

TPS pensioninsider.com newsletter

PROVIDING SUPERIOR SERVICE AND SUPERIOR ADVICE

Get 401(k) Funds into Plan Promptly.

Consulting Services

- Design Consultation
- Feasibility Study
- Employee Survey
- Document Design
- Communication & Enrollment
- Human Resources

Administration Services

- Documentation/IRS
- Submission
- Participant Recordkeeping
- Compliance Testing
- Discrimination Testing

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ThePensionSpecialists,Ltd.

In 2004, ThePensionSpecialists,Ltd. sent information to clients regarding the Department of Labor's (DOL) deadlines for sending withheld 401(k) contributions (salary deferrals). This is a high priority enforcement area for the DOL with potentially severe penalties. We want to remind you about the timing rules for 401(k) deferral deposits.

The DOL regulations state that deferrals must be deposited into the trust by the earliest date when the contributions can reasonably be segregated from the employer's general assets, and in no event later than the 15th business day of the month following the month in which the deferrals were withheld.

A common misconception we still hear is that the 15th business day of the following month is the deadline. **Not true!** You must determine when the deferrals could reasonably have been put in the trust—which can be as soon as 1 to 3 days after the funds were withheld—as applied to your specific payroll facts and circumstances.

Look at the timing of your actual deposits. If you have been able to deposit the deferrals by the second business day after the payroll date on several occasions, then that history shows that a second business day deadline is feasible, and such date may become the deadline for deposit. Longer time frames for deposit must be justified by objective business factors.

Failure to timely deposit 401(k) contributions is both a "prohibited

transaction" and a fiduciary breach under ERISA. It is treated as a prohibited loan from the plan to the employer, and in egregious cases, an embezzlement of plan assets. The income that the deposits would have earned had they been timely deposited must **always** be restored to the plan by an employer contribution, and an IRS penalty tax **must** be computed and paid based on the time value of the money. The late deposits must be reported to the Government in the plan's annual Form 5500. A knowing failure to report is a crime; worst case, the sanction for failures to timely deposit can (and does with regularity) escalate to jail time and fines.

Applying the DOL's regulations to each employer's facts and circumstances, in order to determine the date by which deposits should be made, is not a difficult task. Because timing of 401(k) deferrals is always on the very top of the DOL's audit list, we urge you to look at your deposit procedures.

Last Minute Year-End Actions

December 1, 2005

If your plan is a safe harbor 401(k) plan, safe harbor notice needs to be distributed

December 31, 2005

Amendment required for every retirement plan that has a small cashout amount of \$5,000—has your plan been amended?

Story continued on reverse side



Administration Services

- Actuarial Valuation
- Government Filings
- Termination Services
- Human Resource Administration
- Payroll Administration

Communication Services

- Group Orientation Meetings
- One-on-One Enrollments
- DOL 404(c) Compliance
- Employee Booklets

January 1, 2006

Is your payroll system updated for the 2006 limits:

- Pre-Tax Section 401(k) and 403(b) Employee Contribution Limit

Increases from \$14,000 to \$15,000 for 2006

- Age 50 Catch-up Contribution

Increases from \$4,000 to \$5,000 in 2006

- Maximum Annual Recognized Compensation

Increases from \$210,000 to \$220,000 for 2006

To limit retirement plan accumulations for highly paid employees, as well as to increase contributions for non highly paid employees, retirement plans generally may only recognize compensation up to this limit.

These and other limits can be found on our website: www.pensioninsider.com.

About ThePensionSpecialists,Ltd.

ThePensionSpecialists,Ltd. is an independent retirement plan administrator. Our mission is to provide the highest quality services to assist clients in reaching their objectives.

Formed in 1987, we have grown to service over 930 employer retirement plans, with services covering over 25,000 plan participants with over \$350 million of retirement plan assets. We consult with clients to implement plans and proactively service them with interactive communication aimed at maximizing benefits, while

solving problems. Our in-house staff performs all plan administration.

ThePensionSpecialists,Ltd. provides services to many well known companies, which include broker dealers, investment firms, CPA firms, law firms, medical groups, hospitals, engineers and retail businesses.

For more information about us, access our website at www.pensioninsider.com, or call us at 815.394.5500, or toll free at 800.963.5501.



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