



When must 401(k) deferrals be submitted to the plan?

When a 401(k) deferral is deducted from a participant's paycheck, the employer is required to make a "timely deposit" of that contribution to the plan. In final regulations published by the Department of Labor (DOL) on January 14, 2010, the DOL provided a safe harbor definition of "timely deposit" for plans with fewer than 100 participants. The definition states that **contributions are considered timely if the amounts are deposited to the plan no later than the 7th business day following the date the contributions (including loan repayments if the plan allows) are received by the employer, or would otherwise have been paid to the employee as compensation.**

If 401(k) deferrals (and loan payments as applicable) are not deposited to the plan in a timely manner as defined above, the contribution will be deemed a prohibited transaction. The employer must submit lost earnings and pay an excise tax in order to correct the prohibited transaction.

Plans that have more than 100 participants were not addressed in the DOL regulations referenced above so the previous contribution guidelines continue to be used for these plans. Those guidelines state that contributions should be deposited to the plan as soon as they can reasonably be segregated from the assets of the employer.

We strongly recommend that you review your current method of making these deposits to ensure that you are in compliance with the DOL guidelines.

