

MEMO# 22293

March 3, 2008

DOL Proposes Safe Harbor Rule for Depositing Participant Contributions

[22293]

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TO: PENSION COMMITTEE No. 8-08

PENSION OPERATIONS ADVISORY COMMITTEE No. 8-08 RE: DOL PROPOSES SAFE HARBOR RULE FOR DEPOSITING PARTICIPANT CONTRIBUTIONS

The Department of Labor has proposed to amend the existing participant contribution regulation by adding a seven-day safe harbor period for depositing participant contributions by employers with plans with fewer than 100 participants (attached). In addition, the amendment would clarify that participant loan repayments must be treated in the same manner as participant contributions. The proposal also revises the Examples section of the existing regulation. Comments on the proposal are due to the Department by April 29, 2008.

Under the existing rule, to avoid the requirements associated with holding plan assets, an employer must deposit participant contributions with pension plans as of the earliest date the contributions can reasonably be segregated from the employer's general assets, but generally no later than the 15th business day of the month following the month in which participant contributions were received by the employer or withheld from the employees' paychecks. [\[1\]](#) The proposal does not change this general rule, other than it subjects loan repayments to the same rule expressly.

Under the proposed safe harbor rule, participant contributions and loan repayments deposited with a plan not later than the seventh business day following the day on which such amounts are received or withheld by the employer are deemed timely under the

general rule. As proposed, this new seven-day safe harbor would apply only to plans with fewer than 100 participants at the beginning of the plan year. The Department will consider including a safe harbor for plans with 100 or more participants if commenters provide information and data sufficient for the Department to evaluate the need for a safe harbor for large plans. The Department specifically requested information concerning the time period within which employers with large plans deposit participant contributions following the date of receipt or withholding and the need for a safe harbor and for what size plans.

The Department proposes to make the new regulation effective on the date of publication of the final regulation in the Federal Register, but it asks for comments concerning the effective date.

We are currently evaluating the proposal and the need for an Institute comment letter. If you believe that the Institute should submit a comment letter recommending that the Department include a safe harbor for plans with more than 100 participants or if you have any other comments, please let the undersigned know (adriggs@ici.org or 202?218?3573) by March 18, 2007.

Anna Driggs
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[Attachment](#)

endnotes

[\[1\]](#) The existing regulation contains special rules for welfare plans not addressed in this memorandum.