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Employee Benefits Security Administration
Room N-5655, U.S. Department of Labor
200 Constitution Ave. NW
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Sent electronically via the [Federal eRulemaking portal](#)

Attention: Proposed Revision of Annual Information Return/Reports RIN 1210-AB97

We are pleased to have an opportunity to respond to the Proposed Revision of Annual Information Return/Reports RIN 1210-AB97 and welcome the opportunity to share our thoughts with the Employee Benefits Security Administration (EBSA).

AAFCPAs is a regional CPA firm located in the greater Boston, MA marketplace. We presently provide assurance services to over 150 employee benefit plans. Those plans include defined contribution (profit sharing plans, 403(b) plans and 401(k) plans) and defined benefit plans. We are a member of the AICPA Employee Benefit Plan Audit Quality Center.

AAFCPAs supports EBSA's objectives to ensure the Form 5500 Annual Return/Report and accompanying reports issued by Independent Qualified Public Accountants (IQPA) remain a critical enforcement, compliance, and research tool for the Department of Labor (DOL), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) and that they also continue to be an important disclosure document for plan participants and beneficiaries.

As part of proposed changes to the Form 5500 on SECURE Act implementation rules and Form 5500 revisions, the DOL, IRS and PBGC (the Agencies) are proposing to change the rules for determining when a defined contribution pension plan is required to file as a large plan (i.e., have 100 or more participants) and attach an independent auditor's report and audited financial statements to its Form 5500 annual return/report filing. Under the proposal, defined contribution pension plans would make the determination of plan size based on the number of participants with account balances as of the beginning of the plan year (those eligible to participate without account balances would not be included in the determination). Currently, the plan size measure for the audit requirement is based on the total number of participants at the beginning of the plan year, including those eligible to elect to have contributions even if they have not elected to participate and do not have an account balance. The proposal, if finalized, would eliminate the requirement for independent audits of plans that have fewer than 100 participants with account balances as of the beginning of the plan year, beginning on or after January 1, 2022.

The proposed changes to the regulations are estimated to impact over 19,000 defined contribution plans. The result, if the regulations are finalized as proposed, would enable these plans to file Form 5500 as a "small plan," thereby avoiding attaching the IQPA report and the Schedule of Assets available for Benefits. The corresponding theory is that the ability of these plans to file as a small plan rather than a large plan would enjoy a level of cost savings, since the plan would not be subject to an independent audit issued by an IQPA.

In our experience, a majority of plan sponsors pay for the audited financial statements of the benefit plan issued by an IQPA. The fee is not paid out of plan assets. Further the issuance of independent audit of the plan's assets by an IQPA provides a level of "best practice," the benefit of which represents value, not only to current participating employees, but also employees contemplating contributing to the benefit plan in future years, and that the benefit/value to participants and non-participants alike, far outweighs the cost to the plan sponsor.

Plans which have a high eligible participant count AND a low active participant count should be a target area of concern for the DOL. We find that in many instances, these plans are not being properly administered by plan sponsors to their eligible participants. Our data shows that once plans which were previously unaudited, satisfy the legacy "100 eligible participant" count and start being audited, the participation rates increase significantly. Further, the plan sponsor becomes more active and engaged with respect to their employees and retirement planning in general. The plan sponsors

become more informed and aware of the plan's provisions and compliance requirements, leading to increased education of the employees and incentivizing employees to save for retirement.

Our experience shows that smaller retirement plans require the most advice, support and education. This has been most notable in 403(b) plans since they became subject to ERISA and audit requirements in 2009. Listed below are some of the key areas in which smaller plans have been positively impacted as a result to being subject to IQPA audit requirements:

- Improved plan fiduciary oversight resulting from our plan audit comments, observations and recommendations to the plan administrator.
 - Plan oversight committee charter
 - Oversight committee meeting minutes
 - Investment policy statements
 - Fee policy statements
 - Investment and retirement savings education
- Improved communication and engagement with third party recordkeepers and service providers
 - Leading to periodic review of plan document design and provisions
 - Increased employee education
 - Review of how the plan sponsor can increase employee participation and contributions to the plan
 - Correction of participant data and eligible compensation (census information) which impacts both the administration of plan provisions, as well nondiscrimination test
- Increased awareness of potential plan provision options to encourage employee participation and contributions including:
 - Automatic enrollment, including ensuring participants are enrolled timely
 - Auto escalation
 - Roth contributions
 - Adding employer matching and/or non-elective contribution features
- In the years following our initial plan audits we see significant improvement in the plan sponsor's application of existing plan provisions including the following:
 - Proper application of the plan's eligibility provisions
 - 403(b) plans compliance with universal availability rule
 - Definition of compensation, adherence to the plan definition of "qualified compensation" and the correct calculation of both deferral amounts and employer match amounts
 - Improved plan sponsor internal controls
 - Improved identification and self- correction of missed participant contributions, missed eligibility and enrollment, and missed employer contributions
 - Remittance consistency and timeliness of contributions
 - Timely and proper utilization of forfeitures
 - Ensuring the plan has a fidelity bond

Based on our experience with auditing retirement plans of this size and participation profile over the past 40 years, there is a "net benefit" to both employees and plan sponsors that has resulted from the independent plan audit. **It is evident that making this proposed rule change would be detrimental to plan sponsors and participants (both active and inactive) and would result in a regression of the greatly improved participation rates and retirement savings rates we have seen in recent years.** We encourage EBSA to reconsider this rule change taking into account the value and benefit the IQPA audit provides to the plan sponsor and employee

If you have any questions about our comments, please contact Davide Villani, CPA, CGMA, Partner, at 774.512.4012, dvillani@aafcpa.com.

Sincerely,

AAFCPAs
Certified Public Accountants

By: 

Davide Villani, CPA, CGMA, Partner