



## DOL adjusts civil penalties for inflation

On June 30, 2016, the Department of Labor (DOL) published an interim final rule to adjust for inflation the civil monetary penalties assessed for fiduciary, reporting and disclosure violations under Title I of ERISA.

### Background

In 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act) was enacted. The new law requires federal agencies to annually adjust their civil monetary penalties for inflation. Agencies are required to publish these new penalties no later than July 1, 2016, to take effect on August 1, 2016. The 2015 Inflation Adjustment Act directed agencies to publish an initial “catch-up adjustment” through an interim final rule.

### Adjusted penalties

The new civil penalty amounts are applicable only to civil penalties assessed after August 1, 2016 for violations that occurred after November 2, 2015, the date of enactment of the 2015 Inflation Adjustment Act. Violations 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 civil penalty amounts described in prior DOL regulations.

Beginning in 2017, the DOL will adjust the new Title I penalty amounts annually for inflation no later than January 15 of each year.

Below are the current penalty amounts and the adjusted penalty amounts for inflation. The adjusted amounts are effective August 1, 2016.

ERISA Penalty Statute	Description of Violations Subject to Penalty	Current Penalty Amount	New Penalty Amount
ERISA Section 209(b)	Failure to furnish reports, such as pension benefit statements, to certain former participants and beneficiaries or maintain records	\$11 per employee	\$28 per employee
ERISA Section 502(c)(2)	<ul style="list-style-type: none"> <li>Failure or refusal to file the Form 5500; and</li> <li>Failure of a multiemployer plan to certify endangered or critical status under ERISA Section 305(b)(3)(C) treated as a failure to file annual report</li> </ul>	Up to \$1,100 per day	Up to \$2,063 per day

ERISA Penalty Statute	Description of Violations Subject to Penalty	Current Penalty Amount	New Penalty Amount
ERISA Section 502(c)(4)	<p>Failure to:</p> <ul style="list-style-type: none"> <li>Notify participants of certain benefit restrictions and/or limitations arising under IRC Section 436 (underfunded defined benefit plans);</li> <li>Furnish certain multiemployer plan financial and actuarial reports upon request;</li> <li>Furnish estimates of withdrawal liability upon request; and</li> <li>Furnish automatic contribution arrangement notices</li> </ul>	Up to \$1,000 per day	Up to \$1,632 per day
ERISA Section 502(c)(8)	<p>Failure by:</p> <ul style="list-style-type: none"> <li>A plan sponsor of a multiemployer plan in endangered status to adopt a funding improvement plan;</li> <li>A plan sponsor of a multiemployer plan in critical status to adopt a rehabilitation plan; and</li> <li>A plan sponsor of an endangered plan (but not seriously endangered plan) to meet its benchmark by the end of a funding improvement period</li> </ul>	Up to \$1,100 per day	Up to \$1,296 per day
ERISA Section 502(c)(6)	Failure to furnish information requested by DOL pertaining to any employee benefit plan documents	Up to \$110 per day not to exceed \$1,100 per request	Up to \$147 per day not to exceed \$1,472 per request
ERISA Section 502(c)(7)	Failure to furnish a blackout notice or a notice of the right to divest employer securities	Up to \$100 per day	Up to \$131 per day

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ERISA Penalty Statute	Description of Violations Subject to Penalty	Current Penalty Amount	New Penalty Amount
ERISA Section 502(c)(12)	Failure of a Cooperative and Small Employer Charity Plan to establish or update a funding restoration plan	Up to \$100 per day	Up to \$100 per day
ERISA Section 502(m)	Payment of an improper distribution from a defined benefit plan with a liquidity shortfall	Up to \$10,000 per distribution	Up to \$15,909 per distribution

## Next steps

Plan sponsors and administrators should become familiar with the adjusted penalty amounts. If they have any questions about the impact of these penalties on their plans, they should consult their legal counsel.

### Compliance Bulletin by Prudential Retirement

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