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# Late Participant Contributions to Your Employee Benefit Plan? EBSA is Coming for You!

ERISA

BY SCHNEIDER DOWNS PROFESSIONAL

Contributions to employee benefit plans that are withheld from employee pay must be remitted to the plan as soon as administratively feasible. Generally, the U.S. Department of Labor (DOL) believes that “contributions (other than union dues) withheld from an employee’s wages or paid to the employer by a participant must be sent to the plan on the earliest date these contributions can reasonably be separated from the employer’s general assets...In no event may these contributions be forwarded later than the 15<sup>th</sup> business day following the month of the withholding.” However, the DOL expects that most employers can forward the contributions long before the maximum time period, and will look at past contribution history and employer practices to determine the appropriate period of time for contribution remittance.

The Voluntary Fiduciary Correction Program (VFCP) was created by the DOL to allow for plan officials to correct certain employee benefit plan fiduciary violations, including delinquent participant contributions. If a plan sponsor follows the applicable steps as required by the VFCP, no self-reported transactions will result in further enforcement action by the DOL.

Even after following the steps as required by the VFCP, plan sponsors must report the delinquent contributions on Schedule H of the applicable plan year Form 5500 filing. With the Form 5500 filing, the plan sponsor must indicate whether the delinquent contributions were:

- Not corrected
- Corrected outside of the VFCP
- Pending correction in the VFCP
- Fully corrected under the VFCP and Prohibited Transaction Exemption 2002-51

As a best practice, we have always advised clients with identified delinquent contributions to make the appropriate corrective action, following all required steps under the VFCP. However, this practice is proving to be even more prudent as it appears that beginning in 2018 the Employee Benefit Security Administration (EBSA) of the DOL began sending form letters to plan sponsors who indicated on their 5500 filings that late contributions were corrected outside of the VFCP. The letters threatened “possible alternative enforcement measures” if the plan sponsor did not complete a VFCP application within 60 days of receiving the letter. While organizations such as the American Retirement Association have filed formal comments opposing the EBSA’s recent actions, it is still advisable to make all appropriate

corrections through the VFCP to avoid additional potential fines and penalties.

If you think you've made delinquent contributions to your benefit plan, or have any plan compliance issues or concerns, please feel free to reach out to our benefit plan experts at [Schneider Downs](#).

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