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SPRING 2024

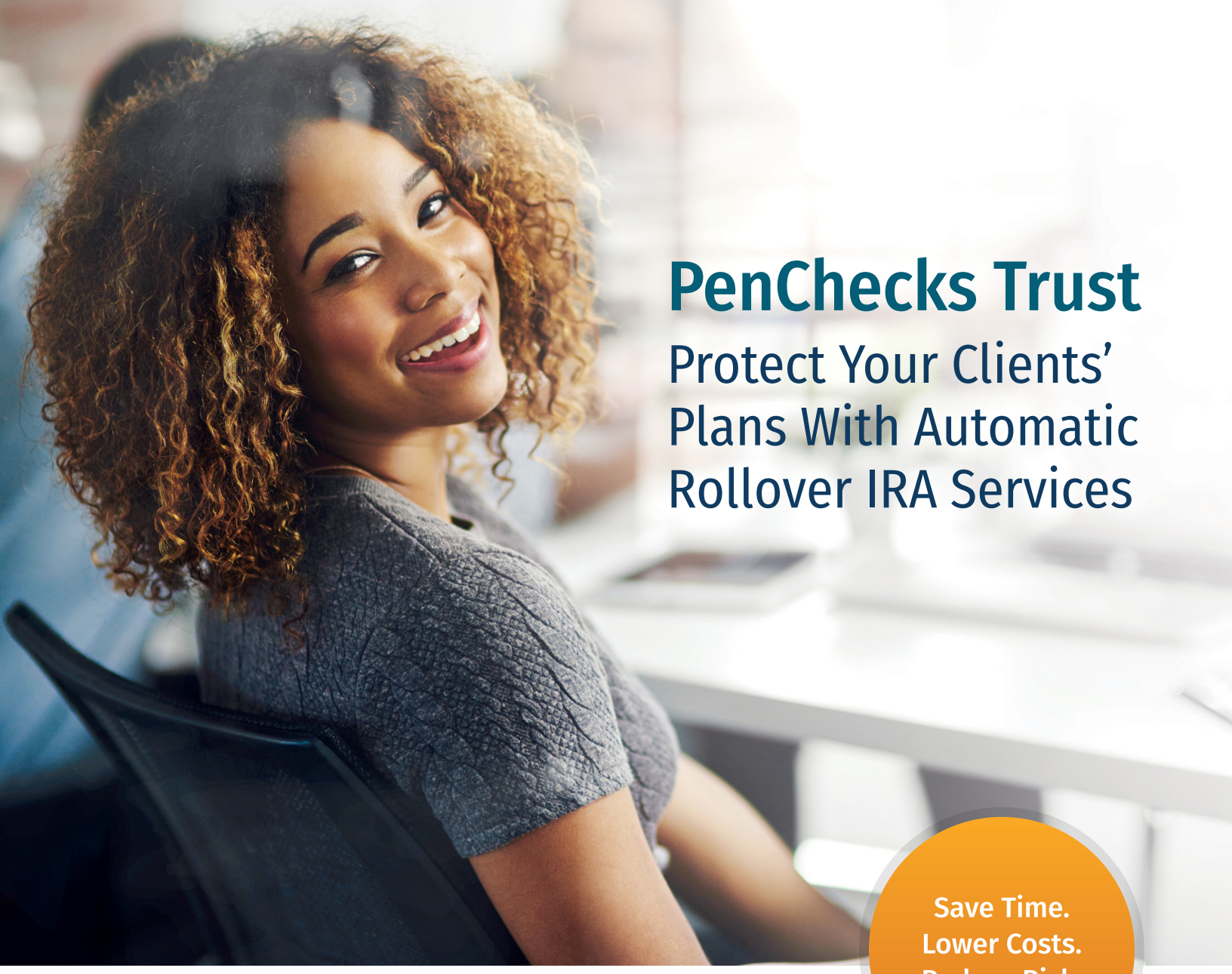
NOT SO SIMPLE

SOME HINDSIGHT — AND FORESIGHT — ON THE SECURE 2.0 PROVISIONS EFFECTIVE IN 2024

EMPOWERING EXCELLENCE AT THE WIRC

M&AS ALMOST EVERYDAY: WHY?

THE 'PEPS' RALLY: TO CHEER OR NOT TO CHEER



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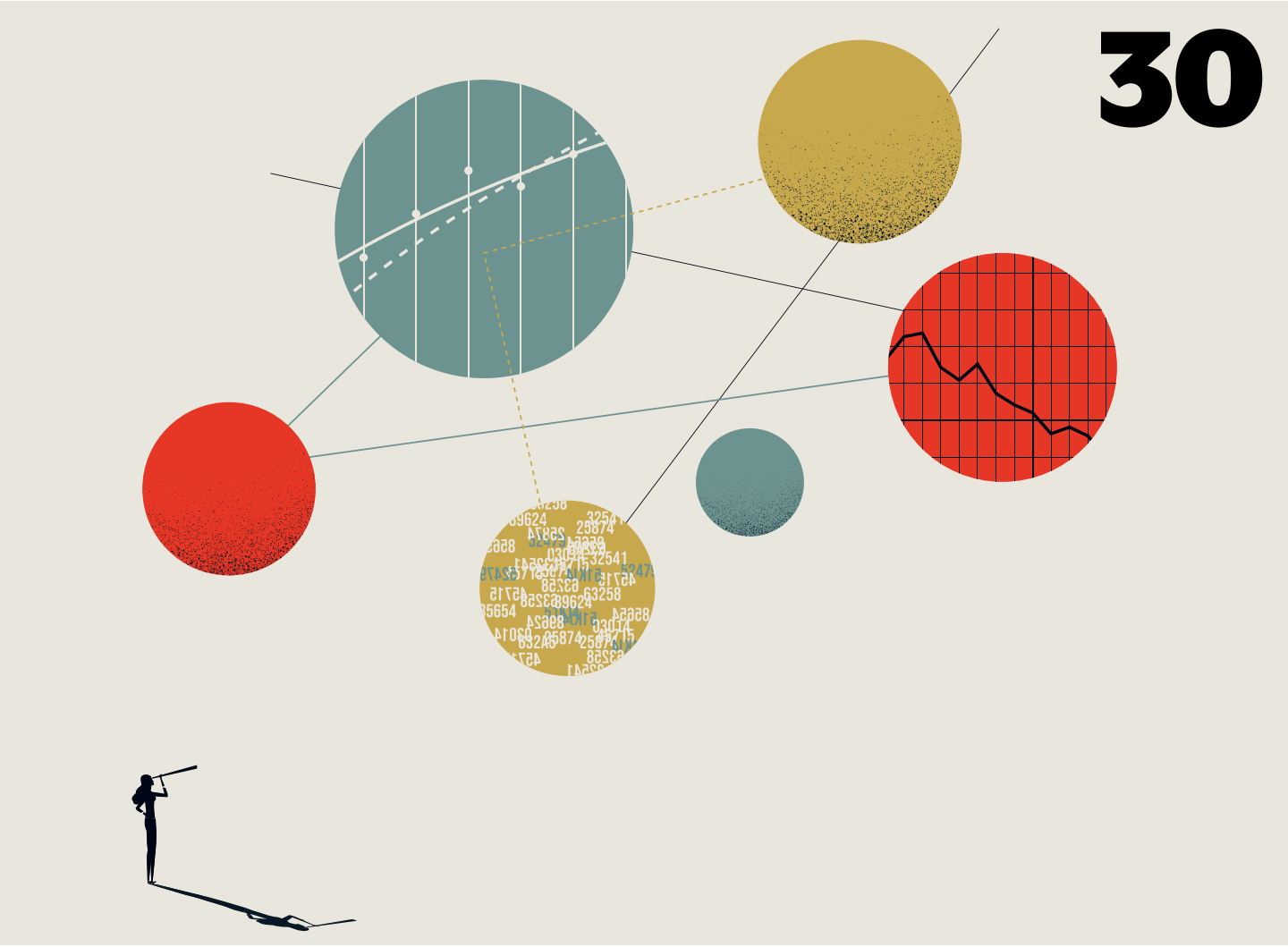

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'SPRING' INTO CONFERENCES

ASPPA Annual may be months away but with NAPA Summit days away and ASPPA Spring National weeks away—there's plenty to enjoy now as the weather warms. **By Joey Santos-Jones**

Spring is in the air! The weather is warming, birds are chirping outside, and, of course, the 2024 ASPPA Spring National is almost here. This event is your chance to "spring" into 2024 with some solid knowledge.

This year's Spring National event will be held virtually from May 15-16. Can't make those exact days? Live and on-demand viewing options are available.

The agenda for this year's conference, like a well-tended garden, has been carefully curated to delve into the intricacies and impacts of SECURE 2.0, spotlighting the bits that matter most for 2024. The SECURE 2.0 Update session, opening the conference, promises to be a highlight, shedding light on essential topics such as tax incentives for small businesses, the SAVERS credit, and the latest tweaks to the Family Attribution Rule, among others. This session aims not just to present the facts but to equip you with the insights and tools you need to make a difference.

You'll also find plenty of workshops that delve into specific areas of interest and concern. For instance, discussions on 401(k) testing corrections and the administration of Cash Balance Plans reflect a deep dive into the practical challenges and strategies for effective plan management. Similarly, the focus on the EPCRS Expansion and the nuances of automatic enrollment under SECURE 2.0 highlights the ongoing need for compliance and adaptability in plan administration.

Day 2 builds on this foundation, with sessions like the one on Long-Term Part-Time (LTPT) employees, particularly pertinent as we enter 2024. The conference also addresses operational challenges, such as data collection during plan takeovers and updates on Forms 5500, providing attendees with a comprehensive toolkit for navigating the current regulatory and operational environment.

The structure of the Spring National, with its blend of general sessions, targeted workshops, and interactive discussions, fosters a rich learning environment. The "Ask the Experts" session, in particular, stands out as an opportunity for attendees to seek guidance from industry veterans, ensuring that the conference is not just informative but also responsive to the attendees' needs.

Beyond the content, the conference's virtual format acknowledges the modern professional's need for flexibility and accessibility. The option to participate live or access sessions on-demand ensures that the insights and learnings from the conference are available to all, regardless of scheduling constraints. Moreover, the emphasis on networking, facilitated through peer-to-peer roundtable discussions, underscores the value of community and collective wisdom in navigating the complexities introduced by SECURE 2.0.

> "THE STRUCTURE OF THE SPRING NATIONAL, WITH ITS BLEND OF GENERAL SESSIONS, TARGETED WORKSHOPS, AND INTERACTIVE DISCUSSIONS, FOSTERS A RICH LEARNING ENVIRONMENT."

This year's ASPPA Spring National is more than a conference; it's a crucial gathering point for retirement planning professionals seeking to understand and leverage the changes brought about by SECURE 2.0. Through expert-led sessions, practical workshops, and opportunities for connection, the event promises to be an invaluable resource for anyone looking to enhance their practice and better serve their clients in this new landscape. Is it May 15 yet?

But what is spring without a Summit? NAPA Summit, that is. The Summit has somehow managed to draw more attendees than ever and set it on one of the biggest rock stages in the world—Nashville, Tennessee! Last year's Summit saw a strong attendance by ASPPA members, so if you were on the fence about this year, start planning to attend both the ASPPA Annual and NAPA Summit. Beyond the need-to-know information, the conferences are just plain fun.

Joey Santos-Jones
Editor

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BUILDING BRIDGES

Sometimes the best bridges are built through clarity and communication. **By Amanda Iverson**

Amanda Rae Iverson, CPA, MBA, PHR, SHRM-CP, APM, is CEO of Pinnacle and 2024 ASPPA President

As I sit down to write this, it is hard to believe that January 2024 is almost over. There is something special about January; it's not just the start of a new year full of possibilities but also the time when ASPPA and NAPA cohost the much-awaited Women in Retirement Conference, affectionately known as WiRC.

If you have never attended WiRC, let me paint a picture of why it's not just another event on the calendar. WiRC is unique in its essence — crafted by women, for women. This isn't your typical technical conference. WiRC zeroes in on four pivotal areas: leadership, sales & marketing, practice management, and professional development and growth. It's a convergence of women business owners and industry leaders, unlike any other.

What sets WiRC apart is not only its focus, but also its diverse conference planning committee and attendees. WiRC is the sole conference that unites women from all five of ARA's sister organizations. The diversity and breadth of expertise present offer unparalleled learning opportunities. Personally, connecting with women specializing in different verticals within the retirement plan industry has been influential in my professional development, understanding, and growth.

Reflecting on the early days of WiRC, I'm reminded of the initial hesitance to merge ASPPA and NAPA at a conference. The first WiRC was somewhat akin to a middle school dance, minus the awkward slow dances. The advisors and TPAs, each stuck to their own corners with minimal interaction. However, over the years, this landscape has dramatically transformed. Now, advisors and TPAs eagerly anticipate this annual gathering, celebrating newfound friendships, networking and collaborative spirit. The conference attendee mix includes, but is not limited to, women TPAs, advisors, actuaries, and plan sponsors.

This shift in the conference environment is particularly noteworthy to me. For the past two years, I've been part of a task force aimed at fostering relationships and building bridges between advisors and TPAs. The insights I've gained through interacting with others active in sister organizations have been helpful to the work performed within the task force. Despite some historical tensions between advisors and TPAs often caused by communication gaps, our task force has been developing tools to bridge these gaps. (Check out the TPA compliance checklist here. This is an ever-evolving tool that is meant to be completed by TPAs and provided to new advisors to foster better communication, mutual understanding, and role division.)

In my interactions with others at WiRC, I've confirmed what we all know, most tensions stem from misunderstandings and poor communication. For instance, in the TPA and advisor relationship, a common frustration is the lack of clarity in dividing duties. Clarity is key. As one advisor put it, "The partnership thrives when roles are clearly defined, and there's an understanding of who manages the client relationship. When this is clear the partnership is much more successful." This clarity not only eases internal processes, but also enhances client service from both the TPA and the financial advisor.

Despite some challenges, the commitment to positive collaboration continues to grow between advisors and TPAs. Many advisors and TPAs have expressed the enhanced quality of service when working together. "Pairing up with a proactive TPA service provider who calls me and communicates effectively can preempt many potential issues and create a positive partnership," one advisor remarked. It's a testament to the power of collaboration and open communication.

This emphasis on collaboration and clear communication certainly extends beyond just advisors and TPAs. When communication and the division of duties is unclear, between actuaries and TPAs or TPAs and plan sponsors, frustration results. But when we have clear communication, a clear division of duties, and a sense of collaboration, magic happens.

As we just completed another exciting year of WiRC, it's clear that this conference is more than just a meeting point for industry professionals. It's a melting pot of ideas, a bridge between different perspectives, and a catalyst for transformative relationships. The progress we've witnessed, from tentative interactions to robust partnerships, is a reflection of the collective commitment to understand, communicate, and grow. Through unity, learning, collaborative efforts, and clear communications, endless possibilities emerge. We are much stronger when we come together. Here's to another year of breaking barriers, building bridges, and growing stronger, together. Together, we are not only helping people throughout our country retire, we are also actively shaping the future of our industry. **PC**

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A 401(k) CALL TO ACTION

We'll continue to execute on our mission to expand, strengthen, and defend the employer-based retirement plan system. **By Brian H. Graff**

I'll be blunt—the frequency and intensity of the policy "fixes" from both sides of the aisle are increasing and usually contain massive proposals to completely upend the retirement savings system.

We thought the Retirement Savings for Americ*ans Act (RSAA)*—pushed by familiar names at the Economic Innovation Group and backed by high-profile politicians—was peak radical. Only a year later, it's almost quaint, at least when compared with more recent proposals.

The message to ASPPA members is the same now as it was then, only with far greater urgency; there's an ideological—and increasingly political—battle for the country's retirement plan system and the extent to which the private and public sectors play a role. 401(k)s and similar-style defined contribution plans are at its center and under threat, so we need you engaged.

As an industry, we must be better about communicating the 401(k) plan's value proposition and how it's the only effective way to get working Americans to meaningfully save.

In just the past few months, we've seen three concerning proposals, only because national outlets are all-in on the media hype.

The first added a topical twist to Social Security solvency concerns. Writing for the Center for Retirement Research at Boston College, Andrew Biggs, Alicia Munnell, and Michael Wicklein argued the federal government should limit contributions or accumulations in tax-advantaged retirement plans—or tax the earnings each year—to address Social Security's shortfall.

The trio reasoned that tax expenditures for employer-sponsored plans are expensive, costing about $185 billion in 2020, and primarily benefit high earners. They also claimed the tax advantages failed as a compelling incentive to save.

Talk about robbing Peter to pay Paul. It's absurd to take away the incentives from a system that's actually working to give money to a system with fundamental challenges.

Not to be outdone, two Massachusetts Institute of Technology professors also argued against the tax preferences, claiming they exacerbate the racial savings gap. Yet, they referred to the preferences as "very powerful" and admitted that defined contribution retirement plans are one of the biggest ways to build wealth in today's economy.

Finally, Allison Schrager, a senior fellow at the Manhattan Institute, appeared in *Bloomberg Opinion* with a provocative piece titled "Your 401(k) Will Be Gone Within a Decade." This line, in particular, caught our attention: "The intellectual case for getting rid of tax-advantaged retirement plans is strong, and the political case is catching up."

We disagree (vehemently) with the premise, but we note its purpose. Schrager popped up on CNBC the next day to expound on her claim, echoing arguments that auto-enrollment, rather than tax preferences, drive participation and the latter should be abandoned.

Thankfully, we're fighting fire with fire, or rather research with research. Peter Brady, Senior Economic Adviser with the Investment Company Institute, said the idea that tax incentives don't work and primarily benefit high earners is "easily dispelled." He dug into the data he and colleague Sarah Holden shared in a NAPA point/counterpoint and on my DC Pension Geeks podcast, which are available on NAPA-Net.org.

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

Most irritating is the notion of a zero-sum, mutually exclusive retirement system in which the public and private sectors compete with—rather than complement—one another.

State-based auto-IRA plans have shown the exact opposite to be true, what we've called the perfect public-private partnership. State plans encourage more private sector businesses to offer a plan and more employees to engage, resulting in higher coverage, participation, and greater retirement security overall.

The bad ideas will continue, and we will continue to execute on our mission to expand and strengthen (and defend!) the employer-based retirement plan system, which, while imperfect, is incredibly effective for hardworking Americans.

The point/counterpoint is at https://bit.ly/49BXeJ7.

The DC Pension Geeks Podcast is at https://bit.ly/4bNsmH4. PC

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WASHINGTON STATE AUTO-IRA LATEST TO BECOME LAW

Washington Gov. Jay Inslee (D) on March 28 signed into law a bill that creates Washington Saves, a state-run auto-IRA program. **By John Iekel**

With that, Washington became the latest state to run a retirement program that will provide coverage for private-sector employees whose employers do not. The Evergreen State would join its Pacific Coast neighbors in providing such a plan. California was the first to adopt such legislation, and Oregon was the first to establish and run such a program.

Nathan Glassey, Executive Director for the National Tax-Deferred Savings Association (NTSA), sees this as a huge opportunity for Washington-based businesses. "At the beginning of March, Washington joined the 15 other states that had previously adopted state Auto-IRA language to provide the best opportunity for small businesses and their employees to prepare themselves for retirement in the future."

Glassey continued that there are "enormous opportunities" for Washingtonians with the passage of the measure. "We are grateful to the legislators in Washington for making this choice to take great care of hard-working Washingtonians."

The process, from the introduction to passage in the Senate and finally the governor's signature, hasn't taken long. Sen. Mark Mullet (D-Issaquah) introduced the bill on Jan. 9. The Senate passed it on Feb. 12. The House initially passed it on March 1 in a 57- 39 vote, and on March 6, it passed a version that incorporated Senate views on the amendments it had made. The Senate passed the amended version in a 35-12 vote on March 7.

ABOUT THE PROGRAM

Washington Saves will be an automatic enrollment individual retirement savings account program. The measure will require covered employers to allow employees an opportunity to contribute to an IRA through an automatic payroll deduction.

The default contribution rate is to be not less than 3%, nor more than 7%, of wages. The program also includes automatic escalation that may not exceed 1% per year or cause the maximum contribution rate to exceed 10% of wages. Accounts are portable.

Employers. Covered employers are businesses located in Washington State for at least two years, that had employees working a combined minimum of 10,400 hours during the previous calendar year, and that do not already offer employees a qualified retirement plan. Employers are required to enroll employees who have had continuous employment for one year or more in the program at default contribution rates.

Employers' duties include:

- registering and providing their employees' information to the program;
- offering their employees the choice to participate in the program or opt out;
- timely remittance of participant contributions;
- providing program information to employees, including specific disclosures; and
- providing information, forms, and instructions to employees with procedures for making contributions, investment selections, transfers, rollovers, withdrawals, and other distributions from the employee's IRA.

Employees. Employees may have a say in how their account funds are invested. They also may opt out of the program. Former participants will still be permitted to contribute to their accounts.

PROGRAM ADMINISTRATION

A 15-member governing board will design, develop, implement, maintain, and oversee the program. It is to begin meeting in 2025. The governing board must submit a preliminary legislative report by Dec. 1, 2025, and submit a final legislative report on program design and implementation recommendations by Dec. 1, 2026.

TIMING

The program must be launched by Jan. 1, 2027, but implementation may be phased in.

WHAT'S NEXT?

"The final piece to the puzzle is to nudge employers to make the choice to take advantage of this groundbreaking legislation," remarks Glassey. PC

Alexander Lukatskiy/ Shutterstock.com

FIDUCIARY RULE: TRICK OR TREAT?

The newest iteration of the Fiduciary Rule was unveiled last Halloween. To some, it was scary, to others, a reasonable and positive step. **By John Iekel**

Exactly one week earlier, Assistant Secretary of Labor Lisa Gomez told attendees at an Oct. 24 session of the 2023 ASPPA Annual conference that issuing proposed guidance on when an individual who provides advice is a fiduciary under ERISA was a "very high priority" to the Department of Labor (DOL). She added that the proposed rule would "take into consideration so much that has happened" as well as what the DOL has heard from stakeholders.

Gomez did not give a specific date but did say that the DOL would be issuing the rule "very soon." She wasn't kidding—the proposed new guidance was announced at a White House ceremony just a week later, on Oct. 31.

CORE ISSUES

The proposed rule is an effort to make guidance on fiduciary duty applicable to current circumstances, simplify it, and fill gaps, say proponents.

Up to date. The DOL argues that the way the 1975 rule defines "fiduciary" does not meet contemporary retirement investors' needs or expectation, and that the proposed rule brings the definition up to date. It says:

> "Under the nearly 50-year-old rule, a financial services provider is an investment advice fiduciary only if, among other things, the advice is provided on a 'regular basis' and there is a 'a mutual agreement, arrangement, or understanding' that the advice will serve as 'a primary basis for investment decisions.'"

Part of the reason the DOL issued the proposed rule was that "too often goals and reality are not in line," remarked DOL Principal Deputy Assistant Secretary at EBSA Ali Khawar in a Nov. 6, 2023, session at the SPARK Forum.

Proper recommendations. Khawar said on Nov. 6 that the intention with the rule is not to turn every conversation into a fiduciary conversation; rather, "when giving advice, it should be treated as advice." The way to ensure that recommendations are happening properly is to make sure that policies and procedures are in place, he said.

Khawar noted that there was no sophisticated investor carve-out in the new version. He said that is because the context for those transactions is not the same as it was for small businesses nor for individual investors.

Simplicity. Joe Canary, Director of EBSA's Office of Regulation and Interpretation, added at the SPARK session that the 2016 rule was complicated. This new iteration, however, "is a more standard approach," he said. Canary added that the version released a week before was an effort to simplify the rule and make it easier to understand.

Small businesses too. The new proposed rule includes a requirement that 401(k) plan-level protection extend to small

business owners and participants—something which the American Retirement Association (ARA) strongly supports.

Filling a gap. House Financial Services Subcommittee on Capital Markets Ranking Member Rep. Brad Sherman (D-CA), at the subcommittee's Jan. 10 hearing on the proposed rule and its implications said that something is needed to fill the gaps in existing regulatory guidance and mitigate the fact that some states have not adopted the NAIC's model guidance. Witness Kamila Elliott, CEO of Collective Wealth Partners, similarly argued that the proposed rule will help fill a regulatory gap when providing retirement investment advice.

American Retirement Association (ARA) CEO Brian Graff a month earlier in testimony submitted to the DOL had highlighted "the significant regulatory gap" regarding plan-level advice to small businesses. And Allison Wielobob, Chief Legal Officer of the American Retirement Association, says that in its comment letter on the proposed rule and amendments to PTE 2020-02, the ARA "pointed to the regulatory gap under current law, which means that small plan service providers are subject to less regulation than larger plans, including advisors who engage clients on a one-time basis rather than in a regular and ongoing relationship."

Changes to be made. Wielobob has written that "if the proposed requirements are finalized in their current form, banks, insurance agents and insurance companies will need to make significant changes." However, she also says that "outside of the banking and insurance contexts, an overview of the proposed changes to PTE 2020-02 shows that the changes are somewhat less daunting than they may seem at first blush and are not drastic for many parts of the industry as some headlines have suggested."

QUESTIONING THE PROPOSAL

The proposed fiduciary rule has evoked support from some high-profile firms, among them the aggregation firm HUB, Fidelity, Morningstar, and Vanguard. But other financial services firms and related trade groups have expressed opposition.

Several witnesses at the Jan. 10 hearing of the House Financial Services Subcommittee on Capital Markets called the proposal unnecessary because existing federal and state regulations, such as the ERISA five-part test, the SEC's Regulation Best Interest (Reg BI) and the National Association of Insurance Commissioners' best interest standard for annuity sales, are adequate safeguards for protect consumers and investors.

Bradford Campbell, Partner with Faegre Drinker who previously served as Assistant Secretary of Labor for the Employee Benefits Security Administration during the George W. Bush administration, called the proposals a "new, highly detailed, and very proscriptive federal regulatory regime" that would make financial professionals less accessible.

Chairwoman Rep. Ann Wagner (R-MO) expressed similar sentiments in her opening statement on Jan. 10, remarking, "As we saw when the 2016 rule went into effect, this proposal will shut millions of low and middle-income Americans out of the financial advice market, and we would be left with two classes of investors: those who can afford investment advice, and those who cannot."

Campbell also questioned the proposals' scope, telling subcommittee members, "The proposals go well beyond DOL's limited authority. In fact, the proposals would make DOL the primary financial regulator of $26 trillion, approximately half of which is held by individuals in individual retirement accounts and annuities (IRAs) rather than employer-provided plans."

Graff has written that the ARA recognizes that "there are an enormous number of details contained in this proposal" and that "there will no doubt be practical issues that arise, and we certainly expect that we will have concerns with some of the new requirements." Nonetheless, he also said that the organization "will be actively engaged, including meeting with DOL and what we expect will be extensive written comments."

WHERE THE ARA STANDS

In a Nov. 1 statement concerning the proposal, Graff said,

> *ARA's mission is to expand and strengthen the employer-based retirement plan system. We support DOL's proposed retirement security regulation updating the definition of investment advice under ERISA because, as we work toward expanding retirement plan coverage, it will ensure that advice given to plan sponsors with respect to plan investments under any and all circumstances is required to comply with the fiduciary standards of ERISA.*

Shortly before Christmas, in prepared testimony to DOL leadership and staff, Graff highlighted "the significant regulatory gap" regarding plan-level advice. His comments included the following:

> *As we look to increase small business retirement plan coverage it is critical we address this regulatory gap. The 1975 regulatory definition of investment advice is ill-suited for advice to plan sponsors with respect to participant-directed 401(k) plans that didn't even exist in 1975. Under ERISA, a small business owner is subject themself to ERISA's fiduciary standard when selecting a provider of plan investment options. Since a plan sponsor is making decisions on behalf of participants, ARA believes it is absolutely essential, as provided in the Department's proposed rule, that such a fiduciary plan sponsor be able to rely on the fact that their investment advisor will be subject to the same fiduciary standard of care regardless of whether such advice is just once or on a "regular basis."*

Graff reiterated the ARA's "general support for the Department's longstanding effort to modernize the 1975 regulatory definition of investment advice …We believe it is critical to the interests of plan sponsors and participants that the fundamental changes in the 1975 regulatory definition of investment advice be allowed, after almost 50 years, to finally move forward." **PC**

See Brian Graff's full DOL testimony on the next page.

Brian Graff's Full DOL Testimony

Following is the full testimony American Retirement Association (ARA) presented at the Dec. 12, 2023, Department of Labor hearing concerning the proposed fiduciary rule.

Thank you, Assistant Secretary Gomez, Deputy Assistant Secretaries Khawar and Hauser, and the rest of EBSA staff for this opportunity to testify on behalf of the American Retirement Association on the proposed retirement security regulation. The mission of the ARA has always been to expand and strengthen the employer-based retirement plan system. Consistent with this mission, ARA embraced the enactment of ERISA almost fifty years ago in 1974 because it included a principles-based fiduciary standard designed to protect the interests of both plan sponsors and participants. From the outset, we would like to voice our support for the Department's longstanding efforts to modernize the 1975 regulatory definition of investment advice, leading to fiduciary responsibility under ERISA, particularly as it applies to advice to retirement plan sponsors with respect to plan investments.

It is well recognized that the gateway for working Americans to achieve a comfortable retirement is having access to a workplace retirement plan. Moderate income workers are fifteen times more likely to save for retirement when covered by an employer-based retirement plan than on their own in an IRA. The advent of automatic enrollment has made the connection between retirement plan coverage and positive retirement outcomes even stronger.

The retirement plan coverage gap tends to be greater among small business employers and this has contributed to savings inequity among communities of color where employment disproportionately skews to smaller businesses. Access to a workplace retirement plan is by far the best way to address savings inequity and the American Retirement Association remains committed to the goal of expanding retirement plan coverage, particularly by smaller businesses.

The good news is that progress is being made. The overwhelmingly bipartisan legislation SECURE 2.0 contained numerous provisions to expand small business retirement plan coverage. Legislative efforts with similar policy objectives have also been spearheaded in now fifteen states. As an example, data from one state has shown an over 50 percent increase in 401(k) plan coverage with the smallest businesses showing the biggest increase. Over the next five to seven years, it is estimated that hundreds of thousands of new small business retirement plans will be created.

This is indeed good news, but it also highlights a significant regulatory gap respecting advice to plan sponsors regarding plan investments. It is often said that small business retirement plans are "sold" not "bought" because small business owners are too busy running their businesses.

"Selling" a small business retirement plan, including the specific investment options offered to participants, is not "investment advice" under the current 1975 regulation because, as is often the case with smaller plans, there is no ongoing advice relationship and the "regular basis' prong of the 1975 five-part test is not satisfied. Practically, this means that when most small business retirement plans are "sold" the advice given is NOT subject to ERISA's fiduciary standard of care.

Investment advice given to small business plan sponsors is also NOT protected by SEC's Regulation Best Interest because "plan-level" advice is considered "institutional advice" even if we are talking about an unsophisticated small business owner with just two employees. In fact, when Reg BI was being developed the ARA asked the SEC Commissioners to consider applying it to advice to small business retirement plans and we were told that they believed such advice properly belonged within DOL's jurisdiction.

Similarly, although the NAIC Model Rule has increased protections for individual purchasers of annuities in over half the states so far it again does NOT apply to the purchase of annuity-based retirement plans by small business owners. Thus, under the current federal and state regulatory framework, most small business owners doing the right thing and trying to offer a retirement plan for their employees are often provided zero—let me repeat zero—regulatory protection with respect to the advice given to them regarding plan investment options.

As we look to increase small business retirement plan coverage it is critical we address this regulatory gap. The 1975 regulatory definition of investment advice is ill-suited for advice to plan sponsors with respect to participant-directed 401(k) plans that didn't even exist in 1975. Under ERISA, a small business owner is subject themself to ERISA's fiduciary standard when selecting a provider of plan investment options.

Since a plan sponsor is making decisions on behalf of participants, ARA believes it is absolutely essential, as provided in the Department's proposed rule, that such a fiduciary plan sponsor be able to rely on the fact that their investment advisor will be subject to the same fiduciary standard of care regardless of whether such advice is just once or on a "regular basis."

Both SEC Reg BI and the NAIC Model Rule provide investor protections to individuals on

a transactional basis whether or not there is an ongoing advice relationship on a so-called "regular basis." It is simply nonsensical to give an unsophisticated small business owner who is arguably making a more consequential set of investment decisions on behalf of his or her employees LESS investor protection than that same small business owner would likely get with respect to investment advice received on his or her own personal investments.

ARA feels strongly that small business owners looking to provide a retirement plan for their employees should never be left without any regulatory protections when getting advice with respect to plan investment options.

The ARA as a matter of policy believes that all retirement plan regulations should be business model and product neutral. The proposed regulation will ensure that advice given to plan sponsors will be subject to the same fiduciary standard of care regardless of whether the advice is given once or as part of an ongoing relationship. It will also provide for the same fiduciary standard of care regardless of the retirement plan investments being considered be they mutual funds, insurance products, CITs, CDs, commodities, or even cryptocurrency.

We also support the stated intent of the proposal to be distribution and compensation model neutral. ARA feels strongly that commission-based compensation must continue to be permitted. We appreciate the recognition in the proposal that commission-based compensation for advice may in many cases be in the best interest of plan sponsors and participants. In fact, the allowance of commission-based compensation is critically necessary with respect to small business retirement plans as it can reduce out-of-pocket costs to the small business owner who might not otherwise be able to afford the plan. The same can be said regarding proprietary investment products and we appreciate the Department's recognition that their use in retirement plans can also be consistent with ERISA's fiduciary standard.

Of course, we recognize that with a broad rule like this the details matter. We supported PTE 2020-02 when it was originally proposed, and we generally think it has been working well in protecting plan sponsors and participants.

We frankly have some concerns about some of the proposed changes, such as the substantial changes to the disclosures required, and question whether the benefits of some of these changes outweigh the likely costs. We will be outlining these concerns in more detail in our written comments.

We would like to highlight one significant proposed change to PTE 2020-02 that appears to be inconsistent with the Department's stated position of being business model and product neutral. Proposed changes to the policies and procedures required under PTE 2020-02, Section II(c), would now include a proscriptive list of business and compensation models that are presumed to be in violation of a retirement investor's best interest. These include appraisals, performance and personnel actions, bonuses, and importantly differential compensation. Given the season, we are referring to this as the "naughty list."

The inclusion of this proscriptive "naughty" list would seem to be wholly inconsistent with the Department's general embracing of a principles-based fiduciary standard. If this list is included in the final exemption, it will absolutely interfere with existing business and compensation models by creating a clear negative presumption against all these forms of compensation.

For example, there are numerous examples of when differential compensation may be entirely appropriate and in the best interests of plan sponsors and participants because such differential compensation relates to specialized investment options offering different levels of services or features. Such common options to plan sponsors and participants would now be chilled as a consequence of this negative presumption. We strenuously recommend that the final exemption return to the previous language in the current exemption which relies on a principles-based approach to policies and procedures.

That said, we do want to reiterate our general support for the Department's longstanding effort to modernize the 1975 regulatory definition of investment advice. In this regard, we strongly support the Department's suggestion that when finalized the regulation be structured so as to be severable in case a court determines that portions of the final regulatory package, and in particular the changes to the existing prohibited transactions exemptions, should be vacated. We believe it is critical to the interests of plan sponsors and participants that the fundamental changes in the 1975 regulatory definition of investment advice be allowed, after almost fifty years, to finally move forward.

Thank you for the opportunity to testify today. We look forward to continuing the dialogue on this important topic, and I am happy to take any questions. **PC**

ADDING A CASH BALANCE PLAN TO A PROFIT SHARING 401(k) PLAN

When a client informs your firm that they're adopting a Cash Balance (CB) plan alongside their existing Profit Sharing 401(k) (PS/k) plan, it's crucial to understand the implications and necessary adjustments. **By Norman Levinrad**

Okay, your firm administers a Profit Sharing 401(k) (PS/k) plan for a client and they tell you they have decided to adopt a Cash Balance (CB) plan. Presumably, some design analysis or illustration was presented to them by a salesperson, and they've told you they intend to proceed. For purposes of this article, I'll assume that an actuary or someone other than you will be handling all aspects of the CB plan, and your concerns are what changes need to be made to the PS/k plan document and what the administrative issues affecting the PS plan that you need to be aware of given the addition of the CB plan.

Your first concern will be whether any changes need to be made to the PS/k document or adoption agreement. There are a few main issues to consider here:

- **Highly Compensated Employee (HCE) Definition:** Both plans must use a consistent definition for determining HCEs. Make sure you know how the combo plan was designed in this regard and if necessary, amend the PS/k plans HCE definition to match what's being used in the CB plan.
- **PS Allocation Method:** The combo plan design will almost always require that you amend the PS/k plan to use individual allocation groups. Without this, it is often impossible to make the plan design work because different levels of PS contributions will be required for HCEs and Non-Highly Compensated Employees (NHCEs), and often, additional contributions will need to be made to select NHCEs to get the combined testing to pass.

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PS Allocation Requirements: The combo plan design will operate most efficiently if no allocation requirements are associated with the PS contribution.

This is because there may be statutory contributions required for NHCEs to satisfy the top-heavy contribution requirements and the dual plan gateway requirements, and these statutory contributions will override a last-day employment or 1000-hour requirement.

- It's understandably very confusing to clients when you tell them they have to make PS contributions for employees who don't satisfy the plan document's allocation requirements. With individual allocation groups, they are not compelled to make PS contributions for anyone but have the ability to make the required statutory contribution for everyone they are required.
- **Top-Heavy (TH) Minimums:** Both plan documents need to specify in which plan the TH minimum contribution will be made in the event the plans are top heavy. In almost all cases, the dual plan TH minimum will be provided in the PS/k plan, so the PS/k plan document will need to be amended accordingly.
- **Vesting:** The slowest vesting schedule allowed for a CB plan is the three-year cliff vesting schedule. Under the regulations, this is considered comparable to the six-year 2/20 vesting schedule commonly used on the PS plan, so there is no issue with the two plans using these different vesting schedules.
- **Other Benefits, Rights and Features:** When two plans are tested together for non-discrimination testing purposes, they are then tested together for all other purposes. So things like timing of distributions, availability of in-service distributions and participant loans, and optional forms of benefits must provide in each plan in a non-discriminatory manner.
- While not required, the administration of the two plans is way simpler and less prone to errors if both plans use a consistent compensation definition and a consistent definition for eligibility and entry dates.
- In my experience, the best thing to do when your client tells you they are adding a CB plan is to send the existing PS/k plan document to the actuary and ask them to review it and tell you what changes need to be made.

Now, let's consider the administrative issues that will affect the administration of the PS/k plan:

- Firstly, it's critical that you and the sponsor realize that the profit-sharing contributions to the Non-Highly Compensated Employees (NHCEs) are no longer discretionary. In almost all cases, the CB plan and the PS/k plan have been designed to be tested together for non-discrimination purposes, which means the contributions for the NHCEs are required to pass non-discrimination testing each year.

One of the most common compliance issues that happens in these combo plan situations is when the sponsor makes advance PS contributions during the plan year. This can blow up the client's ability to deduct the planned cash balance contribution!

- Suppose the CB plan is covered by the Pension Benefit Guaranty Corporation (PBGC). In that case, there is no combined deduction limit – the CB plan has its own deduction limit, and the PS plan has its normal 25% Compensation deduction limit. But suppose the CB is exempt from PBGC coverage. In that case, the employer contributions (the total of employer matching contributions, Safe harbor non-elective contribution and profit-sharing contributions) made during the plan year must not exceed 6% of compensation! As a quick refresher, owner-only plans and professional service organizations with less than 25 active participants will be exempt from PBGC coverage. If the plan is not covered by PBGC and the client has made employer contributions of more than 6% of compensation during the plan year. The combined deduction limit becomes 31% of compensation and they may have blown up their ability to deduct the planned cash balance contribution! You need to know if there is a combined deduction limit and if the employer contributions must be limited to 6% of compensation. If that's the case, tell the client never to refund profit-sharing contributions until after year-end!
- For this same reason, it's often better not to provide the Safe Harbor contributions to HCEs so that there is room within the 6% deduction limit to make the required statutory combined gateway requirements to the NHCEs. It's also for this same reason that a Safe Harbor contribution is best provided by the 3% non-elective safe harbor if there is a combined deduction limit since the 3% non-elective SH contribution does triple duty – it goes towards the usual 5% TH dual plan contribution, it goes towards the combined gateway requirement, and it's also used for non-discrimination testing.
- Each year, the top-heavy test will now need to consider the cash balance accounts for the Key and Non-Key employees in combination with their PS/k plan balances. Usually, the actuary will ask you for the PS/k plan balances to compile the combined TH test to determine if the plans are top-heavy, or they will ask you to compile a combined test. If the plans are top-heavy, they will take the required TH minimum contributions required for the non-keys into account.
- When there is a combo CB and PS/k arrangement, you should only communicate PS contribution information to the client once the actuary has completed the combined testing and told you what the PS contributions are for the year. For the two plans to operate smoothly, you and the actuary need to be communicating with each other to ensure that you are both on the same wavelength with respect to what PS contributions are desired for the HCEs and what PS contributions are required for the NHCEs. Communication is key to keeping both plans operating smoothly! PC


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FORFEITURE 'CAUSE

As if our jobs as compliance administrators weren't complicated enough, something that we thought we knew how to handle with very little questions or confusion has just gotten… complicated. **By Shannon Edwards**

What will they think of next?

I'm talking, of course, about the reallocation of forfeitures–those non-vested balances "left behind" by terminated participants.

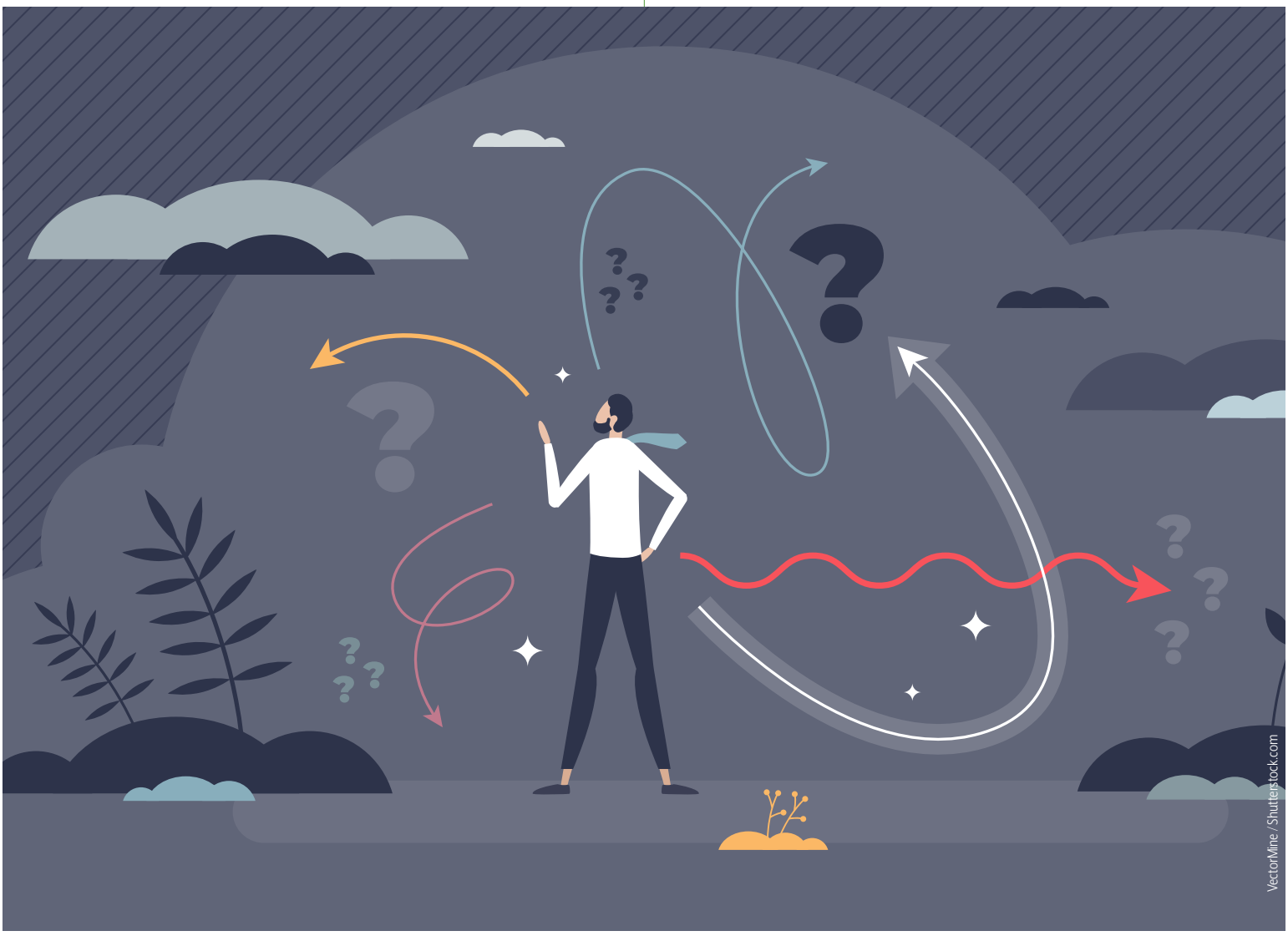
Roughly a year ago, the Treasury and IRS issued proposed regulations (Prop. Treas. Reg. §1.401-7) relating to forfeitures in qualified plans. In the proposed regulations, they gave us the answer to the question, "what is the deadline for the use of the funds in the plan's forfeiture account?". In doing so, they formalized their previous guidance that forfeitures must be "used no later than 12 months following the close of the plan year in which the forfeitures were incurred." The effective date of the proposed regulation was January 1, 2024.

At the same time, they also gave us guidance on what to do with plans that had suspense accounts that had been accumulating for years. In fact, they were very generous - allowing plan sponsors to treat the forfeitures as if they had been incurred in 2024, which means that they have until the end of the 2025 plan year to do something with those non-vested balances. The preamble to those proposed regulations also includes a suggestion that the plan document should include multiple options on how forfeitures will be used rather than limiting that use to a single option - so that the new timing requirements for the use of forfeitures will not be violated. For more details regarding the proposed regulations, be sure to read the article written by Robert Richter You Have How Much in Your Forfeiture Suspense Account?.

That "latitude" notwithstanding, we were reminded of the importance of adhering to the plan document's provisions regarding forfeitures when, last fall Sypris Solutions, Inc.) was ordered to restore $575,000 to their plans due to a "misuse" of participant forfeitures. The Department of Labor filed a complaint against Sypris Solutions back in December of 2017 in the U.S. District Court, Western District of Kentucky, Louisville Division. The DOL claimed that Sypris Solutions and members of their retirement plan advisory committee failed to follow the plan documents for several of their 401(k) plans, documents that required the plans to use forfeitures to pay plan expenses. However, rather than following the document, the defendants instead used the forfeitures to reduce employer contributions. In this case there was no flexibility or decision to be made regarding the use of forfeitures by the company or the committee. The DOL argued by not using the forfeitures to pay plan expenses, the participants were harmed due to increases in the expenses they had to pay, and the employer benefited. If you would like to read more, you can refer to the article written by Nevin Adams on January 2, 2024 called DOL Successfully Sues Employer for Misuse of Forfeitures.

That long-standing practice of using plan forfeitures to offset employer contributions was recently drawn into question, courtesy of a half-dozen suits (as we go to press) filed by a law firm in South Pasadena, Hayes Pawlenko, LLP, asserting that the use of forfeitures to reduce employer contribution obligations - even in cases where the plan document apparently allowed for that - is a breach of fiduciary duty. The suits–involving national, name brand firms like Intel, Honeywell, HP and Clorox–have all been filed in federal courts in the state of California, and in four of the cases the defendants have filed a motion to dismiss. In each of the cases Hayes Pawlenko law firm, on behalf of the plaintiffs, asserts that the fiduciaries of the plan failed to act in the best interests of the plan participants and instead unjustly enriched the defendants and/or the Plan Sponsor.

In one of those cases (Barragan v. Honeywell International Inc. et al.), Hayes Pawlenko argues that "ERISA requires Defendants to defray the Plan's expenses" and by not doing



"THE LAW IS CLEAR THAT AN EMPLOYER DETERMINES HOW MUCH MONEY IT WILL CONTRIBUTE TO A PLAN IN ITS SETTLOR CAPACITY AND MAY MAKE SUCH DECISIONS SOLELY IN ITS OWN INTEREST, WITHOUT REGARD TO THE INTERESTS OF PLAN PARTICIPANTS."

so and instead using the forfeitures to reduce company contributions, they are using plan assets for the company's benefits rather than the participants' benefit. Unlike the DOL case against Sypris Solutions, Inc. mentioned above, in several of these cases Hayes Pawlenko acknowledges that the plan document authorizes the use of forfeitures to offset company contributions. They also completely disregard the fact that the use of plan forfeitures to offset employer contributions is allowed and has been allowed for years under the regulations. In fact, the IRS and Treasury refer to the ability to use forfeitures to offset employer contributions in their proposed regulations issued last year and mentioned above. They even encourage plan sponsors to make sure that their plans allow this option and other options to avoid an operational error. In my reading of the information regarding these cases the attorneys are basing their arguments on the fact that the fiduciaries had a choice between using the forfeitures to reduce contributions or to pay for thereby reducing plan expenses. They are arguing that by choosing to use the forfeitures to reduce the contributions rather than reduce the participant expenses they did not act in the sole interest of the participants, but instead chose to benefit themselves.

However, in several of the motions to dismiss, the fiduciary defendants argue that the decision on how to use the forfeitures is a settlor decision not a fiduciary decision, and therefore, there cannot be a breach of fiduciary duty. "The law is clear that an employer determines how much money it will contribute to a plan in its settlor capacity and may make such decisions solely in its own interest, without regard to the interests of plan participants. Because contribution decisions are settlor—not fiduciary—in nature, it follows that Defendants cannot breach any fiduciary duty to participants by failing to cause the Company to contribute more money to the Plan." In fact, they go on to note that the plaintiff "has not alleged any facts to show that Defendants could have caused the Company to contribute more money, rendering Plaintiff's theory of injury entirely speculative. Plaintiff's claims for breach of fiduciary duty should be dismissed as a matter of law."

In essence, the arguments made by the defendants thus far have tended to emphasize:

There's no fiduciary breach because (a) funding a plan is a settlor, not a fiduciary function; (b) a fiduciary does not control a company's decision to contribute assets to a plan; instead, the company makes plan funding decisions solely in its settlor capacity; and (c) payment of benefits in accordance with the plan document is not a breach of fiduciary duty.

Additionally, they argue that there is no injury to the plan, that the plaintiff has failed to state a claim for violation of ERISA's anti-inurement provision, nor have they stated a claim for violation of ERISA's prohibited transaction provisions nor stated a claim for failure to monitor fiduciaries–in other words, the participant-plaintiff has received all the benefits they are entitled to, and the notion that they would have received those amounts AND the reallocation of forfeited balances is speculative, at best. If your clients are allowed by their documents to make a choice between one option for disposing of their forfeitures and another, it may be best to document how they reached their decision and why. Best practices would dictate that you check your clients' plan documents, and make sure that they are currently disposing of their forfeitures in a manner allowed by their document. In order to comply with the new deadline for disposing of forfeitures you may want to take the IRS' advice and make sure that all of the options for disposing of them are available to your clients in their document. On the other hand, several law firms of note have recommended that the discretion on how to reallocate forfeitures be removed from the plan document–that the intended use going forward, be it to offset employer contributions, to pay expenses, or to reallocate to remaining participants–and simply spell out in black and white how forfeitures will be dealt with.

As for the litigation outcomes - only time will tell what the courts will decide. To learn more, be sure to check out the series of articles written by Nevin Adams as well as the article Flexibility on the Use of Forfeitures-Not so Fast Written by Robert Richter. PC

LEARNING FROM FAILURES

How the statistics used in the latest DOL audit quality study can drive a more effective EBP auditor selection process. **By Travis Jack**

REGULATORY FRAMEWORK TO THE MOST RECENT DEPARTMENT OF LABOR AUDIT QUALITY STUDY:

Since its 1974 enactment, the Employee Retirement Income Security Act (ERISA) provides the regulatory framework for private pension and welfare benefit plans including oversight authority. Under ERISA the Secretary of Labor was tasked with primary responsibility for enforcing annual reporting requirements and other fiduciary provisions contained in Title I of ERISA. Specifically, the administrator of an employee benefit plan subject to Part 1 of Title I of ERISA must file an annual report with the Secretary of Labor, generally required to include a Form 5500 and any statements and schedules required to be attached to the Form 5500.

ERISA § 103(a)(3)(A) requires a plan administrator to engage, on behalf of all plan participants, an independent qualified public accountant ("IQPA" or "EBP Auditor") to conduct an examination of the plan's financial statements. The Department of Labor has generally waived the audit requirement for qualifying plans that have fewer than 100 participants at the beginning of the plan year. The opinion prepared by the IQPA is to be made a part of the annual report for all plans requiring an audit. In 2023, the DOL revised instructions for determining whether a plan is deemed large and required to undergo an annual audit. The new rules state that for plan years beginning on or after January 1, 2023, only participants with account balances at the beginning of the year will be counted versus prior reporting periods that also included eligible participants.

THE MOST RECENT AUDIT QUALITY STUDY OVERVIEW & FINDINGS:

The OCA's most recent audit quality assessment focuses on IQPAs' financial statement audits of employee benefit plans covered under the Employee Retirement Income Security Act (ERISA) for the 2020 filing year. OCA selected a statistically sample of 307 plan audits. The workpaper reviews were conducted between December 2021 and October 2022 and the report was released in November 2023.

OCA's review found that *30 percent of the audits contained major deficiencies* with respect to one or more relevant generally accepted auditing standards requirements.

There are also key data considerations regarding CPA firm demographic factors in the study that are strongly correlated with audit quality:

- Firms that audit 1-2 employee benefit plans have a 70% deficiency rate
- In general CPAs auditing fewer than 25 plans had a significantly higher deficiency rates than those reviewing 25+ plans.
- CPAs auditing fewer than 100 plans had a significantly higher deficiency rate than those reviewing 100+ plans.
- In each of the other strata (1-2, 3-5, 25-99, and 100+ audits), deficiency rates are not significantly different from those in our 2015 study.
- In addition to volume of Employee Benefit Plan (EBP) audits performed membership in the Association of International Certified Professional Accountants (AICPA)'s Employee Benefit Plan Audit Quality Center (EBPAQC) was strongly correlated with audit quality. Approximately 71% (22 of 31) audits performed by non-EBPAQC members were deemed significantly deficient in the most recent DOL study. This number is over 200% higher deficiencies than EBPAQC center members.

We will review how best to harness this data in the EBP Auditor evaluation process to drive better auditor selections and provide a prudent fiduciary process for this often-overlooked service provider selection.

HISTORICAL TRENDLINES OF DEFICIENCY RATES

The problem of audit quality is not new there have been a number of employee benefit plan quality studies ranging from 1989 to the most recent in 2023. The table below illustrates the broad trend of overall deficiencies rates of each study:

Audit Quality Study	1989	1997	2004	2015	2023
Audits With GAAS Deficiencies	23%	19%	33%	39%	30%

TABLE AND DATA OBTAINED FROM THE 2023 DOL AUDIT QUALITY STUDY: https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/november-2023-audit-quality-study.pdf

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In addition to the overall deficiency results the two most recent studies had statistical sampling methods stratifying deficiency rates based upon the number of EBP audits performed by the firm and the most recent 2023 study also bifurcated plans between "simple" and "complex". With the simple category consisting of EBSA is treating audits of 401(k) and 403(b) plans as "simple" plan audits because the structure and operations of the plans tends to be less complex than is true of other audits. "Complex" plan audits, for these purposes, includes audits of defined benefit plans, Employee Stock Ownership Plans (ESOPs), and health and welfare plans. *(See table below)*

Additionally, the 2015 and 2023 studies reveal a number of qualitative factors regarding the population of CPA plan auditors & large plans requiring an audit as a whole. The number of firms performing employee benefit plan audits has decreased substantially from 7,330 to 4,300 while the number of plans required to have an audit increased from 81,162 to 86,863.

STEEP PENALTY FOR GETTING IT WRONG:

ERISA assigns responsibility to the Plan Sponsor and Plan administrators to ensure that plan financial statements are properly audited in accordance with generally accepted auditing standards (GAAS). Hiring a plan auditor is defined as is considered a key fiduciary function. As such plan administrators should use the same care and prudence in hiring a plan auditor that they use when hiring any individual or entity that provides services to the plan. As with all key fiduciary functions here is potential liability: Fiduciaries who do not follow the basic standards of conduct may be personally liable to restore any losses to the plan. There is a significant amount of risk to plan administrators associated with the audits of their ERISA plans. Oftentimes plan administrators are unaware of the importance of this responsibility and potential liability. The DOL studies of audit quality have historically identified significant deficiencies in plan audits. The penalties for such audit failures can be substantial. In recent years, the DOL Employee Benefits Security Administration (EBSA) has significantly stepped up its enforcement of the audit requirement for employee benefit plans. *The DOL has the right to reject plan filings and assess penalties of up to $2,586 per day, without limit, on plan administrators for deficient filings. Because an incomplete, inadequate, or untimely audit report may result in a rejection of your filing and penalties being assessed against you as the plan administrator, selection of an experienced and reliable auditor is very important.* Plan administrators should make the selection of the plan auditor a priority (and documentation of the process) and exercise due care during every phase of the auditor selection process. With 30% of the population of submissions filed deemed to have a major deficiencies based on the most recent quality study and extrapolation of the sample results, EBSA estimates that 30 percent of the audits (nearly 1 of every 3 audits) contained "Unacceptable-major" deficiencies with respect to one or more relevant GAAS requirements, putting $927.6 billion dollars and 11.7 million plan participants and beneficiaries at risk. Fortunately, you can leverage the data contained within the audit quality study to sidestep this pervasive risk.

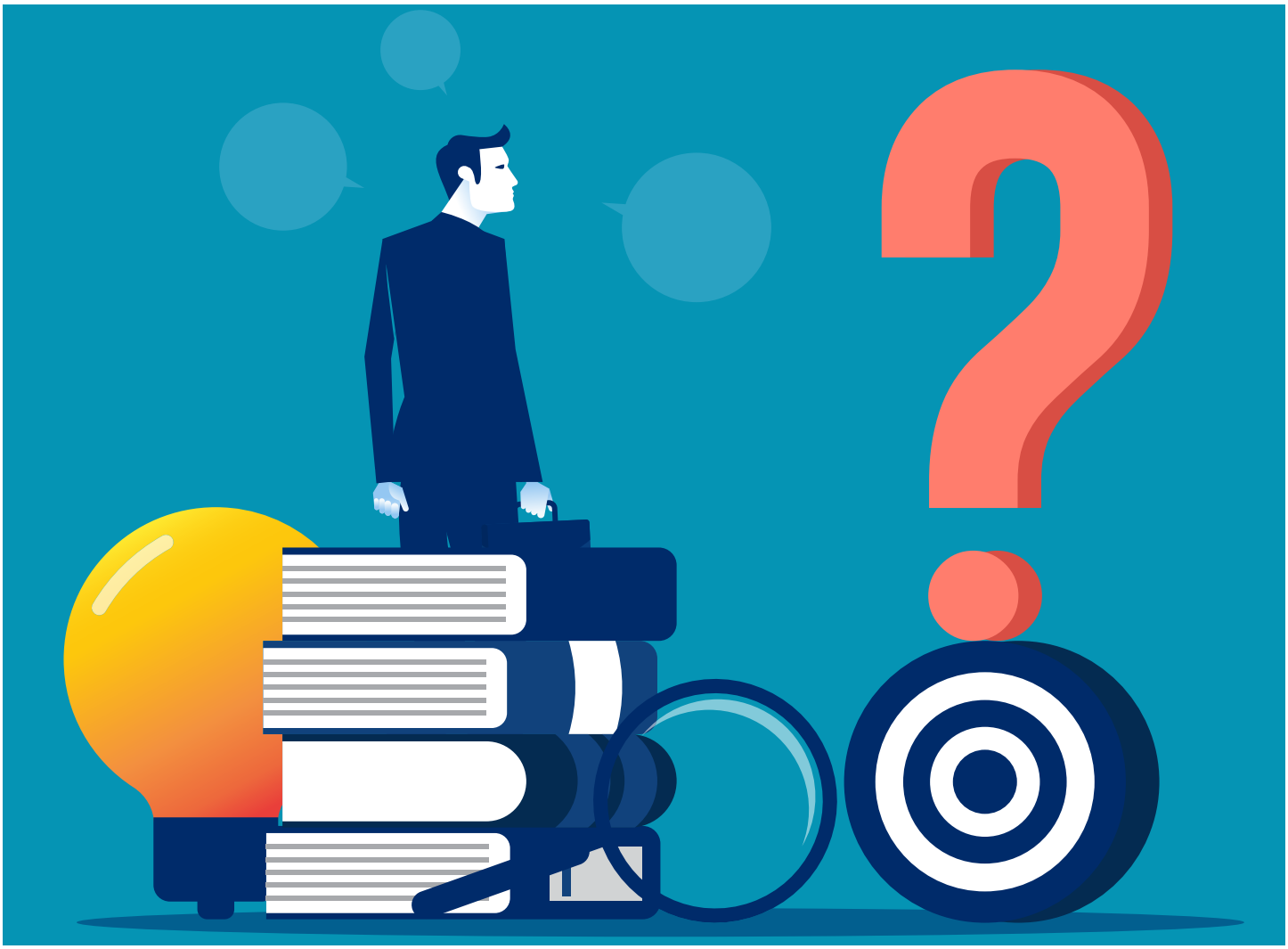
LEVERAGING DATA TO IMPROVE THE EMPLOYEE BENEFIT PLAN AUDITOR SELECTION PROCESS AND DRIVE MORE EFFECTIVE RFPS FOR CLIENTS

A link to a blank RFP template is included withing the article to assist you in taking charge of the auditor selection

Audit Deficiency Comparison — Form Year 2020 v. 2021

Strata	Form Year 2020		Form Year 2021	
	Audits Reviewed	Audits with Deficiencies	Audits Reviewed	Audits with Deficiencies
1-2 Plans	20	70.0%	95	75.8%
3-5 Plans	23	51.2%	95	68.4%
6-24 Plans	54	50.1%	95	67.4%
25-99 Plans	74	38.0%	65	41.5%
100+ Plans	137	17.0%	50	12.0%
Total	308	30%	400	39%

TABLE AND DATA OBTAINED FROM THE 2023 DOL AUDIT QUALITY STUDY: https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/november-2023-audit-quality-study.pdf



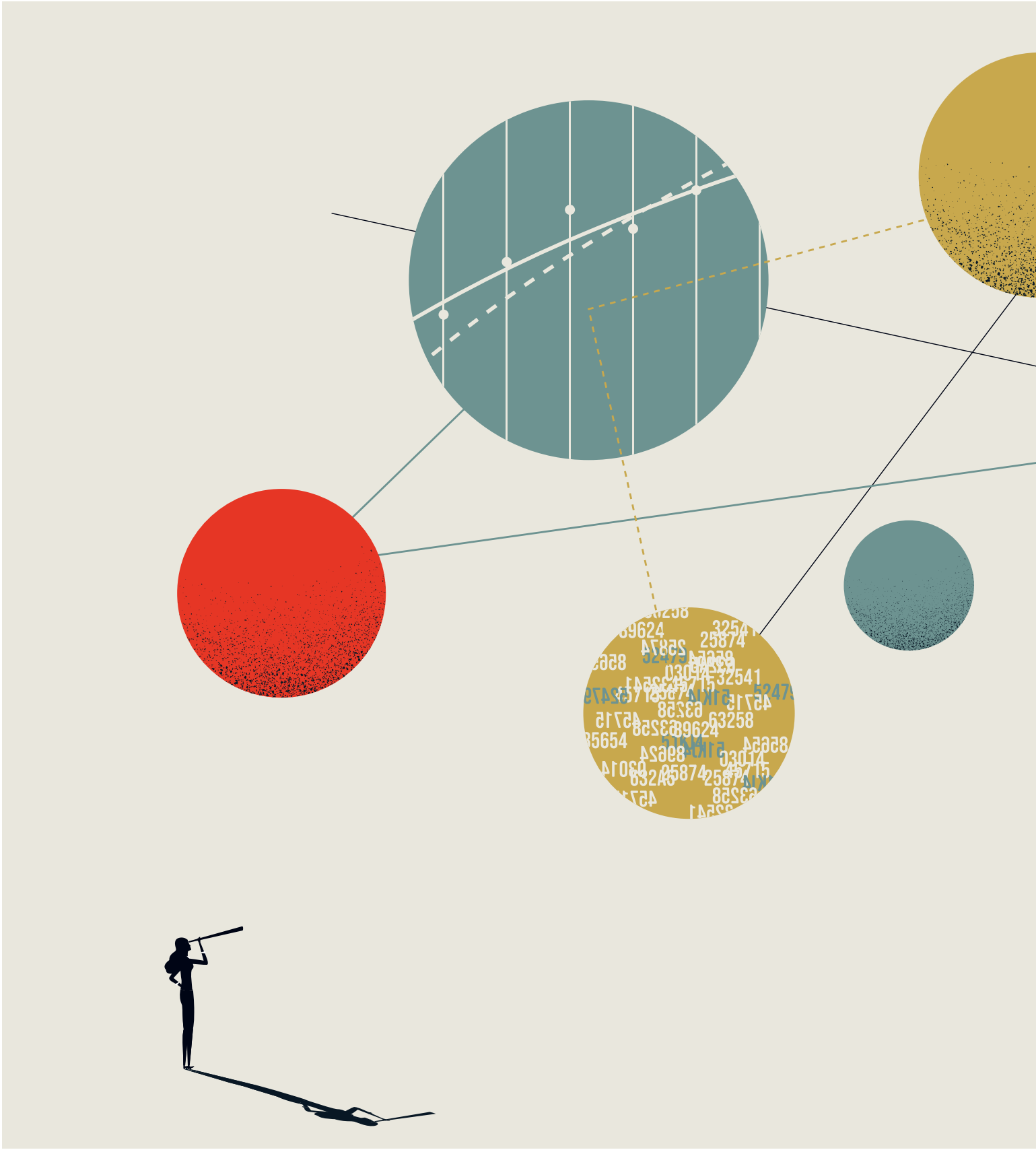
and driving additional value for your clients in the process. The data from the study and additional data from both the publications from the Department of Labor and AICPA have been included in the links. The key data and how to review it is included in the reference material.

- Number of employee benefit plan audits performed by the Firm
- Number of the specific Employee Benefit Plan type audited by the firm
- Firm Membership in the AICPA employee benefit plan audit quality center
- Number of Employee Benefit Plan Specific CPE performed by the Audit Partner or Director signing the report
- Number of Employee Benefit Plan Specific CPE performed by manager or primary point of contact for the EBP audit.
- Percent of the firms audit practice dedicated to EBP audits as a percentage of total audits performed.

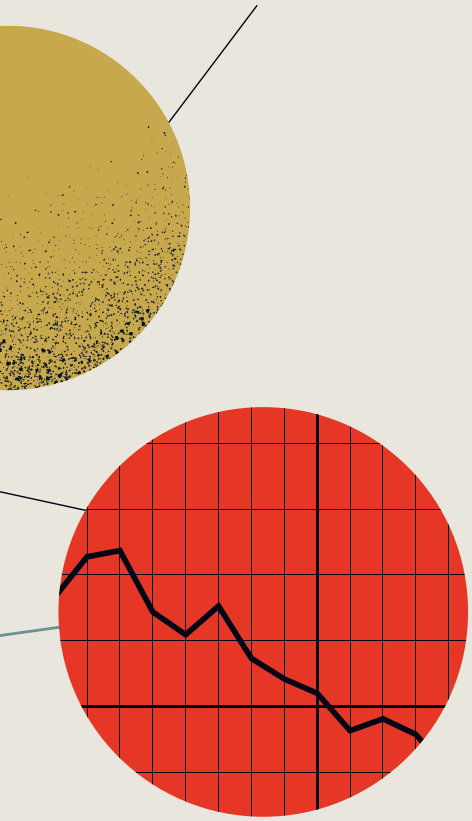
PLANNING OPPORTUNITIES TO OPTIMIZE YOUR VALUE BY VETTING EBP AUDITORS FOR YOUR CLIENTS:

There is a number of advantages of taking charge of driving the vetting process:

- If you are a service provider, you have the opportunity to assess not only auditor knowledge and likelihood to deliver a quality audit but also conduct the audit efficiently. This will allow you to also inquire and review the possible time impact of the audit on the client and other plan service providers required to complete the audit
- You can help reduce the overall possible liability for clients from the EBP auditor selection and ramifications of a possible substandard or deficient audit of the Plan thus adding value and deepening the client relationship.
- By driving the selection and interview process you create the possibility of building relationships with EBP auditors that can be an often over looked referral source. **PC**



BY
SHANNON
EDWARDS,
AMY
GARMAN
&
NEVIN
ADAMS



NOT SO SIMPLE

SOME HINDSIGHT — AND FORESIGHT — ON THE SECURE 2.0 PROVISIONS EFFECTIVE IN 2024

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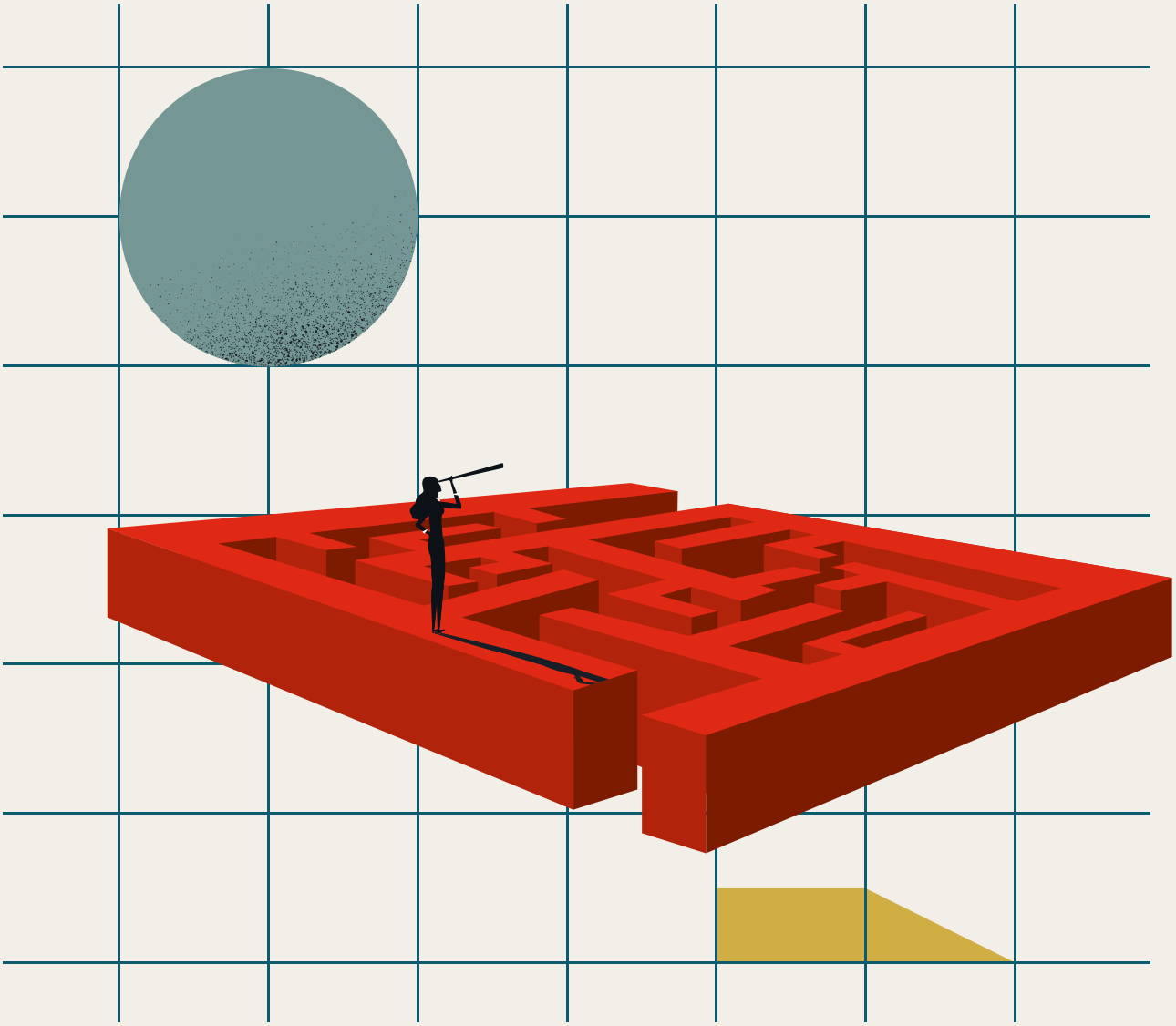

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OF THE 90-ODD PROVISIONS IN THE SECURE 2.0 ACT OF 2022, MORE THAN A QUARTER ARE EFFECTIVE IN 2024. NOW, GRANTED MOST OF THESE ARE OPTIONAL — TO BE EMBRACED AND ADOPTED BY PLAN SPONSORS AS THEY SEE FIT. BUT FOR RECORDKEEPERS AND TPAS — WELL, THEY HAVE TO BE READY FOR — WELL, PRETTY MUCH ANYTHING.

While it's still early yet, experience and reality have already set in, providing an opportunity to consider which provision(s) are good, which are problematic, and which are, perhaps, necessary evils. **Nevin Adams**, former Chief Content Officer of the American Retirement Association, recently sat down with **Amy Garman**, TPA Internal Retirement Plan Counselor at Capital Group, and **Shannon Edwards**, President of TriStar Pension Consulting to discuss the good, the bad, and the "ugly."

ADAMS: Let's start with the good stuff. What are you most excited about?

EDWARDS: Well, I am most excited about the fact that the rule regarding long-term part-time employees has changed the plan design conversations that we're having. Almost every new plan I've sold in the last three to four months has chosen to use a 60- or 90-day waiting period for eligibility instead of a year-long eligibility waiting period and no hours-of-service requirement. With the new long-term part-time rules now in effect, the plan design conversation has shifted from me telling new clients that they can keep employees out for a full year and require that they work one thousand hours to talking about the fact that while they can still require a 12-month waiting period, practically speaking, the maximum hours requirement has been dropped from 1,000 hours to 500. Once we have that conversation, they have been opting for a much shorter waiting period and are usually tying it to their other benefits such as health insurance. This is a shift in attitude that I hadn't anticipated. I hadn't imagined that clients would simply want to go ahead and let as many people into the plan as possible and make them eligible for employer contributions. That hasn't been the attitude of most small business owners in the past. Honestly though when you explain to them how the two-year calculation period will work for LTPTEs, and you consider how few hours a week it takes to reach 500 hours in a year, they basically have asked me, "Why bother?"

The other shift in our conversation has been to add automatic enrollment to all of our new plans now even though it's not required until 2025, and even if they are not "required" to add it because of the size of their company or for some other reason. We have had zero pushback from anyone because they have never had a plan without auto enrollment before, so they don't have anything to compare it to.

ADAMS: Indeed. There's been a lot of conversation and concern over the past 18 months mostly fretting that plan sponsors hadn't been tracking the hours for this provision — first included in SECURE 1.0 and then accelerated in SECURE 2.0 — to allow those with at least 500 hours of service in two consecutive years to participate. But if you simply lower that eligibility provision for everyone, it becomes something of a non-issue.

EDWARDS: Of course, for existing clients this has not been true in every case. And there are plenty of plans out there that haven't made that change or any change. I spent the final days of 2023, following the release of the LTPTE guidance on Black Friday, contacting clients who were going to be potentially affected by the new rules. I was trying to explain the potential consequences and convince them to amend their plans to avoid the rules altogether. Even after the effort I made, not all of our clients responded or took action. I do want to mention that I had two superstar financial advisor partners who attended my live Zoom meeting that I had trying to explain to advisors and my clients what the LTPTE rules meant for them — the consequences of non-action and how easy it could be to avoid them. Then they went to each of our mutual clients (who did not attend the Zoom) and explained the rules to them and got them to amend their eligibility requirements. On the other hand, I have a lot of TPA friends — friends that I respect — who told me to just blow off the long-term part-time stuff because you don't have to amend the plan until 2025. But I was trying to amend my clients' plans out of the long-term part-time rules by changing eligibility ahead of the Jan. 1, 2024, effective date. I was trying to not have any long-term part-time employees to track in the future as of Jan. 1. So, yes, I think there are people not worrying about that rule that should be, but I'm super excited about that rule because it's changing the conversations we are having with plan sponsors, and we are seeing a shift in their attitudes towards letting employees into the plan sooner rather than later.

GARMAN: How does that shift contribute to how you're handling automatic enrollment?

EDWARDS: Well, we already have two missed deferral opportunity corrections for this year for existing plans who had employees who became eligible because of the long-term part-time rules, but they were not enrolled. We are just going to have to tackle those issues as we find them. For the most part, when we are designing new

plans, we've designed the plan so that the long-term part-time rules don't come into play. That helps with the automatic enrollment issues. I think automatic enrollment is really going to mess some people up on the long-term part-time rules if the plan isn't designed to take them out of play.

GARMAN: The intersection of automatic enrollment and long-term part-time eligibility, and sponsors not designing around that reality, is definitely top of mind. Building solutions for that reality is a time-sensitive driver for us as a recordkeeper. In RecordkeeperDirect, for instance, we recently rolled out eligibility tracking. That by itself is a major enhancement, but we know we also have to factor in payroll integration and auto enrollment features so we can fully support our partners next year. I think the biggest challenge for us is integrating all the moving parts, working this all out simultaneously, and also working with other recordkeepers. Plans will continue to be in motion this year and next, despite, or perhaps because of, SECURE 2.0. How smoothly will data transition from one recordkeeper to another? That's an important question to solve for.

EDWARDS: I've already had one very large plan where the recordkeeper told us that they were ready — that they could tell us who the long-term part-time people were — and they could not, even though they had all of the historical information in their system that should have allowed them to be able to tell us. We ended up having to go through their entire census by hand for three years and figure out who the long-term part-time people were as of Jan. 1.

GARMAN: That's my concern in all of this — that it's going to be pushed onto the TPAs because that infrastructure is not in place.

EDWARDS: I am concerned with plans who are not using an independent TPA, for instance those plans that are in a bundled environment and have a recordkeeper who was not prepared on Jan. 1 to determine who was a LTPTE or who didn't even have enough information to make that determination. The plan sponsor is relying on all of their service providers to get this right. They don't understand the rules. Luckily on the large plan I mentioned previously we have an advisor partner who is extremely knowledgeable about the rules, and we were able to work together to help the client. If the client doesn't have a TPA to help them with this and the recordkeeper can't do it, I am afraid they are going to assume that the financial advisor will do it.

ADAMS: So, still lots to worry about with long-term part-time tracking — a potential good, but still fraught with potential disaster. What else are you excited about?

EDWARDS: I'm excited about the conversion of SIMPLE plans to 401(k) s mid-year. SECURE 2.0 allows an employer to replace a Simple IRA plan with a simple 401(k) plan or other 401(k) plan that requires mandatory employer contributions during a plan year.

GARMAN: We are extremely excited about the SIMPLE to 401(k) opportunity. It's a relief to finally be free of the calendar-year limitation. So often we'll receive calls from advisors early in the year who want to upgrade to a 401(k), but their SIMPLE sponsor client has already made the first one or two salary deferrals for the year. Now we don't have to put those opportunities on hold. SECURE 2.0 gives us the chance to have those conversations about the benefits of growing into a 401(k) either reactively with advisors who are calling us about it or as a prospecting message to share proactively with advisors and TPAs.

It's the early days of course; we may not know how successful we've been until third quarter. We also have to be mindful of other considerations, such as doing pro rata calculations on participant contributions to determine the limits for the portion of the year they had a SIMPLE IRA vs. the portion of the year they sponsored a 401(k), and the work that's going to put on TPAs.

EDWARDS: Yes. The payroll companies and recordkeepers are not going to be able to do the calculations yet. So that is another step that TPAs are going to have to do for clients and be familiar with how to calculate.

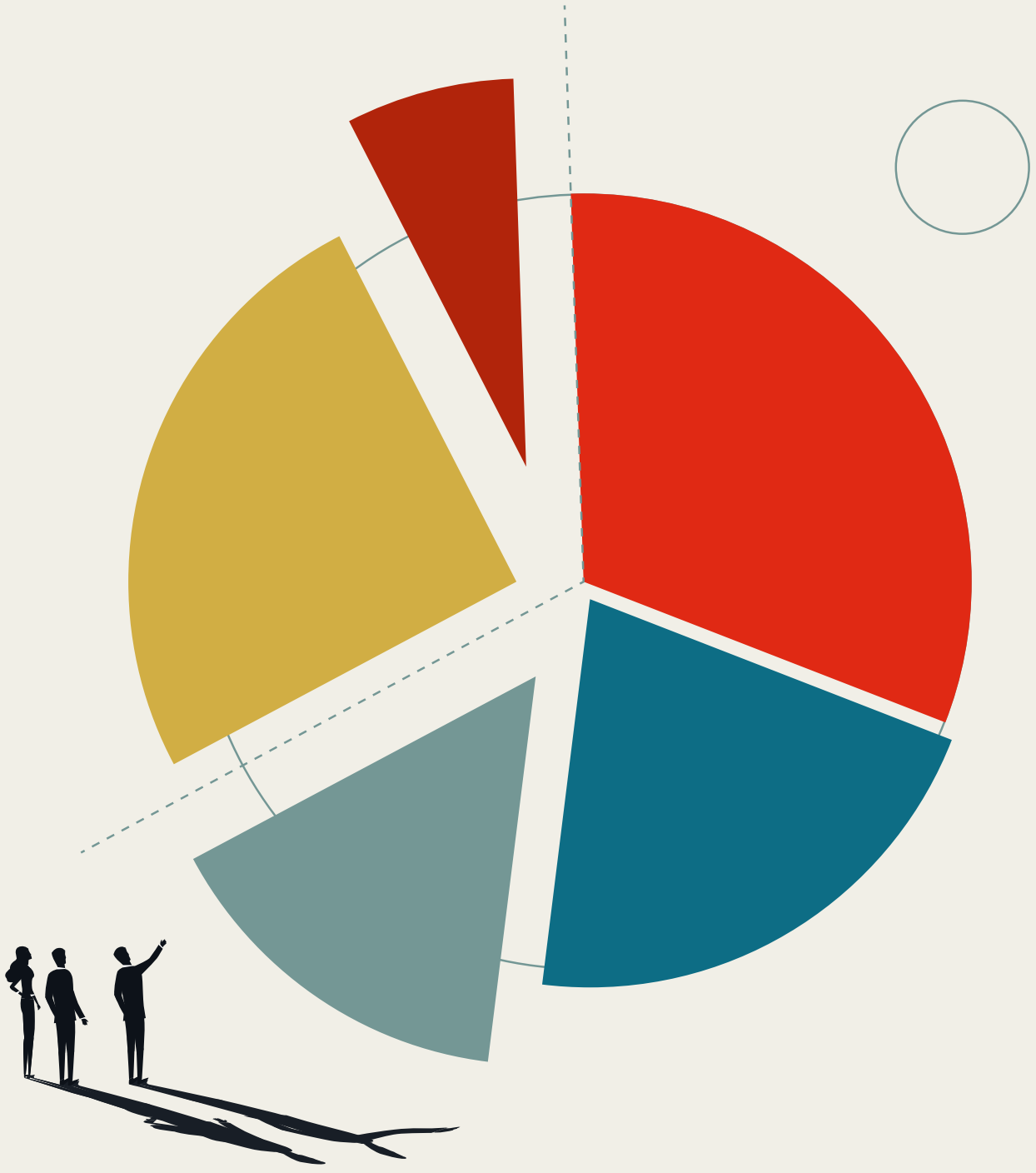
GARMAN: To that point, I've seen some ad hoc spreadsheets from TPAs circulating. Everyone's making a spreadsheet to collect that contribution data for a pro rata calculation. Hopefully best practices streamline that to a tool that is usable across plans, firms, platforms, et cetera. But we're incredibly enthusiastic about having an answer to the question, "can I move my SIMPLE to a 401(k)," and about the good that it's going to do for businesses and for participants.

ADAMS: So, is there anything that isn't living up to "expectations?"

EDWARDS: I think the biggest bust is going to be Roth employer contributions. I think this mainly because the recordkeepers and the TPAs are all telling people, "Don't do it". The recordkeepers aren't ready to administer it yet because we just received guidance on how to report it, but let's face it, even if they were it's just another way to complicate things for the plan sponsors and another way for them to accidentally make a mistake that has to be corrected later. You can already accomplish the same result inside the plan with both Roth transfers and Roth rollovers, assuming the recordkeeper is able to support that functionality. Most of them are able to support it already, and if they are not, they soon will be. I haven't talked to a single TPA firm that is encouraging their clients to add the option for making Roth employer contributions to the plan.

GARMAN: From a payroll perspective, from a taxation perspective, it's really no different, I would agree with you. I think that because we already have a

THE INTERSECTION OF AUTOMATIC ENROLLMENT AND LONG-TERM PART-TIME ELIGIBILITY, AND SPONSORS NOT DESIGNING AROUND THAT REALITY, IS DEFINITELY TOP OF MIND. — AMY GARMAN, *CAPITAL GROUP*



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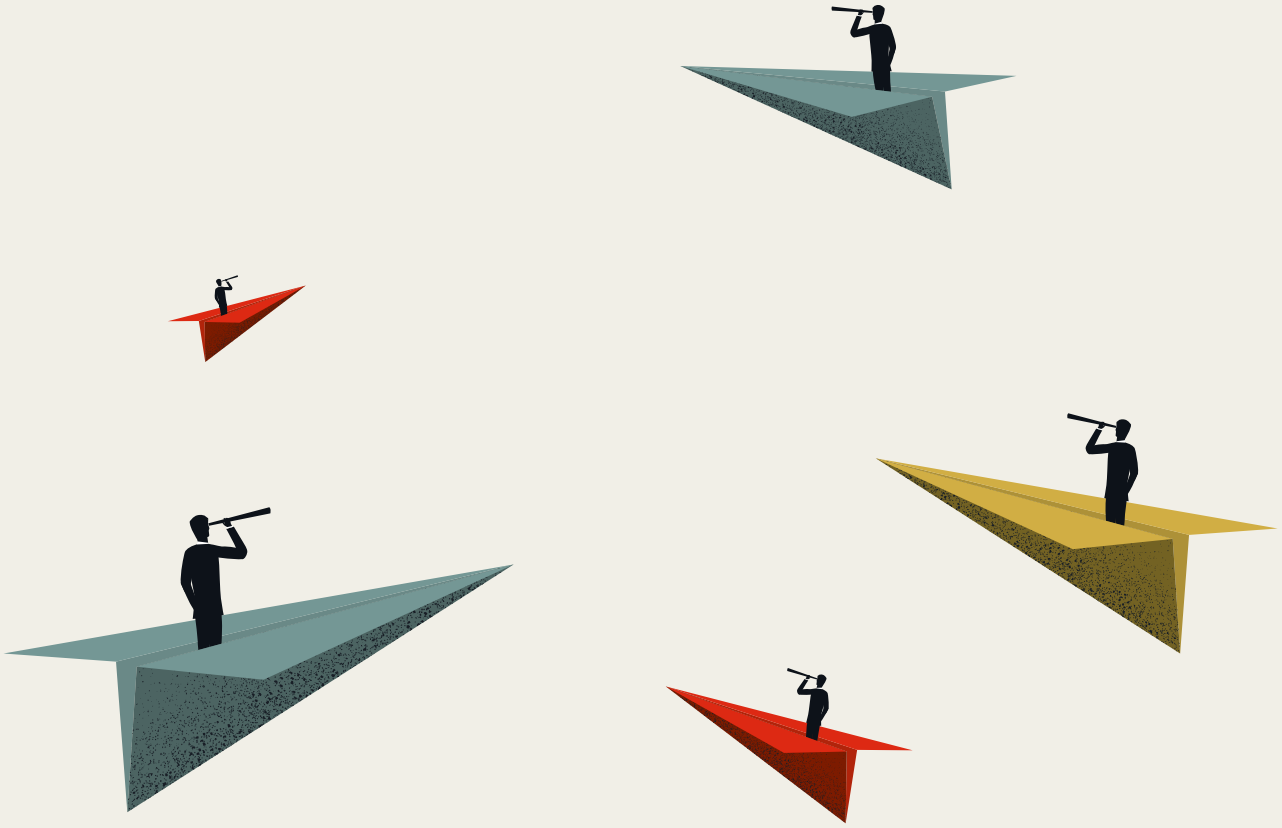
YES. THE PAYROLL COMPANIES AND RECORDKEEPERS ARE NOT GOING TO BE ABLE TO DO THE CALCULATIONS YET. SO THAT IS ANOTHER STEP THAT TPAS ARE GOING TO HAVE TO DO FOR CLIENTS AND BE FAMILIAR WITH HOW TO CALCULATE. — SHANNON EDWARDS, *TRISTAR PENSION CONSULTING*



solution to "Rothify" plan monies and because this provision creates more complexity on the contribution and payroll side, it could be a bust.

EDWARDS: Think about it; each employer is going to have to track what each of their employees chose to do and determine if that employee is fully vested or not. Because only the fully vested employees are allowed to elect to have their employer contributions made as Roth contributions. In contrast once it's in the plan, we can walk through all of that and get to the same place.

GARMAN: It's one of the top questions we've been getting. "When are you going to have Roth employer contributions?" I'm with you, Shannon. I think by the end of this year, end of next year, we won't be hearing so many calls for it.

ADAMS: Who's asking for Roth employer contributions? That's a 2022 option, right? Where a 401(a) plan, 403(b) plan, or a governmental 457(b) plan can permit an employee to designate matching or nonelective contributions as designated Roth contributions?

EDWARDS: Advisors and plan sponsors. The advisors are telling the plan sponsors about everything that's built into SECURE because plan advisors' home offices are pushing all of this information out to them and getting them excited about it. "Oh, look at this is the new big shiny thing." What

they aren't telling them or considering is the complexity that comes with the shiny new options or whether or not any of the service providers are ready to administer them.

ADAMS: What else is in that "big new shiny thing" category?

GARMAN: One that I have not heard at all internally or from clients but one that I'm seeing more in the press is matching contributions for student loan payments. There are reasons to move cautiously here because, again, thinking about recordkeeping, what are the mechanics of that process and who's responsible for tracking payments? I agree we need to help workers with student loan debt also save for retirement, but is the 401(k) the best vehicle for that? Time will tell. But it's one of those things that media outlets like the *New York Times* and *Bloomberg* are really excited about getting out there.

EDWARDS: We have gotten a few questions about student loan matches. I think that we're going to start getting more questions, but I think it's going to fall back on the TPA to have to help track it because I don't think any of the recordkeepers are prepared for it yet. I can see it being helpful in a professional firm like doctors and lawyers if somebody really wants to do it because they do tend to come out of school with some debt, which is significant. I can see some of the smaller, nicer, more paternalistic firms wanting to add this option because of that. I don't think it's going to be widely adopted or hugely successful.

ADAMS: The Plan Sponsor Council of America just did one of their weekly polls and found that two thirds said they weren't going to do it. I think a lot depends on the demographics of your workforce as to how important it is or not. And there are some concerns about this helping some people but not everyone. But the concern I remember reading most from plan sponsors was the tracking and concerns about them being under some scrutiny. Even though I think it's been pretty clear that you're going to be able to rely on the student's representations, I still think people are afraid that won't actually turn out to be the case.

EDWARDS: What about PLESAs (pension-linked emergency savings accounts)? I think that's going to be a huge bust. I'm not excited about it, and I don't have any clients interested in it at this point. I think employers aren't going to like it.

One of the selling points that we use for a 401(k) plan versus a SIMPLE IRA plan is that once the money goes in, it stays in. It's not a savings account versus a SIMPLE IRA where once the employer's contribution goes into the IRA, the participant can just take it out and buy a truck or whatever else they may want. The PLESA will be similar in that the employee can put their own money into the account. If the employer is making a match, they have to match those dollars as well. Once they receive the match, the employee can then take a distribution of their dollars out of the PLESA. I think there is room for abuse in this situation. Everybody needs emergency savings, don't get me wrong. Hopefully their financial advisors are talking to them about that. But the fact that they can just put this money in these savings accounts and get matched on it — and then take it right back out and spend it — is not a conversation that I believe employers are going to like.

ADAMS: What about the new personal emergency distribution provision?

EDWARDS: I think that the emergency distributions are going to be more popular than the PLESA. They're easier to add to the plan, there's less complexity, there are less record-keeping issues because we already know how to handle distributions inside the plan, and there's some limitations around them. I wish that amount had been slightly higher; $1,000 doesn't go a long ways if you're truly having an emergency. We have had people call us for hardships before that needed to fix their car so they could get to their cancer treatment. And fixing your car to get to your cancer treatment is not a hardship. Now if you have the unreimbursed medical expenses and expenses like that, they would qualify as a hardship. However, there are just things that come up that aren't hardships that are going to be more than $1,000. I can see us encouraging our clients to add these.

GARMAN: I think the challenge we have is how do we make this retirement vehicle serve as a remedy for a wide range of employee financial needs. To accomplish that, you need to do a couple things simultaneously: First, you need to streamline certain components of the plan for contribution and financial planning purposes. I think about participant websites that integrate multiple "sub-accounts" in a streamlined, intuitive interface. But second, you also need to keep these sub-accounts separate for the distinct jobs they're supposed to do. For example: explaining to participants that this money is for emergency savings, and this is how distributions will work. This money is for retirement; distributions will work differently.

I approach this all very cautiously, both from the perspective of technological capacity but also from the perspective of our servicing capacity. A core part of our service model is trying to understand what participants or plan sponsors need and fulfilling those needs accurately. Adding this degree of complexity is going to make training service associates absolutely critical.

EDWARDS: I will say one other thing I am excited about though is the participant's ability to self-certify that their expense qualifies as a hardship if they need a hardship distribution.

ADAMS: For a long time we've staked out retirement savings generally as being sort of off limits. We sort of grudgingly allow people to take out loans or hardships because there's been studies that suggest that if they don't have, or don't feel they have the access,

they don't contribute as much money. What's happened is 401(k)s are the only place people set aside any money anymore. What Congress is trying to do is twofold. First, particularly for lower income individuals, sort of encourage them to save for retirement by opening those doors a little bit wider. Secondly, the behavioral finance types, they're very into these sidecar things because it allows people to compartmentalize and not spend beyond that amount for these kind of things when they come up.

EDWARDS: I think the Starter (k) is a good thing — I'm a fan of anything that increases coverage! That said, I think it will be better for some than others, particularly employers that do not want to do a match. We're not talking about them as much because we're selling QACA (Qualified Automatic Contribution Arrangement) safe harbors. We haven't had anyone ask specifically about a Starter (k) plan either.

ADAMS: How does that fit in with the LTPT discussion earlier?

EDWARDS: The QACA is taking over the 401(k) world because it's an easy sell, especially to these employers who want to reduce the waiting period for eligibility down to 60 or 90 days but don't want to make their employer match fully vested immediately. The QACA safe harbor match can give them a two-year vesting schedule with 1,000 hours of service required for a year of service for vesting. It also only requires a three-and-a-half percent match, and the participant has to contribute six percent to get the full match. It's really a fantastic conversation.

GARMAN: I would agree with Shannon that the more employee coverage, the better. That said, we're really relying on TPAs to drive the design conversation. We aren't currently looking to offer a specific Starter (k) product because with its lower deferral limits we're not sure the demand is there. Especially since the tax credits elsewhere in SECURE 2.0 make a QACA so cost effective.

EDWARDS: We had the same cost conversation when safe harbor plans came out. Our answer, like yours, was that we were not going to charge less. The majority of the work is done upfront in making sure you have the right information from the client. Making sure it's accurate and complete. That work doesn't change regardless of the type of plan, and it won't change on a Starter (k). We won't give a lesser level of service to a Starter (k) than we would any other plan we serve. That being said, I think the Starter (k) will be a good fit for some companies.

ADAMS: What about the extension on EPCRS on correcting employee elective deferral failures?

EDWARDS: Oh, that is amazing. That is really helpful. And some of the changes they made regarding the plan document fixes so that we don't have to go through the Voluntary Compliance Program to correct them have been a godsend. We do so many corrections, Nevin. You would be amazed at what percentage of our clients have some sort of correction every year, and most of them are innocent mistakes that the client makes because they didn't know better. Having longer to self-correct more errors and having reduced costs for making the corrections is going to be truly helpful to so many plans.

ADAMS: Increasing the cash out limit to $7,000 from $5,000?

EDWARDS: I think that's a really good change as well. We're excited about that. All of our clients are making the change, and it just helps us keep the plan cleaned up. We do an IRA rollover from $200 to $7,000. We don't cash them out if they're under $1,000 by sending them a check — we were having too many uncashed checks — so we just go ahead and roll them to an IRA.

ADAMS: And we finally have the family attribution rule fixes! The new provision disregards community property rules for ownership under controlled group and affiliated service groups.

EDWARDS: I've been cheering that for something like five years now. That is a personal vindication for me. The "love child" rule is gone. I only wish it was gone retroactively.

ADAMS: It's not a 2024 item, but what about those tax credits?

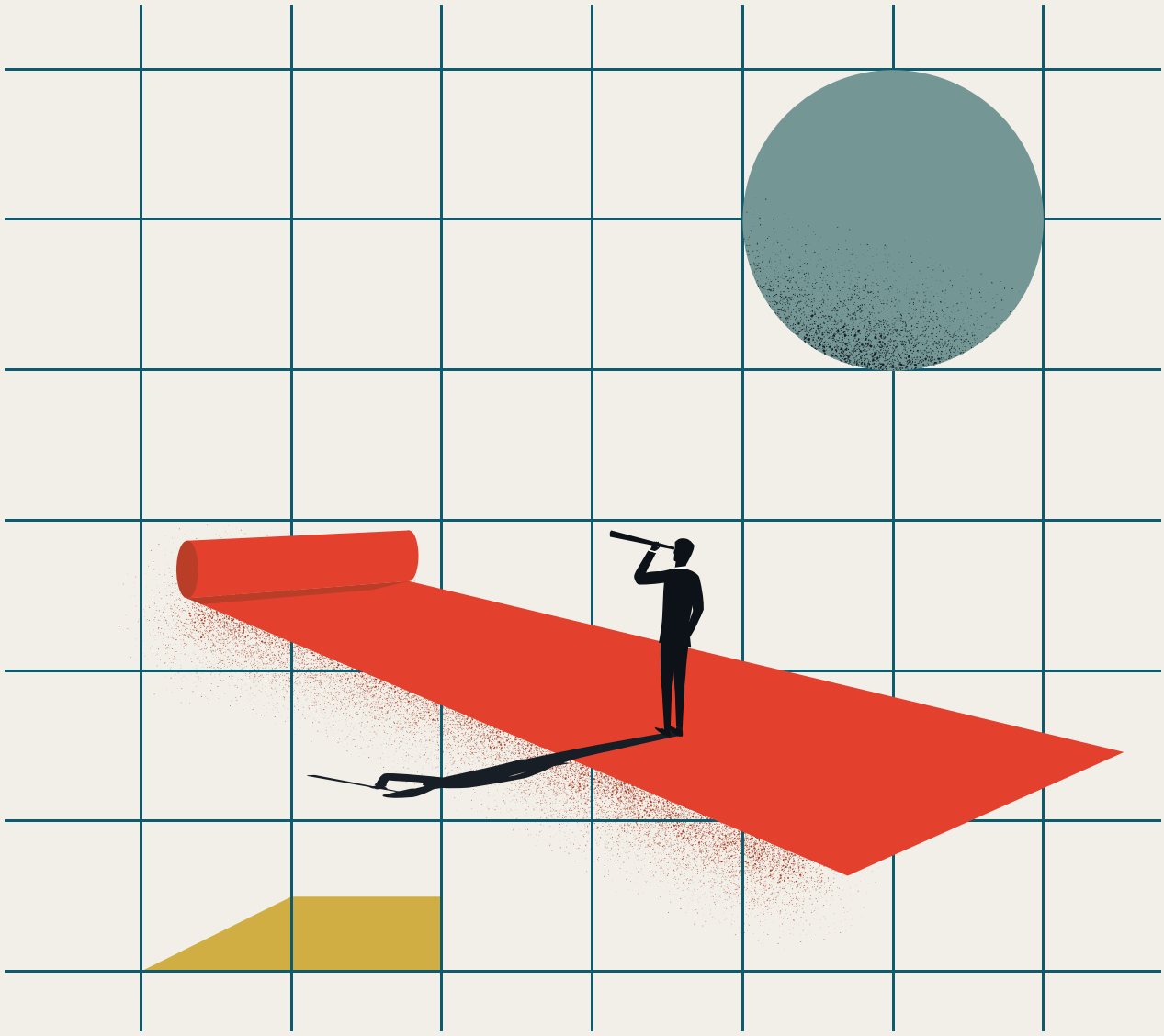
GARMAN: The tax credits continue to be a huge part of the conversation for us, especially since it encourages new sponsors to pay plan expenses without touching plan assets. It's a big win for participants as well.

ADAMS: There's plenty of evidence that small business owners aren't yet aware of those credits. The Employee Benefit Research Institute (EBRI) & Greenwald Associates just published a survey that found that almost three quarters (72%) said they were not aware of tax credits up to $5,000 being available to cover the costs of starting a retirement plan. However, 78% said the tax credits would make it at least somewhat more attractive to offer a plan — and 28% said it would make it MUCH more attractive!

That EBRI/Greenwald Associates report also found that less than a third (31%) of the businesses that do not currently offer a plan have been approached in the last 12 months about offering one.

EDWARDS: I have found that the CPAs aren't aware of the tax credits either. The financial advisors are, but the CPAs don't seem to be. We need to educate them as well. We all know that small plans are sold, not bought. SECURE 2.0 has a lot of new options to work with — and deal with.

GARMAN: Looks like we'll have a lot to keep us all busy! PC



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THE 'PEPS' RALLY

As we reflect on the past three years, the question arises: Have PEPs truly transformed the landscape, or are they merely a footnote in retirement planning history?

By Jim Douglas

THE SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT ACT (SECURE ACT), INTRODUCED POOLED EMPLOYER PLANS (PEPS) WITH MUCH FANFARE IN DECEMBER 2020. DEPENDING ON YOUR PERSPECTIVE AT THE TIME, PEPS WOULD EITHER REVOLUTIONIZE THE INDUSTRY OR PROVE TO BE THE LATEST UNSUCCESSFUL ATTEMPT TO EXPAND RETIREMENT COVERAGE.

As we move into year four of the PEP era, which is it? Was PEPs a revolution or just an interesting thought? Do we know yet? What have we learned over the last three years, and how will we use that knowledge going forward? Will we ever get guidance from the Department of Labor (DOL) and the Internal Revenue Service (IRS)?

In this article, I will share some of the lessons learned from the field in the first three years of the PEP era. Only some can confidently know what the future holds for PEPs at this early stage. However, we have learned a lot about PEPs and the retirement industry.

WHAT IS A PEP?

Before the SECURE Act, only employers related in some manner, such as belonging to the same industry, could participate in group retirement plans, typically in Multiple Employer Plans. However, the industry has long sought a path toward collective plans for unrelated businesses to manage risk, minimize cost, and maximize efficiency. Enter the PEP. Briefly, a PEP is a type of 401(k) arrangement established under Section 3(43) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), that permits multiple unrelated businesses to adopt the same plan, which is managed by a fiduciary known as a Pooled Plan Provider (PPP).

A key feature of every PEP is the PPP, which steps into the role of the "named fiduciary" under Section 402(a) of ERISA. Although the concept of an independent fiduciary is familiar to the retirement industry, the PEP is the first arrangement to require it, leading us to our first PEP lesson: the importance of independence.

THE IMPORTANCE OF INDEPENDENCE

In general, when a business decides to adopt a retirement plan for its employees, the principals of the business (whether they know it or not) sign on to serve as ERISA 402(a) fiduciaries. Of course, this requires the business owner, in most cases an individual not well versed in ERISA or Internal Revenue Code (Code) requirements, to take on an obligation that has been called the duty "highest known to the law."[1]

The role of a 402(a) fiduciary, especially when combined with the typical duties of a business owner, can be quite demanding. Did I mention that our business owner is required to have, or seek out, sufficient expertise to operate a retirement plan? When a business adopts a plan, the fiduciaries must execute their duties with high expertise. One court eloquently stated, "This is not a search for subjective good faith – a pure heart and an empty head are not enough."[2] And let's not forget that the business owner must carefully bifurcate their decision-making between business matters and plan matters that must be decided with only the best interests of participants and beneficiaries in mind.

With that legal standard in place, it seems counterintuitive to impose all the responsibility on the shoulders of an individual or individuals typically unqualified to handle those duties at the level of a "prudent expert." In this paradigm, particularly as the definition of "fiduciary" evolves, the role of the independent fiduciary can be invaluable to business owners.

In addition, the lead fiduciary is typically the party in charge of hiring and overseeing the service providers to the plan: recordkeepers, third-party administrators, investment managers, financial advisors, trust companies, and so on. The role of lead fiduciary is a full-time job, and in a single employer plan, is one generally held by folks who already have more than their share of work to do for the company.

The independence of the 402(a) fiduciary becomes more critical when multiple adopters come together in one plan. This is particularly vital in the oversight of the PEP service providers. As we know, the administration of a 401(k) plan can be pretty complicated. Add in multiple unrelated employers, unrelated service providers, and a new plan type that requires administration and reporting distinct from single-employer plans (SEPs), and the complications multiply exponentially.

Here, we have found that the independence of the PPP is crucial to having a neutral eye overseeing all the various responsibilities and roles. Of course, we strongly believe in the retirement industry's quality and experience. However, most decisions are not black and white, and without any regulatory guidance, PEPs and their providers have had to forge a path in the wilderness.

This has led to various approaches to PEPs, all of which appear to be valid under current guidance but perhaps falling short of the intent of Congress. Following the passage of the SECURE Act, Congressman Richard Neal wrote to the DOL to express his concern about potential conflicts of interest in the administration of PEPs.[3] Chairman Neal unequivocally

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A KEY FEATURE OF EVERY PEP IS THE PPP, WHICH STEPS INTO THE ROLE OF THE "NAMED FIDUCIARY" UNDER SECTION 402(A) OF ERISA.

stated that "any conflicts of interest would be entirely inconsistent with Congressional intent."[4] To this end, it appears that anything other than a fully independent PPP would fall short of the intent of the SECURE Act.

A PPP must select and oversee the service providers to the PEP, and independence from those service providers is vital to protect the best interests of participants and beneficiaries. However, some PPPs have decided to create programs that are populated with affiliated service providers. While there may be advantages to working with all affiliated service providers, such as efficiency and greater familiarity with administrative procedures, a PEP that utilizes affiliated parties may fall short of Congressional intent.

Congress established the PPP to be the expert eyes and ears of the business owner. An independent PPP will typically have a greater ability to identify potential issues such as excessive fees for services provided, preference for proprietary products over less expensive alternatives, and other conflicts of interest. An affiliated PPP may overlook such matters and may not be evident to an unsophisticated business owner.

The role of an independent PPP is vital to the long-term health of PEPs. However, there are other vital roles, none more important than the business' trusted financial advisor.

THE ROLE OF ADVISORS

Anyone who has spent any time in any capacity in the retirement industry understands the importance of financial advisors. It's been said many times, but retirement plans are sold, not bought. And no one is better at selling them than advisors.

However, it's also fair to say that advisors, like all humans, tend to gravitate towards what has been successful historically and shy away from unproven products and strategies. Certainly, it is a useful survival mechanism.

Unfortunately, this also leads to stasis. Despite popular conception, only a very small percentage of American workers have access to a retirement program. In many cases, such as IRAs, those available programs are useful but have limited options.

Quite simply, advisors are the key to closing the retirement coverage gap. However, we as an industry need to move past the conventional wisdom around small and startup retirement plans. If we don't find a coverage solution for these plans, Congress will be happy to create a solution of its own.

In fact, they have already proposed one, The Retirement Savings For Americans Act, and the initiative is backed by both a bipartisan contingent of Congresspeople and a number of powerful private businesses and industry groups.[5]

PEPs were designed and included in the SECURE Act to provide a new retirement vehicle for small businesses. They are an excellent solution for a small business that lacks the time and expertise to run its retirement plan but wants to reward and retain its valued employees. The adopting employer still has some work to do, of course. They need to select a PPP and the program built by that PPP, including the service providers of the PEP. And they need to monitor that program and the PPP to ensure that the best interests of their participants and beneficiaries are being served. Beyond that, much of the administrative burden typically required of a SEP is shouldered by another party with specific expertise in their area of concern.

Many advisors feel there is no sufficiently robust role for them in connection with a PEP. However, advisors can provide incredible value to their small business clients by supporting their PEP oversight responsibilities. Further, a PEP should offer a very high-quality plan for a significantly lower cost than a SEP, based on economies of scale. This should include both the recordkeeping and administrative services and the investments available to participants. Again, the experience and expertise of an advisor can guide small business owners through complicated proposals and identify the program that is best for their clients.

PEPs are not the only solution for small businesses; they are a new weapon in the fight to secure the retirement security of American families. The industry, behind the strong leadership of advisors, should take every advantage available to us to help solve this crisis.

As an industry, we have historically been slow to adopt innovations. Many have embraced a "wait-and-see" approach to PEPs. Meanwhile, millions of Americans need the means to retire. Some caution here is understandable, given the lack of guidance from the DOL and IRS.

THE NEED FOR REGULATIONS AND FIDUCIARY RELIEF

PEPs paired with an independent PPP can be a valuable solution for small businesses and their employees, but additional guidance is still needed on how to operate PEPs. Although discussed above, we still don't know exactly how authority should be divided between the PPP, the adopter, and the service providers.

Of course, some would argue that, without formal guidance, the industry should take the lead in setting out these guidelines by our actions. Yet, even within the industry, there is disagreement on what the role of the PPP should and should not be.

A prime example of this is whether the PPP takes responsibility for the investments of the PEP and oversight of the PEP investment manager.

The law permits a PPP to leave this responsibility with the adopter. However, the question is not whether this is legal but whether it is the right thing to do. Many, if not most, business owners are not investment experts. However, as noted above, retirement plan fiduciaries are expected to either have that expertise or retain an expert to assist them in selecting and monitoring plan investments. Further, the last 15 years of fiduciary fee litigation tells us that the lion's share of liability in the retirement world arises in connection with the investments.

Although permitted under law, PEP adopters should look carefully at programs that require them to retain responsibility over investments. It is clear, from the Neal letter and other sources, that the thrust of the law regarding PEPs was to provide business owners with new arrangements to provide retirement benefits to their employees without taking on significant additional liability that they are not suited to manage.

If you leave much of the potential liability with the non-experts, is that truly fulfilling the independent fiduciary role that the SECURE Act intended?

Of course, this argument cuts both ways, and PPPs must protect their interests, just as their business owner clients must do. This reveals another area ripe for guidance: protecting the PPP from the failures or inactions of adopting employers. One of the new features offered under the SECURE Act was to assure PPPs that one uncooperative or non-responsive adopter would not disqualify the entire plan.[6] However, the current guidelines for addressing and removing "bad apples" are lengthy and complicated. And it protects the PEP and its participants and beneficiaries but offers little protection to the PPP.

A good example of this can be found in the annual 5500 audit requirement. In a SEP that is subject to audit requirements (generally, plans with 100 or more participants), the plan sponsor controls the information required for the audit and related filings. If they fail to provide information or fail to file at all, their liability is clear.

However, what of a PPP who has one or more uncooperative adopters? The proposed "bad apple" regulations provide an exception to the "unified plan rule"[7] and allow the eventual removal of the uncooperative adopter. However, relief for the PPP is unclear, and more protection is necessary for fiduciaries who have taken all the appropriate actions and acted prudently but still are left with operational failures and other issues to correct in the PEP.

Ultimately, the success or failure of PEPs will largely depend on the PPPs who offer them and are willing to accept responsibilities, including investment responsibilities, on behalf of their adopting employers. To be sure, PPPs are not volunteers and must take care of themselves in building a program offering adequate protection and compensation for accepted risk. Congress and the regulatory agencies can further encourage the PEP market by assuring independent fiduciaries that they will not be punished for the failure of others.

LOOKING AHEAD

Ultimately, everyone in the retirement industry, regardless of their opinion on PEPs, needs to work together to solve the coverage gap. PEPs will not solve the problem without the support of advisors and the retirement industry. And as discussed above, if we fail to take action to expand our own industry, the government is poised to step in and solve it for us. With or without us.

At a popular industry conference, PEPs and the coverage gap were recently hot topics. Of course, opinions run the gamut, but what struck me was that the various sides fail to recognize how much we all need each other to succeed. There are many reasons why so many Americans lack access to retirement savings. Unfortunately, one of those reasons is that we, as an industry, have not done our best to encourage adoption by small businesses.

It's counterintuitive if you look at the numbers and see that most Americans are working for small businesses, and they are the ones who need us the most.

Again, PEPs alone are not the magic feather to solve the retirement crisis. However, with the right support from both the industry and the regulators, we can use PEPs alongside the many other retirement solutions to find the right fit for each business so that everyone can enj oy the retirement they deserve. **PC**

Footnotes

[1] Donovan v. Bierworth, 680 F.2d 263, 272 n.8 (2d Cir. 1982).
[2] Donovan v. Cunningham, 716 F.2d 1455, 1467 (5th Cir. 1983).
[3] Letter from Richard E. Neal, Chairman House of Representatives Ways and Means Committee, to Eugene Scalia, Secretary of Labor, June 24, 2020.
[4] Id.
[5] The Retirement Savings For America Act, S. 5271, 117th Congress (2022). The bill is backed by the Economic Innovation Group, an advocacy group founded by Facebook founder Sean Parker and supported by Dan Gilbert, founder of Rocket Mortgage. See, Controversial Bill to Establish Federal Retirement Plan for Private Sector Workers Reintroduced (October 20, 2023), https://www.asppa.org/news/controversial-bill-establish-federal-retirement-plan-private-sector-workers-reintroduced.
[6] Internal Revenue Code §413(e). See also, 87 Fed. Reg. 17225 (March 28, 2022).
[7] Id.

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SO MANY ACQUISITIONS-

ANOTHER DAY—ANOTHER TPA FIRM MERGER AND ACQUISITION ANNOUNCEMENT. WHAT IS THIS CHAOS? WHY IS IT TRULY HAPPENING?

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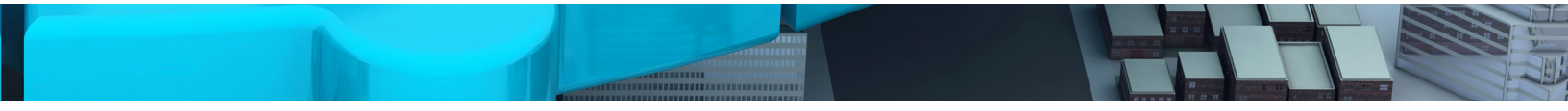
—WHAT'S HAPPENING?

BY LINDA CHADBOURNE, THERESA CONTI & JIM RACINE



OVER

the past three years, we've seen well over 100 announcements of TPA acquisitions. And according to our count, over 70 different firms made these acquisitions. So, let's explore who is selling, who is buying, and some of the reasons that this trend may or may not continue.

SELLING

Let's start with who is selling and why they are selling. The reasons each owner sells are very personal, but here are some of the top reasons owners provide for selling their firm:

Retirement: We all work in this industry, but it seems strange when one of our own decides it is time to give up the daily grind and actually retire. But our industry is aging, particularly when it comes to the TPA business owner, and ultimately, they want to retire and not run their firm until they are 90.

Cost: Cybersecurity, personnel, technology and other costs make running a smaller operation more challenging, and often the efficiencies of scale are giving owners the boost they need.

Complexity: as if our business was not complex enough, keeping up with the secure regulations and other updates that seem to be coming at a faster pace require a lot more research and training.

Change of focus: Some owners want to stay in the business but really like personal or professional development, ASPPA and other industry work, doing the core compliance work, or just sales. Selling your firm and staying on in a more limited role is the right answer for some owners.

Selling a company can provide financial resources and valuable experience that can be leveraged in future ventures. TPAs may use the proceeds from the sale to fund their next business endeavor or to invest in new technologies. Additionally, the lessons learned from previous success and failures can inform their approach to the new business, increasing the likelihood of success.

The decision to sell and then start anew can also be influenced by the evolving landscape of the industry. For instance, changes driven by regulatory shifts like SECURE 2.0 and state-mandated retirement plans can create more competition along with keeping up with these options in general. They also include things that worry TPA business owners like staffing challenges and cybersecurity concerns.

ACQUISITION

Let's talk now about who is acquiring in the industry, and these seem to fall into a few categories as well. First is capital equity firms, who are the acquirers in just under half of all of these transactions. Capital equity firms seem to have found there is opportunity in TPA firms. About 15 capital equity-backed firms are now on the hunt in the TPA marketplace. Most of these firms buy one or two TPA firms to gain insights, and then launch a larger and more focused campaign to buy more and build scale. Some of these firms are smaller and are looking to create a larger regional TPA firm while most are going coast to coast with larger wallets to build national TPA firms.

Almost all these firms are building scale by setting standard processes and pricing across their entire book. As the firms grow, almost all of these firms are functionalizing tasks by creating teams that focus exclusively on one task such as plan testing, distribution processing, client services, or Form 5500 filing. A few of these firms are keeping the local feel of the acquired firms in place, allowing existing processes to remain while consolidating human resource and financial functions to create efficiency.

Local and regional TPAs are also keeping their eyes open. Nearly one-third of the deals in the last three years have come from firms purchasing one or two firms in their area as the owners look for an exit strategy. Friendly competition appears to be how many of these deals start. As the owner of one firm looks to retire while keeping the local feel of the firm, a casual lunch and conversation with the firm down the road often leads to deal.

OTHER OPTIONS AND CONSIDERATIONS

While selling the business is right for many, some owners want to keep their firm but are looking to grow in scale and share some of the responsibilities and cost of running the firm, including keeping up the slew of regulatory changes we have seen in recent years. For these firms, finding another local or regional TPA they like and feel they could work with is the right answer. Over 15% of all mergers and acquisitions are two or three firms merging together where all the owners stay in the business and run one larger operation.

We talked first with Shrey Malla, Head of Corporate Development with Definiti, who stated,

> "We seek to provide good value for a TPA owner's life's work and carry their legacy of service to clients and employees. In times of change, we also want to be the beacon in the industry that can be a great place for a TPA owner, their clients, and employees to find an enhanced experienced all around. We can only do that as a cohesive unit rather than a collection of acquisitions. We're finding this is increasingly resonating with TPA owners as the changes in the industry continue to pick up steam."

Selling on the open market will often be significantly higher than doing an internal succession plan or merging with another local or regional TPA firm.

M&A

We also talked with Fred Bloodgood, who is head of TPA M&A Advisory for Wise Rhino Group. Fred talked about how there was a huge amount of M&A activity in early 2023, then a "lull" in late 2023, but he is seeing increased conversations in early 2024. The number of TPA acquisitions has, overall, been steady the last 3-4 years, and 2024 is starting off hot with nearly 10 acquisitions already announced.

Late 2023 may have also seen a slow down since interest rates were high. When they are high, buyers that have to leverage financing over time will have an impact. However, Fred also feels that private equity firms now have more cash and there will be less financing. Fred also feels that supply and demand is changing. In fact, there is, overall, much left in supply—and demand continues to increase. That may change the multiples that are going to be paid for good quality TPA firms.

There are definitely plenty of small TPA shops available, but they look at their business as a practice and not as a business. They also may not be emotionally prepared to sell and if they don't view the purchaser as a perfect fit, they might change their minds as they get further into the deal. There are instances where they may spend a year or even two talking with the potential buyer and then the seller backs out of the deal.

Fred also talked about how in the current landscape about 50% of the business Wise Rhino is currently doing is advising firms and getting them ready to sell in the future. He advises that firms need to do a better job of tracking, and that means both data (sales, work completed, etc) along with money (sales, revenue, EBIDTA). Most of the opportunity in the current market are firms on the small side (under $2 million in revenue) and mid-sized firms ($2 million to $5 million of revenue).

Fred's final insight is that all deals are different—so if you are thinking of selling, make sure you know what you want and what deal you want so you can make the right choice for yourself, your clients/advisors and your staff.

AS THE TPA BUSINESS OWNER, THE DECISION THAT YOU HAVE TO MAKE IS DO I STAY OR DO I LEAVE AFTER ACQUISITION?

STAY OR GO?

As the TPA business owner, the decision that you have to make is do I stay or do I leave after acquisition?

If the owner stays, he or she needs to think about how to support long-term growth of the new organization, what their role will be, will their employees have the ability for more growth, what will be centralized (sales, accounting and other back-office services), and what the owners' ultimate time-horizon will be to ultimate retirement. Another reason to sell but stay with the new organization may be to get out of the day-to-day minutia of the business and maybe just focus on what you really love, like the sales of retirement plans.

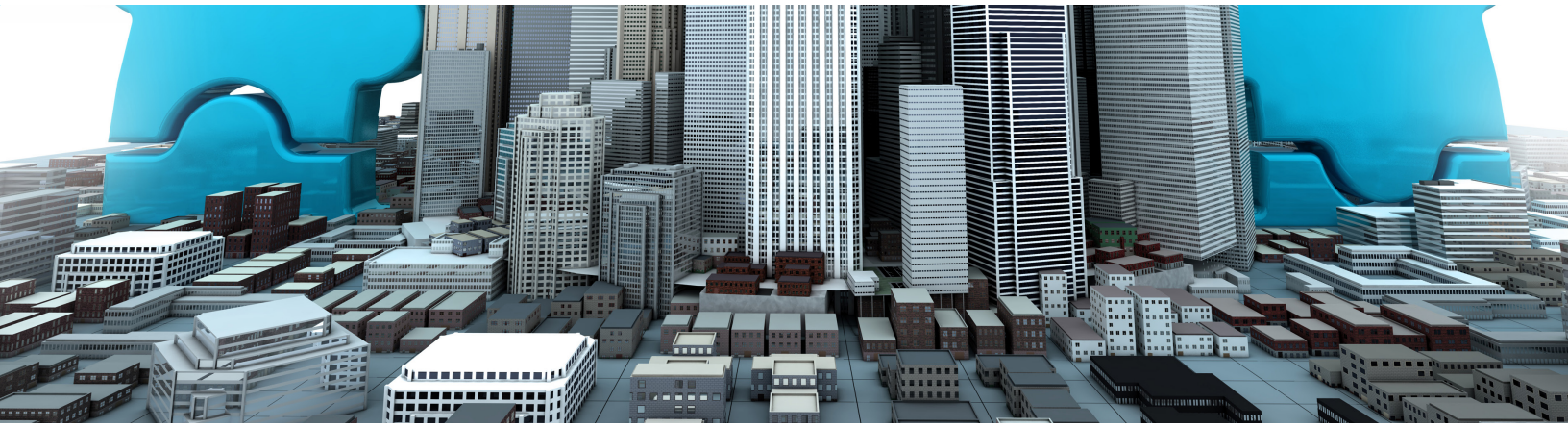
If the owner chooses to leave the new organization, there are definitely other considerations as far as the leadership and sales that that business owner was probably handling. In addition, they need to consider the staff and what their roles will be in the acquiring organization.

ENTREPRENEURSHIP ALIVE AND WELL

The final thing that we want to talk about is that even amid the mergers and acquisitions, the entrepreneurial spirit is still alive and well in the TPA marketplace. Dozens of new firms have sprouted up across the country. Some are building a business from scratch while others are finding a local TPA to buy and rename to kickstart their new business. In addition, we see new life and growth as the next generation of entrepreneurs start their own firms.

While the overall number of TPA firms has consolidated over recent years, new entrants continue to pop up. Some are small local privately owned firms and others are large corporate entities looking for new investments.

Businesses that have been sold may be contacted by financial advisors who are unhappy with the way the plans they have are now being serviced. Or maybe we have a family situation in which the owners were "older" family members and the younger family members did not have the capital to buy out the older family



member. Those younger family members may have gone to the new firm (probably due to some period of non-compete) but are also unhappy with the new firm and decide to hang out their own "shingle" once the non-compete time frame is complete.

EVOLUTION

As far as the industry landscape is concerned, we are seeing an evolution as the TPA industry.

Twenty to 30 years ago, the TPA industry was a network of small businesses and entrepreneurs.

Now we are seeing capital equity-backed firms and mega-national TPAs. For financial advisors and plan sponsors, we see acceptance of the local TPA, regional TPA and national TPAs. In areas in which a large number of TPAs have been acquired by national TPAs, we see new entrants starting up and flourishing their smaller firm and competing well with the national TPAs.

There are various reasons why a person might choose to sell a company and then later open another business in the same industry. One common motivation is the desire for a new challenge or opportunity for growth. After successfully building and selling a company, former TPA owners may find themselves craving the excitement and fulfillment that comes with starting anew. Additionally, they may have identified gaps or untapped potential within the industry that they feel compelled to explore further that may include more boutique type of services.

We have also seen the emergence of TPA consortiums for owners to partner together to obtain some of these benefits without selling their firms.

It seems there is no right answer regarding the size and financial structure of a TPA firm. In asking advisors and plan sponsors why they are working with their TPA, there is support for each based on their views and experiences. The size and organization of TPA firms continues to evolve, but to date no single structure seems to be taking over the industry.

As we look at what is happening, we are saying goodbye to many old friends—many of whom built this industry and have been with us as long as the 401(k) plan. These pioneers built this industry and have guided our evolution over the past 50 years. We thank them for their contributions and trust their wisdom as they put the firms they have built into new hands.

We expect these trends to continue in the coming years as the TPA industry continues to diversify and evolve. **PC**

ADVANCING THE RETIREMENT INDUSTRY

Amid Baby Boomers entering retirement, policymakers are intensifying their focus on the retirement plan industry to enhance security for working Americans, reflecting a shift towards more inclusive coverage models. **By Kelsey Mayo**

The retirement plan industry has seen increased focus from policymakers recently. Perhaps this is natural as the Baby Boomers that comprise a significant portion of those policymakers are contemplating or entering retirement. This has increased the focus and debate about the retirement industry and how to best strengthen retirement security for working Americans.

This article explores key aspects of the retirement system, considers the challenges and opportunities within the retirement industry, and considers strategic measures to enhance access and coverage.

KEY FEATURES OF THE SYSTEM - EMPLOYER PLANS

According to recent data, nearly 100 million individuals had access to a workplace-based retirement plan in 2021.[1] While the heyday of the defined benefit plans is sometimes thought of fondly as a time when Americans had better retirement security, in fact those plans covered fewer than half of American workers at their peak (approximately 30M workers), and those were concentrated among larger employers and unionized workforces. Our current coverage is broader and benefits more working Americans.

The middle class stands out as the primary beneficiary of our current system, with 64 percent of active participants in 401(k) plans earning an adjusted gross income of less than $100,000 per year and 33 percent earning below $50,000. Most importantly, data reveals that more than 70 percent of individuals earning between $30,000 and $50,000 save for retirement if provided access to an employer plan, while fewer than 7 percent save independently through an Individual Retirement Account (IRA).

While some critics argue the system benefits only the wealthiest of Americans, generally by focusing solely on the amount of taxes deferred, that line ignores the significant benefits of a system that overcomes American workers tendency to spend rather than save. A system that doubled coverage and resulted in more than 10 times the number of workers earning between $30,000 and $50,000 saving for retirement is hardly a failure.

CHALLENGES

Those laudable accomplishments don't mean that the current system is without challenges. While the current retirement system covers more American workers than the defined benefit system ever did, it still leaves upwards of 40% of workers without access to retirement savings at work. In addition, not all workers may save sufficiently for their retirement. Finally, there is the struggle to get participants to save enough.

Shoring up the future of the retirement system is likely to be focused on meeting these challenges—increasing the number of employers that offer a plan, increasing the coverage of employees within those plans, and increasing the average savings rates of participants.

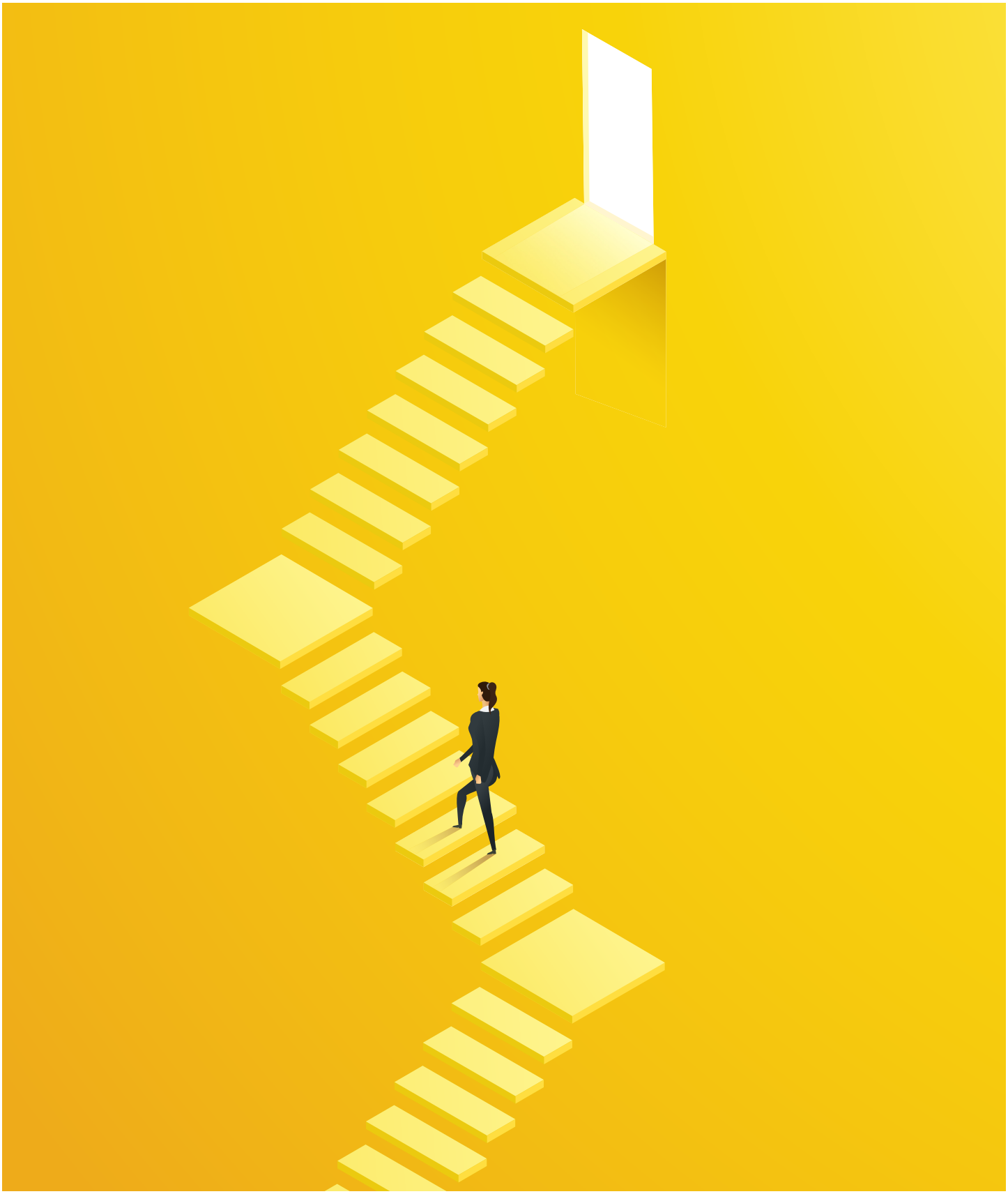
INITIATIVES TO MEET THE CHALLENGES

SECURE and SECURE 2.0

To improve retirement outcomes, Congress passed the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) and the SECURE 2.0 Act of 2022 (SECURE 2.0)—both bipartisan pieces of legislation. The provisions designed to meet the challenges, include the following:

1. To expand the number of employers who offer plans, tax credits for small businesses starting plans were enhanced and a new "Starter 401(k)" plan

Footnotes
[1] https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf



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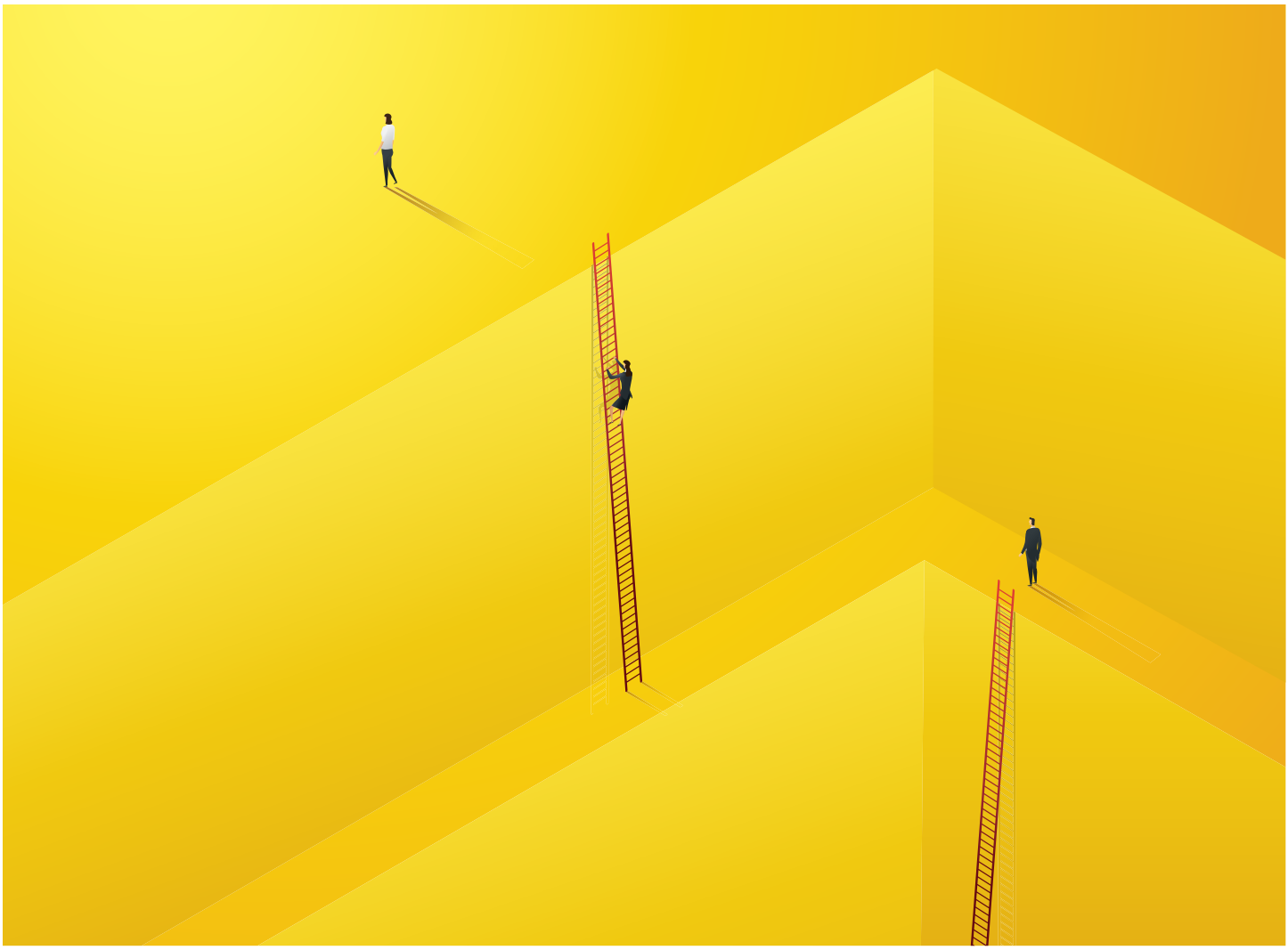

with simplified administration was introduced. These provisions should lower the hurdle for small businesses adopting a plan.

2. To then expand coverage within existing plans, SECURE Act introduced a new requirement to cover long-term part-time employees, which was then expanded by SECURE 2.0. Generally beginning in 2024, plans can no longer include a service condition that prohibits someone who has worked at least 500 hours in three consecutive years (in two years beginning in 2025). Effectively this means that plans will need to allow employees who work at least one-quarter of full-time (or about 10 hours a week) to participate once they have been employed for a couple years.
3. Finally, SECURE 2.0 enacted several provisions to improve participant savings. First, SECURE 2.0 requires new plans to incorporate an automatic enrollment feature by the 2025 plan year. It also offers small employers a tax credit for up to five years for contributing to their employees' retirement accounts. And it provides a federal government "Saver's Match" beginning in 2027 on up to $2,000 of deferrals, to further enhance the retirement savings of the lowest earning American workers.

These two pieces of landmark legislation are just beginning to become effective (and some provisions won't be effective for several more years), so the impact has not yet been seen. While these will hopefully move the needle meaningfully, it likely won't fully address the challenges. Therefore, the question remains how to continuing making progress toward securing a dignified retirement for all. I think there are several possibilities.

Automatic IRAs: Increasing Employers That Offer Plans

To ensure American workers have

"A SYSTEM THAT DOUBLED COVERAGE AND RESULTED IN MORE THAN 10 TIMES THE NUMBER OF WORKERS EARNING BETWEEN $30,000 AND $50,000 SAVING FOR RETIREMENT IS HARDLY A FAILURE."

access to a plan, several states have taken proactive measures through state auto-IRA programs. Currently adopted by 15 states, these programs require businesses over a certain size to provide access to retirement plans for their workers. If employers opt not to offer a workplace-based plan, they must enroll their employees in a state-run auto-IRA program, balancing the needs of workers and small businesses.

These programs have already extended employer-based retirement coverage to millions of working Americans across the country. Further expansion of this auto-IRA approach whether through additional state mandates or even a federal program, such as that proposed in The Automatic IRA Act of 2024, could go a long way to ensuring nearly all employers offer employees the ability to save in an employer-based retirement plan.

Universal Availability: Increasing Coverage Within Employer Plans

The qualified plan rules generally allow the employer to limit participation in the plan. For example, an employer can exclude those regularly working less than one-quarter of full-time (i.e., those who don't meet the long-term part-time employee rules) and other classes of employees as long as the plan meets certain non-discrimination rules. Thus, there may continue to be a meaningful group of employees who don't have an opportunity to save for retirement at work. One way to meet this challenge is for 401(k) plans to allow employees to participate in the salary deferral feature more universally.

In addition, Congress or Treasury should eliminate the penalty that currently applies to plans allowing participants to defer before they meet the eligibility criteria for safe harbor employer contributions. Currently a plan can lose its exemption from the top heavy rules merely for not imposing age and service conditions on the employee's right to defer. In many cases this causes employers to prevent a new hire from saving in the plan until certain age or service requirements are met, significantly reducing the likelihood the employee saves for retirement at all during that period. This antiquated rule has a negative impact on retirement outcomes and should be eliminated so that employees can be allowed to defer as soon as possible.

Improving Savings Rates and Outcomes

Ensuring that employers offer plans and employees are covered is essential—but will fall short if the employees do not then save enough to realize a dignified retirement.

Increasing the number of plans with automatic enrollment seems the most obvious way to increase employee savings rates and thereby improve participant outcomes. I suspect we'll see the percentage of plans with automatic enrollment arrangement increase significantly beginning in 2025, not only due to the plans subject to the SECURE 2.0 mandate, but also because the mandate will improve the automatic enrollment services and promote adoption among employers who have plans exempt from the mandate.

There also are likely a number of ways to incentivize better savings rates and outcomes. Various proposals for stretch match safe harbor designs and tax incentives for re-enrollment in a plan could make a difference. In addition, ensuring individuals have access to financial literacy and retirement planning advice to help avoid early withdrawals and boost retirement savings should be supported.

CONCLUSION

The employer-sponsored retirement system has been instrumental in securing comfortable retirements for millions of Americans. Collaborative efforts between policymakers, industry stakeholders, and advocacy organizations have resulted in legislative advancements such as SECURE 2.0, setting the stage for a more inclusive and robust retirement system.

As discussions continue on the best path to meet the challenges, it is crucial to maintain a balanced approach that enhances access, simplifies administrative processes, and preserves the employer-employee relationship. By building on successful initiatives, addressing gaps, and fostering collaboration, the retirement industry can evolve to meet the evolving needs of working Americans, ensuring a secure and dignified retirement for all. **PC**

'SHHH' HIRING

The ways silent hiring is loudly transforming a labor-scarce market. **By Linda Chadbourne**

In an increasingly competitive market, organizations are continually looking for innovative hiring strategies to retain top talent and optimize their workforce. Among the various approaches, silent hiring has emerged as an effective tactic for many businesses. Silent hiring primarily revolves around using existing employees to fill roles without making public recruitment announcements. Here, we delve into two approaches of silent hiring: using current employees to fill gaps and leveraging them to take on added responsibilities.

FILLING GAPS WITH CURRENT EMPLOYEES: AN INTERNAL TALENT POOL

One approach to silent hiring involves recognizing and promoting talent within the company to fill organizational gaps. Unlike traditional hiring, which seeks external candidates to fill roles, silent hiring looks inward. It is a strategy that companies are using to fill in gaps without hiring new full-time employees.

This approach can be beneficial to the company if they are looking for a way to obtain talent without hiring new employees. It involves an organization strategically looking at the talent they have across the organization and where the critical gaps are and finding ways to fill those gaps. The idea about silent hiring is that you have a limited amount of talent in your organization, and you need to make a call about where it's going to have the best impact.

BENEFITS

1. **Cost-Efficiency:** Onboarding a new employee is expensive. There's recruitment, training, and the integration process. By utilizing the talent, you already have, companies can save significantly.
2. **Faster Integration:** When you're shifting talent within the organization, these employees already understand the company's culture, goals, and processes. There's not a learning curve as there might be with a new hire.
3. **Employee Growth and Development:** Being positioned in a new role or taking on added responsibilities can be a tremendous growth opportunity for an employee. It can also be a testament to their versatility and value to the company.
4. **Strategic Reallocation:** companies can swiftly move their best talent to critical projects or departments, ensuring that vital segments of the business have the best minds working on them.

"FOR THOSE WHO HAVE EMBRACED THE REMOTE WORK LIFESTYLE, THE LOSS OF FLEXIBILITY AND INDEPENDENCE, COMBINED WITH ADDED PRESSURES OF SILENT HIRING, CAN BE A CATALYST FOR SEEKING NEW EMPLOYMENT."

However, companies should also be wary of potential pitfalls. Continually hiring from within can limit the inflow of fresh ideas and perspectives. It's essential to strike a balance between internal promotions and external hires to ensure the organization remains dynamic and adaptive.

While there are benefits to employers for filling in the gaps, there are also drawbacks if not communicated properly. Without adequate transparency about the reasoning behind the decision to implement silent hiring, some employees might take the shift from their current role into another one as a signal that they aren't needed and therefore begin looking for new opportunities.

LEVERAGING EMPLOYEES FOR ADDITIONAL RESPONSIBILITIES DURING RESIGNATIONS.

Another approach to silent hiring involves reallocating responsibilities among existing employees when someone resigns.

In a market characterized by abundant job openings and a shortage of skilled workers, businesses are dealing with recruitment challenges, often attributable to a mismatch of skills, competitive job markets and evolving employee expectations. Without a strategic approach and in lieu of hiring additional staff, companies are instead redistributing the workload.

While taking on new responsibilities can offer employees the chance to expand their skill set, Silent hiring can severely undermine employee's well-being and morale. The additional workload contributes to increased stress levels, burnout, and a decline in overall job satisfaction. If employees are continually given more tasks without appropriate adjustments to their workload, they start feeling overworked and underappreciated.

Moreover, as employees navigate the shift back to the office settings post-pandemic, silent hiring adds to the challenges associated with this transition. Many workers have adapted to remote work, finding value in the flexibility and work-life balance it offers. The return to office life, coupled with increased responsibilities and stagnant compensation, can lead to heightened anxiety and resentment.

While silent hiring may seem like a cost-effective solution in the short term, its impact on employee productivity and performance can be detrimental in the long run. Overburdened employees are likely to experience decreased efficiency, increased errors, and a decline in the quality of their work. The growing effect of these factors can result in financial losses and reputational damage for the company.

One of the most significant consequences of silent hiring is its impact on employee retention and turnover. Employees who feel undervalued and overworked are more likely to seek alternative employment opportunities, resulting in a higher turnover rate. This, in turn, can lead to increased recruitment and training costs for companies, negating any perceived savings from silent hiring.

The return to office life can further increase employee turnover. For those who have embraced the remote work lifestyle, the loss of flexibility and independence, combined with added pressures of silent hiring, can be a catalyst for seeking new employment. As a result, companies may find themselves in a perpetual cycle of recruitment challenges and employee dissatisfaction.

As employees reacquaint themselves with office life, maintaining a positive employer brand is crucial. Companies that fail to support their staff during this transition, while simultaneously practicing silent hiring, risk amplifying negative comments and damaging their reputation in the job market. In an era where company reviews and employee testimonials are readily available online, disgruntled employees can share their experiences with a global audience. Negative perceptions of a company's work culture and employee treatment can deter potential candidates, making hiring even more challenging.

Conclusion, Silent hiring is an effective strategy for businesses looking to optimize their workforce in a streamlined, cost-effective manner. However, its implementation requires careful consideration. The risk of overburdening employees, coupled with potential morale issues, means that it's crucial for companies to strike a balance. Employers should prioritize open communication with their staff, fostering a culture of transparency and trust. Regularly assessing employee workloads, providing avenues for feedback, and acknowledging additional contributions can mitigate feelings of resentment and burnout.

By either promoting from within or reallocating responsibilities, companies can adapt to changing needs without the often-exhaustive traditional hiring process. However, like any strategy, it's crucial to approach silent hiring thoughtfully, considering the wellbeing of current employees and the long-term goals of the organization. PC

TELECOM REINVENTED: UNDERSTANDING MANAGED SERVICE PROVIDERS

In a world where connectivity can make or break your business, technology solutions need to be easier. **By Paige Johnson**

Let's try a little experiment. With your internet browser of choice, search for "worst customer service companies." Don't worry; this query also evokes blood pressure spikes in us, but we promise there will be a light at the end of the tunnel by the time you've finished this article. Back to our search. Do any of these names look familiar to you? Worse than familiar, you're thinking, "Wait, that's my telecommunications company!" or "I'm not even mildly surprised."

Unfortunately, we've become accustomed to the less-than-stellar customer service we've come to expect from our telecom services. This is glaringly evident in the cold, hard facts that typically, three out of the five worst customer service companies are telecom companies.

In a world where connectivity is crucial to business success, we rely on telecommunication companies to provide the essential tools we need to flourish.

Unfortunately, for a tool as crucial as telecommunications, their flair for causing hold-time hair loss and evoking network-error-induced insomnia is horrifically dizzying. And after being suddenly jolted by your recognition of the blatantly ironic hold music's instrumental rendition of "Message in a Bottle" by The Police, you think, "Is there truly anybody out there who can help me?" The simple answer is yes. Consider the SOS received. Expertly versed in refining technology ecosystems, Multi-Carrier Solution Providers (MCSP) are the key to leading your business to the Promise Land of Technology Optimization with your hairline intact.

OPTIONS WITH A SIDE OF OPTIONS, PLEASE!

MCSPs come in various options. This allows you to secure a provider suitably tailored to your business's desired solutions and service needs.

1. Managed Service Providers (MCSP)
Managed Service Providers is the most well-known MCSP. It is a third-party company that will remotely manage your organization's technology

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infrastructure and systems. The most common technologies Manager Service Providers provide are IT/Desktop support, Security, Print Services, and Phone Systems.

2. Value-Added Resellers

The name says it all. Equipment, hardware, and software are purchased wholesale, marked up, and resold with professional services charged to support these products. While they offer elevated expertise on the products and services they resell, their lack of agnosticism often limits them, and they may only recommend solutions based on their limited vendor proficiencies.

3. Consulting & Advisory Firms

This MCSP option is less prevalent due to its cost-to-value proposition. A consulting firm or advisor will produce an analysis of your environment and develop an estimation of the scope of work alongside solutions and providers. The consultant or advisor's services do not include costs or fees for products and services they propose.

4. Technology Solutions Providers (TSP)

A TSP accesses hundreds of managed service providers. It uses consulting/advisory tools to diagnose pain points that lead to proposals for renewed environmental changes. TSPs offer value-added features such as managed services alongside the solutions themselves at no added cost.

YOU DOWN WITH TSP?

While you might be more familiar with the idea of a Managed Service Provider or an Added-Value Reseller, let's explore the lesser-known but highly impactful capabilities of TSP. Think of them as your in-house consultants focusing on service, not commission. Refreshing, right? But how is that possible? In short, they work for you, not the big guys.

1. No overhead costs

TSPs eliminate overhead costs for carriers, which secures lower pricing than a salesperson hustling

"TECHNOLOGY IS THE BACKBONE OF YOUR BUSINESS, AND IF YOU DO NOT ADDRESS WEAK SPOTS, SEEMINGLY MINOR ISSUES CAN QUICKLY COMPOUND INTO SIGNIFICANT OPERATIONAL DISRUPTIONS."

to meet company-set quotas. In fact, on average, a business can see up to 30% in monthly savings by utilizing the advantages of partnering with a TSP.

2. Agnostic supplier portfolio
TSPs foster and maintain partnerships with hundreds of carriers. They leverage these robust partnerships to your business's advantage.

3. Apples-to-apples
One of the most powerful tools in the TSP's arsenal is an Inventory Analysis. This diagnostic exercise provides a transparent window into your business's current and potential technology environment. Believe us, you'll involuntarily fist pump when it's delivered.

4. Ongoing management and support
TSPs offer meticulously tailored guidance to complete technology optimization with unparalleled customer service. For the duration of your contracted services, you will always have someone in your corner advocating for your best interests.

THE TOOL OF A TITAN

TSP's primary tool of choice is an Inventory Analysis. Did we mention that TSPs may offer this at no cost or obligation? This Analysis consists of two primary components: A top-to-bottom snapshot of your current telecom environment and a proposed ecosystem of new, improved, and sustained solutions.

With this comprehensive level of evaluation, there is never a wrong time to review the solutions you have in place. The completed audit clarifies your infrastructure and spending, providing invaluable insight for current and future initiatives. An Inventory Analysis may include the following:

1. Invoice analysis:
TSPs will thoroughly examine invoices related to voice, cloud, security, and connectivity solutions in your current environment. The examination process begins with a simple phone and internet bill. Do not worry; they recognize the value of both you and your firm's time. The TSP will proficiently walk you and your team through any additional requirements if needed.

2. In-depth investigation:
Find yourself a top-tier TSP, and they will delve even deeper, uncovering extraneous fees and obscured term dates, identifying unused products and outdated terms, contributing to your bills, and putting their expertise to full use here.

3. Collaborative strategy:
The TSP assists in aligning your business objectives with the optimal telecom solutions to establish an ideal future telecom ecosystem. This includes identifying your unique business needs, short—and long-term goals, pain points, and compliance or regulatory limitations.

4. Leveraging supplier ecosystem:
With a comprehensive understanding of your needs, the TSP taps into its extensive supplier ecosystem to find the best solutions and pricing that align with your business requirements.

After receiving the Inventory Analysis, you are now equipped with the invaluable ability to quickly analyze your existing telecom environment against a proposed new framework (cue the involuntary fist pump). This comprehensive overview empowers you to make informed decisions, whether it involves maintaining your current ecosystem or implementing the newly optimized proposed environment. Should the decision lean towards progress, this is where having a top-tier TSP is a true game-changer. They stand ready to extend their expertise as your communication, coordination, and collaboration partner to deploy your unique environment, offering a lifetime of support.

KICKING "WORST" TO THE CURB

Technology is the backbone of your business, and if you do not address weak spots, seemingly minor issues can quickly compound into significant operational disruptions. When this happens, you do not want to contribute to the "worst customer service" statistic. Instead, Multi-Carrier Solution Providers stand ready to help safeguard your business's continuity and overall success. Now, with a customized environment and managed service options at your disposal, troubleshooting, escalations, billing disputes, and renewal negotiations all turn into a distant, faint memory. You have more important tasks to accomplish than waiting on hold—no matter how great the music might be. PC

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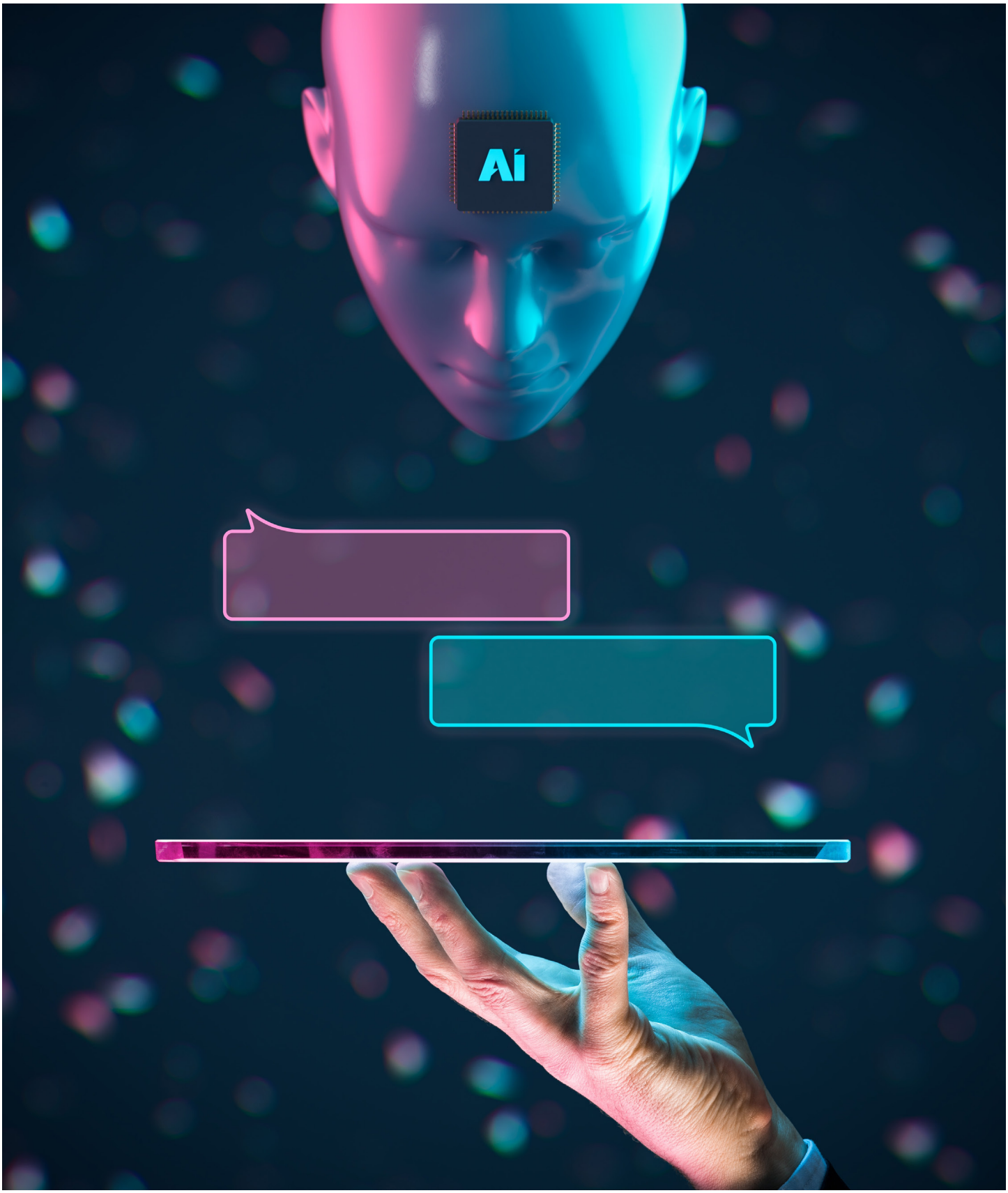

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ME, MYSELF AND AI: LARGE LANGUAGE MODELS

The only thing more daunting than using AI for your firm's day-to-day work is understanding all the buzzwords surrounding the technology. **By Joey Santos-Jones**

As administrators, you stand at the forefront of integrating cutting-edge AI to enhance decision-making processes, personalize retirement advice, and streamline administrative tasks. However, the journey to fully harnessing Large Language Models (LLMs) in retirement planning is challenging. To simply, when you think LLM, think ChatGPT as an example of one. You input something and a smart system develops something from it.

The primary obstacle most industry professionals encounter is the integration of retirement industry-specific expertise in their use of AI. LLMs must not only grasp the complex regulations and unique financial considerations of retirement planning but also adapt this knowledge to cater to the diverse needs of plan participants. Focused use of AI requires a sophisticated understanding of the nuances in retirement savings strategies, tax implications, and the ever-changing regulatory environment.

Moreover, trustworthiness and ethical considerations are paramount. As administrators, ensuring that AI-driven advice aligns with fiduciary responsibilities and maintains the highest ethical standards is non-negotiable. The technology must be transparent, reliable, and, above all, operate in the best interest of the participants.

While seamlessly integrating LLMs into retirement planning presents hurdles, it's a journey worth embarking on. The potential for LLMs to transform the retirement planning landscape by providing personalized, efficient, and insightful guidance is immense. Our goal is not to present immediate solutions but to spark a conversation on navigating these challenges together, paving the way for a future where AI empowers retirement plan administrators to achieve new levels of excellence in serving their customers.

UNDERSTANDING LARGE LANGUAGE MODELS (LLMS)

A LLM is a sophisticated AI program capable of recognizing and generating text, among other complex tasks. These models are termed "large" due to their training on extensive datasets, often encompassing vast swathes of internet-derived text. At their core, LLMs rely on a specific type of neural network known as a transformer model, which enables them to process and understand the intricacies of human language or other complex data forms.

The essence of an LLM lies in its ability to digest and interpret human language, achieved through deep learning—a subset of machine learning focused on analyzing unstructured data probabilistically. This process allows LLMs to discern the nuances of language, such as how characters, words, and sentences interact, without direct human oversight. They undergo further training or tuning to tailor these models for specific applications, such as question answering or language translation, enhancing their precision for designated tasks.

AI'S EXPANDING ROLE IN RETIREMENT SERVICES

Sri Krishnamurthy, the CEO of QuantUniversity and a FinTech instructor at Northeastern University, shed light on the transformative potential of AI in finance during the Employee Benefit Research Institute-Milken Institute 2024 Retirement Symposium. "Companies are not just publishing and saying, 'This is cool research,' they're integrating it as part of their intellectual property and making sure that they are creating value and investing significantly," Krishnamurthy emphasized, pointing out the strategic shift towards leveraging AI for enhanced financial services and user experiences.

Even if currently limited, there is a need for rapid adoption of AI in the retirement sector, which underscores its potential to revolutionize how companies approach every aspect of consumer interaction. AI's ability to adapt to various user profiles and generate personalized retirement plans from raw data presents a significant advantage, especially for those lacking financial literacy. This adaptability promises to streamline retirement planning and offer nuanced explanations for complex financial queries that surpass the capabilities of traditional automated systems.

The stark cost differences between traditional code development and the deployment of AI to create adaptable software partly drive the move towards AI. Krishnamurthy noted, "Cost cutting is a big thing because writing code is super expensive, and people are thinking about using Generative AI to develop new methodologies for writing code." This shift is evident in the actions of large companies like Google, which have invested in foundational LLMs to gather global data and tailor services to the unique needs of each user.

"AI'S ABILITY TO ADAPT TO VARIOUS USER PROFILES AND GENERATE PERSONALIZED RETIREMENT PLANS FROM RAW DATA PRESENTS A SIGNIFICANT ADVANTAGE, ESPECIALLY FOR THOSE LACKING FINANCIAL LITERACY."

REGULATORY CHALLENGES AND PRIVACY CONCERNS

Despite the promising advancements, the rapid integration of AI in retirement plan services raises significant privacy and security concerns. The lag in federal and state regulation in the United States contrasted with movements in the EU, as the AI Act passed in December 2023, highlighting the need for vigilant regulatory oversight. Krishnamurthy stressed the importance of ethical and responsible integration of AI into products, acknowledging the scrutiny from both regulatory and organizational perspectives due to privacy and security concerns.

EVOLVING AI FOR PERSONALIZED RETIREMENT SERVICES

Krishnamurthy remains optimistic about the future of AI in financial planning, citing its success in enhancing user engagement. The continuous improvement of AI, fueled by user interactions and feedback, suggests a future where financial planning software becomes increasingly personalized and effective. "Every application you currently use in your Apple ecosystem, you will have a parallel application in this GPT store which is going to enable you to various common cases for your enterprise products," Krishnamurthy explained, highlighting the potential for AI to create specialized applications tailored to individual needs.

THE FUTURE LANDSCAPE OF AI IN FINANCE

While generic LLMs have potential applications in finance, the unique challenges of navigating the finance sector's legal, ethical, and regulatory complexities suggest a need for LLMs tailored specifically to finance. The pathway to developing these specialized models is generally understood: one can either fine-tune general-purpose LLMs with finance-specific data or design new LLMs from the ground up with financial applications in mind.

Yet, the progress in developing retirement-specific LLMs has been notably slower in academic and open-source research circles compared to other fields. The difficulty of accessing large, high-quality financial datasets, crucial for training effective financial LLMs, contributes to this slow pace. Unlike data from sources like Common Crawl, financial data tends to be costly and proprietary, limiting opportunities for academic and open-source contributions. Common Crawl is an open repository of web crawl data that anyone can access and analyze. Moreover, financial data is often noisy, posing additional challenges for current LLM algorithms to sift through effectively.

This phenomenon of the financial sector lagging in adopting new technologies is not unprecedented. It reflects the historical co-evolution of finance and technology, as outlined by Andrew Lo in the Adaptive Markets Hypothesis (AMH). Lo, the theory's originator, holds that while individuals generally act rationally, they can occasionally overreact during significant market volatility. According to AMH, financial market dynamics are shaped by innovation, competition, and natural selection among market participants, mirroring ecology and evolutionary biology principles.

Despite the financial sector's keen interest in technologies that enhance efficiency and reduce costs, technical capabilities, trust, and reliability influence the adoption rate of financial innovations. The financial industry's cautious approach is understandable, given the high stakes. A minor software glitch can lead to significant financial losses, as demonstrated by the Knight Capital Group incident in 2012, where a malfunction in their trading system led to a loss of $457.6 million, nearly bankrupting the company.

The potential for such catastrophic errors underscores financial institutions' cautious stance towards deploying new technologies like LLMs despite their promise to revolutionize the sector. However, private investments in developing finance-specific LLMs are underway, with projects like BloombergGPT leading the charge, thanks to Bloomberg's access to vast amounts of financial data. Similarly, JP Morgan's Machine Learning Center of Excellence is exploring the potential of finance-specific LLMs.

However, the industry must fully deploy these technologies with thorough vetting and oversight. The journey towards integrating LLMs into the retirement industry is marked by excitement for their potential and caution against their risks, highlighting the delicate balance between innovation and safety in the financial world. **PC**

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RETIREMENT PLAN COMMITTEE MEETINGS, PART 2: HOW TPAS CAN HELP WITH THE PROCESS

We know that that plan sponsors should have retirement plan committees from Part 1—let's discuss how TPAs help with this process. **By Theresa Conti**

SO, I KNOW THAT PLAN SPONSORS WANT MORE DURING COMMITTEE MEETINGS ESPECIALLY WHEN

it comes to helping their plan participants (see my article on Retirement Plan Committee Meetings, Part 1). When we talk about how we as TPAs can help with the process, there is definitely a lot we can do; I will talk about that in depth below, BUT we first need to be "invited" to the meeting.

INVITATION WHYS

Being invited to participate in the meetings is one of the biggest challenges I have experienced in my career, and I often wonder why we are left out of the process. Do the advisors think we add value when attending the meetings, or do they think that they should be showing their value by making presentations related to plan administration? Can the recordkeeper answer most of the questions? What is being covered at the meeting? How often do they meet, and do we need to attend all of the meetings if they meet quarterly? Do we charge for our attendance at the meeting? And do we find out about the meeting when it is too late for us to attend and provide value? In addition, we honestly cannot attend the meetings for all of our clients—so how do we "choose" which clients for whom we want to be part of that meeting?

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COMMIT TO THE COMMITTEE

For those of you with larger clients, or those who are serving as 3(16), we should definitely be part of that process. Talking with the advisor at the start of the plan year to get an idea, and possibly even set the meetings for the entire year, would allow us to prepare in advance for those meetings and possibly even set the dates for those meetings.

For instance, I talked with Bonnie Treichel of Endeavor Retirement, who regularly works with advisors to set a regular process for the services they provide. One of those recommendations is to have a governance process. Her suggestion in that regard breaks committee meetings into four parts: (1) investments, (2) service providers, (3) employee engagement, and (4) operations & administration.

MEETINGS AND WHAT TO BRING TO THE TABLE

When we look at a quarterly schedule of retirement plan committee meetings, here are some ideas of what you can bring to the table to show value and make sure that client really sees what you are doing for their plan. If your client is not holding quarterly meetings, then you can easily adjust the schedule to be twice per year (which to me should be the minimum number of meetings a plan sponsor should hold). Remember that these are just the items that we would bring to the table—there are typically many more things that would be discussed at the meetings.

- First Quarter meeting
  - o Review of prior year's compliance testing typically completed by March 15
  - o Review of employer contributions
- Second Quarter meeting
  - o Review process to assure that Form 5500 and the plan audit are scheduled for completion
  - o Review current processes including distribution, loans and hardship policies and procedures
- Third Quarter meeting
  - o Discuss any upcoming legislative changes that may affect the plan in the following plan year
  - o Review any potential plan design changes that we may want to update/amend for the following plan year
  - o Confirm that the Form 5500 and audit are completed and filed (or at least in the final stages for filing by Oct. 15)
- Fourth Quarter meeting
  - o Ensure that all notices are ready and on schedule to be sent by the due date (including fee disclosures, automatic enrollment notices, safe harbor notices, and QDIA notices)
  - o Review any changes that were adopted during the third quarter meeting and sign any necessary plan amendments or changes to policies
  - o Finalize the addition or removal of safe harbor contributions for the following plan year

When talking further with Bonnie Treichel, she also recommended that for the small plan market, we may only need to attend one meeting per year—and that would be the one that addresses operations and administration of the plan. She works with financial advisors to be aware of the profitability concerns of their partners and to be a good steward of their time…to not expect TPAs or recordkeepers to attend every meeting with the client but to be aware of when to bring them in to add valuable information for the client when it relates to the plan design, including changes that may need to be made or when there are regulatory updates.

BE PRO-ACTIVE

The SECURE Act is making plans more complicated, so often advisors without expertise expect their partners to do everything. Advisors need to understand the expertise of their partners, and we may need to drive that conversation by understanding what value we (and the recordkeepers) add to the topics.

For the retirement plan advisor's perspective, I talked with Deana Calvelli of Calvelli Consulting; she confirmed that advisors should be pro-active and thoughtful in planning in committee meetings. If there is a 3(16)-service provider, they need to bring to discuss with the advisor any plan administration or fiduciary best practices to bring to the client's attention. She also said the recordkeepers and TPAs don't need to be at every meeting when we are talking about the small plan market, but when we go up market to larger plans, she does like to have the TPA and/or 3(16) at most of the committee meetings. Her main message is to talk about being more strategic as opposed to being topical. When we work in those ways, that is how we get the best plan outcomes.

Another idea I discussed with both Bonnie and Deana is to provide updates virtually (as opposed to in person). Clients are looking for updates and trends relating to retirement plans, ideas that they can add to help participants and get the outcomes we want along with fiduciary training. TPAs could easily provide fiduciary training for clients which helps out the advisors. Having an annual presentation means the financial advisor doesn't have to provide this for each of their clients, and also gives us, as TPAs, additional value to our clients.

As TPAs, we need to be more pro-active and in front of the client so they truly see our value. We need to view our relationship with the advisor as a partnership, and make sure we don't completely delegate all the relationship to the advisor. This is very important—so when an issue or question comes up, we have the opportunity to show that our expertise is a truly valuable asset. PC

NAVIGATING THROUGH GIANTS: THE BOUTIQUE TPA FIRM'S STRATEGIC EDGE

The retirement plan sector is rapidly consolidating, with mergers and acquisitions favoring larger entities and challenging boutique firms to differentiate in an increasingly homogenized market. **By Sheri Fitts**

UNDERSTANDING THE CONSOLIDATION CURVE AND MARKET DYNAMICS

The Consolidation Curve, a conceptual framework illustrating the lifecycle of industry maturation, serves as a critical lens through which many firms can strategize their survival and growth. This article dips into the dynamics of the Consolidation Curve, the opportunity for boutique firms, and the strategic implementation of thought leadership as a differentiator in the marketplace.

In the retirement plan sector, we observe an acceleration toward the scale and focus phases, characterized by mergers and acquisitions that consolidate resources and market share under larger entities. This trend poses challenges for boutique firms, such as increased competition and a pressing need to assert their value in a market leaning toward homogenization and one size fits all.

STRATEGIC IMPERATIVES FOR BOUTIQUE FIRMS

In a market more crowded than a Starbucks line in the Denver Airport, standing out requires more than volume—it demands distinction. Despite the daunting presence of larger competitors, boutique firms actually possess unique advantages. Their agility allows for a more tailored approach to service delivery, and their capacity for innovation can meet specific client needs with precision. The key to leveraging these strengths lies in three crucial areas.

Advisory Approach and Niche Focus. Position your firm as the artisanal coffee shop in a sea of generic chain stores, offering bespoke services that resonate with clients. You offer a unique blend (service) that customers (retirement plan advisors

and sponsors) can't find anywhere else. This is your superpower. Embrace it. Lean into it. What does it mean for you and your team to truly serve clients in a different and expansive way?

Clear Value Proposition. Your value proposition is your beacon, guiding retirement plan advisors through the fog to your door. It's not just about what you do but how you make their lives easier, their plans more compliant, and their futures brighter. Think of all of the areas they are attempting to juggle and step in with unusual solutions.

Outcomes-Focused Services and Consultative Selling. Shift the conversation to a results-oriented approach that enhances client relationships, positioning your firm as a strategic partner, not just a vendor. Throw away the playbook. Start over. Ask different questions.

For instance, align your services to tackle the biggest challenges clients face. Then create a transformation roadmap as the guiding document. A detailed roadmaps for organizational change that outline step-by-step processes to achieve desired business outcomes, whether it's employee engagement, financial wellness or operational efficiency.

HOW TO STAND OUT: IMPERATIVE OF THOUGHT LEADERSHIP

If we consider the challenges of standing out and creating value, thought leadership emerges as a potent tool for firms to establish their authority and influence. It involves cultivating and sharing innovative ideas, insights, and solutions that not only address current industry challenges but also anticipate future trends.

IMPLEMENTING THOUGHT LEADERSHIP: A STARTING POINT

Let's get clear, thought leadership isn't attending conferences and posting pictures on LinkedIn. While conferences are crucial to your learning and professional growth, most leaders never take the next step. Meaning, how might you share what you learned with your clients—using a why-it-is-relevant-to-them perspective. (This is one of the biggest challenges for firms—shifting from sharing what-you-do to what-is-in-it-for-them.)

As an example: A sales rep I know wrote a two-page update following her firm's sales meeting. It was an open, honest, and extremely valuable email for her advisor channel. And completely unique. She took a commonplace occurrence and turned it into thought leadership opportunity, providing valuable and helpful content.

Look beyond our industry. Start by exploring how major consulting firms approach similar challenges. Take a look at their content and focus. How might you translate some of those trends and ideas into your market?

Identify expertise. Pinpoint specific topics where the firm can offer deep insights, whether it be regulatory changes, plan committee strategies, or technological innovations in plan administration.

Develop compelling content. Develop content that reflects the firm's expertise and vision—such as white papers, blog posts, and webinars—that engage both current and prospective clients.

Leverage digital. While social media may be calling, don't neglect your email list or firm's website. Offer to create valuable resources for your clients' professional networks. Look for ways to use one bit of content multiple times. Cast a wide net, ensuring it reaches the intended audience effectively.

And by all means, understand that the magic is in the consistency.

Engage in industry conversations. Participate in forums, conferences, and panels to share insights and foster discussions, amplifying the firm's voice and influence in the industry. And then? As mentioned above. Make sure you translate your participation for your clients. What did you learn? What shifted for you? Where are the trends?

THE BOTTOM LINE

As boutique firms navigate the Consolidation Curve, understanding the market dynamics and strategically positioning themselves through thought leadership are paramount.

By highlighting their unique value and engaging in the broader industry conversation, boutique firms can not only survive but thrive amidst the giants. The journey requires foresight, innovation, and a steadfast commitment to delivering specialized, outcome-focused services.

At the crossroads of industry consolidation, boutique TPA firms must reflect on their strategic positioning and embrace thought leadership to differentiate themselves. Assess your firm's areas of expertise, develop a content strategy that showcases your unique insights, and engage actively with your industry peers and clients. The path through consolidation is challenging, but with the right strategies, boutique firms can carve out a successful niche in the retirement plan marketplace. **PC**

Leveraging the Consolidation Curve

The Consolidation Curve offers a blueprint for boutique firms navigating an evolving industry. In its early stages, industry fragmentation opens doors for these agile firms to carve out niche markets and drive innovation with specialized services. As consolidation advances, competition intensifies, yet the opportunity for boutique entities to shine as nimble innovators increases. They adeptly fill the market voids larger corporations leave behind. For boutique firms, the curve underscores moments to consider strategic alliances or acquisitions, using their distinct strengths to secure advantageous positions and capitalize on market shifts.

Source: Harvard Business Review, "The Consolidation Curve," by Graeme K. Deans, Fritz Kroeger, and Stefan Zeisel.

THE GROWTH GAME

Investing in your employees' development and skill acquisition is key to maintaining a competitive edge, regardless of whether you're a small or a large national TPA. **By Linda Chadbourne**

The success of a company is often determined by the growth and development of its employees. A crucial aspect of this development is professional growth and the cultivation of future leaders within the organization. Companies that invest in their employees' professional development not only benefit from increased productivity and innovation but also position themselves for long-term success.

Professional development, in essence, refers to the ongoing process of acquiring new skills, knowledge, and experiences that improve an individual's ability to perform their current role and prepare them for future responsibilities. When competition is fierce and innovation is paramount, having a well-structured professional development policy is not just a matter of convenience but a strategic imperative. Such a policy, designed to nurture and support employees' skill development and career growth, goes a long way in facilitating business growth—especially when it comes to having a credentialed workforce.

Whether you are a small or national TPA, investing in the growth and skill development of your employees is crucial for staying competitive, enhancing employees' job satisfaction, motivation, and achieving long-term sustainability.

Let's explore the benefits of having a professional development policy

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in place and how it contributes to the growth of a company with credentialed employees.

Enhanced Employee Competency: A well-crafted professional development policy ensures that employees receive the training and education they need to excel in their roles. As they refine their skills and expand their knowledge base, employees become more competent and proficient in executing their job functions. This enhanced competency translates to higher-quality work, improved efficiency, and better outcomes for the company.

Increased Innovation and Adaptability: Credentialed employees are often at the forefront of industry knowledge and best practices. By encouraging employees to earn certifications and stay current in their respective fields, a professional development policy fosters an environment of innovation and adaptability. These employees are more likely to bring new ideas, technologies, and solutions to the table—which can give the company a competitive edge.

Attraction and Retention of Top Talent: In today's job market, highly qualified professionals gravitate towards employers that invest in their growth and development. A robust professional development policy can serve as a powerful recruitment tool, attracting top talent to your organization. Furthermore, it helps retain existing talent by providing opportunities for career advancement and skill diversification, thereby reducing turnover rates and associated costs.

Improved Employee Engagement: Employees who feel valued and supported by their employer are more engaged in their work. When a professional development policy is in place, it sends a clear message that the company is committed to its employees' success. This commitment leads to higher levels of job satisfaction and engagement, contributing to a positive workplace culture.

Alignment with Organizational Goals: A professional development policy can be tailored to align with the specific goals and objectives of the organization. We often see TPAs setting metrics and goals by incorporating professional development as part of the bonus structure. By setting clear training and development objectives that are in sync with the company's mission, vision, and strategic plan, employees are more likely to work towards achieving these objectives, contributing to overall business growth.

Enhanced Customer Confidence: In our industry, in which employees interact directly with plan sponsors and advisors, having a credentialed staff can significantly boost client confidence. Clients are more likely to trust and rely on companies that employ professionals with recognized qualifications and certifications.

Competitive Advantage: A workplace filled with credentialed employees gives a company a competitive advantage in the marketplace. It positions the organization as an industry leader and instills trust among clients, partners, and investors. This advantage can open doors to new opportunities and partnerships.

Reduced Errors and Risk: Credentialed employees are often better-equipped to make informed decisions and avoid costly mistakes. This reduction in errors and risks not only saves the company money but also safeguards its reputation and customer relationships.

Once a professional development policy is in place, it's important to align your company and employees with the right organization and educational roadmaps that cater to specific industry needs. This alignment ensures that your employees receive targeted training and education that not only meets your organization's requirements but also keeps them up to date with industry best practices and changing regulations.

Collaborating with a professional organization like ASPPA that specializes in educational programs and industry-specific knowledge brings several advantages.

First and foremost, it ensures that your employees receive high-quality training and development opportunities that are tailored to your organization's needs and objectives. These educational roadmaps are designed by industry experts who understand the intricacies of our industry, ensuring that the content is relevant, up-to-date, and aligned with your goals. As Tiffany Hanks, the Director of Education and Sales with the American Retirement Association eloquently stated,

Our education pathways are designed to not only enhance the skill set of employees but also to align with the evolving needs of businesses in talent sourcing and retention. By providing these educational programs, we are empowering employees to advance in their careers while helping companies to cultivate a robust and future-ready talent pool. Our commitment to this cause reflects our belief that the growth of individuals directly contributes to the success of their organizations.

While implementing a professional development policy that recognizes and celebrates employee's achievements is essential, working with the right organization that already has educational roadmaps and industry subject matter expertise in place can be a game changer. It not only eases the burden of policy development and implementation but also ensures that your employees receive top-notch training and stay at the forefront of industry knowledge.

The strategic collaboration and the benefits of a well-designed professional development policy can lead to improved employee and client retention, setting your organization on a path to sustained success in a competitive market. Clients value working with knowledgeable and skilled professionals who can provide excellent service. When employees continuously enhance their skills and knowledge, they are better equipped to meet client needs and expectations. This, in turn, leads to higher client satisfaction and loyalty, ultimately contributing to the organization's growth and profitability. **PC**

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STATE PLANS: COMPLEMENTS OR COMPETITORS?

State-run retirement plans are emerging nationwide as a safety net for private-sector employees lacking employer-provided options, sparking debate over whether they complement or compete with private-sector retirement offerings. **By John Iekel**

State-run programs that provide retirement plan coverage to private-sector employees whose employers do not have their fans, but they also have their detractors—many of whom argue that they compete with private-sector retirement plans and providers. So, which are they—complements or competitors?

FILLING A GAP

Since there are employers that do not offer plans, state-run retirement plans are arising from coast to coast in every region to serve as a safety net of sorts to fill coverage gaps.

Demographic shift. Paychex, in its WORX blog entry of Oct. 9, 2023, said that such plans are "intended to stop the impending avalanche of impoverished senior citizens." They cited Survey of Consumer Finances statistics stating that more than 50 million U.S. workers lack employer-provided retirement plan coverage and that almost half of U.S. households lack savings in retirement accounts.

"The central issue we're trying to address is, 'How do we address the looming retirement crisis?'" said Christine Cheng, Director of the Illinois Secure Choice program, in the 2023 IFEBP "Talking Benefits" podcast, regarding state-run retirement plans like the one she runs that provide coverage to private-sector employees whose employers do not.

"We're in the middle of a demographic shift," Olson added, offering reasons that help explain why the projections are so serious. She said that the number of people who are age 65 and older will be rising sharply, while the number of people in the workforce will be dropping. "If we do nothing, the costs to state and federal budgets are going to be immense."

The bigger picture. "States have taken it upon themselves" to take this step in the absence of federal action, she continued. IFEBP podcast moderator Julie Stich, Vice President, Content at the IFEBP noted that by June 2023, 19 states and two major cities had either implemented such a plan or had one in the works; since then, more programs have begun and are under consideration.

Lack of retirement savings is serious for individuals, but also for society on a macro level, said Cheng. Kim Olson, Senior Officer of the Pew Charitable Trusts' Retirement Savings Project, who joined Cheng in the podcast, put that in more concrete terms. Olson noted that retirement income shortfalls have a significant effect on federal and state budgets—to the tune of $1.3 trillion in the next 20 years, including $330 billion in costs for the states.

A MIXED BLESSING?

State-run programs to cover those whose employer do not offer it are well-intended, but their appeal is not universal.

In fact, criticism of such plans was practically pre-emptive. Brian O'Connell in *The Street* wrote about it as early as March 2017—the year OregonSaves, the first such plan to begin operation, started functioning.

Burdens on employers. One criticism is that state-run programs would place an additional burden on employers. O'Connell cited a December 2016 memorandum in which the U.S. Chamber of Commerce expressed concern that states creating programs would add "unnecessary complexity" to providing retirement

"SO—ARE STATE-RUN PLANS AN INCENTIVE OR A DISINCENTIVE TO AN EMPLOYER TO OFFER A RETIREMENT PLAN?"

coverage, by adding state requirements to those ERISA already imposes. Not only that, but the chamber also said, an employer with operations, employees, or facilities in multiple states could face even greater complexity in complying with varying requirements.

Cheng remarked that one of the initial concerns they heard in Illinois regarding Illinois Secure Choice was that it would put too big a burden on employers.

Incentive to drop a plan. Another criticism is that state-run programs could prompt private-sector employers to drop their retirement plans and thereby save money and administrative work; O'Connell wrote about such sentiments in 2017.

EMPLOYERS' ROLE

State-run programs require employers to either (1) offer a retirement plan they themselves sponsor or (2) facilitate automatic payroll deductions that are deposited into accounts, usually IRAs, that the state program establishes for employees whose employers do not have a plan.

So what does that mean for an employer? Olson said an employer's main tasks include:

- registering for the program;
- uploading a roster of eligible employees;
- doing payroll reductions each pay period and remitting contributions to the program administrator; and
- conducting maintenance on the roster of eligible employees.

THE BOTTOM LINE

So—are state-run plans an incentive or a disincentive to an employer to offer a retirement plan?

Employer sentiment. The Pew Charitable Trusts found strong employer support for Oregon Saves in two surveys it conducted, according to Olson. She said that almost three-quarters of the Oregon employers they surveyed in 2019-2020 and 2020-2021—73%—said they were satisfied with the program or were at least neutral about it.

Adam Bloomfield, a Senior Economic Policy Advisor at the Federal Deposit Insurance Corporation (FDIC), Kyung Min Lee, an economist at the World Bank, Jay Philbrick, a student at Brown University, and Sita Slavov, a research associate at George Mason University, report similar findings in the National Bureau of Economic Research (NBER) paper "How Do Firms Respond to State Retirement Plan Mandates?" They used data from the Current Population Survey (CPS) and Form 5500 filings to examine the effect of state-run retirement programs on employer decisions regarding offering, and worker inclusion in, employer-provided plans.

Bloomfield, Lee, Philbrick and Slavov argue that employers that "are fully rational" likely will continue to offer a retirement plan of their own, even when the state government begins to make a program available.

Burdens on employers. Cheng said that the fears they heard that Illinois Secure Choice would put too big a burden on employers did not come to fruition. She added that employers' role with Illinois Secure Choice, and the burden it puts on them, are light.

Fewer plans, or more? It is possible, Bloomfield, Lee, Philbrick and Slavov say, that some employers may drop their plans if the state puts one in place, because a plan is expensive to administer and is subject to regulations, including nondiscrimination tests. This, they say, would in effect cut employees' compensation by the value of the retirement benefit it had been offering.

To see if state-run programs are a disincentive for employers to run their own plans, Olson said that the IFEBP looked at Form 5500 data from years immediately before and after Oregon, California, and Illinois put their programs in place and they began functioning. In all three states, said Olson, the feared plan terminations remained at or below the national average.

Nonetheless, said Olson, in California, Illinois, and Oregon, there was an increase in private-employer retirement plan adoption immediately after the respective registration deadline.

"We're seeing kind of a lasting effect on the private plan market. It really does appear that state deadlines are appearing as a decision point for the private employer," remarked Olson, adding that state programs "really are complementary, not in competition," with private-sector employer retirement plans.

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Bloomfield, Lee, Philbrick and Slavov's paper suggests that state adoption of a retirement coverage program can change business norms and the salience of retirement benefits. Consequently, they say, some employers then begin to offer a retirement plan. They found that if a state puts a safety-net retirement plan in place, the likelihood increases that an employer will offer a retirement plan by approximately 3%.

Small employers. Sentiment in favor of Oregon's program was even stronger among small employers in that state; Olson said that nearly all the small employers they approached—95%—felt that way. "These are "really impressive findings, especially for a government program," said Olson.

Cheng underscored the importance of small employers to state programs like hers, remarking that in 2023, the final onboarding wave for Illinois Secure Choice took place, in which employers with 5-15 employees in 2022 had to register with Illinois Secure Choice if they did not have a retirement plan of their own. That is especially significant, she indicated, because that is the largest segment of employers in the Prairie State.

Employee participation. Bloomfield, Lee, Philbrick and Slavov say that the presence of a state plan boosts the chances that an individual employee will participate in an employer-provided retirement plan by about 7%. Further, they say that the number of participants in an employer-provided plan increases by 3%-5%.

Opening a door. Bloomfield, Lee, Philbrick and Slavov estimate that a state putting a program in place not only will increase the odds that an employer will offer a retirement plan, but also that employees will participate in it.

"By creating a system in which every employer has to offer something, we create a floor," remarked Olson. "What you're seeing with these programs is there was a desire to save, but the mechanism wasn't there. These programs have opened the door for savers to have a way to do it and achieve those retirement goals that they have," Cheng added.

"Everyone deserves a chance to secure their future. Everyone deserves a chance to retire with dignity," said Cheng. **PC**

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EMPOWERING EXCELLENCE: A RECAP OF THE WOMEN IN RETIREMENT CONFERENCE

The Women in Retirement Conference, also known as WiRC, is an annual gathering where accomplished and aspiring leaders come together. It's not just an event; it's a celebration of strength, resilience, and the unyielding spirit that defines women in leadership roles. **By Megan Crawford & Karyn Dzurisin**

Imagine a space where powerful narratives intertwine, seasoned leaders and rising stars connect, and a shared commitment to uplifting one another prevails.

It's a unique blend of inspiration and practical wisdom, where each participant brings their own story, lessons, and triumphs to the table.

Let's embark on a journey into the heart of this empowering experience. Discover the excitement of connecting with women who are not only leaders but also trailblazers, mentors, and champions for change. Uncover the power that emerges when women unite with the common goal of supporting and propelling each other forward.

The 2024 WiRC conference took place from January 10 to 12 on the beautiful Isle of Palms in South Carolina. The event commenced with a mix-and-mingle session on Wednesday evening where attendees caught up with friends and colleagues. Notably, there were many first-time attendees — 65 of them!

While every year is remarkable, this year held extra significance. We began with an inspiring talk by conference co-chair Mickie Murphy, who shared her journey of overcoming a recent accident. She emphasized how the relationships formed at conferences like WiRC, along with the support of her tribe, helped her to navigate her recovery and keep a smile on her face.

Additionally, Jeff Acheson, President of the American Retirement Association, moved the audience to tears when he spoke about the recent loss of his daughter and how it inspired him to raise awareness about the lack of self-confidence in young females. Through an organization called ROX (Ruling Our Experiences), he aims to change this narrative. ROX focuses on empowering young women (grades five to 12) by offering a 20-week program to help them find their inner confidence, cope with social pressures, and develop leadership skills. The emotional impact of his words resonated deeply with everyone present. ROX is a truly inspiring group. We highly encourage you to learn more about it.

On Thursday we were treated to an outstanding presentation by Lindsay Boccardo, who delved into the benefits of working with a multigenerational team and offered guidance on becoming a leader who can inspire each generation. She emphasized the importance of helping teams find their purpose in a company. When team members understand their roles and how they align with an organization's mission, they become more engaged and motivated. Building strong relationships with team members is crucial. Lindsay encouraged us to invest time understanding each other's unique needs, aspirations, and

WiRC committee members alongside conference co-chair Mickie Murphy.

"IT'S ALSO IMPORTANT TO FIND OUT WHAT PEOPLE YOU WORK WITH NEED FROM YOU AND TO TELL THEM WHAT YOU NEED FROM THEM"

challenges. By doing so, we can foster trust and collaboration. Lindsay also challenged us to develop a "whole life" understanding of our teams, recognizing that their experiences, backgrounds, and personal lives shape their perspectives at work. By appreciating where they come from, we can better support their growth.

We also learned that a beloved childhood game, "Oregon Trail" (enjoyed by Gen-X and millennials) also mirrored our real lives. We were generally thrown into the wilderness (aka, the real world) without a roadmap and forced to figure things out — sometimes while avoiding metaphorical dysentery. Unlike our Gen Z counterparts, we didn't have technology at our fingertips. They have instant access to any information needed to get through everyday life, while we relied on resourcefulness and problem-solving skills. When the metaphorical wagon wheels broke, Gen-X and millennials rolled up their sleeves and fixed them. Gen Z, on the other hand, might call for help or turn to a YouTube video for instructions. Is that a bad thing? No, but it does affect how we lead, inspire, and train our Gen Z team members in day-to-day interactions at work.

As leaders we must recognize these generational differences and how they work, balancing approaches to ensure effective leadership and team development.

Additionally, Angela Proffitt of GSD Creative shared insights on practice management, including the "true colors assessment," which helps individuals gain clarity about their personality traits and communication styles. By understanding ourselves better, we can enhance our effectiveness in both personal and professional realms. For example, if you identified as "green," you are typically a big thinker/idea person and should not be spending the bulk of your time on mundane tasks of no benefit to you or your company.

The day concluded with a dynamic and diverse panel of retirement plan professionals, each bringing their unique expertise to the table:

- Jill Dennis, CPC, QPA, Director of Business Development/ Shareholder, Dunbar, Bender & Zapf
- Karie M. OConnor, CIMA®, CPFA®, AIFA®, QKA®, Wealth Advisor, Senior Retirement Plan Strategist, Clearwater Capital Partners
- Virginia Krieger Sutton, QKA, QPFC, Vice President, Retirement Plan Practice, Johnson & Dugan Insurance Services Corporation
- Melissa Terito, CPA, Partner, Sentinel Pension

They shared their perspectives on topics including:

- The true value of a Third-Party Administrator (TPA) and understanding that the critical role played by TPAs in retirement planning is essential for effective decision-making.
- Recognizing that we are all an extension of each other's sales teams, and that leveraging this synergy can lead to better outcomes.
- Recognizing the power of client referrals and that satisfied clients will always be our best advocates.
- Underscoring the importance of selling through teaching. Educating clients about retirement planning not only builds trust but also empowers them to make informed decisions.

Beyond the professional insights, evenings at WiRC are always memorable. On Thursday, we transformed our "Ladies Night Out" into a cozy "Ladies Night In" due to inclement weather. Local female artisans showcased their products and craftsmanship, providing a delightful networking opportunity with a taste of local charm.

The following morning, Kelsey H. Mayo, American Retirement Association Director of Regulatory Affairs and Partner at Poyner Spruill LLP, led an interactive session on how each of us can be a voice in our industry and take meaningful action. She went in-depth regarding ARA's Government Affairs team and the role they play in our industry both educating and guiding decision-making around legislative affairs. A highlight was the friendly competition among female leaders from ASPPA and sister organization ASEA to secure new political action committee (PAC) donors. Remarkably, 47% of attendees contributed to the PAC!

The American Retirement Association Political Action Committee (ARA PAC) empowers our members to actively shape the retirement landscape. The money the ARA PAC receives from members goes directly to support lawmakers on both sides of the aisle who support the private retirement industry.

Following that session was Shari Harley, founder and President of Candid Culture, who taught us "How to Say Anything to Anyone: Setting Expectations for Powerful Working Relationships." Shari has been a conference favorite since she

1. Mickie Murphy, CPC, QPA, QKC, ERPA, conference co-chair, tells her resilient story and how WiRC, alongside her tribe, helped her recover and keep a smile on her face .2. Nicole Corning, Shannon Edwards, Lynn Young, and Kelsey Mayo speaking on stage on Day 2. 3. The MANY attendees at Session 3: Practice Management. 4. 2. ASPPA President Amanda Iverson alongside ASPPA Vice President Shannon Edwards at the 2024 WiRC.

first spoke to the previous ASPPA Women's Conference — the Women's Business Leaders Forum (WBLF). Shari is adept at imparting actionable skills participants can immediately apply in the workforce, especially when it comes to having difficult conversations. Her insights emphasize the importance of building trust in business relationships, making it easier to address challenging topics. Shari encourages us to understand what our colleagues need from us and to communicate our own needs effectively. By setting clear expectations, we can proactively reduce the need for difficult conversations.

During her session, Shari also highlighted three common questions to avoid in our everyday conversations:

1. "How's it going?"
2. "Do you have questions?"
3. "Does that make sense?"

Instead, she recommended using the following alternatives:

1. "What is your plan?"
2. "What are you doing first?"
3. "What questions do you have?" or "Who has the first question?"

The rephrased questions encourage dialogue and actionable steps, rather than a yes or no response. Shari's insights remind us of the value of investing time in developing soft skills and connecting with our professional community. So, if you haven't attended the WiRC conference in the past, we highly encourage you to consider doing so in the future.

In the spirit of slowing down to go faster, participating in WiRC is a wise decision! We invite you to explore not only our annual in-person conference but also our other women's initiatives.

For more information, visit www.womeninretirement.org. **PC**

SECURE 3.0?

Recently, several new bipartisan retirement bills have been introduced and several have been gaining traction. Are we seeing the beginnings of a SECURE 3.0 emerging? **By James Locke**

It has been nearly a year since the SECURE 2.0 Act was enacted. As the name of the bill suggests, that law was the second significant retirement savings policy bill enacted in the span of five years.

A year later, while most practitioners and retirement plan sponsors are focused on implementation of the new SECURE 2.0 rules, Congress has quietly been putting forward new bipartisan proposals for consideration in the next round of retirement plan policymaking. We also expect more individual-issue bills to be introduced throughout the remainder of 2024. In sum, these proposals will likely serve as the skeleton for Congress's next comprehensive retirement package.

Although both SECURE 1.0 and SECURE 2.0 have gone a long way toward helping Americans save for retirement, lawmakers on Capitol Hill are beginning to express interest in cobbling together some retirement proposals into SECURE 3.0 to address some glaring policy gaps that need to be resolved.

AUTOMATIC ENROLLMENT

In July 2023, two senior members of the Senate Health, Education, Labor and Pensions (HELP) Committee—along with their House Education and the Workforce, and Ways and Means Committee, counterparts—introduced the Auto Reenroll Act of 2023 (H.R. 4924/S. 2517). The legislation would amend both ERISA and the Internal Revenue Code (IRC) to permit qualified automatic contribution arrangements (QACAs) and eligible automatic contribution arrangements (EACAs) to automatically reenroll workers back into the retirement plan at least one time every three years.

Many employers automatically enroll their employees in retirement savings plans; however, some employees initially decide to opt out. This bill essentially prompts workers who opt out of these plans to periodically reconsider that choice.

STARTUP CREDIT BOOST FOR MICRO EMPLOYERS

In October 2023, two key members of the House Ways and Means Committee—Reps. Claudia Tenney (R-NY) and Dan Kildee (D-MI)—introduced the Retirement Investment in Small Employers (RISE) Act (H.R. 6007). The legislation would create a new Micro Employer Pension Plan Startup Credit in IRC Section 45E for qualified micro employers. A qualified micro employer is defined as an employer with 10 or fewer employees. The credit amount is 100% of any retirement plan administrative costs up to $2,500 for the first three years after adoption of the retirement plan.

Incentivizing the adoption of retirement plans in small businesses is vital to closing the retirement coverage gap.

While the SECURE Act and SECURE 2.0 modified and enhanced retirement plan startup tax credits for small businesses, they did not amend the formula relied upon to determine the amount an employer may claim in retirement plan startup tax credits. This left the smallest microbusinesses and their employers and their employees unable to take full advantage of the credit. The RISE Act would address this problem and would empower the smallest of employers to offer robust retirement savings plans to their employees.

ERISA MINIMUM AGE PARTICIPATION REQUIREMENT

In November 2023, Sen. Bill Cassidy (R-LA), Ranking Member of the Senate HELP Committee, and Sen. Tim Kaine (D-VA) introduced the Helping Young Americans Save for Retirement Act (S. 3305). The legislation would lower the minimum participation age ERISA-covered defined contribution (DC) plans from age 21 to age 18.

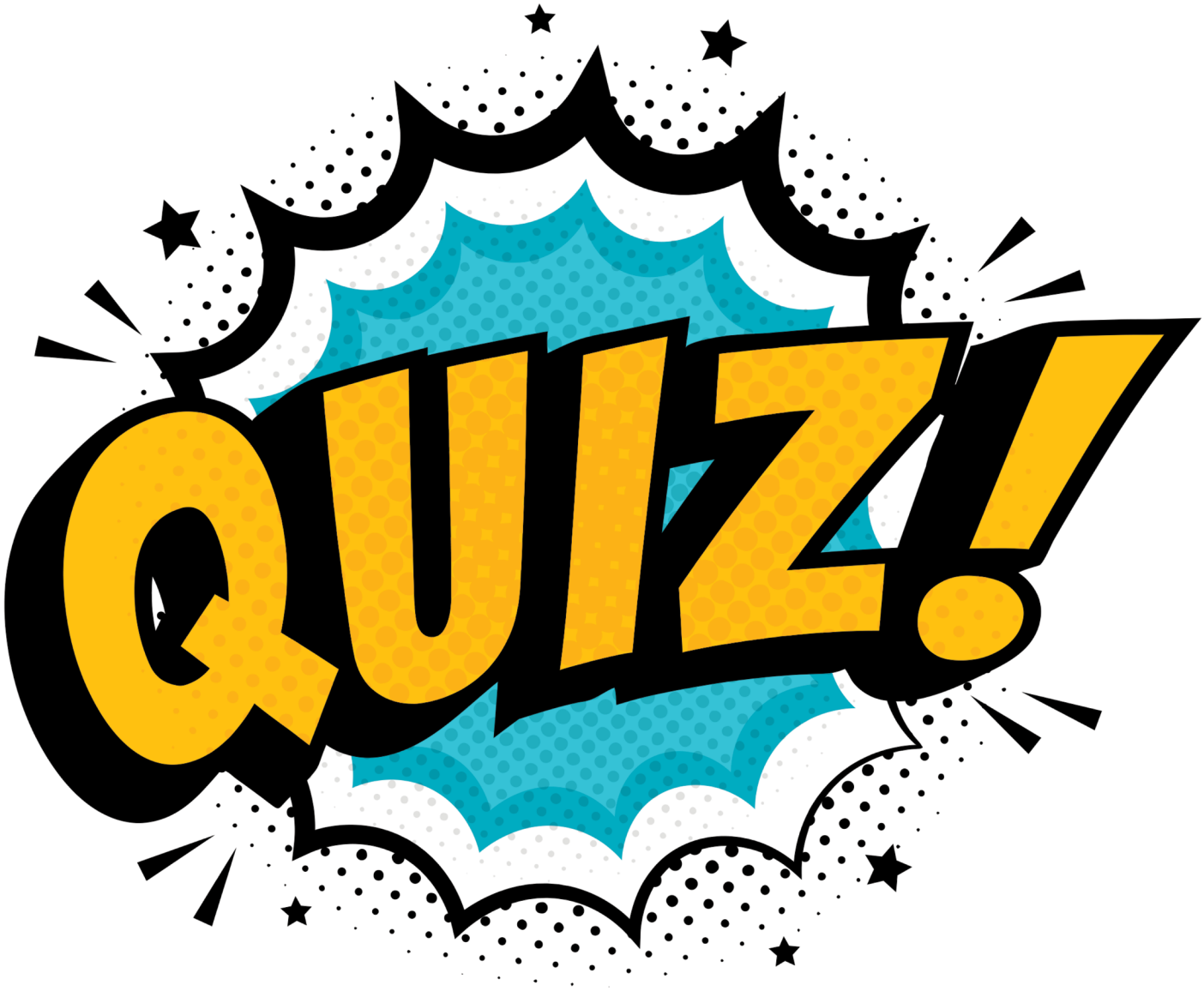
James Locke is the American Retirement Association's Director of Federal Government Affairs.

The legislation also would exempt 18 to 20-year-old employees from testing related to retirement funds that would otherwise increase the cost of administering retirement plans for these employees, directly mirroring the administrative treatment of long-term, part-time employees (LTPTEs).

Nearly half of all workplaces only offer benefits to employees who are age 21 or older. Expanding access to employees between the ages of 18-21 will allow them to accrue additional retirement savings by allowing them to start saving for retirement earlier.

ROTH IRA ROLLOVERS

ARA has worked steadfastly to encourage lawmakers to introduce legislation allowing retirement savers to roll over any of their Roth IRA savings into a Roth bucket within a workplace-based DC plan. Under current law, workers are prohibited from rolling Roth IRA savings into a designated Roth savings account within a workplace-based retirement plan. **PC**



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