



DEPOSIT RULES FOR PARTICIPANT CONTRIBUTIONS

Once retirement or welfare plan participant contributions are withheld from a participant's compensation by an employer, they constitute plan assets. These assets need to be held under the plan, so they are no longer in the employer's control.

The Department of Labor (DOL) dictates the deadline to deposit the withheld assets is the earliest date and the amount that is reasonably segregated from the employer's general assets (general deadline). In no event can this be later than the 15th business day of the month following the month in which the participant contributions were withheld or received by the employer (outside deadline).

When is the safe harbor deposit deadline?

In 2010, the DOL passed a rule for small plans, giving employers a 7-day safe harbor deadline for depositing participant contributions and loan repayments withheld from a participant's compensation.

Therefore, contributions deposited to the plan (i.e., to the trust or account holding the plan's assets) adhere to the "general deadline" if deposited ***no later than the 7th business day following the date of the withholding, even if the employer could have deposited the contributions earlier.***



Example:

ABC Company, Inc. maintains a 401(k) plan with 30 participants. ABC has biweekly payroll dates. For its February 5th payroll, ABC deposits the employee 401(k) contributions to the plan's trust account on February 12th, 5 business days following withholding.

For its February 19th payroll, ABC deposits the employee 401(k) contributions on March 5th, 10 business days following withholding. The deposit of the 401(k) contributions withheld on February 5th is within the safe harbor period, while the deposit of the February 19th elective deferrals is not.

For participant payments (e.g., loan repayments) made to an employer, the safe harbor is met if deposited **no later than the 7th business day following the date of the receipt by the employer.**

Why did the DOL issue the safe harbor rule?

The DOL had previously made several attempts to clarify the general deadline, yet employers continued to struggle with determining the date by which they needed to deposit contributions. Many employers ignore the earliest date rule and believe they are in full compliance if they deposit the outside deadline's contributions. However, DOL strongly enforces the requirement that withheld funds be consistently deposited within **the shortest time possible.**

Since the "shortest time possible" differs by the employer, this approach has inconsistent enforcement. To provide more certainty and greater protection for employee contributions, the DOL issued the safe harbor deadline.



For which plans does the safe harbor deadline apply?

The safe harbor deposit deadline only applies to "small" plans, defined as fewer than 100 participants at the beginning of the plan year. This is regardless of whether the employer filed as a small or large plan on their most recent Form 5500.

What are the consequences for not following the DOL's safe harbor deposit deadline?

A plan that fails to comply with the safe harbor deadline (available on a deposit- by-deposit basis) does not automatically violate the plan asset regulations. However, the DOL will challenge any deposits or payments made beyond the safe harbor period upon investigation. The employer will need to demonstrate that they deposited the participant contributions as soon as reasonably possible. Making deposits within the safe harbor deadline eliminates the guesswork of determining if the deposits are late or not.

What should employers do if they deposited contributions or loan repayments late?

Employers should let their third-party administrator (TPA) know as soon as they realize the delinquency has occurred and report it with their annual census data.

How can EGPS help?

EGPS can help. For our clients, in addition to preparing the Form 5500 accurately with late deposits noted, we also provide the following services*:

- Calculate any lost earnings
- Calculate the applicable employer excise tax
- Assist with utilizing the DOL's Voluntary Fiduciary Correction Program (FVCP), which includes applying to the EBSA to document the corrections and potentially relieve clients of the excise tax and/or civil enforcement from the DOL
- Prepare Form 5330 to report and pay the employer excise tax to the IRS, if clients don't apply or qualify for relief

**Services provided at an hourly fee.*

