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

Attention: Participant Contributions

Dear Sir or Madam:

With nearly 40 million members, AARP is the largest nonprofit, nonpartisan membership organization representing the interests of Americans age 50 and older and their families. More than 45% of our members are employed, full- or part-time.

AARP helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. We produce AARP The Magazine, AARP Bulletin, AARP Segunda Juventud, NRTA Live & Learn, and provide information via our website, www.aarp.org. AARP publications reach more households than any other publication in the United States.

AARP fosters the economic security of individuals as they move from work to retirement by seeking to increase the availability, security, equity, and adequacy of pension benefits. The Employee Retirement Income Security Act's (ERISA) pension protections, and the ability to enforce those protections, are vitally important to older workers and retirees because the quality of their lives before and after retirement depends upon the adequacy and security of their pension benefits.

As more employers adopt defined contribution plans as their primary retirement vehicle, AARP and its members have a substantial interest in ensuring that as many employees as possible participate in employer-sponsored plans, that employers and participants make adequate contributions, and that deductions from participants' pay checks reach their 401(k) accounts as soon as possible.

Indeed, AARP has joined with the Financial Industry Regulatory Authority and the Retirement Security Project to encourage 401(k) plan sponsors to help their employees save more effectively by adopting and expanding automatic enrollment and other similar features. See the website and materials at www.RetirementMadeSimpler.org.

AARP commends the Department of Labor for amending the Regulation Relating to the Definition of Plan Assets – Participant Contributions. The regulation enhances participant protections so that most small employers can meet the amendment's safe harbor with ease, yet the regulation provides flexibility to meet varied circumstances.

Encouraging those employers sponsoring plans with fewer than 100 participants to deposit money withheld from participants' paychecks into the plan within seven business days is consistent with the general rule that amounts paid to or withheld by an employer become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets. If these employers meet the seven business day safe harbor, they will be assured that they will be considered to be in compliance with ERISA's fiduciary requirements, reducing uncertainty and administrative burdens.

Moreover, because the rule is a safe harbor, and not a mandate, it provides smaller employers with flexibility in depositing paycheck deductions. It also places payroll services providers on notice of the Department of Labor's safe harbor so they can make appropriate changes to their computer software and procedures to enable their small employer clients to take advantage of the safe harbor.


For participants, the amendment to the regulation enhances participant protections. By encouraging the early deposit of payroll deductions, participants receive the protection of their monies being deposited in the plan. In this economy, early deposits may be particularly important to participants if their employer is experiencing financial problems.

Finally, this amendment will foster better compliance and help reduce the strain on the Department's limited enforcement resources.

CONCLUSION

AARP appreciates having the opportunity to provide its views on the proposed rule amending the Regulation Relating to the Definition of Plan Assets – Participant Contributions. If you have any questions, please do not hesitate to contact Frank Toohey at 202/434-3760 or Mary Ellen Signorille at 202/434-2072.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Legislative Counsel and
Director of Legislative Policy
Government Relations and Advocacy