



EBP WATCH

Timely Remittance of Participant Contributions

The Employee Benefits Security Administration (EBSA) continues to focus on the timeliness of remittance of participant contributions in contributory Employee Benefit Plans. Participant contributions are considered plan assets on the earliest date that they can reasonably be segregated from the employer's general assets. Although this date is not clearly defined, it is generally assumed that most plan sponsors should be able to segregate participant contributions and remit them within 1-5 business days of the date they were withheld.

Failure to remit or untimely remittance of participant contributions constitutes a prohibited transaction under ERISA Section 406, regardless of materiality. Such transactions constitute either a use of plan assets for the benefit of the employer, or a prohibited extension of credit. In certain circumstances, such transactions may even be considered an embezzlement of plan assets.

Information on all delinquent participant contributions should be reported on line 4a of either Schedule H, Financial Information, or Schedule I, Financial Information – Small Plan, of Form 5500, regardless of the manner in which they have been corrected. In addition, plan administrators should correct the prohibited transaction with the IRS by filing a Form 5330 and paying any applicable excise taxes.

Plan officials faced with remitting delinquent participant contributions should consider applying to the DOL's Voluntary Fiduciary Correction Program (VFCP). Plans that fully comply with the program:

- Will receive a no-action letter issued by the DOL that provides for no imposition of Section 502(I) penalties;
- Will receive relief from the excise tax provisions of the IRC;
- Will continue to report the occurrence and amount of the corrected delinquent remittances on line 4a of either Schedule H or I (but not on line 4d or Schedule G); and
- Are not required to report such transactions as supplemental information if the plan is required to be audited because the transactions are not considered to be prohibited transactions.

The EBSA's web site, www.dol.gov/ebsa, contains useful information about the VFCP.

Delinquent Filer Voluntary Compliance Program

The Delinquent Filer Voluntary Compliance Program (DFVCP) is designed to encourage voluntary compliance with the annual reporting requirements under ERISA.

The program gives delinquent plan administrators a way to avoid potentially higher civil penalty assessments by satisfying the program's requirements and voluntarily paying a reduced penalty amount.

If you find yourself in a position where you believe you need to utilize this program, please feel free to contact us for assistance. There are specific steps you will need to take to ensure you are eligible for the program.

Voluntary Fiduciary Correction Program

The Voluntary Fiduciary Correction Program (VFCP) encourages voluntary compliance by self-correcting violations of the law. The program helps plan officials understand the law and gives immediate relief from payment of excise taxes under a class exemption. Under the VFCP, employers may voluntarily correct specific ERISA violations. A no-action letter is given to plan officials who properly correct violations.