

Timing of Employee Deferral Deposits Coming Under Scrutiny



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ALERT

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Dated:

March 17, 2011

Closer scrutiny is being performed under plan audits with regards to the time period between the pay date in which employee elective salary deferral contributions are being withheld and the date in which they are finally deposited to the employee's investment account for their plan assets.

Under current regulations, which have been in effect since 1996, plan sponsors are required to deposit the employee deferral contributions as of the "earliest date" on which such contributions can be segregated from the employer's assets, but not later than the 15th business day of the month following the month in which the participant's contributions are withheld from their pay.

This rule has often confused many plan sponsors as they overlook the "earliest date" condition and instead focus on the deadline, the 15th business day of the following month. This confusion has led to the assumption that deposits are not late if made by the deadline. The Department of Labor (DOL) recently clarified that, if the deposit is not made by the "earliest date" in which the deferral amounts can be segregated from the employer's assets, they are considered late... ***even if that is only a few days after the pay date.***

Final regulations on changes to the timing of deposit rule were issued on January 14, 2010 for small plans (less than 100 participants) which spelled out a "safe harbor" of 7 business days for the deposit of employee contributions after the pay date in which they were withheld from employee pay. This 7 business day guideline normally works out to 9 calendar days, but may be longer depending on holidays. This 7 business day "safe harbor" does not apply to large plans.

To clarify the new regulations, the following guidelines should be considered with regard to employee deferral contributions and loan repayments to your retirement plan:

- Deferrals and loan repayments deducted from participant pay are to be deposited to the trust at the earliest date that the funds can be segregated from employer assets, but in no case can it be later than the 15th business day of the month following the pay date of the deduction.
- Deposits made after the 15th business day of the following month are considered prohibited transactions and participants must be reimbursed for "lost" earnings.

- Depositing funds within 7 business days from the pay date is generally considered timely for small plans.
- A DOL audit in which it is determined that deposits were made by the 15th business day of the following month but were not made within 7 business days will likely require the employer to pay “lost” earnings to the affected participants of late deposits.
- The DOL encourages deposits to be made on or immediately (1 - 2 days) after the payroll date.

As your Third-Party Administrator, we are required to report the amount of any late deposits deemed to be prohibited transactions (made after the 15th business day of the following month) on your Form 5500. Please be advised that the consequence of not timely depositing deferrals and loan payments is that the plan is subjected to a greater possibility of a government audit, which will include your plan and payroll records.

Because of the DOL’s position on deposits made outside of the 7 business day safe harbor period, if you are not currently depositing deferrals and loan payments within this time period, you should modify your internal processes in order to do so. Our current position is that we will generally not report a deposit as late on the Form 5500 if made by the 15th business day of the following month. However, we will also notify a plan sponsor in writing if we believe the DOL deposit requirements are not being met even if made by the 15th business day of the following month. We do this in order to provide the plan sponsor with the opportunity to deposit more quickly and avoid disclosure on the Form 5500.

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If you have any questions regarding this and how it may affect your individual plan, contact our office at (941) 953-7452 and speak with your plan representative.