Voluntary Compliance Guidelines

1. Purpose. EBSA field offices should use these guidelines to promote voluntary compliance (VC) with ERISA.

These guidelines describe situations where it is appropriate to attempt VC without OE approval. They also detail a procedure for securing OE approval for VC efforts and describe acceptable terms of settlement in cases where the RO pursues VC.

2. Review of Guidelines. The field should consult with OE if it is not clear whether VC efforts are appropriate. Please note: OE will periodically review suggestions from the field regarding when VC is appropriate, and update these guidelines accordingly.

3. Delegation of Authority to the Field.

a. RDs have the authority to permit Investigators/Auditors to discuss their findings with plan officials during an investigation, provided that the officials are advised that the matters discussed:

i. Represent only the views of the Investigator/Auditor;

ii. Are subject to review by higher authority; and

iii. EBSA will confirm in writing. While it will be useful to discuss with plan officials their position and intentions to voluntarily correct violations, RO personnel, other than the RD, generally should not propose corrective actions or discuss tentative settlement terms.

b. After consultation with the RD, Investigators/Auditors may discuss with plan Officials a proposal for corrective actions and the civil penalty process at the conclusion of the investigation. The Investigator/Auditor, however, may not discuss specific dollar amounts related to the proposed corrective action or any possible civil penalty. All discussions with plan officials that relate to findings or proposed corrections must be memorialized in writing by the Investigator/Auditor as soon after the discussion as possible. The memorandum should be included in the case file.

c. RDs have the authority to issue all VC notice letters and to close cases if they meet the guidelines in this section.

4. Types of Cases that are Appropriate for VC. Many issues are suitable for VC, although a few exceptions exist as described in paragraphs 5 and 6. Benefit disputes, bonding, reporting, and disclosure issues are generally always suitable for VC.

5. Types of Cases that are NOT Appropriate for VC. For enforcement policy purposes, certain types of cases are not suitable for VC. These include:

a. Cases in which the time for proposed correction of violations will exceed one year, unless approved in advance by OE.

b. Civil cases in which the violations involve potential fraud or criminal misconduct by a person or entity with respect to dealings with a plan. An exception to this general rule is that the RO may pursue VC if the appropriate USA agrees in writing to a civil settlement. If the RD does not have a written agreement from the USA, he or she should confirm the agreement in a letter to the USA.

c. Cases which may warrant removing a fiduciary or a related entity. Such cases will generally require legal action. If appropriate, other issues other than removal may settle through VC.

6. Types of Cases in Which VC May Not Be Appropriate. VC may also not be suitable in cases involving:

a. Novel or interpretive legal issues;

b. Complex fiduciary violations or complex part 7 violations; or

c. Individuals previously determined to have violated ERISA or other federal statutes.

It is important to remember that these are general guidelines. In selecting a course of correction, the RD should weigh the presence or absence of each of the factors as well as the applicable civil penalties and make a case-by-case determination. ROs should consult with OE when in doubt.

7. Regional Office Action before Pursuing VC. The RD is responsible for ensuring that matters pursued through VC meet the guidelines in this section. Further, the RD must ensure fully documented violations and that the positions taken in the VC notice letter is appropriate. RDs have the discretion to decide on the method to accomplishing these guidelines.

If the RO needs help in determining the proper disposition of a case, it should refer the matter to OE. The RD may choose to make these referrals via telephone consultation or a detailed memorandum. In the latter case, the memorandum should include a proposed VC letter.

8. VC Notice Letter.

a. **VC Notice Letter - General**. A VC notice letter advises plan fiduciaries or others of the results of an investigation, including the ERISA violations, and requests corrective action. The letter does not threaten litigation (Figure 1).

i. **502(i)**. If the RD believes that VC is possible, and a 502(i) civil penalty is assessable, the RD should discuss the case with OE before issuing a VC notice letter. Figure 1 provides language to preserve the Department's ability to assess the 502(i) civil penalty in cases where a VC notice letter precedes the assessment of the penalty. OE

issues 502(i) assessment letters. See Penalties, Figure 1 for an example of a 502(i) assessment letter.

ii. **502(l)**. RO should add ERISA section 502(l) language to any VC notice letter which: (1) is addressed to a fiduciary with respect to the plan or to a knowing participant in a fiduciary breach, (2) involves a violation of part 4 of Title I of ERISA, and (3) contemplates a monetary recovery to the plan (Figure 1).

b. **VC Notice Letter – Part 7 Violations.** VC letters and modified closing letters should advise fiduciaries in writing of findings of part 7 violations. RO should discuss exceptions to this practice with OE.

c. **Interim Correspondence**. All VC notice letters issued containing ERISA section 502(i) or 502(l) language, and interim correspondence should include language that preserves the Department's ability to assess the civil penalties. Figure 1 provides sample language to preserve the penalty.

9. <u>Acceptable VC Settlement Terms</u>.

a. The RO may confer with OE before accepting terms requiring that:

i. Repayment to the plan must be made over a period of no longer than one year.[1] In instances in which the statute of limitations will toll before the terms of the settlement agreement are completed, the RO must obtain a tolling agreement, which expires six months after the repayment period terminates;

ii. Interest on repayments should be at appropriate rates;

iii. All notes must be adequately secured; and

iv. ROs should seek some form of commitment for future compliance. If future compliance is not part of the settlement terms, the RO will determine if further action is appropriate, and may include discussions with OE and SOL.

b. Recovery, for VC and 502(l) purposes, includes amounts paid to the plan that represent losses incurred by the plan, disgorged profits, and amounts required to achieve correction. This amount will be determined as a part of the "settlement agreement" with the party.

c. At the RD's discretion, the RO can consult with OE in cases involving a final written settlement agreement, including the monetary settlement of a 502(l) civil penalty, prior to signature by the Department representative. When the RO seeks guidance from OE related to the assessment of a 502(l) penalty, the following documentation should be included:

i. A copy of the draft 502(l) assessment letter. The RO should use the Penalties Figure 2 as a model for 502(l) civil penalty assessment letters. In situations where consent

decrees have been executed, the RO can issue a modified assessment letter (See Penalties Figure 3);

ii. A worksheet indicating how the RO determined the applicable recovery amount and the 502(l) penalty computed;

iii. Proof that payment of the applicable recovery amount was actually made to the plan;

iv. A copy of the Settlement Agreement; and

v. A copy of the VC notice letter and all subsequent correspondence.

10. Prohibited Transaction Class Exemption 94-71. Prohibited Transaction Class Exemption 94-71 (PTE 94-71) [59 FR 51216 (October 7, 1994)] (Figure 2) applies to certain prospective transactions involving employee benefit plans and parties in interest where such transactions are specifically authorized by the Department pursuant to a settlement agreement. The exemption provides relief for a prohibited transaction entered into by plan fiduciaries as part of voluntary action taken to avoid litigation with the Department following an investigation. The exemption covers transactions that would otherwise violate ERISA §§406(a)(1)(A) – (D), 406(a)(2), 406(b)(1) and 406(b)(2). The Department must describe in a written settlement agreement, the transactions or activities which resulted from an investigation of a plan. EBSA must give affected participants and beneficiaries advance notice of the proposed transaction at least 30 days prior to the execution of the settlement agreement. PTE 94-71 does not serve as a retroactive exemption for transactions that are in progress or have already occurred at the time of settlement with the Department.

PTE 94-71 is similar in form and purpose to PTE 79-15 that provides exemptive relief in certain transactions authorized or required by judicial order or by a judicially approved settlement decree where the Department or the Internal Revenue Service has been a party to the litigation. The underlying reason for both exemptions is to facilitate the settlement process by eliminating the need for an individual exemption. The exemption does not provide exemptive relief for the underlying violation, but only for the corrective action. Accordingly, ERISA section 502 penalties and IRS excise taxes remain applicable.

a. **Relief Provided**. PTE 94-71 provides relief for prospective prohibited transactions or activities involving employee benefit plans which are:

i. Specifically authorized by the Department, after conducting an investigation, in accordance with the VC guidelines found in this section of the Manual;[2]

ii. Described in a written settlement agreement which specifically details the nature of the transaction to be entered into, and to which the Department is a party, following the Department's investigation; and,

iii. Described in notices which must be given to the affected participants and beneficiaries by the party who will be engaging in the transaction or activity, at least 30 days prior to the execution of the settlement agreement.

b. **Types of Prospective Transactions Covered Without OE Approval**. PTE 94-71 contemplates certain transactions for exemptive relief, typically transactions that involve sales of property (real or personal) between a plan and a party in interest.

c. **Types of Prospective Transactions Requiring OE Approval**. Authorization for the following sale and loan transactions require prior OE approval:

i. Any transaction described in the VC Guidelines of this Manual section, which requires approval of OE.

ii. Any transaction that by amount or the type of non-cash assets does not have a clear relationship to the transaction that the RO has determined violates Title I of ERISA.

iii. All transactions or activities that will exceed one year before completion.

d. **Safeguards and Conditions**. In negotiating the terms of an otherwise prohibited transaction or activity to be authorized by EBSA, you must meet the following conditions.

i. For transactions that involve the sale of property (real or personal), securities, promissory notes, or interest in limited partnerships between a plan and a party in interest, a relevant, third party source independent of all parties who have an interest in the settlement agreement, must determine the value of the asset to be sold. Without prior approval from OE, any parties who are the subject of an EBSA investigation or a defendant in a current ERISA-related legal action taken by the Secretary should not determine valuations.

ii. The plan may not pay any fees or commissions in connection with the transaction.

iii. For transactions involving the sale of a promissory note to a party in interest, the plan should receive the greater of: (1) the fair market value of the note; or (2) the outstanding balance of the note plus accrued interest.

iv. In the case of a sale or transaction involving the extension of credit to a party in interest, the plan should receive a rate of interest reflecting market rates for similar transactions. In addition, an adequately secured promissory note should guarantee such repayment.

v. The RO authorizing the transaction or activity will monitor the transaction or activity to ensure the transaction terms met.

vi. The RO must determine that the transaction or activity is in the interest of the participants and beneficiaries of the plan, and is otherwise appropriate as part of the settlement of issues raised by the investigation.

e. **Settlement Agreement**. The settlement agreement pursuant to PTE 94-71 (Figure 3), is an agreement between the Department and a party or parties which addresses the transactions or activities. The exemption provides relief for corrective transactions specifically described in the settlement agreement which would otherwise violate sections 406(a)(1)(A) through (D), 406(a)(2), 406(b)(1) and 406(b)(2) of ERISA for transactions that are in the interest of the plan but would be prohibited. The Department must specifically agree to these transactions as part of a settlement of the issues raised in the VC letter. The settlement agreement shall contain language to protect the Department's right to pursue other issues raised in the VC letters, including the imposition of civil penalties assessed on the underlying transaction addressed in the settlement agreement.

f. **Notice to Participants/Beneficiaries**. The notice requirements to participants/beneficiaries specifically provide that EBSA must give affected participants and beneficiaries notice of the proposed transaction(s) and the opportunity to comment on the proposed transaction(s) (Figure 4).

The written notice must meet the following conditions:

i. The RO that negotiated the settlement agreement must approve the written notice and the method of distribution in advance.

ii. The written notice must contain an objective description of the transaction or activity; the approximate date on which the transaction or activity will occur; the address of the RO which negotiated the settlement agreement; and a statement apprising participants and beneficiaries of their right to forward their comments to the field office. The notice to participants and beneficiaries should include a statement that the Department will keep the identity of commenters confidential, as permitted by law. Commenters, however, may elect to submit information anonymously.

iii. The Department must use a method, to furnish notice to interested persons that would reasonably ensure that interested persons will receive the notice. In all cases, delivery in person and delivery by first class mail to the party's last known address will be considered reasonable methods of furnishing notice.[3]

iv. Affected participants and beneficiaries must receive the written notice at least 30 days prior to the execution of the settlement agreement by the applicant seeking the prospective exemptive relief.

g. **ERISA Section 502 Civil Penalties and Excise Tax**. Granting an exemption will not affect the liability of any persons for the payment of any civil penalties imposed on applicable recovery amounts under ERISA section 502 attributing to the underlying violation (see Penalties). The parties to the alleged violation(s) will also remain liable for any excise taxes

owing under section 4975(a) and (b) of the Internal Revenue Code with respect to transactions or activities cited in the VC letter as prohibited under section 406 of ERISA.

11. 502(l) Settlement Agreements. A settlement agreement, pursuant to the Department's proposed regulation 29 CFR 2560.502l-1(e), is defined as an agreement between the Secretary and a person who the Secretary alleges to have committed a breach of fiduciary responsibility under, or other violation of any provision of, part 4 of Title I of ERISA pursuant to which a claim for such breach or violation is to be released by the Secretary in return for cash or other property being tendered to a plan, any participant or beneficiary of a plan, or the legal representative(s) of a plan or plan participant or beneficiary.

Settlement Agreement No. 1 (Figure 5) provides a written acknowledgement of both the agreed-upon correction amount and the amount of the 502(l) penalty assessment Settlement Agreement. No. 2 (Figure 6) also sets forth the agreed-upon correction amount, but preserves the right of the violator to contest the assessment of the 502(l) penalty and to petition the Secretary for a waiver or reduction of the civil penalty.

12. Procedures for Assessing the 502(l) Penalty. When the RO effects a settlement agreement, the RO should prepare and issue a 502(l) assessment letter.

The regulations require that the assessment letter contain the following information:

a. A brief factual description of the violation for which the assessment is being made;

b. The identity of the person being assessed;

c. The amount of the assessment; and

d. The basis for assessing that particular person that particular penalty amount. (See Penalties)

13. Types of Closing Letters. When the RO determines that there is no further action with regard to a case, it should issue a closing letter. In instances when the Regional Director determines that it is not advisable to send a closing letter, there is a file note explaining the reason for the decision. The RO also notifies OE of the decision not to issue a closing letter. The following are types of closing letters issued in the instances described.

a. **Closing Letter – No ERISA Violation Detected**. RO should issue a pattern-closing letter in all cases in which there are not detected violations (Figure 7).

b. **Closing Letter - No Action Warranted**. In some instances, it will be appropriate to issue a closing letter other than the pattern-closing letter (Figure 8). This letter would be appropriate and would be authorized only if there is no evidence of willful misconduct and one of the following criteria is satisfied:

i. The violations are **de minimis**; or

ii. There are no actual or potential monetary damages to the plan.

This letter is appropriate when, e.g., an investigation identifies a corrected prohibited transaction reversed with no harm to the plan, or a plan failed to submit an accountant's opinion for a particular year but submitted one for all subsequent years. The closing letter should reflect unresolved reporting matters and the referral to OCA.

c. **Closing Letter - Compliance Achieved**. The RO will issue a closing letter (Figure 9) after issuing a VC notice letter, corrective action confirmed, and applicable penalties paid or the payment period has expired. In addition, RO may adapt (Figure 8) for use in situations where violations (1) previously discussed with plan officials at the conclusion of an investigation; (2) confirmed by the RD; and (3) corrected by the plan officials pursuant to the discussions. Because there is not a prior notice letter under these circumstances, the closing letter must detail the violations as well as the specific corrective actions agreed to by the plan officials including 502(l) and 502(i) matters. Also RO may further modify (Figure 6) and use in instances where penalties assessed have not been paid by the end of the payment period,

d. **Closing Letter - Referral to the IRS**. In certain situations where there is no attempt at VC, and when the facts and issues do not appear to justify the commitment of EBSA resources, it may be appropriate to refer a case to the IRS for possible imposition of excise taxes. In cases where the RO determines that such a referral is appropriate, the RO will notify the plan by a closing letter (Figure 10). Closing letters should reflect unresolved reporting matters and their referral to OCA.

e. **Closing Letter - Compliance Not Achieved**. This closing letter will be issued after a VC notice letter has been sent to plan fiduciaries and those fiduciaries have denied the facts disclosed in the investigation, have admitted the facts but deny the facts constitute a violation of ERISA, or have otherwise failed to comply with the terms of our notice letter (Figure 11). RO will use this letter only in situations in which the RO contemplates no further enforcement action, and after consideration of all possible courses of action. Closing letters should reflect unresolved reporting matters and their referral to OCA.

f. **Modified Closing Letters**. While RO generally issue VC letters prior to correction, sometimes plan officials may correct a violation prior to receiving such a letter. In this situation, it is important that the closing letter (Closing Letter – Compliance Achieved) include the same information that is normally included in the VC letter. The Modified Closing Letter should set forth the facts gathered during the investigation, including the plan fiduciaries and parties in interest involved (if any), and identify the ERISA provisions violated.

14. <u>Action to be Taken When VC Attempts Prove Unsuccessful in Whole or in Part</u>.

a. In all cases where VC attempts prove unsuccessful in whole or in part, the RO must consider all possible courses of action within its delegated authority for resolving or closing

the case. In the event the RO believes that the case merits litigation, the RO should refer the case to OE or to the RSOL, as appropriate.

b. ROs may also send cases to OE for guidance on appropriate action to pursue, which may include referral to SOL, referral to DOJ, referral to the IRS for the imposition of an excise tax, assessment of the 502(i) civil penalty, or closing. In cases where there is partial compliance and the 502(l) civil penalty is applicable, the RO shall assess the penalty on the applicable recovery amount.

c. In appropriate cases where VC is not achieved, consideration should be given to disclosing the results of the investigation to affected parties, e.g., by sending them a copy of the closing letter. If the case was opened predicated on a participant, beneficiary or fiduciary complaint with respect to the plan, disclosure may be made to that person, unless the information to be disclosed was obtained pursuant to Rule 6(e), Federal Rules of Criminal Procedure, section 6103 of the IRC, the Department's agreement with the Federal Financial Institution Regulatory Agencies, or from some other source requiring confidentiality (see Release of Information).

d. In instances when reporting violations pursuant to part 1 of ERISA remain non-compliant, the RO refers those issues to OCA (see item 13.b. of this section). If the RO refers issues to OCA prior to closing the investigation, the RO should indicate the status of the investigation at the time of the referral so that OCA can coordinate its review with other enforcement actions. It is particularly important to notify OCA when an independent fiduciary is appointed, and the identification of a possible reporting violation.

15. Duration of VC Negotiations. RO should conduct VC negotiations within a reasonable period. While the length of the process will vary according to the circumstances of the particular investigation and the parties involved, generally there should be no lengthy lapses between initiation of VC efforts and conclusion of any negotiations regarding compliance (although the corrective action may occur over a more extended period). RO should exercise special care to avoid undue delay when the investigation is likely a referral for litigation if the VC process proves unsuccessful.

16. SBREFA Notice. In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Small Business Regulatory Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small businesses. If a small business wishes to comment on the enforcement actions of EBSA, it may call 1.888.REG-FAIR (1.888.734.3247) or write to the Ombudsman at 409 3rd Street SW, MC 2120, Washington, DC 20416.
Notice of the right to comment to the SBREFA Ombudsman will be provided by copy of the EBSA Customer Service Standards pamphlet to all plan sponsors, plans, or plan service providers with fewer than 100 participants or employees during the course of ERISA Title I civil investigations. EBSA RDs have discretion regarding the timing of the delivery of the

pamphlet/notice on a case-by-case basis. The case file must reflect appropriate documentation of the SBREFA notice.

The right to file a comment with the Ombudsman does not affect EBSA's authority to enforce or otherwise seek compliance with ERISA. The filing of a comment by a small business with the Ombudsman is not a substitute for complying with an EBSA subpoena or addressing EBSA's proposed corrective action in a timely manner to protect business' interests.

(Figure 1)
Sample VC Notice Letter

DATE

RECIPIENT
1111 ABC St.
City, ST 00000

Re: NAME OF PLAN
Case Number 00-000000 (00)

You may have violated provisions of the Employee Retirement Income Security Act by loaning money to a party in interest. You will remain in violation until you:

- Restore the money loaned to the Plan, and
- Send us documentation to confirm that you have done so.

Please contact the U.S. Department of Labor by DATEOFLETTER+10 to discuss how you plan to correct these violations, restore losses to the NAME OF PLAN, and ensure future compliance. You may contact us using the information above, or email INVESTIGATOR at last.first@dol.gov.

Dear _____:

The Department of Labor has conducted its investigation of the XYZ Plan and of your activities as its trustee. Based on the information reviewed so far, we have concluded that, as trustee, you may have violated several provisions of the Employee Retirement Income Security Act (ERISA). The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines whether and how to proceed.

What We Found

As we understand the facts, Mr. Smith is a trustee and participant in the Plan. As a trustee and participant in the Plan, Mr. Smith is a fiduciary and party in interest to the Plan.[1]

On December 1, 2005, the Plan loaned $25,000 to Mr. Smith. This loan is unsecured and bears an interest rate of 5 percent. It is our view that this loan violates ERISA sections 406(a)(1)(B) and 406(b)(1), which prohibit fiduciaries from self-dealing.[2]

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[1] See ERISA § 3(21) and 3(14).
[2] See ERISA § 406(a)(1)(B) and 406(b)(1).

In addition, our investigation has disclosed that (outline additional facts and violations as above).

Additional information may lead us to revise our views, but for the reasons cited above, **we have concluded that you are in violation of ERISA and will remain so as long as the loan in question remains outstanding.**

Next Steps

We are providing this information to help you evaluate your obligations as a fiduciary within the meaning of ERISA. Please contact us by DATEOFLETTER+10 to discuss how you plan to correct these violations, restore losses to the Plan, and achieve future compliance.

Additional Notes

The Secretary of Labor must assess a civil penalty (equal to 20 percent of the amount recovered under a settlement agreement or court order) against a fiduciary that breaches a fiduciary responsibility or otherwise violates ERISA Title I part 4.[3] If you correct these actions based on a settlement agreement with the Department, we will close the investigation without further action except for the civil penalty described above, and will not file suit with regard to these issues.

If you do not correct these actions, we may refer the matter to the Office of the Solicitor of Labor for possible legal action. Please note that even if the Secretary of Labor decided not to take legal action, other parties – including plan fiduciaries, participants, and beneficiaries – could still do so. The Secretary is authorized to furnish information to "any person actually affected by any matter which the subject "of an ERISA investigation.[4] If you take corrective action that is not pursuant to a settlement agreement with the Department, it will not grant, expressly or by implication, a release of any claims that the Secretary still might assert in the future.

The Department is speaking only for itself and only with regard to the issues discussed above. We have no authority to restrain any third party or any other governmental agency from taking further action.

Sincerely,

NAME

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[3] See ERISA § 502(l). Please note: The Department may, in its sole discretion, waive or reduce the penalty in conjunction with a settlement agreement:

- if it determines in writing that the fiduciary or knowing participant in the breach acted reasonably and in good faith, or
- if it is reasonable to expect that the fiduciary or knowing participant will not be able to restore all losses to the plan without severe financial hardship unless such waiver or reduction is granted.

You may direct a petition for a waiver or reduction of the civil penalty to an EBSA Regional Office following the procedure set forth in 29 CFR 2570.80-88.
In situations where there are 502(i) issues, add the following sentence: [The Department may assess a civil penalty under 502(i) of ERISA.]

[4] See ERISA §504(a).

(Figure 2)

Department Of Labor

Employee Benefits Security Administration
[Prohibited Transaction Exemption 94-71; Application No. D-9484]

Grant of Class Exemption to Permit Certain Transactions Authorized Pursuant to Settlement Agreements between the U.S. Department of Labor and Plans

Agency: Employee Benefits Security Administration

Action: Grant of Class Exemption

Summary: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The class exemption applies to certain prospective transactions involving employee benefit plans where such transactions are specifically authorized by the Department pursuant to a settlement agreement. The exemption affects plans, participants and beneficiaries of such plans, and certain individuals engaging in such transactions or activities.

For further information contact: [Insert Office Point of Contact], Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor 202.693.XXXX (not a toll-free number); or [Insert Office Point of Contact], Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor 202.693.XXXX (not a toll-free number).[1]

Supplementary Information: On May 27, 1994, the Department of Labor (the Department) published a notice in the Federal Register (59 FR 27581) of the pendency of a proposed class exemption from the restrictions of section 406(a)(1)(A) through (D), 406(a)(2), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code.

The Department proposed the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

The Notice gave interested persons an opportunity to submit written comments or requests for a hearing on the proposed exemption to the Department. No public comments and no requests for a public hearing with respect to the proposed class exemption were received by the Department. Upon consideration of the record as a whole, the Department had determined to grant the class exemption as proposed.

[1] For questions, please call 202-693-8564.

General Information

The attention of interested persons is directed to the following:

1. The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not expressly apply and the general fiduciary responsibility provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. This exemption does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.
2. The exemption will not extend to transactions prohibited under section 406(b)(3) of ERISA and section 4975(c)(1)(F) of the Code.
3. In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of plans and of their participants and beneficiaries and protective of the rights of the participants and beneficiaries of such plans.
4. The exemption is supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.
5. The exemption is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

Effective as of October 7, 1994, the restrictions of section 406(a)(1)(A) through (D), 406(a)(2), 406(b)(1) and 40b(b)(2) of ERISA and the taxes imposed by section 4975(a) and 4975(b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a transaction or activity which is authorized, prior to the occurrence of such transaction or activity, by a settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department under the authority of section 504(a) of ERISA provided that:

a. The nature of such transaction or activity is specifically described in writing, by the terms of such settlement agreement.
b. The Department of Labor is party to the settlement agreement.
c. A party who will be engaging in the transaction or activity has provided written notice to the affected participants and beneficiaries in a manner that is reasonably calculated to result in the receipt of such notice at least 30 days prior to entry into the settlement agreement.

d. A copy of the notice and the method of distribution is approved in advance by the area or district office of the Department which negotiated the settlement.
e. The notice includes an objective description of the transaction or activity, the approximate date on which the transaction will occur, the address of the area or district office of the Department which negotiated the settlement agreement, and a statement apprising the participants and beneficiaries of their right to forward their comments to such office.

Signed at Washington, DC, this 30th day of September 1994.

Alan D. Lebowitz
Deputy Assistant Secretary of Program Operations
Employee Benefits Security Administration
U.S. Department of Labor

(Figure 3)
Settlement Agreement

This Agreement, entered into by and between the United States Department of Labor, Employee Benefits Security Administration (EBSA) and the [Trustee ("the Trustee")] of the _____ ("the Plan") shall fully resolve and settle between these parties the following issues:

[Description of Transaction]

No other issues or violations cited in the [date] letter to the Trustee are subject to the terms of this agreement.

Having received the [date] letter, the Trustee has entered into negotiations with EBSA, and the parties have made the following representations:

1. EBSA continues to believe that the above-described transaction(s) violate ERISA Sections [provide relevant sections].
2. The Plan continues to [state violative actions].
3. _____ is a party in interest to the plan under section 3(14) of ERISA.
4. The Trustee proposes to correct this violation(s) by [state corrective action], hereinafter referred to as "the Correction."
5. The Plan will pay no fees or commissions incurred in connection with the Correction.
6. _____ is willing to [state activity].
7. The Correction would constitute a prohibited transaction under Section 406 or 407 of ERISA.
8. Written notice of the Correction was provided to the Plans' participants and beneficiaries by [describe the method of delivery]. This notice advised the affected plan participants and beneficiaries of their right to forward comments on the Correction to EBSA. This Agreement as Exhibit _____incorporates a copy of such written notice. (Figure 6)
9. EBSA is required to assess a civil penalty of twenty percent (20%) on amounts recovered pursuant to a settlement agreement or court order ("applicable recovery amount"), pursuant to ERISA section 502(l)(2), 29 U.S.C. Section 1132(1)(2).
10. The Trustee reserves all rights to contest the assessment and calculation of the civil penalty under ERISA Section 502(l), 29 U.S.C. Section 1132(l), and to petition the Secretary of Labor for a waiver or reduction of such civil penalty.
11. This Agreement is not binding on any governmental agency other than the U.S. Department of Labor.
12. This settlement agreement is limited to the transactions corrected by the previously described Correction. This agreement shall not affect, in any manner, or for any purpose, the Secretary's claims with respect to any other issues, nor shall it affect the relief obtainable by the Secretary on these issues. Further, the Department notes that this settlement agreement does not provide relief from any penalties that the Department or the Internal Revenue Service may impose on the underlying transactions or activities cited as violations by the Department.

Now, in consideration of such representations [the Trustees] and EBSA agree as follows:

I. _____ will [describe activity].

II. The Trustees shall provide to EBSA evidence of the Correction deemed sufficient by EBSA to ensure that the terms of this Agreement have been fulfilled.

III. EBSA will take no further enforcement action with respect to the Plan's underlying violation which is the subject of this settlement agreement other than the imposition of any relevant civil penalties under ERISA section 502(l), 29 U.S.C. Section 1132(l). In the event that the

representations made by the trustees in paragraphs 2, 4, 6, and 8 of this Agreement are not true and correct, then this Agreement is voidable at the election of the Department of Labor.

IV. The Correction is provided exemptive relief under PTE 94-71.

V. Each of the signatories below hereby represents that he or she is authorized and entitled to sign on behalf of the parties hereto.

Dated this _____ day of _____,

20_____.

For: _____

By:_____

For: The United States Department of Labor, Employee Benefits Security Administration

By: _____

Regional Director

(Figure 4)
Sample PTE 94-71 Notice to Affected Parties

You are hereby notified that the United States Department of Labor plans to enter into a settlement with [insert name of parties]. The settlement contemplates a proposed [insert description of transaction requiring exemptive relief under PTE 94-71]. As a participant or beneficiary of the plan, you are hereby provided the following information with respect to the proposed transaction (the Proposed Transaction).

1. In order to resolve this matter, [insert case-specific information relating to corrected transaction];
2. As a person who may be affected by the Proposed Transaction, you have the right to submit comments on the Proposed Transaction to the U.S. Department of Labor. Comments concerning the Proposed Transaction, which may be sent anonymously, should be addressed to: United States Department of Labor, Employee Benefits Security Administration, [insert Regional Office Address].
3. If the settlement agreement is finalized, the Proposed Transaction will occur on or about [insert approximate date].

(Figure 5)
Settlement Agreement No. 1

This Agreement, entered into by and between the United States Department of Labor, Employee Benefits Security Administration (EBSA) and _____, shall fully and finally resolve and settle the issues between the parties that were raised by EBSA in its letter to _____ dated _____ and which are set forth as follows: (Briefly describe issues.)

Whereas, in connection with this Agreement, _____ has agreed to pay $X to the _____ Plan (the plan);

Whereas, EBSA is required to assess a civil penalty of twenty percent (20%) on amounts recovered under a settlement agreement or court order ("applicable recovery amount"), pursuant to ERISA section 502(l)(2), 29 U.S.C. section 1132(l)(2);

Whereas, EBSA has determined that the applicable recovery amount within the meaning of ERISA section 502(l), 29 U.S.C. section 1132(l) is $Y;

Whereas, this Agreement is not binding on any governmental agency other than the United States Department of Labor.

Therefore, in consideration of these mutual undertakings and understandings, EBSA and _____ agree as follows:

1. _____ shall, within _____ days of the signing of this Agreement, pay $X to the Plan.
2. Upon payment of $X to the Plan pursuant to this Agreement EBSA will assess a penalty of twenty percent (20%) of the applicable recovery amount, pursuant to ERISA section 502(l)(2), 29 U.S.C. section 1132(l)(2); said penalty amount to be paid will be $Y, which represents 20% of the portion of the applicable recovery amount.
3. Within ten (10) days of receipt of EBSA's assessment letter, _____ shall pay said penalty as directed in the letter from EBSA's authorized representative.
4. (Other relief, if any, agreed to between the parties.)
5. Each of the signatories below hereby represents that he or she is authorized and entitled to sign on behalf of each of the parties hereto.

Dated this _____ day of _____,
20_____.

For

By:

For: The United States Department of Labor, Employee Benefits Security Administration

By:

Regional Director

(Figure 6)
Settlement Agreement No. 2

This Agreement, entered into by and between the United States Department of Labor, Employee Benefits Security Administration (EBSA), and _____, with the exception of issues concerning the assessment of a civil penalty under ERISA section 502(l), 29 U.S.C. section 1132(l), shall fully and finally resolve and settle the issues between the parties that were raised by EBSA in its letter to _____, dated _____, and which are set forth as follows:

(Briefly describe issues.)

Whereas, in connection with this Agreement, _____ has agreed to pay $X to the _____ Plan (the Plan);

Whereas, EBSA maintains that it is required to assess a civil penalty of twenty percent (20%) on amounts recovered under a settlement agreement or court order ("applicable recovery amount"), pursuant to ERISA section 502(l)(2), 29 U.S.C. section 1132(l)(2);

Whereas, _____ reserves all rights to contest the assessment and calculation of the civil penalty under ERISA section 502(l), 29 U.S.C. section 1132(l), and to petition the Secretary of Labor for a waiver or reduction of the civil penalty;

Whereas, this Agreement is not binding on any governmental agency other than the United States Department of Labor.

Therefore, in consideration of these mutual undertakings and understandings, EBSA and _____ agree as follows:

1. _____ shall, within _____ days of the signing of this Agreement, pay $X to the Plan.
2. Each of the signatories below hereby represents that he or she is authorized and entitled to sign on behalf of each of the parties hereto.

Dated this _____ day of , 20 _____.

For _____

By:

For: The United States Department of Labor, Employee Benefit Security Administration

By:

Regional Director

(Figure 7)
Sample Pattern Closing Letter
No ERISA Violations Detected

DATE

RECIPIENT
1111 ABC St.
City, ST 00000

Re: NAME OF PLAN
Case Number 00-000000 (00)

Dear (Plan Administrator/Fiduciary):

We have concluded our limited investigation of (name of plan) under the Employee Retirement Income Security Act (ERISA). We plan to take no further action at this time.

Please note that the Department's findings or absence of findings, including the absence of findings regarding any specific provision of the Plan, do not bind the Department in:

- reviewing or investigating any other employee benefit plan, service provider, or
- a subsequent or further review of the Plan regarding issues not raised by this investigation.

Our decision is binding on the Department only. It does not prevent another individual or governmental agency from taking action.

Thanks for your cooperation.

Sincerely,

Regional Director
Enclosure: SBREFA Notice[1]
cc: OE
File

[1] Include when subject of investigation is a plan, or other business entity, with fewer than 100 participants or employees and when the notice has not been provided previously.

(Figure 8)
Sample Closing Letter
No Action Warranted
This closing letter should not be used in a 502(l) or 502(i) situation

[heading]

Dear:

The Department of Labor (the Department) has responsibility for administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as XYZ Plan (Plan).

This office has concluded its investigation of the Plan and of your activities as its trustee. Based on the facts gathered during this investigation, and subject to the possibility that additional information may lead us to revise our views, it appears that, as trustee, you may have breached your fiduciary obligations to the Plan and have violated several provisions of ERISA. The purpose of this letter is to advise you of our findings.

As we understand the facts, many of which you provided to this office during the course of our investigation, on December 1, 2005, the Plan loaned $500 to the XYZ Company, which is the plan sponsor and thus a party in interest to the Plan within the meaning of ERISA section 3(14). This loan was repaid on December 15, 2005. It is our view that this loan violates ERISA section 406(a)(1)(B), which provides:

406(a)(1)

A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect-

(B) lending of money or other extension of credit between the plan and a party in interest;

In addition our investigation has disclosed that (outline additional violations as above).

[With the exception of the reporting violations noted above,][1] We have concluded that further action is not warranted at this time. You are cautioned, however, to refrain from such conduct in the future.

Please be further advised that the resolution of this matter is limited to the specific issues reviewed in the current investigation of the Plan. The Department's findings or absence of findings, including the absence of findings regarding any specific provision of the Plan, shall not bind the Department in the review or investigation of any other employee benefit plan, any service provider, or a subsequent review of the Plan regarding issues not raised by this investigation. You are further cautioned that this notice addresses only the issues described above. You must also be aware that the responsibility for the acceptance or rejection of any Annual Report (Form 5500) or any part thereof is delegated to the EBSA Office of the Chief

[1] This introduction should be used when reporting violations were identified during the investigation.

Accountant (OCA). [The final decision whether the reporting violations described above have been adequately corrected will be made by the OCA pursuant to the federal regulations set forth at 29 C.F.R. 2570.61 et seq. Accordingly, the reporting issues will be referred to the OCA for whatever action they deem appropriate.]

You must understand that the Department's decision is binding on the Department only and only concerns the matters discussed above. Any other individual or governmental agency remains free to take whatever action it may deem appropriate.

[In addition, there is an excise tax on disqualified people (generally, the same as parties in interest under Title I of ERISA) who engage in prohibited transactions with employee retirement benefit plans. In general, this excise tax, which the Internal Revenue Service administers and enforces, applies in two steps:

1. a first level tax equal to 15 percent of the amount involved in the transaction for each taxable year during which the transaction is outstanding, and
2. a second level tax, equal to 100 percent of the amount involved if the transaction is not corrected.

You must pay the excise tax when you file Form 5330 with the Internal Revenue Service.

Please also note that ERISA requires the Secretary of Labor to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred.[2] Accordingly, we will refer this matter to the Internal Revenue Service.]

We hope this letter will be helpful to you in the execution of your fiduciary duties.

Sincerely,

Regional Director

Enclosures:

Filing information on the Form 5330

SBREFA Notice[3]

[2] See ERISA §3003(c), 29 USC §1203(c).

[3] Include when subject of investigation is a plan, or business entity, with fewer than 100 participants or employees and when the notice has not been provided previously.

(Figure 9)
Sample Closing Letter Corrective Action Taken

[heading]

Dear :

We have received your letter dated _____ concerning the _____ Plan which was in response to our letter dated _____.

We have concluded our investigation of the XYZ Plan and of your activities as its trustee. Based on the facts reviewed to date, we have concluded that, as a trustee, you breached your fiduciary obligations to the Plan and violated several provisions of the Employee Retirement Income Security Act (ERISA).

Our previous letter detailed the specific actions you took which we believe violated ERISA. In your letter dated _____, you confirm those facts. It is our understanding that you have taken corrective actions with respect to the specific violations detailed in my DATE letter. Specifically, you:

- (detail actions taken)
- etc.

Because you have taken the corrective action described above, the Department of Labor is closing its investigation. We caution you to refrain from the conduct identified, above, as violating ERISA in the future.

While we are closing the case, the Department has not released any claims that the Secretary might assert in the future, and the decision to close this case does not prevent the Department or any other individual or governmental agency from taking any further action it may deem appropriate with respect to these or other matters.

The Department's findings or absence of findings, including the absence of findings regarding any specific provision of the Plan, do not bind the Department in:

- reviewing or investigating any other employee benefit plan, service provider, or
- a subsequent or further review of the Plan or the conduct that was the subject of this investigation.

Please note that EBSA's Office of the Chief Accountant is responsible for accepting or rejecting any Annual Report (Form 5500) in whole or in part. [The Office of the Chief Accountant will make the final decision concerning the adequacy of any Annual Report or any part thereof pursuant to the federal regulations set forth at 29 C.F.R. 2570.61 et seq.]

[In addition, there is an excise tax on disqualified people (generally, the same as parties in interest under Title I of ERISA) who engage in prohibited transactions with employee retirement

benefit plans. In general, this excise tax, which the Internal Revenue Service administers and enforces, applies in two steps:

1. a first level tax equal to 15 percent of the amount involved in the transaction for each taxable year during which the transaction is outstanding, and
2. a second level tax, equal to 100 percent of the amount involved if the transaction is not corrected.

You must pay the excise tax when you file Form 5330 with the Internal Revenue Service.

Please also note that ERISA requires the Secretary of Labor to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred.[1] Accordingly, we will refer this matter to the Internal Revenue Service.]

Sincerely,

NAME
Regional Director

Enclosures:
Filing information on the Form 5330
SBREFA Notice

OPPEM (When 502(l) issues are involved)

[1] See ERISA §3003(c), 29 USC §1203(c).

(Figure 10)
Sample Closing Letter
No VC Letter/Referral to IRS
This closing letter should not be used in a 502(l) or 502(i) situation

[heading]

Dear _____:

The Department of Labor has conducted its investigation of the XYZ Plan and of your activities as its trustee. Based on the information reviewed so far, we have concluded that, as trustee, you may have violated several provisions of the Employee Retirement Income Security Act (ERISA). The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines whether and how to proceed.

What We Found

As we understand the facts, Mr. Smith is a trustee and participant in the Plan. As a trustee and participant in the Plan, Mr. Smith is a fiduciary and party in interest to the Plan.[1]

On December 1, 2005, the Plan loaned $25,000 to Mr. Smith. This loan is unsecured and bears an interest rate of 5 percent. It is our view that this loan violates ERISA sections 406(a)(1)(B) and 406(b)(1), which prohibit fiduciaries from self-dealing.

In addition, our investigation has disclosed that (outline additional facts and violations as above).

We Are Closing the Case

[With the exception of the reporting violations noted below,][1] We have concluded that further action by the Department is not warranted at this time; however, you are cautioned to refrain from such conduct in the future.

While we are closing the case, the Department has not released any claims that the Secretary might assert in the future, and the decision to close this case does not prevent the Department or any other individual or governmental agency from taking any further action it may deem appropriate with respect to these or other matters.

The Department's findings or absence of findings, including the absence of findings regarding any specific provision of the Plan, do not bind the Department in:

- reviewing or investigating any other employee benefit plan, service provider, or
- a subsequent or further review of the Plan or the conduct that was the subject of this investigation.

[1] This introduction should be used when reporting violations were identified during the investigation.

Please note that EBSA's Office of the Chief Accountant is responsible for accepting or rejecting any Annual Report (Form 5500) in whole or in part. [The Office of the Chief Accountant will make the final decision concerning the adequacy of any Annual Report or any part thereof pursuant to the federal regulations set forth at 29 C.F.R. 2570.61 et seq.]

In addition, there is an excise tax on disqualified people (generally, the same as parties in interest under Title I of ERISA) who engage in prohibited transactions with employee retirement benefit plans. In general, this excise tax, which the Internal Revenue Service administers and enforces, applies in two steps:

1. a first level tax equal to 15 percent of the amount involved in the transaction for each taxable year during which the transaction is outstanding, and
2. a second level tax, equal to 100 percent of the amount involved if the transaction is not corrected.

You must pay the excise tax when you file Form 5330 with the Internal Revenue Service.

Please also note that ERISA requires the Secretary of Labor to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred.[2] Accordingly, we will refer this matter to the Internal Revenue Service.

Sincerely,

Regional Director

Enclosures:

Filing information on the Form 5330

SBREFA Notice[3]

[2] See ERISA §3003(c), 29 USC §12039(c)

[3] Include when subject of investigation is a plan, or other business entity, with fewer than 100 participants or employees and when the notice has not been provided previously.

(Figure 11)
Sample Closing Letter

DATE

RECIPIENT
1111 ABC St.
City, ST 00000

Re: NAME OF PLAN
Case Number 00-000000 (00)

You may have violated provisions of the Employee Retirement Income Security Act by loaning money to a party in interest. You will remain in violation until you:

- Restore the money loaned to the Plan, and
- Send us documentation to confirm that you have done so.

Dear _____:

The Department of Labor has conducted its investigation of the XYZ Plan and of your activities as its trustee. Based on the information reviewed so far, we have concluded that, as trustee, you may have violated several provisions of the Employee Retirement Income Security Act (ERISA). The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines whether and how to proceed.

What We Found

As we understand the facts, Mr. Smith is a trustee and participant in the Plan. As a trustee and participant in the Plan, Mr. Smith is a fiduciary and party in interest to the Plan.[1]

On December 1, 2005, the Plan loaned $25,000 to Mr. Smith. This loan is unsecured and bears an interest rate of 5 percent. It is our view that this loan violates ERISA sections 406(a)(1)(B) and 406(b)(1), which prohibit fiduciaries from self-dealing.[2]

In addition, our investigation has disclosed that (outline additional facts and violations as above).

---

[1] See ERISA § 3(21) and 3(14).
[2] See ERISA § 406(a)(1)(B) and 406(b)(1).

In your letter dated _____, you denied that the facts concerning the December 1, 2005 loan were true (you confirmed that the facts concerning the December 1, 2005 loan were true, but denied that those facts constitute a violation of ERISA) as stated in my previous letter.

I have considered the information provided by you (and have conducted additional investigation with regard to the new facts presented) but remain of the view that the Department's original position is correct. Therefore, we continue to believe that you have violated, and remain in violation of; the above cited fiduciary provisions of ERISA.

We Are Closing the Case

Despite your refusal to undertake the corrective action we deem necessary, we have decided that legal action by the Department will not be commenced at this time. You are cautioned, however, that this decision only addresses issues other than reporting violations.

While we are closing the case, the Department has not released any claims that the Secretary might assert in the future, and the decision to close this case does not prevent the Department or any other individual or governmental agency from taking any further action it may deem appropriate with respect to these or other matters.

The Department's findings or absence of findings, including the absence of findings regarding any specific provision of the Plan, do not bind the Department in:

- reviewing or investigating any other employee benefit plan, service provider, or
- a subsequent or further review of the Plan or the conduct that was the subject of this investigation.

Please note that EBSA's Office of the Chief Accountant is responsible for accepting or rejecting any Annual Report (Form 5500) in whole or in part. [The Office of the Chief Accountant will make the final decision concerning the adequacy of any Annual Report or any part thereof pursuant to the federal regulations set forth at 29 C.F.R. 2570.61 et seq.]

[In addition, there is an excise tax on disqualified people (generally, the same as parties in interest under Title I of ERISA) who engage in prohibited transactions with employee retirement benefit plans. In general, this excise tax, which the Internal Revenue Service administers and enforces, applies in two steps:

1. a first level tax equal to 15 percent of the amount involved in the transaction for each taxable year during which the transaction is outstanding, and
2. a second level tax, equal to 100 percent of the amount involved if the transaction is not corrected.

You must pay the excise tax when you file Form 5330 with the Internal Revenue Service.

Please also note that ERISA requires the Secretary of Labor to transmit to the Secretary of the Treasury information indicating that a prohibited transaction has occurred.[3] Accordingly, we will refer this matter to the Internal Revenue Service.]

Sincerely,

[3] See ERISA §3003(c), 29 USC §1203(c).

NAME
Regional Director

Enclosures:
Filing information on the Form 5330
SBREFA Notice[4]

[4] Include when subject of investigation is a plan, or other business entity, with fewer than 100 participants or employees and when the notice has not been provided previously.

Footnotes

1. If the correction involves any repayment period, the Regional Office must use either PTE 94-71 or obtain a consent order.
2. Settlements may still be approved for cases not otherwise meeting voluntary compliance guidelines, after Regional Office consultation with OE.
3. In certain limited situations, other methods may be appropriate, depending on the size of the plan and assurances by the applicant that all interested plan participants will be notified through their proposed notice methodology. For example, in large plans a number of methods may be used, often in combination, including electronic mail, posting notices where other important employee messages are posted, and publication in the employee newsletter. It is the applicant's responsibility to establish that notice was provided to all interested parties.