



# ERISA ALERT

## AUGUST 2012

### How to Correct Violations of ERISA

Plan fiduciaries, which include employee benefit plan sponsors and parties in interest, must comply with the fiduciary responsibility and prohibited transaction rules of the Employee Retirement Income Security Act ("ERISA"). Fiduciaries and parties in interest will be subject to monetary penalties and excise taxes for failing to comply with the fiduciary responsibility and prohibited transaction rules under ERISA. However, the United States Department of Labor ("DOL") allows fiduciaries to voluntarily self-correct certain violations (including delinquent participant contributions to 401(k) plans and sale of assets by plans to parties in interest) through its "Voluntary Fiduciary Correction Program" ("VFCP").

The VFCP requires the applicant to (1) identify any violations and determine whether they fall within the transactions covered by the program; (2) follow the process for correcting specific violations; (3) calculate and restore any losses and profits, with interest, and distribute any supplemental benefits to participants; and (4) file an application with the appropriate Employee Benefits Security Administration ("EBSA") regional office that includes supporting documentation showing evidence of corrected financial transactions.

As an added incentive, the DOL granted a class exemption that provides limited relief from the excise taxes under the Internal Revenue Code imposed on certain transactions covered by the VFCP. Four specific transactions are now exempt from excise tax, provided that the applicants comply with the conditions contained in the exemption: (1) failure to timely remit participant contributions to plans; (2) loans made at fair market interest rate by plans with parties in interest; (3) purchases or sales of assets between plans and parties in interest at fair market value; and (4) sales of real property to plans by employers and leaseback of the property at fair market value and fair market rental value, respectively.

If a fiduciary discovers that it has violated a provision of ERISA and the VFCP is available, this is definitely an option that should be considered and utilized, as voluntarily correcting an error could save the fiduciary from monetary penalties and other potential obstacles. Attorneys at Herrick are experienced in conducting internal compliance audits to uncover ERISA violations and assisting in correcting any violations that are discovered through the VFCP program.

This Alert is one in a series on the topic of ERISA and employee benefits. To read past alerts, please [click here](#). For more information on this Alert or other ERISA matters, please contact:

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