

June 2, 2005

VIA HAND DELIVERY AND E-MAIL

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor -- Room N-5669
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Attention: Voluntary Fiduciary Correction Program

Re: Comment Re Amendments to the Voluntary Fiduciary Correction ("VFC") Program

Dear Sirs and Madams:

This comment relates to the correction of the transaction described in Section 7.A.1. of the amended VFC Program, Delinquent Participant Contributions to Pension Plans, where an employer does not timely remit withheld participant contributions to a defined benefit pension plan. In the past year, we have encountered cases where this situation has arisen, each of which involves a defined benefit plan that is significantly overfunded where the employers are making substantial contributions to the plan even though none are required under the ERISA minimum funding standards or by collective bargaining agreement.

Request is hereby made that the VFC Program clarify that employer contributions made to a contributory defined benefit plan for any plan year in excess of the amounts legally required under the ERISA minimum funding requirements or by collective bargaining (hereinafter referred to as "voluntary employer contributions") be creditable against any requirement to contribute lost earnings or restoration of profits for the same plan year. Unlike the case where a delinquent remittance of participant contributions is made to a defined contribution plan and the affected participants' accounts lose earnings as a result of the delay, the benefit payable under a defined benefit plan is not affected by the delinquent remittance of participant contributions. Any detriment to the plan and benefit to the employer from the employer's untimely remittance of participant contributions is offset by the voluntary employer contributions. In many of these cases, the voluntary employer contributions amount to millions of dollars and are substantially in excess of the lost earnings or restoration of profits amounts. A certification by the plan administrator to the effect that the voluntary employer contributions for the plan year in which the delinquent remittance occurs exceed the lost earnings or restoration of profits amounts for such year should be sufficient to demonstrate correction. Otherwise, in many cases significant

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effort will be expended in calculating the lost earnings or restoration of profits amounts for no apparent reason.

Thank you for considering this comment and please call me at 202.756.8312 if further explanation is required.

Respectfully submitted,

Stephen Pavlick, P.C.