

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

I strongly agrees with the proposed change with respect to determining whether a plan can qualify for the small plan audit waiver under 29 CFR 2520.104-51. Under the present methodology, any employee eligible to participate in the plan is included in the count irrespective of whether that employee has accrued any benefits or received any contributions. The Proposal would modify these rules for defined contribution plans by only including participants and beneficiaries who have an account balance.

The current rules have resulted in plans with a similar number of participating employees being treated quite differently with little policy reasons for doing so. The potential inconsistent treatment will only be heightened when long-term part-time employees become eligible to participate. Many smaller employers may choose to terminate their plan if forced to pay a \$10,000 to \$15,000 plan audit fee as a result of the influx of part-time employees participating in the plan. The proposed change will provide small employers with a meaningful reduction in the costs and burdens of plan sponsorship and thereby encourage new plan formation.

Audit firms have cried foul over the potential for widespread fraud and noncompliance should their business be cut back by this change. There is obvious self interest in the accounting community pushing back on this proposed change. Myself and other TPAs work closely with our plan sponsor clients to ensure their plans comply with the tax code and ERISA irrespective of whether the plan is subject to the

independent audit requirement. To suggest, as one previous commentator on the Proposal did, that employers will purposely violate the terms of their plan with respect to enrolling long-term part-time employees to avoid an independent audit is absurd.

We would request that the Agencies adopt the proposed change to the participant counting methodology so that only participants and beneficiaries with account balances are considered active participants for purposes of qualifying for the small plan audit waiver.