Benefits
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Misconceptions on Employee Contribution Remittances and 5 Tips to Help Meet your Fiduciary Requirements

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Department of Labor (DOL) regulations related to pension plans, health care and other welfare plans are primarily intended to protect employee contributions. One of the main ways of ensuring such contributions are safeguarded is to investigate situations where employers have delays in remitting participant contributions to the participant's employee benefit plan.

The DOL has set forth regulations under 29 CFR § 2510.3-102 for the plan sponsors to follow. These regulations state that plan administrators who file Form 5500 on a Schedule H (large plans greater than 100 participants) or Schedule I (small plans with less than 100 participants) must report on Line 4a any situations in which the plan sponsor failed to transmit participant contributions with respect to the regulation.

Under the regulation, all amounts must be withheld by the plan sponsor from the participant's wages for contribution to the plan on the earliest date that the contributions can be reasonably segregated from the employer's assets, but in no event later than 15 business days following the month in which the participant contributions are withheld.

A common misconception made by plan sponsors is that they have until the 15th of the following month to remit participant contributions to the custodian. Their interpretation leads them to believe that as long as contributions are remitted within this time frame the contributions are deemed timely and many plan sponsors operate this way.

The appropriate interpretation of the regulation is that the plan sponsor is tasked with remitting participant contributions at the earliest date that they can reasonably make contributions on a consistent basis and at no point will the DOL deem remittances reasonable if the remittance is made beyond the 15th day of the following month. Thus, if the plan has demonstrated the ability to remit these contributions within 5 days of the pay period ending, the DOL may determine late remittances to be any remittance not made within 5 days of the pay period ending should the plan come under audit. These deemed late remittances would need to be disclosed in Line 4a of the Form 5500.

Though it may seem like a daunting task to remit contributions within the same consistent timeline each pay period, it can and should be done. The following are a few tips that can make the process easier and in compliance with the regulations.

> "You should ensure that you keep a copy of all documentation for each pay period together in one easily accessible place within your files"

Tips to Avoid Line 4a:

Tip 1: Go Electronic

Plan Sponsors should eliminate the paperwork and the postage stamps. Sponsors should ask their financial institution to set up an electronic network, such as an ACH, for payment. By setting up the ACH, the assets will be more heavily safeguarded and the process of remitting will take less time, be consistently performed, and easier for the plan sponsor.

Tip 2: Prepare for absences

It is inevitable that your employees typically responsible for processing remittances will need time off. That said, these absences are not an excuse for a late remittance if audited by the DOL. The plan sponsor should create a backup plan to ensure that the process runs smoothly. Plan sponsors could consider cross training certain employees to perform the process in the event of an absence or consider rotating the process between a number of employees. Taking the time to ensure there is a plan in place for when absences do occur will not only keep the process moving, but also have the added benefits of helping mitigate against and detect the potential for fraudulent activity and nurture staff development.

Tip 3: Keep a Calendar

Have employees set up a calendar for all payroll dates, check dates, and planned remittance dates. Ensure that this schedule is circulated amongst the benefit team and track the progress of the remittance procedures. An easy way to track progress is to have employees sign off on this calendar with their initials and date as each step is completed. The extra few moments that this will take will help assign responsibility to specific team members, and will allow management to identify areas for improvement.

Tip 4: Keep it Together

You should ensure that you keep a copy of all documentation for each pay period together in one easily accessible place within your files. This package should include a reconciliation of the contributions from the payroll to the remittance advice, as well as ACH copies, and your tracking sheets. This will allow you to show the DOL or your auditors how much and when the remittance took place, as well as identify when and to what extent forfeiture balances were used for funding. Additionally, this will provide support if the remittance was not timely recorded or applied by your custodian or record-keeper.

Tip 5: Keep Informed

Finally, you should be certain that your plan administrator, as well as employees involved in benefits and payroll are keeping current with all laws and regulations set forth by the IRS and the DOL. Ensure that these employees have access to the DOL (www.dol.gov/ebsa) and IRS sites (www.irs.gov/retirement-plans) and that the plan sponsor maintains an open line of communication with your trusted 401(k) advisor.

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