What are the timing rules for submitting employee deferral contributions into the plan?

Department of Labor (DOL) regulations require an employer to segregate employee contributions, including loan repayments, from its general assets at the earliest date on which the contributions can reasonably be segregated from corporate assets, but no later than the fifteenth business day of the month following the month in which the amounts were withheld from wages. In cases where an employer has fewer than 100 participants, the segregation must occur within 7 business days of being withheld from wages.

Failure to remit deferrals in accordance with these requirements could be interpreted by the DOL as a prohibited transaction, fiduciary breach, or both, and may result in significant penalties.

Some employers have mistakenly believed that the maximum period allowed by the DOL regulations serves as a "safe harbor" time period. The DOL's view is that an employer who makes contributions of participant elective deferral amounts at or near the maximum period permitted will rarely, if ever, be considered in compliance with the regulations. Our experience has been that the DOL will examine all of the relevant facts and circumstances to determine when "the earliest date upon which the contributions can reasonably be segregated from the employer's assets" occurs. Your independent certified auditor, if hired, will review deposits each year to determine if any deposits are considered late.