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DOL Expands Fiduciary Breach Correction Options

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The United States Department of Labor (DOL) has updated its procedures for correcting certain fiduciary violations. This expansion allows employers to self-correct a broader range of errors, aligning the program more closely with the IRS's recently updated correction procedures. If certain conditions are met, the new guidance allows for self-correcting some of the most common fiduciary violations, such as late contributions, late loan repayments, and inadvertent loan failures.

The DOL has long provided plan fiduciaries the option to use its Voluntary Fiduciary Correction Program (VFCP) to address various fiduciary violations. The program requires plan sponsors to both correct the fiduciary violation and submit an application to the DOL for approval. The core elements of the VFCP program remain unchanged. However, the DOL has expanded the program to include a self-correction component (SCC), which will allow plan sponsors to correct fiduciary violations without submitting an application to the DOL. Employers can begin using the new SCC provisions on March 17, 2025.

When Can SCC Be Used?

SCC is available for three fiduciary violations: failure to transmit contributions timely, failure to transmit loan repayments timely, and some inadvertent loan failures. Covered inadvertent loan failures include errors that could be self-corrected with the IRS under its Employee Plan Compliance Resolution System (EPCRS), which includes the most common loan failures.

What Are The Requirements?

To use the SCC program, several requirements must be satisfied:

- If the violation caused lost earnings, those lost earnings must be calculated using the DOL's lost earnings calculator and be less than $100.

- Late contributions or loan payments must be made to the plan within 180 days following when the employer withheld the amounts.
- Employers must complete and maintain a copy of the SCC Record Retention Checklist. Given the importance of complete and proper documentation, employers should seek assistance from legal counsel and other plan service providers.
- Employers must file electronically with the DOL as part of the correction process. Under the traditional VFCP process, the DOL would issue a no-action letter. Under the SCC program, a no-action letter will not be issued, but an acknowledgment will be provided after the electronic filing is made.

Any correction amounts and costs related to the SCC process must be paid from the employer's general assets, not from plan assets.

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