

Important Contribution and Payroll Facts to Remember

Include all ELIGIBLE employees on your report. Elective Salary Deferrals are limited to \$11,000 for the year 2002 and adjusted each year for inflation. These deferrals are not subject to Federal Withholding until distributed to the Participant but are immediately subject to FICA and FUTA taxation. However, some states do require withholding and payment of income tax on deferral amounts. Please consult with your accountant regarding State and Local requirements.

Guidelines for Timing Employer Submission of Participant Contributions

What are participant contributions?

The DoL defines participant contributions as any amount that has been withheld from a participant's wages by an employer for contribution to the plan. Elective deferrals, after-tax contributions, and loan repayments made through payroll deduction fall into this category of participant contributions.

When should the plan sponsor submit participant contributions to the plan?

Under the DoL Reg. §2510.3-102(b)(1), participant contributions become assets of the plan on the **earlier** of:

- ▶ 15th business day of the month following the month in which the contribution is withheld from the employee's wages by the employer or the amount is received by the employer (in the case of after-tax contributions), **OR**
- ▶ the earliest date on which the contributions can reasonably be segregated from the employer's general assets.

Note: The 15th business day is the maximum deadline only if the assets cannot be segregated earlier.

Examples from the regulations

The regulations include an example of a small company needing only 2 business days following the date of withholding to make a deposit because of the small workforce. In another example, DoL used a large national corporation with different payroll centers. Due to the complexity of the corporation, it was determined that it took 10 business days after the close of month to segregate plan assets. Ultimately, it is a facts-and-circumstance determination on the timing of contributions. The DoL considers the employer's payroll frequency and the time it takes the employer to remit FICA withholdings to be key factors in determining when they could have segregated the contributions.

If an employer has a weekly payroll, can they submit monthly?

According to the above, the conservative approach would be to submit with each payroll. But, again, it is a facts-and-circumstances test. Each employer is different and what the DoL would determine is on an employer by employer basis.

What if the employer does not meet DoL regulations for submitting participant contributions?

The plan would be in violation of trust requirement under ERISA, and, in addition, the employer would be subject to an excise tax due to violating the prohibited transaction rules. When Delaware Investments Retirement Financial Services completes the Form 5500, there is a question that specifically asks if this DoL regulation has been exceeded. If there is a prohibited transaction violation, then Form 5330 would have to be submitted along with a 15% excise tax.