

To: MN Secure Choice Board of Directors

From: Dave Bergstrom, Interim Executive Director

Re: Compliance Policy Follow-up When Contributions are Withheld But Not Remitted

At the December 6, 2024, meeting, the Board discussed a compliance policy about situations where employee contributions are withheld from an employee's payroll check but not remitted to the record keeper. I recommended that these situations be turned over to the Federal Department of Labor (DOL). Cynthia Geiwitz asked about DOL's ability to have the resources to address these cases. The Board directed me to research how other States handle cases where deductions are withheld but never remitted to the record keeper or not remitted in a timely fashion.

I asked the Directors from other states how they handle this issue and most consider deductions withheld, but not remitted to the record keeper, as wage theft. In Minnesota, wage theft falls under the jurisdiction of the Minnesota Department of Labor (DOLI) or the Attorney General's Office depending on the severity of the wage theft. The DOLI web site makes it easy to submit a wage theft claim.

Staff Recommendation

I recommend the following:

- 1) Minnesota Secure Choice Retirement Program staff work closely with employers to resolve this compliance issue as quickly as possible.
- 2) To determine timeliness of remitting contributions, the Federal DOL standard should be used. The standard states that contributions be remitted "as soon as they can be reasonably segregated from an employer's general assets, but no later than the 15th business day of the month following the payroll date when contributions are withheld."
- 3) If deductions are not remitted in a timely manner, the DOLI and affected employees should be notified, and a schedule should be developed to follow-up on the case.
- 4) If the problem persists, the wage theft should be reported to the Attorney General's office (Minnesota Statutes 187.07, subdivision 6).
- 5) The law should be changed to eliminate the requirement that no penalties be assessed during the first year of non-compliance for employers who withhold contributions but do not remit them. The compliance policy approved by the Board at the last meeting does

maintain the requirement that no penalties be assessed in the first year if employers fail to offer the Program or do not distribute the materials to employees.

- 6) The law stating that penalties should be commensurate with the penalties for not remitting state-tax withholding should be replaced with the following:
- Employers must pay the missed contributions to the record keeper to put into the participant's account.
 - The employer must pay missed investment gains to put in the participant's account.
 - If there are investment losses during this period of noncompliance, they will not be deducted from the employee's account.
 - The employer should pay the Program and record keeper for the cost of calculating and fixing the error.
 - For a second offense, and any subsequent offenses, a penalty fee of \$250 should be paid to the Program.
 - The 30-day grace period to rectify other noncompliance problems will not apply in cases where contributions are deducted from an employee's account, but not remitted to the Program.