

## Chapter 21

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# Reporting to Government Agencies

Once a qualified retirement plan has been put into operation, the plan administrator has the responsibility of filing certain information returns, reports, and statements with the agencies that administer the federal pension laws: IRS, DOL, and PBGC. This chapter sets forth guidelines for the plan administrator to follow in meeting these reporting requirements.

### **Q 21:1 What are the annual reporting requirements?**

Each employer (subject to a limited exception) (see Q 21:2) that maintains a qualified retirement plan is required to file an annual report. The annual report is commonly referred to as the Form 5500 series return/report.

The appropriate Form 5500 series return/report (Form 5500, 5500-SF, or 5500-EZ) must be filed for each qualified retirement plan (see Q 21:2) for each plan year in which the plan has assets. Therefore, the year of complete distribution of all plan assets is the last year for which a Form 5500 must be filed (see Q 21:8). [I.R.C. §§ 6058, 6059]

### **Q 21:2 Which Form 5500 series return/report is required for a particular qualified retirement plan?**

Qualified retirement plans must file either Form 5500, Annual Return/Report of Employee Benefit Plan, Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan, or Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

Effective January 2010, with respect to filings for 2009, Form 5500 and Form 5500-SF are required to be filed with DOL under the ERISA Filing Acceptance System 2 (EFAST2), an all-electronic system (see Q 21:3).

Form 5500 consists of (1) the main Form 5500, which includes identifying information; (2) one or more of nine schedules that focus on particular subject matter for filing requirements; and (3) supplemental documents or materials that may also be required to be attached. Generally, a Form 5500 filed for a retirement plan that covers fewer than 100 participants as of the beginning of the

plan year should be completed following the requirements for a “small plan,” and a Form 5500 filed for a plan that covers 100 or more participants as of the beginning of the plan year should be completed following the requirements for a “large plan.”

In lieu of completing and filing Form 5500, Form 5500-SF may be used by certain small plans. Plans that meet the following eligibility conditions may voluntarily choose to file Form 5500-SF:

1. The plan must have had fewer than 100 participants at the beginning of the plan year;
2. The plan must meet the conditions for being exempt from the requirement to be audited annually by an independent qualified public accountant, but not by virtue of enhanced bonding (see Q 21:16);
3. At all times during the plan year, the plan must be 100 percent invested in certain secure investments that have a readily determinable fair market value;
4. The plan must not hold any employer securities (see Q 23:86) at any time during the plan year; and
5. The plan must not be a multiemployer plan (see Q 29:2).

[2009 Instructions for Form 5500-SF]

A one-participant plan that is required to file an annual return for 2009 must file a paper Form 5500-EZ or, if eligible, electronically file Form 5500-SF. A one-participant plan may not file Form 5500. A one-participant plan is defined as a qualified retirement plan that covers only:

1. The owner of a business or both the owner and spouse; and the business, whether or not incorporated, is wholly owned by the owner, or both the owner and spouse; or
2. Partners (or the partners and their spouses) in a business partnership.

For plan years beginning after December 31, 2006, for purposes of determining a one-participant plan, the term “partner” has been modified to include an individual who owns more than 2 percent (2%) of an S corporation (see Q 28:2).

Prior to 2009, Form 5500-EZ could not be used if the plan sponsor was a member of an affiliated service group (see Q 5:35), controlled group of corporations (see Q 5:31), or group of businesses under common control (see Q 5:29) or if it leased employees (see Q 5:59). In addition, if the plan satisfied the coverage requirements (see Q 5:15) only when combined with another plan, Form 5500-EZ could not be used. New characteristic codes have been added to identify these features on Form 5500-EZ.

Employers with one or more one-participant plans that have total assets of \$250,000 or less at the end of the plan year need not file Form 5500-EZ. For plan years beginning prior to January 1, 2007, the asset amount was \$100,000.

**Example.** A plan meets all the requirements for filing Form 5500-EZ and its total assets (either alone or in combination with one or more one-participant

plans maintained by the employer) exceed \$250,000 at the end of the 2009 plan year. Form 5500-EZ must be filed for each of the employer's one-participant plans, including those with less than \$250,000 in assets for the 2009 plan year.

Filers of Form 5500-EZ are not required to file any schedules or attachments (see Qs 21:6, 21:7); however, such filers are required to collect and retain a completed Schedule MB (see Q 21:7) for multiemployer defined benefit plans and certain money purchase plans, if applicable, and a completed and signed Schedule SB (see Q 21:7) for single-employer defined benefit plans, if applicable. The requirement to both perform an annual valuation and maintain the minimum funding standard account for all plans subject to the minimum funding requirements (see Q 8:1) continues.

Foreign plans are not eligible to file Form 5500 regardless of whether the plan was previously required to file an annual return on Form 5500. Every foreign plan that is required to file an annual return for 2009 must instead file a paper Form 5500-EZ. A foreign plan is a retirement plan that is maintained outside the United States primarily for nonresident aliens and is required to file an annual return if the employer who maintains the plan is (1) a domestic employer, or (2) a foreign employer with income derived from sources within the United States if contributions to the plan are deducted on its U.S. income tax return.

[2009 Instructions for Form 5500-EZ]

### **Q 21:3 How is the Form 5500 series return/report filed?**

Forms 5500 and 5500-SF and accompanying schedules are required to be filed electronically for plan years beginning on or after January 1, 2009. Beginning January 2010, an all-electronic system called EFAST2 will receive those electronic annual returns/reports.

Form 5500-EZ cannot be submitted electronically and must be submitted on paper with IRS. However, a one-participant plan (see Q 21:2) that is eligible to file Form 5500-EZ may elect to file Form 5500-SF electronically with EFAST2 rather than filing Form 5500-EZ on paper with IRS. Although uncommon, it is possible to have a one-participant plan that covers 100 or more participants. For example, a large law firm could sponsor a plan covering only partners and their spouses and qualify as a one-participant plan. A one-participant plan that covers 100 or more participants is not eligible to file Form 5500-SF and must file Form 5500-EZ on paper with IRS.

Filers may electronically file the annual return/report using (1) EFAST2-approved third-party software or (2) IFILE. IFILE is the Form 5500 and Form 5500-SF annual return/report preparation and submission application that is on DOL's website [www.efast.dol.gov](http://www.efast.dol.gov) and is offered as an alternative to EFAST2-approved third-party software.

Effective January 1, 2010, prior year delinquent and amended filings of the Form 5500 returns/reports must be submitted electronically through EFAST2

and may not be submitted on paper through the initial EFAST system. A limited exception was available for delinquent and amended filings where the filer had the option to submit the forms through EFAST on paper until October 15, 2010. After October 15, 2010, even 2008 plan year filings must be submitted electronically through EFAST2.

A delinquent or amended Form 5500 return/report submitted electronically through EFAST2 for plan years prior to 2009 must use the current filing year Form 5500, schedules, and instructions except as provided below. The current filing year forms take the place of the Form 5500 that would have been filed in the prior year. The electronic filing on the current filing year Form 5500 must indicate in the appropriate space at the beginning of the Form 5500 the plan year for which the annual return/report is being filed. However, filers using EFAST2 must use the actual (original) schedules (see Qs 21:6, 21:7) associated with the plan year for which the annual return/report relates with respect to the following schedules:

- Schedule B, SB, or MB (Actuarial Information)
- Schedule E (ESOP Annual Information)
- Schedule P (Annual Return of Fiduciary of Employee Benefit Trust)
- Schedule R (Retirement Plan Information)
- Schedule T (Qualified Pension Plan Coverage Information)

For example, with respect to a delinquent 2007 Form 5500 return/report for a defined benefit plan, the 2007 Schedules B and R and all required attachments for these schedules must be included and attached as pdf images to the current filing year Form 5500. The filer has the option of using either the current filing year or the original Schedule C. Because Schedule E does not apply to a defined benefit plan, and Schedule P and Schedule T were not applicable to 2007 plan year filings, all other required schedules and attachments should be completed using the current year filing forms and instructions. The entire filing should then be filed electronically in accordance with EFAST2 electronic filing requirements.

Schedule SSA should not be attached to any EFAST2 filing; the most current year Form 8955-SSA should be submitted to the IRS (see Q 21:6).

[EBSA FAQs, EFAST2 All-Electronic System, [www.efast.dol.gov](http://www.efast.dol.gov)]

Prior to January 1, 2010 and the 2009 filings, Form 5500 was filed with DOL and processed under EFAST, the initial computerized system designed for processing the 5500 series forms and predecessor to EFAST2. Form 5500 could have been filed in one of the following formats:

1. Hand print or
2. Machine print

The machine print format required completion by computer software from EFAST-approved vendors; and the hand print format permitted completion by typewriter, by hand, or by computer software from EFAST-approved vendors. The hand print form was published with a pre-printed bar code at the bottom of each page, and all the required attachments were filed by mail. Hand print forms

could not be filed electronically. The machine print form and all the required attachments could be filed in the following ways:

1. By modem, using an approved EFAST transmitter;
2. By mailing magnetic tape, floppy diskettes, or CD-ROMs containing the Form 5500 data; or
3. By mailing a paper version of the machine print form.

**Q 21:4 Are there special filing rules for large plans and small plans?**

Yes. Qualified retirement plans with 100 or more participants (large plans; see Q 21:2) are required to file Form 5500 and certain special schedules, and plans with fewer than 100 participants (small plans; see Q 21:2) need not file these schedules. If the number of participants is between 80 and 120 and a Form 5500 was filed for the prior plan year, the employer may elect to complete the current Form 5500 in the same category (large plan or small plan) as was filed for the prior Form 5500. For example, if a Form 5500 annual return/report was filed for the 2008 plan year as a small plan, including Schedule I if applicable, and the number of participants in 2009 is 120 or less, the employer may elect to complete the 2009 Form 5500 and schedules in accordance with the instructions for a small plan, including for eligible filers, filing Form 5500-SF instead of Form 5500. This rule appears to create an anomaly if the number of plan participants increases from below 100 in year 1 to between 100 and 120 in year 2 and subsequent years. For example, a qualified retirement plan with 95 participants in year 1 files as a small plan filer; and, in year 2, if the plan has 105 participants, it may again file as a small plan filer. Each year thereafter, if the plan has between 100 and 120 participants, the plan may file as a small plan filer for each such year. [DOL Reg. § 2520.103-1(d); 2009 Instructions for Form 5500]

**Q 21:5 What special schedules must accompany the Form 5500 series return/report?**

The Form 5500 return/report consists of the main Form 5500, which includes identifying information and, depending upon the type of filer, one or more of nine schedules, including three for pensions (see Q 21:6) and six for general reporting (see Q 21:7). All schedules must identify the name of the plan, the sponsor's employer identification number, and the plan number.

If a small plan files Form 5500-SF (see Q 21:2), the only schedules that are required to be filed are Schedule SB (Form 5500) (see Q 21:6) or Schedule MB (Form 5500) (see Q 21:6), if applicable. [2009 Instructions for Form 5500-SF]

**Q 21:6 What pension schedules must accompany Form 5500?**

Certain pension schedules must be attached to Form 5500 (see Q 21:4).

Schedule SB (Form 5500), Single-Employer Defined Benefit Plan Actuarial Information, is used for single-employer or multiple-employer defined benefit

plans, and Schedule MB (Form 5500), Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information, is used for multiemployer defined benefit plans or certain money purchase pension plans where a waiver of the minimum funding standard (see Q 8:1) is currently being amortized. [I.R.C. § 6059; 2009 Instructions for Form 5500] Commencing with the 2008 plan year filings, Schedule SB (Form 5500) and Schedule MB (Form 5500) replaced Schedule B (Form 5500). An IRS representative has opined that Schedule B must be filed for the plan year in which a defined benefit plan terminates but need not be filed for the plan year after the year in which the plan terminates (see Qs 8:33, 25:63). [IRS Spec. Rul. (July 27, 1993)]

Schedule R (Form 5500), Retirement Plan Information, must be attached to Form 5500 from a defined benefit plan, a plan subject to the minimum funding standards, or any plan from which a distribution was made during the year. The purpose of this schedule is to report certain information on plan distributions, funding, and the adoption of amendments increasing the value of benefits in a defined benefit plan. Multiemployer defined benefit plans are required to provide additional information, and all defined benefit plans (single-employer, multiple-employer, and multiemployer) with 1,000 or more participants are required to provide financial asset breakdown information. For the 2009 plan year, additional information required by WRERA (see Q 1:36) is filed as attachments to Schedule R. Also, effective 2009, certain ESOP information formerly reported on Schedule E is now reported on Schedule R. [2009 Instructions for Schedule R (Form 5500)]

Schedule E (Form 5500), ESOP Annual Information, has been eliminated for plan years beginning on or after January 1, 2009. Previously, Schedule E was completed by an employer or plan administrator (see Q 20:1) of a qualified retirement plan that included employee stock ownership plan (ESOP) benefits (see Q 28:1). If applicable, the completed Schedule E was attached to Form 5500. Effective 2009, certain ESOP information formerly reported on Schedule E is now reported on Schedule R.

Schedule SSA (Form 5500), Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, has been eliminated for plan years beginning on or after January 1, 2009. Previously, Schedule SSA was used to inform IRS of plan participants who separated from service but were not paid retirement benefits. In general, a separated plan participant with deferred vested benefits was required to be reported no later than on the Schedule SSA filed for the plan year following the plan year in which the separation occurred. [I.R.C. § 6057; 2008 Instructions for Schedule SSA (Form 5500)] As part of the transition to EFAST2 (see Q 21:3), the prior Schedule SSA is being replaced with Form 8955-SSA that will be filed directly with IRS. The 2009 filing of Form 8955-SSA may be delayed until the time the 2010 Form 5500 filing is due. At that time, preparers should expect that both the 2009 and 2010 Form 8955-SSA will be due. The data to be collected will be nearly identical to that required on Schedule SSA.

**Q 21:7 What financial reporting schedules must accompany Form 5500?**

Certain financial reporting schedules must be attached to Form 5500 (see Q 21:4).

Schedule A (Form 5500), Insurance Information, must be attached to Form 5500 if any benefits are provided by an insurance company, insurance service, or other similar organization. This includes investment contracts with insurance companies, such as guaranteed investment contracts and pooled separate accounts. [ERISA § 103(e); 2009 Instructions for Schedule A (Form 5500)]

Schedule C (Form 5500), Service Provider Information, must be attached to Form 5500 by large plans (see Q 20:2) to report:

1. Service providers receiving, directly or indirectly, \$5,000 or more in compensation for services rendered to the plan during a plan year, and
2. Information relating to the termination of an accountant or enrolled actuary.

Schedule D (Form 5500), DFE/Participating Plan Information, is used for filing information on relationships between plans and master trust investment accounts, common/collective trusts, insurance company pooled separate accounts, and group insurance arrangements, collectively known as Direct Filing Entities (DFEs).

Schedule G (Form 5500), Financial Transaction Schedules, must be attached to Form 5500 by large plans (see Q 21:2) to report loans or fixed income obligations in default or deemed uncollectible, leases in default or classified as uncollectible, and nonexempt prohibited transactions.

Schedule H (Form 5500), Financial Information, must be attached to Form 5500 by large plans. This schedule includes financial statements and questions involving investments, financial transactions, handling of plan assets, and the accountant's opinion.

Schedule I (Form 5500), Financial Information-Small Plan, must be attached to Form 5500 by small plans (see Q 21:2). This schedule includes simplified financial statements and questions involving investments, financial transactions, and handling of plan assets.

Schedule P (Form 5500), Annual Return of Fiduciary of Employee Benefit Trust, has been eliminated for plan years beginning on or after January 1, 2006. Previously, the Schedule P was completed by a fiduciary (trustee or custodian) and filed as an attachment to Form 5500 (and, prior to 2005, Form 5500-EZ). It was strongly recommended that Schedule P be filed because it started the running of the statute of limitations under Section 6501(a) for the trust (see Q 21:14). IRS has confirmed that filing Form 5500 and 5500-EZ *without* Schedule P will nonetheless start the running of the statute of limitations on the plan filing. [Ann. 2007-63, 2007-2 C.B. 236; 2006 Instructions to Form 5500]



**Q 21:8 When is a Form 5500 series return/report due?**

The appropriate Form 5500 series return/report is due by the last day of the seventh month following the close of the plan year (July 31 for calendar-year plans), unless the due date is extended (see Q 21:9). Note that the due date relates to the plan year and not to the employer's taxable year. [ERISA § 104]

**Example.** Allaire Corporation files its federal income tax return on a calendar-year basis. Allaire Corporation maintains a qualified retirement plan with a plan year end of January 31. For the plan year ending January 31, 2011, the Form 5500 series return/report is due August 31, 2011.

For a short plan year, the Form 5500 series return/report is due by the last day of the seventh month after the short plan year ends. A short plan year ends on the date of a change in a plan's accounting period or upon the complete distribution of assets with respect to a plan termination (see chapter 25). Generally, if a current Form 5500 series return/report was not available before the due date for the short plan year return, the latest form available could have been used. [2008 Instructions for Form 5500; DOL Troubleshooter's Guide to Filing Form 5500 (May 2001)] Short 2009 plan year filers whose due date to submit their 2009 filing was before January 1, 2010 were given an automatic extension to electronically file their complete Form 5500 within 90 days after the 2009 filing system was available on the DOL website. This special extension was granted to encourage such short 2009 plan year filers to file their 2009 Form 5500 annual return/report electronically under EFAST2. Short 2009 plan year filers whose due date to submit their 2009 filing was before January 1, 2010, and who chose not to take advantage of the special extension, were required to use plan year 2008 forms and submit their 2009 filing to EFAST on or before the due date for their short plan year filing. Short 2010 plan year filers may *not* use the 2009 forms for filing; they must use the 2010 forms, schedules, and instructions. [2008 and 2009 Instructions for Form 5500]

**Q 21:9 May the due date for filing a Form 5500 series return/report be extended?**

Yes. An automatic extension of the due date for filing is available to an employer if all of the following conditions are met:

1. The plan year coincides with the employer's taxable year;
2. The employer has been granted an extension of time to file its federal income tax return to a date later than the due date for its Form 5500 series return/report; and
3. A copy of the income tax extension is attached to the Form 5500 series return/report.

[2009 Instructions for Form 5500]

**Example 1.** Winston Corporation files its federal income tax return on a calendar-year basis and maintains a qualified retirement plan with a calendar-plan year. Winston Corporation receives an extension to file its



federal income tax return to September 15, 2011. The due date for filing the Form 5500 series return/report is automatically extended to September 15, 2011.

**Example 2.** The facts are the same as in Example 1, except that Winston Corporation maintains a qualified retirement plan with a plan year end of January 31. The due date for filing the Form 5500 series return/report is not automatically extended because the plan year does not coincide with the tax year.

Furthermore, an extension of up to two and one-half months will be automatically approved for filing the Form 5500 series return/report by filing Form 5558, Application for Extension of Time To File Certain Employee Plan Returns with IRS—not DOL—on or before the regular due date. A signature is not required if the request is for an extension to file the Form 5500 series return/report. Effective for the 2009 plan year filings, filers will not be required (or allowed) to attach to the electronic filing copies of either the Form 5558 or the acknowledgment letter that plan sponsors were receiving. Prior to the 2009 plan year filings, a photocopy of Form 5558, or the acknowledgment letter approving such request, was required to be attached to the Form 5500 series return/report. [Ann. 99-37, 1999-1 C.B. 907; Instructions to Form 5558]

**Example 3.** The facts are the same as in Example 2, except that Winston Corporation files Form 5558 no later than August 31, 2011. The due date for filing the Form 5500 series return/report is extended to November 15, 2011.

### **Q 21:10 What penalties may be imposed for late filing of the Form 5500 series return/report?**

One or more of the following five penalties may be imposed or assessed for late or incomplete filings after the date they are due unless there was reasonable cause for the improper filing:

1. DOL may assess a civil penalty against a plan administrator (see Q 20:1) of up to \$1,000 a day (\$1,100 after adjustment for inflation) for the late filing of a Form 5500 series return/report. [DOL Reg § 2575.502c-2] In addition, a Form 5500 series return/report rejected by DOL because it lacks material information will be treated as if it had not been filed. In other words, the plan administrator can be assessed a penalty for an incomplete as well as an untimely but complete filing.
2. A penalty of \$25 a day (up to a maximum of \$15,000) is imposed for each day a Form 5500 series return/report is overdue.
3. A plan administrator who fails to include all required separated participants in a timely filed annual registration statement (Schedule SSA (prior to 2009); see Q 21:6) is subject to a penalty of \$1 a day for each separated participant (the maximum penalty is \$5,000).
4. A penalty of \$1,000 is imposed if an actuarial report (Schedule MB or Schedule SB; see Q 21:6) is not filed for a defined benefit plan.

5. A penalty of \$1 a day (up to a maximum of \$1,000) is imposed if a notification of change of status of a plan is not filed on time.

[ERISA §§ 104(a)(4), 502(c)(2); I.R.C. §§ 6652(d)(1), 6652(d)(2), 6652(e), 6692]

Penalties assessed against a plan administrator were within DOL's discretion where subsequent to DOL's initial rejection of Form 5500, the plan administrator mistakenly sent a corrected form to IRS, not DOL. DOL waived 90 percent of the penalty, but assessed the remaining 10 percent because the plan administrator failed to show reasonable cause. [DOL, *PWBA v. Rhode Island Bricklayers & Allied Craftsmen Pension Fund*, DOL/ALJ (Boston, Mass.), No. 94-RIS-64 (May 30, 1995)] Also, DOL's assessment of a penalty for failure to file a correct annual report (Form 5500) despite numerous opportunities to correct errors in the form was upheld by an administrative law judge. [DOL, *PWBA v. Northwestern Inst. of Psychiatry*, DOL/ALJ (Camden, N.J.), No. 93-RIS-23 (Dec. 21, 1993)] In another case, IRS could not collect penalties from a plan sponsor for failure to file returns where the plan sponsor established that it had mailed them, and IRS was unable to rebut the presumption that it had received the returns. [*In re Boedecker*, 1993 Bankr. LEXIS 1873 (Bankr. D. Mont. 1993)]

DOL has opined that a penalty for the late filing of Form 5500 does not constitute a reasonable expense of administering a plan; and, therefore, the penalty is a liability of the plan administrator and not a liability of the plan. [DOL Info. Ltr. (Feb. 23, 1996)]

See Q 21:11 regarding the DFVC Program.

### **Q 21:11 What is the Delinquent Filer Voluntary Compliance Program?**

DOL established the Delinquent Filer Voluntary Compliance (DFVC) Program to encourage, through the assessment of reduced civil penalties (see Q 21:10), delinquent plan administrators (see Q 20:1) to comply with the annual reporting requirements (see Q 21:1). The DFVC Program is not available to plan administrators who have been notified of a failure to file the annual report at issue. IRS late-filer penalty letters will not disqualify a plan from participating in the DFVC Program; however, a DOL Notice of Intent to Assess a Penalty will always disqualify a plan.

In order to comply with the DFVC Program, the plan administrator must file a complete Form 5500 return/report (see Q 21:2), including all required schedules and attachments, for each plan year for which the plan administrator is seeking relief. This filing must be filed electronically pursuant to EFAST2 (see Q 21:3). Form 5500, Part I, box D should be checked. When preparing reports for years prior to 2008, the filer must use the current year Form 5500 (the 2009 form at this time) and the related schedules (see Q 21:3). Each form or schedule must identify the applicable prior plan year to which the filing applies in the Plan Year Beginning and Plan Year Ending fields at the top of each form. The insertion of a plan year other than a current year serves as notification to EFAST2 processing that most edit checks are to be turned off and ensures EFAST2 will accept the

filing. Some schedules that have been eliminated or modified and were required for an earlier reporting year are required to be filed in their original format. These schedules must be converted to a pdf file and attached as “Other Attachment.”

Furthermore, the plan administrator should submit to DOL a paper copy of the Form 5500 return/report, without schedules and attachments and include payment of the applicable penalty amount. This separate submission should be sent by mail to:

DFVC Program-DOL  
P.O. Box 70933  
Charlotte, NC 28272-0933

The applicable penalty amount is determined as follows:

1. With respect to a small plan filer (see Q 21:2), the applicable penalty amount is \$10 per day for each day the annual return/report is filed after the date on which the annual report was due (without regard to any extensions), not to exceed the greater of \$750 per annual return/report or, in the case of a DFVC Program submission relating to more than one delinquent annual filing for the plan, \$1,500 per plan.
2. With respect to a large plan filer (see Q 21:2), the applicable penalty amount is \$10 per day for each day the annual return/report is filed after the date on which the annual report was due (without regard to any extensions), not to exceed the greater of \$2,000 per annual return/report or, in the case of a DFVC Program submission relating to more than one delinquent annual filing for the plan, \$4,000 per plan.

The penalty should be paid by the plan administrator and may not be paid from the assets of the plan.

[DOL Notice, 67 Fed. Reg. 15,051 (Mar. 28, 2002); 2009 Instructions for Form 5500; EBSA FAQs, The Delinquent Filer Voluntary Compliance Program, [www.efast.dol.gov](http://www.efast.dol.gov)]

IRS will not impose penalties (see Q 21:10) on a late filer who satisfies the requirements of the DFVC Program. The late filer does not need to file a separate application for relief with IRS, as IRS will coordinate with DOL which late filers are eligible for relief.

Form 5500-EZ (see Q 21:2) filers are not eligible for relief because such plans are not subject to Title 1 of ERISA, and they are ineligible to participate in the DFVC Program.

[IRS Notice 2002-23, 2002-1 C.B. 742]