



DOL Announces New Self-Correction Program for Late Participant Deferrals

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Posted April 29, 2025

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Good news for 401(k) Plan Sponsors! Under new rules issued by the Department of Labor (DOL) beginning March 17, 2025, Plan Sponsors can now self-correct prohibited transactions resulting from the late funding of employee deferrals and certain participant loan failures. A new streamlined process will allow Plan Sponsors to correct those issues without filing under the DOL's Voluntary Fiduciary Correction Program (VFCP) and provide fiduciary risk relief related to the correction of the prohibited transactions.

The Background:

The DOL requires Plan Sponsors to remit employee 401(k) salary deferrals and loan payments to the Plan's accounts as soon as those amounts can be reasonably segregated from the general assets of the Plan Sponsor. In determining whether contributions are deposited timely, the DOL looks at how long it typically takes those amounts to be funded. Generally, Kernutt Stokes advises clients that if you can deposit your payroll taxes on the day of payroll or the next day, you need to deposit your employee contributions and loan payments on the same schedule.

Any variance from that typical funding timing, regardless of the root cause of the delay, creates a delinquent deposit issue, so it is very important that Plan Sponsors create a procedure for insuring the deposits are made in a timely fashion. That vacation that your payroll processor goes on does not mean deferral funding can wait until they are back to work. The hiccup in your payroll system isn't an excuse for those late deposits, either.

Under DOL regulations, late deposits are considered to be a loan from the Plan to the Plan Sponsor, which is a Prohibited Transaction. In the past there was not a formal self-correction process for Plan Sponsors. Prohibited Transactions were only fully correctable after several steps including: filing with the VFCP, funding a corrective amount to the affected participants to restore the lost earnings potential of those late deposits, and paying an excise tax on the calculated fair market value of the interest earned on the loan between the Plan and the Plan Sponsor.

What's Changing:

With the new rules, a Self Correction Component (SCC) has been created, greatly simplifying corrections. The SCC process streamlines reporting and correction of late funding and eliminates the need for payment of excise taxes by the Plan Sponsor. Now, regardless of the size of the Plan or number of Plan Participants, a Plan Sponsor can use the SCC for correction as long as the following requirements are met:

- The Plan is not currently under investigation by the DOL
- Funding of delinquent deferrals and loan repayments are made within 180 days of the payroll date which created the delinquent amounts
- The calculated lost earnings on the late funding are less than \$1,000

The SCC requires Plan Sponsors to prepare and electronically file a self-correction notice with the DOL Employee Benefit Security Administration and the completion and retention of supporting documentation

related to the correction. The DOL has created two web-based applications for the completion of these two components found here:

Correction Notice: [Voluntary Fiduciary Correction Program Self-Correction Component Notice – Determine your eligibility to self-correct](#)

Document Retention Checklist: [Appendix F: SCC Retention Record Checklist](#)

The SCC program is also available to Plan Sponsors for correction of certain loan failures, even if under examination by the DOL. Correctable failures include:

- Loan amounts and repayment duration exceeding prescribed limits
- Amortization repayment schedules not meeting requirements and
- Loan defaults caused by a failure to withhold loan payments from payroll

What you should do:

A Plan Sponsor should have procedures in place to ensure that all participant deferral and loan payment amounts withheld from participant's payroll are timely remitted to the Plan's custodian. Often errors are not identified until after the end of the Plan's year, when either the Third Party Administrator or Plan's Auditor is completing their work.

With the requirement that these corrections be made within 180 days of the failure to qualify for the SCC program, it is doubly important that in addition to the procedures regarding funding timing, review is completed on an ongoing basis to catch and correct any delinquent contributions within that 180-day timeframe. Once identified, we suggest that the Plan Sponsor work with their Plan Third Party Administrator or Custodian to complete the steps required under the SCC program. After correction, understating the cause of the error and adjusting processes to avoid additional errors is key to safeguarding the Plan, its fiduciaries and participants.