

U.S. Department of Labor

Employee Benefits Security Administration
230 S. Dearborn Street, Suite 2160
Chicago, Illinois 60604



April 27, 2018

Plan Administrator

Dear Plan Administrator:

The Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor (DOL) is responsible for the administration of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). ERISA protects the retirement and health benefits of participants and beneficiaries of private-sector employee benefit plans.

Based on a review of the Plan's Form 5500 filed on _____ for plan year beginning 1/1/2016, it appears that the Plan's sponsor failed to remit _____ in participant contributions and/or participant loan repayments to the Plan within the time period described in Department of Labor Regulation 29 CFR 2510.3-102. This regulation provides in pertinent part:

the assets of the plan include amounts . . . that a participant has withheld from his wages by an employer, for **contribution to the plan as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets**. . . [I]n no event shall the date determined . . . occur later than . . . the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash . . . (Emphasis added)

It is important to note that the "15th business day" rule is not a safe harbor and is included in the regulation only as an outside limit of the time that may be considered for segregation of assets.

Failure to remit, or the untimely remittance of, participant contributions and/or participant loan repayments violates several provisions of ERISA. EBSA has the authority to investigate and, if necessary, take enforcement action to remedy such violations.

As a reminder, EBSA has designed the Voluntary Fiduciary Correction Program (VFCP) to provide plan officials with a cost effective process for voluntarily correcting certain ERISA violations, including the untimely handling of participant contributions and/or participant loan repayments. A full listing of transactions eligible for the program can be found on our website.

Under the VFCP, eligible plan officials can submit a free application to the appropriate EBSA Regional Office demonstrating self-correction of a violation, including the restoration of lost earnings. A VFCP team member can assist the applicant throughout the process to ensure that the correct documents are provided and to answer any questions that the applicant may have.

If the application meets the conditions of the VFCP, EBSA will issue a "No Action" letter to the applicant regarding the violation(s) described in the application. The No Action letter states, in part, that the Department will take no civil enforcement action against the applicant; will not recommend that the Solicitor of Labor initiate legal action against the applicant; and will not impose a civil penalty on the amount repaid to the plan. In addition, applicants may also be eligible for IRS excise tax relief if the conditions of EBSA Class Exemption 2002-51 are met.

Please be aware that self-corrections made by plan officials without participation in the VFCP will not be acknowledged by the Department. Furthermore, use of the Department's VFCP calculator to determine the rate of lost earnings and interest due to the plan is intended for VFCP applicants only and will in most instances result in a lower lost earnings repayment amount, which is another benefit to plan administrators who self-correct and voluntarily file with the Department pursuant to the VFCP.

For your convenience, VFCP Model Application Form, Checklist, Fact Sheet, and FAQs are available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs>.

If you would like to take advantage of this opportunity before we consider any possible alternative enforcement measures, please submit a completed VFC application to our office within 60 days from receipt of this letter. If you have any questions or need assistance, please contact Chicago VFCP Coordinator at (312) 353-0900.

Sincerely,



Chris Davis
Associate Regional Director
Chicago Regional Office
Employee Benefits Security Administration