

Are You Depositing Your Company's 401(k) Contributions on Time?

Final Regulations on Safe Harbor for Small Companies

This regulation which became final on January 14, 2010 sets forth a Safe Harbor for the deposit of deferrals and loan repayments to a pension or welfare benefit plan with fewer than 100 participants (as determined at the beginning of the plan year).

The regulation provides that the deposit will be treated as having been made to the plan in accordance with the general rule (i.e., on the earliest date on which such contributions can be reasonably segregated from the employer's general assets) when contributions are deposited into the plan no later than the 7th business day following the day on which such amount would otherwise have been payable to the participant in cash OR when contributions are deposited into the plan no later than the 7th day following the day on which such amount is received by the employer (in the case of amounts that a participant pays to an employer such as loan repayments).

Participant contributions will be considered deposited when placed in an account of the plan without regard to whether the contributed amounts have been allocated to specific participants or investments of such participants.

Consequences of Late Deferrals

Late Deferrals are considered a violation of ERISA's trust requirement, a breach of fiduciary duty, and a prohibited transaction. Penalties and interest will be required on the total deferral amount.

Reminder to Review Your Procedures

This is a reminder to review your internal payroll procedures to determine if contributions are being transferred in a timely manner. **Note, we are not stating that your contributions are late,** only that you review internal procedures to assure timeliness and avoid any penalties.

What this means to you: If you are currently submitting contributions in a method that is less frequent than your payroll periods, your process needs to be updated to meet these regulations. For example, if your payroll frequency is weekly, but you are making monthly deposits to the plan this is not compliant.

Any breaches to the deadline must be reported and corrected as soon as possible to limit the applicable penalties. **Contact your Retirement Plan Administrator if you find that contributions can be deposited sooner than current procedures allow.**



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