
DOL Issues Final Rules on 401(k) Deposits

DOL Guideline establishes a “7 Business Day” Safe Harbor for deposit of Participant Contributions

The Department of Labor (DOL) has issued a final Regulation regarding the deadline for making plan deposits of employee 401(k) elective deferrals and loan repayments for qualified plans.

The General Rule

DOL Regulation §2510.3-102 states that participant contributions become plan assets on the **earlier of**:

- (a) The earliest date on which the contributions can **reasonably be segregated** from the employer's general assets; or
- (b) The 15th business day of the month following the month in which the participant contribution amounts are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

The DOL has made it very clear that (b) above is **the maximum deadline** and is NOT a safe harbor time frame. DOL will generally assume that an employer can transmit retirement plan withholdings as quickly as they can make tax deposits. For the majority of employers this is a few days at most.

Employee contributions not contributed timely to the trust are considered an extension of credit from the plan to the employer (“a party-in-interest”), and that extension of credit is considered a “prohibited transaction.”

Furthermore, late contributions are reportable on the Form 5500, which is signed under criminal penalties of perjury.

The Safe Harbor Rule

The final regulation establishes a safe harbor for contributions deposited within 7 business days, even if the amounts could have been reasonably segregated from employer assets sooner than that. This new safe harbor is only available for plans sponsored by **small employers** (plans with 100 or fewer participants at the beginning of the plan year).

Effective Date

This final rule is in effect now. The DOL has been allowing use of the 7-business day safe harbor since they published proposed Regulations over a year ago. The final rule simply makes the safe harbor permanent.

Our Take

The DOL has been actively communicating with the business and benefits community about this issue for over 10 years and there are still employers who don't make timely deposits and benefit firms that don't educate them. This new rule will give certainty to employers who deposit within 7 business days and want the comfort of knowing that they are in compliance. Undoubtedly many other employers will continue to rely on the 15 business day rule as if it is a safe harbor, even though it clearly is not. We encourage all of our plan sponsors to comply with the 7 business day rule.

The Department of Labor and Internal Revenue service routinely check deposit timeliness during plan audits. With the safe harbor, it is likely that they will take an even dimmer view of late deposits than they did before.