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- [Home](#)
- [About](#)
 - [Specialists](#)
 - [Our Team](#)
 - [Careers](#)
- [Services](#)
 - [401\(k\) Audits](#)
 - [403\(b\) Audits](#)
 - [Pension Plan Audits](#)
 - [Audit Process](#)
 - [CPA Firm Assistance](#)
- [Clients](#)
- [Videos](#)
- [Blog](#)
- [FAQs](#)
- [Contact Us](#)

Select Page

**DOL Releases Interim Final
Rule Adjusting ERISA Civil
Monetary Penalties for
Inflation**



Background

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. The information below from the DOL 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). As a result, we *strongly* encourage any employers who sponsor **401(a)** qualified retirement plans and **403(b)** plans to be cognizant of their responsibilities and to correct applicable plan failures through various voluntary programs sponsored by the DOL (such as the Delinquent Filer Voluntary Compliance Program) when available.

EBSA is responsible for *administering* and *enforcing* the fiduciary, reporting, and disclosure provisions of Title I of ERISA. The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (the “Inflation Adjustment Act”) requires Federal agencies, including the Department of Labor (“DOL”), to adjust their civil monetary penalties for inflation. In 1997 and 2003, the DOL adjusted a number of civil monetary penalties enforceable by the DOL under Title 1

of ERISA for inflation. In 2015, the Federal Civil Monetary Penalties Inflation Adjustment Act of 2015 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 2015. After this initial “catch-up” adjustment, the agencies must adjust their civil monetary penalties *annually* for inflation.

On June 30, 2016, the DOL published an interim final rule setting forth the catch-up adjustments for the penalties enforced by various agencies in the DDOL, 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 1 of ERISA occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, for violations after November 2, 2015, will *continue* to be subject to civil monetary penalty amounts set forth in the DOL’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 DOL will adjust the new ERISA Title 1 penalty amounts annually for inflation **no later than January 15 of each year**. For example, by January 15, 2017, the DOL will adjust penalty amounts to reflect any increase in inflation from October 2015, to October 2016. EBSA will post any changes to ERISA Title 1 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](#), the [DOL’s Fact Sheet](#) and the [DOL’s FAQs](#).

New Penalty Amounts Adjusted for Inflation

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

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Table C—Calculation of Catch-Up Adjustment							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
ERISA penalty statute	Civil monetary penalty (CMP) amount last established by law and description of ERISA violations subject to the CMP	Year CMP amount last set by law other than prior Inflation Adjustment Act	Inflation factor for year in column (3)	Adjusted CMP—\$ amount in column (2) × factor in column (4)	CMP Amount 11/02/2015	CMP Cap—2.5 × column (6)	Catch-Up CMP—lesser of column (5) or (7)
29 U.S.C. 1059(b) /ERISA § 209(b)	\$10 per employee for failure to furnish reports (e.g., pension benefit statements) to certain former participants and beneficiaries or maintain records.	1974	4.65436	\$47	\$11	\$28	\$28
29 U.S.C. 1132(c)(2) /ERISA § 502(c)(2)	Up to \$1,000 per day for each: <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 § 305(b)(3)(C) treated as failure to file annual report. 	1987	2.06278	\$2,063	\$1,100	\$2,750	\$2,063

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29 U.S.C. 1132(c)(4)/ERISA § 502(c)(4)	Up to a \$1000 per day for each: <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 section 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). 	1993	1.63238	\$1,632	\$1,000	\$2,500	\$1,632
29 U.S.C. 1132(c)(5)/ERISA § 502(c)(5)	Up to \$1,000 per day for each failure of a multiple employer welfare arrangement to file report required by regulations issued under ERISA § 101(g).	1996	1.50245	\$1,502	\$1,100	\$2,750	\$1,502
29 U.S.C. 1132(c)(6)/ERISA § 502(c)(6)	Up to \$100 per day for failure to furnish information requested by Secretary of Labor under ERISA § 104(a)(6) but not greater than \$1,000 per request.	1997	1.47177	\$147 not to exceed \$1,472	\$110 not to exceed \$1,100	\$275 not to exceed \$2,750	\$147 not to exceed \$1,472
29 U.S.C. 1132(c)(7)/ERISA § 502(c)(7)	Up to \$100 per day for each failure to furnish a required blackout notice under section 101(i) of ERISA and of right to divest employer securities under section 101(m)— each statutory recipient a separate violation.	2002	1.31185	\$131	\$100	\$250	\$131

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29 U.S.C. 1132(c)(8)/ERISA § 502(c)(8)	Up to \$1,100 per day for 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.	2006	1.17858	\$1,296	\$1,100	\$2,750	\$1,296
29 U.S.C. 1132(c)(9)(A)/ERISA § 502(c)(9)(A)	Up to \$100 per day for each failure by an employer to inform employees of CHIP coverage opportunities under ERISA § 701(f)(3)(B)(i)(I)—each employee a separate violation.	2009	1.10020	\$110	\$100	\$250	\$110
29 U.S.C. 1132(c)(9)(B)/ERISA § 502(c)(9)(B)	Up to \$100 per day for each failure by a plan administrator to timely provide to any State information required to be disclosed under ERISA § 701(f)(3)(B)(ii), regarding coverage coordination—each participant/beneficiary a separate violation.	2009	1.10020	\$110	\$100	\$250	\$110

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29 U.S.C. 1132(c)(10)/ERISA § 502(c)(10)	\$100 per participant or beneficiary per day during noncompliance period for failure by any plan sponsor of 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. See ERISA § 502(c)(10)(B)(i).	2008	1.09819	\$110	\$100	\$250	\$110
	Minimum penalty of \$2,500 per participant or beneficiary for de minimis failures not corrected prior to notice from Secretary of Labor. See ERISA § 502(c)(10)(C)(i).	2008	1.09819	\$2,745	\$2,500	\$6,250	\$2,745
	Minimum penalty of \$15,000 per participant or beneficiary for failures which are not corrected prior to notice from Secretary of Labor and are not de minimis. See ERISA § 502(c)(10)(C)(ii).	2008	1.09819	\$16,473	\$15,000	\$37,500	\$16,473
	\$500,000 cap on unintentional failures. See ERISA § 502(c)(10)(D)(iii)(II).	2008	1.09819	\$549,095	\$500,000	\$1.25 million	\$549,095
29 U.S.C. 1132(c)(12)/ERISA § 502(c)(12)	Up to \$100 per day for failure of CSEC plan sponsor to establish or update a funding restoration plan.	2014	1.00171	\$100	\$100	\$250	\$100
29 U.S.C. 1132(m)/ERISA § 502(m)	Up to \$10,000 per distribution prohibited by ERISA § 206(e).	1994	1.59089	\$15,909	\$10,000	\$25,000	\$15,909

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29 U.S.C. 1185d and 42 U.S.C. 300gg-15/ERISA § 715	Up to \$1000 per failure to provide Summary of Benefits Coverage under Public Health Services Act section 2715(f), as incorporated in ERISA section § 715 and 29 CFR 2590.715 -2715(e).	2010	1.08745	\$1,087	\$1,000	\$2,500	\$1,087



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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- [Home](#)
- [About](#)
- [Services](#)
- [Careers](#)
- [Clients](#)
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- [FAQs](#)
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