Late Deposit of Contributions

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The U.S. Department of Labor's Voluntary Fiduciary Correction Program (VFCP) assists employers and plan officials in correcting certain breaches of fiduciary duties under the Employee Retirement Income Security Act (ERISA). Participation in the VFCP allows for the correction of eligible transactions to avoid potential Department of Labor civil enforcement actions and penalties. One of the **key updates effective March 17, 2025 was to** allow for self-correction of delinquent contributions and loan payments within 180 calendar days of the date of withholding or receipt, provided that the lost earnings (missed investment returns) do not exceed $1,000. This is great news because it will simplify the process for plan sponsors to address certain common operational failures without needing a formal VFCP application.

The self-correction option does not however, apply to errors that are egregious, related to the misuse of plan assets, or involve abusive tax avoidance.

This new guidance refers to situations where employee contributions or loan repayments were withheld from payroll but were not promptly invested into the participant's account. The delinquent contributions or loan payments must be remitted to the plan within 180 days of when they were withheld from the participant's paycheck or received by the employer. The total amount of lost earnings (calculated using the VFCP online calculator) must be $1,000 or less.

Plan sponsors can self-correct these errors by submitting an electronic notice to the DOL using the VFCP online tool on the Employee Benefits Security Administration (EBSA) website. They must retain a detailed record of the correction, including a penalty of perjury statement and pay any penalties, late fees, or other charges associated with the correction. This simplified process helps plan sponsors avoid potential civil enforcement actions from the DOL and strengthens the security of employee benefits.

It is imperative that plan sponsors monitor contributions to their plan and catch any errors quickly. The Department of Labor considers an error to be a fiduciary breach if a company does not review and confirm their payroll has been funded.

The DOL only permits self-correction of these failures within 180 days of the pay date and if the missed earnings are $1,000 or less. If the error is found after the 180 days, then it will be a more complicated and costly process to fix and repeated failures would be considered a breach of fiduciary duty. We recommend that you reconcile your payroll at least quarterly, and let us know immediately if you discover any discrepancies.

If you have any questions about the deposit timing rules for your plan, please reach out to your Account Executive to discuss.

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