

Deposit Deadline for 401(k) and 403(b) Deferrals

Proper handling of 401(k) and 403(b) deferrals is one of the most important fiduciary duties a plan sponsor has. In fact, the IRS and DOL consider timely deposit of deferrals and loan payments a top priority. In this article, EBS will explain the deadlines for depositing employee contributions and the consequences of not doing so.

Employee contributions and loan payments should be deposited by the *earlier* of 1) as soon as amounts withheld can be reasonably segregated from the company's general assets or 2) no later than the 15th business day of the following month. What exactly does "as soon as possible" mean? Employers generally make their federal income tax withholding deposits within three days. DOL auditors take the position that salary deferrals should be made just as timely or even sooner if deposit history reveals earlier deposit timing.

You may be wondering how an employer can ever be in compliance. To aid with the ambiguity surrounding timing of deposits, the 7 business day safe harbor rule was created by the DOL. This rule set a safe harbor standard that any deposits made within 7 business days of a pay date are considered timely even if the deposits could have been made earlier. It's important to stress that the 7 business day safe harbor does not apply to filers with over 100 participants. These plans must still comply with the "as soon as possible" rule.

The deposit deadline is different for sole proprietors and partners since earned income is not determined until after the end of the plan year. As long as a formal election is made before the end of the year, the deferrals must be deposited as soon as they can reasonably be segregated from the partnership or sole proprietorship assets, after such amounts would otherwise be distributed to the sole proprietor or partner. The deposit must take place before the sole proprietor's or partner's individual tax return deadline, with extension.

Policies and procedures should be evaluated periodically to ensure compliance. Corrective action is mandatory if a mistake is found relating to deposit of elective deferrals and/or loan payments. Generally, this means:

- Calculating and restoring lost earnings to the accounts of affected participants.
- Filing a Form 5330 with the IRS to pay an excise tax equal to 15% on the amount of lost earnings restored to the plan.
- Reporting late deposits on the Form 5500.

Additionally, the employer may request DOL approval of the correction with the Voluntary Correction Program (VCP). This program allows the voluntary reporting of errors and the taking of corrective actions without first becoming subject of an enforcement action.

EBS would like to help by providing strategies for avoiding deferral deposit timing mistakes. Contact your designated retirement plan specialist at (434) 528-4634 to discuss your specific situation.