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WINTER 2024

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THE GREAT AUTO ENROLLMENT DEBATE

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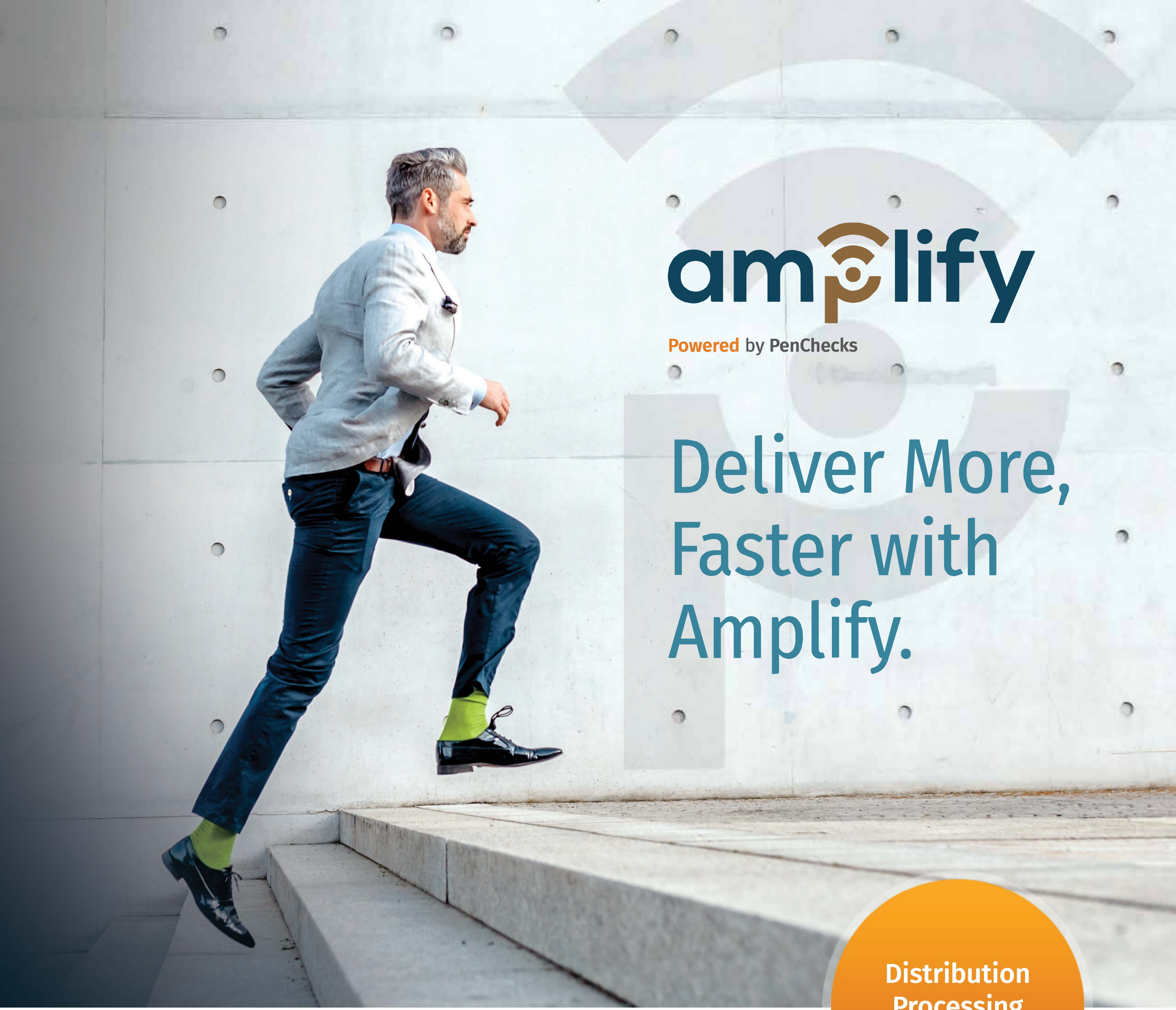
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2024, THE YEAR OF THE... HSA?

Participants are ready to talk about HSAs. Is the industry ready to face the challenges with adoption, improved education, transparency and investment strategies? **By Joey Santos-Jones**

Health Savings Accounts (HSAs) have seen a massive rise in popularity and utility since their inception. A recent report by Morningstar Inc. highlights this growth, noting a staggering 21-fold increase in HSA investments since 2006, reaching approximately $116 billion. This growth trajectory is impressive but highlights areas needing refinement, such as user education, cost efficiency, and legislative support.

HSAs, initially designed as mechanisms to cover immediate medical expenses, have evolved. They now serve a dual purpose: acting as both spending accounts for current healthcare costs and investment vehicles for future medical expenses. Morningstar's evaluation of 10 leading HSA providers reveals a mixed landscape regarding their effectiveness in these roles.

The study's findings are intriguing. When considering HSAs as spending accounts, most providers received favorable ratings. However, the scenario shifts when looking at HSAs as investment accounts. Only four out of the ten providers were rated as 'high' or 'above average.' This discrepancy underscores a significant gap in the market: the need for better investment-focused HSA options.

Fidelity and HealthEquity emerged as frontrunners, excelling in the spending and investing categories. This distinction is crucial, highlighting the potential for HSAs to be more than just a short-term solution for medical expenses.

One of the report's key takeaways is the need for increased awareness and education among HSA participants. Many users must be aware of the potential to use these accounts as long-term investment tools. This lack of knowledge is a barrier to maximizing the benefits of HSAs. Providers, along with financial advisers, can play a pivotal role here. By offering more comprehensive educational resources and simplifying the account setup process, they can encourage users to view HSAs as integral parts of their long-term financial planning.

The report also sheds light on the challenges faced by HSA users, such as navigating complex account details, high fees, and the requirement of maintaining a minimum balance before investing. These issues, coupled with generally low-interest rates on HSA balances, can deter potential users and limit the growth of these accounts.

Interestingly, the report suggests that legislative changes could significantly impact the future of HSAs. Employers can automatically enroll employees in retirement plans but not in HSAs. If this were to change and HSAs were included in automatic enrollment policies, we could witness a substantial increase in their usage. This change would boost the popularity of HSAs and lead to improved services and features as providers respond to a larger, more engaged user base.

However, with increased investment in HSAs comes the need for a more nuanced approach to asset allocation. Unlike traditional retirement accounts, HSAs may require funds for unforeseen medical expenses, necessitating a more conservative investment strategy.

Despite the market downturns in 2022, HSA investment accounts have shown resilience. Both total and average assets in these accounts have grown, indicating a robustness that bodes well for their future as investment tools.

The first half of 2023 has continued this trend, suggesting a growing confidence in HSAs as viable long-term investment vehicles. This shift in perception and usage of HSAs could redefine how individuals plan and save for healthcare costs in the future.

HSAs have come a long way since their introduction, but there's still much room for improvement. Enhancing user education, increasing transparency, and easing investment are crucial steps. Additionally, legislative support could unlock even more potential for these accounts. As the industry matures and adapts, HSAs could become a cornerstone of personal financial planning, offering a balanced approach to managing current and future healthcare expenses.

The evolution of HSAs is a testament to the dynamic nature of financial planning tools in response to changing market and consumer needs. As we look to the future, the continued growth and refinement of HSAs will likely play a pivotal role in shaping how individuals manage healthcare expenses. With the potential for legislative enhancements, improved provider offerings, and a deeper understanding among users, HSAs stand at the cusp of transforming from mere savings accounts into powerful, multifaceted instruments for financial security and healthcare readiness. The journey of HSAs is far from complete, and their full impact on personal finance and healthcare funding remains an unfolding story, rich with possibilities and opportunities for both investors and the industry at large.

Joey Santos-Jones
Editor

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AGENTS OF CHANGE

It's been a year of transformative leadership. Let's take time to reflect on the ASPPA Annual and the journey ahead. **By Amanda Iverson**

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

As I gear up to step in the role of ASPPA President in 2024, I'm buzzing with excitement and a sprinkle of nostalgia. My time as President-Elect under the leadership of my buddy, Justin Bonestroo, has been a learning experience. And now, as we approach a new chapter, another friend, J.J. McKinney, is set to join us as the incoming President-Elect, to form what feels like an expanded collaborative dream leadership team. Reminiscing about the 2023 experience, while looking forward to the 2024 journey, fills me with perspective, gratitude, and excitement.

The past year has been a whirlwind of transformation and challenges for many. The introduction of SECURE 2.0 legislation marked a significant shift in our industry and continues to affect all of us. At home, I navigated a complex array of challenges this year: stepping into the CEO role at Pinnacle in January, and at the same time assuming the President-Elect responsibilities at ASPPA, adapting to my oldest child's driving independence (drivers, be alert!), and managing a few additional unexpected hurdles. It has been quite the experience this last year (to put it mildly). And I know I'm not alone in feeling the whirlwind of this year! Yet, despite each of our trials, we've all shown remarkable grit and dedication. Reflecting on this fills me with immense gratitude. Thank you all for your unwavering dedication to our industry and for positively impacting the lives of others.

Many of us recently returned home from the ASPPA Annual Conference, "Agents of Change." It was perfectly themed for 2023 and lived up to its hype. Attendees dove into real-world scenarios, attended first rate education sessions, gained insights from Capitol Hill, engaged in roundtable discussions, tiptoed into the world of AI, and sparked the problem-solver agents within each of us. The conference created a path for growth, education, engagement, connection, and professional excellence.

Of course, ASPPA Annual also had plenty of entertaining shenanigans! Bobert 2.0 (also known as Bob and Robert) injected humor into our SECURE 2.0 education, Family Feud hilariously proved even the attorneys never want to make the actuaries mad, and JJ and Kizzy showed they were born to be game show hosts. Tuesday's ASPPA at Night event was the cherry on top with the live band in full swing, costumes galore (special thanks to my pal Kelsey Mayo for making us the ultimate Spy vs Spy outfits!), and connections sparking left and right –this all is definitely etched in the Annual conference memory lane!

Amidst the strides in 2023, scaling new heights in growth and development, we were reminded of life's unwavering constant: change. Our industry's individual responses to those tougher reminders stood out to me this year. It seems to me that it's been a year of rallying around our own.

When our dear friend, Mickie Murphy, tragically faced a life-altering accident, I witnessed the outpouring of concern and generosity from colleagues and friends throughout the country for her. This was a powerful testament to both who Mickie is and also who the people within ARA family are. Mickie's positivity and resilience is truly inspiring, to say the least.

And while we navigated the waves of change, we also felt the pang of loss this year. We sadly said goodbye to a one-of-a-kind actuary legend, Tom Finnegan. Again, the outpouring of support for his family and friends has been something incredible to witness. The touching stories many shared about Tom have been a testament to his beloved and respected presence among us. ASPPA's tribute to his legacy by renaming the Educator's Award in his memory was a poignant reminder of the indelible impact he left.

At the Annual Conference, seeing Adam Pozek receive the inaugural Thomas J. Finnegan III Educator of the Year Award was a special privilege and moment. Adam was one of the first to welcome me into the ASPPA community many years ago and remains a close friend today. Adam's embodiment of the educational and mentorship spirit that Tom championed is undeniable. Later at the conference, Nevin Adams winning the Harry T. Eidson Founders Award was another well-deserved special event. Nevin's contributions to our industry throughout his career are far too long to list and his impact is significant. Nevin's words, "What we do really does matter," say it best. It is the collective efforts of individuals like these that contribute to making ASPPA what it is.

Looking forward, in 2024 we will celebrate the 50th anniversary of ERISA—an occasion that signifies both enduring legacy and future potential. The Annual Conference will relocate to Orlando for 2024. This move is more than just a change of scenery—it's a indication of ASPPA's commitment to listen to membership feedback and to continually metamorphose. With the collaborative (dream) leadership team intact, we are dedicated to ASPPA's mission and strategic initiatives. Together, as agents of change, we are committed to making retirement a reality for many more individuals across our nation. I'm excited to connect, collaborate, and celebrate our shared successes in 2024. Here's to a journey of education, growth, innovation, transformation, and of course, lasting relationships. ASPPA Nation, together, let's continue to drive positive change. Cheers to making a difference! PC

WHY ARA SUPPORTS DOL'S PROPOSAL TO MODERNIZE THE REGULATORY DEFINITION OF INVESTMENT ADVICE

It will ensure that advice given to plan sponsors with respect to plan investments under any and all circumstances is required to comply with the fiduciary standards of ERISA. **By Brian H. Graff**

The mission of the American Retirement Association—since it was founded in 1966–is to expand and strengthen the employer-based retirement plan system so that working Americans have the opportunity to achieve a comfortable retirement.

Consistent with this mission, the organization embraced the enactment of ERISA in 1974 because it included a principles-based fiduciary standard designed to protect the interests of both plan sponsors and participants.

A central component to this protection is that a service provider offering investment advice for a fee to a plan with respect to plan assets must do so consistent with ERISA's fiduciary standard. The definition of what constitutes "investment advice" under ERISA is thus extremely important.

The regulatory definition of investment advice was first promulgated in 1975. Under the regulation, a service provider is considered to be giving investment advice

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"CONSISTENT WITH ITS MISSION, ARA FOR OVER 20 YEARS HAS RAISED CONCERNS THAT THE EXISTING REGULATORY DEFINITION OF INVESTMENT DEVICE IS ILL-SUITED FOR ADVICE GIVEN TO PLAN SPONSORS WITH RESPECT TO PARTICIPANT-DIRECTED 401(K) RETIREMENT PLANS."

if the service provider:
(1) renders advice to a plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property; (2) on a regular basis; (3) pursuant to a mutual understanding; (4) that such advice will be a primary basis for investment decisions; and that (5) the advice will be individualized to the plan.

This is commonly known as the "five-part test." Needless to say, the retirement plan landscape has changed dramatically since 1975, including the advent of the participant-directed 401(k) plan which has grown to become the predominant employer-based retirement plan.

Expanding access to employer-based retirement plans is another central part of ARA's mission. It is well established that workplace retirement plan coverage is the critical gateway to enable working Americans to reach their retirement savings goals.

In furtherance of this mission, ARA has spearheaded and supported numerous initiatives to expand retirement plan coverage, including several tax incentives included in SECURE 2.0 to make it easier for small businesses to establish retirement plans for their employees and state-based mandates—now in fourteen states—that require employers above a certain size to adopt a workplace retirement savings program. Over the next five to seven years, it is estimated that hundreds of thousands of new small business retirement savings plans will be created.

Consistent with its mission, ARA for over 20 years has raised concerns that the existing regulatory definition of investment device is ill-suited for advice given to plan sponsors with respect to participant-directed 401(k) retirement plans.

Specifically, we strongly believe the "regular-basis" prong of the "five-part test" should not apply with respect to investment advice given to a plan sponsor regarding investment options offered in a participant-directed retirement plan. Under ERISA, an employer as a plan sponsor is acting in a fiduciary capacity when selecting an investment advisor and/or provider of plan investment options.

Since a plan sponsor is making decisions on behalf of all participants and beneficiaries, it is absolutely essential that such a fiduciary plan sponsor be able to rely on the fact that their investment advisor will be subject to ERISA's fiduciary standards regardless of whether such advice is given just once or on a "regular basis."

The need for this change was made more important when the SEC's Regulation Best Interest was finalized. Although that regulation enhanced individual investor protections it does not apply to institutional advice, including advice to a plan sponsor with respect to plan investments, regardless of the size of the employer or the plan.

Thus, a small business owner, likely to be an unsophisticated investor, could be left without any regulatory protections for the owner and plan participants when "sold" a plan and the "regular basis" prong of the current five-part test has not been met.

Policymakers at both the federal and state levels have enacted numerous provisions intended to expand retirement plan coverage, particularly among smaller businesses. Whether in response to a state requirement or looking to take advantage of the tax incentives in SECURE2.0, small business owners establishing a retirement plan for employees for the first time should never be left without any regulatory protections when getting advice with respect to plan investment options.

To be clear this should not mean that proprietary investments or commissions or similar-based compensation models should be restricted when retirement plans are offered to small businesses or any other plan sponsor for that matter.

Rather, such investments and fee or compensation structures should be addressed as provided under current statutory or class exemptions that apply today when the advice is part of an ongoing relationship and is already subject to ERISA's fiduciary standards. ARA as a matter of policy is and always will be business model neutral with respect to the retirement plan marketplace.

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

ARE WE ON THE VERGE OF A RETIREMENT SAVINGS REVOLUTION?

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Auto-enrollment was introduced in retirement plans more than ten years ago. Since then, studies have shown that auto-enrollment into a retirement plan works. **By Shannon Edwards**

Do you remember what life was like before the internet? I do. I remember when email was first a thing. I even remember dial-up and the noises it made or the feeling you had when you heard the words "you've got mail." I also remember what life was like before 401(k) plans had auto-enrollment features and when they were introduced, most of them thought it would never fly. Now, here we are and they are required as a plan design.

Auto-enrollment was introduced in retirement plans more than ten years ago. Since then, studies have shown that auto-enrollment into a retirement plan works. Many more plan participants are now saving for retirement. Many employees who are auto-enrolled don't opt out, and auto-enrolling participants have helped to overcome the decision paralysis that some participants experience when having to make a decision about enrolling in the plan. It has improved plan participation rates, but even better, it has improved the lives of many employees who may not have otherwise participated in their 401(k) plan.

Over the years, auto-enrollment has evolved and changed. At first, it was adopted by larger employers with human resource teams who could manage the program. More recently, we have seen automatic enrollment trickle down into the smaller plan market but not as much as we would like.

Our most successful automatic enrollment story started because the client was tired of failing the annual non-discrimination test and having to make refunds to their highly compensated employees. They were hesitant to adopt an automatic enrollment feature at first. They had over 1000 employees at the time, and the majority of their employees did not speak English.

In fact, they spoke three or four other languages. They were concerned about how the new automatic enrollment feature would be communicated to their participants in a manner that they would understand and how it would be accepted. They were also concerned about how to manage the program internally. There was a potential for errors that would cost the company money. In the end, they adopted not only the automatic contribution arrangement but also the qualified automatic contribution arrangement. They liked the idea of having some sort of vesting schedule, albeit a short one.

They opted to enroll the participants at a lower deferral level and use the auto increase feature for fear that their employees would be scared off by the higher level. They worked internally to develop policies and procedures for enrolling participants and managing the automatic increase.

Most importantly, they found one trusted employee for each foreign language spoken who was fluent in that language and trusted by his peers to explain the new auto-enrollment feature. Not only were they successful in enrolling employees, but they also opted for auto increases. Since SECURE, they have even auto-increased up to 15% now. Occasionally, even their experienced human resource and payroll departments make mistakes and miss an auto-enrollment or an auto-increase. However, the correction principles for auto-enrollment have greatly improved over the years, and if the error is caught relatively soon, it is less expensive to correct. The most important points here are that the client considered their plan design options carefully, they took steps to make sure that the participants understood what would take place if they took no action, and they ensured that their internal policies and procedures supported the automatic enrollment arrangement.

In my opinion, we haven't seen a lot of smaller plans adopt automatic enrollment features because of the policies and procedures that need to be built into their internal payroll procedures and the potential for making errors and having to fix them. However, in the past few years, we have seen a shift in this due to the impact of state-run plans.

More importantly, in 2025, SECURE 2.0 requires most new plans established after the law was signed to include an automatic enrollment feature. There are some exceptions for employers with less than ten employees or who have been in business for less than three years. However, once they have been in business for more than three years or hire their eleventh employee, they will be subject to the requirement to add an auto-enrollment feature. Therefore, it's time to accept automatic enrollment as the new normal moving forward as we adopt new plans.

Interestingly, the new requirement to add an automatic enrollment feature has changed the plan design conversation significantly. We are having those conversations now rather than waiting until 2025. Our opinion was that since they were brand new plans that had never had a plan without an automatic enrollment feature, why not just go ahead and add it now instead of waiting for 2025 and giving them two years to get used to not having it?

Many small employers are using safe harbor contributions to meet their non-discrimination testing. Under the automatic enrollment rules, a safe harbor contribution has been available to plans that want to use the Qualified Automatic Contribution Arrangement. The QACA safe harbor contribution can cost the employer up to one-half of one percent less than a traditional safe harbor match contribution or

"MORE IMPORTANTLY, IN 2025, SECURE 2.0 REQUIRES MOST NEW PLANS ESTABLISHED AFTER THE LAW WAS SIGNED TO INCLUDE AN AUTOMATIC ENROLLMENT FEATURE."

the enhanced safe harbor match contribution, in addition to the QACA safe harbor matching contribution, allows for a two-year vesting schedule vs the other safe harbor contributions that require full and immediate vesting. However, many smaller employers were still hesitant to adopt the QACA safe harbor because of the potential errors if the automatic enrollment is not properly enacted or the automatic increases are not initiated promptly. There is an error that must be corrected.

However, as I mentioned earlier, with changes in the IRS' voluntary correction program over the years, the cost of the correction, especially for plans that have an automatic enrollment feature, is much less depending on how quickly the error is identified and if proper and timely notice is given to the participant.

Now that SECURE 2.0 generally requires most new plans to have an automatic enrollment feature beginning in 2025; the plan design conversation should include a conversation around the QACA safe harbor matching contribution formula versus the standard safe harbor matching contribution formula. Our conversations are also centered around the fact that the plan can use a two-year vesting schedule for the QACA match. The option to use a two-year vesting schedule became very important in one recent plan design meeting where the client wanted to allow employees to be eligible to make 401(k) deferrals when they became eligible for health insurance after sixty days. They didn't want to worry about the new long-term part-time employee rules. They didn't want a separate eligibility requirement for the QACA safe harbor match and risk losing their top-heavy minimum contribution exemption due to a lack of guidance from the IRS.

However, they have a high turnover in the first year or two of employment due to their industry. The two-year vesting schedule allowed us to meet all of the client's plan design goals and we used the QACA safe harbor contribution rather than the traditional safe harbor contribution.

The second part of the conversation concerns what percentage does the client want to auto-enroll their employees. In my opinion, the biggest pitfall when using automatic enrollment and automatic increase is making sure that the client understands what is required and that builds internal procedures into their payroll procedures to make sure that both the auto-enrollment is acted upon and so is the auto-enrollment required. Therefore, the discussion centers around whether or not the client wants to auto-enroll their employees at the minimum required percentage and be subject to the auto-increase rules annually or would prefer to auto-enroll the participants at the maximum percentage allowed and avoid the automatic increase. There are pros and cons to both methods. Realistically, the automatic increase requirement is just another opportunity for the client to make a payroll mistake that must be corrected. Therefore, the person running payroll must understand what is required and what needs to be done at enrollment and annually.

In short, I am a huge proponent of automatic enrollment or anything else we can do to improve retirement outcomes and close the retirement savings gap. There are challenges in ensuring the automatic enrollment and automatic increase are properly adopted, enacted and maintained. The beauty of the new requirements under automatic enrollment is that they are forcing us to adopt plan design features that have been shown to improve retirement readiness. We must have more in-depth conversations during the plan design process with our clients. We now have to understand automatic enrollment and auto increase, which are generally new concepts to most people, even if they are somewhat familiar with 401(k) plans. It creates an opportunity for us to be more consultative as an industry. Will auto-enrollment revolutionize retirement savings like the internet did business? Who knows, but we are about to see. PC

THIRD TIME'S A CHARM

It's back —back again. A revamped fiduciary rule aimed at shielding retirement savings, is sparking a fierce industry backlash and setting up perhaps a high-stakes political showdown. **By Michael P. Kreps**

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President Biden announced the Department of Labor (DOL)'s new fiduciary rule from the White House surrounded by advocates, government officials, and even a few representatives of the financial services industry. If you thought the event looked much like President Barack Obama's fiduciary rule announcement eight years ago, you are not alone. The similarities were hard to ignore, and perhaps that is fitting given that the new Biden rule is not all that different from the Obama rule, at least from a policy perspective.

The White House and the DOL framed the new fiduciary rule as a narrowly tailored regulation necessary to protect consumers in light of changes to the retirement system over the past five decades. For example, Biden described the proposal as an effort to eliminate "junk fees," and a senior political official at the department argued that the proposal is a "more targeted approach" than the department's prior efforts. However, this framing does not do the proposal justice.

The new proposal – like the 2016 rule vacated by the 5th U.S. Circuit Court of Appeals – is a sweeping regulatory overhaul that would change how much of the retirement services industry interacts with plans, participants, and individual retirement account owners. The centerpiece of the proposal is a new definition of what constitutes "investment advice" under the Employee Retirement Income Security Act. It would replace the current bright-line, five-part test for fiduciary advice with a muddier standard that is dependent on the specific factual circumstances and based on the reasonable (and arguably subjective) expectations of retirement investors. The department believes the current test for fiduciary advice has undermined ERISA's consumer protections by, for example, not holding a financial professional to a fiduciary standard of care when providing one-time advice or recommending rollovers.

The crux of the department's policy disagreement with many in the retirement industry is that the agency "rejects the purported dichotomy between a mere 'sales' recommendation… and advice… in the context of the retail market for investment products." In other words, the department believes individuals have enough trust and confidence in financial professionals that they cannot reasonably be expected to differentiate between marketing and advice. Consequently, the new proposal would make the dividing line between fiduciary advice and non-fiduciary marketing grayer, meaning that many retirement service providers are going to find it difficult and, in some cases, impossible to know when they are actually providing fiduciary advice.

That level of uncertainty might be acceptable for a regulator seeking to maximize its enforcement tools, but it is a tough pill to swallow for an industry that needs clear rules so it can efficiently distribute retirement products and services at scale. The consequences of inadvertently providing investment advice can be severe, particularly in the context of commission-based transactions. For example, a provider could be liable for not only breaches of the fiduciary standard of care but also excise taxes.

Many in the retirement service industry have raised practical and policy concerns with the department's previous efforts, and several groups even met with the department and the White House before the release of the newest rule. However, the department apparently has not been swayed by their arguments because the new proposal retains much of the substance from the 2016 rulemaking and does little to address concerns from critics. The changes the department did make are largely aimed at improving the rule's chances of surviving a legal challenge.

Now, familiar battle lines are being drawn, and the political fight is heating up. One insurance industry trade association accused the administration of engaging in "scare tactics to push regulations that will hurt Americans" while Rep. Virginia Foxx, R-N.C., chair of the House Education and Labor Committee, stated, "This latest proposal is just new lipstick on the same old pig, and it will harm retirement plans, retirees, and savers." On the other side, AARP called the proposal a "critical step" to protecting retirement funds, and Sen. Bernie Sanders, I-Vt., chair of the Senate Health, Education, Labor and Pensions Committee, called the fiduciary rule "a victory for working families."

It remains to be seen whether the department will be able to get its new fiduciary rule across the finish line in the face of motivated opposition, and if the department does succeed, a court, Congress, or a new administration could still unwind the rule. The only thing for certain at this point is that the fight over this fiduciary rule is shaping up to be a lot like the fight over the last one. PC

"IT REMAINS TO BE SEEN WHETHER THE DEPARTMENT WILL BE ABLE TO GET ITS NEW FIDUCIARY RULE ACROSS THE FINISH LINE IN THE FACE OF MOTIVATED OPPOSITION, AND IF THE DEPARTMENT DOES SUCCEED, A COURT, CONGRESS, OR A NEW ADMINISTRATION COULD STILL UNWIND THE RULE."

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HSAS: THE ULTIMATE 401(k) SUPPLEMENT

Health issues can arise at any time. And during retirement, many may turn to their 401(k) for the funds to address them—but health savings accounts (HSAs) are another option. **By John Iekel**

Sara Caddy, Benefits Manager and Vice President at Dimensional Fund Advisors, and Tara Kahler, Human Resources Manager at Whiteford, Taylor & Preston, in a recent Plan Sponsor Council of America (PSCA) webinar shared their perspectives on how HSAs can augment a 401(k).

SETTING THE TABLE

"Emergencies are going to happen to you," said Kahler. Caddy suggested that the need for funds to cover such matters can be broader than just one incident, remarking, "I don't think people realize how much money will be spent on health care during their retirement years." In addition, Kahler pointed out, Medicare—a coverage option for many—isn't free, despite the common assumption that it is. "Many people are caught off guard by Medicare costs," she said.

Some 401(k) participants take hardship withdrawals or loans to cover the costs of medical care. Not only does doing so reduce the size of one's 401(k), Caddy and Kahler point out, it also has other consequences. Among them:

- the loans can set a participant back in saving for retirement;
- hardship withdrawals are subject to income tax on any untaxed funds, as well as penalties if the person taking the withdrawal is younger than age 59½;
- borrowed funds do not earn investment returns; and
- borrowed funds must be repaid.

How much will that be? Panelists cited statistics showing that a 65-year-old who retires in 2023 can expect to spend $157,5000 on health care during retirement. They further cited statistics saying that for tax year 2023, a 55-year-old with family health coverage could save up to $38,750 per year if he or she combines a 401(k) and an HSA.

ENTER HSAS

HSAs are a savings vehicle that can supplement a retirement plan, observed Caddy. She added that 401(k) s are a great savings vehicle, but HSAs are ideal for health care expenses in retirement. And part of the reason for that, she said, is the triple tax advantage that HSAs offer, which gives them an advantage over 401(k)s—whose distributions are taxed—for use in paying for health care.

Kahler elaborated on that advantage, observing that HSA distributions are not taxed on contributions to them, nor on earnings on investments made with their funds and from interest on the accounts, nor on withdrawals.

Kahler also pointed out that HSAs belong to an employee and not an employer, are portable, and are not subject to vesting.

And since an HSA can be drawn upon to help cover health-related expenses during retirement, said, Kahler, "it is considered a retirement vehicle." In addition, she suggested that HSAs can help preserve balances in other retirement accounts, remarking that HSAs help reduce the number of hardship withdrawals that might otherwise be taken from a 401(k) or other account if an emergency occurs.

Shelby George, JD, CEBS, CEO of Perspective Partners, Kelley C. Long, CPA/PFS, CFP®, and Karin Rettger, President of Principal Resource in an article that appeared in the Plan Sponsor Council of America publication *Defined Contribution Insights* took a look at HSAs and 401(k)s, as well as the relative advantage and disadvantages of using an HSA.

PLAN FEATURES

Measure	HSA	401(k)
Reduce Taxable Pay for Federal and State Law	X	X
Reduce Taxable Pay for FICA	X	
Investable in Mutual Funds	X	X
Tax-Free Withdrawals for Medical Costs	X	
Take it With You if You Leave Your Employer	X	X

COMPARING HSAS AND 401(k)S

Benefits of HSAs (vs. 401(k)s)	Drawbacks of HSAs (vs. 401(k)s)
· Always 100% vested · Pretax contributions for all taxes, including FICA · Tax-free distributions for qualified medical expenses · Tax-free investment earnings · Always 100% portable · No required minimum distributions during lifetime · Pay-outs at any time for any reason (not subject to tax penalty before age 65) making it both a short-term and long-term savings tool	· Lower contribution limits · Not available for loans · Match may be higher in 401(k) · 401(k) investment funds may have lower fees depending upon plan size

MORE THAN HEALTH CARE

The PSCA in its 2022 HSA survey found signs that even then retirement plans were starting to influence HSA program designs. To wit: half of large employers—and more than one-third of respondents overall—indicated that they do, or will, position the HSA as part of a retirement savings strategy to employees.

Similarly, Kahler and Caddy suggest that employers and plan administrators communicate to employees and HSA holders that HSAs are not just part of health coverage but can be a part of a retirement strategy.

Caddy and Kahler emphasize with employees that they should:

- Make sure that their HSAs are funded. "HSA plans are not considered active until they are funded," Caddy remarked.
- Not leave free money on the table, by (1) making sufficient contributions to a 401(k) account that will make them eligible for an employer match; (2) making the biggest contributions they can to their HSAs; and (3) continuing to contribute to a 401(k).
- Remember that they have an opportunity to make investments through an HSA.
- Try to limit HSA withdrawals so the funds are available for future medical expenses and/or medical emergencies.
- Try to avoid withdrawals from their 401(k)s to cover medical expenses.

George, Long, and Rettger argue that while HSAs will not replace 401(k)s, in addition to their short-term savings power HSAs also should be considered a long-term retirement savings vehicle. "The power of an HSA alongside a 401(k) makes the two an unbeatable pair," they wrote.

George, Long, and Rettger suggest that the following steps can help one to make the most of an HSA and 401(k):

- Deposit the first dollar into an HSA for eligibility
- Save an amount equivalent to the employer's match in a 401(k)
- Contribute to an HSA to the maximum amount allowed, or as at least much as one can manage
- Invest in an HSA for future expenses.

"Incorporating HSA education as part of a broader financial wellness program throughout the year with multiple touch points, perhaps alongside your retirement plan education, would go a long way towards reframing HSAs," said Ann Brisk, director of strategic partnerships at HSA Bank. "It is encouraging to see data documenting the expansion of these valuable resources across a wide variety of employer sizes and worker populations."

THE BOTTOM LINE

There is "one less thing to worry about if we have an HSA to dip into," remarked Kahler. PC

ERISA PLAN LITIGATION—UPDATE ON BLACKROCK TDF LAWSUITS

Miller Shah LLP recently launched lawsuits against several major corporations, targeting their choice of the BlackRock LifePath target date fund (TDF) in 401(k) plans. Alleging ERISA fiduciary violations, the suits claim the fund underperformed compared to other TDFs, emphasizing performance over fee comparisons. **By Nevin Adams & Andrew Remo**

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Beginning in August 2022, the law firm Miller Shah LLP targeted nearly a dozen different 401(k) plans, including those sponsored by large companies like Booz Allen Hamilton Inc, Capital One, Cisco Systems Inc., Genworth Financial Inc., Marsh & McLennan Cos, Microsoft, Stanley Black & Decker Inc., and Wintrust Financial Corp., that were holders of the BlackRock LifePath target date fund (TDF). The Miller Shah LLP lawsuits allege ERISA fiduciary violations because the investment performance of the BlackRock Lifepath fund was notably worse than other TDFs in the market, even though the BlackRock Lifepath was a passively managed index fund with lower fees–and, unlike the target-date funds the plaintiffs claimed were more appropriate performance benchmarks, the BlackRock funds relied on a "to" retirement glidepath design for allocation of funds, while the others incorporated a "though" retirement assumption. In other words, these novel ERISA fiduciary lawsuits ignored a comparison of fund fees and instead focused on a comparison of fund performance.

WHAT IS A TDF AND WHY ARE THEY IMPORTANT?

A TDF is a type of investment fund associated with a specific target retirement date. The target date corresponds to the approximate year

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when an investor plans to retire. The fund manager creates an asset allocation strategy based on the target retirement date. This strategy typically includes a mix of different asset classes, such as stocks, bonds, and sometimes other assets like cash or real estate. Over time, the fund's asset allocation gradually shifts as the target dates approach. TDFs are often used as the default investment option in retirement plans, which makes them a target of litigation questioning the appropriateness of these fund's asset allocation, risk profiles, and now investment performance. As noted above, there were different design characteristics of the BlackRock TDFs from the target-date funds the plaintiffs argued were more appropriate benchmarks.

ARA AMICUS BRIEF

As the federal courts turned their attention to these lawsuits in October 2022, the American Retirement Association (ARA)–along with the American Benefits Council (ABC) and the ERISA Industry Committee (ERIC)–weighed in with a "friend of the court" brief in support of the plan fiduciary Defendants in the Booz Allen case. The brief argued that the Plaintiffs cherry-picked a set of so-called comparator funds with little in common with the challenged BlackRock funds beyond the target date fund label. The brief additionally cites the Plaintiff's "myopic fixation on a single variable [investment performance] among many that fiduciaries must consider in determining plan investment offerings" that would create "particularly menacing prototype for fiduciary strike suits". The brief concludes that allowing the lawsuit to move forward based on this flawed theory would open the floodgates to lawsuits against every 401(k) plan in the country and force plan fiduciaries to act in a way that is clearly contrary to law.

OUTCOMES OF THE LAWSUITS

In December 2022, two of the lawsuits challenging the prudence of 401(k) plans holding the BlackRock Lifepath target date funds–including the Booz Allen case which included ARA's amicus brief–were dismissed following oral arguments for failing to present a plausible case but were allowed two weeks to correct those shortcomings. They did so by basically adding in two additional points of performance comparison; the S&P Target Date Indices and application of the Sharpe Ratio, the latter an indicator of market risk. However, the The Plaintiffs initially filed a notice of their intent to appeal the dismissal but in May 2023 they effectively said never mind after a nearly identical case involving Microsoft's 401(k) plan was dismissed in a different federal court.

Finally in August 2023, the Plaintiffs in these lawsuits lost again when another federal court dismissed the lawsuit against the fiduciary Defendants of Cisco Systems Inc's 401(k) plan.

That said, two of the more recent decisions have been less than encouraging for fiduciary defendants. In September, a federal judge found the plaintiffs arguments

"THE BRIEF ARGUED THAT THE PLAINTIFFS CHERRY-PICKED A SET OF SO-CALLED COMPARATOR FUNDS WITH LITTLE IN COMMON WITH THE CHALLENGED BLACKROCK FUNDS BEYOND THE TARGET DATE FUND LABEL."

in the Genworth case to be "factual disputes" that were more appropriate for full consideration at trial, rather than to simply allow them to be brushed aside at the motion to dismiss stage. While he acknowledged that there had been different decisions made–with similar facts presented - in two other cases in another federal district court in Virginia, U.S. District Judge Robert E. Payne ruled that the plaintiffs in the Genworth case had alleged "facts that show that the breach caused the loss because a prudent fiduciary properly monitoring the performance of the BlackRock TDFs would have replaced the funds." He determined that the case presented was "materially different" than those other cases–all of which he explained had been provided an opportunity to amend their suits–and thus found those conclusions at the motion to dismiss level irrelevant to his determination. He also noted that, unlike those other cases, the Genworth Investment Policy Statement (IPS) included the S&P Target Date Index as a benchmark.

Most recently, in October the defendants in a case involving the Marsh & McLennan Companies 401(k) Savings and Investment Plan also won their motion to dismiss the claims–but with a potential "catch." The case–which, unlike the other suits, also involved questions regarding the inclusion and retention of a proprietary fund (the Mercer Emerging Markets Fund), though the plaintiffs hadn't invested in that fund–explained that the "duty of prudence does not compel ERISA fiduciaries to reflexively jettison investment options in favor of the prior year's top performers. If that were the case, Plan sponsors would be duty-bound to merely follow the industry rankings for the past year's results, even though past performance is no guarantee of future success."

However, U.S. District Judge John P. Cronan in the U.S. District Court in the Southern District of New York cautioned that his ruling shouldn't indicate that "underperformance alone can never suffice to plausibly allege a breach of the duty prudence. Rather, the underperformance alleged here, in the absence of additional indicia of imprudent decision-making, does not demonstrate dramatic enough underperformance to justify an inference of imprudence." In other words, and unlike the other decisions in these cases thus far, Judge Cronan seemed inclined to allow a suit to move past the motion to dismiss phase based on arguments about poor performance IF the alleged underperformance was "enough."

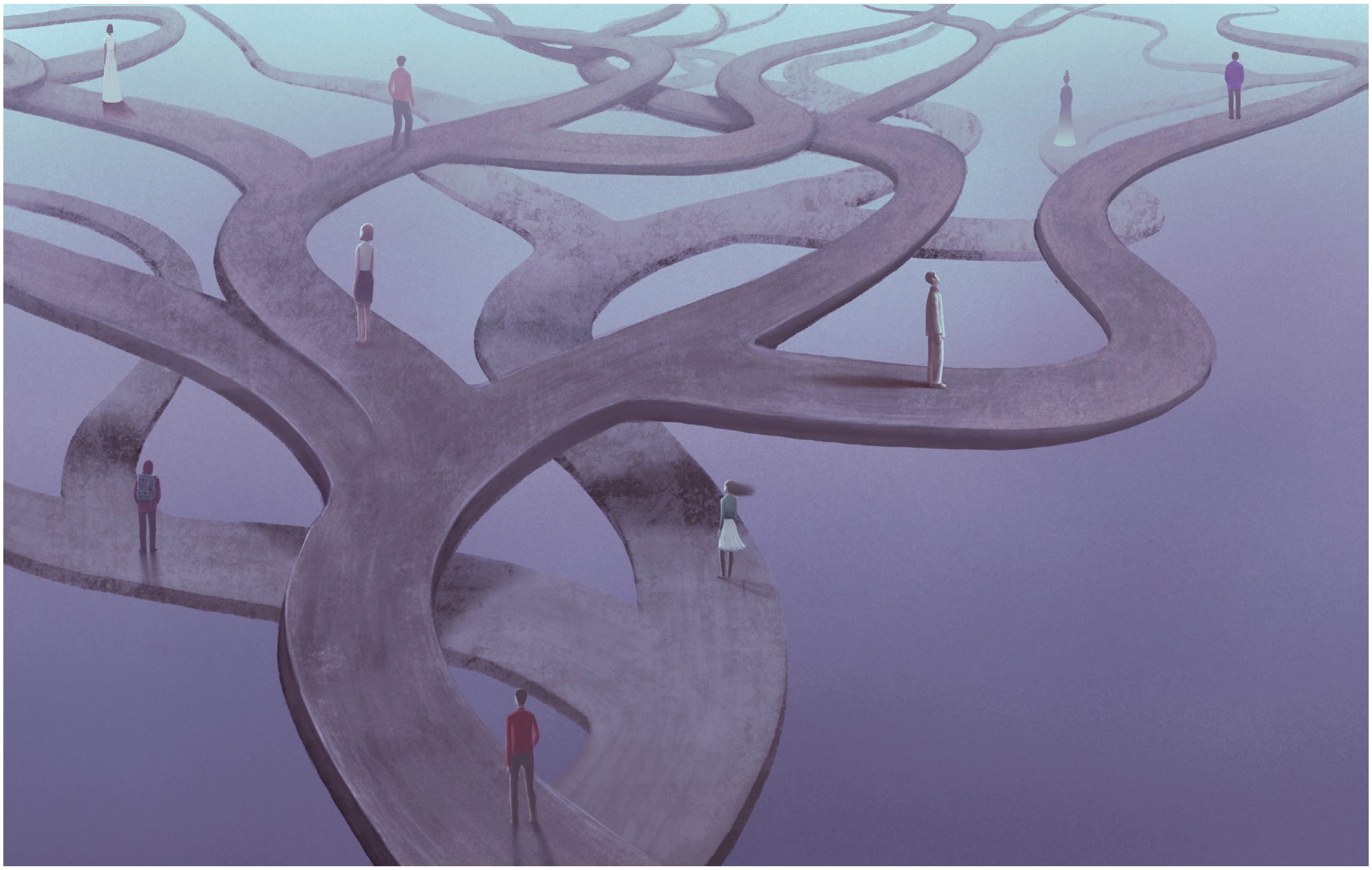
To date the federal district courts have consistently held that allegations based on investment performance alone are generally not sufficient to establish a case of ERISA fiduciary violations sufficiently plausible to move forward to discovery and trial. Still plan sponsors must be aware of litigation risk–and litigation thus far has been particularly critical of investment options into which participants are defaulted. The creation and maintenance of a robust due diligence process, demonstrated through documentation to make prudent decisions for a 401(k) plan's fund lineup remains the best way to mitigate this litigation risk. PC

Process Background

Generally speaking, litigation begins with the filing of a suit alleging harm to specific individuals or entities (plaintiffs). That is typically followed by a motion from the party being sued (defendants) to dismiss the suit based on various factors, most typically that the suit was brought by parties that weren't injured or don't have a basis for bringing the suit (what is called "standing"), or that the suit fails to state a claim sufficient to require trial. Courts will weight the arguments made in that motion, though at this stage generally taking the facts presented by the plaintiffs as true. If the court believes that a plausible case has been presented, the motion to dismiss is rejected, and the parties move to a process called discovery where documents are provided and interviews conducted (depositions), after which–and this can take months–the parties will head to trial or, as the case often is, a settlement may be reached between the parties.

KEEPING SECURE WITH SECURE 2.0

How are recordkeepers handling the many provisions SECURE 2.0 offers? Two recordkeepers tell their stories. **By Karyn Dzurisin & Heather Windjue**



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SECURE 2.0 Act has created significant tailwinds for the retirement plan industry—and it also offers millions of American workers new and enhanced tax credits, auto features, and flexibility to take part in a retirement plan. The complexity of all the new provisions, however, does pose a challenge to the service providers within the industry. The time, programming, and cost of these options—especially in instances in which more clarity is needed—requires a thoughtful approach in bringing these features to market.

CAPITAL GROUP

At Capital Group, home of American Funds®, the provisions have been bucketed into the following groups: 1) Intend to support and 2) Monitoring.

Student loan payments; long-term, part-time (LTPT) employees; hardship self-certification; required minimum distribution (RMD) from designated Roth accounts; Roth catch-up contributions; and employer Roth contributions are all provisions we plan to support. In-plan emergency savings accounts would fall into our monitoring category, primarily because we are awaiting guidance and monitoring demand.

Roth catch-ups. For the Roth catch-up provision, we are working to make this update to plans, making the Roth provision easy for our third-party administrator (TPA) relationships. The delay in the rule has allowed these updates to happen over the next two years. However, we are communicating now—so that if TPAs have worked with their plan sponsors to have Roth added, the updates can be efficient.

Communication is key. Some of the provisions that may not necessarily require programming, but do necessitate communication, include:

- **Fewer notices for unenrolled employees.** Although some employers and recordkeepers may prefer to change their notification process, it may be easier to continue sending notices to all eligible employees rather than develop a new process and notice to comply with the change.

- **Relaxed RMD rules.** These straightforward changes aren't expected to be problematic, similar to the RMD age change in 2020.
- **Automatic IRA portability.** A growing number of recordkeepers are sharing data to support this program and offering plan sponsors access to this service.
- **Significant expansion of the startup tax credits.** New and enhanced tax credits could make plan adoption extremely cost-effective. The credits are independent of each other; employers may qualify for one or the other or both.
    - o With an automatic enrollment requirement for startup plans set to begin in 2025, employers may also benefit from the auto-enroll tax credit. In addition, employers transitioning from state-administered IRAs with automatic enrollment (auto IRAs) and starting a new plan will qualify for the tax credits.
- **Saver's credit becomes a government match.** Effective in 2027, the match is subject to special early withdrawal penalties, which may prevent participants from getting the match and then quickly withdrawing the money. Although an attractive benefit for employers to promote to employees, many logistical details need to be determined.

JOHN HANCOCK

Recordkeepers continue to work with TPAs, plan sponsors and advisors to make retirement plan savings easy and efficient. Our focus continues to be on the plan participant and giving them the opportunities to start to save, continue to increase their savings and have optimal outcomes.

Good news. Many provisions of SECURE 2.0 are welcome news to plan sponsors and their participants. The law is designed to make saving for retirement easier for more Americans by encouraging both employers to offer retirement plans and employees to participate in saving for retirement. At John Hancock, we're pleased with the expanded access and savings enabled by SECURE 2.0, as we're aware of the critical role workplace plans play in helping people prepare for retirement.

Evaluation. John Hancock continues to evaluate and implement the SECURE 2.0 mandatory and optional provisions as deadlines approach and the IRS offers guidance. Our current focus is on provisions already in effect and upcoming 2024 provisions. We're gauging interest in optional provisions (especially those for which guidance is needed) and maintaining an active dialogue with plan sponsors, third-party administrators (TPAs), and financial professionals.

Changes for compliance. We are making changes to our systems, processes, and forms in order to comply with the following mandatory provisions:

- LTPT employee rule;
- increase in RMD age;
- exclusion of Roth contributions from RMDs; and
- three-year repayment period for qualified birth or adoption distributions.

To accommodate the cash-out threshold increase, plans that currently have a $5,000 cash out will be changed to reflect the $7,000 cash-out limit effective Jan. 1, 2024, or as soon as administratively practical thereafter.

Roth catch-ups. The IRS has provided a two-year administrative transition period (until Jan. 1, 2026) to implement the requirement that catch-up contributions must be Roth for certain higher-paid employees. John Hancock has identified plans on our platform that don't permit Roth contributions to start conversations with plan sponsors, TPAs, and financial advisors.

We want to encourage plan sponsors to consider adding a Roth feature before Jan. 1, 2026, to ensure ample time to roll out the program to participants and make necessary changes with the payroll provider, TPA, and recordkeeper. Meanwhile, John Hancock is participating with members in the retirement industry to draft guidance request letters to the IRS regarding this new provision and closely monitoring any forthcoming guidance to help ensure timely compliance.

The two-year administrative transition period also makes it easier to implement the increased catch-up contribution limit for participants at ages 60, 61, 62, and 63, which becomes effective Jan. 1, 2025, by providing time to implement the catch-up limit before adding the complication that the catch-up contributions for certain higher-paid employees must also be made as Roth contributions. John Hancock will work on the increased catch-up limit provision in 2024. Additionally, John Hancock is monitoring interest as the industry awaits guidance on the optional provision of permitting participants to elect to have employer contributions made as Roth.

Assessing. As we wait for IRS guidance, John Hancock continues to assess plan sponsor interest in the optional provisions. These include permitting self-certification for hardships, student loan repayments as matching contributions, and new withdrawal provisions such as financial emergency withdrawals and pension-linked emergency savings accounts. We want to engage in conversations with plan sponsors regarding the impact of adding these optional provisions from the perspective of the plan's goals, impact to plan administration (including payroll providers and recordkeepers), and effect on participants.

'To Do' list. Self-certification for hardships on plans that follow the IRS safe harbor hardship conditions is in progress and expected to be supported in early 2024. John Hancock will continue to support plans that require source documents for hardships, as well as the self-certification approach for interested plans.

Amendments to reflect the mandatory and optional SECURE provisions aren't required until the end of the plan year that begins in 2025 (Dec. 31, 2025, for plans with a calendar year plan year) with a 2-year delay for governmental and collectively bargained plans. Plan sponsors, however, must operate their plans in compliance with the provisions as of the applicable effective dates. PC

LUMP SUMS IN INTEREST RATE / MORTALITY ENVIRONMENT: 6 LIABILITIES ALL CALCULATED THE SAME

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Often there can be confusion in more ways than one when trying to understand why actuaries report liabilities for defined benefit plans. **By Jon Murello**

The reason actuaries report plan liabilities in different manners has to do with the interplay between interest rates, the economy, and the reporting purpose.

Wide-eyed and eager to learn, I started my actuarial career in the third quarter of 2008. Amid the many words of wisdom provided early on, one line that stuck out to me was "when interest rates go down, liabilities go up. When interest rates go up, liabilities go down." As if on cue, the economy quickly greeted me with a housing bubble and a stock market crash. It was at this time I quickly realized how the current interest rate environment affects the different bases for which actuaries report liabilities.

For example, under the Pension Protection Act (PPA) of 2006, Congress intended to improve the funded status of pension plans in the US by mandating the interest rates that were used in calculating plan liabilities. Before PPA, actuaries themselves set the interest rate for calculating plan liabilities, which could result an interest rate used for calculating liabilities that differed from the current environment. With PPA, Congress stipulated that interest rates used to calculate plan liabilities be based on a 24- month average of current corporate bond segment rates. This was done so that plan liabilities more closely reflected the current economic environment.

While trying to improve the funded status of pension plans is a novel endeavor, the timing of PPA turned out to be a perfect storm. Just as Congress mandated using a 24-month average of current corporate bond segment rates to calculate plan liabilities, the stock market crashed due to the housing bubble. This greatly decreased the value of assets for pension plans in the United States. At the same time, interest rates plummeted, which over time significantly increased plan liabilities. Decreasing plan assets, accompanied with increasing liabilities, created a nightmare scenario for plan sponsors.

Different situations call for this use of different interest rates. Consequently, actuaries must report plan liabilities on several different bases:

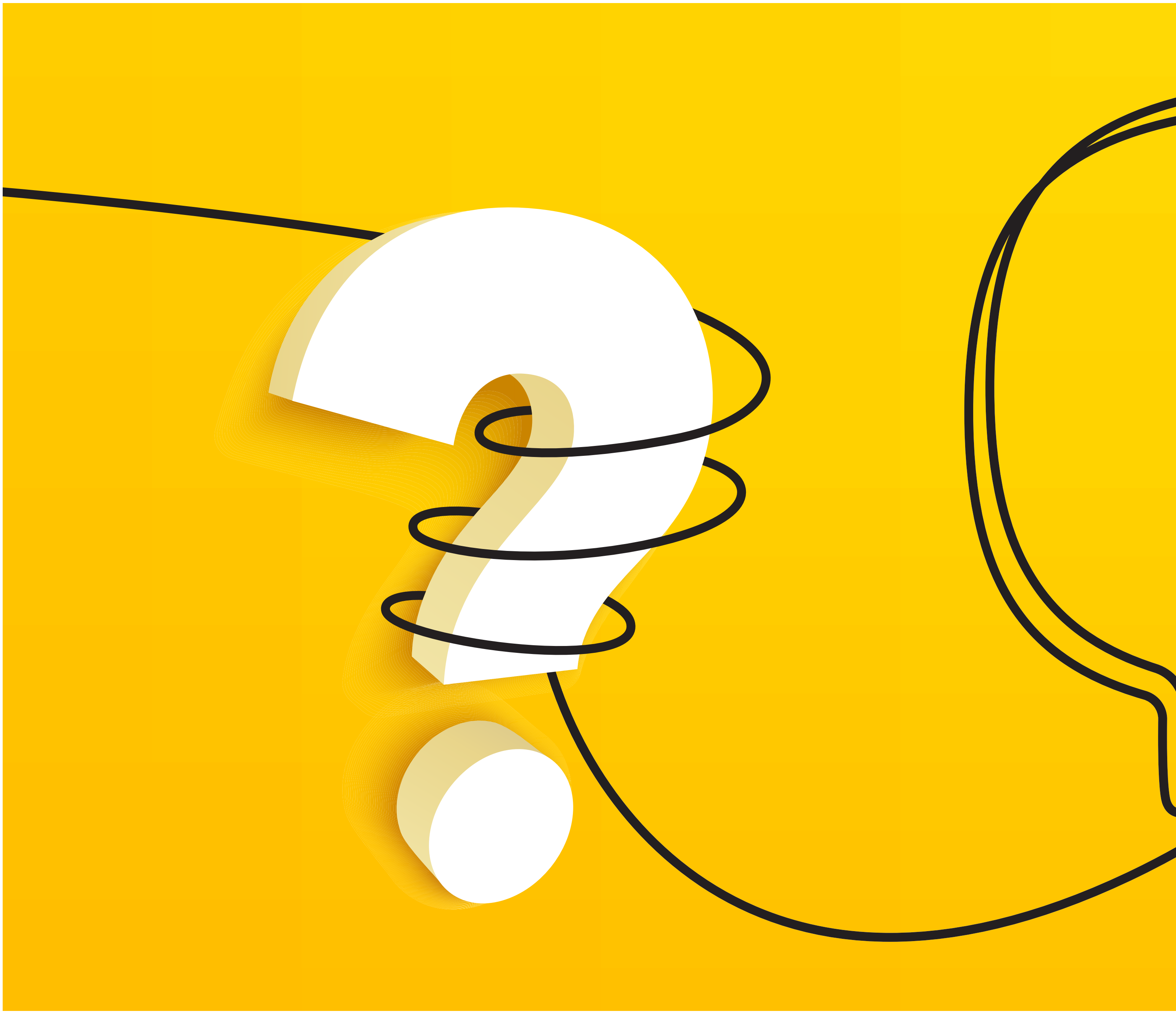
- **Minimum Funding Target (Internal Revenue Code Section 430(h))**
  - Each year, what is known as a minimum required contribution must be calculated. With PPA, Congress had intended these liabilities to be calculated using the 24-month average of current corporate bond segment rates to better reflect the current economic environment. However, with the 2008 stock market crash these minimum required contributions soon became burdensome. Funding relief was soon passed in 2012 under MAP-21

"WHILE TRYING TO IMPROVE THE FUNDED STATUS OF PENSION PLANS IS A NOVEL ENDEAVOR, THE TIMING OF PPA TURNED OUT TO BE A PERFECT STORM."

Legislation to constrain these segment rates by applicable percentage limits on the 25-year average yield curve segment rates. This resulted in higher interest rates and lower liabilities for pension plans in the United States, reducing the funding burden on pension plans. Additional interest rate funding relief legislation was passed in 2015 and 2021 under HATFA and ARPA, respectively.

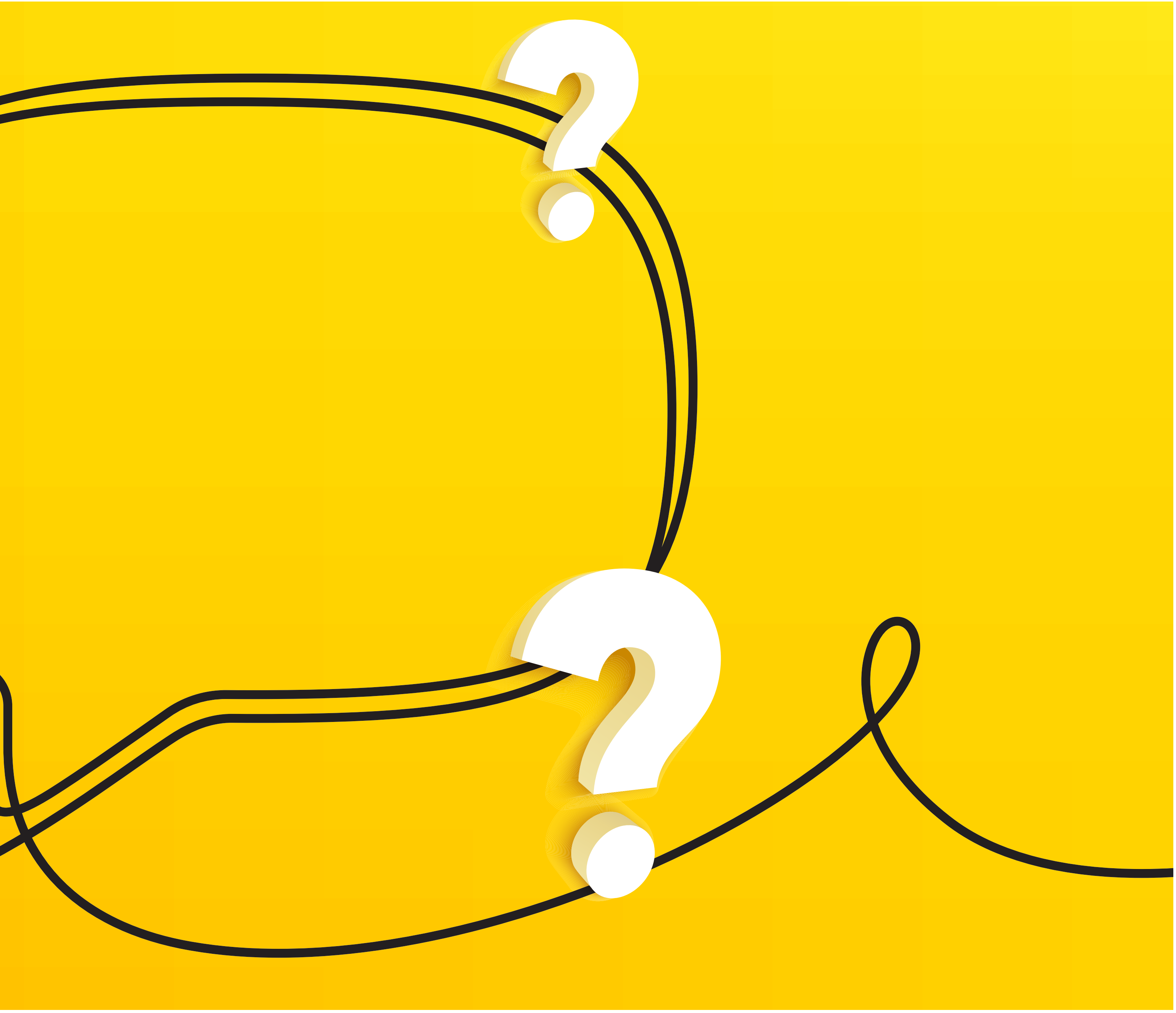
- **Maximum Funding Target (Internal Revenue Code Section 404(o)):**
    - In addition to the minimum required contribution, each year what is known as the maximum tax-deductible contribution must be calculated. This represents the maximum amount a pension plan can contribute while still receiving a tax deduction. Congress had intended for the liability used to determine the minimum required contribution and the maximum tax-deductible contribution to be the same. However, with the passage of interest rate funding relief, the result was that one set of segment rates is now used to determine the liability in the minimum required contribution calculation, and another set of segment rates is used to determine the liability in the maximum tax-deductible calculation.
- **Termination Liability (Internal Revenue Code Section 417(e)(3)(D) Minimum Present Value Segment Rates):**
    - When a pension plan participant reaches their retirement age, they may elect to receive their benefit as a lump sum. Also, when a pension plan terminates, participants must be offered a lump sum option. Before PPA, the interest rates used to determine these lump sums were based on the 30-year Treasury securities rates. Like the minimum and maximum funding target, PPA changed the interest rates used for participant lump sum calculations to better reflect the current economic environment. However, the interest rates used to calculate participant lump sums is based on average corporate bond segment rates for a month, as opposed to a 24-month average.
- **Pension Benefit Guaranty Corporation (PBGC) Premium Funding Target**
    - Certain pension plans in the United States are covered by the PBGC, a federal agency that protects the accrued pension benefits of plan participants in the event a plan sponsor becomes insolvent. The PBGC acts like an insurance program for pension plan participants. All covered plans are required to pay what is known as a PBGC premium annually. One aspect of this premium is the variable rate premium, which reflects the current unfunded liability of the plan. To determine the premium funding target liability, a plan sponsor may elect to use the 417(e) interest rates (standard) or the same interest rates used for the maximum funding target (alternative).
- **Accounting Codification Standard (ASC) 715 Disclosure Reporting:**
    - Certain plan sponsors (such as publicly traded employers or private employers subject to a loan agreement) are required to disclose plan assets and liabilities on an annual ASC 715 valuation report. Information within an ASC 715 valuation is disclosed on a company's financial reports to assess the status of a plan. A key assumption used in an ASC 715 valuation is the interest rate assumption used to value plan liabilities. Typically, a plan's auditor would require the use of a yield curve of current spot rates to determine the interest rate used for calculating plan liabilities, though other methods (such as using the 30-Year Treasury rates or a simple flat rate) may be used.
- **Accounting Codification Standard (ASC) 960 Disclosure Reporting:**
    - While ASC 715 reports plan liabilities on current market rates, ASC 960 takes a more long-term approach in determining plan liabilities. Rather than reflecting the current economic atmosphere, ASC 960 focuses on a long-term interest rate to determine plan liabilities and ignores swings in the market. Usually, the ASC 960 interest rate is set to be equal to the plan's long-term expected rate of return on plan assets. An ASC 960 report is disclosed on a plan's annual financial statements.

Depending on what a particular liability is used for, the interest rates used can vary greatly from the interest rates used to calculate a different liability. While not exhaustive, I hope this information offers insight on to why actuaries report liabilities on numerous bases. PC



TO FILE OR NOT TO FILE… THAT IS THE QUESTION

Facing tight deadlines, plan administrators often grapple with incomplete Form 5500 filings due to missing auditor opinions; while penalties loom for both late and incomplete submissions, expert consultation remains key in navigating this complex terrain. **By Gwen Mazzola**



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In the world of employee benefit plans, compliance with Form 5500 filing requirements seems straightforward—file by the due date, which is the end of the seventh month after the plan's year end (July 31 for a calendar year end), or the extended due date, which is 2½ months after the original due date (Oct. 15 for a calendar year end plan).

However, plan administrators of large plans (typically, those plans with at least 100 participants and require an audit) may find themselves faced with a critical decision if the auditor's opinion is not yet available by the filing deadline: to file or not to file. Facts and circumstances, as well as the respective consequences, must be considered when making that decision. The decision depends on the timeframe involved and the risk the plan administrator is willing to assume.

> "WHEN AN ERROR IS IDENTIFIED, SUCH AS WHEN THE DEFINITION OF COMPENSATION USED TO CALCULATE CONTRIBUTIONS DOES NOT ALIGN WITH THE PLAN DOCUMENT'S DEFINITION OF COMPENSATION, THE IMPACT OF THE ERROR ON THE PLAN'S FINANCIAL STATEMENTS MUST BE CONSIDERED."

CIRCUMSTANCES WHEN THE AUDITOR'S OPINION MAY NOT BE AVAILABLE

There are multiple reasons why an auditor's opinion may not be issued in time to be attached to Form 5500:

- The plan administrator was not aware an audit was required
- The plan administrator did not engage the auditor early enough to allow for the completion of the audit before the filing deadline
- The plan administrator or service provider has not provided the necessary information in a timely manner for the audit to be completed
- Errors are discovered, and the errors have not been quantified to determine the impact on the plan's financial statements

Let's dig into the last bullet point further. When an error is identified, such as when the definition of compensation used to calculate contributions does not align with the plan document's definition of compensation, the impact of the error on the plan's financial statements must be considered. Determining the impact of the error takes time and effort:

- consulting with ERISA counsel to determine the proper corrective action;
- figuring out the participants affected; and
- evaluating whether the error existed in prior years, and then computing the actual correction of the error, including lost earnings.

The process of evaluating the impact of errors on audits and the conclusion regarding whether or not to issue the auditor's opinion pending the correction calculation may vary between audit firms. Generally, a rough estimate of the correction is calculated and used to determine the potential impact on the plan's financial statements. Suppose the estimated correction is clearly inconsequential (below the audit adjustment threshold). In that case, this may be documented in the audit workpapers and, therefore, not hold up the issuance of the auditor's opinion as the conclusion was the correction of the error is not significant to the plan's financial statements.

However, if the estimated correction is more than inconsequential (above the audit adjustment threshold) it could be material to the financial statements. In this situation, the auditor may not issue the auditor's opinion until the correction has been specifically quantified, including lost earnings, as an audit adjustment to the financial statements, and related disclosures, may be necessary so that the financial statements are not materially misstated.

It is important to note that whether or not errors are material to the plan's financial statements, errors of noncompliance with plan provisions or laws and regulations must be corrected to make participants whole and to maintain the plan's tax-exempt status.

Regardless of the reason why the auditor's opinion is not available to be filed with Form 5500, plan administrators must evaluate the facts and circumstances of their particular situation and also consider the consequences and risks associated with their decision.

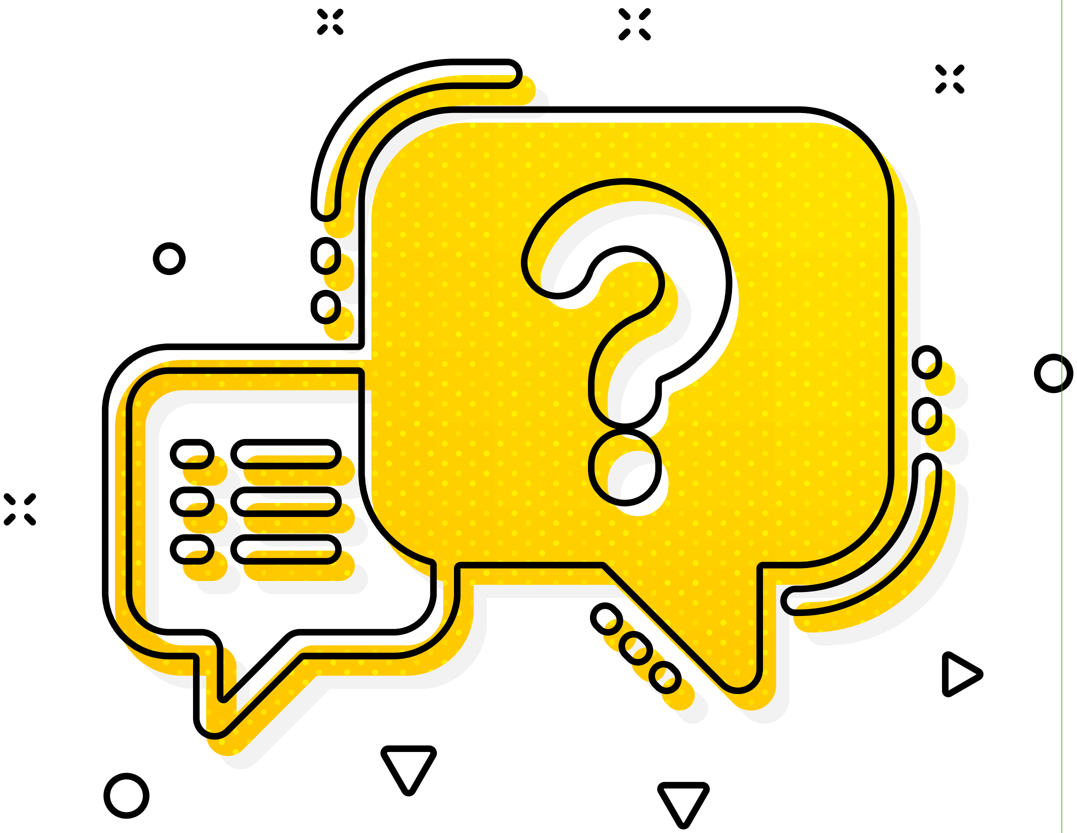
OPTIONS AND CONSEQUENCES

Suppose the required auditor's opinion is not available by the Form 5500 filing deadline. In that case, plan administrators are faced with two options:

- Timely, but incomplete filing—filing Form 5500 by the due date but without the auditor's opinion is considered a "deficient filing." The plan administrator may wish to attach a statement that the auditor's opinion is in process and that Form 5500 will be amended to attach the auditor's opinion as soon as it is available.
- Late filing—not filing Form 5500 by its due date but instead waiting to file Form 5500 until the auditor's opinion is available is considered a "delinquent filing." However, a delinquent filing can become a "nonfiler" if the Department of Labor (DOL) identifies the Form 5500 has not been filed before delinquent filing being corrected.

Let's look at the consequences of both options:

Filing Form 5500 by its due date without the auditor's opinion is considered a timely filing and, therefore, is not subject to late filing or nonfiler penalties. However, the lack of the auditor's opinion creates an



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incomplete filing, subject to deficient filing penalties. This distinction is crucial, as not filing Form 5500 timely is a "failure to file," which accrues penalties from the original, not the extended, due date.

So which is best when faced with this dilemma? While there is no specific regulatory guidance, when this question has been asked of regulators at employee benefit plan conferences, the response has consistently been to file Form 5500 timely as accurately and completely as possible.

In the event Form 5500 is filed without the required auditor's opinion, the remedy is to get the audit completed as soon as feasible and have the plan administrator amend the Form 5500 filing to attach the auditor's opinion. If the plan administrator receives a "notice of rejection" letter from the DOL regarding the missing auditor's opinion, the plan administrator has 45 days to respond to the letter and amend the Form 5500 filing to attach the auditor's opinion to avoid potential deficient filing penalties. If the plan administrator does not correct the Form 5500 filing within the timeframe prescribed by the notice of rejection letter, the DOL will issue a "notice of intent to assess a penalty" for the continued deficient filing. Deficient filing penalties are typically $150/day.

If the Form 5500 has not been filed by the due date, the plan administrator may receive enforcement notices from the IRS and the DOL, subjecting the plan administrator to substantial penalties. For these "nonfilers," provided the plan administrator has not received an enforcement notice from the DOL, the plan administrator may bring the plan into compliance by using the DOL's Delinquent Filer Voluntary Compliance Program (DFVCP). The DFVCP provides plan administrators the opportunity to voluntarily correct delinquent filings. The maximum penalty is $2,000 for a large plan filing a single plan year, or $4,000 for a single plan filing multiple plan years under DFVCP. The IRS generally will waive late filing penalties for Form 5500 filers who file using the DOL's DFVCP. Generally, filing through the DFVCP results in a substantial reduction in penalties. For instance, penalties may accrue at $250 per day for the IRS and $300 a day for the DOL up to $30,000 per year nonfilers.

It is important to note that penalties start accruing the day after the original filing due date without regard to an extension of time to file, which would be Aug. 1 for calendar year end. For example, if a calendar year plan did not file by the extended due date of Oct. 15, but filed on Dec. 15, the penalties could accumulate to approximately $75,350 (137 days from Aug. 1 to Dec. 15 x $250/day (IRS penalty) = $34,250, plus 137 days x $300/day (DOL penalty) = $41,100), plus interest. Note that DOL penalties could be as high as $2,586 per day, but typically are enforced at $50/day for late filing, $150/day for deficient filing, and $300/day for nonfilers.

THE BOTTOM LINE

While there is no DOL official guidance, the DOL has publicly stated that it is best to file as completely and accurately as possible in a timely manner. The DOL's filing system (eFast2) will accept Form 5500 filings without the auditor's opinion. Filing timely but incomplete does not guarantee no penalties or the least amount of penalties, but it does provide protection against the highest potential nonfiler penalties.

Compliance with filing requirements, including engaging auditors and providing requested information timely, should be a top priority for plan administrators. When having to navigate Form 5500 compliance, plan administrators should consult with their plan professionals to discuss their specific situationThe question is not whether to file or not to file; rather what to file and when. PC

License to Thrill

ASPPA ANNUAL… MISSION ACCOMPLISHED

BY GENELLE BRAKEFIELD & MELISSA TERITO

Adobe Firefly

Adobe Firefly

THE 2023 ASPPA ANNUAL CONFERENCE WAS A mission LIKE NO OTHER. IN LATE OCTOBER, THE NATION'S LEADING agents OF CHANGE INFILTRATED THE GAYLORD NATIONAL HARBOR WITH A CORE

objective to gather intel on the ever-changing retirement consulting landscape. Our core mission was to "Gain Knowledge and Effect Change" with an additional goal of creating new spy networks within our industry. After three full days packed with exclusive information, we disperse back into society, 1,076 highly trained, expert agents.

Our story begins with the first-time attendee lunch, which was filled with new agents ready to meet their mission head-on—after a delicious quiche, that is. The room buzzed with talk of the content-filled sessions to come and phone shake connections through the Annual Conference app. As a repeat attendee myself, hearing these fresh perspectives and excitement for the unknown was electric and reinvigorated me for the days ahead. Armed with notebook and pencil in hand, I made my way to the first sessions knowing that I would leave the conference with pages full of chicken-scratched tips, to-dos, and best practices to implement back home.

The pre-conference sessions held Sunday afternoon afforded CE-craving die-hards like myself a look beyond standard core topics. For my first session, I dipped my toes into uncharted waters, for me anyway—group plans. Pete Swisher led an engaging discussion comparing and contrasting PEPs, ARPS, GoPs, and exchanges including fiduciary considerations, fees, and a look to the future for group plans. Next, attorney Robert Gower joined Pete to provide perspective on ERISA's evolving fiduciary standards and discuss the "Battle for Flexible Design," which dove into various investment choices and considerations including ESG, cryptocurrency, managed accounts and brokerage windows.

With my head spinning from all the new information, I rendezvoused with my team who had been on an extensive undercover mission with some of ASPPA's top actuarial minds. Angie Vadnais, Mike Eaton, and Corey Zeller gave our retirement plan super sleuths an A-to-Z look at cash balance plans, starting with the selling and designing phase, then meeting plan sponsor changes and mishaps head on, culminating with considerations when winding down a plan. These consultative sessions allow our agents to get beyond the numbers into the how, why, and what next—in true spy style.

Our afternoon intel concluded with a can't-miss session of the ASPPA Annual Conference—the Washington Update. This installment lived up to the hype with a who's who of the American Retirement Association's Government Affairs Team. Senior Operatives including Will Hansen, Kelsey Mayo, Allison Wielobob, and our Chief Investigator Brian Graff thoroughly reviewed current and future legislation, provided a regulatory update and concluded with the importance of mandatory state auto-IRA laws.

After an educational afternoon, I was ready to infiltrate the social circles of ASPPA Nation. I thought there was no better place for that than rubbing elbows with agents at a president's welcome reception with shaken martini in hand. The exhibitors were there in full force, offering much-needed services and take-home gadgets and gizmos. A successful end to day one of sleuthing.

After a good night's sleep and a healthy breakfast, I was ready for a full day of undercover investigations. At the onset of the first session was an awards presentation. In tribute to the late Mr. Tom Finnegan's significant contributions to the education of those in our industry, it was announced that the Educator of the Year Award will henceforth be called the Thomas J. Finnegan III Educator of the Year Award. For 2023, this prestigious award was presented to Mr. Adam C. Pozek, QPA®, QKC®, QKA®, CPFA® to thunderous applause.

Then my education started, and today's first session was jam-packed with intel. Bob Kaplan and Robert Richter teamed up to provide a lively and informative look into SECURE 2.0. Don't let their banter and apparent laid-back style fool you; these two are masters at stealthily teaching you without you even being aware. Agents left the session with a thorough understanding of available tax credits, new plan design opportunities, emergency accounts and distributions, and changes to distribution rules and taxation—all while just thinking they had been entertained!

At this point, I was torn as to which sessions I would attend—so many great options with so many wonderful speakers! Would I learn about cash balance plans? How about an ethics session? Maybe the DB Regulatory Update or even attend the TPA Growth Summit? In the end, my team divided and concurred. See Secret Agent Melissa's recap of the TPA Growth Summit in the side bar. I decided to take a participant journey through the lifetimes of various secret retirement plan agents. Theresa Conti, Amy Garman, Jeremy Palm, and Frank Porter adeptly maneuvered through various participant scenarios from both a recordkeeper and TPA perspective. This series of sessions wove together various provisions of SECURE 2.0 with the scenarios giving them life. I was impressed by both the amount of content and the fun delivery. Who knew that retirement plan administration was fun?

With no shortage of topics, thanks much in part to SECURE 2.0, I rounded out my morning dissecting intricate death benefit scenarios with Robert Richter and Michelle Ueding displaying what the Annual Conference is known for—the space where hard-hitting facts meet real life application. Meanwhile, my actuary brethren discussed DB Cycle 3 Restatements and the popularity of Kelsey Mayo's long-term, part-time session filled a large session hall.

A long lunch was next on my agenda as I prepared for the specialized 75-minute-long "deep dive" sessions. These longer blocks of time afforded our operatives a more in-depth look into detailed topics like troubleshooting cross-tested plans, automatic enrollment, case studies applying the new EPCRS options, and an A-to-Z look at 415. I opted for automatic enrollment with Kizzy Gaul and Craig Hoffman—how could I not with those two headliners? The session didn't disappoint, as these two masterfully navigated through the difference in the ACA, EACA, and QACA and provided insights on working with plan sponsors, recordkeepers, and financial advisors on implementing the SECURE 2.0 mandate.

My next foray was a twist on an old stand-by: 401(k) testing techniques and their application before, during, and after the plan year. Steve Forbes and Megan Crawford talked through several examples, applying many tools in their arsenal. Simultaneously, two of my favorite agents, Steve Riordan and Erin Patton, gave an in-depth look at self-employment compensation. I know that I will be poring over their slides on my next small plan case. My defined benefit-loving cohorts were faced with a choice of advanced cash balance plan designs or DB takeover challenges.

After a quick drink (and snack) in the exhibit hall, I took my seat in the main conference room for a discussion on Artificial Intelligence—now they've really got the attention of secret retirement agents like myself. Jason Staats, CPA—part accountant, part business owner, part online content creator—shared his views on AI and how it can be incorporated into businesses big and small. Jason's many personas were on display as he discussed Personal AI assistants like Claude by Anthropic, Pi by Inflection AI, and offerings built into current operating systems like Microsoft Windows' Copilot. Jason gave perspective on what is currently possible with AI and provided real-life business use cases like AI transposing pdf documents into csv file formats—chatter erupted from the group on that one. Next, he discussed the free screen recorder Loom allowing us to marry our technical expertise with the client experience. My handwritten notes about this technology-focused session seemed out of place, yet useful nonetheless. Another successful day was in the books probing for information on top retirement topics!

After a good meal, I rested up for the long day ahead of me. I sprang out of bed Tuesday morning. This was a day fully dedicated to celebrating all things Washington DC, and I intended to "capitalize" on it. I dressed in my best secret agent suiting—black of course—and made my way to the main conference room where everyone cheered this year's very deserving Harry T. Eidson Founders Award recipient, Nevin Adams.

Immediately following, the Government Update session featured Lisa Gomez, Assistant Secretary of Labor, and Carol Weiser, Benefits Tax Counsel at Treasury. Both invited speakers were engaging and shared—as freely as possible—the current missions and endeavors of their respective departments. Following their planned remarks, they sat down with ARA CEO Brian Graff for a line of friendly questioning. Their knowledge and commitment to bettering the retirement system was on full display. Sessions like these offer Washington outsiders like myself a glimpse into the inner workings of departments and dedication of the individuals that make retirement policy happen.

Morning breakout options included a continuation of the participant journey, a leadership session, closed plan relief details, and tips on navigating Roth changes under SECURE 2.0. I opted for the final choice. The speaker pairing made the session come to life with Michele Ueding's factual, straight-forward approach, paired with the operational know-how and real-life commentary from Shannon Edwards.

In between Tuesday morning and afternoon sessions, bus transports whisked us to and from Capitol Hill.

1. THE REGISTRATION BOOTH FOR ASPPA ANNUAL HIGHLIGHTED THE "AGENTS OF CHANGE" THEME THAT RADIATED THROUGHOUT THE GAYLORD. 2. ADAM C. POZEK RECEIVES THE 2023 THOMAS J. FINNEGAN III EDUCATOR OF THE YEAR AWARD FROM BOB KAPLAN. 3. JASON STAATS HAD AN ENLIGHTENING DISCUSSION AROUND THE FUTURE OF AI, HOW IT IMPACTS WHAT WE DO. 4. JUSTIN BONESTROO PRESENTS NEVIN ADAMS WITH THE HARRY T. EIDSON FOUNDERS AWARD. 5. LISA M. GOMEZ, CAROL WEISER AND BRIAN GRAFF GIVE THE GOVERNMENT UPDATE TO ATTENDEES ON EMERGING CHALLENGES AND OPPORTUNITIES.

Jessica D'Amico

6. ARA CEO BRIAN GRAFF OPENS ASPPA ANNUAL DAY 1 WITH THE ANNOUNCEMENT OF NEW FUTURE HOST LOCATIONS FOR THE CONFERENCE. 7. MELISSA M. TERITO, CPA LEADS ONE OF THE MANY EXCITING TPA GROWTH SUMMIT PANELS. 8. ONE OF THE MANY PACKED SESSIONS WITH 100'S OF ENGAGED ASPPA ANNUAL ATTENDEES. 9. A GAME OF FAMILY FEUD BETWEEN ATTORNEYS AND ACTUARIES TURNED FROM SERIOUS TO SERIOUS FUN.

Adobe Firefly

WITH MY HEAD **spinning** FROM ALL THE NEW INFORMATION, I RENDEZVOUSED WITH MY TEAM WHO HAD BEEN ON AN EXTENSIVE **undercover mission** WITH SOME OF ASPPA'S TOP ACTUARIAL MINDS.

In collaboration with Advocacy Day, our Hill visits were expertly scheduled and documented, and follow-up emails were swiftly generated. We had support directly from ARA representatives in the three meetings scheduled for our group. This was a bonus that helped with logistics, because nominations for Speaker of the House were underway and the halls of the Longworth House Office Building were swarming with TV cameras and news reporters hoping for a tidbit of information to report to their loyal viewership.

The door to our first meeting was blocked by the media frenzy, so off to the cafeteria for a sit down with a team member from our representative's office. She thoughtfully heard our talking points, interjected with clarifying questions, and feverishly jotted down all pertinent points. Our next meeting took us to a large, formal-looking conference room with Majority Tax Counsel Payson Peabody. Due to his significant tax background, Mr. Peabody was acutely aware of the topics we broached, allowing for a shared dialog regarding our position. He was very gracious with his time and insights. Our third meeting brought us to a quieter setting in the Rayburn House Office Building, where we were greeted with a wide-grinning, warm reception from a young, exuberant Washington newcomer. His energy reminded me why I love these Hill visits so much…the air of possibility. The idea that one eager, hardworking, and optimistic soul will impress a difference on our society for the good. Our group left the meetings feeling that our points were well-considered and shared with our government representatives for action.

Our brief field trip left me renewed for the afternoon sessions, which included testing in a safe harbor plan, the many new distribution options available, and how SECURE 2.0 affects cash balance plans. After a quick beverage break (who am I kidding? I was totally eating again!), I joined the masses for the ASPPA Family Feud. This take on the beloved gameshow featured two battles—one with actuaries versus attorneys, and one with TPAs versus recordkeepers. I loved that the session featured both familiar faces and some newcomers as well. There was content, quite a bit of banter, loads of laughter, and, of course, a significant dose of competition.

After a brief rest, I decided to connect with new informants and field agents at the ASPPA at Night party sponsored by John Hancock. This year's event was like no other. There were spy-themed drinks, plenty of food, loads of activities, and most importantly, people from all different backgrounds with opposing interests all smiling and having a great time! I tend to circle parties, briefly catching up with folks as I passed. It gives an undercover operative like myself a better lay of the land. At the far end of the atrium, a lively crowd hugged the main stage which featured Free Spirit, a high-energy 11-piece band. In the courtyard, quieter conversations ensued around the plentiful bars. This was an optimal place for grabbing a photo of the many famous spies that attended. Some that I noted were James Bond, Spy vs. Spy, Miss Congeniality, Kim Possible, Austin Powers, and Dr. Evil. Though I performed a thorough search, the Kingsman alluded me. Making my way through Harbor Social (after an extended stop at the buffet) I noted the many people reveling in the available games of bowling, pool, shuffleboard, and extra-large Jenga. I horned in on a game of darts where my aloof style aimed to confuse my opponent. All in all, it seemed that a great time was had by everyone!

After a late night, Wednesday morning came early. Thank goodness for the hot breakfast! I was again faced with numerous sessions of interest. I chose a 5500 session by Mary Anderson and Paul Protos. Their humor and delivery brought interest to a straightforward topic. My colleagues gave positive feedback to a DC Notice session, as well as to a discussion on how mergers and acquisitions impact DB plans.

Next, I thoroughly enjoyed a walk down memory lane through 50 years of ERISA with Craig Hoffman. I am a big believer that awareness of our history leads to better understanding of the present. This session served as a homage to ERISA and its changes over time and celebrated the impact certain individuals, many of which were ASPPA members, had on policy. Not having lived through all the changes discussed, I was thankful for the education and appreciative of the individuals who shaped our industry.

I shuffled into the main meeting hall where the traditional cap-off of the conference began, the Ask the Experts Session. A team of highly trained special operatives gave their insights on complex questions from our pool of agents. This session gave attendees the opportunity to get answers from some of the top minds in our field and as such it never disappoints. I punched in my final CE code and prepared to exfiltrate the Gaylord National Harbor following my successful mission.

As I strode through the hall lined with bags and their owners ready to head home, I felt the same sense of accomplishment and satisfaction that I do at the culmination of each Annual I have attended. My carry on is now slightly heavier with my notes of all of the ideas that I want to implement when I get back to the office, along with swag from the exhibit hall. My mind is filled, and somewhat tired, from all of the information that I have learned and attempted to digest over these three full days. My clothes are slightly tighter from all of the food, and my heart is undoubtedly full from the connections that I have made during my time here. Mission accomplished.

The TPA Growth Conference

The TPA Growth Conference began with a dynamic and inspiring session led by Amanda Iverson, where she addressed the theme of “The Culture Conundrum.” Iverson encouraged attendees to identify their top three culture-related challenges and propose effective solutions. Iverson underscored the profound impact of a strong organizational culture on business growth while acknowledging that cultivating such a culture requires substantial effort from the leadership.

Following this, Melissa Terito delved into “The Art of Leading Clients.” She emphasized that in service-oriented industries, clients often unintentionally take the lead, leading to frustrating relationships due to missed deadlines, delayed email responses, and non-compliance with rules and regulations. Terito advised creating an ideal client profile and “grading” clients to assess their compatibility with your firm. By doing so, you can strategically eliminate clients that aren’t a good fit, resulting in greater job satisfaction and fulfillment for business owners and their teams.

The afternoon featured back-to-back sessions on “The Working Genius,” which outlined the six fundamental activities required for all types of work and provided a simple framework for accomplishing tasks. Attendees had previously taken an assessment, and during the session, each table crafted their own team map using background information provided by the speakers. This engaging session equipped agents with actionable strategies to enhance teamwork and achieve more dignified, fulfilling, and successful outcomes.

Tuesday morning consisted of two panel discussions. Adam Pozek, Melissa Terito, and Cari Massey-Sears tackled the critical topic of succession planning, with Pozek emphasizing the need to start thinking about it promptly. The discussion revolved around identifying future leaders, the pros and cons of selling one’s practice, and the influence of organizational structure on tax-related decisions.

Subsequently, Kirsten Curry, Will Hansen, and JJ McKinney explored SECURE 2.0—the hottest topic in the retirement plan industry. Their discussion wasn’t technical, but focused on how SECURE 2.0 could create selling opportunities for practitioners. Will shared valuable insights from a survey of plan sponsors, shedding light on their primary concerns regarding the impact of SECURE 2.0. This session helped practitioners narrow down their focus in the face of the overwhelming complexity of the topic.

The second day concluded with a presentation by Justin Bonestroo and Kevin Hefke, addressing the transition of clients from sales to service. They stressed the importance of training the sales team to effectively communicate expectations with clients during the sales process. Additionally, they highlighted the significance of making the client handover a personal and reassuring experience, ensuring clients feel comfortable with the introduction to a new team member.

On the last day of the conference, a panel discussion kicked off with the topic of “How to Effectively Market and Grow Your Practice,” featuring Dawn Hyne and Manny Marques. This session began with interactive polling so the panel speakers could get an idea of what firms these agents were running. They discussed how the TPA firm model has changed from TPAs taking a backseat, per say, in the sales process, to now hiring their own sales teams and driving the sales process. An overview of options to compensate sales professionals as well as the importance of marketing was also discussed.

Last, but certainly not least, in the TPA Growth Conference was a session focused on navigating ethical dilemmas for TPA firms. Robert Gower and Natalie Wyatt teamed up to present the ins and outs of ethics within a TPA firm. They presented an overview of the ARA Code of Conduct, as well as specific case studies regarding how to apply the code to certain situations. With all TPAs being in a heavily compliance-regulated field, this session was the perfect way to send our agents off with the tools they need to handle and make decisions relative to complicated situations. PC

IVERSON UNDERSCORED THE PROFOUND IMPACT OF A STRONG **organizational culture** ON BUSINESS GROWTH WHILE ACKNOWLEDGING THAT CULTIVATING SUCH A **culture** REQUIRES SUBSTANTIAL EFFORT FROM THE **leadership**.

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Automatic transgressions

Sure, automatic enrollment increases participation–
but is it worth the cost?

by Shannon Edwards, Megan Crawford & Nevin Adams

Third party administrators (TPAs)—including TPAs who are recordkeepers—often have a love–hate relationship with the concept of automatic enrollment. On the one hand, there's no question that the design is effective at dramatically expanding the rate of participation in defined contribution plans–generally improving the standard participation rate of voluntary enrollment programs from 66–75% to something above 90%.

On the other hand, the handoffs between payroll and recordkeeping systems aren't always seamless–leaving behind some who are eligible–and participant opt–outs aren't always timely–both of which can result in a lot of clean–up work. Even the Internal Revenue Service (IRS) goes so far as to acknowledge that two common errors found in 401(k) plans are: (1) not giving an eligible employee the opportunity to make elective contributions; and (2) failing to execute an employee's salary deferral election.

Little wonder that while some TPAs champion the design, others are inclined to let those sleeping dogs lie.

However, the passage of the SECURE Act of 2022 brings with it an automatic enrollment requirement for any new plan adopted after December 29, 2022–and while that isn't required until 2025, some are finding it less complicated and potentially confusing to just start automatic enrollment now, rather than waiting for the legal requirement. Regardless, SECURE 2.0 seems likely to transform the assumption regarding automatic enrollment from may have to must have, certainly for newly adopted plans.

With that shift in assumptions in mind, we connected with two leading TPA voices on both "sides" of the automatic enrollment "debate"; Shannon Edwards, President of Tri–Star Pension Consulting in Oklahoma City, Oklahoma and Megan Crawford, Vice President and Director of Sales and Marketing at Williams Benefit Consulting, LLC in Quincy, Illinois.

ADAMS: Let's start with what may–or may not–be an obvious point. Is automatic enrollment good for retirement?

EDWARDS: I'll give you an example; one of our first automatic enrollment plans was several years ago. It was a plan that was constantly failing non–discrimination testing and they didn't want to go with a safe harbor design. They were extremely conservative, late to adopt anything new–and they don't allow any sort of leakage out of their plan other than loans–don't allow hardship in–service, anything. And they make you wait six months after paying off one loan to take another loan.

They also have multiple workplace language issues–four groups of people Farsi, Spanish, Vietnamese and one other–and the office staff speaks English, so they have all these language barriers. Well, they finally agreed to put in automatic enrollment and adopt the QAKA because it had a two–year vesting–and their participation rates skyrocketed. The success of their plan has been amazing over the years, and I love it.

ADAMS: That reminds me of a study done several years back by Ariel Investments and Hewitt Associates (now Alight), and it found that the differences in participation rates between whites, Latinos and black Americans disappeared with automatic enrollment. Shannon, your experience certainly sounds like a success story, but with all those language barriers, it begs the question–did they know what they were being signed up for?

EDWARDS: They had an employee that spoke each language among each group of fellow workers that could speak their language and explain it to them. These people take care of their employees like nobody else that I know.

CRAWFORD: So, why did they need automatic enrollment? If they had a trusted employee that was helping them understand the enrollment anyway…

EDWARDS: Participants get paralyzed by choice and by having to make a decision. I firmly believe that when you tell them they have to decide how much they want taken out of their paycheck, they have to turn in the form and then they have to choose their investments rather than act. They get paralyzed and do nothing.

CRAWFORD: But wouldn't they be better served by having a discussion with an advisor who can also help them deal with things like are they risk averse or conservative when it comes to investments? Where's that trusted advisor in this scenario?

EDWARDS: They have 3,000 employees, so it was a little bit hard for the advisor to sit down with every single employee and enroll them.

CRAWFORD: We tend to write legislation to be one size fits all, but let's face it, one size never fits all. And this is one of those things. I agree that in a large plan where they physically cannot get someone to sit with each person and offer the education advice, auto enrollment is probably a good thing for those participants, because like we said, instead of 50% participation rate, now they got 90%. So that's 40% more people saving for retirement than there was before. But does it really work for small plans the same way? They know the individuals by name, say good morning to them every day. To them just taking money out of their pay without their permission would seem pretty heavy–handed, however well–intentioned.

ADAMS: So, does the subject of automatic enrollment ever come up? Do you discuss the pros and cons?
CRAWFORD: We just kind of keep it in our pocket. Now, most of our accounts are still brokerage account plans, and that means the burden of administering it falls on them only–no record keeper helping them out with tracking any of it. We also do a lot of safe harbor plans, so they don't need to rely on automatic enrollment to increase participation. Beyond that most of them are small employers, 50 lives or under and are doing payroll in house.

ADAMS: One of the concerns I have heard from plan sponsors–and particularly small employers–is that they aren't comfortable taking money from workers paychecks without their permission. Does this still come up?
CRAWFORD: It does. I recently asked our employees because we do not have automatic enrollment in our plan. Our employees clearly know the importance of saving for retirement and what that means, and one of the newer participants was like, "I'm not really comfortable with you telling me you're going to start taking 10% of my pay". She said, "I understand the rules, I understand what I'm doing for myself and my financial future, and I only want to do X percent".

ADAMS: And the concerns about being too paternalistic?
CRAWFORD: Those concerns remain among some employers. The 401(k) is a voluntary benefit, after all. But I think as a whole we're failing to educate participants on what they should be doing. Instead, we're just going to do this for you and never really teach you why or what your benefit to doing it? It's just set it up, forget it. And while that may make for a good start, I think we're getting comfortable with that passive approach, rather than making an effort to truly educate individuals. And do you think any of them are going in and looking at what they're invested in? Of course not.

There's been a lot of studies recently that say the target date funds aren't the best option–and now we're looking at managed accounts and AI to help answer some questions. If those defaulted participants never have to physically do anything to sign up for the plan–if we've never taught them the importance of personal savings and retirement savings…, how are they supposed to know what to do when it comes time to live on those savings? When you take all of the decision making out of their hands, they never really learn why or how?

EDWARDS: Automatic enrollment does not preclude that education. It's just that when we let human nature kick in, sometimes it doesn't. But SECURE 2.0 is going to transform the assumption about automatic enrollment–all the newly adopted plans will have to have it–so it's no longer a choice on the part of the plan sponsor. We've taken the approach now that every new plan that we set up, we're telling them that they have to do automatic enrollment, period, even though there are exceptions, and you aren't legally obligated to do so till 2025. Instead, and rather than having some participants start now, and then have a change down the road, we're just encouraging employers to take that step now.

ADAMS: And how's that going over?
EDWARDS: It's really common sense–and it's allowing us to talk about the QACA of safe harbor versus the traditional safe harbor so that they can maybe save a little bit of money on the safe harbor if they are pushing back on the required contribution. There's a learning curve for every plan sponsor that sets up the 401(k) plan for the first time–and automatic enrollment is just now part of that learning curve.

With the SECURE 2.0 change there has been a surprise that it is a requirement because nobody's really heard of it that's never had a plan before. So, there's a little bit of surprise, but there's no pushback because well, it's the law.

ADAMS: Have you had any employers back off their commitment to having a plan based on that change?
EDWARDS: We have not seen that. No, we have not seen anybody decide not to do a plan because of auto enrollment.
CRAWFORD: I'll agree with that because I'm in Illinois, which is a state that has a mandatory retirement plan rule, and by the time I'm talking with them, they have to have something in place. I've only had one out of the 15 to 20 I've put on this year that said, no, I'm going to hold off on automatic enrollment, but basically because they just needed to get the plan up and running as quick as they could. So, I don't know that it was an adverse opinion of auto enrollment as much as it just was a timing thing.

ADAMS: So, are you telling them they have an option to wait till 2025 and not letting them not do auto enrollment if they have less than ten workers (one of the exceptions under SECURE 2.0 to the automatic enrollment requirement)?
CRAWFORD: We've gone back and forth because we do a lot of small plans. I've got some that have three employees–and I know they don't ever have a goal to get to ten or eleven employees. It's just what their business model is. But you get the tax credit for setting up a plan under SECURE 2.0, so why not put it in and then it's there and you don't have to keep track of when you hire your 11th person, or you bought another company you didn't tell us about for two years or something. It's just there and ready when the time comes.
EDWARDS: The state–run plans are an interesting development because I do think that it is instigating conversations with employers who could have offered a plan before and never got around to it for various reasons. With the state–run plan, you're already creating an automatic enrollment structure anyway.

ADAMS: One of the issues that TPAs mention with automatic enrollment is the process of correcting errors. Thoughts on that?
EDWARDS: There are always going to be corrections. Even at our 3,000–life plan that has a huge HR department, they just had another missed deferral opportunity because they forgot to automatically enroll everybody that became eligible on October 1. No matter how good the HR department is, no matter how good the person writing payroll is, there's going to be corrections. That doesn't mean you aren't doing far more good than problems with automatic enrollment.
CRAWFORD: Well, there are corrections–and then there are corrections! When you miss including someone who was eligible, you're looking at a corrective contribution of 50% of the missed deferral–adjusted for earnings–for the affected employee. And then fully vesting the employee in those contributions–contributions that are subject to the

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> **In the case of an erroneously excluded employee, the missed deferral is based on the average of the deferral percentages (ADPs) for other employees in the employee's category (for example, non–highly compensated employees).** — Megan Crawford

same restrictions on withdrawal that apply to elective deferrals. In the case of an erroneously excluded employee, the missed deferral is based on the average of the deferral percentages (ADPs) for other employees in the employee's category (for example, non–highly compensated employees). It can be quite complicated, even with the help of the Employee Plans Compliance Resolution System (EPCRS).

ADAMS: Are there other concerns?
CRAWFORD: Some are concerned about the cost of the additional match, of course. But there have also been concerns that automatically enrolling individuals at the traditional starting rate of 3% is actually less than many participants would choose, had they been given the option to voluntarily enroll and fill out a form. Of course, they can always increase that level, but many don't, and even where there's an annual increase in deferrals, it can take 3 to 4 years for their savings rate to reach the level they might have signed up for on day 1, if given that option.

ADAMS: Well, as you mentioned Megan, traditionally one of the pushbacks on automatic enrollment was that it was so effective, it's going to cost the company money because of the additional match. Let's face it, if you're going to talk about a 20% increase in participation and a match that goes along with it, even if it's 3% and it's not the full match, that's still a lot of money.
CRAWFORD: When we've been running our proposals, I always throw a 3% non–elective in to show them, okay, you're going to auto enroll them, let's say at least at six to start. So even if you're doing the QACA, they're getting three and a half out of the gate. I have had a lot of people look at that and think, okay, I want to know my set cost going into this and I'm just going to do the 3% and forget the match altogether. Now, high turnover clients, they want the QACA, a match for the vesting, but otherwise when we're talking to someone and they decide they want to do the 3% NEC (non–elective contribution), that's when we're starting that auto enrollment at a higher percent because it's not costing the company any more money.

ADAMS: There's been a "new" idea percolating regarding automatic enrollment–and even legislation introduced that would encourage it–RE–enrollment. That's where you go back to workers that have previously opted out–maybe 1–3 years later–and automatically enroll them again. Thoughts?
EDWARDS: I think reenrollment is a great idea. We don't have any plans doing it yet. I think it's fantastic, and I think it will work. Our plan document already allows for it. We just haven't really gotten into it.
CRAWFORD: I agree. If the whole premise is to really help people save and they've opted out, hopefully three years down the road, if they're really with the same employer, they're in a different, and perhaps better financial state at that point anyway. And if nobody has talked to them in the last couple of years to try and get them in–well, I don't know why you wouldn't try to do it.

ADAMS: Megan, when you were talking about automatic enrollment with your plan, you jumped right out with 10%. Could part of the problem with that design be how high the default deferral rate was? The annual survey by the Plan Sponsor Council of America indicates that the average default deferral rate has risen about the 3% that the Pension Protection Act codified. Are you seeing that?
CRAWFORD: It's pretty commonly acknowledged that a 3% deferral isn't enough to create adequate retirement savings–in fact, it likely isn't even enough to qualify for the full employer match. Default rates higher than 3% might well account for the relatively high opt–out rates in some of the state–run IRA programs. The danger is that some workers may think that the default rate is enough since their employer set it.
EDWARDS: A lot of my clients want it set at what they're matching to. And sometimes if they start auto enrollment, they'll do it for a year and then go, "hey, why don't we raise this?" At the end of the day, automatic enrollment provides a good starting point–but you probably shouldn't just set it and forget it. **PC**

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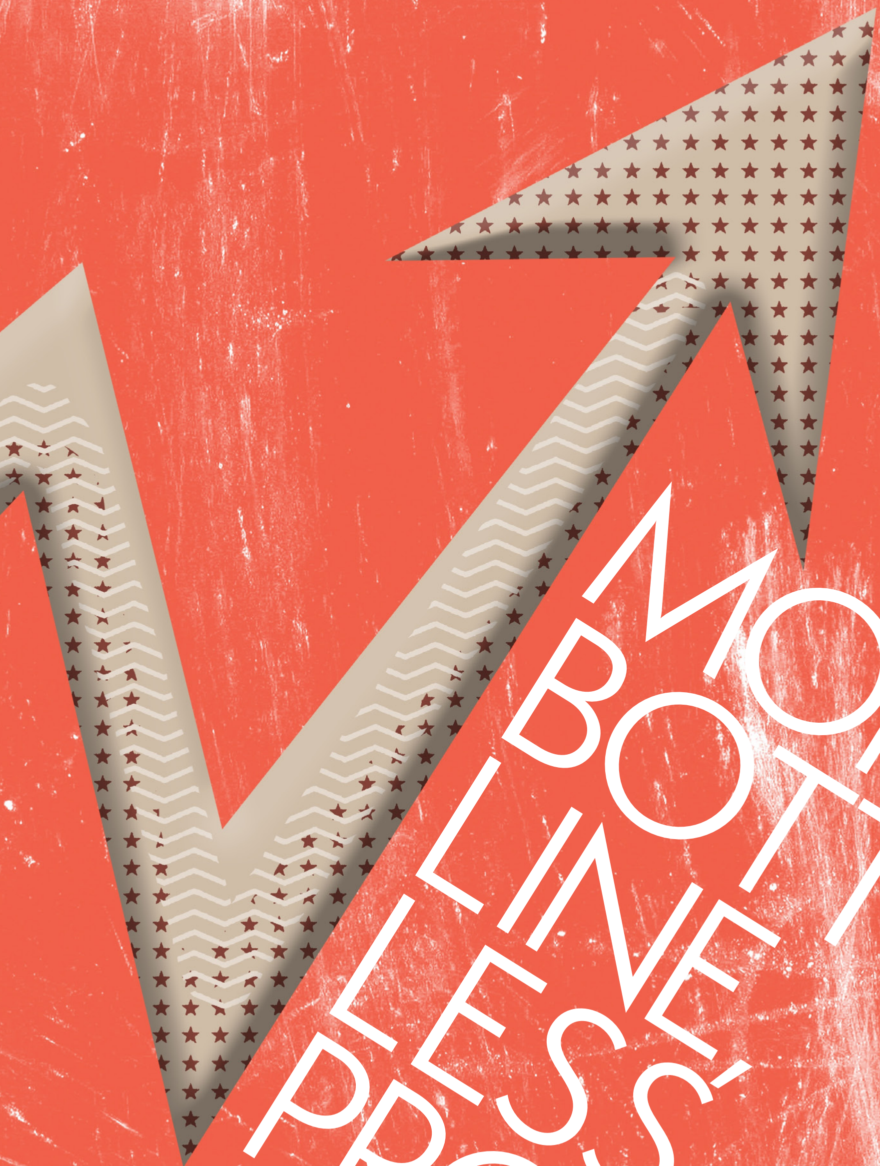

MORE BOTTOM LINE LESS PROBLEMS

IT'S TIME TO BOOST THAT BOTTOM LINE. EXPLORE THE SUBTLETIES OF SOFTWARE NEGOTIATIONS, THE OPERATIONAL BENEFITS OF OUTSOURCING, AND THE MULTIPLIER EFFECT OF AUTOMATION.

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WE would all like to increase our bottom line and work less! And this is also the time to celebrate that we made it through another year! Did we accomplish what we wanted? Did we have any money left over? What would we do differently?

It is always beneficial to reflect right after the year is over. We love to think about what we might have changed so that we can make more money and be more efficient in our practices and more importantly create an environment where our team is happy and productive.

One of the first things that you should always do—and if you didn't do it before the beginning of 2024, there is no time like the present—is a complete review of your income and expenses from 2023.

This article is not about getting more income but instead about the other side of the income statement (of course more income doesn't hurt either). This article is about saving money and how we can do it. It's about the contracts that we have, saving money on business expenses along with ways to be more efficient and we will talk about both automation and outsourcing.

EXPENSES

First let's talk about our expenses.

Time to review. This is the time to review our expenses and what we paid for services, software, and other items in 2023. As many of us are business owners, we should know ALL our numbers to help us understand where we can have savings to show more on our bottom line. Are there things we paid for and didn't use, or did we pay too much? If you use service providers (which I'm sure everyone does), make sure you are getting the best pricing.

Software. We all know that software—whether it is for our plan administration and compliance software, our plan document software, our client management software, or our government forms software—is a huge expense in all of our firms.

It seems that all the software providers wrap in an automatic increase of 3% to 5% each year. It's important to keep track of those increases, but it's also important to compare what you are paying for those products verses what new clients are paying for their products and what you could pay for those same services if you moved to a different provider. It's also important to ask for multiple product discounts if you use multiple products offered by the same companies. Instead of just agreeing to those automatic increases each year, push back and ask for a reprieve.

Just like us, our service and software providers would rather keep us as a client so offering a discount—or at least no increase—might work for both parties. We also know that moving and re-training staff is a cost that we don't want, so take that into consideration when you are reviewing these items. The other consideration is just like us, we need to be sure we aren't putting those providers out of business and that they can afford to give staff increases—so also consider increasing your fees to clients to help offset some of these increases.

Group discounts. One solution you may want to consider is to join a group of TPAs and band together to negotiate discounts with common vendors. For instance, there are now several TPA groups who pay a fee to be part of the group. But those groups can help negotiate discounts for their members on software or services that are used by multiple members. These discounts far outweigh the annual cost of membership; among the discounts available are those on education, automation services, cyber security services, legal services and many others. Service providers also like these groups, as it helps them to get feedback that can not only help the group but also help their other clients. The groups are large enough that most service providers would like to be in front of them to sell their services and products. If you're not in one of these groups, you may want to consider joining one of them or creating one. There is more power to negotiate in groups than alone.

SERVICE PROVIDERS

Speaking of software expenses and services, did you know that there are concierge services that will search for service providers for you and negotiate your contracts? We didn't until recently. Often, we have service issues and since we are not specialists in this area have a difficult time getting the service we need. In fact, we have had issues with cloud desktops and our cloud server provider almost since the relationship started. Frequently, it can take days to get help and weeks for changes to be made to our environment. It culminated in a cyber security issue that in the end turned out fine but caused a LOT of stress in the meantime. Making these types of decisions to make a change can be difficult since it is often hard to understand what will work best for us in the long run.

CYBER SECURITY

Having friends who know a lot more than we do about cloud environments, data storage, and cyber security is great. Having some referrals allowed us to talk to a firm about adding more cyber security services and products, but the cost was shockingly high.

Then we discovered a concierge company. They will help us to research new cloud environment providers, new internet providers and new phone service providers. They will help with anything that has to do with software that we use other than our industry specific software and they will research and get bids to help us find better service providers for a lower cost.

The best thing is that concierge companies don't charge for their services. They are paid by the service providers similar to a wholesaler that works for the service providers. However, they also have relationships with so many providers that they can still make sure that they find the right provider for our specific needs and don't have to make us fit in their box. As we are writing this article, negotiations and research continues

ONE SOLUTION YOU MAY WANT TO CONSIDER IS TO JOIN A GROUP OF TPAS AND BAND TOGETHER TO NEGOTIATE DISCOUNTS WITH COMMON VENDORS.

with them, but so far it sounds like a win win and should save us some money.

Not only will they do this type of research and help us find the right service providers, but they will also negotiate contracts for internet, cybersecurity and providers to do penetration testing and monitoring. This is also one less worry for a business owner when it comes to making sure we don't have a security breach. Not only will they do all of this up front, but they will also assign us an ongoing customer service team to support us. Therefore, if we have an issue with one of the vendors that they refer us to, they will be our point of contact. In fact, they will be our single point of contact for anything we need for any of the service providers we contract with through them. It's really too good to be true best on our current situation with all of the vendors we use and the lack of customer support we receive from most of them.

AUTOMATION

The next area to talk about is using automation to streamline our processes to create efficiencies. By using automation, we may be able to have less people and still accomplish the same tasks and that of course always helps our bottom line. It can also allow us to employ the services of the people we have to perform more meaningful tasks or even avoid having to add more people.

The two biggest considerations if you want to consider automating some processes are to (1) first understand any process that you are trying to automate and then to understand the ROI of that automation, and (2) consider this over the long-term, making sure that this is a process that you will use continually over the next several years if you are going to spend the time to create it.

Using a Robotic Process Automation (RPA) is a technology that allows software robots to use an application's user interface to mimic human actions without human intervention. I talked with Matt Slyter, President of TSC 401k and someone who has been working on automation for over 5 years. He cautioned that when he first started, the scope of the project he envisioned was way too big. He suggests that as a first step, we should build BOTs that can do easy processes for us and replace "keystrokes" of any employee. For example, using a BOT to grab data from a recordkeeper and save it may only save 5 minutes per client. BUT if you have 1,000 plans and save 5 minutes per plan, that frees up over 80 hours, which is 80 hours that an employee can spend on another task! One note of caution is that sometimes BOTs are problematic due to website and security changes that our recordkeeping partners are consistently making.

Matt also talked about how over the next several years, our recordkeeping partners will help us to develop APIs. An API is an Application Programming Interface. This allows two applications to talk to each other. Working with recordkeepers on developing APIs will help us to keep up with the constant demands and to help us scale our practices. We will be able to get data from our recordkeeping partners and potentially from payroll providers that will help us to manage our processes more effectively.

APIs are standardized and can be monitored and managed for both performance and scale. They also have a built-in mechanism for security. Building APIs will then allow a TPA to share with other TPAs to consume what is being done. There is a small up-front development cost, but that is easily paid for in the long run through continued efficiency.

The second generation of APIs will look something like what we know as 360 payroll integration. Why couldn't we share our vesting files back to the recordkeeper instead of

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BY USING AUTOMATION, WE MAY BE ABLE TO HAVE LESS PEOPLE AND STILL ACCOMPLISH THE SAME TASKS AND THAT OF COURSE ALWAYS HELPS OUR BOTTOM LINE.

being a manual process. Another idea is to share something that now has to be communicated via a form to a recordkeeper that could also save time on their end.

Things like these will then allow our good team members to do more relevant work instead of just pushing buttons. It also saves on employee cost by potentially allowing us fewer employees but still the ability to handle the same amount of business.

OUTSOURCING

Another thing that we should talk about is outsourcing. We know that in the past, many TPAs have been extremely averse to outsourcing work performed by their team members. However, in talking with July Business Services, which has provided outsourcing services for TPA firms for many years, the growth of this part of their business has increased from seven TPA outsourcing clients in 2019 to 45 TPA outsourcing clients now. The 45 clients use 184 of July's team members as part of their staff to do the day-to-day administration work. The outsourcing team will access the TPAs databases and software to keep information secure. July also uses the TPA's own processes and procedures so that their employes can easily follow their work and have what they need to service their clients. The outsourced team is trained to create a qualified support team that mirrors the non-outsourced team. The connection between the two teams becomes seamless and creates an environment in which the lines between two teams disappear as if the outsource team was not outsourced.

By moving some of the non-client facing services to an outsourced team, the rest of the team has more time to better serve the clients—both on the front end in data collection, and on the back end in quality control, consulting, and plan design. It actually takes the monotonous tasks of scrubbing census, importing census, running allocations, importing earnings etc. off of their plate and allows them to be more productive and be involved in the parts of our jobs that make our jobs more rewarding. It can create a happier environment for your team while also saving you money that can be spent on other solutions or be used to increase the pay of your non-outsourced team.

One thing to consider if you are thinking about outsourcing, or you are outsourcing, is the price of your outsourced team members and how many team members you need. There is a fine balance between what you are paying for your outsourced team, how much that cost increases each year, how many team members you need, and when do you need more team members. This circles back to the fact that even if you utilize an outsourced team, you still need to be considering the automation discussed previously.

Even outsourced teams can benefit from the increased efficiencies offered by the automation discussed above. That is important to remember. Someone described this to me as using outsourcing to make your team's jobs more rewarding and using automation to make your outsourced team's jobs more rewarding.

THE BOTTOM LINE

Obviously the large national and regional TPA firms have been using some if not all of the tools mentioned above for years. There will also always be a need for smaller more boutique firms. We would argue that regardless of your service mode, local or national, large or boutique, you need to be considering ways to increase your bottom line. In addition, there is a shortage of people to hire and some of these tools can help solve that issue at a reasonable cost as well. We would encourage you to look into some of these suggestions for the upcoming year. PC

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DON'T FALL BEHIND THE 8 BALL: SECURE AND SECURE 2.0 2024 IMPLEMENTATION DATE

The retirement plan industry is constantly evolving. However, in the last few years, our nation has put forth many steppingstones to close the gaps in a multitude of issues that perpetuate the inequality surrounding Americans' retirement security. **By Emily Halbach**

Two of the largest steppingstones are the SECURE Act and SECURE 2.0 Act. With the vast number of provisions in these acts meant to ensure the future of Americans' retirement, it is easy for the new provisions' implementation dates fall through the cracks. To ensure that is not an issue for your practice, here are important provisions that may affect your book of business effective Jan. 1, 2024.

LONG-TERM PART-TIME EMPLOYEES

The SECURE Act enforced a mandatory change for long-term part-time (LTPT) employees. This provision will now start to affect a plan's eligibility although the effective date of the provision was Jan. 1, 2021. If an LTPT employee works three consecutive years or at least 500 hours, he or she must be given the right to defer. Since the mandatory provision excluded service before plan years beginning on Jan. 1, 2021, if an LTPT participant worked 500 hours for three consecutive plan years beginning on or after Dec. 31, 2020, the first available entry date for deferring will be Jan. 1, 2024.

DISTRIBUTIONS

- **Personal Emergency:** One distribution of up to $1,000 per plan year is permissible, and a plan sponsor may rely on a participant's self-certification. This distribution is not subject to the 10% penalty tax for early withdrawal. The participant also has the option to repay this distribution over three years. Furthermore, no additional emergency distribution would be allowed to be distributed in the three-year repayment period unless full recontribution is made. This is an optional amendment choice.
- **Force Pays:** The force pay limit was increased from $5,000 to $7,000. An optional amendment, however, should be implemented in almost all situations. In defined benefit plans, higher interest rates result in lower present values and this provision could create an availability for force pay outs that were not originally eligible under the $5,000 force pay limit if implemented.
- **Domestic Abuse Victims:** A penalty-free withdrawal to a domestic abuse victim is permissible: the lesser of $10,000 (indexed) or 50% of balance allowed for

"WITH ALL THE CHANGES RELATED TO MANDATORY AUTOMATIC CONTRIBUTION AGREEMENTS, THERE ARE BOUND TO BE ERRORS THAT NEED TO BE CORRECTED."

withdrawal within one year of the incident. Participants may self-certify, and repayment is allowed but not required following the distribution in a 3-year period. However, it is important to keep in mind that this is not allowed regarding joint and survivor benefits, as spousal consent is required.

- **403(b) Hardship Rules:** The hardship distribution rules for 403(b) plans conform to those of 401(k) plans. In addition to elective deferrals, 403(b) plans may now allow hardship distributions considering qualified nonelective contributions, qualified matching contributions, and earnings on those sources as well as deferral earnings.
- **Required Minimum Distributions (RMDs):**
    - o Roth RMDs: Qualified plans will now be in line with Roth IRAs in regard to pre-death RMDs. A living participant will not be required to have his or her Roth balances considered in the RMD calculation.
    - o Surviving Spouse Elections: A surviving spouse may elect to be treated as the employee. This would allow the surviving spouse to elect to postpone RMDs so they start when the required beginning date for RMDs would have kicked in for the deceased participant. The key idea here is that the surviving spouse would need to elect this option. If they do not, then the RMDs would begin the year following the passing of the participant.

STARTER 401(K) PLAN

This permits an employer that does not currently offer a retirement plan to offer a "starter 401(k)." The exemptions that make this plan enticing to a plan sponsor are that there are no annual deferral percentage (ADP) or top-heavy testing requirements. The plan can exclude union, non-resident aliens, and require age and/or service requirements.

WHAT'S THE CATCH?

There are no employer contributions allowed and the annual deferral amount is limited to $6,000 with a limited, but indexed, amount allowed for catch-up contributions. For 2024, the catch-up will be limited to $1,000 and begin to be indexed moving forward in 2025. There may be a change to the actual language in the future, after clarification, to match the allowed deferral amount with IRAs as well as indexing, the same as the original intent; however, as it is written currently, it is limited to $6,000 with no indexing.

FAMILY ATTRIBUTION RULES

This may be the best provision in both of the SECURE Acts.

Effective starting in 2024, disaggregation is now allowed regarding entities within a control group or affiliated service group if the only common ownership between the companies is the indirect ownership of a minor child under the age of 21 due to the ownership interests of a parent attributed to the child. That's right, the "Vegas baby rule" is no more!

In addition, SECURE 2.0 disregards community property laws per state in consideration of determining ownership for purposes of controlled groups and affiliated service groups. With these changes, this opens the door for more flexibility in plan design for spouses who individually own separate businesses.

DEFINED BENEFIT PLANS

- **Annual Funding Notices:** An annual notice will now need to include the market value-based information as of the plan year-end, as well as those of the prior two years, the participant counts at the end of those 3 years, and the average rate of return for the plan year of the statement. If a plan utilizes an interest rate stabilization supplement, they will continually be required to report three years of financial information using actuarial values as of the first of each year. Notices also will now be required to provide certain information regarding the Pension Benefit Guaranty Corporation (PBGC) guarantees and a disclosure statement that the PBGC termination liabilities may exceed the actual liabilities shown on the participant's notice.
- **Variable Rate Premiums:** There will no longer be indexing of the variable rate premium. From now on it will be a flat $52.

INCREASE IN TIME TO AMEND TO INCREASE BENEFITS

A plan sponsor is now allowed to amend the plan as of any date to increase any accrued benefit that is not directly related to deferrals for a prior year up until the filing deadline, including extensions, for the plan year that the amendment is effective. This is allowed so long as the amendment does not trigger the plan to fail to meet any of the qualification requirements.

EPCRS SAFE HARBOR FOR CORRECTIONS OF EMPLOYEE ELECTIVE DEFERRAL FAILURES

With all the changes related to mandatory automatic contribution agreements, there are bound to be errors that need to be corrected. Effective 2024, employers can now correct inadvertent auto-enroll failures within a 9½ month period from the plan year-end of the failure without having to contribute the missed deferrals so long as the following three requirements are met.

1. The error is corrected by implementing the enrollment or escalation as of the earlier of end of the month of notification from employee or 9½ months after plan year end.
2. If the affected employee would have been subject to a matching contribution, those contributions are to be made plus missed earnings.
3. The employer gives notice of the error no more than 45 days after correct deferrals begin to be withheld.

STUDENT LOAN MATCHING PROGRAM

Employers are now allowed to recognize student loan payments regarding an employer match. Employers can rely on employee certification of said repayments. Since the employer contribution is treated as a match, affected employees can be tested separately regarding ADP since there are no real deferrals considered.

TOP HEAVY PLANS

It is now possible to disaggregate for testing purposes regarding employees who do not meet the minimum age and service requirements of age 21 and one year of service.

EMERGENCY SAVINGS ACCOUNTS

There is not an optional provision for employers to offer NHCEs an emergency savings account. They also may automatically opt employees in up to 3% of their salary; the accounts are capped at $2,500 (this can be lowered by employer). Contributions are made after tax. Contributions are considered deferrals regarding matching; once the account cap is reached, the contributions would be considered Roth deferrals. Distribution fees are not applicable for the first four distributions. Employers may impose reasonable restrictions on distributions. After termination, a distribution is allowed, or a rollover into Roth. PC

WHEN TPA MEETS ADVISOR

Advisor: I'll have what that TPA is marketing. **By Katie Boyer-Maloy**

It's no secret that to have a successful plan in the retirement industry, there are several key parties that play crucial roles—two of the most important being the third-party administrator (TPA) and the advisor. While some of the other key pieces operate somewhat stand-alone, the relationship between the TPA and advisor is critical.

As the TPA industry has become more and more remote in nature, it's becoming increasingly difficult to find ways to build on relationships, facilitate new ones and effectively communicate the value TPAs provide. So, let's dive into the value, and in turn, cover how to market yourself and your business to maintain current relationships and appeal to new referral sources for your business. To make it easy, let's talk about five key areas that TPAs bring value to their advisors.

There are many things in our day-to-day work life that we can control, like who we work with, what hours we work, and the processes with which we work. However, one thing we cannot control is time. There are only so many hours in a day, and regardless of how you slice and dice them, you cannot change the number of hours in a day. Making the most of that time is critical for anyone. This leads us to the first of our five areas: Getting time back.

1. Making the Most of Your Time

Overwhelmingly, when advisors were asked why they choose to partner with TPAs in their practice, the answer was almost always along the lines of "working with a TPA lets me maximize my time and provide the best service to my clients." It's incredibly important to respect one another's time, which includes the request for information and assistance from your counterparts. If everything is an emergency, nothing is an emergency. And tone is everything. However, when both parties feel confident in their partnership, they know that if they reach out for help, they'll get the expert help they need in a timely manner. Make sure you are that partner of choice.

Speaking of expert help, that leads us right into our second area of focus: Being the retirement plan expert.

2. TPAs Are Retirement Plan Experts

Let's face it, everyone likes to look smart in front of their clients and peers. Now, think about how many rules and regulations have changed over the last two years alone. As TPAs, you stay on top of IRS and Department of Labor (DOL) updates and provide consistent information to keep the advisor community informed of new developments as they arise.

While many specialist advisors may have a good understanding of the complexities of the retirement industry, it is rare that anyone is better prepared than the TPA. This is your area of expertise, and one that your advisors should lean on—ideally to the point of including you in the client meetings to make the sale. With a TPA in their corner, advisors are able to have more in-depth conversations about the complexities of the retirement plan without worry. Plus, you are establishing the partnership element from the very beginning with the client.

On to the third area of focus, and with such a huge focus on growth: Referrals.

3. Improving Sales and Referral Opportunities

We are all proud of the reputations we build in our industry, and we work very hard to maintain them. So if you're great at your job and you partner with someone who's great at theirs, imagine how that could double your reach for referral business.

Seems like a no brainer, right? How many new plans do you expect on an annual basis from your top referral sources? Do you see those numbers consistently? Have you ever asked your advisor why they continue bringing business your way? If you haven't, you should.

Know what you bring to the table and communicate it proudly! While your advisors continue bringing business your way, be sure to continue sharing leads back in the other direction. Staying top of mind with your key advisors is much easier when you've recently sent a referral back their way.

While we need to focus on sales, we know we have to maintain business as well, which leads us to our fourth area of focus: Retention.

4. Retention

We love new business, but if we don't have the retention to back it up, how successful are we?

We all know the value of "stickiness" among our clients. The more value we provide to them, the less likely they are to shop around. No one wants to make habit of constantly jumping service providers, so feeling like their business matters to you both is key!

Even more important, communication is crucial among the three of you (client, TPA, and advisor). We all manage different businesses, especially between the TPA and the advisor. However, a good working relationship between the two leads to growth in business for all involved as the referral agreement and reputation for working well together is shared between all parties.

Many successful business owners, when asked about their success, are quick to mention the army of people behind them that helped them get to where they are. And that brings us to our fifth and final key: Building.

5. Building your retirement army

It's been said about a million different ways at this point. TPAs and advisors are like peanut butter and jelly, or Batman and Robin. They just work together when you find the right pairing.

So how do you make sure you and your advisor are the right fit for one another? Identify partners that work the best for you. The right partners align with your values and those of your clients, your work style, and your overall team and business strategy.

Mutual respect is crucial for a successful partnership. If at any point that is in question, you need to take a hard look at the relationship. It is okay to set boundaries and not budge on them. Just make sure they are clear to the parties with which you partner. You may be amazed how much you are respected for sticking to your guns on the things that are most important to you.

No one should expect perfection. Issues will surely arise over time—it's how you handle them that makes the difference. Staying in communication with your advisor and client as issues come up is key. As long as you are on the same page and working on a solution in tandem, the relationship will continue to thrive.

Now that we've established the five key areas in which TPAs bring value to their advisor relationships, let's close out with a few points to remember on how you can continue to promote your value.

1. **Stay true to your values, always.** If something seems sketchy, trust your gut and kindly pass.
2. **Your fees are your fees.** You do great work for those fees, and they aren't negotiable. If they want the work done cheaper, I'm sure someone out there is willing to do a lesser job, but not you.
3. **Communicate, often and openly.** Remind your partners why working with you is the best option.
4. **Remember, you are the expert in your field.** Make sure that is both understood and appreciated. Your time is just as important as anyone else's. Boundaries are okay and expected to be set for everyone.
5. **Make sure they know what you're doing to go the extra mile.** While it may not directly affect them now, it goes a long way for the relationship in the long run.

It's important to remember that what you do matters—every single day. Don't ever devalue that work to fit someone's need or desire for something less. Partnerships matter, and what you bring to the table is so important to the success of the retirement plan. PC

RETIREMENT PLAN COMMITTEE MEETINGS—PART 1: WHAT PLAN SPONSORS WANT

As a best practice, we know that plan sponsors should have a retirement plan committee and have regular committee meetings. **By Theresa Conti**

Do plan sponsors do this? And if so, what do they really want to talk about in these meetings?

It used to be "regular" stuff like investments, compliance testing, and maybe some information about new things that they should consider for their plan. But in today's world, plan sponsors want more…they want to talk about participant outcomes and financial wellness. When we talk about participant outcomes and financial wellness, what does that really mean?

To get started, when the retirement plan committee is being formed, it should be deciding who should be on the committee, how often they should meet, and the essential items that should be on the agenda.

I do believe that most financial advisors who are committed to the retirement plan space do schedule regular meetings with their plan sponsors. And I also think everyone knows that the committee should be named in the plan document, that they should have a charter, and that the committee members should undergo training to serve on the committee so that they are clear on their responsibilities.

But I also think that the plan sponsor landscape has changed, and that advisors and other service providers really need to talk with the plan sponsors about what they want to cover in the meetings. Clients are now looking for more than just investment reviews, investment policies, 404(c) guidelines, and an understanding of the investment expenses and fees. Now what they want is to drive results for participant outcomes and financial wellness.

To research this more in-depth, I talked with Cynthia Ventura, the Director of Engagement Consulting for Fidelity Investments. The largest part of Cyndi's day-to-day responsibilities is meeting with plan sponsors about their retirement plans. Here are some of the highlights of what plan sponsors currently are asking her to cover in those meetings.

- **Participant Education.** The plan sponsor wants to understand participant outcomes and how they can help employees get to retirement. Plan sponsors want education that will matter to the employees and is meaningful and relevant today. In addition, they now want targeted meetings and no longer just want regular enrollment meetings. They want the content in the meetings to relate to what is going to matter the most to the majority of the population.

- **Financial Wellness.** The provider and advisor need to work together to provide information on financial wellness. The provider's information should complement the information that the advisor has available for participants. Covering topics like budgeting and life events (helping employees

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when they are going through something that is challenging like a new baby, divorce, etc).

Availability of workshops and podcasts can help employees to relieve stress. Employees often don't know where to turn when they are in a stressful situation, and according to Cyndi, employees have no idea that these resources are available. Some other areas that can help employees include credit card debt, savings, and student loan debt and direction, as well as education that is directly related. It is a request for meaningful and relevant information to continually be available.

Plan sponsors are considering financial wellness to help with retention. Creating awareness of the financial wellness offering is the key for success.

- **Communication.** This comes in several forms for plan sponsors as well as participants. It will include information on the online tools that are available along with data (third party administrators (TPAs) can help with this) that complements the data the recordkeeper already has, in order to achieve a better participant experience and ultimately create a campaign to help employees on various topics. Personal campaigns that have a frequent message based on age or behaviors will be critical. So having a partner that collects this type of data will help with developing these campaigns.

- **Communication Frequency.** Set up an annual calendar with the plan sponsor during committee meetings. That calendar should be more than just due dates of plan-related items and be complemented with communication campaigns. At a minimum, there should be a quarterly touchpoint for participants, with monthly communications that trigger items happening with them (such as retirement). Having the correct data and the ability for the TPA, recordkeeper, and plan sponsor to work together will make this a better process.
- **TPA Input.** The recordkeepers and advisors should also consult with the TPA and invite them to the meeting. Before joining committee meetings, consider a pre-call planning session to discuss the service models of the TPA, advisor, and recordkeeper. Really try to get to know each other, become a team, and identify how the services work together.

The relationship between the TPA and the plan sponsor is valuable, and is typically a local presence (and with zoom being prevalent, even if the TPA is not local they can still easily participate). The areas with which the TPA can typically help with are participation information and plan specifications, especially safe harbor and employer non-elective contributions. The TPA also typically knows more about what is going on and how the recordkeeper can help the participants. In addition, if the TPA is functioning as a 3(16), then the involvement is even more in-depth with that plan sponsor.

- **Other Plan Opportunities.** There are often other opportunities that can be discussed with plan sponsors during committee meetings—such as health savings accounts, student loan debt, and benchmarking. Plan sponsors want to make sure that what they are offering to their employees is competitive in the market.
- **Challenges.** Plan sponsors are often short on time, so we need to help them handle this and make it easy. Working together will help them to make it all happen. Having a plan with a great team and education strategy, along with all the data and documents put together, can make for a great relationship in addition to being a great "value add." Plan sponsors also are not able to keep up on changes that are coming for their retirement plan. We are a valuable source of that information and should always have that on an agenda. Setting a time for each speaker / topic can help the meeting stay on track.
- **Impact.** The final piece that plan sponsors want to know is whether they are making an impact on the participants. Having a great partnership with a recordkeeper and TPA allows the plan sponsor to leverage the information that is available on the recordkeeper's system and to really use it for future participant campaigns. Are the items that we are sending and using for education helping participants and really making an impact?

Thank you to Cyndi Ventura for sharing her insights with me as I broke down the important pieces for plan sponsors and plan participants. The next issue will talk more in dept about how TPAs can help more with this process and be a valuable piece of the puzzle. **PC**

NEXT: Retirement Plan Committee Meetings – Part 2: How TPAs can help the Process

NEW IRS 5500 COMPLIANCE QUESTION REQUIRES STRATEGIC MARKETING ASSESSMENTS

The 2023 version of the Form 5500 EFAST System (filings made after Jan. 1, 2024) will contain several new IRS compliance questions. **By Tim McCutcheon**

INTRODUCTION

What arguably is the most controversial question starts by simply asking if the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS opinion letter. So far, this is not particularly controversial. However, the IRS does not stop there. It goes on to ask for the date of the opinion letter and, more importantly, the opinion letter serial number. As we will discuss more fully below, the disclosure of the opinion letter serial number will essentially disclose the client list of any retirement plan service provider (generally third-party administrators (TPAs) and recordkeepers) that has adopted a pre-approved plan in its own name.

But first we will briefly recap the pre-approved plan system and how the new question should be answered. Then we will discuss the implications of the new IRS compliance question.

OPINION LETTER PROGRAM/ COMPLIANCE QUESTION

Let's begin with a definition of an "opinion letter." An opinion letter is a written statement issued by the IRS to a "mass submitter" or a "provider" as an opinion on the qualification of a plan document. A mass submitter is a document vendor who requests opinion letters on its own behalf and on behalf of its customers (providers). Thus, a provider is generally a TPA/ recordkeeper who has been issued an opinion letter in the name of the TPA/ recordkeeper. In a handful of cases, the provider will obtain an opinion letter on its own behalf without going through a mass submitter.

The IRS publishes a list of mass submitters and providers here: https://www.irs.gov/retirement-plans/list-of-preapproved-plans. If your firm is on the list, your firm is a provider with respect to the plans listed.

Please note that some document vendors do not require a customer to be a provider for some, or all, of the documents it offers. In this case, the

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TPA/recordkeeper will use the opinion letter of the mass submitter. A TPA/recordkeeper that does not obtain an opinion letter in its own name and uses the opinion letter of the mass submitter is not a provider.

That brings us to the question of which opinion serial number must be used when answering the IRS compliance question. If a TPA/recordkeeper is a provider with respect to the plan document used by a plan sponsor, the provider's opinion letter serial number must be used when answering the IRS compliance question on the 5500 for the sponsor's plan. If a TPA/recordkeeper is not a provider and is using the opinion letter of the mass submitter, the mass submitter's opinion letter serial number should be used when answering the IRS compliance question on the 5500.

It will be a simple task to review a 5500 filing to determine the opinion letter number for the plan. Because the IRS list of pre-approved plans includes the firm name and opinion serial number of each pre-approved plan, a quick review of the IRS list will reveal the identity of the mass submitter or TPA/recordkeeper for the plan. Thus, the client list of a TPA/recordkeeper that is a provider will become public. On the other hand, the client list of a TPA/recordkeeper that solely uses the opinion letter of a mass submitter will ***not*** become public.

Those of you with the technical competence and budget will be able to obtain the opinion serial numbers for all plans from the DOL FOIA site (https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/foia/form-5500-datasets).

If you do not wish to develop a list independently, you may purchase the information from a 5500 data provider.

IMPLICATIONS

There are three principal implications regarding this new data. The first is that the IRS will likely use it for audit selection. If the IRS notes egregious errors for plans serviced by a given TPA, more of this TPA's plans will likely be selected for audit. If a TPA does quality work, this should not be an issue.

The second implication is the use of this data in the strategic marketing efforts of TPAs/recordkeepers. And by strategic marketing we do not mean raiding the client list of a competitor. What is your message to the prospective client? Your current provider is terrible and we are great? This brute-force tactic of directly contacting each competitor's client is seldom effective and can have the opposite effect of cementing the relationship of a competitor to its client. Keep in mind that the universe of client prospects in your area is not currently a secret. A quick zip code search on a 5500 prospecting service will reveal that information in seconds.

What we ***do*** mean by strategic marketing is using the information to gain insights into your competitors. We will illustrate this point with some examples. These examples are not an exclusive list, and we are certain you can determine some other creative uses of this information.

Let's say you have developed skill in defined contribution/cash balance combo plans but you just can't seem to land any new DC/CB clients. This data may show you the TPA where these prospects end up. This information should prompt some serious introspection to determine why this is happening. What are the reasons the DC/CB prospects are going to TPA X? What can we do to overcome these factors?

The opposite may also be true. Have you ever wondered where all the clients you have fired end up? A review of TPA Y's client list may reveal several of the client's you fired. You may have thought TPA Y was a competitor when actually it is not. It may turn out that you may start referring your fired clients to TPA Y.

> "A TPA/RECORDKEEPER THAT DOES NOT OBTAIN AN OPINION LETTER IN ITS OWN NAME AND USES THE OPINION LETTER OF THE MASS SUBMITTER IS NOT A PROVIDER."

Lastly, the third implication is the case in which you make the determination that it is a strategic disadvantage to have your client list public. Assuming your document vendor/mass submitter permits you to use its opinion letter, you could convert all of your clients to the vendor's opinion letters. If you want to do this, please proceed with caution. It is not clear that you can merely swap opinion letters. It may be necessary to restate all of your documents under the new opinion letter to make the change. In addition, converting all your plans to the vendor's opinion letter may constitute an abandonment by the provider (you) of the pre-approved procedure and require notification to all of your affected clients. We recommend that you consult with counsel before taking this step.

In any event, doing nothing is not an option. Those who can adapt to the new competitive landscape will thrive. Unfortunately, those who just wish it would go away may not. PC

A BIG 'ASSIST' TO YOUR GOALS

The ASPPA Qualified 401(k) Specialist™ can transform your relationship managers to the Roy Kent's of your retirement plan team. **By Chris DeGrassi**

Colin Hutton / Apple TV+

I love soccer. I love the constant movement of free-flowing team play. I am awed by the creativity and moments of individual brilliance. My favorite position as a player was midfield, which is partly a defensive position and partly an offensive one. My aging legs have relegated me to defense when not injured. But I enjoyed running around the entire field in my younger days. Supporting grinding attacks and lockdown defense was my game. At least, that's how I remember it.

The next time you find yourself in a room with your peers, ask them to describe what the relationship managers on their teams do. The answer you'll likely come away with is EVERYTHING!

Relationship managers are the midfielders on your retirement plan team. Relationship managers are like Roy Kent in the show Ted Lasso. Roy was the star midfielder who would enter the pitch to the welcoming chant, "He's here, he's there, he's every &#@ where! Roy Kent! Roy Kent!"

Maybe my youth playing midfield set me on the path to my first job in the retirement plan division at Kemper Investments. I started my career as a relationship manager. Kemper called it sales and plan support.

My first job in the financial industry was to take calls from advisors and plan sponsors and answer any questions they had. The role was a lot of fun! As a relationship manager, I had the chance to do everything from helping to design and sell new plans, assisting with compliance, and helping plan participants with contribution, investment, and distribution options.

I recall that little training was available for a role that did not fit squarely in the advisor role (attacking positions in soccer) or plan compliance (defending positions in soccer). The job was somewhere in the middle! This was back in 1995, so Google did not exist. I relied on Panel Publication Answer Books, Tax Facts, and a shared copy of the Internal Revenue Code and learned on the job.

I've had an exciting career but had to learn a lot the hard way. That's why I'm so happy to announce the development of the ASPPA Qualified 401(k) Specialist™ (ASPPA QKS™) credential!

ASPPA QUALIFIED 401(K) SPECIALIST™ CREDENTIAL – A PROGRAM TO DEVELOP YOUR ROY KENTS

ASPPA QKS™ is a new ASPPA education and credentialing program explicitly developed for retirement plan relationship managers and other members of your team who play somewhere in the middle. Tiffany Hanks, Director of ASPPA Education Sales, championed the development of ASPPA QKS™. Tiffany knows the importance of retirement plan relationship managers because she was one! The ASPPA Leadership Council quickly embraced creating an education and credential program for relationship managers. And the response of ASPPA members who have helped guide program development has been overwhelmingly enthusiastic! Tiffany would love to share what she has learned about how firms plan to introduce ASPPA QKS™ into their training programs.

The ASPPA QKS™ credential will launch in April 2024. Working with Tiffany Hanks and content author Jake Linney, CPC™, QPA™, CPFA®, the ASPPA education development team has designed an 11-module curriculum in a single online course. And there is only one exam required to earn the ASPPA QKS™!

The ASPPA QKS™ course content and design fit nicely between NAPA CPFA® (advisor role) and ASPPA QKA® (plan administration role). This makes ASPPA QKS™ a great fit for relationship managers and your TPA sales team!

ASPPA QKS™ EDUCATION MODULES

1. Plan Fundamentals
2. Plan Types & Considerations
3. Plan Design
4. Takeovers & Conversions
5. Fiduciary Responsibilities
6. **Retirement Plan Contributions**
7. Distributions, Vesting & Loans
8. Annual Administration
9. Reporting & Disclosures
10. Common Errors & Corrections
11. Ethics

The ASPPA QKS™ also has all the building blocks needed for the ASPPA Cash Balance Specialist™ (ASPPA CBS™) credential. This makes ASPPA QKS™ Retirement plan relationship managers learn everything required to support 401(k) and cash balance hybrid plans in two online ASPPA programs. Moreover, the program will also be great for the sales team supporting hybrid retirement plans!

In 2024, ASPPA will offer virtual classrooms designed to help relationship managers prepare for ASPPA QKS™ and CBS™ exams. Stay tuned for virtual classroom dates. You'll want to strike quickly to reserve your seat!

SKILL SETS OF GREAT RETIREMENT PLAN RELATIONSHIP MANAGERS

Soccer managers develop training plans to develop the skills of their players to support the team. Training plans differ by position, and every team uses the same position in a slightly different way. ASPPA QKS™ takes the same approach to education for your retirement plan relationship managers.

Run the Field: Modules one and two, Plan Fundamentals and Plan Types & Considerations, build the leg strength of the team members who need to run the field's length. The modules develop a broad understanding of retirement plan options, service models, and the purpose of different plan designs. These modules set the context for how relationship managers will support the team on the field. Every position has a different purpose, and every player needs to understand how those positions work together.

Support the Offense: Modules four through six prepare relationship managers to develop tactical and technical skills to win new clients. Understanding basic plan designs, knowing the plan takeover and conversion process, supporting plan fiduciaries, and having the confidence to address plan contribution options are all necessary skills for account managers who support sales roles. Relationship managers often play forward with advisors and play an essential role in winning new business and making sure the plan setup goes smoothly. Nobody wants to see a goal waived off due to an offsides or foul off the ball.

Lock Down the Defense: Relationship managers are often responsible for plan retention. This means that relationship managers need to be able to see any problems before they develop and quickly respond to close counterattacks. Modules seven through nine train your relationship managers to see and promptly address issues that may arise relating to distributions, annual testing, and plan communications. Module ten focuses on the close defensive skills needed to guide plans through common errors and corrections.

IN RECOGNITION OF THE TEAM PLAYER

I want to thank all the relationship managers who work hard to support advisors and plan sponsors. Relationship managers are on the field supporting ASPPA's mission, Working for America's Retirement every day. I am so incredibly excited about what the future holds, and I know that the ASPPA QKS™ will help the people who make things happen! Now, let's lace up our boots, take off our pinnies, and take the pitch for added time! PC

FRIEND OR FOE? STATE-MANDATED PLANS AND GROWTH IN THE PRIVATE SECTOR

Growing state intervention in retirement plans can be challenging for some third-party administrators (TPAs) but legislation like the SECURE Act presents opportunities through tax incentives, emphasizing the continued importance of TPAs in the evolving landscape. **By Emily Halbach**

Through the years, there have been many advances and changes in the retirement plan industry that have put fear of our dissolution in the minds of third-party administrators (TPAs). However, TPAs have continued to persevere through all the changes and remain a needed and valued partner for employers who sponsor retirement plans. It is not a surprise that state-mandated plans coming into play bring those fears back to the surface.

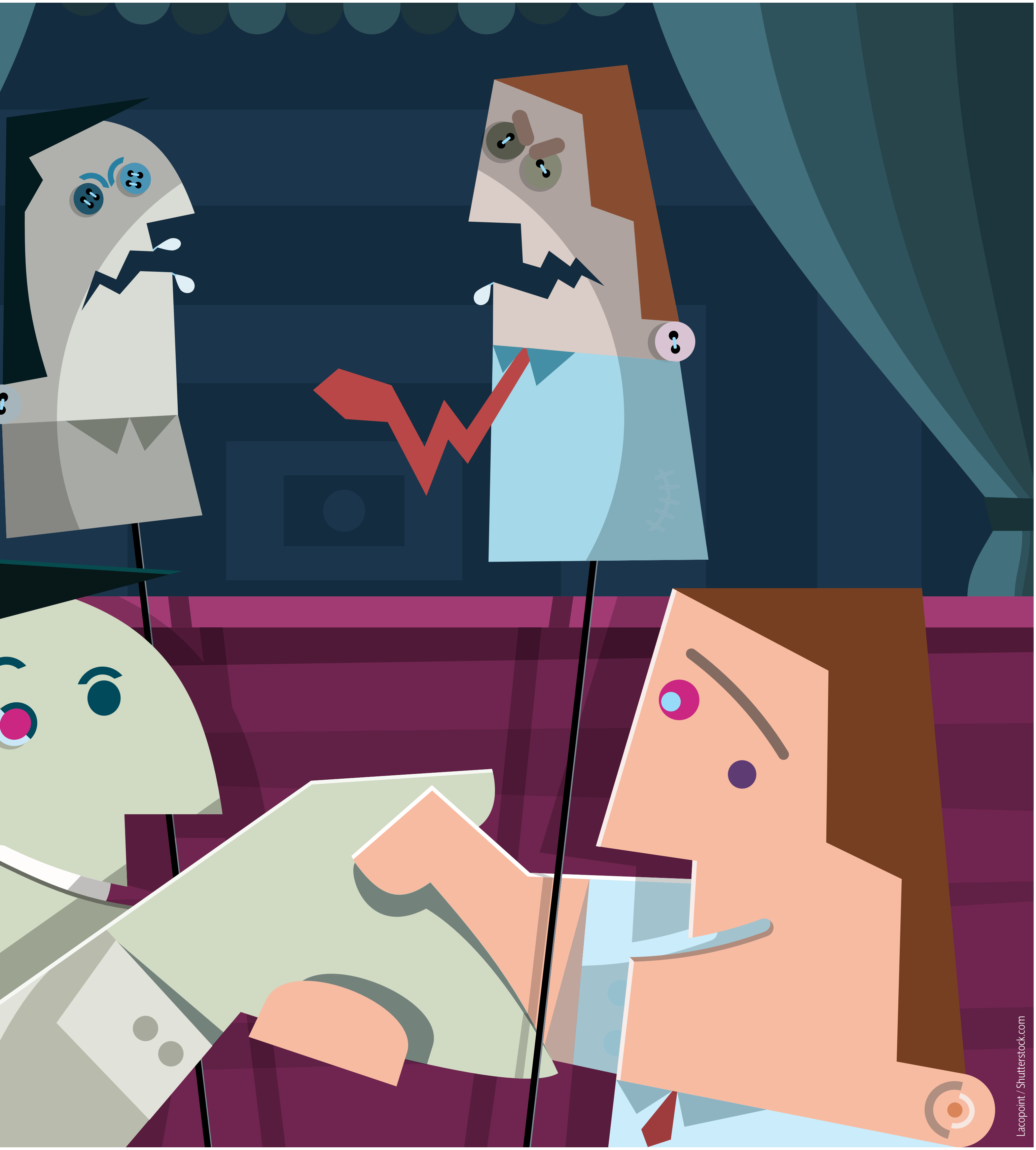
FEELING THE HEAT

State-mandated plans have been on the discussion board since 2012. However, in the last few years, 18 states have established mandatory government-run plans that are either currently in effect or are in the planning stages and deemed likely to be effective within the next couple of years. And in the remaining states, legislation has been introduced in all but seven in the last 10 years.

The heat on state governments to enact plans such as California's CalSavers and Colorado's Colorado Secure Savings Program has grown tremendously due to the underwhelming amount of retirement savings that Americans have stashed away. The Federal Reserve's dataset reports that only 75% of Americans have any retirement assets at all—and out of that 75%, only 40% are on track to retire by a decent age. In addition, the Bureau of Labor Statistics reports that only 69% of privately owned businesses offer retirement plans and only 52% of private-sector employees participate. Essentially, multiple outlets have reported that 50% of workers over the age of 30 will not be able to retire and afford to live.

The state-mandated plans currently in existence are mandatory for employers with workforces ranging from 1 to 100 employees. It is safe to assume that effective for 2023 and subsequent years, the number of employees required in order for mandatory plan requirements to kick in will fall to 0-5 employees.

While these plans are free to employers, they come with limitations. Most state plans that have been enacted are solely allowing for Roth contributions and depositing the funds in Roth IRAs. The state has full control over picking the investments and the advisors that handle the investments. There are no employer contributions allowed, and there are no allowable deductions or credits for an employer for participating



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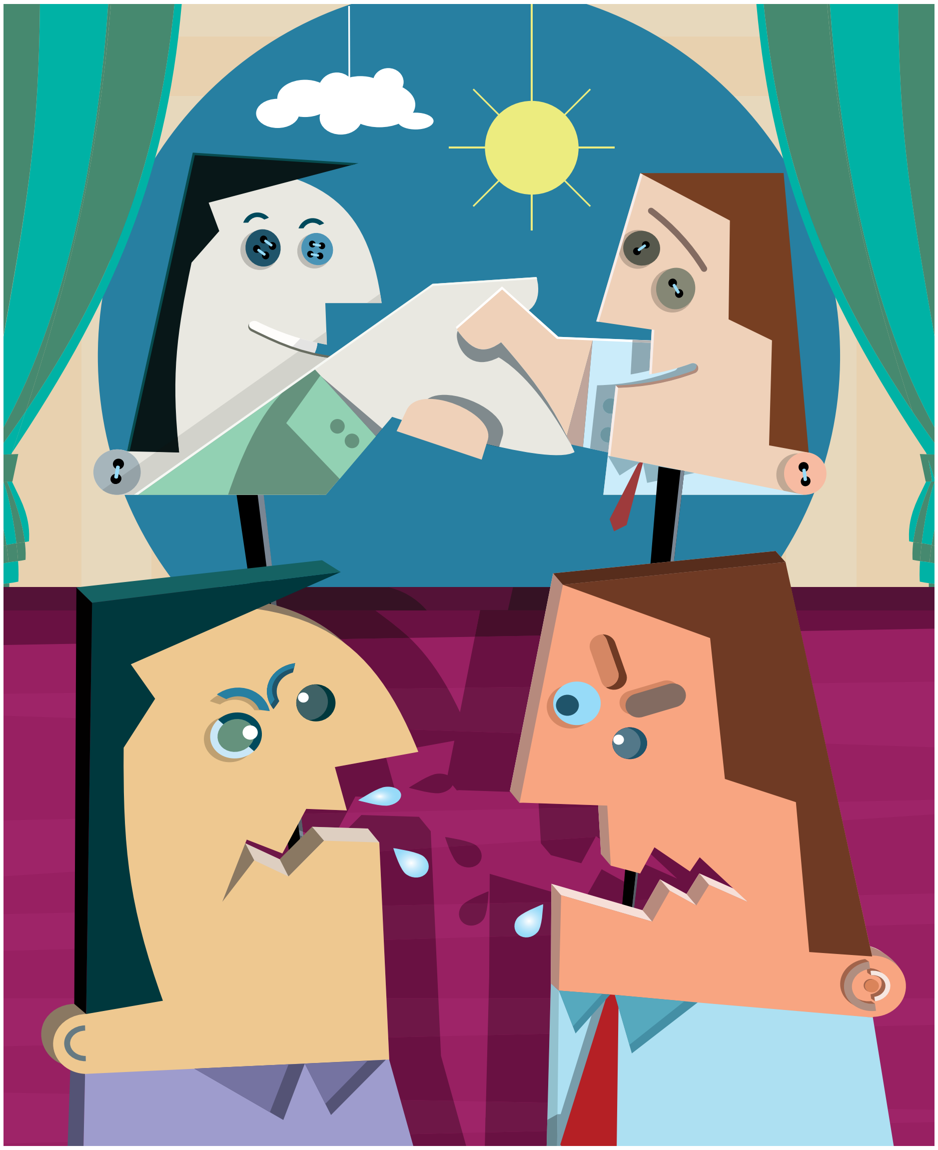

in a state plan. The employer is still liable as a fiduciary, as well as responsible for payment of deductions and remittance of deferrals. There are also limitations to the annual allowance for deferrals and catch-up contributions.

EXISTENTIAL THREAT?

That raises a question: How do TPAs survive when businesses are being provided a free retirement plan provided by the state?

While legislators mean well and retirement for everyone is a wonderful idea, the fact remains that such plans still are being offered by the government. Pew Research Center reported that in a nationwide survey completed in 2022, only 20% of Americans said they trusted the government to "do what is right." Whether an employer is red, blue, or a blurred line of both, the one thing many Americans have in common is that they do not want the government to have control over anything that is not already required for them to have. State plans all have one for sure thing in common: the state controls the investments and the appointment of the advisor of those funds.

CNBC reported in September that Social Security is projected to run out of funds in 2033, and while Americans will still get a check, it will be only 77% of the promised benefits. In addition, state pension plans' funding percentage are public knowledge. Of the 51 state pension plans, 22 are below 80% funded with nine of those being in critical condition at under 70% funding. Investing, spending, and accounting for both Social Security and state pension plans are controlled by the government.

Therefore—while the state-mandated plans are free, they come at a cost of losing control of your investment as well as your employees' investments.

SILVER LINING?

In the first year after the first three state-mandated plans were put into effect during the period 2017-2019, the Pew Charitable Trusts reported there was an increase of 35% in private-sector plan creation in those states. In addition, statistics over the last few years from the Pew Charitable Trusts show an overall increase in the number of private-sector plans in the states that have mandated plans, compared to the number of plans adopted annually before those states implemented their plans—proving that these mandated plan requirements may be a blessing in disguise.

The one thing that TPAs have on their side in this conundrum is knowledge. Plan design is a beautiful tool to make a plan forced on an employer more palatable. While the state may offer a "free plan," there are many limitations to these plans—all while the employer still has fiduciary liability. And according to the Pew Charitable Trusts, many small employers reported their reasons for not offering a retirement plan were expense, strained administrative resources and staff, and lack of employee interest.

SECURE-ITY

In some instances, offering a plan after deductions and credits can come close to, if not zero out, the impact of costs on an employer altogether.

> "THE HEAT ON STATE GOVERNMENTS TO ENACT PLANS SUCH AS CALIFORNIA'S CALSAVERS AND COLORADO'S COLORADO SECURE SAVINGS PROGRAM HAS GROWN TREMENDOUSLY DUE TO THE UNDERWHELMING AMOUNT OF RETIREMENT SAVINGS THAT AMERICANS HAVE STASHED AWAY."

With the SECURE and SECURE 2.0 Acts bringing out the big guns with tax credits and deductions for new plans, sharing that knowledge with a plan sponsor could turn the tables for winning new plan business.

Secure 2.0 gives a tax credit of 100% ($500 minimum and $250 x NHCEs with a cap of $5,000) of administrative costs for the first three taxable years of the plan for employers with 1-50 employees and 50% of set up costs for employers with 51-100 employees ($500 minimum and $250 x NHCEs with a cap of $5,000). This credit also applies to employers that join a multiple employer plan (MEP) or pooled employer plan (PEP). In addition, SECURE 2.0 gives a tax credit for making employer contributions for the first five years, as long as no more than 100 employees made more than $5,000 in the prior year. To be able to get the full 100% tax credit of contribution, the plan would have to have 50 or less employees.

The credit has a calculation method, capped at $1,000 per employee, and graded over a five-year period. In addition, an eligible employer that adds an auto-enrollment feature—which will be mandatory in 2025—can take a $500 tax credit for a 3-year period beginning on the first taxable year of the plan. There is also the "Starter(k)" option that brings forth opportunities for a low-cost plan with limitations.

While all these credits are amazing, there is still the option to take mandatory plan costs from plan assets that would never directly hit the pockets of an employer. While recordkeeping and TPA fees can seem high to an employer without a current plan, there are low plan fee options that used to be very common that have dwindled in popularity as participant direction has grown more popular.

A pooled plan account is still an effective, low-cost way to provide a plan to your employees without the high cost of a large recordkeeper. While this funding arrangement has gone by the wayside in the last decade, it may make a comeback as an affordable option pushed by financial advisors trying to lower plan costs for their clients.

PAYROLL INTEGRATION

The concern of access to administrative resources for an employer can be solved through payroll integration along with 316 services. Most payroll providers/software already complete 90% of the payroll responsibilities in a plan and integrate with almost all large platforms. This takes a large burden off the employer.

There is also the option to outsource their HR responsibilities. The majority of TPAs will also review and approve loans and distributions alongside being able to have logins set up for them at the payroll companies to obtain the needed census data. With all your ducks in a row, and utilizing your relationships with platforms, you can provide solutions to these areas of concern for an employer.

The concern is employee interest. Employee interest is often enhanced by employer contributions. Principal Financial Group reported that 62% of workers identified a matching contribution as being important to them in reaching their retirement goals. While there are many different employer contributions available, an employer match contribution can entice participation as well as attract promising recruits and also help retain valuable current employees.

With employee interest cited as one of the few reasons employers do not create a plan, TPAs have the power to help design a plan that not only will solve that issue, but also create incentives for attraction and retainment in addition to tax deductions and credits for an employer.

Pew also reported that plan termination averages overall steadily decreased after implementation of state mandated plans. While this does not affect businesses closing their doors or mergers, it does create a heavy realization to an employer considering termination that they would just have to turn around and implement a new plan due to the mandatory provisions set in place by the state. In these circumstances, the TPA has the advantage of meeting with their client and finding a resolution to the issues that are making an employer ponder plan termination in the first place.

In conclusion, while state-mandated plans are going to be another "dog in our TPA race," ultimately, they have proven helpful in opening a conversation about plans for employers that had never considered one before those state plans were enacted. Keeping engrossed in provisions, plan design, tax credits, and vendor options offers the opportunity for TPAs to outshine a state plan with knowledge, answers, and the one thing a state plan does not have—a one-on-one relationship with you. PC

PLAYING OFFENSE AND DEFENSE

As we reflect on the tremendous progress ARA has made over the past year, it is important for us to recognize the partnership and unwavering support we receive from our members. **By James Locke**

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

In late October, we convened more than 1,000 of our members for ASPPA Annual. This event was a tremendous success; our members participated in over eighty meetings with legislators on Capitol Hill to discuss some of the issues described below. Members of Congress would much rather hear from their constituents on retirement issues than inside-the-Beltway lobbyists, which makes ASPPA's membership a tremendously powerful advocacy tool.

PROTECTING RETIREMENT FROM A GOVERNMENT TAKEOVER

On Oct. 19, a bi-partisan and bi-cameral group of Members of Congress introduced the *Retirement Savings for Americans Act* (H.R. 9462/S. 5271). This bill would create a new federal government-managed fund called the American Worker Retirement Fund ("Fund"), which would only be accessible to workers without access to an employer-sponsored retirement plan. The Fund would directly compete with employer-sponsored retirement plans and has several material advantages:

- The Fund is not subject to many burdensome ERISA and Internal Revenue Code provisions that apply to private sector 401(k) plans, many of which are carefully designed to ensure consumer protection.
- Additionally, the bill's "Government Match" provision for workers saving in the fund is twice as valuable as the "Saver's Match" provision contained in SECURE 2.0 for private sector 401(k) plans.
- Finally, the number of workers eligible for the "Government Match" is more than double the number eligible for "Saver's Match."

Because this proposal is only available to workers without access to an employer-sponsored plan, it will undoubtedly create a perverse incentive for employers to shutter their 401(k) plans (many of which have a more generous matching contribution for their rank-and-file employees than the "Government Match") so their workers can access the new government subsidized fund.

STRENGTHENING 403(B)

Another legislative priority for ARA is fixing a quirk in federal securities laws that unnecessarily restricts the types of investments that can be made in 403(b) plans. Specifically, current law prohibits 403(b) plan sponsors from using Collective Investment Trusts (CITs) as an investment option in their plans. Notably, there is no such prohibition for 401(k) plans.

Because CITs are exempt from SEC registration requirements, they typically have substantially lower fees when compared to mutual funds (e.g., between 25 and 40 basis points less). They also have lower administrative and marketing costs than mutual funds; these savings are passed on to plan sponsors and participants. These differences can substantially increase returns for retirement plan participants; therefore, it is imperative that we level the playing field for non-profit workers and employers.

TECHNICAL FIXES

Although SECURE 2.0 included a substantial number of positive provisions benefitting both American workers and retirement plan professionals, the legislation also contained several drafting errors that will present significant setbacks for retirement savers if they are not addressed.

For example, SECURE 2.0 created a brand-new retirement product specifically designed to bridge the retirement plan coverage gap: Starter 401(k) plans. Starter 401(k)s are wage deferral-only simple safe harbor 401(k) plans which allow employees to save up to $6,000 per year (with a $1,000 catch-up contribution).

Congress specifically intended for Starter 401(k) contribution limits to match IRA contribution limits. Unfortunately, because of Starter 401(k)'s delayed effective date (2024) and IRA's contribution limits increasing in 2023, Starter 401(k)s will mistakenly have a lower contribution limit unless Congress passes legislation reconciling this inconsistency.

SECURE 2.0 also contained language that inadvertently eliminated a subsection of the Internal Revenue Code dealing with pre-tax and Roth catch-up contributions. Section 603 deleted IRC §402(g)(1)(C), which increases the general pre-tax deferral limit by the amount of any catch-up contributions. This deletion effectively eliminates the ability for savers to make *any* catch-up contributions. PC

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