Increased Fiduciary Risk Under COVID-19

Ensure the rapid deposit of employee 401(k) salary deferrals with SMARTSync®

Rapidly changing conditions and business disruptions caused by COVID-19 have left retirement plan sponsors exposed to the risk of non-compliance in meeting their fiduciary responsibilities.

For example, the Employee Retirement Benefits Income Security Act (ERISA) requires the deposit of employee 401(k) salary deferrals “as soon as administratively feasible.” But under COVID-19 conditions, a sick payroll employee or new burdens due to process changes like remote working could delay employee deposits. Consequences for non-compliance can be steep – including audits, penalties and remediation processes that can be costly and expose the plan to potential uncapped market risk.

To help, the Department of Labor (DOL) has acted to provide temporary reprieve for impacted employee benefits plans. Under EBSA Disaster Relief Notice 2020-01, no enforcement actions will be initiated by the DOL regarding temporary delays in deposits of employee plan contributions. Effective March 1, 2020, the relief will remain in place until 60 days after the announcement of the end of the COVID-19 National Emergency (or until future notice is provided). Plan fiduciaries, however, remain responsible for “acting prudently, reasonably, and in the interest of employees” and “should attempt to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established timeframes.”

Deferral Deposit Requirements

Plans with under 100 participants must meet a 7 business day safe harbor requirement for employee deferral deposits. No universal timeframe allowance is defined for large plans; deferrals must be made as soon as the assets are separated from the employer’s funds and no later than the 15th business day of the month following the month of withholding. The timing of a plan's past deposits may be used to determine “late” versus “timely” for an employer. For example, if deposits are typically made within one day, those made outside of that timeframe may be considered late. Employers should be sure to document the details of any lag in their processes that could be considered a fiduciary breach.

Correcting Late Deposits

Late salary deferral deposits are considered a loan to the plan sponsor, which is a prohibited transaction. To return the plan to compliance, plan sponsors can either self-correct or use the Voluntary Correction Program (VFCP). Both options require the remediation of any potential lost investment earnings for each impacted participant had the money been invested in the plan during the lapse.

Voluntary Correction Program (VFCP) Option

The VFCP can help minimize the impact of breaches of fiduciary responsibility. The program offers an online calculator to accurately determine correction amounts owed to the plan. A key benefit of the program is the DOL “no action” letter that states that no civil action or (ERISA 502(l) or 502(i)) penalties will be imposed on the amount repaid to the plan for the breach. All plan sponsor must adhere to program procedures, including preparing the VFCP Application and Checklist, and providing detailed documentation proving the correction to earn the program’s exemption of excise taxes.
**Self-correction option**

Employers can also self-correct the breach to restore losses to participants. Calculating the missed earnings can be complicated, and the plan sponsor will have to do so manually using one of the EBSA's acceptable methods, such as the greater of: the actual rate of return for the participant, the average plan or the target date fund rate of return, or the Internal Revenue Code underpayment rates (federal short-term rate plus 3%). Self-correcting also requires payment of excise taxes of usually 15% of the amount for each year, and preparation of Form 5330. The plan will not receive a “no action” letter from the DOL that excuses them from investigation of the breach.

**SMARTSync® - Increased Data Reliability with Less Administration**

ADP's SMARTSync® can help you avoid the hassle of delayed employee deferrals, painful and costly remediation processes, and the administrative burdens of keeping your plan in compliance. SMARTSync, available to our joint ADP payroll and Retirement Services clients, is a sophisticated integration solution that links ADP's payroll and retirement plan recordkeeping systems. Critical plan and payroll data flows continuously from one system to the other automatically, synchronizing and making updates to ensure data accuracy. Transactions are rapid and require minimal to no manual intervention. Smart features can help reduce manual mistakes and corrective actions – helping to keep plans in compliance. Plus, data verification and embedded programming features can help catch errors before they grow into big problems that require big resources to resolve.

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