

1, 1988. Eligible administrators may avail themselves of the DFVC Program by complying with the filing requirements and paying the civil penalties specified in Section 3 or Section 4, as appropriate, of this Notice.

.02 Eligibility for DFVC Program. The DFVC Program is available only to a plan administrator who complies with each of the requirements of Section 3 or Section 4, as appropriate, of this Notice prior to the date on which the administrator:

(a) is notified in writing, pursuant to 29 CFR 2560.502c-2, of the Department's intention to assess a civil penalty under section 502(c)(2) of ERISA for failure to file a timely annual report; or

(b) is otherwise notified in writing by the Department of a failure to file a timely annual report under Title I of ERISA.

.03 Effective date. The DFVC Program described herein shall be effective April 27, 1995. The Department of Labor intends the DFVC Program to be of indefinite duration; however, the Program may be modified from time to time or terminated in the sole discretion of the Department upon publication of notice in the **Federal Register**.

Section 3—Administrators Filing Annual Reports

.01 Plan administrators electing to file a late Form 5500 Series Annual Report under the DFVC Program shall:

(a) *File with the Internal Revenue Service.* Except as provided in Section 3.02, file a complete Form 5500 or Form 5500-C (but not the Form 5500-R), as appropriate, with all required schedules and attachments, by entering at the top center of the first page of the Form, in red, bold print "DFVC Program" and mailing the complete Form, along with all required schedules and attachments, to the Internal Revenue Service Center designated in the Form 5500 Series instructions. Do *not* send checks paying penalties under the DFVC Program to the Internal Revenue Service Center.

Note: If a joint employer-union board of trustees or committee is the administrator, at least one employer representative and one union representative must sign the Form.

Current forms and instructions can be obtained by dialing 1-800-TAX-FORM (this is a toll-free number). For prior years, obtain the most current form available. If necessary, mark through the year at the top of the first page and enter the appropriate prior year in red bold print.

(b) *File with the U.S. Department of Labor and Pay Applicable Penalty*

Amount. Send a signed and dated copy of the first page of the Form 5500 Series Annual Report filed with the Internal Revenue Service and a check payable to the "U.S. Department of Labor" in the amount of the applicable penalty, as determined under Section 3.03, to: DFVC Program, Pension and Welfare Benefits Administration, P.O. Box 277025, Atlanta, GA 30384-7025.

The items that are required to be sent to the Department pursuant to this Section 3.01(b) (i.e., the completed first page of the Form 5500 Series annual report as well as the check made payable to the U.S. Department of Labor) also should contain the notation, in red, bold print "DFVC Program". The notation should be located at the top center of each item.

.02 A plan administrator who filed a complete Form 5500 Series Annual Report, including all required schedules and attachments, with appropriate Internal Revenue Service Center prior to the effective date of this DFVC Program, but after the due date for the report, shall only be required to comply with the provision of paragraph (b) of Section 3.01 and, therefore, shall not be required to refile the Form 5500 Series Annual Report with the Internal Revenue Service Center solely for purposes of the DFVC Program.

.03 For each annual report filed under this Section 3, the applicable penalty amount shall be determined as follows:

(a) In the case of an annual report which is filed on or before twelve (12) months after the date on which the annual report was due (without regard to any extensions), \$50 per day for each day the annual report is filed after the date on which the annual report was due (without regard to any extensions), up to a maximum of \$2,500 for Form 5500 filers and \$1,000 for Form 5500-C filers; or

(b) In the case of an annual report which is filed more than twelve (12) months after the date on which the annual report was due (without regard to any extensions), \$5,000 for Form 5500 filers and \$2,000 for Form 5500-C filers.

Note: The plan administrator is personally liable for the payment of civil penalties assessed under section 502(c)(2) of ERISA. Therefore, civil penalties, including penalties paid under this DFVC Program, may not be paid from the assets of an employee benefit plan.

.04 Annual reports that are filed with the IRS pursuant to the DFVC Program may be subject to the usual edit checks. Plan administrators will have an opportunity to correct deficiencies, in accordance with the procedures

described in 29 CFR 2560.502c-2. The failure to correct deficiencies in accordance with these procedures may result in the assessment of further penalties.

PWBA has prepared a booklet, "The Trouble-Shooter's Guide To Filing ERISA Annual Reports," to assist in preparing the Form 5500 Series. The booklet explains how forms are processed and how to avoid potential filing errors. Copies are available by written request to: U.S. Department of Labor, Pension and Welfare Benefits Administration, Room N-5656, 200 Constitution Ave. N.W., Washington, D.C. 20210.

Section 4—Administrators Electing To File Statements for Apprenticeship and Training Plans or "Top Hat" Plans

.01 Administrators of apprenticeship and training plans, described in 29 CFR 2520.104-22, and administrators of pension plans for a select group of management or highly compensated employees, described in 29 CFR 2520.104-23(a) ("top hat plans"), who elect to file the applicable statement(s), described in §§ 2520.104-22, and 2520.104-23, respectively, as a condition of relief from the annual reporting requirements may, in lieu of filing any past due annual report and paying otherwise applicable civil penalties, comply with the following filing requirements:

(a) *Send Form and Pay Applicable Penalty Amount to the U.S. Department of Labor.* For purposes of this requirement, plan administrators must complete items 1a-1c, 2a-2c, 5a-5c, 6a or 6b (as applicable) of the first page of the Form 5500 Annual Report and enter at the top center of the Form, in red, bold print, either "Apprenticeship and Training Plan/DFVC Program" or "Top Hat Plan/DFVC Program", as appropriate. For purposes of completing item 5c, the plan number for all top hat plans should be 888, and the plan number for all apprenticeship and training plans should be 999. The plan administrator must sign and date the Form.

Note: If a joint employer-union board of trustees or committee is the administrator, at least one employer representative and one union representative must sign the Form.

Send the first page of the completed Form 5500 Annual Report, and a check payable to the "U.S. Department of Labor" for the applicable penalty amount, as determined under section 4.01(c), to: DFV Program, Pension and Welfare Benefits Administration, P.O. Box 277025, Atlanta, GA 30384-7025.