

January 22, 2010

DOL publishes Final Regulations on Timely Deposit of Employee Contributions for Small Plans

On January 14, 2010 the Department of Labor (DOL) announced that it had finalized its regulations on providing a safe harbor rule for timely deposits of employee's contributions. The safe harbor rule only applies to retirement plans with less than 100 participants as of the first day of the plan year. One of the biggest operational failures that are found in qualified retirement plans are the late deposits of deferrals and loans.

The Final Regulation

The DOL clarified the amount of time the employer has to deposit employee contributions into the plan. According to the DOL employers have until the **7th business day** following the date of the contribution to make the deposit into the plan. Failure to deposit the assets within that time period will deem the employer's general assets to be commingled with the plan's assets. If such a prohibited transaction occurs the employer is forced to provide lost earnings to the affected participants and pay excise taxes on the lost earnings of the plan.

The safe harbor rule was not extended to large plans, plans with greater than 100 participants at the beginning of the year; however the DOL is looking into this. Therefore large plans continue to operate under the earliest date rule meaning that funds must be deposited as soon as they reasonably can be segregated from the general assets of the employer. This will likely make large plans subject to an earlier deposit date than 7 business days following the date of the contribution to make the deposit to the plan.

One thing to note is the employee contributions include 401(k) deferrals, Roth deferrals and loan payments.

If you would like further information regarding this new regulation please contact your administrator.