



Plan Administrators, Inc.

To: Plan Sponsor
From: MVP Plan Administrators, Inc.
Date: 2/4/2008
Re: Depositing 401(k) Contributions

Dear Plan Sponsor,

We often inform our clients of new legislation, proposed legislation and certain issues that can impact your qualified retirement plan. One issue that has become a "hot topic" of the Department of Labor (DOL) is the deadline for depositing employee contributions to a 401(k) Plan and other qualified retirement plans.

The DOL has focused on this issue and has included direct questions on the annual government filing, Form 5500 that directly relate to the timing of deposits of employee contributions. The DOL has included these questions to make it more difficult for plan sponsors to avoid disclosure of depositing employee contributions in an untimely manner.

The timeframe of depositing employee contributions has often been misunderstood to mean, "the 15th business day of the month following the date in which contributions are withheld". The actual date contributions must be deposited into the trust is the earliest date on which employee contributions can reasonably be segregated from the employer's general assets, but no later than the 15th day of the month following withholding.

The DOL's view is that deposits must be made prior the 15th day of the following month. However, deposits should more likely occur no more than one to two weeks following the withholding date. They have also conducted audits which held that deposits **must be made no more than a few days following withholding.**

An employer that is late in depositing employee contributions may have committed a breach of fiduciary duty and even a prohibited transaction. If the plan sponsor/employer commits a prohibited transaction an excise tax of 15% of the amount involved is assessed. Additionally, "lost earnings" on the contribution amount will have to be paid by the employer. There are other more serious and costly issues that plan sponsors should consider when disclosing late deposits.

It is our recommendation that all deposits of employee contributions are deposited into the plan as soon as they can be segregated from the employer's general assets. Please let us know if you have any questions or wish to discuss this issue in more detail.

Retirement Plan Administrators & Consultants

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