Timely Deposit

TIMELY DEPOSIT OF EMPLOYEE CONTRIBUTIONS AND LOAN REPAYMENTS

Plan Sponsor Responsibilities

As the Plan Administrator, it is your responsibility to deposit participant contributions and loan repayments to the retirement trust account on the earliest date the contributions can be reasonably segregated from the employer's general assets. To determine the earliest segregation date, the DOL considers the employer's payroll frequency and the time it takes to remit FICA withholding to be relevant factors.

In 2010, the DOL published new regulations that provide for a pre-approved "safe harbor" transmittal of employee payroll deposits for small plans. A small plan is a plan that generally has fewer than 100 participants at the beginning of the plan year. This regulation states that contributions and loan repayments will be deemed timely by the DOL if they are deposited to the retirement trust account no later than the seventh (7th) business day following the day the amount would have been payable to the participant in cash. However, the DOL believes that large plans (generally plans with more than 100 participants at the beginning of the plan year) should be able to deposit the employee contributions and loan repayments sooner than the 7 business day rule.

If an untimely deposit is made, the participants must be "made whole" via an employer remittance of calculated lost earnings. Late deposits are considered by the IRS a "prohibited transaction" subject to an employer 15% excise tax until the transaction is fully corrected (i.e., the late deposit and calculated earnings are deposited to participants' accounts.) Additionally, late deposits are also required to be reported on IRS Form 5500 each year until corrected.

We strongly urge all of our plan sponsors to carefully monitor their payroll deposits to ensure all contributions are deposited to the trust timely. Please let us know if we can be of assistance to you in this matter.

Frequently Asked Questions

Q. How do I determine what my company's payroll dates and frequencies should be?

A. The payroll dates and frequencies used by your recordkeeper should correspond with the dates employees receive their paychecks. For example, if your company has bi-weekly payrolls with employees receiving payroll checks each Thursday, the payroll dates used by your recordkeeper should match the Thursday check dates. Contributions cannot be made less frequently than employees are paid (i.e. Semi-monthly payrolls must be submitted semi-monthly; not monthly). If you have determined that your payroll dates or frequencies are incorrect, please contact your recordkeeper as this may affect the contribution timing and/or untimely contribution determination.

Q. How does the DOL determine the "earliest segregation date"?

A. To determine the earliest segregation date, the DOL considers the employer's payroll frequency and the time it takes to remit FICA withholding to be relevant factors. For small plans, contributions and loan repayments will be deemed timely by the DOL if they are deposited to the retirement trust account no later than the seventh (7th) business day following the day the amount would have been payable to the participant in cash. The DOL believes that large plans (generally plans with more than 100 participants at the beginning of the plan year) should be able to deposit the employee contributions and loan repayments sooner than the 7 business day rule.

Q. What is the Voluntary Fiduciary Compliance Program (VFCP)? How do I decide whether to participate or not?

A. By correcting the prohibited transaction under the VFC Program, you receive assurance from the DOL of the full correction, which prevents any further investigations regarding this correction and possible civil penalties that could apply. You are not required to file under the VFCP to correct a violation; however, if the plan is audited and the DOL determines the self-correction was not completed properly, a civil penalty may be assessed on any additional amount required to fully correct the violation.

Q. What is the 15% excise tax and how is it determined?

A. Late Deposits are considered by the IRS a "prohibited transaction" subject to an employer 15% excise tax until the transaction is fully corrected (i.e. the late deposit and calculated earnings are deposited to participants accounts). The 15% excise tax is calculated based on the lost earnings owed to the Plan. For example, if a Plan owes $100 in lost earnings, the excise tax due is $15. This tax is reported annually on the Form 5330 and is payable to the IRS.

Further Questions

We strongly urge all plan sponsors to carefully monitor their payroll deposits to ensure all contributions are deposited to the trust timely. We strive to help our clients understand and comply with the DOL regulations. Let us know if we can assist you in this matter (i.e. setting up an automatic ACH Debit from your bank account), or with any questions you have regarding timely deposits or other plan administration issues.