

401(k) Deposit Timing Rules

Due Date for Depositing Participant 401(k) Contributions



401(k) Plans are subject to strict deadlines for funding employee salary deferrals. The Department of Labor (DOL) has issued several announcements that it intends to investigate and enforce violations of participant contribution deadlines. All participant contribution sources are applicable to the regulations including 401(k), catch-up, after-tax, and Roth.

What are participant contributions?

Participant contributions are employee voluntary or involuntary elections where the employer withholds pre-tax or after-tax contribution amounts from an employee's paycheck for submission to the employer's retirement plan.

When do participant contributions have to be submitted to the plan?

The regulation stipulates that participant contributions are required to be paid into the plan as soon as these assets can be reasonably segregated from employer assets, but in no event later than the 15th business day of the month following the month in which the participant contributions are withheld from compensation.

The 15th business day rule is NOT a safe harbor and that in virtually all cases employers must fund participant contributions sooner.

In recent examples, the DOL has made clear that it expects companies with one payroll location to make participant contribution deposits within two business days.

Is there a Safe Harbor standard for funding participant contributions?

Yes. Regulations finalized in 2010 provide a seven business day Safe Harbor for employers with fewer than 100 eligible participants at the beginning of the plan year.

Please keep in mind that if an employer practices a faster turn-around time for segregating participant contributions, then the DOL will expect the same results for all future participant contributions unless there are extenuating circumstances.

What happens when participant contributions are late?

Correction procedures are available for employers that have exceeded the "as soon as reasonably possible" deadline for depositing participant contributions into the plan or trust. An employer must:

- Calculate and restore lost investment earnings, and
- File IRS Form 5330 and pay applicable excise tax.

Minor cases identified by the DOL have resulted in civil penalties. In cases that the DOL has considered more severe, it has pursued criminal penalties against plan fiduciaries, including employers and plan trustees.

Please contact JULY at [888.333.5859](tel:888.333.5859) for more information.