

How to Apply to the Offshore Voluntary Disclosure Program

i. Step One: Request Preclearance

Taxpayers or their representatives must fax a letter to the IRS – Criminal Investigation Lead Development Center (LDC). The LDC fax number is (267) 941-1115. In the case of jointly filed returns, if each spouse intends to apply for OVDP, each spouse should request preclearance.

The pre-clearance letter must include the following:

1. Applicant identifying information including complete names, dates of birth (if applicable), tax identification numbers, addresses, and telephone numbers.
2. Identifying information of all financial institutions where undisclosed OVDP assets are held. Identifying information for financial institutions includes complete names (including all DBAs and pseudonyms), addresses, and telephone numbers.
3. Identifying information of all foreign and domestic entities (e.g., corporations, partnerships, limited liability companies, trusts, foundations) through which the undisclosed OVDP assets were held by the taxpayer seeking to participate in the OVDP. Information must be provided for both current and dissolved entities. Identifying information for entities includes complete names (including all DBAs and pseudonyms), employer identification numbers (if applicable), addresses, and the jurisdiction in which the entities were organized.
4. Executed power of attorney forms (if represented).

Criminal Investigation will notify taxpayers or their representatives within thirty days as to whether they are eligible to make an offshore voluntary disclosure. Preclearance does not guarantee a taxpayer acceptance into the OVDP.

ii. Step Two: Submit Offshore Voluntary Disclosure Letter And Attachments

In step two, the taxpayer must prepare an Offshore Voluntary Disclosure Letter and Attachment and mail it to the IRS Voluntary Disclosure Coordinator at 1-D04-100 2970 Market

Street Philadelphia, PA 19104.

Criminal Investigation (CI) will review the OVDP letter and notify the taxpayer by mail or fax as to whether the disclosures have been preliminarily accepted as timely or declined. CI estimates that it will complete its review within 45 days of receipt of the OVDP letter.

If the disclosure is preliminarily accepted by CI, the taxpayer must submit the full voluntary disclosure submission to the Austin Campus and cooperate with the civil examiner in resolving the tax liability before the disclosure will be considered complete.

iii. Step Three: What To Do After You've Been Pre-accepted Into OVDP

You've submitted your OVDP letter and attachments to the Voluntary Disclosure Coordinator and are reclining in your armchair watching the "big game" (or perhaps, "Big Bang Theory," whatever your fancy) while opening up the day's mail. The upper left-hand corner of one of the envelopes in your pile is emblazoned with the IRS's logo. You open it up.

The letter is but a few paragraphs long and as you scan it you breathe a sigh of relief. It says that your disclosure has been preliminarily accepted by CI as timely. It provides instructions for the next phase: "complete and submit the full voluntary disclosure package to the Austin Campus within 90 days of the date of the timeliness determination."

You've made it this far. You can see the light at the end of the tunnel, but you are uncertain about what is meant by a "full voluntary disclosure submission." This blog will help make sense of it all.

The voluntary disclosure submission consists of two parts, each of which must be submitted to a separate location. These parts include the following:

- (1) The total amount of tax, interest, offshore penalty, accuracy-related penalty, and, if applicable, the failure-to-file and failure-to-pay penalties for the voluntary disclosure period must be sent with information identifying the taxpayer's name, taxpayer's identification number, and years to which the payments relate. To ensure payments are properly posted to the taxpayer's account, separate checks should be written for each tax year which would include all applicable tax, interest, accuracy-related penalties, and failure-to-file and failure-to-pay penalties. The offshore penalty should be paid by a separate check. These payments are advance payments. Consequently, any credit or refund of the payments is subject to the limitations of IRC Section 6511.

(2) The items listed below must be mailed to: IRS 3651 S. I H 35 Stop 4301 AUSC Austin, TX 78741 (ATTN: OVDP):

- a. **All applicants:** Copies of previously filed original (and, if appropriate, previously filed amended) federal income tax returns for tax years covered by the voluntary disclosure.
- b. **All applicants:** Complete and accurate amended federal income tax returns or original Form 1040 (if delinquent) for all tax years covered by the voluntary disclosure, with accompanying schedules detailing the amount and type of previously unreported income from foreign financial accounts or domestic sources (e.g., Schedule B for interest and dividends, Schedule D for capital gains and losses, Schedule E for income from partnerships, S corporations, estate or trusts and, for years after 2010, Form 8938). For taxpayers who began filing timely, original, compliant returns that fully reported previously undisclosed foreign financial accounts *before* making the voluntary disclosure for certain years of the disclosure period, copies of the previously filed returns for the compliant years must be provided.
- c. **All applicants:** Copy of your completed and signed OVDP letter (including enclosures and attachments) submitted to criminal investigation.
- d. **All applicants:** A completed “Foreign Account or Asset Statement” for each previously undisclosed OVDP asset during the voluntary disclosure period.
- e. **All applicants:** A completed and signed “Taxpayer Account Summary With Penalty Calculation.”
- f. **All applicants:** Properly completed and signed agreements to extend the period of time to assess tax (including penalties) and to assess FBAR penalties. These agreements must follow the instructions provided.
- g. **All applicants disclosing foreign financial accounts:** Copies of filed FBARs for foreign financial accounts maintained during the period of your voluntary disclosure. FBARs must be filed electronically.
- h. **All applicants:** Copies of statements for all financial accounts reflecting all account activity for each of the tax years covered by your voluntary disclosure. For OVDP assets other than foreign financial accounts, provide

all relevant documents pertaining to the asset. For example, if a taxpayer has foreign issued life insurance with cash value, provide all documents governing the policy and, if any, all legal and tax opinions issued to the taxpayer relating to the policy.

- i. **All applicants disclosing foreign entities:** A statement identifying all foreign entities, whether held directly or indirectly, for the tax years included in the voluntary disclosure, and a statement concerning ownership or control of such entities.
- j. **All applicants disclosing foreign entities:** If foreign entities held OVDP assets, provide complete and accurate information returns (or amended returns, if applicable) required to be filed, including Forms 3520, 3520-A, 5471, 5472, 926, 8865, and 8938 for all tax years included in the voluntary disclosure.
- k. **Applicants with estate and gift tax issues:** If the taxpayer is a decedent's estate, or is an individual who failed to report an OVDP asset in a required gift or estate tax return, either as executor or advisor, provide complete and accurate amended estate or gift tax returns (original estate or gift tax returns if not previously filed) for tax years included in the disclosure period correcting the underreporting or omission of OVDP assets.
- l. **Applicants with Passive Foreign Investment Company (PFIC) issues:** A statement whether the amended or delinquent returns involve PFIC issues during the tax years covered by the OVDP period, and if so, whether the taxpayer chooses to elect the alternative to the statutory PFIC computation that resolves PFIC issues on a basis that is consistent with the mark to market (MTM) method authorized by IRC Section 1296 but does not require complete reconstruction of historical data.

iv. Important Points to Keep In Mind

Below are the answers to some of the most frequently asked questions regarding step three:

- (1) May I request an extension to file my voluntary disclosure submission? An extension can be requested for up to 90 days, but only if there is a good reason.
- (2) Can the examiner request additional information beyond what is already required?

Yes. The examiner may contact you for specific additional information to process the voluntary disclosure.

- (3) Who will certify that my voluntary disclosure is correct, accurate, and complete? The examiner. The examiner will also verify the tax, interest, and civil penalties you owe.
- (4) May the taxpayer submit documents on a CD or Flash Drive? Yes, subject to the following conditions. The representative must submit an original, signed paper Agreement for Digital Submission of OVDP Documentation. A copy of the Form 2848 must be attached. All other required OVDP documents other than the Agreement for Digital Submission of OVDP documentation may be submitted digitally. The digital documents should be arranged in separate folders in the same sequence as a paper submission would be assembled. The CD or flash drive must be labeled with the last four digits only of the taxpayer's Taxpayer Identification Number.