

# LEGISLATIVE BRIEF

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## Delinquent Filer Voluntary Compliance Program (DFVCP)

The Delinquent Filer Voluntary Compliance Program (DFVCP) is a Department of Labor (DOL) program designed to encourage voluntary compliance with ERISA's annual reporting requirements. ERISA's annual reporting requirement is commonly referred to as the Form 5500. The DFVCP gives delinquent plan administrators a way to avoid potentially higher civil penalty assessments by voluntarily filing late Forms 5500 and paying reduced penalties.

This Legislative Brief provides an overview of the DFVCP, including the program's eligibility requirements, penalty structure and participation procedures. Please read below for more information.

### WHO IS ELIGIBLE?

Eligibility for the DFVCP is 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 DOL 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 these plans are not subject to Title I of ERISA. A "one-participant plan" for this purpose is a plan that covers only the self-employed (for example, a sole proprietor (and spouse) or one or more partners (and spouses)).

### 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 section 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.



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## "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**.

A top hat plan is a type of nonqualified deferred compensation plan that provides benefits to a select group of management or highly compensated employees. It is exempt from many ERISA requirements.

## **PARTICIPATION PROCEDURES**

Participation in the DFVCP is a two-part process for plan administrators. Plan administrators using this compliance program will need to take the following steps:

1. 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. Please refer to the FAQs on EFAST2 Form 5500 Processing at [www.dol.gov/ebsa/faqs/faq-EFAST2.html](http://www.dol.gov/ebsa/faqs/faq-EFAST2.html) for details on which forms and schedules are to be used for delinquent filings.

Do not submit to EFAST2 the information on separated deferred vested participants (Form 8955-SSA); file this directly with Internal Revenue Service (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.

2. Electronically submit the filing information and payment to the DFVCP using the DFVC Calculator at [www.dol.gov/ebsa/calculator/dfvcmain.html](http://www.dol.gov/ebsa/calculator/dfvcmain.html). 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 submit your payment and filing information to the DFVCP through the mail. The plan administrator is personally liable for the applicable penalty amount. 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.

Amounts paid under the DFVCP cannot be paid from the assets of an employee benefit plan.

## **IRS AND PBGC PENALTIES**

The DFVCP does not relieve filing penalties under the Internal Revenue Code or Title IV of ERISA. The DOL 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:

- All applicable conditions of the DFVCP have been satisfied; and
- 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.

## **ADDITIONAL INFORMATION**

For more detailed information, or if you have questions about the DFVCP, visit [www.dol.gov/ebsa](http://www.dol.gov/ebsa). For additional information about the Form 5500 and Form 5500-SF Annual Return/Report, visit the EFAST2 website at [www.efast.dol.gov](http://www.efast.dol.gov).

*Source: The Department of Labor*

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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