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

Attention: Proposed revision of Annual Information Return/Reports RIN1210-A97

JoAnn Cassell, President and CEO of Cassell Plan Audits appreciates the opportunity to provide its perspective on the proposed revisions of Annual Information Return/Reports of RIN 1210-AB97, specifically Section 1.2 section "*Plans affected by change in participant-count methodology for determining large plan versus small plan status and related filing requirements"* where the determination whether the plan is a large plan would be changed from the number of eligible participants on the first day of the plan year, regardless of their participation status, to the number of participants with account balances on the first day of the plan year.

Cassell Plan Audits is a niche firm that provides only audit services to qualified plans. We audit, on average 90 plans per year and have extensive experience in auditing plans. JoAnn, alone, has audited plans for over 20 years, which has allowed her to experience over 1,000 plan audits in her career.

We audit plans across all industries and size. Our audit practice includes large plans with over 40,000 participants and small plans with zero participation. Within our current practice, only a handful of plans had an audit completed with no findings. While we agree that sponsors with qualified plans that have 100 or more eligible participants and only a handful of those with an account balance, find it quite a burdensome to retain and pay for an IQPA, we fear that omitting those plans from the audit requirement would have <u>adverse effects on the participant and beneficiary benefits</u>.

We'd like to provide several examples of such circumstances that would go undiscovered and uncorrected if the plan did not undergo an independent audit examination.

- <u>Lack of or errors in implementation of auto-enrollment</u>. A plan, that would otherwise have a large number of participants with balances, had only a handful active participants. The third-party administrator (TPA) that is the only other party involved, outside of plan sponsor, does not have the data to determine if the sponsor is following the auto-enrollment provision of the plan. In our client's instance, we caught this deficiency in the year that it occurred, and the participants were made whole without a significant financial burden on the sponsor. Had this plan not been audited, the deficiency could have gone undetected for years with severe adverse effects on the participants, beneficiaries, and the sponsor.
- <u>Definition of compensation</u>. The number one deficiency we note in our audits is not following the definition of compensation per the plan document. This could be due to many different factors, such as manual checks, bonus compensation not otherwise excludable from eligible compensation, final pay outs of vacation, sick, etc. time upon termination. In some cases, these amounts are trivial to the plan as a whole, but significant to the participants and beneficiaries. In other cases, the severity of those deficiencies rises to a material weakness status. If these plans continued to stay in the

small filing category for many years, these deficient would go unnoticed, causing the participants, beneficiaries to miss out on benefits.

- Timing of deposits. This too is a frequent deficiency. Many providers, especially those sales driven, give inaccurate guidance to their clients with various time frames of "safe harbor" to deposit employees' deferrals and loan repayments. Many still follow the 15th business day of the following month as their deposit guidance, even thought this has never been a safe harbor time frame. While this deficiency is easier for outside administrators to monitor, provided the software captures the information, often times it is not and it is still a pervasive deficiency only caught during an audit.
- Incorrect calculation of vested benefits. Determination of vested benefits is often left to the plan sponsor. A large number of these sponsors have delegated such duties to office managers, human resource clerks, or even the receptionists, as that is all the office staff they employ. We have noted incorrect vesting calculation deficiencies numerous times where participants and beneficiaries received either too much or too little as their distribution due to this error.

Above are the most egregious deficiencies we noted. Our list could go on, but we believe these drive the point home. We note these to be more pervasive in plans sponsored by small to mid-sized entities lacking the professional employees with the understanding and education of rules and regulations surrounding qualified plans.

The procedures required as part of an audit subject to Generally Accepted Audit Standards (GAAS) and Department of Labor regulations, are, currently, the only way these deficiencies are discovered.

We believe that changing the methodology, which would effectively remove 23 percent of plans from an audit requirement, in the population most susceptible to deficiencies, would not be in the best interest for plan participants and beneficiaries. Afterall, as the language in the proposed rules states in its introduction, "*The Form 5500 Annual Return/Report also serves as the primary means by which the operations of plans can be* ***monitored*** *by plan participants and beneficiaries and the general public."* Without the audit, the monitoring would not be possible.

We would like to end on a provoking thought. Since obtaining an audit by an IQPA is viewed as financial burden on the plans, would the agency consider removing the independent audit requirement all together, and replacing it with an Agreed Upon Procedures engagement for all plans, regardless of size, whereas the required procedures would focus on the activities of the plans that are most susceptible to errors and deficiencies? Not having to fulfill GAAS regulations would significantly reduce the time required, and consequently lower the financial burden. Including all plans, especially the ones currently falling into the small filer category, would increase the monitoring of ERISA and plan provisions benefiting plan participants and beneficiaries.

We appreciate the opportunity to offer our comments.

Sincerely,

JoAnn Cassell, CPA
President and CEO
Cassell Plan Audits