



TOPIC: REVISED LABOR DEPARTMENT VOLUNTARY CORRECTION PROGRAMS

**EXECUTIVE SUMMARY:**

THE LABOR DEPARTMENT HAS REDUCED THE PENALTIES FOR LATE-FILING OF FORMS 5500, IF THEY ARE CORRECTED UNDER THE DEPARTMENT'S DELINQUENT FILER VOLUNTARY CORRECTION (DFVC) PROGRAM, AND STREAMLINED ITS VOLUNTARY FIDUCIARY CORRECTION PROGRAM. THIS ISSUE OF *MULTI-ELERT* PROVIDES HIGHLIGHTS OF THOSE CHANGES.

PURPOSE: INFORMATIONAL

CATEGORY: AGENCY – OPERATIONAL GUIDANCE

ISSUER: U.S. DEPARTMENT OF LABOR

TARGET AUDIENCE: PENSION PLAN ADMINISTRATORS, FUND COUNSEL, AUDITORS AND TRUSTEES

INPUT REQUESTED: N/A

OFFICIAL COMMENT PERIOD ENDS: N/A

NCCMP DEADLINE: N/A

FORWARD COMMENTS TO: [Multi-elert@nccmp.org](mailto:Multi-elert@nccmp.org)

REFERENCE: VOL.2, ISSUE 3, Revised Labor Department Voluntary Correction Programs

FOR ADDITIONAL BACKGROUND SEE: 67 Federal Register 15052 (March 28, 2002), 67 Federal Register 15062, IRS Notice 2002-23.

## REVISED LABOR DEPARTMENT VOLUNTARY CORRECTION PROGRAMS

The Labor Department has published updated, streamlined versions of its voluntary compliance programs, the Delinquent Filer Voluntary Compliance (DFVC) and Voluntary Fiduciary Compliance (VFC) programs.<sup>1</sup> Coupled with relief from related tax penalties, the changes may make the DOL programs more attractive to multiemployer plan trustees.

### Delinquent Filer Voluntary Compliance Program

This is the relief program for late filings of Forms 5500 (including 5500s that were never filed, which turn into “late filings” when the omission is corrected). Under the revised program the per-day penalty is cut to \$10 a day, to a maximum of \$2,000 per late report and \$4,000 for any one plan, regardless of how many reports it failed to file on time. For small plans – those with fewer than 100 participants at the start of the plan year – the penalties are capped at \$750 per report and \$1,500 per plan. The maximum penalty is \$750 for apprenticeship and training plans of any size.

Also, the IRS announced in Notice 2002-23, published the same day as the revised DFVC Program, that it would not impose tax penalties for late-filed Forms 5500 that come in under the Labor Department’s DFVC Program. In announcing the revised DFVC program, the Labor Department said that the PBGC would extend similar relief.

To use the DFVC program, the plan administrator must file Forms 5500 for all years for which they are missing. Submissions can be made either on the current form or on the form that applied for the years in question, at the plan administrator’s option. Only a plan that is required to file a Form 5500 under ERISA can use the DFVC program. The DFVC program changes, including the reduced schedule of penalties, are effective for submissions made on and after March 28, 2002.

### Voluntary Fiduciary Correction Program

Two major changes were made in the VFC program. First, it is no longer necessary to notify all participants and beneficiaries that there was a fiduciary breach that is being corrected. Second, for specific listed violations that are also prohibited transactions, the Department is proposing a formal exemption that will have the effect of eliminating the related excise tax penalties. However, notice to participants and beneficiaries is required in order to use that exemption.

If a fiduciary corrects a violation under the VFC program, it receives a no-action letter from the Labor Department, pledging that the Department will not take enforcement action against the fiduciary for that violation. While this assurance is not binding on participants, beneficiaries or other fiduciaries, the assumption is that private litigation is unlikely when a fiduciary has done everything the Labor Department said was necessary to correct a lapse. To get this relief, the violation must be corrected exactly as called for in the VFC program document.

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<sup>1</sup> The revised Voluntary Fiduciary Correction Program is in the March 28, 2002 *Federal Register* at 67 FR 15062-89. The revised Delinquent Filer Voluntary Compliance Program is in that same issue, at 67 FR 15052-60.

The fiduciary breaches that are eligible for correction under the VFC program are:

- ☞ An employer's late payment of participant contributions to pension or welfare plans;
- ☞ Loans to or from parties-in-interest, either at or below market interest rates;
- ☞ Purchase or sale of assets between a plan and a party-in-interest;
- ☞ Sale and leaseback of property to a sponsoring employer;
- ☞ Purchase or sale of assets between a plan and an unrelated party, at below-market value;
- ☞ Under- or over-payment of benefits due to inaccurate valuation of plan assets;
- ☞ Payment of duplicate, excessive or unnecessary compensation to a party-in-interest, and
- ☞ Payment of compensation to a fiduciary who is a full-time employee of a contributing employer or a union representing plan participants.

The prohibited transactions that would be exempted from excise tax penalties if corrected under the VFC program are:

- ☞ Late payment of participant contributions to plans;
- ☞ Loans by plans to parties-in-interest at fair market interest rates;
- ☞ Purchases or sales of assets between plans and parties-in-interest at fair market value;
- ☞ Sale and leaseback of property to a sponsoring employer, at fair value.

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*Plan trustees and plan sponsors should rely on their own attorneys and other professional advisors for advice on the meaning and application of Revenue Ruling 2001-56.*

*If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact Randy G. DeFrehn, Executive Director, NCCMP, by phone at (202) 737-5315, or by e-mail at [rdefrehn@nccmp.org](mailto:rdefrehn@nccmp.org).*

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