



## Rewards Policy Insider 2025-05



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## DOL Issues Final Amendments to its Voluntary Fiduciary Correction Program

In January, the Department of Labor (“DOL”) released final amendments to its Voluntary Fiduciary Correction Program (“VFCP”), which allows retirement plan sponsors and other plan officials to voluntarily correct certain transactions that resulted in violations of ERISA. Most notably, the amended VFCP creates a new self-correction component to correct plan errors involving delinquent participant contributions and participant loan repayments.

### What is the VFCP?

The VFCP is a DOL program designed to encourage employers to voluntarily comply with ERISA by allowing them to self-correct certain transactions that violate ERISA in order to avoid potential DOL civil enforcement actions and penalties. The VFCP allows an applicant to correct the transaction that resulted in the violation and submit an application to DOL describing the error and how it was corrected.

There is also a corresponding Prohibited Transaction Exemption (“PTE”), [PTE 2002-51](#), which provides VFCP applicants with relief from excise tax for certain types of transactions that can be corrected through the VFCP.

### Final Changes Streamline the Program and Add New Self-Correction Options

The [final amendments](#) to the VFCP, which are very similar to the proposed changes DOL released just over two years ago, generally expand and streamline the program’s application procedures. For example, the amendments expand the program’s eligibility requirements and add new corrections options or remove administrative requirements for several corrective actions. The final amendments to the VFCP and PTE 2002-51 will go into effect on March 17, 2025.

***New Self-Correction Component.*** The most significant change to the program is the addition of a new Self-Correction Component (“SCC”) allowing plans to self-correct (1) plan errors involving delinquent participant contributions, such as employee payroll deductions, and (2) delinquent participant loan repayments. In lieu of a full VFCP application (which includes an application form, checklist, and supporting documentation), self-correctors can instead merely notify DOL that they corrected the error.

However, the SCC is only available if a number of specific conditions are satisfied. For example, the lost earnings from the late contribution may not exceed \$1,000. The DOL provides an online calculator to determine the amount of lost earnings for this purpose. Also, the correction must occur within a specific timeframe, and the self-corrector must submit an online notice to DOL containing basic information about the correction.

***New Correction Feature for Eligible Inadvertent Participant Loan Failures.*** Another significant change to the VFCP is the addition of a new self-correction feature that permits self-corrections of “eligible inadvertent failures” related to participant loan transactions that are self-corrected under the Internal Revenue Service’s (“IRS”) Employee Plans Compliance Resolution System (“EPCRS”). The SECURE 2.0 Act of 2022 requires DOL to treat certain plan loan failures that are self-corrected under EPCRS as meeting the requirements of the VFCP. Thus,

the amendments to the VFCP reflect this new rule. This self-correction feature is available if the self-corrector meets conditions similar to the requirements for the SCC.

**PTE 2002-51.** DOL also implemented a series of amendments to PTE 2002-51 to reflect the changes to the VFCP, such as the addition of the SCC. In addition, the final amendments to the VFCP remove a rule that prevented VFCP applicants from relying on the PTE's excise tax relief if the same applicant had relied on the PTE for a similar type of transaction within the last three years.

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## Appeals Court Expands the Scope of FMLA Leave to Cover *In Loco Parentis* Relationships Involving Adult Siblings

The Sixth Circuit Court of Appeals issued a ruling that addressed the scope of *in loco parentis*, or in the role of a parent, relationships for purposes of leave under the federal Family and Medical Leave Act ("FMLA"). Finding that *in loco parentis* relationships can include an employee caring for an adult sibling, the court's ruling disrupts the common understanding of what would typically trigger FMLA leave in the *in loco parentis* context.

### Background

The FMLA entitles eligible employees to unpaid leave for a number of specified family and medical reasons, including (among other reasons) for the employee to care for the employee's spouse, child, or parent who has a serious health condition. The FMLA also includes a rule permitting leave to care for someone who is not the employee's legal or biological child if the employee stands *in loco parentis*, or in the role of a parent, for that individual.

### Sixth Circuit Decision

While employed at a car dealership, a woman began to care for her terminally ill sister, including by paying bills and performing daily caregiving tasks such as cooking and taking her sister to doctor's appointments. After exhausting her paid time off while caring for her sister, the employee applied for FMLA leave, but was denied; she was subsequently fired following disputes over her timeliness at work. The employee filed a lawsuit against the dealership, alleging that it interfered with her FMLA rights.

A district court ruled in favor of the employer, concluding that FMLA leave does not cover leave for caring for an adult sibling. But on appeal, the Sixth Circuit ruled that an *in loco parentis* relationship may exist between adult siblings for purposes of FMLA leave.

In its December 2024 ruling in [Chapman v. Bretlinger Enterprises](#), the Sixth Circuit explained that the text of the FMLA does not explicitly address whether an *in loco parentis* relationship can develop between adult siblings. Because the statute is silent, the court, relying on the "common law" understanding of *in loco parentis*, outlined several factors to evaluate whether a person intended to

assume parental status over another adult for purposes of FMLA leave. These nonexclusive factors include whether the person:

- Is in close physical proximity to the adult in question;
- Assumed responsibility for supporting them;
- Exercises control or has rights over them; and
- Has a close emotional or familial bond with them, akin to that of an adult child.

The court also noted that the “touchstone” of this inquiry is the employee’s *intention* to assume a parental relationship.

## Implications of the Decision Go Beyond Siblings

It’s important to note that this ruling only applies to states that are within the Sixth Circuit – i.e., Kentucky, Michigan, Ohio, and Tennessee. However, it is possible that other circuit courts will consider similar cases in the future.

In addition, while the Sixth’s Circuit’s ruling focused on *in loco parentis* relationships involving an adult sibling, the scope of the ruling is potentially much broader. It appears that, as long as the relationship in question – potentially including *any* relationship between adults – meets the *in loco parentis* factors outlined by the court, an employee may be entitled to FMLA leave. Because this case disrupts the common understanding of what type of relationships would typically trigger granting FMLA to an employee, employers in states within the Sixth Circuit should carefully review FMLA leave requests in light of these new factors.

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## FAQs on Social Security Fairness Act Now Available

The Social Security Administration (“SSA”) has published FAQs on the Social Security Fairness Act, which repealed the windfall elimination provision (“WEP”) and the government pension offset (“GPO”) effective for Social Security benefits payable after December 31, 2023. Among other things, the FAQs indicate it might take a year or longer for SSA to adjust the benefits for all affected beneficiaries.

### Background

President Biden signed the Social Security Fairness Act (“SSFA”) into law on January 5, 2025. The purpose of the SSFA is to eliminate “the reduction of Social Security benefits while entitled to public pensions from work not covered by Social Security.” These reductions are the result of the windfall elimination provision (“WEP”) and the government pension offset (“GPO”), which the SSFA repeals effective for Social Security benefits payable after December 31, 2023.

As a general rule, prior to the enactment of the SSFA, the WEP could have reduced an individual's Social Security benefit only if they also earned a pension from certain employment that was not covered by Social Security ("non-covered employment"). Similarly, the GPO could have reduced an individual's Social Security survivor benefit if they also earned a pension from certain non-covered employment. Non-covered employment is generally limited to employment by certain state and local government entities but may include others as well.

## FAQs

According to the FAQs, the types of workers most likely to be affected by the SSFA include:

- teachers, firefighters, and police officers in many states;
- federal employees covered by the Civil Service Retirement System; and
- people whose work had been covered by a foreign social security system.

However, the FAQs caution that not all such workers will necessarily receive enhanced benefits. This is because "Most state and local public employees – about 72 percent – work in Social Security-covered employment where they pay Social Security taxes and are not affected by WEP or GPO."

For those that are affected, the FAQs also point out that the "amount monthly benefits may change can vary greatly." Depending on factors like the type of Social Security benefit the individual is receiving and the size of their pension, adjustments could range from very small amounts to \$1,000 per month or more.

According to the FAQs, the law will require SSA to adjust benefits for more than 3 million people. Because these adjustments will apply to past and future benefits, the FAQs state it may take "more than one year to adjust benefits and pay all retroactive benefits."

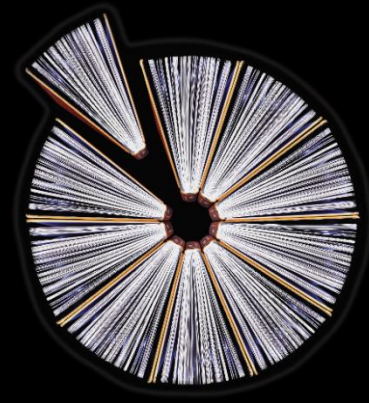
SSA is continuing to add updates to the FAQs and may issue additional guidance on the SSFA in the future. All such updates and other guidance will be published at <https://www.ssa.gov/benefits/retirement/social-security-fairness-act.html>.

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