

AN OFFICIAL PUBLICATION OF ASPPA

# PLAN CONSULTANT

FALL 2023

## ROTH AND FOUND:

UNDERSTANDING  
LEGAL  
AND  
PRACTICAL  
ISSUES  
FOR  
ROTH  
PROVISIONS  
IN  
SECURE  
2.0



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AGENTS OF CHANGE:  
ASPPA ANNUAL

CASH BALANCE  
SPECIALIST CREDENTIAL™

AI: REALLY  
A DISRUPTER?

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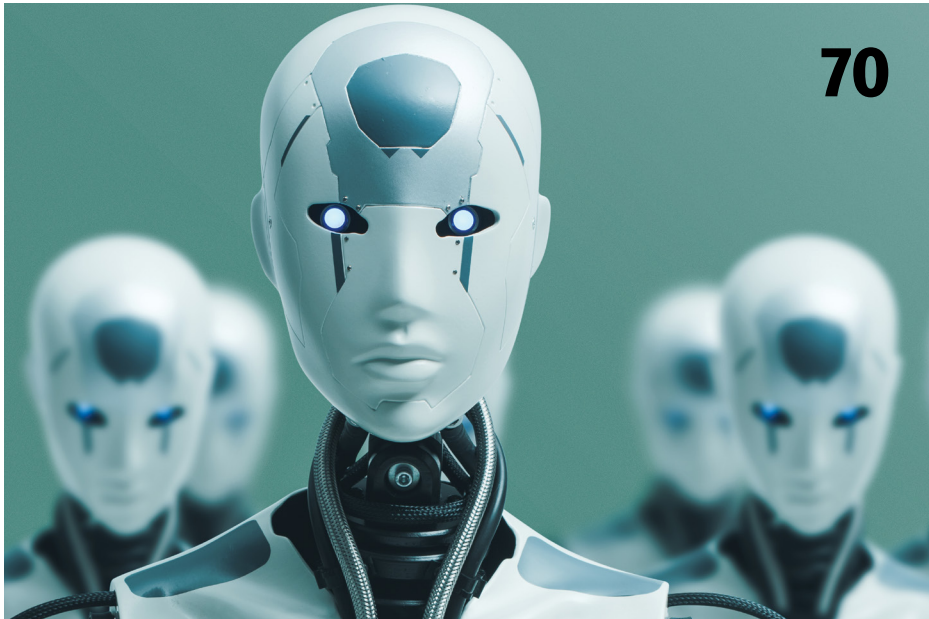
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# WHAT SIZE AM I NOW?

Shifting regulatory definitions help plans stay small and sidestep an audit for 2023. By Travis P Jack

## There have been a significant number of changes and enhancements to the Form 5500 and associated instructions stemming from the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) and SECURE Act 2.0 of 2022.

The U.S. Department of Labor (DOL), IRS and The Pension Benefits Guarantee Corporation (PBGC) (collectively, the Agencies) released a notice of proposed forms revisions encapsulating the intended changes to the Form 5500 derived from SECURE Act provisions. The proposed changes were implemented in three phases.

Phase I and Phase II were implemented and effective for the 2021 and 2022 plan year forms. The changes from the final phase were outlined in the *Federal Registers* released Feb. 23, 2023; they contained a significant number of updates affecting the number and type of plans subject to audit by an independent qualified public accountant (IQPA). These updates are effective for reporting periods beginning on or after Jan. 1, 2023.

One of the primary overarching changes will be the modification of participant-counting methodology for defined contribution (DC) plan types. The definition of who constitutes a plan participant for DC plans will now *exclude individuals eligible* to participate in the plan who do not have balances. In addition, the DOL and IRS have developed a consolidated annual reporting option for certain groups of DC plans, or

defined within SECURE as groups of plans (GoPs). These defined contribution group plans (DCG) will file as a single Form 5500 and any individual plans within that would otherwise be subject to an independent audit will be required to complete one in conjunction with the consolidated filing. And there has been further clarification by the DOL that pooled employer plans (PEPs) will maintain the same participant threshold as single employer plans of 100, not the increased threshold of 1,000 as originally suggested within the SECURE Act.

### REGULATORY FRAMEWORK

#### Historical Framework of Employee Benefit Plan Reporting and EBP

**Audits.** The Employee Retirement Income Security Act of 1974 (ERISA) was enacted to help safeguard private pension funds. As part of that legislation, the administrator of an employee benefit plan subject to ERISA must file an annual report with the Secretary of Labor. ERISA Section 103(a)(3) further elaborates that a plan administrator must engage, on behalf of all plan participants, an independent qualified public accountant (IQPA) to conduct an examination of the plan's financial statements to form an opinion on whether the financial statements are presented in accordance with generally accepted accounting principles (GAAP). The DOL has generally waived the audit requirement for qualifying plans that have *fewer than 100 participants at the beginning of the plan year*. The opinion prepared by

the IQPA is attached to the filing of the annual report (The full audit report inclusive of auditors' opinion, financial statements and notes must be attached to the 5500 filing).

### 2023 CHANGES

#### *Participant counting methodology change impacting audit thresholds for Defined Contribution Plans*

- The 2023 Form 5500 instructions outline a new method of counting participants for purposes of determining if the plan may specifically be exempt from the IQPA audit requirement. Beginning for reporting periods Jan. 1, 2023, plans are directed to count *only the number of participants/beneficiaries with account balances* as of the beginning of the plan year. This is a change from earlier filing periods, for which plans were instructed to include in participant count all of the employee eligible to participate in a defined contribution plan. The change effectively shifts the criteria applied to the 2023 Form 5500 changing beginning participant counts that will directly affect the audit threshold determinations for these plans by removing participants who were eligible but did not have an account balance from affecting plan participant counts.

#### *Audit Requirements for Group of Plans / Defined Contribution Groups*

- The final forms revisions and regulations are generally similar to the September 2021

“ONE OF THE PRIMARY OVERARCHING CHANGES WILL BE THE MODIFICATION OF PARTICIPANT-COUNTING METHODOLOGY FOR DEFINED CONTRIBUTION (DC) PLAN TYPES.”

proposal. They include a filing option for new type of direct filing entity called a DCG reporting arrangement and a new Schedule DCG (Individual Plan Information). DCGs will generally be subject to the Form 5500 requirements for large pension plans. Large plans in a DCG arrangement and small plans not meeting the audit waiver conditions will still be subject to a separate plan-level audit by an IQPA as if they were filing separately.

#### **PEP Audit Thresholds**

- The SECURE Act did not establish a new audit threshold for PEPs. Rather, Section 101 of the SECURE Act amended ERISA Section 104(a)(2)(A) to permit the Secretary of Labor to prescribe by regulation simplified reporting for multiple employer plans (MEP) subject to ERISA Section 210(a) with fewer than 1,000 participants in total, as long as each participating employer has fewer than 100 participants. Note in its proposed revision of annual information return/reports, published in the *Federal Register* on Sept. 15, 2021, the DOL is not currently proposing to amend the current reporting rules to establish a “simplified report” thus maintaining the 100-participant threshold applicable to other plan types.

#### **Impact of the Prior Regulatory Framework on the Updates**

As a general rule, the DOL establishes conditions under 29 CFR 2520.104-

46 for small employee benefit plans (generally those with fewer than 100 participants) to be exempt from the general requirement under Title I of ERISA to be audited annually by an IQPA as part of the plan’s annual report (Form 5500).

- An additional exception referred to as the “80-120 participant rule” that allows certain plans that would otherwise be considered large to continue to file as “small plans” following the streamlined Form 5500-SF, Short Form Annual Return/ Report of Small Employee Benefit Plan.
- Audit deferral for short plan year: If the plan year is shorter than seven months, the plan administrator may elect to defer the audit to the following year. This does not eliminate the need for an audit; rather, the subsequent year’s audit will cover the first two calendar years of the plan.

The existing regulatory framework and exceptions still apply; the Participant count methodology only changes the criteria applied to who counts as a plan participant in a defined contribution plan. It effectively carves out participants who were eligible to participate in the plan without plan balances from impacting the audit threshold.

**Future impacts on the EBP audit market:** Before the update, plan audits were still required in instances in which there were less than 100 individuals account balances, due to a population of eligible participants that elected not to contribute to the plan. The impact of the regulatory

updates will result in a large reduction of the overall number of plans that will need to be audited, carving out over 19,000 plans that will no longer be required to obtain a plan audit and will drop to a 5500-SF filing. The regulatory updates are intended to continue to encourage small to midsized employers with more limited resources to both offer a retirement plan to employees.

The number of certified public accountant (CPA) firms performing EBP audit services has reduced sharply going from 7,330 in 2011 to approximately 4,600 firms currently providing EBP audit service. The reduction is a multifactor impact of less students entering the CPA profession combined with significant numbers of CPAs retiring. There also is a significant reduction in firms with smaller EBP audit practices that have exited the EBP market segment or discontinued offering audit services altogether. This has primarily been due to the DOL and Association of International Certified Professional Accountants (AICPA) working in tandem to increase audit quality through enforcement activities and educational outreach. These factors have created increased EBP audit pricing pressure in conjunction with general cost inflation impacting the industry. The reduction in the overall population of EBP audits may help reduce these inflationary pressures impacting EBP engagement pricing.

#### **CONCLUSION**

There are significant opportunities for service providers to help clients to optimize rule changes. **PC**