



# Pension Analyst



## Glossary of special VFC terms

**Breach:** Any transaction that is or may be a breach of ERISA's fiduciary responsibilities.

**Fair Market Value (FMV) Determinations:** A valuation that meets the following conditions:

- *If there is a generally recognized market for the property* (e.g., the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (e.g., the closing price).
- *If there is no generally recognized market for the asset*, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified, independent appraiser and reflected in a written appraisal report signed by the appraiser.
  - An appraiser is "qualified" if he has met the education, experience, and licensing requirements that are generally recognized for appraisal of the type of asset being appraised.
  - An appraiser is "independent" if he is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following:
    - (i) The prior owner of the asset, if the asset was purchased by the plan;
    - (ii) The purchaser of the asset, if the asset was or is now being sold by the plan;
    - (iii) Any other owner of the asset, if the plan is not the sole owner;
    - (iv) A fiduciary of the plan;
    - (v) A party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or
    - (vi) The VFC Program applicant.

**Loss Date:** The date that the plan lost the use of the [Principal Amount](#).

**Lost Earnings:** In general, the amount the participant would have earned on the [Principal Amount](#) from the [Loss Date](#) to the [Recovery Date](#). Lost Earnings may be calculated by: (i) determining the applicable [Code section 6621\(a\)\(2\) corporate underpayment rate\(s\)](#)\* for each calendar quarter (or portion of a quarter) for the period beginning with the Loss Date and ending with the Recovery Date; (ii) determining the applicable factor for the quarterly underpayment rate(s) by referring to IRS Revenue Procedure 95-17 for each calendar quarter (or portion of a quarter) beginning with the [Loss Date](#) and ending with the [Recovery Date](#); and (iii) multiplying the [Principal Amount](#) by the first applicable factor to determine the amount of earnings for the first calendar quarter (or portion of a quarter). Instead of performing a manual calculation, the Lost Earnings may be calculated by using the [Online Calculator](#) provided by the DOL.

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*Note:* If Lost Earnings are paid to the plan after the Recovery Date, interest on the Lost Earnings must be paid to the plan. The interest is calculated in the same manner as Lost Earnings for the period beginning on the Recovery Date and ending on the date the Lost Earnings are paid to the plan. The Online Calculator may also be used to calculate the interest on Lost Earnings.

\* If the amount of Lost Earnings calculated under these rules is greater than \$100,000, the Code section 6621(c)(1) underpayment rate is used instead of the section 6621(a)(2) corporate underpayment rate(s).

**Party-in-Interest:**

1. A fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of the plan;
2. A person providing services to the plan;
3. An employer whose employees are covered by the plan;
4. An employee organization whose members are covered by the plan;
5. An owner, direct or indirect, of 50% or more of—
  - a. the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,
  - b. the capital interest or the profits interest of a partnership, or
  - c. the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in 3 or 4;
6. A relative of any individual described above;
7. A corporation, partnership, or trust or estate of which (or in which) 50% or more of—
  - a. the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,
  - b. the capital interest or profits interest of such partnership, or
  - c. the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in 1, 2, 3, 4 or 5 above;
8. An employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in 2, 3, 4, 5 or 7 above, or of the employee benefit plan; or
9. A 10% or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in 2, 3, 4, 5 or 7 above.

**Plan Official:** A plan fiduciary, plan sponsor, party in interest with respect to the plan, or other person who is in a position to correct a [Breach](#).

**Principal Amount:** The amount that would have been available to the plan for investment or distribution on the date of the [Breach](#), had the Breach not occurred. The Principal Amount also includes, where appropriate, any transaction costs (e.g., closing costs) associated with entering into the transaction that constitutes the Breach.

**Recovery Date:** The date that the [Principal Amount](#) is paid to the plan.

**Restoration of Profits:** If the [Principal Amount](#) was used for a specific purpose such that a profit can be determined, the [Plan Official](#) must calculate the Restoration of Profit. The greater of the Restoration of Profit or [Lost Earnings](#) must be paid to the plan.

Restoration of Profits can be calculated by combining:

- 1) The amount of profit made on the use of the [Principal Amount](#), and
- 2) If the profit is returned to the plan on a date later than the date on which the profit was realized (received or determined), the amount of interest earned on the profit from the date the profit was realized to the date the profit is paid to the plan.

Interest on the profit can be calculated by: (i) determining the applicable Code section 6621(a)(2) corporate underpayment rate(s)\* for each calendar quarter (or portion of a quarter) for the period beginning with the date the profit was realized and ending with the date the profit was paid to the plan; (ii) determining the applicable factor for the quarterly underpayment rate(s) by referring to IRS Revenue Procedure 95-17 for each calendar quarter (or portion of a quarter) beginning with the date the profit was realized and ending with the date the profit was paid to the plan; and (iii) multiplying the first applicable factor by the profit to determine the amount of interest for the first quarter (or portion of a quarter). Instead of performing a manual calculation, the interest amount for Restoration of Profits may be calculated by using the [Online Calculator](#) provided by the DOL.

\* If the amount of Restoration of Profits is greater than \$100,000, the Code section 6621(c)(1) underpayment rate is used instead of the section 6621(a)(2) corporate underpayment rate(s).

**Supporting Documentation:** All VFC Program submissions must include the following documents:

- A copy of the relevant portions of the plan document, and any other pertinent documents (e.g., adoption agreement, trust agreement, insurance contract);
- Documentation supporting the narrative description of the transaction and correction;
- Documentation establishing the [Lost Earnings](#) amount;
- Documentation establishing the amount of [Restoration of Profits](#), if applicable; and
- Proof of payment of the [Principal Amount](#) and Lost Earnings or Restoration of Profits.

*Note:* There are special supporting documentation requirements related to the correction of participant loan violations or the correction of default loans. Refer to “Eligible transactions and corrections under the VFC Program.”

**Under Investigation:** The plan or potential applicant is “under investigation” if:

1. DOL is conducting an investigation of the plan;
2. DOL is conducting an investigation of the potential applicant or plan sponsor in connection with an act or transaction directly related to the plan;
3. Any governmental agency is conducting a criminal investigation of the plan, or of the potential applicant or plan sponsor in connection with an act or transaction directly related to the plan (e.g., IRS, Securities and Exchange Commission, or Pension Benefit Guaranty Corporation);
4. The Tax Exempt and Government Entities Division of the IRS is conducting an Employee Plans examination of the plan; or
5. The Pension Benefit Guaranty Corporation, any state attorney general, or any state insurance commissioner is conducting an 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, unless the applicant notifies DOL in writing, of such an investigation or examination at the time of the application; and the plan, a [Plan Official](#), or any authorized plan representative has received a written or oral notice of an investigation or examination described in items 1-5.



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