

# Compliance Alert



## ERISA Non-Compliance Just Became More Costly (and the DOL has Proposed to Make Compliance More Complicated)

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It has been a busy summer for the Department of Labor (DOL). The DOL released [interim final rules](#) adjusting the ERISA civil monetary penalties for inflation, and also announced proposed major revisions to the [Form 5500 annual return](#).

### ERISA Civil Monetary Penalties Adjusted for Inflation

The last time the DOL adjusted a number of civil monetary penalties for inflation was 2003. In November 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act, requiring federal agencies to issue catch-up inflation adjustments to civil monetary penalties, and subsequently to adjust them annually for inflation.

The new penalty amounts effective August 1, 2016 represent a significant increase. For example, failure to timely file the Form 5500 previously carried a penalty of up to \$1,100 per day. The new adjusted penalty amount is up to \$2,063 per day. Of course, under the Delinquent Filers Voluntary Compliance Program, employers are able to significantly reduce their liability if the Form is submitted prior to the DOL discovering the failure.

Of course, the best way to avoid penalties is to remain in compliance. We can help!

For more information on the Act's penalty increases, see the DOL's set of [FAQs](#).

### What is the Form 5500 and Why is it (Maybe) Changing?

ERISA requires health and welfare plans and retirement plans subject to its rules to submit annual reports to the DOL which provide details regarding the financial condition and operations of the plan. The proposed revisions reflect efforts of the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation to improve employee benefit plan reporting for filers, modernize the financial information filed regarding plans and enhance mineability of the data filed on annual returns. The DOL also determined that in order for it to effectively fulfill its responsibilities under the various laws, all plans that provide group health benefits should be subject to some level of annual reporting with a focus on compliance issues.

### What are the Proposed Changes, and When Would They Take Effect?

The proposed changes would be effective for the 2019 plan year (for Forms 5500 filed in 2020).

## 1) Eliminating the Filing Exemption for Small Plans

The first big change would be that all Plan Sponsors would be required to file the Form 5500—regardless of plan size. Currently, most health and welfare plans with fewer than 100 covered participants on the first day of the plan year are not required to file a Form 5500.

## 2) New Schedule J for Group Health Plans

The other major proposed change is a new Schedule J, which would apply to all group health plans. The proposal would have the Schedule J request the following information:

- Participant break out on subscribers, dependents and COBRA members
- Type of health benefits offered
- Source of assets to pay for benefits
- Specific details on contributions
- Third Party Administrator information
- Whether the employer offers a HDHP, health FSA, or HRA
- Details on Stop Loss coverage and premiums
- Details on claims, both paid, unpaid, denied etc.
- Details regarding the SPD document and its compliance
- And more!

The proposed changes are complex and would significantly increase the reporting obligations for health and welfare plan sponsors. We can expect that the Departments will receive a significant volume of comments on the proposal by the October 4th deadline, so we will keep you up to date on the status of these changes and the final reporting requirements.

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