

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
January 29, 2013

Delinquent Filer Voluntary Compliance Program

The Delinquent Filer Voluntary Compliance Program (DFVCP) is designed to encourage voluntary compliance with the annual reporting requirements under the Employee Retirement Income Security Act (ERISA). The DFVCP gives delinquent plan administrators a way to avoid potentially higher civil penalty assessments by satisfying the program's requirements and voluntarily paying a reduced penalty amount. To increase incentives for delinquent plan administrators to voluntarily comply with ERISA's annual reporting requirements, the Department further reduced penalties under the DFVCP, and updated and simplified the rules governing participation in the program.

Who is Eligible

Eligibility for the DFVCP continues to be limited to plan administrators with filing obligations under Title I of ERISA who comply with the provisions of the program and who have not been notified in writing by the Department of a failure to file a timely annual report under Title I of ERISA. For example, Form 5500-EZ filers, and filers electing to file a Form 5500-SF instead of a Form 5500-EZ for "one-participant plans," are not eligible to participate in the DFVCP because such plans are not subject to Title I. A "one-participant plan" for this purpose is a plan that covers only the self-employed (e.g., a sole proprietor (and spouse) or one or more partners (and spouses)).

Program Criteria

Participation in the DFVCP is a two-part process:

First, electronically file with EFAST2 a complete Form 5500 or, if eligible, Form 5500-SF, Annual Return/Report, including any required schedules and attachments, for each year relief is requested. However, do not submit to EFAST2 the information on separated deferred vested participants (Form 8955-SSA); file this directly with IRS.

To ensure proper processing, the "DFVC program" box on line "D" of Part I of the 5500 or 5500-SF must be checked. Special simplified rules apply to "top hat" plans and apprenticeship and training plans.

Second, electronically submit the filing information and payment to the DFVCP using the DFVC Calculator at <http://www.dol.gov/ebsa/calculator/dfvcmain.html>. You may also submit your payment and filing information to the DFVCP through the mail. The plan administrator is personally liable for the applicable penalty amount. Amounts paid under the DFVCP shall not be paid from the assets of an employee benefit plan.

Penalty Structure

The basic penalty under the program is \$10 per day for delinquent filings.

"Per filing" cap. The maximum penalty for a single late annual report is \$750 for a small plan (generally a plan with fewer than 100 participants at the beginning of the plan year) and \$2,000 for a large plan.

"Per plan" cap. The DFVCP also includes a "per plan" cap. This cap is designed to encourage reporting compliance by plan administrators who have failed to file an annual report for a plan for multiple years. The "per plan" cap limits the penalty to \$1,500 for a small plan and \$4,000 for a large plan regardless of the number of late annual reports filed for the plan at the same time. There is no "per administrator" or "per sponsor" cap. If the same

person is the administrator or sponsor of several plans required to file annual reports under Title I of ERISA, the maximum applicable penalty amounts would apply for each plan.

Small plans sponsored by certain tax-exempt organizations. A special “per plan” cap of \$750 applies to a small plan sponsored by an organization that is tax-exempt under Internal Revenue Code §501(c)(3). The \$750 limitation applies regardless of the number of late annual reports filed for the plan at the same time. It is not available, however, if as of the date the plan files under the DFVCP, there is a delinquent annual report for a plan year during which the plan was a large plan.

“Top hat” plans and apprenticeship and training plans. The “per plan” cap for plans eligible to use the “top hat” plan and apprenticeship and training plan options is \$750.

DFVCP Participation Procedures

The procedures governing participation in the DFVCP are intended to make the program easy to use:

- File the delinquent Form 5500/5500SF electronically with EFAST2. Please refer to the FAQs on EFAST2 Form 5500 Processing at www.dol.gov/ebsa/faqs/faq-EFAST2.html for details on which forms and schedules are to be used for delinquent filings.
- Use the online calculator at www.efast.dol.gov to compute the correct penalty amount. After using the calculator, you can choose to make your payment electronically simply by following the on-screen instructions when the calculator has computed the penalty amount. You will be automatically be given a receipt for your electronic payment.

You may also make your payment by check by sending it with the required information to the addresses written in the DFVCP FAQs. If you pay by check, you must print out a paper copy of the electronically filed Form 5500 or Form 5500-SF and include it with your check. In addition, receipts for payment are NOT given for payments by check.

IRS and PBGC Penalties

DFVCP does not relieve filing penalties under the Internal Revenue Code or Title IV of ERISA. The Department understands that the IRS may provide relief from late-filing penalties under the Internal Revenue Code for a delinquent Form 5500 or Form 5500-SF of a Title I plan if (i) all applicable conditions of the DFVC Program have been satisfied, and (ii) any information required concerning separated deferred vested participants (Form 8955-SSA) for the applicable plan year has been filed directly with the IRS.

The Pension Benefit Guaranty Corporation may provide certain penalty relief for delinquent annual returns/reports filed for Title I plans where the conditions of the DFVCP have been satisfied.

Contact the IRS and PBGC for further information.

Contacts for Additional Information

For more detailed information, or if you have questions about the DFVCP, either call EBSA at 202-693-8360 or visit www.dol.gov/ebsa. For additional information about the Form 5500 and Form 5500-SF Annual Return/Report, visit the EFAST Internet site at www.efast.dol.gov, or call the EBSA help desk at 1-866-463-3278.

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice phone: 202-693-8664; TTY: 202-501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.