

# PUBLIC SUBMISSION

<b>Received:</b> October 21, 2021 <b>Tracking No.</b> kv1-dlr1-5scs <b>Comments Due:</b> November 01, 2021 <b>Submission Type:</b> Web
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**Docket:** EBSA-2021-0006

PROPOSED IMPLEMENTATION OF SECURE ACT REVISIONS TO FORM 5500  
EMPLOYEE BENEFIT PLAN REPORTS

**Comment On:** EBSA-2021-0006-0002

Annual Information Return/Reports

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## Submitter Information

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## General Comment

RIN 1210-AB97

Under 112 of the SECURE Act, the requirements to allow participation will include part-time employees which could result in plans that historically were identified as a small plan now being considered a large plan, thus having an audit requirement.

As an auditor of retirement plans over the past 20 years, it has been my experience that the smaller plans (those over the threshold with less than 100 participating) have the higher percentage of operational errors, late remittances, definition of compensation errors, etc.

It's entirely possible that making the changes suggested in the Secure Act and removing the eligible participants without account balances (resulting in those plans now being considered small plans) would encourage plan sponsors not to provide education regarding the retirement plan or the opportunity to participate in the plan. This seems contradictory to the Department of Labor's objectives, historically.

A suggestion would be to add a line and instructions to the Form 5500 subtracting the part-time participants who became eligible under the Secure Act to arrive at the eligible participant counts.

In my experience auditing these plans, the larger plans appear to have the expertise and personnel dedicated to ensure the plan is acting in compliance with the legal plan document and the smaller plans (with less than 100 actually participating) most often are those plans that consistently have operational errors.