



ADS BENEFITS UPDATE

Department of Labor Issues Final Regulations For Small Plan Safe Harbor For Timing of Retirement Plan Deposits

The Department of Labor (DOL) has released final regulations which provide a safe harbor timing rule for depositing employee contributions, such as elective deferrals and employee loan repayments under a 401(k) plan or 403(b) plan. The rule applies to plans with less than 100 participants at the beginning of a plan year.

New Final Regulation

Under the final regulation, the deadline for depositing employee contributions (and employee loan payments) for sponsors of small plans is the 7th business day following the day the amounts would otherwise have been paid to the employee in cash if it had not been deferred into the plan.

The new rule will provide plan sponsors with a much higher degree of certainty that plan contributions are being made on a timely basis and will conform with the requirements of ERISA. As under the previous regulations, contributions will continue to be considered to be deposited when the contributions are placed in the Trust without regard to when they are allocated to each individual participant's account or invested in accordance with participant's investment elections.

While this standard provides much needed clarity for sponsors of small plans, sponsors of large plans are still required to deposit contributions as soon as administratively possible. The DOL did not expand the safe harbor to cover plans with 100 or more participants due to a lack of information and data sufficient to evaluate current practices of such employers and assess the costs, benefits and risks to participants associated with extending the safe harbor to large plans.

These regulations will become fully effective on January 14, 2010 when they are published in the Federal Register.

Employer Action

We urge sponsors of small plans who have been depositing contributions later than the safe harbor period to review their procedures and work with their payroll systems or payroll providers to determine whether it is possible to deposit contributions within the safe harbor period. Now that the regulations are finalized, the DOL will most likely be challenging plan deposits that are made after the 7-day safe harbor time frame. Sponsors of small plans will need to be prepared to justify deposits that are made later than the period provided under the safe harbor to avoid ERISA violations that could result in interest and excise tax penalties.

If you have any questions about how the Department of Labor's timing rules may affect your plan, please contact your ADS Plan Administrator.

Centervale Farm

200 US Route One, Suite 120
Scarborough, Maine 04074

VOICE 207-879-9200

FAX 207-879-9209

where every detail counts