



# Pension Analyst



## Eligible transactions and corrections under the VFC Program\*

Transaction	Correction	Example	Required Documentation
<p><b><i>Delinquent Participant Contributions or Loan Repayments to Retirement Plans</i></b></p> <p>An employer receives directly from participants, or withholds from employees' paychecks, certain amounts either for contribution to a retirement plan or for repayment of participants' plan loans.</p> <p>In the case of employee contributions, instead of forwarding the contributions for investment in accordance with the provisions of the plan and the DOL's timing requirements, the employer retains the contributions for a longer period of time.</p> <p>In the case of participant loan repayments, instead of applying the repayments to outstanding loan balances in accordance with the provisions of the plan and the DOL's timing requirements, the employer retains the repayments for a longer period of time.</p>	<p><b>Unpaid contributions or participant loan repayments.</b> Pay to the plan the <a href="#">Principal Amount</a>, plus the greater of:</p> <ul style="list-style-type: none"> <li>• <a href="#">Lost Earnings</a> or</li> <li>• <a href="#">Restoration of Profits</a>, if applicable.</li> </ul> <p>The <a href="#">Loss Date</a> for each participant contribution or loan repayment is the earliest date on which it could reasonably have been segregated from the employer's general assets. In no event shall the Loss Date be later than the 15<sup>th</sup> business day of the month following the month the contributions or loan repayments would otherwise have been payable to the participant in cash.</p> <p><b>Late contributions or participant loan repayments.</b> Pay to the plan the greater of:</p> <ul style="list-style-type: none"> <li>• <a href="#">Lost Earnings</a> or</li> <li>• <a href="#">Restoration of Profits</a>, if applicable.</li> </ul>	<ul style="list-style-type: none"> <li>• Organization A's pay periods end every other Friday. Each pay period, participant contributions total \$10,000, which reasonably can be segregated from Organization A's general assets by ten business days following the end of each pay period.</li> <li>• Organization A should have remitted participant contributions for the pay period ending March 4, 2008 to the plan by March 18, 2008, the Loss Date, but actually remitted them on April 15, 2008, the <a href="#">Recovery Date</a>.</li> <li>• In early 2009, it was discovered that participant contributions for this pay period were not remitted on a timely basis. To comply with the Program, it was determined that all Lost Earnings would be repaid on January 30, 2009.</li> <li>• Based on the facts:             <ul style="list-style-type: none"> <li>▪ <b>Principal Amount</b> is \$10,000</li> <li>▪ <b>Loss Date</b> is March 18,</li> </ul> </li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ol style="list-style-type: none"> <li>1. A statement from a <a href="#">Plan Official</a> identifying the earliest date on which the participant contributions or loan repayments reasonably could have been segregated from the employer's general assets, along with the supporting documentation on which the <a href="#">Plan Official</a> relied in reaching this conclusion.</li> <li>2. If restored participant contributions or loan repayments (excluding <a href="#">Lost Earnings</a>) either (A) total \$50,000 or less; or (B) exceed \$50,000 but were remitted to the plan within 180 calendar days from the date the amounts were received by the employer or the date the amounts would have been paid to the participant in cash, submit:             <ol style="list-style-type: none"> <li>i.) A narrative describing the applicant's contribution or loan repayment remittance practices before and after the period of unpaid or late contributions or loan</li> </ol> </li> </ol>

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		<p>2008</p> <ul style="list-style-type: none"> <li>▪ <b>Recovery Date</b> is April 15, 2008</li> <li>▪ <b>Number of Days Late</b> is 28 (Recovery Date less Loss Date)</li> </ul> <p>Applicants may either use <a href="#">the Online Calculator</a> to calculate the Lost Earnings amounts, or perform the calculation manually. Both the Online Calculator and examples of a manual calculation are available at: <a href="http://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs/vfcp">http://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs/vfcp</a></p>	<p>repayments; and</p> <p>ii.) Summary documents demonstrating the amount of unpaid or late contributions or loan repayments.</p> <p>3. If restored participant contributions or loan repayments (excluding Lost Earnings) exceed \$50,000 and were remitted more than 180 calendar days after the date such amounts were received by the employer, or the date such amounts otherwise would have been payable to the participants in cash, submit:</p> <p>i.) A narrative describing the applicant's contribution and/or loan repayment remittance practices before and after the period of unpaid or late contributions and/or loan repayments; and</p> <p>ii.) For contributions or loan repayments received from participants: a copy of the accounting records that identify the date and amount of each contribution received; and</p> <p>iii.) For contributions or loan repayments withheld from employees' paychecks: a copy of the payroll documents showing the date and amount of each withholding.</p>
<p><b>Loan at Fair Market Interest Rate to a Party-in-Interest</b></p> <p>A plan makes a loan to a <a href="#">Party-in-Interest</a> at an interest rate no less</p>	<p>Pay off the loan in full, including any prepayment penalties.</p> <p>An independent commercial lender must also confirm in writing</p>	<ul style="list-style-type: none"> <li>• Plan Y made a \$25,000 loan to a <a href="#">Party-in-Interest</a>, Participant A, who does not qualify for a prohibited transaction exemption.</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus a narrative describing the process used to determine the fair market interest rate at the time the loan was made,</p>

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<p>than that for loans with similar terms made to a borrower of similar creditworthiness. However, the loan is not exempt from ERISA's prohibited transaction provisions.</p>	<p>that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness.</p>	<ul style="list-style-type: none"> <li>☞ Participant A must pay off the loan in full, including any prepayment penalties.</li> <li>☞ An independent commercial lender must confirm that the loan was made at a fair market interest rate for a loan with similar terms to a borrower of similar creditworthiness.</li> </ul>	<p>validated in writing by an independent commercial lender.</p>
<p><b><u><a href="#">Loan at Below-Market Interest Rate to a Party-in-Interest</a></u></b></p> <p>A plan makes a loan to a <u><a href="#">Party-in-Interest</a></u> at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms made to a borrower of similar creditworthiness. The loan was not exempt from ERISA's prohibited transaction provisions.</p>	<p>Pay off the loan in full, including any prepayment penalties.</p> <p>Also, pay to the plan the <u><a href="#">Principal Amount</a></u>, plus the greater of:</p> <ul style="list-style-type: none"> <li>• <u><a href="#">Lost Earnings</a></u>, or</li> <li>• <u><a href="#">Restoration of Profits</a></u>, if any.</li> </ul> <p>For purposes of this transaction, the Principal Amount is the excess of the interest payments that would have been received if the loan had been made at the fair market interest rate (from the beginning of the loan until the <u><a href="#">Recovery Date</a></u>) over interest payments actually received under the loan terms during such period. An independent commercial lender must determine the fair market interest rate.</p>	<ul style="list-style-type: none"> <li>• Plan X made a \$150,000 mortgage loan to a <u><a href="#">Party-in-Interest</a></u>, Participant B.</li> <li>• The loan is secured by a first Deed of Trust, at a fixed interest rate of 4% per annum.</li> <li>• The loan is to be fully amortized over 30 years.</li> <li>• The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum.</li> <li>☞ Participant B or a <u><a href="#">Plan Official</a></u> must repay the loan in full plus any applicable prepayment penalties.</li> <li>☞ Participant B or a Plan Official also must pay the difference between:             <ul style="list-style-type: none"> <li>• What the plan would have received through the <u><a href="#">Recovery Date</a></u> had the loan been made at 7%, and</li> <li>• What the plan did receive from the commencement of the loan to the Recovery Date, plus Lost</li> </ul> </li> </ul>	<p><u><a href="#">Standard Supporting Documentation</a></u>, plus:</p> <ul style="list-style-type: none"> <li>• A narrative describing the process used to determine the fair market interest rate at the time the loan was made;</li> <li>• A copy of the independent commercial lender's fair market interest rate determination(s) and</li> <li>• A copy of the independent fiduciary's dated, written approval of the fair market interest rate determination(s).</li> </ul>

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<p><b><i>Loan at Below-Market Interest Rate to a Person Who is Not a Party-in-Interest</i></b></p> <p>A plan makes a loan to a person who is not a <a href="#">Party-in-Interest</a> at an interest rate which, at the time the loan was made, was less than the fair market interest rate for loans with similar terms made to a borrower of similar creditworthiness.</p>	<p>Pay to the plan the <a href="#">Principal Amount</a>, plus <a href="#">Lost Earnings</a> through the <a href="#">Recovery Date</a>, in accordance with the following:</p> <ol style="list-style-type: none"> <li>Each loan payment has a Principal Amount equal to the difference between:                             <ul style="list-style-type: none"> <li>Interest payments that would have been received until the Recovery Date if the loan had been made at the fair market interest rate, and</li> <li>The interest actually received under the loan terms. An independent commercial lender must determine the fair market interest rate.</li> </ul> </li> <li>From the inception of the loan to the Recovery Date, pay to the plan the Lost Earnings on the series of Principal Amounts.</li> <li>From the Recovery Date to the maturity date of the loan, pay the present value of the remaining Principal Amounts, as determined by an independent commercial lender. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.</li> </ol>	<p>Earnings on that amount.</p> <ul style="list-style-type: none"> <li>Plan Y made a \$150,000 mortgage loan to an individual who is not a Party-in-Interest.</li> <li>The loan was secured by a first Deed of Trust at a fixed interest rate of 4% per annum.</li> <li>The loan was to be fully amortized over 30 years.</li> <li>The fair market interest rate for comparable loans, at the time this loan was made, was 7% per annum.</li> </ul> <p>☞ The borrower or the <a href="#">Plan Official</a> must pay the difference between:</p> <ul style="list-style-type: none"> <li>What the plan would have received through the Recovery Date had the loan been made at 7%, and</li> <li>What the plan did receive from the commencement of the loan to the Recovery Date, plus Lost Earnings on that amount.</li> </ul> <p>☞ On the Recovery Date, the Plan Official must also pay the difference in the value of the remaining payments on the loan between the 7% and the 4% for the duration of the time the plan is owed repayments on the loan.</p>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>A narrative describing the process used to determine the fair market interest rate at the time the loan was made; and</li> <li>A copy of the independent commercial lender's fair market interest rate determination(s).</li> </ul>

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<p><b><i>Loan at Below-Market Interest Rate Solely Due to a Delay in Perfecting the Plan's Security Interest</i></b></p> <p>A plan intended to make a secured loan to a person who is not a <a href="#">Party-in-Interest</a>, but there is a delay in recording or otherwise perfecting the plan's interest in the loan collateral. The loan is treated as unsecured until the plan's security interest was perfected.</p>	<p>Pay to the plan the <a href="#">Principal Amount</a>, plus <a href="#">Lost Earnings</a>, through the date the loan is fully secured.</p> <p>The Principal Amount is equal to the difference between:</p> <ul style="list-style-type: none"> <li>• Interest payments actually received under the loan terms, and</li> <li>• The interest payments that would have been received if the loan had been made at the fair market interest rate for an unsecured loan.</li> </ul> <p>An independent commercial lender must determine the fair market interest rate.</p> <p>If the delay in perfecting the loan's security caused a permanent change in the risk characteristics of the loan, an independent commercial lender must determine the fair market interest rate for the remaining term of the loan. In that case, the correction amount includes an additional payment to the plan. The additional amount to be paid to the plan is the present value of the remaining Principal Amounts from the date the loan is fully secured to the maturity date of the loan. Instead of calculating the present value, it is acceptable for administrative convenience to pay the sum of the remaining Principal Amounts.</p>	<p><b>Example 1:</b></p> <ul style="list-style-type: none"> <li>• Plan Z made a mortgage loan, which was supposed to be secured by a Deed of Trust.</li> <li>• The plan's Deed was not recorded for six months, but, when it was recorded, it was in first position.</li> <li>• The interest rate on the loan was the fair market interest rate for a mortgage loan secured by a first-position Deed of Trust.</li> </ul> <p>☞ The loan is treated as an unsecured, below-market loan for the six months prior to the recording of the Deed.</p> <p><b>Example 2:</b></p> <ul style="list-style-type: none"> <li>• Assume the same facts as in Example 1, except that, because of the delay in recording the Deed, the plan ended up in second position behind another lender.</li> <li>• The risk to the plan is higher and the interest rate on the note is no longer appropriate to that risk.</li> </ul> <p>☞ The loan is treated as a below-market loan (based on the lack of security) for the six months prior to the recording of the Deed of Trust and as a below-market loan (based on secondary status security) from the time the Deed is recorded until the end of the</p>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>• A narrative describing the process used to determine the fair market interest rate for the period that the loan was unsecured and, if applicable, for the remaining term of the loan; and</li> <li>• A copy of the independent commercial lender's fair market interest rate determination(s).</li> </ul>

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<p><b><i>Failure of Loan to Comply with Plan Provisions for Amount, Duration or Level Amortization</i></b></p> <p>A plan extended a loan to a Participant who is a <a href="#">Party-in-Interest</a> solely because he is an employee.</p> <p>The loan was a prohibited transaction that did not qualify for the plan loan exemption under ERISA because the loan terms did not comply with the requirements of section 72(p) of the Code concerning:</p> <ul style="list-style-type: none"> <li>• The amount of the loan,</li> <li>• The duration of the loan, or</li> <li>• The level amortization of the loan repayment.</li> </ul>	<p><a href="#">Plan Officials</a> must correct the loan with IRS approval under the Voluntary Correction Program (VCP) of the <a href="#">IRS' Employee Plans Compliance Resolution System (EPCRS)</a>.</p>	<p>loan.</p> <p><b>Example 1: Loan Amount Exceeds Plan-Imposed Limit</b></p> <ul style="list-style-type: none"> <li>• On January 1, 2008, Participant A receives a \$15,000 loan.</li> <li>• Participant A is an employee of Company Y, the plan sponsor.</li> <li>• Participant A is only a Party-in-Interest because he is an employee of Company Y.</li> <li>• The loan repayment period is 5 years and repayments are made in equal monthly installments of principal and interest at an interest rate of 4.625%. Monthly payments are \$280.</li> <li>• According to Plan X's limitations on participant loans and Participant A's account balance as of January 1, 2008, Participant A should not have received a loan exceeding \$10,000. The loan otherwise complies with Plan X's loan provisions.</li> <li>• In late 2008, a <a href="#">Plan Official</a> discovers that the amount of Participant A's outstanding loan exceeded the plan limits.</li> <li>• On January 1, 2009, the Recovery Date, Participant A's outstanding loan balance is \$12,270.</li> </ul> <p>☞ To correct the transaction, Participant A repays \$5,000 to Plan X, the amount by which</p>	<p>Applicants only need to submit the following documentation:</p> <ul style="list-style-type: none"> <li>• A copy of the IRS Compliance Statement; and</li> <li>• Proof of payment of Principal Amount and Lost Earnings or Restoration of Profits.</li> </ul>

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		<p>his loan exceeded the limitations on January 1, 2008.</p> <ul style="list-style-type: none"> <li>☞ <a href="#">Plan Officials</a> reform the remaining outstanding principal balance of \$7270 to be paid back in equal monthly installments at the original loan rate of 4.625%.</li> <li>☞ The monthly repayment amount is adjusted to \$166 over the 4-year period remaining on the original 5-year loan.</li> <li>☞ Plan Officials submit an application to the IRS' Voluntary Compliance Program (VCP).</li> </ul> <p><b>Example 2: Loan Duration Exceeds Plan-Imposed Limit</b></p> <ul style="list-style-type: none"> <li>• On January 1, 2008, Participant A receives a \$10,000 general purpose loan.</li> <li>• Participant A is an employee of Company Y, the plan sponsor.</li> <li>• Participant A is only a Party-in-Interest because he is an employee of Company Y.</li> <li>• The loan repayment period is 10 years and repayments are made in equal monthly installments of principal and interest at an interest rate of 4.75%. Monthly payments are \$105.</li> <li>• According to the Plan X</li> </ul>	

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		<p>provisions, Participant A should not have received a loan with a duration longer than 5 years.</p> <ul style="list-style-type: none"> <li>• In late 2008, a <a href="#">Plan Official</a> discovers that the duration of Participant A's loan exceeded plan limitations.</li> <li>☞ Plan Officials reform Participant A's loan on January 1, 2008, based on the remaining outstanding principal balance of \$9,200, to be paid back in equal monthly installments at the original loan rate of 4.75%.</li> <li>☞ The monthly repayment amount is adjusted to \$211 over the 4-year period remaining on the original 5-year loan.</li> <li>☞ Plan Officials submit an application to the IRS' Voluntary Compliance Program (VCP).</li> </ul>	
<p><b>Defaulted Loans</b></p> <p>A plan extended a loan to a plan participant who is a <a href="#">Party-in-Interest</a> with respect to the plan solely because he is an employee.</p> <p>At its origination, the loan complied with the applicable plan provisions, which incorporated the requirements under Code section 72(p).</p> <p>During the loan repayment period,</p>	<p><a href="#">Plan Officials</a> must correct the loan with IRS approval under the Voluntary Correction Program of the <a href="#">IRS' Employee Plans Compliance Resolution System (EPCRS)</a>.</p>	<ul style="list-style-type: none"> <li>• On January 1, 2008, Participant A receives a \$20,000 general purpose loan.</li> <li>• Participant A is an employee of Company Y, the plan sponsor.</li> <li>• Participant A is a Party-in-Interest because he is an employee of Company Y.</li> <li>• The loan repayment period is 5 years and repayments are made in equal monthly</li> </ul>	<p>Applicants only need to submit the following documentation:</p> <ul style="list-style-type: none"> <li>• A copy of the IRS Compliance Statement; and</li> <li>• Proof of payment of Principal Amounts and Lost Earnings or Restoration of Profits.</li> </ul>

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<p>the <a href="#">Plan Official</a> responsible for loan administration failed to properly withhold a number of loan repayments from the participant's wages and included the amount of such repayments in the participant's wages based on administrative or systems errors. The failure to withhold is a <a href="#">Breach</a> causing the loan to become non-compliant with applicable plan provisions.</p>		<p>installments with interest at an interest rate of 4.75%. Monthly payments are \$105.</p> <ul style="list-style-type: none"> <li>In April 2008, a <a href="#">Plan Official</a> discovers that the loan repayments were not made due to administrative error.</li> <li><a href="#">Plan Officials</a> reform Participant A's loan by reamortizing the remaining balance over the remaining loan period.</li> <li>Alternatively, a Plan Official may allow Participant A to make a lump sum payment reflecting the missed loan repayments.</li> <li>Plan Official submits an application to the <a href="#">IRS' Voluntary Compliance Program</a>.</li> </ul>	
<p><b><i>Purchase of an Asset (Including Real Property) by a Plan From a Party-in-Interest</i></b></p> <p>A plan uses cash to purchase an asset from a <a href="#">Party-in-Interest</a>, and no prohibited transaction exemption applies.</p>	<p><b>Option 1.</b> Sell the property back to the Party-in-Interest who originally sold the asset to the plan or to a person who is not a Party-in-Interest.</p> <p>The plan must receive the higher of:</p> <ul style="list-style-type: none"> <li>The <a href="#">fair market value (FMV)</a> of the asset at the time of resale, without a reduction for the costs of sale; plus the restoration to the plan of the Party-in-Interest's investment return from the proceeds of the sale, to the extent they exceed the plan's net profits from owning the property; or</li> </ul>	<p><b>Example 1: Plan Sells Property Back to Original Owner</b></p> <ul style="list-style-type: none"> <li>Plan M purchased a parcel of real property from the plan sponsor for \$120,000 plus \$5,000 in transaction costs.</li> <li>The plan uses the property as an office.</li> <li>As part of the correction, the <a href="#">Plan Official</a> obtains two appraisals from a qualified independent appraiser to determine the FMV of the property at the time of purchase and at the time of the correction (the "Recovery Date").</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the seller;</li> <li>A narrative describing the relationship between the original seller of the asset and the plan; and</li> <li>The qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan, both at the time of the original purchase and at the recovery</li> </ul>

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	<ul style="list-style-type: none"> <li>The <a href="#">Principal Amount</a>, plus the greater of:                             <ul style="list-style-type: none"> <li>(A) <a href="#">Lost Earnings</a> on the Principal Amount, or</li> <li>(B) <a href="#">Restoration of Profits</a>, if any.</li> </ul> </li> </ul> <p><b>Option 2.</b> The plan may keep the asset and receive the total of (A) + (B), below:</p> <p>(A) The greater of:</p> <ul style="list-style-type: none"> <li>(i.) Lost Earnings, or</li> <li>(ii.) Restoration of Profits, if any, on the Principal Amount, but only to the extent that such Lost Earnings or Restoration of Profits exceeds the difference between the FMV of the asset as of the <a href="#">Recovery Date</a> and the original purchase price.</li> </ul> <p>(B) The amount by which the Principal Amount exceeded the FMV of the asset (at the time of the original purchase), plus the greater of:</p> <ul style="list-style-type: none"> <li>(i.) Lost Earnings, or</li> <li>(ii.) Restoration of Profits, if any, on such excess, provided an independent fiduciary determines that the plan will realize a greater benefit from</li> </ul>	<ul style="list-style-type: none"> <li>The FMV of the property at the time of the purchase was \$100,000 (\$20,000 less than the plan paid for it).</li> <li>As of the Recovery Date the property is valued at \$110,000.</li> </ul> <p>☞ The plan sponsor repurchases the property for \$120,000 with no reduction for the transaction costs and reimburses the plan for the \$5,000 in transaction costs.</p> <p>☞ The plan sponsor also pays the plan the greater of</p> <ul style="list-style-type: none"> <li>The plan's Lost Earnings, or</li> <li>The plan sponsor's profits on this amount.</li> </ul> <p>☞ An independent fiduciary's determination is not required because the assets are being sold back to the Party-in-Interest.</p> <p><b>Example 2: Plan Keeps the Asset.</b></p> <ul style="list-style-type: none"> <li>On February 1, 2008, Plan N purchased from a Party-in-Interest a parcel of commercial real estate for \$120,000, and \$5,000 in transaction costs.</li> <li>The plan initially uses the property as an office.</li> <li>At the same time it is discovered that the original purchase was a prohibited transaction, the plan enters</li> </ul>	<p>date.</p> <ul style="list-style-type: none"> <li>If applicable, a report of the independent fiduciary's determination that the plan will realize a greater benefit by retaining the asset than by reselling the asset.</li> </ul>

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	<p>this correction than it would from the resale of the asset.</p> <p>For this transaction, the Principal Amount is the plan's original purchase price.</p>	<p>into a lucrative lease with an unrelated party for the use of the property to begin January 1 of the following year.</p> <ul style="list-style-type: none"> <li>• Due to commercial developments in adjacent properties, the Plan Official believes that the property will increase in value and that the plan would be able to obtain substantially increasing rental payments for the use of the property.</li> <li>• As part of the correction, the Plan Official obtains two appraisals from a <a href="#">qualified independent appraiser</a> to determine the FMV of the asset at the time of the purchase and at the time of the correction (the "Recovery Date").</li> <li>• The FMV of the property at the time of purchase was \$120,000 (the same as the original purchase price).</li> <li>• As of the Recovery Date, the property is valued at \$150,000.</li> <li>• Lost Earnings are calculated through September 30, 2011, the anticipated Recovery Date. The Online Calculator determined that Lost Earnings is \$26,098.23 on the Principal Amount of \$125,000 (purchase price plus transaction costs).</li> <li>• There were no determinable profits.</li> </ul>	

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		<ul style="list-style-type: none"> <li>• The increase in the FMV, \$30,000, is greater than Lost Earnings or Restoration of Profits.</li> <li>• The Plan Official would like to correct by retaining the property rather than selling it back to the Party-in-Interest.</li> <li>☞ The Plan Official must obtain a determination by an independent fiduciary that the plan will realize a greater benefit by retaining the asset than by selling the asset back to the Party-in-Interest.</li> <li>☞ Because the original purchase price was the same as the FMV, and the increase in the FMV is greater than any earnings or investment return on the original purchase price, the only cash payment to the plan involved in this correction is the \$5,000 of transaction costs, plus Lost Earnings.</li> </ul>	
<p><b><i>Sale of an Asset (Including Real Property) by a Plan to a Party-in-Interest</i></b></p> <p>A plan sells an asset for cash to a <a href="#">Party-in-Interest</a>, and the transaction is not exempt from the prohibited transaction provisions of ERISA.</p>	<p><b>Option 1.</b> The plan must receive the <a href="#">Principal Amount</a> plus the greater of:</p> <ul style="list-style-type: none"> <li>• <a href="#">Lost Earnings</a>, or</li> <li>• <a href="#">Restoration of Profits</a>, if any, provided an independent fiduciary determines that the plan will realize a greater benefit from this correction than it would from the repurchase of the asset, as described below.</li> </ul> <p><b>Option 2.</b> The plan may</p>	<p><b>Example 1: Plan Repurchases the Asset.</b></p> <ul style="list-style-type: none"> <li>• Plan O sold a parcel of unimproved real property to the plan sponsor for \$120,000, and did not incur any transaction costs.</li> <li>• The sponsor did not make any profit on the use of the property.</li> <li>• The <a href="#">Plan Official</a> obtains from a qualified, independent appraiser an appraisal of the property reflecting the <a href="#">FMV</a> of</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>• Documentation of the plan's sale of the asset, including the date of the sale, the sales price, and the identity of the original purchaser;</li> <li>• A narrative describing the relationship of the purchaser to the asset and the relationship of the purchaser to the plan;</li> <li>• The qualified, independent appraiser's report addressing the FMV of the property at the</li> </ul>

Transaction	Correction	Example	Required Documentation
	<p>repurchase the asset from the Party-in-Interest at the lower of:</p> <ul style="list-style-type: none"> <li>(A) the price for which it sold the property, or</li> <li>(B) the <b>FMV</b> of the property as of the Recovery Date plus restoration to the plan of the Party-in-Interest's net profits from owning the property if they exceed the plan's investment return from the proceeds of the sale.</li> </ul> <p>For this transaction, the Principal Amount is the amount by which the FMV of the asset (at the time of the original sale) exceeds the sale price.</p>	<p>the property as of the sale date.</p> <ul style="list-style-type: none"> <li>• The appraiser valued the property at \$130,000.</li> <li>• As of the Recovery Date, the appraiser values the property at \$140,000.</li> </ul> <p>☞ The plan repurchases the property at the original sale price of \$120,000, with the Party-in-Interest assuming the costs of the reversal of the sale transaction.</p> <p>☞ The determination of an independent fiduciary is not required because the property is being repurchased.</p> <p><b>Example 2: Plan Receives Additional Payment.</b></p> <ul style="list-style-type: none"> <li>• Assume the same facts as in Example 1, except as of the Recovery Date, the appraiser values the property at \$100,000 and the plan fiduciaries believe that the property will continue to decrease in value based on environmental studies conducted in adjacent areas.</li> </ul> <p>☞ Based on the determination of an independent fiduciary that the plan will realize a greater benefit by receiving the Principal Amount (FMV) of the asset at the time of the original sale less the original sales price equals \$10,000) plus the greater of:</p>	<p>time of the sale from the plan and as of the Recovery Date; and</p> <ul style="list-style-type: none"> <li>• If applicable, the independent fiduciary's determination that the plan will realize a greater benefit by receiving the correction amount described in Example 2 than by repurchasing the asset.</li> </ul>

Transaction	Correction	Example	Required Documentation
<p><b><i>Sale and Leaseback of Real Property to Employer</i></b></p> <p>The plan sponsor sells a parcel of real property to the plan, which then was leased back to the sponsor, in a transaction that is not exempt from the prohibited transaction provisions of ERISA.</p>	<p>Sell the parcel of real property back to the plan sponsor or to a person who is not a <a href="#">Party-in-Interest</a> with respect to the plan. The plan must receive the higher of:</p> <ul style="list-style-type: none"> <li>• <a href="#">FMV</a> of the asset at the time of resale, without a reduction for the costs of sale; or</li> <li>• The <a href="#">Principal Amount</a>, plus the greater of :                             <ul style="list-style-type: none"> <li>(A) <a href="#">Lost Earnings</a> on the Principal Amount, or</li> <li>(B) The <a href="#">Restoration of Profits</a>, if any.</li> </ul> </li> </ul> <p>If the plan has not been receiving rent at FMV, as determined by a qualified, independent appraisal, the sale price of the real property should not be based on the historic below-market rent that was paid to the plan.</p> <p>In addition, if the plan was not receiving rent at FMV, as determined by a qualified, independent appraiser, the Principal Amount also includes the difference between the rent actually paid and the rent that should have been paid at FMV. The plan sponsor must pay to the plan this additional Principal Amount, plus the greater of:</p> <ul style="list-style-type: none"> <li>• Lost Earnings, or</li> </ul>	<p>(A) Lost Earnings or (B) Restoration of Profits, the transaction is corrected by cash settlement.</p> <ul style="list-style-type: none"> <li>• Plan R purchased at FMV from the plan sponsor an office building that served as the sponsor's primary business site.</li> <li>• Simultaneously, the plan sponsor leased the building from the plan at below the market rental rate.</li> <li>☞ The <a href="#">Plan Official</a> obtains from a qualified, independent appraiser an appraisal of the property reflecting the FMV of the property and rent.</li> <li>☞ The plan sponsor purchases the property from the plan at the higher of the appraised value at the time of the resale or the original sale price and also pays the Lost Earnings.</li> <li>☞ Because the rent paid to the plan was below the market rate, the sponsor must also make up the difference between the rent paid and the amount that should have been paid, plus Lost Earnings on this amount.</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>• Documentation of the plan's purchase of the real property, including the date of the purchase, the plan's purchase price, and the identity of the original seller;</li> <li>• Documentation of the plan's sale of the asset, including the date of sale, the sales price, and the identity of the purchaser;</li> <li>• A narrative describing the relationship of the original seller to the plan and the relationship of the purchaser to the plan;</li> <li>• A copy of the lease;</li> <li>• Documentation of the date and amount of each lease payment received by the plan; and</li> <li>• The qualified, independent appraiser's report addressing both the FMV of the property at the time of the original sale and at the <a href="#">Recovery Date</a>, and the FMV of the lease payments.</li> </ul>

Transaction	Correction	Example	Required Documentation
	<ul style="list-style-type: none"> <li>Restoration of Profits resulting from the plan sponsor's use of the Principal Amount.</li> </ul> <p>For purposes of this transaction, the Principal Amount is the plan's original purchase price.</p>		
<p><b><i>Purchase of an Asset (Including Real Property) By a Plan From a Person Who Is Not a Party-in-Interest at a Price Other Than Fair Market Value</i></b></p> <p>A plan acquires an asset from a person who is not a <a href="#">Party-in-Interest</a> without determining the asset's <a href="#">FMV</a>. The plan paid more than it should have for the asset.</p>	<p>The plan must receive the Principal Amount plus the Lost Earnings.</p> <p>The Principal Amount is the difference between the actual purchase price and the asset's FMV at the time of purchase.</p>	<ul style="list-style-type: none"> <li>Plan T bought unimproved land without obtaining a qualified, independent appraisal.</li> <li>☞ Upon discovering that the purchase price was \$10,000 more than the appraised FMV, the <a href="#">Plan Official</a> pays the plan the Principal Amount of \$10,000, plus Lost Earnings.</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>Documentation of the plan's original purchase of the asset, including the date of the purchase, the purchase price, and the identity of the seller;</li> <li>A narrative describing the relationship of the seller to the plan; and</li> <li>A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's purchase.</li> </ul>
<p><b><i>Sale of an Asset (Including Real Property) By a Plan to a Person who is not a Party-in-Interest at a Price Less Than Fair Market Value</i></b></p> <p>A plan sells an asset to a person who is not a <a href="#">Party-in-Interest</a>, without determining the asset's <a href="#">FMV</a>. The plan received less than it should have from the sale.</p>	<p>The plan must receive the Principal Amount plus Lost Earnings.</p> <p>The Principal Amount is the amount by which the FMV of the asset as of the Recovery Date exceeds the price at which the plan sold the property.</p>	<ul style="list-style-type: none"> <li>Plan C sold unimproved land without taking steps to ensure that it received FMV.</li> <li>☞ Upon discovering that the sale price was \$10,000 less than the FMV, the <a href="#">Plan Official</a> pays the plan the Principal Amount of \$10,000 plus Lost Earnings.</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>Documentation of the plan's original sale of the asset, including the date of the sale, the sale price, and the identity of the buyer;</li> <li>A narrative describing the relationship of the buyer to the plan; and</li> <li>A copy of the qualified, independent appraiser's report addressing the FMV at the time of the plan's sale.</li> </ul>
<p><b><i>Holding of an Illiquid Asset Previously Purchased by the</i></b></p>	<p>A <a href="#">Plan Official</a> may sell the asset to a Party-in-Interest. This</p>	<p>Example.</p>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p>

Transaction	Correction	Example	Required Documentation
<p><b>Plan</b></p> <p>A plan is holding an asset previously purchased from:</p> <ul style="list-style-type: none"> <li>• A <a href="#">Party-in-Interest</a> in an acquisition that was eligible for a prohibited transaction exemption, or</li> <li>• A Party-in-Interest at no greater than fair market value FMV at that time in an acquisition that was not eligible for a prohibited transaction exemption, or</li> <li>• A person who was not a Party-in-Interest in an acquisition in which a plan fiduciary failed to appropriately discharge his or her fiduciary duties, or</li> <li>• A person who was not a Party-in-Interest in an acquisition in which a plan fiduciary appropriately discharged his or her fiduciary duties.</li> </ul> <p>A current plan fiduciary determines that such asset is an illiquid asset because:</p> <ul style="list-style-type: none"> <li>• The asset failed to appreciate, failed to provide a reasonable rate of return, or caused a loss to the plan;</li> <li>• The sale of the asset is in the best interest of the plan; and</li> <li>• Following reasonable efforts to sell the asset to a person who is not a Party-in-Interest,</li> </ul>	<p>correction provides relief for both the original purchase of the asset, if required, and the sale of the illiquid asset by the plan to a Party-in-Interest, provided the Plan Official also satisfies the applicable conditions of the VFC Program class exemption.</p> <p>The transaction may be corrected by the sale of the asset to a Party-in-Interest, provided the plan receives the higher of</p> <p>(A) The FMV of the asset at the time of resale, without a reduction for the costs of sale; or</p> <p>(B) The Principal Amount, plus Lost Earnings.</p> <p>For this transaction, the Principal Amount is the plan's original purchase price.</p>	<ul style="list-style-type: none"> <li>• A plan purchases undeveloped real property from a Party-in-Interest for \$60,000 in June 2008.</li> <li>• In April 2013, <a href="#">Plan Officials</a> determine that the property is an illiquid asset.</li> </ul> <p>☞ A qualified independent appraiser appraises the property at a current FMV of \$20,000.</p> <p>☞ The plan sponsor pays the plan the Principal Amount of \$60,000 plus Lost Earnings, and Plan Officials transfer the property from the plan to the plan sponsor.</p> <p>☞ The Plan Officials also comply with the applicable terms of the related prohibited transaction exemption requirements.</p>	<ul style="list-style-type: none"> <li>• Documentation of the plan's original purchase of the asset, including the date of the purchase, the plan's purchase price, the identity of the original seller, and a description of the relationship, if any, between the original seller and the plan;</li> <li>• The qualified, independent appraiser's report addressing the FMV of the asset purchased by the plan at the recovery date;</li> <li>• A narrative describing the plan's efforts to sell the asset to persons who are not parties in interest with respect to the plan and any documentation of such efforts to sell the asset;</li> <li>• A statement from a <a href="#">Plan Official</a> attesting that: (i) The asset failed to appreciate, failed to provide a reasonable rate of return, or caused a loss to the plan; (ii) the sale of the asset is in the best interest of the plan; (iii) the asset is an illiquid asset; and (iv) the plan made reasonable efforts to sell the asset to persons who are not Parties-in-Interest with respect to the plan without success; and</li> <li>• In the case of an illiquid asset that is a parcel of real estate, a statement from a <a href="#">Plan Official</a> attesting that no Party-in-Interest owns real estate that is contiguous to the plan's parcel</li> </ul>

Transaction	Correction	Example	Required Documentation
<p>the asset cannot immediately be sold for its original purchase price, or its current FMV, if greater.</p> <p>Examples of assets that may meet this definition include, but are not limited to, restricted and thinly traded stock, limited partnership interests, real estate and collectibles.</p>			<p>of real estate on the Recovery Date.</p>
<p><b><i>Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based</i></b></p> <p>A defined contribution plan pays benefits based on the value of the plan's assets. If one or more of the plan's assets are not valued at current value, the benefit payments are not correct. If the plan's assets are overvalued, the payments will be too high. If the plan's assets are undervalued, the payments will be too low.</p>	<p>A <a href="#">Plan Official</a> must determine the <a href="#">FMV</a> of the improperly valued asset, for each year in which the asset was valued improperly.</p> <p>Then, participant account balances for each year must be adjusted accordingly.</p> <p>The Plan Official or plan administrator must determine who received distributions from the plan during the time the asset was valued improperly.</p> <p>For distributions that were too low, the amount of the underpayment is treated as a Principal Amount for each individual who received a distribution. The Principal Amount must be paid to the affected individuals, plus Lost Earnings.</p> <p>For distributions that were too high, the total of the overpayments constitutes the Principal Amount for the plan. The Principal Amount plus the <a href="#">Lost Earnings</a> must be restored to the plan or to the</p>	<p><b>Example 1: Asset Overvalued and Participants Overpaid.</b></p> <ul style="list-style-type: none"> <li>• On December 31, 2008, a profit sharing plan purchased a 20-acre parcel of real property for \$500,000.</li> <li>• The plan has carried the property on its books at cost, rather than at FMV.</li> <li>• One participant left the Company on January 1, 2010, and received a distribution, which included her portion of the value of the property.</li> <li>• The separated participant's account balance represented 2% of the plan's assets.</li> <li>☞ A qualified, independent appraiser has determined the FMV of the property for 2009, 2010, and 2011.</li> <li>☞ The FMV as of December 31, 2009, was \$400,000.</li> <li>☞ This participant was overpaid by \$2,000 ((\$500,000-\$400,000) times 2%).</li> <li>☞ The <a href="#">Plan Officials</a> correct the transaction by paying to the</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>• A copy of the qualified, independent appraiser's report for each plan year in which the asset was revalued;</li> <li>• A written statement confirming the date that amended Annual Report Forms 5500 with correct valuation data were filed;</li> <li>• If losses are restored to the plan, proof of payment to the plan and copies of the adjusted participant account balances; and</li> <li>• If additional payments are made, proof of payment to the individuals entitled to receive the additional payments.</li> </ul>

Transaction	Correction	Example	Required Documentation
	<p>participants who received distributions that were too low.</p> <p>The annual Forms 5500 must be amended and refiled for:</p> <ul style="list-style-type: none"> <li>• The last three plan years, or</li> <li>• All plan years in which the value of the asset was reported improperly, whichever is less.</li> </ul>	<p>plan the \$2,000 Principal Amount plus Lost Earnings.</p> <ul style="list-style-type: none"> <li>☞ The plan administrator also files an amended Form 5500 for plan years 2009 and 2010, to reflect the proper values.</li> <li>☞ The plan administrator will include the correct asset valuation in the 2011 Form 5500 when that form is filed.</li> </ul> <p><b>Example 2: Asset Undervalued and Participants Underpaid.</b></p> <ul style="list-style-type: none"> <li>• Assume the same facts as in Example 1, except that the property had appreciated in value to \$600,000 as of December 31, 2009.</li> <li>• The separated participant would have been underpaid by \$2,000. The Plan must locate participant and distribute the \$2,000 Principal Amount to her plus Lost Earnings, as well as file amended Forms 5500.</li> </ul>	
<p><b><i>Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan</i></b></p> <p>A plan used plan assets to pay compensation, including commissions or fees, to a service provider (such as an attorney, accountant, actuary, financial advisor, or insurance agent) and the compensation was:</p> <p>(1) Excessive in amount for the services provided to the plan;</p>	<p>Restore to the plan the Principal Amount, plus the greater of:</p> <p>(A) <a href="#">Lost Earnings</a> or</p> <p>(B) <a href="#">Restoration of Profits</a> resulting from the use of the Principal Amount.</p> <p>For transactions that are excessive in amount, the Principal Amount is the difference between:</p> <p>(A) The amount actually paid by the plan to the service provider, and</p>	<p><b>Example 1: Excessive Compensation.</b></p> <ul style="list-style-type: none"> <li>• Plan G hired an investment advisor who advised the plan's trustees about how to invest the plan's entire portfolio.</li> <li>• In accordance with the plan document, the trustees instructed the advisor to limit the plan's investments to equities and bonds.</li> <li>• The plan paid the investment</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>• For excessive payments, a written estimate of the reasonable market value of the services and the estimator's qualifications; and</li> <li>• The cost of the services at issue during the period that such services were provided to the plan.</li> </ul>

Transaction	Correction	Example	Required Documentation
<p>(2) Duplicative, in that a plan paid two or more persons to provide the same services to the plan; or</p> <p>(3) For services that were not necessary for the operation of the plan.</p>	<p>(B) The reasonable market value of the non-duplicative services.</p> <p>For transactions that are duplicative, the Principal Amount is the difference between:</p> <p>(A) The total amount of compensation paid to the service providers, and</p> <p>(B) The least amount of compensation paid to one of the service providers for the duplicative services.</p> <p>For payment of unnecessary services, the Principal Amount is the amount of compensation paid by the plan to the service provider for the unnecessary service.</p>	<p>advisor 3% of the value of the portfolio's assets.</p> <ul style="list-style-type: none"> <li>If the trustees had inquired they would have learned that comparable investment advisors charged 1% of the value of the assets for the type of portfolio that the plan maintained.</li> </ul> <p>☞ To correct the transaction, Plan Officials must pay the plan the Principal Amount of 2% of the value of the plan's assets, plus Lost Earnings or Restoration of Profits.</p> <p><b>Example 2: Unnecessary Compensation.</b></p> <ul style="list-style-type: none"> <li>A plan paid a travel agent to arrange a fishing trip for the plan's investment advisor as a way of rewarding the advisor because the plan's investment return for the year exceeded the plan's investment goals by 10%.</li> <li>An internal auditor discovered the charge on the plan's record books.</li> </ul> <p>☞ The plan must be paid the Principal Amount, which is the total amount paid to the travel agent, plus the greater of Lost Earnings or Restoration of Profits.</p>	
<p><b><i>Payment of Dual Compensation to a Plan Fiduciary</i></b></p> <p>A plan used plan assets to pay</p>	<p>Restore to the plan the Principal Amount, plus the greater of:</p> <ul style="list-style-type: none"> <li><a href="#">Lost Earnings</a> or</li> <li><a href="#">Restoration of Profits</a> resulting</li> </ul>	<ul style="list-style-type: none"> <li>A union sponsored a plan funded through contributions by employers.</li> <li>The union president receives</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>Copies of the plan's accounting records which</li> </ul>

Transaction	Correction	Example	Required Documentation
<p>compensation for services rendered to the plan when the fiduciary already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in the plan. The plan's payments to the plan fiduciary are not reimbursements of expenses properly and actually incurred by the fiduciary.</p>	<p>from the fiduciary's use of the Principal Amount for the same period.</p> <p>The Principal Amount is the amount of compensation paid to the fiduciary.</p>	<p>\$50,000 per year from the union in compensation for his services as union president.</p> <ul style="list-style-type: none"> <li>• He is appointed as a trustee of the plan while retaining his position as union president.</li> <li>• In exchange for acting as plan trustee, the union president is paid a salary of \$200 per week by the plan while still receiving the \$50,000 salary from the union.</li> <li>• Since \$50,000 is full-time pay, the plan's weekly salary payments are improper.</li> </ul> <p>☞ The plan must be paid the Principal Amount, which is the \$200 weekly salary amount for each week that the salary was paid, plus the higher of Lost Earnings or Restoration of Profits.</p>	<p>show the date and amount of compensation paid by the plan to the identified fiduciary.</p>
<p><b><i>Expenses Improperly Paid by a Plan</i></b></p> <p>A plan used plan assets to pay expenses, commissions or fees, which should have been paid by the plan sponsor, to a service provider (such as an attorney, accountant, recordkeeper, actuary, financial advisor, or insurance agent) for:</p> <ul style="list-style-type: none"> <li>• Services provided in connection with the administration and maintenance of the plan ("plan</li> </ul>	<p>Restore to the plan the Principal Amount, plus the greater of:</p> <ul style="list-style-type: none"> <li>• <a href="#">Lost Earnings</a>, or</li> <li>• <a href="#">Restoration of Profits</a> resulting from the use of the Principal Amount.</li> </ul> <p>The Principal Amount is the entire amount improperly paid by the plan to the service provider.</p>	<ul style="list-style-type: none"> <li>• Employer X, the sponsor of Plan Y, is considering amending its defined contribution plan to add a matching contribution.</li> <li>• Employer X operates in a competitive industry, and a human resource consultant has recommended that Employer X provide a competitive matching contribution to help attract and retain a highly qualified workforce.</li> </ul>	<p><a href="#">Standard Supporting Documentation</a>, plus:</p> <ul style="list-style-type: none"> <li>• Copies of the plan's accounting records which show the date and amount of expenses paid by the plan to the service provider.</li> </ul>

Transaction	Correction	Example	Required Documentation
<p>expenses”) in circumstances where a plan provision requires that such expenses be paid by the plan sponsor, or</p> <ul style="list-style-type: none"> <li>• Services provided in connection with the establishment, design or termination of the plan (“settlor expenses”) which relate to the activities of the plan sponsor in its capacity as settlor.</li> </ul>		<ul style="list-style-type: none"> <li>• Employer X hired an actuary to estimate the cost of providing this matching contribution over the next ten years.</li> <li>• The plan paid the actuary \$10,000.</li> <li>• Several months after the actuary’s bill has been paid, a <a href="#">Plan Official</a> realizes that one of Employer X’s employees erroneously paid the bill from the plan’s assets.</li> <li>• The bill should have been paid by Employer X, because the bill related to settlor expenses incurred by Employer X in analyzing whether to add a matching contribution to the plan.</li> <li>• The plan must be paid the Principal Amount (\$10,000), plus Lost Earnings or Restoration of Profits.</li> </ul>	

\* Although delinquent participant contributions to insured welfare plans and welfare plan trusts can be corrected under the VFC Program, this document covers only the transactions/correction applicable to retirement plans.



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