AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

November 30, 2020

Mr. Timothy Hauser
Deputy Assistant Secretary for National Office Operations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington DC 20210
Submitted via email

RE: Form 5500 Issues related to Section 112 of the SECURE Act—Long-Term, Part-Time Employees

Dear Mr. Hauser,

The American Retirement Association ("ARA") is writing to share with the Department of Labor a copy of our comment letter to the Internal Revenue Service ("IRS") responding to Notice 2020-68, concerning certain provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019, Public Law 116-94. Our comments to the IRS relate to reducing potential administrative burdens of counting years of service beginning before January 1, 2021, for purposes of determining a long-term, part-time ("LTPT") employee's nonforfeitable right to employer contributions under § 112 of the SECURE Act.

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, ARA has more than 30,000 individual members who provide consulting and administrative services to sponsors of retirement plans. ARA's members are diverse but united in their common dedication to the success of America's private retirement system.

In our November 2, 2020, letter to the IRS, the ARA raised a concern that implementation of this new rule will result in an increased participant count on the Form 5500, causing plans that otherwise would have been considered "small plans", to be considered "large" plans, changing their Form 5500 filing status. We are concerned that the increased costs associated with administering a retirement plan that must file Form 5500 as a large plan, specifically the costs associated with an independent audit, may discourage plan sponsors from choosing to adopt or continuing to maintain a retirement plan. We have already heard some anecdotal evidence of plan sponsors delaying a decision to establish a retirement plan because of the potential cost increases of a financial audit requirement.

It is uncertain whether a significant number of participants will take advantage of the deferral opportunity provided by the LTPT provisions. Using the count of participants with an account balance to determine whether an audit is required provides a more equitable result when considering the costs of an audit.

The number of participants with an account balance at the end of the plan year is currently part of the Form 5500 reporting requirements. ARA believes it would not take significant effort to report participants with an account balance as of the beginning of the plan year.

In addition, the costs for an audit may be paid for using plan assets and could ultimately be borne by plan participants and beneficiaries. If the plan sponsor chooses to pay these costs, the plan sponsor would be diverting resources from other business priorities.

As such, ***ARA recommends*** that the Form 5500 and related instructions be revised so that the determination of whether a plan is exempt from the annual audit requirement is based on the number of plan participants (including LTPT employees) with account balances as of the beginning of the plan year, rather than the total number of participants at the beginning of the plan year.

If you have any questions regarding the matters discussed herein, please contact either Allison Wielobob, General Counsel, at awielobob@usaretirement.org, or Martin Pippins, Director of Regulatory Affairs, at mpippins@usaretirement.org. Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/
Martin Pippins, Executive Director, ASEA
Director, Regulatory Affairs
American Retirement Association

/s/
Allison Wielobob
General Counsel
American Retirement Association

Cc: Mr. Joe Canary, Director, ORI, EBSA, DOL