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In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment 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.

The Department of Labor (DOL) recently published the final rule to adjust for inflation the civil monetary penalties assessed or enforced in its regulations, and the annual adjustments for 2017 that increases certain penalties applicable to employee benefit plans.

The updated penalties went into effect on January 13, 2017 and apply to penalties assessed after the effective date.

## Annual Penalty Adjustments for 2017

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

Description	Current Penalty	Updated Penalty
Failure to file <b>Form 5500</b>	Up to \$2,063 per day	Up to \$2,097 per day
Failure of a <b>MEWA</b> to file reports	Up to \$1,502 per day	Up to \$1,527 per day
Failure to provide <b>CHIP Notice</b>	Up to \$110 per day per employee	Up to \$112 per day per employee

Failure to disclose CHIP/Medicare Coordination to the State	\$110 per day per violation (per participant/beneficiary)	\$112 per day per violation (per participant/beneficiary)
Failure to provide <b>SBCs</b>	Up to \$1,087 per failure	Up to \$1,105 per failure
Failure to furnish <b>plan documents</b> (including SPDs/SMMs)	\$147 per day \$1,472 cap per request	\$149 per day \$1,496 cap per request
<b>Genetic information</b> failures	\$100 per day	\$112 per day
De minimis failures to meet genetic information requirements (Minimum)	\$2,500 minimum	\$2,790 minimum
Failure to meet genetic information requirements - not de minimis failures (Minimum)	\$15,000 minimum	\$16,742 minimum
Cap on unintentional failures to meet genetic information requirements (Maximum)	\$500,000 maximum	\$558,078 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.