

DOL Increases Penalties for ERISA Compliance Violations

The DOL announced increased penalty amounts for ERISA violations after November 2, 2015, that are assessed after August 1, 2016. Inflation adjustments to these penalties will now be announced annually (no later than January 15).

Background

The Employee Benefit Security Administration (EBSA) enforces ERISA's fiduciary, reporting and disclosure provisions, which provide that civil monetary penalties can be assessed for various compliance failures.

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) established a mechanism for updating various penalties to reflect inflation in an effort to maintain their deterrent effect, but adjustments were historically infrequent because of certain rounding rules. On November 2, 2015, Congress enacted the Federal Civil Monetary Penalties Inflation Adjustment Act Improvements Act (Improvements Act) to require federal agencies to make a "catch-up" inflation adjustment. The catch-up increase, effective for penalties assessed after August 1, 2016, is capped at 150% of the November 2, 2015 level. The Improvements Act also replaced the previous rounding convention for penalty inflation adjustments with rounding to the nearest dollar for all penalty amounts.

DOL will issue subsequent cost-of-living adjustments under the Improvements Act, determined by fluctuations in the Consumer Price Index for all Urban Consumers (CPI-U).

DOL Interim Final Rule with Inflation "Catch-up" Adjustment Amounts

On July 1, 2016, DOL published [its interim rule](#) specifying the penalty inflation catch-up amounts. The catch-up inflation adjustments will apply to penalties DOL assesses after August 1, 2016, if the associated violation occurred after November 2, 2015. (Violations that occurred on or before November 2, 2015, and assessments made on or before August 1, 2016, will be subject to the old penalty amounts in effect prior to the inflation catch-up adjustment.)



Civil Penalty Monetary Penalty Description and ERISA Penalty Statute Section	Current Maximum Penalty	New Maximum Penalty Effective 8/1/2016
Failure to furnish statement of benefits to former retirement plan participants and beneficiaries <u>or</u> failure to maintain records for a retirement plan. Section 209(b)	\$11/employee	\$28/employee
Failure or refusal to file annual report (Form 5500). Section 502(c)(2)	\$1,100/day	\$2,063/day
Multiemployer DB plan's failure to certify endangered or critical status. Section 502(c)(2)	\$1,100/day	\$2,063/day
Failure to notify single employer DB plan participants of certain benefit restrictions and/or limitations arising under Code Section 436. Section 502(c)(4)	\$1,000/day	\$1,632/day
Failure to furnish certain multiemployer defined benefit plan financial and actuarial reports upon request by participant, beneficiary or employee representative. Section 502(c)(4)	\$1,000/day	\$1,632/day
Failure by plan sponsor or plan administrator of multiemployer DB plan to furnish estimate of withdrawal liability upon request to participating employer. Section 502(c)(4)	\$1,000/day	\$1,632/day
Failure to furnish of automatic contribution arrangement notice to DC plan participants. Section 502(c)(4)	\$1,000/day	\$1,632/day
Failure of Multiple Employer Welfare Arrangement (MEWA) to file required report (M-1). Section 502(c)(5)	\$1,100/day	\$1,502/day
Failure to furnish employee benefit plan documents to DOL upon request (including plan and trust documents, summary plan description, summary of material modifications collective bargaining agreement). Section 502(c)(6)	\$110/day (but no greater than \$1,100 per request)	\$147/day (but no greater than \$1,472 per request)
Failure to furnish blackout notice or notice of right to divest employer securities to participants and beneficiaries in DC plans. Section 502(c)(7)	\$100/day/required recipient	\$131/day/required recipient
Failure of multiemployer DB plan sponsor to adopt a funding improvement plan for plan in endangered status (or failure to adopt a rehabilitation plan for plan in critical status). Also applies to failure to meet benchmark by end of funding improvement period for endangered plans (that are not seriously endangered plans). Section 502(c)(8)	\$1,100/day	\$1,296/day

Civil Penalty Monetary Penalty Description and ERISA Penalty Statute Section	Current Maximum Penalty	New Maximum Penalty Effective 8/1/2016
Failure by employer to inform employees of Medicaid/CHIP coverage opportunities. Section 502(c)(9)(A)	\$100/day/employee	\$110/day/employee
Failure of group health plan's plan administrator to provide state with timely coverage coordination disclosure form for Medicaid/CHIP eligible individuals. Section 502(c)(9)(B)	\$100/day/participant or beneficiary	\$110/day/participant or beneficiary
Genetic Information Nondisclosure Act (GINA) violation by group health plan sponsor/health insurance issuer. Section 502(c)(10)	\$100/day/participant or beneficiary (if not corrected before notice of violation is received — subject to <u>minimum</u> of \$2,500/day/participant or beneficiary for <i>de minimis</i> violations <u>or</u> \$15,000/day/participant or beneficiary for violations that are not <i>de minimis</i> ; <u>maximum</u> of \$500,000 for unintentional failures)	\$110/day/participant or beneficiary (if not corrected before notice of violation is received — subject to <u>minimum</u> of \$2,745/day/participant or beneficiary for <i>de minimis</i> violations <u>or</u> \$16,473/day/participant or beneficiary for violations that are not <i>de minimis</i> ; <u>maximum</u> of \$549,095 for unintentional failures)
Failure of a Cooperative and Small Employer Charity Act (CSEC) DB plan sponsor to establish or update a funding restoration plan. Section 502(c)(12)	\$100/day	\$100/day
Prohibited payment from DB plan during period when plan has a liquidity shortfall. Section 502(m)	\$10,000/prohibited payment	\$15,909/prohibited payment
Failure to provide Summary of Benefits Coverage to participant or beneficiary of group health plan. Section 715	\$1,000/participant or beneficiary	\$1,087/participant or beneficiary

Annual Adjustments to Penalties Starting in 2017

After this initial catch-up adjustment, agencies must adjust their civil monetary penalty amounts annually for inflation. The inflation adjustment will be determined from October to October using CPI-U, and the adjusted penalty amounts will be announced on the agency's website no later than the following January 15. Annual inflation adjustments will not be subject to the usual regulatory agency notice and rulemaking process.

In Closing

Although the DOL does not typically assess the maximum penalty permissible under the law, the threat of larger penalties may provide plan sponsors and administrators with stronger incentives to pay very careful attention to compliance deadlines.

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