

## Legal Alert: DOL Proposes Small Plan Safe Harbor for Remitting Participant Contributions to Plan

March 3, 2008

On February 29, 2008, the U.S. Department of Labor (“DOL”) proposed a new safe harbor, limited to small plans, under its regulation governing when participant contributions become “plan assets” for ERISA purposes. Click [here](#) for a copy. Under the existing regulation, participant contributions paid to an employer or deducted from payroll must be deposited in an account of the plan:

- As of the earliest date such amounts can be reasonably segregated from the employer’s general assets, but in any event,
- No later than:
  - For retirement plans, the 15<sup>th</sup> business day of the month following the month in which the employer received the payment from the participant or would have otherwise paid the amount in cash to the participant; or
  - For welfare plans, 90 days after the employer receives or withheld the amount.

On its own motion, and based on its enforcement and other experience, DOL has concluded that greater certainty as to when participant contributions must be forwarded to the plan would advance both compliance by employers and protection of participants’ benefit security. Accordingly, DOL is proposing a safe harbor, limited to plans with fewer than 100 participants at the beginning of the plan year, in which amounts deposited with the plan not later than the 7<sup>th</sup> business day after the day of receipt or withholding by the employer will be treated as satisfying this rule.

- The preamble reflects that DOL considered a 5-day and 10-day time period for small plans, but settled on 7 days after weighing the relative burdens on employers and benefits to participants.
- The preamble also states that DOL will include in any final regulation a safe harbor for larger plans, if commentary both demonstrates a need for such a safe harbor and provides data on contribution practices and other information sufficient to permit DOL to establish a safe harbor.

Consistent with a 2002 advisory opinion, the proposal also would extend this regulation, and the safe harbor, to participant repayments of plan loans.

Comments on the proposed regulation are due on or before April 29, 2008. The final regulation would be effective on publication. Prior to that effective date, DOL will not assert an ERISA civil violation in the case of plans with fewer than 100 participants that remit contributions to a plan account in accordance with the proposed safe harbor.



*If you are interested in more information about this development, or any of the services we provide, please contact any of the following attorneys or the attorney with whom you regularly work:*

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