



July 7, 2016

Mr. Joe Canary, Director  
Office of Regulations and Interpretations  
Employee Benefit Security Administration  
Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210

Re: Final AFN Regulations – Small Plan Audit Notification  
29 CFR Part 2520, RIN 1210–AB18

The ASPPA College of Pension Actuaries (ACOPA) is writing in response to a change in the instructions for providing a notice to employees that the employer will take advantage of small plan audit relief. This change was included in the final regulations regarding the Annual Funding Notice (AFN) published February 2, 2015 (29 CFR Part 2520, RIN 1210–AB18), and is applicable to notices for plan years beginning in 2015.

ACOPA is part of the American Retirement Association. The American Retirement Association is a national organization of more than 20,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. The American Retirement Association also is home to the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA) and the National Tax-deferred Accounts Association (NTSA). All credentialed actuarial members of ASPPA are members of ACOPA, which has primary responsibility for the content of comment letters that involve actuarial issues.

Department of Labor (DOL) regulations §2520.104-46 provide guidance on the waiver of the independent audit requirement for plans with fewer than 100 participants. If an employer wants to take advantage of this small plan audit relief, one of the requirements that must be met is notice to employees. Originally, the notice was to be added to the Summary Annual Report (SAR). The Pension Protection Act of 2006 (PPA) replaced the SAR with the AFN, effective for plan years beginning after 2007. With the switch to the AFN, the form 5500 instructions said to put the audit waiver notice in the AFN, or provide a separate notice by the SAR deadline.

Final AFN regulations issued earlier this year are effective for plan years beginning in 2015. In addition to providing guidance on the AFN, the final rule changed language in the small plan audit waiver regulation. With this change in the final rule, the audit communication must go in the AFN.

For a plan that meets both the AFN and 5500 small plan definitions, the AFN due date aligns with the 5500 deadline. Thus the requirement to include the audit notice in the AFN is not a

problem. However, if a plan does not meet the small plan AFN definition, the AFN must be delivered 120 days after the end of the plan year. The plan administrator may not know if there will or will not be an audit before that deadline has passed, so it is not possible to know with certainty whether or not to include the notice in the AFN.

For example, CG ABC has Plan A with 50 lives, Plan B with 60 lives, and Plan C with 115 lives with each plan eligible for the audit exception. All three plans need to meet the 120 day AFN deadline. If one or more of the plans may take advantage of the audit exception, it is not clear whether the plan administrator should include the notice in the AFN, then, presumably, issue a correction if a decision to not take advantage of the exception is made. This is inefficient, and potentially confusing to participants.

**ACOPA recommends** that inclusion of the small plan exemption notice in the AFN be optional. As an alternative, the notice requirement could be met by providing a separate notice by the SAR deadline.

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These comments were prepared by the ACOPA Government Affairs Committee. Please contact Judy A. Miller, MSPA, ACOPA Executive Director at (703) 516-9300 if you have any comments or questions on the matters discussed above.

Thank you for your time and consideration.

Sincerely,

/s/  
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/s/

Cc: Mr. Jeffrey Turner, Deputy Director  
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