Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
April 2005

Original Voluntary Fiduciary Correction Program

The Voluntary Fiduciary Correction Program (VFCP) is designed to encourage employers to voluntarily comply with the Employee Retirement Income Security Act (ERISA) by self-correcting certain violations of the law. Many workers can benefit from the program as a result of the increased retirement security associated with restoration of plan assets and payment of additional benefits. It also will help plan officials understand the law. The program describes how to apply, the 15 specific transactions covered, acceptable methods for correcting violations and examples of potential violations and corrective actions. In addition, the Department of Labor is giving applicants immediate relief from payment of excise taxes under a November 2002 class exemption.

Who is Eligible

Anyone who may be liable for fiduciary violations under ERISA, including employee benefit plan sponsors, officials, and parties-in-interest, may voluntarily apply for relief from enforcement actions provided they comply with the criteria and satisfy the procedures outlined in the program.

Program Criteria

Persons using the program must fully and accurately correct violations. Incomplete or unacceptable applications may be rejected. If rejected, applicants may be subject to enforcement action, including assessment of civil monetary penalties under Section 502(l) of ERISA.

How to Apply

Applicants do not need to consult or negotiate with EBSA to use the program. They merely need to follow the procedures outlined in the notice published in the March 28, 2002, *Federal Register*. See **www.dol.gov/ebsa/regs/fedreg/notices/2002007516.pdf** for more information. Violations can be fully and correctly resolved in four easy steps:

- Identify any violations and determine whether they fall within the transactions covered by the program;
- Follow the process for correcting specific violations (i.e., improper loans or incorrect valuation of plan assets);
- Calculate and restore any losses and profits with interest and distribute any supplemental benefits to participants; and
- File an application with the appropriate EBSA regional office that includes documentation showing evidence of corrected financial transactions.

Covered Transactions

The program provides descriptions of 15 transactions and their methods of correction. Corrective remedies are prescribed for the following fiduciary violations involving employee benefit plans:

- Delinquent Participant Contributions to Pension Plans
- Delinquent Participant Contributions to Insured Welfare Plans
- Delinquent Participant Contributions to Welfare Plan Trusts
- Fair Market Interest Rate Loans With Parties-in-Interest
- Below Market Interest Rate Loans With Parties-in-Interest
- Below Market Interest Rate Loans With Non Parties-in-Interest
- Below Market Interest Rate Loans Due to Delay in Perfecting Security Interest
- Purchase of Assets by Plans from Parties-in-Interest
- Sale of Assets by Plans to Parties-in-Interest
- Sale and Leaseback of Property to Sponsoring Employers
- Purchase of Assets from Non Parties-in-Interest at Other Than Fair Market Value
- Sale of Assets to Non Parties-in-Interest at Other Than Fair Market Value
- Benefit Payments Based on Improper Valuation of Plan Assets
- Payment of Duplicate, Excessive, or Unnecessary Compensation
- Payment of Dual Compensation to Plan Fiduciaries

Acceptable Corrections

The program provides rules for making acceptable corrections involving the transactions listed above. Applicants must:

- Conduct valuations of plan assets using generally recognized markets for the assets or obtain written appraisal reports from qualified professionals that are based on generally accepted appraisal standards;
- Restore to the plan the principal amount involved, plus the greater of: lost earnings starting on the date of the loss and extending to the recovery date or profits resulting from the use of the principal amount for the same period;
- Pay the expenses associated with correcting transactions, such as appraisal costs or recalculating participant account balances; and
- Make supplemental distributions to former employees, beneficiaries, or alternate payees when appropriate and provide proof of the payments.

VFCP Documentation

Under the program, applicants provide supporting documentation to the appropriate regional office of EBSA. Documentation must include:

- Statement showing the plan has a current fidelity bond, the name of the company providing the bond, and the policy number;
- Copy of relevant portions of plan and related documents;
- Documents supporting transactions, such as leases and loan documents and applicable corrections;
- Documentation of lost earnings amounts;
- Documentation of restored profits;

- Proof of payment of affected amounts;
- Documents on affected transactions as outlined in Section 7 of the notice;
- Signed checklist; and
- Penalty of perjury statement.

Restitution to Plans

Applicants must restore the plan, participants, and beneficiaries to the condition they would have been in had the breach not occurred. Plans must then file, where necessary, amended returns to reflect corrected transactions or valuations.

Under the revised program, applicants also must provide proof of payment to participants and beneficiaries or properly segregate affected assets in cases where the plan is unable to identify the location of missing individuals. Payment of the correction amount may be made directly to the plan where distributions to separated participants would be less than $20 and the cost of correction exceeds the distributions owed. In addition, the program was modified to allow applicants to use the "blended rate" in calculating rate of return on affected transactions involving 404(c) plans only for affected participants who have not made investment allocations.

Excise Tax Exemption

In order to encourage use of the program, the Department of Labor granted a class exemption providing limited relief from the excise taxes under the Internal Revenue Code imposed on certain transactions covered by the VFC Program. Four specific transactions are now exempt from excise tax, provided applicants comply with the conditions contained in the exemption. The exemption covers transactions involving:

- Failure to timely remit participant contributions to plans;
- Loans made at fair market interest rate by plans with parties-in-interest;
- Purchases or sales of assets between plans and parties-in-interest at fair market value;
- Sales of real property to plans by employers and leaseback of the property at fair market value and fair market rental value, respectively.

Under the exemption, applicants must repay delinquent contributions to plans no more than 180 days from the date the money was received by the employer or would be payable to participants in cash. The exemption also requires, except in the case of delinquent participant contributions, no more than 10 percent of the fair market value of total plan assets be involved. In addition, the exemption requires that notice of the transaction and the correction be provided to interested persons. Finally, covered transactions under the exemption cannot be part of an arrangement or understanding that benefits a related party and the exemption does not apply to any transactions for which an application for a similar transaction was submitted under the VFCP within the past 3 years.

A copy of the November 25, 2002, class exemption is available at:
www.dol.gov/ebsa/regs/fedreg/notices/2002029799.pdf

Contacts for Additional Information

For additional information, VFCP applicants may contact the appropriate regional office at EBSA's toll-free Employee and Employer Hotline number: **1-866-444-EBSA (3272)** and request the VFCP coordinator.

* This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice phone: (202) 693-8664; TTY: 1-202-501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.