



RetireWell Administrators, Inc.

Third-party Pension Administration and Consulting Services

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RetireWell Administrators, Inc. provides total retirement plan solutions by combining TPA services with the employee benefits practice at The Law Firm of Anthony L. Scialabba, LLC.

Self-Correction For Late Elective Deferral Contributions and Loan Repayments

By Anthony L. Scialabba IV, Esq., QKA

On January 14, 2025, the Employee Benefits Security Administration (EBSA) within the United States Department of Labor (DOL) revised the Voluntary Fiduciary Correction Program (VFCP). Specifically, instances of late elective deferral contributions and loan repayments may be resolved through the use of the self-correction component (SCC) effective as of March 17, 2025 (The SCC is not "live" yet and we are waiting for confirmation as to when it will become live.). The following provides important information concerning the SCC.

1. History

The DOL mandates employers to deposit contributions as soon as they can be reasonably segregated from an employer's general assets. In no event can contributions be deposited later than the 15th business day of the month following the month in which they are withheld or received by an employer. Retirement plans with less than 100 participants have a safe harbor rule in that contributions must be deposited within seven business days of withholding or receipt by an employer. A subjective determination is implemented to determine when contributions can be reasonably segregated. If an employer demonstrates that the contributions can be provided in a plan quickly (e.g., two to three days), such employer can actually become held to that standard.

If contributions are not timely deposited, the DOL can sue a plan fiduciary for a breach of the fiduciary duty to operate the plan in a prudent manner and the duty to operate a plan for the exclusive benefit of plan participants and beneficiaries. In addition to being sued for a breach of these fiduciary duties, an employer could subject a plan to civil penalties by the DOL. The failure to segregate contributions from an employer's general assets and timely forward them to the plan's trust allows an employer the

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Anthony L. Scialabba IV, Esq., QKA

Tel: (856) 396-0499 Fax: (856) 985-6817
www.retirewelltpa.com



1002 Lincoln Drive West, Suite E
Marlton, New Jersey 08053

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prohibited use of plan assets. This can result in a plan fiduciary engaging in a prohibited transaction for which it can ultimately be assessed an excise tax. In this aspect, the Internal Revenue Service mandates that there be a 15 percent excise tax on "lost earnings". To pay this excise tax, an employer must use Form 5330, Return of Excise Taxes Related to Employee Benefit Plans (Form 5330).

The DOL offers the VFCP to correct late contribution defects. To use the VFCP, an employer must correct the untimely deposit error. Subsequently, an employer must file an application with the DOL which details (among other things: (1) the amount of each late contribution and when it was corrected; (2) the amount of any lost earnings due in connection with the late contributions and when they were contributed to the accounts of affected participants; and (3) the circumstances pertaining to the late contributions. By correcting through the VFCP, an employer would receive a "no action letter" which states that EBSA will not seek enforcement action or civil penalties.

2. Qualification

An employer may use the SCC if the following conditions are met:

- the late elective deferral contributions or loan repayments are deposited to the plan within 180 days after they are withheld or received by an employer; and
- the lost earnings on the principal is \$1,000 or less.

The VFCP Online Calculator must be utilized to calculate the lost earnings on the principal. The link to the VFCP Online Calculator is as follows: <https://www.askebsa.dol.gov/vfcpcalculator/webcalculator.aspx>.

3. Process

An electronic notice (SCC Notice) is required to be

submitted using EBSA's web tool. The information included in the SCC Notice is: the name and an email address for the self-corrector; the name of the plan; the plan sponsor's EIN; the plan number; the principal amount; the amount of lost earnings and the date paid to the plan; the loss date; and the number of participants affected by the correction. In addition, the self-corrector must provide to the plan administrator a SCC Retention Record Checklist and supporting documentation. The link to the SCC Retention Record Checklist is as follows: <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/vfcpc>. Instead of receiving a no action letter, the self-corrector will receive an acknowledgment e-mail from EBSA. This will in effect avoid EBSA enforcement action or civil penalties.

4. Additional Points

The SCC essentially streamlines the process for correcting instances of late elective deferral contributions and loan repayments.

- An employer is able to avoid submitting to the government much of the information it would need to submit to the government via the VFCP and instead keep such information in its records.
- An employer or its service provider must complete but does not need to file a Form 5330. The payment of excise taxes would need to be paid to the plan.
- Like with the VFCP, employers seeking to use the SCC should be prepared to communicate with any entities administering their plans.

There is not a specific restriction placed on the number of times an employer can make use of the SCC. That being said, the government has confirmed that it does intend to monitor participation for frequent use of the SCC and that it may communicate with repeat users or open

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investigations to identify and correct systemic issues leading to repeated failures to transmit participant contributions in a timely fashion.

An employer should endeavor to avoid instances of late elective deferral contributions and loan repayments so as to not need use either the VFCP or SCC. To do so, a clear procedure should be implemented to make certain that contributions are deposited as soon as they can be reasonably segregated. An employer should coordinate with its payroll provider to determine when that date may generally be.

If you have questions with respect to the SCC or other retirement plan matters, please contact RetireWell Administrators, Inc. at 856-396-0499 or ClientServices@RetireWellTPA.com.

Lower Fees Should Not Be the Main Goal With A Retirement Plan

By Anthony L. Scialabba IV, Esq., QKA

In the context of administration of a retirement plan, an employer should not primarily aim to incur lower fees in connection with the plan. There are many factors which are important to consider when evaluating what entity or entities should administer a plan. Some of these factors are discussed as follows.

1. Communication

An employer should want a service provider that is responsive to any questions it may have. Often, an employer may not receive prompt responses which may lead to potential frustration and compliance issues. For instance, with a payroll provider, an employer would likely not receive timely responses as the payroll provider would likely not have an assigned person to handle the plan, unlike with RetireWell.

2. Experience

An experienced service provider is more likely able to tackle situations than an inexperienced one. There are issues that arise in the retirement plan industry where a service provider must lean on its experience to proceed with resolving a matter. A service provider with vast experience can be invaluable to a plan. RetireWell has a management team with over 85 years of experience and in-house ERISA attorneys.

3. Relationships

An employer should aim to limit its time as a middleman among the service provider and other such entities. It is beneficial to an employer's time to not need to be involved in every inquiry. At RetireWell, we take on this role from an employer and navigate between all entities administering a plan.

An employer should ultimately consider these factors and others when looking for a service provider.

If you have questions with regard to using RetireWell Administrators, Inc. for your company's retirement plan or other retirement plan matters, please contact us at 856-396-0499 or ClientServices@RetireWellTPA.com.

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