



## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

#### **Delinquent Filer Voluntary Compliance Program**

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** This notice describes changes to the Department of Labor's Delinquent Filer Voluntary Compliance Program (DFVC Program or Program).

**DATES:** The DFVC Program is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Program adopted herein modifies, as of its effective date, the DFVC Program adopted on April 27, 1995 (60 FR 20874) and modified on March 28, 2002 (67 FR 15052) and Jan. 29, 2013 (78 FR 6135).

**FOR FURTHER INFORMATION CONTACT:** Scott C. Albert, Office of the Chief Accountant, Employee Benefits Security Administration; telephone (202) 693-8360. This is not a toll-free number.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The Department of Labor's Employee Benefits Security Administration (EBSA) introduced the DFVC Program in 1995. It is intended to encourage, through the assessment of reduced civil penalties, delinquent plan administrators to comply with their reporting obligations under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Administrators of multiple employer welfare arrangements (MEWAs), that are not group health plans but provide benefits that consist of medical care (non-plan MEWAs) and Entities Claiming Exception (ECEs), who fail to file a Form M-1 annually and upon the occurrence of specific events may be subject to civil penalties under ERISA section 502(c)(5). Administrators of MEWAs that are group health plans (plan MEWAs) who fail to file a Form M-1 annually and

upon the occurrence of specific events may be subject to civil penalties under section 502(c)(2) of ERISA.

Following a review of the DFVC Program, as modified in 2002 and 2013, the Department has determined to expand the penalty relief to plan MEWAs, non-plan MEWAs, and ECEs who are required to file the Form M-1. As with prior DFVC modifications, because the modifications to the DFVC Program include lower civil penalty assessments, the modifications are being put into effect upon publication of this notice in the Federal Register. Like prior DFVC modifications, this document constitutes an enforcement policy of the Department and is not being issued as a general notice of proposed rulemaking.

The Secretary of Labor has the authority under sections 502(c)(2) and 502(c)(5) of ERISA and the Secretaries' regulations to assess civil penalties against plan administrators who fail or refuse to file complete and timely reports as required under sections 101(b) and 101(g) of ERISA and related regulations. Pursuant to 29 CFR 2560.502c-2 and 2560.502c-5, EBSA has maintained a program for the assessment of civil penalties for noncompliance with ERISA's reporting requirements. The Department may, in its discretion, waive all or part of a civil penalty assessed under sections 502(c)(2) or 502(c)(5) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely report or that there was reasonable cause why the penalty, as calculated, should not be assessed.

To encourage delinquent filers to voluntarily comply with the annual reporting requirements under Title I of ERISA, the Department adopted, on April 27, 1995, the DFVC Program (60 FR 20874). The Program, as adopted in 1995, permitted administrators otherwise subject to the assessment of higher civil penalties for failing to file a timely annual report to pay reduced civil penalties for voluntarily complying with the requirement to file an annual report under Title I of ERISA. The 1995 DFVC Program provided reduced penalties for plan administrators filing the Form 5500, plan administrators filing annual reports for apprenticeship and training plans described in section 2520.104-22 and for "top hat" plans described in section

2520.104–23(a). Under the terms of the DFVC Program, the Department reserved the right to modify or terminate the Program upon publication of a notice in the Federal Register.

In 2002, the Department modified the Program by reducing civil penalty assessments. It capped the cumulative daily penalty amount for Form 5500 annual reports for a plan year at \$750 for small plans and \$2,000 for large plans. It also provided a maximum penalty amount of \$750 for late filings by apprenticeship and training plans and top hat plans. Finally, in consultation with the Internal Revenue Service (IRS), the Department added small plans sponsored by Internal Revenue Code section 501(c)(3) organizations (including small code section 403(b) plans) as a new class of plans that could file a late Form 5500 annual report under the Program, subject to a reduced maximum penalty of \$750 per DFVC submission. Although the Department's Notice did not provide relief from late filing penalties under the Code or Title IV of ERISA, both the IRS and Pension Benefit Guaranty Corporation agreed to provide penalty relief where the conditions of the DFVC Program were satisfied.

In 2013, the Department issued a Federal Register notice describing an online penalty calculator and Internet-based payment system for the DFVC Program.

## **B. Modifications to the DFVC Program**

The Department is now modifying the DFVC Program to further facilitate and encourage voluntary compliance with certain of ERISA's reporting requirements. These modifications expand the types of entities eligible for the program to include MEWAs and ECEs seeking to file a late Form M-1. The Department is also simplifying and updating the process governing the assessment of the flat rate penalty for top hat and apprenticeship and training plans. A discussion of the changes follows.

### **1. Applicable Penalty Amount**

The Department, to encourage voluntary compliance with ERISA's reporting requirements, is extending to plan and non-plan MEWAs and ECEs that are required to file Form

M-1 the same \$750 maximum penalty amount currently available to small plans filing a late Form 5500, and to filers of apprenticeship and training plans and top hat plans.

In addition, top hat and apprenticeship plans will no longer be directed to the DFVC payment calculator. All plans eligible to pay a flat \$750 fee will follow a link to a gov.pay site.

### **Paperwork Reduction Act**

The DFVC Program modifications collect only self-identifying login information from late M-1 filers and facilitate payment through the Department's website. Accordingly, the Department has determined that the PRA does not apply to these modifications.

### **Section 1—Delinquent Filer Voluntary Compliance (DFVC) Program**

The DFVC Program is intended to afford eligible MEWA administrators (described in Section 2 of this Notice) the opportunity to avoid the assessment of civil penalties otherwise applicable to administrators who fail to file timely required reports. Eligible administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the civil penalties specified in Section 3 of this Notice.

### **Section 2—Scope, Eligibility and Effective Date**

.01 Scope. The DFVC Program described in this Notice provides relief from assessment of civil penalties otherwise applicable to MEWA and ECE administrators who fail or refuse to file timely required reports. The relief extends to plan MEWAs that fail to provide a Form M-1 receipt confirmation code on the Form 5500 because they have failed or refused to file a timely Form M-1. Relief under this Program does not extend to penalties that may be assessed for reports that are otherwise determined by the Department to be incomplete or otherwise deficient.

.02 Eligibility. The DFVC Program is available only to a MEWA or ECE administrator that complies with the requirements of Section 3 or Section 4, as appropriate, of this Notice prior to the date on which the administrator is notified in writing by the Department of a failure to file a timely report under Title I of ERISA.

.03 Effective date. The DFVC Program described herein shall be effective December 19, 2025. The Department intends that this DFVC Program to be of indefinite duration; however, the Program may be modified from time to time or terminated in the sole discretion of the Department upon publication of notice in the Federal Register.

### **Section 3—MEWA and ECE Administrators Filing Required Reports**

.01 General. A MEWA administrator electing to file a late Form M-1 under this DFVC Program must comply with the requirements of this Section 3.

.02 Filing a Complete Form M-1.

(a) The MEWA or ECE administrator must file a complete Form M-1 Return/Report, for the most recent filing year. The requirement to file once for the most recent filing year applies to MEWAs and ECEs who either failed to file annually or who failed to file upon the occurrence of certain other events specified in 29 CFR 2520.101-2. This filing shall be submitted electronically in accordance with the EFAST electronic filing requirements. See the EFAST Internet site at [www.efast.dol.gov](http://www.efast.dol.gov) to view forms and instructions.

.03 Payment

(a) The MEWA or ECE administrator shall pay the \$750.00 penalty amount by submitting electronic payment in accordance with the gov.pay web payment link on the Department's Web site. (See <http://www.dol.gov/ebsa/dfvcmain.html>).

(b) Liability for Applicable Penalty Amount.

The MEWA or ECE administrator is personally liable for the payment of civil penalties assessed under sections 502(c)(2) and 502(c)(5) of ERISA; therefore, civil penalties, including amounts paid under this DFVC Program, shall not be paid from the assets of an employee benefit plan.

### **Section 4—Waiver of Right to Notice, Abatement of Assessment and Plan Status**

.01 Payment of a penalty under the terms of this DFVC Program constitutes, with regard to the late or delinquent filings submitted under the Program, a waiver of an administrator's right

both to receive notices of intent to assess a penalty under 29 CFR 2560.502c-2 and 2560.502c-5 from the Department and to contest the Department's assessment of the penalty amount.

.02 Acceptance by the Department of a filing and penalty payment made pursuant to this DFVC Program does not represent a determination by the Department as to the status of the arrangement as a plan, or the particular type of plan under Title I of ERISA.

**Authority:**

The Secretary of Labor has the authority under sections 502(c)(2) and 502(c)(5) of ERISA and the Secretaries' regulations to assess civil penalties against plan administrators who fail or refuse to file complete and timely reports as required under sections 101(b) and 101(g) of ERISA and related regulations.

Signed at Washington, DC, on December 23, 2025.

**Daniel Aronowitz,**

*Assistant Secretary, Employee Benefits Security Administration.*

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