

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Part 2570**

RIN 1210-0056

Final Rule Relating to Adjustment of Civil Monetary Penalties

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that adjusts the civil monetary penalties under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), pursuant to the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), as amended by the Debt Collection Improvement Act of 1996 (the Act). The Act amended the 1990 Act to require generally the adjustment of civil monetary penalties for inflation no later than 180 days after enactment of the Act, and at least once every four years thereafter, in accordance with guidelines specified in the 1990 Act, as amended.

DATES: This final rule is effective on July 29, 1997. This final rule applies only to violations occurring after July 29, 1997.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and

Interpretations, Pension and Welfare Benefits Administration, (202) 219-7461. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 3720E of the Act (Pub. L. 104-134, 110 Stat. 1321-373) amended section 4 of the 1990 Act (Pub. L. 101-410, 104 Stat. 890) to require, with certain exceptions, that, by a regulation published in the **Federal Register**, each civil monetary penalty (CMP) be adjusted in accordance with guidelines specified in the amendment. The Act specifies that any such increase in a CMP shall apply only to violations which occur after the date the increase takes effect. On April 18, 1997, the Department published a notice of proposed rulemaking in the **Federal Register** at 62 FR 19078 (the "proposal") containing proposed regulations that would adjust the CMPs under Title I of ERISA pursuant to the 1990 Act, as amended by the Act. No comments were received from the public in response to the proposal, and the Department is by this notice promulgating the regulations as set forth in the proposal adjusting the CMPs under sections 209(b)(1), 502(c)(1), 502(c)(2) and 502(c)(3) of ERISA (29 U.S.C. 1059(b)(1), 1132(c)(1), 1132(c)(2) and 1132(c)(3)).

The term "civil monetary penalty" is defined in the 1990 Act to mean any penalty, fine or other sanction that—

(A)(i) is for a specific monetary amount as provided by Federal law; or
(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

Only CMPs that are specified by statute or regulation in dollar amounts are adjusted under the 1990 Act, as amended. CMPs that are specified as percentages are not adjusted. The statutory citations for each of the CMPs under Title I of ERISA that are adjusted by the final rule contained in this Notice are set forth in columns (A) and (B) of Table A. Column (C) briefly describes the nature of the violations associated with these citations. Column (D) of Table A indicates the dollar amount of each CMP to be adjusted, and Column (E) sets forth the year that each penalty was established by law or last adjusted. Columns (F), (G), (H), (I), and (J) contain the intermediate results of applying the series of steps mandated by the 1990 Act, as amended. Reference should be made to Column (K) of Table A to determine the dollar amounts of the adjusted penalties that are effected by the final rule contained in this document pursuant to the requirements of the 1990 Act, as amended.

TABLE A.—INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES UNDER TITLE I OF ERISA

(A) U.S. Code citation	(B) ERISA Title I section	(C) Nature of violation	(D) Penalty amount to be adjusted	(E) Year penalty last set or ad- justed	(F) CLA factor=456.7/ CPI below	(G) Penalty after raw adjustment=col D×456.7/col F	(H) Unrounded penalty increase=col G – col D	(I) Round- ed pen- alty in- crease	(J) Uncapped maximum penalty=col D+col I	(K) Capped penalty=min(col J, 1.1×col D)
29 U.S.C. 1059(b)	209(b)	Failure to furnish or maintain records.	\$10 per em- ployee.	1974	146.9	\$31.09	\$21.09	\$20	\$30	\$11 per em- ployee.
29 U.S.C. 1132(c)(1)(A) ..	502(c)(1)(A)	Failure to notify plan participants of group health benefits under COBRA.	Up to \$100 a day.	1986	327.9	139.28	39.28	40	140	Up to \$110 a day.
		Failure to notify participants and beneficiaries re: asset transfer.	Up to \$100 a day.	1990	389.1	117.37	17.37	20	120	Up to \$110 a day.
29 U.S.C. 1132(c)(1)(B) ..	502(c)(1)(B)	Refusal to provide required info in timely manner.	Up to \$100 a day.	1974	146.9	310.89	210.89	210	310	Up to \$110 a day.
29 U.S.C. 1132(c)(2)	502(c)(2)	Failure or refusal to file an annual report.	Up to \$100 a day.	1987	340.1	1,342.84	342.84	300	1,300	Up to \$1,100 a day.
29 U.S.C. 1132(c)(3)	502(c)(3)	Failure to notify participants and beneficiaries re: failure to meet minimum funding requirements.	Up to \$100 a day.	1989	371.7	122.87	22.87	20	120	Up to \$110 a day.
		Failure to notify certain persons re: transfer of excess pension assets to health account.	Up to \$100 a day.	1990	389.1	117.37	17.37	20	120	Up to \$110 a day.

Specifically, the 1990 Act, as amended, provides that the required inflation adjustment shall be determined by increasing the maximum CMP amount or the range of maximum and minimum CMP amounts, as applicable, for each CMP by a cost-of-living adjustment (CLA). The term "cost-of-living adjustment" is defined in the Act as the percentage for each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted by law. The term "Consumer Price Index" is defined in the 1990 Act, as amended, to mean the Consumer Price Index for All-Urban Consumers published by the U.S. Department of Labor.

Accordingly, to calculate the CLA it is necessary to divide the CPI for June of the calendar year preceding the adjustment by the CPI for June of the calendar year in which the CMP was last set by law or adjusted for inflation. (See Column (F) of Table A). In order to calculate the raw inflation adjustment, it is necessary to multiply the original penalty amount by the relevant CLA. (See Column (G) of Table A). The subtraction of the original CMP amount from this product yields the unrounded penalty increase (See Column (H) of Table A).

Section 5 of the 1990 Act, as amended, sets out the manner in which inflation adjustments must be rounded. Specifically, any increase in the maximum CMP or the range of maximum and minimum CMPs, as applicable, must be rounded to the nearest:

- (1) Multiple of \$10.00 in the case of penalties less than or equal to \$100;
- (2) Multiple of \$100.00 in the case of penalties greater than \$100 but less than or equal to \$1000;
- (3) Multiple of \$1000 in the case of penalties greater than \$1000 but less than or equal to \$10,000;
- (4) Multiple of \$10,000 in the case of penalties greater than \$10,000 but less than or equal to \$200,000; or
- (5) multiple of \$25,000 in the case of penalties greater than \$200,000.

Once the penalty increase has been rounded in accordance with the procedures set forth in the 1990 Act, as amended (see Column (I) of Table A), the rounded increase must be added to the original penalty amount to determine the uncapped maximum penalty. (See Column (J) of Table A). The first adjustment of a CMP pursuant to the amendment effected by the Act, however, may not exceed 10% of the

penalty being adjusted. The final adjusted penalty amounts listed in Column (K) of Table A reflect the application of this statutory cap.

Applying the CLA rules described above, the following CMPs under Title I of ERISA are being adjusted.¹ (See Columns (A), (B), and (C) of Table A):

(1) the per capita CMP of \$10.00 set by ERISA section 209(b) (29 U.S.C. 1059(b)) for a failure to furnish the employee benefit plan information or to maintain the plan records specified in ERISA section 209(a);

(2) the CMP of up to \$100.00 a day (as determined in the discretion of a court) set by section 502(c)(1)(A) (29 U.S.C. 1132(c)(1)(A)) for a failure or refusal by a plan administrator to meet the requirements of ERISA section 101(e)(1) (29 U.S.C. 1021(e)(1)) (concerning notice with regard to a transfer or excess pension assets) or ERISA section 606(4) (29 U.S.C. 1166(4)) (concerning notice with regard to the occurrence of qualifying events), or to comply with a request for information which such administrator is required by Title I of ERISA to furnish to a participant or beneficiary;

(3) the CMP of up to \$100.00 a day (as determined in the discretion of a court) set by ERISA section 502(c)(1)(B) (29 U.S.C. 1132(c)(1)(B)) for a failure or refusal to comply with a request for information which a plan administrator is required by Title I of ERISA to furnish a participant or beneficiary;

(4) the CMP of up to \$1,000.00 a day set by ERISA section 502(c)(2) (29 U.S.C. 1132(c)(2)) for the failure on the part of a plan administrator to file the annual report required to be filed under ERISA section 101(b)(4) (29 U.S.C. 1021(b)(4));

(5) the CMP of up to \$100.00 a day (as determined in the discretion of a court) set by ERISA section 502(c)(3) (29 U.S.C. 1132(c)(3)) for the failure on the part of an employer to meet the requirements of ERISA section 101(d) (29 U.S.C. 1021(d)); (concerning provision of notice to participants and beneficiaries for failure to meet the minimum funding requirements) or ERISA section 101(3)(2) (29 U.S.C. 1021(e)(2)) (concerning provision of notice regarding transfers of excess pension assets).

The final rule contained in this document amends Part 2570 ("Procedural Regulations Under the Employee Retirement Income Security

Act") of Title 29 of the *Code of Federal Regulations* (CFR) by adding a new "Subpart E—Adjustment of Civil Penalties Under ERISA Title I." New Subpart E contains five new regulations effecting the adjustment for inflation of the civil monetary penalties discussed above.

Executive Order 12866

The Department has determined that this regulatory action is not a "significant rule" within the meaning of Executive Order 12866 concerning federal regulations, because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

When a Federal agency promulgates a final rule under 5 U.S.C. 553 after being required to publish a proposed rule, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires the agency to perform a final regulatory flexibility analysis unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. In conjunction with the publication of the notice of proposed rulemaking on April 18, 1997 (62 FR 19078), the undersigned certified that the rule, if promulgated as proposed, would not have a significant effect on a substantial number of small entities.

Because the final rule is identical to the proposed rule and because no comments were received from the public in response to the April 18, 1997, notice of proposed rulemaking, there is no basis for modification of the determination that the rule will not have a significant impact on a substantial number of small entities. Accordingly, the Department is not required to conduct a final regulatory flexibility analysis.

¹ Civil penalty set forth in ERISA section 502(c)(4) for a failure to provide the information specified in ERISA section 101(f), relating to Medicare and Medicaid coverage data bank requirements, is not being implemented or enforced. See H.R. Conf. Rep. No. 103-733, 103rd Cong. 2nd Sess., at 22 (1994).

Paperwork Reduction Act

This final rule contains no information collection requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 et seq.).

Unfunded Mandates Reform Act

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 5 U.S.C. 1531–1538, as well as Executive Order 12875, this final rule does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, and tribal governments in the aggregate, or impose an annual burden exceeding \$100 million on the private sector.

Congressional Review

The Department has determined that this final rule is not a “major rule” as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Statutory Authority

This final regulation is adopted pursuant to authority contained in section 4 of the Federal Civil Penalties Adjustment Act of 1990, Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, Title III, section 31001(s)(1), 110 Stat. 1321–373, and contained in sections 209(b), 502(c)(1) and 505 of ERISA, 29 U.S.C. 1059(b), 1132(c)(1) and 1135.

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans,

Employee Retirement Income Security Act, Penalties, Pensions.

Final Rule

In view of the foregoing, Part 2570 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below:

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

1. The authority citation for Part 2570 is revised to read as follows:

Authority: 5 U.S.C. 8477(c)(3); 29 U.S.C. 1108, 1135; Reorganization Plan No. 4 of 1978; 5 U.S.C. 8477(c)(3); Secretary of Labor Order No. 1–87.

Subpart A is also issued under 29 U.S.C. 1132(c)(1).

Subpart E is also issued under sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321–373.

2. Part 2570 is amended by adding a new Subpart E to read as follows:

Subpart E—Adjustment of Civil Penalties Under ERISA Title I

Sec.

2570.100 In general.

2570.209b–1 Adjusted civil penalty under section 209(b).

2570.502c–1 Adjusted civil penalty under section 502(c)(1).

2570.502c–2 Adjusted civil penalty under section 502(c)(2).

2570.502c–3 Adjusted civil penalty under section 502(c)(3).

Subpart E—Adjustment of Civil Penalties Under ERISA Title I**§ 2570.100 In general.**

Section 3720E of the Debt Collection Improvement Act of 1996 (the Act, Pub. L. 104–134, 110 Stat. 1321–373) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act, Pub. L. 101–410, 104 Stat. 890) to require generally that the head of each federal agency adjust the civil monetary penalties subject to its jurisdiction for inflation within 180 days after enactment of the Act and at least once every four years thereafter.

§ 2570.209b–1 Adjusted civil penalty under section 209(b).

In accordance with the requirements of the 1990 Act, as amended, the amount of the civil monetary penalty established by section 209(b) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from \$10 for each employee to \$11 for each employee. This adjusted penalty applies only to violations occurring after July 29, 1997.

§ 2570.502c–1 Adjusted civil penalty under section 502(c)(1).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(1) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from \$100 a day to \$110 a day. This adjusted penalty applies only to violations occurring after July 29, 1997.

§ 2570.502c–2 Adjusted civil penalty under section 502(c)(2).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from \$1000 a day to \$1100 a day. This adjusted penalty applies only to violations occurring after July 29, 1997.

§ 2570.502c–3 Adjusted civil penalty under section 502(c)(3).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from \$100 a day to \$110 a day. This adjusted penalty applies only to violations occurring after July 29, 1997.

Signed at Washington, DC this 22nd day of July 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–19769 Filed 7–28–97; 8:45 am]

BILLING CODE 4510–29–M