E&J at 11317.

17 For these civil penalties, the appropriate COLA is 1.183. See COLA calculation for  
18 civil penalties under 11 CFR 111.24(a)(1), above. To obtain the inflation-adjusted civil penalty  
19 for the \$2,200 amount, \$2,200 is multiplied by the COLA of 1.183, which equals \$2,603

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<sup>9</sup> As discussed above, the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the 1997 increase to the \$2,000 civil penalty was limited to ten percent of \$2,000, or \$200, and this penalty was increased to \$2,200. Similarly, the 1997 increase to the \$5,000 civil penalty was limited to ten percent of \$5,000, or \$500, and this penalty was increased to \$5,500.



1 (\$2,200 x 1.183 = \$2,603). Thus, the increase is \$403 (\$2,603 - \$2,200 = \$403). Under the  
2 rounding rules described above, \$403 is rounded to zero. Thus, the \$2,200 civil penalty  
3 remains unchanged. Because no changes are being made at this time, the next adjustment will  
4 reflect inflationary changes since 1997 rather than 2005.

5 To obtain the inflation-adjusted civil penalty for the \$5,500 amount, \$5,500 is  
6 multiplied by the COLA of 1.183, equaling \$6,507 (\$5,500 x 1.183 = \$6,507). Thus, the  
7 increase is \$1,007 (\$6,507 - \$5,500 = \$1,007). Under the rounding rules, the \$1,007 amount is  
8 rounded to \$1,000. Consequently, section 111.24(b) is amended by adding \$1,000 to the  
9 \$5,500 amount to obtain the new inflation-adjusted civil penalty of \$6,500 for knowing and  
10 willful violations of confidentiality.

#### 11 11 CFR 111.43 – Schedules of Penalties

12 FECA permits the Commission to assess civil penalties for violations of the reporting  
13 requirements of 2 U.S.C. 434(a) in accordance with schedules of penalties established and  
14 published by the Commission. 2 U.S.C. 437g(a)(4)(C). The schedules of penalties for political  
15 committees that file their reports late or that fail to file reports are set out in 11 CFR 111.43,  
16 and were last amended in 2003. Final Rules and Explanation and Justification for  
17 Administrative Fines, 68 FR 12572, 12573-12575 (Mar. 17, 2003). To determine the  
18 appropriate COLA to apply to the schedules of penalties for violations of these reporting  
19 requirements, the Commission uses the CPI for June of 2004, which is 189.7, and the  
20 CPI for June of 2003, which is 183.7. Although applying the COLA of 1.033 (189.7 / 183.7 =  
21 1.033) to all possible civil penalties under the schedules of penalties would result in a slight  
22 increase in the civil penalty amounts, the Inflation Adjustment Act rounding rules would round

1 down the increased civil penalty amounts to the current amounts. Consequently, the formulas  
2 in the schedules of penalties in 11 CFR 111.43 are not changed.

3 However, the Commission is correcting a typographical error in the schedule at section  
4 111.43(a)(2)(iii). Under the column entitled “[I]f the level of activity in the report was,” the  
5 level of activity of \$450,000 - \$549,999.99 is missing the first instance of the number “4.”  
6 Thus, this level of activity is erroneously listed as “\$50,000 - 549,999.99.” The Commission is  
7 correcting this to read “\$450,000 - \$549,999.99.”

#### 8 11 CFR 111.44 – Schedule of Penalties for 48-Hour Notices

9 Principal campaign committees are required to report, within 48 hours of receipt, any  
10 contributions of \$1,000 or more that are received after the 20th day, but more than 48 hours  
11 before any election. 2 U.S.C. 434(a)(6). FECA permits the Commission to assess civil  
12 penalties for violations of this reporting requirement. 2 U.S.C. 437g(a)(4)(C). In 2000, the  
13 Commission adopted rules setting forth the civil penalties for failure to file timely notices of  
14 these last-minute contributions. Final Rules and Explanation and Justification for  
15 Administrative Fines, 65 FR 31787, 31793 (May 19, 2000). The amount of the civil penalty for  
16 each notice not filed timely is \$100 plus ten percent of the amount of the contribution(s) not  
17 timely reported, and is increased for prior violations. 11 CFR 111.44. To determine the  
18 appropriate COLA to apply to the \$100 amount, the Commission uses the CPI for June of 2004,  
19 which is 189.7, and the CPI for June of 2000, which is 172.4. The COLA is obtained by  
20 dividing the CPI for June of 2004 (189.7) by the CPI for June of 2000 (172.4), which equals  
21 1.100 ( $189.7 / 172.4 = 1.100$ ). To obtain the inflation-adjusted civil penalty amount, \$100 is  
22 multiplied by the COLA of 1.100, which equals \$110 ( $\$100 \times 1.100 = \$110$ ). Thus, the  
23 increase is \$10 ( $\$110 - \$100 = \$10$ ). The Inflation Adjustment Act rounding rules do not

1 not change the amount of this increase.<sup>10</sup> Consequently, section 111.44 is amended by adding  
2 \$10 to the \$100 civil penalty to obtain the new inflation-adjusted civil penalty of \$110.

3 **Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

4 The provisions of the Regulatory Flexibility Act are not applicable to this final rule  
5 because the Commission was not required to publish a notice of proposed rulemaking or to  
6 seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a).  
7 Therefore, no regulatory flexibility analysis is required.

8 **List of Subjects**

9 11 CFR Part 111

10 Administrative practice and procedure, Elections, Law enforcement, and Penalties.

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<sup>10</sup> Under the rounding rules, where the existing penalty is less than or equal to \$100, the increase is rounded to the nearest multiple of \$10. Therefore, the amount of the penalty increase is rounded to \$10, the same amount as it was prior to application of the rounding rules.

1 For the reasons set out in the preamble, the Federal Election Commission amends  
2 subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

3 **PART 111 – COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))**

4 1. The authority citation for part 111 continues to read as follows:

5 **Authority:** 2 U.S.C. 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

6 2. In section 111.24, paragraphs (a)(1), (a)(2)(ii) and (b) are revised to read as follows:

7 **§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).**

8 (a) \* \* \*

9 (1) Except as provided in paragraph (a)(2) of this section, in the case of a violation  
10 of the Act or chapters 95 or 96 of title 26 (26 U.S.C.), the civil penalty shall not  
11 exceed the greater of ~~\$5,500~~ 6,500 or an amount equal to any contribution or  
12 expenditure involved in the violation.

13 (2) \* \* \*

14 (ii) Notwithstanding paragraph (a)(2)(i) of this section, in the case of a  
15 knowing and willful violation of 2 U.S.C. 441f, the civil penalty shall not  
16 be less than 300% of the amount of any contribution involved in the  
17 violation and shall not exceed the greater of ~~\$50,000~~ 55,000 or 1,000%  
18 of the amount of any contribution involved in the violation.

19 (b) Any Commission member or employee, or any other person, who in violation of 2  
20 U.S.C. 437g(a)(12)(A) makes public any notification or investigation under 2 U.S.C.  
21 437g without receiving the written consent of the person receiving such notification, or  
22 the person with respect to whom such investigation is made, shall be fined not more

1 than \$2,200. Any such member, employee, or other person who knowingly and willfully  
2 violates this provision shall be fined not more than ~~\$5,500~~6,500.

3 3. In section 111.43, paragraph (a)(2)(iii) is amended by removing “\$50,000 -  
4 \$549,999.99” and adding in its place “\$450,000 – 549,999.99”.

5 4. In section 111.44, paragraph (a)(1) is revised to read as follows:

6 **§ 111.44 What is the schedule of penalties for 48-hour notices that are not filed or are filed**  
7 **late?**

8 (a) \* \* \*

9 (1) Civil money penalty = ~~\$110400~~ + (.10 x amount of the contribution(s) not  
10 timely reported).

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Scott E. Thomas  
Chairman  
Federal Election Commission

20 DATED \_\_\_\_\_  
21 BILLING CODE: 6715-01-U