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# Proposed Changes to Voluntary Fiduciary Correction Program (VFCP): DOL Adds Self-?Correction for Late Deposits of 401(k) Contributions

Labor & Employment Workforce Watch


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In November 2022, the U.S. Department of Labor (DOL) proposed changes to its Voluntary Fiduciary Correction Program (VFCP). VFCP allows plan sponsors to voluntarily correct certain fiduciary breaches to avoid civil enforcement actions and civil penalties under the Employee Retirement Income Security Act of 1974 (ERISA). A popular tool for correcting late deposits of participant deferrals and loan repayments, VFCP requires the plan sponsor to submit a paper application with the DOL to obtain the no-action letter relief; self-correction is not available under the current VFCP.

**Proposed Self-Correction Component**

The most significant proposed change to VFCP is the addition of a self-correction component (SCC) for plan sponsors who fail to timely transmit participant deferrals and loan repayments to retirement plans. To be eligible for the SCC, the plan sponsor must meet the following requirements:

- Participant contributions or loan repayments to the plan must be remitted no more than 180 calendar days after the date they were received or withheld.
- Lost earnings (calculated using the VFCP online calculator) must not exceed $1,000.
- The plan or plan sponsor must not be under investigation as defined in the program.
- Plan sponsors must file an electronic notice with the DOL containing information similar to that required with the regular VFCP submission and will receive an automated acknowledgment of the notice filing.
- Plan sponsors must also complete and retain the SCC Retention Record Checklist, which is provided as an appendix to the proposed VFCP, prepare or collect the documents listed in the appendix, and provide the completed checklist and required documentation to the plan administrator.

Late deposits that are self-corrected through the SCC component of VFCP will also qualify for IRS excise tax relief under a corresponding change to Prohibited Transaction Exemption 2002-51.

Unlike formal VFCP applications, plan sponsors that correct under the SCC, if adopted, will not receive a “no action” letter from the DOL, but the proposed rule clarifies that self-correction in accordance with the SCC requirements will exempt plan sponsors from penalties or civil enforcement actions under ERISA.

The DOL is accepting comments on the proposed changes through January 20, 2023. The amended and restated

VFCP can be found here.

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