

§ 1168.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraph (a) or (b) of this section shall be subject to a civil penalty of \$10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between \$10,000 and \$100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

(g)(1) The penalty amounts provided in table 1 to this paragraph (g) apply to violations of this section that occurred prior to December 31, 2023, with each row listing the penalty amounts for violations that occurred in a particular time frame.

(2) For violations of this section that occur on or after January 1, 2024, the maximum penalty range which may be assessed under this section is the larger of:

(i) The amount for the previous calendar year; or

(ii) An amount adjusted for inflation, calculated by multiplying the amount for the previous calendar year by the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor (CPI-U) for the month of October preceding the current calendar year exceeds the CPI-U for the month of October of the calendar year two years prior to the current calendar year, adding that amount to the amount for the previous calendar year, and rounding the total to the nearest dollar.

Table 1 to Paragraph (g)—Civil Monetary Penalty
Inflation Adjustments for Violations Prior to December
31, 2023

Date of violation	Penalty range
October 23, 1989-December 31, 2015	\$10,000-\$100,000
January 1, 2016-December 31, 2016	18,936-189,361
January 1, 2017-December 31, 2017	19,246-192,459
January 1, 2018-December 31, 2018	19,639-196,387
January 1, 2019-December 31, 2019	20,134-201,340
January 1, 2020-December 31, 2020	20,489-204,892
January 1, 2021-December 31, 2021	20,731-207,314
January 1, 2022-December 31, 2022	22,021-220,213
January 1, 2023-December 31, 2023	23,727-237,268

(h) Notice of the maximum penalty amounts which may be assessed under paragraphs (a), (b), and (e) of this section for calendar years after 2023 (calculated using the formula in paragraph (g) (2) of this section) will be published by NEH in the Federal Register on an annual basis on or before January 15 of each calendar year.

[55 FR 6737, 6755, Feb. 26, 1990, as amended at 85 FR 22028, Apr. 21, 2020; 88 FR 19000, Mar. 30, 2023]