

Delinquent Filer Voluntary Compliance

Overview: The Delinquent Filer Voluntary Compliance (DFVC) Program was designed to encourage plan sponsors to voluntarily comply with the annual requirements of ERISA. This program is limited to employers who have not already been notified by the Department of Labor.

Why go through this process? The advantage of this program is that you will bring your plan into compliance while at the same time avoiding the possibility of the plan being disqualified. Plan disqualification has many consequences including the possibility of disqualifying the employer deductions and the plan assets losing their tax deferred status. Also, if your plan is ever discovered to not have filed the 5500, both IRS and DOL fines can be assessed. The normal penalties are as follows:

IRS: \$25 per day up to a maximum of \$15,000 and
DOL: \$1,100 per day with no limit.

However, by going through the DFVC Program, the Department of Labor drastically reduced their fees. And as an added bonus by going through the DFVC the IRS penalties are waived.

The DFVC Program fees for plans with fewer than 100 employees are as follows:

\$10 per day or
\$750 cap per return or
\$1,500 cap per plan

What to do next:

As a part of this process there are a number of forms that must be signed and mailed.

To be mailed to EBSA:

Signed and complete sets of the 5500 and the applicable schedules for each year. Please sign and date and then mail in the forms in the EBSA envelope.

To be mailed to DFVC:

Only the first page of the 5500 is sent. No schedules are needed. Please sign and date and mail in the DFVC envelope provided. Also enclose a check made out to the Department of Labor. ***This penalty must be paid out of the Employer's assets. You can not pay this penalty with the plan assets.***

Employer Checklist:

_____ 1) Check made out to the Department of Labor for \$1,500

_____ 2) Signed and dated complete set of 5500 and Schedules for the 2002, 2003, 2004 and 2005 Plan Years.

This gets mailed to:

EBSA
PO Box 7043
Lawrence, KS 66044-7043

_____ 3) Signed and dated 5500 (first page only) with no Schedules for the 2002, 2003, 2004 and 2005 Plan Years.

This along with the check for \$1,500 gets mailed to:

DFVC Program
EBSA
PO Box 530292
Atlanta, GA 30353-0292

This is just a guideline and is meant to be used as a reference tool. Should you have any questions please contact our office at 561-459-4871.