



# Timing of Remittance

## *ERISA Regulations*

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***This important notice outlines legal requirements for the timely remittance of employee-withheld contributions as well as employer contributions.***

*The YMCA Retirement Fund sponsors two plans: The YMCA Retirement Fund Retirement Plan and the YMCA Retirement Fund Tax-Deferred Savings Plan. In 2004, the YMCA Retirement Fund was successful in having federal legislation enacted which protects important aspects of our plans:*

- *Recognition of our plans as church plans,*
- *The right to continue commingling the assets of the Retirement Plan with those of our Tax-Deferred Savings Plan for investment efficiency purposes and,*
- *Permission to continue to convert participant account balances into life annuities for retiring employees (known as self-annuitization, which only defined contribution church plans can do).*

*As a result of the legislation's enactment, effective July 1, 2006, the Retirement Plan elected into certain provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").*

### **ERISA Regulations**

Department of Labor ("DOL") regulations under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") require that employee contributions (amounts withheld from an employee's pay) be treated as plan assets as of *the earliest date on which such contributions can reasonably be segregated from the employer's general assets. Such regulations also provide that in no event shall that date be later than the 15th business day of the month following the month in which the amounts would otherwise have been payable to the employee.* (DOL Reg. Section 2510.3-102 and DOL Field Assistance Bulletin 2003-2). The purpose of the DOL regulations is to assure that employers are not using employee funds for non-retirement purposes or unnecessarily delaying the remittance of contributions.

### **What YMCAs Need to Know**

To comply with ERISA, YMCAs participating in the Retirement Plan are required to remit employee-withheld contributions to the Retirement Fund as soon as reasonably possible following the date that amounts are withheld from employee paychecks, but in no event later than the 15th business day of the month following the month in which amounts would otherwise have been payable to the employee. For example, if contributions are withheld from employee paychecks on July 15, the YMCA is required to remit such employee contributions to the Retirement Fund as soon as reasonably possible but no later than the 15th business day of August. The "as soon as reasonably possible" standard will depend upon the facts and circumstances of the YMCA, including whether they have electronic payroll systems and computer capabilities or manual systems to transmit contributions, as well as the number of YMCA branches that need to be coordinated and whether an outside payroll provider is utilized.

### **What YMCAs Need to Do**

YMCAs need to remit employee-withheld contributions after every payroll.

## The Basics

ERISA regards employee-withheld contributions as plan assets as of *the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which amounts would otherwise have been payable to the employee*. This is important because failure to remit such contributions on time may be viewed as a "prohibited transaction," and may result in significant excise taxes and penalties. In this context, the "prohibited transaction" may constitute an impermissible loan between the Retirement Plan and the YMCA. The method to correct a prohibited transaction is by undoing the transaction (contributing the employee amounts and related earnings). In addition, the transaction may need to be reported to the IRS (on IRS Form 5330) and an excise tax penalty any other penalties may be due.

Funds withheld from an employee's pay are considered plan assets and cannot be diverted for any purpose other than to be remitted to the Retirement Fund to be credited to the employee's accounts under the Retirement Plan for the exclusive benefit of the employee. The Retirement Fund will be required to report late contributions to the IRS on the annual information return filed for the Retirement Plan. Using plan assets for any other purpose, including the cash flow needs of the employer, could result in criminal liability.

## If Employee-Withheld Contributions are not Remitted to the Fund ASAP

If employee-withheld contributions are not remitted to the Retirement Fund on time per DOL regulations as described above, the YMCA is still obligated to remit the contributions to the Retirement Fund, and may also be required to file IRS Form 5330 and pay a **15% excise tax** penalty of the amount involved to the IRS. Failure to correct the prohibited transaction, to file the Form 5330 and to pay the penalty tax by the time it is due, or by the time a deficiency notice is received from the IRS, may subject the YMCA to a **100% excise tax** penalty. Under DOL regulations, a 10-business day extension may be available if certain specific requirements are met, including notifying all participants, the DOL, and obtaining a performance bond.

## Employer Contributions are Due on the 15th Business Day

Employer contributions by YMCAs to the Retirement Plan must be sent to the Retirement Fund by the 15th business day after the end of the month to which such employer contributions relate. If a YMCA fails to remit employer contributions in a timely manner, the YMCA must pay all contributions plus interest (at the applicable interest rates) to the Retirement Fund. In addition, the YMCA may be required to complete IRS Form 5330 and pay a **15% excise tax** penalty.

## Failure to Comply May Result in Expulsion

Failure to comply with the timely remittance of either employee-withheld contributions or employer contributions to the Retirement Fund could result in appropriate action being taken against a non-complying YMCA, including expulsion from participation in the plans of the Retirement Fund.

## Where Can I Get More Information?

If you have any questions about this notice or wish to discuss faster methods for sending contributions, please call our Finance Department at 800-RET-YMCA or email [info@ymca.org](mailto:info@ymca.org).