



## DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

### Questions and Answers Voluntary Fiduciary Correction Program

#### VFCP Fact Sheet

Q. Briefly describe the VFC Program.

A. The VFC Program is a voluntary enforcement program that encourages the correction of possible violations of Title I of ERISA. The program allows plan officials to identify and fully correct certain transactions such as prohibited purchases, sales and exchanges, improper loans, delinquent participant contributions, and improper plan expenses. The program includes 13 specific transactions and their acceptable means of correction, eligibility requirements, and application procedures. If an eligible party documents the acceptable correction of a specified transaction, the Department will issue a no-action letter.

Q. Why did the Department create the VFC Program?

A. In part, the Department developed the VFC Program in response to requests from the employee benefits community for a formal program that would reduce the risk of enforcement action and the imposition of the Section 502(l) penalty. Most of PWBA's investigations are resolved by fiduciaries taking corrective action after PWBA identifies violations. The Department recognized that as the private benefit system evolves, there is a need for innovation in voluntary compliance. Publication of the VFC Program provides an opportunity to inform plan fiduciaries of their obligations so that complete and fully acceptable corrections may be made without discussion or negotiation with the Department.

Q. Who is eligible to participate in the program?

A. The Department will consider an application if neither the plan nor the applicant is under investigation and if the application contains no evidence of potential criminal violations as determined by PWBA.

Q. How long will the Department operate the program?

A. The Department expects to operate the program indefinitely. However, there may be changes in the program's procedures based on comments received from the public.

Q. What if the Department receives an application from a plan sponsor that has not adequately corrected a violation?

A. The Department may need to negotiate with the sponsor for full correction. In that case, the Section 502(l) penalty may apply to amounts restored pursuant to the negotiation. Depending on the facts, PWBA may also need to conduct a civil or criminal investigation or take other action, such as seeking removal of persons from positions of authority with respect to a plan.

Q. Are there any civil penalties involved in the program?

A. If the applicant complies with the conditions of the program, no Section 502(l) penalty would apply to correction amounts paid to the plan or to participants. However, the Department is not precluded from referring information regarding the transaction to the IRS as required by Section 3003(c) of ERISA, or from imposing civil penalties under Section 502(c)(2) of ERISA based on the failure or refusal to file a timely, complete and accurate annual report Form 5500.

Q. Will the new program provide any certainty to the applicant if he or she complies with the conditions?

A. Yes. The Department acknowledged the need for plan sponsors and their service providers to know that the Department would take no further action if the applicant satisfied the terms of the program. Under those circumstances, the Department will issue a no-action letter to the applicant. The no-action letter states that the Department will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no-action letter, nor assess a Section 502(l) penalty. However, the issuance of a no-action letter does not affect the ability of any other government agency, or any other person, to enforce their rights.

Q. How do I apply for relief?

A. The program includes application procedures. Briefly, one must submit a written narrative and supporting documents describing the transaction and its correction, proof of restoration of losses, a written notice to plan participants, and an executed penalty of perjury statement.

Q. Where do I apply?

A. Applications should be mailed to the appropriate PWBA Regional Office, listed in an appendix to the program. PWBA's 10 Regional Offices will administer the program.

Q. How can I find out more about the program?

A. Interested parties may contact one of PWBA's 10 Regional Offices. Each region has a coordinator assigned to the program.

Q. How can I comment on the program?

A. Comments may be addressed in writing to PWBA, VFC Program, Office of Enforcement, U.S. Department of Labor, Room N5702, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Written comments may also be sent by Internet to "vfc-program@pwba.dol.gov". One may also contact PWBA by telephone in Washington to comment or ask general questions.

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