

Form 5500 Delinquent Filer Voluntary Compliance Program (DFVCP)

Background

- Department of Labor (DOL) can assess a penalty of up to \$2,670 per day per plan number per plan year that a Form 5500 filing is late or not filed.
 - No statute of limitations or cap on penalty fees.
 - Penalties adjusted annually by the DOL.

What is the DFVCP?

- DOL designed program to encourage plan administrators to voluntarily comply with the annual reporting requirements under ERISA.
- Provides 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.

Who is eligible to participate in the DFVCP?

- Limited to plan administrators with filing obligations under Title I of ERISA who comply with the provisions of the program.
- Have not received a notice of assessment from the DOL for failure to file a timely annual report.
- Applies to plan years beginning on or after January 1988.

What are the Penalties under the DFVCP?

- Small Plan Filers: fewer than 100 participants at the beginning of the plan year.
 - \$10 per day.
 - Not to exceed \$750 for each report.
 - Not to exceed \$1,500 per plan.
- Large Plan Filers: at least 100 participants or more at the beginning of the plan year.
 - \$10 per day.
 - Not to exceed \$2,000 for each report.
 - Not to exceed \$4,000 per plan.
- Penalty amounts are calculated from the day after the filing was due until the day that it is electronically filed, without regard to any filed extensions.
- Plan administrator (employer) is personally liable for the applicable penalty amount, and, therefore, amounts paid under the DFVCP shall not be paid from assets of an employee benefit plan.

How do employers take advantage of this Program?

- Two-part process that should be done on the same day.
 - *Special note when filing multiple plans:
 - If multiple plans are filed at the same time under the DFVCP, they must be mailed separately to the DOL, with separate penalty checks.
 - Example: Plan 501, Plan 502, Plan 503.
 - Multiple plan years submitted at the same time for the same plan may be mailed together.
- 1. E-File Form(s) 5500:
 - Electronically file the appropriate Form(s) 5500, including all schedules, for each year relief is requested.
 - "DFVC Program" box in Part 1, Line D of the Form 5500 must be checked.
- 2. Pay the Penalty:
 - Two options are available:
 1. Mail a signed copy of each applicable 5500 (first 2 pages only, w/o schedules) and a penalty check made out to Department of Labor for the applicable penalty amount (note DFVC Program on check).
 - Mail to:
DFVCP
PO Box 6200-35,
Portland, OR 97228-6200
 - Certified mail with return receipt is recommended.
 - Overnight Delivery now accepted when sent to:
U.S. Bank
Attn: DFVC 6200-35
17650 NE Sandy Blvd.
PD-OR-C1GL
Portland, OR 97230
- 2. Pay online via the DFVC Penalty Calculator and Online Payment site (preferred method): <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs/dfvcp>.
- If the penalty is paid online, a copy of the Form 5500 does not need to be mailed to the DOL.