

The check that is 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 the check.

(b) *File Applicable Statement with the U.S. Department of Labor.* Prepare and file a statement meeting the requirements of §§ 2520.104-22, or 2520.104-23, as appropriate.

The apprenticeship and training plan statement described in § 2520.104-22 must be sent to: Apprenticeship and Training Plan Exemption, Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

The "top hat" statement described in § 2520.104-23 must be sent to: Top Hat Plan Exemption, Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Note: A plan sponsor maintaining more than one "top hat" plan is not required to file a separate statement for each such plan. See § 2520.104-23(b).

(c) *Applicable penalty amount.* For purposes of the statements filed under this Section 4, the applicable penalty amount is \$2,500, without regard to the number of plans maintained by the same plan sponsor for which statements are filed pursuant to Section 4.01(b) and without regard to the number of plan participants covered under such plan or plans.

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.

(d) *Multiple "top hat" plans.* In the case of plan sponsors maintaining more than one pension plan for a select group of management or highly compensated employees described in § 2520.104-23, the plan administrator shall, for purposes of the DFVC Program, be required to send a copy of the first page of the Form 5500, completed in accordance with Section 4.01(a), without regard to the number of such plans maintained by the plan sponsor, provided that each plan maintained by the sponsor is clearly identified on the first page of the Form 5500 or attachment thereto filed with the Department of Labor.

.02 Administrators who have complied with the requirements of this Section 4 shall be considered as having elected compliance with the exemption(s) and/or alternative method of compliance prescribed in §§ 2520.104-22, or 2520.104-23, as appropriate, for all subsequent plan years.

.03 Acceptance by the Department of a filing and penalty payment made pursuant to this Section 4 does not represent a determination by the Department of Labor as to the status of the arrangement as a plan or particular type of plan under Title I or ERISA or a determination by the Department of Labor that the provisions of §§ 2520.104-22, or 2520.104-23 have been satisfied.

Section 5—Waiver of Right to Notice and Abatement of Assessment

.01 Payment of a penalty under the terms of this DFVC Program constitutes a waiver of an administrator's right both to receive notice of assessment under 29 CFR 2560.502c-2 from the Department and to contest the Department's Assessment of the penalty amount. It should also be noted that payment of a penalty under the DFVC Program does not preclude the assessment of non-filing or late-filing penalties by other Federal agencies, including the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

.02 The Internal Revenue Code (Code) and regulations thereunder require information to be filed on the Form 5500 Series Annual Return/Report and provides penalties for failing to timely file. Under the Code, these penalties apply unless it is shown that the failure to timely file is due to reasonable cause. If the late filing of a Form 5500 Series Annual Return/Report required by the Code may be due to reasonable cause, a cover letter, demonstrating that the failure to timely file was due to reasonable cause, should be attached to the completed Form 5500 Series Annual Return/Report that is filed with the IRS.

Signed at Washington, DC, this 24th day of April, 1995.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

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