



## Legal Alert: A Safe Harbor for Small Plans: The DOL Proposes New Regulations Regarding Participant Contributions

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On February 29, 2008, the Department of Labor (“DOL”) proposed new regulations addressing when participant withholdings would become “plan assets.”

The present regulations provide that all participant contributions either paid to an employer or deducted from payroll must be deposited in a plan account the earliest date such amounts can reasonably be segregated from the employer’s general assets, **but in any event, no later than:**

- For retirement plans, the 15<sup>th</sup> business day of the month following the month in which the employer received the payment from the participant or would have otherwise paid the amount in cash to the participant; or
- For welfare plans, 90 days after the employer receives or withheld the amount.

In order to add additional clarity, the DOL has proposed a new “safe harbor” provision regarding depositing funds into the plan. For plans with 100 or fewer participants at the beginning of the plan year, amounts deposited with the plan no later than the 7<sup>th</sup> business day after the day these receipts or withholdings are received will be treated as satisfying these rules.

### Employers’ Bottom Line:

Timely contributions by employers are extremely important. The DOL has devoted a great deal of effort toward locating employers whose plans have delinquent contributions. This seven-day safe harbor should be adopted by employers administering their own smaller plans as it ensures they satisfy the DOL’s requirements regarding contributions.

If you have any questions regarding this or other employee benefits issues, feel free to contact any of the following attorneys in Ford & Harrison’s Employee Benefits Practice Group: Michael Coval, [mcoval@fordharrison.com](mailto:mcoval@fordharrison.com), 404-888-3892; Joelle Sharman, [jsharman@fordharrison.com](mailto:jsharman@fordharrison.com), 404-888-3975; Tiffany Downs, [tdowns@fordharrison.com](mailto:tdowns@fordharrison.com), 404-888-3961; or Jeff Rickman, [jrickman@fordharrison.com](mailto:jrickman@fordharrison.com), 404-888-3925, or the Ford & Harrison attorney with whom you usually work.

