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PLANCONSULTANT

WINTER 2023

THE MANY FLAVORS OF RETIREMENT SAVERS

SEVERAL LONG-TERM TRENDS ARE MAKING THE NEED FOR RETIREMENT PLANNING MORE ACUTE AND THE INVOLVEMENT OF RETIREMENT PROFESSIONALS MUCH MORE IMPORTANT.

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SALES VS. CONSULTING

PARTNERING WITH A 3(16) FIDUCIARY

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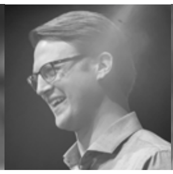
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JUMP THE CHASM!

Two innovative solutions to the retirement coverage gap may be about to change the game for American retirement savers. **By John Ortman**

A study released last year by Natixis found that 36% of Americans feel that they will never be able to retire.

According to a 2017 Government Accountability Office (GAO) study, the median savings of Americans age 55-64 stood at $107,000—a nest egg that would yield just $445 a month over 20 years—and 29% of households had *no retirement plan at all.*

Yikes. What we've long referred to as the coverage gap has become more like a chasm. Of course, the lack of coverage is found almost exclusively among small businesses. As of this year, America's 33.2 million small businesses account for 99.9% of all businesses and 46.4% of all jobs, according to policyadvice.net. Yet despite employing the largest share of American workers, only one in four small and midsized businesses offers a 401(k) plan.

We all know why: cost and administrative concerns.

For years, those two barriers to new plan formation were regarded as intractable. But over the last decade, addressing them to help close the coverage gap has become a focus of lawmakers at the state and federal level. There has been modest success, mostly in states that created state-run retirement programs for private-sector workers whose employers don't offer a plan.

At the federal level, the 2019 SECURE Act included several provisions addressing the new plan formation problem, most notably the small plan start-up tax credit (see the cover story of our Spring 2020 issue for details).

Well, hold on to your hats. After a long, midterm election year slog through the Capitol Hill sausage-maker, Congress may be about to approve SECURE 2.0, which generally picks up the fight against the coverage gap where the SECURE Act left off. The term "game changer" has become trite through overuse, but in the case of SECURE 2.0 that may well turn out to be an apt description of two key provisions of the legislation: the Starter K and the Saver's Match.

Doubt that? Check out the estimated number of Americans who would benefit from these two innovative provisions: 100 million savers could benefit from the Saver's Match, and the Starter K could add 19 million new savers. That's a huge impact.

Here's a quick look at the Starter K plan:

- They would provide employers a safe harbor from the nondiscrimination and top-heavy testing requirements for DC plans.
- Eligible employees would be automatically enrolled at a minimum default level of 3% of pay.
- Annual contributions would be limited to $6,000, indexed to inflation, with an additional $1,000 catch-up contribution for those at least age 50—the same limits as an IRA.
- Employers would not be required to provide matching contributions.

This should be a great option for a small or start-up business that is not yet able to contribute to a retirement plan, but wants to give its valued workers an opportunity to save for their retirement.

Under the Saver's Match program, the federal government would provide a 50% matching retirement contribution up to $2,000 annually. As you might imagine, the program would be very costly to Uncle Sam, making it the least likely of the two provisions to make it across the finish line.

Brian Graff has more on both the Starter K and the Saver's Match in his column on page 10 of this issue, and you'll find a deeper dive into SECURE 2.0's prospects for enactment in the Legislative column on page 14.

COMING ATTRACTIONS

Well, it looks like we'll survive 2022. Here's a peek at some of what's coming in *Plan Consultant* in 2023:

- **Spring issue:** dealing with the industry's staffing crisis, including solutions that are working; a deeper dive into SECURE 2.0 (assuming it's enacted); VCP best practices; dealing with LTPT employees, streamlining your firm with tech, and much more
- **Summer issue:** a roundtable discussion on solo K plans, discussing allocation formulas with plan sponsors, tips on communicating bad news to clients, how to handle 402(g) excess amounts, and more
- **Fall issue:** updates on cash balance plans, behavioral finance, legal arbitration and student loan programs; a look at ASPPA's new cash balance plan certification; troubleshooting a top heavy plan VCP client; and more.

As always, hats off to the *Plan Consultant* Committee for making PC the interesting read it is!

Questions, comments, bright ideas? Email me at jortman@usaretirement.org.

Editor

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Retirement Industry Insights

With the sheer volume of statistics and surveys, it can be difficult and time-consuming to find the plan benchmarking data you're looking for. Our Perspectives publication puts the information your clients need in a convenient, user-friendly package and includes data from the most recent studies on retirement plans and the recordkeeping industry. The data, categorized by topic, allows you to see where your clients' plans stand relative to others. These benchmarks can also help you to identify potential changes you may wish to implement for your clients.

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OUR SUCCESS IS NO ACCIDENT

Hats off to the many talented, dedicated and hard-working ASPPA members and ARA staff for all that they do. **By Justin Bonestroo**

One of my fondest childhood memories has to be getting home from school, firing up the Nintendo, and spending way too much time playing Super Mario Bros over and over again. Those 16-bit graphics and that unforgettable song are burned into my brain.

So this year's ASPPA Annual Conference theme—"Level Up"—really brought a fun sense of nostalgia, including arcade game slide decks and Nintendo-sounding music playing in the background. Not only was it well-liked by our audience, the conference website was recognized with a Gold Award by dotCOMM Awards, honoring excellence in web creativity and digital communication.

In 2021, we returned to National Harbor after a pandemic-induced hiatus, and while attendance was lower than usual, it was invigorating to be reconnected. In 2022, it seemed that people were more than ready to get back to normal—in fact, attendance nearly doubled from 2021.

> "I'M LOOKING FORWARD TO THE COMING YEAR AS ASPPA PRESIDENT AND TO SERVING OUR MEMBERSHIP AND WORKING WITH ARA STAFF TO CONTINUE TO SUPPORT OUR MISSION."

The conference did not disappoint. This year's ASPPA Annual offered exam prep cram sessions, added some entertainment to the quality education we always enjoy, and offered a new take on the various education tracks. Judging from the feedback I've heard, it was a massive success.

But success like this doesn't happen by accident. It is created by many passionate, talented members who spend a massive amount of time brainstorming, planning and creating—not only to offer amazing conference experiences, but also to educate retirement plan professionals and to create a framework of public policy that gives every working American the ability to have a comfortable retirement.

I first heard about ASPPA in my first month working in the retirement industry, when I was given the study materials for the RPF 1 and 2 exams. Since that time, through attending conferences, volunteering on committees and in leadership, and obtaining several ASPPA credentials, I have gained a huge appreciation for not only all that ASPPA does to support our members and improve our industry, but also to protect and improve the private retirement system—helping countless Americans achieve a comfortable retirement.

The more I became involved, the more struck I was that while ASPPA members are competitors in many cases, they collaborate so deeply to educate each other and partner to build relationships with regulators and legislators, improving the framework that we work under and that provides for Americans' ability to retire.

As important as membership involvement is to our success, I have no doubt that we would not be where we are without the incredible talent of the ARA's staff. These last few years spent on ASPPA's Leadership Council have given me an opportunity to work more with more departments, and to watch them operate. Every time I do so, I come away with more respect for their talent, their hard work and the way they provide a framework that allows us to grow and be successful in our mission.

Justin Bonestroo, MSPA, EA, CPC, CPFA, is a Senior Vice President at CBIZ Retirement Plan Services. He serves as ASPPA's 2023 President.

That framework has so many integral teams filled with experts in their specific fields: membership, marketing, education, publications, conferences, advocacy and leadership (and I'm sure I'm missing some). I had no idea how much art and science go into planning conferences, the process that goes into developing educational programs based on research-driven learning concepts, or how much thought goes into creating a positive user experience for our members—all the way down to website design, delivery of online news/commentary and magazine content, to name just a few. If you can imagine a webcast on a complicated topic that you walked away from realizing there is more to the topic than you ever imagined, and impressed with the speaker's knowledge on the subject, that is what it feels like every time I get to work with these teams.

So, hats off to the many talented people at ASPPA and ARA for all that they do, and a sincere thank you for your hard work, your dedication, and the impact you have on supporting our mission. I'm looking forward to the coming year as ASPPA President and to serving our membership and working with ARA staff to continue to support our mission. PC


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CLOSING THE RETIREMENT SAVINGS OPPORTUNITY GAP

Here comes SECURE 2.0, featuring new Saver's Match and Starter K programs. **By Brian H. Graff**

We've long talked about the coverage gap—the gap between full-time working Americans who have access to a plan at work and those who lack that access. And we've also talked about the impact that has on savings—that even modest income workers are 12-15 times more likely to save for retirement if they have that access than if they don't.

This "opportunity gap" is particularly pronounced in the black and Hispanic communities. Fortunately, data also shows that when moderate income workers are enrolled automatically in a workplace retirement plan, there is no racial disparity in retirement savings participation—with roughly 80% of black, Hispanic, and white Americans all participating in these programs.[1]

We've spent most of the past two years working with those on the Hill to pass legislation. It's been tagged "SECURE 2.0" since many of its provisions build on the

Brian H. Graff, Esq., APM, is the Executive Director of ASPPA and the CEO of the American Retirement Association.

"THERE WILL BE MUCH TO DO IN THE WEEKS AND MONTHS AHEAD AS WE WORK TOGETHER TO MAKE THESE OPPORTUNITIES A REALITY FOR AMERICAN WORKERS."

SECURE Act passed in late 2019. Indeed, as we head to press, Congress is poised to pass this legislation. While there will be much to build on and work with, there are two key provisions I want to draw your attention to: the Saver's Match program and the Starter K program.

The Saver's Match program will increase retirement savings adequacy through a targeted tax incentive to moderate-income earners who save for retirement. The Starter K program will close the retirement plan coverage gap, so more American workers gain access to a workplace-based retirement savings plan. The aggregate impact of these two policies is nothing short of profound. Moreover, these proposed changes would have a significant impact on moderate income workers, particularly workers of color. In fact, estimates indicate that black and Hispanic workers would see a 22% increase in access to workplace retirement plans with the help of these provisions.[2]

Over *108 million Americans* will now be eligible for the Saver's Match—a new government matching contribution that is directly deposited into a retirement account—boosting the savings of moderate-income earners.[3] This includes millions of new gig workers as well as government workers like public school teachers, many of whom are not currently eligible for matching contributions. The expanded and enhanced Saver's Match would both encourage saving and help moderate income earners build wealth by providing an immediate, meaningful return on personal retirement contributions. The Saver's Match would replace the existing Saver's Credit and its limitations. It would be deposited directly into a retirement account, and as a refundable tax credit—unlike the current Saver's Credit—would be deposited automatically into a retirement account regardless of federal income tax status. The legislation also expands the income levels eligible for the match and boosts the match level.

As for the Starter K, it's projected to provide over *19 million new workers* with access to a workplace retirement account through a brand new, super-simple, safe harbor 401(k) plan—and the legislation under consideration also includes enhanced retirement plan startup tax credits for employers.[4]

The Starter K plan allows employees to save up to $6,000 per year (with a $1,000 catch-up contribution for older workers) in a tax-preferred retirement account—the same contribution limits as an IRA—but without the complexity, administrative burden or expense of a traditional 401(k) plan. The Starter K doesn't require employer contributions or complicated nondiscrimination or top-heavy testing. It only requires that workers be automatically enrolled in the plan at a minimum of 3% of pay, and provides the ability for workers to opt out of this program if they wish. This new streamlined Starter K plan with automatic enrollment becomes the perfect option for a small or start-up business that is not yet able to contribute to a retirement plan, but wants to give its valued workers an opportunity to save for their retirement.

Of course, the Starter K plan does more than just make it easier for small business owners to provide a meaningful benefit to their workers. Coupled with automatic enrollment, it provides a significant step toward closing not only the nation's retirement opportunity coverage gap, but racial wealth gaps as well.

These are exciting times—and the culmination of months of hard work and engagement by your Government Affairs team with Hill staff in crafting and refining the legislation that will create a tremendous and potentially unprecedented opportunity to create opportunity for American workers.

That said, there will be much to do in the weeks and months ahead as we work together to make these opportunities a reality for American workers. PC

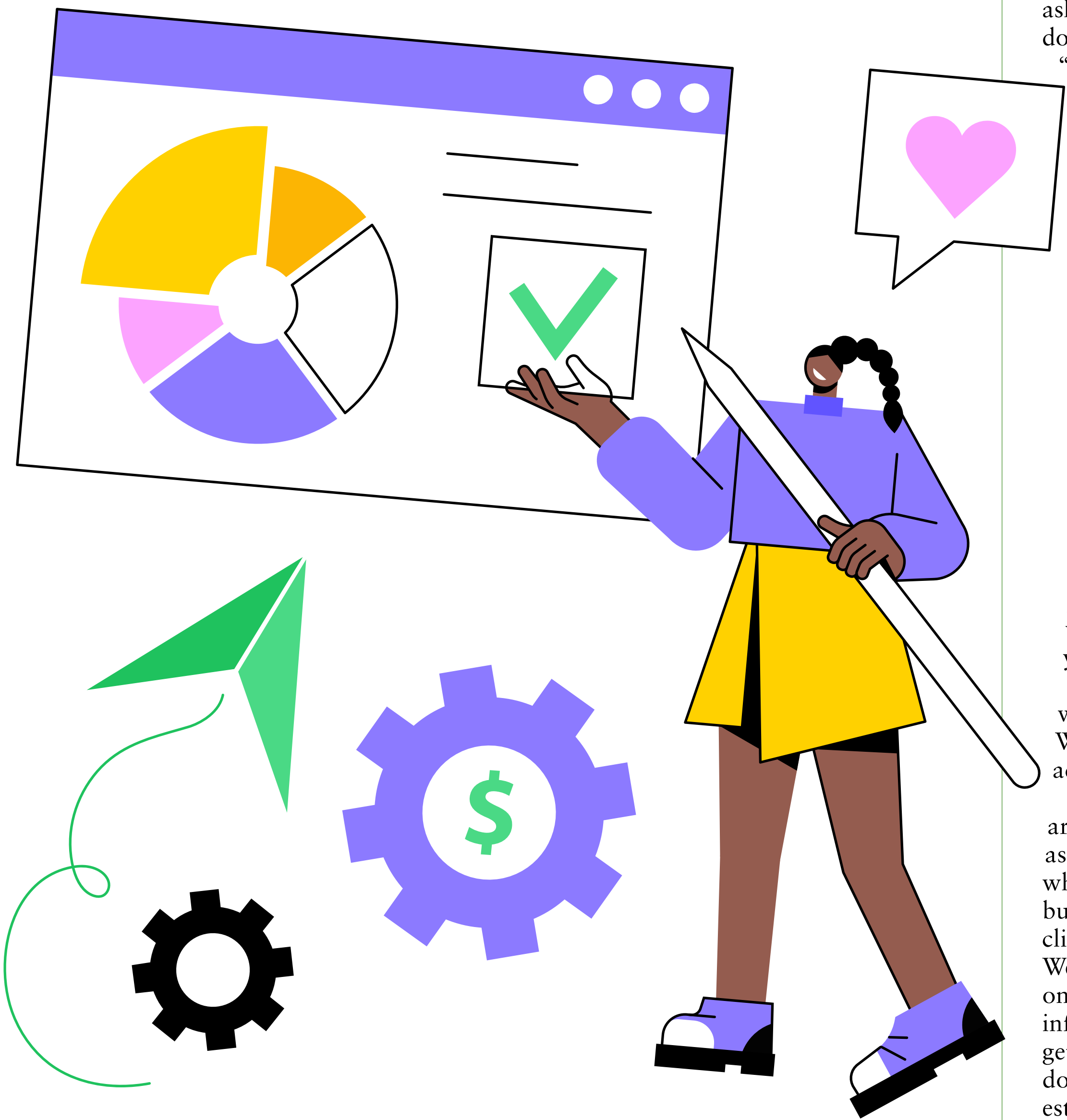
Footnotes

[1] "401(k) Plans in Living Color, A Study of 401(k) Savings Disparities Across Racial and Ethnic Groups," The Ariel/Aon Hewitt Study, 2012.
[2] *Ibid.*
[3] Estimates prepared by Judy Xanthopoulos, PhD, of Quantria Strategies, based on 2019 IRS, SOI W-2 Data.
[4] *Ibid.*

MORE LATE ADOPTION LESSONS

Here are some additional best practices and lessons we've learned about the SECURE Act's late plan adoption provisions.

By Theresa Conti & Shannon Edwards



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You might remember that our first article on late adoption lessons appeared in the Winter 2022 issue. We are continuing to learn lessons about how late adoption of profit sharing and/or cash balance plans affects our clients and our businesses—not to mention our sanity. So here we go with some new lessons we've learned!

SET A DEADLINE AND STICK TO IT

Do you have children? Do they put off their homework until the last minute? How many times have you asked, "Do you have your homework done?" The response I usually get is: "I have everything done that's due tomorrow. I mean, I have some other stuff due in few days, but I'm not going to work on that today." Because why do today what you can put off until tomorrow, right?

I must admit that I have been known to be a "deadliner" and work better under pressure at times. But let's face it, I have also chosen to spend my life in an industry built around multiple recurring and overwhelming deadlines. I think you must be a deadliner to work in our industry—what fun would it be to file no extensions on July 31 or have any 5500s to prepare after July 31? And what would we do with all our free time the rest of the year?

What does this have to do with adopting retirement plans? Well, many of our clients and their advisors are also deadliners.

The focus of our Winter 2022 article was how we pushed the limit as far as we possibly could—because who wants to turn down new business? We tried to accommodate clients and their financial advisors. We took on new business with only two weeks to gather accurate information, prepare calculations, get client approval, create a plan document, have the financial advisor establish a new account and get the plan funded before the September 15 deadline—all while working through our busiest time of year, with the

"THERE'S A PENALTY FOR TURNING IN YOUR HOMEWORK LATE; THERE SHOULD ALSO BE AN ADDITIONAL CHARGE FOR OUR EXPERTISE AND THE STRESS THAT IT CAUSES WHEN WE HAVE CLIENTS AND POTENTIAL CLIENTS WAIT UNTIL THE LAST MINUTE TO DECIDE."

final 5500 filing deadline looming on October 15. The actuaries we work with were also under pressure, from the September 15 funding deadline for their clients and the September 30 AFTAP deadline as well as the 5500 filing deadline.

What we learned from that experience was that we needed to set a true deadline and stick to it. Our deadline needed to be well before the regulatory deadline to give us the time we needed to do our job right and maintain our sanity. Our actuaries started setting and enforcing early deadlines as well. If we did decide to take on a new client after our deadline and rush something through, we needed to charge a rush fee. There's a penalty for turning in your homework late; there should also be an additional charge for our expertise and the stress that it causes when we have clients and potential clients wait until the last minute to decide.

So this year we set a deadline for retroactive plan adoption. When Theresa had advisors call after the deadline, she explained that she needed at least 45 days to complete everything that is required to establish and fund a plan by September 15. When you think about it, 45 days is still a very short period considering we are in busy season and focused on our long-term clients.

Even the large record keepers require at least 45 days to set up a new plan and be ready for it to be funded. No one balks when they set limits and time requirements. Why do TPAs feel like they should kill themselves trying to meet unrealistic deadlines because the law allows it? Just because you can doesn't always mean you should.

GET CREATIVE WITH YOUR FEES

Theresa had a client that she had run illustrations for early in 2022. They waited until early August to decide to move forward with implementation of the plan. When Theresa's team started truly "digging" into that actual data once they had given the go ahead, they discovered that the client didn't have enough income to make the plan work, nor did they mention the other entities they owned (which they had been asked about previously). The team spent a considerable amount of time at a very busy time of year to have it blow up and not be able to charge the client for the work.

In the future, the answer may be to charge for multiple subsequent illustrations after the original if you don't charge for the original proposal itself. You may also want to consider collecting an installation fee up front that is kept if the plan falls apart or the client decides at the last minute not to move forward. One firm that we work with charges a rush fee for late illustrations but then waives the plan installation fees if the client decides to move forward.

CASH BALANCE PLANS ARE SCARY

We have noticed that some advisors may be "pushing" clients into plans that they aren't ready for. In particular, sometimes the responsibilities and consequences of adopting a cash balance plan have not been thoroughly explained to the client. Before we spend time on illustrations that may not be necessary, we have found it a best practice to make it extremely clear to the client that the funding is required—and for multiple years. We also explain that the plan sponsor bears the investment risk.

We have had several potential cash balance clients back out before we even run the illustrations once they understand the responsibilities. At a 2022 ASPPA Annual Conference workshop, Shannon and Kevin Donovan spoke to DC plan administrators about DB plans. Kevin told the audience that having a cash balance plan is scary—it should be considered seriously before setting it up. He's right.

Theresa's firm has added a page to their plan installation paperwork addressing cash balance and defined benefit plans. Clients must initial it, indicating they understand that:

- there are required contributions for approximately five years;
- the illustrations that were run are not final numbers;
- changes to the final census data could yield different final numbers; and
- setting up a plan using the late adoption rules will result in them being billed for two years in the current year (the prior year and the current year).

After seeing these rules, they have had clients back out and tell them that these things had never been explained to them.

In our experience, most of the challenges of late adoption of plans have revolved around the new adoption of cash balance plans. It may be procrastination on our clients' part, or the CPA may suddenly realize there is a tax issue in August—or the fact that committing to sponsoring a cash balance plan is frankly scary. It's almost like deciding whether or not to marry someone, for better or worse until death do you part. PC

HAS SECURE 2.0'S TIME COME?

Javier Cruz Acosta / Shutterstock.com

The fate of the landmark retirement policy legislation lies in the hands of a lame-duck session of Congress. **By ASPPA Net staff**

Last March, the House of Representatives approved the Securing a Strong Retirement Act of 2022—a.k.a. "SECURE Act 2.0"—by a 414-5 margin. And in June, the Senate Health, Education, Labor and Pensions (HELP) Committee unanimously approved the Retirement Improvement and Savings Enhancement to Supplement Healthy Investments for the Nest Egg (RISE & SHINE) Act. Also in June, the Senate Finance Committee unanimously approved the Enhancing American Retirement Now (EARN) Act.

These three bills are all similar in that they seek to build off the 2019 SECURE Act to make it easier for employers to offer retirement plans and for individuals to save for retirement. There are some differences among the bills that the House and Senate have been working to resolve over the past few months in order to have a final bill ready before the 117th Congress adjourns.

With limited time remaining in the session and floor time at a premium, a pending year-end omnibus spending bill that funds the federal government for the remainder of FY 2023 is considered the best shot for the SECURE Act 2.0 to be enacted. It is this legislative vehicle to which many believe a final SECURE Act 2.0 will be attached—as in 2019 with the original SECURE Act.

Senate Finance Committee Chairman Ron Wyden (D-OR) apparently remains bullish on the prospects that SECURE 2.0 will be enacted during the lame-duck session. Speaking to reporters Nov. 15, Wyden, one of the bill's key authors, predicted that the House and Senate will agree on a final retirement package and that it would be approved as part of a year-end spending deal.

"We're going to make it part of the package that moves before the end of the year—we're deep in the discussions," Wyden stated, according to *Politico*. "All of the negotiators are committed to getting this done before we wrap up."

If the legislation is not acted on before Congress adjourns at the end of the year, then the process will start all over when the 118th Congress begins in January. With such broad, bipartisan support, it's hard to imagine the SECURE Act 2.0 not being acted upon before adjournment—particularly given the upcoming retirements of House Ways and Means Committee Ranking Republican Kevin Brady (R-TX) and Senate Finance Committee member Rob Portman (R-OH), who have been champions of retirement policy.

Nonetheless, anything could happen. Members may want to wrap as much up as possible before adjourning or they may want to punt key decisions until next year.

RICHTER, KAPLAN ON SECURE 2.0

At an Oct. 24 session of the 2022 ASPPA Annual conference, the American Retirement Association's Education Counsel Robert Richter Director of Technical Education Bob Kaplan offered a deep dive into the SECURE 2.0 legislation. Following are some of the highlights of their discussion.

Long-Term, Part-Time Employees. SECURE 2.0 would lower the requirement that a long-term, part-time (LTPT) employee must have at least 500 hours of service before he or she can be vested from three consecutive years to two. This provision would become effective in 2023, but vesting would count retroactively back to 2021. Additionally, the EARN Act provides a partial fix for the situation in which if LTPTs are included in the plan, if there is no safe harbor provided to those with less than one year of service, then the top-heavy exemption is lost. The EARN Act refers to the safe harbor match. Richter said he hopes the provision will become part of the final SECURE 2.0 bill.

Hardship Distributions. Under current rules, Kaplan and Richter noted, certification that the deemed hardship conditions are met is permitted only concerning whether the participant has other financial means. But the EARN Act provides that the Treasury can issue regulations excepting reliance if the administrator has knowledge to the contrary.

EPCRS. The legislation would make some changes to the IRS Employee Plans Compliance Resolution System (EPCRS), Richter and Kaplan noted. It provides that there would be no time limit on self-correction for eligible inadvertent failures, such as a mistake in oversight or in applying procedures. It also would address the safe harbor correction for fixing automatic contribution failures. While these provisions are in both the SSRA and the EARN Act, the two bills do differ regarding effective dates. The former calls for these provisions to be effective immediately on the date the measure is enacted; the latter says that guidance on it must be issued within two years of enactment.

Start-Up Credit. Under current rules, the start-up credit for small employers is 50% of start-up costs with a cap of $1,500 to $5,000 depending on the employer's size. Both the SSRA and the EARN Act clarify that the credit applies when joining a MEP, effective after the date of enactment. But they do have some differences. For instance, the EARN Act would increase the 50%-of-costs credit to 75% for those with less than 26 employees, effective after 2023; while the SSRA, effective for tax years after 2023, would increase the 50% credit to 100% if there are fewer than 50 employees. It also would create a new credit of up to $1,000 of employer contributions per employee in the first year, grading down over five years.

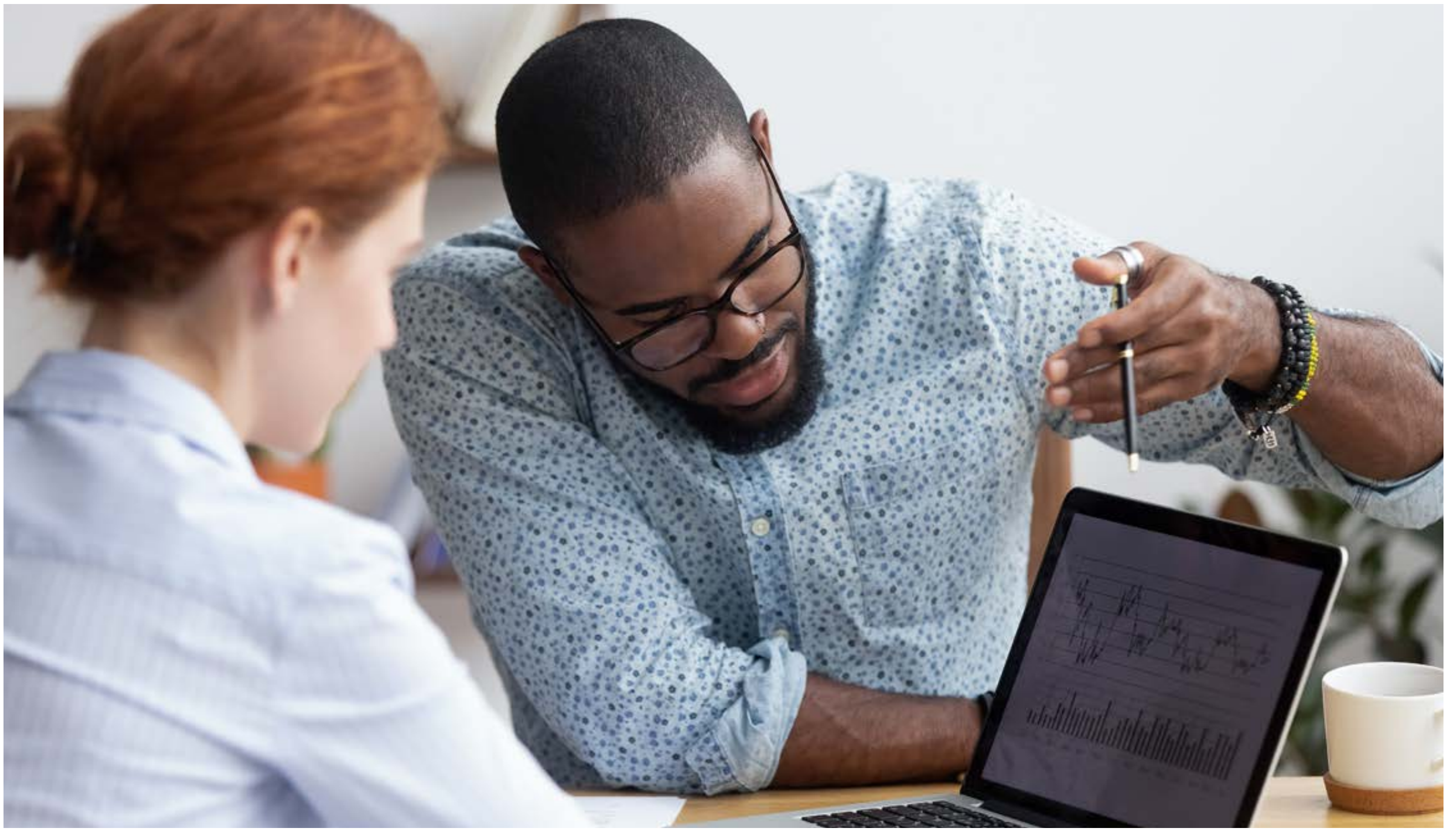
Starter 401(k)s. These accounts would be intended for employers with no retirement plan. The default enrollment contribution rate would be between 3% and 15%, and the contribution limit would be the same as that of IRAs. There would be no ADP test or top-heavy test. It would be effective after 2023.

Automatic Contribution Arrangements. The SSRA states that 401(k)s and 403(b)s would have to provide 3% at enrollment and a 1% increase until it reaches 10%, but not more than 15%; 90 days to unenroll; and an exemption for churches, government, and businesses less than three years old and with 10 or fewer employees. These would apply to new plans after Dec. 31, 2023.

Timing of Conforming Plan Amendments. If SECURE 2.0 is enacted, plans would not need to be updated until 2024; governmental plans would have until 2026. But the plan amendments also would apply to the first SECURE Act and the RMD provisions of the CARES Act. Richter indicated that he expects this provision to change. "We know this is something that they're going to fix," he said. PC

Deeper Dive on the Saver's Match and Starter K

With Congress poised to pass the comprehensive SECURE 2.0 retirement policy bill this year, a new analysis underwritten by the American Retirement Association shows the dramatic impact on retirement savings and coverage that two key provisions in the bill—the Saver's Match and Starter K—could have. A white paper outlining the findings, alongside a state-by-state impact can be found at https://araadvocacy.org/secure-report/.



ASSISTING PLAN ADVISORS WITH ROLLOVER OPPORTUNITIES

Here's how a consistent, high-quality participant education program can help plan sponsors with recruitment, retention and productivity. **By Jeff Atwell**

Qualified plans create an opportunity for financial advisors to significantly increase their assets under management. For example, on a plan with 50 participants, an average account balance of $40,000 and total plan assets of $2 million, the advisor has increased its potential client base by 50. This one plan could substantially increase the revenue of the wealth management firm over a period of time if the majority of the plan assets remain with the firm as plan participants terminate, die or retire.

In addition, the advisor can pursue relationships with the client's C-suite executives to create additional income opportunities, including insurance for buy-sell agreements, key-man insurance, estate planning or a non-qualified deferred compensation plan.

Financial wellness has also come to the top of the list for plan sponsors in recent years. This creates an opportunity for the wealth management advisor to package the information they provide to their individual wealth management clients to the qualified plan participants on a group basis or individual basis. This can make offering financial planning to participants with small account balances profitable for the advisor.

OBSTACLES

There are obstacles to profitability and growth driven by qualified plans, of course. One of the most recent obstacles, effective July 1, 2022, is following the provisions of PTE 2020-02 in order to avoid a prohibited transaction in advising participants to either roll their money out of the qualified plan or into the qualified plan the advisor is serving. However, with proper guidance and documentation from the qualified plan advisor's broker/dealer, attorney or other resources designed to meet the documentation requirements of PTE 2020-21, this obstacle can be overcome, thereby creating a path for the qualified plan advisor to advise

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participants on how to manage their rollover if a distributable event occurs or an opportunity to roll assets into the plan from a previous plan in which the participant had an account balance.

A second obstacle is how to communicate effectively with participants on an ongoing basis so they will know about the services offered by the plan's advisor—and so that when a distributable event occurs, the plan's advisor is the first person they call. This is critical because once a participant requests their funds from the recordkeeper following a distributable event, that participant probably has already set up their IRA rollover account and the plan advisor will miss out on the rollover opportunity.

This obstacle has been an issue for the last 35 years I have been working with advisors in the qualified plan market. Before the pandemic, often plan sponsors would not allow the advisor to meet with their participants on a regular and ongoing basis—usually only with new participants when they became eligible. Unless the advisor had developed some type of communication program away from the workplace, the participants usually did not remember to contact the plan advisor when a distributable event occurred. This obstacle was compounded by the pandemic and continues because a lot of plan sponsors continue to work remotely or are spread out geographically, making it very difficult to conduct regular retirement plan education or financial wellness meetings.

For a qualified plan advisor, having regular ongoing meetings and presenting useful, quality information is the key to the being the first call a participant makes when a distributable event occurs. I can have seen many instances over the years where the advisor who held participant meetings on a regular basis was called when a participant needed assistance. And the same dynamic applies if a participant has a financial windfall, such as an inheritance or a financial settlement on some type of litigation.

"FOR A QUALIFIED PLAN ADVISOR, HAVING REGULAR ONGOING MEETINGS AND PRESENTING USEFUL, QUALITY INFORMATION IS THE KEY TO THE BEING THE FIRST CALL A PARTICIPANT MAKES WHEN A DISTRIBUTABLE EVENT OCCURS."

SOLUTIONS

Fortunately, today's technology can be very beneficial in identifying participants in a qualified plan who:

- have indicated they have outside assets they can use for retirement;
- have terminated and not taken a distribution;
- are close to the plan's normal retirement age; or
- are beneficiaries of participants who have not taken a distribution of a deceased participant's account balance.

Of course, a review of the plan document is imperative to properly advise participants on when their retirement plan assets become distributable, who can roll money into the plan, and the process to initiate and complete a rollover transaction. Not all plan provisions are the same.

The second step is to establish goals and objectives with the plan sponsor. These should encompass not only enhancing plan features such as implementing a shorter eligibility period, auto enrollment, auto escalation, or an in-plan income solution, but also the types of educational programs they would want to implement based on the demographics of the workforce.

Next, an education policy should be established around those goals and objectives. This policy should contain an event calendar that can be updated at the beginning each year. It should include quantitative goals, such as increases in participation, average deferrals, average account balances, monthly retirement income projections, and investment diversification.

The education policy will serve as the foundation for the participant education program, hold both the plan advisor and plan sponsor accountable, and serve as documentation to justify the compensation being paid to the plan advisor for 408(b)(2) purposes.

In addition, the advisor needs to determine if the recordkeeper provides the technology which will allow the advisor to create electronic participant communications. Advisors have used various media to communicate effectively with participants, ranging from compliance-approved podcasts to recorded presentations on various financial wellness and retirement topics.

If the recordkeeper does not have the technology to assist the advisor with distributing educational material, the advisor will have to subscribe to a separate system or move the plan to a recordkeeper which does provide the technology.

CONCLUSION

A consistent, high-quality participant education program will assist the plan sponsor in creating a robust workplace financial planning program that the plan sponsor can use to recruit new employees, retain existing employees, and boost productivity. The result could increase the bottom-line profits for the company.

The plan's advisor, over a period of time, will have more rollover opportunities, more opportunities to visit with C-suite executives for ancillary sales, and higher plan assets. This will result in higher sustained income for the advisor—not only through the accumulation stage but also during the decumulation stage when participants begin withdrawing assets for retirement. PC

DISPOSING OF SURPLUS ASSETS UPON DB PLAN TERMINATION

How much do you know about the three most common ways to eliminate a surplus upon plan termination? Here's a refresher. **By David Kupstas**

After years of funding its cash balance or traditional defined benefit plan, an employer decides it's time to pull the plug and terminate the plan. In a perfect world, the plan would have exactly the amount it needs to pay all the benefits owed under the terms of the plan. We know the world is not perfect, however. There are times when a plan will have excess assets—what we'll call a "surplus." What then?

There are a number of options. If the surplus is small, the plan may be able to dispose of the surplus by paying certain allowable administrative expenses that the employer would normally pay. If the surplus is large, it may be possible for the plan sponsor to be sold to another company and have the overfunded plan merge with an underfunded plan sponsored by the buyer. Those transactions require specific expertise and are outside the scope of this article.

The three most common ways to eliminate a surplus upon plan termination are:

- Revert the surplus to the plan sponsor
- Increase benefits to participants
- Utilize a qualified replacement plan (QRP)

A plan sponsor may employ any one or a combination of these strategies. Each is discussed below.

REVERT SURPLUS TO THE PLAN SPONSOR

Internal Revenue Code Section 4980 permits an employer to withdraw money from an overfunded terminating DB plan. Such a "reversion" represents taxable income to the employer, in a sense undoing a portion of the past deductions taken when the contributions were made. Unfortunately, in addition to the income taxes, reversions carry an additional 50% excise tax. The excise tax may be reduced to 20% if certain

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"IF THERE ARE SURPLUS ASSETS WHEN A DB PLAN TERMINATES, AN EMPLOYER WILL WANT TO LOOK AT INCREASING BENEFITS OR UTILIZING A QRP, LEST IT PAY HEAVY EXCISE TAXES FOR RECEIVING A REVERSION OF THAT SURPLUS."

steps are taken. The reversion excise tax is on top of the income taxes. If $1 million is reverted, the excise tax is 20% or 50% of the full $1 million, not 20% or 50% of the net amount after income taxes. Reversion excise taxes are paid via Form 5330.

Reversion is not an option if the plan language does not allow it. Moreover, under ERISA Section 4044(d), the reversion language must be in place for at least five years to be effective, or since plan inception if the plan is less than five years old. Therefore, it is wise to include reversion language in every plan as soon as possible. Such language can always be removed, but it cannot be effective unless it has been in place for five years.

PRO-RATA BENEFIT INCREASES

The first way to reduce the reversion excise tax from 50% to 20% is by providing a pro-rata benefit increase inside the terminating DB plan. The present value of the increase must be at least 20% of the maximum reversion. The pro-rata allocation is based on the present value of the benefits in whatever manner they are being paid, be it through lump sums or an annuity purchase. Inactive participants may receive no more than 8% of the maximum reversion amount under this rule. The increase must not cause a violation of Section 415. Rules such as 401(a)(4), 401(a)(26), 410(b), and 416 must all be followed.

As an example, assume a plan has a surplus of $1 million. If the full amount were reverted, the excise tax would be 50%, or $500,000. If the plan is amended to provide pro-rata benefit increases with an aggregate present value of at least $200,000, the excise tax drops to 20%. If the increases are exactly $200,000, the excise tax is 20% of the $800,000 reverted, or $160,000.

QUALIFIED REPLACEMENT PLANS

The second way to reduce the reversion excise tax to 20% is by utilizing a QRP. A QRP may be any type of new or existing qualified plan, including profit sharing, 401(k), money purchase, or even DB. A QRP may consist of more than one plan. And a QRP may be maintained by a successor employer.

To reduce the reversion excise tax to 20% using a QRP, the amount of surplus transferred must be at least 25% of the maximum reversion less the present value of benefit increases arising from amendments made within 60 days before the termination date and taking effect on the termination date. At least 95% of the active employees who remain after plan termination must be active employees in the QRP. (The threshold is 95% of the active employees remaining at any given time, not 95% of those who were there at the time of plan termination.)

Assume again that a plan has a surplus of $1 million. If at least $250,000 is transferred to a QRP, the excise tax drops from 50% to 20%. The $250,000 going to the QRP is not taxable as corporate income, is not deductible as a contribution, and is not taxed as a reversion at the 20% rate. If instead the plan is amended to provide benefit increases totaling $100,000, then $150,000 needs to be transferred to the QRP to reduce the reversion tax to 20%. There is no requirement that the benefit increase be pro-rata, but it does need to satisfy the usual gallery of 401(a)(4), 401(a)(26), 410(b), 415, and 416.

Once in the QRP, any surplus transferred in must be allocated to either: (1) participant accounts immediately in the year of transfer; or (2) to a suspense account and allocated to participants no less rapidly than ratably over seven plan years beginning with the year of transfer. Any investment gains on the suspense account must be allocated ratably over what's left of the seven-year period. The allocation must pass 401(a)(4) and 415. Administrative expenses may be paid from the suspense account. The suspense account may not be used toward matching contributions unless the matches were accrued prior to the surplus transfer.

Allocating more rapidly than over seven years is permissible. Allocating more slowly than one-seventh per year would seem to be a violation of the rule, even if the surplus is ultimately all allocated by the end of year seven. If the QRP is terminating after year seven and any surplus remains unallocated, it should be allocated at that time unless the Section 415 limits apply. In that case, the surplus would revert to the employer. The excise tax on this final reversion would be 20% if less than 75% of the initial surplus reverted in all (initial reversion plus remainder after year seven). The tax would be 50% if more than 75% of the initial surplus reverted in all. Presumably, if the 20% rate applied to the initial reversion upon termination of the DB, it would not be retroactively increased if after seven years more than 75% of the surplus had reverted in all, but this is not clear.

If there are surplus assets when a DB plan terminates, an employer will want to look at increasing benefits or utilizing a QRP, lest it pay heavy excise taxes for receiving a reversion of that surplus. PC

DIFFERENCES BETWEEN SOLO K AND REGULAR 401(K) PLANS

A TPA that understands both and that works well with an advisor can really keep Solo plans running smoothly and in compliance—and generate profitable revenue. **By the 401KInABox Team**

Service providers, investment advisors and CPAs responsible for 401(k) plan compliance must be cognizant of common pitfalls when procedures distinguish between solo and traditional plans. The best policy is ensuring that service agreements and client communications are prepared to be *preventive* rather than *reactive*.

WHO IS ELIGIBLE FOR A SOLO K?

A Solo K plan is a plan sponsored by a for-profit business not subject to ERISA requirements due to the business not employing a "statutory employee." By "statutory," we are referring to an someone who has attained at least age 21 and worked a year of service. This sounds simple, but quite often, the "i's and t's" are not always dotted and crossed.

The first question one must answer before doing anything is ask whether the owner has statutory employees. Remember, all related businesses are consider a single employer. Onboarding procedures for a new Solo client should include five questions that trigger red flags:

- Do the owners own at least 80% of another company?
- Do the owners have some ownership in another business and there is a relationship servicing similar clients or servicing each other?
- Is an owner a highly compensated employee in another company?
- Is there a potential management organization relationship?
- Does an owner's spouse own another business? If so, having minor children or residing in a community property state may be a problem.

Once the owners confirm that they have no statutory employees and no related businesses with statutory employees, they and their spouses may adopt a Solo plan. One of the major benefits of a Solo plan is that both the owner (or owners if there are partners) and their spouse(s) can be included in the plan and it still be considered a Solo plan.

BENEFITS OF SOLO VS. TRADITIONAL PLANS

Solo owners and spouses covered by a Solo plan are permitted to enjoy the tax benefits of a 401(k) plan:

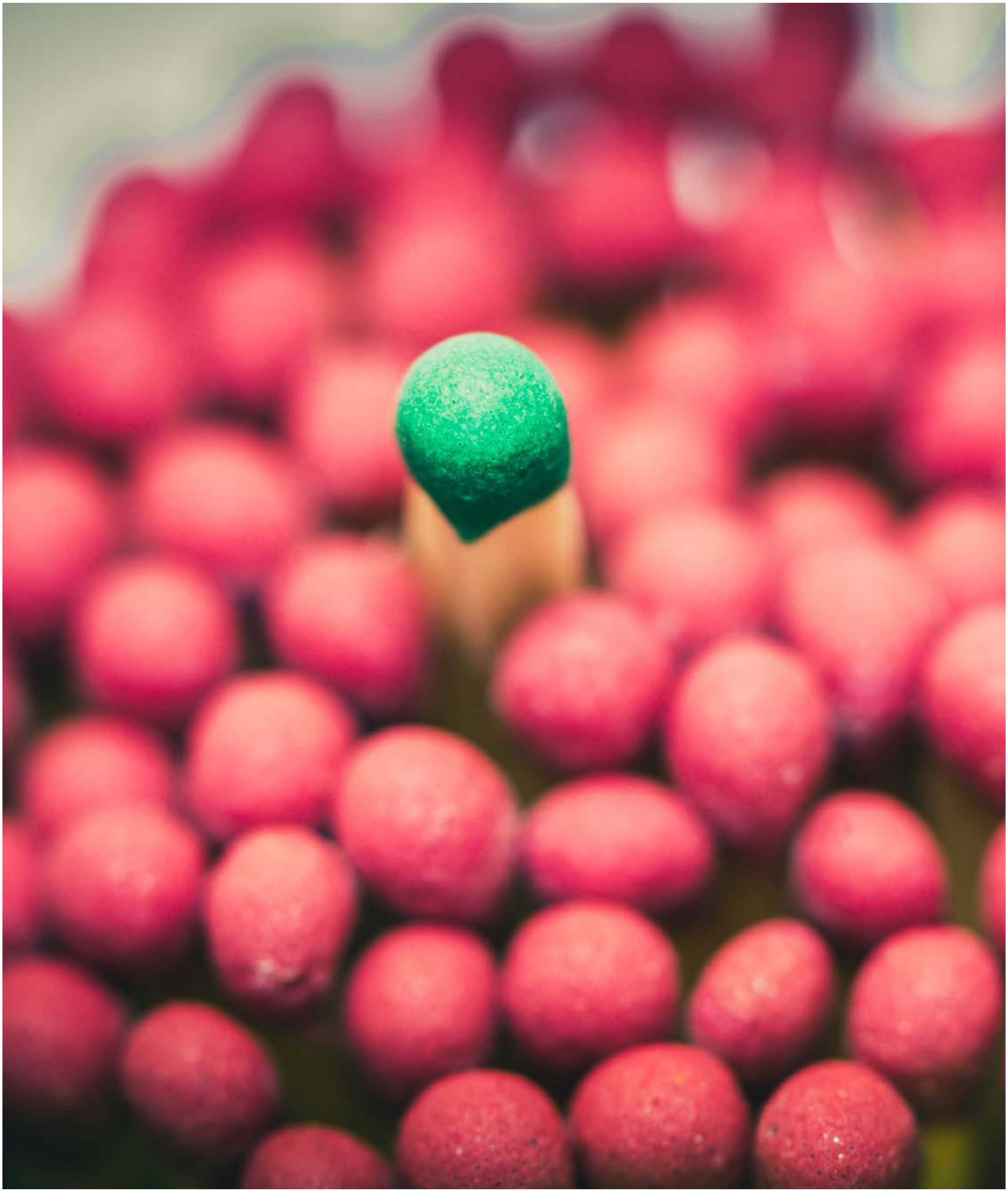
- Owners and spouses may freely maximize 401(k) elective deferrals without regard to non-discrimination testing.
- Total 401(k) elective deferrals and employer contributions may be credited to an owner or spouse without regard to non-discrimination testing.
- Solo plans qualify for simpler annual IRS Form 5500 filings (i.e., IRS Form 5500-EZ). Plans with assets under $250,000 at the end of a plan year do not have to file. Watch out for Solo sponsors rolling in assets from another eligible plan—rollover assets are counted for purposes of the filing waiver.

It's important to note that certain plans may not be subject to non-discrimination testing but still not quite qualify as a Solo plan for purposes of the annual IRS Form 5500 requirements. Businesses employing children and other individuals attributed ownership may be exempt from non-discrimination testing but still must file Form 5500-SF or Form 5500.

IF THE SOLO PLAN SPONSOR HIRES AN EMPLOYEE

Plan document requirements do not distinguish between Solo and traditional plans. All plans must define eligibility, contribution types, distributions, vesting and other provisions. Sometimes Solo plans are drafted with eligibility provisions requiring no age or service requirement. If that's the case and the employer hires an employee, the employee is immediately eligible upon hire and that event immediately changes the 401(k) plan from a Solo to a regular plan.

To avoid such consequences, it is always recommended to draft a Solo plan document with the maximum statutory eligibility requirements (i.e., age 21, one year of service and maximum entry provisions such as semi-annual). Designing all of your Solo plans this way gives the Solo sponsors time to prepare for the impact on the plan. If the employee is hired as part-time (under 1,000 hours per year), the plan may already treat the employee as ineligible indefinitely—disregarding the new SECURE Act rules governing long-term, part-time employees working at least 500 hours per year (effective in 2024). Note that irrevocable waivers contained with 401(k) plan documents do not save the Solo sponsor from being required to cover the new employee.



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> "IF A SOLO PLAN BECOMES TRADITIONAL AND INADVERTENTLY COVERS AN EMPLOYEE WITHOUT A SAFE HARBOR, THE PLAN IS LIKELY TO BE A TOP-HEAVY PLAN, WHICH WOULD PROBABLY REQUIRE A 3% CONTRIBUTION TO THE ELIGIBLE EMPLOYEE IF THE OWNER HAS MADE CONTRIBUTIONS INTO THE PLAN DURING THE YEAR."

If the plan provisions require a year of eligibility service, the plan sponsor should consider whether the plan ought to be amended prior to the beginning of the following year. One of the benefits of the SECURE Act is that it gives sponsors flexibility to adopt safe harbor well after the beginning of a plan year. Sponsors have until December 1 of the plan year to adopt a 3% non-elective safe harbor—4% if adopted between December 1 of the plan year through the business' tax return due date including extension. On the other hand, if the employer prefers a safe harbor match, the maximum should be adopted by December 1 prior to the plan year for which it is to be effective.

If a Solo plan becomes traditional and inadvertently covers an employee without a safe harbor, the plan is likely to be a top-heavy plan, which would probably require a 3% contribution to the eligible employee if the owner has made contributions into the plan during the year.

THE 401(K) TRADITIONAL RULES APPLY

Most Solo sponsors who employ a statutory employee wish to continue to operate their plan the same way and only wish to work with the minimum requirements for the employee. That is, they tend to say, "I still want to maximize my 401(k) and employer contributions. What do I have to do?"

Clients with this goal are likely implying that they want to make profit sharing contributions, and since profit sharing contributions force application of the top-heavy rules, the likely plan design is to adopt the safe harbor 3% non-elective provision so that it can satisfy both top-heavy and nondiscrimination testing. However, if the employee is older than the owner, there are other design options that may be worthwhile for the owner to still maximize their benefits in the plan (plus provide a fantastic benefit to the employee). As a TPA, a safe harbor match plus an integrated profit sharing may be the better option. (Also, a triple-stack match plan may make sense in these circumstances.)

TPA PROACTIVE PROCEDURES

TPAs should draft their onboarding procedures and documents to not only steer the plan sponsor into the appropriate Solo or traditional arrangement, but that also are proactive. Educate your clients on basic Solo versus traditional concepts to encourage proactive dialogue. Ensure that your annual compliance procedures continue to look out for red flags and potential new hires that have already or may become statutory employees. That is, don't just assume that "once a Solo, always a Solo." Make sure service agreements address the possibility of a Solo plan inadvertently becoming a traditional plan.

The annual communication process for the TPA is key. Often, TPAs employ an account manager or plan administrator approach to service, where a single administrator may have 80 to 150 dedicated clients. However, for TPAs that want to work with Solo 401(k) plans, this model probably will not work since the revenue for a Solo 401(k) typically does not support a dedicated account manager. Instead, a TPA can use an automated or pooled communication process and flag the Solo plans that need changes. Often, these changes can require premium billable consulting. A TPA can structure its Solo book of plans to create "upsell" opportunities that generate profitable revenue.

For example, assume that a TPA has 1,000 Solo plans and applies an automated approach to reaching out and communicating with them. In a given year, 50 may need advanced consulting work, where the TPA can bill $150-$250 per hour. The TPA can dedicate a Solo technical specialist to provide consulting on these plans and generate additional profitable revenue. In our example, if these 50 plans require three hours of consulting work each that generates billables of $200 per hour, that is an additional $30,000 of revenue for the TPA from existing clients.

ADVANTAGES OF TPAS SUPPORTING SOLO PLANS

While Solo plans are not a typical focus for TPAs, they can be a valuable offering for the advisor partners that are so important to TPAs. A strong partnership with a TPA can help an advisor offer an important tax-advantaged plan to the advisor's wealth clients. The assets are typically held in brokerage accounts that are often connected with the advisor's wealth platforms. Advisors are really comfortable with managing Solo funds, but a TPA that understands them and that works well with an advisor can really keep Solo plans running smoothly and in compliance.

Solo plans are a great way to introduce advisors to 401(k) plans. Then, when they have opportunities with larger companies, their TPA is going to be the first one they call. PC

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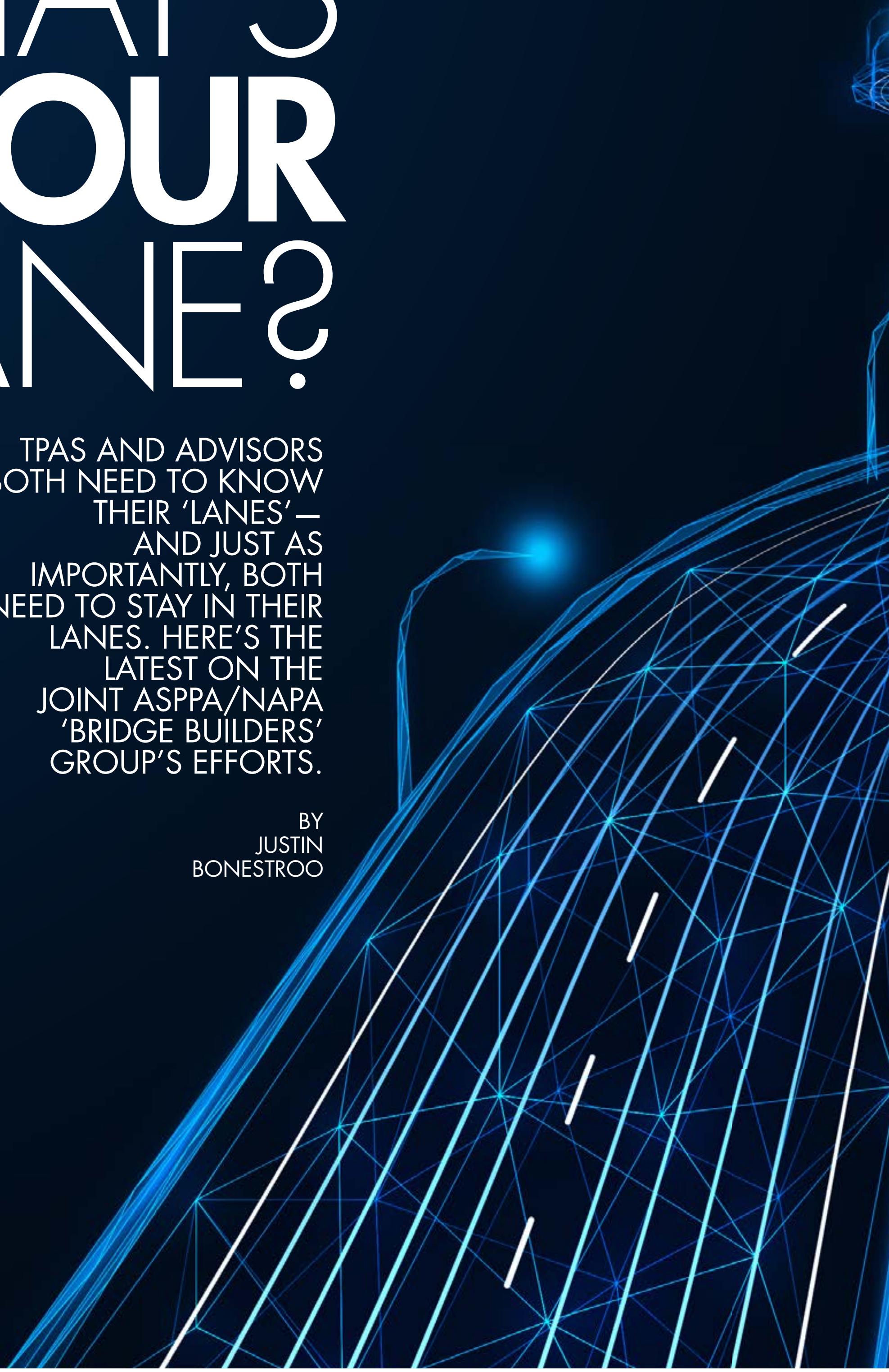
WHAT'S **YOUR** LANE?

TPAS AND ADVISORS BOTH NEED TO KNOW THEIR 'LANES'—AND JUST AS IMPORTANTLY, BOTH NEED TO STAY IN THEIR LANES. HERE'S THE LATEST ON THE JOINT ASPPA/NAPA 'BRIDGE BUILDERS' GROUP'S EFFORTS.

BY JUSTIN BONESTROO

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I've heard it said that a good coach can change a game, but a great coach can change a life. I have had a lot of coaches in my life, first in sports, and now in business, and some of the advice and analogies I've heard from them along the way still stick with me today.

One analogy that has always stayed with me came from a football coach I had in college. After practice one day, while addressing our team, he talked to us about synergy, explaining that by working together, we could accomplish more than we could by working as individuals.

To make his point, he gave an example of plowing a field. He explained that a single mule could pull a single-blade plow, but two mules working together could pull a three-blade plow. By combining their efforts, the two could perform more than double what one could do on their own.

THE 'BRIDGE BUILDERS'

What does a story about a football coach and mules plowing a field have to do with retirement plans? Well, there is no argument that the services that advisors and TPAs bring to a plan sponsor and their participants complement each other, or at least that they should, but while there are many examples of TPAs and advisors working together in harmony, I think it's fair to say that generally, things could be improved.

So, since early 2021, a few members of ASPPA and NAPA brought together by Nevin Adams have worked as an informal committee focused on the relationships between retirement plan advisors and TPAs, with the goal of improving the synergy between them.

Since we began, ASPPA and NAPA have run several articles in both their newsletters and magazines on the topic of improving advisor and TPA

MANY OF THE CRITICISMS THE GROUP HAS HEARD OVER THE LAST YEAR AND A HALF HAVE CENTERED AROUND SERVICES DUPLICATED BY THE RECORDKEEPER, CONFUSION BY PLAN SPONSORS REGARDING POINTS OF CONTACT, LACK OF SERVICE, AND LACK OF COMMUNICATION.

relationships. Also, in April 2022, a panel of TPAs led a workshop session on the topic at the NAPA 401(k) Summit in Tampa.

In the "Bridge Builders" cover story about the group's efforts published in the Summer 2022 edition of *Plan Consultant*, Adams noted the need to "help the TPA and the advisor to better communicate and recognize where the lanes are" and to "quit fighting over who owns the relationship and come together in a way that will allow that relationship to really function for the betterment of everybody—not the least of which is the plan participants and plan sponsors we're all trying to work for."

The article noted that after receiving feedback from both advisors and TPAs, it became clear that some of the biggest barriers to a synergistic partnership come from miscommunication, inaccurate expectations and a misunderstanding of each other's roles—and that these barriers must be acknowledged and addressed purposefully if we want to create meaningful improvement.

Having acknowledged that there are barriers, the team focused on ways to begin setting accurate expectations and clearly identifying roles and responsibilities.

'ROLE' PLAYING

That Summer 2022 cover story in *Plan Consultant* included a TPA Assessment Checklist, an updated version of which was recently included in a NAPA Net post titled, "Have You Hugged Your TPA Lately?" The checklist is intended to be a first step in helping advisors and TPAs set accurate expectations as they establish new ones or evaluate existing ones. But it is only a start, and there is much work to be done after the partnership selection has been made.

If you think about it, you wouldn't interview a new employee, asking them all the right questions to determine if they are a fit for your team, hire the most impressive candidate, and then just put them to work without explaining their new role or checking in on them. The same concept applies to a successful TPA/advisor relationship. To use Adams's term, both need to know their "lanes"—and just as importantly, both need to stay in their lanes. To be successful, everyone needs to know their role and continue communicating throughout the relationship.

Whether partnering together on a single plan or an entire book of business, there are myriad services to be provided on an ongoing basis. At some point, every plan requires setup, participant enrollment and education, recordkeeping, compliance, distributions and possibly loans. Regardless of whether the plan is bundled or unbundled, someone will need to take responsibility for the tasks that fall in these service areas. In too many situations, ownership of these tasks is merely assumed, and not specifically assigned or agreed upon.

RETIREMENT PLANS HAVE THE BEST RESULT WHEN SERVICED BY A TEAM OF DEDICATED SPECIALISTS, AND THOSE TEAMS WORK BEST WHEN THEY WORK TOGETHER.

TAKING A DEEPER DIVE

Many of the criticisms the group has heard over the last year and a half have centered around services duplicated by the recordkeeper, confusion by plan sponsors regarding points of contact, lack of service, and lack of communication. With so many tasks to complete, there are many areas in which a misstep can occur, and the more plans a particular TPA and advisor partner together on, the more opportunities there are for these missteps.

Here are a few examples of the criticisms that the group uncovered.

Duplication of Services

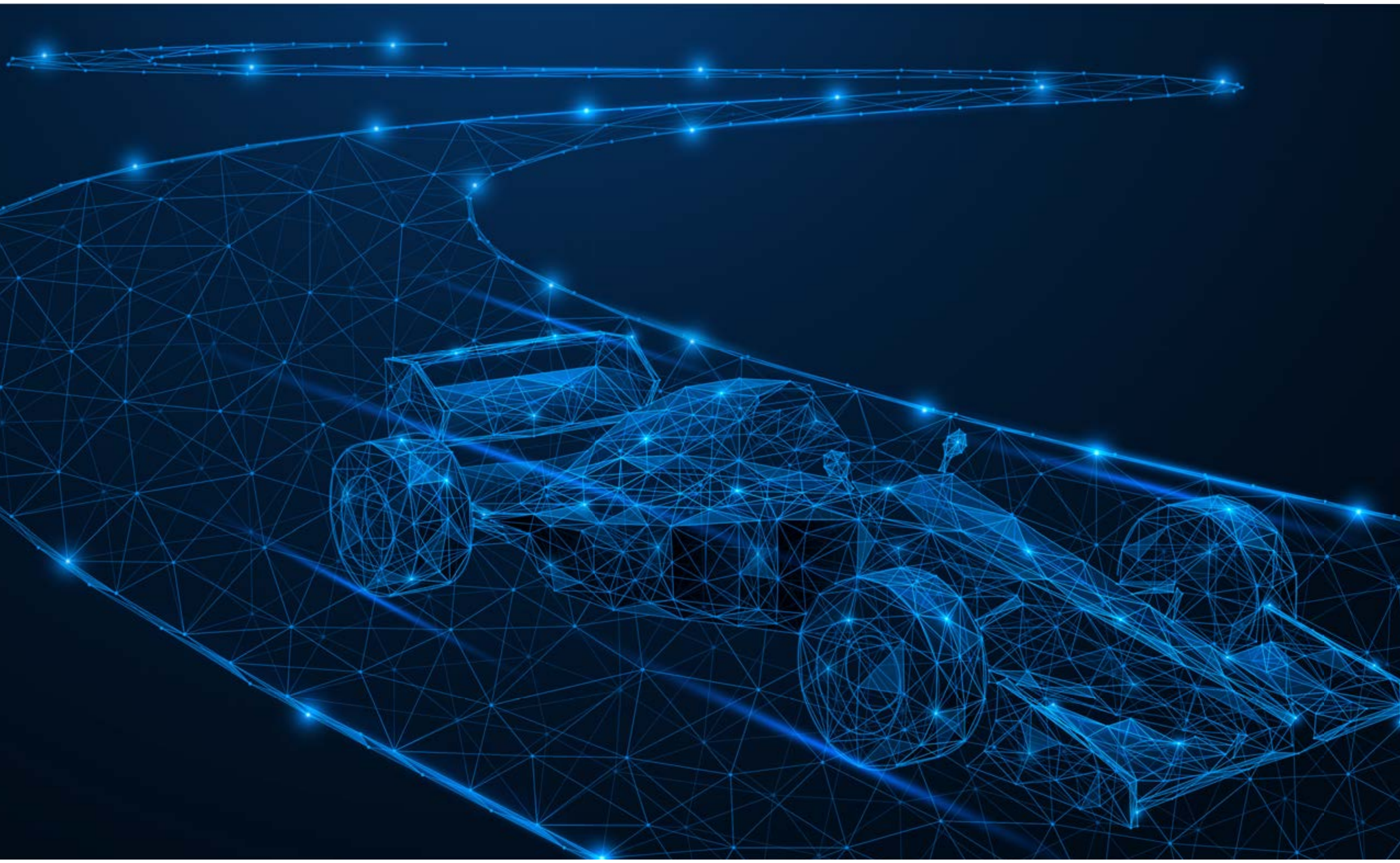
First, duplication of services provided by a recordkeeper. In many cases, there is a very good reason to involve the TPA in the loan and distribution process. But in other cases, there may be reason to allow the recordkeeper to handle this task without the TPA. Generally, when a TPA processes distributions, they charge a fee to do so. And often, recordkeepers also charge a processing fee. If the assignment of responsibility is not discussed up front, with all options identified, sponsors and advisors can be frustrated over duplicated fees that they did not expect.

On the other hand, if the decision is made to allow the recordkeeper to process loans and distributions, there are requirements for a recordkeeper to be able to do so in an unbundled plan. They need to be able to apply vesting (assuming the plan has a vesting schedule) or determine if the participant has accrued additional contributions beyond what is currently included in their account balance, both of which rely on continuous updating of employee service credit. There are ways to account for this, but without thoughtfully addressing the distribution process up front, things can go haywire, leaving everyone frustrated.

Eligibility Determination

Another example that really stood out this past year was determination of eligibility. When asked if they calculate eligibility, most TPAs would say "yes." The problem is that in most cases, TPAs are calculating eligibility for employer contributions, or verifying eligibility for deferrals after the end of the year, once census data is received.

Many sponsors or advisors may hear that the TPA determines eligibility, and assume this means they are doing so on a per payroll basis and assisting the plan administrator in determining when an employee becomes eligible



to begin deferring to the plan. As TPAs, we know that this wouldn't be possible unless we had access to census information with each payroll, which isn't usually the case. And even if that access did exist, determining eligibility for deferrals still may not be part of the service agreement since it requires ongoing attention that may not be included in the service model (or factored into pricing).

While these examples may seem obvious to the TPA, they may not be as obvious to those who don't do what we do every day. And because they are seldom discussed up front, they are often a source of friction. Luckily, with a little proactivity, these and many other functions can be clarified easily by creating a process to identify and assign services among the team, leading to better communication and understanding of the roles of each party.

To assist with this process, courtesy of Linda Chadbourne of Beacon Benefits, the "Assignment of Responsibilities Guide" on p. 30 is provided for TPAs to use as a tool with advisors to clarify roles, assign responsibilities and increase communication. We anticipate that by creating a process that opens the dialogue, the guide will help to bridge the gap between advisors and TPAs, leading to a more productive and harmonized partnership. For those TPAs focused on improving their relationships with advisors, we hope that you find the Guide helpful—whether you use the Guide as it is or as a starting point to create your own resource.

Retirement plans have the best result when serviced by a team of dedicated specialists, and those teams work best when they work together. As I noted above, there is an obvious synergy between TPAs and advisors, but even with that synergy, the relationship has much room for improvement. Creating and utilizing tools to select quality partners and to assign and monitor responsibilities among those partners requires effort, but it also establishes accountability, removes surprises, develops trust, and builds strong partnerships.

As Henry Ford said, "If everyone is moving forward together, then success takes care of itself." PC

ROLE "PLAY"

Perhaps the most important aspect of working together as a team is not only knowing what needs to be done, but knowing who is going to do "it." The list and role identification that follows won't be applicable in every case – but is presented as a sample template that could, and likely should, be part of every customer engagement.

RELATIONSHIP ROLES FOR SAMPLE PLAN X

Services	TPA	Financial Advisor	Recordkeeper	Plan Sponsor
PLAN SETUP				
Plan Design	√	√		√
Prepare Plan Document, amendments and IRS Qualification filings	√			
Prepare Summary Plan Description	√			
Compile and provide participant census data electronically to investment company	√			√
Provide investment company with plan provision information	√			
Review and select participant services		√		√
Coordinate with Payroll Service	√		√	√
Select investment options		√		√
Provide Termination letter to prior TPA and/or Recordkeeper	√		√	
ENROLLMENT & EDUCATION				
Design participant education		√	√	√
Prepare educational materials about retirement planning and financial decisions		√	√	
Conduct Enrollment meetings (as needed)		√	√	
Conduct ongoing post-enrollment meetings		√	√	
Present other retirement planning seminars		√	√	

RELATIONSHIP ROLES FOR SAMPLE PLAN X

Services	TPA	Financial Advisor	Recordkeeper	Plan Sponsor
RECORDKEEPING				
Submit timely, accurate plan contributions				√
Provide valuation of accounts			√	
Grant access to retirement accounts website			√	
Create and distribute participant statements			√	
Review and select participant services			√	
COMPLIANCE				
Complete Yearly Census and Questionnaire	√			√
Obtain Investment information to reconcile plan assets	√			
Reconcile Plan Compensation	√			
Review employee census and determine eligibility	√			
Determine Highly Compensated Employees	√			
Reconcile contributions from census to contribution deposits to trust	√			
Conduct all Compliance Testing pertaining to Plan provisions	√			
Calculate Participant Vesting	√			
Provide employer contribution allocations as determined at year end	√			
Review of Late Deposits	√			
Provide information to prepare Annual Form 5500 and Related Schedules			√	√

RELATIONSHIP ROLES FOR SAMPLE PLAN X

Services	TPA	Financial Advisor	Recordkeeper	Plan Sponsor
COMPLIANCE CONTINUED				
E-file Form 5500, annual reports and Related Schedules	√			
Provide support to assist plans in meeting legislative compliance requirements	√	√	√	
Provide Yearly Plan Financial Summary and Participants Summary of Accounts	√			
TERMINATION, INSERVICE WITHDRAWALS & LOANS				
Determine Eligibility of withdrawal or loan	√			√
Initiate Distribution – if not participant	√			√
Calculate participant vesting	√			
Monitor and calculate Required Minimum Distributions	√			
Coordinate income tax withholding	√		√	
Prepare Form 1099-R	√		√	
Issue Check or ACH payment			√	

THE MANY FLAVORS OF RETIREMENT SAVERS

SEVERAL LONG-TERM TRENDS ARE MAKING THE NEED FOR RETIREMENT PLANNING MORE ACUTE AND THE INVOLVEMENT OF RETIREMENT PROFESSIONALS MUCH MORE IMPORTANT.

BY JOHN IEKEL

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MY ELDER DAUGHTER'S WEDDING CAKE HAD SEVERAL LAYERS: CHOCOLATE, TIRAMISU, TRES LECHES. AND LIKE THAT BRIDAL CONFECTION, THE VARIOUS GROUPS OF RETIREMENT SAVERS HAVE SPECIAL FLAVORS THAT MAKE THEM UNIQUE. UNDERSTANDING THOSE LAYERS CAN BE A KEY TO BETTER EMPOWERING THEM TO SAVE AND PREPARE FOR A SECURE RETIREMENT.

SETTING THE TABLE

"We have gone from a Baby Boom in the 1950s to a baby bust today. We are now living with something like an inverted population pyramid—with an unusual number of old people relative to young workers," writes October Three's Michael Barry.

Compounding that trend is not only increasing longevity, but also the awareness that living a long life is more common today. In "Longevity and the New Journey of Retirement," a study of more than 11,000 North American adults that examined the changing definition of retirement, Edward Jones and Age Wave found that 69% of respondents said they want to live to age 100—but only if they are living well. They further found that retirees now say the ideal length of retirement is 29 years.

When Retirement Begins

The researchers found blurred lines concerning when retirement begins:

- to 34%, it's when full-time work stops;
- to 22%, it's when they start receiving Social Security and/or a pension;
- to 17%, it starts when one leaves a job/career;
- to 17%, it's when they achieve financial independence; and
- to 10%, it starts when one reaches a certain age.

Interestingly, in a March 2022 survey of 1,000 Baby Boomers and Millennials, the time2play blog found that the younger generation shows slightly more optimism about when their retirement will take place: 16% of the Baby Boomers—presumably, the younger Boomers who are not yet at retirement age—believe that they will be able to retire at age 62, while 20% of Millennials believe they can by age 65. Equal percentages of each generation—15%—expect to be able to retire by age 70.

And older generations may share their younger counterparts' positivity about retirement timing. EBRI reveals in "Staying Optimistic: Older Americans' Retirement Expectations Remain Uninterrupted Despite COVID-19 Impact" that older American adults did not adjust their retirement expectations significantly due to the pandemic—including the ages for retirement and claiming Social Security benefits.

67% OF GEN Z-ERS ARE SAVING THROUGH EMPLOYER-SPONSORED 401(K)S OR SIMILAR RETIREMENT PLANS AND/OR OUTSIDE THE WORKPLACE—AND STARTED DOING SO AT THE TENDER MEDIAN AGE OF 19.

DB-to-DC Shift

Another important factor is the shift in retirement financing from being predominantly based on defined benefit plans to a stronger reliance on defined contribution plans.

The way retirement is financed has shown a "massive shift," say Robert Siliciano and Gal Wettstein, respectively a research economist and a senior research economist with the Center for Retirement Research at Boston College. In "Can the Drawdown Patterns of Earlier Cohorts Help Predict Boomers' Behavior?" they cite data showing that at least 60% of households of those born in the 1920s and early 1930s had a DB plan, while only 10% or fewer of households whose members were born in the early 1960s do.

DC plans can increase responsibility for account holders; for instance, they are responsible for deciding how to handle drawing down the balance. And they can incorporate risk, which can vary depending on how the assets are invested.

Still, some argue that the shift from DB to DC plans also includes good news: for instance, DC plans are not all risk, some observe, and can make it possible for retirees to amass retirement savings beyond that of their parents.

The bottom line is that these longer-term trends make the need for retirement planning more acute and the involvement of retirement professionals much more important.

OK BOOMER

The Baby Boom generation—those born roughly between 1945 and 1964—is perhaps the one most affected by the shift from DB to DC plans, since Boomers' parents were more broadly served by pension plans, while they were new or firmly in the workforce when the shift took hold. The Squared Away Blog run by the Boston College Center for Retirement Research notes that nearly two-thirds of Boomers' parents had a pension, while just 6% of those born at the end of the Baby Boom could say that.

Boomers were caught in the middle of the transition, and the result was not exactly a recipe for concerted retirement saving. For the most part, they didn't save in their early years—there were no 401(k) plans or automatic enrollment/escalation of contributions. Not only that, many also lack pension plan coverage. And the blog warns that Boomers may not remember that another price of DC plans is having to pay taxes on withdrawals, as well as the requirement that they make minimum withdrawals by the time they reach a certain age.

GEN X

Generation X—generally those born between 1965 and 1980—began entering the workforce when 401(k) plans were brand new and DB plans were declining. They were early adopters of 401(k)s, notes the Transamerica Center for Retirement Studies, and 81% are saving for retirement in an employer-sponsored 401(k) or similar plan. Still, their confidence is low that they will be able to fully retire with a comfortable lifestyle—in part, says Transamerica, because the plans were not as sophisticated when they entered the workforce as they are now.

So low is their confidence, says Transamerica, that 38% either expect to retire at age 70 or older or do not plan to retire at all, and 55% plan to work in retirement.

GEN Z

Generation Z—generally those born between 1997 and 2012—began entering the workforce shortly before the pandemic, notes Transamerica. They have had greater access to 401(k)s and workplace retirement plans than their predecessors.

While 51% of them in Transamerica's study report having trouble making ends meet, at the same time they have not given up on retirement: 67% are saving through employer-sponsored 401(k)s or similar retirement plans and/or outside the workplace—and started doing so at the tender median age of 19.

GENERATION GAP

Baby Boomers, the oldest part of the workforce, and Millennials—generally born between 1981 and 1996 and who make up the bulk of the young part of the workforce—are separated by more than age. They have somewhat different takes on saving and retirement—but not entirely in ways one may expect.

Priorities

Some of the differences reported by the time2play blog are to be expected and reflect where those demographic groups are in life. For instance, more Millennials than Boomers consider saving for a house their top saving priority, while more Boomers than Millennials put saving for retirement at the top (*see table on the next page*).

And looking even further ahead, Fidelity in its 2022 Career Assessment Survey reports that like their older peers, college students consider saving for retirement to be a priority—in fact, a majority of them, 54%, do.

Investing
Boomers maintain a more traditional approach when it comes to finances. With a focus on financial security and traditional investments, nearly half of Boomers (48%) invest in stocks, while only a fraction (5%) invest in digital currencies. At the same time however, a quarter of Millennials (24%) and roughly a fifth of Gen Xers (19%) plan to invest in digital currencies in retirement.

Retirement
The two generations also differ regarding how they plan to live when they are retired, says Schwab in its Retirement Reimagined Study. Millennials embrace flexibility and new experiences in retirement to a greater extent than do Boomers, who value stability and consistency.

Millennials appear to have an evolving vision of what it means to retire, says Schwab. Key findings include that Millennials:

- started saving for retirement nearly a full decade earlier than Boomers;
- are likely to spend less time managing their personal finances and investments after they retire; and
- will be more likely to use their savings to achieve their dream lifestyle and pursue their passions along the way and once in retirement.

DECUMULATION

Not only were workers in the past more likely to leave the workforce with a DB plan financing their retirement, they also drew upon those funds in different ways than do more current retirees, write Siliciano and Wettstein. They say the assets of retirees participating in a DB plan fell less by age 70 than do those of retirees not covered by one.

Increasing longevity exacerbates the risks inherent in a decumulation strategy. DB plans, Siliciano and Wettstein argue, protect against longevity risk; however, due to less liquidity they do not readily provide funds that may be necessary if a sudden health issue arises. DC plans offer more liquidity; however, spending patterns among those with DC patterns are not the same as those of previous generations that spent less readily.

Siliciano and Wettstein also point out that required minimum distributions (RMDs) and annuitized wealth are additional factors relevant to retirement savings and decumulation that did not exist for earlier generations.

All that places retirees at risk of having little or no ability to handle unexpected expenses, as well as posing difficulty for those who live a long life.

ROUND 2

The number of retirees returning to the workforce is increasing, said MagnifyMoney in a 2022 report that cites inflation and labor market changes as reasons why higher numbers of adults age 65 and older are returning to the workforce. Magnify Money is not alone—in their 2022 U.S. Retirement Survey, the investment management firm Schroders found that 69% of working Americans plan to work in retirement.

And in “Longevity and the New Journey of Retirement,” a study of more than 11,000 North American adults that examined the changing definition of retirement, Edward Jones and Age Wave found that:

- 59% want to work in some way during their retirement;
- 22% want to work part time;
- 19% hope to cycle between work and leisure; and
- 18% want to work full time.

Older Americans returning to the workforce may not be a bad thing, suggests Schroders. They found that 54% of those age 60-67 said they have saved less than $250,000 for retirement; in addition, 57% of retirees said they saved less than $250,000 when they retired. Furthermore, 44% of retirees said that their expenses are higher than they anticipated.

CLIENTS’ ANXIETY

Demographic shifts, economic challenges and a global pandemic are ingredients for stress, including anxiety about finances. Many financial planners underestimate it, says a study sponsored by Allianz Life and the Financial Planning Association. They found that on average, financial planners thought financial anxiety affected nearly half (49%) of their clients. But the researchers found a disconnect: 71% of those clients said they were experiencing financial anxiety.

Financial Finesse in its 2021 Financial Wellness Year in Review suggests that such anxiety is widespread: they found that 81% of Millennial and Gen Z employees are experiencing some level of financial stress, and 40% are uncomfortable with their debt.

Top Priority	Millennials	Boomers
Emergency Fund	53%	61%
Saving for a House	25%	16%
Saving for Retirement	5%	13%

But Gen X is even more stressed, suggests State Street Global Advisors in its 2022 Inflation Impact Survey. They say that Gen Xers are significantly more concerned than the generations surrounding them on either side of the age spectrum—Millennials and Boomers—about the economic outlook, maintaining their current standard of living, retiring on time and affording expenses in retirement. The percentages of those groups who expressed concern about inflation's impact on their retirement stood at 88%, 72% and 70% respectively. And more than half of the Gen Xers who participated worry about being able to afford retiring when they plan to.

Research by T. Rowe Price in 2022 illustrates why that matters: they found that retirement plan participants who are stressed about debt save less for retirement than those who are not.

COULDA, SHOULDA

An expert panel in a June 2022 Employee Benefit Research Institute (EBRI) webinar discussed retirees' views on their situations and how their decisions led them to those choices. Bridget Bearden, Research & Development Strategist, EBRI, cited research EBRI and Edelman Financial Engines conducted concerning 1,109 retirees aged 55 to 80 with assets of $50,000 – $5 million.

Key findings include:

- Current retirees wish they had saved more and planned earlier for retirement.
- Twenty-five percent of retirees reported that their former employer offered financial planning assistance, potentially reflecting a timing difference or an awareness gap.
- Many retirees lack a formal financial plan for retirement.

Half of respondents said that they would have changed their financial habits if they had known that doing so would have improved their current situation, said Bearden. That rose to 53% of those without a financial plan, and to 57% among those with less than $500,000.

About half—49%—said they wished they had started planning for retirement earlier, said Bearden, and 55% of those who have $500,000 or less said so. Furthermore, 40% of those with $500,000 – $2 million and 57% of those with less than $500,000 said that they would have changed their financial habits during their working years in order to improve their financial situation in retirement. And 72% of those who said they would have changed their behavior said that they would have saved more or started saving earlier.

IMPROVING RETIREMENT READINESS

There is a wide range of ways that employers and retirement plan professionals can help meet the unique needs of particular groups in being better financially prepared for retirement.

Action Steps

The EBRI Panelists had a wide range of suggestions on actions that could help employees to prepare for a more financially secure retirement.

Stephen Rubino, Senior Vice President, Head of Workplace Innovation, Edelman Financial Engines, identified three things that can help employees approaching retirement prepare more actively:

1. Comprehensive and personalized income planning.
2. Support from a trusted advice professional.

LIKE THEIR OLDER PEERS, COLLEGE STUDENTS CONSIDER SAVING FOR RETIREMENT TO BE A PRIORITY—IN FACT, A MAJORITY OF THEM, 54%, DO.

3. Leveraging a 401(k) investment lineup and payout flexibility.

Rubino and Demi Hannon, Senior Director, Global Financial Benefits and Well Being, Boeing had additional suggestions:

- Remember the importance of financial health.
- Start instruction about the importance of finances and financial health early—in schools.
- Make sure that employees have, and are using, the right plan design.
- Have personalized plans for employees.
- Enhance and modernize the digital experience.

ASSIST UNDERREPRESENTED POPULATIONS

An Urban Institute report warns that retirement security is projected to be "especially precarious" for early Millennials of color, those with little education and limited lifetime earnings, and those who are not married.

An expert panel at the 2022 NTSA Summit stressed the importance of keeping the backgrounds of the audience being reached in mind and approaching clients with understanding. "As you work with your clients, you have to understand their backgrounds and where they came from," said Mahes Prasad, Private Wealth Advisor Managing Director, US Bank.

NTSA panelist Philip Kim, CRES, Divisional Vice President, Signature Wealth Concepts, noted that part of the explanation for the poor savings rate of minorities and immigrants may be that they are reluctant to trust strangers with their hard-earned money, which would include reluctance to trust financial planners and managers. "Understanding this helps you serve the underserved," said fellow panelist Fred Makonnen, Division Vice President, Equitable Advisors, who added, "Communicating what financial services are to underserved communities will improve the situation."

In "Improving Retirement Readiness for Underrepresented Groups," Alight suggests six steps that can help plan sponsors increase savings for historically under-represented groups:

1. Embed financial wellbeing principles within retirement plan design.
2. Consider diversity, equity and inclusion (DE&I) in the investment selection process.
3. Have a diverse savings communication strategy.
4. Provide benefit equity in the retirement plan.
5. Align retirement plan design with DE&I research.
6. Facilitate financial stability during employment changes.

Enhance Investment Savvy

The Principal Financial Group has found that many workers are uncomfortable making their own investment decisions and are looking for help. They also found a correlation between the availability of financial resources and professional advice and investor confidence, and they conclude that investment education could be key.

Address Stress

Allianz and the Financial Planning Association call for better appreciation of clients' financial anxiety Furthermore, 2021 research by the MQ Research Consortium and the Kansas State University Personal Financial Planning Program suggests that training financial planners about recognizing and managing client financial anxiety could help them facilitate more productive meetings, and that planners should consider reevaluating how they get to know and understand their clients.

T. Rowe Price's findings suggest that employers and retirement professionals may consider targeting their efforts to reduce employees' stress. Specifically, they found that 65% of employees who are entering or who are in the middle of their working years (30–49 years old) are stressed about retirement savings, while 50% of younger employees are.

A NOTE OF HOPE

Despite the many challenges unique to particular generations and groups, there is hope. For instance, Hannon is optimistic about younger generations, noting that at Boeing they are seeing newer employees not wasting any time and "making their investment choices and saving right away."

"As with any generation, every individual will have a different vision for their ideal retirement, but the key for everyone is to start saving and investing early," advises Rob Williams, Schwab's managing director of financial planning, retirement income and wealth management, in his remarks concerning the Schwab study. PC

Sales vs. Consulting

A sound sales process will allow a TPA to provide a consistent, time-efficient message to generate and close sales opportunities. Here's a deep dive.

By Lee Bachu & Jake Linney

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As plan consultants and TPAs, we often wonder, "Are we salespeople or are we consultants?"

Sometimes it's a very fine line between the two. Let's explore the definition first. Salespeople are professionals who use their customer service skills to sell goods or services. While salespeople educate customers about products, their main goal is to highlight the benefits of a particular product or service and convince the customer that it is worth buying. A consultant is a sales professional who educates customers about various services and advises them to ensure that they choose the solution that suits their need. Even though the jobs are similar, consulting focuses more on satisfying the customer's requirements instead of selling a specific product or meeting a quota.

Many salespeople start out with little or no experience. Companies tend to be willing to train these professionals and help them gain experience. Since companies want salespeople to focus on selling a specific product and meeting their quotas, these professionals tend to emphasize the product's benefits and quell any doubts customers might have about purchasing it.

Consultants place a greater emphasis on listening to the customer's needs and matching them with the appropriate products and services. Consultants usually don't have a quota to meet, so they can take the time to educate their customers about various products and services and then explain how that would suit their needs.

Consulting is never a one-size-fits-all process. A successful results-based relationship should start with the consultant listening to where the company is currently and where they want it to be in the years to come. As plan consultants and TPAs, we have expertise in our business and can help guide individuals and businesses to get the best from their retirement plan.

Opportunities and Value

What do we do when it comes to "selling" a retirement plan? There are many variations of what the client and advisor need. The first (and maybe most common) is when the advisor approaches the TPA and they and the client have no idea what they want to accomplish or what the options are, even are for a retirement plan. As a salesperson we would just want to make the sale… and as a consultant we will take the time to review census, talk with the plan sponsor and really make sure the client has the right plan to accomplish their goals.

Will we always make this sale? No. Sometimes, when the client doesn't want to benefit employees or it all seems too complex for them, we might want to make the decision to walk away from the opportunity.

Another type of opportunity is when the advisor has a client who has an existing plan, but they have no idea what they have, how to use all the features that would be available to them, or even what all those features are. Or they may have a problem in their plan that they don't know how to fix. They look to us as experts to help guide them through the process of fixing and/or changing their plan. As consultants, we have the expertise to guide them through the options and help them make informed decisions about the future of their retirement plan. Often we are asked for our opinion and we remind clients that it is *their* plan; we can offer advice and guidance but we can't make those decisions for them.

Another opportunity might be a situation where we have a client or advisor that already knows what they want for their plan. They have done their research and know what they want to do… so do they still need us? Will they appreciate the value we bring to the plan they are setting up? This is always the hardest question. We always add value by making sure that the plan stays in compliance and we can actually monitor the plan in case it starts to have an issue or we can suggest a change that will benefit the owners/HCEs or maybe reduce costs in some way.

As a consultant, we try to educate clients on our role and how we add value and that we aren't an "additional" charge but are just billed directly instead of built into the pricing. Honestly, there are many times where a client may be better off at a bundled provider to start out. It is often much less confusing to them.

The hardest piece of this puzzle though is that as consultants, we can keep the client in compliance and monitor their plan instead of being brought in when the plan has come kind of issue that needs correcting or fixing. But does that make me a salesperson in trying to just push them into the plan, instead of the consultant that I really want to be?

Should we really just focus on consulting? If a client or advisor doesn't perceive our value, should we just move on? If all my plans really need my true consulting, then am I charging enough for that service? Do I need some "basic" plans to offset the time I spend on the ones that need that additional expertise? As TPAs, it really is a hard balance because we don't want only complicated plans, but to have those small safe harbor plans to service as well.

Defining Success

As consultants, what does success look like when we are working with a client and their retirement plan? This is often hard to measure. Is it enough to think if we don't hear anything, then everything must be fine? No, it's not. At a minimum we should meet with the client regularly as part of our consulting role so that we stay involved with the plan. When we do that, we can discuss any regulatory changes or plan improvements and clarify any changes that they may want to consider. Our business is complicated. Since we are entrenched in it every day we sometimes forget that. Often our clients are small businesses that have a plan because they need one but don't really understand all the moving parts.

Do you remember the good old days, when we actually had time after Oct. 15 to meet with clients and deliver reports in person? Making time for this and reminding ourselves that this is how we feel successful in our role as consultants is so important! The problem with this model now is that with fee compression and having to charge less than we probably should to get new clients, we don't have the time or resources for these personal touches.

What Does the Client Need?

Another consideration about consulting in the retirement plan space is really determining what the client needs. Do they need profit sharing to maximize the plan? Maybe if they really want to maximize, they need a defined benefit or cash balance plan. One thing that always comes up in this discussion is how much money the plan sponsor wants to put away for the owners and HCEs versus how much they really have to spend on making contributions. Often I have this conversation and the client says they can spend "a lot." Well, is that $50,000 or $500,000?

The Fee Question

Should we consider charging more so that we can stay in front of the client and keep their business going forward along with providing the support that our clients need? How much is acceptable? Does that model work if we have fewer plans but charge more? It is definitely something worth considering.

Consulting is never a one-size-fits-all process. A successful results-based relationship should start with the consultant listening to where the company is currently and where they want it to be in the years to come.

When this industry was young, TPAs tracked the hours worked for a particular client like an attorney does and then billed based on an hourly rate. If we are consultants, then maybe we should consider going back to that model for our consulting services. It is hard to have staff track their hours to really determine if we should bill extra for extra consulting.

The TPA Sales Process

As financial advisors become more sophisticated in their knowledge of 401(k) plans, it is becoming more common for an advisor to know exactly what they want for a client's plan. More advisors go out into the TPA market looking to select the right TPA for their client. Thus, a TPA's ability to sell its services and products becomes very valuable. For example, an experienced financial advisor has a client that wants to start up a cross-tested 401(k) plan. The advisor has already evaluated three recordkeepers, has determined the best fit, and now wants to evaluate a TPA that fits well with the client and the recordkeeper.

A sound sales process will allow the TPA to provide a consistent, time-efficient message to generate and close sales opportunities. A sample sales process may look like this:

1. The advisor has a plan opportunity
2. The salesperson sets up a meeting with the advisor
3. Exploratory questions (see below)
4. Salesperson presents the TPA's value proposition
5. Based on what the advisor and client are looking for, the TPA salesperson outlines the features of working with the TPA and connects those features to the benefits that the client and the advisor experience
6. The salesperson asks for a meeting with the client
7. TPA sales follow-up until there is a meeting with the client
8. Point-of-sale information (how the client moves forward with the TPA)
9. Follow up until the client decides to work with the TPA or not
10. The prospective client is transitioned into the TPA's onboarding process

It is helpful for the salesperson to have some standard questions to ask the advisor based on the circumstance to help the salesperson position the TPA. Here are some exploratory questions to ask an experienced advisor:

- Has your client ever had a retirement plan before? What was their experience?
- In an ideal world with no rules, how much money could your client save per year?
- What does your client's workforce look like? Is it stable or is there high turnover?
- What kind of service is your client looking for? Are they responsive? Do they need hand-holding?

The answers to these questions not only help the salesperson construct the pitch to the advisor, but also help determine whether the client is a good fit for the TPA. For example, if a TPA's value proposition is for premium service with lots of hand-holding but the client is price-sensitive and wants a simple plan with an HR/Finance staff that can handle it, the TPA isn't going to be a good fit.

Once the salesperson has an idea of what the advisor and client are looking for, he or she can construct the sales pitch for the client focusing on what differentiates the TPA from others that the advisor will be evaluating. Here's a simple way to think about this:

1. Provide a value proposition
2. Provide the features of working with your TPA
3. Connect those features to the benefits that the client and advisor experience
4. Make sure the benefits sync to the answers to the initial exploratory questions

For example, if the advisor is looking for quick responsiveness from the TPA's service team, then a feature of a dedicated account administrator with a call-in ticketing tracking system and a 98% 24-hour response rate will lead to the benefit of a next-day service response when the client needs it.

As the 401(k) industry matures and plan advisors become sophisticated, it becomes more and more beneficial for a TPA to outline and standardize their sales process so that their value can be articulated quickly and is simple for advisors and their clients to understand. When a TPA's value is clear, they don't have to fight on price. PC

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PARTNERING WITH A 3(16) FIDUCIARY VENDOR

Here's how to offer 3(16) fiduciary services to your clients without being a fiduciary yourself. **By R.L. "Dick" Billings**

As service vendors in the retirement plan industry, TPAs, investment advisors, recordkeepers and education providers understand that we are always hired by a "Named Fiduciary," that is, the person or entity defined by ERISA as having "authority to control and manage the operation of the plan." This is usually the employer and/or plan sponsor. In the smaller-plan 401(k) world, the employer and the plan sponsor are almost always the same people.

ERISA incentivizes plan sponsors to delegate plan-related tasks to competent vendors if they do not possess the necessary knowledge themselves. This is what the Department of Labor says about fiduciary responsibility:

> "Section 404(a)(1)(B) requires the fiduciary to discharge his duties 'with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.' This duty is known as the prudent expert rule or the duty of prudence. Given that most employers are neither experts in investment management or, more generally, in plan administration, these section 404 fiduciary duties create an incentive for employers to seek the help of outside professional fiduciaries to carry out their fiduciary responsibilities."[1]

In my experience, plan sponsors want to concentrate on running their business, not learning their plans' administrative ins and outs. Yet we all know that current DOL regulations clearly put the fiduciary onus on the plan sponsor—whether they are aware of this fact or not. As Thomas Jefferson wrote, "Ignorance of the law is no excuse in any country. If it were, the laws would lose their effect, because it can always be pretended." While I think we could safely assume he was not referring directly to fiduciary rules, the same standard applies. This is exactly what Congress intended when ERISA was passed in 1974.

With all the regulations being issued by the IRS and the Department of Labor since then, as well as all the relevant court cases over this same period, many Named Fiduciaries are looking to delegate some, or many, of their fiduciary responsibilities to outside professional organizations.

Many firms have leapt into this market niche. There are probably hundreds of firms offering some form of fiduciary services to the retirement plan world, primarily 401(k) plans. While many of those services relate to the handling of plan assets, the other major offering of fiduciary services relates to the plan's "administration." It is this latter fiduciary service that we will focus on here.

TWO ADMINISTRATIVE ROLES UNDER ERISA

But before we get into how your TPA firm can easily and profitably partner with a 3(16) fiduciary vendor, let me elaborate on ERISA §3(21)(A), which defines the two basic "administrative" roles of a qualified retirement plan:

- **§3(21)(A)(i) – Management.** That is, a person or entity having discretionary authority and control over the plan (emphasis added); and
- **§3(21)(A)(iii) – Administration.** That is, a person or entity having discretionary authority or discretionary *responsibility in administering* the Plan (emphasis added).

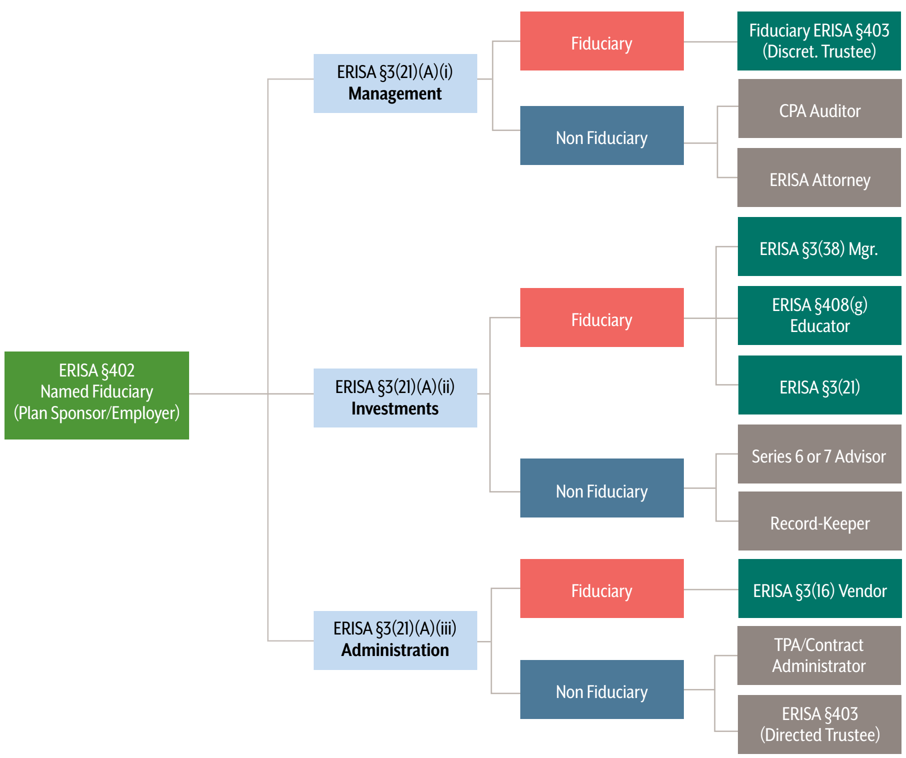
This allocation of responsibilities is illustrated in the nearby graphic. (FYI, §3(21)(a)(ii), which is omitted above, relates to a fiduciary *giving* investment advice, like a 3(38) investment manager.)

"Management" under subsection (i) relates to the Named Fiduciary mentioned at the beginning. This fiduciary is responsible for running the plan committee or investment committee meetings, hiring and firing vendors, retaining all necessary written plan records, and documenting all fiduciary decisions. You could also call this "governing."

"Administration" under subsection (iii) means determining eligibility, adjudicating distributions (including QDROs and participant loans) and performing discrimination testing, as well as filing and signing the 5500 and being responsible for all employee disclosures. As a TPA, you may already do much of this work under your normal service agreement, just in a non-fiduciary capacity.

I take the time to break down these two administrative items because: (1) ERISA regulations require it,[2] and (2) when a plan sponsor hires an "administrative" fiduciary, only those duties specifically named within the written contract are accepted by the outside vendor. All duties *not* specifically named are retained by the employer/plan sponsor (the Named Fiduciary). It is crucial that we educate our plan sponsor clients about understanding the benefits, and limits, of fiduciary outsourcing.

Allocation of fiduciary duties under ERISA



"YOU NO DOUBT ALREADY DO MANY OF THE TASKS A 3(16) WOULD OFFER, SO FIND A PARTNER WHOSE SERVICES MELD WELL WITH THE THINGS THAT ARE ALREADY IN YOUR 'WHEELHOUSE."

A KEY DIFFERENTIATOR

Outsourcing 3(16) services will allow you to offer one more valuable service and differentiate you from much of your competition. You can list this in your company's website, brochures and digital marketing pieces. You will not be taking on this actual risk; that risk is accepted by the 3(16) vendor. Yet it will be critical for all parties concerned to understand which fiduciary duties are being taken on by the 3(16) vendor and which are not. Those not specifically accepted in writing by the vendor remain with the Named Fiduciary. It is also possible for you to pick up another revenue stream as a subcontractor of the 3(16) vendor.

If you wish to remain a non-fiduciary TPA and to partner with a 3(16) fiduciary firm, here are some important questions to ask and answers to understand. Speak with several different 3(16) vendors to compare their services.

Will your 3(16) vendor:

1. Keep written records of all meetings and decisions made by Named Fiduciaries?
2. Provide fiduciary education for new fiduciaries, as well as continuing education for all fiduciaries?
3. If no investment committee exists, assist in setting one up?
4. If no written investment policy exists, assist in preparing one?
5. Distribute all necessary disclosure notices directly to plan participants?
6. Distribute all necessary enrollment materials to plan participants?
7. Complete, sign and file all required government reporting, including the 5500 Series?
8. Discuss the advantages and disadvantages of fiduciary insurance with the Named Fiduciaries?
9. Create a compliance plan or calendar to track the various deadlines throughout the year?
10. Approve distributions, loans, and QDROs without plan sponsor involvement?
11. Represent the plan and plan sponsor in the event of IRS or DOL audit?

This list is not exhaustive, but it will give you a good start on partnering with a 3(16) vendor. Be prepared for a wide variance of services and cost. You no doubt already do many of the tasks a 3(16) would offer, so find a partner whose services meld well with the things that are already in your "wheelhouse." But always remember: "You get what you pay for."

Partnering with a 3(16) will require your firm's management to adequately perform their due diligence (up front, and on an ongoing basis). The delegation of services to the 3(16) vendor and yours also must be communicated clearly to your clients and investment advisor partners, as well as your own employees.

We all know how complicated the administration of qualified retirement plans has become. Partnering with a 3(16) provider can enhance your firm's service offerings as well as reduce your risk. It will be must less likely for your clients to think your firm is the fiduciary if an outside firm, separate from yours, has clearly stated in writing that they are the fiduciary! PC

Footnotes

[1] From the 2007 DOL Advisory Council Report of the Working Group on Fiduciary Responsibilities and Revenue Sharing Practices, at https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.

[2] ERISA assigns a plan fiduciary six core duties: (1) act prudently, (2) diversify plan assets, (3) comply with the provisions of the plan, (4) loyalty, (5) pay only reasonable plan expenses, and (6) not engage in certain prohibited transactions. [29 USC § 1104(a)(1)]

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NEXT-LEVEL PAYROLL INTEGRATION

Several firms are offering 360-degree payroll data integration outside the proprietary native platform context. Here's a look under the hood. **By Jeff Kayajanian**

Payroll makes the world go round for every business in America. Most payroll companies provide cutting-edge technology that allows for an easy flow of data between businesses and their respective payroll company. But when it comes to submitting 401(k) contributions, then receiving the change file and delivering those to a payroll company, it can seem as though we're still stuck in the 1970s.

Every day, payroll managers working for plan sponsors upload 401(k) contributions into a Microsoft Excel spreadsheet. Then, days or weeks later they receive the return file with changes made in the recordkeeper's participant portal. They input those changes into another file and send that back to the payroll company. Not only are these 401(k) submission processes painfully cumbersome, but they also lead to manual entry errors that cause delays in completing timely contributions.

ADP and PayChex, two of the largest payroll providers, each have robust 401(k) platforms. Combined, they provide 401(k) recordkeeping services for roughly 170,000 plans out of the 1.5 million domestic businesses for which they provide payroll services. Nearly all these plans use their native payroll system, allowing instant 360-degree integration for their proprietary plans.

What if a plan asks for a 360-degree integration between an independent recordkeeper like Empower, Transamerica or ADP Payroll? Instead of that instant connection that ADP has with its proprietary 401(k) platform, the connection must be built from scratch. Files must be built on both sides, and then go through a regimen of testing to make sure ADP is delivering the payroll in the format and with the security that recordkeepers need. This process normally involves a weekly call among the plan sponsor, advisor, payroll company and recordkeeper. ADP and other payroll companies will normally charge a setup fee and possibly a per-payroll fee. The process can take two to six months to complete and exhausts all parties involved with the integration.

My firm, Payroll Integrations, Inc., is one of several that offer a different approach to providing 360-degree integration. We are an Integration Platform as a Service (iPaaS). Instead

"IF A 360-DEGREE INTEGRATION SERVICE IS CONTINUALLY CONNECTED TO THE CLIENT'S PAYROLL ACCOUNT, THEY CAN GRAB THE COMPLETE ANNUAL PAYROLL CENSUS AND PROVIDE IT TO THE TPA FOR YEAR-END TESTING PURPOSES."

of integrating one payroll company with a single 401(k) plan, Payroll Integrations integrates multiple payroll companies like ADP, PayChex and QuickBooks Online with many recordkeeping platforms, including Empower, Lincoln, PAI, Relius, Schwab RT, Transamerica and VOYA.

Here's how it all works.

Our Application Programming Interface (API) connections with payroll companies allow us to onboard a company in a matter of minutes. The plan sponsor provides their payroll login and their plan ID number, and they are set up in about 15 minutes. In contrast, the recordkeeper will normally take two to four weeks to go live with the 360-degree integration. This is due to the need to assign a payroll specialist to the plan as well as file testing between the recordkeeper, Payroll Integrations and the payroll company.

Once the plan goes live, Payroll Integrations begins to "ping' the client's payroll account twice a day looking for files. Even though the plan sponsor may pay semi-monthly or weekly or both, we look for files every day. We capture all payroll files that the client runs, whether they are on cycle, off cycle, PTO or bonus files. We extract those files, convert them to the recordkeeper's file specs and send them to the recordkeeper. The recordkeeper's file spec has been preprogrammed into our system so we deliver each of their plans' payrolls in the same format every time, no matter which payroll company each plan works with.

After we have uploaded the plan's file to a recordkeeper, within a few hours or a few days, the recordkeeper sends the return file back to the our platform. It is converted to the payroll company's approved data format and sent back to the payroll provider.

All of this happens without the plan sponsor touching the payroll. This will save the plan sponsor's payroll person an estimated 60 to 100 hours per year. Also, by reducing or eliminating errors, the Payroll Integrations platform speeds up the overall payroll-to-recordkeeper process and reduces the need for plan sponsors to continually resubmit payrolls. It also saves the recordkeeper additional time rejecting payrolls and having new files resubmitted.

TPAs particularly enjoy working with plans using 360-degree integration for several reasons. They, like recordkeepers, realize that most mistakes are made by plan sponsors entering the wrong payroll data and uploading it to the recordkeeper. "Fat fingers" lead to delays in contributions and could even lead to fines if contributions are too late. TPAs want clean data because it is most often the TPA that catches the mistakes and works with both the plan sponsor and recordkeeper to resolve the issue.

Many TPAs are now offering 3(16) services where they take on fiduciary responsibility for the plan. TPAs essentially sign off on every payroll prior to sending it to the recordkeeper. They need accurate payroll information. Sue Perry, CEO of Fiduciary Outsourcing in Arizona, has offered 3(16) services to hundreds of plans for years. She also offers her own version of 360-degree integration for her clients. Perry puts it this way: "If payroll is wrong, the enrollments are wrong, the contributions are wrong, and the distributions are wrong. It all starts with payroll!"

If a 360-degree integration service is continually connected to the client's payroll account, they can grab the complete annual payroll census and provide it to the TPA for year-end testing purposes. This saves the TPA countless hours of attempting to contact their hundreds or thousands of plan sponsors and retrieve their payroll census.

Recordkeeping platform wholesalers use 360-degree integration as a selling point as well. By explaining to the plan sponsor that their in-house payroll manager no longer must upload payroll files to the recordkeeper or download changes to the payroll company, saving them dozens of hours of work per year, the sale becomes much easier—especially if that payroll manager is in the presentation meeting!

Also, because of the "Great Resignation," plan sponsors, TPAs and recordkeepers are having difficulty hiring and retaining workers. If they can streamline the retirement plan submission process, reducing hours of manual entry, they can repurpose those payroll managers to focus on more important aspects of their jobs.

Integration platforms on the market include PayKonnect, Finch, Payroll Integrations and others. 360-degree payroll integration will soon be demanded by plan sponsors of all sizes—not only for 401(k) plans but also for HSA providers, company-sponsored Section 529 plans and other payroll deduction benefits offered by employers. PC

ESOP REPURCHASING STRATEGIES

There are many options to consider when determining the best way to handle an ESOP plan's repurchase obligation. Here's a refresher. **By Kevin T. Rusch**

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Privately held companies sponsoring an Employee Stock Ownership Plan (ESOP) have a financial responsibility to monitor and manage the cash flow required to maintain the ESOP. As plan participants are eligible for a distribution or diversification of shares from the ESOP, the company must provide a market to convert those shares into cash. This is known as the ESOP repurchase obligation.

HANDLING THE ESOP REPURCHASE OBLIGATION

The great thing about ESOPs is that a plan sponsor has many options to consider when determining the best path for handling their repurchase obligation. Common practices include recycling, redeeming or releveraging shares. Multiple options can be used at the same time and solutions will change as an ESOP matures, even within the first 10 years of its existence.

Recycling

Recycling shares is the most common approach to satisfying the ESOP repurchase obligation. The company satisfies the repurchase obligation by depositing cash into the plan. Recycling uses cash in the ESOP trust to convert participants out of their stock position at the time of distribution. Cash is generally deposited to the trust as a discretionary employer contribution or a dividend/S distribution on company stock held in the ESOP.

Participants receiving a cash distribution exchange their stock balance in return for cash with other participants in the plan. The other participants that exchanged their cash now have the shares allocated to their ESOP account. The net effect to the overall shares held in the trust is zero since *recycled shares do not leave the trust*.

Redeeming

Redeeming shares involves the company purchasing stock and retiring the shares. The company satisfies the repurchase obligation by paying cash to retire stock. In this process, *company stock does leave the ESOP trust* as a stock distribution to the former ESOP participant.

Generally, the steps are as follows:

1) ESOP distributes stock to plan participants.
2) Plan participants sign a "put" option to sell stock back to the company.
3) The redeemed shares are retired to the company's treasury account where they are no longer considered outstanding stock for valuation purposes.

One important item to note is the ESOP can also redeem the shares from the former ESOP participant to the extent the ESOP trust has available cash. While the company has the legal obligation to buy back the distributed shares, the ESOP trust can buy back the shares at the most recent fair market value on the company's behalf. This can be beneficial when a company wishes to retire some, but not all, of the stock being distributed.

The company can also redeem stock directly from the ESOP trust to get cash in the plan to process participant distributions. This involves additional costs, as an updated stock valuation on the date of the stock redemption is required by an independent appraiser.

Releveraging

Releveraging shares allows the shares to be repurchased by the ESOP trust. The company satisfies the repurchase obligation by paying cash to redeem shares, but instead of retiring the stock, the company sells the shares back to the ESOP in exchange for an internal loan. The shares purchased in the transaction are used as collateral for the ESOP loan and are *placed in an unallocated suspense account within the ESOP trust*. As the loan is paid off over time, the shares are released from the suspense account and allocated to the ESOP participants as a plan benefit.

The impacts of the three strategies are illustrated in the nearby table.

ESOP BENEFIT LEVEL

An important factor in deciding whether to recycle, redeem or releverage shares is to first determine what benefit level the company wants to provide to ESOP participants on

REPURCHASE OBLIGATION STRATEGIES

	Recycle (Contributions)	Recycle (S Distribution)	Redeem	Releverage
Shares Outstanding	No impact	No impact	Reduced	No impact
ESOP Ownership	No impact	No impact	Reduced if < 100% ESOP	No impact
Add'l shares to EE accounts	Yes	Yes	No	Yes, over time
Employee group most benefitted	All employees (pro rata to comp)	Longer-term EEs with larger share balances	Longer-term EEs with larger share balances	All employees (pro rata to comp)
Per share value	Dilution	Dilution	No dilution	Dilution
Corporation's cash flow	Reduce	Reduce	Reduce	Reduce
Income tax deduction	Yes	No	No	Yes, over time

> "AN ANALYSIS OF THE POTENTIAL ESOP REPURCHASE OBLIGATION SHOULD BE DONE ON A FREQUENT BASIS TO ENSURE THAT THE COMPANY CAN MEET THE CASH FLOW NEEDS TO OPERATE AND MAINTAIN THE ESOP RETIREMENT PLAN."

an annual basis. The benefit level equals the summation of the fair market value of shares released from ESOP loan payments, cash or stock contributions, and reallocated forfeitures divided by eligible payroll. The benefit level is often communicated as a percent of eligible compensation. Once that value is known, the plan's distribution policy and repurchase obligation strategy can be modified as needed to assist the company in meeting its benefit level goals for the ESOP participants.

For example, if the desired benefit level is lower than the projected repurchase obligation in a given plan year, processing stock distributions would be a better solution for the company to achieve its desired benefit level. Instead of the ESOP covering the full repurchase obligation by recycling all the shares, the company can decide how many shares the ESOP would buy back in the case of stock distributions, with the company buying back the remaining shares and retiring them to the corporate treasury account. This approach reduces the benefit level and provides the company more control of how many shares are reallocated in the ESOP.

The release of shares from the ESOP internal loan also affects the benefit levels allocated to ESOP participants. Careful consideration should be given when drafting the terms of the loan documents, so they support the company's goals of appropriate retirement benefits to the ESOP participants.

REPURCHASE OBLIGATION FORECASTING

An analysis of the potential ESOP repurchase obligation should be done on a frequent basis to ensure that the company can meet the cash flow needs to operate and maintain the ESOP retirement plan. Plan consultants assist their clients by preparing repurchase obligation studies. Typically a 20-year forecast, this process provides the company guidance in determining the best strategy to deal with the ESOP repurchase obligation. In addition, these studies project future benefit levels provided to ESOP participants.

A thorough review and discussion of the following assumptions should be incorporated into the analysis:

- **Company value assumptions:** projected enterprise value, adjustments to enterprise value to compute equity value, and the number of shares outstanding to project future share price

- **Participant level assumptions:** projected retirements, participant turnover rates, mortality and disability rates, future eligible payroll for allocations and diversification election rates

- **Trust activity assumptions:** distribution policy, contributions to the plan, loan payments and share release, dividends/S distributions, rate of return on cash investments and redeeming, recycling, or releveraging shares

After the assumptions are determined and incorporated into the repurchase obligation software/modeling tool, the first scenario should be reviewed to determine if any assumptions need to be revised. Then multiple scenarios can be produced with different assumptions to see the impact on cash flow needs and benefit levels. Repurchase obligation scenarios are highly recommended for plan sponsors looking to change their distribution policy or releveraging their ESOP, since those changes can have a significant result on cash flow and benefit levels.

CONCLUSION

Repurchase obligation can be one of the largest cash flow requirements for an ESOP company. Understanding the available options to satisfy repurchase obligation can ensure the plan sponsor is using the appropriate strategy in the current life cycle of their ESOP. Working through a repurchase obligation study can not only educate a new or old ESOP company to understand the ins and outs of repurchase liability, but it also gives them a sense of comfort they have done their due diligence as a plan sponsor to ensure the sustainability of the ESOP and the current plan design is supporting their corporate goals. PC

ARE AMERICANS BETTER PUBLIC SPEAKERS?

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Most surveys consistently show that Americans are more afraid of public speaking than anything else—so why would we be the best at it? **By Ryan Avery**

Gone are the days when people wanted to work with a faceless business. Today, people demand authenticity and an emotional connection. They want to work with people they relate to and trust to have their best interests at heart.

What makes Americans the best public speakers? I have received this question from several of my international audiences and it makes me consider, "Are Americans really better public speakers than those in any other country?" That's a bold statement, yet a lot of educated people believe this and tell me that they "know it" but can't explain why.

During one of my last keynote speeches, I got this same question and decided to dive deep into the history of this belief and see if there is any validity to it. Here's what I found.

SEARCHING FOR THE BEST PUBLIC SPEAKERS ONLINE

When I did a simple search online on for "the best public speakers," 8 out of the first 10 who show up are Americans.

When I searched "the best public speakers of all time," 5 out of 10 of are Americans.

When I searched "the best public speakers in the world," 9 out of 10 of them are Americans. Why? Yes, my search engine can be biased based on the fact that I am typing this in the United States and that my digital cookies and captcha knows my history.

However, when we look at the 90-plus years of the world champions of public speaking with Toastmasters International—a worldwide organization—more than 90% of the past champions were Americans.

"WE VIEW PUBLIC SPEAKING AS ONE OF THE MOST IMPORTANT SKILLS. THAT DOESN'T MEAN WE ARE NATURALLY GOOD AT IT; IT MEANS MANY OF US WORK ON IT, INVEST IN DEVELOPING THE SKILL AND HAVE A LOT OF OPPORTUNITIES TO SPEAK."

Could this be because English is the main language of that contest? Could be—but there are many other countries whose first language is English. It is also important to note that for the 10 years from 2009–2019, 6 out of 10 of the winners are not Americans.

Consistent, reputable lists and articles from *Entrepreneur*, LinkedIn, *Business Insider*, YouTube and even *Forbes* all have Americans topping the list of best public speakers.

There are many (many) effective and well-known public speakers who are not American, from the good like Ghandi to the horrible like Hitler. Most surveys consistently show that Americans are more afraid of public speaking than anything else—so why would we be the best at it?

Is it because if we know we wouldn't want to do it, and then we see someone succeed at it, we value them more? Many people consider Aristotle, a Greek, the father of public speaking. So how did public speaking turn from this European birthplace to American prevalence?

It has taken me over a month to research and write this article, and I still don't fully know how to answer the question, "Why are Americans better public speakers?" I feel that it is very subjective, but based on my experience, research and belief, the following is what I will share the next time I get asked this question.

WHAT SOME AMERICANS VALUE—THE ART OF PUBLIC SPEAKING

Americans spend a lot of money on learning! According to the Organization for Economic Cooperation and Development (OECD) and Investopedia, The United States spends more money educating its young people that any other nation—nearly 30% more! At most American public high schools, only two subjects are part of the curriculum for the entire 4 years of high school: math and English. Physical health is 1 year, foreign language is 2 years and science and history are 3 years or are considered electives once you have achieved the minimum requirements. Perhaps we value math and English (both of which are related to public speaking) over other elements of our children's curriculum more than other countries do.

WHAT SOME AMERICANS LEARN—LEADERS WHO ARE GOOD SPEAKERS DEVELOP FASTER

No research here—this is from my experience. I was taught at a very young age to speak up for myself, to have a firm handshake, to make eye contact, to know how to argue my point or debate others when they challenge my beliefs. It was instilled in me by my parents at a very young age to be good at "public speaking" because those who are, achieve more. I don't know what all cultures teach their children, or even other families in my own country, but for most Americans, I would suggest this is the case regarding what our parents taught us and ingrained in us.

WHAT SOME AMERICANS SEE—LEADERS WHO ARE GOOD SPEAKERS ACHIEVE MORE

How is public speaking portrayed in the global media market? For one thing, Americans are in the public eye in other countries. When I travel, I am amazed by how many countries watch American politics. There are more than 15,000 Toastmasters International clubs in 135 countries related to the art of public speaking. As subjective as this is, of the 100 most influential people in the world, 45% are Americans. That is a large number considering that there are 193+ countries in the world.

Generally speaking, Americans value good leaders who can speak well. We pay for good speakers (eight of the highest paid speakers in the world are Americans) and we view it as one of the most important skills. That doesn't mean we are naturally good at it; it means many of us work on it, invest in developing the skill and have a lot of opportunities to speak.

Globally speaking, the world sees more American speaking via politics, movies and other media. For most people, Americans may be perceived as better public speakers judging by the lists created, the articles written, the various mass media, and the awards and contests related to public speaking that Americans win. However, I believe this is not because of Americans' abilities but because of our *visibility*.

I acknowledge that my own biased search activity and upbringing might skew my view and research. While I worked to be as objective as I could, that approach was still limited by my access and search engine captcha. Here is what I know for a fact: Anyone who has a message to share, works hard to develop their public speaking skills and believes they can be the best at it—no matter your citizenship—has the opportunity to be the best public speaker.

So, what do you think? Are Americans the best public speakers? PC

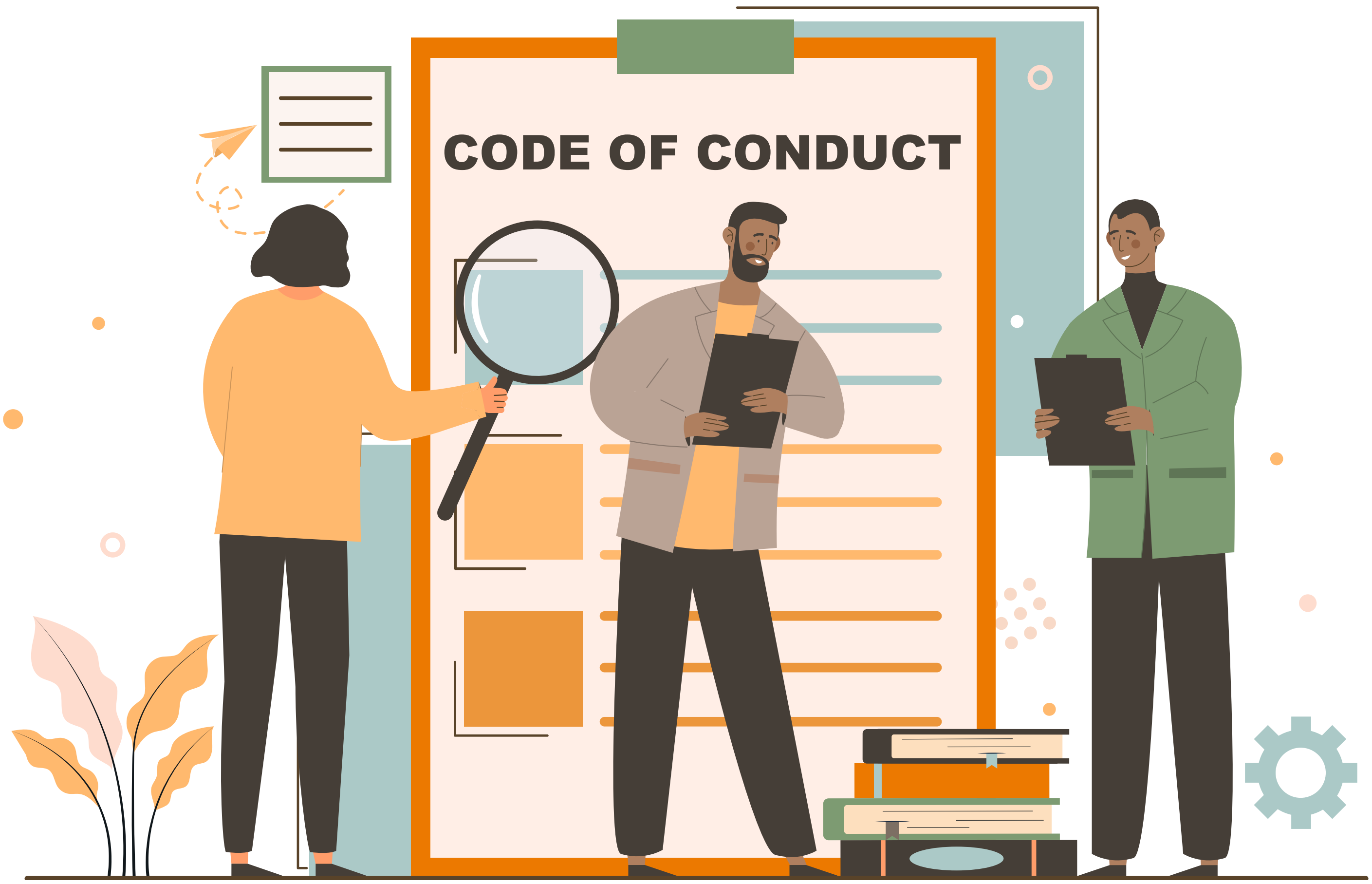
PROFESSIONALISM AUDIT: COMPLYING WITH MULTIPLE CODES OF CONDUCT

Here's how to meet the potentially conflicting requirements of multiple codes governing professional conduct. **By Lauren Bloom**

This article continues our series on professionalism audits. The last article focused on communications, i.e., what factors an employee benefits plan professional might consider when communicating professional advice. This one focuses on the challenges that an employee benefits plan professional might face when considering how to meet the (potentially conflicting) requirements of multiple codes that address professional conduct.

ERISA is described by the U.S. Department of Labor as "a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans." In the 48 years since its passage, ERISA's requirements have been reinforced by a mass of regulations, agency publications and court cases that, taken together, define how employee benefit plans operate across the United States. Among its requirements, ERISA establishes standards of conduct for fiduciaries and other professionals. Employee benefit plan professionals must meet those standards, along with applicable testing and licensing requirements, to become and remain eligible to serve ERISA-qualified plans.

As federal law, ERISA normally preempts state laws and takes precedence over professional



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"WHENEVER CODES APPEAR TO CONFLICT, THE PROFESSIONAL IS PRUDENT TO THINK CAREFULLY, DECIDE ON A COURSE OF ACTION THAT WILL BEST SERVE THE PRINCIPAL'S INTEREST, AND DOCUMENT HIS OR HER REASONING."

membership organizations' rules. However, state laws may establish additional requirements beyond ERISA, and professional associations typically have standards of conduct for their members that interpret and supplement the law. To add complexity, employee benefit plan professionals may have to meet the standards of more than one professional organization. For example, the American Retirement Association's Code of Professional Conduct applies to all of its members. ARA members who are accountants, actuaries and attorneys or members of other professions are also bound by the ethical standards of their other professional associations. The more organizations an employee benefits plan professional belongs to, the more codes of conduct he or she may have to satisfy.

The fundamental principles of good professional conduct and practice—honesty, integrity, skill, care, transparency, respect for confidentiality, and the like—don't vary much depending on context. An employee benefits plan professional who makes those principles the foundation of his or her practice has a good head start toward satisfying whatever standards of conduct he or she is required to meet. However, codes may differ in the specifics of how they require professionals to comply. An organization's code of conduct is usually written by respected members of the organization whose professional experience gives them a thorough understanding of good practice and the challenges faced by their peers. These individuals balance competing goods to develop a code that's appropriate to the specific services that they and their colleagues provide. A code also usually reflects the prevailing culture and values of the organization's members. However, it may not take account of the codes of other groups to which its members may belong. As a result, codes may differ from organization to organization. For example, one organization's code might require its members to advocate strongly on their principals' behalf, while another organization might instruct its members not to allow their principals' interest to interfere with their professional objectivity. Both codes would be principles-based, but a professional who had to satisfy both might have some difficulty reconciling them.

When faced with an ethical dilemma and codes of conduct that appear to conflict, the employee benefits professional's first step is to determine what ERISA requires. ERISA's provisions take precedence over state laws and professional associations' standards, so the professional who takes a particular action because ERISA requires it is on defensible ground. However, if state law or professional standards contain additional requirements that ERISA does not prohibit, compliance with ERISA may not be sufficient alone. When ERISA's requirements are in question, or in potential conflict with other laws, the employee benefits professional is usually wise to get legal counsel before deciding how to proceed.

When dealing with an apparent conflict between two codes of conduct, there are several steps for the professional to take. The first is carefully to read the two codes together to confirm that a conflict actually exists. If one code requires something and the other is silent, no real conflict exists. If the two codes can be harmonized—using the example above, if the professional can find a way to advocate strongly for the principal while maintaining objectivity—the professional can satisfy both. If one code's requirements are more specific or rigorous than the other—for example, requiring the professional to complete annual continuing education while the other code simply instructs the professional to "keep current"—the professional can satisfy both by meeting the first code's more specific or rigorous requirements. It's only in the relatively rare situations where two codes are truly in irreconcilable conflict that the professional must choose which to follow. In those instances, the professional is often wisest to satisfy whichever requirement best protects the principal's interests and least advantages the professional. Preparing a memorandum to the file documenting the professional's reasons for choosing a particular course of action may be helpful if questions about his or her compliance arise at some future time.

Navigating apparent conflicts between professional obligations can be difficult. Professional associations usually offer published guidance, and many organizations also offer confidential counseling to their members; the professional is usually wise to take the counselor's advice. But whenever codes appear to conflict, the professional is prudent to think carefully, decide on a course of action that will best serve the principal's interest, and document his or her reasoning. PC

MY SUCCESS STORY: RETIREMENT!

Let's just say that I learned a lot over the several months immediately after retiring. **By John Markley**

Olena Yakobchuk / Shutterstock.com

For many of us working in the retirement industry, our own retirement is the ultimate success. We save for retirement by maximizing our own 401(k) deferrals. We may have influence over our company's plan design and annual contribution decisions, further increasing our retirement benefits.

At age 67, I decided to retire. Given my career as a pension actuary, I thought that I would be knowledgeable about the process regarding distribution from the qualified retirement plan and other steps necessary for retirement. Let's just say that I learned a lot over the several months immediately after retirement.

My intent in this article is not to advocate for any specific company product or to quantify decisions. I hope that by explaining my decisions, I might help guide others as the time to retirement approaches.

AS ACTUAL RETIREMENT DATE APPROACHES

My recommendation to all participants in 401(k) plans is to maximize deferrals. There are always surprises after retirement. For 2023 and recent retirees, the surprise is the downturn in the stock market and other financial investments. I have taken responsibility for retirement planning and execution in our family, so any amount extra in retirement savings increases the probability that we will have enough for our retirement.

At the end of 2021, I officially retired. Target date funds within the 401(k) plan are an attractive alternative. However, the funds selected in the 401(k) plan are the responsibility of my former employer, not me. So I decided to roll over my lump sum to an IRA.

After waiting for the last matching contribution to be deposited, I elected my lump sum distribution with a wire transfer to my established IRA account. Decisions had been made regarding the investment of the IRA when the account balance was transferred from the 401(k) plan.

After a month, I checked with the custodian of the IRA account. Still no transfer. Given that this transfer represented nearly all of our retirement accounts, I followed up. I checked with the platform for the 401(k) account and I was informed that my file did not have a date of termination. I went back to my former employer and the date of termination was inserted into my file on the 401(k) platform. A few days later, the transfer was made and my IRA account had a balance!

SOCIAL SECURITY AND MEDICARE

Social Security and Medicare are such an important part of retirement, this article would not be complete without considering these sources of retirement security.

Step 1 is starting the monthly Social Security benefit. There has been much debate about when to start Social Security. The earliest age to start a benefit is age 62. If the benefit is started before Social Security Retirement Age (SSRA), there is an earnings test. To summarize, early benefits before SSRA are only permitted if your earnings are below a certain limit. So unless you are no longer working, I would recommend

"THERE ARE NUMEROUS OPTIONS FOR MEDICARE PART C MEDICARE ADVANTAGE COVERAGE (AND FOR MEDICARE SUPPLEMENTAL COVERAGE, WHICH IS AN ALTERNATIVE). MEDICARE SUPPLEMENTAL IS INSURANCE THAT COVERS THINGS THAT MEDICARE DOES NOT, SUCH AS DEDUCTIBLES AND COPAYMENTS."

waiting until at least reaching your SSRA. The SSRA will be 67 for future retirees, but it was still 66 for me.

I decided to wait until I was actually retired to start my benefit. Since benefits increase at 8% per year up until age 70, many wait until age 70 to start benefits. I decided against this approach. This would be my only source of income until mandatory IRA distributions began, so I started Social Security benefits when I retired.

Now onto Medicare. Did you know that there are Medicare Part A, B, C and D benefits? Medicare benefits can begin at age 65, so I started this process while I was still working by signing up for Medicare Part A. Signing up for Medicare Part A made Parts B, C and D easier.

When I retired fully, I no longer had health insurance from my employer, so I elected Parts B (Hospital) and D (Prescription Drug). I have no prescriptions, so coverage is less than $10 per month! There is an advantage to electing Part D when you are first eligible, since there are penalties for delaying entry as you may not be electing coverage until you have conditions requiring a significant number of prescriptions.

There are numerous options for Medicare Part C Medicare Advantage coverage (and for Medicare Supplemental coverage, which is an alternative). Medicare Supplemental is insurance that covers things that Medicare does not, such as deductibles and copayments. (Perhaps you have seen Joe Namath advertising for one of these programs.) There must be hundreds of alternatives. I narrowed my selection process to Medicare Part C and then reviewed the benefits provided by each program.

The Medicare Part C coverage that I selected provides dental, vision and hearing coverage and additional benefits for less than $25 per month. (The balance of the monthly premium is deducted from my monthly Social Security benefit.) The right program varies by individual. I am healthy and only see my medical doctor for an annual checkup, so I was very interested in the additional benefits that the program provides.

I now have hand-on experience with the Part C program that I selected. From my time as a business owner when I and others were responsible for the health insurance plan for our employees, I remember the anxious moments after providing my insurance card at the doctor's office and seeing whether it was accepted and how much I had to pay. I was anxious once again when I went to the doctor's office with my Part C card for the first time (I did not have to show my Medicare card.) My Part C coverage has been accepted for all medical and dental coverage that I have received since enrolling!

Your spouse and/or children may also be covered by your employer's health insurance. Since you have now retired and are no longer covered by your former's health insurance, your spouse and children will lose their coverage as well, typically at the end of the month in which you retire. The next step will be finding coverage for your beneficiaries. COBRA insurance through your prior employer, the employer of your spouse, the Affordable Care Act (Obamacare) or Medicare (if your spouse is age 65 or over) may be the answer.

CONCLUSION

Here is a summary of the steps described in this article as your retirement date approaches:

- Decide between keeping your 401(k) account balance in your former employer's plan or rolling it over to an IRA. (The next several steps are based on a rollover.)
- If rollover, choose an investment firm for the IRA and determine your investment mix.
- Confirm that the 401(k) plan administrator has all the required information for the rollover.
- Confirm that the rollover has taken place.
- Determine when to start Social Security benefits.
- Consider Medicare benefits; elect Parts A and B.
- Review the alternatives for Part D prescription drugs.
- Review the alternatives for Medicare Part C (Medicare Advantage) or alternatively, supplemental insurance. This step will require much time to consider the different options.
- Consider the options for providing health insurance to family members after you retire. PC

ARA'S DE&I RESOURCES

'Learn together and grow together' is the mantra of the ARA's new diversity committee. Here's an update on the committee's progress so far. **By Erika Goodwin**

Ten months ago, a group comprised of plan advisors, TPAs, actuaries and wholesalers met in a virtual room to commit to confronting and helping to reduce the retirement savings gaps among underrepresented groups.

The group focused first on steps that could be taken to help ARA members increase the participation of underrepresented groups in an employer-sponsored retirement plan. It's a complex problem, and everyone at the table understood the reality that no one group, diversity webinar, conference session or article would provide the solutions that are needed. With that in mind, they began the work to investigate what member resources exist—or should exist—to support diversity, equity, inclusion and belonging (DEI&B) initiatives for the growing ranks of members in the ARA sister organizations and the communities they serve.

Recognizing that the diversity committee needed input from each of the ARA sister organizations to inform their recommendations, a diversity survey was conducted. To date, 351 responses have been received from the sister organizations (ASPPA 221, ASEA 32, NAPA 109, NTSA 45 and PSCA 30).

Here is what we've learned so far via the 2022 ARA Diversity Survey and how ARA's DEI&B initiatives and resources have grown in 2022.

WHAT WE'VE LEARNED

We asked participants to share the top three issues that women and/or underrepresented groups in their organization or practice are facing. The top three responses were:

1. Work/Life Balance challenges including family responsibilities
2. Not enough underrepresented candidates who are interested in positions/industry
3. Finding/Hiring qualified female associates

This question also offered an opportunity for open-ended responses, which included:

- Increase outreach to colleges/universities to ensure students are aware of the retirement/finance sector
- Make available more leadership opportunities for underrepresented groups to help set policies that will enable more (and more satisfying and sustainable) representation in the field
- College recruitment programs to improve diversity and inclusion within industry

When asked, "What resources can ARA offer to help members work with underrepresented groups?" the top responses were research/data on underrepresented groups (53%) and prospecting ideas for reaching minority business owners (47%).

One respondent noted, "We need more data on how far behind underrepresented groups are with regard to retirement savings. What is the delta between minority balances and non-minority balances? How much longer will underrepresented groups have to work? How will this affect all Americans in the future?"

While we don't have the answers to all these questions, a partial answer can be found in ARA CEO Brian Graff's testimony before the Senate Finance Committee hearing on June 28, 2021. In his testimony, Graff noted that 56% of black families and 67% of Latino families have zero retirement savings assets, compared with 35% of white families. (Click here to read Graff's testimony.)

The latter two questions (How much longer will underrepresented groups have to work? How will this affect all Americans in the future?) may have some anecdotal answers when considering the "equal pay dates" of those two groups. For example, in 2021, based on Census data, the

wage gap for black women was 58 cents on the dollar. Thus, Sept. 21, 2022 was the approximate day of the year on which the median earnings of a working black woman caught up to the median 2021 annual earnings of a non-Latino white man. That 2022 date is more than a month later than the 2021 date, Aug. 3. For Latina women that date was even later, falling on Dec. 8.

The committee also asked for ideas for additional programs or services that would increase the value of membership to members of underrepresented groups in their organization or practice. The top three responses were:

1. Networking opportunities with people of similar backgrounds (54%)
2. Practice management workshops (36%)
3. Mentoring opportunities (34%)

Other responses included: targeted communication to those members; better promotion of the retirement sector; college recruitment programs of new hires working on their education credentials by making available free or discounted webinars and diversity programming; and discussion about serving underrepresented business owners.

When asked, "What is your organization's greatest diversity challenge?", the top three answers were:

1. Finding diverse candidates
2. Lack of diversity within the organization
3. Access to early training and exposure

PROGRAMS AND PARTNERSHIPS

In addition to what we've learned above, the ARA has taken steps to build a bridge to black and Latino communities through new partnerships and opportunities.

Our existing DEI&B member engagement programs and resources include webinars, conference sessions, advisor roundtables, the Women in Retirement Conference (Jan. 11-13, 2023), Third Thursday's with ARA Women in Retirement virtual event series, and the ARA Thrive Mentoring Program, which allows pairing across all five sister organizations. (For more information on current programing or to view past DEI&B sessions, please visit the ARA diversity webpage).

Through a new partnership with the U.S. Black Chamber of Commerce (USBC), the U.S. Hispanic Chamber of Commerce (USHC) and our existing partnership with the Financial Alliance for Racial Equity (FARE), we look forward to taking actionable steps, sharing retirement planning resources, creating new opportunities to get in front of minority-owned business owners and mentoring the next generation of retirement plan professionals.

With the support of our member volunteers, ARA has grown its diversity footprint through community events to increase awareness of the importance in prioritizing retirement savings in communities of color—despite competing priorities. In April, the ARA sponsored a retirement planning session in partnership with the Alpha Kappa Alpha Sorority's Rho Mu Omega Chapter. The virtual event, "What's the 411? Retirement Fundamentals for Women and Communities of Color" was developed to present to two audiences: caregivers and entrepreneurs/aspiring entrepreneurs.

HOW YOU CAN GET ENGAGED

As the world continues to change, we will continue to update, refine and deliver relevant resources for members. With an organization of more than 30,000 members across the United States, ARA needs your input to determine the resources and tools our members would find of value and timely. We're committed to keeping the DEI&B lines of communication open, and we invite you to join in. Click here to volunteer, write an article or provide data to add to the conversation. With your input, we can continue to ensure an inclusive and supportive environment for all our members so that together we can continue to work to ensure that all Americans have the opportunity to retire with dignity.

The current members of the ARA DEI Committee are listed online here.

Thank you, committee members, for your leadership! PC

THE INTERSECTION OF PUBLIC POLICY AND DE&I

Will Hansen is the American Retirement Association's Chief Government Affairs Officer.

The ARA is committed to expanding our programming and advocacy to ensure that all Americans are able to save for a secure retirement. **By Will Hansen**

Last year, the American Retirement Association's Erika Goodwin joined the Government Affairs team as Senior Manager of Advocacy Engagement. Over the previous few years, Erika had developed ARA's conference programming focused on building and promoting the growth of women in the retirement services field. In addition, she assisted with the creation of a diversity committee whose purpose is to tackle the retirement savings gap among underrepresented groups. By joining the Government Affairs team, Erika can now focus more of her time on those important activities.

Women's initiatives and diversity activities fall squarely within the diversity, equity, and inclusion space. ARA is committed to expanding our programming and advocacy to ensure that all Americans are able to save for a secure retirement. Specifically, the ARA Government Affairs team is dedicated to advocating for public policies that enhance the private sector retirement system.

One of the greatest needs within the retirement sector is to ensure that more small businesses provide a retirement plan to their employees. We can tackle this problem in two ways:

- pushing for greater incentives for small businesses to provide a plan; and
- promoting education and outreach to small businesses on the benefits of a plan (benefits that Congress created by passing new laws).

With both of these activities, we need ARA members to engage—that is, engage members of Congress to advocate for policies that will ensure more Americans are saving for retirement, and engage organizations that work with small businesses to talk about the importance of retirement plans.

In her "Inside ASPPA" column in this issue, Erika provides more information on ARA's women's initiatives and diversity committee activities. We need more of our members engaged in lifting up underrepresented groups, especially when it comes to saving for retirement. More minorities and women working in the financial services field will help to ensure that more minorities and women are saving for a secure retirement. And more minority-owned businesses providing a plan will only help to close the retirement savings gap.

Bottom line: The more outreach, education, diversification there is in the retirement field, the more it will help all of us become better advocates for policies that will continue to enhance the private sector retirement savings system. PC


QUIZ