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Mr. Robert Doyle, Director
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Mr. Ivan Strasfeld, Director
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Re: Voluntary Fiduciary Correction Program – Proposal to Permit Self-Correction for Late Deposits

The American Society of Pension Professionals & Actuaries (ASPPA) is writing to follow up on our discussions concerning ASPPA's proposal to permit self-correction of certain late deposits under the Department of Labor's (DOL) Voluntary Fiduciary Correction Program (VFCP or Program). ASPPA's proposal is described in our prior letters dated February 12, 2010 and June 11, 2009 (we have enclosed copies of the prior letters for your reference). This letter provides additional details regarding ASPPA's proposal.

ASPPA is a national organization of more than 7,300 retirement plan professionals who provide consulting and administrative service for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced

by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

Discussion

During our previous conversations on this issue, two concerns were expressed regarding ASPPA's proposal. First, there was a desire to ensure that plan sponsors and fiduciaries who have been late in making deposits fully understand their responsibilities and the timing requirements for depositing participant contributions in trust. To address this concern, ASPPA proposes that fiduciaries who wish to utilize a self-correction program acknowledge that the law and regulations require contributions to be placed in trust on the earliest date by which such amounts can reasonably be segregated from an employer's general assets. An affirmative representation to this effect would be required as an attachment to the correction year's Form 5500. The representation would include an acknowledgement by the fiduciary that the regulatory standard for deposit relating to the 15th business day of the month following month in which such amounts are withheld is an "outer limit" deadline and in no way constitutes a "safe harbor".

ASPPA proposes that the fiduciary's representation and acknowledgement be incorporated in the "schedule of correction" that was proposed in our February 12, 2010 letter and filed with Form 5500.

It was also suggested that it may be appropriate to limit our proposal for self-correction to small plans (i.e., those with less than 100 participants at the beginning of the plan year who would otherwise be eligible for the "7 day safe harbor" under Reg. §2510.3-102(a)(2)). While we believe that permitting self-correction for all plans under the conditions stated in our proposal would be beneficial, expand compliance and the reach of VFCEP, ASPPA would support initially extending the self-correction option only to small plans. Our hope is that it could be expanded at some future date to large plans as well.

Our proposal would further the DOL's goals of ensuring timely deposits and in doing so protect plan participants and plan assets. ASPPA believes the proposal would provide the necessary documentation and certainty that late deposits have been fully corrected. By simplifying and expanding participation through a self-correction component, the Department would be able to verify the important role VFCEP plays with respect to the many plan sponsors, who self-correct in accordance with, and as a direct result of VFCEP, but are not counted in the "official" statistics.

We are available to discuss the issues with you and to further assist in the formulation of such a component.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO

/s/
Judy A. Miller, MSPA
Chief of Actuarial Issues

/s/

Craig P. Hoffman, Esq., APM
General Counsel

/s/

James Paul, APM, Co-chair
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/s/

Mark Dunbar, MSPA Co-chair
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