
Civil Penalties Set to Increase Significantly, Many Present Retroactivity Concerns

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Over the past several months, many federal agencies have adopted rules significantly increasing the maximum civil monetary penalties (CMPs) they can potentially impose. The increased penalty amounts were adopted in response to recent legislation from Congress requiring that federal agencies make adjustments to “catch up” with inflation. The catch-up adjustments allow agencies to increase their penalty amounts by as much as 150 percent of their November 2, 2015 values. In addition, agencies must make annual adjustments to their CMPs for inflation going forward.

Aside from the obvious impact of the increased penalty amounts, the new regulations present a more subtle concern, of which interested parties should take note. Many agencies adopted rules that would apply the increased penalty amounts retroactively to violations that occurred before Congress passed the law requiring such increases. This retroactive application of increased penalty amounts is unlikely to withstand judicial scrutiny. The time period for submitting comments to many agencies concerning these retroactive increases has not closed. These issues are discussed in the downloadable PDF below.

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