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## DOL Ramping Up Efforts to Catch Non-Filers

The Department of Labor (DOL) is ramping up its enforcement efforts heading into 2013 to make sure health and welfare plan sponsors are compliant with the annual reporting (Form 5500) requirements under ERISA. The DOL has long been aware that while some employers appropriately file Forms 5500 for their retirement plans, these same employers are unaware that filings should also be made for their health and welfare benefit plans. So, to ensure that plans are compliant as well as to identify those who may be delinquent in their annual reporting obligations (as they apply to their health and welfare plans), we understand the DOL is now crosschecking their records between retirement plan filings and welfare plan filings in the EFAST2 system using the plan administrator's employer identification number (EIN). Based on its findings, the DOL will then decide whether to mail a follow up letter/short questionnaire to the plan administrator entitled "Request for Clarification of Your Employee Benefit Plan Annual Reporting Requirements."

*Penalties possible.* Administrators of employee benefit plans subject to ERISA who fail to file annual reports on a timely basis can be subject to civil and criminal penalties. The DOL may assess a civil penalty against a plan administrator of up to \$1,100 per day starting from the date of the administrator's failure or refusal to file the Form 5500. Criminal penalties are also possible. Under ERISA Section 501, any person who willfully violates any provision of Part 1 of Title I of ERISA (which includes the Form 5500 reporting rules), or any regulation or order issued under such provision, will be subject to a fine of not more than \$100,000, imprisonment for not more than 10 years or both. In the case of a violation by an entity that is not an individual (e.g., a corporation), the fine will not exceed \$500,000. "Willfully" requires only a finding of general intent - that is, that the person acted knowingly and voluntarily. There is no requirement that the person acted with the specific intent to violate the law.

*DFVC program.* The DOL created the Delinquent Filer Voluntary Compliance (DFVC) program to encourage plan sponsors to comply with the Form 5500 filing requirements by offering reduced penalties on voluntarily-submitted late filings. The DFVC program gives delinquent plan administrators a way to avoid potentially higher civil penalty assessments by satisfying the program's requirements and voluntarily paying a reduced penalty amount. However, time may be of the essence because if a delinquency is identified before the required Forms 5500 are filed, the plan administrator will no longer have the option to participate in the DFVC program. The DOL recently announced [technical updates](#) to the DFVC guidance to incorporate an existing voluntary online penalty calculator and web payment system into the DFVC program. The updates also fully integrate the DFVC program into the EFAST2 electronic filing system, including a Form 5500

[Version Selection Tool](#), which helps filers determine which forms they need to use when filing electronically for past years. See the DOL's recently updated [Frequently Asked Questions](#) for more information on the DFVC program.

Should you have additional questions about this or any aspect of the annual reporting requirements under ERISA, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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