

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration

ADJUSTING ERISA CIVIL MONETARY PENALTIES FOR INFLATION

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). Under Part 5 of Subtitle B of Title I, EBSA has the authority to assess and collect a number of civil monetary penalties. ERISA civil monetary penalties are for a specific or maximum dollar amount provided by statute. Percentage based penalties such as ERISA section 502(l) (violations of fiduciaries) and 502(i) (certain prohibited transactions) are not civil monetary penalties.

The Federal Civil Monetary Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Act) requires EBSA to adjust ERISA's civil monetary penalties annually for inflation. ERISA monetary penalties assessed by a court (e.g., sections 502(c)(1) and (3)) rather than EBSA are not adjusted for inflation under the 2015 Inflation Act.

Calculation of Inflation Adjustments

Prior to enactment of the 2015 Inflation Act, EBSA periodically adjusted ERISA civil monetary penalties, based on the date of violation. The 2015 Inflation Adjustment Act required a one-time catch up inflation adjustment for post November 2, 2015 violations assessed on or after August 1, 2016 and an annual adjustment thereafter beginning in 2017. Annual inflation adjustments are based on the percentage increase in the Consumer Price Index-Urban (CPI-U) for the October preceding the year of the adjustment and the prior year's October CPI-U. The new penalty amounts generally are published in the Federal Register by January 15 of the year of adjustment. For example, the percentage increase in the CPI-U from October 2019 to October of 2020 generates the inflation adjustment for penalties assessed the day after the adjustment is published in the Federal Register in January of 2021.

Current Year Inflation Adjusted Penalty

The table below shows the penalty amounts enforceable by EBSA for penalties assessed after January 22, 2019 for violations occurring after November 2, 2015. See, 84 FR 213, 221-222 available at <https://www.govinfo.gov/content/pkg/FR-2019-01-23/pdf/2019-00089.pdf>.

ERISA Penalty Statute	Description of ERISA Violations Subject to Penalty	Penalty Amount
ERISA § 209(b)	Failure to furnish reports (e.g., pension benefit statements) to certain former participants and beneficiaries or maintain records.	Up to \$30 per employee
ERISA § 502(c)(2)	<ul style="list-style-type: none"> • Failure or refusal to file annual report (Form 5500) required by ERISA § 104; and • Failure of a multiemployer plan to certify endangered or critical status under ERISA § 305(b)(3)(C) treated as failure to file annual report. 	Up to \$2,194 per day
ERISA § 502(c)(4)	<ul style="list-style-type: none"> • Failure to notify participants under ERISA § 101(j) of certain benefit restrictions and/or limitations arising under Internal Revenue Code § 436; • Failure to furnish certain multiemployer plan financial and actuarial reports upon request under ERISA § 101(k); • Failure to furnish estimate of withdrawal liability upon request under ERISA § 101(l); and • Failure to furnish automatic contribution arrangement notice under ERISA § 514(e)(3). 	Up to \$1,736 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 \$1,597 per day
ERISA § 502(c)(6)	Failure to furnish information requested by Secretary of Labor under ERISA § 104(a)(6).	Up to \$156 per day not to exceed \$1,566 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 \$139 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 \$1,378 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 \$117 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 \$117 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.	\$117 per day per failure 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.	\$2,919 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.	\$17,515 minimum
ERISA § 502(c)(10)(D)(ii)(II)	Cap on unintentional failures to meet genetic information requirements.	\$583,830 maximum
ERISA § 502(c)(12)	Failure of CSEC plan sponsor to establish or update a funding restoration plan.	Up to \$107 per day
ERISA § 502(m)	Distribution prohibited by ERISA § 206(e).	Up to \$16,915 per distribution
ERISA § 715	Failure to provide a participant or beneficiary a Summary of Benefits Coverage under Public 2715(f), as incorporated into ERISA section § 715 and 29 Health Services Act section CFR 2590.715-2715(e).	Up to \$1,156 per failure

Where to Find Inflation Adjustments for Prior Years

See the table below to locate the relevant inflation adjusted penalty amount for prior years:

Violation occurring	Penalty assessed	Where to find inflation adjusted penalty amounts
On or before November 2, 2015	Date of violation not date of assessment determines penalty amount.	29 CFR 2575.1 and 2575.2
After November 2, 2015	On or before August 1, 2016	29 CFR 2575.1 and 2575.2
After November 2, 2015	After August 1, 2016, but on or before January 13, 2017	Appendix 1, 81 FR 43429, 43457 – 43459 (July 1, 2016)
After November 2, 2015	After January 13, 2017 but on or before January 2, 2018	Appendix, 82 FR 5373, 5384-5385 (January 18, 2017)
After November 2, 2015	After January 2, 2018 but on or before January 22, 2019	Appendix, 83 FR 7, 15-17 (January 2, 2018)