Deposit of Employee Contributions & Loan Payments

If a plan allows a participant to make employee contributions and/or loan payments from his/her paycheck, the employer/plan sponsor must deposit these funds to the plan in a timely manner. On January 14, 2010, the Department of Labor (DOL) released final regulations regarding the timing of deposits of employee contributions and loan payments.

For employers with fewer than 100 participants, deposits of employee contributions and/or loan payments will be considered timely if made within 7-business days of receipt or withholding from payroll. The regulation became effective January 14, 2010.

For employers with 100 or more participants, the regulations remain unchanged. Employee contributions and/or loan payments must be deposited no later than the earliest date on which such amounts can reasonably be segregated from the employer's general assets - but no later than the 15th business day of the month following the month in which contributions are received or withheld by the employer. However, the DOL has stated verbally that the "15th business day of the month" should not be interpreted as a "safe harbor". If an employer can reasonably make deposits sooner, it must do so.

Guidance on the correction of late deposits of employee contributions and loan payments is provided by the DOL under the Voluntary Fiduciary Correction Program (VFCP). Please refer to the DOL's website www.dol.gov/ebsa to obtain more information on the VFCP and the deposit/correction requirements of employee contributions and loan payments.

The late deposit of employee contributions and/or loan payments is a prohibited transaction. The employer can "correct" the prohibited transaction through the VFCP by:

I. **depositing additional amounts to the plan for lost earnings**

and

II. **notifying plan participants and the DOL of the late deposit**

The calculation of lost earnings must be determined using the earliest possible date the contributions could have been segregated from the employer's assets, even if that date is earlier than 7-business days.

The annual Form 5500 requires a plan sponsor to report the total amount of employee contributions and/or loan payments that were deposited late during the plan year and continue to report those amounts through the year in which the late deposits are "corrected". The DOL has determined that the "correction" date is the date the lost earnings are deposited to the plan.

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