

October 2003

## **Plan Alert!** **401(k) Contribution Deposit Guidelines**

### **A Helpful Reminder to 401(k) Plan Sponsors and Advisors**

Department of Labor (DOL) regulations require that 401(k) contributions **and** participant loan payments be deposited “**as soon as reasonable**” following the plan sponsor’s regular “payday.” Unfortunately, the DOL has not defined “**as soon as reasonable**”; however, based on recent DOL audits, they are holding employers to a much higher standard than they did in previous years.

- ✓ In DOL examples, they suggest making deposits within **two** days following payday.
- ✓ Others believe that 401(k) deposits should be made the same time payroll tax deposits are made (within approximately **three** days following payday.)
- ✓ Upon DOL audit, if deposits have consistently been made within **five** days of payroll, they will hold plan sponsors to that five-day standard.
- ✓ We know that the DOL is taking a hard look at employers who are taking more than seven days to deposit 401(k) contributions.

Because there is no bright line due date, we encourage plan sponsors to consistently deposit 401(k) contributions and participant loan payments as soon as possible after each payday.

### **Good Reasons Not to Violate the Deposit Rules!**

- ✓ Late deposits are considered a prohibited transaction and must be disclosed on Form 5500, which *could* trigger a Department of Labor audit.
- ✓ Prohibited transactions must be corrected by depositing all of the late contributions **and** making up “missed” investment earnings.

In addition, the company must pay a 15% excise tax on the make-up earnings amount.

### **What 401(k) Plan Sponsors Can Do**

- ✓ **Review procedures and practices.** Are plan sponsors doing everything possible to make sure that they are depositing 401(k) contributions and participant loan payments as soon as possible after each payday? *(On the reverse side of this sheet is a list of ideas, which may help you.)*
- ✓ **If Kravitz is your 401(k) administrator and you know your company transmitted its deposits late, contact Kravitz immediately to keep your penalties to a minimum.** We’ll discuss how we can help you keep your plan in compliance with the law.

Please feel free to call us if you have any questions. We’re always happy to assist you!

## Kravitz Recommendations to Help Keep 401(k) Plan Sponsors in Compliance

- ✓ Be certain that the payroll department knows that 401(k) contributions and participant loan payments must be deposited as soon as possible after payday. Give them a deadline and make sure they meet the deadline.
- ✓ Automate the transfer of data to the 401(k) record keeper.
- ✓ Deposit electronically for faster transfer of funds.
- ✓ Make certain that more than one payroll person knows the deposit rules, contribution procedures and how to use the appropriate computer software. In this way, the company is covered when the primary payroll person is sick or on vacation.
- ✓ Develop a procedure to verify the record keeper has received the deposit. Compare *their* reports to *your* records.
- ✓ If you receive quarterly reports, check *their* quarterly total to *your* quarterly total.

If you send checks, make sure every check has been cashed.

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