

## **Fiduciary Duty #34**

In our continuing series of articles concerning the duties of those who oversee a qualified retirement plan on behalf of participating employees, today's topic addresses the need to deposit employee contributions in a "timely" manner.

The regulations from the IRS on this matter require that participant contributions be deposited to the plan on the earliest date that they can be "reasonably segregated" from the employer's general assets, but in no event later than the 15<sup>th</sup> business day of the month following the month in which the participant contributions are deducted from their pay.

However, this doesn't mean an employer can routinely wait until the 15<sup>th</sup> business day to deposit the funds. The 15<sup>th</sup> business day is NOT a safe harbor. Rather, the general rule is that the deferrals must be deposited as soon as is reasonably possible after payday. If the employer can segregate and deposit the contributions prior to this deadline, they must do so.

If the employer doesn't make the deposits timely, the failure may constitute both an operational mistake, giving rise to plan disqualification, and/or a prohibited transaction. Although an employer can correct an operational mistake under the Employee Plans Compliance Resolution System (EPCRS), a prohibited transaction can't be corrected through this same system. However, the Dept. of Labor (DOL) maintains a Voluntary Fiduciary Correction Program (VFCP) that may be used to resolve the prohibited transaction.

Due to the significance surrounding this topic, we don't want to overlook any of the important components of this duty. As a result, we have attached the link to the IRS website that will provide you with additional insights, and links, that can be of benefit to you.

<https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-you-have-not-timely-deposited-employee-elective-deferrals>

We hope you have found this information to be of benefit as you seek to fulfill your fiduciary duties.

If we can be of any further assistance, please let us know.

Mike & Matt