



# DELINQUENT FILER PROGRAM

For your nonqualified plan to be exempt<sup>1</sup> from the participation, vesting, funding, and fiduciary responsibilities of ERISA, a one-time Top Hat Plan Statement must be filed with the Department of Labor (DOL) within 120 days of the plan effective date. Doing so also satisfies your plan's ERISA reporting and disclosure requirements. If filed beyond this 120-day window, the Delinquent Filer Voluntary Compliance Program (DFVCP) must be used.

## PROGRAM OVERVIEW

- Filing through the DFVCP:
  - Exempts your plan from annual Form 5500 filing requirements
  - Requires a one-time fee of \$750<sup>2</sup>
- Failure to file through the DFVCP:
  - Mandates the annual filing of Form 5500
  - Puts your plan at risk for late filing penalties (IRS: \$25/day up to \$15,000; DOL: \$1,100/day, no limit)
- Questions:
  - Review the FAQ<sup>3</sup> online.
  - Contact The Pangburn Group at [support@pangburngroup.com](mailto:support@pangburngroup.com) or (800) 634-3287.

## FILING INSTRUCTIONS

### Part 1: Top Hat Filing

- Submit your Top Hat Plan Statement through the DOL Website for Top Hat Filings.<sup>4</sup>
- The Pangburn Group should not be listed as Plan Administrator. The Pangburn Group is your Third-Party Recordkeeper. You or someone at your company will generally act as Plan Administrator, as directed by the plan agreement or board resolution.

### Part 2: DFVCP Filing

- Submit your filing through the DOL Website for DFVCP Filings<sup>5</sup> using the following table as a guide:

DFVCP PENALTY CALCULATOR	
Are you filing a form 5500-EZ/5500 SF as a 1 participant plan?	No
Are you a 501(c)(3) organization?	Yes or No (Based on your entity type)
Are you a Top Hat or Apprenticeship Training Program?	Yes
Was this plan filed using the "80-120" participant rule?	No
Plan number:	888
<i>Skip the reporting year section &amp; click Enter/Calculate &amp; then click the Continue button.</i>	
DFVCP E-PAYMENT	
Complete the required plan information on the next page.	Type of Filing: Top Hat
<i>Click Continue &amp; "Pay now at pay.gov" to make your payment via ACH or Credit Card.</i>	

<sup>1</sup>Top Hat Exemption: The nonqualified plan established by your company is considered a "top hat" plan, as defined by the Employee Retirement Income Security Act of 1974 (ERISA). A top hat plan is an unfunded, nonqualified plan maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees. Top hat plans are subject to Part 1 (reporting & disclosure) and Part 5 (enforcement and administration) of Title I of ERISA; however, they are exempt from Part 2 (participation & vesting), Part 3 (funding), and Part 4 (fiduciary responsibilities).

<sup>2</sup>DFVCP Fee: The \$750 penalty is for each DFVCP submission, and a single submission may include more than one delinquent plan. To file on behalf of multiple plans, complete Part 1 (Top Hat Filing) which asks for the number of plans being submitted. Then, complete Part 2 (DFVCP Filing) only once as the \$750 penalty covers all plans. You do not owe a separate \$750 penalty for each plan within Part 1 of your submission.

<sup>3</sup>DFVCP FAQ: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/dfvcp.pdf>

<sup>4</sup>DOL Website for Top Hat Filings: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/e-file/tophat-plan-filing-instructions>

<sup>5</sup>DOL Website for DFVCP Filings: <https://www.askebsa.dol.gov/dfvcepay/calculator>