

Fact Sheet

U. S. Department of Labor
March 2002

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 is further reducing penalties under the DFVC program, and updating and simplifying 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 PWBA a complete Form 5500 Series Annual Return/Report, including all schedules and attachments, for each year relief is requested. Special simplified rules apply to “top hat” plans and apprenticeship and training plans. Second, submit to the DFVC Program the required documentation and 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.

New Penalty Structure

Reduced per day penalty. The basic penalty under the program was reduced from \$50 to \$10 per day for delinquent filings.

Reduced “per filing” cap. The maximum penalty for a single late annual report was 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.

New “per plan” cap. The revised DFVC Program also includes a new “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 was reduced to \$750.

Updated and Simplified Procedures

The Department also simplified and updated the procedures governing participation in the program. The changes are intended to make the program easier to use. For example:

- Plan administrators may use the Form 5500 forms 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 no longer be annotated in bold-red print identifying the filing as a DFVC filing;
- The program has been updated to conform to the annual reporting procedures under the computerized ERISA Filing Acceptance System (EFAST); and
- The address where DFVC Program remittances are submitted has been changed to DFVC Program, PWBA, P.O. Box 530292, Atlanta, Georgia 30353-0292. Submissions made to the old address will be returned to the filer.

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.

Effective Date and Comments

The modifications of the DFVC Program are effective immediately. A notice announcing the modifications was published in the *Federal Register* on March 28, 2002. PWBA is also seeking public comments on all aspects of the program. Written comments should be submitted by May 28, 2002 to: DFVC Comments, Office of Regulations and Interpretations, Room N-5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210.

Contacts for Additional Information

Questions about the DFVC Program should be directed to PWBA by calling (202) 693-8360. For additional information about the Form 5500 Series, visit the EFAST Internet site at www.efast.dol.gov, or call the PWBA Help Desk at 1-866-463-3278.