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PLANCONSULTANT

SPRING 2022

POOL IT!

MORE AND MORE
INDEPENDENT TPAS
ARE JOINING COLLABORATIVE
GROUPS TO POOL
THEIR RESOURCES
AND EXPERTISE.
WHAT'S DRIVING
THIS TREND?



TAKEOVER BEST
PRACTICES

WiRC TOGETHER
AGAIN

TOP 10 TPA
MARKETING TRENDS

SPRING NATIONAL

MAY 4-5, 2022



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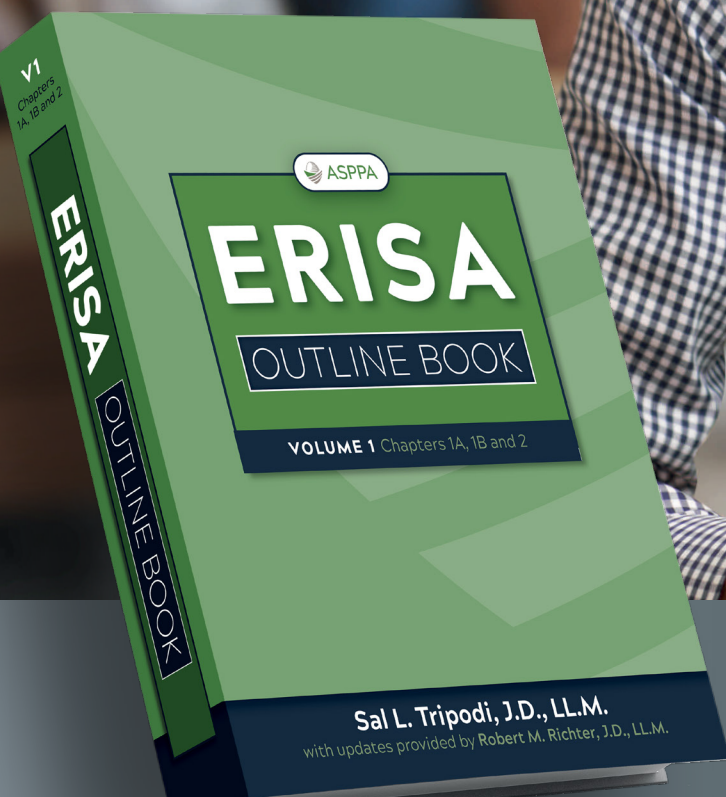


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THE YEAR OF GUARANTEED LIFETIME INCOME



Is it back to the future for annuities? By John Ortman

With the decline of private sector DB plans, the industry is currently dealing with the first generation of retiring American workers in a very long time who, in large part, lack any guaranteed income in retirement other than Social Security. According to the Plan Sponsor Council of America, just 10% of 401(k) plans now offer a guaranteed in-plan lifetime income option.

That number is about to change—big time.

One major factor driving that change, of course, is the SECURE Act provision creating a safe harbor limiting plan sponsors' fiduciary liability in selecting an annuity provider. Additionally, follow-up legislation is now before Congress that would enhance the lifetime income provisions in the SECURE Act by allowing the use of an in-plan annuity as a QDIA, which the SECURE Act did not address.

Recognizing this newly enhanced opportunity for in- and out-of-plan lifetime income solutions, several financial firms have jumping into the arena in recent months, bringing new products to market. These include TIAA, Fidelity and BlackRock, as well as a consortium of providers (American Century Investments, Lincoln Financial Group, Nationwide, Prime Capital Investment Advisors, SS&C Technologies, Wilmington Trust, N.A. and Wilshire) that collaborated on a new in-plan TDF series incorporating a guaranteed lifetime income option.

As we have often seen in the industry, the biggest challenge facing developers of in-plan solutions is infrastructure. Most recordkeeping platforms were built to support daily valued mutual funds. Adding a third-party annuity option, however, means building extensive daily data feeds between the recordkeeper and the insurance company.

In addition, they will have to overcome plan advisors' reluctance to recommend in-plan annuity products and address the high cost, complexity and lack of fee transparency that has always plagued retail annuities—which brings us to another hurdle: lower, institutional pricing is generally not available for annuities.

So is out-of-plan a better way to go? We may get an answer to that question soon, in a first-of-its-kind offering that launched March 1st. The result of a partnership between

Morningstar and Hueler Investment Services, the new product pairs Morningstar's managed accounts with Hueler's out-of-plan marketplace.

Here's how it works. The marketplace provides real-time fee quotes on different institutionally priced retirement-income products, so individual plan participants can choose one that works best for them. Throughout the selection and purchasing process, participants receive guidance tailored to their specific needs, such as how much they will need, where they'll live, the condition of their health, and Social Security and other income sources.

Once the annuity is purchased, Morningstar manages and allocates the remaining balance of the participant's account through its managed accounts or advisor-managed account services. And participants have access to continuous annuity conversion values of the annuities offered through the platform, filtered by recommendations from a 3(38) advisor.

HUB Retirement and Private Wealth, a major aggregator, is one of the first advisory firms to get on board, bringing its significant distribution potential to bear.

Assuming the past is a reliable indicator, we can expect 2022 to be a year marked by education, as consultants and advisors gauge their clients' interest in incorporating lifetime income in their plans and help them sort through the different solutions coming to market.

We'll also probably see a few more products launch this year. Some of them will be copycats (or at least similar), and perhaps one or two will be trailblazers like the Morningstar/Hueler solution. What happens after that depends on the degree of plan sponsors' interest and whether it turns into action and implementation in 2023.

Years ago, annuities were a staple of retirement planning outside the workplace plan environment. Then the industry moved away from them. Now it looks like they're back as part of new solution to the decumulation dilemma.

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



Editor

Mark Your Calendars!

2022 Conference Calendar

DATE	CONFERENCE	LOCATION
May 4-5	ASPPA Spring National	Online Event
June 22-23	ASEA Actuarial Insights	Online Event
August 5-6	ASEA Actuarial Symposium	Chicago, IL
October 23-26	ASPPA Annual & TPA Growth Summit	National Harbor, MD
December	ASPPA Winter Symposium	Online Event

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SPRING IS IN THE AIR

In winter we plot and plan; in spring ASPPA moves! By Natalie Wyatt



Spring is upon us and I, for one, am glad to be coming out of the winter season and enjoying watching Mother Nature come alive again. When we look to Merriam-Webster, one of their definitions of spring is that of a time or season of growth or development. ASPPA is currently undergoing our own “spring” following the “pandemic winter” that began in 2020!

As we began to emerge from this pandemic winter with the in-person ASPPA Annual Conference last October, it became obvious that our industry, our firms and our membership had changed and grown to be different than who we were at the beginning of 2020.

While the ever-present possibility of legislative changes that could affect our services and offerings has stayed constant, ASPPA continues to keep our membership informed and abreast of these potential developments. As always, ASPPA is also

“ASPPA IS CURRENTLY UNDERGOING OUR OWN “SPRING” FOLLOWING THE “PANDEMIC WINTER” THAT BEGAN IN 2020!”

involved in the shaping of policy through the ARA Government Affairs Committee. But during this winter, our industry has evolved—with mergers and acquisitions on the rise, new players entering the marketplace and new product offerings emerging.

For the firms that our members own, lead, manage and work in, the landscape of the employee base has changed. Remote employees are no longer looked at as a challenge but, for many, now a normal part of their staff demographic. This has changed how we hire, train and interact with the teams within our firms.

In January 2020, ASPPA launched the revamped QKA training that was mobile-friendly and entirely online with a self-paced format. This timing could not have been better given the onset of the pandemic. The program is designed to help a candidate learn, retain and apply the information in a practical manner. As a result, the new



Natalie Wyatt, QPA, QPFC, has more than 30 years of experience in the retirement plan industry. She serves as ASPPA's 2022 President

QKA program saw an amazing initial adoption rate, and today the QKA is the most widely held designation among our members.

Following the ASPPA Annual Conference, the ASPPA Leadership Council created an ASPPA Annual Conference Task Force made up of TPAs, actuaries, recordkeepers and sponsors. This task force was asked to answer the following question: *What should the ASPPA Annual Conference look like and who are we creating it for?*

The task force met weekly over a number of months, addressing all aspects of the ASPPA Annual Conference including the audience, curriculum, format and overall experience. The resulting recommendations included peer-to-peer case studies, deep-dive sessions and time for peer-to-peer critical thinking/problem-solving roundtable exercises. These recommendations (as well as a few more) are being used by the 2022 ASPPA Annual Planning Committee to develop a conference that meets the needs of our membership as they plan for the next ASPPA Annual Conference.

So “ASPPA Spring” has begun—with new growth and development surrounding the 2022 ASPPA Annual Conference! More exciting announcements are ahead as plans for the 2022 event are developed and shared.

What's next to bud and bloom for ASPPA? That would be the virtual ASPPA Spring National Conference in May. I hope to see you there—virtually! **PC**

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THE ENDS IN MIND

As things stand today the 401(k) is a savings plan, not a retirement plan—a road with no smooth off-ramp. By Brian H. Graff

One of those secrets of highly effective people is to “start with the end in mind”—and yet, as thousands of Americans head into retirement each and every day, it seems that many have no ready idea for how to do so financially.

It's ironic that retirement income—literally the benefit defined in defined benefit pension plan design—has struggled to gain a foothold in the vast majority of defined contribution programs. Indeed, it's long been said that 401(k)s were never intended to be a retirement plan, and the lack of even the most rudimentary decumulation in-plan solutions is a stark testament to that reality. In fact, whatever its initial focus, it's clear that as things stand today the 401(k) is a savings plan, not a retirement plan—a road with no smooth off-ramp.

Sadly, it's not hard to see why. The products are complex, comparatively expensive, and generally require (or are positioned so as to seem to require) the kind of “all or nothing” choice to which individuals are reluctant to commit. For many, it looks to be the decision to bet it all—a lifetime of retirement savings—on “red.” Even so, as things are structured now, most participants have no ready in-plan access to those options—with plan fiduciaries still reluctant to take on what remains widely viewed as an additional (and unrequired) long-term fiduciary obligation.

“OUR INDUSTRY NEEDS TO COME TOGETHER—AND QUICKLY—ON WORKABLE, AFFORDABLE, AND EASY-TO-ADOPT RETIREMENT INCOME SOLUTIONS.”

The SECURE Act contained three key provisions specifically designed to not only calm those concerns, but to increase the visibility of the need with participants. And today, more than ever, it seems that outcomes are a bigger focus than ever before. Not coincidentally, the past year has seen a number come to market, featuring some new designs, and, perhaps more intriguingly, new partnerships focused on addressing, if not resolving, those objections. Moreover, a significant trend among advisory firms remains the continued development, and/or acquisition of, wealth management capabilities—though those are likely to be directed at those who have managed to accumulate larger sum, with perhaps more complex needs.

But what about everyone else—and truth be told, it's likely to be not only many, but most. What about individuals—many of whose savings have been “shepherded” to the point of retirement by automatic enrollment designs and invested in the friendly confines of a qualified default investment alternative, often a target-date fund—who now, at a critical point in their lives, are expected to make a complex



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financial choice? And who in best (though likely not most) cases, are instructed by calculators that have many imbedded and unarticulated assumptions (not the least of which is that they only anticipate a 50-50 chance of being accurate)—and no real accounting for health, inflation, legacy considerations or personal risk tolerance?

Too many Americans today get to the end of their working careers with no sense of what to do next. That leaves them vulnerable—to spending without discipline, or more insidiously to those who would prey on their gullibility and/or good will.

Our industry needs to come together—and quickly—on workable, affordable, and easy-to-adopt retirement income solutions. Decumulation is, after all, a uniquely personal experience—one whose circumstances, needs, and aspirations will likely require an array of alternatives. Fortunately, we appear to be on the brink not only of a new era of choices to fill that gap, but also a fresh appreciation of the need for lifetime income solutions that can help provide a secure outcome over the years as well. **PC**

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LATE ADOPTION LESSONS, PART 2

This is the second year we can retroactively adopt qualified plans for prior plan years. What have we learned?

By John Markley, Theresa Conti & Shannon Edwards

Thanks to the SECURE Act, December 31 is no longer the deadline to adopt a retirement plan for the current plan year. Now, we can adopt plans retroactively up until the due date of the client's business return including extensions.

In addition, no new clients will bleed out the week after Christmas if their TPA takes a vacation and can't get them a plan document to sign by December 31 (although his may

not be true for "owner only" plans, but that's another story altogether). This is only the second year in which we can retroactively adopt qualified plans for prior plan years. What have we learned? What have we had to change?

IRS PROVIDES GUIDANCE

For plans adopted after the end of the fiscal year, there was uncertainty regarding whether IRS Form 5500 series filing was required. In the IRS' *Employee Plan News* of Aug. 6, 2021,

the agency provided guidance that the 2020 Form 5500 series filing would not be required for 2020 for plans adopted after the end of the year. Instead, there will be an indication on the 2021 IRS Form 5500 that the plan was adopted after the end of the 2020 plan year.

However, the IRS guidance came so late that many practitioners had already filed a request for an extension to file the 5500s for the plans that were adopted retroactively—although now we know the 5500 and the related Form 5558 were not necessary. Hopefully, plan sponsors will not receive a notice regarding a late or missing 5500 when, in fact, the filing is not required.

Certain due dates were not extended by the IRS. The minimum funding requirements continue to require that minimum contributions be made by 8½ months after the end of the plan year. While a small

“WE MAY HAVE GONE FROM ONE DEFINITIVE DEADLINE OF DECEMBER 31 TO A SITUATION WHERE EVERY DAY IS A DEADLINE UP UNTIL THE TAX FILING AND/OR FUNDING DEADLINE.”

employer's tax deadline may be extended until October 15, the minimum funding deadline for a defined benefit plan they adopted retroactively is not extended beyond September 15. Realistically, their actual deadline for retroactively adopting a plan is prior to September 15 and in time to be able to fund it by September 15.

This becomes a challenge for many TPA firms and means that we must decide what our deadline needs to be. Decisions such as whether we should charge a rush fee for the last-minute adopters must be made (remember the lesson from Part 1 and put a value on your time and the headache you will have to suffer through). Which custodians can accept contributions at the last minute and how much lead time do they need?

It seems like we may have gone from one definitive deadline of December 31 to a situation where every day is a deadline up until the tax filing and/or funding deadline, and instead of one stressful month leading up to December 31, we have spread the stress throughout the entire year.

CHALLENGES AND SOLUTIONS

The SECURE Act provision allows many employers to have a tax-deductible contribution by adopting a plan after year-end. However, in many cases we discovered that the CPA had already filed the tax return. The expected plan implementation process, in which the CPA sees that a client has substantial tax liability while preparing their tax return and calls their local TPA to implement a qualified plan for their client, did not magically occur last year. In many cases, the CPAs may not have even been aware of the new option under the SECURE Act. This year, many of

us realize that we must do a better job of making our CPA and financial advisor partners aware of the ability to retroactively adopt a qualified plan after year-end if it is done prior to the business tax return being filed.

EXAMPLES

In 2021, implementing a plan after year-end did not always work out as anticipated. Here are some problems we have experienced and things to look out for.

Cash Flow. Some businesses have experienced new and extreme success during the pandemic and have now decided to implement a qualified plan. Implementing a cash balance plan after one or two extremely successful years might be risky. We need to explore with our clients whether they can sustain the cash flow to meet the minimum funding requirements beyond the next year or so.

Bad Data. The new plans with challenges generally face those challenges because of incorrect census data used during the sales process. The plan is being implemented retroactively and often in a hurry so that the client can file their tax return. Often, the potential client provides “rough” census data and savings goals during the sales process so that the TPA can prepare design illustrations. Working with estimated data can lead to inaccurate illustrations. One excellent suggestion from an actuary is that you should require the actual year-end payroll data before you run an illustration. After all, it is available by then.

Timing. Retroactive plan implementation condenses the time to prepare an accurate report. Therefore, one of our clients acted on the plan design data. Several challenges were created as a result, including the

date of hire. The employer provided estimated dates of hire during the sales process. The actual dates of hire meant that key employees were not eligible for the plan. The client funded the plan based on the sales illustration before the final actuarial report was completed using the correct census information. The contributions for the employees who were not yet eligible for the plan were not deductible.

In a separate case, the potential client reported compensation equal to the IRS maximum during the sales process. However, when the actual payroll data was submitted, we learned that the client had not actually paid themselves the full amount the reported during the sales process, and since it was after year-end, it was too late to change that.

BEST PRACTICES

Here are five best practices moving forward in the new post-SECURE world:

1. Get accurate census data before running the illustrations to avoid headaches.
2. Decide what your deadlines are going to be for setting up a retroactive plan for your client.
3. Stick to your deadlines. Don't let someone else's failure to plan become your emergency. There are no retirement plan emergencies.
4. Value your time and your health. If you let someone rush you at the last minute, value your time enough to charge for it.
5. Market to your CPA and financial advisor partners. Remind them that this new option is available. **PC**

4 IDEAS FOR SOLVING THE RETIREMENT INCOME DILEMMA



Tackling the challenge of DC plan decumulation will entail outside-the-box thinking. Here's a start. By Mark Shemtob

Providing retirement income in the defined contribution plan world has become a hot topic over the last several years.

We are challenged with finding solutions to increase retirees' access to alternative, efficient options designed to provide reliable retirement income—while not burdening those employers that voluntarily sponsor retirement plans. The general consensus is that no one best approach exists.

Here are four ideas that might be considered. All four would likely require future legislation or regulations.

1. SAFE HARBOR FOR NON-INSURED RETIREE INCOME OPTIONS

The SECURE Act included a provision designed to encourage DC plan sponsors to offer insured lifetime income by creating a safe harbor provision that provides fiduciary

protection. Most retirees, however, prefer using non-insured payout strategies over purchasing an insured annuity.

Non-insured income options would not provide a guaranteed income level for life. If properly structured, however, they can provide a systematic method of payouts that could provide a high probability of lasting a lifetime. Currently no safe harbor provision is offered for non-insured income options. And although a plan can offer non-insured retirement income options, few currently do.

The potential value of having plans offer direct income payments is that plans may have access to lower-fee investments and greater investment selection expertise than most individuals can secure on their own. In addition, by offering these options within plans, the transition to retirement income can become more seamless. Possible reasons why employers are hesitant to include these non-insured income options include fiduciary liability concerns, additional costs and administrative efforts.

Employers might be encouraged to offer non-insured options through the creation of a safe harbor provision offering fiduciary protection from retirees that select a plan provided non-insured income payout and are dissatisfied with the outcome. However, employers should not be required to offer these income options. Such a safe harbor should also include a provision making it clear that reasonable administrative costs of providing the income could be charged to the retiree's account.

The federal Thrift Savings Plan (TSP) may be a potential model for non-insured retirement income payouts eligible for safe harbor relief. The TSP allows for a couple of non-annuity payout options from account balances. Other options may also be

considered in addition to those used by the TSP.

The Department of Labor (DOL) may have the jurisdiction to add this safe harbor without new legislation.

2. ESTABLISHMENT OF NEW PERSONAL RETIREMENT ACCOUNT ARRANGEMENTS

Difficulty in the portability of account balances poses a challenge in creating efficient lifetime income. Providing retirement income from employer-sponsored plans would probably work most effectively when employees have most of their retirement savings in their current plan. However, many employees have accounts scattered about among multiple IRAs, IRA rollovers, as well as prior 401(k) or other employer-sponsored plans.

Finding a way to aggregate these accounts would be helpful in creating cost-efficient retirement income options, both annuities and non-insured payout approaches. Having financial institutions administer a new type of retirement tax-deferred vehicle (Lifetime Retirement Accounts or LRAs) would be beneficial.

LRAs would function in a similar manner to IRA rollovers, but would also be required to offer retirees insured annuities and non-insured retirement income options as well as target-date-like funds. There would be no requirement that any employee ever use an LRA. However, DC plans would be required to designate a DOL-approved LRA in their plan, which would be among the plan distribution options. It would serve as the default distribution when an employee terminates service with an employer and does not select another distribution option.

Note that if an employee already has a LRA account, he or she would probably select that for the distribution. In order to consolidate accounts more efficiently, the current limit on forced distributions should be increased above \$5,000. An LRA could also provide for DOL-approved, age-appropriate financial retirement education, as well as assistance in consolidating other retirement accounts.

“LRAS WOULD FUNCTION IN A SIMILAR MANNER TO IRA ROLLOVERS, BUT WOULD ALSO BE REQUIRED TO OFFER RETIREES INSURED ANNUITIES AND NON-INSURED RETIREMENT INCOME OPTIONS AS WELL AS TARGET-DATE-LIKE FUNDS.”

It is unclear whether the IRS or DOL has the authority to permit these types of arrangements; thus legislation might be needed.

3. VARIABLE OR INDEXED QLACS

Currently, Qualified Longevity Annuity Contracts (QLACs) must provide a fixed (or inflation protected) guaranteed income. As a result, insurers hold the underlying assets in their general accounts in low-risk securities. In today's low-interest-rate environment, this practice makes QLAC payouts unattractive on a premium-to-benefit basis. QLACs have lengthy accumulation periods (between premium payment and the first benefit payment). Few retirees will wish to lock in their future retirement funds for a long period with an unattractive internal rate of return.

Allowing QLACs to be invested in more diversified options could potentially provide larger accumulations and future income. For example, over a 15-year period the difference in the accumulation of funds between a 3% and a 6% rate of return would result in a 53% larger amount. Of course, the amount of benefit would not be guaranteed until commencement age.

The Treasury Department probably has the authority to allow variable or indexed QLACs without further legislation.

4. NON-INSURED LIFETIME INCOME OPTIONS BASED ON RETIREE RISK POOLING

It's important to continue to explore alternative ways to provide retirement income. One innovative approach

would be to broadly permit tax-qualified retirement arrangements to offer non-insured annuity options that pool and share investment and longevity experience among retirees. Under such options, benefit payments would be periodically adjusted for actual investment and longevity experience of the pool. There would be no requirement for an employer or other entity sponsoring such a program to fund contributions to satisfy any experience losses, since benefit levels are adjusted based upon actual program assets.

Such programs based on this concept are now used in some non-ERISA church plans and under TIAA-CREF in the U.S. as well as in 15 other countries. This approach requires a significant number of participants to provide longevity pooling efficiently, such as found with larger employer plans, well-established PEPs, and the LRA-type arrangement discussed above.

It's unclear whether the IRS or DOL has the authority to permit these types of arrangements, and thus legislation might be required.

CONCLUSION

To date, most of the emphasis on retirement security has been on improving access to retirement plans and increasing plan participation rates. Clearly those are key ingredients in providing retirement security. However, the task of tackling the challenge of efficiently turning account balances into reliable retirement income is still in its early stages—and is in need of new ideas. **PC**

SDBAs: PROCEED WITH CAUTION

Just because you can doesn't mean you should... By Shannon Edwards



My family and I love to go four-wheeling in the mountains surrounding Crested Butte, CO in the summer, which is one of the most amazing times of year there. We haul our “toys” up there on a trailer and spend a week. We totally unplug, mainly because there is no cell service where we go.

Most days, we load up our four-wheelers and head into the mountains to see the things you can't see from the road. We've been to old ghost towns and deserted mines, and tiny cafes you would never know were there.

We get to see things that many people will never get to experience.

We've been through the Crystal Canyon down the Devil's Punch Bowl and over to the town of Crystal, where we got to see the Crystal Mill and swim in the waterfall located just below the mill. Then we moved on to the town of Marble, where it is said that much of the marble for the Lincoln Monument came from. We enjoy some of the best barbecue you'll ever have in Marble and then head back up Crystal Canyon, back through the Devil's Punch Bowl and home to Crested Butte.

We've been over Pearl Pass from Crested Butte to Aspen and back. We've spent the day on Italian Creek Pass where we went to the top of

Flag Mountain to see what used to be the home of the highest maintained American flag.

We are experienced four-wheelers who enjoy beautiful scenery, unplugged family time, and a good adrenaline rush. If the trail is all green, we probably don't run it. We prefer the blues with some red mixed in. If the trail is snowpacked and we can't get where we set out to go, we will try to find a way through, over or around the snowpack instead of turning back.

However, a few years ago we learned the true meaning of the saying, “Just because you can doesn't mean you should.” We were headed over Italian Creek to see Flag Mountain

“WE DID SUGGEST THAT ADDITIONAL GUIDANCE WAS NEEDED IN THE FORM OF BEST PRACTICES. WE ALSO SUGGESTED THAT SOME GUARDRAILS FOR PROTECTING THE PARTICIPANTS COULD BE HELPFUL.”

and decided to take the upper Reno Ridge Road because the lower road wasn't challenging enough. That's where we made the mistake. We didn't know that there had been a rockslide up top which made the road extremely dangerous to traverse in anything with four wheels. (The motorcycles made it look like a breeze.)

By the time we figured out that we shouldn't be there, it was too late to go back. It took hours of moving inches at a time, holding the vehicles on the mountain with tow straps, and many narrow escapes to get all three vehicles down the mountain.

You might be asking yourself, “What the heck does this have to do with retirement plans and regulations?”

ERISA ADVISORY COUNCIL HEARINGS

In June and August 2021, the ERISA Advisory Council held meetings at which they heard from several people from different parts of our industry regarding the use of self-directed brokerage accounts (SDBAs) in 401(k) plans. This was a follow-up to their request for comments back in 2014. My friend Mickie Murphy and I were asked to give statements to the committee from the point of view of local TPAs.

Of course, our first reaction when asked to speak and as we started discussing our written statements for the Council was that more rules and oversight were needed when it came to the use of SDBAs in 401(k) plans. Here's why.

Our experience as local TPA firms has often been that small employers establish 401(k) plans with SDBAs

so that the owners can use their own advisors and invest in anything they want without being restricted by a set menu of funds. In this situation, it is not uncommon for the rank-and-file employees to be told to establish their own SDBA as well. There is rarely oversight by the fiduciaries regarding the choice of where their SDBAs are established.

Normally an advisor is not made available to the rank-and-file employee. The fee structure for their account—as opposed to that of the account of the owner, who typically has a much larger balance and access to lower fees—is generally not reviewed. There is no qualified default investment available for rank-and-file employees who don't want to choose their own investments, nor is there a list of designated investment alternatives.

To our surprise, all the witnesses who spoke to the council in June stated that no additional regulations should be imposed and to do so would make it impossible for plan sponsors to offer SDBAs. They also stated that SDBAs were a much-needed solution for many plan sponsors.

SMALL VS. LARGE PLAN MARKET

Mickie and I became curious as to why. We began researching, reading the testimonies and discussing our experience with some of those who testified in June. It came to our attention that our experiences, while common in the small plan market, were not common in the larger plan market. In fact, in the larger plan market, SDBAs are normally offered as part of an offering by a recordkeeper. There are investment

advisors involved with the plan for anyone who wants to use them. And there are designated investment alternatives as well as qualified default investments.

Eventually, Mickie and I changed our minds and backed off from our first suggestions prior to giving our testimony. Based on our research and discussions we had with people who worked in different markets, we decided that additional regulations were not required and could cause more harm than good.

However, we did suggest that additional guidance was needed in the form of best practices. We also suggested that some guardrails for protecting the participants could be helpful, such as strongly suggesting the use of a qualified default investment and a menu of designated investment alternatives. (In fact, Jason Brown and We Rommerskirchen with Benefit Plans Plus wrote a great article in 2016, “SDBAs: Undesired Elements for Plan Fiduciaries” (<https://bit.ly/3HGtqgg>) that discusses some of the things plan sponsors should consider before adding SDBAs—including some best practices.

In the end, if your clients are going to offer SDBAs, walk ahead and take a good look at the road before you head down it. Make sure you aren't going to run into a boulder field caused by a rockslide. Make sure they have some guardrails in place to help the participants who don't want to, or don't have the knowledge to, invest for themselves so that no one slides over the cliff, and everyone makes it down the road to a successful retirement safely. **PC**





BOY OR EOY?

Beginning-of-Year vs. End-of-Year DB valuations, explained.

By David J. Kupstas

Among other things, a defined benefit plan valuation produces the minimum required and maximum deductible contribution amounts for the plan year (PY). A DB valuation may be performed as of the beginning of the year (BOY) or the end of the year (EOY).

An EOY valuation is straightforward in that the year's contribution is developed after data for that year (compensation, employee population, asset values, etc.) are known. Since data for the current year cannot be known in a BOY valuation, prior year data must be used. If current year data is needed, it must be estimated using actuarial assumptions. If actual experience is different than estimated, this does not make the BOY valuation wrong. The goal of both BOY and EOY valuations is to enable there to be sufficient funds to pay all benefits. They are just two different paths for reaching that goal.

A BOY valuation might seem strange to someone who works mainly with defined contribution plans, since all DC valuations are EOY. On the other hand, EOY valuations might seem strange to someone working for a large corporation, which may

“A BUSINESS WITH FLUCTUATING INCOME MAY PREFER THE EOY VALUATION SO THAT BENEFIT ACCRUALS ARE MORE CLOSELY TIED TO THE YEAR’S REVENUE.”

need their numbers early in order to contribute quarterly. In fact, plans with more than 100 participants aren’t even allowed to have an EOY valuation.

Below is a simple comparison between BOY and EOY valuations. Complex questions about quarterly contributions, credit balances, AFTAPs, and PBGC premiums as they relate to BOY vs. EOY valuations are beyond the scope of this article.

FUNDING TARGET AND TARGET NORMAL COST

Robert is the sole participant in a 1.00%-per-year DB plan based on high three-year average compensation. He has five years of service and has received compensation of \$50,000 each year. Whether the valuation is BOY or EOY, the monthly accrued benefit for funding target (FT) purposes will be $1.00\% \times \$50,000 \times 5 \div 12 = \208.33 . The FT benefit is attributable to service before the current PY.

The target normal cost (TNC) benefit—the benefit attributable to current year service—may differ in BOY vs. EOY valuations. If the valuation is BOY, an assumption must be made about upcoming year compensation. Assume a 3.00% salary scale. It is therefore assumed that Robert’s compensation in the upcoming year will be \$51,500, his high three-year average will become $(\$50,000 + \$50,000 + \$51,500) \div 3 = \$50,500$, and his TNC benefit will be $\$50,500 \times 1.00\% \times 1 \div 12 = \42.08 .

If the valuation is EOY, we know that Robert actually earned \$56,000 instead of \$51,500. Now, his new high three-year average will be $(\$50,000 + \$50,000 + \$56,000) \div 3 = \$52,000$ and his TNC benefit will be $\$52,000 \times 1.00\% \times 1 \div 12 = \43.33 .

The FT and TNC are the actuarial present values of the FT benefit and TNC benefit, respectively. For BOY valuations, these present values are as of the first day of the PY. For EOY valuations, they are as of the last day of the PY. Two main differences are: (1) the participant will be a year older at EOY vs. BOY; and (2) the segment interest rates may come from

a different lookback month. The rates for a 1/1/2022 valuation might be from December 2021, while the rates for a 12/31/2022 valuation might be from November 2022. The effect of the different lookback month will depend on how interest rates have fluctuated in the intervening year. For this example, assume the annuity purchase rate (APR) at BOY is \$134.0150, while the APR at EOY would be \$156.6604, the difference being that at EOY the participant is a year older and the segment rates are lower.

The FT and TNC for each valuation date are summarized in Table 1.

Table 1

	BOY Valuation	EOY Valuation
Average Compensation - BOY	\$50,000	\$50,000
FT Benefit	\$208.33	\$208.33
Funding Target	\$27,919	\$32,637
Average Compensation - EOY	\$50,500 (assumed)	\$52,000 (actual)
TNC Benefit	\$42.08	\$43.33
Target Normal Cost	\$5,639	\$6,788

ASSETS

For a BOY valuation, the asset value as of the first day of the year is used. Any receivable contributions, discounted for interest, are added to the value of the assets actually in the trust. For an EOY valuation, the asset value as of the last day of the year is used. Normally, contributions for the prior PY will have been made by then, so there are no receivable contributions to add in. However, contributions for the current PY made before the valuation date (accumulated with interest) are subtracted from the EOY asset value.

CONTRIBUTION AMOUNTS

Using the FT, TNC, and asset value, minimum and maximum contribution amounts as of the valuation date are developed. The minimum contribution is adjusted for interest based on how long after the valuation date the contribution is made. If the entire contribution is deposited on the minimum funding deadline (8½ months after the close of the PY), the contribution would be adjusted for 8½ months of interest for an EOY valuation and 20½ months for a BOY valuation. There is no interest adjustment for the maximum deductible contribution.

An illustration of minimum required contributions for a BOY and EOY valuation is provided in Table 2. Round numbers for the shortfall amortization factor and effective interest rate have been chosen for simplicity. It is assumed there are no credit balances, prior shortfall amortization bases, quarterly contribution requirement, receivable contributions, or current year contributions made before the EOY valuation date.

To fund the same plan benefits, the contribution is \$1,166 higher with an EOY valuation rather than a BOY valuation. Of course, it is possible that the EOY number could have been lower if there were asset gains during the year, compensation turned out lower than assumed, and/or segment interest rates were higher at EOY.

Table 2

	BOY Valuation	EOY Valuation
(1) Assets	\$27,000	\$30,000
(2) Funding Target	\$27,919	\$32,637
(3) Funding Shortfall [(1) - (2)]	\$919	\$2,637
(4) Shortfall Amortization Factor	6.000	6.000
(5) Shortfall Amortization Payment [(3) ÷ (4)]	\$153	\$440
(6) Target Normal Cost	\$5,639	\$6,788
(7) Minimum Contribution as of Valuation Date [(5) + (6)]	\$5,792	\$7,228
(8) Effective Interest Rate	5.20%	5.00%
(9) Number of Months to Minimum Funding Deadline	20½	8½
(10) Minimum Contribution as of Funding Deadline [(7) × (1 + (8))]	\$6,316	\$7,482

WHEN TO USE BOY AND EOY VALUATIONS

Except where restricted by law or regulation, there is no right or wrong choice between BOY and EOY valuation. It is a matter of employer preference (with possible deference to the actuary).

The main advantage of the BOY valuation is that final contribution numbers are available sooner. Year-end estimates are not needed. Also, the earned income for self-employed individuals, which depends on the amount of contributions made, is locked in for a BOY valuation. The circular calculation is avoided.

EOY valuations have their advantages, too. A business with fluctuating income may prefer

the EOY valuation so that benefit accruals are more closely tied to the year's revenue. With a BOY valuation, there could be high required contributions in lean years if last year's compensation was high. An EOY valuation will reflect the final participant population for the year, as well as any mid-year changes to plan provisions. Also, combined DB/DC nondiscrimination testing may be easier with EOY valuations.

The valuation date is part of the plan's funding method and therefore cannot be easily changed from year to year. For a new small plan, the employer should take great care in selecting the valuation date, as there is a good chance it will apply for the life of the plan. **PC**

AFTER-TAX CONTRIBUTIONS



To after-tax or not after-tax—that is the question. By Jason Brown & Theresa Conti

We have all gotten that call from a client, financial advisor or CPA—the one where they just learned about this new hidden gem

of a plan design option called voluntary after-tax contributions and they need the option added to their plan immediately. While they're not commonly used today, one of us co-authoring this column remembers when many plans incorporated after-tax contributions because the retirement plan limits were low and Roth contributions didn't exist yet.

This money source has garnered much attention recently, which has

created heightened interest. However, most articles don't explain how it functions from a plan operational perspective and which entities might be good potential candidates for its adoption. With that in mind, we will explore many of the items that are not typically covered to paint a fuller picture of the strategic advantages and potential hurdles associated with after-tax contributions.

THE STRATEGY

You may be wondering why after-tax contributions are currently getting so much attention from companies, as well as the government, considering

that the idea has been around for decades. Most viewed this money source as a non-factor once plan limits were increased and Roth deferrals were permitted about 20 years ago; however, there are some unique characteristics that have brought it back into the spotlight.

The most common reason today that plan sponsors are considering after-tax contributions is that it can be utilized as a conduit that allows participants to "super-fund" what many in the industry refer to as a Backdoor Roth IRA. Offering this capability is a pretty big deal for individuals who cannot contribute

to Roth IRA accounts due to AGI restrictions, especially those who want to save more than the 402(g) deferral limit. The after-tax dollars contributed to the plan can be withdrawn at any point, as long as that's addressed in the plan document. Remember that unlike Roth earnings, after-tax contribution earnings are taxable, so the cost basis is rolled to a Roth IRA, and gains are typically rolled to a traditional IRA to avoid immediate taxation. However, the participant may also pay taxes on the investment returns and deposit them into the Roth IRA. Once these dollars are rolled to a Roth IRA account, they will grow tax-deferred and are distributed tax-free (even the earnings) once account qualifiers are met.

A secondary benefit of this money source is that it provides flexibility to business owners on how they can max out their accounts, especially for business owners who receive income via W-2 and company distributions. In many cases, business owners may not want to increase their W-2 pay to maximize profit-sharing to reach the Section 415 limit due to the additional payroll taxes it would create. Incorporating after-tax contributions in conjunction with profit-sharing could help them get to the 415 limit without increasing their tax liability.

The key advantages of after-tax contributions include:

- allowing participants to save more for retirement;
- providing the option of funding a Roth IRA regardless of income;
- integrating a higher level of personal tax strategy; and
- contribution flexibility for some business owners.

THE CONUNDRUM

After hearing all the potential benefits above, you may be asking yourself, "Why doesn't every plan take advantage of incorporating voluntary after-tax contributions in its design?" It appears to be an excellent opportunity for any highly compensated employee (HCE) looking to save more for retirement, especially those who cannot contribute to a Roth IRA due to Adjusted Gross Income

(AGI) phase-out restrictions. However, there are some misconceptions on how contributing to this money source can impact a retirement plan. The primary confusion is centralized on how the money is categorized and classified for compliance testing.

Many are under the impression that since the participant elects to contribute this money from their compensation, it is treated similarly to deferrals. While that makes sense on a fundamental basis, though, it is not the case. This money source is treated as a match for testing purposes, which means it is included in the Actual Contribution Percentage (ACP) testing. In most situations, HCEs are the only participants who make the after-tax contribution, which causes a more than permissible overweighting of ACP percentage for the HCEs. In many cases, this will cause the ACP test to fail, and the HCEs will get those dollars refunded. There are two common rebuttals when explaining the above circumstance to advisors and CPAs, discussed below.

The first position usually taken is that the plan is Safe Harbor Match/ Safe Harbor Non-elective, so it automatically passes ACP testing. This argument would seem to make sense on the surface; however, the additional ACP created by after-tax dollars is not insulated from a failed test result. Once this fact is disclosed, the most common response, the participant will simply roll the failed testing refund into an IRA. Again, this initially sounds plausible; however, failed testing refunds are not rollover-eligible.

Other considerations for this money source are that it counts towards the maximum plan contribution limit under Section 415. If an employer wants to maximize tax-deductible contributions through profit-sharing or a match, then incorporating after-tax contributions could impair that objective and should be evaluated.

Four key hurdles are:

1. Safe Harbor contributions do not give you ACP testing immunity for this money source;
2. failed testing refunds can't be rolled to an IRA;

3. after-tax dollars are included in the 415 limit (not in addition to it); and
4. unlike in a Roth IRA, investment gains are taxable.

THE OPPORTUNITIES

Now that we have covered some of the primary strategic concepts and prospective hurdles that come with after-tax contributions, the question becomes: who might be an ideal candidate? One of the biggest obstacles to having this money source work is passing ACP testing. This leads us to the following plan scenarios that can help mitigate that issue.

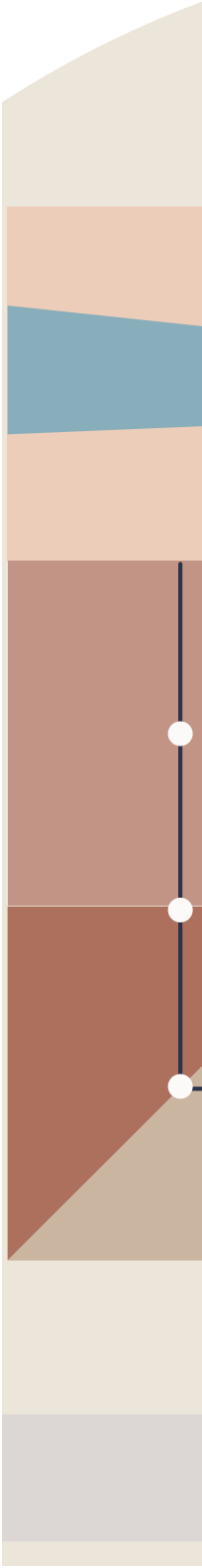
Here are the top potential candidates:

- **Owner only/individual 401(k) plans.** These plans have only HCEs, so there are no issues passing ACP testing.
- **Companies that have only HCEs.** Again, there are no non-HCEs for ACP testing.
- **Companies that utilize the Top 20% Rule for HCE designation.** This provision can push some HCEs into the non-HCE class for testing. If those individuals contribute, it helps ACP testing results and could also help offset after-tax contributions made by other HCEs.
- **Large companies.** A volume consideration as a contribution made by a few HCEs averaged over many HCEs might not affect the ACP testing significantly enough to cause a failure.

CONCLUSION

As you can see, some interesting variables come into play when evaluating the impact of after-tax contributions, and this design feature is not a "one size fits all" option for plan sponsors. However, if you do your homework and take the time to understand the goals and dynamics of a company, you might be able to find a client that can take advantage of this unique money source. **PC**

TAKEOVER BEST PRACTICES





Ah, takeovers!

Every salesperson's dream; every administrator's nightmare! Experienced TPAs know that plan sponsors do not move their plan on a whim. Typically they only do so after a sufficient level of administrative pain has been felt that change is deemed to be the only way to "fix" it. A takeover means disruption for participants and extra work by certain plan sponsor employees—not to mention work undertaken by your takeover team.

But first, let us define a couple of terms:

- **Takeover:** a process of precision guesswork based upon unreliable data provided by those with questionable knowledge.
- **Best Practices:** fixing issues for people who didn't know any problems existed, in a way they probably will not fully understand.

Assuming you agree with these somewhat lighthearted definitions, one might even question the wisdom of taking on existing plans. But takeover plans are an essential part of any TPA firm staying profitable and in business. TPAs know that the new client will never really understand why you do what you do and why you charge what you do! But the use of best practices will educate your client better than any other available tool.

Prior to the actual takeover of an existing plan is the absolute best time to prepare and introduce the use of best practices—for your staff, your potential new client, and any plan-related parties (e.g., investment advisor, CPA, attorney, etc.). Once everyone's sale euphoria subsides, your takeover team will be asked to proceed through a relatively rapid process of transferring relevant data from the old system into the new one. And if you have ever been involved in an actual retirement plan takeover, you know they *always* take more time than anticipated! Previously unknown information will arise, and your staff will have to be nimble enough to quickly incorporate this new information into the overall takeover process.

If I were a salesperson in a TPA firm, I would almost always say that takeovers are the best plans to bring into the firm; more assets and probably more individual compensation, company revenue and job security. On the other hand, most non-owner administrators want a new plan. No old problems to fix. No retraining the HR or payroll department. No dealing with black-out periods, terminating vendors, mapping or re-enrollment.

Whether you fall on the sales side or the administrative side, both will be sold. Some firms try to price themselves out of the new plan business. In my own firm, I liked them both. Less money in new plans, but oh so easy! Much more money in takeover plans, but much more competition for the sale, as well as the problems that inevitably present themselves during the takeover process. So, I guess what they say is true: "You get what you pay for!"

With both types of "new-to-the-company" plans, the use of best practices is essential because:

- soon enough your client will be asked to move their plan away from you. Use of best practices will minimize its loss; and
- the use of best practices will minimize your personal and company's risk while the client is retained.

Key Documents

How do best practices actually manifest themselves in a takeover? Let us start with a list of documents that best practices would require from your new takeover client:



1. All “signed” current and prior plan documents, including any and all amendments since the plan’s inception; if a prototype document was used, each Adoption Agreement’s respective base document
2. Applicable Determination or Opinion Letter for each respective plan document
3. If plan has a vesting schedule, the last 5 years of annual reports
4. If plan has Roth or after-tax contributions, all prior annual reports since such contributions commenced
5. 5500 Series forms, including attachments for each year applicable to items 3 and 4 above (Accountants Opinion too, if applicable)
6. Census report for each open tax year
7. Declarations Page of ERISA §412 bond
8. Investment Policy Statement (IPS)
9. Loan policy, if applicable
10. All individual participant documents for each existing loan
11. Qualified Domestic Relations Order policy, as well as any QDROs currently in effect
12. All individual participant enrollment forms for existing participants
13. Benefit payout documents for *all* prior participants who have received a distribution
14. All signed plan-related vendor agreements
15. Last 5 years of minutes of any plan-related committee meeting

By now, you are probably rolling around on the floor! You are thinking, “There is *no way* we will be able to obtain all this information!” And you would be correct. Even if your new client had this information, they would not know where to look for it.

I make this observation to set a guidepost. If you decided you were going to employ takeover best practices, this list would be pretty close to what you would need. And for those who have never handled takeovers, let me restate my earlier definition of takeovers: “A process of precision guesswork based upon unreliable data provided by those with questionable knowledge.” Even if you asked all the right questions, the responses would be incomplete at best.

Since you are not going to require your staff to get *every* document listed above, they will need to know your firm’s guidelines and ethics. Which documents and information are absolutely necessary? Which years will be applicable? Like every other plan-related question, the answer will be, “it depends.” So, what internal processes exist to decide these issues? How will your client be informed, and by whom? Will your new client be required to sign some kind of release for certain missing or inadequate information?

How about a best practices checklist for your salespeople? They would formally present any such document(s) to the client early in the new relationship. During this “honeymoon” period, an explanation would accompany the checklist to help your new client appreciate just what a takeover involves. This would also be an opportune time to meet with the

person or persons (either in person or via a video call) who will be supplying these documents.

If the client directs you to get the information from an existing plan-related vendor (e.g., the old TPA), your salespeople should present them a *signature-ready* Letter of Authority. Better yet, make all these documents and signatures available electronically so they can be produced and sent to the client in real time. Many vendors today have their contracts signed electronically; why not these “up-front” documents?

Practical vs. Theoretical

How responsible do you wish to be for past problems that you may or may not be aware of at the start of the takeover process? Does your Service Agreement need to be updated? What’s your policy if your staff finds an obvious past mistake? What’s your policy if some information cannot be obtained, like Roth cost basis?

Best practice has a theoretical application as well as a practical one. In theory, you would require *all* the documents listed above before agreeing to take on the case. Of course, if you did this, you would probably *never* get a new takeover client! As in everything else, “everything in moderation.” Fortunately, best practices gives you this flexibility.

How are you keeping your client in the loop as the takeover progresses? Best practice would encourage a regular (e.g., weekly) phone call with all relevant parties. Such a phone conversation can be very helpful when you are having problems obtaining documents and data, as it identifies problems earlier.

Your Relationship with the Advisor

Unless your firm also sells investments, it is likely your takeover case came through an “investment sale”—that is, an investment advisor relationship brought you into the mix. You have probably groomed this investment relationship for some time and certainly don’t want to jeopardize this important referral source.

However, best practice requires you to first pledge your allegiance to the new client. After all, did you not sign an Administrative Contract with this plan sponsor? I doubt there is any contract language indicating your relationship to be subservient to other party, including the referring advisor. So, as far as your client is concerned—as well as any outside plaintiff attorney down the road—your sole duty is to serve the client, not the advisor.

But remember, best practice does not preclude keeping the investment advisor in the loop, or from educating or communicating with the investment advisor. In fact, I would argue that best practice encourages you to educate and communicate with all plan-related parties on a regular basis. But your client, *and* your referring investment advisor, need to understand your *exact* relationship with the plan sponsor as soon as reasonably possible.

In the 35 years I owned my own TPA firm, I lost count of the times when the referring investment advisor attempted to impose these two requirements upon me and my staff:

1. the plan sponsor is actually a client of the investment advisor, not us as the TPA; and
2. in effect, any and all plan communications have to be cleared through the investment advisor first, before the



As far as your client is concerned—as well as any outside plaintiff attorney down the road—your sole duty is to serve the client, *not* the advisor.

plan sponsor could be advised; thus, the investment advisor would have some level of veto power over our expert advice.

Any TPA employing best practices would never agree to these requirements. The challenge that all non-producing TPAs face is threading the needle between these two unreasonable commands and your firm's best practices. How much control are you willing to cede to the advisor just so you can keep the relationship intact? Just where is your line in the sand?

In my experience, most competent investment advisors sympathize with the TPA's position and do not interfere with direct client communications. Most advisors have little knowledge about ERISA, and they recognize your value. But most investment advisors are just a little paranoid—and justifiably so, to some degree. They did a lot of work to close a nice sale and basically dropped this plan in your lap. They are sticking out their neck by sharing this client. They do not want you messing things up! And they certainly do not want you to go into the investment business so you can steal their client.

I have no magical solutions to impart here. But best practices require you, at a minimum, to set down a policy, preferably in writing, for your sales and administrative staff to employ when handling the next paranoid or demanding investment advisor. If you don't do this, by the time this problem comes before upper management, a difficult choice between your staff and referral source will be required. By this time, the individual plan relationship will be well entwined with your firm, thus making any decision very likely to bear substantial consequences for all parties. Giving your staff tools upfront will better prepare them when dealing with outside referral sources.

Internal Best Practices Checklist

In addition to your firm's normal takeover information and document checklist, let me offer a revised best practices internal checklist:

1. Identify all plan fiduciaries. Verify your list with your new client. Make sure each plan fiduciary understands the extent of their responsibilities and risks.

2. If plan investments are participant-directed, make sure participants have received sufficient disclosure information in the recent past. If not, make sure your client understands this issue and your plan to rectify the deficiencies.
3. Verify that plan document language conforms to what is happening "on the ground."
4. Verify the adequacy of your client's ERISA §412 bond, based upon plan applicable regulations.
5. Verify how all future fees will be allocated to participants. Determine if said allocation regime(s) will be non-discriminatory. And which fees will be considered "settlor" costs.
6. Verify with your client and all other relevant parties the two "switch dates":
 - a. the date employee deferral deposits switch from old vendor to the new (if applicable); and
 - b. the date the existing assets move, whether physically or by data feed (again, if applicable).Ideally, these dates will be close to one another. But do not try to make these two dates identical.
7. Verify your client's fiduciary insurance. If a client does not have fiduciary insurance, encourage them to seriously consider buying it.
8. Properly document and stored all collected information within your database. Consider forcing client to sign a document that codifies the issues mentioned above.

Conclusion

Best practices.... theoretical versus practical. That is the issue here. The more resources your firm devotes to following written best practice rules, the smoother your business will run, and the better relationship you will have with your client. Misunderstandings or mistakes will inevitably occur down the road. Your employees must be empowered to realize that management will have their back when written policies are followed, during the takeover and thereafter.

Do you feel that your current takeover best practices checklist is adequate? What about from the viewpoint of your takeover staff? If the answer is no to either or both questions, you now have something to do! **PC**

POOL T!

MORE AND MORE
INDEPENDENT
TPAS ARE JOINING
COLLABORATIVE
GROUPS LIKE
THE CERRADO GROUP
AND TPA
BENCHMARKING
TO POOL THEIR
RESOURCES
AND EXPERTISE.
WHAT'S DRIVING
THIS TREND?

By John Iekel





THE EXPERIENCES OF SEVERAL INDEPENDENT TPAS IN SHARING RESOURCES AND EXPERTISE OFFER A LOOK AT HOW THAT MUTUAL SUPPORT AND COLLABORATION LEADS TO GREATER PRODUCTIVITY AND EFFICIENCY, MONEY SAVING, CONTINUAL IMPROVEMENT, AND NEW IDEAS IN THE REALMS OF PRACTICE MANAGEMENT, SALES AND MARKETING.

Sharing resources and expertise “absolutely helps all of us,” says TriStar Pension Consulting President Shannon Edwards, who participates in the TPA Benchmark group created by industry veteran Dawn Hynes of Hynes Associates. “The primary reason I joined was to have a group of

peers that I could collaborate with,” says Edwards, explaining that the group shares policies, procedures, CRM projects, marketing ideas, hiring ideas and software.

For Jill Dennis, Director of Business Development and Shareholder Business Development

at Dunbar Bender & Zapf (DBZ), an actuarial and retirement consulting firm in Pittsburgh, DBZ’s path to joining the Cerrado Group didn’t start as an effort to build comprehensive collaboration. Rather, she “has been and continues to be involved with advisory boards which have started

out as a means for recordkeepers to get the TPA perspective on what is working and not working with platforms,” she says. “Throughout those discussions, I have formed bonds with other TPAs where in addition to discussing the recordkeepers, we are able to discuss business concerns, industry concerns, what works for others, what works for us and share ideas.”

Dennis outlines a variety of ways in which DBZ has worked with other TPAs over the years. “We provide services, such as actuarial services or ESOP administration to TPAs throughout the country who do not have actuaries or ESOP specialists on staff,” she explains. Eventually this led to joining Cerrado, a 501(c)(6) non-profit trade association of like-minded independent TPAs that is a prime example of collaboration among TPAs.

MULTIPLICITY OF IDEAS AND SKILLS

“It’s not just the numbers that matter,” Dennis says, “it’s having the right combination of members that is most important.” She adds that a benefit of collaborating with multiple independent TPAs is being able to benefit from multiple viewpoints.

“We join these groups for collaboration, sharing and discounts that can save us money if possible,” says Edwards. “I think the collaboration and sharing of ideas, etc. is more important than that, though. For instance, one of our roundtable members is really strong in HR, which I am not.”

The Cerrado Group describes itself as “Purposefully built around unconventional diversity,” and notes that it believes that its members are “naturally different.”

“Everyone has something to offer,” says Dennis, noting that some firms excel at technology and some offer specific services such as those unique to defined benefit plans. Still others, she says, were first to jump into 3(16) fiduciary services or pooled employer plans (PEPs) “and are willing to share what works and what doesn’t.”

MECHANICS OF A COLLABORATIVE GROUP

A variety of factors go into building a collaborative group.

Get Buy-in

Before joining a collaboration, it’s necessary to get buy-in from others in your firm, for a variety of reasons—security of information about the organization and its clients, the effect on the organization’s resources and the expenditure of them, the sources of various kinds of expertise, and more.

Dennis says that at DBZ, “there was no actual ‘sell’” about becoming a part of the collaboration. “Everyone saw the value,” she says. Nonetheless, she did consult with her colleagues. “I have three partners. Before sharing confidential business information or sharing secrets, I definitely thought it necessary for everyone to be in agreement,” she says. “Also, there are times where I am not the right person at my firm to be a part of the conversations. So I would bring my partner who is more suited for the conversation.”

It wasn’t a hard sell for Edwards either. “It did not require any selling internally,” she recalls. Not only that, she says, “My managers/senior personnel love that I have other business owners to get ideas from. In fact, they ask me to ask them questions from time to time. They also sit in on some of our meetings if it is something they are interested in.”

Ann Slotwinski, the Cerrado Group’s Executive Director, says that it “tends to engage leadership right up front, as we begin the discussions around membership. Prior to the actual interview, there are a number of steps we go through to get to the interview stage. We provide speaking points to leadership of each firm so that they can explain to their teams the reason for joining the Cerrado Group and how it will benefit the firm. However, anyone who needs to be involved in the decision is part of an in-depth call that I have with each prospective member firm to discuss any questions they may have.”

“WE SHARE IDEAS FOR MAKING OUR FIRMS MORE EFFICIENT. WE ALSO SHARE INFORMATION ABOUT SOFTWARE WE USE, ETC. WE DISCUSS HIRING CHALLENGES AND SOLUTIONS AS WELL AS SALES AND MARKETING IDEAS.”

— Shannon Edwards
TriStar



“I BELIEVE THAT WE OFFER THE BEST OF BOTH WORLDS—GLOBAL SCALE, EFFICIENCY AND COVERAGE WITH LOCAL SERVICE AND HIGH CUSTOMER TOUCH. WE BELIEVE THAT WE ARE THE FUTURE OF THE LOCAL, INDEPENDENT TPA FIRMS.”

— Ann Slotwinski
The Cerrado Group

Quality, Not Quantity

Bigger is not necessarily better in the view of collaboration participants. Says Dennis, “I think it’s important that the size of the collaborative group is limited.” And Edwards reports that a roundtable group to which she belongs “is not growing, but that is intentional.” She explains, “We have a limit to the number of people we want in the group.”

Why limit the size of the group? One reason is to promote trust and communication. “There is a lot of trust that goes into discussing your business with other firms. The point is to be collaborative, not just have individuals that sit there and take information and never add to the discussion,” says Dennis. And Edwards says that the roundtable to which she belongs that limits the number of members does so “to make sure that they are a good fit with everyone in the group. We are very careful when we invite new members.”

The Cerrado Group also adds members by invitation only, which the association says stems from its belief in the importance of serving plan sponsors and participants well and

reserving membership for firms that are committed to those goals.

Adding Members

“We are looking for firms where we currently do not have coverage. However, more importantly, we want forward-thinking firms who embrace technology and efficiency, who are looking to grow and who want to be a leader in the industry,” says Slotwinski of the Cerrado Group’s approach to adding new members.

Once prospective members have been identified, a vetting process is set in motion, reports Slotwinski. That process consists of the following steps.

1. Any nomination for a new member must come from an existing member.
2. The member makes an initial phone call to the prospective member. “We have created a document that the member uses to explain the Cerrado Group to the prospective member and asks them a number of questions about their firm,” says Slotwinski.
3. The next step is for the member to formally nominate the prospective member using the information gathered in the initial phone call. This is done during the weekly member phone call. Based on that discussion, the group votes on whether or not to proceed with the nomination.
4. “Upon approval,” says Slotwinski, “I then send the prospective member an NDA and have an in-depth call with firm leadership to answer any questions they may have and to share proprietary information with them. If at the end of that conversation, the firm would like to move forward, I send them a business metrics questionnaire to be completed. This is shared with the members prior to the interview,” she continues.





About the Cerrado Group

The Cerrado Group is a 501(c)(6) trade association composed of TPA consulting firms. The group says that it was established to provide a new approach to retirement plan design, reporting, compliance, administration and industry education.

According to Executive Director Ann Slotwinski, the group was originally a study group of TPAs who would meet annually to share best practices and discuss industry trends. "This consistent exchange of information and ideas proved very beneficial for the members," she says.

Slotwinski says a big discussion arose concerning the consolidation going on in the industry in which large national firms were buying local, independently owned TPAs, and that a central question was how smaller, independent TPAs could compete with national firms while still retaining ownership of their firms.

After careful consideration, according to Slotwinski, the study group decided to form a consortium of TPAs who collectively would be able to provide the broad geographical coverage and broad range of services national firms do, but at the same time retain local and independent ownership and service excellence. "Thus, the Cerrado Group was born," she says.

Slotwinski describes the Cerrado Group as a collective that offers a full suite of services. "If one firm gets a request for service or plan type that they cannot accommodate, one of the other members can. It is our goal to never have to say 'no' to a prospect for service offering or geographical reasons. This unique relationship also allows the open sharing of ideas and best practices between all the firms in a safe and trusting environment."

"The Cerrado Group operates as a true business entity," explains Slotwinski, with formal governance, policies and procedures, weekly

calls and committees to work on initiatives. Further, it has created a formalized way for members to ask questions of each other and share information.

According to Slotwinski, the Cerrado Group had nine members when it started on March 1, 2021. Less than a year later, by January 2022, it had 12 with another in the wings.

Also by January 2022, the Cerrado Group had more than 199 credentialed employees, and it was serving more than 16,000 plans and 665,000 retirement plan participants. Collectively, its members had \$35 billion in assets under management.

What it Does

The Cerrado Group provides:

- Advice and guidance regarding plan design, benefit formulas and eligibility
- Information regarding expected liabilities, contributions, benefit payments and plan document review
- Projections for age-weighted and target benefit plans
- Adoption agreements, summary plan descriptions, and plan amendments
- Determinations and recommendations of necessary plan changes
- Benchmarking assistance
- Reviews of factors relevant to plans, including costs, features, documents, notices, policies, procedures, fee agreements and investment policy statements

Its members can serve as expert witnesses on actuarial issues; in addition, those with ERPA designations can represent clients before the IRS. **PC**

Continued from page 34

5. The final step is the formal interview with all members and a vote at the end of that discussion.

Forming a Collaborative Group

Interested in forming your own collaboration? Dennis suggests composing “a group of diverse individuals that you trust.” She continues, “Start small—even if it is just one other TPA firm.” Edwards suggests, “I would look for an existing roundtable to join or look for industry friends you have made at conferences and start one of your own.”

“I started by joining a group of people I met through ASPPA conferences,” Edwards shares. “They were people that I enjoyed spending time with and people who had great ideas and were willing to share them. We carried on the discussions that began at the conferences and it eventually turned into a monthly roundtable group of friends.”

THE BENEFITS OF COLLABORATION

Forming connections and collaborating can yield a variety of results.

Productivity and Best Practices

The collaborating businesses are more productive and efficient, Edwards says, which allows them to keep improving their services. “We all have learned from each other and gotten ideas from each other which have made us better,” she says, adding, “I have gotten ideas for improving efficiencies as well as marketing and sales. And it has made me a better leader.”

“As a member of the Cerrado Group,” says Dennis, “we are able to pool resources to ensure that we understand and exceed cybersecurity standards and integrate automation efficiencies into our business, among many other things.” She continues, “These relationships have allowed

DBZ to fine tune our 3(16) services, benchmark compensation for sales teams and implement changes to client billing. It allows other TPAs to provide cash balance or ESOP plans to their plan sponsors.”

Regular Meetings

Edwards says that the group to which she belongs meets monthly to discuss matters such as policies, procedures and ideas for hiring. “We share ideas for making our firms more efficient. We also share information about software we use, etc. We discuss hiring challenges and solutions as well as sales and marketing ideas.”

Edwards reports that they share and pool resources during regular roundtable meetings that are held every three or four weeks. “We typically have one person in the group who leads the discussions. We have a planned topic that we all want to talk about, and we share and collaborate,” she says.



The group has other meetings as well, Edwards says, such as a monthly meeting with an ERISA attorney at which members can ask questions and obtain legislative updates, and a meeting for business owners to collaborate with each other and share ideas.

Dollars and Cents

Edwards notes that collaborating can save participating firms money. She says they have started to negotiate with service providers and that as a group they have shared the cost of engaging an attorney to write a model engagement letter for all members to use and to write a model cyber policy for them.

“For my business, I have been able to save money on services that I needed and use,” says Edwards, adding that they also have group discounts. “It’s important to us to be able to save money where we can,” says Edwards.

Tick, Tock

Not only does collaboration save money, it also saves time, according to Edwards. “I have been able to save time in developing policies and procedures that my friends had already developed,” she says, noting that “when one of us has already put the time and effort into developing something like a remote employee policy, we share that with each other. It saves us time and money.”

Personal Connections

It’s also personal. One result, says Edwards, has been the development of lifelong friendships. “It really is amazing how willing to share all of the business leaders in this industry are,” she says. “They will give you the shirt off their back without blinking.” Slotwinski concurs, noting that the deep relationships between members often result in questions being posed and answered through personal conversations.

“Nobody outside of the retirement plan community understands what it is we do. To be able to have real

conversations with other TPAs who understand our industry and talk about 3(16) services, PEPs, staffing concerns, compensation, cybersecurity, tax law changes and everything that as business owners keeps up at night is invaluable,” Dennis believes.

WHAT’S NEXT?

“Our industry is constantly evolving, as are the goals of each individual firm,” Dennis observes. As for the Cerrado Group, Slotwinski says, “We will continue to add new members as we see fit.” She continues: “We are also looking to expand our distribution channels and deepen the relationships we have with existing centers of influence.”

Both Dennis and Slotwinski expect to emphasize cybersecurity and automation this year, which are big discussion points in each group, Dennis reports. “Our focus this year is on cybersecurity, automation and data transmission,” says Slotwinski.

AND ULTIMATELY...

The Cerrado Group believes that the work it does in the retirement industry directly impacts plan sponsors and their participants’ ability to retire comfortably, which it calls a “noble cause.”

Plan participants benefit from collaboration among TPAs, says Dennis, noting that they benefit from enhanced plan offerings, efficiencies, benchmarking and security. They also gain from collaboration through full-service offerings, compliance work and, ultimately, a better retirement outcome, Slotwinski believes.

“I believe that we offer the best of both worlds—global scale, efficiency and coverage with local service and high customer touch. We believe that we are the future of the local, independent TPA firms,” says Slotwinski. **PC**

“I HAVE FORMED BONDS WITH OTHER TPAS WHERE IN ADDITION TO DISCUSSING THE RECORDKEEPERS, WE ARE ABLE TO DISCUSS BUSINESS CONCERNS, INDUSTRY CONCERNS, WHAT WORKS FOR OTHERS, WHAT WORKS FOR US AND SHARE IDEAS.”

— Jill Dennis
Dunbar Bender & Zapf



WiRC *Together* Again



FOLLOWING
A COVID-
INDUCED
YEAR OFF,
THE WOMEN
IN RETIREMENT
CONFERENCE
WAS BACK
IN PERSON
IN JANUARY.
HERE'S A
WRAPUP OF
THIS YEAR'S
EVENT.

by
Megan
Crawford
&
Emily
Minnich





the DAY BEGAN WITH POURING RAIN AS WE ARRIVED IN FORT LAUDERDALE FOR OUR FIRST IN-PERSON WOMEN IN RETIREMENT CONFERENCE IN TWO YEARS! WE WERE EXCITED AND HAD SUCH GREAT EXPECTATIONS FOR THE EVENT THAT NO ONE EVEN SEEMED TO NOTICE IT WAS RAINING.

With great expectations comes real-life challenges—in this case, the rain kept us from enjoying a rooftop reunion. So instead we moved to the Oceanside Ballroom. It was full of amazing views and no high winds, proving challenges can lead to even better outcomes.

Once the excitement of being back in person subsided, we started with our theme for our time together: “Intentional Networking” led by co-WiRCer Jessica Fox. Jessica was brought back by popular demand

from our Third Thursday event last June.

In her session, attendees were encouraged to find another person in the room they had not met and ask two questions: “what do you do?” and “what is your passion?” There was a brief moment of panic in everyone’s eyes as they realized they were going to have to go mingle with someone they had never spoken to after two years of sitting at home in their pajamas. Surprisingly, this exercise gave everyone the tools

to jump into action, find a buddy, and start networking. We learned that those two questions made the conversation flow easily; by the time we needed to move on to dinner, it was hard to quiet the room. Thankfully, we were able to continue with our intentional networking exercise during dinner.

Once at dinner, the second round of panic set in, with assigned seating at the tables. Using our new intentional networking skills, the conversations were overflowing.

However, the evening did not end there: there were optional activities to get out and enjoy Fort Lauderdale, including the famous Elbo Room, conversations and cocktails at the hotel bar, and ice cream on the beach.

With 80 first-time co-WiRCers, it was important for us to make attendees feel welcome and included even if they didn't know anyone else in attendance. It is always intimidating to go to large industry events and having to scramble to find someone to have dinner with so you don't have to eat alone!

There was no such worry at WiRC—the entire event is programmed so that attendees can continue their days together and have activities planned to build conversations, continue learning, and inspire collaboration efforts going into each evening.

Hopefully, at your next industry event, you will have a connection with someone you met at WiRC!

What is WiRC?

The Women in Retirement Conference was created by combining two existing events: NAPA Connect and ASPPA's Women's Business Leaders Forum. Now, in our fifth year, all five ARA sister organizations (ASEA, ASPPA, NAPA, NTSA and PSCA) are involved. Clearly, the ARA champions women's initiatives.

This is the place where we come together to learn and grow as we work to help Americans work toward their retirement goals. In our group you will find actuaries, advisors, CPAs, HR professionals, broker dealers and home office team members, plan sponsors, service providers, TPAs, recordkeepers and relationship managers. We operate with one voice and one goal: the professional growth of women in the retirement services industry and the manifestation of the next generation.

Day 1

We started our first full day with speakers and sessions to continue to connect and collaborate as a group.

WE OPERATE WITH ONE VOICE AND ONE GOAL: THE PROFESSIONAL GROWTH OF WOMEN IN THE RETIREMENT SERVICES INDUSTRY AND THE MANIFESTATION OF THE NEXT GENERATION.

Vision and Dreams

L'areal Lipkins started us off with a session on "Helping Executive Women Achieve Their Biggest Dreams." Her session gave us the tools to become clear about our vision and why that's important. She also led us through a workshop to set goals that align with that vision. This generated a mindset to help us focus on what really matters!

Policy and Legislation

Next, we heard from Kelsey Mayo and the Government Affairs team on how policy and legislation can affect the way we service and administer retirement plans. This led to a lively conversation about how policy and legislation can affect participants—especially women and minorities. This really got the room engaged, and it was great to hear the perspectives of other attendees on why new policies matter. (For more on this session, see "Inside ASPPA" on page 56.)

Council for Women Panel

The ARA Council for Women joined us on stage after lunch for a panel discussion about "Pathways to Leadership and Navigating Growth." The Council is made up of one representative from each of the ARA sister organizations:

- **ASEA**
Lynn M. Young, EA, MSEA
partner/consulting actuary
Pinnacle Plan Design, LLC
- **ASPPA**
Shannon M. Edwards, ERPA, QPA, QKA, APA, APR
president
TriStar Pension Consulting
- **NAPA**
Nicole Corning, CFP®, CRPC®, AIF®
managing partner
Buckman & Corning Financial Strategies Group, Wells Fargo Advisors Financial Network
- **NTSA**
Kristine J. Coffey, CPC, CPFA™, CRES
executive vice president
CPE Associates, Ltd.
SOUTHWEST and MIDWEST, International Consulting
- **PSCA**
Michelle R. McGovern, CPSP
director
Strategic Operations, People and Culture;
director
Human Resources and Operations, American College of Surgeons

The ARA Council for Women provides coordinated solutions to women currently in or seeking to join the retirement industry, including events, leadership, mentoring, education and advocacy. The Council is designed to support, strengthen and educate industry professionals who work with ARA on matters affecting women. It was insightful to hear from women who have been successful in the industry how they have navigated their careers.

Leadership

We ended the day with Darlene Flagg, NTSA's 2021 President, who spoke to us about being a better leader and team player for yourself and other women in the retirement industry. She also shocked us with some eye-opening statistics about the buying power that women have and why we should focus on selling to women. For example, women:

- control \$31.8 billion in global spending;

- account for over 90% of purchases for new homes, food, vacations and OTC pharmaceuticals; and
- account for over 80% of health care purchases and bank accounts.

With all this buying power, women are equipped to make financial decisions, but they still fall short when it comes to saving for retirement. As an industry, we need to focus on women to ensure they are able to retire!

Wine Time!

After our jam-packed day, we needed to "un-wine." We walked over to the nearby Wine + Garden, a little Italian restaurant where we did a wine tasting and enjoyed dinner under the beautiful string lights in their courtyard. We were able to indulge in conversation and share some Instagram-worthy photo ops. It was a perfect way to end the day.

Day 2

Friday started with sunrise yoga on the roof. It was a little chilly even for us midwestern girls, but proved to be an amazing way to start the last day of the conference. Thank God there was a Starbucks on the first floor.

Plan Sponsor Council of America

Up first was WiRC Committee member Gabrielle Turner, CPSP. This was her first WiRC conference representing PSCA, our newly added sister organization. Gabrielle shared insights about her passion: helping people feel included, understood and cared for in order to reach their full potential in an organization. She encourages meaningful corporate culture through recognizing diversity, fostering open communication, and building relationships with her employees. It is always great to hear another perspective when it comes to servicing the workforce of America.

THANK YOU, SPONSORS!

A huge thank you to the sponsors of this year's event:

- » Marsh McLennan
- » Ascensus
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- » John Hancock
- » J.P. Morgan Asset Management
- » Lincoln Financial Group
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- » OneAmerica
- » PenChecks Trust
- » PensionPro
- » Prudential
- » The Standard

ARA WOMEN'S INITIATIVES

In addition to the WiRC conference, the ARA's current initiatives include:

Thrive

Thrive is a mentoring program that launched in 2021. It facilitates mentoring relationships for women retirement professionals interested in developing new competences, expanding their network and navigating career transitions. Whether you're looking for a mentor, willing to be one, or both, this is your opportunity to enhance your connection to the industry.

Third Thursday

Third Thursday virtual events started in 2020 as a way to stay connected virtually with our co-WiRCers. It is offered monthly and is complimentary to ARA members. The sessions are 60-90 minutes, including time for networking by splitting into small groups. Each Third Thursday experience focuses on one of the four core topic areas: leadership, marketing, practice management or personal growth. It is a great way for women in all parts of the retirement industry to connect and meet with other professionals on a regular basis.

ENGAGE

The Council partners with ENGAGE to promote women's economic security. (If you haven't heard of ENGAGE or founder Rachel Pearson, check out the group's website at engagewomen.org.)

Advocacy

The ARA's women's advocacy initiative was launched in 2021. One of the biggest goals of all of the ARA women's groups is to give back to the community. For example, the giveaway items (yes, you can win stuff at the conference) were all purchased from women-owned businesses to help get their names out in our community. We have also partnered with "Rock the Street Wall Street," which promotes interest in the financial services field to girls in high school.

If you would like to find out more about upcoming women's events, be sure to check out womeninretirement.org, which houses all of the information on the ARA women's initiatives.



Top left: 2022 Women in Retirement Co-Chairs Emily Minnich and Megan Crawford. Top right: the 2022 Women in Retirement Conference Steering Committee. Middle right (left to right): Conference sponsor Katie Boyer and attendees Amanda Iverson, Michelle Murphy, Megan Crawford, Emily Minnich and Barbara LaBounty. Bottom right (left to right): Emily Minnich, Megan Crawford, Kate Clark, Kara Kidney, Apryl Pope and Nicole Corning.

Presentation Skills

After a quick break, we were back to hear from Deborah Shames, co-founder of Eloqui. She helped us hone our presentation skills and to seize every opportunity and aspire to new heights. Deborah coaches individuals to identify their strengths, utilize their authentic voice, and drive business. Here's a pro tip from Deborah: Eat grapes to stay hydrated during public speaking. (Sadly, she wasn't referring to the fermented grapes from the night before.)

Advocacy

Wrapping up the 2022 conference, Pat Wenzel, Immediate Past President

of NAPA, moderated a conversation with U.S. Rep. Maria Elvira Salazar. Rep. Salazar represents Florida's 27th Congressional District and is a champion of women's and immigrants' rights. She encouraged all the co-WiRCers in the room to get involved in their local politics, no matter what the party, so their voices are heard! With her unique style and energy, Rep. Salazar is a forceful presence in Congress. It was an inspiring way to wrap up our last session of the conference.

Takeaways

As we look back and reflect on our time together, we always like to

provide our co-WiRCers actionable takeaways that can be incorporated into their daily routine. Here are some of the biggest takeaways from this year's event:

- Get clear about your long-term vision and dreams
- Set goals that align with your vision
- Your results reflect your routine
- Think about roadblocks you may encounter before you hit your goal and how to handle them
- Be okay with asking for and accepting help
- The best goals are the ones you have to grow into
- Never stop learning
- Always take a woman with you
- Be authentic, be persuasive, be engaged
- When speaking, know your intention
- Lean on your partners
- Identify and create policies, processes and programs that reflect the unique culture of your company
- Be a champion for women
- Get involved locally and be a voice
- And always double-check the size of your panty hose

As we ended our last session and took the stage as co-chairs one last time, we couldn't help but think about how amazing it has been to see this conference grow into the event that it has become! Looking around the room at all the amazing women who are going above and beyond to serve their clients and help Americans retire was outstanding!

The community that has developed because of WiRC is amazing. You could tell how special it was to meet in person, connecting with friends who were made virtually and creating new connections that developed from our intentional networking. Those new connections were undeniable as we watched everyone join together and say goodbye to their newfound co-WiRCers before they left. **PC**



BACK-OFFICE OUTSOURCING

For smaller TPAs, is outsourcing the solution to the industry's staffing crisis? By Michelle G. Murphy

Not long ago, the headlines across the country were blaring the news that the January 2022 Consumer Price Index (CPI) was reporting year-over-year inflation at 7.5%, the highest in 40 years. Stocks dropped and bonds rose, hitting return percentages we have not seen in ages. Concerns about inflation were rampant.

While inflation has not hit all consumer categories in the same manner, TPAs have seen pretty significant increases in items that affect our bottom lines. For those of us running businesses who don't own our buildings and have not gone fully remote, rent costs have begun to increase significantly in many parts of the country.

Our TPA firm and related accounting firm have both seen a substantial increase in software costs. In the past couple of years, we added new costs for cybersecurity software and insurance coverage for cyber breaches. It is critical to the work we do, but rather pricy and more expensive than we ever faced previously—in some cases, a new budget item altogether.

We have seen a year-over-year increase of 7–10% in our operating expense this year, which is hand-in-hand with the

CPI increase. This has led to internal discussions about how that will affect our pricing for services. In an industry that is already seriously fee-compressed, how do we deal with the situation, especially as we recognize that our two greatest business expenses are salaries/benefits and software?

RECRUITING DIFFICULTIES

Long prior to the January announcement of the crazy increase in the CPI, however, we had noticed significant difficulty in finding and recruiting employees with experience in the qualified plan administration and compliance industry—and with that void, an increase in the starting salary requirements when we do find viable, experienced candidates.

We are fortunate that our TPA shop has very little turnover, but late in 2021 we had two seasoned employees decide to make career changes. Neither went to another TPA, which means they also diminished the overall employee pool! We were tasked with finding two experienced professionals in an environment in which that has become increasingly difficult.

For the first of my vacant positions, I placed advertisements in what had been my go-to posting sources for

“IN NORTH CAROLINA, INDIANA, CONNECTICUT AND MASSACHUSETTS, COLLEAGUES HAVE REPORTED A 15–25% INCREASE IN SALARIES FOR EXPERIENCED EMPLOYEES OVER THE PAST THREE YEARS.”

many years. But for the first time in my career, I didn't receive a single response. I knew people were looking at the ads, but no one was responding. Something had changed.

In those ads, I did not include that working remotely was an option, which may have been the reason for the lack of responses. But for the second ad I placed six weeks later, I noted that it was a remote position. Among the smattering of resumes I received, there was only one with even barely viable experience.

The market had shifted greatly since I had placed an ad three years earlier, even though responses were sparse then. Scarcity of candidates versus demand for experience, in addition to COVID-related “work from home” and what is now called the “Great Resignation,” has created a more difficult staffing market for those of us in the pension consulting world than we have ever experienced.

In addition to multiple informal discussions over the past few months regarding the increase in employee compensation, I recently spoke to several TPA firm leaders to discover whether they were having a similar experience in recruiting and hiring in the past year—as well as what they were doing to plan for hiring in the future and how they were coping with the expense of higher compensation.

All agreed that it is very difficult to find experienced employees and salaries are up across the board, but there are some different approaches to handling the dwindling pool and rising cost of experienced consultants. In North Carolina, Indiana, Connecticut and Massachusetts, colleagues have reported a 15–25% increase in salaries for experienced employees over the past three years. Those firms in smaller towns or in the Midwest that previously were not affected by compensation costs in the same way those on the East or West Coast have been thrown abruptly into the same compensation pool with the rest of the country because experienced employees can, and want to, work remotely. And employers are concerned about replacement cost as employees leave.

OUTSOURCING NOW A TREND?

It has not been uncommon to find compliance and administration jobs functionalized in large recordkeeping firms that provide plan compliance and administration as part of their services or in TPA firms handling large books of business, using less experienced employees to perform singular tasks.

When knowledge workers were economical, economies of scale were not necessarily a concern for smaller TPA firms. Many smaller firms had owners who brought in experience as their clientele grew, and many continue that practice. Some firms intentionally plan for growth by investing in new employees, pairing them up with their experienced consultants for mentoring and training. This practice allows the training of employees in more functional roles while they learn skills and assist senior consultants, builds junior consultants, and creates a succession plan. I like this approach! It does require intentional investment in training and strategic planning for future needs, however, and does not address the unanticipated loss of a senior consultant in a small shop if you haven't already nurtured and prepared a replacement.

An opportunity that some TPAs are beginning to explore is the outsourcing of back-office work. Many of the large recordkeeping firms doing administration have outsourced Form 5500 preparation and data processing to firms in places like India, where there are many qualified employees for every job opening. At least one U.S. TPA firm developed a back office out of the country in order to take advantage of an educated workforce clamoring for jobs. They are now assisting other TPAs by offering well-trained individuals to assist with non-client-facing tasks such as census scrubbing and Form 5500 preparation, forms preparation, etc. The compensation cost is considerably less, allowing those using these services to accommodate their budgets by freeing their experienced consultants to focus on client relationships and complex review of numbers already compiled, as opposed to working every plan from census collection to signed Form 5500. It is not a new option, but one fairly new to smaller TPAs.

For many years I have asked my colleagues at conferences, “Where are the people who don't have gray hair or shiny heads?” As an industry, we need to focus on “training up” people as part of our succession plans and make the investment in young people, building our budgets with this in mind. If you have not planned for investing in training a young person with your experienced consultants, you will pay in the long run, either by hiring recruiters to help you find excellent talent as I did to replace senior talent, paying to keep talent from leaving with increased salaries, or finding alternative staffing solutions, such as outsourcing. **PC**



THE DOL'S ESG RULE: THE RETIREMENT COMMITTEE PERSPECTIVE

A retirement committee seeking to apply the tie-breaker test is no longer subject to an impossibly narrow standard. **By Alden J. Bianchi**

The proposed Department of Labor regulation entitled “Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights” addresses the duties of retirement plan fiduciaries when considering economically targeted investments—i.e., investments that take into account environmental, social, and governance (ESG) factors. Issued in response to a May 20, 2021 Executive Order, the proposal would significantly modify prior, Trump-era rules on the subject. This article examines it from the retirement committee’s perspective.

THE EVOLUTION OF RETIREMENT PLAN ESG INVESTING

The DOL has a longstanding position that trustees, investment managers and other fiduciaries charged with the investment of the assets of ERISA-covered retirement plans must not sacrifice investment returns or assume



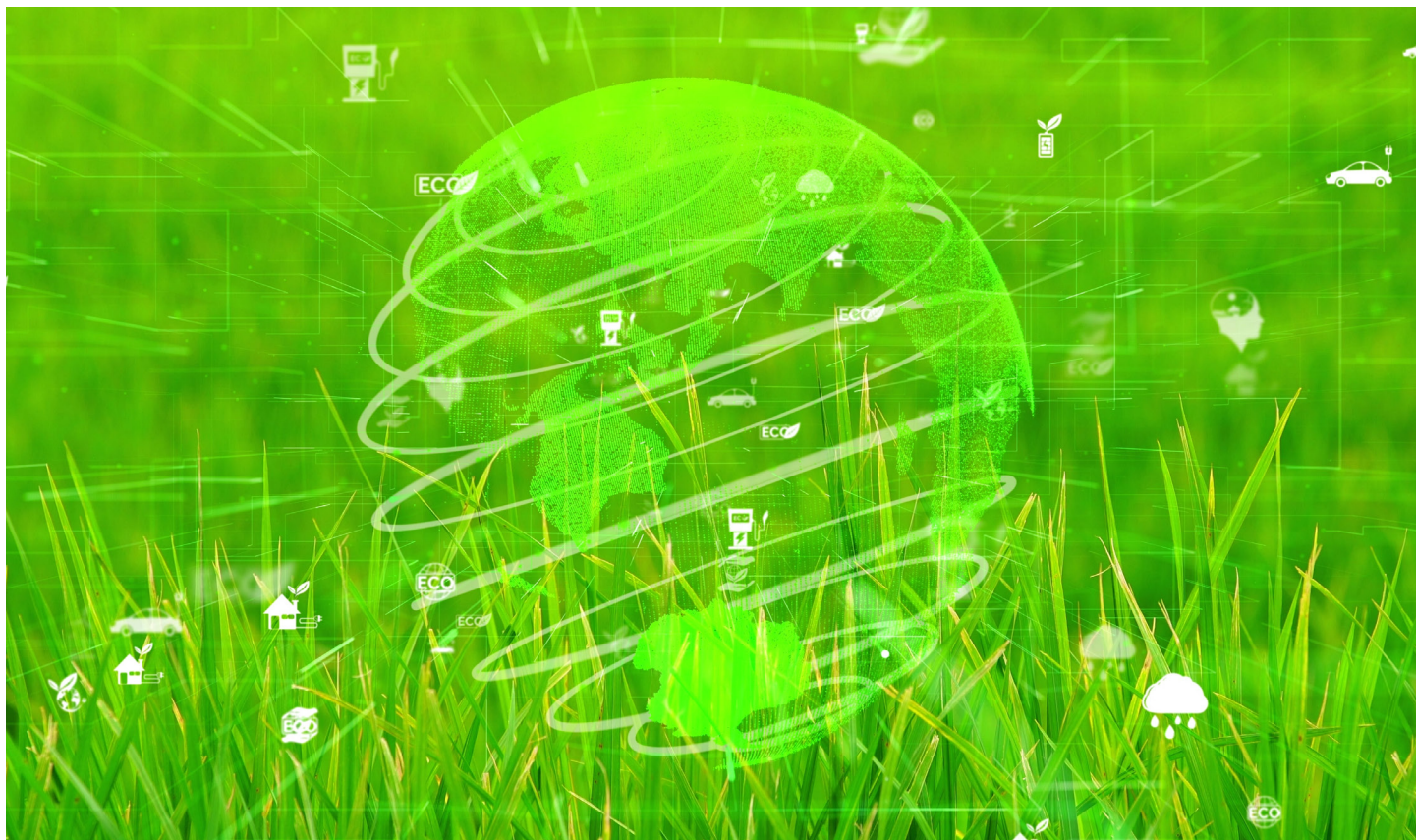
greater investment risks as a means of promoting collateral social policy or goals. If, however, an economically targeted investment has an expected rate of return at least commensurate to rates of return of available alternative investments, and if an economically targeted investment is otherwise an appropriate investment for a plan, then plan fiduciaries could use these collateral considerations as the deciding factor for an investment decision. This rule, which dates back to a 1994 Department of Labor interpretive bulleting, is colloquially referred to as the “all things being equal” test or the “tie-breaker” standard.

For the next two decades, the Department continued to endorse the “all things being equal” in subsequent guidance, with minor variations. At no time did the DOL ever vary from its regulatory position, however: fiduciaries run afoul of ERISA if they accept reduced expected returns or greater risks to secure social, environmental, or other policy goals. Then, in 2015, the Department added an important

nuance to its views of ESG investing. For the first time, the Department recognized that there could be instances when ESG issues:

[P]resent material business risk or opportunities to companies that company officers and directors need to manage as part of the company’s business plan, and that qualified investment professionals would treat the issues as material economic considerations under generally accepted investment theories. As appropriate economic considerations, such ESG issues should be considered by a prudent fiduciary along with other relevant economic factors to evaluate the risk and return profiles of alternative investments. [Field Assistance Bulletin 2018–01, citing to Interpretive Bulletin 2015–01]

Thus, the Department recognized that in addition to acting as mere tie-breakers, ESG factors also might bear directly on an investment’s underlying economic merits.



In 2020, though, the Department abruptly changed direction, issuing a final regulation that modified the rules governing the consideration of ESG factors in three important ways:

- The 2020 rule clarified that a fiduciary's duties of prudence and loyalty are satisfied where the fiduciary's investment decisions are based solely on their *pecuniary factors* and not on the basis of any non-pecuniary factor. A pecuniary factor for this purpose is "a factor that a fiduciary prudently determines is expected to have material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the funding policy."
- According to the 2020 rule, ESG factors can be only used as a tie breaker between financially equivalent investments. Thus, investment alternatives must be economically indistinguishable. In addition, where the investment selected is based on nonpecuniary ESG factors, fiduciaries are required to document their determination that the selected investment is indistinguishable from a pecuniary standpoint.
- The 2020 rule bars the use of an ESG-oriented fund as a qualified default investment alternative (QDIA) if its investment objectives or goals or its principal investment strategies include, consider or indicate the use of one or more nonpecuniary factors.

While the 2020 rule nowhere uses the term "ESG investments" or "ESG factors," the rule was clearly intended to discourage the use of ESG factors by fiduciaries of ERISA-covered plans either as tie-breakers or in connection with an investment's underlying economic merits.

THE PROPOSED RULE

The DOL's proposal reverses much of the substance of the 2020 final regulation. From the perspective of retirement committee members who are charged with curating 401(k) investment menus, it makes the following changes:

Materiality of ESG Factors

The proposal clarifies that a fiduciary may consider *any* factor material to the risk-return analysis, including climate change and other ESG factors. Thus, climate change and other ESG factors are no different than other traditional material risk-return factors. The proposal nevertheless singles out certain ESG factors that a fiduciary may consider in the evaluation of an investment or investment course of action if material, which include:

- **Climate change-related factors**, such as a corporation's exposure to the real and potential economic effects of climate change, including its exposure to the physical and transitional risks of climate change and the positive or negative effect of government regulations and policies to mitigate climate change.

“THE PROPOSAL CLARIFIES THAT A FIDUCIARY MAY CONSIDER ANY FACTOR MATERIAL TO THE RISK-RETURN ANALYSIS, INCLUDING CLIMATE CHANGE AND OTHER ESG FACTORS. THUS, CLIMATE CHANGE AND OTHER ESG FACTORS ARE NO DIFFERENT THAN OTHER TRADITIONAL MATERIAL RISK-RETURN FACTORS.”

- **Governance factors**, such as those involving board composition, executive compensation, and transparency and accountability in corporate decision-making, as well as a corporation’s avoidance of criminal liability and compliance with labor, employment, environmental, tax and other applicable laws and regulations.
- **Workforce practices**, including the corporation’s progress on workforce diversity, inclusion, and other drivers of employee hiring, promotion, and retention; its investment in training to develop its workforce’s skill; equal employment opportunity; and labor relations.

Jettisoning the ‘Pecuniary Factors’ Test

The proposal removes any reference to pecuniary factors in the provision of the regulation governing the application of the ERISA duty of loyalty. It also confirms that consideration of an economically material ESG factor, including climate-related financial risk, is consistent with ERISA’s duty of loyalty. Depending on the investment or investment course of action under consideration, relevant factors may include the items enumerated above.

Reinstating the Prior Law ‘Tie-Breaker’ Test

The 2020 final rule focused on whether the competing investments are indistinguishable based solely on consideration of risk and return. Thus, investments might not be indistinguishable despite that they might be equally appropriate additions to the plan’s portfolio. Under the proposal, the tie-breaker standard is broadened such that it applies when choosing between competing choices or investment courses of action that a fiduciary prudently concludes “equally serve the financial interests of the plan.” Thus, for example, two investments may differ on a wide range of attributes, yet when considered in their totality can serve the financial interests of the plan equally well. The proposal also disposes with the additional documentation requirements that the 2020 final rule impose on fiduciaries with applying the tie-breaker provision.

Investment Options and QDIAs Applying ESG Factors

The proposal allows fiduciaries to make available investment alternatives, including QDIAs, which take collateral ESG factors into consideration, provided that the fiduciary discloses the collateral ESG benefits to plan participants.

In the preamble to the proposal, the DOL explains that

the purpose of the disclosure requirement is to ensure that plan participants “are given sufficient information to be aware of the collateral factor or factors that tipped the scale in favor of adding the investment option to the plan menu, as opposed to its economically equivalent peers that were not.” The proposal offers flexibility on how to make the disclosure. Fiduciaries can, for example, use the existing rules requiring plan administrators of 401(k) and other defined contribution plans that permit participants to direct how their accounts are invested to provide investment and expense information under the Department’s 2010 regulation on the subject.

THE EFFECT ON RETIREMENT COMMITTEES

The incentives (or pressure) to include 401(k) investment alternatives that take ESG factors into account can come from two sources: at the request of rank-and-file plan participants or as a matter of a retirement committee’s preferences. The proposal radically changes the calculus either way. Its most fundamental change is that a fiduciary is no longer constrained by the pecuniary factor limitation and its corresponding documentation requirement; rather, a fiduciary is free to consider ESG factors when crafting a plan’s menu of investment options and when selecting a QDIA.

Additionally, a retirement committee seeking to apply the tie-breaker test is no longer subject to an impossibly narrow standard. Rather, two investments may now differ on a wide range of attributes, yet still be deployed to break a tie, provided that they equally serve the financial interests of the plan. This change takes a good deal of pressure off fiduciaries as they deliberate over competing investments, one of which includes ESG factors. Under the proposal, committees also have the ability to designate a QDIA that takes ESG factors into consideration.

Despite the material break from the 2020 rule, the proposal makes clear that plan fiduciaries must act prudently and diversify plan investments, and they must act solely in the interest of the plan’s participants and beneficiaries. These twin duties of prudence and loyalty are neither negotiable, nor have they changed.

If the proposal were to be adopted, retirement committees and other fiduciaries would be able to take ESG factors into account. However, nothing in the proposal gives committee members or other fiduciaries license to pursue ESG objectives unmoored from or indifferent to an investment’s underlying economic merits. **PC**



TOP 10 TPA MARKETING TRENDS

From blogs to vlogs to podcasts, from digital ads to Instagram or TikTok, try something outside your comfort zone. **By Rebecca Hourihan**

After another rollercoaster year, a lot has changed, yet the resiliency of people has remained strong. We have created new ways to stay connected, communicate and come together. Now is the time to use your newfound digital skill set and apply it forward in 2022 and beyond. Here are this year's top 10 marketing trends you can use in your TPA business to enhance client retention, grow your business and build stronger relationships.

1. COMMUNICATING REGULARLY VIA EMAIL

Sending regular news, information and updates to your contact list is one of the cornerstones of client retention. It demonstrates that your firm is aware of current trends and changes.

By providing important updates about administrative news (e.g., CARES Act deadlines, SECURE Act changes, Cycle 3 opportunities), employer concerns (e.g., tax implications, missing participants) and employee interests (e.g., financial

wellness), you show that you are more than a trusted TPA, but also a font of knowledge your contacts can rely on.

PRO TIP: Not sure what to send? Try a ready-made e-newsletter from one of the many great publication resources. Strive to send at least one email per month to your contact list.

2. REVIEWING YOUR SOCIAL MEDIA PROFILE

A lot of TPAs think their clients aren't on social media, but you would be surprised. From employers to advisors to referral partners, you will find that a significant amount of your network has a profile.

To get started on social media, select a platform such as LinkedIn. Set up your company profile, including your logo, banner image, website URL and "About" section. After that, review your individual LinkedIn profile. This includes uploading a professional headshot (less than three years old), banner image, "About" section and confirming that your "Experience" section is linked to your company page.

“UPDATE AND INFORM YOUR CLIENTS AND TRUSTED RELATIONSHIPS ABOUT HOW YOUR FIRM IS PREPARED TO PREVENT (OR RESPOND TO) A CYBERATTACK.”

PRO TIP: LinkedIn profiles without a banner image are categorized as incomplete and may not yield the same search results as a complete profile. Make sure you don't miss out on attracting new followers and connections by adding a banner.

3. POSTING ON SOCIAL MEDIA

Share your knowledge and experience through social media. As a quick example, the next time you read a great ASPPA Net post, copy and paste the URL into a new post on LinkedIn and share a short sentence about what you learned.

PRO TIP: Aim to post a least one update per week.

4. PROFESSIONALIZING YOUR WEBSITE

For years, websites have been thought of as a “check the box” activity. That has changed. Your website should immediately convey trust, professionalism and competence. Think of your website as your “digital storefront.” This is the first impression that advisors, plan sponsors and referral partners are going to see. Use your website to give your business a virtual boost of confidence.

PRO TIP: If your website hasn't been updated in the last three years, it's time for a review.

5. INVESTING IN TECHNOLOGY

As more and more people gain comfort in using video meetings, a small investment in high-quality audio, video equipment and internet speed can transform a choppy interaction into an excellent experience.

PRO TIP: Go on Amazon and find an integrated microphone and camera device. Google “test your internet” and run a speed test to learn how well your internet can handle virtual conversations.

6. ADVERTISING ABOUT CYCLE 3 RESTATEMENTS

This is a big year for TPAs. The more you communicate to your clients how Cycle 3 is an opportunity for plan enhancements, the more supported your clients will feel. Talk with your advisor relationships and educate them with ideas they can use when speaking with their employer relationships. Use this administrative requirement as a marketing message to demonstrate the value of a trusted TPA partner.

PRO TIP: Start sending emails now with plan design ideas to spark conversations and get your contact list excited about the changes they can make this restatement period.

7. PROMOTING CYBERSECURITY

With the recent ransomware attacks, phishing scams and data hacks, protecting against cybercrime is on every employer's mind. Review your internal policies to prevent data breaches. Ask the service providers you partner with about their cyber defenses. Then update and inform your clients and trusted relationships about how your firm is prepared to prevent (or respond to) a cyberattack.

PRO TIP: Consider hiring a third-party audit firm to conduct an SOC Audit of your internal practices.

8. OPTIMIZING YOUR DIGITAL RESULTS

Help your prospects and contacts find you online. By setting up a Google My Business account, your business is more likely to appear on the first page of search results. You can display your website, business address, phone number, email, hours of operation, company overview and more. It's free, so give it a try today.

PRO TIP: Setup is simple, but can yield tremendous results in your local search. Visit google.com/business/, sign in or click the “Manage Now” button and follow the prompts to enable a powerful tool.

9. EDUCATING VIA WEBINARS AND VIDEOS

Select a popular industry topic and host a webinar to educate your contact list about recent news and best practices. Some examples could be discussing missing participants, cybersecurity, Cycle 3, SECURE Act, PEPs or new recordkeeper functionalities. Helping your clients understand what's happening in their professional space and how they can offer a compliant, competitive retirement plan will establish you as valued partner.

PRO TIP: Record your webinar. Send the recording via email, post it on your website and share it through LinkedIn to expand your influence.

10. TRYING SOMETHING NEW

From blogs to vlogs to podcasts, from digital ads to Instagram or TikTok, try something outside your comfort zone. Find a platform that seems interesting, then post content that employers, advisors and referral sources would readily consume. Whether it's educational, funny, entertaining or somewhere in between, have some fun and expand your marketing reach.

CONCLUSION

Commit to at least 3 of these 10 marketing initiatives so you can confidently enhance client retention, grow your business and build stronger relationships through 2022 and beyond.

As a TPA, you understand how the right plan design has the power to boost retirement outcomes and change the trajectory for millions of hard-working Americans. When your digital reputation and marketing efforts regularly educate your contact list, you are helping employers, advisors and your network appreciate the great work you do.

Thanks for reading and Happy Marketing! **PC**



ASPPA launches a fundamental education program to address the industry's onboarding dilemma.
By Ashley M. Meredith

Over the last two years, there has been a noticeable shift in online education and training. When companies were forced to switch to a remote working environment during the pandemic, a new set of challenges in handling day-to-day tasks quickly followed. Hiring employees is exciting, but in reality, the task of bringing on new employees in a fully remote working environment can be daunting.

Managers and supervisors now must onboard their new hires virtually. Even so, there is a responsibility to introduce and acclimate the new hires to a virtual office, get them up to speed, and ensure that they have everything they need to be productive. For the new hires, onboarding needs to be relevant and valuable, quickly covering what they need to know to get started.

In addition to new hires, other entry-level staff need a basic understanding of the retirement industry—employees in marketing, call center agents, interns, advisor assistants, receptionists and entry-level administrative positions, for example. These employees need to have a basic understanding of the retirement world, but not necessarily know all the details that seasoned retirement plan professionals know.

To address all these employees' need for "basic training," ASPPA launched a new certificate program, Introduction to Retirement Plans (IRP), in January. Here's a closer look.

WHAT'S UNDER THE HOOD?

IRP quickly trains new hires within 1-2 hours by using highly engaging interactions, video, audio, scenarios and imagery to enhance learning. The program consists of two online

modules: “Building your Foundation” and “Expanding on Your Foundation of Employer-Sponsored Retirement Plans.”

Breaking it down from the learner’s perspective, Building your Foundation of Employer-Sponsored Retirement Plans (Module 1) focuses on the “who, what, why, how and where” basics. It provides a clear breakdown of what the learner needs to know, shaping the content around those topics, such as: What is a retirement plan? What is ERISA? What are the types of retirement plans? Which service providers are involved in retirement plans? Why do employers offer plans? Why are there many plan types? Why have a retirement plan? How are retirement plans funded? Where are the details of the plan found?

Expanding on Your Foundation of Employer-Sponsored Retirement Plans (Module 2) expands on the topics covered in Module 1, focusing specifically on eligibility, contributions, distributions and plan operation. Learners will be able to understand the eligibility criteria for participating in a retirement plan, differentiate between the types of employee and employer contributions, describe the milestones that qualify a plan participant to receive a distribution, and explain the basic plan operations that must take place to administer a plan.

SCAFFOLD OF LEARNING

Now you may be thinking, “Doesn’t ASPPA already have an introductory course like this?” Yes, and no.

One of our popular introductory ASPPA education programs, Retirement Plan Fundamentals (RPF), provides an in-depth review of the lifecycle of a retirement plan. Designed for employees with 6 to 12 months of industry experience, the 10-15 hour RPF program provides practical knowledge for employees who support operations and administration.

Recognizing that RPF may not be the best choice in terms of length for onboarding new employees, we wanted to create something shorter and more appropriate for the first week on the job. IRP is not meant to replace RPF; rather, they are meant to work together.

Learners retain more information when there is a natural progression. In adult education, learning takes place at a higher level when there is instructional “scaffolding” of the content. This means there are repeated steps of foundational information that build upon each other, adding more and more detail to the same concepts over time.

IRP provides a seamless fit as the first step in ASPPA’s overall education program. We recommend that all new hires start with IRP, and then continue to take RPF later in their first year. And as a long-term goal, these two programs would be a useful precursor for employees to earn their Qualified 401(k) Administrator (QKA®) credential. These three programs build upon one another, providing instructional scaffolding to increase learners’ retention of the content.

OUR GOAL FOR ASPPA EDUCATION

When we first introduced the IRP program to our long-term clients, we kept hearing the same thing: *there is a real need in the market for this*. Just a few weeks after IRP’s debut

The Development Process



Appropriately, my own onboarding experience at the American Retirement Association helped shape the program during the development process. I’m not a retirement plan professional—my background is in adult education. But when I joined ARA as an instructional designer, my onboarding process started with taking the RPF program.

While still trying to situate myself and get familiar with language and concepts, I found that I did not have 10-15 hours in my first week to devote to the content in the RPF. Rather, I needed a bite-sized overview of the industry.

Because of that experience, I understood what information would be relevant to other new-to-the-industry employees. I kept this—and the industry’s virtual onboarding needs—in mind as I worked with the ASPPA team to develop the program. —A.M.M.

in January, clients had already incorporated it into their onboarding process for all new hires.

Ultimately, ASPPA’s goal for education is to meet learners where they are and provide educational resources to help them get to where they want to be. With the IRP, we’ve been able to fulfill the need for a new fundamental course that can help both employers and their employees during onboarding—especially in today’s remote working environment.

With the addition of the IRP program, ASPPA is now a “one-stop shop” for all retirement plan education purposes, offering education and training for employees at any stage in their careers. If you are looking to learn more about the IRP program, go to asppa-net.org and use the rollover menu in the “Education” tab (select “Credentials and Certificates,” then “IRP”) or email Thanks@USARetirement.org. **PC**



FIGHTING CYBER FRAUD

Recordkeepers should act now to minimize the risk of cyber fraud. Here's how. By Tom Schrandt

"I didn't make a distribution request!" is probably one of the last things any employee benefits plan professional wants to hear from a plan participant. It's a red flag that a fraudulent instruction request may have been received and processed and that someone may have just lost their life savings to an online scammer.

THE NATURE OF THE RISK

Due to the sensitive nature of stored personal information and the high value of plan assets under management, cybercriminals are increasingly interested in retirement plan data and assets. While the tricks cybercriminals use to commit online fraud tend to vary, the goal remains the same: impersonate a trusted party in order to divert funds into a fraudulent bank account.

The risk of such cyber fraud is growing. "It is getting harder and harder for victims to spot the red flags and tell real from fake," said Donna Gregory, chief of the FBI's Internet Crime Complaint Center (IC3), in a recent report. The fact that many professionals are working from home, where security is less robust, also complicates matters. IBM reports that email phishing scams, the precursor to most cyber fraud schemes, have multiplied at an exponential rate to more than 60 times pre-pandemic levels.

For plan sponsors, administrators, recordkeepers and other fiduciaries, even a single cyber fraud incident can have a cumulative effect that does serious damage. There's the danger of stolen data and assets, plus legal costs, reputational damage, regulatory penalties, and the added potential personal liability risk that can come with an ERISA fiduciary duty breach.

WHO HOLDS THE LIABILITY?

Resolving an allegation of plan asset theft can be a complex undertaking. Legal action is often necessary to determine the facts of what went wrong and whom, if anyone, is to blame. Fiduciaries who share discretionary authority over plan administration and investments often share responsibility for the cybersecurity of their plan participants' data and assets. Typically, courts have found that delegating these responsibilities does not remove fiduciary obligations.

In a situation where a plan participant's retirement savings have been drained, there's plenty of blame to go around, and all plan fiduciaries can expect to find themselves in court defending their cybersecurity practices. A few examples come to mind.

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In *Berman v. Estee Lauder, Inc.* (N.D. Cal. Oct. 9, 2019), a plan sponsor, a recordkeeper and a custodian all had to defend their cybersecurity practices in the face of unauthorized distributions. In *Leventhal v. MandMarblestone Group, LLC* (E.D. Pa. May 1, 2019), both the plan sponsor and recordkeeper were found to share a fiduciary responsibility to restore accounts after cyberbreaches.

In the case of *Bartnett v. Abbott Laboratories et al.* (N.D. Ill. Oct. 2, 2020), a lawsuit was filed against both the plan sponsor and the recordkeeper, but the plan sponsor was dropped from the case, leaving the recordkeeper as the sole defendant. It's worth taking a closer look at how this surprising turn of events came to be.

In the complaint, a plan participant alleges an unknown cybercriminal compromised her email and began attempting to use it to gain access to her plan account. Through contact with the recordkeeper's website and call center, the cybercriminal was able to reset the password on the plan account, change the bank account associated with the plan account, and transfer \$245,000 of plan assets to the new bank account and out of the country before the theft could be noticed and stopped.

As the *Bartnett* case moves forward, there is plenty for recordkeepers to think about. Typically, a recordkeeper's role is considered to be non-fiduciary, handling only "ministerial" functions. But evolving case law has the potential to change that. Recordkeepers may one day find their standard functions constitute fiduciary conduct, in which

case, having the correct cybersecurity practices and protections becomes even more important.

WHAT STEPS CAN RECORDKEEPERS TAKE?

A new and evolving area of case law is taking shape, but recordkeepers don't have to wait for courts to decide *Bartnett* and other cases before acting to shore up their cybersecurity. The threat is already at a high level, presenting a major risk for anyone overseeing retirement plans. Guidance from the Department of Labor generally addresses three aspects of the problem, advising recordkeepers to:

- educate employers and employee plan participants;
- stay up to date on evolving fraud threats and tactics; and
- follow current industry fraud prevention best practices.

Diligent recordkeepers can and should take steps now to protect plan participants and themselves from hackers and fraudsters. Following are some steps that can minimize the risk.

- **Identity Verification.** An internal process to verify the identity of participants and authenticate all distribution requests can significantly cut down on fraudulent transactions. Protections range from calling participants to verify requests to high-tech voice recognition and two-factor authentication technologies.
- **Participant Notification.** An instant automatic notification alert sent through multiple channels, such as email, text and an automated phone call, when an account change has been made or a distribution is requested gives participants more opportunity to alert their plan fiduciary if something is wrong.
- **Account Monitoring.** An automated tool monitoring accounts for suspicious activity can also make it harder for fraudsters to drain a participant account, flagging unfamiliar logins and account changes made shortly before a distribution request as requiring additional verification and authentication.
- **Restoration Policy.** A policy on restoration can help recordkeepers better manage the risk of unauthorized disbursements by addressing which plan fiduciary has a responsibility to make participants whole and what circumstances and requirements must be met for the protection to apply.
- **Participant Engagement.** A plan to engage plan participants in the safety of their own accounts, requiring an initial complete account setup, opting in for real-time alerts, providing education about phishing and fraud threats, and requiring regular account reviews can greatly reduce the risk to plan assets.
- **Insurance Protection.** Another important step recordkeepers can take is to obtain cyber liability insurance coverage to protect themselves. A policy that specifically covers fraudulent instruction requests and losses to a participant's account is a must, as is checking for any coverage sublimits and policy restrictions that may limit protection.

Lastly, even though recordkeepers may do everything right and take all possible precautionary measures, it's wise to ensure that you carry the right insurance. Sooner or later, a fraudulent instruction request may slip through the cracks and lead to a loss for a participant and a lawsuit for the recordkeeper. **PC**

DIVERSITY OF THOUGHT AT WiRC



Diversity of perspectives is a key component to ensuring that retirement proposals are thoroughly vetted to ultimately create good, workable legislative proposals. **By Erika Goodwin & Kelsey Mayo**

There is something special that happens when we get out of our comfort zone, try something new, and talk to someone new. That something special is diversity of thought.

If you're reading this, you are probably a TPA, a recordkeeper, or maybe a retirement plan advisor. You may be the person who makes the administration of a plan possible; but the fact is, neither you nor any other one person in the retirement space can make the reality of retirement security possible alone. If only one perspective

is considered in establishing policies, the rules are unlikely to work as well as when diverse perspectives are considered. And this was recently on full display at the 2022 Women in Retirement Conference (WiRC) in January.

WiRC is a unique forum that invites and encourages members of all the diverse ARA sister organizations (ASEA, ASPPA, NAPA, NTSA and PSCA) to be in the same room and in the same discussion. The planning committees for the WiRC annual conference, WiRC brunches and virtual events, and "Third Thursdays

with WiRC" very intentionally make space for diversity in the room, on the stage and in conversations.

For the past four years the WiRC agenda has focused on four key areas: leadership, marketing, practice management and personal growth. In 2021, we added another key component: advocacy. As one attendee commented, "Legislative updates should always be a part of this agenda." That sentiment was echoed by the WiRC steering committee, the ARA Government Affairs team and the newly created ARA Council for Women.

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BUILD A BILL

This new focus on advocacy was incorporated into the this year’s WiRC conference as attendees had the opportunity to share their diverse perspectives during the “Build a Bill at WiRC” session. Those who have attended the ASPPA Annual Conference may be familiar with this session, but for many WiRC attendees, it was a new experience. Attendees had the opportunity to “geek out” with the Government Affairs team as they discussed which policies should be a priority and drive ARA’s legislative work on Capitol Hill.

ARA’s Government Affairs team presented provisions currently under consideration in Congress, and each attendee could vote on whether ARA should support the proposals. These included spousal consent for DC plan distributions, catch-up contributions for caregivers, domestic abuse withdrawals, and inclusion of additional long-term part-time employees. Most importantly, after the initial votes on a provision were taken, attendees sharpened their reasoning by discussing why they voted the way they did.

The interactions in the room were evidence that subject matter expertise alone is not enough to shape good policy. The women in the room were all well versed in the retirement plan rules and regulations, but each offered a different perspective. Kathleen Tompkins said it well in her ASPPA Net post on the conference: “What was fascinating was that everyone from our five sister organizations had different thoughts, perspectives and solutions for each retirement issue. I learned that gathering well-rounded

feedback is critical in crafting a successful bill.”

By sharing multiple perspectives, analysis on provisions became more informed and well rounded. On more than one occasion, an attendee would say, “I voted against this provision because it seemed needlessly complex, but after hearing [another attendee’s] rationale for why this is important, I would support it.”

On numerous occasions, an attendee would raise a question or concern that would prompt additional questions from other attendees. For example, in discussing a new withdrawal option for victims of domestic violence, one attendee asked whether a participant would be required to tell an employer about violence (which might chill the likelihood of using the distribution). This prompted another to raise the concern about whether an employer who learns of violence through the plan would trigger reporting obligations under state law. And the robust discussion often led to consideration of whether the provision would have unintended consequences, such as whether a new withdrawal option might actually be counterproductive because it might be used by an abuser to force a participant to take a distribution. Attendees then discussed ways to address these concerns to achieve the policy objective while protecting participants and not make the provision overly complex to administer.

Diversity in perspectives is a key component in ensuring that retirement proposals are thoroughly vetted to ultimately create good, workable legislative proposals. This is done by

taking into consideration perspectives of those in compliance, those who work and speak directly with plan participants, and those invested in employee outcomes. The unique perspectives attendees brought as women who have experienced part-time work, caregiving responsibilities that lowered earnings, domestic violence, and a spouse’s raiding of retirement assets without consent were critical.

This session was just one opportunity for attendees to think critically, express their perspectives about legislative changes to the current retirement plan rules, and reflect on how the proposed changes would impact their daily work—and how each one could help or harm plan participants. Through the exercise of polling and conversation (and sometimes debate), attendees were able to experience in real time the decision-making process that often leads to the policy reflected in a new retirement bill in Congress and to gain appreciation of the different points of view in relation to the public policy items we discussed.

CONCLUSION

So, does what happens at WiRC stay at WiRC? In this case, the answer is no. The feedback gathered has already helped the Government Affairs team in their efforts to develop good retirement policies.

Want to get involved? Join us virtually or in person for an upcoming Women in Retirement event. Visit www.womeninretirement.org for upcoming event dates, topics, locations and times. And to get involved in ARA’s advocacy work, visit www.araadvocacy.org. **PC**

STARTER K IN 2022?

Cost and compliance have always been barriers to employers in providing a retirement plan. The Starter K would help overcome those barriers. By Will Hansen

In 2021, the American Retirement Association's Government Affairs team was focused on expanding access to a retirement plan by advocating for the Automatic Retirement Plan Act to be included in the Build Back Better reconciliation package that congressional Democrats were advancing. Unfortunately, this provision was dropped from the package, and the entire Build Back Better package is still in limbo.

For decades, the 401(k) plan (and similar plans) have worked for those who have access to a plan at work. The Automatic Retirement Plan Act (ARPA) would have required most businesses to provide a retirement plan to employees. We will continue to advocate for this important piece of legislation, but for 2022, our sights are now set on bipartisan legislation that could be signed into law this year.

In the last issue of *Plan Consultant*, I discussed the prospects of a large retirement package advancing this year—and perhaps even being signed into law. This final retirement package could have 60-plus provisions that would improve the employer-sponsored retirement plan system. With ARPA on the sidelines, we felt there was still an opportunity to push for a policy that could increase the number of employer-sponsored retirement plans. We settled on the “Starter 401(k).”

“MORE MUST BE DONE TO ENCOURAGE SMALL BUSINESSES, ESPECIALLY THOSE WITH FEWER THAN 50 WORKERS, TO ADOPT A RETIREMENT PLAN.”

The Starter 401(k) was a component of ARPA. In summary, the Starter 401(k) is a simplified 401(k) retirement plan with lower limits, no employer contributions required, automatic enrollment, and a waiver from non-discrimination testing. Bottom line: It would provide employers without a retirement plan an opportunity to dip their toe in the water of providing one without being required to contribute dollars and at a lower cost to operate the plan due to the waiver of non-discrimination testing. Cost and compliance have always been barriers to employers in providing a retirement plan, and the Starter K helps to overcome those barriers.

Prior to being a component of ARPA, which was a Democrat-led bill, the Starter K was championed by former Republican Senator Orrin Hatch. At the time he introduced it, Hatch was the ranking member of the Senate Finance Committee.

As the process unfolds in the coming months, bipartisanship will be necessary to ensure that a provision is included in the final retirement package. We are hopeful that this important provision will be included due to its history of bipartisan support.

Why is this provision important? According to the Department of Labor's Bureau of Labor Statistics report from September 2020, only 53% of employees at smaller



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businesses (i.e., firms with fewer than 50 workers) have access to a workplace retirement plan, compared with 69% of employees at firms with more than 50 workers and 83% of employees at firms with more than 100 workers. More must be done to encourage small businesses, especially those with fewer than 50 workers, to adopt a retirement plan.

For employers which conduct business in a state that requires employers that do not provide a retirement plan to auto-enroll their employees into a state-run IRA program, the Starter K would be an excellent alternative to those state-run programs. We've heard from members across the country in those states, and they have provided evidence that some small employers would rather adopt their own company-sponsored retirement plan than engage with the state-run IRA program. The addition of a Starter K option for small businesses may further entice those employers to offer an ERISA-backed retirement plan.

We remain committed to policies that expand access to a workplace retirement plan. Over the next few months and into late this year we will see a lot of activity on Capitol Hill with respect to retirement policies. **PC**



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