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Proposed Safe Harbor Relating To Timing For The Deposit Of Participant Contributions

On February 29, 2008, the Department of Labor published proposed regulations that would establish a safe harbor period of 7 business days during which an employer has to deposit participant contributions to a qualified plan.

Under the proposed safe harbor, participant contributions (such as elective deferral contributions and loan repayments) to a plan with fewer than 100 participants at the beginning of the plan year will be treated as having been made to the plan in accordance with the general rule (as defined below) when contributions are deposited with the plan no later than the 7th business day following the day such amounts were withheld from wages. The "general rule" is that participant contributions must be made on the earliest date such contributions can be segregated from the employer's general assets but no later than the 15th business day of the month following the day such amounts were withheld from wages.

The Department of Labor may include a safe harbor for employers with large plans in the final rule if it receives sufficient information and data to evaluate the current contribution practices of such employers and is able to conclude it will be a net benefit to them and their employees to have a safe harbor.

Until the safe harbor rules are finalized and based on informal comments from Department of Labor auditors, best practices would dictate that employers with small and large plans consider the deadline for depositing participant contributions as the same date the money was withheld from paychecks.

If you have any questions regarding when participant contributions should be deposited in your plan, please contact a member of the Benefits Law Group.

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