

# ALERT

## How Soon Must An Employer Transmit Salary Deferrals To The 401(k) Plan After They Have Been Withheld From Employees' Pay?

When auditing a 401(k) plan, the DOL reviews the employer's deposit pattern. The regulations provide a seven business day safe harbor for deposit of employee contributions to the trust for small plans (i.e., plans with fewer than 100 participants). In short, employee contributions are deposited on time when deposited to the trust within seven business days after the payroll period.

The DOL feels employers with large plans are better able to deposit their employee contributions sooner than 7 days. They are currently working on a safe harbor deadline for these large plans. What are the consequences of making late deposits? When employee contribution deposits are late, the employer is considered to be using plan assets for corporate purposes. This is a prohibited transaction. The employer must pay the "lost earnings" to each participant's account as well as a 15% prohibited transaction penalty to the IRS. Although the lost earnings and the 15% penalty may not be significant, the calculation and allocation of these amounts can be time consuming and result in increased administrative costs. In conclusion, it is very important that you transmit employee contributions and participant loan payments in a timely manner.

If you have questions regarding this alert or any retirement plan issues please call Catherine M. Beaver, Managing Director of the Retirement Plan Services at LBA, directly at 904.224.9769 or [CBeaver@TheLBAGroup.com](mailto:CBeaver@TheLBAGroup.com).



**LBA Retirement Plan Services, LLC**

501 Riverside Avenue, Suite 800 | Jacksonville, Florida 32202  
904.396.4015 | [www.TheLBAGroup.com](http://www.TheLBAGroup.com)