

# Retirement Plan News Update

Brought to you by the Barnes Dennig Employee Benefit Plan Audit Team

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## 401(k) HIGHLIGHT: Late Remittance of Participant Contributions

The Employee Benefits Security Administration (EBSA) continues to focus on the timeliness of participant contributions in contributory employee benefit plans. Department of Labor (DOL) regulations require employers who sponsor pension plans to remit employee contributions as soon as practicable, but in no event more than fifteen business days after the month in which the participant contribution was withheld or received by the employer.

Failure to remit or untimely remittance of participant contributions may constitute a prohibited transaction, regardless of materiality. Plan sponsors faced with remitting delinquent participant contributions should consider utilizing the DOL's Voluntary Fiduciary Correction (VFC) Program. The program will lead an employer through the steps necessary to pay "lost earnings" on late deposits and will result in the DOL's issuance of a "no-action letter" and no imposition of DOL penalties. In addition, applicants could be eligible for immediate relief from payment of certain prohibited transaction excise taxes imposed by the IRS.

The DOL has conducted many investigations involving late remittances, often times triggered by the reporting

of late remittances on the plan's Form 5500. It is not uncommon for the DOL to find additional late remittances that were not reported once they begin their investigation. Employers should be certain they are remitting employee withholdings promptly, certainly within the 15 business day threshold and earlier if at all possible.

Information regarding the VFC Program is available on the EBSA's web site at [www.dol.gov/dol/ebsa](http://www.dol.gov/dol/ebsa). Plan sponsors can telephone the EBSA regional office in their area with any questions about the application process. These telephone numbers may be found on the EBSA's website <http://askebsa.dol.gov/>. Employers not utilizing the VFC Program, are required to remit lost earnings to the plan as well as file form 5330, Return of Excise Taxes Related to Employee Benefit Plans, with the IRS to pay the 15% excise tax on the earnings on the late employee contributions and could be assessed additional penalties by the DOL.

If you would like to talk further about corrections to late remittances, please call your Director or Manager contact at Barnes Dennig at (513) 241-8313.



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