

Docket: EBSA-2008-0001

Amendment of Regulation Relating to Definition of “Plan Assets”— Participant Contributions

Comment On: EBSA-2008-0001-0001

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Submitter Information

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General Comment

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

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RE: Comment on Proposed Regulations: Participant Contribution Regulation Safe Harbor

Dear Sir or Madam:

The Society of Professional Benefit Administrators appreciates the opportunity to comment on the Participant Contributions Regulation proposed regulations under 29 CFR 2510.3-102 which were issued on Feb. 29, 2008.

On behalf of third party contract administration firms, the Society of Professional Benefit Administrators (SPBA) wishes to express to you concerns raised in the recently published Request For Information and we hereby submit the following comments.

The Society of Professional Benefit Administrators is the largest national association representing independent third party administration firms who are responsible for the administration of the employee benefits of nearly forty percent of all United States workers. SPBA represents over 90 percent of the firms which make third party contract administration of employee benefit plans their primary business.

Third party administrators (TPAs) provide continuing professional outside claims and benefit plan administration for employers and benefit plans. TPAs very often become the "employee benefits office" for the covered workers of many small employers (under 100 employees). The average TPA client employs some degree of self-funding and clients range from large Taft-Hartley union/management jointly-administered plans, customized plans for single employers of all sizes, and cost-effective plans designed for related groups of employers in trade associations and other multiple employer configurations.

We commend the Department on its foresight in seeking information from the private industry on the impact this change in the law will have on employers before issuing comprehensive regulations. Benefit administrators seek guidance from you on how to administer employer requests for compliance advice.

TPA members find that the seven day safe harbor provision for holding plan assets will significantly

impact small employers who sponsor health plans. In an informal survey of SPBA members at our recent annual meeting, we found general concern regarding the 7 day rule as exceedingly short.

Many TPAs expressed concern that the change will not be feasible for compliance by small employers for several reasons.

First, it is not a realistic safe harbor for small employers. Time is needed to reconcile transmittals and the necessary checks and balances that must occur to ensure all deposited amounts are correct will take time.

Secondly, the regulation does not recognize the myriad of problems that small employers face in running their businesses. Currently many small employers generally remit amounts withheld from employee paychecks on a monthly basis. Yet with the new regulations they would now need to remit after every payroll thereby quadrupling the remittances. Because many small employers personally handle payroll themselves, the increase in the number of remittances raises an issue of whether it is "administratively feasible" for employers to comply if they themselves face personal illness or seek to take a vacation without facing a violation of the new rule. The increased remittances will overall result in increased costs to small employers to comply with the new regulations.

Thirdly, while some small employers rely upon outside payroll firms to process the payroll and make contributions, even with these specialized service providers, all agree that problems can arise from time to time. The regulation does not provide relief to small employers should a problems arise with contribution transmissions. Under the proposed regulation, small employers would experience a violation and incur penalties for seemingly common business problems such as internet problems, loss of power issues or an intense local natural disaster, etc.

For the reasons set above, we respectfully request you consider a 14-day window for timely deposit of funds which will lead to wide-spread ability for small employers to comply with the

regulation.

Further, if the Department deems necessary to change the current regulations, SPBA requests that the additional advance time, a minimum of 6 months, be provided so that Third Party Administrators may provide guidance to client employers to promote their good faith understanding of their new responsibilities under the regulations and so that TPAs can review their additional client responsibilities in lieu of the new requirements as well. We believe that making the regulation effective on the publication of the final regulation would undermine the ability of small employers to comply and lead to widespread non-compliance.

Summary

SPBA respectfully requests that the recommendations cited above be considered in the final regulations and that changes to the Plan Contributions regulations reflect comments submitted. SPBA appreciates the opportunity to express our comments on this issue and would like to reserve the opportunity to provide future comments when the final regulations are released. As the preeminent representative of third party contract administration firms, SPBA would be happy to provide you with additional information or to respond to any additional questions arising as a result of this submission. Please contact me at (301)718-7722 if we can be of further assistance.

Sincerely,

Elizabeth Y. Leight
Director of Government Relations and Legal Affairs
Society of Professional Benefit Administrators