
From: Michael F. Yates [mailto:myates@mfyco.com]
Sent: Thursday, March 06, 2008 11:33 PM
To: EBSA, E-ORI - EBSA
Subject: 401(k) Safe Harbor Contribution Regulation

Dear Sir or Madam:

I believe the direction this proposed Regulation takes is a good one, but I believe that the safe harbor time frame does not realistically recognize the problems small business owners face in running their businesses. The safe harbor time frame is too short and should be 10 business days at a minimum with 12 business days preferable.

The reasons for the suggested 12 business day safe harbor are as follows:

Small business owners are faced with many, many things to do. If a small business makes a contribution once a month at the end of the month to a 401(k) Plan, then that activity can be done once a month. If the owner now has to perform that activity 4 times a month, that is a **much increased burden**. The burden is not so much the cost but the time.

Small business owners typically write the contribution checks themselves. If the requirement is 7 business days and there is a weekly payroll, **the owner will not be able to take a vacation** for more than a week. **That is not fair.**

The summary of the proposed regulation states that a safe harbor longer than 7 business days may result in the delay of contributions currently being made within the 7 day or 10 day period. I do not believe that will happen. Once a business practice is set, I believe that it will continue - therefore having no effect.

I understand that the "administratively feasible" provision would continue assuming the proposed regulation is adopted. This would provide the relief necessary for the small business owner to take a vacation, but I am afraid it may provide the ground work for a heated debate on what is "administratively feasible". The 12 business day safe harbor would cure that.

In summary, this regulation would be fine if the safe harbor were **12 business days** after the contribution is deducted from the employee's paycheck. It would double the work currently mandated and would permit the business owner some flexibility in scheduling personal time off.

I would be interested in a dialogue if you wish. Please feel free to call me at: 908-797-2700 (cell).

Sincerely,

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