

# 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 significant, amounting to approximately 6%. The updated 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 Health & 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>\$171</b> per day, up to <b>\$1,713</b> maximum per violation</li> </ul>
<b>Form 5500 Reporting</b>	<ul style="list-style-type: none"> <li>• Up to <b>\$2,400</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>\$1,264</b> per willful failure to provide</li> <li>• CHIPRA - <b>\$127</b>/day for failure to provide notice</li> <li>• COBRA - \$100 to \$110/day per affected person</li> </ul>
<b>HIPAA Privacy</b>	<ol style="list-style-type: none"> <li>1. Lack of Knowledge - <b>\$120 - \$60,226</b> per violation</li> <li>2. Reasonable Cause - <b>\$1,205 - \$60,226</b> per violation</li> <li>3. Willful Neglect (corrected) - <b>\$12,045 - \$60,226</b> per violation</li> <li>4. Willful Neglect (not corrected) - <b>\$60,226 - \$1,806,757</b> per violation</li> </ol> <p>For each tier, there is a <b>\$1,806,757</b> calendar-year cap for multiple violations of the same provision</p>
<b>Medicare Secondary Payer (MSP) Rules</b>	<ul style="list-style-type: none"> <li>• Up to <b>\$9,753</b> per violation</li> </ul>
<b>GINA</b>	<ul style="list-style-type: none"> <li>• <b>\$127</b>/day per affected person</li> </ul>
<b>ACA Reporting</b>	<ul style="list-style-type: none"> <li>• <b>\$280</b> per form for failure to provide to employees &amp; for failure to timely file with IRS by Aug. 1</li> </ul>

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

The Employee Benefit Security Administration (EBSA) has also published its enforcement statistics for the 2021 fiscal year. The chart below provides a summary of selected EBSA enforcement activities from 2015 through 2021. Most notable is the general upward trend in overall recoveries from enforcement actions, from a mere \$265.3 million in 2015 up to \$3.12 billion in 2020 and a relatively strong \$1.9 billion for 2021.

## EBSA Enforcement of ERISA Welfare & Retirement Plans

Enforcement Activity for EBSA Fiscal Year	Recoveries from Enforcement Actions	Monetary Benefit Recoveries from Informal Complaint Resolution	Civil Investigations Closed with Results	Criminal Investigations: Individuals with Guilty Pleas or Convictions	Number of Individuals Indicted
2021	\$1.9 Billion	\$499.5 Million	741	38	72
2020	\$3.12 Billion	\$456.0 Million	754	59	70
2019	\$2.57 Billion	\$510.0 Million	770	80	76
2018	\$1.1 Billion	\$443.2 Million	860	87	142
2017	\$682.3 Million	\$418.7 Million	1,114	79	113
2016	\$352.0 Million	\$394.2 Million	1,356	75	96
2015	\$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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