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Dear Ms. Smith and Mr. Doyle:

The American Society of Pension Professionals & Actuaries (ASPPA) appreciates your taking the time to meet with us on June 12, 2006, to discuss issues of concern to ASPPA and its members. This letter is intended to supplement our discussion regarding the use of the US Department of Labor's (DOL) Voluntary Fiduciary Correction Program (VFC Program) and online calculator for the correction of late deposit of elective deferrals.

ASPPA is a national society of retirement plan professionals. ASPPA's mission is to educate pension professionals and to preserve and enhance the employer-sponsored pension system. Its membership consists of over 6,000 actuaries, plan administrators, attorneys, CPAs and other retirement plan experts who design, implement and maintain qualified retirement plans covering tens of millions of American workers.

The latest version of the VFC Program, published in the Federal Register on April 19, 2006, provides that the "Online Calculator" on the Employee Benefit Security Administration's (EBSA) Web site may be used to calculate lost earnings. ASPPA commends the DOL for creating the online calculator and for making it available to plan sponsors.

Unfortunately, the online calculator is currently only available for use in accordance with VFC Program filings (*i.e.*, it is not available for self-correcting violations). To utilize the VFC Program, plan sponsors frequently need to hire experienced professionals to complete the application. As a result, it can be very expensive for plan sponsors to use the program. Due to the online calculator's limited availability, plan sponsors who want to obtain reliance on their correction of fiduciary violations must either use the VFC Program or perform manual calculations to correct lost earnings. The manual calculation of lost earnings under the alternative methods provided in the VFC Program can be extremely time-consuming and costly.

ASPPA strongly advocates the use of the online calculator and proposes that the DOL consider expanding its availability to the correction of late deposits of elective deferrals. Late deposit of deferrals is one of the most common types of fiduciary violations. Many plan sponsors want to correct these types of violations. To do so with reliance, however, they must engage in a process that is unduly expensive. In many cases, the amount of lost earnings is significantly less than the cost to hire a professional to prepare a VFC application or calculate lost earnings.

ASPPA supports the efforts of the DOL to protect plan participants by ensuring that deferrals are deposited in a timely manner. ASPPA also recognizes that plan sponsors will become complacent if there are minimal consequences for a failure to timely deposit deferrals. Plan sponsors, however, are more likely to correct late deposit of deferrals in accordance with the principles set forth in the VFC Program if they could utilize the online calculator for a stream-lined VFC Program filing process. While using the online calculator under the VFC Program

would reduce overall costs to plan sponsors, the public reporting to the DOL would serve as a significant deterrent to engaging in similar fiduciary violations in the future. As a result, ASPPA recommends that the DOL consider implementing one or more of the following stream-lined VFC reporting alternatives when there has been a late deposit of deferrals:

- **Form 5500 Disclosure** – Plans are already required to report the late deposit of deferrals on the Form 5500. ASPPA recommends that the Form 5500 be amended to permit plans to include the amounts of the late deposit of deferrals as an alternative method for filing under the VFC Program.<sup>1</sup>
- **Streamlined VFC Application** – ASPPA recommends that fiduciaries be permitted to submit a one-page document that identifies the information that is required by the online calculator. The submission would include a copy of the *final page* that results from using the “Print Viewable Results” function.
- **Electronic Filing** – ASPPA recommends that the DOL add an online form on its Web site that fiduciaries could use to input information about the late deposit of deferrals after using the online calculator as an alternative VFC Program filing.

Any of the above alternatives would provide a cost effective way for employers to utilize the VFC Program and online calculator for late deposits in a cost-effective manner as well as increase the usage of the VFC Program.

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These comments were prepared by ASPPA's Government Affairs Committee, DOL Subcommittee and were primarily authored by Debra A. Davis, Chair. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration.

/s/  
Brian H. Graff, Esq., APM  
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/s/  
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/s/  
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<sup>1</sup> On September 19, 2006, ASPPA filed comments on the proposed revisions to Form 5500 (RIN 1210-AB06) recommending that no additional attachments be required when the DFVC box is checked on line C/D and that an additional check box be added for “special extensions.”