AN OFFICIAL PUBLICATION OF ASPPA

PLAN CONSULTANT

WINTER 2021

AN ONLINE ANNUAL CONFERENCE

Last fall's ASPPA All Access conference offered real answers—virtually.

IMPACT OF THE CARES ACT'S PLAN LOAN RULES

THINKING OF RUNNING A PEP?

MEET ARA'S NEW WOMEN'S COUNCIL

INSIDETHISISSUE

QR Code to Digital Version*

Use your phone to link directly to the Online Version!

* ios 13 and Android 9 users can scan using your phones built in camera utility.

DELIVERING INNOVATIVE RETIREMENT SOLUTIONS THAT YOU CAN DEPEND ON

FIS empowers small to large retirement plan providers around the globe with a comprehensive, integrated suite of retirement solutions. Our industry-leading offering includes an extensive selection of technology and services that supports all aspects of your business and positions you for future growth.

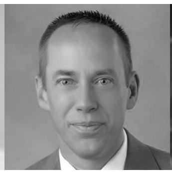
FIS offers every component a retirement plan provider needs to deliver services including:

- Recordkeeping technology and plan administration/ compliance
- Operational outsourcing and staff augmentation
- Participant engagement and financial wellness tools
- Trust and custodial services
- Consulting services

www.fisglobal.com getinfo@fisglobal.com twitter.com/fisglobal linkedin.com/company/fis

ADVANCING THE WAY THE WORLD PAYS, BANKS AND INVESTS™


DICK BILLINGS


JASON BROWN


LINDA M. CHADBOURNE


NICOLE CORNING


ROBERT J. D'ANNIBALE, JR


SHANNON EDWARDS


JOHN R. MARKLEY


MIKE McWHERTER


SUSAN PERRY


ROBBIE PETRILLO


JIM RACINE


RICHARD W. RAUSSER

R.L. "Dick" Billings, CPC, CEBS, ERPA, is principal and Director of Communications at Fiduciary Wise, LLC in Phoenix, AZ, a professional 402 and 3(16) fiduciary. He is a member of the *Plan Consultant* committee.

Jason Brown is a Principal at Benefit Plans Plus, LLC, and is a retirement plan consultant, plan design strategist, and subject matter expert with over 20 years of industry experience. He is a member of the *Plan Consultant* committee.

Linda M. Chadbourne, QKA, APR, APA, PFC, is the President of Hills Pension Associates, Inc., a full-service retirement plan administration and consulting firm in Carver, MA. She is a member of the *Plan Consultant* Committee.

Nicole Corning, CFP®, CRPC®, AIF®, is a Managing Partner in Scottsdale, AZ. She has nearly 20 years of experience in the finance and banking industry.

Robert J. D'Annibale, Jr. has four decades of legal experience and has practiced extensively in 412(i) litigation nationally. He also offers consulting and other services through Fidant Solutions, LLC, which he founded in 2016.

Shannon M. Edwards, ERPA, QPA, QKC, QKA, is the President of TriStar Pension Consulting. She is a member of the *Plan Consultant* magazine committee.

John R. Markley, FSPA, CPC, ASA, FCA, MAAA, founded Markley Actuarial Services in 1985. He has more than 30 years of experience providing services to qualified retirement plans, and is a Past President of ACOPA (now ASEA) and a member of the *Plan Consultant* magazine committee.

Mike McWherter, JD, is the Chief Compliance Officer at PenChecks, Inc./PenChecks Trust. He has 30 years of combined legal, financial institution and ERISA service provider experience.

Susan Perry is the owner of Edberg Perry, LLC, a TPA firm in Phoenix, AZ. She also owns Fiduciary Outsourcing, LLC, a 3(16) company.

Robbie Petrillo, QPA, QKA, is the Director of Business Development at Pinnacle Plan Design, LLC. He provides marketing insights and technical consulting for Pinnacle's TPA clients and referral sources.

Jim Racine, CLU, ChFC, is the V.P. of TPA Business Development at Ascensus. He is a 30+ year industry veteran with recordkeeper and TPA management experience, and a member of the *Plan Consultant* magazine committee.

Richard W. Rausser, CPC, QPA, QKA, has more than 25 years of experience in the retirement benefits industry. He is Senior Vice President of Client Services at Pentegra. He is a frequent speaker on retirement benefit topics.

Plan Consultant is Published by

ASPPA
American Society of Pension Professionals & Actuaries

EDITOR IN CHIEF
Brian H. Graff, Esq., APM

PLAN CONSULTANT COMMITTEE
Mary Patch, QPA, CPFA, Co-chair; David J. Witz, Co-chair; Lee Bachu; R.L. "Dick" Billings, CPC, ERPA; Gary D. Blachman; Jason D. Brown; Linda Chadbourne, QKA; Kelton Collopy, QPA; Lorraine Dorsa; Shannon Edwards, ERPA; John A. Feldt, CPC, QPA; Tim Hackleroad; Todd Heller; Brian J. Kallback, QPA, QKA; John R. Markley; Michelle C. Miller, QKA; Jim Racine; Lisa Showalter; Stephanie Terry, QPA; Eric Thorne, QKA, TGPC; Robert Zamary; Gabrielle Zoldos

EDITOR
John Ortman

SENIOR WRITERS
Ted Godbout, John Iekel

ART DIRECTOR
J.Ethan Duran

ADVERTISING SALES
Erik Vanderkolk
evanderkolk@usaretirement.org

DIGITAL SALES
Tony DeScipio
tdescipio@usaretirement.org

TECHNICAL REVIEW BOARD
Michael Cohen-Greenberg ; Sheri Fitts; Drew Forgrave, MSPA; Grant Halvorsen, CPC, QPA, QKA ; Jennifer Wiczynski, CPC, QPA, QKA; Robert Richter, APM

COVER
Pixels Hunter / Shutterstock.com

ASPPA Officers

PRESIDENT
Frank Porter, QPA, QKA

PRESIDENT-ELECT
Natalie Wyatt, QKA, QPFC

VICE PRESIDENT
Justin Bonestroo, MSPA, EA, CPC, CPFA

IMMEDIATE PAST PRESIDENT
Missy Matrangola, QPA, QKA

Plan Consultant is published quarterly by the American Society of Pension Professionals & Actuaries, 4401 N. Fairfax Dr., Ste 600, Arlington, VA 22203. For subscription information, advertising, and customer service contact ASPPA at the address above or 800.308.6714, customerservice@USAretirement.org.

Postmaster: Please send change-of-address notices for *Plan Consultant* to ASPPA, 4401 N. Fairfax Dr., Ste 600, Arlington, VA 22203.

NEW RESOLUTIONS

What are we, individually and collectively, supposed to get out of this extraordinary time we're living through?

By John Ortman

Between the resurgent COVID-19 closings and the post-election fevers that we are still being subjected to, things have been more than a bit rough for many of us lately. As anyone who uses social media can attest, there is a lot of despair and resignation out there, both focused and unfocused.

Resignation and despair may be close cousins, but they are not the same. Being resigned about the failure of our efforts in the face of the world's difficulties, whatever they may be, is close to being in despair, but there's an important difference: In troubled times, resignation can be the first step on a journey to hope and a better future. Despair cannot.

"IN TROUBLED TIMES LIKE THIS ONE, A LITTLE PERSPECTIVE AND HUMOR CAN GO A LONG WAY."

In troubled times like this one, a little perspective and humor can go a long way. Humor, in particular, is remarkably capable of shining a light on the line between despair and resignation.

Here's an example: Pope John Paul II once managed to slam his fingers in a car door. Someone nearby heard him mumble under his breath: "Thank you, Lord, for loving me in *this* way." He was resigned to the misfortunes that befall us, but he refused to despair of the situation, choosing instead to turn this particular misfortune into an act of gratitude. (That tiny prayer has been one of my favorites since I first heard this story. It is the only one I know of that can be prayed with equal measures of piety and sarcasm at the same time.)

Bear with me as I stick with the Judeo-Christian perspective for a moment. In that perspective, God permits scourges like plagues, rioting and political upheavals in order to bring some good out of them, usually as a sharp reminder that we ought to change our lives—kind of a slap in the face intended to bring us to our senses. In a way, that's nearly the entire Old Testament in a nutshell.

So in that sense, what are we, individually and collectively, supposed to get out of this extraordinary time we're living through? Perhaps we ought to have spent these last few trying months figuring that out, and striving to live accordingly. Individually, perhaps changes in the way we live are called for, like trying to be humbler, more tolerant, more generous, more understanding.

Traditionally we take stock of the past year every January 1 and formulate resolutions for the coming year. People resolve to lose weight, or change jobs, or mend some relationship. We all know how those wishes usually turn out before long.

This year, in the same way—although in a different, more meaningful spirit—perhaps it's a good time to seek an answer to the question, "What am I supposed to get out of this time we're living through?"

Best wishes for a healthy and happy new year!

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

Editor

AGENTS OF CHANGE

How can we help strengthen the fabric of our society and continue to improve? **By Frank Porter**

As the world turned upside down in 2020, this is a good time to remember that we all play an important role in helping retirement savers stay grounded in their fundamental savings programs. We must continue to remind working Americans that saving for retirement is a key long-term success factor.

For those who are not saving or have had to take a step back from their long-term savings plans, as shepherds of the retirement industry we must continue to educate and advocate. How can I effect change, you ask? Speak up; ask insightful questions; invest in your industry knowledge.

I have been involved with ASPPA's Government Affairs Committees for many years, which is a great way for members to become informed and be part of the advocacy towards helping individuals save. In terms of regulatory activity, 2020 turned out to be one of the most active years in recent history, helping to shape many facets of our industry. We provided the IRS feedback related to COVID relief around distributions, including required minimum distributions. We assisted with the framework relating to the structure and the registration of Pooled Employer Plans and provided feedback on what to focus on as related to the Priority Guidance Plan. We requested improvements in the interim amendment process for pre-approved plan documents. We worked with the Department of Labor on ways to structure environmental, social, governance (ESG) investments in a plan, relief from ERISA notices during the pandemic, the framework for the default electronic disclosure rule, and lifetime income disclosures. I highly recommend getting involved as it is a great way to connect with likeminded individuals and make a difference in our industry.

"OUR SOCIETY AND ITS BASIC STRUCTURE, WITH ALL THE CUSTOMS AND BELIEFS THAT MAKE IT WORK SUCCESSFULLY, HAS BEEN PUT INTO QUESTION IN 2020, A YEAR OF UNPRECEDENTED EVENTS."

You can help shape the industry by investing in yourself to be at the top of your game. ASPPA has the revamped Qualified 401(k) Administrator and the newly created Qualified 401(k) Consultant programs as steps for you to take to help educate Americans on the importance of saving for their retirement.

It is clear that as a nation we still have a lot of work to do. Our industry is not isolated from the inequality that exists. We must step up and do what is right as it relates to race, ethnicity, color, national origin, age, ability, sexual orientation, gender identity, marital status, religion and citizenship status. Embracing each other's inherent and acquired differences helps frame the steps we must take.

The end goal as it relates to our industry should be that each individual has the ability and opportunity to save for an adequate retirement. If we can break through each of the cultural barriers leading up to this step, then we will have done what it takes to make a meaningful difference. Already we have seen announcements of initiatives for women and minorities by companies at an unprecedented rate. Individuals now have the ability to save using ESG investing techniques as a popular way to ensure their savings dollars are put to use in a manner that upholds their fundamental beliefs. These are just a few ways we have seen the financial industry begin to shift. We need to ensure that each individual has the access and opportunity to save through a workplace-based retirement plan and the means to do so. I expect to see many more creative and compelling programs in the coming years, and I am excited to be part of the journey we are on towards making a difference.

"Diversity and inclusion, which are the real grounds for creativity, must remain at the center of what we do."
– *Marco Bizzarri*

Our society and its basic structure, with all the customs and beliefs that make it work successfully, have been put into question in 2020, a year of unprecedented events. As we begin a new year, I encourage you to reflect on how we can strengthen the fabric of our society and continue to improve, not only for current generations, but for future generations as well. PC

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

WELCOME
NEW & RECENTLY CREDENTIALED MEMBERS!

QKA
Rebecca Alexander
Nicholas Axline
Allison Bailey
Kimberly Baker
Genevieve Bell
Shayla Benoit
Gregory Berman
Brian Boswell
Ryan Broadbent
Thomas Brooks
Ellandra Bryan
Clare Cady
Ivis Cardona
Simeon Clark
Michael Crocker
Amber Curl
Adam D'Acierno
Suzanne Debartolo
Luan Doniger
Elizabeth Donnelly
Maygan Downs
Andrew Dweck
Ellen Ebelhar
Victoria Edstrom
Lawrence Egort
Matthew Eusey
Preston Faulkner
Jennifer Forgey
Crystal Fraser
Rachael Gehman
Denise Gilbert
Patrick Glennon
Hillary Grady
Rebecca Haahn
Michael Haas
David Hale
Valerie Haley
Daniel Hamilton
Michelle Hammond
Melanie Hilt
Robert Jones
Stephanie Jones
Amber Kallberg
John Kavanagh
Kevin Kelly
Brendan Kinsella
Rebecca Koehler
Alexis Kourgelis
Eddie Kramer
Neil Lange
Jill Langmeier
James Lauzon
Vivian Leung
Michael Leyden
Baoqin Li
Alex Limardi
Jonathan Little
Dianne Loomis
Emily MacDowell
Joseph Maestas
Elizabeth Matthews
Holly Mills
Kandace Moore
Shannon Morecraft
Demetrius Murray
Angela Newman
Karen Nothe-Valley
Heather O'Connor
James Palys
Sherri Panzarella
Vincent Parker
Henna Patel
Kanika Peters
Shelby Pierce
Robert Puzier
Rebecca Ray
Janna Recchio
Joseph Redd
Chad Rick
Karen Ritchie
Taylor Rix
Justyna Rosiejka
Melissa Ruggiero
Melissa Sams
Andrew Schrader
Anta Secka
Lisa Serbin
Rachael Simms
Briana Smith
Carson Smith
Barbara Sparks
Samuel Spearman
Christopher Stauffer
Heather Steuer
Marlin Stovesand
Annette Suarez
Debi Svrjcek
Cheryl Szabo
Rebecca Torres
Yuan Wing Tseng
Santiago Uribe Palacios
Diane Ward
Caitlin West
Gretchen Williams
Allison Willingham
Todd Wilson
Sheila Young
Kyle Zeller

QKC
Mary Akel
Cory Aldrich
Nathan Alexander
Laura Anderson
Diane Armstrong
Nicholas Arnold
Melissa Baker
Thomas Barrett
Jill Bazile
Lisa Beckman
Candis Belin
Lisa Bennett
Sharon Bergeson
Karen Bettner
Antonio Blasini
Cheryl Bowness
Melissa Brady
Kendra Bragg
Dana Brannon
Elizabeth Brinkley
Bridget Brouillette
Amanda Brown
Tara Brown
Allan Browns
Damien Callahan
Stacylyn Carano
Rebeccah Cardillo
Kathleen Carillo
Thomas Carline
Thong Chau
Leo Chiaraluce
Gwendelyn Coleman
Heather Connington
Birgit Cornelius
Earl Correll
Sean Crites
Jennifer Cusatis
Jean Dailey
Iva Dario
Martha Dean
Chrissy DeCaria
Tami Delaney
Krisy Dempewolf
Chad Dicristina
Lisa Dielman
Wendy Dixon
Michael Dupre
Eric Ehui
Philip Ely
Robert Ely
Paul Erickson
Denise Falbo
Kimberly Flett
Janice Fluke
Jessica Foster
Michael Franciskovich
Vicky Freeman
Scott Freund
Nathan Gage
Sadie Gaston
Maryann Geary
Rachael Gehman
William Goff
Maximilian Gottfried
Chris Griess
Amy Griffith
Janet Gutting
Scott Hannan
Jacqueline Hartle
Sharon Hartman
Constance Haugen
Margret Heberling
Matthias Helduser
Jeffrey Heller
Danny Hernandez
Jennifer Hill
Michelle Hoesly
Renee House
Michael Howard
Jeaninne Irwin
Leah Johnson
Patricia Jones
Laura Kasper
Jamie Kelly
Scott Keswick
David Kirkham
Barbara Klein
Justin Koffenberger
Jessica Kroll
Christopher Kuhl
James LaMancusa
Amy Larsen
Michelle LeCates
Kimberly Lekki
Kathryn LeMaster
John Lestock
Louis Levine
Russell Linderer
Kathleen Litchfield
Gabrielle Lorbiecki
Ryan Lupke
Yana Lv
Sarah Mahalic
Christopher Maradie
Michael Marsh
Stephanie Martelli
Allison Martin
Jennifer Massey
Barbara May
Robert McKendry
Michelle McLaughlin
Anjele Melancon
Kimberly Miller
Andrea Minton
Ellen Moll
Carol Moore
Samuel Morgan
Kathryn Morrison Phelps
Ildiko Munoz Villasana
Barbara Murphy
Jennifer Nau
Robson Neves
Vivian Nguyen
Lindsey Nichols
Mary Nicholson
Mary Nuskey
Andrew Ogeare
Jennifer Ontko
Amanda Overcash
George Patterson
Holly Perez
Sharon Powell
Adam Pozek
Matthew Pranschke
William Pratt
Ellen Prozorov
Robert Puzier
R. Joseph Rader
Marilyn Ramjohn
Syed Raza
Kevin Reynolds
Judy Richardson
Kathryn Risch
Ashley Ritter
Christiane Roloff
Megan Santa Maria
Connie Schultz
Laura Scobee
Sharon Scussel
Nancy Seroogy
Jackie Sgarlata
Angela Shanks
Amy Shaub
Maureen Sitlinger
Gene Skonetski
Arlana Smith
Brian Smith
Luke Smith
Kimberly Soppel
Ronald Stair
Jennifer St-Denis
John Stone
Rebecca Sullenberger
Jennifer Swets
Sammi Tang
Gordon Tewell
Kevin Thompson
Lanie Thompson
Tamra Thompson
Larissa Tibbles
Natalie Torres
Dennis Trombino
Jordan Tuma
Jennifer Twigg
Amy VanDerhei
Emily Vincent
Saira Voller
Tanya Weaver
Susan Westby
Duane Williams
Jeffery Wilson
Kathy Wilson
Melody Wilson
Mark Winslow
Julia Wolak
Alison Yakubik
Cindy Yarbrough
Barbara Young
Sherry Zastawny

QPA
Mei Jie Corwin
Nathan Ferris
Kevin Gaston
Rachael Gehman
Jeffrey Heller
Jennifer Kovacs
Jessica Kroll
Amanda Pickarski
Robert Puzier
Jennifer Twigg

UNFINISHED BUSINESS

Together, we've accomplished so much in this extraordinary year—but the business of America's retirement remains a work in progress. **By Brian H. Graff**

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

There are no words that seem adequate to describe the extraordinary events of the past year.

A year ago most had written off any prospect of legislative developments, much less something as sweeping as the Setting Every Community Up for Retirement Enhancement (SECURE) Act—one of the most significant pieces of retirement legislation in more than a decade. We hadn't even gotten to the New Year's champagne before we were immersed in sorting out the implications, identifying needed points of clarity, and fleshing out FAQs—that hadn't even had an opportunity to be asked—but would be. Questions that would continue to be asked—and answered during the first quarter. And then…

Who could have imagined that mere weeks following that we'd find ourselves in the middle of a worldwide pandemic—necessitating sweeping legislative relief in the Coronavirus Aid, Relief and Economic Security (CARES) Act. This time the relief was real, but optional, and the retirement provisions primarily focused on making it easier for participants to access retirement savings. Which, of course, created extraordinary challenges, operationally, administratively, and in communications for plans and our members.

You were an integral part of the process—helping highlight key issues, to prioritize areas that needed confirmation, clarity, and correction, working together to provide results that could be sustained with minimal impacts of retirement security. With the assistance of members, we were able to identify which providers had embraced default assumptions about adoption of CARES distribution and loan provisions, and to provide that information to assist planning and communication, we conducted webinars that helped bring to the fore critical questions that not only fostered another set of FAQs, but informed and helped guide our discussions with regulators as we sought to work out the "kinks" and fill in the blanks that the hastily crafted legislation missed.

Members were also an essential aspect of our assessment and evaluation of the impact of COVID-19 on employers and their ability to sustain the financial commitments of these programs, notably safe harbor plans. Through member surveys (ASPPA, NAPA and PSCA), and collaboration with the Employee Benefit Research Institute (EBRI), we were not only able to quantify the potential impact across the industry, but to provide legislators with some "real world" examples of employer/plans in their districts, and the implications for their continued support of their plans in the absence of relief. It is, unfortunately, a message that we continue to press on Capitol Hill—and one that we'll likely need your help on in the weeks ahead.

We've been there with you as we sorted out the impact of the SECURE Act, developed FAQs to help you help your customers understand and take action, took on the CARES Act , tracked the legislative and subsequent regulatory guidance, and along the way—via webinars, publications, and virtual events—strove to provide you with the most accurate, actionable intelligence and insights. We took your concerns—and those of your clients—to lawmakers and regulators, and, with your help, effected positive change that made a difference.

We're not done, of course—and 2021 looks to be just as challenging. We're already working with your Government Affairs Committee to map out a strategy for needed relief and clarity on a series of new rules and regulations, both proposed and (now) final. On that front, we've just seen the introduction in the House of Representatives of what's been called SECURE 2.0, the Securing a Strong Retirement Act of 2020. It's a bipartisan bill—sponsored by House Ways & Means Committee Chairman Rep. Richard Neal (D-MA) and Rep. Kevin Brady (R-TX), the ranking Republican on the committee—the same duo that managed to get the SECURE Act through a sharply divided House by a margin of 417-3 less than a year ago. That legislation could, as SECURE was a year ago, find its way into law as part of a year-end agreement. There are also a number of retirement provisions contained in the House-passed HEROES Act and the Senate's HEALS Act package that could be folded into a year-end agreement.

> "WE TOOK YOUR CONCERNS—AND THOSE OF YOUR CLIENTS—TO LAWMAKERS AND REGULATORS, AND, WITH YOUR HELP, EFFECTED POSITIVE CHANGE THAT MADE A DIFFERENCE."

Together, we've accomplished so much in this extraordinary year—but the business of America's retirement remains a work in progress. It's "unfinished" business, but one in which—under extraordinary strains and circumstances—we've been able to make a positive impact—together. PC

Thank you

For your continued support!

ASPPA | ASEA | NAPA | NTSA | PSCA

Unprecedented. Novel. Coronavirus. Covid-19. Pandemic. Quarantine. Social distancing. Face masks. Contact tracing. Essential workers. Essential businesses. Lockdown. Flatten the curve. Zoom/Teams meetings. Remote work. Virtual – everything. These are some of the words and phrases that we have become all too familiar with in 2020.

At the top of that list is another phrase that cannot be said enough **– thank you!** Thank you to all the people who work tirelessly to help those who have fallen ill, who work tirelessly to help prevent us from getting ill, and who work tirelessly providing various services to us every day so our lives can be as normal as possible, even if virtually, during this crisis.

I would also like to say thank you to all of you – the leaders, volunteers and members of the American Retirement Association – for your continued amazing support. Thank you for understanding when conferences or events were cancelled, maybe virtual, back on, then virtual again. Thank you for embracing our many new virtual education programs for plan administrators, consultants, advisors and sponsors. Thank you for recognizing that pandemics apparently do not slow down the work on legislation and regulations affecting retirement policy. And thank you for the work that each and every one of you do every day helping American workers save for retirement and reassuring plan participants to stay the course during this crisis. As an organization we believe in what you do, which is why we will always fight to protect, preserve and enhance our nation's retirement plan system.

On a personal note, thank you to the staff of the American Retirement Association who so seamlessly converted to a remote working environment while remaining steadfast in their commitment to the organization and its mission. Finally, I would certainly not want to leave out a thank you to my family for putting up with Dad disrupting their routines, sharing the home office space, and giving up some of their WiFi.

Thank you,

Brian H Graff, CEO
American Retirement Association

COVID-19 AND 1099-R ISSUES

Alphabet soup for the compliance manager's soul? **By Mike McWherter**

When I was a young boy, my mother would often give me chicken soup when something was ailing me. COVID-19 has been ailing the U.S. for several months now. In response, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020.

There's no chicken soup in them, but COVID-19, the SECURE Act, the CARES Act and 1099-Rs include plenty of alphabetic and alphanumeric "soup." They also bring changes, some of which are more obvious and some more subtle, that could cause issues if overlooked.

Let's take a look at what's new for Form 1099-R, Coronavirus-related distributions (CRDs), tax withholding, and other matters that affect 1099-R reporting for 2020.

WHAT'S NEW? QBOADS

Section 113 of the SECURE Act establishes qualified birth or adoption distributions (QBOADs) which, as the name implies, allow for a distribution of up to $5,000 for a qualified birth or adoption. Important for 1099-R purposes, the QBOAD is exempt from the 10% early distribution tax. In the *2020 Instructions for Forms 1099-R and 5498*, the IRS refers you to Table 1, Guide to Distribution Codes. However, there doesn't appear to be a new distribution code for QBOADs. ***1099-R Tip:*** The assumption is use Code 2 "Early distribution, exception applies." Conversely, for 5498s the IRS has added code "BA" for reporting the repayment of a QBOAD.

CORONAVIRUS-RELATED DISTRIBUTIONS (CRDS)

Most practitioners now understand what a CRD is, which plan types can allow them, who qualifies for one, the CRD dollar limit, participant self-certification, etc. What may be less well understood are some things that affect the 1099-R reporting of CRDs. For example, there are certain 2020 distributions that can be designated as a CRD, up to the $100,000 limit:

Ekaterina Kondratova / Shutterstock.comw

"WITH 2022 AND 2024 PLAN YEAR-END AMENDMENT DEADLINES, PLAN SPONSORS AND TPAS SHOULD HAVE ADEQUATE TIME TO REVIEW EXISTING DISTRIBUTION, PLAN LOAN AND RMD TERMS AND PROCEDURES."

- A distribution that otherwise would've been a RMD
- Recurring payments—annuities or other installment type payments
- Offset of a plan account balance repaying a plan loan
- Distributions received by a beneficiary due to the death of the participant

Similarly, there are a number of distributions that cannot be treated as CRDs as set forth in IRS Notice 2020-50:

- Excess deferrals under Code §402(g)
- Amounts returned for purposes of ADP or ACP testing
- Amounts distributed for compliance with contribution limits of Code §415
- Deemed distributions of loan amounts per Code §72(p)
- Deemed distributions per Code §409(p)
- Cost of life insurance coverage, as well as distributions of premiums for accident or health insurance under Treas. Reg. §1.402(a)-1(e)(1)(i)

Also, be aware that a participant can take multiple CRDs as long as the total of all CRDs remains below the $100,000 limit. This raises the possibility of multiple 1099-Rs if the CRDs are taken from different plans by the participant.

TAX WITHHOLDING AND 1099-R CODES

Tax withholding also affects 1099-R reporting. For CRDs there is no requirement to withhold 20%. There's no 10% early distribution penalty, and the mandatory 10% withholding tax can be spread ratably over 3 years starting in the year the CRD is made.

However, a CRD is subject to 10% *voluntary* withholding, so the participant must be provided the opportunity to voluntarily withhold. The amount of the CRD will of course be reported on Form 1009-R.

1099-R Tip: On Form 1099-R, use code 2 in box 7—the participant has not reached age 59½, early distribution, exception applies. Note however that it is also permissible to use code 1 in box 7—the participant has not reached age 59½, early distribution, no known exception.

1099-R Tip: Some states and localities have mandatory withholding. If your participant resides in a mandatory withholding state or locality, you'll want to pay attention to Boxes 14 through 19 in Form 1099-R.

Boxes 14 through 19 and Copies 1 and 2 of the 1099-R do not need to be completed for the IRS. They are provided for the taxpayer's convenience. The state and local information boxes can be used to report distributions and taxes for up to two states or localities. Use the dotted line to keep the information separate for each state or locality. Use boxes 14 and 17 to report state and/or local taxes withheld on the distribution, as indicated. Enter the state abbreviation in box 15 as well as the participant's state identification number assigned by that state. For localities, enter the locality name in box 18. In boxes 16 and 19 you can enter the amount of the distribution. Copy 1 is filed with the state or local taxing authority. Copy 2 is the participant's copy for their records.

CORONAVIRUS-RELATED LOANS (CRLS) AND THE 1099-R

The CARES Act also expanded the amount available for plan loans—the lesser of $100,000 (up from $50,000) or the greater of $50,000 or 100% (up from 50%) of the participant's vested account balance. NOTE: This increase is temporary and only available for 180 days following March 27, 2020, the date the CARES Act was enacted.

The CARES Act also allows for the deferment of plan loan repayments for up to one year for those repayments that fall between the date of enactment (March 27, 2020) and Dec. 31, 2020.

1099-R TIP: If the participant terminates employment during the one-year delayed repayment time, the loan can be converted to a distribution at that time, with the resulting 1099-R reporting the unpaid amount of the loan.

CONCLUSION

With 2022 and 2024 plan year-end amendment deadlines, plan sponsors and TPAs should have adequate time to review existing distribution, plan loan and RMD terms and procedures in their plan documents and update them accordingly. Where the IRS has provided sample amendments, they should be considered and reviewed to see if they are compatible with the current plan document(s) and operations.PC

Nate Allred / Shutterstock.com

5 LESSONS LEARNED FROM 412(i) LITIGATION…

…about the use of life insurance in defined benefit plans. By Robert J. D'Annibale, Jr.

Toward the end of the last century, a number of retirement professionals identified an old vehicle that presented new opportunities given the economic forecast, which anticipated a fluctuating stock market going forward resulting from the advent of technology and associated stock runups colloquially known as the "tech bubble."

These professionals included actuaries, CPAs, life insurance agents, and design coordinators/TPAs, as well as insurance company funding product providers. The old vehicle was a defined benefit plan then identified in the Internal Revenue Code as a 412(i) plan, now designated as a 412(e)(3) plan in the Code. (For continuity purposes, these plans are referred to by their historical name of 412(i) plans in this article.) A 412(i) was a defined benefit plan funded exclusively with life insurance or annuity contracts, or a combination thereof.

Section 412(i) of the Code exempted these plans from the minimum funding requirements contained in other provisions of Section 412. Generally, a 412(i) plan was subject to all other requirements applicable to defined benefit plans. To qualify under Section 412(i), a plan had to meet the following requirements:

1. The plan must have been funded exclusively by the purchase of individual insurance contracts.
2. Such contracts must have provided for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date that the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase became effective).
3. Benefits provided by the plan must have been equal to the benefits provided under each contract at normal retirement age under the plan and must have been guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums had been paid.
4. Premiums payable for the plan year, and all prior plan years, under such contracts must have been paid before lapse or there was reinstatement of the policy.
5. No rights under such contracts had been subject to a security interest at any time during the plan year.
6. No policy loans were outstanding at any time during the plan year.

These plans presented a lower risk option compared with traditional DB plans funded with investments that were at risk to a fluctuating stock market. On the whole, the costs associated with the plan itself were less than those costs incurred in implementing and administering a traditional DB plan. For example, no Schedule B was required to accompany a Form 5500 filing. Though these differences were appealing, some retirement professionals emerged as vocal critics of 412(i) plans in the late 1990s and early 2000s. Generally, these critics that surfaced had different opinions based on different agendas, and constructed their criticisms on issues stemming from the requirements of 412(i)(1) and 412(i)(3).

Specifically, in an ocean of litigation, plaintiffs' lawyers focused on plans that were more aggressively funded with more—and in some cases solely—life insurance than annuity contracts. Similarly, the IRS also focused on instances where the benefits provided by the plan were not equal to the benefits provided under the contract at normal retirement age under the plan. Both plaintiffs' lawyers and the IRS claimed that plans that were more aggressively funded by life insurance rather than annuity contracts were listed transactions. (A listed transaction is defined as a transaction that is the same or substantially similar to one that the IRS has determined to be a tax avoidance transaction and identified by IRS notice or other form of published guidance.)

After the first 20 years of the 21st Century, the use of life insurance contracts in retirement plans is still an option through a 412(i) plan. However, the significant legal challenges by plaintiffs' lawyers and the IRS mean that one should keep in mind certain takeaways from the foregoing. Below are five lessons learned during extensive litigation in this area.

1. BE THOROUGHLY FAMILIAR WITH ALL RELEVANT LEGAL AUTHORITY IN REGARD TO THE PLAN ITSELF AND THE FUNDING PRODUCTS USED.

As with the marketing, sale, design, implementation and administration of any benefit plan, a comprehensive understanding of the legal requirements associated with the

> "IN AN OCEAN OF LITIGATION, PLAINTIFFS' LAWYERS FOCUSED ON PLANS THAT WERE MORE AGGRESSIVELY FUNDED WITH MORE—AND IN SOME CASES SOLELY—LIFE INSURANCE THAN ANNUITY CONTRACTS."

plan and its funding products is imperative. It is essential to have a thorough understanding of the applicable Code, regulations, Revenue Rulings, case law, etc.

Of particular importance on this issue is Rev. Rul. 74-307. As indicated above, one of the primary challenges in the efforts of plaintiffs' lawyers and the IRS nearly two decades ago centered around the amount of life insurance used as a funding product. The premiums associated with the life insurance policy substantially increased the amount of required contributions and, ultimately, tax deductions in cases that were funded with more life insurance as compared to annuity contracts. In determining the amount of allowable death benefits, contributions, and ultimately deductions, Rev. Rul. 74-307 is of paramount importance. It is my opinion that fewer challenges will be encountered if pre-retirement death benefits under the plan do not exceed 100 times the anticipated monthly normal retirement benefits. The 100-times formula is a maximum test and not a requirement. Therefore, any lesser amount decreases the likelihood of a challenge. More importantly, objections are almost certain to occur should the alternative method provided by Rev. Rul. 74-307 be utilized in determining whether the incidental death benefit rule is violated. Finally, the life insurance policies must be evaluated in regard to their surrender charges, death benefits, mortality charges, loads, premium costs, and values at normal retirement.

2. CLEARLY DEFINED ROLES.

The marketing, sale, design, implementation and administration of these plans involve professionals of different disciplines, as well as insurance company funding product providers. In defending challenges, there must be clear delineations between each professional's role, including the roles of insurance company funding product providers. It is also advisable that the compensation received by each of these professionals be relative to their services. In litigation, everyone involved with a plan will be named as a defendant. The practice of using clearly defined roles will reduce unnecessary finger pointing which would only benefit the plaintiff(s).

3. USE DISCLOSURES AND ACKNOWLEDGMENTS THAT DEFINE EACH PLAYER'S ROLES, RESPONSIBILITIES, AND COMPENSATION (METHOD AND MANNER).

The use of disclosures and acknowledgments formed a helpful centerpiece in providing a defense to the various professionals and/or insurance company funding product providers named as defendants during the past litigation surrounding 412(i) cases. In some instances, a well-drafted disclosure and acknowledgment that defines each professional's roles, responsibilities, and compensation (method and manner) may be determinative of the issues involved in the case.

4. MAKE SURE MARKETING MATERIALS ARE CONSISTENT WITH THE FIRST THREE LESSONS ABOVE.

At the litigation stage, the ship has already sailed. The marketing, sale, design, implementation and at least some administration has already occurred. A skilled plaintiffs' lawyer has the advantage of effectively "Monday-morning quarterbacking." Any disconnect between marketing materials, design, implementation, administration, and results will enhance the difficulty of defending the claim.

5. MAKE SURE ALL PLAYERS HAVE APPLICABLE INSURANCE COVERAGE.

All professionals and/or insurance company funding product providers involved in the marketing, sale, design, implementation and administration of a 412(i) plan possess an opportunity to purchase applicable insurance coverage in the event that a lawsuit is initiated against them. In conjunction with the other lessons learned above, having all the named defendants cloaked with available insurance coverage is essential in the defense of these claims. It provides a level playing field in regard to determination of responsibility, allocation of risk, determination of fault, and availability of resources to provide a defense and satisfy any financial responsibility that may result to one or more of these parties.

CONCLUSION

The legal environment for the use of 412(i) plans remains intact and is more fully defined and developed as a result of the prior litigation and the efforts of the IRS in the late 1990s and early 2000s. Economic conditions, from time to time, may make these plans an attractive alternative to a traditional DB plan. Keeping these lessons in mind will reduce risk for those who boldly embark on this journey down a road already traveled. PC

CEFEX CENTRE FOR FIDUCIARY EXCELLENCE

ASPPA RETIREMENT PLAN SERVICE PROVIDER

ASSESSMENTS PERFORMED BY CEFEX, CENTRE FOR FIDUCIARY EXCELLENCE

The following firms are certified* within the prestigious **ASPPA Service Provider Certification** program. They have been independently assessed to the ASPPA Standard of Practice. These firms demonstrate adherence to the industry's best practices, are committed to continuous improvement and are well-prepared to serve the needs of investment fiduciaries.

ADMIN SUPPORT GROUP
Barreal de Heredia, Costa Rica

ALLIANCE BENEFIT GROUP OF ILLINOIS
Peoria, IL
abgil.com

ALLIANT EMPLOYEE BENEFITS
New York, NY
alliant.com

ALTIGRO PENSION SEVICES, INC.
Fairfield, NJ
altigro.com

APS PENSION
Melville, NY
apspension.com

ASC TRUST
Hagatna, Guam
asctrust.com

ASPIRE FINANCIAL SERVICES, LLC
Tampa, FL
aspireonline.com

ASSOCIATED BENEFIT PLANNERS, LTD.
King of Prussia, PA
abp-ltd.com

ASSOCIATED PENSION CONSULTANTS, INC.
Plainview, NY
associatedpension.com

ATLANTIC PENSION SERVICES, INC.
Kennett Square, PA
atlanticpensionservices.com

BEACON BENEFITS, INC.
Danvers, MA
beacon-benefits.com

BEASLEY & COMPANY
Tulsa, OK
bco.cc

BENEFIT MANAGEMENT INC.
Providence, RI
unitedretirement.com

BENEFIT PLANNING CONSULTANTS, INC.
Champaign, IL
bpcinc.com

BENEFIT PLANS PLUS, LLC
St. Louis, MO
bpp401k.com

BENEFIT PLANS, INC.
Omaha, NE
bpiomaha.com

BENEFITS ADMINISTRATORS, LLC
Lexington, KY
benadms.com

BLUE RIDGE ESOP ASSOCIATES
Charlottesville, VA
blueridgeesop.com

BLUESTAR RETIREMENT SERVICES, INC.
Ponte Vedra Beach, FL
bluestarretirement.com

CECILCO 401(K) MANAGED SOLUTIONS
Dallas, TX
cecilco.com

CETERA RETIREMENT PLAN SPECIALISTS
Walnut Creek, CA
ceteraretirement.com

CREATIVE PLAN DESIGNS LTD.
East Meadow, NY
cpdltd.com

CREATIVE RETIREMENT SYSTEMS, INC.
Cincinnati, OH
crs401k.com

DELAWARE VALLEY RETIREMENT, INC.
Ridley Park, PA
dvretirement.com

DWC – THE 401k EXPERTS
St. Paul, MN
dwc401k.com

FIDUCIARY CONSULTING GROUP, INC.
Murfreesboro, TN
ifiduciary.com

FUTUREBENEFITS OF AMERICA
Arlington, TN
futurebenefitsofamerica.com

GREAT LAKES PENSION ASSOCIATES, INC.
Farmington Hills, MI
greatlakespension.com

GUIDELINE, INC.
San Mateo, CA
guideline.com

INGHAM RETIREMENT GROUP
Miami, FL
ingham.com

INTAC ACTUARIAL SERVICES, INC.
Ridgewood, NJ
intacinc.com

JULY BUSINESS SERVICES, INC.
Waco, TX
julyservices.com

LATITUDE SERVICE COMPANY, INC
Plymouth, IN
latituderetire.com

NATIONAL BENEFIT SERVICES, LLC
West Jordan, UT
nbsbenefits.com

NORTH AMERICAN KTRADE ALLIANCE, LLC.
Plymouth, IN
ktradeonline.com

PCS RETIREMENT, LLC
Philadelphia, PA
pcscapital.com

PENSION FINANCIAL SERVICES, INC.
Duluth, GA
pfs401k.com

PENSION PLANNING CONSULTANTS, INC.
Albuquerque, NM
pensionplanningusa.com

PENSION SOLUTIONS, INC.
Oklahoma City, OK
pension-solutions.net

PENTEGRA RETIREMENT SERVICES
Columbus, OH
pentegra.com

PINNACLE PLAN DESIGN, LLC
Tucson, AZ
pinnacle-plan.com

PREFERRED PENSION PLANNING CORP
Bridgewater, NJ
preferredpension.com

PRIME PENSIONS, INC.
Florham Park, NJ
primepensionsinc.com

QRPS, INC.
Raleigh, NC
qrps.com

REA & ASSOCIATES
New Philadelphia, OH
reacpa.com

RETIREMENT, LLC
Oklahoma City, OK | Sioux Falls, SD
retirementllc.com

RETIREMENT PLAN CONCEPTS & SERVICES, INC.
Fort Wayne, IN
rpcsi.com

ROGERS WEALTH GROUP, INC.
Fort Worth, TX
rogersco.com

RPG CONSULTANTS
Valley Stream, NY
rpgconsultants.com

SAVANT CAPITAL MANAGEMENT
Rockford, IL
savantcapital.com

SECURIAN RETIREMENT
St. Paul, MN
securian.com

SENTINEL BENEFITS & FINANCIAL GROUP
Wakefield, MA
sentinelgroup.com

SI GROUP CERTIFIED PENSION CONSULTANTS
Honolulu, HI
sigrouphawaii.com

SLAVIC401K.COM
Boca Raton, FL
slavic.net

SOUTH STATE RETIREMENT PLAN SERVICES
Charleston, SC
southstate401k.com

SUMMIT BENEFIT & ACTUARIAL SERVICES, INC.
Eugene, OR
summitbenefit.com

TPS GROUP
North Haven, CT
tpsgroup.com

TRINITY PENSION GROUP, LLC
High Point, NC
trinity401k.com

as of Sept. 01, 2020

ASPPA

For more information on the certification program, please call 416.693.9733.

Orhan Cam / Shutterstock.com

IS THERE A 'SECURE ACT 2.0' ON THE WAY?

Bill introduced in the House in October may set a marker for the next Congress. **By Ted Godbout**

The chairman and the ranking member of the powerful U.S. House Ways & Means Committee have introduced a sequel to the SECURE Act—but have taken a step backward on e-delivery.

Ways & Means Committee Chairman Rep. Richard Neal (D-MA) and Rep. Kevin Brady (R-TX), the ranking Republican on the committee, introduced the "Securing a Strong Retirement Act of 2020" (dubbed "SECURE Act 2.0") on Oct. 27.

Seeking to build on the Setting Every Community Up for Retirement Enhancement (SECURE) Act, which was enacted in December 2019, the 132-page bill includes some 36 provisions addressing everything from expanding coverage and increasing retirement savings, to preservation of income, simplification and clarification of retirement plan rules, to technical and administrative provisions.

"The introduction of this bill shows that retirement policy issues will continue to be a priority going into the new Congress," noted Brian Graff, Executive Director of ASPPA and CEO of the American Retirement Association.

According to a summary, the legislation would, among other things:

> "THE INTRODUCTION OF THIS BILL SHOWS THAT RETIREMENT POLICY ISSUES WILL CONTINUE TO BE A PRIORITY GOING INTO THE NEW CONGRESS." — BRIAN GRAFF

- expand automatic enrollment in retirement plans by enrolling employees automatically in their company's 401(k) plan when a new plan is created;
- modify the credit for small employer pension plan startup costs;
- increase and "modernize" the existing Saver's Credit for contributions to a retirement plan or IRA (the bill would create a single credit rate of 50%, would increase the maximum credit amount from $1,000 per person to $1,500, and would increase the maximum income eligibility amount);
- expand retirement savings options for non-profit employees by allowing 403(b) plans to join together to offer retirement plans to their employees in multiple employer plans (MEPs);
- allow a higher catch-up limit to apply at age 60 (from 2020's $6,500 to $10,000—SIMPLEs also expanded to $5,000 from $3,000), providing more flexibility for older individuals to set aside savings as they approach retirement;
- increase the required minimum distribution age to 75;
- allow individuals to receive an employer match in their retirement plans for paying down a student loan;
- provide a safe harbor for corrections of employee elective deferral failures;
- reduce the excise tax on certain accumulations in qualified retirement plans;
- expand the Employee Plans Compliance Resolution System (allowing more types of errors to be corrected internally through self-correction, and exempt certain failures to make required minimum distributions from the otherwise applicable excise tax); and
- make it easier for employees to find lost retirement accounts by creating a national, online, database of lost accounts (to be managed by the Pension Benefit Guaranty Corporation (PBGC)).

PAPER PUSHERS

The bill also includes a clarification—some would see it as a step backwards—of the Department of Labor's recently finalized electronic delivery rule. Rather than requiring only an initial notice of a paper delivery option, the bill would amend ERISA to generally provide that with respect to DC plans, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually. The summary notes that the other three quarterly statements required under ERISA are not subject to this rule and can be provided electronically. For DB plans, unless a participant elects otherwise, the statement that must be provided once every three years under ERISA must be a paper statement.

WHAT'S NEXT?

When the SECURE Act was enacted last December, it was folded into an end-of-year spending bill. A similar scenario could happen this year, as Congress will need to reconvene in a lame-duck session to extend the government's funding beyond the current temporary measure that runs only through Dec. 11. However, it's not clear whether this bill will have the same level of bipartisan support and what the overall appetite is in the aftermath of the election to act on additional legislation beyond funding the government. As it is, Congress and the Trump administration have had a hard-enough time reaching consensus on a follow-up COVID-19 relief bill. PC

HOW DOES THE DOL'S LIFETIME INCOME ILLUSTRATION WORK?

A closer look at lifetime income illustrations for pension benefit statements. By Richard W. Rausser

JL IMAGES / Shutterstock.com

On Sept. 18, 2020, after much anticipation, the U.S. Department of Labor (DOL) published its interim final rule (IFR) on lifetime income disclosures for pension benefit statements. A 60-day comment period expired on Nov. 17, 2020, and assuming no major changes take place, the final rule will become effective on Sept. 18, 2021.

The interim final rule is in response to the SECURE Act, which requires plan administrators to include illustrations of a participant's account balance converted to monthly lifetime income streams. The lifetime income illustrations must be provided at least once every 12 months and the illustrations must be included on the same pension benefit statement. The income disclosures are required to provide illustrations on the basis of a single life annuity (SLA)[1] and a qualified joint and 100% survivor annuity (100% QJSA).[2]

The reasons behind providing the illustrations are simple: Most people don't know how to convert their retirement savings into lifetime income, which means that they are unsure of how to determine whether or not they will have enough money to support themselves in retirement. In addition, illustration of lifetime income on benefit statements will enable participants to plan more effectively for their retirement since the disclosure may encourage participants to save more money in order to boost their retirement income down the road.

A primary concern for many will be how to "pensionize" their retirement savings in an effort to provide more reliable retirement income. Maximizing one's retirement income is of course a major challenge for many. Spending too much in the early years of one's retirement and running out of savings, or being too

Footnotes

1. An SLA provides a fixed monthly benefit payable for the life of the participant with no survivor benefit.

2. A qualified joint and 100% survivor annuity provides a fixed monthly benefit for life of the participant, and the same fixed monthly amount to the surviving spouse after the participant's death.

Account Balance as of [DATE]	Monthly Payment at 67 (Single Life Annuity)	Monthly Payment at 67 (Qualified Joint and 100% Survivor Annuity)
$125,000	$625/month for life of participant assuming Participant X is age 67 on 12/31/2022	$533/month for participant's life, and $533/month for life of spouse following participant's death (assuming Participant X and her hypothetical spouse are age 67 on 12/31/2022

frugal and leaving excess savings behind, requires quite a balancing act; factors including inflation, longevity and market volatility further complicate the picture. The lifetime income disclosure should prove to be a useful tool for some in the effort to convert a participant's account balance to monthly retirement income. By translating the savings experience into a future income stream, participants can better assess their retirement readiness.

APPLYING THE ASSUMPTIONS

The IFR provides plan fiduciaries, plan sponsors and others with liability relief for the illustrations under which they will not have any liability under ERISA with respect to how the lifetime income illustrations are calculated. To qualify for this liability relief, the lifetime income illustrations must be calculated using the assumptions that are set forth in the IFR and must be accompanied by the model language in the IFR, or by language which is similar to the model language provided in the IFR.

In general, the IFR takes a "simple is better" approach to many of the assumptions used for the lifetime income illustrations. Here's an overview of the assumption used for the calculations:

1. **Commencement date:** the monthly payment illustrations must assume that payments begin on the last day of the benefit statement period.
2. **Age:** Participants are assumed to be age 67 on the commencement date (actual attained age is used if the participant is older than age 67).
3. **QJSA survivor benefit:** must be a qualified joint and 100% survivor benefit and participants are assumed to be married, and the spouse is assumed to be the same age as the participant.
4. **Interest rate:** 10-year constant maturity Treasury rate (10-year CMT) as of the first business day of the last month of the statement period.
5. **Mortality:** gender neutral mortality table specified in Code Section 417(e)(3)(B) (the mortality table generally used to calculate lump sum benefit payments in DB plans).

Notably, the IFR does not include any assumptions with respect to projection of the account balance to normal retirement age, or age 67. This means that future contributions, investment returns and inflation are not considered in the lifetime income illustrations.

CRUNCHING THE NUMBERS

The IFR includes the following example, based on these facts:

- Participant benefit statement period ending Dec. 31, 2022
- $125,000 account balance on that date
- 10-year CMT interest rate = 1.83% per annum on Dec. 1, 2022
- Participant X is a 40-year-old female

Based on these assumptions, the benefit statement for this participant would show the data in the above table.

Model language is provided in the IFR that defines and details many elements of the lifetime income disclosures. This language is provided to help participants understand how the illustrations were calculated and it specifically states that the illustrations are estimated benefits and they are not guaranteed benefits. The IFR does provide plan administrators with some flexibility with respect to how these disclosures are added to their standard benefit statements.

SPECIAL RULES

Special rules apply for plans that provide in-plan distribution annuities. These plans have the option to use the regulatory assumptions specified in the IFR, or they may base the lifetime income illustrations on the actual terms of the plan's insurance contract. Illustrations similar to the IFR illustrations must be provided. See the IFR for the specific details.

For plans with deferred income annuities (DIAs), special disclosure requirements apply. Basically, any portion of the participant's account that is not invested in DIAs must provide the normal illustrations specified in the IFR.

CONCLUSION

In general, this is a big step in the right direction, however, the lifetime income illustrations based on the IFR may be misleading to some participants due to the simplification of the assumptions and the lack of a projection of benefits to NRA or age 67. Time will tell if this disclosure will prove to be a boon to plan participants and sponsors alike; however, it will take at least some of the guesswork out of pensionizing one's retirement income. For that we can all be grateful. PC

THRIVING, NOT JUST SURVIVING

Demand for cash balance plans remained strong during the pandemic. Here's why. **By John Markley**

What is a cash balance plan? In this type of defined benefit plan, instead of the typical monthly benefit at retirement provided by a traditional DB plan, a cash balance communicates the benefit as an account balance. It is a DB plan because the participant is always able to convert the account balance into an annuity at retirement. Otherwise, it is a typical DB plan—the account balance is guaranteed and the plan has minimum funding requirements.

A cash balance plan is also subject to the benefit and related contribution limits of a DB plan, which allows for much greater deductible contributions for employees nearing retirement age.

In 2001, there were 1,337 cash balance plans. By 2017, there were over 20,000 plans, with double-digit percentage annual growth. What are the reasons for such growth—and how have cash balance plans fared during the pandemic?

REASONS FOR GROWTH

The factors driving the growth of cash balance plans fall into several diverse categories. Let's take a look.

Demographics. The Baby Boomers are approaching retirement age and many have not saved enough. A cash balance plan allows substantial additional savings for retirement.

Legislative. There have been several developments in this regard over the last 20 years. One of the more significant ones was the Pension Protection Act of 2006 (PPA), which included several provisions that benefited cash balance plans. The PPA:

- Allowed the benefit from a cash balance plan to be the account balance of the participant. Before PPA, there was litigation over whether the account balance had to be projected to a retirement age, converted to an annuity

"IN 2001, THERE WERE 1,337 CASH BALANCE PLANS. BY 2017, THERE WERE OVER 20,000 PLANS, WITH DOUBLE-DIGIT PERCENTAGE ANNUAL GROWTH."

and then converted to a lump sum by current interest rates. Cash balance plans implemented after PPA would not have confusion about the lump sum benefit.

- Allowed expanded employer contributions to a 401(k) plan when paired with a cash balance plan for plans not covered by the Pension Benefit Guaranty Corporation.

Development of IRS pre-approved documents for cash balance plans. Just over 10 years ago, each cash balance plan was individually drafted and an IRS determination letter of approval was requested. The cost of implementation of a cash balance plan was significantly reduced with the use of IRS pre-approved documents.

Expertise. To achieve the growth described above, more firms had to develop the knowledge to implement and administer cash balance plans. Over the past 20 years, there has been significant growth in the number of firms in the cash balance marketplace, and some TPA firms have outsourced the actuarial function to an actuarial firm.

EMPLOYERS IMPLEMENTING CASH BALANCE PLANS

The majority of cash balance plans have been implemented by:

1. Businesses with consistent profits
2. Professional firms such as law firms, medical professionals, CPAs and financial professionals
3. Businesses with no or just a few employees other than the owner.

NEW CASH BALANCE PLANS DURING THE PANDEMIC

The reason for this article was new plan sales information from my employer. Through the end of September 2020, the number of new cash balance plans implemented by The Retirement Advantage (TRA) increased over the number of plans year-to-date in 2019. Several other firms and actuaries have described similar sales growth. Additionally, the SECURE Act, which was enacted at the end of 2019, gives employers additional time—until the due date of their tax return—to implement a cash balance plan.

What's driving new plan sales during the pandemic? First, consider the list of businesses above that typically implement cash balance plans. Many of these businesses are in a comparable business situation as they were before the pandemic. For example, CPAs, in addition to the usual accounting and tax return work, were also in the business of preparing PPP loan applications for their clients. So, during the pandemic, all employees continued to work. These employers applied for PPP loans and likely received them, and then they were forgiven because the employees continued to be paid.

Most of the law firms that we worked with also continued working during the pandemic and may have been in a similar position.

There were also new businesses that were good cash balance candidates. For example, doctors who met with patients over the internet were busier than ever. And many businesses in the construction industry are now busier than ever.

HOW ARE EXISTING CASH BALANCE PLANS SURVIVING THE PANDEMIC?

The CARES Act provided relief for DB plans, including cash balance plans. Specifically, under the Act, any contributions due in 2020 did not have to be contributed until Jan, 1, 2021. Also, funding percentages for 2019 could be used for 2020 with proper election with respect to lump sum distributions, freezing benefits and other issues.

We recently completed the cycle of preparing 2019 IRS Form 5500s for all plans, including cash balance plans, so we have had contact with nearly all of our cash balance clients. I have been surprised at the percentage of businesses with cash balance plans that have continued their plans and contributions during the pandemic. Certainly, those who have experienced significant difficulties because of the pandemic would be justified in freezing or terminating their plan as a result of change in business circumstances.

CASH BALANCE PLANS ARE HERE TO STAY!

Based on the continued increase in the number of cash balance plans and the continuation of current plans, cash balance plans will continue to be a part of the retirement plan marketplace. In addition, the positive impact of the SECURE Act has yet to be measured. In addition to being able to implement a plan until the due date of the tax return, the SECURE Act also provides for a tax credit for employers that implement a plan if they never had one before.

With TPA and actuarial firms ready to assist employers in designing and implementing cash balance plans and utilizing the provisions of the SECURE Act, cash balance plan growth will continue! PC

SPLIT DECISIONS IN 401(K) THEFT SUIT FOR RECORDKEEPER, PLAN SPONSOR

A decision in the Abbott Labs case creates an opportunity for recordkeepers to ask, "Could something like this happen to me?" By Nevin E. Adams, JD

Sundry Photography / Shutterstock.com

A plan sponsor, sued for a 401(k) account theft, is off the hook for now—but not the recordkeeper.

The suit, *Bartnett v. Abbott Laboratories et al.*, was filed on behalf of Heide Bartnett, 59, a retired former employee of Abbott Laboratories, who had left her savings in the Abbott Corporate Benefits Stock Retirement Plan. Filed against the fiduciaries of the Abbott Labs retirement plan, and Alight Solutions, LLC, the recordkeeper for the plan, the suit alleges that the defendants "failed to enforce a security question routine set up for security purposes on the Defendants' website"… and "instead simply provided a one-time code over the phone that was used to loot Ms. Bartnett's account." And then, "rather than communicating with Ms. Bartnett via email concerning changes to her account, as Defendants knew Ms. Bartnett preferred, they mailed notices, allowing the theft to be consummated and $245,000 to be transferred out of the country via email to an Indian IP address before Ms. Bartnett could take any steps to halt the fraud."

In the case, an individual (subsequently tied to an IP address in India) accessed Barnett's account online, and after entering invalid information, triggered the "forgot password" option, and with the code (they apparently had access to her email account) was able to access the account, had communications with service center personnel, and changed the bank account associated with that account, and transferred money from it to that other bank—without being noticed—until the confirmations of the activity were actually received by regular postal mail. (Bartnett claims her established communication preference was email.)

Bartnett's complaint contains two counts: one against the Abbott Defendants and Alight for breach of fiduciary duty under ERISA, and the other against Alight for violations of the Illinois Consumer Fraud and Deceptive Business Practice Act (ICFA).

FIDUCIARY DUTIES

U.S. District Judge Thomas M. Durkin of the U.S. District Court for the Northern District of Illinois quickly dispensed with the claims against Abbott Labs as a fiduciary, dismissing Bartnett's "conclusory allegation" regarding Abbott Labs' role with regard to plan assets. "The complaint fails to allege any fiduciary acts taken by Abbott Labs, no less link them to the alleged theft," he wrote. "And while the complaint alleges that the call center and website were used to perpetuate the theft, it also indicates that both are operated by Alight."

"AS IS COMMON IN LAWSUITS AGAINST RECORDKEEPERS, ALIGHT ARGUED THAT IT ONLY PERFORMED MINISTERIAL FUNCTIONS, AND THEREFORE WAS NOT A FIDUCIARY."

As for Marlon Sullivan, administrator and named fiduciary of the Abbott Labs plan, while Judge Durkin acknowledged that there "is no dispute that he had a fiduciary duty to Bartnett," he found no evidence that Sullivan "misled" or acted contrary to the exclusive purpose of providing benefits to plan participants, nor that he failed to make sound investment decisions on behalf of the plan.

Dismissing claims regarding Sullivan's breach of prudence, he continues, "the complaint does not allege that Sullivan knew about the unauthorized attempts to access Bartnett's account. Further, Bartnett's account was frozen as soon as she told the call center about the improper withdrawal of funds."

As for a duty to monitor, Judge Durkin notes that Bartnett's allegation that Sullivan "fail[ed] to monitor other fiduciaries' distribution processes, protocols, and activities" amounts to "nothing more than speculation." Moreover, he notes that "the complaint does not allege any monitoring process between Sullivan and Alight, let alone a defect in that process," and that while Bartnett "makes several allegations concerning Alight's own protocols, none of those allegations speak to Sullivan or his duty to monitor Alight." In other words, he found no credible case for the notion that Sullivan breached a fiduciary duty to monitor.

ALIGHT ALLEGATIONS

Barnett's complaint alleges more than legal conclusions concerning Alight, Durkin noted: "The complaint catalogues the repeated actions taken by Alight related to the Retirement Plan and its assets, including, most importantly, the disbursement of $245,000 in plan assets."

As is common in lawsuits against recordkeepers, Alight argued that it only performed ministerial functions and therefore was not a fiduciary, and that the claims against it should be dismissed. However, Durkin commented, "Unlike the sparse allegations concerning the Abbott Defendants, there are sufficient allegations on the face of the complaint to infer that Alight acted as a fiduciary by exercising discretionary control or authority over the plan's assets. And even though Alight argues that its actions were purely ministerial, Bartnett's complaint challenges that assertion."

As for the legal standard for dismissal, "Since competing factual allegations and any reasonable inferences drawn from them must be resolved in favor of the nonmoving party at the pleading stage, Alight's factual assertions do not provide a proper basis to dismiss Bartnett's claim," Durkin concluded.

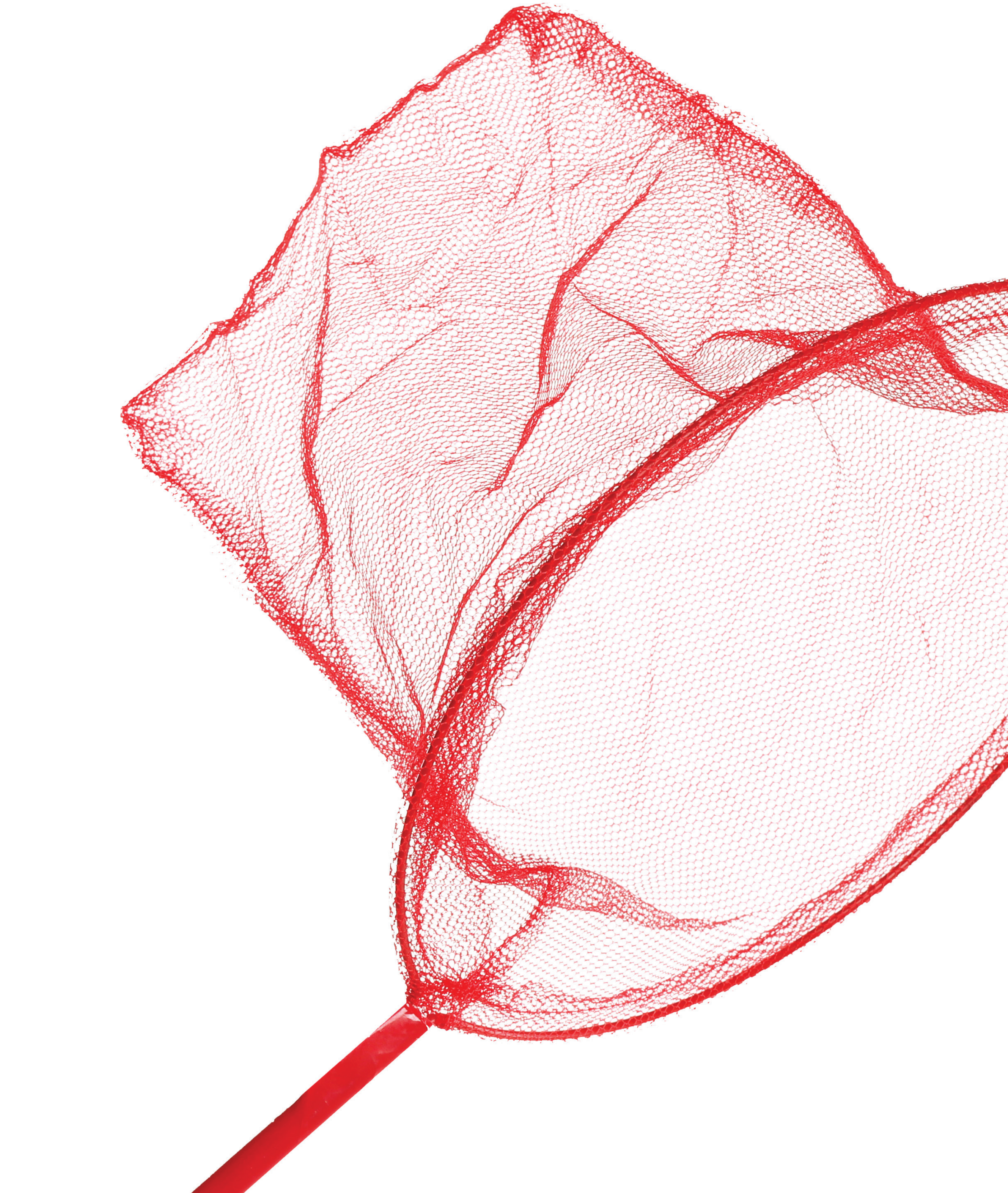
ERISA PREEMPTION OF STATE LAW

Judge Durkin disagreed that ERISA preempted the IFCA state law as Alight claimed. "The ICFA claim does not require the Court to interpret the terms of the Retirement Plan," he wrote. "Indeed, the claim is premised on the allegations that Alight misrepresented the quality of its services and engaged in an unfair business practice, which have little to no bearing on the plan itself. And while the ICFA claim involves an ERISA plan, the claim arises in the context of that plan."

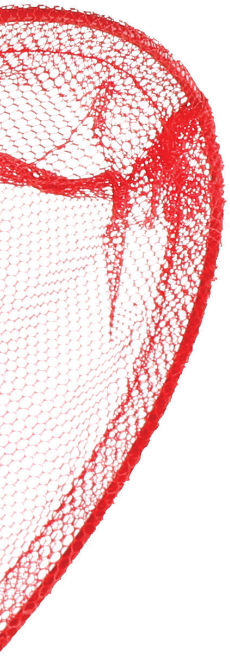
Judge Durkin goes on to point out that "the complaint specifically alleges that Alight made representations online about the quality of its services and that those representations were misleading because Alight failed to protect her retirement money. It also alleges that Alight engaged in an unfair business practice because it failed to implement proper security procedures online and over the phone, which led to the improper withdrawal of her funds," he noted. "The claim therefore seeks recovery for activities that occurred outside the terms of the plan. Accordingly, the ICFA claim is not preempted by ERISA."

And while he did conclude that Bartnett's assertions that the website service claims were deceptive weren't valid (and dismissed them), he concluded that "Bartnett has sufficiently stated a claim for unfair business practice under ICFA" with allegations that "Alight failed to protect Bartnett's personal information and properly notify her of important changes to her account." The allegations that "Alight's failures allowed the scammer to steal hundreds of thousands of dollars in retirement funds," and that "proper security measures would have prevented the theft" were "…sufficient to state an ICFA claim for unfair business practices."

While it is easy to see of room for improvement in the process, it's worth remembering that we still really only have one side of events. However, it seems a good opportunity for recordkeepers to ask, "Could something like this happen to me?" And, if so, to take steps to prevent it. PC



New Africa / Shutterstock.com



CATCHING BUTTERFLIES

WHAT HAS BEEN THE IMPACT OF THE NEW PLAN LOAN RULES UNDER THE CARES ACT?

BY SHANNON EDWARDS & LINDA CHADBOURNE

New Africa / Shutterstock.com

WHEN YOU WERE YOUNG, DID YOU EVER RUN AROUND A BIG OPEN FIELD TRYING TO CATCH BUTTERFLIES? THEY WERE FAST, AND THEY COULD TWIST AND TURN AND FLY ABOVE YOU. THEY would land and flap their fragile little wings, taunting you to come closer and try again. Then, just as you were about to pounce, with your hand cupped to gently scoop them up without hurting them, moving ever so slowly toward them, being ever so quiet as if it mattered, they flapped their wings and flew away. They would land just out of your reach, and the chase was on again.

When reflecting on the past few months (and trying to survive October 15 with sanity intact), we are also looking forward to what the next two and a half months hold in store for us and our teams. When we think about the changes to participant loans in response to the financial impact caused by COVID-19, we predict that catching loan issues and/or errors before they cause a suspended loan to be defaulted in 2021 is going to be like catching butterflies. You might get lucky and catch one every once in a while. But there are a lot more that get away.

WE BELIEVE THAT ALL TPA FIRMS STILL HAVE OUTSTANDING QUESTIONS AND WILL FACE ADDITIONAL CHALLENGES CREATED BY COVID-RELATED LOANS AND THE LOAN PAYMENT SUSPENSIONS.

CARES ACT TO THE RESCUE

On Dec. 20, 2019, the SECURE Act was signed by President Trump. As we started studying the new law and preparing to educate clients and advisors, little did we know that the world was about to turn upside down, and soon we would all forget what the SECURE Act even contained. In March 2020, COVID-19 took hold. The world, our country, our economy and our industry were rocked. In response to the pandemic, Congress rushed to enact a new law to relieve the financial stress on small businesses and their employees.

As a result, the Coronavirus Aid, Relief and Economic Security (CARES) Act was signed into law March 27 to help Americans affected financially or otherwise by the COVID-19 pandemic. It contained stipulations that made accessing participants' retirement savings much easier. One of these stipulations allowed Americans to borrow money from an eligible retirement plan (such as 401(k) plan or a 403(b)) at much higher levels. Prior to the passage of the CARES Act, you could only borrow up to 50% of your vested balance or $50,000, whichever is less. Section 2202(b) of the CARES Act increased these limits, allowing participants to borrow up to 100% of their vested account balance or $100,000, whichever is less.

The increased loan limits were only available until Sept. 22, 2020. They were only available to qualified individuals, and the maximum loan period was not increased beyond 5 years.

In addition to the increased limits, loan payments that were due between March 27, 2020 and Dec. 31, 2020 (see IRS Notice 2020-50) for both new loans and loans taken before the CARES Act was enacted could be suspended. According to the CARES Act, loan payments could be deferred for 1 year. If plan sponsors allowed the suspension of loan repayments, the loans would not be considered to be in default thereby creating a deemed distribution under Code Section 72(p) and creating a taxable event for the participant.

Qualified Individual Defined

A qualified individual was defined in the CARES Act as a participant who meets any of the following criteria:

- An individual, spouse or dependent diagnosed with the virus SARS-CoV-2 or with Coronavirus disease 2019 (collectively, COVID-19) by a test approved by the Centers for Disease Control and Prevention.
- An individual, spouse or dependent living in the household who has experienced financial hardship for being furloughed or laid off, having work hours reduced, being quarantined, being unable to work due to lack of childcare, having a reduction in pay (or self-employment income), or having a job offer rescinded or start date for a job delayed.

CONFUSION AND CLARIFICATION

Within a week of the CARES Act being signed, record keepers were responding to the changes and trying to facilitate participants' and plan sponsors' needs by providing elections, notices, checklists and procedures.

Unfortunately, in the race to help, the record keepers did not coordinate with their TPA partners or each other. Every record keeper had a different procedure and policy, making it extremely difficult for the TPAs to track the policies. Though adoption of the CARES Act provisions were optional, some record keepers opted all of their clients in to the provisions without permission. Other record keepers left it up to the clients. Some made the forms available to the participants regardless of the plan sponsors' choice. Some required plan level forms to be completed and some did not.

When the dust settled, the new questions centered on what to do about the suspended loan payments. What did Congress mean by allowing them to be suspended for a year with repayments beginning on Jan. 1, 2021? When did loan payments actually have to begin, and when were they actually re-amortized?

On June 19, 2020, the IRS released Notice 2020-50, which provided further clarification on suspension of loans and safe harbor methods for calculating loan payments without causing the loans to violate Section 72(p) and create a taxable distribution for the participant. The notice states that plan administrators may delay loan repayments for up to 1 year and the loan repayments must resume after the end of the suspension period but no later than Jan. 1, 2021. Loan amortizations could also be extended 1 year from the date the loan was originally due to be repaid, and the repayment amount would be re-amortized with accrued interest during the suspension period.

Example applying the safe harbor provided in Notice 2020-50

Assume that on April 1, 2020, a participant with a nonforfeitable account balance of $40,000 borrowed $20,000 to be repaid in level monthly installments of $368.33 each over 5 years, with the repayments to be made by payroll withholding. The participant makes payments for 3 months through June 30, 2020. The participant is a qualified individual (as described in section 1.B of the notice).

The participant's employer takes action to suspend payroll withholding repayments, for the period from July 1, 2020, through Dec. 31, 2020, for loans to qualified individuals that were outstanding on or after March 27, 2020. Since the participant is a qualified individual, no further repayments are made on the participant's loan until Jan. 1, 2021 (when the balance is $19,477). At that time, repayments on the loan resume, with the amount of each monthly installment re-amortized to be $343.27 in order for the loan to be repaid by March 31, 2026 (which is the date the loan originally would have been fully repaid, plus 1 year).

ALTERNATIVE SOLUTIONS

The Department of the Treasury and the IRS recognize that there may be additional reasonable, if more complex, ways to administer section 2202(b) of the CARES Act. For example, in a plan with a suspension period beginning April 1, 2020, each repayment that becomes due during the suspension period may be delayed to April 1, 2021 (the 1-year anniversary of the beginning of the suspension period). After originally scheduled repayments for January through March of 2021 are made, the outstanding balance of the loan on April 1, 2021, including the delayed repayments with interest, may be re-amortized over a period that is up to 1 year longer than the original term of the loan.

While plan amendments are not required until the end of the 2022 plan year, TPAs and plan sponsors will need to work with their record keepers to ensure that loans affected during this time are handled correctly. If not handled correctly, a participant's loan could be considered in default, in which case the outstanding loan amount becomes a taxable deemed distribution, and a 10% tax penalty will apply if the participant is under the age of 59½. Deemed distributions are also not eligible for rollover to another qualified plan or IRA.

EVERY RECORD KEEPER HAD A DIFFERENT PROCEDURE AND POLICY, MAKING IT EXTREMELY DIFFICULT FOR THE TPAS TO TRACK THE POLICIES.

IMPACT OF SELF-CERTIFICATION

What has been the effect of the new loan rules under the CARES Act? In talking to other TPAs, many firms have not seen widespread use of the new loan limits for the personal financial recovery from the results of the economic downturn caused by the pandemic. In fact, there are many stories about participants taking loans under the CARES Act rules who are high-net-worth individuals looking to invest in assets not normally considered appropriate in qualified plans.

In Notice 2020-50, the IRS made it clear that plan sponsors could accept the self-certification of participants without proof that they had been affected financially by COVID-19. Based on the much looser definition of a qualified individual under Notice 2020-50, this made it much easier for a loan to be taken from the plan for reasons other than those caused by COVID-19.

RECORD KEEPERS' DATA

While writing this article, we reached out to record keepers to gather information on their experiences during the pandemic. Two recordkeepers shared some interesting COVID-related contribution and plan loan data with us.

The first record keeper has 62,000 plans with 1.2 million participants. To date they have processed 13,638 COVID-related distributions totaling $267 million and 10,594 COVID-related loans totaling $140.5 million. They have also suspended more than 4,186 participants' loans in 1,466 plans, and will be re-amortizing all of their loans where loan repayments were suspended as of Jan. 1. With these statistics, it's hard to believe that their plan terminations are down from 188 in August 2019 to 139 in August 2020, but that is what the numbers are.

The second record keeper told us that initially in March, the percentage of participants lowering their contribution rate spiked to 3.4%, but it has now returned to more normal levels of 1% to 2% of a plan's population on average. The

New Africa / Shutterstock.com

percentage of participants increasing their contributions fell, but by June started returning to normal.

The percentage of the second record keeper's participants changing their investments also spiked in March due to fluctuations in the stock market. Now the activity has slowed down and returned to normal levels. A larger percentage of those who changed their investments moved to stable value in July 2020 than in July 2019.

Less than 1% of their plan participants have taken a Coronavirus-related distribution (CRD) under the CARES Act. The number taken peaked in June, and the average amount that has been taken has been between $18,983 and $20,399 other than in April, when the average hit a high of $26,174.

Fewer than 1% of their participants have taken COVID-related loans, but the activity has been gradually increasing since April. The average amount spiked to $13,500 in May, and has been declining since then. For any loans which have been suspended during the allowed time period, the TPA will be expected to re-amortize the loan and provide the record keeper with the new information.

Lastly, inquiries about CARES Act provisions continue to make up more than 10% of their total call volume.

CONCLUSION

We believe that all TPA firms still have outstanding questions and will face additional challenges created by COVID-related loans and the loan payment suspensions. For instance, who will be responsible for the re-amortization of the loans? Will it be the record keeper or the TPA? Will the TPA and/or plan sponsors have to notify the record keepers? For the TPA firms, merely tracking which clients did or did not adopt and/or use CARES Act provisions has been a challenge in and of itself. Determining and tracking how each record keeper handles the loan suspensions adds an additional level of difficulty.

Finally, if the TPA firms have the responsibility to re-amortize the loans prior to the first payroll in January 2021 in order to comply with the requirements of the CARES Act, that will constitute an added hardship on them at an already extremely busy time of the year.

We would suggest that we all grab our butterfly nets and go out in the field together as a team to catch more butterflies. If you find a better butterfly net, share it with your peers—and maybe we will catch them all! PC

TierneyMJ / Shutterstock.com

MEETING THE CHALLENGE

ASPPA All Access offered real answers—virtually. BY JOHN IEKEL

THE 2020 ASPPA ALL ACCESS VIRTUAL CONFERENCE, DELIVERED ONLINE OVER THE COURSE OF THREE WEEKS IN OCTOBER AND NOVEMBER, WAS THE ORGANIZATION'S ANSWER TO THE CHALLENGES OF HOSTING A GATHERING OF MORE 1,000 PEOPLE IN THE MIDST OF A PANDEMIC.

The virtual event captured the tenor of our time, presenting important information on where we've been, what ASPPA is doing and how industry professionals of all stripes are addressing a wide range of challenges. Following are just some of the highlights of a conference that may have been virtual, but nonetheless provided content that is very real.

WASHINGTON UPDATE

Kicking off the conference Oct. 26, Brian Graff, CEO of ARA and Executive Director of ASPPA, ARA General Counsel Allison Wielobob and Chief Government Affairs Officer Will Hansen offered their insights into what may lie ahead in the new year.

Biden's Tax and Retirement Plans

The Biden tax plan says that it would equalize benefits across the income scale, and argues that it will give low- and middle-income workers a tax break for saving money for retirement. To do that, it would replace the current exclusions and deductions with a refundable flat tax credit.

The ARA's concern, the panel noted, is that reduced tax incentives for small business owners will make them less likely to make matching and other employer contributions—or worse, make them less likely to offer a plan at all. "We could be dealing with significant issues," said Graff, adding that it could pose "threats to the system" and that there is "fear that some proposals could result in employers dropping plans."

This "isn't a new idea," Graff noted, commenting that it was a bad idea before and is still so, and remarking that the current rules "are in place for a reason. They work." He added that there are other adjustments that can be made to the current system to create incentives for low-income workers to save for retirement.

The Biden retirement plan, Graff noted, calls for almost all workers without a pension or 401(k)-type plan to have access to an "automatic 401(k)," which it says would provide an opportunity to save for retirement at work easily. It would create a national plan to supplant the current situation in which states are designing their own such plans.

What is unclear is whether a national automatic 401(k) plan would be government-run. "We support the private sector fulfilling the requirement" and that it not be government-run, said Graff.

Wall Street Tax Act

Another proposal under discussion is for a financial transaction tax to be put in place. Among the measures that would accomplish that is the Wall Street Tax Act, legislation which provides for a transaction tax of 10 basis points to as much as 50 points—a level Graff termed "unbelievable"—to be imposed every time a security is traded. Sponsors of the legislation call it "a new progressive tax on financial transactions" and say that it would "generate billions of revenue, while addressing economic inequality and reducing high risk and volatility in the market."

Retirement plans would not be exempt from the tax. And it is estimated, said the panel, that one-third of the $777 billion in revenue it is projected to raise would come from taxation of retirement savings.

But two-thirds of 401(k) holders make less than $100,000 per year, Graff observed. He termed it "ridiculously ironic" that the industry is criticized for high fees and basis points, but Congress proposes to do it—"You can't, but we can." He added, "This is not a tax on Wall Street fat cats, but on middle income Americans."

MEPS AND PEPS

With the enactment of the Setting Every Community Up for Retirement Enhancement (SECURE) Act, the climate changed for multiple employer plans (MEPs) and pooled employer plans (PEPs). Theresa Conti, President of Sunwest Pensions, and Pete Swisher, President of Waypoint Fiduciary discussed factors facing service providers concerning these arrangements.

"When the entire marketplace aims its salespeople to go out with the message—whatever that message might be—and employers hear that message from lots of different directions, people start to pay attention," said Swisher, continuing, "I think that's what's going on with multiple employer plans and association retirement plans."

"I think we're just at the beginning of people hearing from the salesforces of industry vendors that MEPs are a good idea. That's going to make a difference and change the marketplace," said Swisher, adding, "clearly, the marketplace is moving toward adopting these structures."

One of the reasons service providers are embracing the new structures, Conti said, is the "showcase effect"—they are a fresh opportunity to package, or showcase, one of their best ideas.

Conti also said that service providers are drawn to MEPs and PEPs because they play to the service providers' strengths. "That is one of the reasons I like working with them—because we can be very efficient, we can be very effective, very out front with that," she said.

Swisher emphasized the attractiveness of something that is considered likely to be a major force. "Anything that moves 20% of the market is going to be a big deal," he said.

Wait a Minute

Still, there can be some reticence to offer a MEP, Conti indicated, remarking that she is "reluctant to roll something out until we have really firm guidance." She said that she is "going to wait a little bit longer to see what happens with all the rules." This is important to her, she said, "so I know what I'm supposed to be doing from a practical standpoint and from a process standpoint."

"There are lots of unanswered questions," said Conti. "The TPA community, I think, is pretty conservative," she remarked, "so not having regulations and having unanswered questions is a problem."

Swisher regards big picture clarity as especially important. "I don't think we're waiting on much regulatory clarity other than big regulatory clarity," he said, citing prohibited transactions as one such area. "You do have a fundamental issue that a plan sponsor is not able to be paid under the interpretation of ERISA that has stood for decades," he said, noting, however, that "it is clear" that under the SECURE Act, a provider can be paid. "I think it's actually very

THE SUSPICION THAT MEPS WILL BE LESS EXPENSIVE—AND THEREFORE, LESS LUCRATIVE—SUGGESTS THAT IT MAY NOT BE WORTH A SERVICE PROVIDER'S TIME TO WORK WITH THEM, WHICH IS AN IMPEDIMENT TO SOME PROVIDERS.

TierneyMJ / Shutterstock.com

clear that the legislative intent was that plan sponsors can get paid and that the legal mechanism for that is the provision in the law that says that the PPP and any other named fiduciary are appointed by the participating employers," Swisher said.

"What we are really waiting on is for the Department of Labor to say specifically what the regulatory mechanism is that you are to use—a proprietary fund or an affiliate," Swisher said.

Not knowing how to make money from the new structures is another source of concern. For instance, the suspicion that MEPs will be less expensive—and therefore, less lucrative—suggests that it may not be worth a service provider's time to work with them, which is an impediment to some providers.

But a service provider need not charge less for services rendered to clients that are part of such arrangements, Conti and Swisher indicated. "As a service provider, as a TPA, I have to provide all the same services, all the same processes to these types of clients as I do my single employer clients," said Conti. Swisher was more forceful, remarking that the marketplace is "very clearly telling us that what they want is all the goodies that a MEP promises" without the responsibilities that entails, and they also want it to cost less. "That's not fair to us," said Swisher, adding that "A TPA does have to do the same work to a large extent" when working with MEPs.

Risk, too, is an impediment, Conti says. "What type of risk am I putting myself in if I'm a pooled plan provider? Now I'm a fiduciary, now I definitely have responsibilities. What type of risk am I putting myself, my practice, my firm in by being a PPP?" she asked.

Drivers of Change

Technology, fees and convergence of business are MEP drivers, Swisher said. Conti suggested that additional regulatory clarity would increase interest in MEPs. "I think having more rules in mind is really going to drive this," she said.

And Swisher added that there are ways to mitigate risk. He noted that the risks for administrators are very different from the risks of litigation over fees. The way to protect against risks connected with administration is to have "really well-written documents" and make sure ownership of data is properly defined, he said. "The combination of process and controls and insurance will take care of us," Swisher said.

"At a minimum, the burden is on us to figure out the most effective way to deliver the best-governed plan," said Swisher. "You're not going to be successful with MEPs unless you offer services effectively, efficiently and to scale," he added.

PONDERING A CHAOTIC YEAR

A panel featuring Robert Kaplan, Director of Technical Education for the American Retirement Association; Thomas Finnegan, President, Actuarial Division, CBIZ Retirement Plan Services; JJ McKinney, Principal Consultant, McKinney Consulting; Missy Matrangola, President, Atlantic Pension Services, Inc.; and Rod Stortenbecker, Assistant Vice President of Compliance, Lincoln Financial Group, discussed what a variety of developments this year have meant for retirement plan professionals and participants.

Enter the CARES Act

On March 27, the Coronavirus, Aid, Relief and Economic Security (CARES) Act was enacted as the pandemic worsened. Not only did the situation that sparked its enactment

TierneyMJ / Shutterstock.com

pose challenges—so did the measure itself and the changes it made directly affecting plans, service providers and participants. And a mere three months after the SECURE Act had become law.

"We had been focused on the SECURE Act," said McKinney, noting that "The situation was different from the expectations we had earlier in the year." Stortenbecker indicated just how different: "On March 27, we were inundated with questions. It was a big challenge just getting information out," he said. Matrangola had a similar experience, remarking that her firm encountered a lack of awareness about required minimum distributions and the ability to roll them back in.

"It was a real fire drill right after the CARES Act passed," said Finnegan. Stortenbecker had a similar experience, remarking, "The call center took a number of participant calls about distributions. We saw that a lot of them wanted discussions." Their offices moved quickly to better serve clients. Finnegan said that they gathered as much information for the client base as possible. Said Stortenbecker, "We used it as an opportunity to speak to clients and for relationship building," adding, that they "tried to be as flexible as possible."

But the enactment of the CARES Act was not the end—more laws were enacted, and regulations to implement them came from federal agencies in rapid fire. "The government just never quit giving," said Matrangola. The onslaught did not mean inundating clients, however. Remarked Matrangola, "Clients only want to know what they absolutely need to know." Stortenbecker expressed a similar view, and said that his office "moved from a fire hose approach to the sprinkler approach." McKinney said that their operation took a pause after the initial period and formed a team that puts information together in digestible amounts.

Plan activity did not spell trends as negative as some expected. McKinney said they had expected distributions to increase, but they "didn't see a huge uptick." Stortenbecker said they expected more plan freezes and match reductions than what actually happened; McKinney reported his office "did see a lot of match reductions and freezes," but that some freezes were done preemptively, and the plans were unfrozen later. Finnegan reported reduced activity, saying, "With companies not wanting to spend money to protect liquidity, employers have been on hold."

Challenges in the Office

Addressing clients' needs was challenging enough, but it was by no means the extent of what they faced: there also were challenges in the office itself. The immediate reaction to the pandemic was "we're going to work from home. We're going to do what we have to, to get through this. But we were never set up to have everyone work from home at the same time," said Finnegan. Matrangola made the same observation: "We were not set up for everyone working at home."

And it went deeper than mechanics and business operations; the new way firms suddenly functioned also affected how new and younger employees learned and became a part of operations. Finnegan remarked that another problem with the virtual way of working is that younger workers are not seeing how more experienced workers handle situations. "The real-life experiences of how to be a senior-level consultant is what they're missing

ASPPA Honors Simoneaux with 2020 Eidson Founders Award

ASPPA honored Sarah Simoneaux with the prestigious Harry T. Eidson Founders Award during the Oct. 26 opening session of the 2020 ASPPA Annual Conference.

Simoneaux is a founding partner of Simoneaux & Stroud Consulting Services. She earned her Certified Pension Consultant designation with ASPPA in 1988, and served as President of ASPPA in 2005-2006. She was the Technical Education Consultant for the Enrolled Retirement Plan Agent (ERPA) education program and was an ASPPA Educational Programs Advocate. Simoneaux is the author of the textbook *Retirement Plan Consulting for Financial Professionals*. She also co-authors a quarterly column in *The Journal of Pension Benefits* on retirement organizations' best practices.

"We are bound by more than the job that we do," said Simoneaux in accepting the award. "We are connected by something deeper. I know that our love and respect for each other thrives in this space. The impact we're going to make is lifelong," she continued.

ASPPA established the Eidson Award in 1995 to honor the memory of its founder, Harry T. Eidson. His belief in the importance of the employer-sponsored retirement system in the United States and in having an organization dedicated to preserving and enhancing such a system was the inspiration for the formation of ASPPA in 1966. Each year, ASPPA honors one or two individuals for their contributions to the industry. Recipients can be members of ASPPA or from outside the association's membership.

out on," he said, adding that people just out of college gain from seeing how more experienced people handle things. "We should be teachers and we need a lot of patience. And it's harder in this environment," said Kaplan.

But that can also spell opportunity, McKinney indicated. "We have a real opportunity here for a ride-along, he said—for example, having new staff member join a phone call. "It is more acceptable now than before," McKinney said, noting that "we can use these opportunities to beef up that training."

Lessons and Suggestions

Panelists indicated that they and their operations had learned much and had some suggestions regarding how service can be further refined.

"We learned how resilient we can be," said McKinney. Finnegan had a similar observation, remarking that they were pleasantly surprised by staff engagement and their spirit of cooperation. "It shows, when they are committed, what people can accomplish," he said.

"The one word I would use is 'adapt,'" said Kaplan. "It is important to let individual clients know "we are here with you," Finnegan asserted.

THE NEW WAY FIRMS SUDDENLY FUNCTIONED ALSO AFFECTED HOW NEW AND YOUNGER EMPLOYEES LEARNED AND BECAME A PART OF OPERATIONS.

SECURE ACT AND CARES ACT: 'INCREDIBLE OPPORTUNITIES'

Within the space of three months, two major pieces of legislation were enacted—the SECURE Act and the CARES Act. A panel at an Oct. 27 virtual session of ASPPA All-Access discussed these measures and the opportunities they offer service providers.

Members of the panel included Justin Bonestroo, Senior Vice President, CBIZ Retirement Plan Services; Shannon Edwards, President of TriStar Pension Consulting; and Bill Presson, Executive Vice President, Sales and Consulting, EGPS Inc.

President Trump signed the Setting Every Community Up for Retirement Enhancement (SECURE) Act into law on Dec. 20, 2019. The sweeping measure makes many changes, including changes concerning the dates for required minimum distributions, new deadlines for plan adoption, higher penalties for not filing a Form 5500, allowing two or more unrelated employers to join a pooled employer plan, expansion of multiple employer plans, changes concerning part-time employees who are long-term staff members, and safe harbor notice relief.

And just three months later, after the pandemic began to hit, on March 27 President Trump signed the Coronavirus, Aid, Relief and Economic Security (CARES) Act into law. The $2.2 trillion stimulus bill includes provisions that make changes concerning distributions, change loan limits, provide RMD relief, address loan suspensions and provides the Department of Labor with expanded authority to postpone certain deadlines under ERISA.

With the changes these measures make and the ways business is conducted during the pandemic, there now is "an incredible opportunity for those who want to sell high-touch service to their clients," said Presson. "There are things that just can't be handled by e-mail," he said.

For instance, Presson said, the changes that the SECURE Act and the CARES Act have made have "given us an opportunity to decide how you want to play a role in distributions." "Are you going to make a change? Are you going to get more involved?" he asked, suggesting that a service provider start asking itself such questions.

"We're extremely involved in the distribution process," said Edwards, adding that they are trying to encourage all of their clients to go online. "We're consolidating practices and methodologies," reported Presson. Another option, he said, is to create a benefit distribution department.

TECHNOLOGY

Technology is key to helping clients navigate the new laws and new business and social context. "We all have the opportunity now to go out and talk to the clients," said Presson. He added, "this is an opportunity for you to teach your clients how to take advantage of that technology that they spent money on," for instance by teaching them how to extract census data and how to send secure email. "They need us to explain things," Presson said.

"We've changed so much this year," observed Edwards, reporting that "in the last few months, we've revamped all of our technology. We're completely cloud-based, we're changing all of our cameras and systems. It has really changed what we do in the office and how we do it." She cited Zoom as a means by which her firm has been able to interact with clients they have not heard from in years. "It helped us build relationships and deepen those relationships we already had," she said.

REACH OUT AND TOUCH

Presson advocated a "high touch" approach—using virtual and technological means—to serving clients and interacting with them. "High touch enables you to improve the relationship and hold conversations with your clients to work through which parts of these make sense," he said. Presson suggested regarding this an opportunity to provide value and to signify to clients that one wants to guide them through application of these laws, and in a time in which the ways in which business is conducted are very different.

Presson argued that the changes ushered in by the SECURE Act, the CARES Act and the pandemic offer service providers fresh opportunities to do many things, such as:

- exercise greater control over their interactions with clients and over services they perform;
- teach clients how to use technology;
- control how to do distributions;
- change how one is paid by clients; and
- discuss restatements.

"Here is an opportunity to meet with a client, possibly get a new service agreement," Presson said, adding, "we've got to make it easy for clients to hire us and pay us."

"Current changes have given us a chance to deepen relationships," Edwards agreed, adding, "we still have to provide value." She said that her practice has seen contact with clients increase concerning the CARES Act, and that they reached out to clients rather than follow the approach of other service providers that simply opted participants in. "That's why we've stayed local," she said—they want to interact with clients. "We consider them members of our family," Edwards said. PC

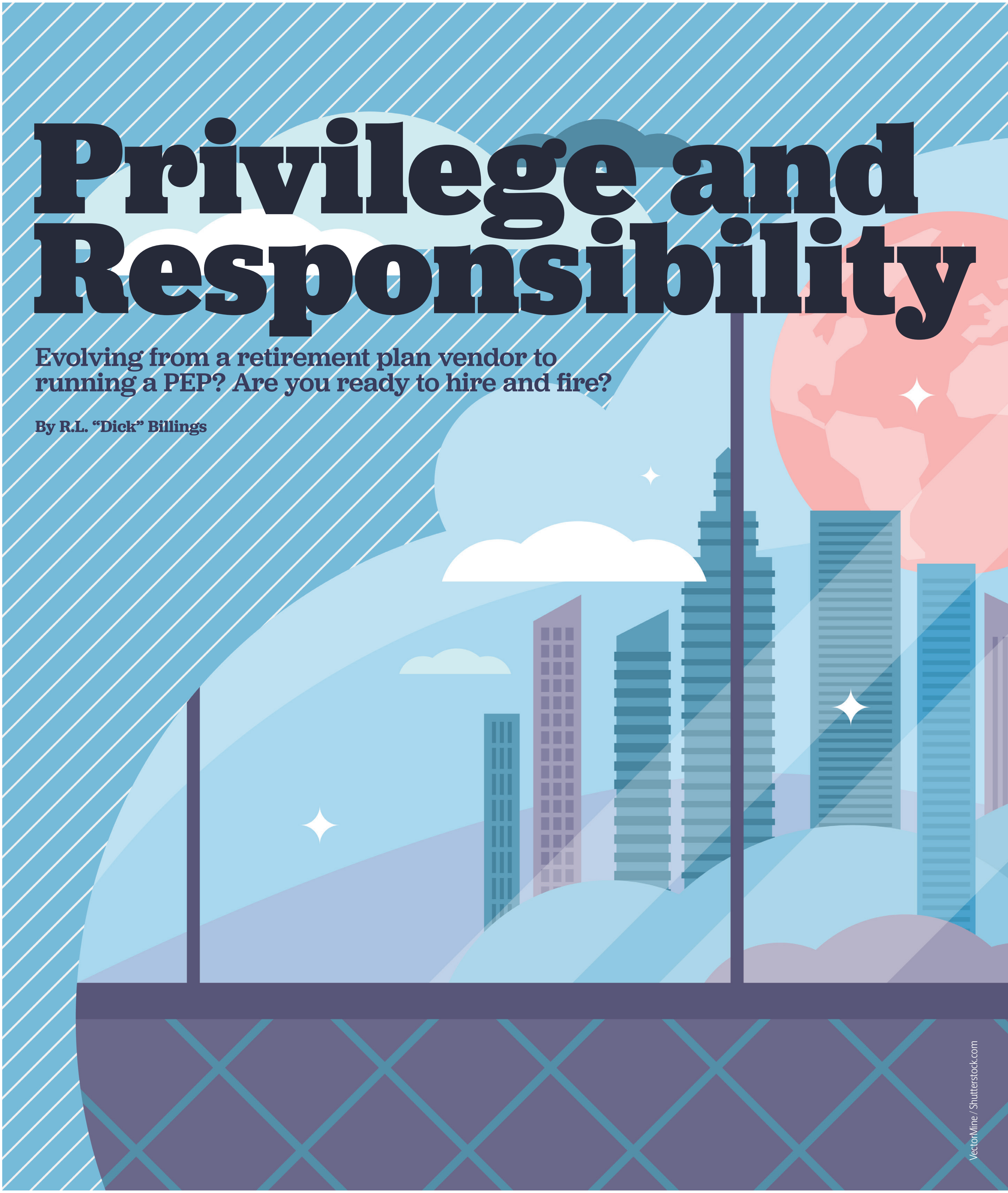
There's More Online!

Looking for a deeper dive into the 2020 All Access conference? You'll find our online news coverage of the event—as well as October's TPA Growth Summit—on the Conferences news page on ASPPA Net (www.aspppa-net.org). To navigate there, start by selecting "Browse Topics" under the "News" heading in ASPPA Net's top navigation bar. Then click on "Conferences" under the "Education and Career Development" heading.

Privilege and Responsibility

Evolving from a retirement plan vendor to running a PEP? Are you ready to hire and fire?

By R.L. "Dick" Billings



VectorMine / Shutterstock.com

VectorMine/ Shutterstock.com

If you have had any involvement in the 401(k) or ERISA 403(b) marketplace within the last 20 years, you may have seen the recent evolution of "groups of plans." We have closed MEPs, open MEPs, and even 81-100 Trusts.

And now we have the Pooled Employer Plan (PEP), which will require the existence of a newly created entity, the Pooled Plan Provider (PPP). PEPs will have far-reaching advantages for the typical retirement plan sponsor and its participants.

Many of you reading this may be a retirement plan vendor, TPA, investment advisor, record keeper, custodian or educator. You are now being invited by our federal government to "take the plunge" and become a PPP. The question is, should you accept this invitation? Whatever your answer, remember this: *"with privilege comes responsibility!"*

As a child growing up in Iowa, I naturally asked for more things as I aged. First, I asked for certain presents at Christmas time or for my birthday. Then I was asking to drive the family car to a friend's house. And as I reached my older teenage years, I asked to stay out at night—later and later. Once I reached the "age of reason" (whenever that was!), my mom always told me, *"with privilege comes responsibility."* And if you think about that simple statement, it's true in every aspect of our lives.

In my years of starting and running my own TPA business, this was a mantra I told not only to my employees, but to my clients and to our retirement plan partners: *"with privilege comes responsibility"*! Unfortunately, many wanted all the perks but did not really want to be held accountable when a mistake was made or when somebody started asking questions.

In my 40+ years of experience in the 401(k) marketplace, I have found almost all retirement plan vendors to exist within in two camps:

1. We have never been a fiduciary, and don't want to become one now!
2. We're willing to be a fiduciary, but only to a limited degree.

If you're a TPA, you might be offering your clients 3(16) fiduciary services. If you're in the investment arena, you might be offering your clients 3(21) or 3(38) fiduciary services. All good services, but limited at best.

Let's assume you have been a long-term, successful entrepreneur in the 401(k) business. You either wanted nothing to do with fiduciary responsibility, or you accepted the

You are now being invited by our federal government to "take the plunge" and become a PPP.

role, but only to a limited extent. What do you do now? If you take this plunge and become a PPP, you now must completely change your prior mindset and accept *full* fiduciary responsibilities. You'll no longer have limited fiduciary exposure or responsibilities.

So, is a PPP something *any* reasonably minded vendor would want to undertake?

Named Fiduciary's Responsibilities

The SECURE Act, signed by President Trump on Dec. 20, 2019, gave all of us vendors, should we choose to accept it, the opportunity to play King-of-the-Hill and be in total control of the entire retirement plan relationship: the recordkeeper, the investment advisor, the custodian, the Trustee—*everybody*!

This also means that you'll be in charge of all hiring and firing.

As a TPA owner I lost track of how many times my firm would be fired for some reason that really had nothing to do with our services. It was basically because we had little or no control over the client relationship. Well now, as a PPP, you can be much more in control. The only question is, "are you willing to accept the responsibility that comes with that privilege?"

Let us set the stage. When I say the PPP becomes the "buck-stops-here" entity, let me put this phrase into perspective. Following is my layperson's definition of a Pooled Plan Provider, as stipulated in Section 101 the SECURE Act: The PPP is the entity designated by the terms of the plan as the named fiduciary (within the meaning of Section 402(a) of ERISA), as the plan administrator, and as the entity responsible for performing *all* administrative duties which are reasonably necessary to ensure that:

- the plan meets *any* compliance requirement under ERISA or the Code;
- each employer on the plan fulfills its own portion of compliance obligations;
- it registers as a pooled plan provider with the Secretary of the Treasury;
- it acknowledges *in writing* that such person is a named fiduciary (within the meaning of Section 402(a)(2) of ERISA) and the plan administrator with respect to the plan; and
- it ensures that all individuals who handle assets or who are fiduciaries are bonded in accordance with Section 412 of ERISA.[1]

Note especially two terms I emphasized: *all* and *any*. These terms were specifically included by Congress. Sounds pretty broad, doesn't it?

If you have been a 3(16), 3(21), or 3(38), you probably have already accepted your fiduciary role in writing. But now, *in writing*, you'll be taking on *any* and *all* plan-related fiduciary tasks with very little limitation.

Also note the emphasis on the Section 402(a) "named fiduciary" reference in the statute. Congress did this for a reason: to make it clear that the 402(a) is at the top of the fiduciary pyramid. That does not mean that other fiduciaries are unimportant. But it *does* mean that the 402(a) is the *premier* fiduciary and oversees all other vendors, fiduciary and non-fiduciary alike. Including all vendor hiring and firing.

Unfortunately, most plan sponsors, and many players in the business, think that 3(16) has been the end-all administrative fiduciary position. Not so, and the SECURE Act makes this clear. But Congress' position that the 402(a) named fiduciary as the most important fiduciary is not new. This position was defined specifically by ERISA in 1974. This was emphasized by Prof. Colleen E. Medill of the University of Nebraska College of Law. Her words bear repeating here:

> *From the perspective of ERISA fiduciary liability, the role of the named fiduciary is unique. Recall that under the general definition of a fiduciary under Section 3(21)(A), a person's potential fiduciary liability is limited "to the extent" the person performs fiduciary functions. The extent of liability under ERISA for a named fiduciary, however, is distinctly different. Under ERISA, the default rule is that the plan's named fiduciary is liable for the entire operation of the ERISA plan.*[2]

According to the Department of Labor's Sept, 1, 2020 proposed "Registration Requirements of Pooled Plan Providers," the DOL estimates more than 3,000 firms will apply to become PPP fiduciaries. They further estimate that most PPP applicants will be rolling out some version of a "bundled" PEP. If this holds true, many, if not most, PEPs we will see coming in the near future will *not* have truly independent PPP fiduciaries. Most PPPs will also be offering one or more related services to the PEP via some affiliate or subsidiary.

If you take this plunge and become a PPP, you now must completely change your prior mindset and accept full fiduciary responsibilities.

From the standpoint of ERISA, this alone should raise some red flags. This very conflict-of-interest issue was recently addressed by Rep. Richard E. Neal (D-MA), Chairman of the House Way & Means Committee: "Congressional intent with respect to this provision is that the pooled plan provider should not be the fiduciary responsible for overseeing itself as the provider of investment products and services to the plan. No financial institution should be overseeing itself."[3]

The mechanics of setting up a PEP are pretty straightforward. If you're familiar with how MEPs work, you already know how to do it. Establishing the PEP is the easy part. The *hard* part is the PPP, since the firm signs on as the named fiduciary under ERISA Section 402(a), and can go to jail if they do not perform in accordance with ERISA's "highest standards."[4]

Let me illustrate. I had the opportunity recently to help a national insurance company set up a PEP. The only thing missing was a PPP. So, they issued an RFP to find such a named fiduciary. The RFP stated that PEP participants would be forced to choose their asset allocation from a set number of company-determined models, with such models simply having different allocations within one mutual fund owned by… you guessed it, the insurance company!

As a firm intending to be approved as an *independent* PPP in 2021, we politely but firmly declined to respond to the RFP, saying we felt we could not act "for the sole benefit of participants and beneficiaries"[5] with such a limited investment array. What I found most interesting about this entire exercise was that (Lord only knows how many) insurance company lawyers said this "one mutual fund" universe would be in the best interests of the participants!

Other PPP Issues

Here three other PPP issues of which you should be aware.

1. Some vendors wanting to become a PPP have been looking for ways to have the title, but delegate virtually all their tasks and risks. That is, can one become a PPP and essentially have no responsibilities? I think not, but here are two issues that will come to the fore in the event of an audit or lawsuit:

a. Under ERISA, compensation from plan assets must be "reasonable." If you have no responsibilities, how can you justify receiving *any* compensation? And if you choose to forgo compensation, what is your value to the plan? Are the costs of these services then being subsidized elsewhere? If so, they must be disclosed in writing.

b. Under ERISA, if you're the named fiduciary and you delegate *any* task, you'll still have the responsibility to "monitor" the delegee.[6]

2. You're planning on being the PPP, but you will also offer some other plan-related service such as compliance, recordkeeping or investment advisory services. Will the existence of these services complicate your position as a PPP? I think so, but here are three issues that will come to the fore in the event of an audit or lawsuit:

a. One of your PPP tasks will be to determine the "reasonableness" of each underlying vendor's compensation. Relative to these affiliated services, you'll have a built-in conflict of interest in determining your affiliate's fees.

b. Could you ever actually see yourself firing and replacing your own affiliated firm for underperformance? If no, then you will be violating ERISA's duty of loyalty.

c. If you try to be fair and have each participating employer approve your affiliated vendor's fee, some will approve and some will not. What will you do with the latter group? And if you delegate this responsibility to each participating employer, you may be diminishing your position as an "objective" PPP. Why would I, as a participating employer, want to be part of a PEP in which the supposed independent party (the PPP) has a vested financial interest in retaining certain vendors? Why would I want this additional fiduciary task when a truly independent PPP would make this decision for me?

3. Can I set up a PEP, hire an outside independent PPP and still "be in control" and guarantee I cannot be fired? I think not, but is that really necessary?

a. Due to the SECURE Act's explicit language, the PPP must be "in charge." If some contractual language inhibits the PPP's ability to act in the sole interest of participants and beneficiaries, that would be a

VectorMine / Shutterstock.com

violation of ERISA's duty of loyalty.

b. As a retirement plan vendor outside a PPP relationship, you're not in total control; the plan sponsor is in charge. If you're a quality vendor, you'll have great influence no matter the setting.

c. The last thing a truly independent PPP wants is to fire a vendor. It adds a lot of work to the PPP's plate and can be very disruptive to participating employers and plan participants. My experience is that any PPP worth his or her salt will detect vendor deficiencies well in advance and address those concerns directly with the vendor in question well before major discontent exists within participant ranks.

But let's not be fooled! The creation of a PEP-world by the SECURE Act will in no way ensure that the programs rolled out in 2021 will be either "reasonably priced" or necessarily "in the best interests of participants and beneficiaries."

It will be up to the marketplace, and the plaintiffs' bar, to weed out the less efficient and more conflicted PEPs. And if you or your company become a PPP, you'll be the one responsible if your PEP is brought to task by the federal government or a participant lawsuit.

In summary, we all want control. We all want to affect our destiny as much as possible. We all want to do what is best for our retirement plan clients. As you consider whether you should be a PPP, whatever decision you make must be what is best for your clients, not just what is best for you.

Remember: with privilege comes responsibility! **PC**

Footnotes

[1] Section 413(e)(3)(a).

[2] June 18, 2014 remarks to the ERISA Advisory Council, a group organized specifically to advise the Secretary of Labor. See also "Regulating ERISA Fiduciary Outsourcing" by Coleen E. Medill, Robert and Joanne Berkshire Professor of Law, University of Nebraska College of Law, and Of Counsel, Koley Jessen, P.C., L.L.C.; *Iowa Law Review* [Vol 102:505 2017].

[3] Letter to The Honorable Eugene Scalia, June 24, 2020.

[4] CFR §2550.404a-1(b), ERISA's "prudent expert" rule.

[5] CFR §2550.404a-1(a), ERISA's "duty of loyalty" rule.

[6] 29 CFR §2509.75-8, FR 17.

ARA'S WONDER WOMEN

Meet the ARA Women in Retirement Council! **By Nicolle Corning**

It's no secret that women are in the minority when it comes to the professionals who service this country's retirement plans. For me, being a female financial advisor in a field where women account for only 20% of all advisors is a particular frustration.

That's what made it so inspiring to serve on the NAPA Leadership Council with powerhouse women like Jania Stout and Pat Wenzel, where we were able to do our part to create tools for women to enter and advance in our industry by creating and advocating for programs like the Thrive mentorship program for women and the Women in Retirement Conference (WiRC). Each of these efforts began as a kernel of an idea which grew into meaningful outlets for women in this industry to connect, empower and motivate each other.

And as I spoke with my counterparts in the leadership of ASPPA and the other ARA sister organizations, I realized that the efforts we were making in NAPA could easily be used as a template by those organizations without them having to reinvent the wheel. While the WiRC conference was having success in fostering relationship building and professional growth for the women in ASPPA and NAPA, it was starting to feel like a once-a-year conference was not enough to capitalize on the ideas birthed there.

That confluence of events led to the beginning of the idea of forming an ARA Women in Retirement Council. The five sister organizations within the American Retirement Association family represent just about every aspect of the retirement universe—from plan sponsors (PSCA) to actuaries (ASEA) to 401(k) advisors (NAPA) to the not-for-profit plan advisors (NTSA) to pension professionals (ASPPA). We have such power to be able to promote through every single professional channel in the retirement plan space.

The vision was to support the membership of each sister organization to promote and advance women within their professions through coordination and increased awareness of resources for our female members. There was already a need; there was the will to advance women; and we had begun to make individual efforts within each of our organizations. If we could have a permanent council with a representative from each of the sister organizations meeting on a regular basis to share ideas and drive momentum around recruiting and retaining women in the industry, we felt we could effect real change within this industry we all love.

Easy, right? Now all we had to do was convince each of the sister organizations to approve it. With the help of the ARA staff, we put together the pitch book. Now it was up to each of the sister organizations to vote it up or down. We identified an advocate on each Leadership Council and they led the charge. Starting with NAPA, the case was made to each Leadership Council for the formation of an effort we believed was long overdue. One by one, each of the sister organizations gave the council their stamp of approval. It passed all five organizations unanimously.

On August 26, Women's Equality Day, the ARA officially launched the Women in Retirement Council. I had been appointed the Chair and NAPA representative along with a team of women I can best describe as the "Wonder Woman" collective: Lynn Young from ASEA, Shannon Edwards from ASPPA, Kristine Coffey from NTSA and Michelle McGovern from PSCA. This is a group of women who get things done—and we wasted no time.

Our first order of business was to create a better structure for the NAPA Thrive program and to roll it out to the entire ARA family. And while there are still some finishing touches to put on the project, we have made it available to all ARA members. You can learn more at https://www.usaretirement.org/ara-women-in-retirement-council. We encourage any woman looking for a mentor or to serve as a one to please sign up.

In addition, we have identified a succinct list of areas of focus with specific projects designed to further the advancement and inclusion of women in our industry. My highest hope for the council is that we are able to effect gender parity within our industry to the point that someday councils like ours will not be needed. With numbers like only 30% of actuaries being female, that goal can seem daunting. But I know our group of Wonder Women won't stop until we get there. **PC**

TY Lim / Shutterstock.com

"ON AUGUST 26, WOMEN'S EQUALITY DAY, THE ARA OFFICIALLY LAUNCHED THE WOMEN IN RETIREMENT COUNCIL."

READY, SET, GO!

DOL issues final PPP registration rules for Pooled Plan Providers. By Ted Godbout

Pooled plan providers (PPPs) are one step closer to being able to offer Pooled Employer Plans (PEPs) under final guidance released by the Department of Labor in November.

The final rule establishes the registration requirements for PPPs pursuant to the Setting Every Community Up for Retirement Enhancement (SECURE) Act. PPPs can start operating PEPs beginning on Jan. 1, 2021, but they must register with the Labor and Treasury departments before they can begin operations.

Under the final rule, PPPs are required to register at least 30 days before beginning operations by electronically submitting a new EBSA Form PR, but the DOL provides an exception for the period Nov. 25, 2020 to Jan. 31, 2021. As such, the requirement to register at least 30 days prior to operating a PEP during that period is waived—provided registration occurs no later than the start of the plan.

"Pooled employer plans will give employers, especially small unrelated employers, a way of offering their employees a workplace retirement savings option with reduced burdens and costs," stated Acting Assistant Secretary of Labor for the Employee Benefits Security Administration Jeanne Klinefelter Wilson. "This final rule lays the groundwork for a sensible registration process so that providers can get pooled plans up and running."

FILING OBLIGATIONS

The rule's requirements are divided into three sets of filing obligations:

- An initial registration filing of basic identifying information about the PPP and information about pending legal or administrative proceedings.
- A supplemental filing for any changes in the information that was reported in the initial registration or if there is a significant new financial and/or operational event related

Andrey_Popov / Shutterstock.com

to the PPP (a supplemental filing also is required when a PEP starts operations).
- A final filing once the last PEP has been terminated and ceased operations.

The DOL explains that the requirement for supplemental information is intended to provide the agencies, participating employers and employees, and the public with information about noteworthy events occurring after the initial registration. DOL notes that it considered requiring PPPs to file a registration for each PEP, but decided not to because it would have required pooled service providers to make multiple filings while providing minimal additional benefits.

In response to comments from the American Retirement and others about simplifying the registration process, the final rule adopts operation of a PEP as the event requiring prior registration rather than "marketing" or "offering services" as a PPP.

"Preliminary business activities of a would-be pooled plan provider, such as establishing the business organization, creating a business plan, obtaining necessary licenses, entering into contracts with subcontractors or partners, obtaining a Federal employer identification number from the IRS, or actions and communications designed to evaluate market demand, including marketing activity, do not trigger the registration requirement," the preamble to the final rule explains.

In addition, the final rule treats registration with the DOL as satisfying the SECURE Act requirement to register with the Treasury Department.

WHAT'S REQUIRED?

The information to be submitted as part of the Form PR includes:

- The legal business name and any trade name of such person, as well as the employer identification number (EIN), business mailing address and phone number of such person.
- The address of any websites of the PPP or any affiliates to be used to market the PPP or to provide public information on the PEPs operated by the PPP.
- The contact information for the responsible compliance official of the PPP.
- The agent for service of legal process for the PPP and the address at which process may be served on such agent.
- The approximate date when pooled plan operations are expected to commence.
- An identification of the administrative, investment, and fiduciary services that will be offered or provided in connection with the PEP by the PPP or an affiliate, including all persons who are treated as a single employer with the person intending to be a PPP who will provide services to PEPs sponsored by the PPP.
- A statement disclosing any ongoing federal or state criminal proceedings or convictions against the PPP, or any officer, director, or employee of the PPP (a criminal conviction may be omitted if it is outside 10 years of the date of registration).

"THE REQUIREMENT TO REGISTER AT LEAST 30 DAYS PRIOR TO OPERATING A PEP DURING THAT PERIOD IS WAIVED—PROVIDED REGISTRATION OCCURS NO LATER THAN THE START OF THE PLAN."

- A statement disclosing any ongoing civil or administrative proceedings against the PPP or any officer, director or employee of the PPP involving a claim of fraud or dishonesty with respect to any employee benefit plan or involving the mismanagement of plan assets. This appears to take into consideration comments by the ARA urging the DOL to exclude routine audits or investigations or mere inquiries from governmental entities.

DOL FEEDBACK

As for the information regarding "primary compliance official," it appears that the DOL also addressed the ARA's comments. The ARA recommended clarifying what information should be reported for the "primary compliance officer," noting that many service providers employ multiple compliance officers.

Accordingly, the final rule simply requires the identification and basic contact information for the person or entity designated by the PPP as the point-person responsible for addressing questions about the PPP's status under ERISA and the Internal Revenue Code. "Put differently, this provision requires nothing more than for the company to identify whom it wishes to receive and address status and compliance-oriented questions," the preamble explains.

In response to comments that the Form 5500 is more appropriate for disclosing reportable events, the DOL remarked that Form 5500 data generally is not available for 18 months after a plan starts operation and that the Form PR will allow the department to monitor PPPs and help protect the interests of plan participants and beneficiaries.

The DOL estimates that approximately 3,200 entities will initially register to serve as PPPs, with recordkeepers and plan administrators of existing DC plans most likely to enter the market first, followed by professional employer organizations, chambers of commerce and plan advisors.

The new electronic filing system is available at https://www.efast.dol.gov/. **PC**

Alex Kravtsov / Shutterstock.com

EXTRA INNINGS!

Navigating your extended sales window (Thanks, SECURE Act!). By Robbie Petrillo

"Selling safe harbor 401(k) plans is like selling beer at a Major League Baseball game," I blurted out to an advisor in October 2019. He had approached me and wanted us to establish—immediately—a safe harbor 401(k) plan for a highly profitable client of his, even though we were already in the fourth quarter. What can I say? It was playoff time and the Nation's Pastime was pumping through my baseball-obsessed veins.

"Look," I explained, "everyone knows that concession stands at a baseball game can only sell beer through the end of the 7th inning, even though the games are 9 innings long. Similarly, startup safe harbor 401(k) plans must be sold by the end of the 9th month, even though the year is 12 months long."

He eventually understood that since September had come and gone, the startup safe harbor 401k) was off the table until 2020. "The client could, however, consider a profit sharing plan or even a cash balance plan," I explained. "We have until the end of the year 2019 to implement such a plan, just as the concession stand has until the end of the 9th inning to sell other refreshments like soda and hotdogs." Little did I know that 2019 would be the final year of this truth!

THE SECURE ACT INTRODUCES RETROACTIVE PLAN ADOPTION

Fast-forward two months. In December 2019, the SECURE Act threw TPA business owners and salespeople a curveball: retroactive plan adoption.

"BY INTRODUCING RETROACTIVE PLAN ADOPTION, THE SECURE ACT HAS LENGTHENED YOUR SALES WINDOW, PUSHING THE ADOPTION OF MANY NON-DEFERRAL PLANS INTO "EXTRA INNINGS.""

Ladies and gentlemen: This game has gone to extra innings! This "concession stand" (i.e., TPA) will now be dispensing "sodas" (i.e., profit sharing plans) and slinging "hot dogs" (i.e., cash balance/defined benefit plans) all the way into the 15th inning!

Thanks to the SECURE Act, the deadline to establish a qualified retirement plan has been extended theoretically up to 8 months:

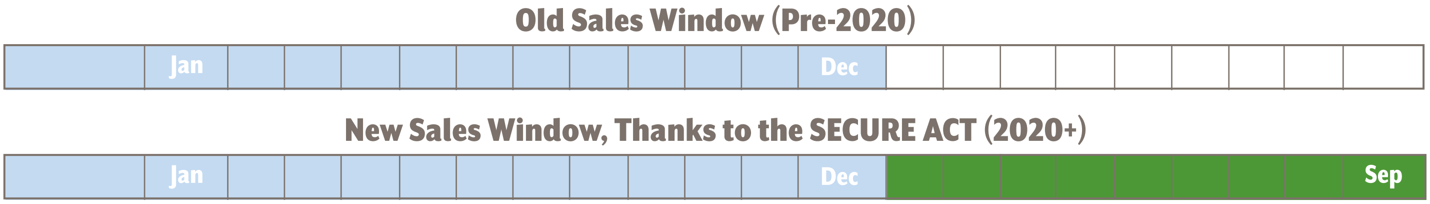
- **Old implementation deadline (pre-2020):** Last day of the company's tax year (12/31 for calendar year filers)
- **New implementation deadline (2020+):** The due date, including extension, of the company's tax return. (S-Corporations and partnerships can extend from 3/15 until 9/15. C-Corporations and sole proprietorships can extend from 4/15 until 10/15, but due to the plethora of tasks involved with the annual administration cycle, implementing a plan in October seems unrealistic.)

The result: An extended sales window (see chart).

1. Delayed Implementation of Non-deferral Plans

No longer will TPAs be the last person to the New Year's Eve party, as we cram in plans on 12/31! Pushing out the adoption of non-deferral plans beyond 12/31 will become the new normal for two key reasons:

- **Procrastination:** As we salespeople know, nothing combats our prospects' tendency to procrastinate quite like an implementation deadline! With the 12/31 deadline now pushed back, many sales which would have occurred within the calendar year (the first 9 innings of the game) now will not close until the months following (during "extra innings").
- **Wait-and-See Approach:** Pushing the decision to implement a non-deferral plan past 12/31 is a sound strategy. Waiting until the fiscal year has come to a close and the financials are drafted gives the business owner and their CPA full clarity on whether a plan should be adopted, which type of plan, and the targeted contribution amount. Additionally, they will be part of the way through Year 2, meaning they won't have to gaze as deeply into their crystal ball to project Year 2 profitability, employee demographics and business conditions.



However, even in light of the SECURE Act, I'll reiterate: "Selling safe harbor 401(k) plans is like selling beer at a Major League Baseball game." Startup safe harbor 401(k) plans, even post-SECURE Act, still must be implemented well before the close of the first plan year. Due to the concept of a Cash or Deferred Arrangement (CODA), we cannot retroactively implement 401(k) deferrals.

IMPLICATIONS FOR TPA SALESPEOPLE AND OWNERS

Retroactive plan adoption will radically change our non-deferral plan sales (profit sharing plans, cash balance and traditional defined benefit plans, etc.), while posing little to no change for our 401(k) plan sales. Here are the four key implications for TPA salespeople and owners:

2. Put an Asterisk (or Two) on the 2020 Sales Window

I propose putting a big fat asterisk on the 2020 sales window (the period to which sales goals and quotas relate, spanning 1/1/2020-12/31/2020). Here's why:

- **COVID-19:** For obvious reasons, COVID-19 has and will continue to disrupt the 2020 sales window. You and your team have certainly already discussed this at length, so I won't spend time unpacking this here.
- **Retroactively implemented plans won't be captured:** To continue our analogy, now that every game is going into

the 15th inning, you wouldn't count up your concession stand sales at the end of the 9th inning, would you? While all the beer sales would be in the books, you'd miss out on 6 additional innings of soda and hot dog sales! Similarly, TPA salespeople should not be judged on their 2020 sales on Dec. 31, 2020. We should reserve judgment until September 2021, once the retroactive plan adoption deadline has passed.

If your organization pays its salespeople commissions or uses sales quotas, I understand that you can't simply "throw out" 2020. Rather, I posit that, due to the above factors, a creative, thoughtful and time-intensive analysis of your 2020 sales window is warranted. It's a year like we have never seen!

3. Understand Your Sales Window for 2021 and Beyond

Yes, 2020—since it's a transition year—will yield some skewed sales metrics. Thankfully, come 2021, this awkward transition will be behind us and we can continue evaluating our salespeople based on the calendar year once again (1/1/2021-12/31/2021). It will look a bit different than it did pre-SECURE Act, but your 2021 sales window will contain:

- Retroactive adoption of non-deferral plans for 2020 (January-September)
- Traditional 401(k) business (January-September for 2021 startups, backloaded in Q3 due to the safe harbor deadline; January-December for takeovers)
- Adoption of non-deferral plans for 2021 (January-December, backloaded in Q4 due to the increased clarity of a business' profitability as the year progresses, though many will close in 2022)

4. These Extra Innings Are an Opportunity

Successful TPA salespeople and owners will take advantage of the extra innings afforded by the SECURE Act by:

- **Marketing to CPAs:** No longer is it necessary for a CPA to uncover a qualified plan opportunity before year-end! They can spot the opportunity in real time as they work on the company's tax return in Q1 and learn that the business owner has significant levels of taxable income. They can then pick up the phone and call you—their favorite TPA, who has educated them about retroactive plan adoption—to propose a plan that will solve the client's tax problem right now, instead of months from now.
- **Turning "no" into "yes":** How many times has an advisor or a business owner approached you in January or February begging you to help them alleviate last year's tax burden? You've had to say "no" every time. The SECURE Act has granted us the power to turn that "no" into a "yes," naturally helping us convert more opportunities into wins. Granted, sometimes that client would have started a plan with you for the current year and beyond, but by being able to go back one additional year, you've likely increased their Client Lifetime Value (CLV) to the firm by one year's worth of administration fees.

BOTTOM LINE

By introducing retroactive plan adoption, the SECURE Act has lengthened your sales window, pushing the adoption of many non-deferral plans into "extra innings." Be mindful of this as you analyze your 2020 sales numbers; the game is not yet over. And remember: Despite the changing sales landscape, retroactive plan adoption is a huge opportunity! PC

zieusin / Shutterstock.com

2021 Mark your calendars!

January

13 WEBCAST
TPAs and PEPs: Structure and Service Options

20 WEBCAST
Ask the Experts: Correcting Loan and Distribution Errors

27 WEBCAST
ADP/ACP Testing Techniques

February

2 TRAINING
DC-1 Exam Cram (Part 1)

3 ASEA WEBCAST
Actuarial Grab Bag

4 TRAINING
DC-1 Exam Cram (Part 2)

10 WEBCAST
Tax Issues

24 WEBCAST
Corrective Amendments

March

23 TRAINING
QKC Exam Cram (Part 1)

24 WEBCAST
Plan Freezing and Terminations

25 TRAINING
QKC Exam Cram (Part 2)

April

7 WEBCAST
403(b) and 457(b) Plans

20 TRAINING
QKA1 Exam Cram (Part 1)

21 WEBCAST
Trends in DOL and IRS Audits

22 TRAINING
QKA1 Exam Cram (Part 2)

28 29 CONFERENCE
ASPPA Spring National (Online)

May

5 WEBCAST
Intro to Coverage Testing

25 TRAINING
DC-2 Exam Cram (Part 1)

27 TRAINING
DC-2 Exam Cram (Part 2)

June

1 TRAINING
QKA2 Exam Cram (Part 1)

2 WEBCAST
Form 5500 Update

3 TRAINING
QKA2 Exam Cram (Part 2)

9 TRAINING
CPC Spring Exam

10 CONFERENCE
ASEA Digital Insights (Online)

16 WEBCAST
Plan Document Issues for 2021

Schedule as of Nov. 2020.
Dates and/or topics may change.

ASPPA ASEA www.asppa.org

INSIDE THE RETIREMENT PLAN CENSUS

The annual census is the key to ensuring the health of every retirement plan. **By Linda M. Chadbourne**

Prior to getting married, I asked my husband to purchase life insurance. The application process included a medical exam. When we returned from our honeymoon, we found that his application had been denied—he was diagnosed with cancer. Certainly, this was heartbreaking news; however, we were prepared to do everything we could to get him back into good health.

While retirement plans are not a life-or-death situation, there are certainly many requirements to keep the plan in compliance, which if not done correctly cause a sort of "cancer" in the plan.

THE ANNUAL PLAN CENSUS IS VITAL TO THE HEALTH OF RETIREMENT PLANS

The TPA is an important resource to avoid "cancers" or other hurtful consequences to a retirement plan through thoughtful and rigorous assistance via a yearly review of the plan. Seems easy, right? Clearly, the TPA has it all under control and the fiduciary just needs to simply sit back and go about daily functions. While this may be true, the TPA must have it under control and will need information to do the job accurately to ensure the plan stays in compliance and good health.

As in a medical exam, it is critical for the TPA to be essentially a "doctor" for the plan. As such, a review of the health of the plan begins with the TPA reaching out to clients each year to let them know that it's time for the plan's yearly "physical"—the retirement census. What has changed during the year for the plan and the employees? Has the plan sponsor bought or merged with a company? Has the ownership or company entity changed? These types of transactions need to be reviewed carefully.

WHAT IS REQUESTED IN THE CENSUS PHYSICAL?

The census file should include information on each employee who received a paycheck from the plan sponsor during the year, regardless of whether or not they are eligible to participate in the plan. This includes part-time, leased and shared employees. Failing to include eligible employees or exclude ineligible employees in the plan, or allowing an employee to participate before meeting the eligibility requirements, are considered operational failures and must be corrected.

Let's take a look at the census file in detail and the important information required for each employee.

- **Basic Information** (date of birth, date of hire, date of termination, date of rehire and hours). This information allows the TPA to verify that all participants have met the eligibility requirements in the plan. The dates and hours also verify retirement age for vesting, employer allocations, eligibility to receive in service withdrawals and required minimum distributions. The employer may also have certain

Nakigitsune-sama / Shutterstock.com

"THE TPA IS AN IMPORTANT RESOURCE TO AVOID 'CANCERS' OR OTHER HURTFUL CONSEQUENCES TO A RETIREMENT PLAN THROUGH THOUGHTFUL AND RIGOROUS ASSISTANCE VIA A YEARLY REVIEW OF THE PLAN."

provisions in the plan for the participant to receive an employer allocation based on age, service, hours or classes.

- **Location or Division.** Providing the location or employee type is relevant to plan administration. This may be an allocation group (for plans that allow varying contributions based on a specific groups), employees location (for plans with more than one participating employer), employee type or job category.
- **Excluded Employees or Other Classifications**. Certain employees are often excluded in the plan such as union members and nonresident aliens. Others may be classified as a leave of absence, disabled, death or military. These types of employees should be noted as this affects nondiscrimination testing and allocations.
- **Ownership and Key Employees.** Listing the company owners, their family members who work for the company, officers and their percentage of ownership is critical in determining who is a highly compensated employee (HCE) or a key employee when working on nondiscrimination testing. Failing to properly differentiate between HCEs and non-NHCEs can affect compliance testing results.
- **Compensation.** The definition of compensation is defined in the plan adoption agreement for purposes of allocating contributions, compliance testing, plan limitations and identifying HCEs and key employees. While there are three basic safe harbor options to choose from, there are additional options to exclude or include certain compensation such as bonuses, Section 125 contributions or fringe benefits. For example, if commissions are excluded from the plan's definition of compensation, this could trigger additional nondiscrimination testing to ensure that NHCEs are not disproportionately affected. Self-employed individuals, such as sole proprietors and partners in a partnership, on the other hand, receive earned income which is counted for plan compensation purposes. It is also good to note that while owners of a corporation receive W-2 income, any distribution of profits (either dividends in a C- or S-corporation) is disregarded as plan compensation.
- **Pre-tax Retirement and Roth Deferrals.** The total dollar amount contributed by participants during the plan year through payroll deduction needs to be provided as part of the plan's health census. Pre-tax retirement and Roth contributions totals need to be provided separately since they are taxed differently. Not only is this information needed for compliance testing and IRS limitations, the employee contributions need to be reconciled to the deposits made at the investment company. Were all deposits made to the right employee? Were the employee deposits made on time? Were they catch-up eligible? If the plan utilizes automatic enrollment, were employees enrolled?
- **Matching Contributions.** Employer matching contribution information provides the TPA with a basis for nondiscrimination testing. First, the matching contributions need to be reviewed for eligibility and then reviewed to make sure that every eligible participant received the correct amount. Once this is determined, the TPA can run an all nondiscrimination testing application needed for the matching contribution.

DILIGENCE IS THE KEY TO PLAN HEALTH

In many ways, my personal experience with my husband was a sort of health census. He had to provide detailed information about what types of food he ate, medications he took, how he slept and his reactions to treatment. But we can attest that it was well worth giving his team of doctors the information needed to help him be cancer-free. Sometimes asking more is less burdensome than you think.

For a retirement plan's sponsor and participants, keeping the plan healthy is essential. With proper understanding of the plan sponsor's fiduciary responsibilities and the right TPA, odds are that the plan will pass that medical exam (i.e., IRS or DOL audit) in good health. PC

MEETINGS AND MARKETING ADAPT TO THE VIRTUAL WORLD

Need some tips on conducting outstanding virtual meetings and webinars for clients and prospects? **By Jason Brown & Jim Racine**

The COVID-19 pandemic has severely affected everyone's capability to conduct face-to-face meetings, which for most TPA firms is (or was) one of the primary methods for marketing and business development.

However, in some circumstances, adversity can provide the "push" a company needs to reformulate and strategize how they are conducting business. This new business environment has subsequently forced TPAs to become more innovative in their marketing efforts and start utilizing technology and methods that they have been reluctant or slow to adopt. If you find yourself in the early stages of this evolutionary process, here are some vital points we believe you will find helpful.

GET PREPARED IN A NEW WAY

Today, more of our meetings are virtual. While with virtual meetings, we don't have the travel time, it still takes time preparing for a great session, and it takes an entirely different skill set. This preparation starts before we even "walk in the virtual door."

First, remember we are inviting the client to our location for the meeting. To prepare for the meeting, let's start by sitting in front of the camera to check:

- What does my background look like? Is it neat and professional, or am I inviting the client to my kitchen or couch?
- What's on the shelf or wall behind me? Does it make the impression I want of my company and me?
- Am I too close (just my head being seen) or too far (more than mid-torso up) from the screen?
- Is my face dark or washed out? Can I put a lamp directly behind my camera to light my face?
- Is my camera at the right height? Is the top of my head 2-3 inches (3 finger width) from the top of the screen?
- Does my outfit look suitable? Dress for the meeting—does the pattern get fuzzy or appear to move on video? Does the color work with my background?
- If I can use a virtual background—does it reflect my company and me well?

metamorworks / Shutterstock.com

PRACTICE NEW TECHNIQUES AND EXECUTE

Now it is time to practice, which is essential. One of the most challenging items we want to accomplish is to "look our client in the eye"! Remember, if we look at their image on the screen, they see us looking down, and it appears we are looking at their feet. A quick reminder, your audience's face is your camera. When you look right into the camera, they see that you are looking directly into their eyes!

Now everything looks ready, but you need to test it out. The best way to do this is to set up a virtual meeting with one of your teammates. Come dressed and prepared, just like you are planning to meet your client. Get the outside perspective and ask for feedback on everything we just covered from the background to looking them in the eye.

Once the stage is set, there are a couple more items to review:

The invitation

- Just like every meeting, be very clear about the agenda.
- Ask that the client join with their camera on but be prepared to talk to a "box on the screen" if they do not. Remember, even if their camera is off, they can still see you, so continue to look at the camera.
- Establish a backup plan and have a call-in number in case the technology fails.

Starting the meeting

- Just like any other meeting, but check in to ensure they are comfortable being on camera.
- As needed, prepare your client for potential distractions at your house, including pets and children.
- Have attendees identify themesleves, especially unidentified call-in participants.
- Body language is harder to read, so remember to "check-in" and ask: Is this still a good time? Is the agenda still appropriate, or has something changed? Are we on track with these points? Are there any questions before we move to the next topic?

> "IN SOME CIRCUMSTANCES, ADVERSITY CAN PROVIDE THE 'PUSH' A COMPANY NEEDS TO REFORMULATE AND STRATEGIZE HOW THEY ARE CONDUCTING BUSINESS."

Following the thought processes outlined above will get you on the right path to conducting a polished virtual meeting or presentation, whether for an internal or external audience. However, for business development purposes, the messaging and content being offered is critical. Below are some thoughts on setting you apart from the competition and garnering higher levels of participation when incorporating virtual meetings for business development.

OFFER UNIQUE AND ORIGINAL CONTENT

Several years ago, in an article in *Plan Consultant* about Discovering and Creating Unique Qualities, the question was asked, "Are you Paul Revere or Will Dawes?" The objective, of course, was to build and create something memorable (Paul Revere) versus something that blends in or is somewhat forgettable (William Dawes, another of the midnight riders warning of the British attack). In this environment, retirement plan advisors and recordkeepers are getting bombarded daily via e-mail and social media about the impact of COVID-19 and financial/economic volatility. To compound this issue, these groups are also getting a far higher volume of e-mails and webinar invitations due to not being able to meet face to face. So, the question becomes, do you want to be the 20th person that day who has shared similar information, or do you want to offer material and content that will get someone's attention and stand out?

PROVIDE STRATEGIES ON WINNING BUSINESS AND BUILDING THEIR PRACTICE

Advisors and recordkeepers are always appreciative of insight and perspectives on how to create an advantage that can lead to winning more business or making business opportunities more profitable. One of the webinars our firm conducted revolved around the new SECURE Act Startup Plan Tax Credit, which strategized how advisors and platforms could best use and leverage these credits. One aspect of the material focused on how advisors could position a flat-fee structure that would be paid by the plan sponsor instead of being compensated via an asset charge or trail commission. This arrangement would allow advisors to make startup plans more profitable for their practice while having their cost for services reduced by up to 50% in the first 3 plan years for the plan sponsor. This same concept was shared with recordkeepers as well during the webinar, so they could help better position their cost for services and consult with sponsors on their fee payment options. This presentation was also positioned as continuing education (CE) in some advisory channels, which were always very well attended as CE availability is more complicated for advisors in the COVID-19 environment.

The essential aspect to remember is to offer original and unique content that separates you from the mainstream. The more your webinars and marketing content can help advisors and recordkeepers win business and improve their practice, the more your firm will be looked upon as a business partner and thought leader in the marketplace. PC

PROFESSIONALISM AUDIT: ARE YOU QUALIFIED?

Do you have the knowledge and experience to capably perform the work that you're doing? **By Lauren Bloom**

It has become a cliché to say that 2020 was an extraordinarily difficult year. 2021 presents all of us with a fresh start and an opportunity to assess where we are and where we want to be. Over the course of this year, I will offer thoughts on how employee benefit plan professionals can conduct a "professionalism audit" of various aspects of their practices. The goal will be to boost confidence in the things that are going well and help improve practices that may fall a little short. We'll begin by looking at a fundamental question: are you fully qualified to do your work?

The first step in answering this question is to look at applicable qualification requirements imposed by law and professional associations. For example, ERISA and its regulations oblige enrolled actuaries and enrolled agents to fulfill examination and continuing education requirements to work on employee benefit plans. The IRS has specific eligibility requirements for attorneys who practice before it. Even if you believe you're current on your legal qualification requirements, it's wise to confirm that by checking the rules that apply to you. Regulations change, and it's important to keep up with them.

Similarly, many employee benefit plan professionals belong to one or more associations that have specific qualification requirements. Those requirements change rarely, and the associations normally provide ample advance notice before they do. Nonetheless, it's a good idea to review those requirements at least once a year to ensure that you remain in compliance.

The second step is somewhat more subjective and comes up most frequently for employee benefit plan professionals who are venturing into a new area of practice or returning to an area of practice that they haven't

MarcoVector / Shutterstock.com

"EVEN IF YOU ARE NOT A FIDUCIARY, YOUR GOOD WORK UNDERGIRDS THE AMERICAN SOCIAL SAFETY NET."

performed in some time. Assuming you're in compliance with legal qualification requirements, do you have the knowledge and experience to capably perform the work that you're doing? This question is sometimes referred to as the "look in the mirror test," i.e., can you look yourself in the eye and confidently state that you're qualified? That reference is something of a misnomer, though. If your qualifications are ever challenged, it will be third parties—an unhappy client, a professional disciplinary body or even a court—who will take a hard look at your qualifications if your work is deemed substandard. The better question might be, "Would one of my professional peers, or another reasonable person who knows what this work entails, agree that I am qualified to do it?"

If your answer to the second question is no, or even maybe not, don't despair (and don't just push through doing the best you can). There are ways to shore up your qualifications if you decide that they're shaky. You can work with another employee benefit plan professional whose qualifications fill in any gaps in yours. Depending on the nature of the work, you can involve that person throughout the project, or bring him or her in toward the end for peer review. Continuing education can also fill in gaps and update your knowledge. There's a wealth of material available online to choose from. If you intend to use that material to meet legal or professional continuing education requirements, however, make sure that you adhere to any rules about reviewing material in groups rather than alone and documentation of what you have completed.

And, speaking of continuing education, is yours up to date? Federal agencies and professional associations set specific continuing education requirements for employee benefit plan professionals, and you must satisfy them to be qualified. Some associations give a pass on continuing education to professionals who have met all regulatory requirements, but the scope of that pass may be up for debate. For example, an enrolled actuary whose practice extends beyond annual statement certifications may need continuing education in the additional areas. Applicable documentation requirements—i.e., proof of attendance— also must be met. Even if you believe those requirements don't apply to you, it's a good idea to keep hard or electronic copies of your continuing education records in case your qualifications ever come into question.

One area where qualifications can come into question is *pro bono* volunteer work. When an employee benefit plan professional donates his or her time to a worthy cause, it can be easy to assume that qualifications are less important. After all, the work is being done for free out of a generous spirit. Does it matter if the work is outside the scope of the professional's normal practice or involves questions that the professional normally doesn't address? The answer to that question is a resounding yes. An employee benefit plan professional must be qualified to perform whatever services to an employee benefit plan he or she provides, regardless of whether the work involved is for a fee or donated. This is not intended to encourage employee benefit plan professionals to avoid *pro bono* work, but to remind you to confirm your qualifications before taking on *pro bono* projects, however worthy the cause.

If all of this seems too demanding, bear in mind that employee benefit plan sponsors, as well as participants and their families, depend on you directly or indirectly to do a professional job. Even if you are not a fiduciary, your good work undergirds the American social safety net. It just makes sense to take a little time once a year to confirm that you're fully qualified to do it. **PC**


Madele / Shutterstock.com

403(B) SPECIALISTS WEATHER ROUGH SEAS

Retirement professionals serving 403(b) clients focused on communication and technology to overcome the impact of COVID-19. **By John Iekel**

Rogue waves arise out of nowhere and can cause devastation—but a skilled captain can navigate even that sudden terrifying turmoil. And so it is with COVID-19—skilled retirement plan specialists can steer deftly through these unexpected seas too. So what are retirement professionals in the 403(b) market doing in response to the pandemic?

EMPLOYEES

Employees are key to maintaining business operations at any time, and their importance only increases during days when every client is even more precious.

"This gave me a chance to have a true appreciation for my team and how valuable they are to me," says Kathy Cawley, President of the Voyager Group, Ltd. Robert Young, Managing Partner of One2One Wealth Strategies, strikes a similar tone: "One of the first things we did was get our own employees together and let them know we were not going to lay off or cut hours for anyone. My partners and I are well-prepared to weather any storm and although there was a drop in our AUM, we took 100% of the hit; we did not feel our employees should. This was critical, it let our team know they were safe and could focus on the clients."

CLIENTS

Service providers have been quick to seize the opportunity to be innovative in how they slice and serve the bread and butter of business—meeting clients' needs.

An essential ingredient to that has been sensitivity. "When this hit, my partners and I sat down with our

"SERVICE PROVIDERS HAVE BEEN QUICK TO SEIZE THE OPPORTUNITY TO BE INNOVATIVE IN HOW THEY SLICE AND SERVE THE BREAD AND BUTTER OF BUSINESS—MEETING CLIENTS' NEEDS."

operations manager, identified what was happening, how clients would likely react to this and how we could help them. There were multiple layers to this issue: people were scared of the virus, some were losing jobs or getting a reduced income while working. And on top of that, the global markets were on the verge of plummeting—causing investor confidence to drop as well," says Young.

Frank Owen, President of F.R. Owen & Associates, says his firm also sought to support clients and inspire confidence: "The first month or so we worked to reassure them of the options regarding their assets. Service (and promptness) was the reassurance they needed to confirm they could weather the storm and that we were still here along the way. We kept our office open, with proper protocol, protecting staff (we are very small) and making ourselves available for any issue that arose."

A personal approach has been a hallmark of the approach taken by Williams & Co. Financial Solutions, according to Gary Immink, a financial advisor representative there. "We have tried especially hard during COVID to reach out to individual clients either by phone or Zoom to communicate updates, take financial temperatures, and deal with possible concerns," he reports. And Immink is not alone. "I started calling clients to check in and make sure they were okay," says Cawley. Young's office, too, called every client.

And clients appreciate it. "I got a tremendous response back from clients who thanked me for keeping in touch," says Calwey. Similarly, Immink reports, "The fact that we didn't wait for the client to call us but got to them first is worth more than I ever knew and I was often told at the end of the call just how much that meant to the client." And says Young, "We had hundreds of clients thank us for being here for them and just talking them through this."

TECHNOLOGY TO THE RESCUE

The rapid-fire development of new technology and its application to communication and commerce, which already had been proceeding apace, could not have been better timed to help in a time such as this.

Young says that his operation prepared their entire staff to use Zoom for all video conferences and phone calls. For them, it was seamless; he says: "The great news is all our people have been using the platform for years during training and client meetings." Joe Avallone, Managing Partner, US Retirement Planning Associates, reports, "We had very much been an in-person type of office," but they have converted to using Microsoft Teams as a virtual appointment platform.

Now, many months after the turmoil began, some service providers are taking a hybrid approach in which they meet with clients in the office while observing social distancing and mask conventions, but also offer video or phone appointments as an option. Avallone is one: "When we call to offer appointments, clients can choose phone only or video conferencing depending on which they are more comfortable with. If someone prefers to come to the office, we have all the safety measures in place—temperature checks, masks, hand sanitizer and social distance."

THE BOTTOM LINE

"We followed the 'trinity': Maintain frequent communication, make yourself available for virtual or face-to-face meetings (following CDC protocols) to address client needs, and maintain visibility to your clients through virtual or live appointments," says Bruce Allen, President of Old Dominion Insurance & Investments. "The result: New business is up 60% year over year and profits improved since travel and entertainment costs are down," he notes.

"Now that we are months further into this crisis, we are finding clients are more open to discussing and deciding options related to their financial decisions by phone or email," says Owen.

"By acting and responding to our clients without panic or overstated worries, they have been reassured and we think that has helped cement our relationship even more," Owen reports. Says Immink, "If anything, COVID has reinforced the fact that being proactive with possible client concerns is paramount. I will continue to use this lesson as we move through COVID and beyond."

"These are challenging times, but we have done our best to step up quickly and adjust to them. Our main focus has always been and always will be taking care of our clients. Now more than ever we have seen the value in that and will continue to prioritize them, our staff and our community," says Avallone. PC

4 THINGS I WISH WE KNEW THEN

Yuganov Konstantin / Shutterstock.com

What we've learned as a 3(16) that I wish we knew as a TPA. **By Sue Perry**

My company has been offering 3(16) services since early 2014. Over the last few years, there are things I have learned that I wish I had known when I was only a TPA. I could have offered a better experience to our clients. Here are four of those lessons.

YEAR END CENSUS DATA

At the end of the year, we ask clients to provide us with a year end census data file. Many plan sponsors view this as a major headache.

In the year end census request, we ask for things that a payroll system can't easily generate. For example, payroll systems can't normally generate compensation from date of plan entry or hours worked for a salaried employee. I have seen requests asking for date of plan entry, which normally isn't stored in a payroll system. I have seen requests asking for excluded compensation without an explanation for what items are excluded. I have seen requests for W-2s that don't include certain Section 125 contributions, and then been asked to explain the compensation differences between the census file and the W-2s.

In our TPA company, we have started requesting inquiry access to clients' payroll systems. It allows us to help the client put together the correct census file. We can also create our own year end census file, which the clients just love.

The lesson we learned is that offering clients a way to obtain additional assistance in putting together a year end data request increased our customer satisfaction and reduced the need to rerun year end compliance testing.

YEAR END NOTICES

There are TPAs who issue year end notices to clients in late November. We get through October 15, try to get a few off-calendar plan years completed, and then turn our attention to the notices in mid-November. At least, that's not atypical for our TPA firm.

Did you know that a commercial printer will request 3-5 business days to print, fold, stuff and mail a notice? So if your client asks a printer to generate all of those notices and mail them out, they pretty much need the notices in their hands by November 15.

The recordkeepers who handle notice mailings often have cut-off dates for uploading year end notices as early as October 31. That's because of the time it takes to compile all of the notices and get them printed and mailed.

When the professionals handle these mailings, it becomes imperative that notices are produced in late October or early November. However, TPAs, who don't do the mailings for clients, often don't start the process of providing notices until mid-November.

At our TPA firm, we prioritize the notice creation at the end of October. The lesson we learned is that we should offer clients sufficient time to utilize commercial printing services to issue year end notes, and that means we must do notices earlier.

NEGATIVE CONTRIBUTIONS

From time to time, payroll processors make mistakes and adjust their company's payroll system by creating a negative paycheck. Many of the recordkeepers can't accept a negative contribution on the payroll upload files. One of two things happens next: either the negative contribution never gets adjusted at the recordkeeper or the client asks for help to get the money back. If the contribution never gets adjusted at the recordkeeper, the payroll system doesn't reconcile to the recordkeeping system. The client must now hunt for those adjustments, person by person, payroll by payroll. Not the most fun way to spend a day or two.

At our TPA company, we ask clients to notify us immediately if they have a negative contribution that won't post directly to the recordkeeper. That way we can assist them in recovering the funds. We can also reconcile the deposits without having to ask the client for assistance, which they appreciate.

We considered providing the clients with a spreadsheet and asking them to update it each pay period for any adjustments between the payroll system and the recordkeeping system. We weren't very popular after making that request, so we ceased this practice quickly.

The lesson we learned is that reconciling deposits at the end of the year is very difficult and time consuming. Teaching the clients to track these adjustments throughout the year reduces year end stress considerably. And it gets the negatives processed timely to avoid overpayment errors.

IDENTIFYING PLAN PARTICIPANTS

For smaller clients, all employees are in one office and the payroll/HR person knows everyone. A request for a loan or distribution can be verified easily with the participant so that the client knows the request is real. However, an HR/payroll person working at a company with 100 employees spread out in four locations is less likely to know everyone. A fraudulent request is harder to identify in those companies.

If the request is made online, there are procedures put in place by the recordkeepers to verify a participant's identity; for example, logging in with a PIN. But if the client allows for paper requests, it is much harder to verify a signature.

We strongly encourage our clients to use the electronic systems for all requests. However, this can be difficult in manufacturing, agriculture, hospitality and similar industries.

Our TPA now offers a service where we will reach out to the participant and verify that the participant actually made the request, for a fee. We ask the client to confirm something for the payroll system that isn't likely to be available on the "dark web," like the amount of state withholding taxes or FICA deducted on a particular paycheck.

The lesson we learned is that clients will distrust all service providers if money gets out in error due to a fraudulent request. Taking steps to help clients protect themselves is valued and appreciated.

> "STANDING IN THE SHOES OF THE PLAN SPONSOR HAS SHOWN US THAT WE, AS TPAS, CAN PROVIDE ADDITIONAL ASSISTANCE TO MAKE PLAN SPONSORS' LIVES EASIER"

CONCLUSION

You'll notice that none of these lessons relates to fiduciary liability. They are administrative in nature. Standing in the shoes of the plan sponsor has shown us that we, as TPAs, can provide additional assistance to make plan sponsors' lives easier. And happy plan sponsors means a well respected, profitable TPA firm! PC

THE MOTHER OF INVENTION(S)

Despite the travails of a world-wide pandemic, ASPPA Annual pivoted to a special "ASPPA All Access" platform in record time. By Nevin E. Adams, JD

Without question, 2020 has been an extraordinary year of change, both in terms of where we worked from and how we worked. And while ASPPA Annual has always provided a unique gathering of the nation's premier retirement plan professionals, with plenty of opportunity for the development and nurturing of relationships and future collaborations, the legislative and regulatory environment of 2020 combined to make these essential connections more vital than ever before.

So, how did they do it?

At a time when the future was anything but certain, the committee wanted to provide participants with a realistic planning target—and so, on June 30, it was announced that we were going to transform ASPPA Annual to an all-virtual event, and rebranded it "ASPPA All Access" with an eye toward solving not only the travel issues imposed by COVID-19, but also as an opportunity to expand access to the content and experts and to others who traditionally may not be able to participate in the in person event.

To accommodate the wide variety of time zones of attendees, while accommodating attendees operating in a WFH/COVID environment, the decision was made to spread the "wealth"—to schedule the 43 workshops and 7 general sessions over a 4-week period (MWF, 12-5 p.m. ET).

PICKING A PLATFORM

The platform chosen (Pathable) leveraged Zoom technology, but did so on a platform that made it easy for attendees to customize not only their attendee profile, but to connect with individuals of like interests and background.

UNSUNG HEROES

Sure enough, this year's speakers were, once again, a veritable who's who of knowledgeable experts and thought leaders. However, in this "year like no other," the unsung heroes of ASPPA All Access were the speakers, who not only had to convert their presentations to the new medium, had to learn that new platform, some had to learn the mechanics of recording their presentations, and all had to master the art of managing "virtual"—and highly interactive—Q&A in the platform's chat rooms. The content there was, in fact, so valuable that we received requests—and provided—transcripts of those chat interactions.

Speaking of those chat rooms, "highly interactive" hardly seems an adequate description for them, where attendees shared comments, asked for clarifications, posted up reference links—oh, and interacted with the speakers as well (see "By the Numbers"). In fact, these proved to be such a valuable enhancement to the attendee experience, we're considering new ways to incorporate that approach in our live events going forward.

TABLE ENABLED

Another innovation—a dozen select speaker table talks—enjoyed big turnouts, where attendees had a chance to get their questions answered from select speakers without having to linger in those post-presentation follow-up queues that have long been part of the ASPPA Annual experience.

Attendance was on par with the prior two years, but there were three times as many first time "attendees" as normal—more than 350, in fact. While the entertainment programs so popular at past events weren't possible, we were able to leverage the capabilities of the event platform to host "virtual hangouts" with an unprecedented level of customization, including special sessions for new attendees, events organized by geography, a special session for women attendees, and for those who were struggling to balance the challenges of work and kids at home. We even had one for individuals who were studying to prepare to obtain a new credential.

As compelling (and necessary) as was the agenda, speakers, and engagement, it wasn't all information sharing and networking. With ASPPA All Access we achieved a whole new level of "gamification" as the participation, interactivity, and engagement added up to a very active leader board of points participants.

LOOKING AHEAD

Much was learned during this process, and the extraordinary level of "chat" engagement during the sessions, not to mention the big turnouts for the virtual table talks are elements that we'd like to bring to our live events going forward. All in all, ASPPA "All" Access lived up to its billing—thanks to the enthusiasm, resilience, creativity and commitment of the committee, the speakers, and participants alike! PC

All Access—By the Numbers

368
first time attendees

1,149
total attendees

11,857
public conversations


QUIZ