



COMPLIANCE BULLETIN

May 2002*

DOL Announces Changes to Delinquent Filer Voluntary Compliance (DFVC) Program

In 1995, the DOL created the Delinquent Filer Voluntary Compliance (DFVC) program to encourage plan sponsors to comply with the Form 5500 filing requirements by offering reduced penalties on voluntarily-submitted late filings. The DFVC program has now been updated to reflect revisions to the Form 5500 filing process and to reduce penalties even further for plan sponsors that take advantage of the program. In addition, the IRS and PBGC have agreed to provide penalty relief for plan sponsors that use this program.

Revised Program Guidelines for Tax-Qualified Plans

The revised DFVC program became available March 28, 2002, to plan sponsors who have not received written notification from the DOL that they have failed to file a timely Form 5500. To correct a failure to timely file a Form 5500 under the DFVC program and qualify for the reduced penalties, the plan sponsor must take the following steps:

- **File a complete Form 5500, including all required schedules and attachments, for each plan year that a Form 5500 was not timely filed.** This filing is sent to the DOL's Pension and Welfare Benefits Administration (PWBA) at the address where the plan sponsor would normally send a current Form 5500 for processing.

For this filing, the plan sponsor can use either:

- a) The Form 5500 or Form 5500-C (Form 5500-R may not be used) issued for the plan year(s) for which the program is being used; or
- b) The most current Form 5500 available at the time the plan sponsor elects to use the DFVC program.

The plan sponsor does *not* need to note "DFVC Program" in red ink at the top of the Form 5500.

- **Pay the penalty amount.** The plan sponsor must submit the appropriate penalty amount (see chart below) with a copy of the late Form 5500 that was filed according to the directions noted above, without schedules or attachments. If the plan sponsor is using a Form 5500 for any year prior to 1999, only the first page of the Form 5500 or Form 5500-C is submitted. The Form 5500 and a check made payable to "U.S. Department of Labor" must be mailed to:

*Republished December 2004 to reflect Prudential Financial's acquisition of CIGNA's retirement business.

DFVC Program
PWBA
P.O. Box 530292
Atlanta, GA 30353-0292.

This penalty cannot be paid from plan assets.

Reduced Penalty Amounts

The chart below compares the standard DOL, IRS and PBGC penalties for a Form 5500 filing failure with the penalties under the revised DFVC program.

Maximum Penalty	DFVC	
	Small plan**	Large plan***
DOL: <ul style="list-style-type: none"> • Up to \$1,100 per day. 	\$10 per day, up to \$750 per annual report. If there is more than one late Form 5500 (e.g., 1998, 1999 and 2000), the maximum is \$1,500 per plan (\$750 for plans sponsored by tax-exempt organizations under IRC section 501(c)(3).)	\$10 per day, up to \$2,000 per annual report. If there is more than one late Form 5500 (e.g., 1998, 1999 and 2000), the maximum is \$4,000 per plan.
IRS: <ul style="list-style-type: none"> • \$20 per day for each failure to file a return or include the required information (maximum may vary based on gross receipts of employer). • \$1 per participant not included on the Schedule SSA, up to \$5,000 for any plan year. • \$25 per day, up to \$15,000. • \$1,000 for each failure to file an actuarial statement. 	No penalties will be imposed once the late filer meets the DFVC program requirements.	No penalties will be imposed once the late filer meets the DFVC program requirements.
PBGC: <ul style="list-style-type: none"> • Up to \$1,000 per day. 	No penalties will be imposed once the late filer meets the DFVC program requirements.	No penalties will be imposed once the late filer meets the DFVC program requirements.

** A "small plan" is a plan with fewer than 100 participants at the beginning of the plan year. However, if a plan has no more than 120 participants at the beginning of the plan year, the plan administrator can choose to classify it as a small plan if it was classified as a small plan in the previous year.

*** A “large plan” is a plan with 100 or more participants at the beginning of the plan year. However, if a plan has no fewer than 80 participants at the beginning of the plan year, the plan administrator can choose to classify it as a large plan if it was classified as a large plan in the previous year.

Guidelines for Top-Hat Plans

The sponsor of a top-hat plan that did not timely request an exemption from the Form 5500 filing requirement may make that request under the DFVC program. To do so, the plan sponsor must send the required statement to:

Top Hat Plan Exemption
Pension and Welfare Benefits Administration
Room N-1513
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The plan sponsor must also complete the most current Form 5500 (without schedules or attachments), items 1a-1b, 2a-2c, 3a-3c, using plan number 888. The paper copy of the form must be signed, dated, accompanied by a check for \$750 made payable to the "U.S. Department of Labor," and mailed to:

DFVC Program
PWBA
P.O. Box 530292
Atlanta, GA 30353-0292.

Next Steps

Plan sponsors that discover they have not filed one or more Form 5500s by the filing deadline should discuss use of the DFVC program with the plan's legal counsel. Prudential Retirement offers a 5500 Preparation Service. For more information about this service, please contact your Prudential representative.

Prudential Financial is a service mark of The Prudential Insurance Company of America, Newark, NJ and its affiliates. The Pension Analyst is published by Prudential Retirement, a Prudential Financial business, to provide clients with up-to-date information on current legislation and regulatory developments affecting qualified retirement plans.