

DOL Passes “Safe Harbor” Rules for Remitting Employee Contributions to Small Plans

As of January 14, 2010, the DOL issued final regulations on *the Definition of Plan Assets – Participant Contributions*. Small plans which consist of fewer than 100 employees are particularly affected by these regulations. Plans most affected by this regulation are 401(k), ERISA 403(b), and similar defined contribution plans, as well as to contributory defined benefit plans that are subject to ERISA.

The final ruling, which is now in effect, states that the plan’s sponsors have a 7-day safe harbor deadline to deposit participant contributions and loan repayments withheld from a participant’s compensation

The Safe Harbor Requirements:

- **Place amounts in an account of the plan. The contributions do not have to be allocated to specific participants accounts or the selected investments of such participants.**
- **Start counting seven business days from the day amounts are withheld by the employer from a participants wages or the day a participant contribution is received by the employer.**
- **Available to plan sponsors on a deposit-by-deposit basis.**
- **Rules apply to both employee contributions, as well as participant loan repayments.**

The general rule, however, has not changed. Under the general rule, amounts paid to or withheld by an employer become plan assets on the earliest date on which they can reasonably be segregated from the employer’s general assets. So the earlier the better!

Remember this new safe harbor is applicable to small plans only. There is not a safe harbor effective for larger plans, defined as consisting of more than 100 eligible employees. The general rules still apply. However, some experts in the industry have indicated that a 7 day safe-harbor is too long and with the technical advances that are available to the larger companies enable them to deposit even earlier. Again the earlier the better!

For additional information about the DOL’s final ruling providing a safe harbor for the timing of participant deposits, please contact Veronica Plousis, CPA, Director and Leader for Elko & Associates Ltd’s Employee Benefit Plan Practice at (610) 565-3930.