

Delinquent Filer Voluntary Compliance Program
OMB Control Number 1210-0089
Expiration Date: 1/31/2021

DELINQUENT FILER VOLUNTARY COMPLIANCE PROGRAM

OMB Control Number 1210-0089

This ICR seeks to extend the collection of information under OMB Control Number 1210-0089.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), authorizes the Secretary of Labor to assess civil penalties against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Annual Return/Report of Employee Benefit Plan (OMB Control Number 1210-0110)) as required under section 101(b)(1) of ERISA and ERISA regulations codified in 29 CFR part 2520. The amount of the penalty for associated violations is up to \$2,233 a day for penalties assessed after January 15, 2020, occurring after November 2, 2015.¹

Pursuant to 29 CFR 2560.502c-2 and 2570.60 *et seq.*, the Employee Benefits Security Administration (EBSA) has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed \$50 per day for each day an annual report is filed after the date on which the report was required to be filed, without regard to any extensions for filing. Plan administrators who fail to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) of ERISA, upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of the above-described civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department implemented the Delinquent Filer Voluntary Compliance Program (the DFVC Program) on April 27, 1995 (60 FR 20873)

¹ See also ERISA section 502(c)(2), 29 CFR 2560.502c-2, and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act). Pub. L. No. 114-74; 129 Stat. 599 and DOL's implementing regulation at 85 FR 52292 (Jan. 15, 2020). The 2015 Inflation Adjustment Act requires agencies to adjust the levels of civil monetary penalties with an initial catch-up adjustment, followed by annual adjustments for inflation.

(the Notice). Under the DFVC Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

Under Title I of ERISA, the administrator of each welfare plan and each pension plan, unless otherwise exempt, is required to file an annual report with the Secretary containing the information set forth in Section 103 of ERISA. The statutory annual reporting requirements under Titles I and IV of ERISA, as well as the Internal Revenue Code (the Code), are satisfied generally by filing the appropriate annual return/report (the Form 5500). The Form 5500 is filed once and applicable data is shared among the federal agencies with authority to collect the information (Department, Internal Revenue Service, and Pension Benefit Guaranty Corporation or “the Agencies”). For the Department, the Form 5500 collection has been approved under the Paperwork Reduction Act and given OMB control number 1210-0110.

The DFVC Program is intended to encourage, through the use of reduced civil penalties, delinquent plan administrators to comply with their annual reporting obligations under Title I of ERISA. Delinquent plan administrators are those who fail to file timely annual reports for plan years beginning on or after January 1, 1988. Eligible plan administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the specified civil penalties set out in the Notice.

The only information collection requirement included in the DFVC Program is the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the only means by which each penalty payment is associated with the relevant plan. If the Department were unable to determine readily whether a penalty had already been paid as a result of a late filing, an additional penalty might be assessed when it was determined that the filing was received after the deadline. This would result in unnecessary burden for the plan and additional cost to the government even though the delinquency had already been resolved. With respect to most pension plans and welfare benefit plans, the requirement is satisfied by sending, along with the penalty payment, a copy of the delinquent annual report (without attachments or schedules) which is filed with the Department under the EFAST 2 filing system. In the event the plan administrator files the delinquent annual report using a 1998 or prior plan year form, a paper copy of only the first page of the Form 5500 or Form 5500-C, as applicable, should be submitted along with the penalty payment.

Certain pension plans for highly compensated employees, commonly called “top hat” plans, and apprenticeship plans may file a one-time statement in lieu of annual reports. With respect to such plans, information collection requirements of the DFVC Program are satisfied by sending a completed first page of an annual report form along with the

penalty payment. The one-time statements are required to be sent to a different address within the Department. The DFVC Program is designed to allow the processing of all penalty payments at a single location within the Department.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration for using information technology to reduce burden.**

EBSA provides a web-based calculator and payment system that makes participation in the program easy, quick, and error-free. The online DFVCP penalty calculator helps applicants accurately calculate the payment needed to participate in the program. Applicants are not required to use the online calculator or make payments electronically to participate in the DFVC Program. Applicants also have the option, but are not required, to pay the penalty online.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

The Agencies utilize a consolidated annual report that eliminates the duplicative reporting that would otherwise result from the separate reporting to each agency. However, the DFVC Program applies only to the Department. There is no similar information gathered by any state or Federal agency or other sources that would enable the Department to effectively monitor participation in the program.

- 5. If the collection of information impacts small businesses or other small entities describe any methods used to minimize burden.**

No separate administrative provisions apply to small versus large businesses. Under the terms of the DFVC Program, small plans, that is, plans with fewer than 100 participants, are assessed a lower penalty for each delinquent filing than large plans.

- 6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If the information collection is not conducted, it may not be possible to continue the DFVC Program because the Department would be unable to determine whether persons seeking to take advantage of the reduced penalties offered under the program had in fact come into compliance with reporting requirements. The purpose of the program is to encourage delinquent plan administrators to come forward and file the required reports. Lack of compliance with existing filing requirements impairs the administration and enforcement of the statute, and the quality and timeliness of information available on

ERISA-covered employee benefit plans. The information collection in the DFVC Program is intended to place a minimal burden on plan administrators who have failed to comply with reporting requirements, while at the same time offering a method of correction at reasonable cost to the administrator.

7. **Explain any special circumstances that would cause an information collection to be conducted in a manner:**
- **requiring respondents to report information to the agency more often than quarterly;**
 - **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
 - **requiring respondents to submit more than an original and two copies of any document;**
 - **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
 - **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
 - **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
 - **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
 - **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

None.

8. **If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if

the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department's notice for the Federal Register, as required by 5 CFR 1320.8(d), soliciting comments on the information collection, was published on October 20, 2020 (85 FR 66580). The notice provided the public with 60 days to comment on the Department's submission; no comments were received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The annual reports are required by statute to be disclosed to participants and beneficiaries, and to the public. As such, the Department provides no assurance of confidentiality to respondents.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

None.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate**

categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

Burden hour estimates include the time required to determine the appropriate penalty and to submit this penalty amount to the Department. Using the average number of plans that participating in the program from 2017 through 2019, the Department estimates the number of employee benefit plans filing annually under the DFVC Program is approximately 10,350.

Participation in the DFVC Program is voluntary. The annual burden per filing is estimated to be approximately 30 minutes performed by a financial professional at an hourly labor rate of \$165.63.² The reporting burden on respondents is not expected to vary widely because of differences in activity, size, or complexity.

The total annual burden hour estimate is based on the assumption that 90 percent of DVFC Program filings are prepared by service providers, and the remaining 10 percent by in-house staff. The hour burden for the in-house preparation is considered in this Item 12; the cost burden for the preparation by service providers is considered in Item 13. Therefore, the total annual hour burden is estimated to be about 518 hours (10,350 plan filings x 30 minutes x 10%). The equivalent cost of these burden hours for filings prepared in-house is estimated to be \$85,714 (10,350 plan filings x 30 minutes x 10% x \$165.63).

Estimated Annualized Respondent Cost and Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)	Hourly Wage Rate	Monetized Value of Respondent Time
In-House Preparation for DFVC Program filings	1,035	1	1,035	0.5	518	\$165.63	\$85,714
Unduplicated Total	1,035	1	1,035	0.5	518	--	\$85,714

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).

- **The cost estimate should be split into two components: (a) a total capital and**

² For a description of the Department’s methodology for calculating wage rates, see <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>

start up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of service component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

As noted in item 12, only about 10% of plans are expected to use in-house staff to prepare the DVFC Program filing. Thus, 90% of plans are expected to use and pay service providers. The hourly labor cost for service providers to prepare the DFVC Program filing is estimated to be \$165.63. Therefore, the total annual cost burden for preparation is estimated to be 771,421.725 (10,350 x 30 minutes x 90% x \$165.63).

In addition, 90% of plans are expected to pay the penalty online, since a majority of plans are already using EFAST2 to electronically file the Form 5500. Thus, 10% of plans are expected to mail their payment. The cost of materials and certified mailing are estimated to total \$7.05 per filing (\$6.95 for certified mail with return receipt and 2 pages*\$.05/page), thus totaling \$7,296.75 (10,350 x 0.10 x \$7.05). The labor cost for distribution by clerical staff is expected to be minimal. Therefore, the total annual cost burden for preparation and distribution is estimated to be \$778,718.475 (\$771,421.725 for service provider preparation + \$7,296.75 for materials and postage).

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this**

collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

The Department has allocated 2.5 full-time employees (PTEs) at the GS-11 level to help administer the program. Using the salary of GS-11 step 5 for 2020, an overhead estimate of \$79,000³ and wages being 68.5 percent of total compensation, the Department estimates that labor costs to the government of administering the program is \$495,434 [(\$81,634/0.685+\$79,000) x 2.5].

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14.

The total cost and hour burdens have been adjusted to reflect updated information on the number of plans utilizing the DFVC Program and updated postage and labor costs.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This is not a collection of information for statistical use.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The collection of information will display a currently valid OMB control number.

18. Explain each exception to the certification statement identified in Item 19.

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. The use of statistical methods is not relevant to this collection of information.

³ EBSA requests a flat \$79,000 annually per FTE in its budget requests based on actual spending