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PROVIDING SUPERIOR SERVICE AND SUPERIOR ADVICE

Timing Becomes Everything When it Relates to 401(k) Deferrals

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ThePensionSpecialists, Ltd.

If you haven't checked the date window in your watch lately, timely 401(k) deferral deposits by employers continue to be closely monitored by the Department of Labor (DOL).

With the recent accounting scandals, the DOL has been devoting more resources to enforcing the rule regarding the timing of deposits for 401(k) elective deferrals.

The DOL takes the position that in today's "technologically sophisticated climate", businesses should have reasonable information needed to forward deferrals and should be available within a few days after, if not simultaneously with, the issuance of paychecks.

The DOL is now holding plan sponsors to a deposit date for 401(k) deferrals of no longer than 7 days following the payday. In a recent audit of our clients, they are going back as far as 5 years in assessing interest and penalties for deposits held longer than 7 days.

Instructions added to the 2003 Form 5500 instructions underscore this position by specifically requiring plan auditors to both review and enforce the general rule set forth in 29 CFR 2510.3-102—stating employee deferrals must be remitted to a Plan as of the earliest date on which contributions can reasonably be segregated from an employer's general assets.

Question 4a on Schedules H and I of Form 5500 inquires as to whether the employer has failed to deposit participant contributions in accordance with the time period prescribed by the regulations. Plan auditors must confirm the accuracy of an employer's response to question 4a by reviewing deposits and the timeliness of them. In 2002, the DOL audited accounting firms; if it was noted that an accounting firm did not report the failure to timely deposit deferrals as a schedule in their 5500 audit report, the DOL reported these firms to the American Institute for Certified Public Accountants [AICPA], the regulatory body for CPA's.

The DOL regulation reads that employers must deposit contributions on the earliest date an employer can reasonably segregate contributions from its general assets, but in no event later than the 15th business day of the month following the month in which an employer withheld a contribution from an employee's paycheck. Some employers have incorrectly interpreted this regulation to allow them to wait to deposit a participant's contribution until the 15th business day of the following month, even if they had segregated funds sooner.

TPS advice: Get your 401(k) deferrals deposited no later than 7 days after each payday!

Story continued on reverse side



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- Employer-sponsored plans should strictly adhere to policies, procedures, and controls regarding deposits. Reasonable segregation and timely deposits of deferrals are the keys to successfully adhering to this DOL regulation. In addition, plan sponsors looking to avoid DOL problems should remit premiums to carriers as soon as they can.

Survey Notes

Declining 401(k) Participation

Fewer employees participated in their 401(k) plan last year, according to the latest annual survey by the Profit Sharing/401(k) Council of America.

In 2003, 76.4% of eligible employees had balances in their 401(k) plans, a dip from 80.3% in 2002. Lower-paid employees contributed an average of 5.2% of pay to their plan, a figure consistent with that of the 2002 survey. Highly compensated employees, meanwhile, contributed an average of 6.4%, up a tick from 6.3% the year before. Company contributions averaged 4.4% of payroll, an increase from 4.1% in 2002.

Some 87.3% of plans offered 10 or more funds for participant contributions in 2003, up from 80.8% in 2002 and 69.8% in 2001. Investment advice is becoming more common, with 54.1% of plans offering it, up from 51.9% in 2002 and 41.4% in 2001. Some 8.4% of plans feature automatic enrollment.

The 2003 survey reports on 1,161 plans with over 3.4 million participants and more than \$412 billion in plan assets. Companies of all sizes nationwide are represented in the survey, which may be ordered by visiting PSCA's Web site at <http://www.psc.org/401k.html>.

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.

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Should you have further questions related to the topic(s) discussed in this publication or information seen on our website, please contact us by calling 815.394.5500 ext. 103. Our Specialists are here to help.