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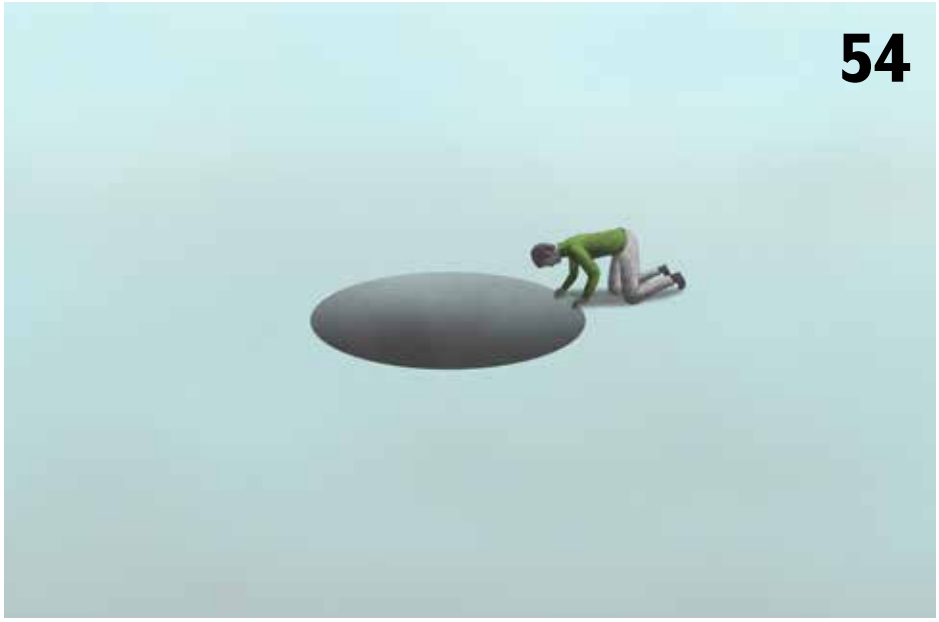

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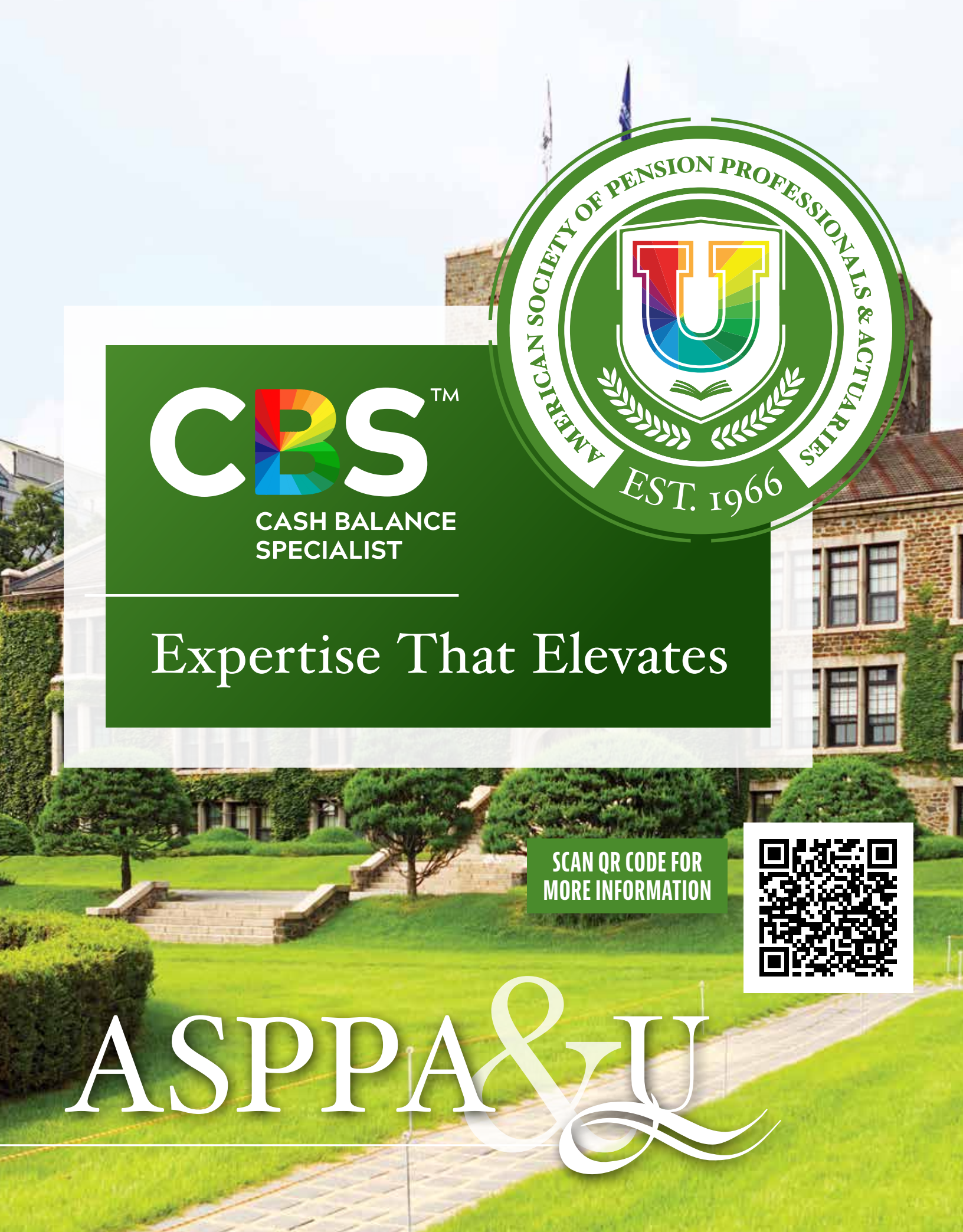
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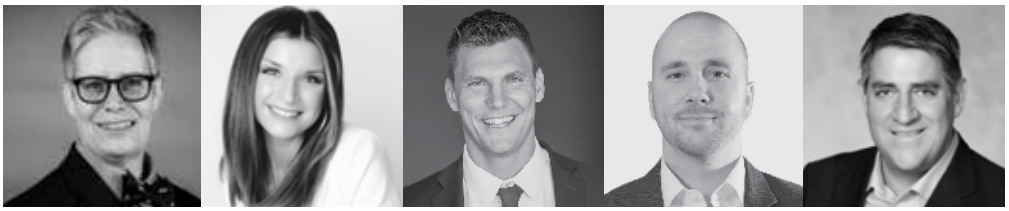

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JUST WON'T 'HACK' IT

Props to recordkeepers and third-party administrators (TPA) for taking a vital topic—cybersecurity—seriously. If only other areas of the retirement plan industry followed suit. **By Joey Santos-Jones**

Lisa Gomez, Head of EBSA, highlighted several striking points during a recent discussion with the American Retirement Association (ARA) about retirement plan cybersecurity and AI.

A major concern is that despite significant hacks causing extensive damage, only a small fraction of plans adhere to the DOL's standards. Gomez noted that although many plans rely heavily on recordkeepers and TPAs for system management, compliance remains limited. She praised recordkeepers and TPAs for following the DOL's 2021 guidance but emphasized that plan sponsors still underestimate the substantial liability risks involved.

"It's in their interest, not just to avoid DOL and EBSA scrutiny, but because the potential damage to participants and systems is immense," Gomez said. She added that while EBSA's guidance often goes unappreciated, its cybersecurity guidelines are well-received by recordkeepers as they provide concrete measures for plan sponsors.

Gomez pointed out the rapid evolution of threats, such as AI's ability to clone voices in just six seconds, making it unsuitable as a sole identity verification method. She continues to advocate for robust cybersecurity practices due to the high stakes involved, warning that a single breach could severely impact stakeholders, especially participants.

"How can AI be misused by bad actors to impersonate us? How do we alert our participants? These should be integral to best practices," she stated. Gomez also cautioned against using AI for creating plan documents, stressing that human oversight is crucial as AI outputs are only as reliable as their inputs.

> "WHILE THE DOL DOES NOT MANDATE FORMAL CYBERSECURITY POLICIES OR INCIDENT REPORTING PROCEDURES, IT VIEWS HAVING A STRUCTURED APPROACH TO PREPARATION AND PREVENTION AS BEST PRACTICE."

"It's a useful tool but not a cure-all. Awareness of potential vulnerabilities is essential," she emphasized, urging plans to adhere to fiduciary principles and prudence in managing cybersecurity.

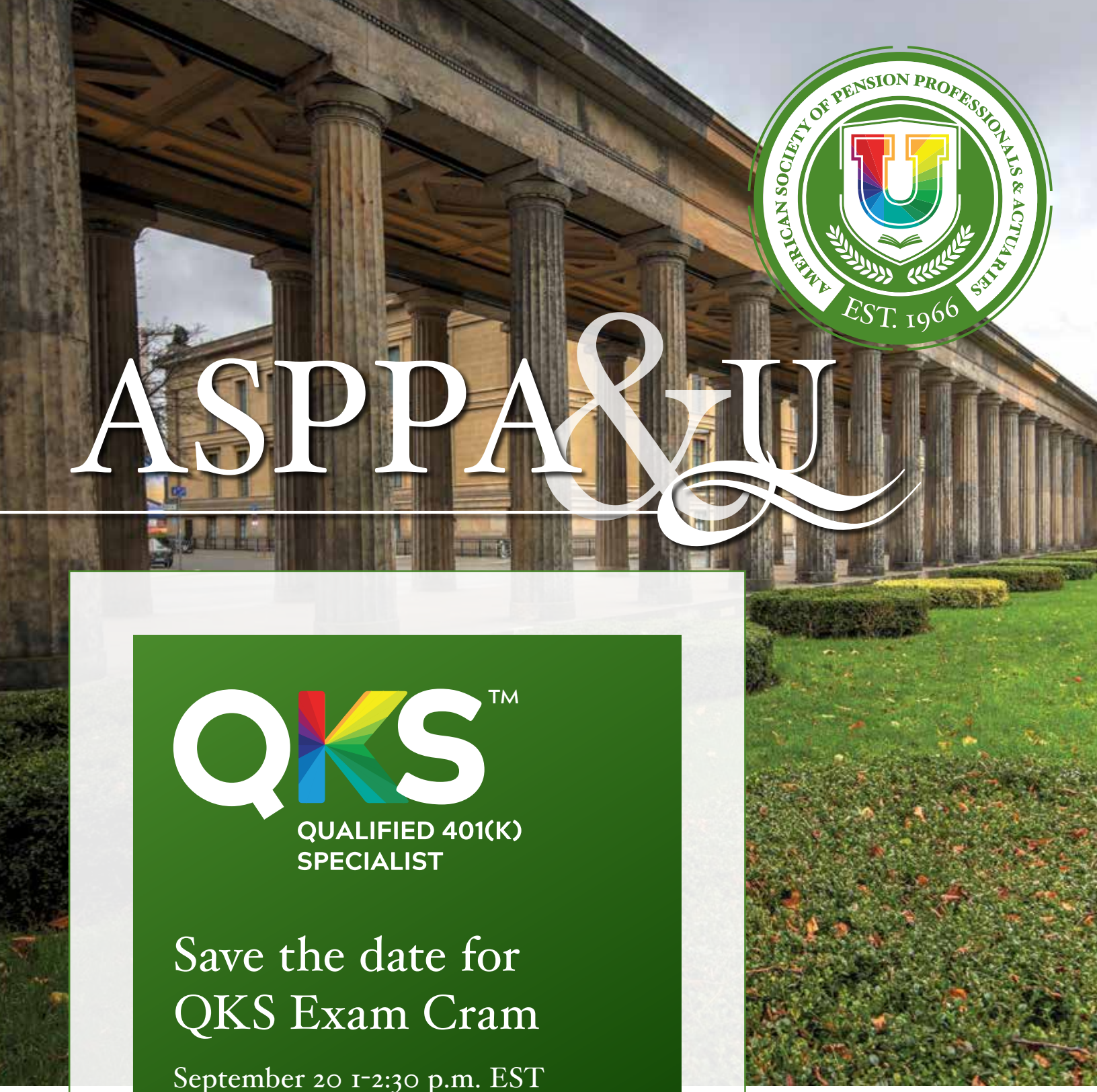
While the DOL does not mandate formal cybersecurity policies or incident reporting procedures, it views having a structured approach to preparation and prevention as best practice. "In our investigations, we look for evidence of thoughtful processes. It doesn't have to be written, but there should be clear signs of planning. Emergencies shouldn't be the first time you think about your response," Gomez explained.

She also underscored the importance of cyber liability insurance and understanding its coverage. "Many plans either don't have cyber liability insurance or aren't aware if it covers plan information. They might face a breach only to find their insurance doesn't cover the specific plan," Gomez noted. Given the complexity and cost of cyber liability insurance, she advised plans to scrutinize their policies carefully, ensuring they understand what is covered and any requirements for activation.

Ultimately, thorough knowledge and proactive management of cybersecurity measures and insurance are vital to protect retirement plans from evolving threats.

Joey Santos-Jones

Editor



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LESSONS FROM THE KENTUCKY DERBY

Under the thunderous roars of the crowd and the pounding hooves on the dirt track, the Kentucky Derby unfolds not just as a spectacle of speed and stamina but as a masterclass in strategic and forward planning. **By Amanda Iverson**

Fresh from attending the 150th Kentucky Derby, I realized the event offers lessons not merely in horse racing but also in navigating the equally competitive race toward a successful retirement. Just as we meticulously planned our visit to Churchill Downs—securing tickets, finding accommodations, and choosing the perfect outfits and hats—we must strategize our financial futures with precision and care. This year, as I joined the crowds of Derby spectators, the parallels between my Derby Day preparations and the foundational principles of effective retirement planning became strikingly clear.

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

THE IMPORTANCE OF EARLY PLANNING

We attended the Derby with three other couples, and our preparation began a year in advance. We found tickets that fit our group ten months prior to the event. Each of us had to decide on accommodations and book them well in advance. Additionally, my three girlfriends and I searched tirelessly for the right dresses and hats to accommodate our desired looks and budgets. From budgeting for the potentially expensive trip to selecting the perfect outfit and every detail in between, it all required forethought and coordination. Similarly, effective retirement planning begins early. Just as Derby-goers scout tickets and accommodations early to get the best deals, starting retirement savings early and saving a bit more can provide a more enjoyable and comfortable financial cushion later on.

SEEKING EXPERT ADVICE

As a betting novice, I relied on one of our friends who had much more expertise in the area to provide me with guidance throughout the process. He was a great and patient teacher! Many Derby attendees rely on tips from seasoned experts to make informed bets. Similarly, navigating the complex world of retirement plans often requires professional advice. As TPAs, we assist clients in understanding various retirement plans and help them make informed decisions. Consulting with the right TPA, financial advisor, and recordkeeper can ensure the retirement strategy is tailored to meet the desired long-term goals of the company, owner(s), and employees.

UNDERSTANDING THE FIELD

Just as bettors study the horses, their past performance, and the race conditions, those approaching retirement must understand the economic landscape and their own financial health. Knowing one's assets, liabilities, potential financial risks, and future expenses is similar to understanding the racetrack conditions on Derby Day. This awareness can significantly influence decision-making, from choosing the right plan strategy to timing one's ultimate retirement.

ADAPTING TO CHANGING CONDITIONS

Before the Derby, we closely monitored the weather forecast. The Oaks race, held the day before the Derby, occurred under a relentless downpour, a stark contrast to Derby Day, which began with clouds but concluded in sunshine. This variability highlighted the necessity of preparation for any scenario. Fortunately, we were equipped for a rain-soaked trek, unlike some less-prepared attendees. Similarly, the jockeys adjusted their racing strategies to suit the changing track conditions. This adaptability mirrors effective retirement planning. Just as Derby bettors recalibrate their bets based on the track's condition, economic fluctuations and shifts in personal or corporate circumstances require flexible retirement strategies. Proactive planning and adaptability are essential to navigate unforeseen challenges and maintain the integrity of a retirement plan.

THE ROLE OF DIVERSIFICATION

At the Kentucky Derby, wise bettors diversify their wagers rather than relying on a single horse. Similarly, in retirement planning, financial advisors stress the importance of diversification to our mutual clients. They teach that spreading investments across various assets can mitigate risk and enhance the potential for consistent returns. This strategy ensures that if one investment falters, others within the portfolio may compensate—akin to distributing bets among several race contenders. Diversification in retirement plans can take multiple forms. For instance, while some companies opt solely for a 401(k)

"RECOGNIZING THAT VARIOUS PREFERENCES AND FINANCIAL SITUATIONS DICTATE DIFFERENT APPROACHES IS CRUCIAL IN CRAFTING A RETIREMENT PLAN THAT IS SATISFYING AND SUSTAINABLE."

Profit Sharing Plan, others might also incorporate a Cash Balance Plan, further diversifying their retirement plan strategies.

ONE SIZE DOES NOT FIT ALL

Just as every attendee at the Derby makes different choices based on their preferences and budget, each company must tailor its retirement plan to fit its unique circumstances and goals. During our trip, my spouse and I decided to economize a bit by using hotel points for our lodging, while our friends chose to splurge on a large, rented home. Both choices worked for our respective desires and financial strategies. Similarly, in retirement planning, what works for one company or person may not suit another. Recognizing that various preferences and financial situations dictate different approaches is crucial in crafting a retirement plan that is satisfying and sustainable.

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CELEBRATING MILESTONES

While the horse Mystik Dan made this year's Derby one of the most exciting races, the Kentucky Derby is not just about that single race; it is a series of events and celebrations leading up to the big day and ultimately the big race. In retirement planning, setting and celebrating milestones can contribute to success. Whether it is starting a retirement plan, determining a realistic retirement budget, or reaching a savings goal, recognizing achievements can provide motivation and a sense of accomplishment.

CONCLUSION

Our Kentucky Derby experience was wonderful and unmatched, filled with excitement and memorable moments. However, much like planning for retirement, it was not just a standalone event but part of a larger journey that warranted careful planning, strategic thinking, and adaptability. These lessons from the Derby are not just about enjoying a single day at the races; they are important for navigating the longer (and sometimes unpredictable) journey of retirement. As we cherish the memories from this year's Derby and eagerly anticipate our next adventure, we can apply that same enthusiasm and thorough preparation to retirement planning. Doing so will not only secure one's financial future but also allow them to approach their retirement years with the same anticipation and confidence that makes events like the Derby so exhilarating. **PC**

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ERISA AT 50: OLDER, WISER, STILL LOOKING GREAT

A landmark anniversary for a landmark law that massively impacted America's retirement plan system and, with it, workers' ability to save. **By Brian H. Graff**

***The Employee Retirement Income Security Act of 1974 (ERISA)* turns 50 on Labor Day, a milestone to reflect on the law's outsized impact while examining its future.** It's particularly apropos given current regulatory uncertainty—a proposed Thrift-like federal takeover, the *Retirement Security Rule*, the Supreme Court's Chevron Deference ruling, *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, and (of course) a "spirited" presidential election season.

Yet it was a similar atmosphere during ERISA's birth, with the economy in recession, an oil embargo, and a nation reeling from Watergate. The Studebaker pension plan's collapse a decade earlier, affecting over 4,000 employees, was a major catalyst for the law's passage. It revealed frightening flaws in the country's superannuation system, and the working public realized pension promises required actual funds and legislative teeth.

"Some pension funds have been invested primarily for the benefit of the companies or plan administrators, not for the workers," President Gerald Ford said upon signing ERISA into law. "It is essential to bring some order and humanity into this welter of different and sometimes inequitable retirement plans within private industry. The men and women of our labor force will have much more clearly defined rights to pension funds and greater assurances that retirement dollars will be there when they are needed."

"IT (ERISA) WAS WRITTEN TO SOLVE A PROBLEM AND AIMS TO ENSURE AN AFFORDABLE QUALITY OF LIFE FOR ALL HARDWORKING AMERICANS, ONE THAT'S MORE THAN WORDS ON A PAGE AND SOMETHING ON WHICH THEY CAN COUNT."

The Department of Labor provides a simple definition: it's a federal law "that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans."

However, its implementation and interpretation are far more complex—which is how it should be when dealing with someone who is saving for a dignified retirement after a lifetime of hard work.

Among other things, it created the Employee Benefits Security Administration (EBSA) and the Pension Benefit Guarantee Corporation to prevent Studebaker-style scandals from devastating future retirees.

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

Most importantly (and as ASPPA members well know), it established requirements for fiduciaries to act prudently, manage plans solely in participants' interest, minimize risk, and avoid conflicts of interest.

Some people "blame" ERISA for the defined benefit plan's demise and defined contribution plan's rise, when in reality, it's a set of neutral requirements to ensure retirement security—hence the title. It was written to solve a problem and aims to ensure an affordable quality of life for all hardworking Americans, one that's more than words on a page and something on which they can count.

Is it perfect or a panacea? Of course not, which is why it's adjudicated through the courts and continually refined. But its incredible impact on the retirement landscape cannot be denied, and it is something about which, ultimately, we should all be proud. **PC**

SAFETY NET IN THE ROUGH

A bit of fine-tuning is not at all unusual when something new is rolled out, and the Pension Benefit Guaranty Corporation's Special Financial Assistance (SFA) Program is no exception. **By John Iekel**

It's still new on the scene, as federal programs go. SFA—a means to help financially troubled multiemployer plans— was born of the American Rescue Plan (ARP) Act of 2021, which added Section 4262 to ERISA. The SFA is a result. The PBGC launched it under an interim final rule published in July 2021, and one year later issued a final rule.

ARP WAS KEY

The enactment of the American Rescue Plan was of key importance not only to the existence of the SFA but also to turning around the fortunes of the PBGC itself.

Gail Sevin, Manager of the PBGC's Legislative Affairs Division, in her Feb. 9, 2024 letter responding to inquiries by House Education and the Workforce Committee Chair Rep. Virginia Foxx (R-NC) and Subcommittee on Health, Employment, Labor, and Pensions Chair Rep. Bob Good (R-VA), noted that,

"Prior to enactment of ARP, PBGC's Multiemployer Insurance Program had a negative net position of $63.7 billion and was projected to run out of money in FY 2026, when the cumulative effect of multiemployer plan insolvencies would have ultimately exhausted the PBGC's trust fund."

Then-PBGC Director Gordon Hartogensis, in March 20, 2024 testimony before Good's subcommittee, touched on the importance of the ARP to the agency and its mission. Before the enactment of ARP, he said, the PBGC faced a solvency crisis and there was a risk of "widespread insolvencies that threatened retirement security." He also noted that the assistance the ARP and SFA program provide and the solvency they foster in turn makes it easier for businesses to obtain the loans they may need in order to function.

SFA BASICS

The amount of SFA to which an eligible plan may be entitled is the amount required to pay all benefits due through the plan year ending in 2051. The program requires plans to demonstrate eligibility for SFA and to calculate the amount of assistance under both the ARP and the PBGC's regulations. A plan must segregate SFA and earnings from other plan assets.

Plans do not have to repay SFA to the PBGC, but they are subject to certain terms, conditions and reporting requirements, including an annual statement documenting compliance with the terms and conditions.

LET'S GOOOO!

The SFA Program hit the ground running.

As soon as August 2021—just one month after it issued the interim rule—the PBGC began receiving and reviewing SFA applications. On Dec. 21, 2021 it issued the first SFA application approval, and the first payment was issued a month later.

By July 6, 2022—just a year after the PBGC issued the interim rule—it had approved over $6.7 billion in SFA funds to financially troubled plans that covered over 127,000 workers and retirees.

According to the Office of the Inspector General (OIG,) by May 2023 the PBGC had approved SFA applications from 46 plans to the tune of approximately $47.4 billion in SFA, including interest and financial assistance loan repayments. And by March 18, 2024, the PBGC had approved approximately $53.6 billion in SFA to plans that covered more than three-quarters of a million workers, retirees, and beneficiaries.

HASTE MAKES WASTE

"Haste makes waste," my father used to say, and the OIG has indicated as much regarding the start of the SFA program. In 2022, the OIG issued a report in which it suggested that the PBGC may have been a bit hasty in crafting the SFA program and implementing its rules and warned that without a fraud risk assessment for the SFA program, the PBGC was at risk for fraud.

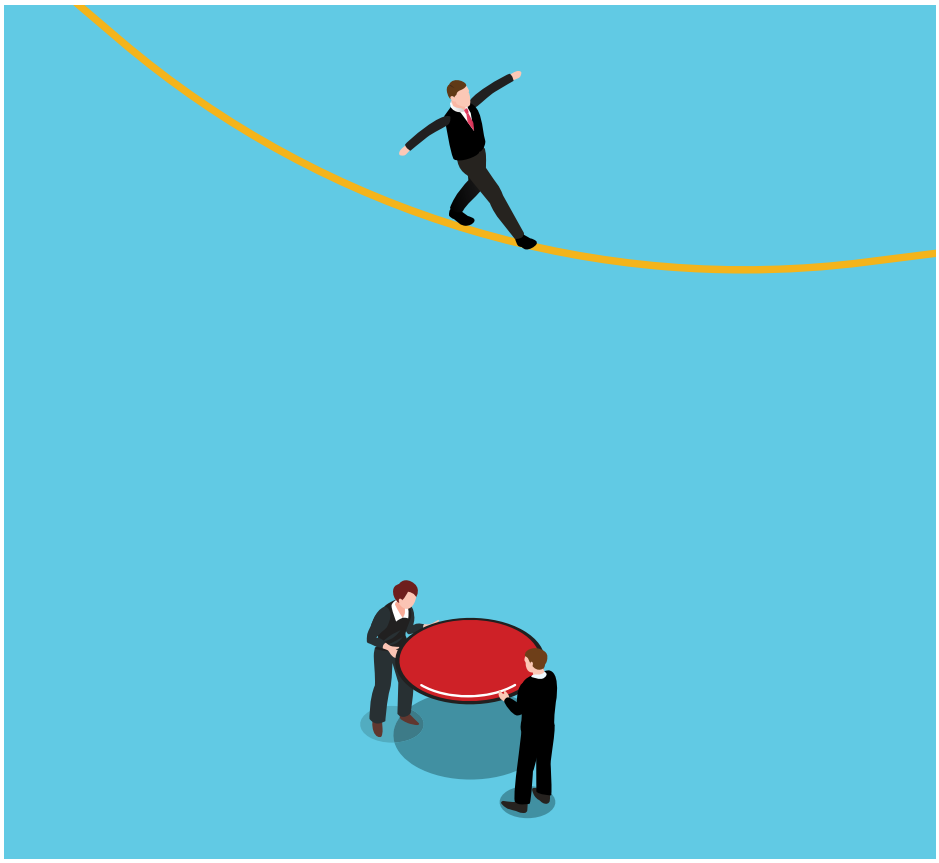
Hartogensis hinted at the March 20 hearing that the OIG was on to something. He remarked that the PBGC had to get the SFA program "up and running very quickly," and indicated that was the backdrop for a highly publicized incident involving a sizable SFA payment.

In an audit of initial SFA applications the OIG released on June 30, 2023, it looked at the PBGC's procedures in reviewing SFA applications and focused on three in particular.

The OIG verified that all three plans submitted required documentation, and that the PBGC had performed the requisite eligibility checks, completeness checks, and legal reviews of plan amendments, and had documented those steps. Nonetheless, the OIG found areas in which the PBGC could improve. It said that:

- The PBGC's documentation did not show in-depth analysis or management awareness of three potential SFA application issues; namely, it found three instances in which the PBGC did not document its analysis and resolution of a potential SFA application issue in its concurrence package.
- The PBGC lacked written guidelines requiring documentation of discussions regarding SFA decisions.
- PBGC management may not have adequate insight into potential issues, and a lack of documentation increases the risk of inconsistent decisions.
- The PBGC's review process for make-up payments was not detailed enough to determine the accuracy of the total reported by the plan.
- There was inconsistent information regarding one plan's contribution income history and projections.
- The PBGC did not examine the effect of CDA interest on the plan's projections.
- The PBGC did not have written procedures for checking total contributions.
- The PBGC did not establish a threshold for a "material amount" in the SFA applications.
- Additional reviews are needed regarding (1) make-up payments for previous benefit cuts and (2) contribution history and projections.

The results of insufficient information, said the OIG, included the PBGC approving an application that may have calculated projected contributions—and, consequently, the total SFA amount—inaccurately.



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I SEE DEAD PEOPLE

One of the problems with SFA administration is that some of the funds have gone to people who were not only retired—they also were deceased. Hartogensis told the subcommittee that the amount sent to them was a very small percentage of the funds distributed—just 0.35% of the SFA funds disbursed.

Nonetheless, that entails more than $100 million. Some of the discussion at the March 20 hearing centered around the report that $127 million in SFA funds that went to the Central States Pension Fund went to dead participants.

A case study. The Central States pension plan, at the time of its SFA application, covered 357,056 participants and was projected to run out of money in 2025. On Dec. 5, 2022, the PBGC approved the plan's SFA application; with that, the plan was to receive approximately $35.8 billion—the largest SFA payment to that time.

The federal government claimed that the plan received certain SFA funds by mistake because its actuarial calculations included deceased participants. In May 2023, the OIG had audited the plan's actuarial calculations, which included comparing Central States' participant roster to the Social Security Administration's Full Death Master File (DMF). It determined that 3,479 participants that Central States' actuarial calculations assumed to be living actually were not.

PBGC Acts. Six months after the OIG audit, the PBGC updated its SFA application instructions, which included requiring the submission of census data in all participant categories so the PBGC could perform an independent death audit to identify deceased pension plan participants using the full DMF. The PBGC began the independent death audits using the full DMF to help plans more accurately calculate SFA amounts.

The Department of Labor's Employee Benefits Security Administration in a March 17, 2024 statement about return of excess SFA payments expressed support for this change, noting that,

"for plans that applied under PBGC's former procedures, plan census data was generally verified using private vendors, but not compared to the Death Master File, which meant that some of the plans received an excess payment amount under the SFA Program."

At the hearing, Hartogensis told the subcommittee that the PBGC is addressing the OIG's concerns, and is actively working to remove deceased people from the rolls of those to whom relief is provided. He also said that the PBGC "is committed to recovering the $127 million."

On Aug. 25, 2023, Central States' actuaries certified to the OIG that the SFA it received would have been $126,555,536 lower if those participants had not been included.

The PBGC and the Department of Justice announced on April 8 that they reached a settlement about the SFA payment and that Central States is returning the excess funds. Central States' plan would pay the federal government the $126,555,536 plus interest on that amount at 2.25% per year beginning on March 26, 2024, by electronic funds transfer no later than five days after April 8, 2024, the effective date of the agreement.

More to Come? It is possible that CFA's may not be the only plan that included dead people in the count of participants they cite in SFA applications. At the March 20 hearing, Hartogensis told the subcommittee that the PBGC has "reached out to all plans given aid before the death match scrub" and told Rep. Tim Walberg (R-MI) that his agency has "reached out to all plans given aid before the death match scrub."

Hartogensis has said that his agency is "working with other plans to recover any SFA funds paid out because of inaccurate census data." The PBGC says that it is conducting full census data audits of SFA payments other plans received before the agency had expanded the scope of its independent death audit.

EBSA in its March 17 statement expressed support for that effort, saying, "While these excess payment amounts may represent only a small fraction of total SFA payments, they would not otherwise have been paid and, as such, must be refunded to the United States government. The plans do not have a valid claim to the funds, which never should have been paid and would not otherwise have been."

THE BIG PICTURE

Problems aside, Hartogensis has hailed the SFA Program as a net positive.

"The Special Financial Assistance Program provides a lifeline to protect the retirement security of millions of American workers, retirees, and their families," said Hartogensis in the July 2022 announcement of a final rule implementing changes to the program. And at the March 20 hearing, Hartogensis remarked that the ARP and the SFA program are "not just a social safety net"—they also have headed off a heavier toll. "A lot of collateral damage would have happened" if it were not for them, he said. **PC**

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CONVERTING A SIMPLE IRA TO A SAFE HARBOR 401(K)

Thanks to SECURE 2.0, your client can now enhance their retirement plan offering from a SIMPLE IRA to a Safe Harbor 401(k) in the middle of the calendar year. **By Theresa Conti and Chad Johansen**

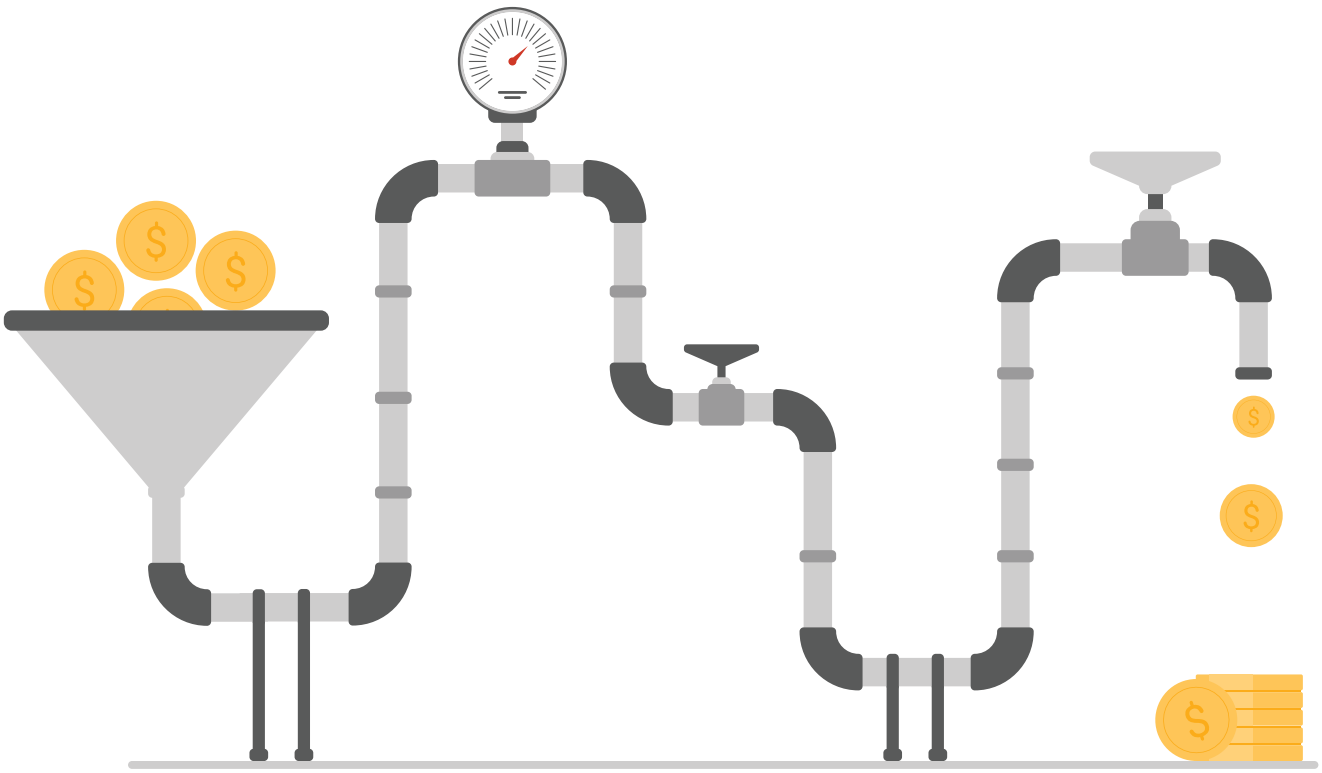
Businesses seeking to increase retirement savings, achieve greater tax benefits, add Roth options (SECURE 2.0 has enabled Roth in SIMPLE IRAs, although most providers have yet to implement this), or enhance their employee benefits program no longer need to wait until the next calendar year. To better understand the changes, let's recap how the rules were prior to Jan. 1, 2024:

- A SIMPLE IRA is a Savings Incentive Match Plan for Employee Individual Retirement Account and is generally available to any small business with 100 or fewer employees.
- A SIMPLE IRA is required to be operated on a calendar year basis and needed to be the sole retirement plan that was in effect for the year.
- Employees who earned at least $5,000 in compensation during any two years before the current calendar year, or expect to earn at least $5,000 during the current calendar year, are eligible to participate.
- A contribution is required by the employer. Either a 3% of compensation matching contribution to those who are saving or a 2% nonelective contribution for all eligible employees.
- Employer contributions are always 100% vested.
- The employee can choose to contribute to the IRA (up to $16,000 plus catch-up of $3,500 if age 50 or over).
- A Summary Description and Annual Deferral Notice are required each year. The annual notice is required to be provided to all employees.
- When terminating a SIMPLE IRA, employees needed to be notified by Nov. 2, and the plan must run through the end of the calendar year.

SECURE 2.0 now provides an exemption to the termination timing of a SIMPLE IRA. If you are enhancing the SIMPLE to a Safe Harbor 401(k), then you can do so during the calendar year. This is a relief to sponsors who may have missed the notification requirement for terminating their SIMPLE at the end of the prior year.

There are clearly outlined steps that must be followed in order to leverage this new flexibility:

- The establishment of the new Safe Harbor 401(k) plan is an exception to the rule that prohibited a SIMPLE IRA and another plan from operating in the same year as long as they are not active simultaneously.
- The new 401(k) must have a Safe Harbor design.
- A SIMPLE IRA Termination Notice must be provided at least 30 days prior to the termination date and specify the date of the final salary reduction period.
- The new 401(k) plan's Safe Harbor Notice must be provided at the same time and include detailed information about the weighted contribution limit for the initial plan year.
- The employer must still make any contributions through the termination date of the SIMPLE IRA.
- The Safe Harbor 401(k) plan must launch immediately following the termination date of the SIMPLE IRA.
- Since the Safe Harbor 401(k) will launch mid-year, the initial plan year will be a short plan year. You cannot draft the effective date of the Safe Harbor 401(k) back to Jan. 1 of the calendar year.
- Personal deferral limits will be based on the number of calendar days the SIMPLE was in place versus the number of calendar days the 401(k) was in place. Here is an example of a 60-year-old employee who deferred $3,000 into their SIMPLE IRA, which is terminating on June 30 and starting the Safe Harbor 401(k) on July 1:
  - o Description: Calculation: Amount
  - o Weighted average of SIMPLE IRA limit: ($16,000 + $3,500 catchup) x (181/365): $9,670
  - o Weighted average of 401(k) limit: ($23,000 + $7,500 catchup) x (184/365): $15,375
  - o Deferral to SIMPLE IRA: N/A: $3,000
  - o Deferral limit to new 401(k): ($9,670 + $15,375) - $3,000: $22,045
- Most short plan years lead to other prorated limits like



compensation and 415 annual additions. However, some 401(k) documents may provide flexibility to draft limits on a calendar year versus a plan year basis.

- Rollovers from the SIMPLE IRA are no longer required to be held for the first two years of participation so long as they are rolled into the new 401(k) or 403(b) plan.
- Your new Safe Harbor 401(k) plan must be in place and operating by Oct. 1, otherwise, the employer should keep the SIMPLE IRA for that year and plan to start the new 401(k) on Jan. 1 of the following year.

As you educate SIMPLE IRA sponsors on the mid-year conversion option, it is important to blend the other SECURE 2.0 changes that will affect them. An example is the upcoming requirements around automatic enrollment and automatic escalation. Plans established on or after Dec. 29, 2022, need to implement an automatic enrollment provision beginning Jan. 1, 2025. Since converting a SIMPLE to a 401(k) mid-year requires the use of a Safe Harbor design, it is often beneficial to establish a Qualified Automatic Contribution Arrangement (QACA) Safe Harbor. This can aid in compliance with the new auto-enrollment and escalation requirements while allowing for a two-year vesting schedule on the employer contributions.

If your client is interested in maximizing up to their allowable 415 annual additions limit, then it may be smart to use a QACA Safe Harbor with a non-elective 3% versus the match. This can lead to greater dollar efficiency when maximizing the profit-sharing component of their plan.

As is true with any employer-sponsored retirement plan, operational efficiency is crucial to a successfully run plan. When you add in the complexities of weighted first-year deferral limits, it is important to build out a sound process in data gathering. The plan's compliance administrator will need to collect the SIMPLE IRA deferrals in order to run the weighted average calculations and provide the customized Safe Harbor Notices. They will also need the SIMPLE IRA deferrals in order to run the annual compliance testing for the initial blended year. Perhaps there has been no better time than now to talk with your retirement plan partners about their process in gathering this data, customizing the Safe Harbor Notices, and bringing operational prudence and ease to your clients. **PC**

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TAX CREDITS FOR PLANS—HOW TO FILE

Accountants and tax preparers may be less aware than retirement plan consultants of their clients' eligibility and the applicable credit amounts. **By Travis Jack**

Legislative updates within SECURE and SECURE 2.0 have expanded incentives to encourage small businesses to initiate new retirement plans. Small businesses now have access to a range of new and expanded credits, including the Startup Tax Credit, Employer Contribution Tax Credit, Auto-Enrollment Tax Credit, and Military Spouse Tax Credit.

SECURE 2.0 Retirement Plan Tax Credit Enhancements & Credit Types

STARTUP TAX CREDIT

Section 102 of the SECURE Act 2.0 introduced a significant enhancement to the Small Employer Tax Credit, specifically designed to offset start-up costs associated with retirement plans. This credit has been increased from 50% to 100% for qualified start-up costs, calculated based on the eligible employers' qualified start-up expenditures.

Qualified start-up expenditures eligible for the credit include:

- Establishment or administration of a new retirement plan
- Employee education program

Formula: Employers with up to 50 employees are eligible for a tax credit of 100% of qualified start-up costs. For employers with 51-100 employees, the tax credit is equal to 50% of qualified start-up costs, with the same maximum credit allowed.

Limits: The credit is limited to the lesser of $5,000, or the greater of $250 per non-highly compensated employee or $500, for each of the first three years. Employers with 51 to 100 employees are subject to the same limits but the base calculation is 50% of qualified start-up expenses as calculated on Line 2 of Form 8881.

Max Credit: $5,000 per year

Term: 3 Years

Filing: To receive this credit, eligible employers must file Part I of IRS Form 8881 (calculated in lines 1-5).

- For our example on Form 8881, we are using 30 qualifying employees for the plan (employees that made at least $5,000 of compensation in the tax year preceding the first credit year) – Line A. One employee is a highly compensated employee, and one is an owner of the business. The 28 eligible employees are included in line 3 per the definitions detailed within the Form 8881 instructions: IRS Form 8881 Instructions.

EMPLOYER CONTRIBUTION TAX CREDIT

The Employer Contribution Tax Credit is a new credit under SECURE 2.0. This credit operates independently from the Start-Up Credit, allowing businesses to potentially qualify for both credits simultaneously. The credit is available for five years for employers with 100 or fewer employees, providing a maximum benefit of $1,000 per employee. The credit is a fixed percentage based on the employer's contribution, capped at $1,000 per eligible employee for those compensated less than $100,000.

Formula: Lesser of actual employer contribution or $1,000 for each employee making $100,000 or less in FICA wages and drops to $0 for each employee making over $100,000 in FICA wages.

Limits: The credit is 100% in the first two years and reduced to 75% in year three, 50% in year four, and 25% in the fifth year. Additionally, the credit is reduced for employers with over 50 employees by 2% times the number of employees over 50. The percentage limitation for employers over 50 decreases ratably as the credit decreases in years three to five.

Max Credit: Up to $1,000 in eligible employer contributions times the number of eligible employees per year.

Term: 5 Years (subject to limits above)

Filing: To receive this credit, all eligible employers must file Part I of IRS Form 8881 (calculated in lines 6a to 6g).

- For our example on Form 8881, we are using 30 eligible employees, one highly compensated employee, and one owner. The full amount of employer contributions of $1,000 was made to all employees.

AUTO-ENROLLMENT TAX CREDIT

SECURE 2.0 introduced the Auto-Enrollment Tax Credit. This credit was designed to incentivize employers to adopt auto-enrollment features in their retirement plans. Similar to the Start-Up and Employee Contribution Tax Credit, employers must have no more than 100 eligible employees who earned a minimum of $5,000 in compensation from their employer in the preceding year.

Qualified employers can receive a $500 tax credit annually for three years, starting when auto-enrollment provisions are added to an existing or new plan.

Filing: To receive this credit, all eligible employers must file Part II of IRS Form 8881.

- For our example on Form 8881, the business included auto-enrollment, and the $500 tax credit was calculated on lines 9 to 11.

"WITH THE CREDITS BEING ASSOCIATED WITH BUSINESS TAX FILINGS, TIGHTER INTEGRATION BETWEEN FINANCIAL ADVISORS, RETIREMENT PLAN PROVIDERS, AND TAX ACCOUNTANTS WILL HELP ENSURE THAT SMALL AND MIDSIZED BUSINESSES DON'T MISS THE OPPORTUNITY TO CLAIM ELIGIBLE TAX CREDITS."

MILITARY SPOUSE PARTICIPATION CREDIT

Effective in 2023, SECURE 2.0 offers another new tax credit for small employers that provide special retirement plan benefits to military spouses.

Formula: The credit consists of two parts: a $200 base amount solely for participating in the plan (calculated on Line 12) and a credit for contributions made to eligible military spouses up to $300 per individual (calculated on Line 13).

Limitations: Military spouses cannot be an owner or a highly compensated employee (both are excluded from the calculation).

Filing: To receive this credit, all eligible employers must file Part III of IRS Form 8881 (calculated in lines 12-15).

- For our example on Form 8881, the business has a significant concentration of military spouses—25 of 28 employees—and over $300 in employer contributions were made to all eligible spouses in the plan year.

Form 8881 Picture

Form 8881 is utilized to calculate the applicable credits which then pass-through to the individual business owner. This is done ratably based upon the percentage of ownership if there are multiple owners. For Partnerships and Sub Chapter S Corporations (S-Corp) this is accomplished via the business owners Schedule K. Below is an example of a S-Corp with one owner.

Statement 2 Picture

For all other entity types the credits are calculated in the same way on Form 8881 but pass-through to the individual business owner via Form 3800.

Part 1 Picture

See Form 8881 Instructions: https://www.irs.gov/pub/irs-pdf/i8881.pdf

PUTTING ALL THE PARTS TOGETHER – MAXIMIZING RETIREMENT CREDITS, COLLABORATING, AND PLANNING OPPORTUNITIES

With the credits being associated with business tax filings, tighter integration between financial advisors, retirement plan providers, and tax accountants will help ensure that small and midsized businesses don't miss the opportunity to claim eligible tax credits. In addition to communicating credit eligibility, closer coordination between these professionals allows for expanded business synergies such as:

- Targeted outreach to businesses that meet the criteria to receive the credit—tax professionals have this information readily available.
- Cobranded materials for providers in different industries that are servicing the same client base.
- An online calculator for credit eligibility that captures opt-in lead generation opportunities with opt-in correspondence scheduled either via automation or manually.
- Minimally, if you give your clients an estimate of the credit calculation, they can ask the appropriate questions to ensure the credits are properly calculated and applied.

CREDIT STACKING AND ADVANCED PLANNING OPPORTUNITIES

With an anticipated increase in new plans and government incentives that cover both plan design and participant education, retirement plan service providers may want to include information on the Retirement Savings Contributions Credit (Saver's Credit) for individual employees to assist in garnering greater plan participation at no additional cost to the employer. Although the credit has a lower income phase-out threshold, employees may receive up to $2,000 based on a percentage of their elective deferrals: Saver's Credit.

The enhanced startup tax credit may cover a significant portion of the administrative costs for more complex plan designs. The introduction of an advanced plan design can significantly help reduce partner or shareholder AGI and allow for a synergistic combination of credits, minimizing income-based phase-outs of deductions like Qualified Business Income (QBI) and other existing credits under the Tax Cuts and Jobs Act, many of which are set to phase out with 2025 being the final year for the QBI deduction unless extended by Congress.

CONCLUSION

The new credit enhancements from SECURE 2.0 present a great opportunity to help more clients and deepen your professional network. Collaborating with your clients' tax professionals can help ensure they receive the credits they are entitled to and may also open the door for increased referral opportunities from tax professionals in the future. PC

ROTH-TYPE EMPLOYER CONTRIBUTIONS–STEAK OR SIZZLE?

Are SECURE 2.0's Roth contributions the main course revolutionizing retirement plans, or just an appetizer? **By R.L. "Dick" Billings**

For those who have been around qualified retirement plans for some time, we have seen major changes and improvements in furthering retirement security for our fellow Americans.

Here are a few that come to mind:

- Employee Retirement Income Security Act of 1974: Before ERISA, pension participants had no federal protections over their retirement benefits.
- Revenue Act of 1978: Allowed employees to defer compensation under a new IRC §401(k).
- Pension Protection Act of 2006: Codified auto-enrollment rules and Qualified Default Investment Alternatives.

More recently, we have seen two major legislative changes—Setting Every Community Up for Retirement Enhancement of 2019 (SECURE 1.0) and SECURE 2.0 Act of 2022.

Most would agree that these Acts included some very positive changes, such as:

- Increasing the Required Minimum Distribution (RMD) age to reflect our longevity.
- Eliminating RMDs for 401(k) Roth-type accounts.
- Eliminating participant loans via a credit card.
- Creation of Pooled Employer Plans (PEPs) and Pooled Plan Providers (PPPs).

In this article, I will concentrate on one provision of SECURE 2.0: the "Roth Employer Contribution" option. Effective Dec. 30, 2022, plan sponsors can now deposit employer contributions on an after-tax "Roth-type" basis.

The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 created the ability to have Roth-type monies in a 401(k). Congress had two interests in extending Roth-type options to 401(k), 403(b), and governmental 457(b) plans:

1. Roth-IRAs were becoming more popular.
2. Roth-type contributions to, and conversions within, a qualified retirement plan create federal income tax revenue.

Roth-type contributions to IRAs, 401(k), 403(b), and governmental 457(b) plans have become very popular among those selling and managing investments. It's another tool in their toolbox, and in theory, there are very good reasons to make Roth-type deposits instead of pre-tax. The "old" theory was to make pre-tax deposits and save taxes during working years, then retire in a lower tax bracket. This was a solid theory because, before 1981, the top federal income tax rate was 70%! It was then lowered to 50% and ultimately to the current maximum rate of 37% in 1988.

Unfortunately, more and more retirees who have dutifully saved over many years into a not-yet-taxed account find themselves retired and in a higher income tax bracket because of the amounts coming out of their retirement account. Most people believe future income tax rates will rise instead of fall. The newer logic is to consider Roth-type elective deferrals and contributions as early in life as possible.

We now have this new provision from SECURE 2.0—the ability for plan sponsors to deposit employer contributions as after-tax Roth contributions. As a TPA myself, my initial response was, "That's kinda cool." Since then, my excitement regarding this new option has dampened quite a bit!

In a 2018 study, more than a third of IRA investors had Roth IRAs. But 76% were set up for contributions only, not for rollovers or conversions . In my own experience, I see many employee participants unwilling to make ANY deferrals into their employer's Plan, much less on an after-tax basis. Since Congress likes Roth-type accounts from a revenue standpoint, this new option will only accelerate the government's income stream.

Here are some facts about these new "Employer Roth-type" contributions:

1. Employers are not required to add this option.
2. Even if a Plan does not allow Roth-type Elective Deferrals, it can accommodate In-Plan Roth-type conversions or rollovers.
3. All Roth-type contributions must be 100% vested.
4. Roth-type features have been extended to 457(b) governmental, SIMPLE , and SEP Plans .
5. Roth-type matching may also be made on student loan repayments.
6. Employees must be given at least one opportunity per year to elect whether they want pre-tax or Roth-type employer contributions.
7. Plan amendments to codify any Roth-type elections by the Employer will not be due until at least Dec. 31, 2026. In the meantime, the Plan complies with the rules "in operation."

Whether you are a TPA, investment advisor, or another plan-related consultant, I am sure you have had at least one client or prospect contact you already wanting to implement

this new program "ASAP." Unfortunately, like many other laws Congress passes, it takes a while for the IRS to issue clarifying rules. No exception here! The first guidance we received from the IRS was Notice 2024-02 . So, while we may not automatically counsel a plan-sponsor-client to stay away from this option, it will be critical for plan sponsors to understand just what they are getting into.

I see the "Annual Election" requirement as the most problematic for plan sponsors:

a. Unless all employees have regular use of a company computer, some "paper-based" elections will be necessary.
b. What verification method will be utilized to prove the annual option was given to employees? What plan sponsor employee will oversee this annual process? And remember, employees who are not fully vested will be ineligible to make this choice.
c. How much follow-up will be needed for employees who do not respond? Employers can set up elections with a "default," but some level of follow-up would seem prudent. Guidance is clear that Roth-type contributions cannot be allocated until the election process has been completed.
d. Roth-type employer contributions are not subject to FICA, FUTA, nor federal income tax withholding. However, each state in which an employee resides will need to be researched to see if state income tax withholding applies. (Fun fact: In governmental 457(b) plans, Roth-type employer contributions ARE subject to FICA and Medicare taxes but exempt from FUTA.)
e. How, or can, the plan sponsor's internal or outsourced payroll system accommodate these additional taxable wages and differentiate them from regular wages?
f. What responsibility lies with the plan sponsor to encourage employees electing Roth-type employer contributions to adjust their W-4 income tax withholding elections to compensate for the extra taxable wages? Otherwise, employees may end up with a large tax bill the following April 15!
g. If matching and nonelective contributions are made in the same year, must employees be given the right to "mix-and-match"?

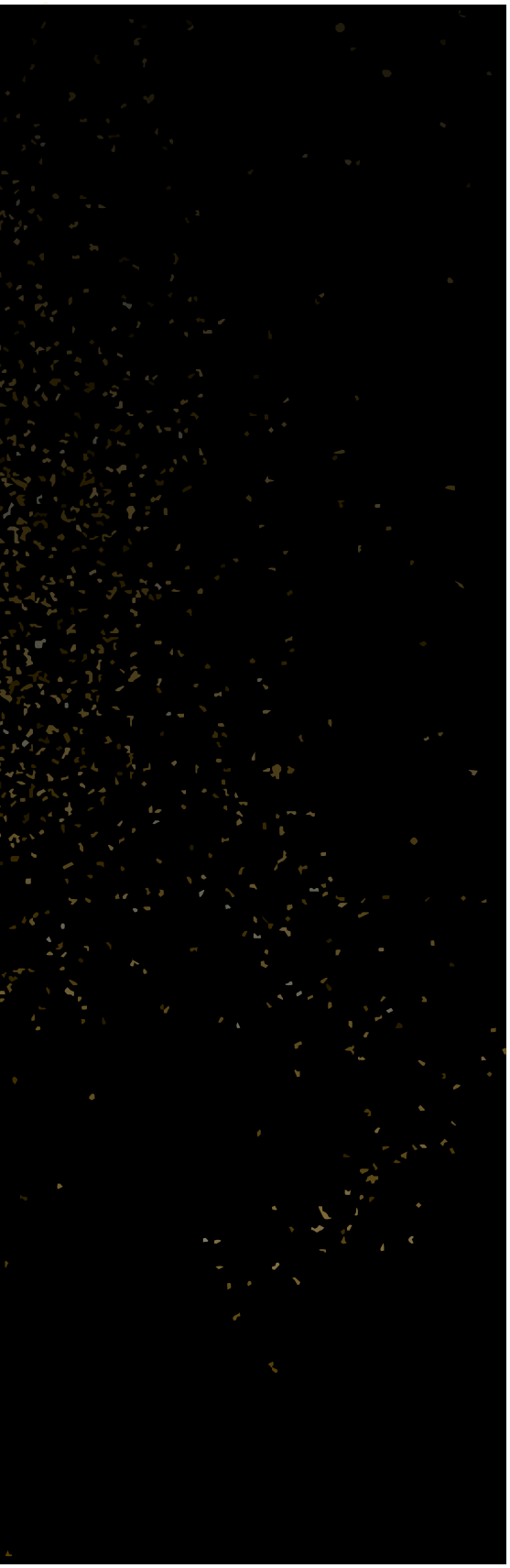
Like almost all things in life, there are good and bad aspects of this change. Most plan sponsors I deal with are in the micro-market. Most of these sponsors want the least amount of involvement in their plan's administration. For some, Roth-type employer contributions will be wonderful! For others, not so much.

A possible nice perk, but will the additional cost and complexity be worth it? So, what do you think—steak or just sizzle? PC

ERISA AT 50

Celebrating the Landmark Retirement Legislation

BY NEVIN E. ADAMS, JD



Those of us who work in the "retirement space" certainly spend a lot of time and energy in that intermediate space between clarity, transformation, and uncertainty.

In fairness, I'm not exactly a kid, but I've never lived in a time without ERISA. I've never had a benefits program—retirement or healthcare—that wasn't operating under its auspices. Those of us in the retirement industry often forget that ERISA also has sway over workplace health plans. Discussing what ERISA has done and changed requires looking back before my personal experience. Despite the disparaging acronym "Every Ridiculous Idea Since Adam," what ERISA has accomplished, and what has emerged in its aftermath, seems remarkable to me.

ERISA didn't create the concept or reality of pensions and retirement plans. The former dates back to the time of the ancient Roman armies. In America, the first private pension plan was by the American Express Company in 1875, an effort to create a stable, career-oriented workforce. By 1899, there were just 13 private pension plans in the country.

Employee pensions had very few legal protections before ERISA. There were no rules around funding or protections for benefits if the plan sponsor went bankrupt or was sold. Many plans had long vesting schedules, requiring up to 20 or 30 years of service. Some plans required employee service periods to be "uninterrupted," and companies reportedly terminated employees just months before vesting to avoid paying their pension benefits.

I've long enjoyed telling newcomers to the retirement space that ERISA was the second big executive act of newly enshrined President Gerald R. Ford. But the process leading to it was much longer and more complicated than that reference suggests. For its time, ERISA seemed like a major government takeover, with nearly every major constituency—labor, employers, and their supporters—opposing it. So much for the influence of big advocacy voices.

ERISA represented a major shift in attitude, inserting the federal government into an oversight role over what had previously been left to employers, workers, and unions. Perhaps most importantly, it established ERISA's federal law preemption over what could have been a mishmash of state regulations and requirements.

ERISA didn't require any employer to establish a retirement plan. It only requires that those who do establish plans meet certain minimum standards and generally does not specify how much money a participant must be paid as a benefit. However, the law did several things that we take for granted today. It established federal standards for vesting, participation, and eligibility. It established rules regarding reporting and disclosure about plan features, funding, and investments to participants, and through mechanisms such as Form 5500, to the government. It set limits on benefits and gives participants the right to sue for benefits and breaches of fiduciary duty.

ERISA wasn't about making it easy—it was about ensuring that the promises made to workers were upheld. The poster child for this effort was the bankruptcy of a major U.S. automaker, Studebaker. In that regard, the security of those promises was paramount. It was about quality, not quantity, and ensuring that promises made were promises kept.

Some say ERISA was responsible for the decline of traditional defined benefit pension plans. The vesting standards, reporting scrutiny, funding standards, and the pension insurance premiums from ERISA's formation of the Pension Benefit Guaranty Corporation (PBGC) all played a part. While ERISA's transparency and funding requirements have been economic factors, it seems more likely that wide swings in interest rates, accounting rigor imposed by FAS 87, benefit limits, and the elevation of those liabilities on the corporate balance sheet were the real culprits.

ERISA set forth rules on vesting, establishing minimum and maximum

time limits on when participants would be entitled to a non-forfeitable right to benefits. ERISA prohibits discrimination based on factors like age, sex, or tenure when determining benefits.

ERISA also established fiduciary duties for those managing retirement plans, requiring fiduciaries to act in the best interest of plan participants and beneficiaries. It laid the groundwork for a definition of fiduciary, which found form in the so-called five-part test a year later.

A "STARTING" POINT?

ERISA has not remained static. Sometimes for good, and sometimes not so good. Let's take a quick trip down memory lane.

In 1982, the Tax Equity and Fiscal Responsibility Act (TEFRA), the biggest tax increase in U.S. history (adjusted for inflation), brought about recordkeeping changes like the automatic 20% withholding on benefit payments. It introduced new dollar limits, tightened rules on participant loans, and increased penalties for failure to report. It also invented top-heavy plans and testing.

The Retirement Equity Act of 1984 reduced the maximum age for participation in a retirement plan. It lengthened the period a participant could be absent from work without losing credit towards the plan's vesting rules and created spousal rights to retirement benefits through qualified domestic relations orders (QDROs) in the event of divorce and through pre-retirement survivor annuities.

The Tax Reform Act of 1986 significantly shortened minimum vesting requirements, limited compensation considerations for benefits or contributions, capped annual additions to DC plans, defined highly compensated employees (HCEs), introduced new nondiscrimination test rules, tightened the ADP test, and added the ACP test. It also capped employee pre-tax deferrals to $7,000 from $30,000.

The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) in 2001 lifted and provided for COLA adjustments to the 401(k) contribution limits, added a provision for catch-up contributions, increased maximum contribution and benefit limits, simplified top-heavy testing rules, and added Roth contributions as an option. The Pension Protection Act of 2006 made sweeping changes to ERISA, including expanding fiduciary investment advice to participants in 401(k)-type plans and IRAs, removing impediments to automatic enrollment through qualified default investment alternatives, and increasing transparency of pension plan funding through new notice requirements.

Suit 'Able'?

ERISA's participant account evolution has opened new doors for litigation.

While ERISA litigation may seem like a relatively new "invention," the statute's breadth and the complexity of applying concepts like "best interests" and prudence have long provided fertile ground for the plaintiffs' bar. One federal court famously described ERISA as having "the highest duty known to law"—an admonition invoked multiple times in courts over the years.

The original prudent man rule dates back to common law, specifically the 1830 Massachusetts case of Harvard College v. Amory. From that case came the notion that trustees were directed "to observe how men of prudence, discretion, and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested." In the absence of specific directions in the trust agreement, the trustee was to invest as he would invest his own property, considering the beneficiaries' needs, the need to preserve the estate (or corpus of the trust), and the amount and regularity of income.

ERISA's prudent man rule goes further, requiring that a fiduciary must perform its duties "with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent man acting in like capacity and familiar with such matters would use..." The "like capacity and familiar" adjectives generally refer to an expert.

STOCK DROP "CROP"

Over its history, those high standards have been applied in various contexts, fueled in no small part by the surge in interest in defined contribution programs, notably the 401(k), and the myriad of "slights" (real and sometimes imagined) that can accrue to individual account balances over time. So-called "stock drop" cases were, for a time, as common as company stock holdings in those accounts—inevitably triggered by a sudden, unexpected decline in the price of that stock holding. While those suits were predictable, few (if any) got past the summary judgment stage under the then-prevailing "presumption of prudence" standard courts applied to such holdings in an Employee Stock Ownership Plan (ESOP).

Then in 2014, the United States Supreme Court—apparently troubled by that litigation trend—articulated a new standard, the "more harm than good" standard that emerged with Fifth Third Bancorp v. Dudenhoeffer. Sure enough, more cases (including some that had fallen short under the former "presumption of prudence" standard) got past the motion to dismiss stage. That said, the so-called

In 2019, the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) expanded coverage to long-term part-time workers, improved lifetime income safe harbor and reporting, and extended the date for adopting plans. Just three years later, the SECURE 2.0 Act of 2022 provided new and enhanced credits for small businesses sponsoring plans and required new plan adoptions to include automatic enrollment provisions.

This is not a comprehensive list of all the legislative and regulatory changes since 1974, but it highlights key moments.

HAS IT WORKED?

Has ERISA worked? In signing the legislation, President Ford noted that from 1960 to 1970, private pension coverage increased from 21.2 million to 30 million workers, while plan assets grew from $52 billion to $138 billion. As of the latest (2021) numbers, the system has grown to exceed $13 trillion, with another $11.5 trillion in IRAs. Nearly 100 million active workers are covered by more than 765,000 plans. The Labor Department recently reported that plans disbursed $322.5 billion more than they received in contributions during 2021.

The composition of the plans and the workforce they cover has changed significantly over time. While some criticize the current system's perceived shortcomings, the reality is that ERISA and its progeny have allowed more Americans to be better financially prepared for a longer retirement.

Fifty years on, ERISA—and the nation's retirement challenges—may still be a work in progress. But it's hard to imagine American retirement without it and the individuals who gave it birth. It is a rich legacy, albeit one with many twists and turns. **PC**

Sources:

i. STEVEN A. SASS, THE PROMISE OF PRIVATE PENSIONS, THE FIRST HUNDRED YEARS, at 9 (1997).

ii. I'd wager that a majority of Americans have never heard of a Studebaker, and the notion that a major U.S. automaker once operated out of South Bend, Indiana, would likely surprise most. The Studebaker brothers, five of them, went from being blacksmiths in the 1850s to making parts for wagons, to making wheelbarrows (in great demand during the 1849 Gold Rush), to building wagons used by the Union Army during the Civil War, before turning to making cars (first electric, then gasoline) after the turn of the century. They had a good, long run making automobiles generally well-regarded for their quality and reliability. However, their finances were not as robust, and a combination of factors, including pension funding, resulted in the cessation of production at the South Bend plant on Dec. 20, 1963.

iii. Roughly 70% of Studebaker's workers were left without their promised retirement benefits after the South Bend plant closed in 1963. Of some 10,500 current and former employees in the pension plan, about 4,000 with more than 20 years of history at the company received only about 15 cents for each dollar they expected. Roughly 3,000 shorter-tenured employees received nothing.

Dudenhoeffer outcome—while a new "standard"—hasn't had much impact on the ultimate result in these cases, setting aside whether that has created "more harm than good."

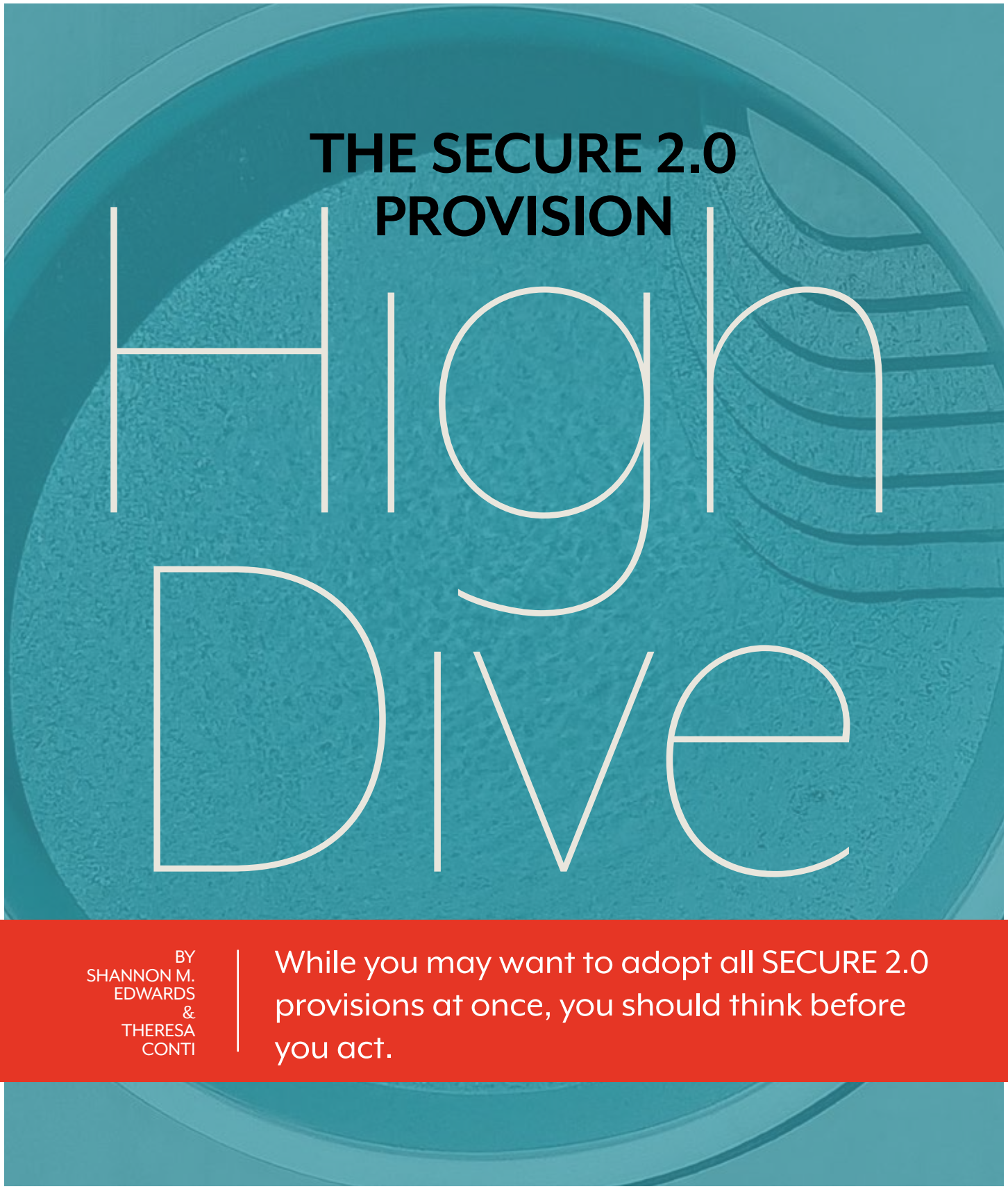
TRANSFORMATIVE TREND

Perhaps the most significant litigation development arrived on the fifth anniversary of 9/11 when the St. Louis-based law firm of (then) Schlichter Bogard & Denton—primarily positioned as a personal injury firm—launched a series of what would eventually be about a dozen different suits, alleging fiduciary breaches regarding revenue-sharing practices, the non-disclosure of fees to participants, and a host of what had been routine practices (active management versus passive, proprietary funds, retail fund usage, etc.). It wasn't the first litigation to challenge revenue-sharing practices, but it would turn out to be the most sweeping and ultimately transformative.

In the years that followed, they'd take not one, but two ERISA cases to the United States Supreme Court, expand their reach to university 403(b) plans (in a move reminiscent of their foray into the 401(k) space, they did so with multiple suits at once), target multiple employer plans (MEPs) for not delivering on their cost efficiency claims, file challenges to the uses of participant data and pension risk transfer transactions deemed to violate safest possible annuity standards, and more recently gear up for litigation involving health plan fee disclosures that, under the Consolidated Appropriations Act of 2021, mirror the 401(k) fee disclosure requirements from a decade earlier.

It's been said that 401(k)s are a class action litigator's "dream," with hundreds, thousands, even tens of thousands of similarly situated potential plaintiffs—all the more readily found these days via social media. Sure enough, over the past decade—and even during the dark days of the COVID epidemic—the pace of litigation and the firms looking to make a name, a difference, and some money have expanded at a dramatic rate. There have been suits alleging excessive fees and suits alleging that fiduciaries chased low fees, suits challenging the use of ESG screens, and suits questioning the lack of the same. Indeed, for every potential fiduciary transgressor action, there seems to be the potential for an equal and opposite fiduciary non-action.

Whether or not this wave of litigation has been good for participants is a matter of some debate—most still end in settlement, rather than resolution. So it's arguably dependent on the particulars of the individual plan and plan fiduciaries. What's undeniable is that the prospect of litigation serves as a valuable reminder of the high standards to which plan fiduciaries—and those who support them—are held.



THE SECURE 2.0 PROVISION High Dive

BY SHANNON M. EDWARDS & THERESA CONTI

While you may want to adopt all SECURE 2.0 provisions at once, you should think before you act.

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JUST BECAUSE YOU CAN JUMP OFF A CLIFF DOESN'T MEAN YOU SHOULD—IT MAY NOT BE BENEFICIAL TO YOUR HEALTH. SIMILARLY, JUST BECAUSE YOU CAN ADOPT PROVISIONS FROM SECURE 2.0 DOESN'T MEAN YOU SHOULD.

We were asked to demonstrate the practicality of some of the provisions in SECURE 2.0 and what we have learned since it passed. We examined what has transpired since these provisions became effective and the limited guidance we have received. We researched areas of concern related to some of the provisions in SECURE 2.0 and tried to figure out how we would implement them, and that is where the trouble starts. We could not cover every provision in one article. We decided to cover the provisions that sound good in theory, ones we would consider implementing but on which we still have questions. Many of these are provisions we still need guidance on or don't know how to implement. They also include those we don't know how or when our recordkeeping partners will be able to implement. As they say, knowledge is power, and without the knowledge we are waiting for, we have no idea how to steer our clients. Should they jump off the cliff and adopt the provisions or not?

Before SECURE 2.0, and for plan years beginning before Jan. 1, 2024, elective deferrals could not be distributed from a 401(k) plan without a distributable event. Generally, distributable events were limited to reaching normal retirement age, death, disability, severance from employment, or hardship. Effective for plan years beginning after Dec. 31, 2023, SECURE 2.0 created the ability for individual account plans to offer Pension Linked Emergency Savings Accounts (PLESAs) for all participants who meet the plan's eligibility requirements, such as age and service requirements, and who are also non-highly compensated employees. If an individual enrolled in a PLESA later becomes a highly compensated employee, their contributions to the PLESA must stop. However, they retain the right to withdraw the funds in the PLESA.

These accounts are short-term emergency savings accounts for which separate accounting and recordkeeping must be prepared. They are separate designated Roth accounts. They may contain only elective deferrals and cannot accept transfers from any other accounts. The plan that offers PLESAs cannot require a minimum contribution amount or a minimum balance to utilize the PLESA. Employers can offer to enroll an eligible participant in a PLESA or automatically enroll eligible employees into these accounts, subject to an automatic enrollment feature at no more than 3% of their pay. If the PLESA is subject to an automatic contribution arrangement, the administrator must provide a notice to the participant no more than 90 days and no less than 30 days before the first contribution to the PLESA. The maximum amount that can be contributed to the PLESA account is capped at $2,500, adjusted for inflation, or lower if the plan sponsor chooses to reduce the limit as part of their plan design. Once the cap is reached, additional contributions can be directed to the employee's designated Roth account or stopped until the balance attributable to contributions falls below the cap. If the limit is exceeded, the participant can increase contributions to another designated Roth account under the plan.

Contributions are made on a Roth basis and are treated as elective deferrals for employer matching contributions. The contributions must be held as cash, in an interest-bearing deposit account, or in an investment product designed to maintain the value of the account equal to the amount invested and preserve principal while providing a reasonable rate of return. The plan must allow for distributions from the PLESA at least once per calendar month. The first four withdrawals from the account each plan year may not be subject to fees or charges. However, distributions after the first four in a plan year can be subject to reasonable fees or charges. All distributions from a PLESA are treated as qualified Roth distributions, regardless of how long they have been in the plan. They are tax-free and are not subject to the 10% early withdrawal penalty. When the employee separates from service, they may take their emergency savings accounts as cash or roll them into a designated Roth account or Roth IRA.

If the employer makes matching contributions to the plan, they must match contributions made by the employee to the PLESA at the same rate as those employee contributions made to the individual account plan. Matching contributions made to the plan are treated as first matching the non-PLESA contributions. If a plan sponsor is concerned about a participant abusing the employer matching contribution by taking distributions of their PLESA contributions after they are matched, thereby maximizing their matching contributions but leaving little to

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no balance in their PLESA, the plan sponsor can employ procedures to prevent potential abuse. However, they cannot forfeit matching contributions made on the PLESA contributions before the withdrawal, suspend the participant's ability to contribute to the PLESA because of the withdrawal, or suspend the participant's matching contributions on contributions made to the 401(k) plan.

PLESAs are an optional benefit created by SECURE 2.0. The offering of these accounts is not a protected benefit. Therefore, if a plan sponsor adds this benefit to their plan, they can later remove it at any time. PLESAs were created because of the lack of emergency savings by Americans in general and the acknowledgment that emergency savings are important. They were also created in the hope that allowing participants to access some of their contributions when emergencies arise would encourage more people to participate in their employer-sponsored 401(k) plans.

However, at this time, we are not aware of any recordkeepers offering plans the ability to add PLESAs as a sidecar to their accounts on the recordkeeping platforms. During informal polling at several industry

conferences over the past year, interest from plan sponsors in adding these types of savings vehicles is extremely low due to the complexity of their operation and the potential for abuse. To our knowledge, creating the ability to offer these accounts on recordkeeping platforms is not a high priority for anyone.

Effective for distributions made after Dec. 31, 2023, there is another new form of in-service distribution available to plan participants. This type of distribution is called the Emergency Personal Expense Distribution. If a plan sponsor offers these types of distributions, the participant can self-certify that they have an emergency to take the distribution. It does not have to meet the traditional hardship requirements. These distributions are not eligible for rollover, and the amount of the distribution may be repaid. Not more than one distribution per calendar year may be treated as an emergency personal expense distribution. The maximum amount that can be treated as a personal expense distribution is the lesser of $1,000 or an amount equal to the excess of the participant's total non-forfeitable accrued benefit under the plan determined as of the date of each distribution over $1,000. This means the participant must have more than $1,000 in the plan to be eligible to take an emergency personal expense distribution. Generally, all plans of the employer are considered when determining the limit. If the participant takes a distribution that is treated as an emergency personal expense distribution in a calendar year, no other distribution can be treated as this type of distribution for the next three calendar years unless the previous distribution is fully repaid or the aggregate of elective deferrals and employee contributions made to the plan after the previous distribution is at least equal to the previous distribution that was not repaid.

Based on conversations at conferences over the past year, plan sponsors are far more likely to offer these types of distributions because they seem less complex, and recordkeepers are working to add these as an option to their platforms. Many recordkeepers will be able to process these types of distributions at some point this year. These types of distributions were introduced for the same reasons as PLESAs but will probably be utilized far more. One of the concerns regarding these types of distributions is that the limit is too low and will not be adjusted for inflation.

SECURE 2.0 also created Terminally Ill Individual Distributions (TIID). The law made these distributions exempt from the premature distribution penalty. However, the law did not make these distributions their own separate distributable event. Therefore, while a participant may meet all the requirements to qualify for a TIID, if they are not otherwise eligible for a distribution from the plan, such as qualifying for a hardship distribution, they will not be able to take a TIID from the plan. While a proposed technical correction would fix this, for now, we must follow the rules, and the participant will have to be eligible for a distribution from the plan under some other rule. A TIID is a distribution made to a terminally ill participant on or after the day the participant's doctor certifies that they have a terminal illness. The participant's doctor must certify that "the participant has an illness or

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"IT APPEARS THAT IF EVEN ONE STANDALONE PLAN IS NOT GRANDFATHERED, THEN THE NEW MEP OR PEP IS NOT EITHER! THIS HAS THE POTENTIAL TO CREATE A LOT OF UNNECESSARY COMPLEXITY AND CHAOS."

physical condition that can reasonably be expected to result in death in 84 months or less after the date of the certification." There is no limit to the amount of a TIID. Since this is an optional benefit that a plan is not required to offer, if the plan does not offer TIIDs, the employee can treat an otherwise permissible in-service distribution as a TIID. The employee can claim TIID treatment on Form 5329 and must retain the certification in their tax files. Unfortunately, until the law is corrected to make this situation its own distributable event, and based on the fact that the participant can achieve the same result outside of the plan or through another distribution vehicle, it is unlikely that many plans will utilize this option. These concerns are compounded by the fact that many employees may not want to inform their employer that they have been diagnosed with a terminal illness.

For a detailed discussion of the Long-Term Part-Time Employee (LTPTE) rules, please see Shannon's article co-written with Emily Halbach, which is also included in this issue of the magazine. That article primarily addresses the complexities that result in 401(k) plans. For this article, we chose to focus on 403(b) plans. 403(b) plans are subject to the new Long-Term Part-Time rules if they are subject to ERISA. This means that governmental plans, non-electing church plans, and deferral-only with limited employer involvement 403(b) plans are not subject to the new LTPTE rules. In general, 403(b) plans sponsored by a charity that have both employee deferrals and employer contributions are subject to the LTPTE rules. These rules become effective for plan years beginning after Dec. 31, 2024. The rules, as they apply to 403(b) plans, disregard employee service in years beginning before Jan. 1, 2023. Unfortunately, as the deadline for enacting these rules approaches, we still need more guidance. The outstanding question regarding the LTPTE rules as they apply to 403(b) s is whether ERISA-covered 403(b) plans can continue to utilize the exemption of employees who are normally scheduled to work less than 20 hours per week and students. The guidance urgently needed is whether these exclusions would violate the LTPTE rules or not. It appears that these exclusions are no longer allowed under the new LTPTE rules as they apply to 403(b) plans, which could be a major inconvenience for many charities that utilize these exemptions.

SECURE 2.0 mandated that all plans established after Dec. 29, 2022, include an automatic enrollment feature. This rule is effective Jan. 1, 2025. "Established" is defined as when the plan document was adopted, not necessarily when it was effective. The rule would also apply to an existing plan, such as a profit-sharing-only plan, that added a cash or deferred arrangement after that date. This rule has limited exceptions. Some of those exceptions include businesses that normally employ fewer than 11 people, businesses that have been in existence for less than three years, and SIMPLE 401(k) plans. This may seem straightforward. However, there may be some challenges for Multiple Employer Plans (MEP) and Pooled Employer Plans (PEP). Overall, MEPs and PEPs are subject to the same auto-enrollment provisions as a standalone plan, but if a new MEP or PEP is created and all the standalone plans are grandfathered, then the MEP or PEP is as well. It appears that if even one standalone plan is not grandfathered, then the new MEP or PEP is not either! This has the potential to create a lot of unnecessary complexity and chaos.

Another area of concern relates to student loan matching. Overall, this is a great feature where employers can match an employee who is making student loan repayments and may not be able to save for retirement due to that debt. An employer being able to still provide a matching contribution to those employees allows them to at least begin retirement saving. That is a great feature, but how does the employee prove their student loan payments? What if the proof is provided just once per year, but the employer matches every pay period? What if the plan is subject to ADP/ACP testing and failed? Now an additional match is made after year-end based on the student loan payments, and that match may have changed the nondiscrimination testing results and reduced corrective distributions? The other issue with the student loan matching is the self-certification process. What requirement does the plan sponsor have relating to the student loan payments being applied to a "qualifying education loan"? This provision was added to SECURE 2.0 as an acknowledgment of the very high levels of student loan debt in America, as well as the importance of making it possible for employees to begin saving for retirement at an earlier age even

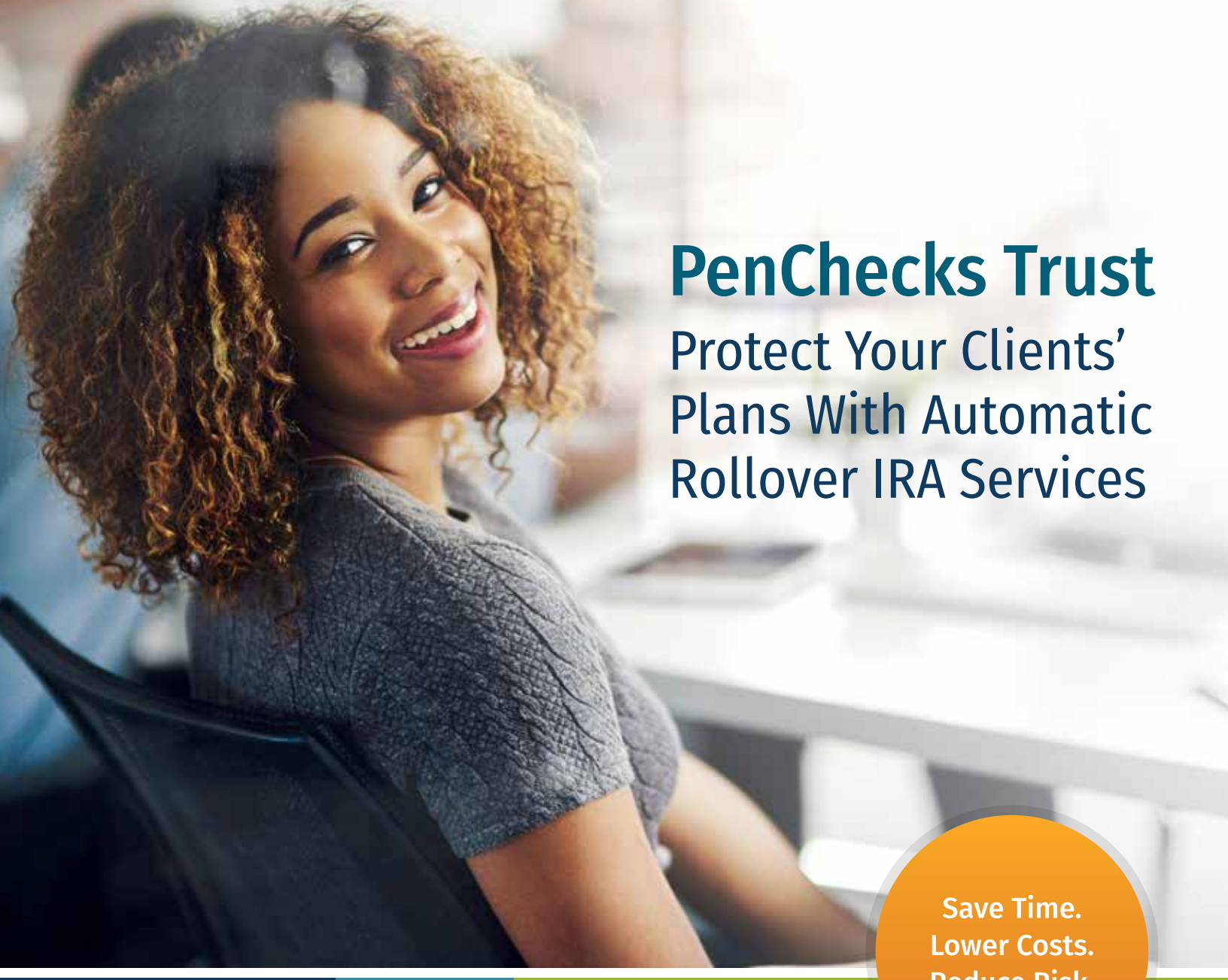
“THE LACK OF GUIDANCE ON HOW TO PROPERLY ADMINISTER THE PROVISION, THE POTENTIAL COMPLEXITY OF THE RULES, AND MORE IMPORTANTLY THE EMPLOYER CONCERN REGARDING ABUSES OF THE PROVISION HAVE LED TO A LACK OF IMMEDIATE INTEREST IN ADDING THE PROVISION TO PLANS.”

though they must repay their student loans. However, the lack of guidance on how to properly administer the provision, the potential complexity of the rules, and more importantly the employer concern regarding abuses of the provision have led to a lack of immediate interest in adding the provision to plans.

Another provision in SECURE 2.0 relates to de minimis incentives to participants if they join the plan. This means plan sponsors would be able to provide an incentive if someone agreed to participate in the plan. A question that arose once the law was passed was what amount is considered de minimis. The IRS issued guidance that answered this question, and their answer was a surprising $250. This de minimis reward can be made in many forms, but it cannot be paid from plan assets. For example, if a plan sponsor wants to encourage participation in the plan, they can offer the employee $100 when they enroll in the plan, and another $100 when, and if, they continue to make deferrals until a set date. Unfortunately, the IRS has said that de minimis rewards cannot be paid to employees who are already participating in an effort to get them to raise their deferral rates. While we are grateful to the IRS for issuing some guidance and defining de minimis, another question remains. Does this de minimis reward have to come from the plan sponsor? Could it be offered by a recordkeeper or a financial advisor to encourage increased contributions to the plan and higher savings rates? We are sure that we have mentioned this in previous articles. While offering incentives for employees to save seems like a fantastic idea and would, in all likelihood, work in some cases, neither of us has ever been asked by a plan sponsor if they could do something like this in all the years we have been practicing. Therefore, we believe that utilization of this provision will be low.

One final area we want to cover in this article relates to catch-up contributions that are required to be designated as Roth contributions. In 2026 (after a welcomed two-year delay), anyone who is catch-up eligible and is earning more than $145,000 per year will be required to make their catch-up contributions as Roth deferrals (as opposed to being able to choose between pre-tax and Roth). On its face, this provision may seem straightforward. However, the potential for issues is abundant. It helps that the determination of who is required to abide by this rule is based on prior year’s compensation. However, catch-up contributions are not solely created by an employee electing to make a catch-up contribution or deferring more than the base 402(g) limit for the year. A catch-up contribution can also be created by a failed ADP test and the recharacterization of an employee deferral as a catch-up contribution to correct the failed test. If the highly compensated employee solely contributed pre-tax deferrals, and now this recharacterization of their deferrals as catch-up contributions needs to occur, there will also be the need for a recharacterization of those deferrals from pre-tax to Roth. Additionally, other questions remain. What if there is an error and the catch-up was put into the pre-tax deferral account? What if a participant doesn’t understand the new rules, and they have always made catch-up contributions on a pre-tax basis? If errors are made, do plan sponsors have to correct payroll and W-2s, or could errors be corrected through the use of in-plan Roth conversions? Luckily, the effective date of these required provisions was surprisingly extended until 2026. However, that will be here sooner than we think, and if the IRS waits to give us guidance for as long as they waited to give us guidance on the LTPTE rules, we will all be scrambling again.

As we said in the beginning, there are many other things that could and will need to be discussed relating to the practicality of many of the SECURE 2.0 provisions. There will be more to come as we get further guidance. Hopefully, the guidance we get, as well as the enhancements that our record-keeping partners are making to their platforms, will make some of these new provisions less complex and easier to adopt. PC



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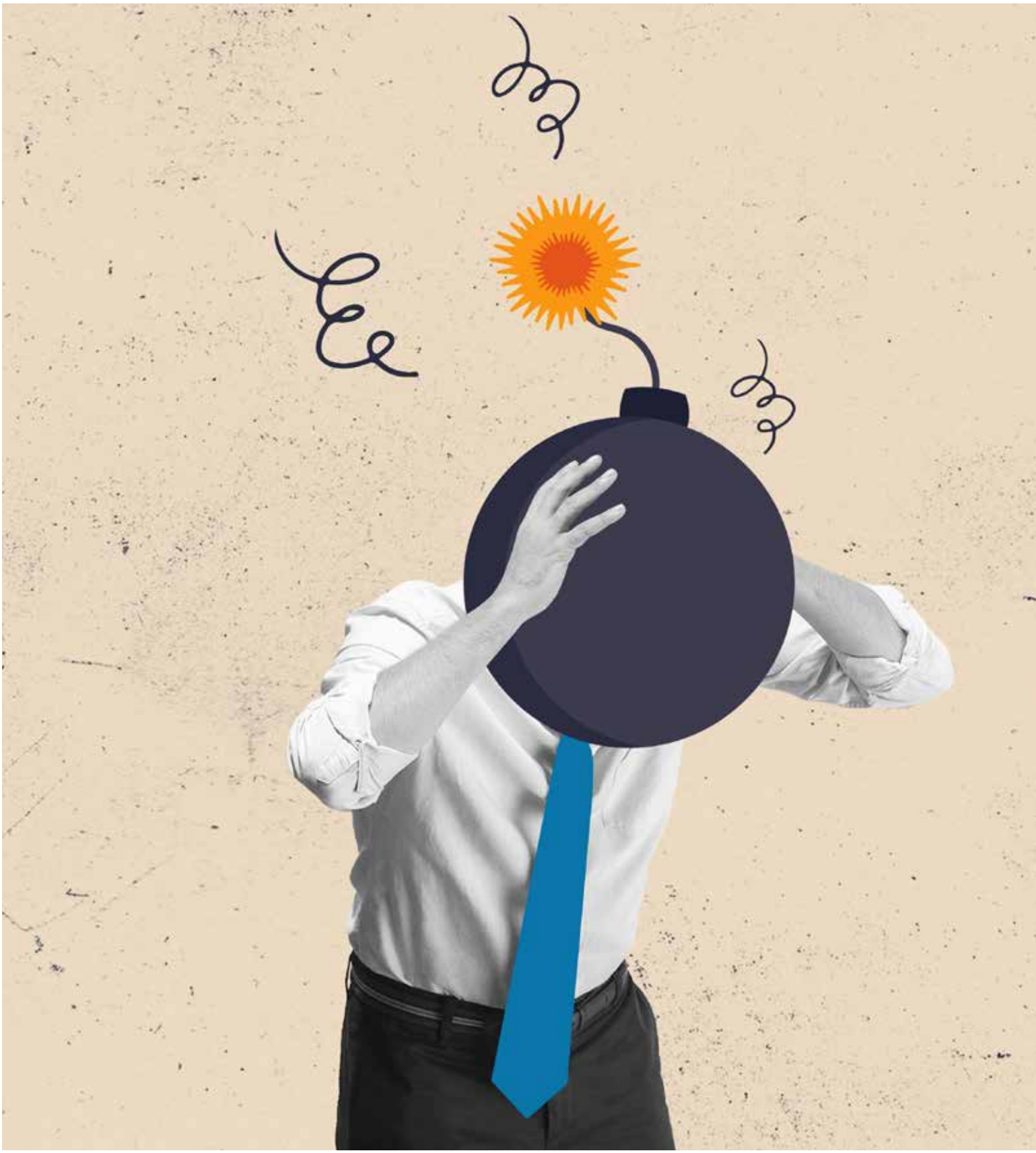

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TRIPS and TRAPS:

How to Avoid 401(k) Plan Headaches When It Is Time to Sell the Company

BY GARY BLACHMAN

Employees often expect their DC plans to continue indefinitely. Depending on the circumstances, an employer may decide to terminate its existing retirement plan at any time.

IN MERGERS AND ACQUISITIONS,

IT'S COMMON FOR AN EMPLOYER TO TERMINATE ITS RETIREMENT PLAN IF THE ACQUIRING COMPANY DOES NOT WANT TO ASSUME THE PLAN AFTER CLOSING THE SALE. SIMILARLY, IF A COMPANY IS GOING OUT OF BUSINESS AFTER THE TRANSACTION, THE EMPLOYER MAY DECIDE TO TERMINATE ITS PLAN.

When a company that sponsors a 401(k) plan decides to sell its business, it is critical to evaluate the available options, considering the best interests of the participants and beneficiaries and avoiding potential compliance issues.

WILL THE TRANSACTION INVOLVE AN ASSET SALE OR STOCK SALE?

One of the most common questions in mergers and acquisitions is how to handle the 401(k) plan in different types of corporate acquisitions. The answer depends on whether the company intends to sell all of its assets or sell the company stock. Specific rules must be followed to avoid compliance pitfalls.

ASSET SALE

If the company intends to sell all of its assets, it will terminate its employees on or before the closing date of the sale. Additionally, the company will be responsible for terminating its 401(k) plan. Terminating the 401(k) plan before closing is often preferred, especially if the seller's employees will begin participating in the buyer's 401(k) plan post-closing, for several reasons:

- Terminating the 401(k) plan before closing generally gives the seller's employees the flexibility to choose between a lump-sum cash distribution of their accounts under the terminated 401(k) plan or roll over their accounts to the buyer's 401(k) plan, an individual retirement account, or another eligible retirement plan.
- The buyer generally does not assume ongoing operational risk concerning the terminated 401(k) plan.
- By terminating the 401(k) plan instead of merging it into the buyer's 401(k) plan, the buyer's 401(k) plan avoids being tainted by any existing compliance issues with the seller's 401(k) plan.
- There is no need to preserve protected benefits from the seller's 401(k) plan.
- Terminating the 401(k) plan before closing avoids potential post-closing testing issues and the increased administrative complexity and expenses associated with maintaining more than one plan post-closing.

However, there may also be reasons why a buyer may not want the seller to terminate its 401(k) plan before closing. It can often be administratively challenging for the buyer to move the seller's employees onto the buyer's payroll and buyer's 401(k) plan immediately following closing. As a result, if the seller's 401(k) plan was terminated before closing, the seller's employees might experience a gap in 401(k) plan coverage for a period following closing.

STOCK SALE

If the company intends to sell all of its stock, the buyer will typically assume the 401(k) plan after the closing unless the buyer requires that the selling company terminate the 401(k) plan before the transaction's closing date.

To avoid post-closing administrative challenges, some buyers will decide to maintain the seller's 401(k) plan for a period following closing and later merge the seller's plan into the buyer's plan. Some reasons buyers may choose a plan merger include:

- Merging the seller's 401(k) plan with the buyer's 401(k) plan after closing minimizes disruption to employees.
- Distributions from the seller's 401(k) plan and rollovers of account balances and outstanding participant loans are not necessary since the stock purchase and the plan merger are not distributable events (and prevent "leakage" of plan assets).
- Full vesting of employer contributions under the seller's 401(k) plan is not triggered by the plan merger.
- The administrative costs and complexities involved with continuing to maintain the seller's 401(k) plan will be eliminated.

However, several reasons exist why buyers do not choose a plan merger. The buyer's 401(k) plan must preserve any protected benefits associated with the assets merged into the buyer's 401(k) plan from the seller's 401(k) plan, requiring a thorough protected benefits analysis of the seller's 401(k) plan before the merger. This increases administrative complexity and costs for the buyer's 401(k) plan (and increases the potential for compliance failures under the buyer's 401(k) plan).

Compliance issues under the seller's 401(k) plan will taint the buyer's 401(k) plan and will continue to present and accumulate risk following closing until corrected (and corrections may incur additional expense).

There are additional administrative costs and expenses for the buyer to complete the merger of the plans and transfer seller's plan assets to the buyer's 401(k) plan.

WATCH OUT FOR UNEXPECTED PARTIAL PLAN TERMINATIONS

If a company is selling a portion of its assets and terminating some but not all of its employees, those employees who terminate during the transaction may need to be fully vested in their 401(k) plan accounts. According to the Internal Revenue

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Service, a "partial plan termination" occurs when more than 20% of the total plan participants are terminated in a particular year or otherwise no longer eligible to participate. However, many factors can impact whether a partial plan termination has occurred, and all the facts and circumstances must be considered. If the 401(k) plan does not have a vesting schedule for employer contributions, incurring a partial plan termination will not affect the plan.

When a 401(k) plan is completely terminated, any participant (active or terminated) that maintains an unvested account balance before the sale must have their account fully vested in all employer contributions at the time of plan termination.

Partial plan terminations are typically due to a reduction in force resulting from an intentional decision by the plan sponsor that results in a change in ownership or going out of business. However, it is important to be aware of these rules because a partial plan termination can also happen unintentionally due to corporate mergers and acquisitions or other events.

Watch Out for Additional Investment Fund Fees Triggered Upon 401(k) Plan Termination

Many 401(k) plans offer at least one capital preservation option in their investment lineups, such as a guaranteed investment contract (GIC), a stable value fund, or a money market option. If the 401(k) plan includes these types of investments, the company should confirm whether the 401(k) plan's withdrawal from these investments due to a sale transaction will negatively impact the timing of distribution to participants. Market volatility in the bond market can trigger a market value adjustment provision in these investment funds that will reduce the amount available for distribution upon a plan termination.

In one recent example, former employees of Bed Bath & Beyond (BB&B) lost approximately 10% of their guaranteed investment contract (GIC) investments when their 401(k) plan liquidated after the company's bankruptcy.

BB&B's plan offered participants a GIC that invested in intermediate

to long-term bonds. As interest rates rose in 2022 and 2023, the market value of the underlying bonds in the BB&B GIC fell below the book value. After the market losses, the GIC's guaranteed rate of return was adjusted downward to make up for the losses.

When BB&B declared bankruptcy, the GIC contract automatically terminated, so the investment was liquidated and paid to plan participants at the current market value. Because of the market decline, GIC investors were paid only about 90% of their accounts' book value as reported before the plan termination. Although exit fees from certain investment funds will typically not be a deciding factor in whether to sell the company, plan fiduciaries should be aware of the potential impact of exit fees on participant account balances at the time of a plan termination.

WATCH OUT FOR MISSING PARTICIPANTS

As part of the termination and wind down of the 401(k) plan, the plan's fiduciaries must take steps suggested by the Department of Labor to locate missing participants so their accounts can be distributed from the 401(k) plan and avoid potential fiduciary liability. These steps typically include checking related employment and retirement plan records for last known addresses. If that is unsuccessful, plan fiduciaries must try to identify and contact any individual that the missing participant has designated as a beneficiary (e.g., spouse, children) to find updated contact information for the missing participant.

The Department of Labor, in Field Assistance Bulletin No. 2014-01, lists the following search methods as the minimum steps the fiduciary of a terminated defined contribution plan must take to locate a participant:

- Send a notice using certified mail.
- Check the records of the employer or any related plans of the employer.
- Send an inquiry to the designated beneficiary of the missing participant.
- Use free electronic search tools.

If the fiduciary cannot locate the missing participant after the plan's termination, it may be necessary to transfer the account balance of both defined contribution and defined benefit plans to the PBGC under its Missing Participants Program.

Consistent with their obligations of prudence and loyalty, plan fiduciaries must make reasonable efforts to locate missing participants or beneficiaries so they can implement directions on plan distributions.

A plan fiduciary may charge missing participants' accounts reasonable expenses for efforts to find them. The amount charged to a participant's account must be reasonable, and the method of allocating the expense must be consistent with the terms of the plan and the plan fiduciary's duties under ERISA. As part of its ongoing audit program, the Department of Labor reviews the efforts taken by plan fiduciaries to locate missing participants. In cases of plan terminations, plan fiduciaries must be able to demonstrate compliance with ERISA's fiduciary standards to locate missing participants and distribute benefits on their behalf.

WATCH OUT FOR OUTSTANDING PARTICIPANT LOANS

When benefits are distributed from the terminated 401(k) plan, plan participants will have three options for any outstanding loans:

- If the participant takes no action to repay the loan, the amount of the outstanding loan will be taxable income when the account balance is distributed to the participant upon plan termination.
- The participant could repay the loan to the plan before the distribution is made. If the participant intends to roll over their benefit, this will avoid any taxes on the loan account.
- If the participant rolls over their benefit to an IRA, they have until the due date of their tax return for the year of the rollover to deposit the funds into an IRA in an amount equal to the outstanding loan. In this case, the participant will not be taxed on those funds.

If the participant is rolling over their benefit to another employer plan, there may be one more option. Some employers permit employees to roll over outstanding loans to their plan, where the participant may continue making payments under the loan documentation. This is not very common, although the ability to process loan rollovers may be negotiated during the sale transaction.

WATCH OUT FOR ADVANCED NOTICE REQUIREMENTS ON PLAN TERMINATION

When a company is involved in a sales transaction, it is not required to provide participants advance notice of the 401(k) plan termination. However, most companies provide notice to participants of the plan termination when the transaction closes.

For safe harbor 401(k) plans, Treasury Regulation 1.401(k)-3(e)(4)(i) requires, among other things, advance notice when terminating a safe-harbor plan mid-year. This is purely a safe-harbor rule that must be met to retain the safe harbor during the short plan year in which the plan terminates; it is not an across-the-board 401(k) rule.

Conversely, Treasury Regulation 1.401(k)-3(e)(4)(ii) allows a safe-harbor plan to be terminated mid-year in connection with a corporate transaction without adding the notice rule. It does not say that notice doesn't have to be provided; it just says the plan can be terminated mid-year (keeping the safe harbor) in connection with a corporate transaction.

WATCH OUT FOR TAX IMPLICATIONS WHEN BENEFITS ARE PAID TO PARTICIPANTS

Participants will have a choice of how to take their retirement benefits from the plan. Usually, there are two options: take the funds in cash (minus 20% withholding for federal income taxes), or roll over their benefit to another employer plan or individual retirement account (IRA).

MR Chalee / Shutterstock.com

If a participant takes the funds in cash, they will be taxed that year on those amounts. The 20% withholding may not be enough to cover all their taxes, so they should do some planning to ensure they are not caught at year-end in a financial burden. If a participant rolls funds into another 401(k) or IRA, they can avoid taxation of the benefit until they remove the money from the receiving plan.

WATCH OUT FOR REQUIRED LEGAL DOCUMENTS WHEN TERMINATING A 401(K) PLAN

The company's directors or managers must adopt written resolutions authorizing the plan's termination as of a certain date and approving the adoption of any amendments necessary to maintain the plan's qualified status. The resolutions may delegate certain individuals the fiduciary authority necessary to wind down the plan. They may mention that a final profit-sharing or discretionary matching contribution will be made concerning compensation paid before the plan's termination date. If the plan's termination date is mid-plan year, IRS compensation limits are pro-rated based on the length of the short plan year. The plan document may require that notice of termination be given to the plan administrator and trustee.

In a stock sale, the buyer may require that the seller establish the plan's termination date at least one day before the scheduled closing date and that the company adopts termination resolutions on or before the plan's termination date. By requiring the pre-closing plan termination date in a stock sale transaction, the parties avoid the successor plan rule that would otherwise require the company's plan to be merged into the buyer's 401(k) plan after closing.

BEST PRACTICES FOR WINDING DOWN THE 401(K) PLAN

First, the employer must amend the retirement plan to establish a termination date, stop employee contributions to the plan, and provide full vesting of benefits for all plan participants regardless of the original vesting schedule.

Second, the recordkeeper will need to perform final ADP and ACP testing for the short plan year.

Third, the company will want to determine how fees for these services will be paid. If fees are to be paid from plan assets, the company may want the plan to prepay the fees before allowing distributions to participants.

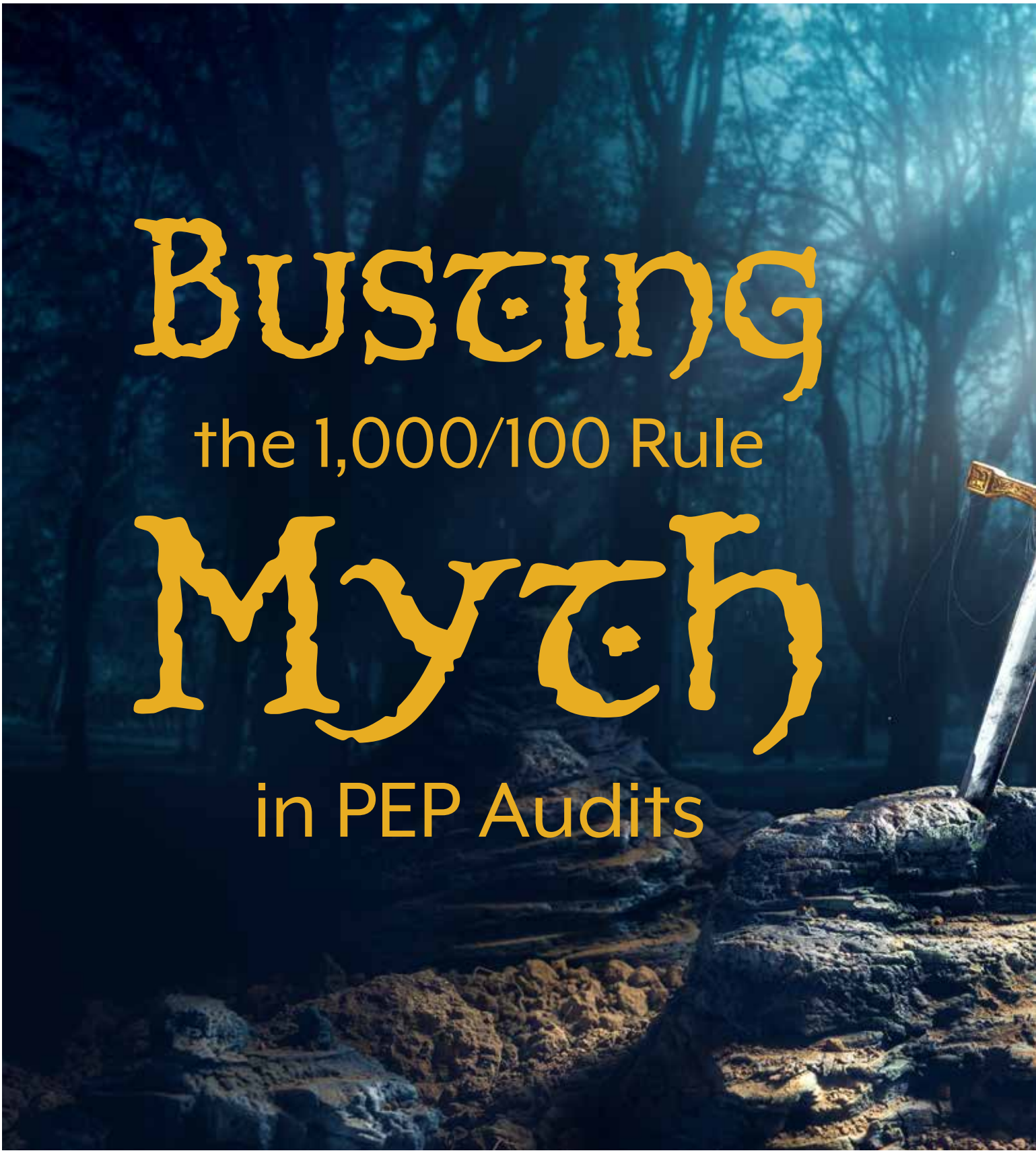
Fourth, IRS Form 5500 must be filed for any plan year in which assets remain in the trust.

Fifth, the employer must pay any outstanding required employer contributions to the plan.

Sixth, the employer needs to inform plan participants and beneficiaries about the plan's termination and provide instructions on how to distribute their benefits.

Lastly, the employer must arrange to distribute all plan assets as soon as possible after the plan termination date.

Each retirement plan and sale transaction is unique and carries its own set of compliance concerns depending on the specific circumstances. For these reasons, it is critical that plan fiduciaries act prudently to avoid the many potential trips and traps when terminating a 401(k) or other retirement plan during a corporate transaction. **PC**



Busting the 1,000/100 Rule Myth in PEP Audits

BY PETE SWISHER

The widespread belief that the "1,000/100 rule" applies to pooled employer plan (PEP) audits is based on a misconception.

PEPs have always needed an audit at 100+ participants,

just like single-employer plans. Is this good or bad? And what should we do about it? The answer depends, in part, on a hypothetical question: if we narrow the coverage gap and add 30 million new participants to retirement plans, which is better—to audit those plans or not? The answer is not as simple as you might think.

THE STORY OF THE 1,000/100 RULE

The SECURE Act of 2019 (SECURE 1.0) Section 101 said this about audits for multiple employer plans (MEPs), including PEPs:

> "SIMPLIFIED ANNUAL REPORTS.—Section 104(a) of [ERISA] is amended by striking paragraph (2)(A) and inserting the following:
>
> '(2)(A) With respect to annual reports required to be filed with the Secretary under this part, the Secretary may by regulation prescribe simplified annual reports for any pension plan that—
>
> (i) covers fewer than 100 participants; or
>
> (ii) (ii) is a plan described in section 210(a) [i.e., a MEP] that covers fewer than 1,000 participants, but only if no single employer in the plan has 100 or more participants covered by the plan.'"

As a result, many in the industry thought there was a "1,000/100 rule" to determine when a small MEP needs an audit because a plain reading of the text suggested this was Congress's intent. The problem is the word "may": "…the Secretary may by regulation prescribe simplified annual reports…" In fact, the Secretary of Labor has not yet chosen to do so.

This paragraph from the preamble to the 2021 proposed forms revisions went largely unnoticed (shockingly, not everyone reads these page-turners word-for-word): "…the SECURE Act…amended ERISA…to permit the Secretary of Labor to prescribe by regulation simplified reporting for MEPs subject to ERISA section 210(a) with fewer than 1,000 participants in total, as long as each participating employer has fewer than 100 participants. The DOL is not, however, currently proposing to amend the current reporting rules to establish a 'simplified report' for such plans. The DOL is interested in stakeholder comments on why MEPs subject to ERISA section 210(a) should be subject to different reporting requirements than single-employer plans that cover fewer than 1,000 participants, and on appropriate conditions and limitations for such a simplified report that would ensure transparency and financial accountability comparable to that for other large retirement plans." [emphasis added]

Many in the industry believed in good faith that the DOL would publish guidance implementing the 1,000/100 rule or that the rule was statutory (the permission to establish such a rule is statutory). But realization is growing that the threshold remains at 100 participants until the DOL publishes a new rule, which it has so far declined to do.

ACCOUNTANTS MAKE AUDIT RULES, NOT THE DOL

The DOL's answer to a commenter in the final Form 5500 revisions in December 2021 gives color to questions about MEP audits:

> "A commenter presenting itself as representing accounting industry interests asked for clarification regarding audit requirements for pooled employer plans. To some extent, however, the comment incorrectly assumed that a pooled employer plan operates as an aggregation of many plans, rather than as a single ERISA-covered plan. For example, the commenter asked 'If a pooled employer plan is comprised of hundreds of plans, will each plan be required to be audited annually?' The commenter also asked 'If the DOL permits rotation of audit procedures for plans participating in a pooled employer plan, how will that be determined?' The commenter also asked 'Will the DOL provide guidance for the auditor if there are one or more plans within the pooled employer plan that are not compliant with the plan document or with ERISA?' A pooled employer plan, like other MEPs, is a single plan covering the employees of multiple employers. It is not comprised of multiple separate plans, as would be true of the proposed new direct filing entity the 'DCG.' [i.e., a 'group of plans'] The Department notes that nothing in the SECURE Act changed the ERISA independent qualified public accountant (IQPA) audit requirements as they apply to pooled employer plans…As such, the audit must be performed in accordance with Generally Accepted Auditing Standards (GAAS), which are established by the accounting industry, not the Department…"

It is worth mentioning that if MEPs cut audit costs, they also cut auditor revenues. Given the DOL's historic efforts to improve audit quality , it seems likely that MEP audits will not go down in cost. But

"IT IS GENERALLY ACCURATE TO SAY THAT THE TYPICAL MEP AUDIT CUTS THE TIME AND COST SPENT ON AUDITS BY OVER 70% FOR A TYPICAL AUDIT-SIZED EMPLOYER. THIS CAN BE A POWERFUL SALES PITCH AND CONTINUES TO MOTIVATE LARGE EMPLOYERS TO JOIN PEPS AND OTHER MEPS TODAY."

historically, MEP audits have been very cost-effective.

PERSPECTIVES ON MEP/PEP AUDITS

Employers generally hate audits. The intense focus on fees—seemingly to the exclusion of all else—means audits are a cost item in a cost-competitive marketplace for an item that few people seem to want.

Historically, in large, long-standing MEPs, audit costs have been relatively small as a percentage of assets. For example, if a $1 billion MEP had a $70,000 audit (a number that is not far off—you can see it in the publicly filed Schedule Cs of Form 5500s), the cost to participants if billed pro rata is less than one basis point. For a participant with a $60,000 balance, that's roughly a $4 fee.

Employers in MEPs historically could expect to be "touched" by an auditor only periodically, rather than annually, though the extent of interaction varies greatly based on factors such as the size of the participating employer. To a large employer (100+ participants), the audit has always been an attractor for MEPs. It is generally accurate to say that the typical MEP audit cuts the time and cost spent on audits by over 70% for a typical audit-sized employer. This can be a powerful sales pitch and continues to motivate large employers to join PEPs and other MEPs today.

"SMALL EMPLOYERS OFTEN LACK THE RESOURCES TO MANAGE COMPLEX TASKS LIKE PAYROLL AND EMPLOYEE BENEFITS ALONGSIDE THEIR DAILY WORK."

THE 3-AUDIT-SIZED-PLANS RULE

A practical tip for new PEP formation is to begin with at least three employers who would be subject to audit if they sponsored single-employer plans. The logic is that for these three employers, the PEP will likely be a better deal than the single-employer plan from day one, and smaller employers can join with the "audit hurdle" already cleared. As long as there is a reasonable cost allocation method for audit costs, this approach can help prevent the problem that a startup PEP ends up with an overpriced audit that its participants can ill afford. For example, if a startup PEP has a $15,000 audit and three employers with 121 participants each, and the employers would otherwise need three separate $10,000 audits, the math works. And once a few large employers join, smaller employers can join and enjoy the benefits of scale—and audits.

THE PROBLEM: WHAT TO DO ABOUT THE LITTLE GUY?

PEPs were created to help close the coverage gap, not to help large employers "get rid of" their audits—as some salespeople have been guilty of saying since the earliest days of open MEPs and PEO MEPs in the 1990s and 2000s. The benefit of a 1,000/100 rule would be to help spur PEP formation by balancing costs and benefits for participants.

For example, if a PEP has 20 participating employers with 10 participants each in year one and has a $20,000 audit, the cost per employer is $1,000, and the cost per participant is $100. In our cost-competitive industry, that is a non-starter. For most participants, $100 is a big increase just for an audit. For most startup employers, if they have to foot the bill, it is a strong disincentive to joining, even after netting out the available tax credits.

On the other hand, if 20 employers with 300 participants each and $15 million in assets join a MEP, that MEP will have $300 million and 6,000 participants. A $60,000 audit will cost $10 per participant, and if history holds true, that cost per participant will likely shrink over time. That MEP might represent a simpler solution with superior governance for those large employers, but it does nothing to close the coverage gap. This is the dilemma for the DOL: choosing not to publish a 1,000/100 rule means the employers most likely to be helped by PEPs are big ones, which is probably not what Congress had in mind.

Small employers often lack the resources to manage complex tasks like payroll and employee benefits alongside their daily work. The quality of their payroll and census data is often low, and the industry is rushing to sell them low-cost, automated solutions with all human contact expunged from the product, resulting in many compliance errors. Audits can help. But the notion that small employers should pay for or be subjected to the same sort of audit as large employers is unreasonable. It simply will not work because the math does not work. Employers will choose a different route, and their participants will lose the benefit of being in an audited plan.

ARE "DCGS" THE ANSWER FOR SMALL EMPLOYERS?

The "group of plans" (defined contribution group or "DCG") made possible by Section 202 of SECURE 1.0 seems like the right answer to many in the industry because it does not require small employers to be included in an overall plan audit. The relative merits of MEPs vs. DCGs are beyond the scope of this article but will be covered in an ASPPA webinar on the subject in the coming months.

WHAT SHOULD THE DOL DO?

Audits are a bargain for very large plans, not so much for the unlucky 120-participant plan paying $10,000 or more, or nearly $100 per participant, which rivals the entire cost of recordkeeping and administration—a mismatch that has never made much sense to many in the industry. Employers of this size are moving into MEPs at an increasing pace because of the time and cost of the audit.

Subjecting micro-employers to audits costing $100 per participant is not the answer because they won't stand for it—they have a choice, and they won't buy solutions that include audits at that price point. But is the answer to push our 30 million new participants into stripped-down single-employer plans versus professionally governed, audited solutions? Is there a path that includes a cost-effective audit for small employers within PEPs, with a sampling routine

commensurate with their size? I believe there is. And participants will generally be better off in an audited solution.

A 1,000/100 rule (or some other DOL approach to simplification) would result in more workers being covered by audited plans in the long run because it allows time to reach scale so the audit is affordable. The notion goes back to the "Hatch Bill"—the SAFE Retirement Act of 2013, introduced by Senator Orrin Hatch, which called for "simplified reporting" limits of 2,500 participants and no more than 500 participants per adopting employer—a "2,500/500 rule" instead of a 1,000/100.

THE SOLUTION: INNOVATE

Technology has made recordkeeping more cost-effective over time, even as features and capabilities improved. I believe the future of auditing can and will follow a similar path. In the future, audit integration may be almost as important as payroll integration, and technology will allow a level of auditor efficiency never before possible.

WHICH WOULD YOU CHOOSE FOR YOURSELF: AUDITED OR UNAUDITED?

Knowing what you know about qualified plans, if you were employed by a small employer outside the retirement industry and had a choice of an unaudited plan or an identical but audited plan that cost you an extra $10-25 per year, which would you choose? I know my answer—I would choose the audited plan every time at that price. The trick is to make the audit affordable, not to eliminate the audit. **PC**

Footnotes

1. Proposed forms revisions published 9/15/2021 at 86 FR 51488.
2. Final forms revisions for 2021 plan years published 12/29/2021 at 86 FR 73976.
3. See the 2023 DOL audit quality study at https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/november-2023-audit-quality-study.pdf

LTPTE: LONG-TERM PLANNING, TRICKY EXECUTION

Handling LTPTE (Long-Term, Part-Time Employee Regulations) rules can be challenging—so finding practical solutions to streamline administration and ensure compliance with SECURE Act is a must.

By Shannon Edwards and Emily Halbach

Have you ever waited excitedly for a surprise? You expected it to be amazing, like the best gift Santa Claus ever brought you as a child. Then you woke up one morning, and the surprise had been delivered. You race to open it and realize that someone thought it was Halloween instead of Christmas and left you a trick instead of a treat. Well, that's how most of us in the retirement plan industry felt on Black Friday when we opened the guidance the IRS released on Long-Term Part-Time Employees (LTPTEs). We waited patiently for almost two years for guidance we thought would surely make this new law easy to administer and understand. We believed the IRS guidance would mesh with the spirit of the law and allow us to open the floodgates. Of course, they would let all employees make 401(k) contributions to the plan without having to give them employer contributions or lose certain exemptions our plans had enjoyed from required employer contributions.

The Setting Every Community Up for Retirement Enhancement (SECURE) Act, signed into law in December 2019, brought significant changes to retirement planning for working Americans and plan sponsors. Among its many provisions, one key area of focus was closing the "retirement savings gap" in America. Previously, plans could exclude from qualified retirement plans employees who had never performed 1,000 hours of service in a year. This changed with SECURE, adding limited coverage for LTPTEs. This change has multifaceted repercussions for employers and employees. While the inclusion of LTPTEs in retirement plans under SECURE has broad implications for retirement plan sponsors, it also offers the opportunity for retirement security to a sector of the workforce that was often excluded from saving for retirement. A whole new group of employees can save for their future and benefit from employer-sponsored retirement plans. Research has proven that an employee is far more likely to save for retirement if they have the opportunity to save in an employer-sponsored payroll deduction plan than if they do not. If they take advantage of this new opportunity, it will improve their overall financial security for the future.

In case you missed it in the thousands of articles previously published, under SECURE, a long-term part-time employee is defined as an individual who is age 21, has never completed at least 1,000 hours of service for an employer in a year but has completed at least 500 hours of service for the employer for three consecutive years (reduced to two in 2025). On the surface, this seems easy to track. However, how plan sponsors track their employees' hours worked makes a huge difference in determining which employees are eligible under the new rule. This issue is compounded by the fact that many third-party administrators and record keepers were not tracking actual hours worked from year to year. Plan design also plays a large part in how or if hours are tracked as well. Some plans use elapsed time and others use equivalencies when actual hours are not available. All these considerations together make determining who qualifies as a long-term part-time employee more difficult than it sounds.

Participants who become eligible under the LTPTE rules can make their own salary deferral contributions to the plan. However, the employer does not have to make them eligible for company contributions. If the plan requires that an employee work at least 1,000 hours of service in a year to be eligible for an employer contribution, the plan can continue to use that rule. There is a catch, though. LTPTEs earn a year of service for vesting for each plan year in which they work 500 hours, even if participants who came into the plan under the 1,000 hours of service rule must work 1,000 hours of service each year to earn a year of service for vesting. As an industry, our first reaction to this vesting rule and the difference in the hours requirement for LTPTEs vs. standard plan participants was that it was irrelevant. LTPTEs wouldn't be eligible for employer contributions, so vesting would not be an issue. It was widely assumed that if they met the 1,000 hours of service rule for eligibility for employer contributions, they would then begin earning years of service for vesting using the 1,000 hours of service rule like the other participants. This was the first trick (instead of a treat) in

the proposed regulations. The IRS interpreted the legislation to say that once an employee entered the plan as an LTPTE and began earning years of service for vesting at a rate of 500 hours per year (instead of 1,000 hours of service), even if they became a former LTPTE, they would continue earning years of service for vesting at a rate of 500 hours per year. This means that their status as an LTPTE would have to be tracked indefinitely (even if they leave and later come back as a rehire). This piece of guidance created the most complexity with the rule because of the requirement to track the status as an LTPTE in perpetuity.

The IRS proposed regulation regarding LTPTEs also made clear that if an employer with a safe harbor plan that relied on the top-heavy minimum exemption wanted to avoid the LTPTE rules by making all employees immediately eligible to make salary deferrals, they would lose that exemption and be subject to the top-heavy rules. This was the second trick in the regulations, as many small employers use the safe harbor plan design and rely on the exemption from the top-heavy requirements. The result of this guidance is that employers must decide whether they would prefer to avoid these complicated rules altogether or avoid giving their LTPTEs an employer contribution.

WHAT HAVE WE LEARNED SINCE THE GUIDANCE WAS RELEASED AND THE RULES BECAME EFFECTIVE IN 2024?

First, while record keepers are working hard to modify their platforms to track LTPTE status, they aren't fully ready. Many of them don't have all the historical data required to determine who should be eligible as an LTPTE for the clients. If they do have the data required, re-tooling their systems to properly make the determination is more difficult than it sounds. Although some thought they had it figured out, there were still some hiccups. Compliance software we use also has difficulty running the eligibility calculation, even when the historical data is in the system. Clients began looking to us for help, and it became a very manual process to make the determination. Many people who should have been enrolled on January 1 were inadvertently missed.

Next, the determination of eligibility is not as easy as looking at each of the three prior plan years to see who was part-time, had never worked over 1,000 hours, but had worked more than 500 hours in three

"EMPLOYERS MUST ENSURE THAT THEIR RETIREMENT PLANS COMPLY WITH SECURE'S PROVISIONS AND THAT ELIGIBLE EMPLOYEES ARE PROVIDED WITH THE NECESSARY INFORMATION TO ENROLL AND PARTICIPATE IN THE PLAN."

consecutive years. If a plan uses the anniversary year for the first eligibility computation period, then switches to the plan year for the computation period, this can effectively cut the three consecutive years down to two or slightly more than two. It does not necessarily mean three full years. In 2025, when three years is reduced to two, it will effectively be slightly more than one. In theory, an employer could have an employee who works for them for 13 months and meets the two consecutive year requirement at the end of the 13 months.

By releasing their guidance on the Friday after Thanksgiving, which gave new meaning to the name Black Friday, the IRS effectively gave us slightly more than a month to decide what we were going to suggest that our clients do if they want to avoid these rules because of their complexity. We had 25 working days to learn all we could about the proposed regulation, reach all our clients that could possibly be affected by the rules, communicate to them what the regulations said, what it meant to them, what we thought they should do, and amend their plan if needed. It was top of mind that if they had someone qualify as an LTPTE, that person would forever be classified as an LTPTE and have to be tracked as such. We learned that we are a resilient industry that doesn't require much sleep, can handle large amounts of stress while juggling year-end requirements, selling season, and coordinating the perfect holiday season for our families and friends.

The inclusion of long-term part-time employees in retirement plans impacts employers, including the cost of consulting regarding needed adjustments to plan administration, communication, and compliance. In addition, there may be a cost for the required amendments that come with this inclusion. Employers must ensure that their retirement plans comply with SECURE's provisions and that eligible employees are provided with the necessary information to enroll and participate in the plan. However, in our experience over the past few months of consulting with employers, many of them are happy to make changes to their plan to avoid adding complexities to the already complex rules that govern them, even if it results in making LTPTEs who otherwise would not have been eligible for employer contributions eligible for them. The LTPTE rules have effectively changed the maximum number of hours a plan uses for eligibility down from 1,000 to 500 if a plan sponsor wishes to avoid having the rules apply to their plan. However, many employers are okay with that, and many of our clients establishing new plans are using eligibility requirements of less than one year now. We've learned that many employers are generous and don't mind contributing toward their employees' retirement.

The complexity of these rules and the fact that employers don't understand them or how to apply them will result in errors. There are going to be LTPTEs who were not properly enrolled on January 1. The good news is that under EPCRS these errors can be fixed, and if they were fixed before the end of the first quarter, the expense of correction was nothing.

There are additional challenges that should be addressed moving forward. When taking over a plan from another provider, historical data regarding LTPTEs must be gathered. Some clients who previously believed themselves to be an "owner only" 401(k) plan because none of their employees had ever met the 1,000 hours of service rule may find themselves having eligible employees under the LTPTE rules. This would make them a 401(k) plan that does not solely cover owners and their spouses and would probably increase their administration costs.

Overall, the LTPTE rules are good for increasing coverage and reducing the retirement savings gap. The IRS's interpretation of the legislation in their proposed regulation added a lot of complexity to the rules, which no one was expecting. This led to a lot of stress and overtime at the end of last year and the beginning of 2024. However, we have learned a lot over the past several months and will continue to learn more about how to live with these rules or amend them out of plans by reducing eligibility requirements. Either way, it is a win for working Americans who need to save for retirement. PC

TO OFFICE OR NOT TO OFFICE: PRODUCTIVITY & LACK OF TRUST

As businesses reconsider the benefits of in-office work, this series explores why a return-to-office mentality might be crucial for productivity, team-building, and mentorship, despite the convenience of remote work. **By Theresa Conti & Shannon Edwards**

Do you remember the days when we were young and sat in the cubicle farm? The accounting firm where I worked called it the bullpen. It was where you were herded if you weren't important enough to have your own office. But do you also remember how important sitting in those pens of people was to our development?

I know that sounds crazy in some ways. How can sitting in a massive room with several other people talking on the phone or to each other while others are trying to concentrate and complete their work be helpful to developing new employees and fostering productivity? However, our business is complicated, and we learned so much from listening to others on the phone, discussing complicated topics with others, and making sure we really understood them. It allowed our mentors and leaders to hear us as well, offering coaching after a discussion with a client that didn't go as well as it could have. These are just some reasons business leaders are asking if it's time to bring everyone back to the office.

Over the next three issues of *Plan Consultant Magazine*, we will talk about why you may want to consider a return-to-office mentality and why many major corporations are. There are many reasons we think being back in the office could be important, such as team-building, collaboration, and coaching! However, there are concerns about whether employees feel the same way since they might give up perceived benefits of remote work, like no commuting. Many perceive remote work to be more flexible as well. There may also be geographic barriers to bringing everyone back into the office. We are aware that in our industry, based on the shortage of talent and the complexity of our industry, most of us will probably always have some fully remote staff. However, if many of your staff are within a reasonable distance of your office, should they come back into the office at least a few days a week?

What do you need to consider when you think about a return-to-office strategy? What is the goal from a business perspective in making the team return to the office? For us, there are probably two major considerations that we will cover in this first piece of the series. The first major consideration is productivity. We work in a fast-paced, deadline-driven industry where clients expect answers immediately, fees are being compressed, and everyone is expected to accomplish more in less time. Productivity is key to profitability and being able to pay staff in a very competitive job market with dramatically elevated salaries.

When employees are in the office, managers have more direct oversight and can better monitor work progress. By doing this, you can provide more timely feedback and identify areas that need improvement. Are employees overall more or less productive when they work from home? An initial study from 2022 thought that remote work productivity was over 7% higher than in-office productivity. But in 2023, a similar study said that fully remote work was about 10% lower in productivity than in-person work. The challenges with productivity they cited revolved around communicating with other staff and issues with self-motivation. In our office, I have been guilty of complaining about all the small talk taking place on Teams, for instance. It appeared to be reducing productivity significantly. However, I was reminded that back in the old days, when everyone was under one roof, the same or more visiting took place in the office and that some sort of communication is needed to foster community.

More recently, a survey showed that 77% of those who work remotely at least a few times per month had increased productivity, including 30% doing more work in less time and 24% doing more work in the same period. However, there is also an argument that letting employees work from home can make them procrastinate, get distracted, or put in less work time than when they are in the office. What is clear is that there is a lot of conflicting information available regarding productivity in the office and out of the office. In fact, you can probably find a study that supports your opinion on either side of the argument. It would be a best practice to have a way to measure your own staff's productivity in the office full-time, remote full-time, or some sort of hybrid working arrangement so that you can make your decision regarding a return to the office based on facts and not emotion or assumptions.

Another side effect of working remotely can be the development of a lack of trust. Why would a lack of trust occur in a remote working environment? When staff are not in the office regularly to see their manager or the business owner, that can result in doubts about the organization. They can also have doubts about their co-workers and may

feel they can't rely on others to help them with their tasks or challenges or even to get their own tasks completed. The remote culture makes verbal and visual communication with each other more difficult, which can lead to a lack of trust. A recent Forbes article stated that a lack of trust can relate to a dysfunctional office environment, and once trust is lost, it can take a lot of time and work to turn around the negative culture that may be created by the lack of trust.

There are many ways that trust flows in a business. It flows from the leader to the team and from the team to the leader. It must also flow from team member to team member. If a team member doesn't trust the leader, they may only do the bare minimum amount of work required and look for a way to leave the organization. They also won't work toward any resolutions or innovations because they don't believe in the organization or the leadership. This is often called "quiet quitting" and results in the bare minimum of work being done. A lot of concern with this is how long it takes to get noticed and correct the problem or let the person go since they are producing the bare minimum, and how much does that ultimately cost the organization?

If the leader doesn't trust the team, they may decide to work on projects themselves or with a very small group of people. By doing this, it may cause the team to pull back and not put forth any effort. Trust of the team is imperative for the leader to be able to delegate to their team so that they can grow the firm. Being given more responsibility by their leader makes the team feel more valued and trusted, which then makes them feel more invested in the company. Finally, when team members do not trust each other, it may also result in members withholding from each other, which can interfere with other team members' work and block the organization from moving forward.

Trust is key to your company's culture and the ability for you to move your organization forward. All of this is made more difficult when there is a lack of visual and verbal communication, as there can be in a fully remote environment. Make sure if you say you value teamwork that you really reward the team and not just an individual for their performance. Make sure you also share information with your entire team and not just a small subset of your staff. You don't want some staff to feel like outsiders, so having regular staff meetings to share what is happening keeps everyone updated on what is happening within your organization.

There is a lot to consider when deciding whether or not to require a return to the office. In all likelihood, there will be pushback and frustration. It's important that you consider all of the pros and cons, understand and support your reasoning for the change, and tread carefully when it comes to employee morale and retention.

Next issue part 2 will dive into the impact of in-person collaboration, training and company culture within the office. **PC**

TECHNOLOGY: WHERE WE ARE – PART ONE

It's no secret that the retirement plan industry has been riding the winds of technology change and, with that, the constant search for efficiency and security, much like the rest of the business world. While our niche industry is just that, the issues we face and the solutions we seek are fairly commonplace in the market. **By Katie Boyer-Maloy**

What does the technology stack look like today for our industry? While there isn't a blueprint of the "must-have" systems to run a TPA shop, there are quite a few staples that, from my experience, are needs to run a successful retirement practice. Here are the five that are top of mind for me today in the industry.

COMPLIANCE SOFTWARE

This one needs no explanation. You likely have your own loyalty to (insert company name here), and that loyalty likely comes from familiarity with the product, alignment to your business model, price comfort, service expectations, and overall confidence in the processes. There are several great options out there to choose from, and, as with choosing any SaaS (software as a service) provider, doing the research, verifying their cybersecurity policies, and disaster recovery plans should be considered before deciding to go with or renew a current usage agreement. Keep in mind, this software is generally a lifeline that your folks are logged into more often than not. Confidence in the product is critical, and in many ways, it should be seen as a key partner in your business.

CRM (CUSTOMER RELATIONSHIP MANAGEMENT) SYSTEM

Data is king in our business, and being able to access it readily, be confident in its accuracy, and share it with your team is crucial. Having a system to store, manage, and

maintain the information is critical to any company's success. There are industry-specific options, as well as more generic options, available in the market for consideration. With a CRM, it's important to understand the available capabilities and then decide what is most important and aligns best with your company's goals. Many products available are incredibly robust and may have offerings that exceed what you're looking for. Don't be overwhelmed by all the bells and whistles. As with any large project or conversion, having a plan for adoption is important and key to successfully implementing and maintaining the database. One very important thing to consider when utilizing a CRM is not just the importance of the plan to onboard, which can be incredibly time-consuming (but so worth it), but the importance of planned ongoing maintenance. Having a routine schedule for data review and updates is critical to keeping your database current. If your team loses faith in its accuracy, they will stop using and believing in the product, and, even worse, start tracking outside of it, making it even more difficult to keep track of in any full-scale way.

WORKFLOW/PROCESS MANAGEMENT

In some cases, this software is built into or works alongside your CRM system. Regardless of how they may or may not interface, having documented processes and procedures that your team follows is critical not just to consistency but to training, continuing education, efficiency management, and customer service. This may come as a surprise, but your way as a business owner is not necessarily the ingrained way your staff has come to know the business. Without a workflow that is built out to the way your team is expected to do the work and track it, having a seamless way to report on, verify, review, and teach is nearly impossible. I learned a long time ago that keeping information only in my head was not only exhausting as the sole resource, but it was also a business liability. It used to scare me to hear statements like "we all have to be replaceable" because I believed it meant I wasn't an important team member. After some growing up and life lessons, I learned that what it actually means is you can take a vacation without constant panic attacks about what might be falling through the cracks in your absence. You can run off to a family emergency without having to think about anything else. You can go on maternity leave and not have to answer calls constantly. While our careers are important to us, when it comes to family, it takes the backseat, and without documented process and procedure, that is not easy to do.

SYSTEM BACKUPS/IT RESOURCES

While these two things are technically separate, I view them as having equal importance, and one doesn't work without the other. Unfortunately, just like with car insurance, you can scoff monthly at the cost you pay for the "in case," but the moment you need it, you breathe a sigh of relief that you had it and you're reminded of its vast importance. Access to the folks who hold the keys to your kingdom is crucial. While none of us like to think we will ever be involved in a cyber incident, the likelihood of it happening is more common than not these days. Instead of wearing blinders and believing it cannot or will not happen to us, being prepared with backups, proper cybersecurity measures, coverage, and true disaster recovery plans is crucial. If you do not have these resources currently, reach out to your peers and industry partners for guidance.

APIS, BOTS, AND SCREEN SCRAPING

Yes, I'm still speaking English here, do not fret. APIs (application programming interfaces) allow two systems to share information, either back and forth or one-way. Bots and screen scraping are other processes that work behind the scenes to perform tasks based on memorized procedures built into code, following routine paths to complete processes that can be programmed and done without the need for a person to click through the steps. Some of these functions are in their infancy. However, there are TPAs successfully using them now to optimize their procedures, build more efficiencies, and lower opportunities for human error. Several vendors have come into our niche industry to help solve some of the known, time-consuming efforts with this functionality, and there is more in their scope in the works to continue providing additional resources to keep on that path. The same can be said of tools, including AI (artificial intelligence). Some folks have begun utilizing AI tools to assist in building content, but many are approaching the technology cautiously. While it may help generate ideas and help build on a content segment, machine learning pulls data from multiple sources to analyze and choose based on what it can pull, which doesn't necessarily mean it is factual. In an industry based around ever-changing legislation, intricate regulatory guidance, and very specific provisions based on different plan documents, the accuracy of AI is not something that can be depended on.

So, what does this mean for the industry now and in the future? I think it means we are nowhere near the end of this era of technological revolution. More and more tools are making their way into our world, and ignoring them may only put us further behind. Think about it; it wasn't all that long ago that offices were full of filing cabinets and a buzzing fax machine. Times are changing, and it's important that we stay aware of what is out there and make educated decisions on what is right for us as business and thought leaders. The pace of change isn't slowing down, and the more you can embrace and find potential areas of efficiency building for you and your team, the better for your business and the better for us collectively as an industry. **PC**

ORPHANED PLANS: LOST AND ALONE

When it comes to the orphan plan problem, both the challenge and opportunity lie in equipping plan sponsors and advisors to be better matches for each other. **By Amy Garman and Emily Halbach**

It's the call that no third-party administrator (TPA) or Recordkeeper wants to get from a plan sponsor: "Our 401(k) advisor has resigned, what do I do now?" It's a problem that impacts hundreds of advisor-sold plans. Why is it happening, who does it impact, and what, if anything, can we do about it? In our experience, plans get orphaned due to one of four reasons:

1. The retiring advisor lacks a successor:

When the financial advisor retires without naming a specific successor, the plan remains on the books but is exiled to a box of "unloved items," with no one to maintain it. This abandonment often stems from junior advisors lacking the knowledge to administer a retirement plan or being deterred by horror stories from experienced advisors about the complexities of qualified plans.

2. Broker-dealer imposed guardrails:

Some broker-dealer firms set guardrails for their generalist advisors who sell retirement plans. These guardrails, such as required plan reviews or permitted share classes, aim to encourage best practices around compensation and client engagement. However, these guardrails also address advisor inaction, and the solution chosen by many firms is the advisor's resignation from the plan.

3. The unmanageable plan sponsor:

Fiduciary liability is a constant threat in our industry. When a plan sponsor becomes an obstacle to adhering to Employee Retirement Income Security Act (ERISA) standards or the financial advisor's guidance, it is sometimes simpler for advisors to resign and "wash their hands" of the potential fiduciary risks.

4. The "I can do this myself " plan sponsor:

There are plan sponsors who believe they can manage without a financial advisor and are confident in their ability to handle the day-to-day tasks an advisor would typically oversee. We've all encountered clients who say that they do not need a financial advisor's services.

THE SOLUTIONS

What can be done to address the orphan plan dilemma? Traditionally the focus has been on replacing the advisor. However, recommending a successor has become complicated due to fiduciary regulations. The new fiduciary rule that goes into effect this September has created a gray area when attempting to define what makes a practitioner a fiduciary in the eyes of the IRS and the Department of Labor. Prior to this rule, recordkeepers shied away from making advisor referrals to avoid possible conflicts of interest, and the new rule does nothing to change that. While recordkeepers could give the plan sponsor a comprehensive list of every financial advisor in their respective state, that's not necessarily helpful to the sponsor. Even for TPAs who don't have a remunerative relationship with advisors, there may be liability in providing a tailored list of referral options under the new rule. It might therefore be prudent to share a longer (if less tailored) list of advisor options, or to disclose to the client that you don't receive any compensation from the advisors for referrals.

Another option would be to place greater emphasis on retaining advisors versus replacing them. In most of the orphan scenarios above, TPA and Recordkeeper advocacy can be instrumental in maintaining sponsor/advisor relationships. In the case of the "unmanageable" and "I can do it myself" plan sponsors, we can ensure that our clients are knowledgeable about the value financial advisor bring to plan sponsors including the ways a financial advisor can ease their administrative and fiduciary liability. As fellow retirement plan professionals servicing clients, TPAs have a responsibility to advocate for financial advisors and the importance of their role in the small plan world. Moreover, we can coach our advisor partners on how to effectively communicate their value to sponsors. This includes clearly articulating plan services such as participant education, quarterly reviews, and investment insights, as well as how those services keep a plan on track to meet sponsors' goals.

In addition to educating plan sponsors, we have an opportunity to support our advisors' succession plans by nurturing the next generation of retirement plan financial advisors. This also extends to the current generation of

advisors who have avoided a deep dive into qualified plans. Over the long term, this will ensure that plans continue to be serviced by a retirement-savvy advisor even after the original financial professional's departure. We can assist broker-dealer representatives in fulfilling their firms' plan requirements for the clients they already service with us. Often an action as rudimentary as a reminder to update a share class or hold a client review can prompt an advisor to preserve the relationship and save the business.

When asked why they're not currently prospecting in the retirement space, advisors commonly respond that "it's a lot of work with little reward." TPAs know, however, that solid administration and client-focused plan design can meaningfully reduce the work and enhance the rewards. Financial advisors accustomed to having all the answers for clients may feel they need the expertise of the TPA to adequately assist a qualified plan. While a basic understanding of ERISA is beneficial and can be achieved over time, working with an experienced TPA partner removes that obstacle, enabling a financial advisor to concentrate on their core competencies: investments and financial wellness.

When it comes to the orphan plan problem, both the challenge and opportunity lie in equipping plan sponsors and financial advisors to be better matches for one another. While we might be able to leverage our advisor relationships to rescue plans post-breakup, that solution is becoming increasingly fraught with fiduciary implications, making our best and most effective strategy prevention. **PC**

JUMPING IN THE 'POOLED'

Are PEPs the key to simplified retirement solutions for small businesses, or do they present new challenges in implementation? **By Kate Whitmore**

The SECURE Acts of 2019 and 2022 are widely regarded as two of the most meaningful pieces of retirement plan reform legislation in nearly two decades. Together, they include several dozen incentives aimed at making it easier for employers to offer workplace retirement plans.

Arguably, the provision that could have the most significant long-range impact on retirement plan design is the one that introduced Pooled Employer Plans, or PEPs – a new type of plan in which multiple employers can participate.

UNPACKING PEPS

At a high level, PEPs allow two or more unrelated businesses to participate in a single plan that is sponsored by a pooled plan provider (PPP). Previously, employers could only participate in a multiple employer plan (MEP) if they had a common nexus or connection such as a shared parent company or maintained businesses in the same industry or association (the "common bond" requirement).

SECURE 1.0 also eliminated the so-called "bad apple" rule, which stipulated that an entire MEP or PEP could face disqualification and fines even if just one participating employer is out of compliance with qualified plan rules.

But what makes PEPs a game changer is that they enable unrelated employers of various sizes to pool their retirement plan assets into one plan that is set up and administered by a pooled plan provider.

The effect of these changes could be significant in terms of boosting retirement plan adoption, especially among smaller employers. A recent study found that business size, cost and a lack of administrative resources were the top three obstacles preventing small employers from offering a workplace retirement plan .

The ability to outsource key plan responsibilities to a designated PPP can free participating employers from the day-to-day burdens and complexities of retirement plan management and administration, while also allowing them to help their employees' achieve retirement security. At the same time, delegating a majority of their ERISA fiduciary responsibilities may help participating employers limit their exposure to the risk of retirement plan-related litigation. In addition, PEPs may unlock certain economies of scale that may help reduce administrative costs, investment fees and recordkeeping expenses compared to a standalone retirement plan.

STALLED ON THE RUNWAY?

The removal of the common bond requirement generated a lot of excitement about the potential for PEPs to help close the retirement coverage gap. Yet PEP adoption has been slower than many expected, especially when you consider that nearly half of employers currently don't offer a workplace retirement plan.

The fact is, PEPs have been a work in progress since they were first introduced in 2021, evolving as the Internal Revenue Service (IRS) and Department of Labor (DOL) slowly pushed out guidance to clarify certain PEP rules, and as SECURE 2.0 extended PEP access to 403(b) plans.

We've been closely monitoring these changes and trends – and their implications – as the PEP landscape continues to take shape. Here are some considerations:

A PEP may be a good fit for employers who:

- Want to start offering a retirement plan but want to limit the expense, fiduciary liability and time it takes to manage a plan.
- Currently sponsor a plan and want to reduce expenses or outsource fiduciary responsibilities to an expert.
- Want a turnkey solution that doesn't require custom documents and plan features – and provides more time to focus on running the business.

1. Lost in the shuffle?

PEPs aren't the only retirement plan recently introduced with small business owners specifically in mind. At the beginning of 2024, SECURE 2.0 introduced the Starter 401(k), a standalone plan for small business owners that do not already offer a retirement plan. State-mandated plans have also been growing in prominence. Today, 14 states have either launched or are preparing to launch programs requiring certain employers without a workplace retirement plan to offer a state-facilitated plan. The rules governing which employers are subject to the requirement vary by state.

Not surprisingly, one of the biggest factors holding back PEP adoption may simply be a lack of awareness.

In fact, a recent study found that fewer than half of small employers are even somewhat familiar with PEPs. Yet once they heard about PEPs, their interest grew. The same study found that 90% of employers with 50-99 employers, 86% of employers with 20-49 employees and 80% of employers with 10-19 employees are very or somewhat interested in learning about PEPs . Interestingly, those survey results remained consistent whether the smaller employers currently had another retirement plan in place or not.

How do PEPs stack up?

	PEPs	Starter 401(k)	State Plans
Employee annual contribution limit	$23,000	$23,000	$7,000
Employer matching contributions permitted	Yes	No	No
Fund selection	PPP	Employer	Plan provider
Form 5500	PPP	Employer	N/A
Fiduciary responsibility	The PPP assumes fiduciary responsibility for plan administration. The employer retains fiduciary responsibility for monitoring the PEP and the PPP to ensure plan administration and investment management are performed in the best interests of plan participants.	Employer	Plan provider
Employer cost, relative to each other	Potentially lower as investment and administrative fees are spread among participating employers	Higher	Lowest

2. When events converge.

More than 500 PEPs have filed with the DOL , fewer than industry experts predicted might happen. However, in business, timing is everything. Almost immediately after the passage of SECURE 1.0 at the end of 2019, the COVID pandemic hit. This significantly slowed the release of crucial PEP guidance from the DOL and IRS, leaving some potential PEP providers waiting on the sidelines and creating a steep learning curve for those who had already entered the market. On May 5, 2023, the World Health Organization declared the COVID crisis over. Since then, more PEP delivery models have emerged and more are expected to be introduced in the months ahead.

For these and other reasons, we continue to see great opportunities ahead for PEPs and the plan consultants and advisors who serve the retirement plan market. The competition for talent remains tight, as job growth continues in the U.S. This makes employee benefits – and especially retirement plans – a top priority for companies of all sizes. Not surprisingly, retirement plan adoption is expected to grow. In fact, Cerulli estimates that 401(k) plans will grow to 970,000 plans by 2029, a 50% increase from 2021 . This, along with growing regulatory and plan administration "fatigue" on the part of plan sponsors, suggests that now may be the time that interest in PEPs escalates.

3. The appeal of PEPs is broadening.

PEPs were created to help boost retirement plan coverage across the country by addressing the needs of small employers, who typically cite revenue stability (60%), cost (52%) and administrative burden/compliance (38%) as the top three reasons for not offering a plan . As interest in PEPs has grown, we've seen an uptick in PEP adoption not only among these smaller employers, but also with mid and large-sized 401(k) plan sponsors.

Many of these larger employers are looking to take advantage of the lower shared costs, fees and economies of scale that PEPs can provide. Some may want to transition out of an existing, more restrictive MEP. Others may be looking to offload their plan administration duties, save on audit costs, and reduce their fiduciary liabilities so they can focus on their core business priorities. And still others may be seeking to provide their employees with access to lower-cost, institutional share class investments.

As the market for PEPs expands beyond small retirement plans, plan consultants, advisors and wealth managers have a unique opportunity to set themselves apart from the competition by using PEPs to expand the services and solutions they provide to valued clients. Some may also find that PEPs offer a way for them to scale and streamline their business / service model.

4. Audit rules clarified.

In February 2023, the DOL issued guidance regarding plan audit rules. Specifically, the DOL clarified that all plans, including PEPs, with 100 or more eligible participants are subject to audit, unless the "80-120" exception applies. However, for plan years beginning on or after January 1, 2023, only participants who have an account balance must be counted when determining whether an audit is required.

In a PEP, audit fees are shared across all participating employers. For smaller participating employers that haven't yet reached critical mass in terms of number of participants and assets, a plan audit is an added expense they wouldn't have to face in a single-employer plan. So why consider a PEP?

An audit is only one factor to consider when evaluating a PEP. Most small employers will find that the many benefits of PEP participation – including relief from most of the administrative and fiduciary responsibilities associated with offering a plan– outweigh the cost of an audit. And when you factor in the economies of scale PEPs provide, these employers may also experience a decrease in overall plan expenses, even factoring in the cost of plan audits.

5. Bridging the knowledge gap.

Studies suggest that there's a significant gap in employers' knowledge about retirement plans. For example, SECURE 2.0 makes available a tax credit of up to $5,000 for three years when a qualifying employer adopts a new plan. Qualifying employers may also be eligible for a tax credit for employer contributions, up to $1,000 per employee for three years. This credit is limited to employers with 50 or fewer employees and reduces for employers with 51-100 employees.

While these tax credits are available for any plan type, they may be especially advantageous when applied to an already low-cost PEP. Surprisingly, a study recently found that a majority of small businesses (72%) were not aware that these tax credits exist. On a positive note, once they heard about them, 78% of employers said that those tax credits would make it at least somewhat more attractive to offer a plan .

6. A work in progress.

One of the chief benefits of PEPs is the ability to shift plan administration responsibilities to the PPP and other PEP service providers. Given that PEPs are still relatively new, it's not surprising that the need for an occasional tweak to the rules governing PEPs has surfaced along the way.

One such example, is how SECURE 2.0 relaxed the rules for monitoring and collecting PEP

Small plan relief: the 80-120 exception

- Plans hovering just above the 100-plan-participant threshold are eligible for special relief.
- The DOL states that if the plan was a "small plan" filer in the previous year, the plan can remain a small plan filer until it reaches 121 eligible participants.

contributions. Originally, it was required that only the PEP's trustee could handle this responsibility.

SECURE 2.0 includes a provision, which became effective January 1, 2023, that allowing a fiduciary other than the PEP trustee to assume responsibility for monitoring and collecting contributions so long as that responsibility was not assigned to one or more employers participating in the PEP.

7. Simplified, not simple.

As the number of PEP providers grow, we're seeing an increase in the number of PEP models and how providers fulfill 3(38) investment fiduciary, recordkeeper and trust responsibilities. Some PEP providers assume all the functionary roles of the PEP, while others partner with outside vendors to fulfill one or more functions.

At the same time, we're also seeing a broadening in the range and type of plan design features PEPs offer. While all PEPs offer the basic plan options and investment choices, some PPPs provide greater flexibility by offering options such as eligibility and vesting alternatives, optional matching contributions, auto-features, and other plan design options that can make PEPs work for a broader range of employers and their plan participants.

LEVEL UP YOUR PRACTICE WITH PARTNERSHIP

While PEPs are still in their infancy phase, a number of providers have taken a "wait and see" approach to jumping into the market. However, as PEPs evolve and mature, and as the IRS and DOL continue to provide additional guidance, now may actually be a good time to test the waters.

When you think about how to incorporate PEPs into your practice, it's important to work with a partner that offers the technology, plan design flexibility and fiduciary oversight needed to drive efficiency and help you grow your practice. There are many PEP providers already out there; to ensure you hit the ground running, focus on a PPP that can provide the range of services and solutions you need, including:

White-label and co-branding support	Payroll contribution tracking and integration
402(a) named fiduciary PEPs only	Integrated nonqualified plan
Integrated in-house 3(16) administrative fiduciary	Single sign-on website capabilities
Fee-only/fully transparent	Single point of contact for service
Partner 3(38) investment fiduciary and managed account support	Spanish-language capabilities, including website
Investment option and plan design flexibility	Integrated trust and custody services

Having access to a retirement plan is fundamental to closing the retirement savings gap facing millions of American workers. PEPs offer a way for employers to provide a simplified but valuable retirement benefit that provides key advantages not found in a standalone retirement plan. Adding them to your capabilities can make a meaningful difference to your practice.

Whether you target small business owners, focus on qualified retirement plans or specialize in wealth management, PEPs allow you to differentiate your offerings and protect your existing revenue streams. All that's needed is some planning, practice and the right PEP partner to deliver for you and your clients. **PC**

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ELEVATE YOUR CAREER IN RETIREMENT PLAN MANAGEMENT

The NEW QKS™ credential shows off your expertise in 401(k) sales and consultation. **By ASPPA Staff**

The retirement industry is evolving, and professionals must stay ahead of the curve. The Qualified 401(k) Specialist (QKS™) credential program is designed to equip retirement plan professionals, especially those in client-facing roles, with essential knowledge and skills for managing and selling defined contribution (DC) retirement plans. This targeted training enhances understanding of 401(k) plan setup, maintenance, and compliance, focusing on effective client engagement. Earning the QKS™ Credential showcases your expertise in 401(k) sales and consultation, preparing you to navigate client interactions successfully.

WHO SHOULD ENROLL?

The QKS™ program caters to a diverse range of retirement plan professionals. It is particularly beneficial for salespeople, wholesalers, client relationship managers, and others in client-facing roles that do not focus on compliance. This credential is ideal for those looking to deepen their knowledge and enhance their career prospects in the retirement plan industry.

TAKE THE NEXT STEP IN YOUR CAREER

In the competitive landscape of retirement plan management, every decision significantly impacts the retirement outcomes of plan participants. The QKS™ credential program is your pathway to mastering the complexities of 401(k) plan sales and client relationships.

The program extends beyond the basics, providing a comprehensive understanding of plan design, setting up new plans, and converting existing ones. Participants will learn the nuances of client engagement and sales through practical modules and real-life scenarios. The QKS™ program ensures that learning is directly applicable to professional roles, enhancing practical skills and boosting career development.

WHAT WILL QKS™ MEAN FOR YOUR CAREER?

- Opening Doors to New Sales: By refining your skills and broadening your knowledge, the QKS™ credential prepares you to identify new opportunities and offer effective solutions to prospective clients. This can significantly enhance your sales potential.
- Strengthening Client Relations: With the QKS™ credential, you become an invaluable asset to your organization. A working knowledge of ERISA is crucial for client retention, enabling you to provide effective solutions and maintain strong client relationships.
- Career Advancement and Recognition: The QKS™ credential is recognized by employers, colleagues, and clients alike. It paves the way for career growth, including promotions and increased sales as you demonstrate your expertise in the field.

Earning the QKS™ credential signifies a commitment to excellence, marking you as a forward-thinking professional in the industry.

EMPOWER YOUR TEAM WITH QKS™

As the financial industry continues to evolve, staying updated with the latest knowledge and skills is imperative. The QKS™ credential program is not just a resource but a necessity for both novices and experts. It helps keep their skills sharp and knowledge current, preparing them for emerging challenges and enhancing their ability to mentor and support their team.

WHY INVEST IN QKS™ FOR YOUR TEAM?

- Expand Client-Facing Expertise and Skills: The QKS™ program enhances your team's understanding and management of 401(k) plans, focusing on sales strategies and client engagement. It prepares them to handle complex client interactions confidently and identify new business opportunities. Even experienced team members will find value in refining their plan knowledge.
- Demonstrate Leadership in Working with Plan Sponsors: By integrating the QKS™ program into your team's development, you foster an environment where continuous improvement and client-oriented learning are prioritized. This leads to better client outcomes and stronger business relationships.
- Boost Employee Retention: Investing in your team's development with the QKS™ credential boosts their confidence and shows that you value their long-term career progression. This investment can enhance team morale and aid in retaining top talent.

WHAT SKILLS WILL YOUR TEAM DEVELOP?

Your team will acquire a comprehensive skill set vital in sales and client-facing roles. They will be well-equipped to:

- Effectively communicate with plan sponsors, advisors, and participants about 401(k) plan options and principles.
- Understand and convey complex concepts such as plan design and the legal and regulatory aspects of 401(k) plans.
- Identify and address potential challenges with plan sponsors, ensuring plans are set up correctly from the start. This ensures clients receive the level of service and support they need, enhancing retention rates.

The outcome is a team proficient in navigating 401(k) plans, capable of driving business growth and enhancing client satisfaction. This positions your firm to excel in a competitive landscape.

CURRICULUM OVERVIEW

The QKS™ program builds on the foundation provided by the Retirement Plan Fundamentals (RPF) certificate course. It comprises 14 interactive online modules, a practice exam, and a final proctored exam. The material is delivered in small, digestible chunks, making it easier for less experienced professionals to access, learn, and retain information.

FLEXIBLE LEARNING FOR BUSY PROFESSIONALS

The QKS™ program offers a self-paced learning experience, allowing students to control their study schedule. Practice exams help test knowledge, culminating in a proctored final exam. Virtual classrooms are also available to prepare students for the exam, ensuring a comprehensive understanding of the material.

The Qualified 401(k) Specialist (QKS™) credential program is a valuable asset for retirement plan professionals looking to enhance their knowledge, skills, and career prospects. By investing in this program, both individuals and organizations can stay ahead in the ever-evolving financial industry, ensuring better outcomes for clients and continued professional growth. **PC**

GET STARTED

Enroll Now! Click here: www.asppaqks.org/

For group orders, contact thanks@usaretirement.org.

SOMEWHERE OVER THE ASPPA RAINBOW

Being an ASPPA member at NAPA 401(k) Summit is a little bit of the Wizard of Oz meets rock concert and that's a good thing. **By Shannon Edwards**

Have you ever wondered what Dorothy felt like when she stepped out of her house when it landed in Oz? She had been transported from the black-and-white and dusty cornfields of Kansas into a beautiful, magical land in Technicolor. I imagine it was a lot for her senses to take in and adjust to. That's how I felt the first time I attended the NAPA 401(k) Summit. After attending my fourth NAPA 401(k) Summit this year, it's not quite the same feeling as it was the first year, but it continues to be an awesome atmosphere and an incredible conference that keeps bringing me back and looking forward to the next year when it's over. It's sort of like a cross between a rock concert and the ASPPA Annual with less quoting of code sections. The first time you go, it can be overwhelming, like stepping into Munchkinland after flying in a house through a tornado, but once you settle in and get your bearings, it's an amazing adventure with a lot of information-packed sessions.

You might be asking yourself why on earth a third-party administrator and compliance geek like me would attend the NAPA 401(k) Summit. It is clearly advertised as the premier conference for financial advisors, also known as "The Advisor Experience." I go because, on a daily basis after registration opens, Nevin Adams peer pressures me on LinkedIn and reminds me that everyone who is anyone will be there, and if I don't go, I will have FOMO. I really go because it's an incredible experience and a great way to learn what is important to the financial advisors that I partner with in my firm.

The NAPA 401(k) Summit is the largest annual gathering of retirement plan and employee benefits-focused financial advisors in the country. There were over 2,800 people in attendance at the Summit. Over 1,400 of the attendees were retirement plan-focused advisors. I am not sure where you get most of your business, but most of my business comes from referrals from financial advisor partners. Not only do I want to get to know more financial advisors who focus on retirement plans as a major portion of their book of business, but I also want to learn from them.

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"THE NAPA SUMMIT AGENDA IS BUILT AROUND THE THINGS THAT MATTER MOST TO ADVISORS EACH YEAR. IT CONSTANTLY CHANGES AND EVOLVES, AND IT IS VERY DYNAMIC."

As you probably know if you have been in the compliance administration business for any length of time, most of the financial advisors we have the opportunity to work with are not retirement plan specialists. The majority, in my experience, are what we call generalists. They may be individual wealth advisors who have a few retirement plan clients. This is especially true in my market, where we have a few specialists but not many and definitely not even close to being the majority. The financial advisors that I serve and partner with are typically focused on many different things within their book of business, such as tax planning, estate planning, life insurance, and other benefits. I also have the privilege of working with many brand new advisors and helping them learn more about retirement plans, why to sell them, how to sell them, and most importantly, how to properly service them as fiduciaries after they win them. One of the value adds I can bring to my advisor partners who are not specialists is the knowledge and insight that my friends at NAPA share with me. Not only that, but if the topic is important enough to make it to the agenda at the NAPA Summit, I know that it is a topic I should learn more about and be able to share my knowledge with my financial advisor partners.

The NAPA advisors I have had the privilege of getting to know throughout my years in the American Retirement Association are some of the nicest and most open people I have met. They are happy to share their knowledge, thoughts, and ideas with anyone in the industry, including TPAs. They have ideas on how to improve the industry and the client experience. They have experiences that they can share that may help you improve the experience of the financial advisors you work with daily. One of the best places to have these conversations and to gain some of this knowledge is in person at the NAPA Summit, which is another one of the many reasons I attend. Some of the best conversations happen during breaks in the exhibit hall. I had one of those enlightening conversations with my friend Jim Sampson just this year.

The NAPA Summit agenda is built around the things that matter most to advisors each year. It constantly changes and evolves, and it is very dynamic. This year, after an amazing, emotional, and inspirational address given by NAPA President Renee Scherzer as she ended her presidency and passed the gavel, it opened with Brian Graff, ARA CEO, and a star-studded panel in a general session called From the Hill to the Summit. The session started with Brian and Lisa Gomez, Department of Labor Assistant Secretary for EBSA, and continued with former EBSA Head Preston Rutledge, Jamie Cummins, Senior Tax Counsel for the Senate Finance Committee, and Shannon Finley, Partner at Capitol Counsel to discuss what Gomez said and how it would affect the industry in the future. During the session, Gomez addressed and explained the new fiduciary rule. It was an extremely informative general session. After that, the conference continued with sessions on retirement income solutions, PEPs, AI, Medicare, nonqualified plans, managed accounts, segmentation, lifetime income solutions, strategic plan committee conversations, Nevin & Fred live, cash balance plans, 403(b) plans, closing the coverage gap, and many more. My favorite session was on finalist presentation do's and don'ts with Josh Itzoe, Donald Barden, and The 401(k) Lady herself, Jeanne Sutton. The session went over what a successful finals presentation should look like once you have made it that far. Obviously, it was directed at advisors, but there was a lot of great and valuable information that could apply to compliance administrators as well. I attend a lot of finalist presentations with my advisor partners, and so the information could definitely be applied to me. I also took a lot of notes with ideas to bring back to my financial advisor partners, especially the newer advisors who frequently ask for help and ideas.

There are so many good and valuable things that a compliance administrator can gain from spending valuable time with our advisor partners, and from my perspective, the NAPA 401(k) Summit is the perfect opportunity and environment to do that. It's a place to meet industry leaders and visit in person. Can you think of a better way to build a bridge between two sister organizations like ASPPA and NAPA than meeting each other where we live and learn? It is true that when NAPA advisors and ASPPA TPAs work together for the good of our clients and the overall good of our industry, we are better together. The NAPA Summit is just one more way for us to do that. **PC**

ELECTION SEASON IS LOOMING!

As we enter a presidential election year, what's on tap for retirement policy? **By James Locke**

There are only a few more months before Capitol Hill grinds to a halt as lawmakers head back to their home districts in preparation for election season. This slowdown in legislative activity is particularly notable in presidential election years, and this year is no exception. What does that mean for retirement policy for the balance of 2024?

As you know, it has been a little over a year since Congress passed the SECURE 2.0 Act and the ARA continues to work with lawmakers to develop retirement legislation that will likely serve as the foundation for the next comprehensive retirement package. Although it is unlikely that any of these proposals will advance in the near term, they do serve as a useful marker for what's to come.

AUTOMATIC ENROLLMENT

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

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

ROTH IRA ROLLOVERS

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

Furthermore, under the current auto-portability process established through SECURE 2.0, a worker's 401(k) account balance can automatically roll over to their new employer's 401(k) after a job change. However, because the balance moves through an IRA, any Roth amounts will have to remain in the IRA while the pre-tax amounts will transfer to the new plan.

In December 2023, Rep. LaHood (R-IL) and Rep. Sanchez (D-CA) introduced H.R. 6757 which fixes this process and allows the seamless transfer of Roth savings between IRAs and designated Roth savings accounts within workplace-based retirement savings plans.

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

RETIREMENT PLAN TAX CREDITS FOR CHARITIES AND NON-PROFIT ORGANIZATIONS

ARA has also met with members of Congress to express the need to increase the availability of retirement plans offered by charities and non-profit organizations. ARA continues to work with lawmakers on both sides of the aisle to introduce legislative text to deliver a payroll tax credit for charities and non-profits that decide to offer a workplace-based retirement plan for their employees.

These entities, because they generally do not have any taxable income, are not able to use the credits under existing law to establish a qualified retirement plan. Therefore, a payroll tax credit is necessary to deliver the same benefit that their for-profit counterparts enjoy. **PC**

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