

## Department of Justice

## § 85.3

EFFECTIVE DATE NOTE: By AG Order 3690-2016, 81 FR 42500, June 30, 2016, the authority citation to part 85 was revised, effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321; Pub. L. 114-74, section 701, 28 U.S.C. 2461 note.

SOURCE: Order No. 2249-99, 64 FR 47103, Aug. 30, 1999, unless otherwise noted.

### § 85.1 In general.

(a) In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 104-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321, the civil monetary penalties provided by law within the jurisdiction of the Department of Justice and listed in section 85.3 are adjusted as set forth in this part, effective for violations occurring on or after September 29, 1999.

(b) Reference should be made to regulations of the Immigration and Naturalization Service in title 8 of the Code of Federal Regulations for the adjustment of civil monetary penalties pertaining to immigration matters. In addition, adjustments to civil penalties relating to unauthorized employment of aliens, immigration related unfair employment practices, and civil document fraud are addressed in 28 CFR 68.52.

EFFECTIVE DATE NOTE: By AG Order 3690-2016, 81 FR 42500, June 30, 2016, § 85.1 was revised, effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth as follows:

### § 85.1 In general.

(a) For violations occurring on or before November 2, 2015, and for civil penalties assessed before August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department of Justice and listed in section 85.3 are adjusted as set forth in that section, in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 104-410, 104 Stat. 890, in effect prior to November 2, 2015.

(b) For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department of Justice are adjusted as set forth in section 85.5, in ac-

cordance with the requirements of the Bipartisan Budget Act of 2015, Public Law 114-74, section 701 (Nov. 2, 2015), 28 U.S.C. 2461 note.

### § 85.2 Calculation of adjustment.

(a) The inflation adjustments described in § 85.3 were determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty assessed or enforced by the Department of Justice by the cost-of-living adjustment as that term is defined by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410. Any increase so determined was rounded to the nearest—

(1) Multiples of \$10 in the case of penalties less than or equal to \$100;

(2) Multiples of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) Multiples of \$1000 in the case of penalties greater than \$1000 but less than or equal to \$10,000;

(4) Multiples of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) Multiples of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) Multiples of \$25,000 in the case of penalties greater than \$200,000.

(b) Notwithstanding the provisions of paragraph (a) of this section, the initial adjustment for each penalty is capped at 10%.

EFFECTIVE DATE NOTE: By AG Order 3690-2016, 81 FR 42500, June 30, 2016, § 85.2 was removed and reserved, effective Aug. 1, 2016.

### § 85.3 Adjustments to penalties.

The civil monetary penalties provided by law within the jurisdiction of the respective components of the Department, as set forth in paragraphs (a) through (d) of this section, are adjusted in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, as follows. The adjusted penalties set forth in paragraphs (a), (c), and (d) of this section are effective for violations occurring on or after September 29, 1999.

(a) *Civil Division.* (1) 5 U.S.C. App. 4 102(f)(6)(C)(i), Ethics in Government

Act of 1978, knowing and willful disclosure, solicitation, or receipt of information with respect to blind trusts: from \$10,000 to \$11,000.

(2) 5 U.S.C. App. 4 102(f)(6)(C)(ii), Ethics in Government Act of 1978, negligent disclosure, solicitation, or receipt of information with respect to blind trusts: from \$5,000 to \$5,500.

(3) 5 U.S.C. App. 4 104(a), Ethics in Government Act of 1978, falsification or failure to file required reports: from \$10,000 to \$11,000.

(4) 5 U.S.C. App. 4 105(c)(2), Ethics in Government Act of 1978, unlawful acquisition or use of public reports: from \$10,000 to \$11,000.

(5) 5 U.S.C. App. 4 504(a), Ethics Reform Act of 1989, violations of limitations on outside earned income and employment: from \$10,000 to \$11,000.

(6) 12 U.S.C. 1833a(b)(1), Financial Institutions Reform, Recovery, and Enforcement Act of 1989, violation: from \$1,000,000 to \$1,100,000.

(7) 12 U.S.C. 1833a(b)(2), Financial Institutions Reform, Recovery, and Enforcement Act of 1989, continuing violations (per day): minimum from \$1,000,000 to \$1,100,000; maximum from \$5,000,000 to \$5,500,000.

(8) 22 U.S.C. 2399b(a)(3)(A), Foreign Assistance Act of 1961, fraudulent claim for assistance: from \$2,000 to \$2,200.

(9) 31 U.S.C. 3729(a), False Claims Act, violations: minimum from \$5,000 to \$5,500; maximum from \$10,000 to \$11,000.

(10) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act, violation involving false claim: from \$5,000 to \$5,500.

(11) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act, violation involving false statement: from \$5,000 to \$5,500.

(12) 40 U.S.C. 489(b)(1), Federal Property and Administrative Services Act of 1949, violation involving surplus government property: from \$2,000 to \$2,200.

(13) 41 U.S.C. 55(a)(1)(B), Anti-Kickback Act of 1986, violation involving kickbacks: from \$10,000 to \$11,000.

(b) *Civil Rights Division.* (1) 18 U.S.C. 248(c)(2)(B), Freedom of Access to Clinic Entrances Act of 1994 (Nonviolent Physical Obstruction):

(i) The civil monetary penalty amount for a first order for nonviolent physical obstruction, initially set at \$10,000, is adjusted to \$11,000 for a violation occurring on or after September 29, 1999, and before April 28, 2014, and is adjusted to \$16,000 for a violation occurring on or after April 28, 2014.

(ii) The civil monetary penalty amount for a subsequent order for nonviolent physical obstruction, initially set at \$15,000, is adjusted to \$16,500 for a violation occurring on or after April 28, 2014.

(2) 18 U.S.C. 248(c)(2)(B), Freedom of Access to Clinic Entrances Act of 1994 (Other Violations):

(i) The civil monetary penalty amount for a first order other than for nonviolent physical obstruction, initially set at \$15,000, is adjusted to \$16,500 for a violation occurring on or after April 28, 2014.

(ii) The civil monetary penalty amount for a subsequent order other than for nonviolent physical obstruction, initially set at \$25,000, is adjusted to \$27,500 for a violation occurring on or after September 29, 1999, and before April 28, 2014, and is adjusted to \$37,500 for a violation occurring on or after April 28, 2014.

(3) 42 U.S.C. 3614(d)(1)(C), Fair Housing Act of 1968, as amended (Pattern or Practice Violation):

(i) The civil monetary penalty amount for a first order, initially set at \$50,000, is adjusted to \$55,000 for a violation occurring on or after September 29, 1999, and before April 28, 2014, and is adjusted to \$75,000 for a violation occurring on or after April 28, 2014.

(ii) The civil monetary penalty amount for a subsequent order, initially set at \$100,000, is adjusted to \$110,000 for a violation occurring on or after September 29, 1999, and before April 28, 2014, and is adjusted to \$150,000 for a violation occurring on or after April 28, 2014.

(4) 50 U.S.C. App. 597(b)(3), Servicemembers Civil Relief Act of 2003, as amended:

(i) The civil monetary penalty amount for a first violation, initially set at \$55,000, is adjusted to \$60,000 for a violation occurring on or after April 28, 2014.

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(ii) The civil monetary penalty amount for a subsequent violation, initially set at \$110,000, is adjusted to \$120,000 for a violation occurring on or after April 28, 2014.

(c) *Criminal Division*. 18 U.S.C. 216(b), Ethics Reform Act of 1989, violation: from \$50,000 to \$55,000.

(d) *Drug Enforcement Administration*. 21 U.S.C. 961(1), Controlled Substances Import Export Act, transshipment and in-transit shipment of controlled substances: from \$25,000 to \$27,500.

[Order No. 2249-99, 64 FR 47103, Aug. 30, 1999, as amended by AG Order No. 3324-2014, 79 FR 17436, Mar. 28, 2014]

EFFECTIVE DATE NOTE: By AG Order 3690-2016, 81 FR 42500, June 30, 2016, § 85.3 was amended by revising the heading and the introductory text, effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth as follows:

**§ 85.3 Adjustments to penalties for violations occurring on or before November 2, 2015.**

For all violations occurring on or before November 2, 2015, and for assessments made before August 1, 2016, for violations occurring after November 2, 2015, the civil monetary penalties provided by law within the ju-

risdiction of the respective components of the Department, as set forth in paragraphs (a) through (d) of this section, are adjusted as provided in this section in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, as in effect prior to November 2, 2015. The adjusted penalties set forth in paragraphs (a), (c), and (d) of this section are effective for violations occurring on or after September 29, 1999, and on or before November 2, 2015, and for assessments made before August 1, 2016, for violations occurring after November 2, 2015. For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, see the adjusted penalty amounts in section 85.5.

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**§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.**

For civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the following table.

| U.S.C. Citation                | Name/Description   | CFR Citation             | DOJ Penalty as of 11/2/15 (\$) <sup>1</sup> | New DOJ penalty <sup>2</sup>  |
|--------------------------------|--|--------------------------|---|-------------------------------|
| <b>ATF</b>                     |  |                          |   |                               |
| 18 U.S.C. 922(t)(5) .....      | Brady Law—Nat'l Instant Criminal Check System; Transfer of firearm without checking NICS.                    | .....                    | 5,000 .....                                 | 8,162                         |
| 18 U.S.C. 924(p) .....         | Child Safety Lock Act; Secure gun storage or safety device, violation.                                       | .....                    | 2,500 .....                                 | 2,985                         |
| <b>Civil Division</b>          |  |                          |   |                               |
| 12 U.S.C. 1833a(b)(1) .....    | Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.                             | 28 CFR 85.3(a)(6) .....  | 1,100,000 .....                             | 1,893,610                     |
| 12 U.S.C. 1833a(b)(2) .....    | FIRREA Violation (continuing) (per day).   | 28 CFR 85.3(a)(7) .....  | 1,100,000 .....                             | 1,893,610                     |
| 12 U.S.C. 1833a(b)(2) .....    | FIRREA Violation (continuing) .....  | 28 CFR 85.3(a)(7) .....  | 5,500,000 .....                             | 9,468,050                     |
| 22 U.S.C. 2399b(a)(3)(A) ..... | Foreign Assistance Act; Fraudulent Claim for Assistance (per act).   | 28 CFR 85.3(a)(8) .....  | 2,200 .....                                 | 5,500**                       |
| 31 U.S.C. 3729(a) .....        | False Claims Act; <sup>3</sup> Violations .....  | 28 CFR 85.3(a)(9) .....  | Min. 5,500 .....                            | Min. 10,781                   |
| 31 U.S.C. 3802(a)(1) .....     | Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).                              | 28 CFR 71.3(a) .....     | 5,500 .....                                 | Max. 11,000 ..<br>Max. 21,563 |
| 31 U.S.C. 3802(a)(2) .....     | Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).                       | 28 CFR 71.3(f) .....     | 5,500 .....                                 | 10,781                        |
| 40 U.S.C. 123(a)(1)(A) .....   | Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act). | 28 CFR 85.3(a)(12) ..... | 2,200 .....                                 | 5,500**                       |
| 41 U.S.C. 8706(a)(1)(B) .....  | Anti-Kickback Act; Violation Involving Kickbacks <sup>4</sup> (per occurrence).                              | 28 CFR 85.3(a)(13) ..... | 11,000 .....                                | 21,563                        |