



## **Deposit Rules - DOL Requires 401k Money Be Deposited into the 401k Plan within 7 Days**

To safeguard employee 401k deferrals from employer delay and possible loss, The Department of Labor (DOL) now **requires** that employers with fewer than 100 participants deposit employee 401k deferrals **within 7 business days of withholding the funds from an employee's paycheck**.

These regulations are important due to abuse by many employers. Some employers use these funds for their own benefit, by paying bills when there is little or no cash flow or to defer impending bankruptcy. If an employer declares bankruptcy, the employees' money (401k deferrals) is lost and recovering these funds is a difficult process.

There are serious consequences for violation of the deposit rule. Failure to deposit 401(k) contributions on a timely basis is both a prohibited transaction and a fiduciary breach. As a result, the company should ensure that procedures are in place for the timely deposit of 401(k) deferrals. If you have any problems which may delay your deposit, please contact FBA so that we can document the reason for the delay (i.e. check lost in the mail, wire returned, etc.). This could prevent future problems with the DOL. This is especially important for clients who undergo an independent audit each year.

Employers should be aware that the DOL considers locating violators of this regulation a top priority. Employers can be required to make up lost earnings for each participant affected by the delay.

As your TPA, we have a duty to inform you that late depositing of deferrals is a violation of ERISA and must be corrected. If you fail to make timely deposits, FBA is obligated to report this to the Department of Labor (DOL) when your annual Form 5500 is filed.

It is imperative that you fax, email (preferably) or mail your payroll reports to us as soon as the reports are prepared by your payroll company or payroll department. To assist you in complying with this stringent regulation, FBA has begun testing a program that will automatically notify you via email if you are more than 10 days late in sending your contribution reports to FBA or depositing your 401k money. We will keep you abreast of this program's development. Once implemented, you can opt out of this notification program at anytime.

If you need any assistance or have any additional questions, please feel free to contact Kim Carpenter or Tami Burris at 1-800-532-0235 or via email at [kcarpenter@fba401k.com](mailto:kcarpenter@fba401k.com) or [tburris@fba401k.com](mailto:tburris@fba401k.com).