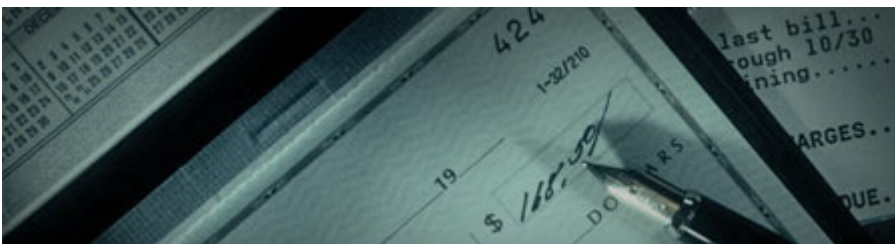


# Creative Plan Designs, Ltd. Newsletter

What the Department of Labor Says About the Timing of Your 401(k) Deposits



The Department of Labor (DOL) stands firm on their position governing 401(k) deferrals. There has been some confusion in the past regarding what the DOL considers timely remittance of employee withheld contributions to employee retirement plans.

As we have advised our clients many times over the last several years, it has been the DOL position that amounts withheld from participants' wages should be deposited within a few days of withholding the deferrals. Specifically, the DOL states that deferrals must be put in the plan on the earliest date the contributions can reasonably be segregated from the employers' general assets.

A few years ago, it was considered "administratively reasonable" for the deposit to be made no later than the 15th business day of the month following the month in which the salary deduction occurred. More recently, the DOL had tightened their definition of administratively reasonable to two or three business days. They consider the frequency with which the employer makes payroll and deposits the payroll taxes to be a relevant factor. If an employer could segregate the payroll taxes at payroll time, they can segregate the employee deferrals.

Small pension and welfare plans (plans with less than 100 participants) may be given some leeway by the DOL, who is now proposing a seven-day safe harbor period for depositing employee withheld contributions to a plan. The DOL is considering a similar safe harbor for large plans, although it is expected it will be shorter than seven business days. Final regulations are still pending.

Plan sponsors should take the time to review their existing contribution practices to ensure they are in compliance with the DOL expectations. Untimely remittances of employee contributions can result in penalties and/or excise taxes, personal liability for plan fiduciaries for lost earnings on late contributions and even criminal liability in some cases.

If you have any questions regarding this or other employee benefits issues, please contact us.

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## IMPORTANT DATES

### September 30, 2008

New 401(k) Safe Harbor plans to be effective in 2008 must be signed by today.

Profit sharing plans adopting the 401(k) Safe Harbor plan design for 2008 must amend by today.

Qualified plans with 3/1 plan years must file Form 5500.

### October 15, 2008

Qualified plans with 1/1 plan years that filed an extension must file Form 5500

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