

# UPDATE: Failing to File Form 5500 Just Became More Costly

By: Alex Mattingly on February 6, 2020 on [graydon.law](https://graydon.law)

As discussed in [our most recent blog post](#), the SECURE Act increased the IRS penalties for failure to file Form 5500 by ten times effective December 31, 2019. The IRS now has the authority to assess a penalty for late filers up to \$250 a day, up to a maximum penalty of \$150,000 per plan year. But even with the increase in the IRS penalties, they still pale in comparison to the penalties that can be assessed by the DOL, and effective for penalties assessed after January 15, 2020, the per day DOL penalties have increased from \$2,194 to \$2,233, *with no maximum*.

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 an error has been made.

The DOL penalties under DFVCP are reduced from \$2,233 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. 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 attorney.