

# Fact Sheet

U.S. Department of Labor  
Employee Benefits Security Administration  
June 30, 2016

## **INTERIM FINAL RULE ADJUSTING ERISA CIVIL MONETARY PENALTIES FOR INFLATION**

*The Department of Labor published in the Federal Register on June 30, 2016, an interim final rule to adjust for inflation the civil monetary penalties enforceable by the Department of Labor. This Fact Sheet describes the adjustments made to the civil monetary penalties enforced by the Employee Benefits Security Administration (EBSA) under the Employee Retirement Income Security Act of 1974 (ERISA).*

### **Background**

- EBSA is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA).
- The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (the “Inflation Adjustment Act”) required Federal agencies, including the Department of Labor (the “Department” or “DOL”), to adjust their civil monetary penalties for inflation.
- In 1997 and 2003, the Department adjusted a number of civil monetary penalties enforceable by the Department under Title I of ERISA for inflation.
- In 2015, the Federal Civil Monetary Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act) amended the Inflation Adjustment Act. On February 24, 2016, the Office of Management and Budget issued implementation guidance under OMB Memorandum M-16-06.
- The 2015 amendments to the Inflation Adjustment Act require federal agencies to issue an interim final rule by July 1, 2016, adjusting their civil monetary penalties for inflation through October of 2015. After this initial “catch-up” adjustment, the agencies must adjust their civil monetary penalties annually for inflation.
- On June 30, 2016, the Department published an interim final rule setting forth the catch-up adjustments for the penalties enforced by the various agencies in DOL, including EBSA.
- The rule’s catch-up adjustments apply to penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the enactment date of the 2015 Inflation Adjustment Act. Violations of Title I of ERISA occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, for violations occurring after November 2, 2015, will continue to be subject to the civil monetary penalty amounts set forth

in the Department’s existing regulations in 29 CFR part 2575 (or as established by statute if the penalty amount was never adjusted by regulation).

- Beginning in 2017, the Department will adjust the new ERISA Title I penalty amounts annually for inflation no later than January 15 of each year. For example, by January 15, 2017, the Department will adjust penalty amounts to reflect any increase in inflation from October, 2015, to October, 2016. EBSA will post any changes to ERISA Title I penalty amounts on its website. Annual inflation adjustments are not subject to notice and rulemaking.
- For more information on the calculation of the civil penalty adjustments, see the interim final rule at <https://www.federalregister.gov/articles/2016/07/01/2016-15378/federal-civil-penalties-inflation-adjustment-act-catch-up-adjustments>, the Department’s Fact Sheet at <https://www.dol.gov/sites/default/files/2016-inflation-factsheet.pdf> and the Department’s FAQs at <https://www.dol.gov/sites/default/files/2016-inflation-faq.pdf>.

## New Penalty Amounts Adjusted For Inflation

The table below shows the current penalty amounts enforceable by EBSA and the inflation adjusted penalty that will go into effect for penalties assessed after August 1, 2016.

<b>ERISA Penalty Statute</b>	<b>Description of ERISA Violations Subject to Penalty</b>	<b>Current Penalty Amount</b>	<b>New Penalty Amount</b>
ERISA § 209(b)	Failure to furnish reports (e.g., pension benefit statements) to certain former participants and beneficiaries or maintain records.	Up to \$11 per employee	Up to \$28 per employee
ERISA § 502(c)(2)	<ul style="list-style-type: none"> <li>• Failure or refusal to file annual report (Form 5500) required by ERISA § 104; and</li> <li>• Failure of a multiemployer plan to certify endangered or critical status under ERISA § 305(b)(3)(C) treated as failure to file annual report.</li> </ul>	Up to \$1,100 per day	Up to \$2,063 per day
ERISA § 502(c)(4)	<ul style="list-style-type: none"> <li>• Failure to notify participants under ERISA § 101(j) of certain benefit restrictions and/or limitations arising under Internal Revenue Code § 436;</li> <li>• Failure to furnish certain multiemployer plan financial and actuarial reports upon request under ERISA § 101(k);</li> <li>• Failure to furnish estimate of withdrawal liability upon request under ERISA § 101(l); and</li> <li>• Failure to furnish automatic contribution arrangement notice under ERISA § 514(e)(3).</li> </ul>	Up to \$1,000 per day	Up to \$1,632 per day
ERISA § 502(c)(5)	Failure of a multiple employer welfare arrangement to file report required by regulations issued under ERISA § 101(g).	Up to \$1,100 per day	Up to \$1,502 per day
ERISA § 502(c)(6)	Failure to furnish information requested by Secretary of Labor under ERISA § 104(a)(6).	Up to \$110 per day not to	Up to \$147 per day not to

		exceed \$1,100 per request	exceed \$1,472 per request
ERISA § 502(c)(7)	Failure to furnish a blackout notice under section 101(i) of ERISA or notice of the right to divest employer securities under section 101(m) of ERISA.	Up to \$100 per day	Up to \$131 per day
ERISA § 502(c)(8)	Failure by a plan sponsor of a multiemployer plan in endangered status to adopt a funding improvement plan or a multiemployer plan in critical status to adopt a rehabilitation plan. Penalty also applies to a plan sponsor of an endangered status plan (other than a seriously endangered plan) that fails to meet its benchmark by the end of the funding improvement period.	Up to \$1,100 per day	Up to \$1,296 per day
ERISA § 502(c)(9)(A)	Failure by an employer to inform employees of CHIP coverage opportunities under ERISA § 701(f)(3)(B)(i)(I) – each employee a separate violation.	Up to \$100 per day	Up to \$110 per day
ERISA § 502(c)(9)(B)	Failure by a plan administrator to timely provide to any State the information required to be disclosed under ERISA § 701(f)(3)(B)(ii), regarding coverage coordination – each participant/beneficiary a separate violation.	Up to \$100 per day	Up to \$110 per day
ERISA § 502(c)(10)(B)(i)	Failure by any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, to meet the requirements of ERISA §§ 702(a)(1)(F), (b)(3),(c) or (d); or § 701; or § 702(b)(1) with respect to genetic information.	\$100 per day during non-compliance period	\$110 per day during non-compliance period
ERISA § 502(c)(10)(C)(i)	Minimum penalty for de minimis failures to meet genetic information requirements not corrected prior to notice from Secretary of Labor.	\$2,500 minimum	\$2,745 minimum
ERISA § 502(c)(10)(C)(ii)	Minimum penalty for failures to meet genetic information requirements which are not corrected prior to notice from Secretary of Labor and are not de minimis.	\$15,000 minimum	\$16,473 minimum
ERISA § 502(c)(10)(D)(iii)(II).	Cap on unintentional failures to meet genetic information requirements.	\$500,000 maximum	\$549,095 maximum
ERISA § 502(c)(12)	Failure of CSEC plan sponsor to establish or update a funding restoration plan.	Up to \$100 per day	Up to \$100 per day
ERISA § 502(m)	Distribution prohibited by ERISA § 206(e) of ERISA.	Up to \$10,000 per distribution	Up to \$15,909 per distribution
ERISA § 715	Failure to provide Summary of Benefits Coverage under Public Health Services Act section 2715(f), as incorporated into ERISA section § 715 and 29 CFR 2590.715-2715(e).	Up to \$1,000 per failure	Up to \$1,087 per failure

The interim final regulation implements these changes by amending 29 CFR Part 2575 to delete sections 2575.100, 2575.209b-1, 2575.502c-2, 2575.502c-5, and 2575.502c-6 and add new sections 2575.1, 2575.2, and 2575.3. Minor conforming technical changes were also made to sections 2560.502c-2, 2560.502c-4, 2560.502c-5, 2560.502c-6, 2560.502c-7, and 2560.502c-8 of 29 CFR Part 2560 and section 2590.715-2715(e) of 29 CFR Part 2950.