

PRESTON ACTUARIAL SERVICES, INC.

Pension & Profit Sharing Consultants

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October 28, 2021

Posted to:

<https://www.federalregister.gov/documents/2021/09/15/2021-19714/proposed-revision-of-annual-information-returnreports#open-comment>

Re: Comment to RIN 1210-AB97

Dear Sir or Madam:

Change to Participant-Count Methodology for IQPA Audit Waiver

The proposed change to the the rules for determining whether a plan can qualify for the small plan audit waiver under 29 CFR 2520.104-51 are welcome and, frankly, long overdue. Under the present methodology, any employee eligible to participate in the plan is included in the count whether or not 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.

Preston Actuarial Services, Inc. strongly agrees with the proposed change. The current rules have resulted in plans with a similar number of participating employees being treated 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 \$20,000 OR MORE** plan audit fee as a result of the new auditing standard (SAS 136, see below) and an expected influx of part-time employees eligible to participate in the plan due to the statutory changes which become effective in 2024. The proposed change would provide small employers with a meaningful reduction in the costs and burdens of plan sponsorship and thereby encourage new plan formation.

This is especially concerning in light of the newly effective auditing standard: "**Statement on Auditing Standards (SAS) No. 136, Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA [the Employee Retirement Income Security Act].**" SAS 136 is effective for reporting periods ending on or after December 15, 2021. That is, for calendar year plans it is already in effect. It is not hard to find articles recently published that warn Plan Sponsors of the increased requirements of SAS 136 that effectively eliminate the limited scope audit. **Audit fees are therefore expected to increase dramatically.**

It should also be noted that the bellyaching of some members of the accounting community if this change is made is misplaced. Preston Actuarial Services, Inc. and other ERISA-based consulting practices work closely with their Plan Sponsor clients to ensure plans comply with the

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tax code and ERISA irrespective of whether the plan is subject to the independent audit requirement. To suggest, as one previous commentator 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 beyond the pale. There is blatantly obvious self interest in the accounting community pushing back on this proposed change.

Preston Actuarial Services, Inc. therefore recommends 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.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael B. Preston". The signature is written in a cursive, flowing style.

Michael B. Preston, FSPA, EA

MBP:wp