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Fiduciary Fitness Program

Education Module #11:

Timely Deposit of Employee Elective Deferral Contributions

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Module 11: Timely Deposit of Employee Elective Deferral Contributions

The purpose of this module is to explain when employee elective deferral contributions are considered timely under the law, and what to do if they are not.

Department of Labor Regulations

The Department of Labor (DOL) requires that elective deferrals be remitted on the earliest date that the employer can reasonably segregate the amount from the employer's general assets; however, in no event can the deposit be later than the 15th business day of the following month.

- The 15th business day of the following month is not a safe harbor for depositing deferrals; rather, this rule sets the maximum deadline
- On audit, the DOL determines the earliest time deferrals are deposited for a particular plan, and sets that as the deadline
- The DOL does, however, provide a seven-business-day safe harbor rule for employee contributions to "small" plans (i.e., plans with fewer than 100 participants as of the first day of the plan year)

Mistake

- **Failure to Timely Deposit Employee Elective Deferrals**
  - If deposits are not timely made, the failure may constitute both an operational failure (failure to follow plan terms) and a prohibited transaction (a transaction between a plan and a disqualified person)
- **Note: Timing of Other Contributions**
  - Rules governing the timing of matching contributions or other employer contributions are different from those for elective deferrals

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- The following rules must be met to obtain a current tax deduction:
  - Contributions made by an employer to match deferrals may be made at the time of the elective deferral contribution or later, but not later than the filing deadline of the employer's income tax return, including extensions
  - Employer contributions that aren't tied to elective deferrals must be made by the filing deadline of the employer's tax return, including extensions

ACTION STEP

- **Review your plan document for the timing and amount of your matching and other employer contributions**

Finding the Mistake

- **Determine** the earliest date that you have, or can, segregate deferrals from general assets; compare that date with the actual deposit dates and any plan document requirements
- **Review** plan terms relating to the deposit of elective deferrals and determine if you've followed them
  - Although it isn't common, some plan documents contain a specific provision for deposit

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Fixing the Mistake

- This failure is usually corrected through the DOL's Voluntary Fiduciary Correction Program (VFCP)
- In addition, if the plan document contains language regarding the timing of deferral deposits, this failure to follow the plan document may need to be corrected through the IRS Employee Plans Compliance Resolution System (EPCRS)
- Generally, correction for late deposits requires a plan sponsor to do both of the following:
  - **Determine** which deposits were late and calculate the lost earnings necessary to correct; and
  - **Deposit** any missed elective deferrals, along with lost earnings, into the trust
- An excise tax may also be required to be paid on Form 5330

ACTION STEP

- **Establish** a procedure that requires elective deferrals to be deposited coincident with or after each payroll
- **Determine** who is responsible for ensuring timely transmittal of contributions – create redundancy for unforeseen circumstances
- **Coordinate** with payroll provider and others who provide service to the plan, if any, to determine the earliest date reasonably possible to make deferral deposits
  - The date and related deposit procedures should match the plan document provisions, if any, dealing with this issue
- **Implement** practices and procedures that are communicated to new personnel, as turnover occurs, to ensure that incoming personnel has a full understanding of when deposits must be made

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