



FEBRUARY 2010

## Employee Benefits and Compensation Legal Update

### Department of Labor Provides Safe Harbor for Employee Contributions

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The Department of Labor's Employee Benefits Security Administration (EBSA) has adopted a new safe harbor regulation for employers sponsoring small employee benefit plans regarding the timely deposit of employee contributions withheld from pay in benefit plan trusts.

#### The Prior Rule

Before the creation of this safe harbor, the Department of Labor required employers of all sizes to transmit employee contributions to pension plans as soon as they could reasonably be segregated from the general assets of the employer, but no later than the 15th business day of the month following the month in which employers received or withheld contributions. However, the latest date for forwarding participant contributions to health and other welfare plans was 90 days from the date employers received or withheld such amounts.

Over the last several years, EBSA has made the enforcement of this timely deposit standard a priority of its compliance efforts. EBSA has frequently taken an aggressive position regarding the deposit of elective deferrals to retirement plans, often finding that employers could have reasonably made such contributions in five business days or less.

#### The Safe Harbor

The final regulation amends the participant contribution rules to create a safe harbor period under which an employer sponsoring a plan with fewer than 100 participants at the beginning of the plan year will be considered to have timely deposited employee contributions if such contributions are deposited in the appropriate trust within seven business days after the date they are withheld from pay. The regulation, which is effective January 14, 2010, clarifies that monies only need to be deposited into the trust, not allocated to specific investment options within the safe harbor period. The Department of Labor specifically declined to extend this seven business day safe harbor to large pension and welfare plans, which continue to be subject to the general "reasonably segregated" standard.

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If you have questions about the safe harbor described in this alert, please contact any of the following attorneys:

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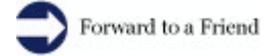
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