

Timely Deposits

What you need to know



When an employee decides to contribute money to their retirement plan, they are trusting their employer to deposit their funds in a timely manner. If their contribution is deposited untimely, the employee may have lost investment earnings on the amount that was deposited late. If this occurs, the employer, as a fiduciary of the plan, is at fault for not making a timely remittance. The failure may result in a prohibited transaction. There are steps to correct and report this information to the Department of Labor (DOL) and/or the Internal Revenue Service (IRS).

WHAT IS CONSIDERED A TIMELY CONTRIBUTION?

DOL Regulation 2510.3-102 states that employers must deposit employee contributions (including loan payments) as soon as administratively possible. The DOL may evaluate the deposit standard determined by the plan or plan sponsor against the past performance of actual deposit timing for the plan.

There is a myth that an employer has until the 15th business day of the following month to submit their contribution. This comes from a rule that the deposit should never occur after the 15th business day of the month following when it was withheld. The 15th business day of the following month is not the deadline; it is only an outer limit of what is considered timely. The real deadline to submit a contribution is as soon as administratively possible.

If a plan has under 100 participants as of the first day of the plan year, a special provision allows employee contributions (including loan payments) to be submitted within seven business days following the payroll date. Even with this special provision, we recommend submitting all employee contributions as soon as administratively possible.

NOTE: Plans covering only sole proprietors, partners, and sole shareholders of corporations (including spouses of such individuals) are not subject to the requirements above but should make a good faith effort once deferrals have been withheld to submit them into their plan as soon as possible

WHAT OPTIONS DO I HAVE TO CORRECT LATE CONTRIBUTIONS?

There are three methods of correction: Greater of Earnings (non-VFCP self-correction), Voluntary Fiduciary Correction Program (VFCP), and Self-Correction Component of VFCP (SCC). Generally, the two most common methods of correction are Greater of Earnings or VFCP.

The table below provides a high-level overview of each method. The VFCP is filed with the DOL and may allow relief from the 15% excise tax and fiduciary breach, so this method requires additional documentation be submitted to the DOL. SCC requires completion and retention of similar documentation and does not provide relief from further investigation or excise tax. Greater of Earnings may result in higher earnings owed to participants and does not provide relief from excise tax; however, it does not require reporting to the DOL or participants.

GREATER OF EARNINGS	SELF-CORRECTION COMPONENT	VFCP
Application to the DOL is not required	SCC Notice to DOL required via online submission	Application to the DOL is required ¹
Fund corrective earnings using the greater of the DOL calculator ² or the plan rate of return	Fund corrective earnings using the DOL calculator ² ; earnings must be no more than \$1,000 and deposits not funded later than 180 days	Fund corrective earnings using the DOL calculator ² or, if preferred, greater of earnings calculation
Employer required to pay 15% prohibited transaction excise tax (on earnings) using the IRS Form 5330	Employer required to pay 15% prohibited transaction excise tax (on earnings) using the IRS Form 5330	May receive relief from the 15% prohibited transaction excise tax (on earnings) ³
Participant notice is not required	Participant notice is not required	Participant notice is generally required ⁴
A “no action” DOL letter is not provided	A “no action” DOL letter is not provided; an email acknowledgement of submission is provided	If approved, DOL provides “no action” letter, resulting in civil relief for the fiduciary breach

I HAVE LATE CONTRIBUTIONS. WHAT DO I DO NOW?

As soon as you realize your deposits are late, submit the late contributions. Payrolls should be submitted separately and applied to the appropriate payroll date.

After all late contributions have been submitted, please contact your client service team to discuss your next steps and how we can help.

¹Including proof of payment of both principal and earnings (e.g., copies of canceled checks, wire transfers, signed and dated receipts, bank statements).

²The DOL provides an online calculator that calculates earnings using the Internal Revenue Code Section (IRC Sec.) 6621 rates. The calculator can be found at <https://www.askebsa.dol.gov/VFCPCalculator/WebCalculator.aspx>.

³Excise tax relief is only available for payrolls deposited not more than 180 calendar days from the withholding and if the fiduciary has not taken advantage of excise tax relief under the VFCP for a similar transaction in the past three years.

⁴Participant notice is generally required if seeking relief from the 15% prohibited transaction excise tax.