

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES UNDER TITLE I OF ERISA—2003—Continued

(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 Adjusted	(F) CPI-U for Col. E year	(G) Penalty After Raw Adjustment = Col. D × (538.9*/Col F)	(H) Unrounded Penalty Increase	(I) Round to the Nearest	(J) Rounded Penalty Increase	(K) New Penalty Amount = Col. (D) + Col. (J)
29 U.S.C. 1132(c)(5).	502(c)(5)	Failure or refusal to file information required under section 101(g).	Up to \$1,000 a day.	1996	469.5	1,147.82	147.82	100	100	Up to \$1,100 a day.
29 U.S.C. 1132(c)(6).	502(c)(6)	Failure to furnish documents under section 104(a)(6) upon request.	Up to \$100 a day.	1997	480.2	112.22	12.22	10	10	Up to \$110 a day.
			But not >\$1,000 per request.	1997	480.2	1,122.24	122.24	100	100	But not >\$1,100 per request.

* The value of the CPI-U average for all U.S. cities in June 2002 using 1967 as the base year was 538.9.

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 (COLA). 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 COLA it is necessary to divide the CPI for June of the calendar year preceding the adjustment² by the CPI for June of the calendar year in which the CMP was last set by law or adjusted for inflation. In order to calculate the raw inflation adjustment, it is necessary to multiply the penalty amount to be adjusted by the relevant COLA. See column (G) of the table. The subtraction of the penalty amount to be adjusted from this product yields the unrounded penalty increase. See column (H) of the table.

² The Pension and Welfare Benefits Administration has determined for purposes of title I of ERISA that the year of adjustment is the year during which the applicability date of the final rule first applies. Because the applicability date applies to violations occurring after March 24, 2003, the year of adjustment is 2003. Accordingly, the CPI for June 2002 (i.e., the CPI for the year prior to the adjustment) is used for this calculation and its value is 538.9 using the 1967-year as the base year.

Section 5 of the 1990 Act, as amended, sets forth 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 in the case of penalties less than or equal to \$100;
- (2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- (4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
- (5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and
- (6) Multiple of \$25,000 in the case of penalties greater than \$200,000.

These amounts are determined for each penalty according to these rules and appear in column (I) of the table.

Once the penalty increase has been rounded in accordance with the procedures set forth in the 1990 Act, as amended (see column (J) of the table) the rounded increase must be added to the penalty to be adjusted to determine the revised penalty amounts. See column (K) of the table.

Upon application of the COLA rules previously described, and as reflected in the table set forth above, the following CMPs under title I of ERISA are affected:

- (1) The CMP of up to \$1,000 a day set by ERISA section 502(c)(5) for the failure or refusal on the part of a person to file the information required to be filed pursuant to ERISA section 101(g) is adjusted to \$1,100 a day; and
- (2) The CMP of up to \$100 a day but in no event in excess of \$1,000 per

request set by ERISA section 502(c)(6) for the failure on the part of the plan administrator to furnish the material requested by the Secretary under ERISA section 104(a)(6) is adjusted to \$110 a day but in no event in excess of \$1,100 per request.³

In view of the foregoing, the final rule contained in this document amends subpart A of part 2575 ("Adjustment of Civil Penalties under ERISA Title I") of title 29 of the Code of Federal Regulations (CFR) by adding the two new regulations on the adjustment for inflation of the civil monetary penalties discussed above.

Notice and Public Comment

As a general matter, the Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. Section 553(b)(3)(B) of the APA exempts certain rules or agency procedures from the notice and comment requirements when an agency finds for good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest. The Department finds for good cause that notice and comment on the two CMP adjustments is unnecessary pursuant to section 553(b)(3)(B) of the APA. The Department, in this final rule is merely implementing the specific statutory methodology, prescribed by

³ The first adjustment under the Act, as amended, to any CMP may not exceed 10 percent of the penalty being adjusted. This is the first COLA adjustment to the section 502(c)(5) and 502(c)(6) CMPs and the adjustment to each CMP does not exceed the statutory cap. Section 502(c)(5) was added to title I of ERISA by the Health Insurance Portability and Accountability Act of 1996, and section 502(c)(6) was added to title I of ERISA by the Taxpayer Relief Act of 1997.