

DOL Clarifies Deadline For Depositing Employee Salary Deferrals

On February 29, 2008, the Department of Labor published proposed regulations providing a safe harbor timeframe for depositing employee contributions to a 401(k) plan. Existing regulations provide that employee contributions become assets of the plan and must be deposited as soon as such amounts can be segregated from corporate assets but no later than the 15th business day of the month following withholding. With no clear-cut deadline, there has been confusion among employers and inconsistent enforcement by DOL auditors.

Under the proposal, employers sponsoring plans with fewer than 100 participants as of the beginning of the plan year, and who deposit salary deferrals and participant loan payments within 7 business days of withholding (*i.e.*, the pay date), are deemed to be timely.

Although the new rule is still only in proposed form, the DOL has indicated they will not take enforcement action against small employers who comply with the 7-business day rule now.

The rule also clarifies that loan repayments are subject to general payment requirement set forth in the first paragraph, regardless of the plan size.

Now that DOL has set a clearly defined standard, they are likely to scrutinize the timing of deposits even more than they have in the past. We recommend that all employers currently taking more than 7 business days to remit employee contributions and loan payments should take action to accelerate those deposits to comply with this new standard, unless you can clearly justify a longer period within the general rule.