

DOL Penalties Increase

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In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “Inflation Adjustment Act”) to direct federal agencies to adjust the civil monetary penalties for inflation every year. Civil penalties ensure compliance with federal regulation by incentivizing employers not to violate federal regulation and providing federal agencies the power to ensure compliance. However, when penalties are too low, or have failed to be increased for inflation, compliance with federal regulation remains stagnant.

Following the directive of the Inflation Adjustment Act, the Department of Labor’s Employee Benefits Security Administration (“EBSA”) published an Interim Final Regulation that increases certain penalties applicable to employee benefit plans to match other penalties that remain unchanged.

The updated penalties go into effect on August 1, 2016 and apply to assessments after August 1, 2016 whose associated violations occurred after November 2, 2015.

■ Updated Penalties

The following updated penalties are applicable to health and welfare plans subject to ERISA.

Description	Current Penalty	Updated Penalty
Failure to file Form 5500	Up to \$1,100 per day	Up to \$2,063 per day
Failure of a MEWA to file reports	Up to \$1,100 per day	Up to \$1,502 per day
Failure to provide CHIP Notice	Up to \$100 per day per employee	Up to \$110 per day per employee
Failure to disclose CHIP/Medicare Coordination to the State	\$100 per day, per violation (per participant/beneficiary)	\$110 per day per violation (per participant/beneficiary)
Failure to provide SBCs	Up to \$1,000 per failure	Up to \$1,087 per failure
Failure to furnish plan documents (including SPDs/SMMs)	\$110 per day \$1,100 cap per request	\$147 per day \$1,472 cap per request
Genetic information failures	\$100 per day	\$110 per day
De minimis failures to meet genetic information requirements (Minimum)	\$2,500 minimum	\$2,745 minimum
Failure to meet genetic information requirements – not de minimis failures (Minimum)	\$15,000 minimum	\$16,473 minimum
Cap on unintentional failures to meet genetic information requirements (Maximum)	\$500,000 maximum	\$549,095 maximum

■ Employer Action

Private employers, including non-profits, should ensure employees receive required notices timely (SBC, CHIP, SPD, etc.) to prevent civil penalty assessments. In addition, employers should ensure Form 5500s are properly and timely filed. Finally, employers facing document requests from EBSA should ensure documents are provided timely, as requested.