Clarifying the Increase in Funeral Rule Violation Penalties

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Brookfield, Wisconsin – In July 2016, NFDA reported that the civil penalties for a violation of the Funeral Rule would increase from $16,000 to $40,000 beginning August 1, 2016. Since that time, there have been various articles and reports about the FTC increasing the penalty amount that may have caused some confusion and generated questions in the funeral profession. Here, NFDA answers questions regarding the increase.

Why did the FTC increase the amount of the civil penalty for Funeral Rule violations?

The FTC did not increase the dollar amount of the Funeral Rule violation on its own. Rather, it was required to do so by an act of Congress passed in 2015. As part of last year’s Budget Act, Congress enacted the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015. That law required agencies to implement a “catch-up” inflation adjustment using a set formula.

Applying that formula to the Funeral Rule increased the civil penalty from $16,000 to $40,000. Because the amount of the Funeral Rule civil penalty had not increased very much since the implementation of the Funeral Rule back in 1984, under the formula set by Congress, the Funeral Rule violation was increased the maximum of 150 percent.

Does this mean that each violation of the Funeral Rule will now cost a funeral home $40,000?

Not necessarily. The $40,000 would be the maximum amount a funeral home would pay the FTC. When negotiating the amount of a fine with the FTC, the commission will often reduce the maximum amount depending on the degree of culpability of the funeral home, whether the firm has violated the Funeral Rule in the past, its ability to pay the fine and the impact that paying the fine will have on the funeral home’s ability to do business.

The commission also has a leniency program for small businesses under which it may waive a civil penalty or significantly reduce it.

Will the amount of the $40,000 civil penalty increase in the future?

Yes. The $40,000 limit was set because Congress put a 150 percent ceiling on the amount that a fine could go up as a result of the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015. That ceiling applies only through this year. Therefore, starting January 1, 2017, the amount of the fine could increase.

Had there not been the 150 percent ceiling, the amount of the civil penalty for a Funeral Rule violation would have increased to $52,000.

Is the amount that a funeral home pays to join the Funeral Rule Offenders Program also increasing?

No. The payments under the Funeral Rule Offenders Program (FROP) are not impacted by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015.

Those payments, which amount to 0.8 percent of the funeral homes’ average annual gross revenue, will remain the same. Because the payments under the Funeral Rule Offenders Program are based on annual revenue, there is already a built-in inflation adjustment factor since funeral homes’ annual income has customarily increased from year to year.

Will the dramatic increase in the dollar amount of the civil penalties under the Funeral Rule persuade more funeral homes to join the Funeral Rule Offenders Program rather than try to settle Funeral Rule violations with the FTC?

Perhaps. However, we know from experience that the vast majority of funeral homes cited by the FTC for Funeral Rule violations are already joining the Funeral Rule Offenders Program rather than litigating the cases or trying to settle out with the FTC. Joining FROP has many advantages for funeral homes, not the least of which is paying a lesser penalty amount.

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