

## **DOL Safe Harbor Timeline for Deposit of Employee Contributions**

The Department of Labor (“DOL”) has finalized regulations that establish a safe harbor timeline for small employer plans on the timing of elective deferrals and loan payments withheld from participants’ income. Consistent with the proposed regulations from February 29, 2008, the final version released on January 14, 2010 provides that such deposits to the plan will be deemed timely if deposited within the established safe harbor timeline. Historically, DOL investigations have determined that the deposit should be made within a few days after the payroll date. However, different DOL agents and district offices have made inconsistent determinations of what this reasonable timeline should be based on relevant facts and circumstances, which created uncertainty for many plan sponsors.

The final regulations provide that the deposit of 401(k) elective deferrals and loan payments withheld from the employees’ pay will be deemed timely if made to the trust no later than the 7<sup>th</sup> business day following the applicable payroll date. As noted above, the regulations apply only to small plans, defined as fewer than 100 participants as of the first day of the plan year.

The DOL has not provided any safe harbor standard for large plans (100 or more participants as of the beginning of the plan year). It is unclear whether any potential safe harbor for large plans will be 7 business days or even a shorter timeline. For these plans, the best approach is to make such deposits as quickly as possible while considering that the DOL may not treat such deposits as timely if made more than just a few days after the payroll date.

A recommended action for all plan sponsors is to review the timeliness of their current elective deferral (and loan payment) deposit process and determine all possible enhancements in effort to comply with these DOL requirements.

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