

Employee Benefit Plan Audit Series #3 | Rules for Remittance

Dan Holthaus, CPA, CCIFP

Jessica Doremus, CPA

August 2024

Jessica Doremus:

Welcome to Barnes Dennig Ask The Experts. I'm Jessica Doremus, and we have Dan Holthaus here to talk us through some timely remittance contributions. So, Dan, thanks for joining us today. What are some of the DOL's rules for remitting timely contributions?

Dan Holthaus:

Absolutely, Jess. This is a really important rule. It's something that we have to look at in every plan audit we do. And the DOL'S rule is that you must remit employee deferrals as soon as administratively feasible, but no later than the 15th business day in the following month following pay run.

Okay, so there's a big caveat there because some might read that as a bright line where they have until the 15th business day of the following month. But in reality, the real rule is as soon as administratively feasible.

So if a plan sponsor has been able to show that they've remitted within one day or within two days, generally, that's what the standard would say they need to continue to do. If they've shown that they can't do that until the fifth business day or the sixth, then fifth or sixth business day might be what is administrative be feasible for them.

Jessica Doremus:

That seems pretty vague and a gray definition. Can you go into some more about that?

Dan Holthaus:

Absolutely. So the rule is really intended to be gray. The Department of Labor wants the plan sponsor to get the money into the plan as soon as they can. They want it in there working for the participant, but they also don't want the plan sponsor to be using employee-withheld money to potentially fund operations. And so if the DOL were to create some bright line, then employers who historically have put funds in within one or two business days, if they make a bright line for five or six days, they might move

to five or six days, and therefore the participants deferrals aren't reaching the plan as early as they could potentially be.

Jessica Doremus:

So there are different sizes of plans. So the rules that you're talking about, does this apply to all plans?

Dan Holthaus:

No, actually it does not. The “as soon as administratively feasible” applies to large plans, the ones we audit, that generally have 100 participants or more in the plan. There is what is referred to as a small plan that has fewer than 100 participants. Their rule is seven business days. So they do have a bright line, which is very different from the vague “as soon as administratively feasible”.

Jessica Doremus:

Right, right. Okay. So what happens if a large plan doesn't adhere to those rules that you just talked about?

Dan Holthaus:

Yeah, so it's actually a pretty common plan error. So essentially the plan sponsor has to make up the lost earnings for that period of time. So we look at the date that the deferrals were considered to be late when the deferrals were made. There's a gap there between those days. You calculate lost earnings for that period of time.

Now, there's two different ways we could do that. You could look at the DOL'S website. They have a lost earnings calculator on the website. You put the principle in, the day it was lost, the day it was contributed, its out of lost earnings, and that number's contributed. But for errors that have a larger magnitude that might be more employees, multiple pay periods, they may be required to go and actually calculate lost earnings on the actual plan assets, make that contribution. That's a lot more complex, a lot more time-consuming, maybe even costlier to have someone help make those calculations. So in both instances, they take that lost earnings, contribute it to the plan, allocate it to the participants who are affected.

Jessica Doremus:

Okay. And if a plan has those contributions and corrections that needs to be made, do they have any different reporting requirements?

Dan Holthaus:

Yes, they do. So we're going to report it in two different spots. It's first going to be reported on the 5500, on one of the schedules as a lump sum number, and that's for the late employee dollars, not the lost earnings.

And then also on the audited financial statements, there's going to be an attached schedule. There's going to be a schedule there that says amount lost and it'll be allocated to one of four different categories. One could be not corrected. So some employers decide to not correct this error. We do not advise that.

Two could be corrected outside of the voluntary filing correction program, otherwise known as the VFCP. Three, it could be corrected inside the VFCP, which is another filing that you do with the Department of Labor. We're not going to get into that with this video. But for larger errors, we typically see plan sponsors actually doing the VFCP filing.

The next one could be pending correction in the VFCP. So if they've submitted the VFCP, it hasn't been accepted yet by the DOL. And then finally, there's a fourth column where it says fully corrected inside the VFCP. And so if it was actually accepted by the DOL, it would be reported there.

And then the final component about when and how this is reported, that number stays on that schedule until the year after the corrections made. So if an error occurs in 2022, corrected in 2023, it won't come off until the 2024 5500 filing.

Jessica Doremus:

Okay. That's great information. Thanks for filling us in on all that. Thanks for joining us today on Ask The Experts.