



# Legislative Brief

## Final Safe Harbor Rules For Small Plan Contributions



### **EXECUTIVE SUMMARY**

The Department of Labor ("DOL") has issued final rules regarding the timing of employee contributions to small retirement and welfare plans.

- If you sponsor a small plan (one with less than 100 participants at the beginning of the plan year), the final rules provide you with an **optional** safe harbor for depositing employee contributions to the plan.
- To take advantage of the safe harbor, you must deposit employee contributions (including plan loan repayments) with the plan **within seven business days** of receiving or withholding them. If you work with a payroll vendor, you should make sure that it is aware of the new rule and determine whether it can meet this deadline.
- The DOL predicts that employers can reduce costs and risk of noncompliance by using the safe harbor.
- The final rule is effective **January 14, 2010**.

This HUB International of California Insurance Services, Inc. Legislative Brief provides an overview of the safe harbor rules. Please read below for more information and contact your HUB International of California Insurance Services, Inc. representative with any questions.

### **OVERVIEW OF THE SAFE HARBOR RULES**

#### **What are the Usual Deadlines for Employer Contributions?**

Under existing DOL rules, employers have a limited amount of time to deposit employee contributions into a retirement or welfare plan. If the contributions are not deposited within the required time period, they become "plan assets," which are subject to a number of requirements.

The general rule is that contributions must be deposited **as soon as they can reasonably be segregated from the employer's general assets**. That date must not exceed the following limits:

- Retirement plans – the 15<sup>th</sup> business day of the month following the month in which the employer receives the contribution from the employee or withholds the contribution from the employee's wages.
- Welfare plans – Ninety days from the date the employer receives or withholds the contribution.

#### **What is the Small Plan Safe Harbor Rule?**

The safe harbor rule provides that employers with small plans are considered to have made a timely deposit to the plan if employee contributions (including plan loan repayments) are deposited **within seven business days** of receipt or withholding. Employee contributions are considered deposited when they are placed in an account of the plan, even if they are not allocated to specific participants or investments. The safe harbor rule is available only to small plans – those with fewer than 100 participants at the beginning of the plan year.

#### **Why Did the DOL Establish the Safe Harbor?**

In investigating compliance with the contribution rules, the DOL found that many employers with small plans are confused about the deadlines and their confusion is leading to compliance issues. In order to avoid delinquent employee contribution violations and provide more compliance certainty regarding when an employer's contributions are on time, the DOL has established a safe harbor rule for small plans.

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### **Are Employers Required to Comply with the Seven-Day Deadline?**

No. The safe harbor rule is optional, so employers need not comply with the seven-day deadline. If the employer cannot (or does not) reasonably segregate the contributions from its general assets by this deadline, it must still comply with the general rule noted above. The safe harbor is also available on a deposit-by-deposit basis. This means that if an employer does not meet the safe harbor deadline for one deposit of employee contributions, the employer can still use the safe harbor for other deposits.

### **Why Should My Company Meet the Safe Harbor Deadline?**

The DOL has stated that complying with the safe harbor will benefit participants and employers because they will have increased certainty regarding timely remittance of employee contributions to plans. This certainty may reduce costs by reducing the need to determine whether timely deposits have been made in individual circumstances.

Employers will benefit because they will not have to determine or monitor how quickly employee contributions can be segregated from their general assets if they comply with the seven-day deadline. They will also face a reduced risk of challenges to their deposit practices by employees and the DOL.

In addition, if employers expedite the deposit of employee contributions to take advantage of the safe harbor, contributions will be credited to investment accounts sooner and can start accruing investment earnings sooner.

### **Why Doesn't the Safe Harbor Apply to Large Plans?**

The DOL reported that it did not expand the safe harbor to cover large plans with 100 or more participants due to a lack of information to adequately evaluate current practices of employers sponsoring those plans or to assess the costs, benefits, and risks to participants associated with extending the safe harbor to large plans.

### **Example of Safe Harbor Compliance**

The DOL regulations contain the following example:

ABC Company sponsors a 401(k) plan. There are 30 participants in the plan. ABC Company has one payroll period for its employees and uses an outside payroll processing service to pay employee wages and process deductions. ABC Company has established a system under which the payroll processing service provides payroll deduction information to ABC Company within one business day after the issuance of paychecks. ABC Company checks this information for accuracy within five business days and then forwards the withheld employee contributions to the plan. The amount of the total withheld employee contributions are deposited with the plan on the seventh business day following the date on which the employees are paid.

Under the safe harbor rule, when the employee contributions are deposited with the plan on the seventh business day following a pay date, the contributions are deemed to be contributed to the plan on the earliest date on which the contributions can reasonably be segregated from ABC Company's general assets (and thus are in compliance with the contribution deadline rules).

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