

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
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Employee Contributions

The Labor Department's Employee Benefits Security Administration (EBSA) is committed to safeguarding employee contributions to 401(k), health care, and other contributory plans by investigating situations in which employers improperly delay forwarding employee contributions to the appropriate funding vehicle or simply convert the contributions to other non-plan uses. Either or both scenarios may occur when the employer is having financial problems and turns to the plan as a source of financing.

Background

EBSA has a long history of protecting contributions withheld from employees' pay for the purpose of being transmitted to employee benefit plans. These plans include 401(k) plans, health benefit plans and other contributory plans. Beginning in 1995, EBSA began emphasizing the failure to forward employee contributions as a national enforcement project, the Employee Contributions Project. Such projects are generally designed to address a recurring issue found throughout the country. The Employee Contributions Project focused on correcting the untimely remittance of or failure to forward employee contributions. This national enforcement project continued until Fiscal Year 2010, when EBSA designated delinquent employee contributions as an ongoing National Policy Priority. Protecting employee contributions has become more important as employees take on more responsibility for saving for retirement. EBSA's commitment to protecting employee contributions led to the first solely criminal national enforcement initiative, the Contributory Plans Criminal Project. This project focuses on criminal misuse of plans with employee contributions. Issues under this project include the criminal conversion of employee payroll contributions for an individual's own personal use or the misuse of employee contributions to pay business expenses.

- In 2007, almost 80 percent of families participating in an employment-based retirement plan participated in a 401(k)-type retirement plan.
- The number of 401(k) plans has grown continually from around 17,000 covering approximately 7.5 million active participants in 1984 to almost 512,000 plans covering almost 60 million active participants in 2008.
- Assets in 401(k)-type plans were approximately \$2.2 trillion in 2008.
- The Labor Department's focus on protecting employee contributions is multi-faceted--
 - Conducting civil and criminal investigations into 401(k) misuse
 - Issuing a regulation to shorten the time for transmission of contributions to the plan
 - Launching an education campaign to inform retirement plan participants about their rights and ways to protect their pensions

Civil Results – Fiscal Year 2011

- 1,700 cases closed
- 1,429 with corrected violations.
- \$58,773,213 in monetary results
- For information on litigation go to www.dol.gov/ebsa/newsroom/ECI/main.html

Voluntary Fiduciary Correction Program

EBSA adopted the Voluntary Fiduciary Correction Program (VFCP) to encourage employers and fiduciaries to comply with ERISA. This program allows plan officials to self-identify and correct certain violations and receive “no action” letters if they meet certain criteria. Most of the VFCP applications involve delinquent employee contributions. This successful program allows self-identified violations to be corrected, allowing EBSA investigators to pursue undiscovered violations.

Participant Contribution Regulation

The Department’s participant contribution regulation requires employers of all sizes to transmit employee contributions to pension plans as soon as they can be segregated, but in no case later than the 15th business day of the month immediately following the month in which the contribution is either withheld or received by the employer. The Department issued an amendment to the participant contribution regulation to create a safe harbor rule under which participant contributions to small plans (with fewer than 100 participants) will be deemed to be made in compliance with the law if those amounts are deposited with small plans within seven business days of withholding or receipt. This amendment can be found at <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=23466&AgencyId=8&DocumentType=2>

Consumer Education

- The Department began a consumer education program simultaneously with its enforcement effort on employee contributions.
- The “Top Ten Warning Signs” were published on EBSA’s web site to provide consumers with tips on indicators of potential 401(k) abuse.
- Several publications were developed to assist individuals in learning about their rights and monitoring the safety of their retirement benefits. Some of the more popular publications include “What You Should Know About Your Retirement Plan” and “A Look at 401(k) Plan Fees.”
- These and other publications are available on EBSA’s web site at www.dol.gov/ebsa or through EBSA’s toll free number at 1-866-444-EBSA (3272).
- If you have questions not answered in this fact sheet, contact EBSA electronically at www.askebsa.dol.gov or call the toll-free number.