

# COMPLIANCE OVERVIEW

Provided by Clarke & Company Benefits, LLC

## 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 Form 5500 must generally be filed by the last day of the seventh month following the end of the plan year, unless an extension applies. The DOL has the authority under ERISA to assess penalties of up to \$2,140 for each day a plan administrator fails to file a complete 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 Compliance Overview provides an overview of the DFVCP, including the program's eligibility requirements, penalty structure and participation procedures.

### LINKS AND RESOURCES

- DOL's [frequently asked questions](#) (FAQs) on the DFVCP
- [DFVCP Penalty Calculator and Online Payment](#) (DOL resource)
- DOL [web page](#) on Form 5500 forms and instructions
- DOL's [FAQs](#) on the EFAST2 Electronic Filing System

### HIGHLIGHTS

#### DFVCP ELIGIBILITY

To be eligible to use the DFVCP, a plan administrator of an ERISA plan:

- Must comply with the program's provisions; and
- Cannot have been notified in writing by the DOL of its failure to file a timely annual report.

#### REDUCED PENALTIES

- The basic penalty under the DFVCP is \$10 per day for delinquent filings.
- The maximum penalty for a single late annual report is \$750 for a small plan and \$2,000 for a large plan.
- The maximum "per plan" penalty is \$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.

This Compliance Overview 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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## 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.

### *“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:

- ✓ **Electronically file a complete Form 5500 with EFAST2, or, if eligible, Form 5500-SF, Annual Return/Report, including any required schedules and attachments, for each year that relief is requested.** Refer to the [FAQs](#) on the EFAST2 electronic filing 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 the 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.

- ✓ **Electronically submit the filing information and payment to the DFVCP using the [DFVC Calculator](#).** After using the calculator, plan administrators can make their payments electronically simply by following the on-screen instructions when the calculator has computed the penalty amount. Payers will be automatically given a receipt for their electronic payments.

Payment and filing information can also be submitted to the DFVCP through the mail. The plan administrator is personally liable for the applicable penalty amount. If the penalty is paid by check, the plan administrator must print out a paper copy of the electronically filed Form 5500 or Form 5500-SF and include it with the 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.

In [Notice 2014-35](#), the IRS modified its requirements for qualifying for IRS penalty relief. Late filers of the Form 5500 series qualify for penalty relief from the IRS if they complete the following steps:

- Satisfy all of the DFVCP requirements;
- File a paper form 8955-SSA with the IRS (no electronic filings);
- Check the box on Form 8955-SSA, Part I, Line C (Special Extension) and enter “DFVCP” in the description on Line C; and
- Mail the Form 8955-SSA and the delinquent returns to the IRS within 30 calendar days of the DFVCP filing.

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.