



## **DOL FINALIZES SAFE HARBOR DEPOSIT RULE FOR SMALL PLANS (UNDER 100 PARTICIPANTS)**

On January 14, 2010, the U.S. Department of Labor (DOL) finalized regulations on a new **Safe Harbor** deposit deadline for plans with participant contributions (e.g., 401(k) deferrals) and/or loan repayments. Under the new Safe Harbor rule, **small plans (under 100 participants) automatically satisfy the deadline if they deposit contributions/loan repayments to the Trust by the 7<sup>th</sup> business day after the day they are withheld/repaid.**

A small plan that does not satisfy the new Safe Harbor may be required to demonstrate that the actual deposit date was the earliest date that participant contributions could reasonably be segregated from the employer's assets. Under this "General Rule", factors such as employer size, payroll frequency and complexity would be weighed in determining the applicable deadline.

Employers with small plans should give serious consideration to satisfying the new safe harbor deadline to automatically comply with the DOL regulations.

Employers with large plans (100 participants or more) should continue to deposit participant contributions to the trust promptly, since DOL has not provided a safe harbor to such large plans. DOL had previously indicated that under the General Rule the deposit deadline could be as few as three (3) to five (5) business days for large plans.

Failure to comply with these rules is a Prohibited Transaction, requiring the employer to add investment earnings on the delayed deposit, file Form 5330 and pay a 15% penalty tax.