

# Are You Going To File Form 5500 On Time? Play It Safe And Avoid Penalties

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Missing filing deadlines for Form 5500, *Annual Return/Report of Employee Benefit Plan*, for retirement and health and welfare plans can be extremely costly. The best way to avoid any trouble is to have safeguards in place to ensure that meeting filing deadlines never falls between the cracks.

## Adding up penalties

How costly is a missed Form 5500 deadline? The maximum penalty for 2017 is now \$2,097 per day after the filing deadline, for filing violations that have occurred on or after November 2, 2015. The Department of Labor (DOL) adjusts the civil penalties each year. The previous \$1,100 daily penalty ceiling is still applied to delinquency periods that started before then.

That means, for example, that if you inadvertently neglected to file a 5500 that was due on September 1, 2015, and didn't file it until December 1, 2017, you could owe up to approximately \$66,000 for the period before the penalty rose, and then approximately another \$1.6 million for the remaining period of the delinquency.

Remember that the penalties noted are assessed by the DOL. The IRS can impose additional penalties for late filings. Currently the penalty is \$25 per day up to a maximum penalty of \$15,000.

## Cumulating penalties

If you neglect to file two years' worth of Forms 5500, the penalty calculation is cumulative. That is, the DOL calculates the fine based on the sum of the total days late each form was, as opposed to just counting the days since the first late form was due.

If you fail to furnish all the data required on the Form 5500 — such as not attaching an independent auditors' report if your plan requires it — you could still be in trouble. The DOL can treat the filing of an incomplete Form 5500 in the same way as not having filed the form at all. Generally, though, the DOL will give you a heads-up, and you'll have 45 days to submit the missing information before becoming subject to penalties.

## Remedying potential delinquency

If you discover that you're delinquent with a Form 5500 filing, you might have an opportunity to reduce your penalties under the DOL's Delinquent Filer Voluntary Compliance Program (DFVCP). You must do so before receiving a notice of your filing delinquency from the DOL. It's a two-step process:

**Step 1.** Electronically file a complete Form 5500 or Form 5500-SF, with all necessary schedules and attachments, using the DOL's EFAST e-filing system. (<https://www.efast.dol.gov/welcome.html>)

**Step 2.** Use the online calculator to calculate your penalty, and then pay it either electronically or by check.

The penalty for small plans (those with fewer than 100 participants) is \$10 per day for each day the annual report is filed late, to a maximum of \$750 (or \$1,500 if multiple late filings are involved). Large plans must pay the same \$10 per delinquent day penalty, but with a higher cap (\$2,000 per plan or \$4,000 for multiple late filings).

If you use the DOL's DFVCP program through the DOL, it's likely that the IRS will waive any penalties that it may assess.

## Keeping up to date

As a reminder, the normal deadline for the Form 5500 filing is seven months following the end of the plan year. But you can file for a two-and-a-half-month filing extension before the end of the basic seven-month filing deadline, using Form 5558, "Application for Extension of Time To File Certain Employee Plan Returns."

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