

## DOL Expands Voluntary Fiduciary Compliance Program

by **Hannah Munn**, Partner,  
Poyner Spruill

Earlier this year, the Department of Labor released new rules for its Voluntary Fiduciary Compliance Program (VFCP). Happily, the rules include a new, long-awaited self-correction feature for plan sponsors.

**What is VFCP?** The DOL's VFCP is a program that enables employers and plan sponsors to correct fiduciary breaches and other prohibited transactions while also generally avoiding DOL civil enforcement actions and penalties. Certain violations corrected under VFCP are also eligible for relief from excise taxes associated with the breach or prohibited transaction. Though not entirely comparable, the DOL's VFCP is often thought of as similar to the IRS's Voluntary Correction Program (VCP): VFCP allows plans to correct violations related to duties under ERISA, and VCP allows plans to correct violations related to requirements under the Tax Code.

**Who is eligible for VFCP?** Employers are generally eligible so long as: (1) they are not under investigation by a relevant government agency, (2) the application does not show evidence of possible criminal violations of ERISA, and (3) the employer has not been subject to a DOL investigation related to this matter for which the DOL sent a referral to the IRS.

**What can plan sponsors self-correct?** Until very recently, there were no self-correction options under VFCP—meaning that all corrections pursuant to VFCP required filing a correction application with the DOL and waiting on DOL approval. Beginning in May of this year, plan sponsors may now self-correct failures related to: (1) late-deposited participant contributions and (2) plan loans.

The issue of late-deposited participant contributions is one plan sponsors frequently encounter—and, until this year, generally required correction via a lengthy filing with the DOL. Now, plan sponsors may generally self-correct these errors so long as: (1) the total lost earnings amount due to the plan is \$1,000 or less and (2) the correction is made within 180 days of the initial withholding.

### What does the self-correction process look like?

VFCP's new self-correction process doesn't mean plan sponsors and officials don't have to file *anything* with the DOL. The new amendments to VFCP require that the notice of self-correction be filed with the DOL and include brief information about the plan, the plan sponsor, the error, and the number of impacted participants. Applicants who submit the notice will receive confirmation of the DOL's receipt but need not wait on DOL approval.

Especially regarding the late-deposited participant contributions, clients should be excited to hear that the DOL now permits them to correct fiduciary errors without a formal application filing. Now is a great time to reach out to your TPA partner and ensure clients are aware of the expanded VFCP correction options.

### Reminders

- **March 15, 2025 (Saturday):** Deadline for refunds and/or reallocations related to ADP/ACP testing failures for 2024 (for plans other than eligible automatic contribution arrangements).
- **March 31, 2025:** Deadline for electronic filing of Form 1099-R with IRS.
- **March 31, 2025:** General Form 5330 and excise tax deadline for excess ADP/ACP contributions in 2023.