

# ERISA: An Update on Penalties & Enforcement

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Each year in mid-January, the Department of Labor adjusts ERISA penalty amounts to account for inflation. The increases for this year are modest, amounting to approximately 1%. The quick reference chart below contains a summary of selected penalty amounts which may be imposed against plan sponsors for a variety of federal law violations, including the recently adjusted ERISA penalties and others.

## Quick Reference for Welfare Plan Penalties

<b>Plan Documents</b>	<ul style="list-style-type: none"> <li>• Most violations - \$100 to \$110/day per affected participant</li> <li>• Failure to provide SPD or SMM when requested by DOL - <b>\$161</b> per day, up to <b>\$1,613</b> maximum per violation</li> </ul>
<b>Form 5500 Reporting</b>	<ul style="list-style-type: none"> <li>• Up to <b>\$2,259</b>/day per plan for failure to file</li> <li>• \$110/day per affected person for failure to distribute SAR</li> </ul>
<b>§125, §105(h) and §129 Nondiscrimination</b>	<ul style="list-style-type: none"> <li>• Potential loss of tax advantages for highly compensated employees</li> </ul>
<b>Required Notices</b>	<ul style="list-style-type: none"> <li>• SBC - <b>\$1,190</b> per willful failure to provide to participants</li> <li>• CHIPRA - <b>\$120</b>/day for failure to provide notice</li> <li>• COBRA - \$100 to \$110/day per affected person</li> </ul>
<b>HIPAA Privacy</b>	<ul style="list-style-type: none"> <li>• <b>\$119 - \$59,522</b> per violation if breach not resolved (up to <b>\$1,785,651</b> max)</li> </ul>
<b>GINA</b>	<ul style="list-style-type: none"> <li>• <b>\$120</b>/day per affected person</li> </ul>
<b>ACA Reporting</b>	<ul style="list-style-type: none"> <li>• \$270 per form for failure to provide to employees on time &amp; \$270 per form for failure to timely file with IRS</li> </ul>

Note: Figures in **bold** are adjusted annually

The Employee Benefit Security Administration (EBSA) also published its enforcement statistics for the 2020 fiscal year. The chart below provides a summary of selected EBSA enforcement activities from 2015 through 2020. Most notable is the significant upward trend in overall recoveries from enforcement actions, from \$265.3 million in 2015 to \$3.12 *billion* in 2020.

### **EBSA Enforcement of ERISA Welfare & Retirement Plans**

<b>Enforcement Activity for EBSA Fiscal Year</b>	<b>Recoveries from Enforcement Actions</b>	<b>Monetary Benefit Recoveries from Informal Complaint Resolution</b>	<b>Civil Investigations Closed with Results</b>	<b>Criminal Investigations: Individuals with Guilty Pleas or Convictions</b>	<b>Number of Individuals Indicted</b>
<b>2020</b>	\$3.12 Billion	\$456.0 Million	754	59	70
<b>2019</b>	\$2.57 Billion	\$510.0 Million	770	80	76
<b>2018</b>	\$1.1 Billion	\$443.2 Million	860	87	142
<b>2017</b>	\$682.3 Million	\$418.7 Million	1,114	79	113
<b>2016</b>	\$352.0 Million	\$394.2 Million	1,356	75	96
<b>2015</b>	\$265.3 Million	\$402.9 Million	1,640	67	61

**We hope this information is helpful to you. Please give us a call if we can be of assistance to you with Health & Welfare Compliance, Actuarial Services, Healthcare Reform, HIPAA Security, and COBRA/Retiree Billing Administration.**

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