

PUBLIC SUBMISSION

Received: October 28, 2021 Tracking No. kvb-g3u9-kzhv Comments Due: November 01, 2021 Submission Type: API

Docket: EBSA-2021-0006

PROPOSED IMPLEMENTATION OF SECURE ACT REVISIONS TO FORM 5500
EMPLOYEE BENEFIT PLAN REPORTS

Comment On: EBSA-2021-0006-0002

Annual Information Return/Reports

Submitter Information

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General Comment

To Whom It May Concern:

The Agencies are proposing to change the rules with respect to determining whether a plan can qualify for the small plan audit waiver under 29 CFR 2520.104-51. Under the present methodology, any employee eligible to participate in the plan is included in the count irrespective of whether that employee has accrued any benefits or received any contributions. The Proposal would modify these rules for defined contribution plans by only including participants and beneficiaries who have an account balance. For example, a Plan Sponsor could easily have over 120 Beginning of year participants (e.g., those eligible and passed and entry date plus those terminated and vested) as opposed to the number of those with account balances, sometimes 10-20 employees. As such, an audit provides little value when sampling only a few participants with balances.

Our third party administrative firm and myself personally having worked in the industry 10 years, strongly agree with the proposed change. The current rules have resulted in plans with a similar number of participating employees being treated quite differently with little policy reasons for doing so. The potential inconsistent treatment will only be heightened when long-term part-time employees become eligible to participate. Many smaller employers may choose to terminate their plan if forced to pay a \$10,000 to \$15,000 plan audit fee as a result of the influx of part-time

employees participating in the plan. The proposed change will provide small employers with a meaningful reduction in the costs and burdens of plan sponsorship and thereby encourage new plan formation. This flies in the face of the efforts by Congress to encourage adoption of new retirement plans.

It should also be noted that the tales of woe put forth by the accounting community if this change is made are overstated at best. TPAs work closely with our plan sponsor clients to ensure their plans comply with the tax code and ERISA irrespective of whether the plan is subject to the independent audit requirement. To suggest, as one previous commentor on the Proposal did, that employers will purposely violate the terms of their plan with respect to enrolling long-term part-time employees to avoid an independent audit is ludicrous. There is obvious self interest in the accounting community pushing back on this proposed change. TPAs work to keep plans compliant everyday without the need of a plan audit, and furthermore, we know the law, code and regulations better than most auditors thereby giving more value to our engagements which cost Plan Sponsors significantly less than audits.

I recommend the Agencies adopt the proposed change to the participant counting methodology so that only participants and beneficiaries with account balances are considered active participants for purposes of qualifying for the small plan audit waiver.