



April 29, 2008

Submitted electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Participant Contribution Regulation Safe Harbor

Ladies and Gentlemen:

The Investment Company Institute and the American Benefits Council welcome the Department's proposed regulation amending the definition of "plan assets" to provide for a safe harbor for depositing participant contributions with a plan. While we agree with the Department's approach of attempting to strike the balance between providing certainty to employers and encouraging speedy remittance of contributions to plans, we make two suggestions to make it possible for more pension plans to come within the proposed safe harbor.

The Investment Company Institute is the national association of U.S. investment companies (including mutual funds, closed-end funds, exchange-traded funds, and unit investment trusts), which manage more than half of 401(k) assets and assets of other defined contribution plans. Mutual fund firms and their affiliates also serve as recordkeepers and other service providers to 401(k), 403(b), 457, and other defined contribution plans.

The American Benefits Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

We agree with the Department that the amendment to the general rule on timely remittances should be in the form of a safe harbor.¹ As the Department recognizes in the preamble, a safe harbor will provide an incentive to employers to speed up remittances, without penalizing them when they are not able to meet the safe harbor but are still within the parameters of the general rule.

We recommend, however, that the Department extend the safe harbor from 7 business days to 10 business days. The preamble to the proposed rule states that the Department selected a period that would encourage employers to speed up their remittance practices as opposed to one that either would be very difficult or very easy to comply with. The Department notes that only 21 percent of small plans currently are able to meet the 7-day safe harbor period on a regular basis, while 69 percent of small plans may be able to meet this safe harbor some time. The Department was reluctant to extend the safe harbor to 10 days because 94 percent of small plans would be able to meet this safe harbor some time, deeming it to be too easy. According to the Department's statistics, only 29 percent of small plans would meet the 10-day safe harbor all the time. This is the most important number, in our view, in determining whether the 10-day safe harbor would be "too easy." While there is not that much difference between 21% (plans that can consistently satisfy the 7-day period) and 29% (plans that can consistently satisfy the 10-day period), moving to the 10-day period would provide an incentive to significantly more plans to improve their practices. The ten business day period also would allow employers to deal with a familiar time frame of two work weeks, as opposed to an odd 7-business day schedule.²

We further recommend that the 10-business day safe harbor extend to all plans, not just to plans with fewer than 100 participants at the beginning of the plan year. As the Department notes, it is unlikely that a significant number of employers will redesign their systems to slow down remittances solely to get the benefit of a slightly longer remittance period.³ While large plans may be more automated and benefit from economies of scale in their payroll processes, they encounter other issues (*e.g.*, multiple geographical sites and different company payroll periods) that affect the time required for remittances. The 100-participant threshold also would create compliance uncertainty for plans that are on the cusp of 100 participants and have a fluctuating workforce.

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¹ The general rule for pension plans is that participant contributions become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets but no later than the 15th business day of the month following the month in which participant contributions were withheld by the employer. 29 C.F.R. § 2510.3-102(a)-(b).

² We question the Department's assumption that costs for shortening the remittance period to 7 business days for plans that currently submit some contributions within an 8 to 14 day period may be "modest or negligible." See 73 Fed. Reg. 11072, 11076 (Feb. 29, 2008). A plan that seeks to improve its practices so as to assure that it will come within the safe harbor may have to implement significant systems and processing changes, all of which entail costs.

³ 73 Fed. Reg. 11072, 11076.

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We would welcome the opportunity to answer any questions the Department may have about our comments. Please feel free to contact Mary Podesta at (202) 326-5826, Jan Jacobson at (202) 289-6700, or Anna Driggs at (202) 218-3573.

Sincerely,



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