

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
April 2005

Delinquent Filer Voluntary Compliance Program

The Delinquent Filer Voluntary Compliance (DFVC) Program is designed to encourage voluntary compliance with the annual reporting requirements under the Employee Retirement Income Security Act (ERISA). The DFVC Program 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 DFVC program, and updated and simplified the rules governing participation in the program.

Who is Eligible

Eligibility for the DFVC Program 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 Form 5500 filers for plans without employees (as described in 29 CFR 2510.3-3(b) and (c)) are not eligible to participate in the DFVC Program because such plans are not subject to Title I.

Program Criteria

Participation in the DFVC Program is a two-part process. First, file with EBSA a complete Form 5500 Series Annual Return/Report, including all schedules and attachments, for each year relief is requested. To ensure proper processing, box "D" on the 5500 must be marked and a statement labeled "DFVC Program" must be attached. Special simplified rules apply to "top hat" plans and apprenticeship and training plans. Second, submit to the DFVC Program a copy of the 5500, without the schedules and attachments, and the applicable penalty amount. The plan administrator is personally liable for the applicable penalty amount, and, therefore, amounts paid under the DFVC Program shall not be paid from the assets of an employee benefit plan.

Penalty Structure

Per day penalty. 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 has been reduced from \$2,000 to \$750 for a small plan (generally a plan with fewer than 100 participants at the beginning of the plan year) and from \$5,000 to \$2,000 for a large plan.

"Per plan" cap. The DFVC Program 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 DFVC Program, 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 penalty amount for “top hat” plans and apprenticeship and training plans is \$750.

Program Participation Procedures

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

- Plan administrators may use the Form 5500 for the year relief is sought or the most current form available at the time of participation. This option allows administrators to choose the form that is most efficient and least burdensome for their circumstances;
- The forms and penalty payment check should not be annotated in bold red print identifying the filing. Instead, box D of the Form 5500 must be checked and a statement labeled “DFVC Program” must be attached;
- The program conforms to the annual reporting procedures under the computerized ERISA Filing Acceptance System (EFAST); and
- The address where DFVC Program remittances are submitted is DFVC Program, EBSA, P.O. Box 530292, Atlanta, Georgia 30353-0292.

IRS and PBGC Participation

Although the DFVC Program does not cover late filing penalties under the Internal Revenue Code or Title IV of ERISA, the Internal Revenue Service and Pension Benefit Guaranty Corporation agreed to provide certain penalty relief for delinquent Form 5500s filed for Title I plans where the conditions of the DFVC Program have been satisfied.

Contacts for Additional Information

Questions about the DFVC Program should be directed to EBSA by calling 202.693.8360 or www.dol.gov/ebsa. For additional information about the Form 5500 Series, 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: 1-202-501-3911. 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.