October 28, 2021

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

In comment of RIN 1210-AB97, specifically "Changes to Method of Determining Small Plan Status for Certain Filing Exemptions and Requirements."

As a defined contribution (DC) auditor, I've noted issues that affect these plans and I'm concerned this proposed change in methodology will allow smaller plans to fly under the radar and not receive the guidance they need to properly manage their plans.

Many issues noted as auditors stem from plans with first year audits. Just in the 2020 cycle of plans requiring first year audits, I've noted incorrect use of eligible wages for deferrals, late contributions, not following the plan document for eligibility into the plan, missing employee documentation and incorrect coding of Roth contributions as before tax deferrals. More plans are adopting automatic enrollment and are also not implementing this correctly by not enrolling the participant in a timely manner.

These plans under the new methodology would be exempt from an audit and would have continued operating their plans with deficiencies. I understand that small employers do not want the cost of an audit but finding these issues and correcting them early will save the Plan Sponsor costs in the future. Most of these failures require correction; prohibited transactions, lost earnings, QNECs, excise taxes.

Small employers often lack knowledgeable staff or dedicated employees to manage the plan and an audit is their first opportunity to receive communication on proper internal controls and plan management. At the conclusion of an audit, auditors report significant deficiencies or material weaknesses in internal controls and may suggest recommendations for improvement. An audit is a valuable service to clients, especially small businesses.

The proposed change to count methodology in the end saves the company money at the expense of the participant. Participants who trust their employers are making contributions on time, using correct wages for contributions, and following the plan document. I know the DOL wants to protect participants but decreasing the number of plans that require an audit is counterintuitive to that goal.

Thank you for consideration of my comments.

Sincerely,

Anne Kozlowski, CPA