

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

The Mission of the Department of Labor:

To foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

The Mission of the Employee Benefits Security Administration:

The mission of the Employee Benefits Security Administration is to ensure the security of the retirement, health, and other workplace-related benefits of America's workers and their families. We will accomplish this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law.

Dear Sir or Madam:

This letter is in response to the Proposed Revision of Annual Information Return/Reports, specifically regarding the proposed change to participant-count methodology for the determination of whether an audit is required for individual plans.

Not many people from the general population can say they are passionate about employee benefit plans, but I can. I love my work as an EBP auditor because I have always strongly believed that what I do makes a difference in individual people's lives. As auditors, we are defenders of employees' retirement accounts. I have always envisioned the DOL and EBSA as partners in this endeavor, all of us working together with employers to promote fairness and best practices to ensure all workers are able to save for their retirement. We provide accountability, oversight, and advice. We catch errors and correct course. We are often the most accessible knowledgeable professional many plan administrators have. This proposed change, per the DOL's own estimates, will take all of that away for over 8,500 plans, which equates to over 500,000 workers.

I do understand that audits can be costly and provide additional administrative work for companies. Regarding the cost, however, there are some expenses that are just the cost of doing business. While I believe this is one of those situations, I also think auditors provide a tremendous value for the money, some of which is detailed below. Audits are exceedingly important, particularly to a plan of the size that would be affected by this change, in helping plan sponsors fulfill their fiduciary responsibilities. I would hope there would be ways to help small businesses succeed that do not do so by taking shortcuts with their employees' futures. As for the administrative burden, in my experience small, well-run plans don't find it takes much time at all to provide what is needed for the audit. Plans that find the audit burdensome have typically not given it the administrative attention it needs throughout the year, in which case I think it is a good thing that they have to give a little more attention to it during the audit.

I have only been an EBP auditor for about 5 years. In just that short time though, I have discovered and helped plan administrators correct a myriad of errors that adversely affected participants, such as the following types of issues:

- A company routinely failed to remit participant contributions in a timely manner, sometimes for several months at a time. The audit identified this as a major issue and ensured processes were fixed and all lost earnings contributed.
- A plan simply failed to remit participant money that had been withheld for a few payrolls, meaning that, for example, if John Doe had \$1,200 of his earnings withheld from his paycheck for the year, only \$1,100 made it to his retirement account. This was caught and corrected, including lost earnings, because of the audit.
- Participants under a grandfathered provision of a plan should have received an additional percentage of employer contribution. They did not receive it until the audit discovered it.
- Workers at a company should have been receiving a match on overtime differential. They were not until this payroll error was identified as part of the audit.
- Errors in vesting calculations, leading to some participants forfeiting money at the time of distribution in which they were actually vested. Because of the audit, participants received what they were owed.
- A myriad of other eligible compensation issues related to bonuses, COVID-19 pay, overtime, etc.

These are just a handful of scenarios from my limited experience. When considering the number of these mistakes that are likely caught and corrected by the audit process across the country each year, the effect on participants, while unknowable, must be astounding. These errors are often more likely to occur on so-called small plans, the very plans which will be affected by this proposed change. Due to the size of the company, the plan administrators of this size of plan are sometimes without the knowledge, experience, or resources to run the plans in accordance with standards on their own. Even though I believe that most plan administrators are well-intentioned and take their responsibility to participants seriously, ERISA knowledge is a specialized skill set. This lack of audit requirement could also allow for plan administrators who do not see the plan's compliance as a priority to get sloppy as they know no one will be holding them accountable.

If these plans are not being audited, who will catch these errors? Does the DOL intend to drastically increase their own workforce to expand their inspections? How will this enforcement gap be filled? How will these participants be protected?

I also have concerns about the proposal's overall effect on saving for retirement. I worry that plans will stop encouraging, or even actively discourage, enrollment in order to avoid having an audit. This could mean less educational sessions, less information shared, and less general awareness of retirement plans, which in turn will do nothing to create a culture of saving. This proposal could put a company in a position of having to spend \$10,000 on an audit or not based on whether new employee Jane Doe signs up if she is the 100th participant. It is not unreasonable to think there would be some companies who would bury the enrollment information in a stack of other new hire information to prevent this, leaving Jane much less likely to enroll and save for her future. It could also lead to companies ceasing to offer automatic enrollment as a way to keep participant numbers down.

All of this will have a detrimental effect to the average worker's saving opportunities. Collectively, we need more retirement savings, not less! Professionals in our industry must do all we can do make saving easy, accessible, and fair. While this proposal may result in a savings for businesses, it does so at the expense of their employees. The DOL's mission is "to foster, promote, and develop the welfare of wage earners...and retirees...and assure work-related benefits" and EBSA's is "to ensure the security of

retirement...of America's workers...by developing effective regulations". I truly believe that you, the employees of DOL and EBSA making these decisions, stand behind those missions and work to promote them every day. I ask you to deeply consider whether this proposal works for or against those missions.

What is in the best interests of the participants we all seek to serve?

Thank you for your time.

Kathleen Jackson, CPA