

## **APPENDIX E**

### **COVER PAGE**

#### **PAPERWORK BURDEN DISCLOSURE NOTICE**

**OMB Control Number 1210-0118; expires 03/31/2028**

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 offered under the Program with respect to a breach of fiduciary responsibility under Part 4 of Title I of ERISA. EBSA will use this information to determine that you have satisfied the requirements of the Program. EBSA estimates that completing and submitting this form and the checklist will require an average of 7 hours. This collection of information is currently approved under OMB Control Number 1210-0118. You are not required to respond to a collection of information unless it displays a currently valid OMB Control Number. You may send comments on this collection of information, including suggestions for reducing burden to: US Department of Labor, Office of Research and Analysis, Attention: PRA Officer, 200 Constitution Avenue, NW, Room N-5718, Washington, DC 20210; or send to [ebsa.opr@dol.gov](mailto:ebsa.opr@dol.gov).

**DO NOT INCLUDE THIS PAPERWORK REDUCTION ACT BANNER IN NOTICES**

## Appendix E – Model Application Form (Optional)

### Voluntary Fiduciary Correction Program Application Form

This application form provides a recommended format for your VFC Program application. Please make sure you have attached all documents identified on the VFC Program Checklist (for example, proof of payment). If you choose to use a different format to submit the required information for your VFC Program Application, your application must still include a completed copy of the VFC Program Checklist. Submit your application to the appropriate EBSA Regional Office. Check with the relevant Regional Office whether it accepts email submissions of VFC Program applications. For full application procedures, consult [www.dol.gov/ebsa/](http://www.dol.gov/ebsa/).

Applicant Name(s) and Address(es) (street and email)

List separately:

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### List Transaction(s) Corrected

Check which transaction(s) listed in the VFC Program you have corrected:

Delinquent Participant Contributions and Loan Repayments to Pension Plans

Delinquent Participant Contributions to Insured Welfare Plans

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 Delay in Perfecting Plan's Security Interest
- \_\_\_ Loans Failing to Comply with Plan Provisions for Amount, Duration or Level Amortization
- \_\_\_ 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 Illiquid Asset Previously Purchased by a Plan
- \_\_\_ Payment of Benefits Without Properly Valuing Plan Assets on Which Payment is Based
- \_\_\_ Duplicative, Excessive, or Unnecessary Compensation Paid by a Plan
- \_\_\_ Expenses Improperly Paid by a Plan
- \_\_\_ Payment of Dual Compensation to a Plan Fiduciary

**Correction Amount**

*Principal Amount:* \$ \_\_\_\_\_ *Date Paid* \_\_\_ / \_\_\_ / \_\_\_

*Lost Earnings/Restoration of Profit:* \$ \_\_\_\_\_ *Date Paid* \_\_\_ / \_\_\_ / \_\_\_

**Narrative and Calculations**

List:

(1) All persons materially involved in the Breach and its correction (e.g., fiduciaries, service providers):

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(2) An explanation of the Breach, including the date(s) it occurred (attach separate sheets if necessary):

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(3) An explanation of how the Breach was corrected, by whom, and when (attach separate sheets if necessary):

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(4) For a correction of Delinquent Participant Contributions or Loan Repayments, provide a statement from a Plan Official identifying the earliest date on which participant contributions/loan repayments reasonably could have been segregated from the employer's general assets (attach supporting documentation on which Plan Official relied).

Number of days used to determine the date on which participant contributions/loan repayments withheld from employees' pay could reasonably have been segregated from the employer's general assets:

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Description of how this date was determined, including the applicant's current contribution and/or repayment remittance practices:

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(5) For a correction of Delinquent Participant Contributions or Loan Repayments, provide a narrative describing any changes to the applicant's contribution and/or repayment remittance practices after the period of unpaid or late contributions and/or repayments, including any steps taken to prevent future delinquencies: (attach separate sheets if necessary)

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(6) Specific calculations demonstrating how Principal Amount and Lost Earnings or Restoration of Profits were calculated (attach separate sheets if necessary): If the Online Calculator was used, you only need to indicate this and attach a copy of the “View Printable Results” page.

\_\_\_ Online Calculator – “View Printable Results” page attached.

\_\_\_ Manual calculation – see attached calculations, which must follow the method used in subparagraphs (i) through (iv) of section 5(b)(6). See Appendix D for a sample.

**Supplemental Information**

(1) Plan Sponsor Name:

\_\_\_\_\_

EIN: \_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2)(a) Plan Name:

\_\_\_\_\_

Plan Number: \_\_\_\_\_

(2)(b) For Bulk Applicants (attach additional sheets identifying this information for each Plan named in the application involved in the transaction):

Plan Name:

\_\_\_\_\_

Plan Sponsor EIN or date the most recent Form 5500 was filed:

\_\_\_\_\_

(3) Plan Administrator Name:

\_\_\_\_\_

EIN: \_\_\_\_\_

Address:

\_\_\_\_\_

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(4) Name of Authorized Representative: (Submit written authorization signed by the Plan Official.)

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Address:

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Telephone: \_\_\_\_\_

(5) Name of Contact Person:

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Address:

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Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

(6) Date of Most Recent Annual Report Form 5500 Filing, if applicable: \_\_\_ / \_\_\_ / \_\_\_ for Plan Year Ending: \_\_\_ / \_\_\_ / \_\_\_

(7) Is Applicant Seeking Relief From Excise Tax Under PTE 2002-51?

\_\_\_ Yes - Either:

\_\_\_ Submit a copy of the notice to interested parties within 60 calendar days of this application and indicate date of the notice if not on the notice itself; or

If you are relying on the exception to the notice requirement contained in section IV.C. of PTE 2002-51, provide a copy of a completed IRS Form 5330 or other written documentation and proof of payment.

No.

(8) Proof of Payment:

Canceled check

Executed wire transfer

Signed, dated receipt from the recipient of funds transferred to the plan (such as a financial institution)

Bank statements for the plan's account

Other: \_\_\_\_\_

**Caution: The correction amount and the costs of correction cannot be paid from plan assets, including by charges against participant accounts or plan forfeiture accounts.**

(9) Disclosure of a current investigation or examination of the plan by an agency, to comply with section 3(b)(3)(v):

PBGC

Any state attorney general State: \_\_\_\_\_

Any state insurance commissioner State: \_\_\_\_\_

Other federal governmental agency: \_\_\_\_\_

Contact person for the agency identified: \_\_\_\_\_

(10) Be sure to include the required VFC Program Application Checklist and all other documentation identified as being enclosed. The checklist is available at

<http://www.dol.gov/ebsa/calculator/2006vfcpcchecklist.html>

(11) In order to help us improve our service, please indicate how you learned about the VFC

Program: \_\_\_\_\_

**Authorization of Representative**

*I have authorized (insert name of authorized representative) to represent me concerning this*

*VFC Program application.*

Name of Plan Official

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Signature of Plan Official

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Date \_\_\_\_\_

**Penalty of Perjury Statement**

The following statement must be signed and dated by a plan fiduciary, (or pursuant to special rules, a bulk applicant or an employer with respect to a multiemployer plan or multiple employer plan), with knowledge of the transaction that is the subject of the application and by the authorized representative, if any. Each Plan Official applying under the VFC Program 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 section 3(b)(3) of the VFC Program) 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.”

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Name and Title

Signature \_\_\_\_\_

Date \_\_\_\_\_

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Name and Title

Signature \_\_\_\_\_

Date \_\_\_\_\_

## **VFC Program Application Checklist (Required)**

Use this checklist to make sure you are submitting a complete application. Indicate “Yes”, “No” or “N/A” next to each item. A “No” answer or the failure to include a completed checklist will delay review of the application until all required items are received. The applicant must sign and date the checklist and include it with the application. Check with the relevant Regional Office whether it accepts email submissions of VFC Program applications.

\_\_\_\_\_ 1. Have you reviewed the eligibility, definitions, transaction and correction, and documentation sections of the VFC Program?

\_\_\_\_\_ 2. Have you included the name, address (street or email) and telephone number of a contact person familiar with the contents of the application?

\_\_\_\_\_ 3. Have you provided the EIN, Plan Number, and address (street and email) of the plan sponsor and plan administrator?

\_\_\_\_\_ 4. Have you provided the date that the most recent Form 5500 was filed by the plan (or for a bulk application as described in section 4(d), the nine-digit employer identification number for each plan sponsor of a named plan)?

\_\_\_\_\_ 5. Have you enclosed a signed and dated certification under penalty of perjury for the plan fiduciary with knowledge of the transactions and for each applicant and the applicant's representative, if any? In the case of a bulk application, have you enclosed a signed and dated certification under penalty of perjury for the bulk applicant based on knowledge of the transactions and for the bulk applicant's representative, if any? In the case of a contributing or adopting employer in a multiemployer plan or multiple employer plan, the employer may sign the Penalty of Perjury statement and, without regard to the employer's status as a plan fiduciary, no other plan fiduciary need sign.

\_\_\_\_\_ 6. Have you enclosed relevant portions of the plan document and any other pertinent documents (such as the adoption agreement, trust agreement, or insurance contract) with the relevant sections identified?

\_\_\_\_\_ 7. 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 PBGC, any state attorney general, or any state insurance commissioner?

\_\_\_\_\_ 8. If applicable (under section 4(b)(2) of the Program), have you included the following items?

\_\_\_\_\_ a. Contact information for the law enforcement agency notified of the criminal activity;

\_\_\_\_\_ b. A statement from the applicant asserting no involvement in the potential criminal activity; and

\_\_\_\_\_ c. A statement as to whether a claim relating to the criminal activity has been made under an ERISA section 412 fidelity bond.

\_\_\_\_\_ 9. Where applicable, have you enclosed a copy of an appraiser's report?

\_\_\_\_\_ 10. Where applicable, have you enclosed a copy of an independent fiduciary's approval?

\_\_\_\_\_ 11. Have you enclosed supporting documentation, including:

\_\_\_\_\_ a. A detailed narrative of the Breach, including the date it occurred;

\_\_\_\_\_ b. Documentation that supports the narrative description of the transaction;

\_\_\_\_\_ c. An explanation of how the Breach was corrected, by whom and when, with supporting documentation;

\_\_\_\_\_ d. A list of all persons materially involved in the Breach and its correction (e.g., fiduciaries, service providers, borrowers, lenders);

\_\_\_\_\_ e. 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 Viewable Results” page(s) after completing use of the Online Calculator;

\_\_\_\_\_ f. Proof of payment of principal amount;

\_\_\_\_\_ g. Proof of payment of Lost Earnings or restoration of profits to the plan; and

**Caution: The correction amount and the costs of correction cannot be paid from plan assets, including by charges against participant accounts or plan forfeiture accounts.**

\_\_\_\_\_ h. If application concerns delinquent participant contributions or loan repayments, a statement from a Plan Official identifying the earliest date on which participant contributions/loan repayments reasonably could have been segregated from the employer’s general assets and supporting documentation on which the Plan Official relied?

\_\_\_\_\_ 12. If you are an eligible applicant and wish to avail yourself of excise tax relief under the VFC Program Class Exemption:

\_\_\_\_\_ a. Have you made proper arrangements to provide within 60 calendar days after submission of this application a copy of the VFC Program 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 VFC Program Class Exemption because the amount of the excise tax otherwise due would be less than or equal to \$100.00, have you provided to the appropriate EBSA Regional Office a copy of a completed IRS Form 5330 or other written documentation containing the information required by IRS Form 5330 and proof of payment?

\_\_\_\_\_ 13. In calculating Lost Earnings, have you elected to use:

\_\_\_\_\_ a. The Online Calculator; or

\_\_\_\_\_ b. A manual calculation performed in accordance with section 5(b) of the VFC Program?

\_\_\_\_\_ 14. If the application involves payments to participants and beneficiaries:

\_\_\_\_\_ a. Have you enclosed a description demonstrating proof of payment to participants and beneficiaries whose current location is known to the plan and/or applicant in accordance with section 5(d) of the VFC Program?

\_\_\_\_\_ b. For individuals who need to be located, have you demonstrated how adequate funds have been segregated to pay missing individuals and included a description of the process that you commenced to locate missing individuals in accordance with section 5(d)?

\_\_\_\_\_ 15. For purposes of the three transactions involving participant contributions covered under section 7.1, has the plan implemented measures to ensure that such transactions do not recur?

**Signature of Applicant and Date Signed:**

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**Name of Applicant:**

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**Title/Relationship to the Plan:**

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**Name of Plan, EIN and Plan Number:**

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**Contact information: Phone; email**

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