

PUBLIC SUBMISSION

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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

In regards to changing how the small plan / large plan filings are determined, I understand that the Agencies are addressing this because of the concern related to including part time employees under the eligible participants. This concern arose due to the SECURE Act in that it requires plans to include participants who became eligible under 112 of the SECURE Act and thus the Agencies are proposing a change to participant count to only include participants with account balances. Rather than changing the requirements or count methodology and the related lines and instructions of Form 5500, I propose adding a line subtracting from eligible participants the part time participants who became eligible under 112 of the SECURE Act to arrive at eligible participants.

I have audited or assisted with auditing numerous plans with numerous sizes over my career and the vast majority of significant issues or operational errors were those with smaller plans (above the eligible threshold with fewer than 100 participating). Furthermore, larger plans (more than 100 participating) quite often have the resources to devote to tracking and monitoring the 401k process and therefore have fewer major issues.

It is possible that changing the count methodology would encourage plan sponsors to not educate employees or inform or advertise the 401k plan to keep the participant

count down since it would not be based on eligible participants but on participants with account balances. This seems contrary to the DOL's past objectives.