

Are you depositing employee contributions quickly enough? Please read this important **Compliance Alert** regarding the Department of Labor's just-issued guidelines for depositing employee contributions.

ERISA COMPLIANCE

A S S O C I A T E S • L L C

DOL Proposes 7-Day Safe Harbor for Depositing Employee Contributions - Finally!

On February 29, 2008 the Department of Labor (DOL) issued a proposed amendment to DOL Regulation §2510.3-102 which establishes a "safe harbor" period of 7 business days (effectively 9 calendar days) as the deadline for plan deposits of employee contributions and loan repayments for plans sponsored by small employers (plans with less than 100 participants). As under the current regulation, contributions will be considered deposited when placed in an account of the plan, without regard to whether the contributed amounts have been allocated to specific participants or investments of such participants.

The original 1988 DOL regulation as to the definition of what constitutes "plan assets" was amended in 1996 to provide that employee contributions must be deposited to the plan on the earliest date that they 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 when the contributions were withheld from the employee's pay.

The difficulty is that the DOL has never clarified what constitutes "as soon as they can be reasonably segregated" and this has been a hot audit issue for both the DOL and the IRS since "late deposits" - which must be reported on Form 5500 - are considered an extension of credit from the plan to the employer (a party-in-interest) and therefore a "prohibited transaction." The safe harbor provides compliance certainty for small employers with respect to when an employer has made timely deposits to the plan.

Effective Date

The 7- business day safe harbor will be effective on the date the DOL publishes the final regulation. The proposed regulation provides, however, that the DOL will not assert an ERISA violation of the plan asset rules if a small plan complies with the safe harbor.

Action Required

All employers - small and large - should immediately ensure that they comply with the proposed safe harbor. (While the proposed regulation is limited to small employers, the DOL also announced that it is considering the application of this rule, or a similar one, for large plans.) Payroll procedures should dictate that a check - or better yet, electronic funding - to the plan trust for contributions and loan repayments is issued at the same time as wage checks, but no sooner (to avoid early deposit restrictions of the IRS).

Please contact Elinor Merl, ERISA Compliance Associates, LLC, at 619-233-3054, if you have any questions regarding the timeliness of contributions.

This Compliance Alert is not intended as legal advice or as an opinion on specific facts.

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