**From:** Peters, Georgeann [mailto:GPeters@bakerlaw.com]
**Sent:** Tuesday, April 01, 2008 10:53 AM
**To:** EBSA, E-ORI - EBSA
**Subject:** Proposed Revision to Plan Asset Regulations

The idea of providing a realistic safe harbor for small employers relative to their plan asset remittance obligations is welcome and, if the 7 business days is supported adequately by a realistic assessment of what is feasible for small employers, it will greatly enhance confidence and certainty in their compliance with the law. However, some changes warrant your consideration.

First, I happen to represent a multiple employer plan which would not meet your definition of a small plan because, despite the fact many small employers participate, the plan itself is a single plan which is quite large. My point is that the regulation should be tied to the size of the employer (on a controlled group basis, of course), not the size of the plan. (One such plan with thousands of total participants includes many employers with fewer than 100 employees, some with only one or two. It would be inappropriate for these employers not to have the same certainty of an employer that sponsored its own plan simply because these employers have come together to jointly sponsor a plan and thus gain economies of scale otherwise unavailable to them. Those economies do NOT affect their payrolls, which continue to be independent, with many being manual.) Thus, the litmus test for the safe harbor, if it continues to be available based on size, should be size of the employer, not the size of the plan.

Second, strong consideration should be given to making the safe harbor available to all employers. Some of the very largest employers with which I am familiar also need 3 to 4 business days to make contributions, a time line which can occasionally be extended due to the occasional system problem or other issue, such as assimilating a new group of employees following a corporate acquisition. While some may think that large employers should be able to remit immediately, the reality of the on-line, 24-7 plan administration environment is that participants can and do make changes to their deferral elections, take and pay off plan loans, and alter their investment choices at any time, usually through an interface with the plan's trustee and recordkeeper, not through the employer. As a result, time is needed to reconcile the latest changes transmitted to the plan recordkeeper with the information of the payroll vendor and employer. The necessary checks and balances that must occur to ensure all withholdings are correct and the right amounts are deposited necessarily takes time. Accordingly, while 7 business days may be at the outer limits of what is needed for this process, there would appear to be little if any downside to permitting larger employers to also enjoy the regulatory certainty of the safe harbor. It is highly unlikely that any employer would slow down its processing in light of such a safe harbor. However, having one will enable all employers to know if/when they have missed the mark and must take corrective action as opposed to wondering whether they have done so.

Thank you.

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