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# Torrillo & Associates

Benefit Plan Audit Specialists

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## **DOL Updates the Voluntary Fiduciary Correction Program**



Following up on [proposed changes](#), the DOL has updated its [Voluntary Fiduciary Correction Program \(VFCP\)](#). The changes under the program now allow employers and plan officials to self-correct certain transactions without submitting a VFCP application. Additionally, employers and plan officials can use the self-correction component (SCC) to voluntarily self-correct delinquent participant contributions and loan repayments to pension plans of any size if lost earnings total \$1,000 or less. Below is information from the [DOL's Fact Sheet](#) describing the program and changes.

The Voluntary Fiduciary Correction Program (VFCP) encourages employers and plan officials to voluntarily correct violations of the Employee Retirement Income Security Act (ERISA). Participation in the VFCP offers these benefits:

- Allows employers and plan officials to correct eligible transactions to avoid potential Department of Labor civil enforcement actions.
- Helps employers and plan officials better understand and meet their legal responsibilities.

- Strengthens the security of workers' promised retirement and health benefits.

The Department also provides employers and plan officials conditional relief from payment of excise taxes for certain violations corrected under the VFCP through a related class exemption, Prohibited Transaction Exemption (PTE) 2002-51.

The Department's Employee Benefits Security Administration adopted the VFCP in 2002 and updated it in 2005, 2006, and 2025. The [2025 VFCP update](#) (which includes [amendments to PTE 2002-51](#)) adds a self-correction component for specific transactions, along with improvements that make the VFCP and PTE 2002-51 easier for users to navigate.

The 2025 VFCP update and amendments to PTE 2002-51 are effective March 17, 2025.

## **Eligibility to Correct Violations Under the VFCP**

Employee benefit plan sponsors, officials, and other individuals who may be liable for fiduciary violations under ERISA can apply for relief from enforcement actions through the VFCP. However, they cannot apply if the plan or applicant is "under investigation" (as defined in the VFCP).

In order to receive relief, VFCP applicants must fully correct violations as specified in the VFCP. Incomplete or unacceptable applications may be rejected, which could result in enforcement action as well as civil monetary penalties under ERISA sections 502(l) or 502(i).

## **VFCP Application Process**

Applicants can use the VFCP without first consulting EBSA. They simply need to follow the procedure outlined in the 2025 VFCP package. Violations can be corrected in four easy steps:

- Identify any violations and determine if they qualify as transactions covered by the VFCP;

- Follow the process for correcting specific violations, such as improper loans or incorrect valuation of plan assets;
- Calculate and restore any losses or profits with interest, if applicable, and distribute any supplemental benefits to participants; and
- File an application with the appropriate EBSA regional office and include documentation showing evidence of corrective action taken.

The new self-correction component, described below, provides streamlined correction procedures for certain transactions.

## **Covered Transactions**

The VFCP outlines 19 categories of eligible transactions for correction. It provides corrective remedies for fiduciary violations involving employee benefit plans, including:

- Delinquent Participant Contributions and Participant Loan Repayments to Pension Plans;
- Delinquent Participant Contributions to Insured Welfare Plans;
- Delinquent Participant Contributions to Welfare Plan Trusts;
- Fair Market Interest Rate Loans to Parties in Interest;
- Below Market Interest Rate Loans to Parties in Interest;
- Below Market Interest Rate Loans to Non-Parties in Interest;
- Below Market Interest Rate Loans Due to Delay in Perfecting Security Interest;
- Participant Loans Failing to Comply with Plan Provisions for Amount, Duration, or Level Amortization;
- Defaulted Participant Loans;
- Purchase of Assets by Plans from Parties in Interest;
- Sale of Assets by Plans to Parties in Interest;
- Sale and Leaseback of Property to Sponsoring Employers;
- Purchase of Assets from Non-Parties in Interest at More

- Than Fair Market Value;
- Sale of Assets to Non-Parties in Interest at Less Than Fair Market Value;
- Holding of an Illiquid Asset Previously Purchased by Plan;
- Benefit Payments Based on Improper Valuation of Plan Assets;
- Payment of Duplicate, Excessive, or Unnecessary Compensation;
- Improper Payment of Expenses by Plan; and
- Payment of Dual Compensation to Plan Fiduciaries.

## **Acceptable Corrections**

The VFCP provides rules for acceptable corrections of the eligible transactions listed above. Applicants generally must:

- Conduct valuations of plan assets using generally recognized market standards or obtain written appraisal reports from qualified professionals that are based on generally accepted appraisal standards;
- Restore to the plan the principal amount involved in the transaction, along with either the lost earnings from the date of the loss to the recovery date or the profits gained from using the principal amount from the date of the loss to when the profit is realized, whichever is greater;
- Pay the expenses associated with correcting transactions, such as appraisal costs or fees for recalculating participant account balances; and
- Make supplemental distributions, when appropriate, to former employees, beneficiaries, or alternate payees, and provide proof of these payments.

## **VFCP Documentation**

VFCP applicants must submit supporting documentation to the appropriate EBSA regional office with their application. Required documentation typically includes:

- A copy of relevant portions of plan and related documents;
- Records supporting transactions, such as leases and loan documents, and applicable corrections;
- Documentation of lost earnings;
- Documentation of restored profits (when applicable);
- Proof of payment of required amounts;
- Specific documents required for relevant transactions, as outlined in Section 7 of the VFCP;
- Signed checklist; and
- Penalty of perjury statement.

Applicants can use the VFCP's model application form to avoid common application errors that cause processing delays or rejections.

## **Restitution to Plans**

Applicants must restore the plan, participants, and beneficiaries to the condition they would have been in had the breach not occurred. The VFCP provides an [online calculator](#) to help applicants automatically calculate correction amounts to be paid to the plan. Plans must file, where necessary, amended returns to reflect corrected transactions or valuations.

Applicants also must provide proof of payment to the plan, participants, and beneficiaries. The correction payment can go directly to the plan if the distributions to separated participants are below \$35 and the correction costs exceed the amount owed.

## **New Under the 2025 VFCP Update – Self-Correction Component (SCC)**

The SCC allows employers and plan officials to self-correct certain transactions without submitting a VFCP application. As described below, instead of a VFCP application, eligible self-correctors submit a SCC Notice through EBSA's web tool and provide specified information. After filing the SCC Notice,

self-correctors receive an email acknowledgement from EBSA.

Two types of transactions are eligible for the SCC:

- Delinquent Participant Contributions and Loan Repayments to Pension Plans
- Eligible Inadvertent Participant Loan Failures

## **Self-Correction of Delinquent Participant Contributions and Loan Repayments to Pension Plans**

Participant contributions and loan repayments are considered delinquent when employers retain these payments beyond the time contemplated by the Department's regulations (see 29 CFR 2510.3-102) instead of remitting them to the plan.

Employers and plan officials can use the SCC to voluntarily self-correct delinquent participant contributions and loan repayments to pension plans of any size if lost earnings total \$1,000 or less. They must also:

- Compute lost earnings on the delinquent payments from the date of withholding from participants' paychecks or receipt by the employer, using the online calculator;
- Remit delinquent payments to the plan within 180 calendar days from the date of withholding from participants' paychecks or receipt by the employer;
- Pay any penalties, late fees and other charges themselves; and
- Ensure neither the self-corrector nor the plan is "under investigation", as defined by the VFCP.

Self-correctors must notify EBSA of the self-correction by submitting the SCC Notice with the required information through EBSA's web tool. They must also collect records related to the correction, including the SCC Retention Record Checklist and a penalty of perjury statement, and provide them to the plan administrator for recordkeeping. Unlike the VFCP application process, self-correctors will receive an email

acknowledgment instead of a “no action” letter.

## **Self-Correction of Eligible Inadvertent Participant Loan Failures**

Eligible Inadvertent Participant Loan Failures are violations involving loans from a plan to a participant that can be self-corrected under the Internal Revenue Service’s Employee Plans Compliance Resolution System (EPCRS). The SCC allows employers and plan officials to self-correct these violations under the VFCP and receive relief from EBSA enforcement action and civil penalties, if they make a correction through EPCRS.

These violations include:

- Non-compliance with plan terms that incorporate requirements of the Internal Revenue Code regarding the amount, duration, or level amortization of the loan;
- Loans that defaulted due to a failure to withhold from the participant’s wages;
- Failure to obtain spousal consent for a loan; or
- Allowing a loan that exceeds the number of loans permitted under the plan.

Self-correctors must notify EBSA of the self-correction by submitting the SCC Notice with required information through EBSA’s web tool. They must also complete and retain the penalty of perjury statement. The SCC Retention Record Checklist is not required for correction of this transaction.

## **Other Improvements in 2025 VFCP Update**

In addition to adding the SCC, the 2025 VFCP update includes other improvements:

- Additional correction options are available for prohibited loan transactions and prohibited purchase and sale transactions involving plans;
- Relief for prohibited sale and leaseback of real property is expanded to include sale and leaseback to

- affiliates of the plan sponsor;
- Applicants can correct delinquent participant contributions and loan repayments despite the application containing evidence of a criminal violation, if the applicant certifies that they did not participate in the criminal activity, the appropriate law enforcement agencies have been notified, and other conditions are satisfied; and
- Service providers can submit a “bulk” application to address violations involving multiple plans.

Please consult the VFCP document for a complete discussion of the improvements.

## **Excise Tax Exemption**

PTE 2002-51 provides relief from certain excise tax provisions of the Internal Revenue Code, provided that all requirements of the VFCP and exemption are met. The Department has amended PTE 2002-51 to expand the relief to include corrections made through the SCC.

The exemption covers six prohibited transactions listed in the VFCP:

- Failure to timely remit participant contributions or participant loan repayments to plans;
- Loans made at a fair market interest rate by plans to a disqualified person;
- Purchase or sale of assets between a plan and a disqualified person at fair market value;
- Sale of real property to a plan by an employer (or its affiliate) at fair market value and leaseback of the property at fair market rental value;
- Purchase or sale of illiquid assets by plans;
- Use of plan assets to pay fees that are “settlor expenses” to service providers, if such payments are not expressly prohibited in the plan documents.

Applicants relying on the class exemption must meet all VFCP requirements and receive either a “no action” letter or SCC email acknowledgment from EBSA. They must also comply with any transaction-specific conditions of the class exemptions, including any required notifications and documentation.



Refer to the class exemption PTE 2002-51 to confirm that you meet all terms and conditions.



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## Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New

York and Florida. We are also able to practice in additional states that have passed firm mobility.

## Recent Articles

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- [DOL Updates National Enforcement Projects for Employee Benefit Plans](#)
- [2025 Required Amendments List Issued by the IRS](#)
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