

Simplified Option for Correcting Certain Retirement Plan Failures

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Earlier this year, the U.S. Department of Labor (“DOL”) amended its Voluntary Fiduciary Compliance Program (“VFCP”) to provide retirement plan sponsors with a simplified option for correcting certain specified prohibited transactions. The simplified option will be welcome news to employers that are late depositing participant contributions into a 401(k) plan or who administer plan loans incorrectly – relatively common mistakes that previously required filing an application with the DOL to fully correct. While the new self-correction option is available for certain other specified, less common problems, the foregoing are the major targets of the new simplified VFCP process.

The new rules, which became effective on March 17, 2025, provide for the following:

Self-Correction of Late Deposits of Participant Contributions and Loan Repayments

This feature permits plan sponsors to self-correct late deposits of participant contributions and loan repayments without having to submit a full VFCP application, provided certain requirements are met, including that (i) the late contributions are deposited into the plan within 180 days from when they were withheld from employees’ pay, (ii) the corrective deposit includes lost earnings on the late deposits calculated using the DOL’s online calculator, and (iii) the lost earnings do not exceed \$1,000.

To complete the self-correction process, the plan sponsor must submit, electronically, a self-correction notice to the DOL. Following this submission, the DOL will send an automatic email acknowledging the submission of the notice. As long as the plan sponsor has received this acknowledgement and retains relevant records with its plan administrator, and as long as the information provided in the self-correction notice is accurate, the DOL will not pursue an investigation or assess penalties on the correction amount paid to the plan or its participants.

Self-Correction of Participant Loan Failures

The new rules also allow for self-correction of participant loans that did not comply with legal and plan provisions concerning amount, duration, or level amortization, as well as loans that defaulted due to a failure to withhold loan repayments from the participant’s wages, provided that such loan failures have been self-corrected under the IRS’s Employee Plans Compliance Resolution System (“EPCRS”). Unlike with late participant contributions and loan repayments, self-correction of these loan failures is available even to plans and plan sponsors that are under investigation by a government agency.

Excise Tax Relief

Ordinarily, the IRS assesses excise taxes against employers who engage in prohibited transactions consisting of late deposit of participant contributions and failure to properly administer participant loans. In addition, previously, excise tax relief was available only if the employer completed the formal VFPC application process. The new rules, however, provide that excise tax relief will now be available for covered transactions that are self-corrected, provided that the plan sponsor deposits the excise tax amount into the plan.

Advantages to Using the New Self-Correction Option Where Available

Correcting plan failures that do not qualify for the new simplified VFPC requires compiling a package of numerous documents that have to be filed with and signed off on by the DOL; the plan sponsor also has to provide a formal notice to affected plan participants. Under the new simplified self-correction program, eligible corrections involve simply submitting a self-correction notice and retaining records with the plan administrator, and there is no longer any need to wait for DOL review and sign-off before enjoying excise tax relief and protection from civil actions.

Conclusion

Plan sponsors who realize they need to correct one of the above described errors should consider working with legal counsel to take advantage of the new self-correction options. Kelley Drye's Employee Benefits and Executive Compensation Practice Group is available to assist with any questions and any work needed to use the new program.