

Henson & Efron

PROFESSIONAL ASSOCIATION

DEPARTMENT OF LABOR PROPOSES NEW RULE FOR PLAN ASSET DEPOSITS

By Karen S. Johnston, Henson & Efron Attorney

On February 29, 2008, the Department of Labor (“DOL”) proposed adoption of a rule which allows employers more time to deposit employee contributions into a qualified plan account. This proposal, which applies to employers who maintain qualified retirement plans with fewer than 100 participants, allows the sponsoring employers to use up to seven business days to segregate these amounts from their general assets and deposit them into the plan account.

Current DOL guidance states that qualified plan contributions received from employees or withheld from employee wages are to be deposited into the plan account as soon as they can reasonably be segregated from the employer’s general assets. By proposing this new rule for smaller plans, the DOL is hoping to give employers greater certainty as to when these monies become plan assets and, if not timely deposited, when violations of the general rule could be asserted.

This proposed guidance can also be relied on with respect to depositing participant loan repayments into plan accounts. In addition, it is intended to cover contributions made by employees or withheld from wages under the terms of an employer’s group welfare benefit plans.

Even though this is a proposed rule, plans covered by this rule may begin to apply it immediately. This means that, even if the employer could deposit the contributions more quickly, contributions deposited by the end of the seven day period will be considered timely and in compliance with the general rule.

In general, the best course of action with respect to participant contributions and loan repayments remains the segregation of these assets from the employer’s general assets as soon as is reasonably practicable and placing them into the appropriate plan account for the benefit of participants.

No similar rule has been proposed for larger plans, although the DOL is currently considering whether to do so. If you have questions about this new guidance or any related employee benefits issues please contact either Stephen Hopkins or Karen Johnston.