



Safe Harbor Deadline for Small Retirement Plan Contributions

ERISA requires a retirement plan's assets to be held in a trust in order to ensure that the assets are used solely to benefit the plan's participants and beneficiaries. The employer sponsoring the retirement plan is responsible for timely depositing participants' contributions into the plan's trust. The Department of Labor (DOL) requires employers to make these deposits as soon as the amounts can reasonably be segregated from the employer's general assets.

In addition, the DOL has established a safe harbor deadline for employers to deposit participant contributions into small retirement plans. An employer that sponsors a small plan (one with fewer than 100 participants at the beginning of the plan year) has the option of using this safe harbor for meeting the deadline for depositing employee contributions into the plan.

To take advantage of the safe harbor, employers must deposit employee contributions (including plan loan repayments) within **seven business days** of receiving or withholding them.

LINKS AND RESOURCES

- [Final regulations](#) establishing the safe harbor deadline
- ["401\(k\) Plans for Small Businesses"](#) – A joint publication from the DOL and IRS for small employers sponsoring 401(k) plans

General Timing Rule

- Employees' contributions must be deposited into the retirement plan as soon as they can reasonably be segregated from the employer's general assets.
- That date cannot exceed the 15th business day of the month following the month in which the employer receives the contribution from the employee or withholds the contribution from the employee's wages.

Safe Harbor Timing Rule

- Employers with small plans are considered to have made a timely deposit into the plan if employee contributions are deposited within **seven business days** of receipt or withholding.
- This rule only applies to small plans—those with fewer than 100 participants at the beginning of the plan year.

What is the General Deadline for Depositing Contributions?

Under general DOL rules, employers have a limited amount of time to deposit employee contributions into a retirement plan's trust. If the contributions are not deposited within the required time period, they become "plan assets," which are subject to a number of requirements.

The general rule is that contributions must be deposited **as soon as they can reasonably be segregated from the employer's general assets**. For retirement plans, that date cannot exceed the 15th business day of the month following the month in which the employer receives the contribution from the employee or withholds the contribution from the employee's wages.

What is the Small Plan Safe Harbor Rule?

The safe harbor rule provides that employers with small plans are considered to have made a timely deposit into the plan if employee contributions (including plan loan repayments) are deposited within **seven business days** of receipt or withholding. Employee contributions are considered deposited when they are placed in an account of the plan, even if they are not allocated to specific participants or investments. The safe harbor rule is available only to small plans—those with **fewer than 100 participants at the beginning of the plan year**.

Are Employers Required to Comply with the Seven-Day Deadline?

No. The safe harbor rule is **optional**, so employers need not comply with the seven-day deadline. If the employer cannot (or does not) reasonably segregate the contributions from its general assets by this deadline, it must still comply with the general rule noted above. The safe harbor is also available on a deposit-by-deposit basis. This means that if an employer does not meet the safe harbor deadline for one deposit of employee contributions, the employer can still use the safe harbor for other deposits.

Why Should My Company Meet the Safe Harbor Deadline?

According to the DOL, complying with the safe harbor will benefit participants and employers because they will have increased certainty regarding timely remittance of employee contributions to plans. This certainty may reduce costs by reducing the need to determine whether timely deposits have been made in individual circumstances.

Employers will benefit because they will not have to determine or monitor how quickly employee contributions can be segregated from their general assets if they comply with the seven-day deadline. They will also face a reduced risk of challenges to their deposit practices by employees and the DOL. In addition, if employers expedite the deposit of employee contributions to take advantage of the safe harbor, contributions will be credited to investment accounts sooner and can start accruing investment earnings sooner.

Why Doesn't the Safe Harbor Apply to Large Plans?

The DOL reported that it did not expand the safe harbor to cover large plans with 100 or more participants due to a lack of information to adequately evaluate current practices of employers sponsoring those plans or to assess the costs, benefits and risks to participants associated with extending the safe harbor to large plans.

Example of Safe Harbor Compliance

The DOL regulations contain the following example:

ABC Company sponsors a 401(k) plan. There are 30 participants in the plan. ABC Company has one payroll period for its employees and uses an outside payroll processing service to pay employee wages and process deductions. ABC Company has established a system under which the payroll processing service provides payroll deduction information to ABC Company within one business day after the issuance of paychecks. ABC Company checks this information for accuracy within five business days and then forwards the withheld employee contributions to the plan. The amount of the total withheld employee contributions are deposited with the plan on the seventh business day following the date on which the employees are paid. Under the safe harbor rule, when the employee contributions are deposited with the plan on the seventh business day following a pay date, the contributions are deemed to be contributed to the plan on the earliest date on which the contributions can reasonably be segregated from ABC Company's general assets (and, thus, are in compliance with the contribution deadline rules).

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