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ALERT: Seven-business-day “safe harbor” period proposed for small plans to deposit employee retirement plan contributions; large-plan safe harbor under consideration as well

401k employee retirement plans and plans with participant loans with fewer than 100 participants have received new guidance from the Department of Labor’s Employee Benefit Security Administration (EBSA) on timely retirement plan deposits. EBSA proposes that a seven-business-day period between when an employee contributes to his or her retirement plan and when that employee contribution is deposited into the employee’s plan be considered a “safe harbor” for ERISA (Employee Retirement Income Security Act) compliance for small plans.

EBSA is seeking comments on whether to create a safe harbor for large plans.

Although the seven-business-day period is not yet final, **EBSA is already operating according to the safe harbor period and will not seek ERISA-violation enforcement against an eligible plan which makes deposits in the required time period.** EBSA proposes to make the safe harbor provision final upon publication of the final regulations – expected yet this year.

Background

Until now, EBSA’s guidance on timeliness of retirement-plan contributions has focused on the maximum time limit allowable between the employee’s contribution and when it is deposited into the retirement plan. Most recently, in 1996, EBSA set the maximum time limit for timely deposits at the 15th business day of the month following the month in which a participant’s contributions are received (or withheld) by an employer. The lack of more specific guidance for timely deposits meant that some employers held and invested funds until the required deposit date.

EBSA’s proposal will not change maximum time limits for deposits, but simply clearly define a safe harbor period for small plans as an incentive for them to deposit funds quickly.

A safe harbor period looks increasingly attractive for employers as EBSA continues to devote significant resources to enforcement against delinquent (delayed) employee contributions. EBSA indicates that **it will consider a safe harbor for large plans if convinced that the value of the safe harbor in ensuring timely deposits outweighs the value of potential lost investment income to plans receiving funds later than at the present time.**

If you have questions about this alert or other employee benefit issues, please contact your Allen, Gibbs & Houlik, L.C. professional or Brad Bechtel, AGH vice president of employee benefit services, at (316) 267-7231 or brad.becht@aghlc.com.

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