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FALL 2021

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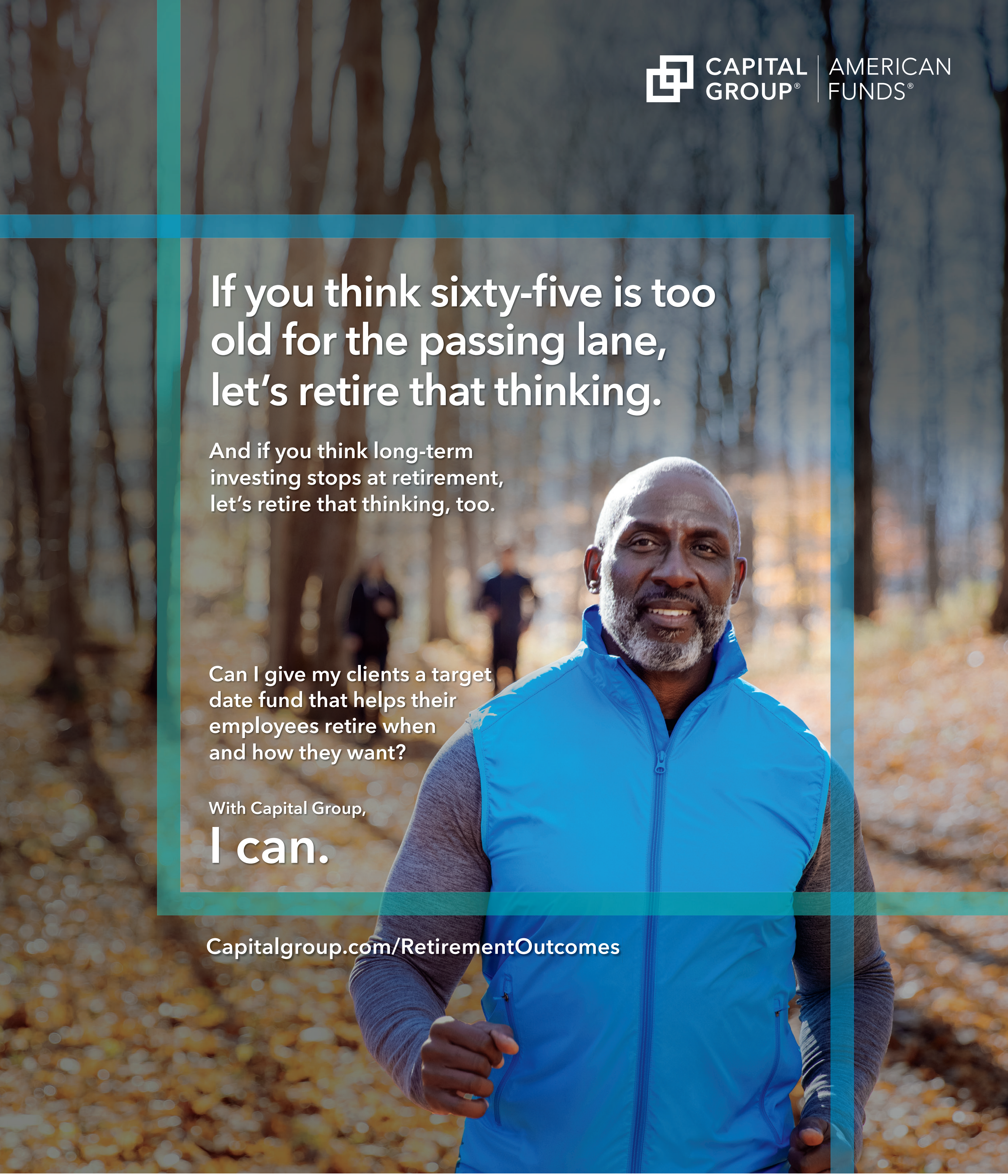
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AFTER THE DELUGE

A look back at the last 18 months before we plummet headlong into the "new normal."

By John Ortman

After year and a half of working from home, endless Zoom meetings, staffing shortages and enough random hardships and tribulations to make Lot himself sit up and take notice, it looks like we may finally be surfing out the other side of the pandemic wave.

Or not. The success of our "experts" in staving off the Delta variant, and possibly other variants to come, may tell the tale. Nonetheless, insofar as the retirement industry is concerned, it seems to me that we're in a place right now where it may be edifying to take a look back at the last 18 months before we plummet headlong into whatever lies ahead. That's what our cover story, "Perfect Storm," is about.

"SOME GOOD THINGS DID HAPPEN DURING THE PANDEMIC THAT WOULD NOT HAVE HAPPENED UNTIL SOMETIME IN THE FUTURE, OR PERHAPS NOT AT ALL."

For the most part, I suspect that most retirement industry professionals share a simple sentiment about the last year and a half: "Let's not do *that* again." However, every coin does have two sides. Some good things did happen during the pandemic that would not have happened until sometime in the future, or perhaps not at all—smarter and more widespread use of communication technology, for example, and learning how to manage a hybrid or even fully remote workforce. Those are things that we now know how to do. In future issues of *Plan Consultant*, we'll be focusing on how to do them even better.

Back to the cover story. Its focus is on how TPAs changed their business practices in response to the SECURE and CARES Acts in 2020. On a strategic level, that meant changes in their approach to business development, the sales process, human capital, budgeting and much more. On tactical level, it meant changes in how they handle plan loans and distributions, long-term part-time employees, new plan startups, frozen plans, safe harbor rules, lifetime income provisions, retroactive plan adoption and MEPs and PEPs. And not just in the middle of a global pandemic, but also under what one TPA CEO described as "a deluge" of legislative and regulatory mandates.

In a sense, the article is a natural follow-up to "Success Under Duress," our cover story in last year's Fall issue. In that article, written in July 2020, owners and executives in eight sectors of the industry—a TPA, small and large recordkeepers, an advisor, a 3(16) administrator, a law firm, an actuary and a wholesaler—shared what they learned over the first four months of the pandemic. (You can find that issue on the ASPPA Net website—start by hovering over the "Industry Intel" tab in the top nav bar.) In a way, the two articles work together as bookends of a sort.

And Now for Something Completely Different...

One of the first magazines I read as a boy, *Mad* magazine, had a regular feature comprised of definitions of common terms that sound plausible but were all comically wrong. Recently, I flashed on that feature in the middle of a discussion about the arcane jargon that people new to the retirement industry have to learn.

Later, it occurred to me that calling on the vast knowledge of PC's readers, we could crowd-source a list of industry jargon and buzzwords with definitions that are amusingly wrong. Here are three to get us started:

- ***Recordkeeper:*** A person who will never throw out their Elton John albums even though they haven't owned a turntable for two decades
- ***Third Party:*** The one that starts at 2:00 a.m.
- ***Actuary:*** Where dead actors are embalmed

This could be your greatest contribution to the retirement industry! Or the most pointless thing you've ever done. Either way, a win-win. Are you in? Email your definitions to me at jortman@usaretirement.org, and I'll find a place for them in our next issue.

Editor

Changing the retirement industry one plan at a time

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THE GREAT RESIGNATION

There's a wave of departing employees. How will that affect their retirement readiness? **By W. Frank Porter**

Never in my wildest dreams would I have guessed that the pandemic would go on as long as it did, nor would I have guessed that it would continue to have ongoing impacts once a vaccine was made available. Similarly, I would have never guessed that the headlines following a once-in-a-lifetime pandemic would read:

- "How to quit your job during COVID-19" – *Los Angeles Times*
- "How To Be Part Of The 'Great Resignation'" – *Forbes*
- "For the Economy, Quitting Never Felt So Good" – *Wall Street Journal*
- "How do they say economic recovery? 'I quit.'" – *The New York Times*

In normal times, people quitting jobs in large numbers signals a healthy economy with plentiful jobs. But these are not normal times. The pandemic led to the worst U.S. recession in history and millions of people are still out of jobs, yet employers are now complaining about acute labor shortages.

WHAT'S DRIVING THE 'GREAT RESIGNATION'

In March 2021, Prudential's Pulse of the American Worker Survey concluded that more than one quarter of workers plan to look for a different employer once the threat of the pandemic has decreased. Among those, 80% are concerned about their career growth. And in a Microsoft survey, this percentage grew to 41% of the global workforce, with more than half of the 18- to 25-year-olds considering quitting their jobs.[1]

"MOST FOCUS ON QUITTING FOR A BETTER LIFE. THEY ARE TAKING TIME TO FIND WHAT THEY WANT TO DO FOR THE REST OF THEIR LIFE."

HOW IT IMPACTS OUR INDUSTRY

In my walk of life, I get to interact with advisors, consultants, recordkeepers, actuaries and TPA owners ranging from small to midsize to national firms. Many of the business owners have expressed not only a loss of employees greater than normal, but also a drastic shortage of talent to replace positions or fill newly added ones.

Here are a few statements I captured that stuck with me from earlier this year:

- "We are hearing that some of our TPA partners are feeling slammed. Most are looking to hire more employees and can't find people. Ultimately, they are not confident they can complete all the restatements by next summer."
- "(Expletive)! Just lost another one. That's 4 out of 8 full-time employees in 1 month."

W. Frank Porter, APA, QKA, QPA, is the Head of Institutional Development at Empower Institutional. He serves as ASPPA's 2021 President.

Clearly, to meet the demands we must continue to educate and train our current and future employees. Many are doing this through traditional education programs offered by the American Retirement Association as well as other industry programs. The industry labor shortage has led to many employers turning to interns and job-start programs with local colleges.

WHAT ARE THE LONG-TERM IMPLICATIONS FOR RETIREMENT READINESS?

While most of the studies have focused on the reasons individuals are looking to leave their current employer and what employers can do to curb the potential loss, few have focused on what this could mean for employees' ability to save for retirement.

According to the Bureau of Labor Statistics (BLS), about 4 million workers quit their jobs in April alone, a rate about 24% higher than before the pandemic. Some retirement industry experts warn that mass job separations could lead to potential damage to retirement savings, which are generally accrued through employer-sponsored retirement benefits. It's been proven that a salary-deferral program is the best way to collect retirement savings for people, because they can set up their percentage and accumulate. As more workers leave their jobs—some without another role lined up—industry observers expect more plan leakage to occur.[2]

While some individuals are taking the traditional route of finding a replacement position before leaving their current employer, the storyline in most publications is not about this approach. Most focus on quitting for a better life. They are taking time to find what they want to do for the rest of their life. This may include remodeling their house or a buying an RV to spend more quality time with their dogs, significant other and/or their children, making more time for walks and hanging out in the park. That all sounds great, but it doesn't pay the bills, and certainly doesn't put money away for retirement.

Studies have shown the biggest driver of retirement readiness is the amount of deferral an individual is able to contribute and that the compounding can amount to more than two-thirds of the final account balance. Also, just slight adjustments of a 1% decrease in one's account balance can amount to a decline in assets of over 25% at retirement. Similarly, a delay in savings for individuals early in their career such as Gen Z can have a significant effect in their overall return.

Retirement accounts give us an opportunity to save for our golden years in a tax-advantaged account. If you start early, the power of compounding can turn relatively modest monthly or annual contributions into life-changing wealth. Individuals who are considering leaving their current employment need to assess their knowledge and skill to replace their current position with a better job. They must determine what education or training might be needed to ensure they land the perfect position, as well as assess the current benefits and what the lasting impact of a career change might be on their long-term savings. **PC**

Footnotes

[1] Microsoft, *Work Trend Index: 2021 Annual Report*.
[2] Amanda Umpierrez, plansponsor.com, July 6, 2021.

CLOSING THE RACIAL SAVINGS GAP

Providing an opportunity to save through a workplace retirement plan coupled with auto-enrollment is the key to closing the racial savings gap. **By Brian H. Graff**

Every American deserves the opportunity to achieve a comfortable retirement. But for many Americans today that opportunity remains out of reach because their employer doesn't offer a retirement savings plan.

The gateway to a comfortable retirement is having a 401(k)-style plan at work. Moderate income workers are 12 times more likely to save if they have access to some type of retirement plan. With nearly $10 trillion in assets, these plans provide long term economic growth and build financial security for the middle class. Nearly two-thirds of participants in 401(k)s earn less than $100,000. One-third make less than $50,000.

The workplace retirement plan has been a success—for those who have access. Unfortunately, far too many working Americans still lack access to a retirement plan at work—a retirement plan coverage "gap" that is particularly pronounced in the black and Hispanic communities. More than half (52%) of black Americans and more than two-thirds (68%) of Hispanic Americans lack the opportunity to save in a workplace retirement plan, compared with 40% of white Americans. As a result, 56% of black families and two-thirds of Hispanic families have zero retirement savings, compared with about a third of white families.

"FAR TOO MANY WORKING AMERICANS STILL LACK ACCESS TO A RETIREMENT PLAN AT WORK—A RETIREMENT PLAN COVERAGE GAP THAT IS PARTICULARLY PRONOUNCED IN THE BLACK AND HISPANIC COMMUNITIES."

Providing an opportunity to save through a workplace retirement plan coupled with auto-enrollment is the key to closing this racial savings gap. Data show that when even moderate-income workers are auto-enrolled in a workplace plan, there is no disparity in retirement savings participation, with black, Hispanic and white Americans all at about 80%.

On Sept. 9, the House Ways and Means Committee, led by Chairman Richard Neal (D-MA), approved legislation that would significantly close this gap, giving millions more working Americans the opportunity for a comfortable retirement. The Automatic Retirement Plan Act would require that businesses with five or more employees provide a retirement savings option to their workers. There would be no cost to employers to do so, since the legislation does not require any employer contributions, like matches, and goes further by providing smaller businesses a 100% tax credit for any administrative costs they might incur.

The Ways and Means Committee also created a "Savers Match," which would provide an additional incentive to save and boost the retirement security of moderate-income workers. The Savers Match provides a 50% government matching

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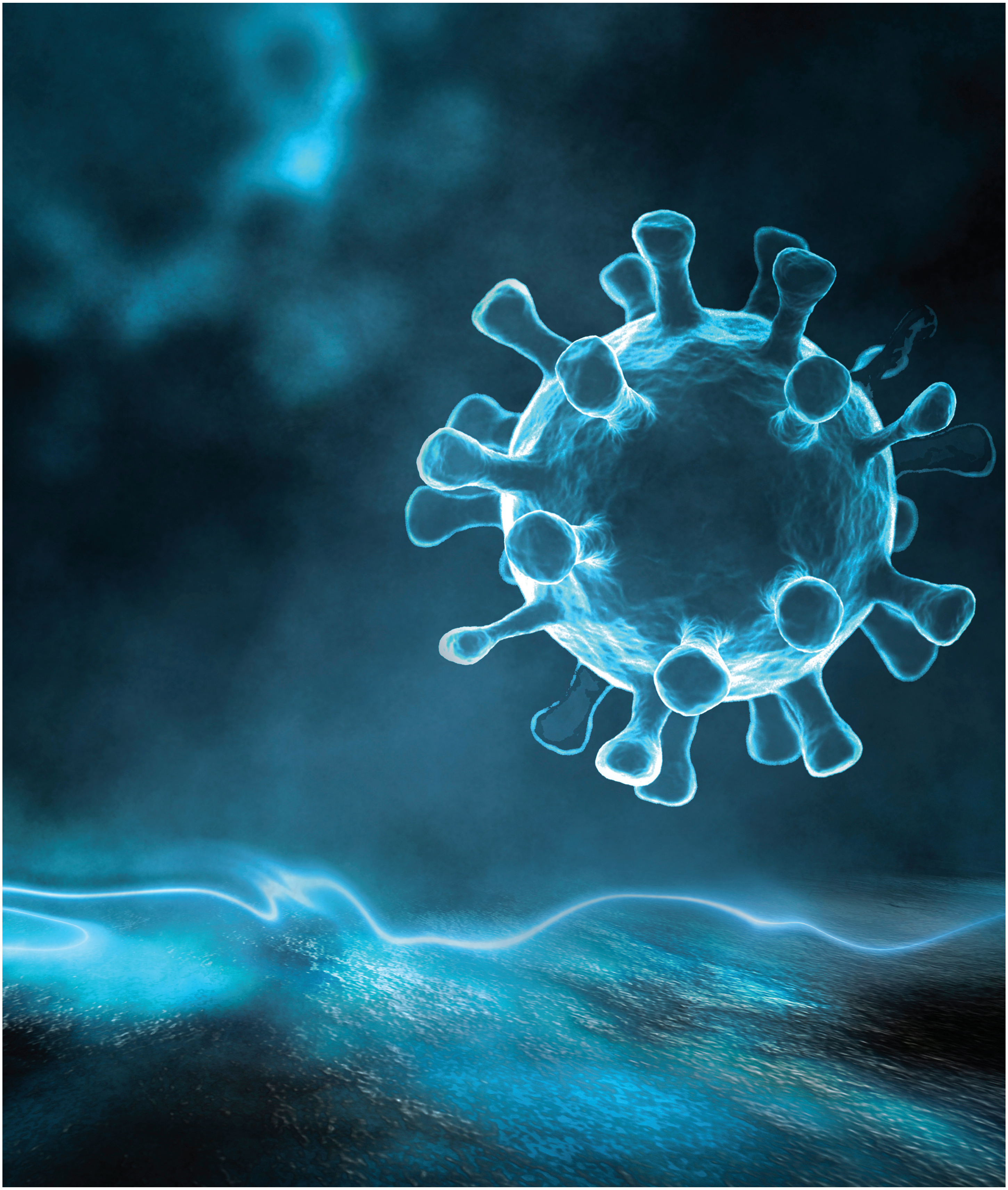
contribution of up to $500 a year contributed directly into a worker's 401(k) plan account—and it would be available in full to families earning up to $50,000 a year, with a reduced amount for families making up to $70,000.

What impact would this have? Estimates show that enactment of the combination of the Automatic Retirement Plan Act and the Savers Match would result in 62 million new retirement savers and nearly $7 trillion in new savings over the next 10 years. Nearly all—98%—of these new savers earn less than $100,000 a year, including nearly 18 million new savers in the black and Hispanic communities.

For working Americans, retirement savings is important because it provides a cushion against unexpected financial shocks. Retirement savings is also accumulated wealth which leads to generational wealth. Ultimately, retirement savings is an essential element in closing the nation's racial wealth gap. These two vital retirement savings proposals together will give tens of millions of Americans the opportunity for a comfortable retirement. By enacting both of these proposals, Congress can turn the 401(k) success story into a story of diversity as well. PC



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TROUBLESHOOTING COVID-19 ISSUES

The COVID-19 pandemic may be nearing its end, but its ripple effects on plan sponsors continue to linger. **By Lena Gionnette**

Many employers were heavily impacted by the global COVID-19 pandemic and the associated shutdown of nonessential businesses in 2020. In an attempt to curb their financial hardship, plan sponsors made difficult decisions involving their employees and their benefit plans. They furloughed and laid off employees, reduced salaries, reduced hours, and temporarily suspended their retirement plan employer contributions.

As a result of these pandemic-related measures, plan sponsors may contend with lingering compliance issues associated with their retirement plans. In particular, qualification failures may exist where a plan sponsor suspended retirement plan employer contributions, but failed to correspondingly amend their plan in a timely manner. Also, plan testing may be an issue, due to the wide swings in levels of participant compensation and plan contributions in 2020.

FAILURE TO ADOPT TIMELY AMENDMENTS

Attendant with the pandemic-related measures described above was a sense of urgency to "stop the bleeding." In many instances, employers that temporarily suspended their employer contributions quickly approved the suspension and timely notified participants, but put the preparation of a formal plan amendment on the back burner. Due to the unprecedented circumstances surrounding the pandemic, plan amendments didn't take center stage. And depending on how long a plan amendment sat unattended, plan sponsors may have been noncompliant with the IRS's requirement to adopt discretionary retirement plan amendments by the end of the plan year in which the amendment became effective.

This was especially prevalent in non-calendar year plans. For example, a plan with a June 30th year end may have suspended its matching contribution in May 2020, giving it only a month to prepare and execute a formal plan amendment by the end of its plan year. In many situations, this rapid-fire timing just wasn't possible given the pandemic-related conditions.

A plan sponsor generally has two available options to address the failure to adopt a timely discretionary amendment that results in a decrease in participant benefits: It may submit an application under the IRS's Voluntary Correction Program (VCP) seeking the IRS's permission to adopt an amendment retroactively, or it can try and treat the extrinsic evidence surrounding the suspension of contributions as a *de facto* plan amendment.

Notably, there's a risk the IRS would reject this type of VCP application because the amendment doesn't favor plan participants. At a minimum, the IRS might require the noncompliant plan sponsor to reinstate contributions retroactively. It's not yet clear whether the IRS would be more lenient given the past year's circumstances. For the time being (until Dec. 31, 2021), the IRS permits plan sponsors to submit VCP applications anonymously. This avenue allows plan sponsors to submit a "risky" retroactive amendment to the IRS on a no-names basis to avoid potential enforcement action from the IRS, should the IRS reject the sponsor's proposed correction method.

Note that pursuant to its most recently published correction procedures, the IRS is discontinuing its anonymous VCP application program at the end of 2021. Plan sponsors

"DUE TO THE UNPRECEDENTED CIRCUMSTANCES SURROUNDING THE PANDEMIC, PLAN AMENDMENTS DIDN'T TAKE CENTER STAGE."

with this type of qualification failure may consider taking advantage of the IRS's anonymous VCP application program while it's still around.

ADP/ACP TESTING

The adoption of timely amendments wasn't the only obstacle associated with the chaos of 2020. Nondiscrimination testing issues may have also crawled out of the woodwork.

The actual deferral percentage (ADP) and actual contribution percentage (ACP) tests are used to determine whether a retirement plan's elective deferral amounts and matching and after-tax contributions, respectively, are nondiscriminatory. The tests rely heavily on contribution and compensation data. Average deferral rates are invariably tied to compensation, and average contribution rates are linked to both deferrals and compensation.

Therefore, the measures plan sponsors and participants took during the pandemic, which led to shifts in employee populations, elective deferral changes, and reduced matching contributions, may have impacted test results. These measures—and the associated ways they affected 2020 and 2021 ADP and ACP testing—included:

- **Furloughs.** Plan participants who were furloughed in 2020 did not have compensation from which to make elective deferrals and receive matching contributions during their period of furlough. While it might seem at first glance that this would affect testing, furloughs probably had a minimal impact on testing overall. A participant's average deferrals and average contributions generally don't change very much when both compensation and deferrals (and matching contributions) concomitantly decrease for a period of time. Say, for example, a participant making $50,000 a year contributes 3% to their retirement plan and receives a match of 100% on the first 3% deferred. Both their average deferral and average contribution ratios are 3%. If that participant is furloughed for half the year, receiving only half of their annual compensation but deferring at 3% for the period of time they're actively employed, their average ratios remain at 3%. Of course, this example doesn't hold true if the participant fails to resume their deferral election upon return from furlough, as their average deferral and contribution ratios would, indeed, decrease in that situation.

  It's more likely that furloughs affected testing in plans that impose a last day and/or 1,000 hour allocation requirement to receive matching contributions. Furloughed participants who did not return before the end of the year or who ended up working less than 1,000 hours in the year may have skewed the ACP averages by virtue of not receiving a matching contribution, especially if the majority of furloughed participants were non-highly compensated employees (NHCEs).

- **Reduced Salaries.** Across-the-board pay cuts may not have had a huge effect on testing in 2020 unless NHCEs decreased their deferral elections in response to the salary reduction. Further, because highly compensated employees (HCEs) are determined based on their prior year compensation, this pandemic-related measure may not fully play out until 2021 testing. If participants were considered HCEs during 2020 testing, and the pay decrease caused them to fall below the compensation threshold, they might be considered NHCEs for 2021 testing.

- **Suspended Matching Contributions.** Most plan sponsors that suspended their matching contributions in 2020 did so for all participants. However, ADP and ACP testing may have been negatively affected if mostly NHCEs reduced their deferral elections in response to the suspension. Further, any safe harbor plans that suspended their match in 2020 needed to perform ADP and ACP testing for the year. That may have posed a problem if difficulty in passing testing was part of why the plan sponsor adopted a safe harbor in the first place.

Since testing for 2020 has come to a close, plan sponsors that haven't already made necessary corrections should work with their recordkeepers to ensure that any testing failures are timely corrected. Plan sponsors concerned with testing issues in 2021 (especially those plan sponsors utilizing the prior year testing method) should consult with their service providers to strategize ways to minimize failures.

CONCLUSION

Last year was a year of tumult for plan sponsors, to say the least, and we're still seeing the effects of the pandemic in far-reaching ways, including on retirement plans. As the waves caused by the early days of the pandemic calm, plan sponsors should take the time to review the past year of plan activity, and ensure that their amendments, testing, and the like are in order and up-to-date. PC

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[1]As of December 31, 2020.
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[3]Chatham's proprietary industry benchmark includes 8 major retirement industry providers.
[4]2020 Chatham Client Satisfaction Study for plans over $5M in assets.
[5]Average core market plan retention rate over 5 years, from 2014 to 2020.
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PENSION SMOOTHING EXTENSION INCLUDED IN INFRASTRUCTURE BILL

The legislation faces an uncertain future on Capitol Hill, however. **By Ted Godbout**

The $1.2 trillion infrastructure bill passed by the U.S. Senate August extends pension smoothing relief for single-employer plan sponsors. The same day, the Senate approved a budget outline that sets the stage for a broader $3.5 trillion tax and spending bill later this fall.

The pension smoothing provision was included in the Infrastructure Investment and Jobs Act (H.R. 3684, as amended) to help offset the cost of $550 billion in new spending to rebuild the nation's highways, roads, bridges, railways, transit systems and other infrastructure projects. The Senate approved the bill on a 69-30 vote, including support from 19 Republicans.

To provide plan sponsors more flexibility in funding their pension obligations, H.R. 3684 would adjust the funding stabilization percentages that were included in the American Rescue Plan (ARPA) that was enacted in March. The infrastructure bill also further extends the stabilization period from 2029 to 2034. The amendments made by H.R. 3684 would apply with respect to plan years beginning after Dec. 31, 2021.

The legislation would amend the table in subclause (II) of Code Section 430(h)(2)(C)(iv) and in subclause (II) of section 303(h)(2)(C)(iv) of ERISA (29 U.S.C. 1083(h)(2)(C)(iv)) See below for the table as amended.

If the calendar year is:	The applicable minimum percentage is:	And the applicable maximum percentage is:
Any year in the period starting in 2012 and ending in 2019	90%	110%
Any year in the period starting in 2020 and ending in 2030	95%	105%
2031	90%	110%
2032	85%	115%
2033	80%	120%
2034	75%	125%
After 2034	70%	130%

“THE PENSION SMOOTHING PROVISION IS ESTIMATED TO RAISE APPROXIMATELY $3 BILLION OVER 10 YEARS.”

In addition to adjusting the funding stabilization percentages that were included in ARPA, the infrastructure bill further extends the stabilization period from 2029 to 2034. ARPA had also set a floor of 5% on the average segment rate for any 25-year period. ARPA's legislative history noted that the provision was intended to preserve the stabilizing effects of smoothing by revising the specified percentage ranges for determining whether a segment rate must be adjusted upward or downward.

But in recent years, so-called pension smoothing has been used as more of a “revenue offset” under the congressional budget rules because it reduces the level of deductible employer pension contributions required under the pension funding rules. In the current legislation, the pension smoothing provision is estimated to raise approximately $3 billion over 10 years.

The amendments made by the provision would apply with respect to plan years beginning after Dec. 31, 2021.

$3.5 TRILLION BUDGET OUTLINE

The same day, the Senate also approved along party lines a non-binding $3.5 trillion fiscal year 2022 budget outline that sets the stage for debate on a yet-to-be-written catch-all infrastructure bill. This would include more of the priorities of the Biden administration and congressional Democrats, such as addressing climate change, providing two free years of community college and expanding paid family and medical leave, among other things.

The budget outline also calls for tax increases directed at corporations and high-income individuals. The tax section of the bill would be drafted by the Senate Finance Committee, where Chairman Sen. Ron Wyden (D-OR) has indicated that he plans to target mega-Roth IRAs and close the carried interest loophole in forthcoming legislation. The House Ways and Means Committee would also be responsible for developing legislation based on the instructions outlined in the budget.

WHAT'S NEXT?

The infrastructure bill now goes back to the House of Representatives for consideration. However, House Speaker Nancy Pelosi (D-CA) has indicated that she will not bring up the infrastructure bill unless the Senate first approves the additional $3.5 trillion infrastructure bill. And as with the infrastructure legislation, the House will need to approve the Senate's $3.5 trillion budget outline before the actual legislation can be written. PC

Bill to Protect Women's Retirement Security Reintroduced

Sen. Patty Murray (D-WA), Chair of the U.S. Senate Health, Education, Labor and Pensions (HELP) Committee, along with Rep. Lauren Underwood (D-IL), have reintroduced legislation to bolster and provide protection for women's retirement security. According to a summary, the Women's Retirement Protection Act of 2021 (WRPA) would:

- expand existing spousal protections for DB plans to DC plans to prevent one spouse from making decisions that might undermine a couple's retirement resources without the other's knowledge and consent;
- amend the SECURE Act to reduce the minimum retirement plan participation standards for part-time workers from three years with an employer to two years;
- increase access to information about retirement and savings tools by providing grants of at least $250,000 for community-based organizations to help provide information and financial tools to women who are of working or retirement age; and
- support low-income women and survivors of domestic abuse seeking retirement benefits by providing grants of at least $250,000 for community-based organizations that assist them in obtaining qualified domestic relations orders.

“Even before this pandemic, women in America typically had less money saved for retirement, in part because they were paid less than their male counterparts for the same work throughout their careers,” Murray said in a statement. “Inequities, like investments, compound over time—which is why it is so critical we take action now to address how this pandemic and other challenges are undermining women's financial futures.”

08/21

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IRS UPDATES THE EPCRS CORRECTION PROGRAM

After Rev. Proc. 2021-30, the new EPCRS offers additional flexibility to complete plan corrections under both the SCP and VCP. **By Gary D. Blachman & Austin Anderson**

The IRS updated the Employee Plans Compliance Resolution System (EPCRS) on July 15, 2021. The update, Revenue Procedure 2021-30, modifies and supersedes the previous version of EPCRS set forth in Rev. Proc. 2019-19.

The new edition of EPCRS makes several changes, including:

- expanded guidance on the recoupment of overpayments;
- elimination of the anonymous submission procedure under the Voluntary Correction Program (VCP);
- addition of a free and anonymous VCP pre-submission conference procedure;
- extended correction period for significant failures under the Self-Correction Program (SCP);
- expanded ability to correct errors under the SCP by plan amendment; and
- extended availability of the safe harbor correction method for certain elective deferral failures related to automatic contribution features in 401(k) and 403(b) plans.

The new EPCRS was generally effective July 16, 2021. However, the extension of the safe harbor correction method related to automatic contribution features is effective Jan. 1, 2021. In addition, the elimination of anonymous VCP submissions and availability of anonymous pre-submission VCP conferences take effect Jan. 1, 2022.

SIGNIFICANT CHANGES

The most significant changes for plan sponsors include the following five provisions.

1. Elimination of Anonymous VCP Submission Procedure. Prior to the update, plan sponsors could submit a VCP application anonymously and reach an agreement about the correction before revealing the plan sponsor and the plan's identity. Anonymous submissions were useful in the case of especially egregious errors and/or errors for which EPCRS did not clearly provide an acceptable correction method. The anonymous VCP procedure is eliminated effective Jan. 1, 2022. However, as noted below, free and anonymous VCP pre-submission conferences will be available.

2. Free and Anonymous VCP Pre-Submission Conference Procedure. While the availability of anonymous VCP applications is eliminated, free and anonymous VCP pre-submission conferences are added. This allows the representatives of plan sponsors to confer with the IRS about a proposed correction before submitting the formal VCP application and identifying the plan sponsor. The new EPCRS offers these conferences for matters on which a compliance statement may be issued under EPCRS if (1) the requested correction method is not described as a safe harbor correction method under Appendix A or B of EPCRS; and (2) the plan sponsor is eligible and intends to submit an application under the VCP.

The new anonymous conferences will be held at the discretion of the IRS. The IRS will offer oral feedback about the error and proposed correction; however, the guidance will be advisory and non-binding. Representatives seeking a conference must submit the Form 8950 via Pay.gov. The IRS expects to modify the instructions to Form 8950 to address this new procedure.

3. Extended Correction Period for Significant Failures Under SCP. The SCP allows plan sponsors to self-correct insignificant operational failures at any time, but they may correct significant operational failures only within a specified period. Previously, the self-correction deadline for significant operational failures was generally the last day of the second plan year following the plan year in which the failure occurred. The new EPCRS extends the end of the self-correction period for significant operational failures to the last day of the third plan year following the plan year in which the failure occurred.

This change also affects the deadline for the safe harbor correction method for employee elective deferral failures in 401(k) and 403(b) plans. Under this safe harbor, elective deferral failures can be corrected with reduced qualified non-elective contributions (QNECs) by certain deadlines. Elective deferral failures that do not exceed three months can be corrected without any QNEC under some circumstances. Failures that exceed three months but do not exceed the SCP correction period for significant failures may be corrected with a 25% QNEC. Thus, the extension of the correction

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"THE NEW EPCRS EXTENDS THE END OF THE SELF-CORRECTION PERIOD FOR SIGNIFICANT OPERATIONAL FAILURES TO THE LAST DAY OF THE THIRD PLAN YEAR FOLLOWING THE PLAN YEAR IN WHICH THE FAILURE OCCURRED."

period for significant failures under the SCP extends the safe harbor deadline for correcting elective deferral failures with a 25% QNEC.

4. Expanded Ability to Correct by Plan Amendment Under SCP. The prior version of EPCRS expanded the ability of plan sponsors to correct operational failures by plan amendment. This allowed sponsors to amend a plan to conform the terms of the plan with the plan's operations and thereby correct a failure. However, the ability to take advantage of SCP required that these corrective amendments, among other things, result in an increase of a benefit, right or feature that applied to all employees eligible to participate in the plan.

The new version of EPCRS still requires that corrective amendments result in an increase of a benefit, right or feature. However, that increase is no longer required to apply to all employees eligible for the plan. This is a helpful change for plan sponsors, as operational failures often do not affect all employees eligible to participate.

5. New Guidance on Recoupment of Overpayments. Prior versions of EPCRS allowed plans not to require certain participants and beneficiaries to return overpayments to the plan. Overpayments include payments from DC and DB plans that exceed either the amount payable under plan terms or limitations under the Code. In certain circumstances, overpayments may be corrected by retroactive plan amendments. In other cases, EPCRS offers new correction methods. Under these rules: (1) for periodic payments, future payments must be reduced as soon as practicable either to reflect the correct amount payable or to satisfy a limitation under the Code; (2) the plan sponsor must notify the overpayment recipient in writing that the overpayment is not eligible for favorable tax treatment; and (3) generally, the amount of the overpayment must be contributed to the plan by the plan sponsor or another person.

OVERPAYMENTS FROM DB PLANS

The new EPCRS offers two exceptions to the requirement that the amount of the overpayments must be contributed to the plan:

- **Funding Exception Method.** For plans subject to Code Section 436, no corrective payment is necessary if the certified or presumed AFTAP applicable on the date of correction is at least 100% (or if, for multiemployer plans, the most recent annual funding certification indicates the plan is not in critical, critical and declining, or endangered status). Future benefit payments to the overpayment recipient must be reduced to the correct amount. No further corrective payments from any party are required, and no further reductions to future benefit payments to an overpayment recipient, or his/her spouse or beneficiary, are permitted. In addition, no further corrective payments from an overpayment recipient, or his/her spouse or beneficiary, are permitted.
- **Contribution Credit Method.** Under this method, the amount of overpayments required to be repaid to the plan is the amount of overpayments reduced (but not below zero) by: (1) the cumulative increase in the plan's minimum funding requirements attributable to overpayments; and (2) certain additional contributions in excess of minimum funding requirements paid to the plan after the first overpayment was made.

As with the funding exception method, future benefit payments to the overpayment recipient must be reduced to the correct amount. If the amount of overpayments is reduced to zero after the contribution credit is applied, no further corrective payments from any party are required, and no further reductions to future benefit payments to an overpayment recipient, or his/her spouse or beneficiary, are permitted. In addition, no further corrective payments from an overpayment recipient, or his/her spouse or beneficiary, are permitted.

Importantly, neither of these methods may be applied to overpayments associated with a failure to satisfy a statutory limit. Also, it appears that these methods may not apply to governmental plans, which are not subject to Code Section 436.

OVERPAYMENTS FROM DC PLANS

The new EPCRS clarifies that a DC plan may permit an overpayment recipient to choose the method of repayment applicable to the overpayment, and that such method may include an installment agreement (in addition to lump sums and reductions of future payments, as permitted in the prior EPCRS).

Additionally, EPCRS' safe harbor correction method for certain elective deferral failures affecting employees who are subject to an automatic contribution feature in a 401(k) or 403(b) plan is extended by three years, to failures that begin on or before Dec. 31, 2020. Previously EPCRS offered this safe harbor correction method only for failures that began on or before Dec. 31, 2023. PC

FUNDING RELIEF UNDER ARPA

Here's what the new provision means—and doesn't mean—to DB plans. **By Lorraine Dorsa**

One significant provision of the American Rescue Plan Act of 2021 (ARPA) that has been highlighted in much of the commentary about the Act is the funding relief provided to single-employer defined benefit plans. This funding relief, while welcomed by plan sponsors in difficult financial circumstances, does not reduce all costs and obligations of maintaining a DB plan and in fact may cause certain other costs to increase.

WHAT IS FUNDING RELIEF?

Funding relief refers to changes to the funding requirements for DB and cash balance plans that allow the plan sponsor to fund the plan with lower annual contributions over a longer period of time rather than the more rapid funding schedule required prior to ARPA.

The intent of funding relief is not to excuse plan sponsors from the obligation to fund their plans; rather it reduces the annual funding requirement so plan sponsors can afford to continue to fund and maintain their plans in lean years. For plan sponsors that are recovering from the financial challenges of the last two years, this is welcome relief.

OVERVIEW OF THE RULES

Single-employer DB and cash balance plans are subject to both minimum funding requirements (IRC §430) and maximum deductible limits (IRC §404). Taken together, they produce a range of allowable contributions. The plan sponsor must contribute at least the minimum required amount each year; failure to do will result in excise taxes and other consequences such as restrictions on plan benefits.

The plan sponsor may also choose to contribute (and deduct) amounts larger than the minimum required amount but not more than the maximum deductible limit. Most plan sponsors budget to contribute an amount somewhere in the range, perhaps more in some years and less in other years, such that plan assets will be sufficient to pay all benefits.

This ability to vary contributions from year to year (within the allowable range, of course) provides an opportunity for forward-thinking plan sponsors to manage both the immediate and long term needs of their plans. (Note: This article does not address multiemployer plans, which are subject to different set of funding requirements.)

"FOR PLAN SPONSORS THAT ARE RECOVERING FROM THE FINANCIAL CHALLENGES OF THE LAST TWO YEARS, THIS IS WELCOME RELIEF."

DB FUNDING RULES AS MODIFIED BY ARPA

The IRC §430 minimum funding requirements for single-employer plans stipulate the methodology and prescribes the interest rates and amortization periods to be used in the determination of the minimum required annual contribution. This minimum required contribution is the sum of two parts: the cost of benefits earned during the current year and amortization of benefits earned in past years that have not yet been funded.

Under ARPA, the prescribed interest rates are higher than under prior law. Higher interest rates translate to lower liabilities and lower contributions needed to fund these liabilities. This provision is effective for plan years beginning in 2022, but plan sponsors may elect to apply it as early as plan years beginning in 2020.

ARPA also provides for a fresh start for amortizing unfunded past service liabilities and by extending the period over which they are amortized from 7 years to 15 years, which again translates into lower minimum required annual contributions. This provision is effective for plan years beginning in 2019, but plan sponsors may elect to delay it until as late as plan years beginning in 2022.

The impact of these changes varies by plan. Plans with significant unfunded past service liabilities and a significant number of participants close to retirement age will see the greatest impact, while well-funded plans with no unfunded past service liabilities and younger participants will see the least.

WHAT IS NOT AFFECTED BY ARPA FUNDING RELIEF?

As important as what funding relief means and what it changes is it what it does not change. It does not:

- relieve the plan sponsor of the obligation to fund the plan such that it can pay promised benefits;
- change the value of benefits payable to plan participants;
- reduce premiums for PBGC covered plans;
- change the maximum deductible contribution; or
- change how pension obligations are reported on the plan sponsor's balance sheet and financial disclosures.

In fact, a plan sponsor that takes advantage of the lower minimum required annual contribution is likely to experience potential negative consequences in other areas, such as:

- increased PBGC premiums (the variable rate portion of the premium is based on the plan's funded status; lower contributions can result in lower assets and a lower funded status);
- a greater number of years over which a frozen plan must funded before it is sufficient to terminate; or
- higher unfunded liabilities reported on the plan sponsor's balance sheet and financial disclosures.

WHICH PLAN SPONSORS WILL BENEFIT MOST FROM ARPA FUNDING RELIEF?

The funding relief provided by ARPA is most valuable to plan sponsors that would otherwise have trouble funding their plans over the short term. For a plan sponsor under significant financial strain, the reduced minimum required annual contribution under ARPA may be low enough that the plan sponsor can continue to fund the plan (either the full required minimum contribution or some part of it) and avoid or minimize the excise taxes and other consequences of not contributing the required amount.

A plan sponsor that is in an overall good financial position but may be in a short-term bind or experiencing cash flow issues may choose to contribute only the lower minimum required contribution under ARPA for several years and thus be able direct more of the firm's assets to immediate business needs.

WHICH PLAN SPONSORS ARE LEAST LIKELY TO TAKE ADVANTAGE OF ARPA FUNDING BELIEF?

Many smaller DB and cash balance plans are sponsored by professionals or other small businesses with the goal of tax-favored wealth accumulation for the business owners and principals. These plans are generally well funded and are likely to continue to remain so, as the goal is to be fully funded by the time the principal(s) retire, often only a few years in the future.

Except for an occasional year with cash flow issues (or maybe a pandemic year), these plan sponsors are usually looking more to maximize their tax deductions and focusing on becoming fully funded than they are to make the minimum contribution.

CONCLUSION

The funding relief provided by ARPA provides valuable flexibility to plan sponsors, particularly those under financial strain. The ability to make lower contributions in difficult years allows these plan sponsors to direct more of their financial resources to maintaining and managing their businesses and thus being able to continue in business and to sponsor their plans. PC

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WHERE'S THE CANARY IN THE PLAN'S DATA MINE?

A federal court in Texas dismissed an important suit against Fidelity's recordkeeping division. **By Kelsey Mayo**

Participant data—not only who is viewing it, but how it is viewed—has moved into the direct line of sight of recent ERISA litigation.

Christine Roberts contributed a wonderful summary of the issues and arguments behind this trend in "What's in a Name?" published in the Spring issue of *Plan Consultant*. As she noted, *Harmon v. Shell Oil* (Case No. 3:20-cv-00021) brought this issue out of the periphery for many. Unlike many prior cases, which settled before the court could rule on the matter, the *Shell Oil* case proceeded all the way through decision—giving us some insight into how courts might apply ERISA to the subject of plan data.

In the *Shell Oil* case, the plaintiffs' alleged a breach of fiduciary obligations against the plan's third-party recordkeeper, Fidelity. To support this allegation, the plaintiffs initially had to establish that Fidelity was a fiduciary. To do this, they first asserted that various participant personal information, including income levels and investments, were plan assets. Then the plaintiffs argued that because Fidelity utilized participant data to market their non-plan-related products and services, it exercised control over a plan asset, and thereby became a fiduciary. The court disagreed and dismissed the plaintiffs' claims.

The court cited the Department of Labor's regulations interpreting the term "plan asset" (29 C.F.R. §2510.3-101). These regulations specifically mention that plan investments and participant contributions are plan assets, but the court noted that no regulation mentions data as a potential plan asset. In the absence of a regulatory provision specifically mentioning participant data, the court looked beyond ERISA, namely, to ordinary notions of property rights. Rather than independently providing a rationale regarding whether ownership of data comported with ordinary notions of property rights, the court noted that no court has held that transfer of data was a fiduciary breach under ERISA and several other district courts found data was not a plan asset and then "[found] no reason to depart from those holdings." While less helpful than an actual rationale, the decision still indicates that courts are reluctant to find that data collected in plan operations are plan assets.

This case will most likely be appealed, but whether we will see a Circuit Court of Appeals decision providing additional insight before the case is settled remains to be seen. The dismissal should bring some comfort to plan fiduciaries, but it doesn't negate the lessons and best practices that Christine Roberts outlined in the Spring issue. This issue is far from settled, and plan sponsors and service providers alike would be well advised to follow her suggestions of discovery, negotiation, and disclosure with regard to the use of participant data. PC

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Best Practices vs. 'Git-R-Done'™

How much time can—or should—you devote to processes and procedures that are considered best practices, yet remain profitable? By R.L. "Dick" Billings

For 35 years, I was the founder and CEO of a TPA/daily-recordkeeping firm. Over those years, we had large clients and small ones; "easy" clients and "difficult" ones. If you are an owner or an administrator of a TPA firm, you probably have the same range of clientele. My point is that very few companies have the luxury of a homogeneous clientele.

Most TPA and recordkeepers state contractually they have no fiduciary relationship with their clients. If you *are* a fiduciary, ERISA has special rules you must follow. But even if you are not a fiduciary, I am sure you try, to the best of your ability, to conform to industry best practices in servicing and advising your clients.

If you have been in this business the last 10 or 20 years, you have seen the fee compression happening all around you. TPAs and recordkeepers have not been immune. Fortunately, today's technologies are sophisticated, affordable and cost-effective. The problem is that TPA owners are too busy "putting out fires." Staff is continuously encountering issues that are punted to higher levels of management. An owner may have time to methodically review the new technology, understand it, and then make a rational purchase decision. Unfortunately, my experience with most small businesses is they strive for such a scenario, but never seem to achieve it.

As with any major investment to further the development of

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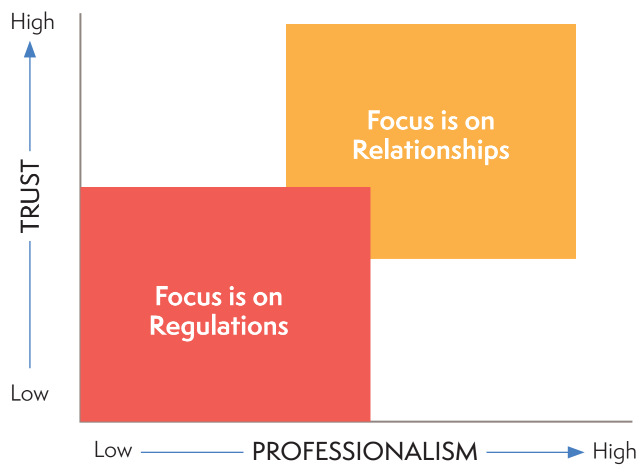
administrative checklists and procedures, there always exists a certain tension: How much time can, or should, you devote to processes and procedures that are considered best practices, yet remain profitable? How much can you reasonably afford to invest in automation and technology? And at what point is there is so much automation and technology that your practice loses its effectiveness at always being "consultative"—thus causing clients to leave and reducing your profitability even more?

Before we go any further, let's address the definition of "best practices." What might qualify as best practices to me or a government regulator may be different than your standard. We all know the inexpensive TPA or recordkeeper firms, as well as those considered expensive. In most cases, the old saying rings true: "You get what you pay for."

Investopedia defines best practices as "a set of guidelines, ethics, or ideas that represent the most efficient or prudent course of action in a given business situation. Best practices may be established by authorities, such as regulators or governing bodies, or they may be internally decreed by a company's management team." And Merriman-Webster defines them as "a procedure that has been shown by research and experience to produce optimal results and that is established or proposed as a standard suitable for widespread adoption."

The graph below illustrates best practices, showing the tension between what is best for the client and what one "has to do." Of course, federal regulations stipulate certain minimum requirements, but if you run a "consultative" practice, your services must go beyond these required minimums. As the graph shows, your best clients are those with whom you



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> We train our staff in the proper way to perform each individual task or process, but we are all human and subject to error and shortcuts.

can develop a trusting relationship. Of course, this is accomplished by a continuum of competent, accurate, and empathetic services.

However, you have to decide when profitability is lost as you focus more and more on this relationship. More attention, more effort, more oversight upon a client is always a very good thing, at least in concept. But there is always a practical limit. If you do too much for a client, are you simply enabling them? Are you setting yourself up for the inevitable time when a mistake is made and your client says, "Well, you have always been responsible for everything!"

So where is that tipping point today? How will it change for each client as time marches on? At what point must you limit your services in some productive area in a way that that still makes your client relationship profitable?

As a detail-oriented TPA or recordkeeper, you know that the first step in getting closer to best practices is to create checklists—lots of them! We all have checklists for:

- participant distributions;
- ADP/ACP testing;
- vesting;
- eligibility;
- contribution allocations;
- and more.

We seem to create a checklist for almost everything, whether on paper, on our phones, or within some sophisticated vertical market software. We train our staff in the proper way to perform each individual task or process, but we are all human and subject to error and shortcuts. Employees forget that such a checklist exists or, more likely, they were not properly trained in each checklist's use and importance.

But even if they have been properly trained on how to properly complete any such process, too many times you will have certain staff who have gone through the checklist so many times they become complacent. They review the checklist in their heads and then, to satisfy their supervisor, pull out the checklist and check off/initial each item, giving little thought to whether they really performed each and every checklist item in a thoughtful and competent manner.

So, to provide better service to your clients and get you closer to your definition of best practices, you simply must invest in more sophisticated software, insert more layers of oversight, or periodically take a completed case and audit it internally to ensure its proper and efficient administration.

If I asked you, "Has your office achieved best practices regarding your firm's administration and service?", what would be your response? You may either say "yes" or "not yet!" If it's the latter, now is the time to figure out why. If it's the former, you are probably wrong. As humans, we spend so much time creating documents, checklists, procedures, etc., and then strive to ignore them! (Think corporate bylaws, personnel manuals, or Summary Plan Descriptions.)

Larry the Cable guy is the one who coined the phrase, "Git-R-Done™." I doubt he would do well as a 401(k) administrator. As an owner, the question you should ask yourself is whether you have one or more employees or administrators with that "Git-R-Done" attitude. Yes, the faster that staff gets cases done, the more profitable the company is. But at what price? Is any accuracy or oversight lost in the process?

On the other hand, are some of your administrators so concerned about accuracy that they become so much slower than everyone else in handling their caseload? Clearly, a healthy balance is necessary. And that ultimately is the job of the firm's executive managers. If they do not train their subordinates how to create and manage this delicate balance, those subordinates should not be expected to figure it out on their own. And why would any rational owner or executive want to avoid such a critical component of their consultative practice?

To help you get closer to any best practices goal, following are some standards we developed in our own firm.

REGULAR ASSESSMENTS

Assess the strengths and weak spots on a yearly basis to improve organization performance. This can be done by holding periodic administrative/recordkeeping team meetings to go over *each and every* checklist item. These meetings *must* include someone who is well versed in IRS and DOL regulations. Too many times there is a big disconnect between how management wants a plan to be administered and how

The faster that staff gets cases done, the more profitable the company is. But at what price? Is any accuracy or oversight lost in the process?

the administrator (who just wants to complete the checklist and move on to the next case) handles the administrative process.

Some firms have annual retreats. But most retreats I see only involve executive management. I don't think executive retreats are bad, but unless the executives are truly "in the administrative weeds," that is the wrong group to analyze such organizational weaknesses. While it would probably be helpful for one or more executives to be involved in these team meetings, the meetings should be led by local supervisors.

OPERATING GOALS AND TRAINING

It's important to align training with management's operating goals. Once you know the goals, you can design targeted programs. Design onboarding procedures and new-hire training that ensures employees will be knowledgeable and focused on company standards. When I used to ask administrators why they do a certain process, too often, the response was either, "This is how I was trained" or "We have always done it this way." (I hated both responses!)

I also found a hesitancy by administrators about attending live national or regional seminars. Maybe they didn't like traveling, or simply were not the kind of people who always want to participate actively and meet people at live seminars or conferences. While I know such trips are much more expensive than video-based training, much is lost when only offering virtual events. Live seminars allow your staff to interact with presenters, vendors and fellow administrators. But this is key: Require your attendees to formally brief appropriate fellow employees after the seminar. This will encourage them to take better notes and to ask a presenter or vendor the same questions their fellow employees would ask.

Also, I found much more staff cooperation if I allowed two co-workers to travel and attend an event together. Having two or more in attendance will also encourage each of them to attend all the sessions and take copious notes!

TRAINING PROGRAM

Develop an ongoing training program. Identify who needs to be trained and on which skills. Don't focus only on one-time training events. Engage learners with job-relevant materials. If you are looking for such programs, I would recommend educational and training resources at either ASPPA at asppa.org or the National Institute of Pension Administrators at nipa.org. I required all of my employees to study and pass ASPPA's Retirement Plan Fundamentals Certificate program. *Every* employee who works in a TPA office needs to understand the basics of how retirement plans work, how the law developed, and current issues.

Furthermore, if an employee plans on making administration his or her career choice, a designation from a reputable education organization is a must. Forcing or strongly recommending professional education to employees will not only help them in their advancement, but also allow them to serve clients better and reduce your liability from mistakes made by the employee themselves or your clients. If an administrator refuses such an opportunity, you should be honest with them that their prospects for advancement and higher wages will be diminished as a result.

VERTICAL-MARKET SOFTWARE

Purchase a vertical-market software product to administer your plans (e.g., ADP, ACP, coverage, etc.) and track each plan's progress (i.e., a customer relationship management (CRM) system). If you perform recordkeeping, be sure to also purchase auditing/accounting software that balances your daily accounts to the penny each and every business day.

I still see TPAs that use basic spreadsheets or cheap, internet-based generic CRM systems. Their rationale is that vertical-market software is just too expensive, or that their business is somehow unique and no vertical-market software exists that would fit into it. Baloney! Too often, owners focus only on the hard-dollar cost of such a system and make little or no effort to quantify the soft-dollar cost of not having one: more mistakes, poorer customer service, employee frustration, and ultimately, more turnover.

If you doubt me, just ask your administrative employees how they like your existing recordkeeping, administrative or CRM system. If you already have "good" vertical-market software and employees are *still* frustrated, it's because either they have not been trained adequately by the vendor or your company has not spent enough time allowing teams to go through actual cases as a group so all can learn the system concurrently.

I cannot stress this issue of "frustration" enough. You sometimes

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see job dissatisfaction among your clients' employees and wonder just how their employer stays in business. They may vent about their employer to you or your staff privately, either because of poor management or lack of desire to "invest in their employees." But too often we managers spend so much time placating our clients and their underlying employees that we ignore our own employees' needs. We ourselves just want to "Git-R-Done" and pressure our staff to move quickly from one client to the next. If you and your firm are going to be trusted by your clients and colleagues, you have to first invest in your staff. And the most inexpensive way to do that is to invest in vertical-market software.

LIABILITY INSURANCE

"Everything should be made as simple as possible, but not simpler," Albert Einstein wrote. Assuming you agree with Dr. Einstein, this does not mean that checklists or well-defined procedures are somehow inadequate. But as a professional, if you are going to strive for best practices (no matter how they are defined), you must carry a sufficient amount of liability insurance. It seemed to me over the years that $1 million of coverage was adequate. Now I am seeing $2 million of coverage much more frequently. Of course, if you run a larger shop or also offer daily recordkeeping, purchase more liability insurance than these minimum amounts.

A side note about daily recordkeeping: If you offer this service internally to your clients (like through Relius or ASC), know that mistakes *will* occur. These systems are designed to be automated in many ways, but trust me, mistakes will happen—a deposit is not invested timely, a distribution is delayed unreasonably, or a trade is not executed as the participant instructed. As a result, staff will be required to make restitution to the participant.

This means you need to set up a contingency fund of some amount to pay for these errors. My own experience was that this fund amounted to a few thousand dollars each year; the restitution cost usually totaled less than $1,000 a year.

This is simply one of the costs of offering internal daily recordkeeping to your clients. Of course, if you only use outside insurance companies and recordkeepers, a fund like this normally is not needed as long as all the participant activity and web access is directly with the outside firm and no one in your firm has to touch the request in any way.

CONCLUSION

I suggest that you create one more thing: a list that tells you what you need to do each and every year. Instead of creating a whole new checklist, simply set up an annual calendar appointment on your computer. Your meeting notes within the appointment would then include the meetings or tasks that are discussed above. Set the appointment as "recurring" annually. As your task list evolves, simply paste any changes into a future annual meeting and tell your system to replicate those edits going forward.

We all know that the answer to the question, "What is the definition of insanity?" is "Doing the same thing over and over again, but expecting a different result." Whether you are a business owner or an administrator, you need to ask yourself whether that's what your company is doing. Is there constant innovation occurring internally? Is there much internal discussion about changing this checklist or that process? Is there much internal discussion about freely discussing new ideas in a nonintimidating environment?

If you are an owner and encourage little or no discussion of potential changes or improvements, you had better change your habits or give someone else the freedom to initiate and oversee such discussions. Failure to do so will not necessarily mean your business will go bankrupt. But it will undoubtedly mean your business will never really change from what it is now to something better. Maybe this is okay with you. But even if it is, I can guarantee you that your employees or partners do not share your complacency.

Now… Get-R-Done! PC

PERFECT STORM

NEW LAWS, NEW REGULATIONS, A PANDEMIC, WORK-FROM-HOME—2020 WAS A YEAR UNLIKE ANY OTHER. HOW DID TPAS WEATHER THE STORM?

BY JOHN ORTMAN

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In an industry run by executives and business owners with decades of experience in their field, no one had ever seen anything like 2020. Apart from the COVID-19 pandemic and the shutdowns that resulted, they faced the task of coping with multiple COVID relief initiatives from Congress, DOL and IRS that directly impacted their business and their clients, mainly in the form of the Coronavirus Aid, Relief and Economic Security (CARES) Act enacted in March 2020 as the shutdowns began. Other related legislation, as well as regulations implementing those changes, soon followed.

Further complicating matters, the CARES Act's new programs and rules changes came only 90 days after enactment of the wide-ranging Setting Every Community Up for Retirement Enhancement (SECURE) Act, which enhanced many of the federal government's retirement savings provisions and changed many compliance requirements in ERISA and the tax code.

The burden of coping with that legislative and regulatory "perfect storm" fell squarely on the nation's third-party administrators. How did they respond?

THE DELUGE

"Right when we all heard about the SECURE Act, I feel like the whole industry went into three weeks of graduate school—going deep, going hard on everything," recalls Katherine Tipper, the President and CFO of Hunter Benefits

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Consulting Group, a national TPA with offices in Chicago, Denver, Seattle and Spokane.

"How do you explain this deluge of regulations that we had to power through?" Kirsten Curry remembers asking at the time. Curry is the founder and President of Leading Retirement Solutions, a national TPA based in Seattle serving about 1,500 clients in all 50 states. "We were having to get our arms wrapped around a set of regulations that affects our entire group of clients in all kinds of different ways, and that's huge."

"It's funny that some of the clients were ready to hear it, but a lot of them really were dealing with their own stuff," observes Tipper, whose 28 employees service about 1,000 plans in 42 states. "In the middle of a crisis, they don't need a big education. They just need to know something's happening—this is briefly what it is—and we're going to help you when you need it."

Amid that deluge of new and modified compliance requirements, being the trusted resource that all clients want in their TPAs became more important than ever. "We all want to lead the charge in educating our clients," Tipper notes. "Some of them have the bandwidth, and some of them at that point didn't, but they still needed the options. But when a loan or a distribution came in, they counted on us understanding it and being able to tell them if there were options on it."

That's where a good team becomes a difference-maker. "I'm a firm believer in surrounding myself with people who are smarter than I am and have talents that I don't have," says Melissa Terito, a partner at Sentinel Pension in Baton Rouge, LA whose team oversees more than 200 plans with assets totaling more than $350 million. "I learned a long time ago I don't have to know everything. I just have to know enough."

CARES ACT LOANS AND DISTRIBUTIONS

The CARES Act included two provisions that impacted TPAs for the rest of the year:

- allowing plan participants affected by COVID-19 to take a new Coronavirus Related Distribution (CRD), withdrawing up to $100,000 from their retirement plan penalty-free until Dec. 30, 2020, and spreading the income tax due on these distributions over a three-year period; and
- creating the Paycheck Protection Program (PPP), a lending program to help small and medium-sized business suffering from liquidity problems.

Those two provisions proved to be the main compliance-and-administration focus of TPAs through the rest of 2020. Not only were they complex, but they also became effective immediately and regulatory guidance would not come for weeks or months—and they came just as industry professionals were starting to gain a full understanding of the SECURE Act.

At Leading Retirement Solutions, "We were thrust into the position of very quickly gaining understanding of new and different regulations because our clients needed to be able to rely on us to help them understand what was going to be allowed," says Curry. "We also had to work really quickly to get new and different forms in place, communication, and all of that kind of stuff, which I think in our industry we've continued to become more accustomed to having to work pretty frantically and fast when things like this happen."

"I had a lot of crying on shoulders to other people in the retirement plan community, trying to figure out what the heck was going on," recalls Shannon Edwards, President of TriStar Pension Consulting, a regional TPA in Oklahoma City, OK whose staff of 8 handles more than 275 clients. "Then we were constantly, as quickly as we could, pushing information out to our clients."

Prior to the CARES Act, Terito and her staff had looked into the SECURE Act and begun to make plans as a team. "Then the CARES Act came and we needed to address that within an hour—a brand new piece of legislation that we all had to figure out, and very quickly. And answer a ton of questions from clients," she recalls. "And so, we just did it. And figure out how the record keepers were going to handle it."

At the same time, Terito's team developed a plan to track their CARES Act-related interactions with individual clients, utilizing Microsoft Teams to share a spreadsheet tracking all interaction starting with initial outreach. "We created an internal amendment, so that we would have the client sign off on it if they were going to adopt the CARES Act provision, because at the beginning we didn't have any legal documentation that they could sign off on. And then we just took it day by day and did the best that we could to help our clients make the determination whether if they should allow these types of distributions from the plan."

Coupled with the challenge of trying to run her own business in the early stages of a pandemic while all this was going on, "it was a lot of pressure," Curry recalls—and many decisions

KATHERINE TIPPER

Hunter Benefits Consulting Group - Chicago Office

"WE WERE HAVING TO GET OUR ARMS WRAPPED AROUND A SET OF REGULATIONS THAT AFFECTS OUR ENTIRE GROUP OF CLIENTS IN ALL KINDS OF DIFFERENT WAYS, AND THAT'S HUGE." — KIRSTEN CURRY, LEADING RETIREMENT SOLUTIONS

had to be made. "Do we default clients into the CRDs or allow them to elect-in and have to make what could be considered big decisions, when we still had questions about what these programs were supposed to look like? We still needed some more guidance around the regulations that had been released."

As it turned out, participant utilization of the new CRDs also turned out to be underwhelming. At Sentinel, "Maybe we had an uptake of a couple of percent," says Terito. "It wasn't the tsunami that we expected it to be." **SB**

The provision was not especially popular with plan sponsors either. "It was surprising to me that very few of our clients added the CARES Act distributions or loans," Edwards notes. "We had a very, very small percentage of clients use those in any way at all or add those opportunities to their plans." At first, TriStar took a strong stance on what it meant to be qualified to take one of those because there was very little guidance. Later, as things changed, she recalls, the DOL "kind of loosened that up and said, 'No, this does include spouses and family members and things like that.' But even after we told clients, 'Now things are more clear and it is a wider group of people who can take these,' our clients still didn't use them, really."

Edwards also perceived regional variances in the pandemic's impact on clients. "It seemed like on both coasts, a lot more people were suffering from the shutdowns and needing access to their money and needing those types of distributions than people in the Midwest" and elsewhere, she recalls. "As I would

CRDs by the Numbers

A January 2021 Vanguard analysis of its 2020 recordkeeping data indicated that 73% of its plan sponsor clients permitted their participants to access retirement funds if needed. Among those clients, 5.7% of participants did so. And among those who initiated a withdrawal, 69% took one distribution, while 31% took multiple distributions.

The average distribution was $15,700 and the median was $6,500. However, since nearly a third of participants who initiated a withdrawal took multiple distributions, the average per-participant distribution was $24,600, with a median of $13,300.

And while those are significant amounts, nearly one in four distributions were for less than $5,000 and 60% of all withdrawals were for less than $20,000. Vanguard also reported that withdrawals of more than $30,000 were less common, and only 4% of participants who initiated a CRD withdrew the maximum amount of $100,000.

talk to people from Oklahoma, Texas and Missouri about what we were experiencing here, we just didn't have as many employers laying people off. Many would tell me, 'No, we've kept our entire staff. We haven't let anybody go.' We did have a really large manufacturer that cut hours a little bit, but they're very intentional about not allowing for certain distributions and keeping money in the plan, so they were not willing or ready to give people another avenue to take money out of the plan."

One reason for the unanticipated lack of interest in the CARES Act distribution option among plan sponsors may be that a PPP was a better choice, especially for smaller businesses. "We do have a decent number of more owner-driven plans where they're smaller owners and more heavily involved, and rather than taking monies out of the retirement plan, they looked to the government for support, whether it be a PPP loan or an EIDL loan," Curry explains. "We saw more utilization by our business owner clients of those funding mechanisms versus taking money out of the plan."

Edwards agrees. "I really think that the PPP loans helped tremendously, especially here in Oklahoma, as far as keeping businesses open and keeping people employed," she says. "Especially when I look at my dentists' offices and doctors' offices, those really helped them keep their staff on, which meant that they did not have to basically open up the floodgates and let all the money out of their retirement plan."

SMALL PLAN START-UP CREDIT

To help small businesses establish retirement plans, the SECURE Act significantly expanded the tax credit available to small business with fewer than 100 employees for starting a plan, as of Jan. 1, 2020. Did it work?

The new tax credit "was a great point to push out to CPAs and advisors, and to market not only the plans, but us as being in front of that," reports Linda Chadbourne, President of Hills Pension Associates, a small boutique TPA in Carver MA. Her team of five handles 200 plans, including doctors, lawyers, dentists and family-owned businesses. "This year's been really, really busy with new plans," Chadbourne adds.

At TriStar and Leading Retirement Solutions, Edwards and Curry are also seeing more startup plans than ever. "All the TPAs that I'm talking to are experiencing the same thing—a lot of us are doing a lot more plans than we thought we were going to be doing this year," says TriStar's Edwards. A lot of those are startups, she adds.

Edwards and Curry attribute the uptick in new business to several factors in addition to the new tax credit—in particular, the growing list of states creating retirement saving programs for private-sector workers. "It's interesting because there are plenty of companies where they're grumbling, 'I'm in California and they're making me put a retirement plan in place for my employees, and I just don't have time to do this,' says Curry. "Then we can say, 'But you can pretty much get this plan started for free, without the pain or burden.' It's been helpful for our sales process."

LTPT EMPLOYEES

In an effort to help long-time part-time (LTPT) employees save for retirement, the SECURE Act included a provision requiring 401(k) plans to adopt a new, dual-eligibility requirement under which an employee must complete either one year of service (subject to the 1,000-hour rule) or three consecutive years of service with at least 500 hours of service. The plan sponsor may choose to exclude employees eligible solely on the basis of this new three-year rule from the top-heavy, coverage and nondiscrimination rules.

It appears that 2024 is the earliest that employees will gain eligibility under the three-year rule, so plan sponsors and their recordkeepers need to begin tracking LTPT employee data this year. What are the ramifications for TPAs in 2021 and beyond?

At Sentinel Pension, "We are really leaning on our recordkeeping partners being to be able to help us with this," says Terito. Sentinel has also created some videos and a white paper for clients. "But I think there's going to be a lot of cleanup at some points and a lot of unintended, 'Oh, I didn't realize that this was going to happen to me,'" she adds.

The right software is key as well, several TPAs noted. "We do require clients to give us hours so that we can track that," notes Chadbourne. And when her team provides valuations, they usually identify employees who are going to become eligible for the plan. "So this is a focus that we're going to have to shift a little bit more to let them know how it's going to impact their plan," she adds.

SHANNON EDWARDS
TriStar Pension Consulting

The new rule is not going to be a big problem for larger firms that track time well, Tipper believes, but smaller firms that do their own payroll might have a problem—especially owner-only plans. "Right now they can qualify as owner-only, but do they have support staff? Do they have big projects? Are they going to go back themselves and look at their part-time workers and how they use them?" she asks. "I think that there's going to be some time bombs in there, and that clients who want owner-only plans might not realize what they're getting into."

At Leading Retirement Solutions, Curry reports, they started to get more bullish about the rule in 2020, communicating to clients that there is an expectation that they provide all employee data so that everyone is prepared for the LTPT rule. Today they are encouraging clients to assume that at some point most, if not all, of their employees will be eligible for the plan—not only in part because of LTPT employee rule, but also what they anticipate will be coming down the road if the SECURE 2.0 legislation is enacted. "We are bringing a lot more of that message into our sales process particularly, especially when the part-timer conversation comes up," says Curry.

LINDA CHADBOURNE
Hills Pension Associates

MEPS AND PEPS

Multiple Employer Plans have been around for years, of course, but they were constrained by regulatory requirements—mainly the commonality and one-bad-apple rules. Now that the SECURE Act has eliminated those barriers and streamlined reporting and administration, how do TPA owners view MEPs and the new Pooled Employer Plans (PEPs)?

"We're bullish on the concept. If it means more access, and we can make it work, then that's fantastic. But right now, regarding the details on what it takes to make it work and to make it useful, we don't feel that's quite settled yet," says Hunter's Tipper. "People are still talking more optimistically about how well it's going to work, but the details need to come through so we know how it actually happens."

For her, the question is, "What's the real magic in it?" Tipper says. "If the magic is just that I'm going to save money, it's not as magic as it sounds. But hey, if we can put together a great one, we would do it. It's about how to do it well."

At Leading Retirement Solutions, Curry reports, a lot of different groups want to have conversations around MEPs and PEPs. "One thing that I find interesting is that with these various companies that are considering deploying a MEP or a PEP, there seems to be this initial expectation and desire that the MEP or PEP has total flexibility and customization—where every member that comes into the MEP or PEP can have their own plan design, and even more flexibility than that," she continues. "That kind of strikes me, because one of the value propositions behind MEPs and PEPs is standardization, whether it be plan design, investments or service offerings, and thus you get decreased fees, minimized liability and the like.

"I think investment advisory firms looking at PEPs would be a good example, where you have that conversation and then it maybe becomes less appealing to them. They start to go back to considering, 'Well, why don't I just do a standalone plan for my client?'" Curry says.

TriStar's Edwards finds MEPs and PEPs underwhelming. "I think they're much ado about nothing—at least that's what we're seeing in our market," she says. "We're not having any questions about them. We're not having the advisors that we normally work with running to them."

Ultimately, TPA owners view their biggest value proposition—the high level of personal service they offer their clients—as a key differentiator that sets them apart from MEPs and PEPs. "It's the same value proposition that we've been using for years against bundled service providers," says Edwards. "It's the difference between, 'Do you want this huge service provider, this 800 number, nobody local to talk to, you might get a call back in several days? Or do you want somebody who's in your backyard, who can sit down with you, who returns phone calls?' I think we're going to be fighting the same battle against PEPs and MEPs."

For her, "It's about knowing your value and what you bring to the table as a local TPA and actually being able to deliver on those promises, both for your financial advisor and your clients." Furthermore, Edwards notes, the early information on PEPs indicates that they are not really less expensive. "So if

"I'M A FIRM BELIEVER IN SURROUNDING MYSELF WITH PEOPLE WHO ARE SMARTER THAN I AM AND HAVE TALENTS THAT I DON'T HAVE. I LEARNED A LONG TIME AGO I DON'T HAVE TO KNOW EVERYTHING. I JUST HAVE TO KNOW ENOUGH." — MELISSA TERITO, SENTINEL PENSION

you're not saving money and you're not getting a high level of service, hopefully you're going to choose a local TPA that's going to give you more 'touch,'" she believes.

Tipper's view is similar. "The plan part you can work out, but then there's the people part, where things go wrong and people need help," she says. "I think TPAs are excellent at doing that. Having a great structure still doesn't mean that employers don't need support. So, the question is, how do you support them and have it be fair in terms of price for both parties?" In general, Tipper says, "What we have to figure out is what parts you can automate and in what parts you need the human touch. And the question is, can you find some balance in there where there's help from a great TPA behind it if you need it?"

Looking to the future, Curry sees a rising tide lifting all boats. "I support the concept of MEPs and PEPs—I think they're a good solution for certain types of clients," she says. "But standalone plans are a great solution for just as many. So I think there are plenty of companies to go around, whether they choose a MEP or PEP, or a standalone plan. And with more states adopting state-mandated retirement plan requirements, there's going to be exponentially more clients for us all to serve."

SECURE 2.0

Following on the heels of the SECURE Act and the legislation subsequently enacted in 2020 and early 2021, the comprehensive "SECURE 2.0" bill has been pending in Congress since last Spring. Are TPA owners making plans now in anticipation of SECURE 2.0?

At TriStar, they are already considering staffing up, Edwards reports. "I think that some of the things in SECURE 2.0, like increased tax credits for establishing a plan and auto enrollment coupled with the fact that so many states have or are considering mandated retirement savings vehicles of some sort for small employers, are going to push more employers to put in qualified plans versus going into some type of mandatory retirement program," she says. "Auto enrollment is going to push up the number of participants, so we're going to have larger plans. The long-term part-time employee provisions is also probably going to push up participant counts."

Given the staffing shortage now facing TPAs, however, Edwards sees problems ahead. "We're looking at the potential for this huge explosion of new plans if SECURE 2.0 passes and states continue to pass mandates for retirement savings vehicles, and there's nobody to do the work. Every third party administrator you talk to has openings and is looking for people. And you have large recordkeepers on both coasts, and large bundled providers, paying outrageous wages for the level of experience that people have—we've seen probably a 20 to 25% wage increase in our industry alone since COVID started," Edwards notes.

"SECURE 2.0 is going to bring a lot more business to the industry as a whole," she believes. "I'm really excited about it—and about the fact that it's going to increase coverage for plan participants. That's awesome. I just hope we can find the people to do the work." PC

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Solving the Gamification PUZZLE

A look at some ways to meet the challenges inherent in implementing gamification.

By Alice Palmer, Fred Reish, Bruce Ashton & Brad Campbell

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401(k) plans have enabled tens of millions of American workers to accumulate meaningful retirement savings. However, the country's retirement savings system still has challenges. Two of the biggest are how to get more people to participate in plans, and how to help them to save more than they do. The growing popularity of automatically enrolled plans has put many on the right track. That said, we also see an opportunity to help even more people participate and save at more optimal rates—and at the same time to make it "fun"—through the use of elements of game playing or what's been termed "gamification" (pronounced "game-a-fication").

What is Gamification?

Gamification refers to the use of elements of game playing, such as point scoring, competition with others, rules of play and ultimately a prize or benefit, to encourage or increase engagement. In the plan context, we propose using gamification as a technique for improving outcomes—specifically, for encouraging participation and saving in deferral-based retirement plans (e.g., 401(k) or 403(b) plans).

Gamification is effective because it puts a decision normally associated with sacrifice or effort into a fun context that provides an immediate reward, such as a contest that provides a chance to win something of value (a tangible gift or recognition) if people participate in specified behaviors. For example, a company might sponsor a contest to get employees to adopt more healthy lifestyles by offering a gift card to those who record the highest number of steps over a two-week period. This "game" provides a short-term challenge, peer recognition (i.e., the "winners" are announced to the entire workforce) and a modest reward for those who participate.

Gamification is effective because it puts a decision normally associated with sacrifice or effort into a fun context that provides an immediate reward.

In the context of participant-deferral plans, this may seem like a good idea—turn the sometimes complex decision to participate or defer into a game. Before employers use this approach, there are some legal considerations that need to be addressed (see "Potential Legal Barriers" below). These include:

- the contingent benefit rule (applicable to 401(k) but not 403(b) or 457 plans)
- nondiscrimination concerns (applicable to both 401(k) and 403(b) plans, but not 457 plans); and
- fiduciary issues (applicable to nongovernmental 401(k) and ERISA 403(b) plans, but not non-ERISA 403(b) or 457 plans).

None of these are insurmountable, plus Congress is considering new, bipartisan pension reform legislation (the so-called SECURE Act 2.0 and the Portman-Cardin bill in the Senate) that would remove the first of these barriers to gamification. For a variety of reasons, we urge Congress to pass that legislation in the very near future. But even if we don't see these reforms, gamification can be used under current law.

What Can Be Done Now

Despite the legal concerns there are rewards that could incentivize behavior and approaches to structuring the "game" that would not violate the rules. Here are some examples (this is not an exhaustive list):

- An incentive that does not fall under the "other benefits" definition of the regulations might take the form of public or private recognition of participants for participation

POTENTIAL LEGAL BARRIERS

The Contingent Benefit Rule

The Internal Revenue Code says that it is permissible for an employer to provide a match to incentivize participants to defer into the 401(k) plan. (This rule doesn't apply to 403(b) or 457 plans.) On the other hand, the Code specifies that a plan cannot condition the receipt of any other benefit on an employee's election to defer. (Code §401(k)(4)(A)) "Other benefits" are defined very broadly in the tax regulations, and include benefits under other plans offered by the employer or items such as "increases in salary, bonuses or *other cash remuneration*…" [Emphasis added.] (Treas. Reg. §§1.401(k)-1(e)(6)(i) and (ii)) A cash gamification award might run afoul of this prohibition.

Nondiscrimination Considerations

Another potential barrier is the nondiscrimination rules of the Code that apply to 401(k) plans. Under Code §401(a)(4), a plan will only be qualified if "the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees…." This non-discrimination requirement extends to "benefits, rights and features," which means that they must be currently and effectively available on a non-discriminatory basis. (Treas. Reg. §§1.401(a)(4)-1(b)(3) and -4(a) Though it's important to be aware of this restriction, in the gamification context, there may be an easy way to avoid this concern, as discussed later in this article.

Fiduciary Considerations

The third potential hurdle is that the fiduciary rules under ERISA—applicable to non-governmental 401(k) and ERISA 403(b) plans, but not to 457 plans—require an employer to operate the plan in the interest of the participants for the exclusive purpose of providing them with benefits. (For the sake of simplicity, we use the term "employer" to refer to the fiduciaries of a plan.) However, ERISA doesn't regulate the "settlor" decisions of employers, such as the decision to have a plan, to amend the plan to provide features such as participant loans—in other words, business decisions that are not related to the operation or investments of the plan. We think that the offer of gamification rewards by a plan sponsor could well be seen as a settlor function and not a fiduciary one at all. But even if this is not the case, and the fiduciary rules apply, there are still ways to manage this issue.

Gamification could be an important part of enhancing not only engagement, but in broadening awareness of financial wellness by rewarding desired behaviors like greater participation and contribution levels at very little cost.

or for specified increases in their deferral rates. Employees who elect to participate in the 401(k) plan or those who join the plan or increase their deferral rate could be recognized in an employee newsletter.
- An employer might provide a contribution to a charity if an employee begins participating or increases his or her deferral rate level by a specified amount or to a specified level.

CHANGING THE LAW

While contingent benefits (other than matching contributions) are currently prohibited under the Code, the bipartisan "SECURE Act 2.0" legislation is widely expected to be voted on by the full House of Representatives this year. That bill, if enacted, would exempt a "de minimis financial incentive" from the contingent benefit restriction. A similar provision is included in a bill pending in the Senate. This indicates a level of recognition by legislators that the use of gamification to encourage retirement savings could make a difference in retirement readiness for American workers. While it's not clear when these provisions will be enacted, it is reasonable to expect that gamification prizes may be permissible in the near future.

- An award, including a financial one, could be structured around a participant's use of a financial wellness tool. This would not violate the contingent benefit rule restriction because it would not be an incentive to defer into the plan, only an incentive to make use of a tool that would demonstrate the importance of participating and saving for retirement, as well as other financial wellness steps (such as budgeting or opening a savings account).
- A common approach in gamification, and one that might be permissible under the contingent benefit rules but falls into a grey area, is an award that could only be redeemed from a list of gifts of relatively nominal value.

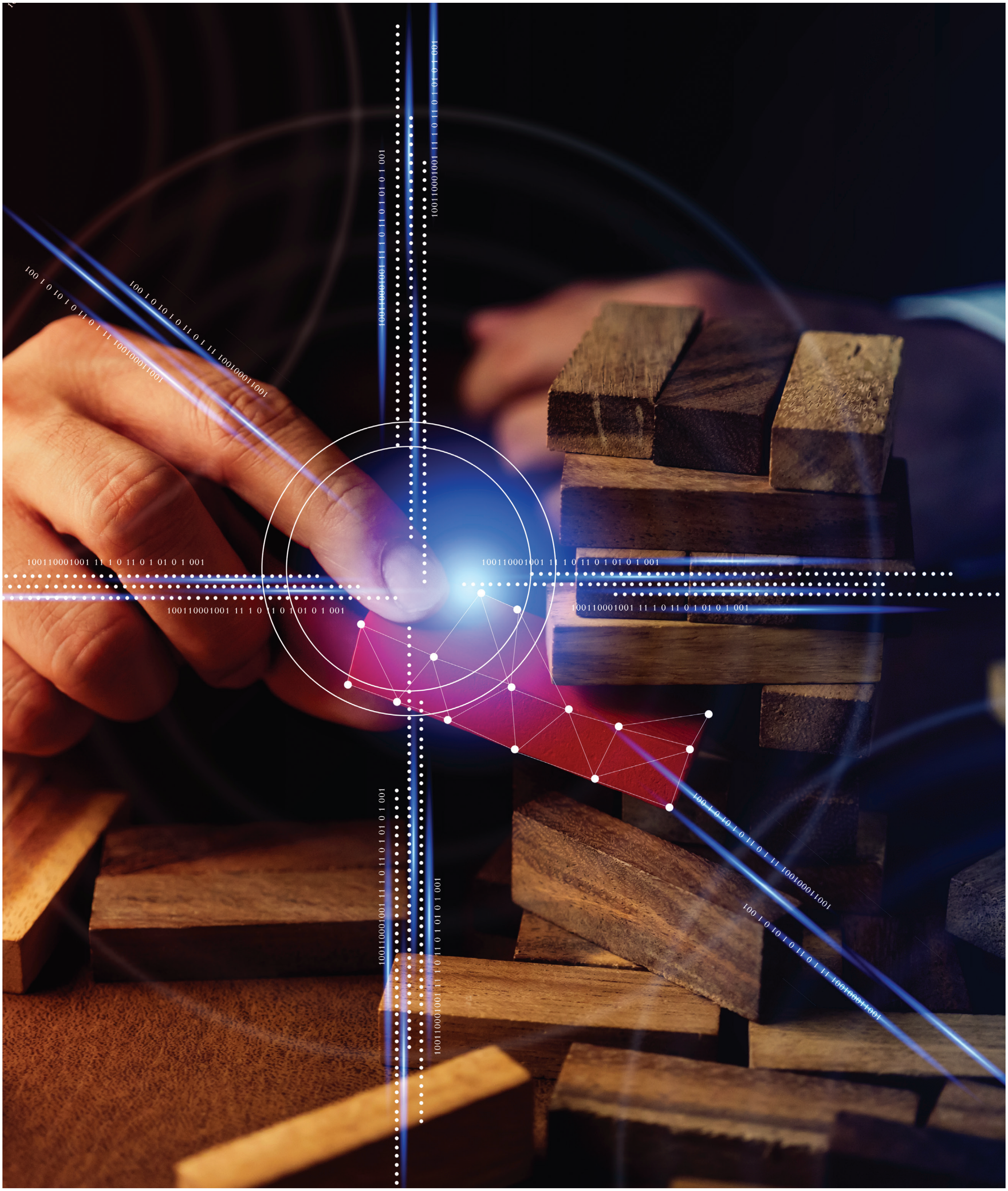
While there may not be discrimination issues for gamification programs, one way to avoid any issue is to limit the gamification incentives to non-highly compensated employees, since discrimination against them is not a violation of those rules. As a practical matter, this would likely have little impact, since higher-paid employees tend to have higher participation levels and deferral rates.

Finally, regarding the fiduciary concern, we think that establishing a gamification incentive could—and should—be viewed as a "settlor" function rather than a fiduciary one, though there is no guidance that specifically addresses this issue. Even if it were viewed as a fiduciary decision, however, offering a gamification prize to encourage employees to defer into a plan or to increase their deferrals is in their interest and furthers the purpose of providing retirement benefits. Thus, the program would accomplish the fiduciary objective of providing retirement benefits to participants. (See "Changing the Law" for other possibilities.)

Conclusion

401(k), 403(b) and 457 plans are popular retirement savings vehicles for good reasons, but "you can't win if you don't play." Traditionally, most Americans have had to make the decision to participate and to contribute enough on their own. Auto enrollment and auto escalation work by effectively making these decisions for participants. Gamification could be an important part of enhancing not only engagement, but in broadening awareness of financial wellness by rewarding desired behaviors like greater participation and contribution levels at very little cost.

Today this can be done through recognition and celebrations of achievement and with certain properly structured incentives. But with additional relief related to the provision of financial incentives and regulatory and legislative support for the other risk mitigation strategies outlined above, these programs could do more to catch the attention of workers who are not currently participating or not contributing to their fullest potential, spurring them to take action they know is for their own benefit. Even without changes in the law, though, gamification can be used now with recognition and incentives that don't have monetary value to a participant. PC



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KEEPING YOUR 403(b) PLAN COMPLIANT

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RECENT LEGISLATION AND REGULATIONS CREATED NUMEROUS COMPLIANCE RESPONSIBILITIES. HERE'S A HELPFUL WRAPUP.

BY TARA SCISCOE

BEGINNING JAN. 1, 2009, MOST EMPLOYERS SPONSORING 403(B) RETIREMENT PLANS SPENT A SIGNIFICANT AMOUNT OF TIME ON THEIR PLAN DOCUMENTS TO ENSURE THAT THEY WERE TIMELY AND ACCURATELY RESTATED (OR, FOR SOME NON-ERISA EMPLOYERS, MEMORIALIZED IN WRITING FOR THE FIRST TIME), AS REQUIRED BY THE 2007 FINAL 403(B) REGULATIONS.

Since those regulations made it clear that plan sponsors were responsible for the operational compliance of their 403(b) plans, even if informally or formally delegated to a service provider, many employers also used this restatement process as an opportunity to consolidate service providers and self-audit their 403(b) plan for operational compliance.

Maintaining 403(b) plan compliance since 2009, however, has not been without its challenges. The IRS has not issued significant guidance to 403(b) plan sponsors since the 2007 final regulations. The IRS's determination letter process is not available to 403(b) plans, and until recently, the IRS did not issue comprehensive model 403(b) plan language. Employers that adopted off-the-shelf plans or used a "paper clip"

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approach with respect to their plan documents were often unaware that they needed to amend these documents over time for discretionary and legally required changes. Moreover, employers did not always understand how rules such as universal availability worked, and faced practical difficulties such as coordinating compliance in multi-vendor situations.

Recognizing these challenges, the IRS launched a pre-approved 403(b) plan document program that became available to plan sponsors beginning in 2017. Employers that restate their plan documents onto pre-approved plan documents can rely on those documents as being compliant in written form. The IRS also issued guidance permitting employers to self-correct 403(b) plan document failures retroactive to Jan. 1, 2010, by restating them onto complaint plan documents by no later than June 30, 2020. Additionally, to aid employer compliance going forward, the IRS currently posts on its website:

- an annual Required Amendments List that lists required 403(b) plan amendments that are effective during that plan year; and
- an annual Operational Compliance List that identifies changes in legal requirements during a calendar year that impact operational compliance.

These tools have—and continue to be—very helpful to employers in maintaining 403(b) plan compliance.

However, even the most diligent of employers cannot rest on their laurels. Legislation and other guidance impacting 403(b) plans keeps coming. Since 2016, the IRS has been actively auditing 403(b) plans. Additionally, plaintiffs' attorneys have been busy filing lawsuits for breach of fiduciary duties related to 403(b) plan operation. This article outlines the items that should be on every 403(b) plan sponsor's radar.

HARDSHIP DISTRIBUTION RULES

The Tax Cuts and Jobs Act of 2017 and the Bipartisan Budget Act of 2018 made changes to the safe harbor rules for hardship distributions from 403(b) plans, and the IRS issued final regulations implementing these changes on

WITH THE ADDITIONAL IRS GUIDANCE AND RELIEF RELATED TO 403(b) PLANS, IT IS EXPECTED THAT PLAN SPONSORS WILL BE HELD TO A HEIGHTENED STANDARD WITH RESPECT TO THEIR PLAN COMPLIANCE GOING FORWARD.

Sept. 23, 2019. Most critically for 403(b) plan sponsors, the changes require plans to eliminate the six-month suspension of elective deferrals to the 403(b) plan (and all other plans sponsored by the employer) following a hardship distribution for any such distribution on or after Jan. 1, 2020. Other important changes include:

- permitting plans to eliminate the requirement that participants obtain all available plan loans prior to taking a hardship distribution;
- expanding the types of hardship expenses that qualify under the safe harbor; and
- replacing the historic "facts and circumstances" test with a more objective standard that requires the employee to represent in writing that he has insufficient cash or assets reasonably available to satisfy the financial need.

It's also important to note that certain changes to the hardship distribution rules for 401(k) plans do *not* apply to 403(b) plans, including that neither earnings on elective deferrals nor QNECs can be distributed due to hardship. 403(b) plans must generally be amended for the required changes by no later than Dec. 31, 2021, but plans must already be operated in accordance with these new rules.

CLAIMS RULES

The Department of Labor issued final regulations for disability claims under ERISA plans effective April 1, 2018. These new claims rules apply to retirement plans instead of the general claims rules in any case where a benefit will be paid or vest because of disability, *unless* the plan relies on a disability determination of the Social Security Administration, disability insurer, or an independent third party. For example, if the 403(b) plan permits early distributions due to disability and the administrator has responsibility for determining whether a participant is disabled for this purpose, the new disability claims rules will apply. While 403(b) plans must generally have been amended for these rules by no later than Dec. 31, 2018, it is important that plan sponsors are aware that these new rules could apply to their 403(b) plans unless they outsource these determinations.

Additionally, the IRS and DOL released a Joint Notice on May 4, 2020, that requires ERISA-covered 403(b) plans to allow claimants additional time to file a claim or appeal under a retirement plan due to the COVID-19 pandemic. Specifically, plans are required to disregard the "outbreak period," defined as the period from March 1, 2020, until 60 days after the end of the National Emergency (but no more than one year), when calculating filing deadlines. Notably, IRS Notice 2021-01 extends these deadlines for up to one year from the date an individual participant or beneficiary is eligible for the relief (or 60 days after the end of the National Emergency, if earlier). As a result, this claims extension continues on an individual by individual basis, and plan sponsors should ensure that they accurately administer their retirement plans in accordance with this relief.

REQUIRED MINIMUM DISTRIBUTION RULES

The Setting Every Community up for Retirement Enhancement (SECURE) Act of 2019 made two significant changes to the required minimum distribution (RMD) rules for 403(b) plans. The SECURE Act:

- raised the age by which RMDs must begin under a 403(b) plan from age 70½ to 72 for any participant who attains age 70½ in 2020 or later; and
- changed the RMD rules that apply to individual beneficiaries generally effective Jan. 1, 2020 (2022 for governmental plans), so that most non-spouse beneficiaries will be required to receive a full distribution from the plan within 10 years of the participant's death. Only spouses, minor children, incapacitated individuals, or beneficiaries that are not more than 10 years younger than the participant can continue to take their RMDs over the life expectancy rule.

403(b) plans must be amended to reflect SECURE Act changes by the last day of the first plan year beginning in 2022 (2024 for governmental plans), but plan sponsors should ensure that their service providers are administering the 403(b) plan in accordance with these rules, and that participant communications are timely updated.

To keep things interesting, the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 then *waived* RMDs for 2020 for participants and beneficiaries, including for participants whose required beginning date was April 1, 2020 (unless the RMD had already been paid in 2019) and April 1, 2021. Plan sponsors could either pay the RMDs unless participants asked not to receive them, or suspend

COMMON PLAN ERRORS THAT REQUIRE CORRECTION INCLUDE THOSE RELATED TO UNIVERSAL AVAILABILITY AND THE PLAN'S DEFINITION OF COMPENSATION.

RMDs unless participants asked to receive them. While this was a temporary change, 403(b) plans must still be amended by the last day of the first plan year beginning in 2022 (2024 for governmental plans) to reflect how the suspension was administered.

COVID RELIEF

In addition to RMD relief, the CARES Act permitted 403(b) plan sponsors to adopt temporary relief in 2020 for certain individuals affected by COVID-19. This included permitting in-service coronavirus-related distributions, increased loan limits, and a suspension of loan repayments. If a plan sponsor adopted one or more of these optional provisions for its 403(b) plan, the plan must be amended by the last day of the first plan year beginning in 2022 (2024 for governmental plans) to reflect these changes. It is important that 403(b) plan sponsors maintain documentation of their decisions so that they can be accurately memorialized in the plan.

QUALIFIED BIRTH OR ADOPTION DISTRIBUTIONS

The SECURE Act allows for a new in-service distribution for qualified births or adoptions effective Jan. 1, 2020, which will not trigger an early distribution penalty and is exempt from mandatory withholding and the direct rollover rules. A qualified birth or adoption distribution (QBAD) is a distribution up to $5,000 taken within one year of a birth or adoption which can be repaid to the plan or another plan/IRA at a later date. While the IRS recently issued Notice 2020-68 providing helpful guidance on QBADs, there remain a number of open questions relating to the repayment provisions for which more guidance is needed. If a plan sponsor chooses to adopt QBADs, the 403(b) plan must generally be amended to reflect these changes by the last day of the plan year, but no earlier than the last day of the first plan year beginning in 2022 (2024 for governmental plans).

FIDUCIARY DUTIES

Since 2016, a number of lawsuits have been filed against employer sponsors of 403(b) plans, primarily against institutions of higher education and hospitals. These lawsuits have alleged breaches of fiduciary duties under ERISA related to the funding structure of the plan, poorly performing or high cost investment options, and improper use of participant data. While some plan sponsors have had success in securing dismissal of these lawsuits, a few have moved forward in the courts, while many others have settled out of the courts.

One of the issues in these cases has been the pleading standard that plaintiffs have to meet in order to survive a motion to dismiss. Notably, the Supreme Court has agreed to hear the *Hughes v. Northwestern University* case on this question. The future of this type of litigation may depend in part on the Supreme Court's decision.

Regardless of the Court's decision, however, 403(b) plan sponsors should be aware of the claims being made in these cases and take steps to put in prudent policies and processes related to plan administration, including the selection and monitoring of service providers and plan investments, the allocation of plan expenses, and permitted uses of plan data.

CYBERSECURITY THREAT MITIGATION

On April 14, 2021, the DOL issued its first formal guidance to plan sponsors related to cybersecurity issues concerning retirement plan sponsors and fiduciaries. The guidance states that ERISA requires plan fiduciaries to take appropriate precautions to mitigate the risks of internal and external cybersecurity threats to participants, and offers suggestions for prudently hiring and monitoring service providers. The guidance recommends that plan fiduciaries:

- have formal, written due diligence processes in place relating to cybersecurity;
- conduct annual risk assessments;
- implement strong data security controls; and
- ensure that there are provisions in service provider contracts regarding compliance with cybersecurity standards, notification of and remedies for cybersecurity breaches, and cybersecurity liability insurance.

Though these are characterized as best practices, the DOL has already started auditing employers regarding their cybersecurity practices. To limit their liability, 403(b) plan sponsors should review their current cybersecurity practices and service provider contracts to ensure that they adhere to the DOL's suggested standards. Sponsors of non-ERISA covered plans should also consider engaging in this process to manage risk under applicable state law.

MISSING AND UNRESPONSIVE PARTICIPANTS

While locating missing and nonresponsive participants has been a recent national enforcement initiative of the DOL, the DOL has not always been consistent in its audit positions, nor has it issued guidance on how a plan administrator meets its fiduciary responsibilities when a participant cannot be located. In response to these concerns, on Jan. 12, 2021, the DOL issued guidance related to an administrator's fiduciary responsibility for locating and distributing retirement benefits to missing or nonresponsive participants.

As part of that guidance, the DOL listed a number of best practices for minimizing the problem, including maintaining accurate census data for participants, communicating regularly with participants, conducting missing participant searches, and documenting the fiduciary's procedures and actions. In connection with these best practices, the DOL issued guidance on how it will conduct investigations related to terminated vested participants in defined benefit plans which, while not directly applicable to 403(b) plan sponsors, provides helpful guidance on what the DOL considers to be inadequate practices and red flags of problems.

The DOL also issued guidance on the ability of terminating defined contribution plans to use the PBGC's missing participants program, which allows fiduciaries of a terminating plan to transfer missing participant accounts to the PBGC.

Thus, 403(b) plan fiduciaries should adopt written policies and procedures with respect to how the plan will address missing/nonresponsive participants consistent with this guidance.

ONCE-IN-ALWAYS-IN RULE

403(b) plans are subject to the universal availability rule, which generally provides that *all* employees must be eligible to make elective deferrals to the plan if *any* employee is eligible to make elective deferrals to the plan. Under an exception to this rule, a plan may exclude an employee during his or her first year of employment if:

- the employer reasonably expects the employee to work fewer than 1,000 hours that year; *and*
- during each year thereafter, the employee actually works fewer than 1,000 hours.

In 2015, the IRS clarified its interpretation of this exception to mean that once an employee has worked 1,000 hours *in any year*, the employee must be permitted to defer to the plan *in all subsequent years*, even if he or she never works more than 1,000 hours a year again—the "once-in-always-in" rule. However, due to widespread misunderstanding of the

PLAN SPONSORS SHOULD MONITOR THE IRS'S ANNUAL REQUIRED AMENDMENTS LIST FOR REQUIRED PLAN DOCUMENT CHANGES AND THE IRS'S ANNUAL OPERATIONAL COMPLIANCE LIST FOR OPERATIONAL CHANGES THAT IMPACT 403(B) PLANS.

rule, the IRS issued guidance in Notice 2018-95 to provide retroactive relief through Dec. 31, 2019, and a fresh start for 403(b) plan sponsors beginning Jan. 1, 2019 (for calendar year plans). With the expiration of this relief, 403(b) plan sponsors should ensure that they are complying with the once-in-always-in rule going forward.

LIFETIME INCOME DISCLOSURES

The SECURE Act amended ERISA to provide that the pension benefit statement for DC plans, including 403(b) plans, must contain a lifetime income disclosure at least annually. This disclosure must state the monthly payments that the participant would receive if the participant's total account were used to provide a qualified joint and survivor annuity and a single life annuity. The DOL issued an interim final rule on Sept. 18, 2020, implementing this change, as well as a model lifetime income disclosure. A plan sponsor that follows the DOL's rules in furnishing the statement will be protected from fiduciary liability. This rule becomes effective Sept. 18, 2021, so plan sponsors should be working with their recordkeepers now to ensure that this requirement is timely implemented.

PLAN TERMINATIONS

The final 403(b) regulations included rules for terminating a 403(b) plan. These rules generally require the distribution of all plan assets— which can include distribution of an annuity contract —within 12 months of termination. However, many 403(b) plan sponsors struggled with terminating their plans because the assets were held in individual annuity contracts or custodial accounts which the employer did not control. The IRS subsequently issued Revenue Ruling 2011-7, which described successful 403(b) plan terminations, but neither the regulations nor the IRS addressed in-kind distributions of custodial accounts for individuals.

To help plan sponsors, the SECURE Act directed Treasury to issue guidance to permit custodial accounts to be distributed on plan termination, and the IRS did so in Revenue Ruling 2020-23. This guidance permits the in-kind distribution of custodial accounts to participants retroactively effective Jan. 1, 2009, without resulting in immediate taxation to participants. Accordingly, plan sponsors that want to terminate their 403(b) plans now have guidance on distributing plan assets with respect to both group and individual annuity contracts and custodial accounts, which will greatly facilitate these terminations.

PLAN CORRECTIONS

All 403(b) plans must be administered in accordance with the written terms of the plan document. Internal and external audits often bring to light plan operational failures. Common plan errors that require correction include those related to universal availability and the plan's definition of compensation. To assist employers with compliance, the IRS has established correction procedures available to plan sponsors of qualified plans and 403(b) plans under the Employee Plans Compliance Resolution System (EPCRS). EPCRS offers employers the opportunity to correct many 403(b) plan failures without IRS involvement, or by filing a voluntary correction (VCP) with the IRS and paying a related fee. The IRS recently updated its guidance under EPCRS in Revenue Procedure 2021-30 to, among other things, expand the ability to self-correct errors by plan amendment, expand guidance on overpayments, and extend certain self-correction periods. 403(b) plan sponsors that correct plan failures in accordance with EPCRS can protect the plan and participants from adverse tax consequences. EPCRS is designed to encourage plan sponsors to maintain internal processes and procedures to routinely self-audit their plans, and it generally favors plan sponsors that are proactive and diligent in correcting plan errors.

GOING FORWARD

With the additional IRS guidance and relief related to 403(b) plans, it is expected that plan sponsors will be held to a heightened standard with respect to their plan compliance going forward. To keep abreast of required changes, plan sponsors should monitor the IRS's annual Required Amendments List for required plan document changes and the IRS's annual Operational Compliance List for operational changes that impact 403(b) plans. Plan document and operational errors should be timely identified and corrected under the IRS's recently updated correction program set out in Revenue Procedure 2021-30. And lastly, 403(b) plan administrators should remain diligent about meeting their fiduciary duties with respect to plan investments, data security, and administration. PC

WHAT'S PAY GOT TO DO WITH IT?

A strong salary structure helps ensure that pay levels for your jobs are competitive externally and also internally equitable. **Alicia Finley**

Doug Conant said, "To win in the marketplace, you must first win in the workplace."

Employees are an organization's greatest expense, but they are also its greatest asset. So how do employers balance that? There are many ways, but the most basic way is through compensation. Paying employees based on market-comparables, as well as for the talents and expertise they bring to the organization, is the simplest way to reduce turnover and ensure the organization's ability to attract quality talent. The happier your employees are at work, the more productive and loyal they will be, as well as being better ambassadors when discussing their workplace outside of the office.

Compensation is a major tool of any organization attracting, retaining and motivating employees. The many facets of compensation include base salary or wages, incentives, benefits, vacation/sick leave, insurance, retirement,

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and even company culture. A strong salary structure helps ensure that pay levels for your jobs are competitive externally and also internally equitable.

COMPENSATION PHILOSOPHY

An important part of any compensation study is first understanding the organization's compensation philosophy.

A compensation philosophy explains the "why" behind employee pay and creates a framework for consistency throughout the organization. It is usually based on several factors, including the current financial position, the size of the organization, the industry, strategic plan and objectives, market salary information, and the ability to attract qualified talent. An organization should align their philosophy with the realities of cost, or create alternate no-cost or low-cost benefits to employees.

WHAT DRIVES PAY?

There are many factors that drive pay. Market price, which determines what the position and/or the employee is worth in the market is a big driver; however, there are many others to consider, including the following.

- **In-Demand Skills.** A position may be a "hard-to-fill" position within the organization, so an employer may choose to compensate the position at a higher level in order to fill it with the most qualified applicant.
- **Internal Value and Impact.** Internal impact of a position varies from position to position. When looking at impact, review factors such as number of direct reports, budget dollars the position is responsible for, communication skills needed, difficulty of problems requiring solutions, decision-making authority,

and work environment to name a few. Pay should differentiate between the two roles and their associated responsibilities.

- **Education and Experience.** It goes without saying that the more experience and education a candidate has, the higher their compensation should be and, as an employer, you should be compensating accordingly.
- **Location.** Location is another defining factor. Cost of living and cost of housing (and availability) is also a consideration when looking at pay based on location.

OTHER CONSIDERATIONS

Classification

One of the biggest risks for any organization is the misclassification of positions under the Fair Labor Standards Act (FLSA).

If jobs that should be Non-Exempt are classified as Exempt, there are large penalties for this misclassification both in fines and litigation, as hourly employees would not be compensated for any work hours above 40 in a workweek. Conversely, the risk of classifying salaried employees as hourly is not one that is litigious, but rather, quickly drains resources for paying salaried employees overtime for work that, if classified correctly, would normally be part of their salaried wages.

The Department of Labor has very specific guidelines and tests for determining job classification, so review of these classifications should be done by someone who has a full understanding of what those are and which exemptions may be applicable.

Structure

Step-based pay, which provides raises based on time in the organization, hinders an organization's ability to make real-time pay changes, and doesn't consider performance.

Using pay ranges will improve an employer's ability to hire and retain qualified employees. It allows the employer to be more intentional about how they pay each employee.

Having access to a variety of relevant data sources that provide multiple data points is important, as not all survey data encompasses every position. Understanding benchmarks and where specialized titles compare to benchmarks is equally important.

INTERNAL EQUITY

Identifying pay disparities in an organization and ensuring a fair and consistent method for determining compensation ensures that employees feel they are being rewarded fairly based on performance, skills, and other job requirements. With increasing minimum wages across the country, not paying attention to internal equity can create pay compression within an organization.

Pay compression is an issue that develops over time. One example of pay compression is when new hires join the organization at compensation levels higher than those employees that have been with the organization longer. This can create problems if your most tenured employees, who possess institutional and valuable knowledge, decide to leave. Even if they are not actively looking for a job, they can lose motivation which results in lost productivity, feelings of being undervalued, and can also result in the inability to recruit top talent.

"HAVING ACCESS TO A VARIETY OF RELEVANT DATA SOURCES THAT PROVIDE MULTIPLE DATA POINTS IS IMPORTANT, AS NOT ALL SURVEY DATA ENCOMPASSES EVERY POSITION."

Market forces or location may drive an organization to pay a higher salary in order to attract qualified talent. However, if an organization does this and fails to account for how that higher salary affects the compensation levels of existing employees, it creates compression.

THE COST OF NOT OFFERING COMPETITIVE PAY

An organization may think they are saving money by keeping compensation rates below market, but what is the cost in other areas? Unfilled positions, due to the inability to recruit, create burnout and turnover because current employees are tasked with taking on additional work.

Paying below market will also negatively impact the ability to recruit qualified employees especially in professional positions because they know their experience, education, and skillset will not be valued as expressed through pay.

At a time when concerns about hiring, retention, and pay equity are high, having a compensation strategy that emphasizes agility, flexibility, and transparency is key in creating a winning workplace. It allows an employer to accommodate more rapid pay changes, gain a better understanding of true market value of their positions, and improve workplace culture and employee loyalty. PC

401(k) TO 403(b)

A TPA shares the lessons learned from helping a 501(c)3 tax-exempt organization replace its old 401(k) plan with a 403(b). **By Jennifer L. Pulver**


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When onboarding a new client, as TPAs, we gather as much data as we can to get a picture of the existing plan and any potential compliance issues that may come. As we know, with takeover plans, information we receive may be limited. When we begin digging in, we may uncover issues that the plan sponsor was not aware of.

Explaining what the issue is and why it is an issue to the plan sponsor is the first step in getting them back on track and rolling smoothly down the compliance road. In my experience, helping them understand the why, along with any potential consequences of not correcting, helps lessen any resistance.

It is easy to overwhelm plan sponsors if there are multiple corrections. Starting with a phone call, explaining the process that will be taking place and being upfront with any fees will lay the groundwork for expectations. Discuss what information they will need to provide and determine who at their office will be the point of contact for the correction process. Setting expectations early will help ensure a smoother process.

Follow up on the phone conversation with an email outlining what needs to be done and who will be handling what. Documentation for your files is always recommended. It is a great reference if there is any confusion. Start with the easier corrections, if possible, and get them checked off the list. Advise on what needs to be done to remain in compliance—as their TPA, what you will be doing on an ongoing basis to continue to keep the plan in compliance.

Of course, we all know that we can do our best to set expectations, but we still hit those bumps in the road. Sometimes those bumps tend to feel more like roadblocks. If your client is resisting, you may need to assess whether that client is good fit for your business model.

Recently, we took over a large plan and through the onboarding process and discussions with the advisor, it was clear that we would need to review the plan from top to bottom. The first issue noticed was them being a 501(c)3 tax exempt organization and sponsoring a 401(k) plan instead of a 403(b) plan. At first glance, this might not be an issue; they do have a lot of employees and the 401(k) plan would allow eligibility restrictions. However, in reviewing their eligibility, they had no restrictions on employee deferrals. Compliance issues at year end resulted in an ADP refund to the HCE whose goal was to defer the maximum. This client also had a lot of employee turnover, which meant a lot of terminated participants with small balances that had not been addressed. In addition, this was a larger organization that had multiple people doing multiple tasks regarding the retirement plan.

Due to the large plan status, we worked closely with the independent auditor in monitoring the internal processes. Making sure all parties were on the same page about the plan features was crucial. This continues to be a constant conversation as the organization shifts employees' duties.

Cleanup was the next important step in the process. This entailed:

- working with the plan sponsor to put processes and procedures in place for those terminated participants with balances in the plan;
- reviewing and processing any potential participant force-outs on a quarterly basis; and
- reviewing their eligibility and ensuring that employees were offered the plan, and that employer contributions started per the document provisions.

Once those cleanup items were handled, discussions started regarding plan design. What were the company's goals and which plan would best fit their needs? Allowing everyone to participate once hired and finding a plan design that allowed their HCEs to defer the maximum were two of their goals.

Based on the company's objectives, we were able to determine the best course of action regarding the retirement plan. Terminating the 401(k) plan and starting the 403(b) plan would check all their boxes. Taking the time in the beginning of the process to understand the client's goals and objectives will pay off in the end with a more efficient and effective retirement plan. PC

Film by Flynn / Shutterstock.com

THE ETCH A SKETCH FACTOR

Three videos you can create right now can save you time and help you connect with customers.

By Laura Garfield

As a kid, did you have an Etch A Sketch? With the two knobs in the corners, you could draw to your heart's content, then give it a shake and the screen was suddenly blank. (An elbow bump from your brother or an accidental drop had the same effect.) If you think of life as the image on an Etch A Sketch screen, drawn slowly and painstakingly, the COVID-19 pandemic gave it a good shake.

Did you ever think so many workers would be doing their jobs remotely? Or that people would prefer to stream movies instead of watching them at the movie theater? Well, forget the buttery popcorn and long commutes. Work from home and streaming services are a reality.

A similar shift has happened when it comes to how retirement industry players are keeping in touch with customers, educating participants and building relationships with prospects. At a time when we couldn't meet face-to-face, video took center stage. And there is no sign of video being ushered out of the limelight.

WHY DOES VIDEO WORK?

Sure, video marketing had advocates before COVID shifted how we think about communication. But today, more people have realized that video is a powerful way to leverage your time while still having a personal touch with your audience. Consider these four reasons why video makes sense:

- **Saves time:** By its very nature, video is a time-saving tool. You record it once, then can share it with many.
- **On-demand:** You don't have to set up a meeting to deliver your message. Video can be consumed when the viewer is ready.
- **Entertainment factor:** Many would argue that it's more fun to watch a video than to read. These days more people prefer to consume content in a video.
- **More personal:** Perhaps the reason video has taken hold as a communication tool for everyone from plan sponsors to administrators is that video is more personal. And after a year when nothing felt very personal, seeing and hearing someone deliver a message adds the human touch.

HOW CAN THE RETIREMENT INDUSTRY USE VIDEO?

There's no cookie-cutter approach to putting video to work for you. In fact, coming up with creative, custom ways to deliver your message will help differentiate you from your competitors. However, if you would like to borrow ideas from the retirement community, here are three examples of how you could use video.

#1: OUR WHY

Whatever space you play in within the retirement industry, there's a need for your "Why." Simon Sinek helped us all uncover the importance of our "Why" more than a decade ago. He said, "People don't buy what you do, they buy why you do it." Sharing that story in a video can be a powerful way to build a relationship with a customer.

When Jania Stout's Fiduciary Plan Advisors team decided to create a video delivering their value proposition and benefits, they did it wrapped in a story. Their "A Message to Garcia" video (go to https://ideadecanter.wistia.com/medias/ajvk0uhdme) helps demonstrate the team's value in a way that's memorable for the audience.

Pro Tip: Dig into the photo and video archives to help bring your story to life. There are plenty of inexpensive stock resources to help illustrate what you're talking about. Can't find the right images? Try making more modern pictures black and white. And if you choose to tell a story like "A Message to Garcia," make sure to link it back to you and your audience.

Jania Stout, Fiduciary Plan Advisors

"MORE PEOPLE HAVE REALIZED THAT VIDEO IS A POWERFUL WAY TO LEVERAGE YOUR TIME WHILE STILL HAVING A PERSONAL TOUCH WITH YOUR AUDIENCE."

#2: CLIENT COMMUNICATION

When it comes to communicating with your customers on high-priority needs, what's the best way to get their attention? Video can help deliver a personal message with a little nudge of urgency.

Shannon Edwards, TriStar Pension Consulting

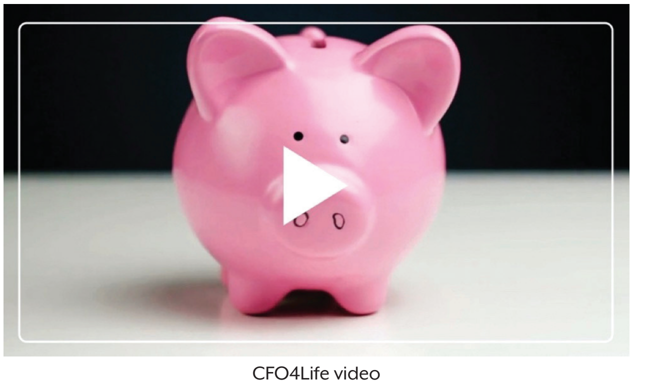
Shannon Edwards of TriStar Pension Consulting knew that year after year, getting customers to turn in their census data was challenging. Creating a video that explained the reasons behind the request helped her deliver the message and leave a positive brand impression with her clients (go to https://youtu.be/lO_oPGlYcKU).

Pro Tip: Did you notice how Shannon starts her video? She catches viewers' attention by giving them something relatable. "Do you get excited to clean out the attic? How about pulling weeds in the yard? No?" The most important part of getting to viewer to hang in with you is getting them reeled in during the first five seconds.

#3: PLAN PARTICIPANT EDUCATION

What does it look like to best serve your plan participants? If delivering digestible how-to content is your answer, video can help. Topical, educational videos are a great way to bring more complicated subjects to life.

The team at CFO4Life has created a series of easy-to-understand educational content. They tackle the most-asked questions they get from plan participants, including, "Why should I start saving for retirement so early?" In their video, Chase McMellian and Michelle Hahn explain it in a user-friendly way (go to https://vimeo.com/526147274).



CFO4Life video

Pro Tip: Video has the power to help make hard-to-understand concepts easier to grasp. The snowball analogy makes the idea of compound interest real, but it's the animated graph that really helps put the concept of saving into a message that makes sense. You can use visuals and audio to help educate your audience in a way they'll remember.

INSPIRED TO START CREATING?

If one of these stories got your wheels turning about ways you can use video in your business, take a few last pieces of advice. There are plenty of people making videos and sharing them every day. In fact, worldwide 500 hours of video gets uploaded to YouTube every minute.[1] Who is watching it all? YouTube has 2 billion users logging in each month.[2]

If you are joining the video creation fray, don't just create noise, create content that connects. To do that, remember to always keep your viewer in mind. And don't let your need to be perfect hold you back. Just like that Etch A Sketch, you can always stop recording and start over. You'll get better with every video you record. PC

Footnotes

[1] Maryam Mohsin, "10 YouTube Stats Every Marketer Should Know in 2021," Oberlo, at https://www.oberlo.com/blog/youtube-statistics.

[2] Christina Newberry, hootsuite.com blog, "25 YouTube Statistics That May Surprise You: 2021 Edition," at https://blog.hootsuite.com/youtube-stats-marketers/. (Free trial registration required.)

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PROFESSIONALISM AUDIT: HOW DO YOU PRESERVE CONFIDENTIALITY?

Ultimately, a professional's mindfulness is often the best defense for confidential client information. **By Lauren Bloom**

This article continues our series on questions that might be relevant to a professionalism audit, focusing on client confidentiality.

Not everything that an employee benefit plan professional receives from a client is necessarily confidential. However, it is vital for the professional to protect the confidentiality of information that is, so the professional is wise to make confidentiality a priority.

WHICH INFORMATION IS CONFIDENTIAL?

Verifying what information is and isn't confidential is an important first step. When it comes to employee benefit plans, the professional is wise to presume that all participant and beneficiary information—names, Social Security numbers, wages, contributions, and the like—is confidential and must be protected. Other information will likely also be confidential. Depending on the circumstances, the professional may have access to confidential information about the plan itself, such as proposed amendments, funding strategies, tax issues or internal disagreements about plan administration. The professional may even have access to confidential information about the sponsor and its business operations. The American Retirement Association's Code of Professional Conduct defines confidential information as:

> *… information not in the public domain of which the Member becomes aware during the course of rendering Professional Services to a Principal. It may include information of a proprietary nature, information which is legally restricted from circulation, or information which the Member has reason to believe that the Principal would not wish to be divulged.*

The ARA Code of Professional Conduct recognizes two exceptions to the employee benefit plan professional's duty of confidentiality. First, information that would otherwise be confidential can, and indeed must, be disclosed by the professional when required by law. Unless the professional's legal duty to disclose is clear, though, the professional is wise to consult with his or her own attorney before disclosing confidential client information.

Second, confidential information can be disclosed by the professional with the client's authorization. It's normally unwise for the professional to assume that a client has informally authorized or wouldn't object to disclosure of information. Ordinarily, the professional is prudent to ask for the client's permission and maintain documentation of the client's consent before disclosing information about the client or the plan. The request and documentation does not necessarily need to be formal. A simple email from the professional asking permission to disclose and the client's return email granting permission is often enough. The timing, however, is critical. Information normally can't be called back once it has been disclosed. It is far better to ask for and receive permission to divulge confidential information before it is disclosed than to ask for forgiveness after an unauthorized disclosure has occurred.

> "THE PROFESSIONAL'S INTENT IS LIKELY IRRELEVANT IF CONFIDENTIAL INFORMATION IS DISCLOSED. BREACHES OF CONFIDENTIALITY ARE RARELY INTENTIONAL."

When it comes to confidentiality, that last clause is key. It is the client, not the employee benefit plan professional, whose wishes govern confidentiality. And the professional's duty of confidentiality is not limited only to information that the professional knows the client wishes to keep confidential. If the professional "has reason to believe" that the client would want certain information kept confidential, the professional should not disclose it.

There may be times when the professional is wise to obtain consent more than once. Especially if the professional has served a client for several years, changed circumstances or simple forgetfulness may cause a

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client's consent to grow stale. While it may not be necessary to obtain the client's permission before every disclosure, the professional may want to refresh the client's authorization from time to time.

CONFIDENTIALITY POLICY

The professional's intent is likely irrelevant if confidential information is disclosed. Breaches of confidentiality are rarely intentional. More often, disclosure occurs out of carelessness or by mistake. Even inadvertent disclosure can do damage, though, which is why the employee benefit plan professional is wise to implement safeguards to minimize the risk of inadvertent disclosure.

Unless the employee benefit plan professional is a solo practitioner working alone in a locked, windowless office, there is a risk that unauthorized third parties may see unprotected information.

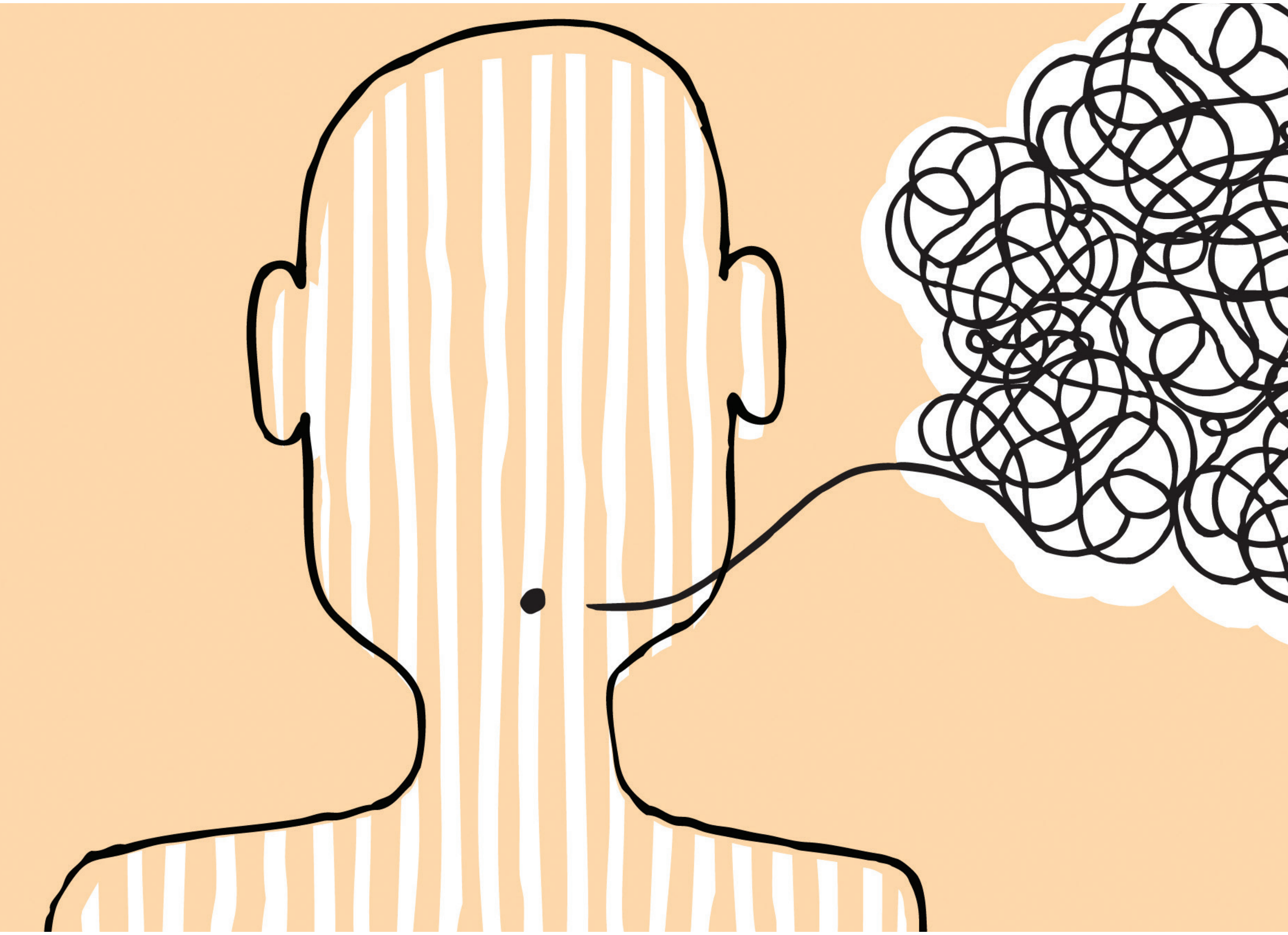
So it's smart to put a confidentiality policy in place, along with procedures and practices for compliance. (Prohibiting employees from leaving information on printers and using a professional shredding service for discarded documents can be a good start.) Regularly training staff to recognize and protect confidential client information is also wise. It may not be immediately obvious to a social media aficionado that posting a photo of a messy desk with a caption like "I'm sooooo busy!!!" might expose client data in that photo. Even discussing plans and clients in public over dinner or a drink with friends creates a risk of improper disclosure. It's usually good practice to instruct employees not to talk business in public settings. Unfortunately, it can also be necessary to discipline employees who deliberately or repeatedly breach confidentiality. Regular training can prevent the loss of otherwise excellent staff, so it's worth investing the time and effort to provide it.

GUARDING AGAINST CYBERATTACKS

Similarly, the prudent employee benefit plan professional will review the office's digital security on a regular basis. Even national governments are vulnerable to cyberattacks, so no one is completely safe. The cost of good security systems is normally much less than the costs associated with a ransomware attack, though, so it's often worth the investment.

CONCLUSION

Ultimately, a professional's mindfulness is often the best defense for confidential client information. Paying attention to how that information is obtained, stored, used, discarded and disclosed is usually the best way to ensure that client confidentiality is protected. PC



COMMUNICATION DURING THE 401(K) SALES/ PLAN DESIGN PROCESS

The only way to successfully transition a prospect to a new client is to gain the trust of our audience. This can only be done through effective and meaningful communication. **By Nick Westmoreland**

Editor's Note: This is another in our ongoing series of articles on communicating complex topics.

"Communication happens only when the information being imparted by the speaker is received and understood by the intended audience. This may seem obvious, but it is often overlooked. The mere fact that information has been transmitted does not mean that communication has happened." *— Lorraine Dorsa, Aegis Pension Services*

Lorraine's quote from the first article in this series couldn't be more relevant than during the sales and plan design process. For us to successfully

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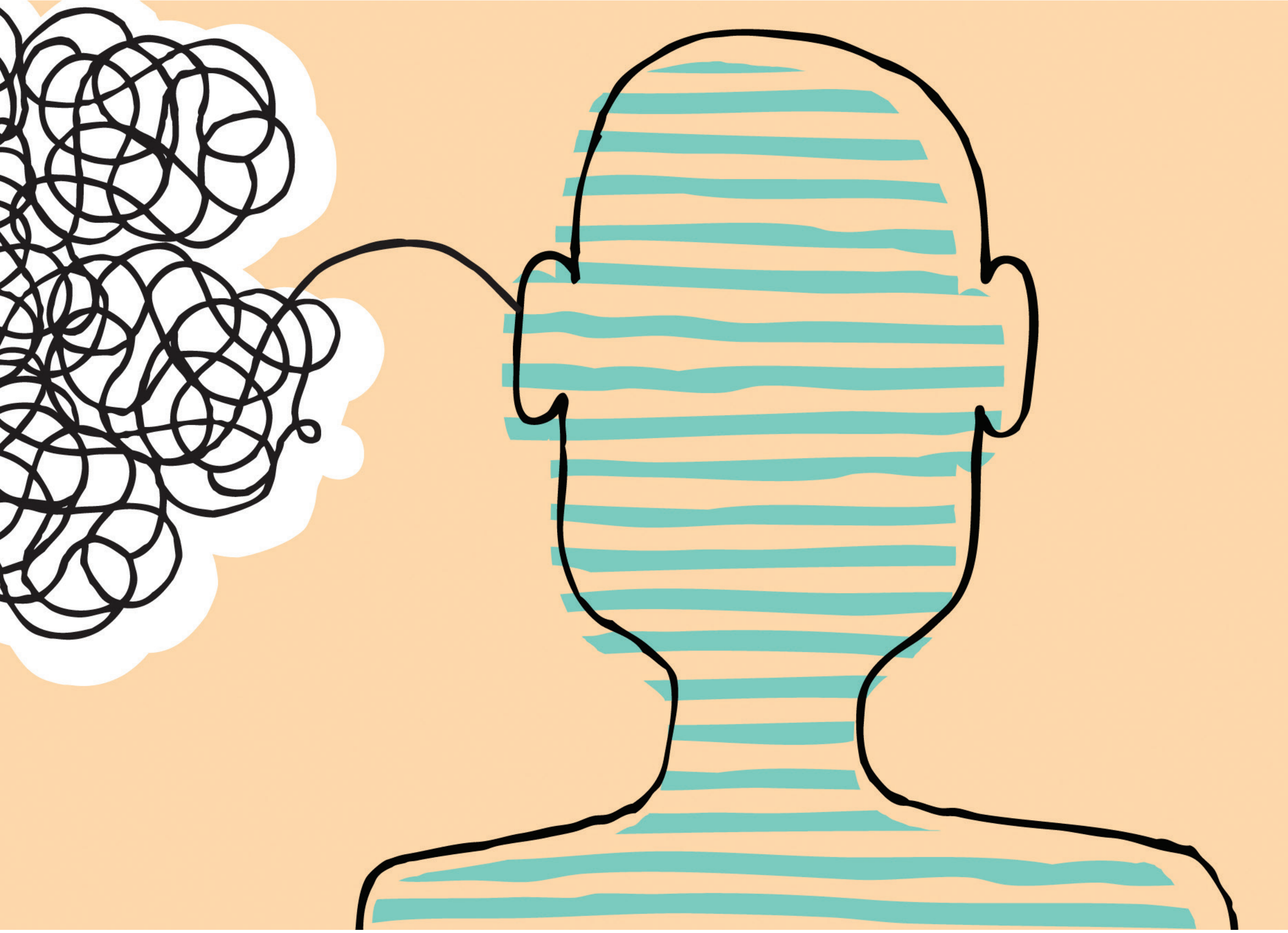

transition a prospect to a new client, we will need to gain the trust of our audience. This can only be done through effective and meaningful communication. If we can put ourselves in the shoes of our audience, then we can understand how and what we need to communicate to be successful.

Here, we will use the example of a startup cash balance/401(k) combo plan that is in the sales and plan design stage.

WHO'S THE AUDIENCE?

In this situation, it's almost a certainty that much our audience are not well versed on cash balance plans. One other major challenge is that there will be those in our audience who want and deserve a voice but have little to no experience with cash balance plans. The audience could include the following:

- Plan Sponsor (usually, in this example, the business owner)
- Financial Advisor
- CPA
- 401(k) Platform Wholesaler

As the decision-maker, the business owner will be our primary target for effective communication. The business owner is trusting that their financial advisor and/or CPA has surrounded him or her with the best service providers they know to get their new plan started.

Most TPAs and actuaries rely on their referral network and Circles of Influence (COIs) for new business opportunities. While the business owner is the decision-maker here, there are many times when it will be just as—or more—important to impress your referral source (advisor, CPA or wholesaler) if you want repeat opportunities.

Lastly, since each of our audience members has a different viewpoint and

"WE ARE EDUCATING AND TRYING TO COMMUNICATE EFFECTIVELY, WHICH WILL BE FAR MORE IMPRESSIVE TO OUR AUDIENCE THAN RATTLING OFF CODE SECTIONS AND INDUSTRY ACRONYMS."

interest in reaching the conversation, we need to be aware of this so that we are successful in our intended goal.

WHAT'S THE GOAL?

Our goal is simple: for all parties involved to understand the options before them and to feel good about the decision to partner with us. To accomplish this, we will need to start simple, speak plainly and make sure our audience feels comfortable enough to ask even the most basic questions. We are the educators in this context, and effective education (and communication) will help build immediate trust between us and our audience.

START SIMPLE

Starting simple means laying the foundation the plan sponsor will use to make their decision to move forward or not. Maybe they are a good candidate for a cash balance plan or maybe they're not—our goal is not to make that decision for them but to equip them with the knowledge necessary to make it.

For those of us in a sales role, an additional benefit of starting simple is that it allows us to settle into the conversation, as even seasoned sales consultants can have an off-day or be battling nerves (maybe this is your first presentation with the referral source, or maybe this is your biggest local referral source). The same goes for our partnered advisor or CPA—if they are not experienced in 401(k) and cash balance plans, they will surely appreciate us recapping the basic pros and cons that these vehicles offer.

SPEAK PLAINLY

Speaking plainly is a necessity as we move through the presentation. We are educating and trying to communicate effectively, which will be far more impressive to our audience than rattling off Code sections and industry acronyms.

We hear this at industry conferences, and for good reason—in such a technical industry, it's easy for people like us to forget we are communicating with an audience that has no desire to understand any more than what is needed for them to make a good decision for their businesses and employees.

Think back to when we were new to our industry and how overwhelming it was to start learning acronym after acronym. Now take that feeling, add running a successful business into the mix, and you can understand how our prospective clients and referral sources feel during a presentation about a startup cash balance/401(k) combo plan.

MAKE YOUR AUDIENCE COMFORTABLE

Nearly always, the most successful presentations are the ones where our audience is engaged and asking questions. Starting simple and speaking plainly will certainly pay dividends as we get further into the presentation, but if our audience still does not seem engaged, we should stop periodically and ask them questions. Stopping to make sure they are understanding the concepts or can ask questions shows that we care about their understanding of what we are presenting. Furthermore, not only do we want the plan sponsor/client to ask questions, but we also want our other audience members to feel comfortable asking questions.

Ideally, we would know the experience level and knowledge base of our partnered advisor and CPA before we host a plan design call, but let's face it, we won't always have that opportunity or the time for extensive preparation.

We can't assume our CPA understands cash balance or 401(k) plan design just because of the tax benefits these plans represent. Nor can we assume our financial advisor understands that cash balance plan assets are invested differently than 401(k) plan assets.

Our audience will appreciate a comfortable setting to ask questions, and even if they call you before or after the presentation to ask their questions, we will have cemented ourselves in their mind as a future go-to resource for other opportunities with their clients.

CONCLUSION

Communication during the sales and plan design process needs to be simple and straightforward so that our future clients feel comfortable enough to ask the questions they may otherwise feel uncomfortable asking. Our audience will notice that we are not only willing to spend our time with them to answer their questions, but that we made every effort to communicate in a way that was tailored to them being able to understand very technical concepts/solutions.

Something special happens when we are successful in doing this—our audience will appreciate it so much that their search for which service provider has their best interests in mind will stop with us. And we will differentiate ourselves from our competition and be rewarded with deeper relationships with those who refer us business. PC

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SETTING THE TABLE ON CYBERSECURITY

A GAO analysis placed the onus on the DOL to provide guidance on cybersecurity. **By John Iekel**

The Government Accountability Office (GAO) is part of the chorus voicing concern over cybersecurity. In the process, it's lived up to its name in its assessment of federal direction on cybersecurity—especially regarding the Department of Labor (DOL).

The GAO released "Defined Contribution Plans: Federal Guidance Could Help Mitigate Cybersecurity Risks in 401(k) and Other Retirement Plans" in March. It discusses the risks cyber crime poses and calls on the DOL to set minimum standards for mitigating cybersecurity risks and formally state whether it is a fiduciary's responsibility to mitigate those risks in DC plans.

THE THREAT IS REAL

"Ineffective data security controls can result in significant risks to plan data and assets," the GAO warned. "The risks to systems underpinning the nation's critical infrastructure are increasing, including insider threats from witting and unwitting employees, as security threats evolve and become more sophisticated."

Several entities may be part of administering a DC plan, the GAO noted, and that can involve sharing a "vast amount" of personally identifiable information (PII) and plan asset data. That, coupled with data storage, "can lead to significant cybersecurity risks for plan sponsors and their service providers, as well as plan participants," the GAO noted. And the connectivity of information systems, the internet and other electronic infrastructure heightens the potential impact of cyber threats.

A VAGUE VOID

The GAO suggested that federal activity was not commensurate with the growing risk cyber crime poses for assets and the security of plans and participants. "A host of plan administrators share the personal information used to administer these plans via the internet, which can lead to significant cybersecurity risks. In some cases, there is no federal guidance about how to mitigate these risks," the report said.

The GAO noted that there are federal requirements and industry guidance that could mitigate cybersecurity risks in DC plans, such as requirements that pertain to entities that directly engage in financial activities involving DC plans. But the GAO argued that this all entities involved in DC plans are considered to have such direct engagement.

The report says that federal activity was not comprehensive, coordinated nor definitive—and what exists is not mandatory. "Guidance and tools are generally voluntary and therefore do not ensure that these entities are taking appropriate actions to mitigate their cybersecurity risks," the report says.

FIDUCIARY DUTY

Federal law requires plan fiduciaries to prudently administer plans; in addition, 21 of 22 stakeholders the GAO interviewed said cybersecurity is a fiduciary duty. Yet "Although a compelling need exists, DOL has not issued a formal statement, either in a document or on its website, on whether it is a fiduciary's responsibility to mitigate cybersecurity risks in retirement plans," said the report.

"THE GAO SUGGESTED THAT FEDERAL ACTIVITY WAS NOT COMMENSURATE WITH THE GROWING RISK CYBER CRIME POSES FOR ASSETS AND THE SECURITY OF PLANS AND PARTICIPANTS."

CALLS TO ACTION

Cybersecurity is a long-standing GAO concern. In 1997, it designated cybersecurity a government-wide high-risk area; in 2003, it added protection of critical cyber infrastructure to that high-risk area; in 2015, it added protecting the privacy of PII; and in 2018, it identified steps the federal government should take.

No definitive guidance means no assurance that sensitive information is being adequately or consistently protected, and continued gaps and inconsistencies in how plan sponsors and service providers implement security. "This potential lack of adequate and consistent protection could result in substantial harm to participants and beneficiaries including loss or theft of money, identity theft, or litigation of plan fiduciaries and their administrators," said the GAO.

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DOL MOVES

The GAO placed the onus squarely on the DOL. "Until DOL clarifies responsibilities for fiduciaries and provides minimum cybersecurity expectations, participants' data and assets will remain at risk," it said. "Without DOL formally stating whether mitigating cybersecurity risks is a plan fiduciary's responsibility, retirement plan administrators may find it difficult to understand what is expected of them with respect to mitigating cybersecurity risks. Further, plan participants cannot be assured that plan administrators are adequately securing their PII and plan asset data to minimize identity theft and potential losses of their retirement assets."

Still, the GAO also indicated that there may be hope, reporting: "DOL officials said that they believe cybersecurity is a large problem for retirement plans," and that the agency "has conducted investigations and prosecutions related to cybersecurity incidents, both civil and criminal."

Furthermore, the officials suggested ERISA may be applicable and "explained that by design, ERISA is meant to be broad and apply to a wide range of activity, and that its general fiduciary obligations of prudence and loyalty include cybersecurity as well as any other part of plan administration." The report added that DOL officials said they "expect plan administrators to keep their IT systems secure as part of their fiduciary responsibility."

Two of the GAO's recommendations were very specific:

1. The Secretary of Labor should formally state whether cybersecurity for private-sector employer-sponsored DC retirement plans is a plan fiduciary responsibility under ERISA.
2. The Secretary of Labor should develop and issue guidance that identifies minimum expectations for mitigating cybersecurity risks that outline the specific requirements that should be taken by all entities involved in administering private sector employer-sponsored DC retirement plans.

The DOL did not tell the GAO whether it agreed with the first, but it did agree with the second. DOL officials said guidance was coming, but when was unclear. A month after the GAO released the report, the DOL's Employee Benefits Security Administration (EBSA) made good (see the Recordkeeping column on page 20 of our Summer issue). "Participants and assets may be at risk from both internal and external cybersecurity threats. ERISA requires plan fiduciaries to take appropriate precautions to mitigate these risks," said EBSA.

The guidance came in three sets:

1. For recordkeepers, other service providers and plan fiduciaries that choose service providers, best practices such as a range of steps including a formal, well-documented cybersecurity program; encryption; strong technical and access controls; annual risk assessments; clearly defined roles and responsibilities; periodic training and more.
2. For plan fiduciaries that choose service providers, tips regarding questions to ask about standards and experience; what to look for in service providers and contract provisions; comparing services offered to those other financial institutions follow; evaluating a service provider's record; and determining if there is appropriate insurance.
3. General online security tips such as practices that can reduce the risk of fraud and loss.

Acting Assistant Secretary for Employee Benefits Security Ali Khawar hailed the guidance as "an important step towards helping plan sponsors, fiduciaries and participants to safeguard retirement benefits and personal information." He added, "This much-needed guidance emphasizes the importance that plan sponsors and fiduciaries must place on combatting cybercrime." PC

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IT'S TIME TO THRIVE!

The ARA's new Thrive program provides a framework to connect with other women within the retirement plan industry.

By Beth K. Scheffey & Kirsten Curry

In a groundbreaking initiative, the five organizations of the American Retirement Association have come together to create an exciting mentorship program for women unlike any in the retirement plan industry.

The ARA Thrive Mentoring Program is an initiative of the ARA Council for Women, whose goal is to build and promote growth and support for women in the retirement plan industry. Thrive facilitates mentoring relationships for women retirement professionals interested in developing new competencies, expanding their network, and navigating career transitions by pairing them with industry-leading mentors with proficiency and experience in those areas.

The program was first widely introduced in April 2021 at a "Third Thursday" virtual social hour, another initiative supported by the ARA Council for Women and hosted by the Women in Retirement Conference Committee. By the summer of 2021, Thrive had been rolled out to all female members of the five ARA organizations.

WHY A WOMEN'S MENTORING PROGRAM?

Formal mentorship programs in all industries have become increasingly popular in recent years as more and more studies confirm their efficacy and reveal the depth of benefits a successful mentorship can have on both organizations and individual careers. Although mentoring can benefit anyone, mentoring relationships can be particularly important to women—as their numbers at the highest levels of organizations, while climbing, continue to be unrepresentative of the population at large. Additionally, as noted in an article in the *Academy of Management Journal* (1994, Vol. 37 No. 4), while "career development for men means increased autonomy and separation from others, career development for women is tied more to attachments and relationships." So the relationships and conversations that develop from building mentorship relationships can be a perfect way to set women up for success. Of course, men often serve as valued mentors and champions for their female mentees, but female to female mentorships can confer the additional benefit of a built-in female role model.

WHAT MAKES THRIVE UNIQUE?

ARA's Thrive Mentoring Program is a pioneering one and the first program supported by and benefitting members of all five of the ARA organizations.

> “THE RELATIONSHIPS AND CONVERSATIONS THAT DEVELOP FROM BUILDING MENTORSHIP RELATIONSHIPS CAN BE A PERFECT WAY TO SET WOMEN UP FOR SUCCESS.”

This collaborative effort expands the pool of professionals proficient in many of the skills mentees want to develop, including negotiating, building networks and giving and receiving effective feedback. Since these skills are necessary for success, regardless of the industry hat one wears, a program that includes all five ARA organizations intrinsically generates more opportunities to build successful mentorships. Furthermore, it affords a benefit that is not available through any other mentorship program in the industry precisely because the mentors and mentees under the program are made up of professionals from every facet of the industry. Thrive mentors and mentees include administrators, plan consultants, actuaries, business owners, insurance professionals, investment advisors, plan sponsors, accountants, recordkeepers, ERISA attorneys, payroll providers and human resource professionals. The depth this affords can provide a bridge for a member of one organization to be able to easily connect with members of the other ARA organizations. Such a bridge provides an invaluable benefit to mentees looking to transition to new roles within the retirement plan industry or expand their breadth of industry acumen.

HOW THE PROGRAM WORKS

A subcommittee of the ARA Council of Women, the Thrive Mentoring Program committee, is comprised of one seasoned industry female professional from each of the five organizations. The committee reviews mentor and mentee submissions and makes pairings based on the information provided and the available pool of mentors. When enrolling, mentors and mentees submit information about their career experience, current roles, areas of interest and expertise, and availability. They are also encouraged to provide any additional details that would help the committee suggest a successful match for them.

Once paired, mentors and mentees are provided with resources to facilitate successful development of the relationship, goal setting and follow-through. The program assumes mentors and mentees will connect monthly over a one-year engagement. However, this is a personal relationship that the participants will build and define, so they may choose to meet more frequently or determine that the goals have been met sooner. As the relationship develops and time passes, the mentee’s goals may evolve or completely shift focus. The program’s flexibility provides the participants the autonomy to redefine the relationship throughout the term of the engagement as needed. When possible, in-person meetings are encouraged, especially at the various ARA organization events including the annual Women in Retirement Conference.

Throughout the term of the relationship, the Thrive committee is available to provide guidance and additional resources as needed.

WHY JOIN THRIVE?

Mentors, whether seasoned professionals in the industry or subject matter experts in a particular industry niche, often sign-up because of a desire to provide assistance and guidance. This can be because they want to “pay it forward” or because they have had to struggle through issues without guidance and want to help others avoid similar challenges. Seasoned professionals also often recognize that taking on a mentoring role can take their own career to another level as it provides them with new experiences throughout the relationship.

Mentees may be looking for guidance as they develop specific business skills or navigate taking on new responsibilities. They may be looking for short-term assistance with a particular issue or looking for a long-term coaching and guidance experience. Mentees are often newer to the industry but they may also be experienced professionals looking to navigate a career change or hone skills needed to take on new responsibilities and challenges.

While more companies are developing formal mentoring programs, many businesses in our industry don’t have the resources or staff to be able to provide such a program. Even if an internal mentor is available, an additional outside mentor can expand a mentee’s network and add additional perspective, if just to navigate a specific issue.

CONSIDER BECOMING A THRIVE MENTEE OR MENTOR, OR BOTH!

Whether engaging as a mentor or a mentee, Thrive provides a framework to connect with others within the retirement plan industry. Whether you’re looking for a mentor, willing to be one, or both, this is an opportunity to get (more) connected, help each other further careers and strengthen industry relationships so we can all thrive. If you are interested in learning more we encourage you to take advantage of this ARA provided benefit by signing up to become a mentee or mentor. You can sign up by filling out the application available online at https://womeninretirement.org/thrive-program/. PC

CAPITOL HILL CONVERGENCE

The convergence of committee activity and key legislators pushing for passage of retirement legislation may result in the enactment of a massive retirement bill in 2022. **By Will Hansen**

In May 2021, the House Ways & Means Committee passed legislation that has been dubbed "SECURE 2.0" — a follow-up to the popular SECURE Act signed into law in December 2019. While we hoped this legislation would move directly to the full House of Representatives for a vote, instead, we will have to wait, most likely until 2022.

What special characteristic does SECURE 2.0 have compared to the thousands of other bills introduced into Congress? Bipartisan support. Bipartisanship has become an unfortunate rarity as of late on Capitol Hill, but for retirement policy, it could help get SECURE 2.0 across the finish line.

SECURE 2.0 isn't just a House Ways & Means legislative product. For the first time in many years, other Committees that have jurisdiction in the retirement policy space are flexing their muscle and want a piece of the action.

One, the House Committee on Education & Labor, has jurisdiction over legislation that would amend ERISA. While SECURE 2.0 includes provisions that amend ERISA, ultimately, it could be the Education & Labor Committee that takes control of those provisions and determines their final fate. For example, SECURE 2.0 includes a new provision that would mandate a paper mailing of one benefit statement per year. Technically, this provision falls within the jurisdiction of Education & Labor. In all likelihood, Education & Labor will decide to make changes to provisions in SECURE 2.0 that are within their jurisdiction—and focus on new provisions to add to the retirement policy debate.

> "ALL FOUR PRIMARY COMMITTEES WITH JURISDICTION ARE FOCUSED ON RETIREMENT POLICIES AND ALL WOULD LIKE IT TO BE A BIPARTISAN EFFORT."

On the Senate side, several bills have been introduced that are the same as or similar to provisions included in SECURE 2.0. Primarily, these provisions fall within the jurisdiction of the Senate Finance Committee. In July, ARA CEO Brian Graff testified before the Senate Finance Committee on provisions that ARA supports. The hearing took place to build the legislative record on provisions that the committee would like to pass.

In addition to the Finance Committee, the Senate Health, Education, Labor & Pensions (HELP) Committee is going to focus on debating retirement policy within its jurisdiction. From electronic disclosure to cybersecurity to financial literacy, the HELP Committee will be active.

In summary, all four primary committees with jurisdiction are focused on retirement policies and all would like it to be a bipartisan effort. Which leads back to why I think 2022 will be a busy year for retirement policy. Typically in an election year, Congress spends less time legislating and more time politicking. However, when Congress *does* focus on legislating in an election year, members want to work on bipartisan legislative items to avoid partisan debates that highlight the dysfunction in Washington. This could provide an opportunity for the bipartisan retirement policies that each of these four committees have focused on in 2021 to move forward in the legislative process in 2022.

Speaking of retirement, both Sen. Rob Portman (R-OH) and Rep. Kevin Brady (R-TX) will retire the end of 2022. Both have been champions of retirement legislation and have a vested interest in the current retirement policies being implemented into law—Portman with the Portman/Cardin bill that has 40+ retirement policies and Brady with the SECURE 2.0 legislation that was approved by the Ways & Means Committee in May.

Ultimately, we have a "perfect storm"—but in a positive way. And because of this convergence of committee activity and key legislators pushing for passage of retirement legislation, I believe we will see a massive retirement bill enacted in 2022. PC

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