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

I am a defined contribution (DC) Plan auditor and see many DC Plans firsthand and what issues are affecting them on a daily basis. Some of the pros and cons that I see in this change of methodology of making Plans that have 100 or more participants with account balances at the end of the year to be required to obtain an IQPA (rather than the 100 eligible employees as of the beginning of the Plan year) are as follows:

PROS:

I agree that there are many Plans that have 100 or more eligible employees, but only a handful of actual employees participating in the Plan. It is quite a burden on the company to acquire an IQPA as well as afford one with the average rate of fees that are charged within the accounting industry.

The company would not have to struggle to meet the July 31, or extended October 15th deadline (for calendar year ended plans). Many companies have limited staff they can devote to pulling all the necessary items to complete the annual IQPA audit.

Many of the smaller companies that offer Plans also become very frustrated with the demands from the auditor as they dive into the internal controls, census data, payroll information, acquiring ERISA bond coverage proof, etc. that is needed to complete the audit.

CONS:

I see daily what many of these Companies internal controls consist of (or lack thereof). The Plans that have the most pervasive issues, from my experience, are those that have approximately 10 to 100 active participants. It seems that as the Company grows and has the ability to add additional staff, more individuals can pay closer attention to the Plan and its activities, which will provide stiffer and more prevalent internal controls over the Plan. The Plan does not have the best oversight from Plan management as they are busy “wearing many hats” within the Company, and one of the last items that get their attention is the Plan and its activities.

The Plans we audit that have approximately 10 to 100 active participants usually have issues in regards to internal controls, incorrect deferral rates used as compared to what the participant chose, when deferrals for participants began as compared to when they chose to enter the Plan, incorrect definition of compensation used (no deferrals on many different eligible wage types, such as bonus wages, manual payrolls, fringe benefits, etc.), incorrect investment allocation as compared to participant selections, missed contributions for entire payroll periods (yes, I have seen many Companies have this issue), late submission of contributions to the custodian, missing ERISA bond or under coverage, and so on.

Having the ability to begin assisting Plans that started a Plan with the current requirements has saved the Company many headaches and potential fines for errors (which would sometimes be greater than the overall cost of the IQPA audit). For instance, many new Plans we have audited do not use the correct

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definition of compensation. The Companies may offer large bonuses to participants at the end of the year for various reasons, but not have deferral withholdings on these wages. If this Plan continued to stay in the small filing category for many years, the first audit performed could find a large sum of corrections that need completed (auditors must gain a strong reliance on beginning balances and will need to go back many years and test participant accounts, which will only add additional costs to the audit). Again, the “small” fee for an audit that first year could have saved the company a large sum of money in comparison to the corrections that will need to be made.

Many of the Plans we audit also have very little guidance from outside professionals. Many are sold Plans by third-party administrators or plan advisors that sell the Plan to the Company, afterward they will have little communication with Plan management. One of the Plans we audited last year had a third-party administrator that informed the Company that participant deferrals needed to be submitted to the custodian on a quarterly basis (as compared to them needing to be submitted as soon as the Company can separate the contributions from the Companies’ assets). Yes, they had a lot of corrections to pay that year for the year under audit, and the prior year that needed to be reviewed in the process to gain reliance on the beginning balances. They were very frustrated with the third-part administrator, and ironically, this was their first audit performed on the Plan. They changed third-party administrators shortly after the audit was completed. This is just another step where auditors can assist as they see all of the controls that are functioning within the Plan and what could be going wrong. We have offered many recommendations to clients over the years with oversight and when to bring in outside council for investment advice, ERISA council, better service from another third-party administrator (I will point out the above example once again), etc.

Overall, I believe the Plans that are subjected to the current guidelines benefit greatly from having another outside party perform a through audit of the Plan, especially when many lack strong controls and oversight. Perhaps the guidance could be changed to where a Plan has 100 or more eligible employees AND has 20 or more participants that have ending balances would be required to have an IQPA. This would assist in finding errors, lack of internal controls, lack of and ERISA bond, etc. before the issues become too large and out of control for the Company.