



Understanding the Voluntary Fiduciary Correction Program

The Department of Labor (DOL) recently updated its Voluntary Fiduciary Correction Program (VFCP). The updates include a new and more streamlined self-correction component (SCC), which aims to make the VFCP more efficient and user-friendly for plan sponsors who have errors to their plan that require correction.

Here's What You Really Need to Know:

- By now including SCC as well as other improvements to VFCP, the administrative and procedural requirements for participating in VFCP have been simplified, reducing the burden on plan sponsors and making the correction process more efficient.
- There are two new features included in SCC that plan sponsors can take advantage of correcting: (1) the failure to timely remit participant contributions, which is the most frequently used correction under VFCP and (2) failure to timely remit loan repayments.
- The recently announced modifications to the VFCP were published January 2025 and will be available beginning March 17, 2025.

Let's Dive In

In 2002, the DOL adopted VFCP to encourage employers and plan fiduciaries to voluntarily comply with the Employee Retirement Income Security Act (ERISA) by correcting certain violations. Specifically, VFCP allows employers and plan fiduciaries who are potentially liable for breaches of fiduciary duty under Title I of ERISA to apply for relief from enforcement actions and certain civil penalties, subject to certain conditions. This helps ensure that plan participants' benefits are protected and that plan assets are restored.

Historically, there has been a list of 19 categories that could be corrected via VFCP, including late contributions. For plan sponsors, using VFCP is a lot of work because it requires notifying the DOL, filing a very lengthy application that may take several months to be processed, and completing the correction before receiving a no-action letter from the DOL. The entire process was historically completed via a manual, paper process and not via online processing.

New in 2025, plan sponsors can take advantage of the SCC for late participant contributions and loan repayments, if certain conditions are met. There is no limit on the frequency of usage of the self-correction option, and it is available for plans of all sizes. Any costs associated with the corrections, such as lost earnings, may **not** be paid from plan assets; this includes no payments from the plan's forfeiture account.

Part of the 2025 SCC update requires that plan sponsors notify the DOL via the SCC Notice through a new EBSA web tool. Plan sponsors that are interested in using this correction method will need to provide:

- the name and email address for the self-corrector;
- the plan name;
- the organization's nine-digit employer identification number (EIN) and the plan's three-digit number (PN);
- the principal amount;
- the amount of lost earnings and the date they were paid to the plan;
- the loss date (for purposes of the SCC, the date(s) of withholding or receipt); and
- the number of participants affected by the correction.

The SCC notice must be submitted electronically to EBSA using a new online VFPC web tool located on EBSA's website. Self-correctors using the web tool will receive an automatic EBSA email acknowledging the SCC notice submission, which replaces the no-action letter that is generally required for VFPC corrections.

The 2025 update includes two items eligible for SCC:

1. Participant Loans

Eligible loan failures for the self-correction may include:

- Loans with a term exceeding the maximum permitted under Code Section 72(p);
- Loans defaulted due to a failure to withhold the repayment;
- Failing to obtain required spousal consent; and
- Exceeding the maximum number of loans available under the plan.

2. Participant Contributions

As a reminder, employee (not employer) contributions and loan repayments must be deposited to the plan as soon as they can be segregated from organization funds but in no case later than the 15th business day of the month immediately following the month in which the contribution is either withheld or received by the employer. The DOL provides a 7-business-day safe harbor rule for employee contributions to plans with fewer than 100 participants.

When employee contributions are deposited later than they can reasonably be segregated from the organization funds, to correct under the new SCC, the following requirements must be met:

- The participant contributions must be deposited into the plan no more than 180 calendar days from the date they were withheld from the participant's paycheck
- Lost earnings must not exceed \$1,000, calculated from the date the amounts were withheld
- The plan or self-corrector must not already be the subject of a DOL investigation

Note also that this new self-correction mechanism does not relieve a plan sponsor from reporting delinquent contributions on Form 5500 (as filing amended returns may be necessary), nor does it

substitute for Form 5330 which is filed with the IRS for excise taxes related to late contributions. No correction is available under VFPC for delinquent *matching* contributions.

Lost Earnings – A New Rule

Generally, when there are late contributions to participant accounts, lost earnings must be provided to plan participants to make them whole. New with the updated VFPC, lost earnings must be calculated from the date of withholding or receipt (the date the amount would otherwise have been payable to the participant in cash). Plan sponsors must use the online calculator provided by the DOL's EBSA (available online) to determine the amount of the loss payable to the plan. It is important to note that this is a distinct rule that differs from the calculation of lost earnings requirements under the full voluntary correction program, which begins on the earliest date on which the participant contributions or loan repayments could reasonably have been segregated from the employer's general assets.

Record Retention Checklist

Self-correctors under SCC also must follow the retention record checklist to ensure that all necessary documentation is maintained for compliance; this checklist is distinguishable from the full VFPC. Key items that should be included:

- **Documentation of the violation:** Keep detailed records of the late participant contributions or loan repayments.
- **Calculations of lost earnings:** Evidence of how the lost earnings were calculated, including any tools or methods used.
- **Proof of correction:** Documentation showing that any applicable lost earnings were restored to the plan and the participant's account was made whole.
- **Certification of compliance:** A statement certifying that the correction meets all VFPC requirements.
- **Correspondence with EBSA:** Any communication with the Employee Benefits Security Administration regarding the correction should be documented and maintained.

Records must be retained for at least six years, as required by Section 107 of ERISA. Additionally, a penalty of perjury statement must be signed by a plan fiduciary, certifying the information provided is true and accurate to the best of their knowledge. The DOL explains that since its inception in 2002, VFPC has required a penalty of perjury statement as a necessary safeguard.

Action Items for Plan Sponsors

1. **Review VFPC guidelines:** Ensure familiarity with all correction options under the VFPC program.
2. **Implement self-correction procedures:** Establish internal procedures for self-correcting late participant contributions and loan repayments to ensure they are deposited within the 180-day window.
3. **Document corrections:** Maintain thorough records of any corrections made, including calculation of lost earnings and proof that impacted participants were made whole.
4. **Monitor compliance:** Regularly monitor plan operations to ensure ongoing compliance with ERISA requirements.



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