



Submitted Electronically

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

**RE: Implementing a Consolidated Annual Report for Groups of Defined Contribution Retirement Plans
Proposed Revision of Annual Information Return/Report
U.S. Department of Labor - Employee Benefits Security Administration (RIN 1210-AB97)**

Dear Sir or Madam:

TAG Resources, LLC (“TAG”) is one of the country’s leading providers of “aggregated plan services.” Aggregated plan services provide advantages of scale, making them more affordable to startups and small plan markets that could not previously access them. These programs include Multiple Employer Plans, available to organizations that meet the definition of “Employer” Under Section 3(5) of ERISA—Association Retirement Plans, other Multiple-Employer Plans, 84 FR 37508 (July 31, 2019), programs we refer to as “Multiple Employer Aggregation Programs,” (or “MEAPs”) that are designed to mimic the most favorable aspects of multiple employer plans (“MEPs”), and Pooled Employer Plans (“PEP”) that were developed following enactment of the Setting Every Community Up for Retirement Enhancement (“SECURE”) Act of 2019, Pub. L. 116–94, (“the Act”).

Jodi L. Green, Esq. is an ERISA attorney at Tatum Hillman & Powell, LLP. She worked at the Employee Benefits Security Administration (“EBSA”) of the U.S. Department of Labor (the “Department”) from 2007 to 2018, where she led investigations into qualified ERISA plans, including “open” and “closed” multiple employer plans.

Pursuant to the Notice of Proposed Form Revisions (“NPR”) by the Department as reported in 86 FR 51488 (September 15, 2021) relating to the SECURE Act, we appreciate the opportunity to comment on the Department’s request for feedback on implementing the SECURE Act’s directive to develop a consolidated Form 5500 Annual Return/Report option for the group of plans arrangements (“GoP”) specific to groups of defined contribution retirement plans (“DCG”).

I. Background: Groups of plans (DCGs) and consolidated audits increase corporate participation and employees’ retirement savings.

The SECURE Act in section 202 calls for the Secretary of Labor and the Secretary of the Treasury to establish an annual report for DCGs starting with the 2022 plan year. The Department proposes in 29 CFR §§ 2510.103-14 and 104-51 that the plan administrator of a DCG who decides to file a consolidated annual report must file a Form 5500 and include schedules and attachments required for large retirement plans and Direct Filing Entities (DFEs), and a Schedule DCG (Individual Plan Information) for each plan represented in the DCG filing. The consolidated Form 5500 would include an IQPA audit of the DCG’s trust financial statements and an opinion on the Form 5500 schedules ‘conformity with Department rules, including the delinquent contributions schedule filed by the DCG and separate schedules referenced in ERISA § 103(a)(3)(A) and the Department’s text.

We appreciate that the SECURE Act’s support of group arrangements encourages new providers to enter the marketplace and increases corporate participation in defined contribution retirement plans. We were not surprised that the Department estimated that consolidated audits would provide substantial savings in annual audit costs for all expected PEPs and GoPs. The Department estimated total cost savings of \$63.9 million based on a single plan audit costing \$7,500. We believe that audit cost savings will be higher. IRS-mandated audits performed

by an independent qualified public accountant (“IQPA”) range in cost between \$8,000 to \$15,000, averaging between \$10,000 to \$12,000 for most single-employer plans, varying by geography, plan characteristics, and auditor fees. The average single-employer plan pays IQPA expenses that are often double or triple the fees of the plan’s 3(16) plan administrator, even while the 3(16) plan administrator completes the IRS-mandated nondiscrimination tests on behalf of the plan.

The prudent plan sponsor must decide if the plan audit expense will be paid with corporate assets or if it will be paid by the plan from the forfeiture account or proportionately charged to participants’ accounts. Often the plan sponsor opts to pay for the annual audit using corporate assets instead of reducing employees’ savings and deterring participation in the plan. It is TAG’s experience that many small employers, particularly those in the food and hospitality industry, avoid developing defined contribution plans for their employees because they wish to avoid the expense of an IQPA audit. Often, TAG has responded by offering to supplement or discount the audit fees, but most of these employers believe the costs are still too high.

As aggregated plan services gain in popularity, we expect DCGs to compete with MEPs (and PEPs). Plan sponsors attracted to DCG arrangements value the reduced administrative costs and increased investment opportunities typically found in MEPs. They also value the flexibility in plan design and plan sponsor involvement common in single-employer plans. Startups and growing businesses appreciate the ease and cost-efficiency of DCGs in plan design, plan mergers, and plan terminations.

Burdens associated with MEP (or PEP) consolidated filings are reduced in DCGs. Plan administrators or named fiduciaries in MEPs struggle each year with participating employers who are untimely in providing plan data or testing information for the aggregated Form 5500 Annual Return/Report. Despite receiving multiple requests for missing plan data, participating employers can be unresponsive, causing auditors to risk missing deadlines to complete the annual audits. These participating employers who provide plan data for the annual report beyond the plan’s deadline place the plan’s named fiduciaries at risk of incurring substantial penalties from the Department and the U.S. Department of the Treasury for late submissions of the Form 5500 Annual Return/Reports.

Burdens associated with removing an individual participating plan from a MEP (or PEP) are eliminated in DCGs. A plan “spinoff” from a MEP is a lengthy process requiring fiduciary-level approval, notice to the plan sponsor, and establishment of a new single-employer plan to accept the spinoff retirement plan’s assets from the MEP structure. Even after a successful spinoff, it is common for a former plan administrator or fiduciary to expend effort retrieving overdue plan data from the spinoff retirement plan for use in the MEP’s Form 5500 Annual Return/Report.

DCGs are operated by professional 3(16) plan administrators. The 3(16) plan administrators, such as TAG, also function as named 402(a) plan fiduciaries identified in the Plan Documents. At their discretion under ERISA law and per service agreement, the DCG’s 3(16) plan administrators may remove DCG’s noncompliant plans from a consolidated Form 5500 Annual Return/ Report. The burden of a plan spinoff does not exist in a DCG; the 3(16) plan administrator simply files a separate Form 5500 Audit Return/ Report for plan sponsors that are untimely providing testing data or are noncompliant with ERISA or IRC.

II. Groups of plans (DCGs) utilize 3(16) fiduciaries, which prompts an evaluation of IQPA oversight in consolidated audits.

We agree with the Department that the proposed consolidated annual report meets both the SECURE Act’s stipulation for a consolidated filing and the Departments’ oversight of employee benefit plans. The Department estimated that there are 772,000 private pension plans and that the regulatory impact of permitting DCG consolidated audits would decrease the total number of filers by nearly 20,000. Consolidated audits will allow the Department to conduct reviews of the entire DCG instead of reviewing each single-employer plan within a DCG.



It is worth reiterating that DCGs utilize a professional 3(16) plan administrator, which is not the same as a third-party administrator (TPA). A TPA does not always operate as a fiduciary under ERISA section 3(16) or 402(a). A professional 3(16) plan administrator performs day-to-day administration, has compliance responsibilities, and accepts the fiduciary liability associated with these tasks. The modern-day 3(16) plan administrator uses new technology and automated programs to provide DCGs' plans with regular compliance checks and fiduciary oversight. The 3(16) plan administrator signs the Form 5500 Annual Return/ Report attesting to the Return's accuracy and the plan's compliance. The 3(16) plan administrator, as the Department states, "increases the likelihood of ERISA compliance and that more accurate and complete data is reported in the Form 5500 filings."

We expect that the Form 5500 will be updated each plan year to adapt to the Departments' enforcement objectives and oversight concerns. Even if the Department increased the information required for the consolidated Form 5500, TAG believes that the resulting additional work required by the 3(16) plan administrator would be a nominal expense to the plans in the DCG, and the consolidated annual report would still provide savings to participants and plan sponsors.

We support a consolidated Form 5500 Annual Return/Report that does not involve the same oversight for transparency and accountability required for MEPs (or PEPs). Considering today's professional 3(16) plan administrator in a DCG, we respectfully request that the Department consider further if the proposed level of IQPA involvement is necessary and if audit costs could be reduced more. We ask if the Department could accomplish any of its interests currently proposed through audit oversight by (additional) supplementation in the information requirements (e.g., data elements) of the Form 5500.

III. In Conclusion

We thank the Department for the opportunity to comment on the SECURE Act's directive to develop a consolidated Form 5500 Annual Return/Report for DCGs. We appreciate the Department's role in increasing access to retirement savings for all employees, and we urge the Department to continue evaluating how to reduce audit expenses for plan sponsors and participants in DCGs.

We welcome the opportunity to answer questions regarding the content of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Troy Tiste', with a long horizontal flourish extending to the right.

Troy Tiste
President
TAG Resources, LLC

A handwritten signature in black ink, appearing to read 'Jodi L. Green', with a long horizontal flourish extending to the right.

Jodi L. Green, Esq.
Partner
Tatum Hillman & Powell, LLP