

# Increased Penalties for Late 5500 Filings

By: Alex Mattingly on March 3, 2021 on [graydon.law](https://graydon.law)

As part of the release of the 2021 annual adjustment to the civil monetary penalties, the DOL has provided benefit plans with the ever important reminder of the severity of the penalties that can be assessed for failing to file Form 5500. Effective for penalties assessed after January 15, 2021, the DOL **per day penalty** for failure to properly file an annual report has increased from \$2,233 to \$2,259, with no maximum. In addition to the DOL penalties, the IRS can also assess a penalty for late filers up to \$250 a day, up to a maximum penalty of \$150,000 per plan year.

Because of the severity of the penalties, it is important to know what steps can be taken if you have missed a filing deadline. To be eligible to reduce potential penalties through the DOL's Delinquent Filer Voluntary Compliance Program (DFVCP), a taxpayer must comply with the requirements of the program and must not have been notified in writing by the DOL of a failure to file a timely report. Because correction under the DFVCP cannot be started once notified by the DOL, time is of the essence when you discover an error has been made.

The DOL penalties under DFVCP are reduced from \$2,259 per day to \$10 per day. Further, penalties for small plans (generally under 100 participants) are capped at \$750 for a single late Form 5500 and \$1,500 for multiple years per plan. Penalties for large plans (generally 100 employees and over) are capped at \$2,000 for a single late Form 5500 and \$4,000 for multiple years per plan. This means that going through the program makes financial sense if you are even one day late on your submission!

To comply with DFVCP, the plan administrator must first file all late Forms 5500 for which relief is sought and should indicate on the Form 5500 that it is filing under DFVCP. A separate submission must be made for DFVCP penalty relief. If more than one plan is involved, a separate DFVCP filing must be made for each plan. Filing under DFVCP not only reduces the DOL penalties, but IRS penalties will also be automatically waived (but if Form 8955-SSA is required to be filed, it must be separately filed with the IRS for penalties to be waived).

If you have any questions regarding Form 5500 filing requirements or the DOL correction program, please contact a Graydon employee benefits attorney.

