

DOL Releases Final Rule for Self-Correction Under the Voluntary Fiduciary Compliance Program

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On January 14, 2025, the U.S. Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) released its long-awaited [final rules](#) regarding changes to the Voluntary Fiduciary Compliance Program (VFCP). The new rules, which were initially proposed in November 2022, are the first changes to the VFCP in nearly two decades.

Quick Hits

- On January 14, 2025, the DOL released new rules for the Voluntary Fiduciary Compliance Program (VFCP), introducing a self-correction feature for retirement plan sponsors to address common operational failures.
- The VFCP rules allow plan sponsors to self-correct late deposits of participant contributions and loan repayments without filing a formal application.
- The DOL also amended Prohibited Transaction Exemption 2002-51 to extend excise tax relief to self-corrections of participants and loan repayment features.

Most significantly, the final rules create a self-correction feature for retirement plan sponsors to address delinquent transmittal of participant contributions and loan repayments, which are two of the most common retirement plan operational failures. In addition, the final rules provide that the self-correction procedures also apply to certain participant loan failures that are eligible for correction under the Internal Revenue Service's (IRS) Employee Plans Compliance Resolution System (EPCRS). The SECURE 2.0 Act of 2022 (SECURE 2.0) greatly expanded the ability of plan sponsors to self-correct "eligible inadvertent failures," including certain plan loan failures. SECURE 2.0 also directed the EBSA to implement new rules approving self-correction of loan failures.

The Voluntary Fiduciary Compliance Program

The VFCP permits plan fiduciaries, including plan sponsors, to correct certain fiduciary breach violations under the Employee Retirement Income Security Act (ERISA) by formally applying to EBSA for relief. The VFCP specifies nineteen enumerated categories of fiduciary violations that are eligible for correction. Plan sponsors may submit corrections to EBSA using the VFCP for approval. If the

plan sponsor's correction is approved, EBSA will issue what is referred to as a "no-action" letter to the employer. The no-action letter provides that EBSA will not take any civil enforcement action against the plan sponsor with respect to the corrected fiduciary breach, including foregoing legal action and assessment of civil monetary penalties. VFCP applicants may also obtain relief from payment of excise taxes for certain transactions.

Self-Correction of Delinquent Transmittals of Participant Contributions and Loan Repayments

Among the fiduciary breaches that are eligible for correction using the VFCP are delinquent transmittals of participant contributions and loan repayments. Late deposits of participant contributions and loan repayments are a common occurrence for plan sponsors and, according to EBSA, are the most commonly corrected failures using the VFCP. In general, an employer must transmit employee contributions (including loan repayments) to a plan as soon as they can be segregated from the employer's general assets, but in no case later than the fifteenth business day of the month immediately following the month in which the contribution is either withheld or received by the employer. For plans with fewer than one hundred participants, a safe harbor rule provides that contributions to a plan are deemed compliant if those amounts are deposited within seven business days of withholding or receipt.

Under the new rules, plan sponsors can self-correct late deposits of participant contributions and loan repayments, regardless of the number of plan participants or the amount of plan assets, without the need to file a formal VFCP application. In order to be eligible for self-correction, the general rules for participation in the VFCP must be met, including that the plan and plan sponsor are not "under investigation" by EBSA. In addition, the self-correction rules require that:

- The lost earnings associated with the principal portion of the delinquent participant or loan repayments contributions must be less than \$1,000. EBSA maintained this \$1,000 threshold from the proposed rule despite comments to increase the cap in order to preserve guardrails for this self-correction component.
- Delinquent participant contributions or loan repayments must be remitted to the plan within 180 calendar days from the date of withholding from participants' paychecks or receipt by the employer.
- The correction amount must include both the principal amount of the delinquent contribution as well as any associated lost earnings based on the EBSA's VFCP [online calculator](#).
- The plan sponsor must prepare and electronically file a self-correction notice, which requires that the plan sponsor provide the name and an email address for the self-corrector, the plan name, the plan sponsor's nine-digit employer identification number and the plan's three-digit number, the principal amount and amount of lost earnings and the date of withholding or receipt, and the number of participants affected by the correction.
- The plan sponsor must complete a "[Record Retention Checklist](#)" and execute a penalty of perjury statement attesting to the facts of the self-correction.

Unlike a formal VFCP submission, plan sponsors will not receive a no-action letter. Instead, plan sponsors will receive an acknowledgment email from EBSA following submission of the self-correction notice. Notably, there is no limit as to the frequency with which a plan sponsor can make use of self-correction. However, plan sponsors are not relieved from the requirement that they report delinquent participant contributions on the plan's annual Form 5500.

Self-Correction of Plan Loan Failures Eligible for Correction Under EPCRS

As indicated above, the new rules extend self-correction under the VFCP to certain loan failures that are eligible for self-correction under the IRS's EPCRS. This includes failures involving the loan amount, duration, level amortization, or loans that defaulted due to a failure to withhold loan repayments from the participant's wages. If a plan loan failure is determined to be eligible for correction under EPCRS, then the plan sponsor can use the VFCP's self-correction procedures to correct the failure. Notably, the final rules provide that a self-corrector may be eligible to correct a loan failure even if the self-corrector is under investigation, as long as the loan failure is still eligible for self-correction under EPCRS.

Other Revisions to the VFCP

The new rules also make several other clarifying changes to the VFCP, including additional corrections for prohibited loan transactions and prohibited purchase and sale transactions involving plans and relief for prohibited sale and leaseback of real property to affiliates of a plan sponsor.

Excise Tax Relief Under Prohibited Transaction Exemption 2002-51

In addition to the final rules, EBSA has also [amended](#) Prohibited Transaction Exemption (PTE) 2002-51. PTE 2002-51 is a class exemption that provides for excise tax relief in connection with certain transactions corrected pursuant to the VFCP. Specifically, the amended PTE 2002-51 extends the general excise tax relief available under the VFCP to self-correction of failures to timely remit participant contributions or participant loan repayments to plans. In order to rely on PTE 2002-51, self-correctors must receive an acknowledgment email from EBSA following submission of the self-correction notice.

PTE 2002-51 also clarifies and expands coverage of the exemption to six of the transactions identified in the final rule as eligible for correction using the VFCP.

Lastly, EBSA has eliminated the requirement that relief under PTE 2002-51 is not available to VFCP applicants that had taken advantage of the exemption for a similar type of transaction within the previous three years.

Conclusion

The official ability to self-correct delinquent participant contribution transmittals and loan repayments is a welcome development for retirement plan sponsors. The new rules complement the recent expansion of EPCRS under SECURE 2.0 and underscore a new approach by the IRS and DOL to streamline their remedial programs, which emphasizes self-correction of plan errors.

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