



Philadelphia Regional Office



Employee Benefits
Security Administration

Voluntary Fiduciary Correction Program Workshop

for Late Participant Deferrals and Loan Repayments

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Welcome

Voluntary Fiduciary Correction Program

Mike Horton
Associate Regional Director
Employee Benefits Security Administration
Philadelphia Region

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Disclaimer

Solely opinion of presenter

Philadelphia Region's
VFCP procedure

Cannot be recorded or disseminated
without written approval



©2014, ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Philadelphia Region

Streamline the
VFCP process

In this region only

Pennsylvania

Southern New Jersey

Delaware

Maryland

Washington, DC

Virginia

West Virginia



©2014, ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Outside Philadelphia Region

dol.gov/ebsa

EBSA Hotline

866-444-EBSA (3272)

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Focus of Workshop

Late contributions of
participant
deferrals and/or loan repayments
into a
pension plan

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

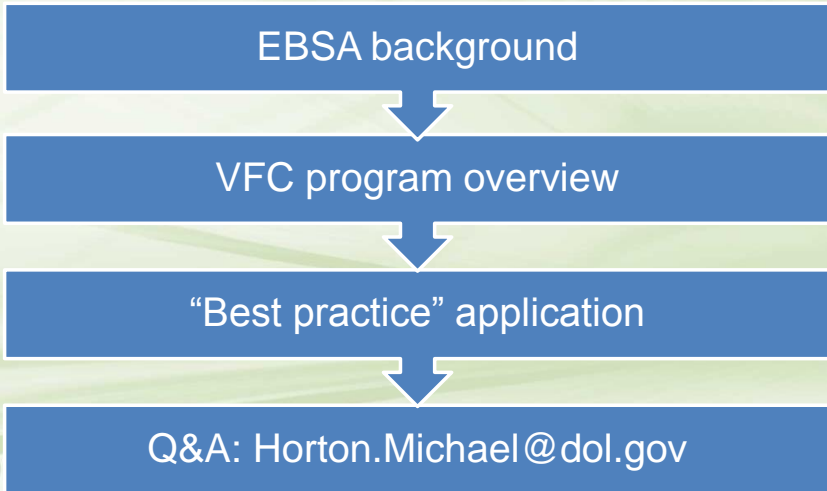
Terms

Participant *deferrals* VS Participant *contributions*

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Agenda



ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



EBSA Overview



Vigorously enforcing ERISA Title I

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



VFC Program Overview

Regain compliance with ERISA

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

VFC Program Overview

Participant Advantage:

Restoration of deferrals

Lost earnings

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Fiduciary Advantages

Regain ERISA compliance

DOL “no action” letter

Avoid 20% penalty

Possible: avoid IRS excise tax

No VFCP application fee

ASP

without the express permission of ASPPA.

VFCP Process

Voluntary program

No need to consult EBSA

Submit application after correction

VFCP applicant

Successful: “no action letter”

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

VFCP Process

Workshop Goal:

Streamline the VFCP process
to increase your probability
of a successful application

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

VFC Program Limits

EBSA reserves the right to:

Investigate truthfulness and completeness

Confirm correction occurred

Refer criminal information to appropriate agency

Take other actions under special circumstances

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

VFC Program Relief

DOL “no action” letter

Limited - specific transaction

Conditioned - truthfulness

Does not limit other parties' rights

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

VFCP Eligibility

Not under investigation

No criminal violations

1 of 19 transactions

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

VFCP General Rules



Multiple transactions – same type
(e.g., late deferrals over many pay periods)



Multiple types – single application
(e.g., late deferrals and improper expenses)

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



VFCP General Rules

Plan cannot pay for correction

Losses and earnings restored

Form 5500 amended as needed

Excise tax resolved

Reasonable assumptions

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Workshop Spreadsheet

Payroll Period	Pay Date					
8/1/13 – 8/14/13	8/19/13					

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Workshop Spreadsheet

Payroll Period	Pay Date	Principal	Loss Date			
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13			

AGGREGATE deferrals and loan repayments

Date deferrals and loan repayments **SHOULD HAVE BEEN** contributed to the plan



©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Workshop Spreadsheet

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	

Date late deferrals credited into the plan (ON or BEFORE)

Date lost earnings **WILL BE** credited into the plan (ON or BEFORE)



©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Workshop Spreadsheet

"On or Before" example

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	9/30/13	
Assume today's date is 8/30/13						

1 month in the future: 8/30/13 to 9/30/13



©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Workshop Spreadsheet

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	



©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



VFCP Online Calculator

“VFCP Calculator” in a web search engine

dol.gov/ebsa

under the “compliance assistance” tab

<http://askebsa.dol.gov/vfcpcalculator/webcalculator.aspx>



©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



VFCP Online Calculator

VFCP Calculator - Lost Earnings

▶ Please see [instructions](#) to assure correct data entry.

Principal:

Loss Date: / / mm/dd/yyyy

Recovery Date: / / mm/dd/yyyy

Final Payment Date: / / mm/dd/yyyy

[View Instructions](#)

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	



ASPPA



VFCP Online Calculator

VFCP Calculator - Lost Earnings

▶ Please see [instructions](#) to assure correct data entry.

Principal:

Loss Date: / / mm/dd/yyyy

Recovery Date: / / mm/dd/yyyy

Final Payment Date: / / mm/dd/yyyy

[View Instructions](#)

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	

ASPPA



VFCP Online Calculator

VFCP Calculator - Lost Earnings

▶ Please see [instructions](#) to assure correct data entry.

Principal:

Loss Date: / / mm/dd/yyyy

Recovery Date: / / mm/dd/yyyy

Final Payment Date: / / mm/dd/yyyy

[View Instructions](#)

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	

ASPPA



VFCP Online Calculator

VFCP Calculator - Lost Earnings

▶ Please see [instructions](#) to assure correct data entry.

Principal:

Loss Date: / / mm/dd/yyyy

Recovery Date: / / mm/dd/yyyy

Final Payment Date: / / mm/dd/yyyy

[View Instructions](#)

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	

ASPPA



VFCP Online Calculator

VFCP Calculator - Lost Earnings

▶ Please see [instructions](#) to assure correct data entry.

Principal:

Loss Date: / / mm/dd/yyyy

Recovery Date: / / mm/dd/yyyy

Final Payment Date: / / mm/dd/yyyy

[View Instructions](#)

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	

ASPPA



VFCP Online Calculator

VFCP Calculator - Lost Earnings

▶ Please see [instructions](#) to assure correct data entry.

Principal:

Loss Date: / / mm/dd/yyyy

Recovery Date: / / mm/dd/yyyy

Final Payment Date: / / mm/dd/yyyy

[View Instructions](#)

Principal	Loss Date	Recovery Date	Final Payment Date	Amount Due	Delete
\$10,000.00	8/19/2013	9/30/2013	11/15/2013	\$34.71	Delete

Total: \$34.71

After you are finished entering all Lost Earnings transactions, if any Principal Amount was used for a specific purpose such that a profit on the use of the Principal Amount is determinable then proceed to the next step by clicking the "Calculate Restoration of Profit" button below:

Otherwise you may click the button below to display the final results in a printer-friendly format.

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



VFCP Online Calculator

VFCP Calculator - Lost Earnings

▶ Please see [instructions](#) to assure correct data entry.

Principal:

Loss Date: / / mm/dd/yyyy

Recovery Date: / / mm/dd/yyyy

Final Payment Date: / / mm/dd/yyyy

[View Instructions](#)

Principal	Loss Date	Recovery Date	Final Payment Date	Amount Due	Delete
\$10,000.00	8/19/2013	9/30/2013	11/15/2013	\$34.71	Delete
\$15,000.00	9/2/2013	10/30/2013	11/15/2013	\$71.77	Delete

Total: \$106.48

After you are finished entering all Lost Earnings transactions, if any Principal Amount was used for a specific purpose such that a profit on the use of the Principal Amount is determinable then proceed to the next step by clicking the "Calculate Restoration of Profit" button below:

Otherwise you may click the button below to display the final results in a printer-friendly format.

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



VFCP Online Calculator

VFCP Calculator - Final Results

Lost Earnings and interest, if any, (\$106.48) exceed Restoration of Profits (\$0.00). Therefore the amount due to the plan is: \$106.48.

Note: This amount does **not** include any Principal Amount that may also need to be paid to the plan. Check the specific transaction to determine if the Principal Amount must be paid.

Lost Earnings

Principal	Loss Date	Recovery Date	Final Payment Date	Amount Due
\$10,000.00	8/19/2013	9/30/2013	11/15/2013	\$34.71
\$15,000.00	9/2/2013	10/30/2013	11/15/2013	\$71.77

Total Lost Earnings: \$106.48

Restoration of Profits

No Restoration of Profit transactions entered.

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Workshop Spreadsheet

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	\$34.71
8/15/13 – 8/29/13	9/2/13	\$15,000	9/2/13	10/30/13	11/15/13	\$71.77
		\$25,000				\$106.48

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Attachments

Deferral amounts

Principal deposit

Lost earnings deposit

Excise tax

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Deferral and Loan Repayment Proof

Payroll Report

- ✓ Aggregate amounts
- ✓ Match pay period and pay date
- ✓ Highlight

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Principal Deposit Proof

Plan Asset Report

- ✓ Shows receipt into plan account
- ✓ On or before the recovery date used in the Workshop Spreadsheet and VFCP Calculator

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Lost Earnings Deposit Proof

Plan Asset Report

- ✓ Shows receipt INTO plan account
- ✓ On or before the Final Payment Date used in the Workshop Spreadsheet and VFCP Calculator

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Proof – General Considerations

Spreadsheet is NOT proof

Aggregate level NOT participant level

No personally identifiable information

Must match Workshop Spreadsheet

Commingled funds = additional proof

Highlight ONLY Workshop Spreadsheet numbers

Contact me if unable to provide requested proof

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Excise Tax - Overview

- ✓ Late deferrals = prohibited transaction
- ✓ Prohibited transaction = excise tax
- ✓ NOT paid for by plan participants

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Excise Tax - Options

Provide participant notice

Pay excise tax to plan

Pay excise tax to IRS

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Excise Tax – PTE 2002-51 Relief

Eligibility

- ✓ NOT late more than 180 days
- ✓ NOT taken advantage of this exemption for a similar transaction in last 3 years

If excise tax is \$100 or less

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Excise Tax – PTE 2002-51 Relief

May choose to:

Provide participant notice

-or-

Pay excise tax to plan

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Excise Tax – Participant Notice

- ✓ Within 60 days of VFCP application
- ✓ Seeking VFCP and PTE 2002-51 relief
- ✓ Describe error and correction
- ✓ 30 days to make comments to EBSA
- ✓ Provide EBSA regional office contact info

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Excise Tax – Participant Notice

Include copy in VFCP application

Effective only upon “no action” letter

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Excise Tax – Paid to Plan

Alternatively

- ✓ Tax \$100 or less
- ✓ Calculate using IRS Form 5330
- ✓ Copy of Form 5330 in VFCP Application
- ✓ Add proof of deposit into plan
- ✓ Effective only upon “no action” letter

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.

Excise Tax – Paid to IRS

All Others

- ✓ Calculate using IRS Form 5330
- ✓ Copy of Form 5330 in VFCP Application
- ✓ Add proof of payment to IRS
- ✓ Cancelled check or outgoing wire OK

Excise Tax – Consequences

Not properly submitted with
VFCP Application

Refer Plan to IRS

Even if we issue a “no action” letter



VFCP Application

Completing the VFCP Application



©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Applicants

Voluntary Fiduciary Correction Program Application Form

U.S. Department of Labor
Employee Benefits Security Administration
January 2009

The application form provides a standardized format for your Voluntary Fiduciary Correction Program (VFCP) application. Please make sure you have completed the VFCP Checklist and all supporting documents described in the checklist. For example, proof of plan assets. Submit your application to the appropriate EBSA field office. For full application procedures, consult www.dhs.gov/ebsa.

List Party	
First Name	SSN
Address	Address
Address	Address
Address	Address

Trans. Items Corrected

Circle which corrections listed in the VFCP you have corrected:

- Delinquent Participant Contributions and Participant Loan Repayments to Pension Plans
- Delinquent Participant Contributions to Income Voluntary Plans
- Delinquent Participant Contributions to Welfare Plan Trusts
- Loans at Fair Market Interest Rate to a Party in Interest
- Loans at Below Market Interest Rate to a Party in Interest
- Loans at Below Market Interest Rate to a Non-Party in Interest
- Loans at Below Market Interest Rate Due to Delay in Perfecting Plan's Security Interest
- Loans Failing to Comply with Plan Provisions for Amount, Duration or Least Advantageous
- Default Loans
- Purchase of an Asset by a Plan from a Party in Interest
- Sale of an Asset by a Plan to a Party in Interest
- Sale and Leaseback of Real Property to Employer
- Purchase of Asset by a Plan from a Non-Party in Interest at More Than Fair Market Value
- Sale of an Asset by a Plan to a Non-Party in Interest at Less Than Fair Market Value
- Holding of an Asset Involuntarily Purchased by a Plan
- Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based
- Duplicate, Erroneous, or Unnecessarily Compensated Payments
- Expenses Improperly Paid by a Plan
- Payment of Dual Compensation to a Plan Fiduciary

✓ All who need “no action” letter

Common Listing

Plan Sponsor

Third-Party Administrator

Trustee

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Transactions Corrected

Voluntary Fiduciary Correction Program Application Form

U.S. Department of Labor
Employee Benefits Security Administration
January 2009

This application form provides a recommended format for your Voluntary Fiduciary Correction Program (VFCP) application. Please make sure you include the required VFCP Checklist and all supporting documents identified on the checklist (for example, proof of payment). Submit your application to the appropriate EBSA field office. For full application procedures, consult www.dhs.gov.

Unit Separately

Participant Name	Address
Participant Name	Address
Participant Name	Address

Transactions Corrected
Check which transactions listed in the VFCP you have corrected:

- Delinquent Participant Contributions and Participant Loan Repayments to Pension Plans
- Delinquent Participant Contributions to Insurance Policies
- Delinquent Participant Contributions to Welfare Plan Trusts
- Loan at Fair Market Interest Rate to a Party in Interest
- Loan at Below-Market Interest Rate to a Party in Interest
- Loan at Below-Market Interest Rate to a Non-Party in Interest
- Loan at Below-Market Interest Rate Due to Change in Participating Plan's Security Interest
- Loans Failing to Comply with Plan Provisions for Amount, Duration or Level Amortization
- Office Costs
- Purchase of an Asset by a Plan from a Party in Interest
- Sale of an Asset by a Plan to a Party in Interest
- Sale and Leaseback of Real Property to Employer
- Purchase of Asset by a Plan from a Non-Party in Interest at More Than Fair Market Value
- Sale of an Asset by a Plan to a Non-Party in Interest at Less Than Fair Market Value
- Issuance of an Asset Previously Forfeited by a Plan
- Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based
- Qualitative Excesses or Unnecessary Compensation Paid by a Plan
- Expenses Improperly Paid by a Plan
- Other
- Other (Check Compensation to a Plan Fiduciary)

- ✓ Delinquent Participant Contributions and Participant Loan Repayments to Pension Plans
- ✓ One type of transaction per application

©2014, ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Principal Amount and Date Paid

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	\$34.71
8/15/13 – 8/29/13	9/2/13	\$15,000	9/2/13	10/30/13	11/15/13	\$71.77
		\$25,000				\$106.48

Correction Amount

1. Enter the amount of the correction (in dollars and cents) (do not include a dollar sign).

Monthly Acre Calculations

2. Enter the amount of the correction (in dollars and cents) (do not include a dollar sign).

3. Explain how the interest was corrected, by when, and when (attach separate sheets if necessary).

4. A certification of Delinquent Remediation of Participant Funds, provided from a Plan Official according to the model date on which such certification is required, must be included with the application. The certification must include the following information on which the correction is based:

- a. Number of days used to determine the date on which participant contribution/loan repayments without from employer pay could reasonably have been repaid from the employer's general assets.
- b. Description of how the date determined.



©2014, ASPPA. All rights reserved.

Principal Amount and Date Paid

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	\$34.71
8/15/13 – 8/29/13	9/2/13	\$15,000	9/2/13	10/30/13	11/15/13	\$71.77
		\$25,000				\$106.48

Correction Amount

Principal Amount \$ Date Paid

Narrative And Calculations

1. List all parties normally involved in the breach and its correction (e.g., Employee, service provider)

2. Explain the breach, including the dates it occurred (attach separate sheets if necessary)

3. Explain how the breach was corrected, by whom, and when (attach separate sheets if necessary)

4. For a correction of Employee Remittance of Participant Funds, provide a statement from a Plan Official identifying the material date on which participant contributions/requirements normally could have been repaid from the employer's general assets (attach supporting documentation on which Plan Official relies)

a. Number of days used to determine the date on which participant contributions/requirements withdrawn from employer pay could normally have been repaid from the employer's general assets

b. Description of how the date determined

“Various – See Workshop Spreadsheet”

Lost Earnings and Date Paid

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	\$34.71
8/15/13 – 8/29/13	9/2/13	\$15,000	9/2/13	10/30/13	11/15/13	\$71.77
		\$25,000				\$106.48

Correction Amount

Principal Amount \$ Date Paid

Narrative And Calculations

1. List all parties normally involved in the breach and its correction (e.g., Employee, service provider)

2. Explain the breach, including the dates it occurred (attach separate sheets if necessary)

3. Explain how the breach was corrected, by whom, and when (attach separate sheets if necessary)

4. For a correction of Employee Remittance of Participant Funds, provide a statement from a Plan Official identifying the material date on which participant contributions/requirements normally could have been repaid from the employer's general assets (attach supporting documentation on which Plan Official relies)

a. Number of days used to determine the date on which participant contributions/requirements withdrawn from employer pay could normally have been repaid from the employer's general assets

b. Description of how the date determined

Lost Earnings and Date Paid

Payroll Period	Pay Date	Principal	Loss Date	Recovery Date	Final Payment	Lost Earnings
8/1/13 – 8/14/13	8/19/13	\$10,000	8/19/13	9/30/13	11/15/13	\$34.71
8/15/13 – 8/29/13	9/2/13	\$15,000	9/2/13	10/30/13	11/15/13	\$71.77
		\$25,000				\$106.48

Correction Amount

Original Amount \$ _____ Date Paid _____

Lost Earnings

Lost Earnings (Recovery of FICA) \$ _____ Date Paid _____

Netative And Calculations

1. Explain the breach, including the date(s) it occurred (attach separate sheets if necessary)

2. Explain how the breach was corrected, by whom, and when (attach separate sheets if necessary)

3. For correction of Delinquent Remittance of Participant Funds, provide a statement from a Plan (Clear identifying the material date on which participant contributions/repayments/interests could have been repaid from the employer's general assets (attach supporting documentation on which Plan Official signs)

4. Number of days used to determine the date on which participant contributions/repayments/interests could have been repaid from the employer's general assets

5. Description of how the date determined

Individuals Involved

- ✓ Breach and correction
- ✓ Include job title
- ✓ Manager not entire department

Correction Amount

Original Amount \$ _____ Date Paid _____

Lost Earnings

Lost Earnings (Recovery of FICA) \$ _____ Date Paid _____

Netative And Calculations

1. Explain the breach, including the date(s) it occurred (attach separate sheets if necessary)

2. Explain how the breach was corrected, by whom, and when (attach separate sheets if necessary)

3. For correction of Delinquent Remittance of Participant Funds, provide a statement from a Plan (Clear identifying the material date on which participant contributions/repayments/interests could have been repaid from the employer's general assets (attach supporting documentation on which Plan Official signs)

4. Number of days used to determine the date on which participant contributions/repayments/interests could have been repaid from the employer's general assets

5. Description of how the date determined

Explain the Breach

Sample Response

“The payroll department failed to remit participant deferrals in a timely fashion for 8 payrolls in 2012 and 10 payrolls in 2013 due to a clerical and procedural oversight. A total of 150 participants were affected. The specific dates and amounts of each occurrence are listed on the attached VFCP Workshop spreadsheet.”

Correction Amount	
Original Amount \$	Date Paid
Narrative And Calculations	
1 List all amounts identified in the breach and its correction (e.g., Examples, service periods)	
2 Explain how the breach was corrected, by whom, and when (attach separate sheets if necessary)	
3 Explain how the breach was corrected, by whom, and when (attach separate sheets if necessary)	
4 For correction of Delinquent Remittance of Participant Funds, provide a statement from a Plan Officer identifying the manner date on which participant contributions/requirements reportedly could have been repaid from the employer's general assets (attach supporting documentation on which the breach relied)	
a. Number of days used to determine the date on which participant contributions/requirements withheld from employer pay could reasonably have been repaid from the employer's general assets	
b. Description of how the date determined	

©2014, ASPPA. All rights reserved.

2

Explain the Correction

Sample Response

“Subsequent to the breach, the payroll department deposited the late deferrals for each payroll. The specific dates for each deposit are also listed on the attached VFCP Workshop spreadsheet.”

Correction Amount	
Original Amount \$	Date Paid
Narrative And Calculations	
1 List all amounts identified in the breach and its correction (e.g., Examples, service periods)	
2 Explain the breach, including the dates it occurred (attach separate sheets if necessary)	
3 Explain how the breach was corrected, by whom, and when (attach separate sheets if necessary)	
4 For correction of Delinquent Remittance of Participant Funds, provide a statement from a Plan Officer identifying the manner date on which participant contributions/requirements reportedly could have been repaid from the employer's general assets (attach supporting documentation on which the breach relied)	
a. Number of days used to determine the date on which participant contributions/requirements withheld from employer pay could reasonably have been repaid from the employer's general assets	
b. Description of how the date determined	

©2014, ASPPA. All rights reserved.

2

Ongoing Delay Justification

Plan Official MUST Complete

Small Plans: <100 Participants

- ✓ Deposit deferrals within 7 business days
- ✓ State the number of days
- ✓ “Relying on the safe harbor provided in DOL Regulation 2510.3-102”
- ✓ No further documentation needed

Correction Amount	
Original Amount \$	Date Paid
Lost Earnings/Restoration of Profit \$	Date Paid
Narrative And Calculations	
1. List all errors identified in the Branch and its correction (e.g., Executive, service provider).	
2. Explain the Branch, including the dates it occurred (attach separate sheets if necessary).	
3. Explain how the Branch was corrected, by whom, and when (attach separate sheets if necessary).	
4. If the Branch is a result of participant non-compliance, provide a statement from a Plan Official certifying the material date on which the participant's contributions were made and the date on which the participant's contributions were credited to the plan's general assets (attach supporting documentation on which the participant's contributions were made).	
5. Number of days used to determine the date on which participant contributions/requirements withheld from employee's pay could reasonably have been repaid from the employee's general assets.	
6. Description of how the date determined.	

ASPPA

©2014, ASPPA. All rights reserved.

7/1

Ongoing Delay Justification

Plan Official MUST Complete

Large Plans: 100+ Participants

- ✓ Deposit deferrals same day or next business day
- ✓ State the number of days
- ✓ No further documentation needed

Correction Amount	
Original Amount \$	Date Paid
Lost Earnings/Restoration of Profit \$	Date Paid
Narrative And Calculations	
1. List all errors identified in the Branch and its correction (e.g., Executive, service provider).	
2. Explain the Branch, including the dates it occurred (attach separate sheets if necessary).	
3. Explain how the Branch was corrected, by whom, and when (attach separate sheets if necessary).	
4. If the Branch is a result of participant non-compliance, provide a statement from a Plan Official certifying the material date on which the participant's contributions were made and the date on which the participant's contributions were credited to the plan's general assets (attach supporting documentation on which the participant's contributions were made).	
5. Number of days used to determine the date on which participant contributions/requirements withheld from employee's pay could reasonably have been repaid from the employee's general assets.	
6. Description of how the date determined.	

ASPPA

©2014, ASPPA. All rights reserved.

7/1

Ongoing Delay Justification

Plan Official MUST Complete

Large Plans: >1 business day
Small Plans: >7 business days

- ✓ Complete all parts of question 4 in detail
- ✓ Must provide supporting documentation
- ✓ VFCP application rejection is likely if a significant case for the delay is not proven.

Correction Amount

Original Amount \$	Date Paid
Lost Earnings/Reimbursement of PFDL \$	Date Paid

Narrative And Calculations

1. List all parties potentially involved in the breach and its correction (e.g., Executive, service providers)

2. Explain the breach, including the date(s) corrected (attach separate sheets if necessary)

3. Explain how the breach was corrected, to whom, and when (attach separate sheets if necessary)

4. **Number of days used to determine the date on which participant contribution/loan requirements without from employer pay could reasonably have been requested from the employer's general assets.**

5. Description of how this was determined

Remittance Practices

Sample Response

“Prior to the correction, our procedure was to remit deferrals at the end of each month. Our current procedure is to remit them on the business day following each pay date.”

4. A list of dates of subsequent remittance of participant funds, provide a narrative detailing the approved contribution/loan remittance mechanism practice before and after the period of report or late contribution/loan requirements (attach separate sheets if necessary)

5. Specific calculations demonstrating how original amount and lost earnings or reimbursement of PFDL was calculated. Of the Online Calculator was used, you only need to include this and attach a copy of the "Printable Results" page, which requires sheets if necessary.

Online Calculator ("Printable Results" page attached) Manual calculation (see attached calculations)

Supplemental Information

Plan Sponsor Name	ESB	Address
Plan Name	Plan Number	
Plan Submitter Name	ESB	Address
Name of Authorized Representative, include email address (information reported by the Plan Official)	Address	Telephone
Name of Contact Person	Address	Telephone
Date of Most Recent Annual Report Form 5500 Filing	Plan Year Ending	

Lost Earnings Calculation

- ✓ Check the Online Calculator box

Supplemental Information

- ✓ Basic plan information
- ✓ Authorized Representative
- ✓ Someone other than a Plan Official
- ✓ Plan Official authorizes on page 4
- ✓ Point of Contact for inquiries
- ✓ Add email address
- ✓ Most recent 5500 information



Excise Tax

Participant Notice

Include required proof

Is Applicant Seeking Relief Under PTE 2002-51? PTE 2002-51 p engaging in certain prohibited transactions. For more information not covered by PTE 2002-51, you may want to contact your acco Please note that if you take advantage of PTE 2002-51, you do n

Yes - Either:

- Submit a copy of the notice to interested parties notice itself, or
- If you are relying on the exception to the notice delinquent participant contributions and partici due directly to the Plan if the amount is less ths to the Plan, you do not need to provide a notice other written documentation showing the calcul VFCP submission if you elect to pay the excise

No

- I will pay any applicable excise tax to the IRS
- I have filed a Form 5330 and paid excise tax
- This transaction is not covered by Section 4975

Proof of Payment

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Excise Tax

Pay To Plan

Include required proof

Is Applicant Seeking Relief Under PTE 2002-51? PTE 2002-51 p engaging in certain prohibited transactions. For more information not covered by PTE 2002-51, you may want to contact your acco Please note that if you take advantage of PTE 2002-51, you do n

Yes - Either:

- Submit a copy of the notice to interested parties notice itself, or
- If you are relying on the exception to the notice delinquent participant contributions and partici due directly to the Plan if the amount is less ths to the Plan, you do not need to provide a notice other written documentation showing the calcul VFCP submission if you elect to pay the excise

No

- I will pay any applicable excise tax to the IRS
- I have filed a Form 5330 and paid excise tax
- This transaction is not covered by Section 4975

Proof of Payment

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Excise Tax

Pay To IRS

Include required proof

Is Applicant Seeking Relief Under PTE 2002-51? PTE 2002-51 provides an exception from the payment of excise taxes to the Internal Revenue Service for engaging in certain prohibited transactions. For more information not covered by PTE 2002-51, you may want to contact your account manager. Please note that if you take advantage of PTE 2002-51, you do not need to provide a notice to interested parties.

Yes - Either:

- Submit a copy of the notice to interested parties notice itself, or
- If you are relying on the exception to the notice delinquent participant contributions and participate directly to the Plan if the amount is less than \$10,000 to the Plan, you do not need to provide a notice to interested parties. However, you must provide a copy of a completed IRS Form 5330 and other written documentation showing the calculation of the excise tax and your determination of the amount of the excise tax to the Plan if you elect to pay the excise tax.

No

I will pay any applicable excise tax to the IRS

I have filed a Form 5330 and paid excise tax

This transaction is not covered by Section 4975

Proof of Payment

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Additional Information – Page 4

- ✓ Proof of payment
- ✓ Investigation disclosure
- ✓ VFCP Referral box
- ✓ Please indicate “VFCP Workshop”
- ✓ Authorization of Preparer designated on page 3
- ✓ Signed by a Plan Official

Is Applicant Seeking Relief Under PTE 2002-51? PTE 2002-51 provides an exception from the payment of excise taxes to the Internal Revenue Service for engaging in certain prohibited transactions. For more information not covered by PTE 2002-51, you may want to contact your account manager. Please note that if you take advantage of PTE 2002-51, you do not need to provide a notice to interested parties.

Yes - Either:

- Submit a copy of the notice to interested parties within 90 calendar days of this application and include them with the notice filed on the subsequent page.
- If you are relying on the exception to the notice delinquent participant contributions and participate directly to the Plan if the amount is less than \$10,000 to the Plan, you do not need to provide a notice to interested parties. However, you must provide a copy of a completed IRS Form 5330 and other written documentation showing the calculation of the excise tax and your determination of the amount of the excise tax to the Plan if you elect to pay the excise tax.

No

I will pay any applicable excise tax to the IRS

I have filed a Form 5330 and paid excise tax

This transaction is not covered by Section 4975 of the Internal Revenue Code

Proof of Payment

Disclosure of a current investigation or examination of the plan by an agency in compliance with Section 5030(c)

Contact person for the agency identified

In order to help us track our service, please indicate from you learned about the VFCP

Authorization Of Preparer
 I am the authorized trustee or authorized representative to represent the sponsoring the VFCP application.
 Name of Preparer: _____ Signature of Preparer: _____

Penalty of Perjury Statement: The following statement must be signed and dated by a plan fiduciary with knowledge of the transactions that are the subject of the application and by the authorized representative, if any. Each plan official applying under the VFCP must also sign and date the statement, which must accompany any subsequent additions to the application.

Under penalties of perjury I certify that I am not under investigation (as defined in VFCP Section 3503) and that I have reviewed this application, including all supporting documentation, and to the best of my knowledge and belief the contents are true, correct, and complete.

©2014 ASPPA. All rights reserved.



Penalty of Perjury

<input type="checkbox"/>	Name and Title	Signature	Date
<input type="checkbox"/>	Name and Title	Signature	Date

This application form provides a recommended format for your Voluntary Fiduciary Correction Program (VFCP) application. Please refer to the instructions to include the required VFCP Checklist and all supporting documents identified on the Checklist. For example, proof of payment. Submit your application to the appropriate EBSA field office. For full application procedures, consult www.dhs.gov/ebsa.

Paperwork Reduction Act Notice

The information identified on this form is required for a valid application for the Voluntary Fiduciary Correction Program of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). You are not required to use this form; however, you must supply the information identified in order to receive the relief allowed under the Program with respect to a breach of fiduciary responsibility under Title 48 CFR of EBSA. EBSA will use the information to determine whether you have satisfied the requirements of the Program. EBSA estimates that assembling and submitting this information will require an average of 8 to 8 hours. This collection of information is currently approved under OMB control number 1515-0018. You are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

5

- ✓ Plan Official
- ✓ AND Authorized Representative (when one is designated)

©2014, ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



VFCP Checklist

VFCP Checklist

Use this checklist to ensure that you are submitting a complete application. The applicant must sign and date the checklist and include it with the application. Indicate "Yes," "No," or "N/A" next to each item. A "No" answer or the failure to include a completed checklist will address errors of the applicant and all required items are received.

1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFCP?
 - _____ a. Have you indicated the name, address and telephone number of a contact person familiar with the contents of the application?
 - _____ b. Have you provided the EIN, Plan Number, and address of the plan sponsor and plan administrator?
 - _____ c. Have you provided the date that the error occurred (in "MM/DD/YYYY" format)?
 - _____ d. Have you enclosed a signed and dated certification under penalty of perjury for the plan sponsor with knowledge of the transaction and if not applicant and the applicant representative, if any?
 - _____ e. Have you enclosed relevant portions of the plan document and any relevant documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?
 - _____ f. If applicable, have you provided written notification to EBSA of any current investigation or examination of the plan, or of the applicant or plan sponsor in connection with an act or transaction directly related to the plan by the FDIC, any state attorney general, or any state insurance commissioner?
 - _____ g. When applicable, have you enclosed a copy of an attorney report?
 - _____ h. Have you enclosed supporting documentation, including:
 - _____ 1. A detailed narrative of the breach, including the date it occurred.
 - _____ 2. Documentation that supports the narrative description of the transaction.
 - _____ 3. Documentation of how the breach was corrected, by whom and when, with supporting documentation.
 - _____ i. A list of all persons materially involved in the breach and in connection (e.g., fiduciaries, service providers, business leaders).
 - _____ j. Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were computed, or, if the Online Calculator was used, a copy of the "Print Yourable Results" report after completing use of the Online Calculator.
 - _____ k. Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits, and
 - _____ l. If the correction involves payment and/or other corrective action, a statement from a third party verifying the amount due to which participant contributions that requirements reasonably could have been aggregated from the employer's general assets and supporting documentation on which the Trust Official relied.
10. If you are an eligible applicant and wish to avail yourself of estate tax relief under the VFCP class exemption:
 - _____ a. Have you made proper arrangements to provide, within 90 calendar days after submission of this application a copy of the Class Exemption notice to all interested persons and to the EBSA Regional Office to which the application is filed, or
 - _____ b. If you are relying on the exception to the notice requirement in section IV.C. of the Class Exemption because the amount of the estate tax otherwise due would be less than or equal to \$100,000, have you provided to the appropriate EBSA Regional Office a copy of a completed IRS Form 5303 or other written documentation containing the information required by IRS Form 5303 and proof of payment?
 - 11. In calculating Lost Earnings, have you disclosed:
 - _____ a. The Online Calculator; or
 - _____ b. A manual calculation performed in accordance with Section 580?
 - 12. Where applicable, have you enclosed a description demonstrating good faith of payment to participants and beneficiaries whose current location is known to the plan and/or applicant, and to individuals who need to be located, have you determined from adequate funds how you have arranged to pay missing individuals and commenced the process of locating the missing individuals using either the IRS and SSA locator services, or other comparable means?

- ✓ Complete, sign, and date

©2014, ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.



Questions?

Horton.Michael@dol.gov

ASPPA

©2014 ASPPA. All rights reserved. May not be copied, emailed or distributed without the express permission of ASPPA.