

ThePlan
ADMINISTRATOR



Update on Timely Deposit of Employee Contributions

Fall 2008

As we have communicated in earlier newsletters, the Department of Labor (“DOL”) continues to focus a significant portion of its audit initiative on employers who fail to timely deposit into the plan amounts withheld from an employee’s wages or otherwise contributed by an employee to the plan, e.g., elective deferrals, after-tax contributions, and loan repayments. Existing regulations require such amounts to be deposited

- as of the *earliest date* they can be segregated from the general assets of the employer, but
- in no event later than the 15th business day of the month following the month in which the amounts were withheld.

Failure to timely deposit participant contributions is deemed to be a loan from the plan to the plan sponsor – a breach of fiduciary duty and a prohibited transaction. These violations are required to be reported on the plan’s annual report, Form 5500. Prohibited transactions are subject to a 15% excise tax payable to the Internal Revenue Service (“IRS”), as well as a potential 20% penalty for the fiduciary breach which may be imposed by the DOL.

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New 7-Day Safe Harbor

The time period in which to comply with the general rule first stated above is a factual one peculiar to each employer. Disputes have frequently arisen concerning the “earliest date” language of the existing regulations. In order to provide clarity for employers, the DOL has proposed a safe harbor deadline. Amounts will be considered timely if they are deposited with the plan no later than the 7th business day following the date of withholding or the date a payment is otherwise received by the employer.

ROUTE TO:

This safe harbor applies to “small plans” only (defined as plans with less than 100 participants at the beginning of the plan year). The DOL is soliciting comments regarding a possible safe harbor for larger plans. A plan that fails to comply with the safe harbor does not automatically violate the regulations. However, the employer will have the burden of demonstrating that it deposited contributions timely. After finalizing the proposed regulations, it is likely the DOL will challenge any deposits made after the safe harbor deadline. In the event a late deposit occurs, the safe harbor now provides an exact date from which a plan sponsor can calculate lost earnings to correct the situation pursuant to prescribed DOL methodology.

Restatements Have Begun

Over the last several years, Congress, the Internal Revenue Service and the Department of Labor have made numerous changes to the rules governing qualified retirement plans. We have prepared several amendments to reflect these changes including the good faith amendment to comply with the Economic Growth and Tax Reconciliation Relief of 2001, the mandatory distribution amendment and, for defined contribution plans, the minimum distribution amendment and the final 401(k)/401(m) regulations amendment. These amendments have all been required by the Internal Revenue Service.

Pursuant to Revenue Procedure 2007-44, the Internal Revenue Service requires all qualified plans to be restated every five years, if maintained on an individually designed document, or every six years, if a pre-approved document is utilized, i.e., a prototype or volume submitter document. Earlier this year, HPL&S received approval of our updated defined contribution volume submitter document from the National Office of the IRS. Consequently, all defined contribution plans (i.e., profit sharing, 401(k), and money purchase pension plans) will need to be restated during the next eighteen months. The restatement will consolidate and incorporate the above interim amendments and include additional language as required by law or regulation.

We have commenced sending individual correspondence to each plan sponsor describing the restatement process and our estimate of the related fee. Since the plan is being rewritten, now would be an opportune time to make any discretionary changes under consideration. Please contact our office to discuss these possible changes.

New Phone System

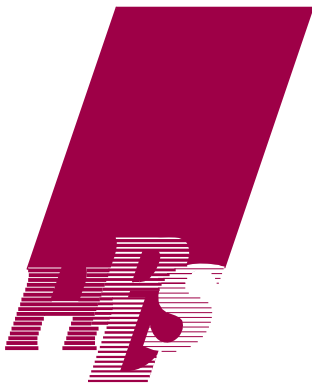
In order to better serve you, we have upgraded our phone system. Our main number and fax remain the same, but you may now contact staff members at the following direct dial numbers. The last four digits of the direct dial number correspond to the member's extension if accessed through the main number.



HPL&S Inc. Telephone Extensions

Angie Comperda	847/586-2034
Brian Zange	847/586-2056
Cassandra Cecola	847/586-2032
Cathi Green	847/586-2038
Dianne Great	847/586-2065
Ginger Cooper	847/586-2061
Howard Post	847/586-2043
Ira Post	847/586-2049
Jackie Kasir	847/586-2045
Jed Forkner	847/586-2037
Jessica Light	847/586-2046
Jim Heinzer	847/586-2040
John Shepherd	847/586-2052
Julie Stromberg	847/586-2054
Kathi Maronta	847/403-8059
Kyle Schaefer	847/586-2051
Lindsey Haun	847/586-2039
Lisa Eberts	847/586-2036
Maria Szczech	847/586-2041
Mark Bouckaert	847/586-2031
Michael Johnson	847/586-2044
Patty Spiegel	847/586-2053
Roger Hotz	847/586-2042
Susan Ratzki	847/586-2050
Thomas Doherty	847/586-2035
Tracy Childs	847/586-2033
Victoria Pelletiere	847/586-2048
William Ludwig	847/586-2047
Yvette Witteck	847/586-2055

Time Sensitive
Material Enclosed



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