



AMERICAN BENEFITS COUNCIL

April 17, 2023

Submitted electronically via www.regulations.gov

Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Reopening of Comment Period on Proposed Amendments to the Voluntary Fidiuciary Correction Program and Prohibited Transaction Exemption 2002-51 (RIN 1210-AB64)

Dear Sir or Madam:

The American Benefits Council (“the Council”) appreciates the opportunity to comment as part of the reopened comment period for the U.S. Department of Labor’s (DOL) proposed changes to its Voluntary Fiduciary Correction Program (VFCP) and the corresponding Prohibited Transaction Exemption (PTE) 2002-51 that provides excise tax relief for certain errors corrected through VFCP.¹ Consistent with our comments submitted on January 20, 2023, in connection with the original comment period, the Council continues to support the self-correction methods under DOL’s proposed amendments to VFCP and PTE 2002-51, as we believe the proposed changes will increase the efficiency and flexibility of VFCP and encourage more employers to voluntarily correct plan errors.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world’s largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

¹ 88 Fed. Reg. 9,408 (Feb. 14, 2023).

DOL SHOULD NOT ADD REPORTING OR OTHER REQUIREMENTS TO SELF-CORRECTED LOANS

The Council has consistently advocated for legislative and regulatory solutions that expand the availability of self-correction, make self-correction more efficient and encourage more employers to self-correct. Accordingly, the Council was very pleased with the changes included in Section 305 of SECURE 2.0 that amend the Internal Revenue Service's (IRS) Employee Plans Compliance Resolution System (EPCRS) so that plans can self-correct all eligible inadvertent failures, including failures related to plan loans. Additionally, the Council supports the provision in SECURE 2.0 that treats any plan loan failure that is self-corrected in accordance with EPCRS as also meeting the requirements of DOL's VFCP.

Although Section 305 of SECURE 2.0 directs DOL to treat any plan loan failure that is self-corrected through EPCRS as also meeting the requirements of VFCP, it also authorizes – but does not require – the U.S. Secretary of Labor to impose reporting or other procedural requirements on parties who intend to rely on VFCP for self-corrected plan loans. The Council does not believe DOL should impose any reporting or procedural requirements in connection with the self-correction of an eligible inadvertent failure relating to a plan loan beyond what is required by EPCRS, as amended by SECURE 2.0. Relevantly, self-correction under EPCRS does not require notification to a regulatory authority. If a plan loan failure is self-corrected so that all parties are put in the position that they would have been had no failure occurred, we do not believe that notice to DOL or other procedural requirements are necessary.

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Thank you for the opportunity to provide our views and suggestions during the reopened comment period. If you have any questions or if we can be of further assistance, please contact me at 202-289-6700 or ldudley@abcstaff.org.

Sincerely,



Lynn D. Dudley

Senior Vice President, Global Retirement and Compensation Policy