

AN OFFICIAL PUBLICATION OF ASPPA

# PLAN CONSULTANT

SPRING 2023



**WHAT  
TO  
LOVE  
(AND  
FEAR)  
ABOUT  
SECURE  
2.0 NOW**

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**THE STAFFING  
CRISIS ISSUE**

**TRAINING, THE KEY  
TO RETENTION**

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ERRORS AND EPCRS**



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# INSIDE THIS ISSUE



## COVERSTORY

### 34|WHAT TO LOVE (AND FEAR) ABOUT SECURE 2.0 NOW

It's complex, confusing, and filled with opportunities for recordkeepers, TPAs, advisors and—importantly—participants. What should retirement plan professionals watch, and watch out for, in the landmark legislation? Our experts weigh in.

By John Sullivan & Nevin E. Adams, JD

## FEATURES

### 28|THE STAFFING CRISIS

At a time of growth, the retirement industry is beset by rising salaries, candidate shortages and job-hopping. What are industry execs doing to combat the current crisis in hiring and retention?

By John Ortman

### 46|TRAINING,THE KEY TO RETENTION

Are your new-hire onboarding and ongoing training programs part of a successful strategy to retain your best employees? Here are some best practices to consider. By Chad Johansen

### 54|401(k) OPERATIONAL ERRORS AND EPCRS

Everyone makes mistakes. Everyone. The key is fixing it—the right way. By Brandon Long & Brian Beatty

## ASPPA IN ACTION

**05** | NEWLY CREDENTIALLED  
MEMBERS

**08** | FROM THE PRESIDENT  
ASPPA Needs You!

By Justin Bonestroo

**80** | INSIDE ASPPA  
Be a Better Plan Sponsor Partner!

By Barbara Giesing

**82** | GOVERNMENT  
AFFAIRS UPDATE  
Champions Among Us

By Will Hansen

## COLUMNS

**06** | LETTER FROM THE EDITOR

**10** | REGULATORY /  
LEGISLATIVE UPDATE  
Beware The Trojan Horse

By Brian H. Graff

## TECHNICAL ARTICLES

**12** | COMPLIANCE /  
ADMINISTRATION  
Plan Amendment Best Practices  
By Theresa Conti & Shannon Edwards

**14** | REGULATORY  
SEC Sharpens its Claws  
By Stan Prybe & Gary Blachman

**18** | RECORDKEEPING  
Ready for the New LTPT  
Employee Rules?

By Sheryl Stucky

**22** | ACTUARIAL / DB  
COVID-19 Pandemic and Future  
PRT Mortality: What's Next?

By Steve Keating & George Eknaian

**26** | REPORTING  
Solo DB Plan Reporting  
By the 401kinabox Team



## PRACTICE MANAGEMENT ARTICLES

**60** | BUSINESS PRACTICES  
Is it Time to Sell?

By Theresa Conti, Linda Chadbourne  
& Jim Racine

**62** | TECHNOLOGY  
Streamlining Success

By Amanda Iverson

**66** | WORKING WITH  
PLAN SPONSORS  
Remember the Three Rs

By John Ickel

**68** | WORKING WITH  
PLAN SPONSORS  
“Lost” Horizons

By Michael Kirschman, Jeff Atwell, Kimberly  
Shaw Elliott & Thomas E. Clark Jr.

**72** | MARKETING  
If You Build it, They Will Come  
By Theresa Conti & Shannon Edwards

**74** | ETHICS  
Keeping Control of Work Products  
By Lauren Bloom

**76** | EDUCATION  
The Ecosystem Evolution  
By Jeff Acheson

**78** | SUCCESS STORIES  
The Employee Referral Solution  
By Megan Crawford

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# THE STAFFING ISSUE



In this issue, we take a quick tour of SECURE 2.0 (and its effective dates), as well some insights on the aftermath of the Great Recession, and how TPA shops are dealing with those challenges as they ramp up for the new legislative challenges. **By John Ortman**

## At a time when the retirement industry is poised to expand, it's facing a worsening hiring and retention crisis.

To take full advantage of the new business opportunities created by provisions in the 2019 SECURE Act and the new SECURE 2.0 law – and the long list of provisions and timing is outlined in this month's cover story – TPAs and recordkeepers are facing the need to add staff, especially workers with 2 to 5 years of experience. Most are struggling—facing a shortage of job candidates, rising salaries and greater competition for talent.

How did we get here? A number of factors played a part. In brief, the pandemic and the Great Resignation led to a shrinking workforce, and the emergence and subsequent prevalence of remote work introduced mobility to that workforce. You don't have to be an economist to see that when an increase in demand for labor meets a shrinking labor pool—at a time when a new, “live anywhere, work anywhere” ethos is eroding the traditional geographic bond between employer and employee—you're going to get a shortage of candidates and rising salaries. That is, a staffing crisis.

In this issue we'll take a deeper dive into how we got here—and more importantly, how TPAs might solve their staffing puzzle:

- In our feature on page 28, we talk to leading TPA execs and business owners about how they view the crisis and what they're doing to surmount it.
- In another feature article, on page 46, Plan Design

Consultants' Chad Johansen explains how a strategic approach to employee onboarding and ongoing training programs can boost employee retention.

- The “Success Stories” column on page 78 profiles an employee referral program that helped with new employee recruitment.
- To provide a 40,000-foot perspective on the nationwide hiring crisis, Senior Editor John Iekel provides a wrapup of current research and polling results (*see page 66*).

“THE PANDEMIC AND THE GREAT RESIGNATION LED TO A SHRINKING WORKFORCE, AND THE EMERGENCE AND SUBSEQUENT PREVALENCE OF REMOTE WORK INTRODUCED MOBILITY TO THAT WORKFORCE.”

Lastly, a bit of perspective. As in many other smaller, technical industries, the compensation trend in the retirement industry is like a pendulum. Right now, it seems, that pendulum has swung to the high-salary side and has paused there. At some point it will start to swing back the other way. Not that long ago, in the wake of the so-called Great Recession, the pendulum was at the other end of the spectrum – and stayed there for years. Sometimes it's a labor market where candidates can demand high salaries and compensation structures. Then there are times when the market doesn't allow for that.

Until that happens, there are steps you can take and tools you can use to ease your own staffing crisis. These include rethinking how you use technology, ensuring that your corporate culture makes you an employer of choice, making your new-employee onboarding and ongoing training programs part of your retention strategy, and looking at outsourcing. You'll find more details about them in this issue.

  
Editor

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# D.C. PENSION GEEKS



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# ASPPA NEEDS YOU!

The involvement of ASPPA members as volunteers is critical to fulfilling our mission. By Justin Bonestroo

**Just after the close of the 2022 ASPPA Annual Conference, I sat down to write this, my first President's message.** Now, in the blink of an eye, a new year is upon us, SECURE 2.0 is the law of the land, testing season has started, and the work on planning the 2023 Annual Conference is well under way.

While many of us are working hard to decipher the many provisions of SECURE 2.0, the ASPPA Annual Conference Planning Committee met recently at ARA headquarters to begin work on this year's conference. Every year that I have been a part of this planning meeting, I have come away excited not just about the upcoming conference but also about the great ASPPA members I get to work with and the job I get to do every day.

## THE IMPACT OF MEMBER INVOLVEMENT

While SECURE 2.0-related content was a hot topic at the Conference Planning Committee meeting, the committee also focused on tapping into the many experts within our membership by integrating new speakers and looking for ways to increase

**“MEMBERS BRING A WEALTH OF KNOWLEDGE, EXPERIENCE AND UNIQUE PERSPECTIVES TO THE TABLE, AND THEIR CONTRIBUTIONS CAN HELP ASPPA ACHIEVE ITS GOALS MORE EFFECTIVELY.”**

membership involvement. One comment made during the meeting was that we want to ensure that our members know they are welcome at ASPPA Annual. But I would challenge that. Our members are not just *welcome*, they are *necessary*. Their involvement is critical to fulfilling our mission. They bring a wealth of knowledge, experience and unique perspectives to the table, and their contributions can help ASPPA achieve its goals more effectively.

The need for membership involvement and the impact made by volunteers is a message that has been repeated over and over again, and I'm sure that if you were to read past issues of *Plan Consultant*, you'll find the same message from many past Presidents. Nonetheless, it is still true, and it bears repeating.

Many times, I've attended meetings of the Government Affairs Committee, the Conference Planning Committee, the ASPPA Leadership Council and other committees, at which we discussed the difficulty of finding volunteers to fill important roles. Conversely, I have attended conferences and chatted with so many members who expressed their desire to become more involved. ASPPA President-elect Amanda Iverson and I recently shared our mutual concerns about this disconnect, and resolved to focus on expanding ASPPA's volunteer network to help improve volunteer opportunities for our members and help bring new perspectives to ASPPA.

## THE SECURE 2.0 SUCCESS STORY

I would be remiss if I didn't congratulate ARA on its role in the creation and passage of SECURE 2.0. Over the last 50-plus years, ASPPA has earned a reputation for expertise and devotion to the private retirement system. The collaborative efforts of



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our Government Affairs Committees and the leadership of ARA staff were instrumental in helping shape legislation that affects our profession.

Additionally, the visibility generated by ARA's Political Action Committee (PAC) provides a platform for us to share that expertise and dedication with a wider audience. The ability to work with legislators and advocate for our industry is a critical component of ASPPA's mission and the PAC is a vital tool in that effort. If you haven't already joined the PAC, I encourage you to reach out to the ARA's Erika Goodman and learn more about how you can help amplify our voice and maintain a positive working relationship with legislators.

## GET INVOLVED!

As we navigate the upcoming year and all that changes SECURE 2.0 will bring to our industry, if you are not already involved as a volunteer, I encourage you to get involved and contribute your unique perspectives. Together, we can make a lasting impact and ensure that the private retirement system remains strong for generations to come. **PC**



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# BEWARE THE TROJAN HORSE

Is a public takeover of the private retirement sector imminent? It's increasingly possible, and something to watch. By **Brian H. Graff**

**You may recall the story of the Trojan Horse—how a Greek army, held to a stalemate outside the ancient city of Troy, built a giant wooden horse, left it outside the city gates, and departed.**

Those inside the walls of Troy saw the horse as a peace offering to their gods (the horse was the symbol of the city) and an acknowledgment of the victory after a long siege. They celebrated it and brought it inside those walls, only to later find that it contained Greek soldiers and, with them, the destruction of their city. It's no coincidence that today we refer to software that sneaks computer viruses into our networks as a "Trojan horse."

There is a Trojan Horse outside the walls of retirement these days—and those who ignore it do so at their peril.

Like the Trojan horse of old, this proposal—the American Worker Retirement Plan—probably looks like a gift to those looking to solve the retirement coverage gap. Its proponents proclaim it will "fix major shortcomings in the U.S. retirement system and build bottom-up wealth in a manner that rewards work and strengthens faith in the basic fairness of our economic system."

Introduced into law while the ink in the SECURE 2.0 Act of 2022 was still damp, it purports to offer a solution for those millions of American workers who don't already have access to a plan at work (or covered by one of those state-run IRA programs), with a special "shout out" for those gig economy workers who arguably don't have a (separate) employer to set up their plan. It relies on a mandate for effect, coupled with automatic enrollment (at 3%), includes a government match (at least

**"SO WHY, ON THE BRINK OF DRAMATIC, POSITIVE CHANGE, WOULD THERE BE ANY INTEREST IN THIS PROPOSAL?"**

for low and moderate-income workers, it phases out at "median" income), and is modeled on a program popular among those on Capitol Hill—the government's own Thrift Savings Plan (TSP).

If the proposal sounds familiar, it should. The legislation (the ironically named Retirement Savings for Americans Act) was introduced on a bipartisan (well, one member from each party, anyway) basis in both the U.S. House and Senate. More ominously, it's the brainchild of none other than Teresa Ghilarducci and her most recent "conservative" cohort, Kevin Hassett—but this time backed by the Economic Innovation Group and a major lobbying effort on the Hill. None of which keeps this not-very-new-idea from being what it has always been—a thinly veiled attempt to "catfish" a big government takeover of the private retirement system.

And while there's no mention here yet of the elimination of tax preferences for regular 401(k)s to pay for this approach, it's been long part of previous proposals (and make no mistake, earlier versions of a very similar proposal have put a price tag of \$60-\$100 billion/year on the government match).

The timing—just ahead of the signing of the SECURE 2.0 Act—is odd, particularly considering the wide range of provisions in that legislation specifically



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targeted at encouraging more employers to offer a workplace retirement plan. The Starter (K) alone is conservatively projected to expand coverage to nearly 20 million new savers and, in conjunction with the greatly enhanced start-up tax credits and automatic enrollment mandates, seems likely to produce even more. Those, coupled with the expanded saver's match that could benefit more than 100 million American workers, seem likely to be true game changers.

So why, on the brink of dramatic, positive change, would there be any interest in this proposal? The trendline here is consistent and troubling—to first claim that the current system isn't working, to then create a "solution"—which turns out to be an alternative system (that looks very much like it in structure). It would operate under the auspices/control of the federal government, fueled with a mandate, and—eventually—would question why we need a private retirement system at all. Could it be that there are forces at work looking to manage and control that big, new, consolidated pool of savings?

Like the Trojan horse, it might look harmless—might even look like a "gift"—but you need to check it out carefully before letting it inside the gates. **PC**



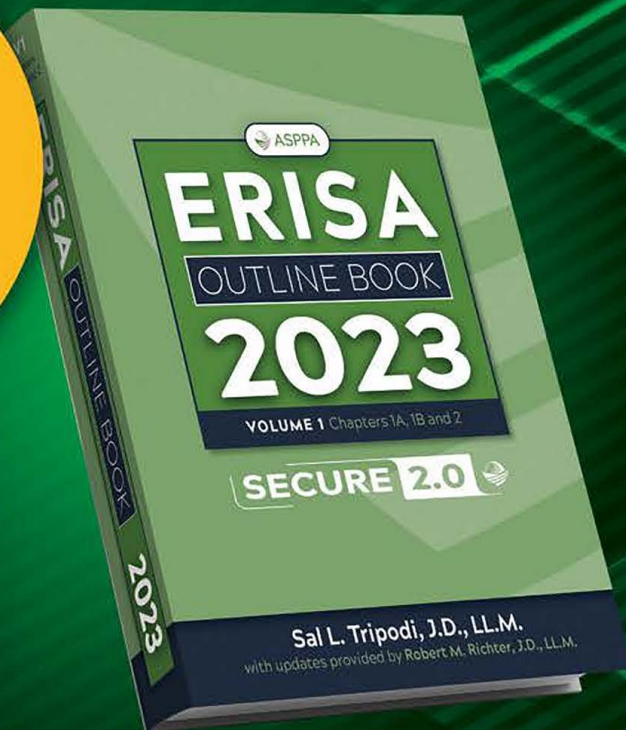
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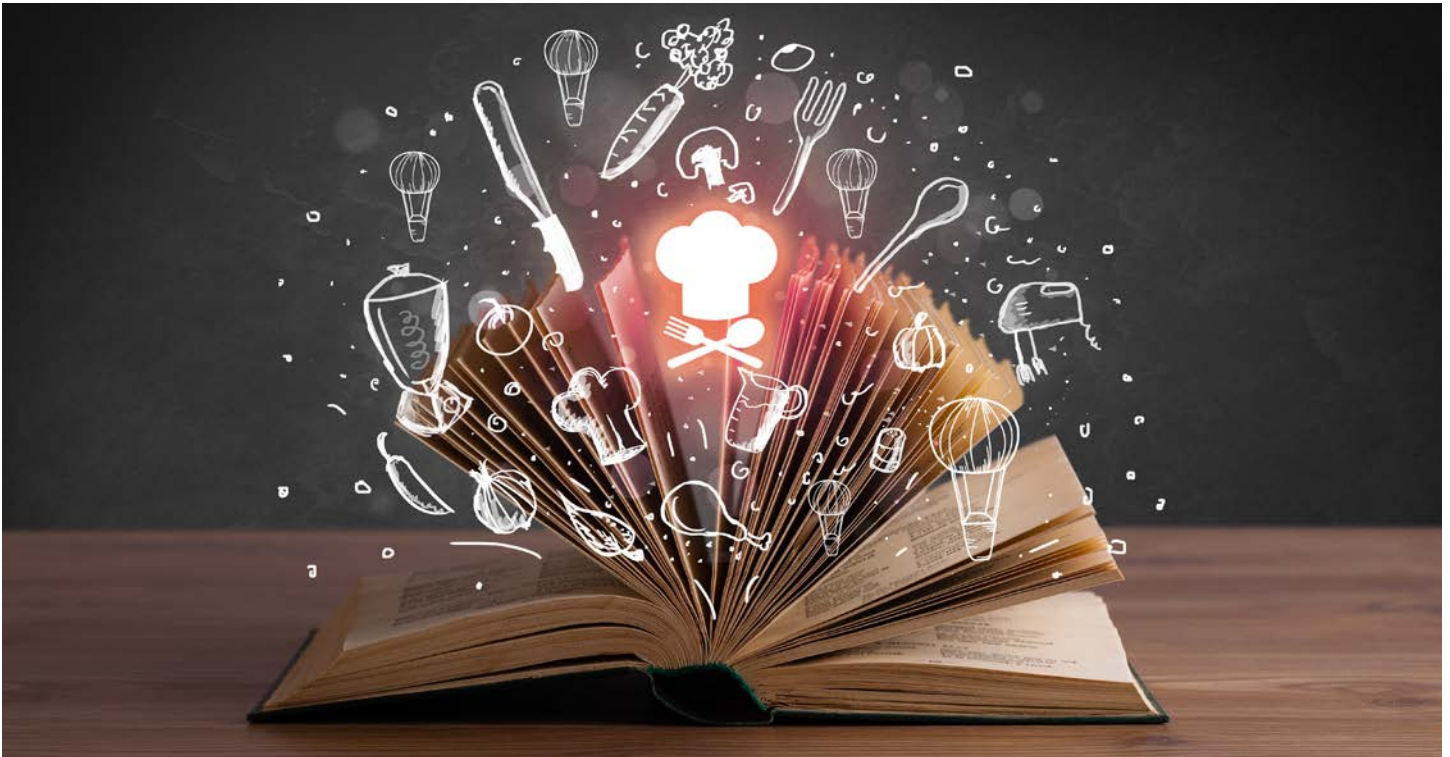
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# PLAN AMENDMENT BEST PRACTICES

Have a recipe for success and follow it. Here are some helpful tips. By Theresa Conti & Shannon Edwards



**Have you ever made a roux? When making a roux, it is very important to follow the steps just right or your sauce will turn out lumpy. The recipe**

represents the best practices for not ruining your roux. The same is true for administering 401(k) plans. You need to have best practices and procedures in place—a recipe of sorts—to avoid mistakes and errors that could ruin your dish.

Having a successful plan that is error-free starts with having a well-designed plan document and properly amending that document when changes are needed. Good procedures and best practices are vital to the document design, adoption and amendment process. The plan

document governs the plan and what the plan sponsor can do, cannot do, and must do. Therefore, when the plan document doesn't meet the needs of the plan sponsor—or worse yet, when the plan sponsor doesn't check the plan document or understand the plan document—it can lead to errors that can be costly and must be corrected.

## **AMEND THE PLAN BEFORE CHANGES ARE MADE**

There are best practices that we should use when it comes to helping our clients through the process of maintaining and making changes to their plans. The most important one would be to amend the plan before making the change in operations. In a perfect world, we would be notified of

a need to consider or make a change before the change is made. However, many times we are the last to know! This is especially true as it relates to our client's retirement plan documents (especially in the case of merger and acquisition transactions where the plan is rarely considered beforehand).

## **CHECK THE PLAN DOCUMENT**

The fact that we are often the last to know leads to the next best practice for making changes to the plan document and the operation of the plan. Train your clients to ask questions first and not to make assumptions. Make them feel comfortable asking questions so that they don't feel stupid or like they are a burden. Let them know that you

“YOU NEED TO HAVE BEST PRACTICES AND PROCEDURES IN PLACE—A RECIPE OF SORTS—TO AVOID MISTAKES AND ERRORS THAT COULD RUIN YOUR ‘DISH.’”

are there to be their resource and they don't have to know how to read and interpret all the legal mumbo-jumbo in the document. *You* are there to interpret it for them and are happy to do so.

“Check the document” is one of the most important things we teach new team members in training. We don't answer a client's question about the plan terms without looking at the document first. Similarly, teaching our clients that the document must be checked is one of the most important procedures we can put in place.

For example, recently we had a client who assumed that their safe harbor match was calculated on a per payroll basis. However, the plan document stated that it was calculated on an annual basis with a true-up. They had not been trueing it up over the three-year period since they became safe harbor plan—and neither of the previous TPAs had mentioned that they were required to, nor had they calculated the true-up for them. They simply ignored that provision.

This error will cost the client money to correct several plan years, and the service provider may have to defend a potential lawsuit for giving them bad or no advice. In this instance, the best practice would have been to first train the client to check the document or at least ask the question. Next the service provider should have been checking the document when completing the annual work, and they should be communicating with the client on a regular basis. And thirdly, the service provider should be reviewing the plan terms with the client regularly to make sure the plan design continues to meet their needs.

### TAKEOVERS

When taking over a plan, it is important to do an in-depth review of the current plan document's terms and consult with the client to determine what changes they may want to make.

There are some things that cannot be amended out of the plan at all, such as in-service distributions, and there are many things that cannot be changed mid-year. For instance, often the non-elective contribution provisions are included with no last day or 1,000-hour requirement. If we are taking over a plan in the middle of a plan year, we may not be able to amend out that provision until the start of the next plan year.

This is something that we should always consider when we are reviewing plan design and suggesting changes that may be affected by who must be included in the contribution allocation. Regardless of what changes can be made and when, it is vital to the plan's success to have a good understanding of what the client thinks the plan says, what they want the plan to say, and what they have been doing in operation.

### CHANGING RULES

Of course, there are also mandatory regulatory and legislative provisions that affect our procedures. Currently we need to pay close attention to the SECURE and CARES Act amendments. Notice 2022-33 generally extended the deadline to adopt the amendments to Dec. 31, 2025. However, it didn't extend the effective dates for some of the changes made by the laws. Therefore, we need to be able to track in operation what the clients have been doing since the laws were passed and prior to the time

that the changes must be documented with an amendment to the document.

This is going to be especially difficult for clients that we take over between the effective date of the law changes and the time that the amendments must be completed. We need to be collecting the amendments if the prior service provider has already adopted them—or at the very least information on what the client has been doing in operation as it relates to both laws. These amendments include the new rules for qualified birth or adoption distributions, pooled employer plans, safe harbor plans, long term part-time employees, and required minimum distributions. It is very important to add steps in our takeover and plan amendment procedures to address these changes.

### SUMMARY

While there are more best practices when it comes to maintaining and amending a plan document than we have room to cover here, start with good policies and procedures within your organization. Review the plan document often and compare it to the client's operation of the plan. Communicate with your client and make them feel comfortable asking questions. Impress on the client the importance of notifying you before making a change. Educate the client on your policies and procedures and why it is so important that they be followed and what the results can be if they are not followed. Make sure the client is familiar with the “recipe” for a successful plan and for avoiding errors so that they don't end up with an unsatisfactory “dish.” **PC**







# SEC SHARPENS ITS CLAWS

What's in the Commission's final 'clawback' rules for incentive compensation? By Stan Prybe & Gary Blachman

**Section 10D of the Securities Exchange Act of 1934 (the "Act") finally has some teeth, or "claws," as the case may be. Originally added to the Act by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Section 10D required the Securities and Exchange Commission to issue rules directing the national security exchanges and associations to adopt listing standards that require issuers to develop and implement a so-called "clawback" policy.**

Following proposed rules in 2015 and several comment periods, the SEC adopted the final implementing rules—New Exchange Act Rule 10D-1—on Oct. 26, 2022. The final rules generally apply to all listed issuers, including foreign private issuers, smaller reporting companies, emerging growth companies, controlled group companies and debt-only filers.

## WHAT ARE THE CHANGES IN THE FINAL RULES?

Generally, the final rules direct national securities exchanges and associations to establish listing standards that require a listed issuer:

- to adopt a written "clawback" policy for the recovery of certain erroneously awarded incentive-based compensation received by current or former executive officers in the event the issuer is required to prepare an accounting restatement; and
- to disclose those compensation recovery policies in accordance with SEC rules, including providing the information in tagged data format.

Further, the final rules require disclosure of the listed issuer's clawback policy and information about actions taken pursuant to such policy in proxy statements. They also require listed issuers to file their policies as exhibits to their annual reports, to indicate on their annual reports whether corrected financial statements are included (and whether those corrections are restatements that required clawback analysis), and to disclose any clawback actions taken in the annual report (either directly or by incorporating the proxy statement by reference).

The final rules will become effective 60 days following publication in the *Federal Register*. The national securities exchanges' listing standards must be effective no later than one year following such publication. Issuers subject to the listing standards must then:

- adopt a clawback policy no later than 60 days following the date the applicable listing standards become effective;
- comply with the clawback policy for all incentive-based compensation received by executive officers on or after the effective date of the applicable listing standards; and

- provide the disclosures required by the final rules in the applicable SEC filings on or after the effective date of the applicable listing standards.

## THE DANGER IS IN THE DETAILS?

While the basics of the final rules are fairly straightforward, there are a lot of nuances that are important to consider and understand.

### *Required for both "Big R" and "Little r" restatements*

Despite receiving many comments to limit the final rules to only "Big R" restatements and in a change from the proposed rules, the SEC decided to have the final rules apply with respect to both "Big R" restatements and "Little r" restatements. A "Big R" restatement is a restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements. A "Little r" restatement, on the other hand, is a restatement to correct an error that is not material but would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

### *Covers only incentive-based compensation*

The final rules only apply to incentive-based compensation, which is defined as any compensation that is granted, earned or vested based in whole or in part on the attainment of a financial reporting measure. For example, base salary, incentive compensation (tied only to operational metrics), discretionary bonuses (except where the bonus pool is determined based on financial reporting measures), and options or restricted stock (subject only to time-vesting) may not be subject to clawback under the final rules. For these purposes, financial reporting measures include stock price, total shareholder return, or any other measures that are determined and presented in accordance with the accounting principles used in the issuer's financial statements (or that are derived from such measures).

### *How far back to claw back*

The policy must provide for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement. For purposes of this timing, the date such a restatement is considered to be "required" is the date that the issuer's board (or a committee of the board or certain authorized officers) concludes, or reasonably should have concluded, that the issuer is required to prepare such a restatement or, if earlier, the date a court, regulator or other authorized body directs the issuer to prepare such

**“ISSUERS ARE NOT REQUIRED TO ADOPT A CLAWBACK POLICY AND MAKE ANY OF THE DISCLOSURES UNTIL AFTER THE NEW LISTING STANDARDS GO INTO EFFECT. NONETHELESS, IT MAY BE ADVISABLE TO SCRATCH THE CLAWBACK COMPLIANCE ITCH NOW.”**

a restatement. In addition, incentive-based compensation is deemed to be “received” during this period if the compensation vests during this period due to satisfying the financial reporting measure, regardless of whether the award is actually paid or granted during this period. Unlike the proposed rules, the final rules provide that compensation received before becoming an executive officer is not subject to the required clawback. Furthermore, the final rules state that the clawback policy only has to apply to compensation received on or after the effective date of the applicable listing standards.

#### ***Amount of clawback***

Under the final rules, the amount to be recovered under the clawback policy is the amount of incentive-based compensation received that exceeds what otherwise would have been received based on the restated amounts. Most notably, these amounts must be calculated without regard to any taxes paid (so on a pre-tax basis). The only limitation on the amount to be recovered is where recovery would be impractical due to the third-party expense in enforcing the policy exceeding the clawback amount, the clawback violating existing laws of a foreign country, or the recovery causing a tax-qualified retirement plan (under which benefits are broadly available to issue employees) to fail to meet the anti-alienation or nonforfeitable benefit rules.

#### ***Policy must cover executive officers***

The clawback policy must apply to current and former executive officers. An “executive officer” is the issuer’s president, principal financial officer, principal accounting officer (or if there is no such officer, the controller), any vice president in charge of a business unit, division, or function, or any other officer or person who performs a policy-making function. Note that this is essentially the same definition as “officer” under SEC Rule 16(a)-1(f).

#### ***Clawback required regardless of whether restated financials are filed.***

Under the final rules, the issuer’s obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

#### ***Clawback required regardless of misconduct***

The preamble to the final rules makes it clear that the clawback policy applies regardless of issuer or executive officer misconduct, and regardless of the role of the executive officer in preparing the financial statements. This makes

the final rules much broader than most recently disclosed clawback policies (the majority of which, according to the SEC, require executive officer misconduct).

#### **INFORMATION REQUIRED IN DISCLOSURES**

The disclosures in the proxy statement and/or the annual report must be made if, during the last completed fiscal year, there was a restatement that required a clawback (or there is still an outstanding balance to be recovered from the prior year). The disclosure must contain the following: (1) Information regarding each restatement, including the date the restatement was required, the aggregate dollar amount of erroneously awarded compensation, an analysis of how the amount was calculated, any estimates used for stock price or total shareholder return metrics (including the methodology used for such estimates), and any amount or erroneously awarded compensation that remains outstanding at the end of the prior fiscal year; (2) an explanation of the reasons and disclosure of the required information in the next proxy statement and/or annual report, if the amount of erroneously awarded compensation has not yet been determined; (3) the amount of recovery forgone and a brief description of the reason in each case not to pursue recovery for each current and former named executive officer and for all other current and former executive officers as a group, if recovery would be impracticable (see the discussion under “Amount of clawback” above); and (4) the dollar amount due from each current and former named executive officer from whom erroneously awarded compensation has been outstanding for 180 days or longer since the issuer determined the amount owed. Note that these disclosures are required to be provided in tagged data format using Inline XBRL.

#### ***Forms are also changing***

Pursuant to the final rules, check box disclosures are being added to the cover pages of the Forms 10-K, 20-F, and 40-F. The check boxes will indicate whether the financial statements in the filing reflect a correction of previous financial statements, and whether any of the corrections are restatements that require a recovery analysis under the issuer’s clawback policy. In particular, the check boxes will provide more transparency with respect to “Little r” restatements that generally would not otherwise be disclosed or reported as prominently as “Big R” restatements.

#### ***Indemnification prohibited***

The final rules prohibit the issuer from indemnifying any current or former executive officer against the loss of

erroneously awarded compensation. The SEC in the preamble states that while executive officers may purchase a third-party insurance policy to help fund a potential clawback obligation, the prohibition on indemnification would prohibit the issuer from paying or reimbursing the premiums of such a policy.

#### *Limited exceptions*

Exemptions from the requirements of the final rules are limited and include certain security futures products (SFPs) cleared by a clearing agency, certain standardized options issued by a clearing agency, certain unit investment trusts, and certain management companies registered under Section 8 of the Investment Company Act of 1940 that have not awarded incentive-compensation to any executive officers in the last three fiscal years (or since listing if listed for less than 3 years). Notably missing are emerging growth companies (EGCs), smaller reporting companies (SRCs) and foreign private issuers (FPIs), who are all subject to the final rules. As mentioned above, the amount to be recovered may also be limited in rare cases of impracticability (see discussion under “Amount of clawback” above).

#### **ACTION STEPS**

Issuers are not required to adopt a clawback policy and make any of the disclosures until after the new listing standards go into effect. Nonetheless, it may be advisable to scratch the clawback compliance itch now. Consider doing the following:

- Review and become familiar with the final rules and SEC guidance.
- Review the current clawback policy and determine if it needs to be amended or if a new policy needs to be adopted to account for the final rules. If the current clawback policy goes beyond the requirements of the final rules (for example, clawback of non-incentive-based compensation for misconduct), determine if it is advisable to keep the more comprehensive policy.
- Review new and existing compensation arrangements and agreements (including equity compensation, incentive plans, employment agreements, and severance agreements) and determine which are incentive-based and subject to the final rules. Consider if existing arrangements or agreements need to be amended to allow for the clawback to operate, and, if so, review and follow the amendment procedures.
- Review indemnification, insurance, and similar arrangements to make sure they do not violate the prohibitions of the final rules.
- Prepare a working list of executive officers under the final rules and consider notifying the officers of these upcoming changes so they can plan accordingly.
- Prepare to comply with the disclosure obligations and review and adjust as necessary proxy statement and annual report preparation procedures. **PC**



# READY FOR THE NEW LTPT EMPLOYEE RULES?

Through the lens of a software provider, here are some tips on preparing for the new long-term part-time employee rules. **By Sheryl Stucky**

**I was a long-term part-time (LTPT) employee throughout high school, serving up fries at the local fast-food chain. Nothing teaches one patience like working across the counter from “hangry” people!**

We have certainly needed patience as we’ve awaited guidance on the LTPT employee rules set forth in the SECURE Act. And what we asked for finally arrived in the form of SECURE 2.0, enacted on Dec. 29, 2022, though it was not exactly what we had hoped for. While we did receive clarification on the years of service counted for vesting, other questions remain unanswered, and new ones have arisen.

How does the current situation affect recordkeepers, TPAs and the software vendors that serve them? Of course, all recordkeeping, valuation and compliance testing system providers must update their software to properly reflect the LTPT employee requirements included in the two SECURE Acts. This will include updates to eligibility, allocation, vesting and compliance testing calculations, plus all system validations, reports and reconciliations.

At ASC, these efforts began with an analysis of the impacts by our ERISA attorneys, consultants, support staff and developers. The LTPT employee rules affect not only our valuation and compliance testing products, but also our plan document, Forms 5500 and CRM products.

Additionally, implementation of these enhancements requires thoughtful planning so as to create the least amount of disruption to users’ continued operation of their plans. Timely guidance on unanswered questions is not expected to be forthcoming, making the task of producing timely updates even more difficult for software vendors. All service providers will be forced to make good-faith efforts to apply the rules in their services and software. Still, certain updates may be delayed as we await guidance.

## RULES REFRESHER

The most important thing you can do right now to prepare for dealing with LTPT employees is educating yourself on the new rules. Here’s a quick summary.



Effective for plan years beginning after 12/31/2020, 401(k) plans must include employees defined as LTPT employees, as outlined below. With the enactment of SECURE 2.0, LTPT employee rules also will apply to 403(b) plans for plan years beginning after 12/31/2024. Section 457 plans are excluded from the LTPT employee rules, as are union employees and nonresident aliens in all plans.

In the SECURE Act, LTPT employees were defined as those working at least 500 hours per year for a period of *three consecutive* 12-month periods. Years of service prior to the SECURE Act effective date are excluded (i.e., pre-2021 years). This means that for calendar year plans, the first date that LTPT employees will begin entering the plan is 1/1/2024. SECURE 2.0 reduces the consecutive years required for eligibility from three to two for plan years beginning after 12/31/2024.





#### *Service and benefit requirements*

- LTPT employees must enter on the earlier of the first day of the first plan year after having met the eligibility requirements, or 6 months after having met the requirements. The age 21 eligibility requirement continues to apply.
- LTPT employees must be allowed to make salary deferrals into the plan. Plans may auto-enroll LTPT employees.
- Employers are not required to make employer, matching, safe harbor or top-heavy contributions on behalf of LTPT employees.
- Employees who subsequently earn 1,000 hours of service are no longer considered LTPT employees as of the first plan year beginning after the year in which they earn 1,000 hours.

- Break-in-service rules will be applied by substituting at least 500 hours of service for more than 500 hours.
- Guidance is needed regarding employees in an excluded class that would otherwise be determined to be LTPT employees. (Most analysts consider them to be excludable, yet this is not clear.)
- Guidance is needed regarding LTPT employee determination when plans amend eligibility provisions (e.g., from immediate entry to 1 year of service).
- Guidance is needed for plans using equivalencies rather than actual hours to clarify how the 500 hours is determined (e.g., can the regular equivalency hours be reduced for LTPT employee purposes?).
- Guidance is needed regarding plans that allow employees to make deferrals before otherwise required under the LTPT employee rules (e.g., immediate entry

“THE GOAL OF EXPANDING RETIREMENT PLAN ACCESS FOR LTPT EMPLOYEES IS AN IMPORTANT ONE, PROVIDING AN OPPORTUNITY FOR MORE AMERICANS TO BE ONE STEP CLOSER TO A SECURE RETIREMENT.”

for salary deferrals for all employees) and whether such plans are exempt from the LTPT employee rules.

#### Compliance

- LTPT employees, even if they receive employer or matching contributions, are not required to be included in coverage and non-discrimination tests (410(b), 401(a)(4), BRF) or ADP/ACP tests *so long as they are participating solely because they are LTPT employees.*
- LTPT employees are subject to individual limits compliance tests, including 402(g), plan limits and 415(c) tests.
- Guidance is needed regarding the inclusion or exclusion of LTPT employees' balances in top-heavy testing. (Note that SECURE 2.0, effective with plan years beginning after 12/31/2023, now allows LTPT employees who would have been otherwise excludable to be excluded from the top-heavy minimum contribution rules, but not excluded from the top-heavy test.)
- Form 5500 participant counts include LTPT employees, unless further guidance clarifies otherwise.

#### Vesting requirements

- If plan sponsors choose to provide employer or matching contributions to LTPT employees, the law requires that they receive vesting credit for years in which they work at least 500 hours.
- Plans may exclude certain years for vesting purposes, such as years prior to age 18 or years prior to the plan's effective date.
- LTPT employees who move to full-time status apparently will continue to have vesting years determined under the 500 hours standard. (Note that the IRS needs to clarify this requirement.)
- The SECURE Act did not have pre-2021 service years specifically excluded for determining vesting service as was done for eligibility service. SECURE 2.0 now aligns the vesting service rule with the eligibility service rule (i.e., pre-2021 service is excluded). (Note that a technical correction may be needed for SECURE 2.0 regarding the first vesting crediting period as the language references the ERISA §202(a)(3)(A) regarding the eligibility computation period starting from the date

of hire, rather than ERISA §203(b)(2)(A), which allows a fixed 12-month period (generally, the plan year) for the vesting computation period. Tracking vesting hours based on date of hire would be a significant burden for most administrators who track hours on a plan year basis.)

#### Action Plan

Here are suggestions for what to tackle next:

- Review your internal procedures to ensure that you are collecting the required hours data and entering it in your systems for year 2021 and forward, including for takeover plans.
- Communicate with your plan sponsors to reinforce their responsibility to report accurate hours for all employees, not just their full-time employees.
- Watch for updates to your software and participate in training to learn about the options that are available. You may or may not choose to take advantage of some options (e.g., testing options to include or exclude LTPT employees, LTPT employee status overrides if you don't have complete history, etc.).
- You may also want to analyze your client base to identify plans where the LTPT employee rules may have significant impact. Then take the opportunity to reach out to those plan sponsors to prepare them for plan design or enrollment changes in 2024.
- Finally, if you aren't using commercial software currently, now is a good time to explore what vendors can offer you regarding enhanced efficiency and accuracy in complying with the new regulations.

The goal of expanding retirement plan access for LTPT employees is an important one, providing an opportunity for more Americans to be one step closer to a secure retirement. Now, would my 16-year-old self have chosen to defer part of my paycheck into a 401(k) plan? Perhaps yes, if the voice of my dad, who started talking to me about college and retirement savings at age 12, ruled. Or perhaps no, if the latest pair of cool jeans at the mall proved irresistible. One thing that would have moved me, though, is a match. Even a 16-year-old understands free money! **PC**

**ASSESSMENTS PERFORMED BY CEFEX, CENTRE FOR FIDUCIARY EXCELLENCE, A DIVISION OF BROADRIDGE FI360 SOLUTIONS**

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**ALLIANT EMPLOYEE BENEFITS**  
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alliant.com

**ALTIGRO PENSION SERVICES, INC.**  
*Fairfield, NJ*  
altigro.com

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

**APS PENSION**  
*Melville, NY*  
apsension.com

**ASC TRUST**  
*Hagatna, Guam*  
ascstrust.com

**ASPIRE FINANCIAL SERVICES, LLC**  
*Tampa, FL*  
aspireonline.com

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

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

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

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

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

**BENEFIT PLANS, INC.**  
*Omaha, NE*  
bpiomaha.com

**BENEFITS ADMINISTRATORS, LLC**  
*Lexington, KY*  
benadms.com

**BLUE RIDGE ESOP ASSOCIATES**  
*Charlottesville, VA*  
blueridgeesop.com

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

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

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

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

**DEMARS PENSION CONSULTING SERVICES, INC.**  
*Overland Park, KS*  
demarspension.com

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

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

**FUTUREBENEFITS OF AMERICA**  
*Arlington, TN*  
futurebenefitsofamerica.com

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

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

**JULY BUSINESS SERVICES, INC.**  
*Waco, TX*  
julybusiness.com

**LATITUDE SERVICE COMPANY, INC**  
*Plymouth, IN*  
latituderetire.com

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

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

**ONEAMERICA**  
*Indianapolis, IN*  
oneamerica.com

**PCS RETIREMENT, LLC**  
*Philadelphia, PA*  
pcscapital.com

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

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

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

**PENTEGRA RETIREMENT SERVICES**  
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pentegra.com

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

**PREFERRED PENSION PLANNING CORP**  
*Bridgewater, NJ*  
preferredpension.com

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

**REA & ASSOCIATES**  
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reacpa.com

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

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

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

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*Valley Stream, NY*  
rpgconsultants.com

**SAVANT CAPITAL MANAGEMENT**  
*Rockford, IL*  
savantcapital.com

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*St. Paul, MN*  
securian.com

**SENTINEL BENEFITS & FINANCIAL GROUP**  
*Wakefield, MA*  
sentinelgroup.com

**SHOWME PENSION GROUP**  
*Independence, MO*  
showmepensiongroup.com

**SI GROUP CERTIFIED PENSION CONSULTANTS**  
*Honolulu, HI*  
sigrouphawaii.com

**SLAVIC401K.COM**  
*Boca Raton, FL*  
slavic.net

**SOUTH STATE RETIREMENT PLAN SERVICES**  
*Charleston, SC*  
southstate401k.com

**TPS GROUP**  
*North Haven, CT*  
tpsgroup.com

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

\*as of February 28, 2023





# COVID-19 PANDEMIC AND FUTURE PRT MORTALITY: WHAT'S NEXT?

How will the pandemic impact pension risk transfer mortality assumptions? By Steve Keating & George Eknaian

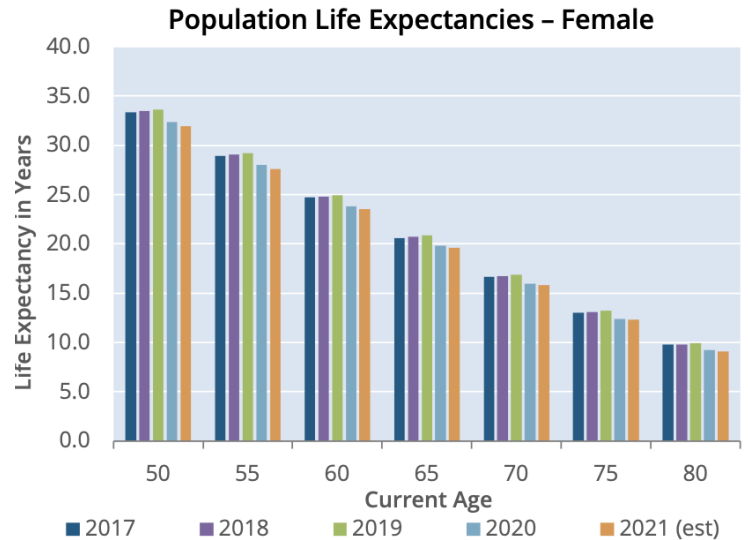
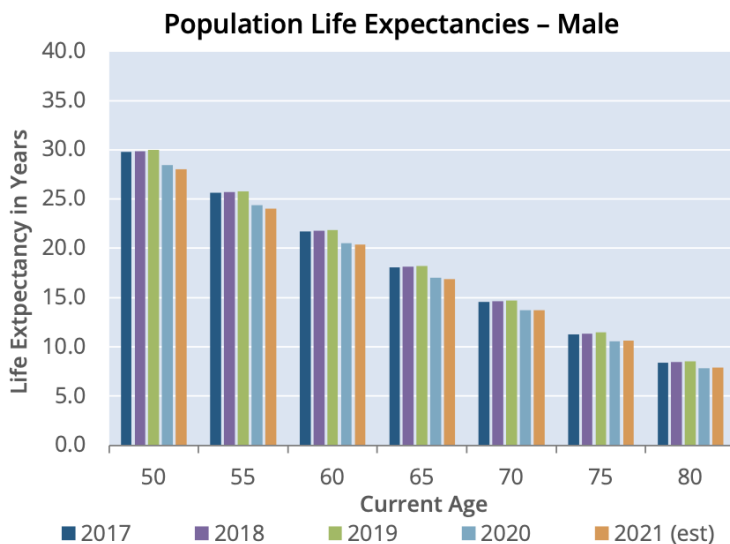
**It goes without saying that the COVID-19 pandemic has significantly affected the world in all aspects of daily living. The impact on the insurance industry, and in particular pension risk transfer (PRT), goes beyond just the number of deaths that have occurred. This article focuses on the mortality impacts, both historically as well as what the future may bring, with a focus on potential impacts on insurers' PRT business. It also addresses the additional information that PRT**

insurers are using and requesting in evaluating PRT transaction opportunities.

## HISTORICAL MORTALITY TRENDS

The last five years of population mortality information shown below fairly depict the impact of the pandemic. We have focused on ages 50 and above since that is where most of the PRT business is issued. We have used population mortality as current pension or annuitant mortality is not readily available in the public domain. (See below.)

As can be seen in these charts, there was slow improvement in life expectancy prior to the pandemic (2017-2019). As an example, age 65 female life expectancy in 2017 was 20.6 years. This had improved slightly to 20.8 years as of 2019, which translates into a 0.55% annual improvement for the two-year time period. In 2020, the life expectancy dropped to 19.8 years, a marked 5% decline. The estimate for 2021 continues that decline, albeit at a much slower pace (19.6 years or a 1.0% decline). The percentage



Source: National Center for Health Statistics, National Vital Statistics System, Mortality.

declines are pretty consistent for males, and increase as age increases for females.

#### FUTURE MORTALITY TRENDS—QUALITATIVE CONSIDERATIONS

The real question now becomes what happens next for future mortality improvement. From a qualitative standpoint, there are several items that could influence future mortality improvement, both positively and negatively (*see table below*).

other underwriting criteria that PRT insurers are using or would like to use. We asked 19 insurers to complete the survey and received 17 responses. We are thankful for such great participation!

#### COVID Survey Questions

When asked whether the mortality experience during the pandemic is included in setting PRT mortality assumptions, 14 insurers stated that they are not reflecting this experience,

assumption setting for pricing. Note that seven of those 11 are insurers that are new to the PRT marketplace. Of the other six, four of them rely materially on historical experience in setting assumptions.

We then asked whether the pandemic influenced future mortality improvement assumptions. Consistent with the first question asked, only two insurers have reflected a change, both reducing future mortality improvement due to the pandemic.

### COVID's Impact on Future Mortality

Positive Improvement	Negative Improvement or Disimprovement
COVID affected people that were already weakened which means the surviving population is healthier	Those infected by COVID could be weaker, causing other unrelated illnesses to manifest
COVID was a pandemic but in the future will be much like the flu	Long COVID is not fully understood as to its potential impacts on mortality
We are more immunized against disease through vaccine development	Long term impacts of vaccines are not known – will they weaken immune systems?
Revolutionary vaccine development can be used to defeat other diseases	Will there be a variant of COVID or another virus that becomes more impactful than COVID was?

As noted, there are arguments that can be made for or against future mortality improvement but even after three years, there are still a lot of unknowns regarding the potential impact of COVID.

#### BCG U.S. PENSION RISK TRANSFER MORTALITY ASSUMPTIONS SURVEY

In order to gain greater insight, we developed a short survey to share with the insurers that participate in the U.S. PRT market. This survey covered the relevance of in-house mortality experience in pricing, adjustments to future mortality due to COVID, and

two are reflecting it, and one is still considering whether to reflect it. This is not unexpected, since as the historical data shows, the 2020 experience in particular was reflective of more of a mortality shock than a trend. More data will be needed to understand if it is a trend.

We also asked whether historical mortality experience in general influences PRT mortality assumption setting. This question is relevant if a PRT transaction opportunity does not provide the plan's own mortality experience. We were surprised to learn that 11 out of the 17 insurers do not really reflect their own experience in

The change in life expectancy has not been significant for those that have reflected this reduction (change of -.5 to 0 years for age 65 or up to 3%).

The results of the survey confirm that there is still a lot of uncertainty regarding the impact of COVID on future mortality. The experience that emerges over the next 3-5 years will most likely be the telling sign as to how COVID has fundamentally changed mortality, if at all.

#### PRT Mortality Underwriting Survey Questions

In recent years, PRT insurers have requested more demographic



information on the participants included in PRT quotes. This is consistent with the question above regarding historical mortality experience and its use in pricing. In particular, newer entrants into the market do not have historical experience to use, so the more demographic information provided, the better they are able to underwrite the PRT business. The survey covered what information has been particularly useful in pricing new business PRT transaction opportunities.

Zip codes have definitely become more prevalent in assumption setting, as 16 of the 17 insurers used 5-digit zip codes, and 10 of 17 take the next step and use 9-digit zip codes. The insurers not using this data (either 5- or 9-digit zip codes) are considering incorporating this in their assumptions in the near future as well. So, we

would suspect that 9-digit zip codes will become the accepted norm for census data.

Thirteen of the 17 PRT insurers consider prior lump sum availability as an assumption determinant. Most insurers are concerned with one-time lump sum offer programs to retirees and/or terminated vested participants; those that consider these programs in assumptions typically view the five-year point as to when the effects of anti-selection of these programs wears off. The criteria for the lump sum programs is also important to some of the insurers, such as the population offered the program, the take-rate of those included in the program, etc.

Other information that was mentioned as helpful to PRT insurers in assessing the mortality of a PRT population are job titles and job descriptions, years of service, more detail on industry, hourly/salaried, and

blue/white collar. There is also a desire to link any of this information to case specific mortality experience, when included in a quotation.

## CONCLUSION

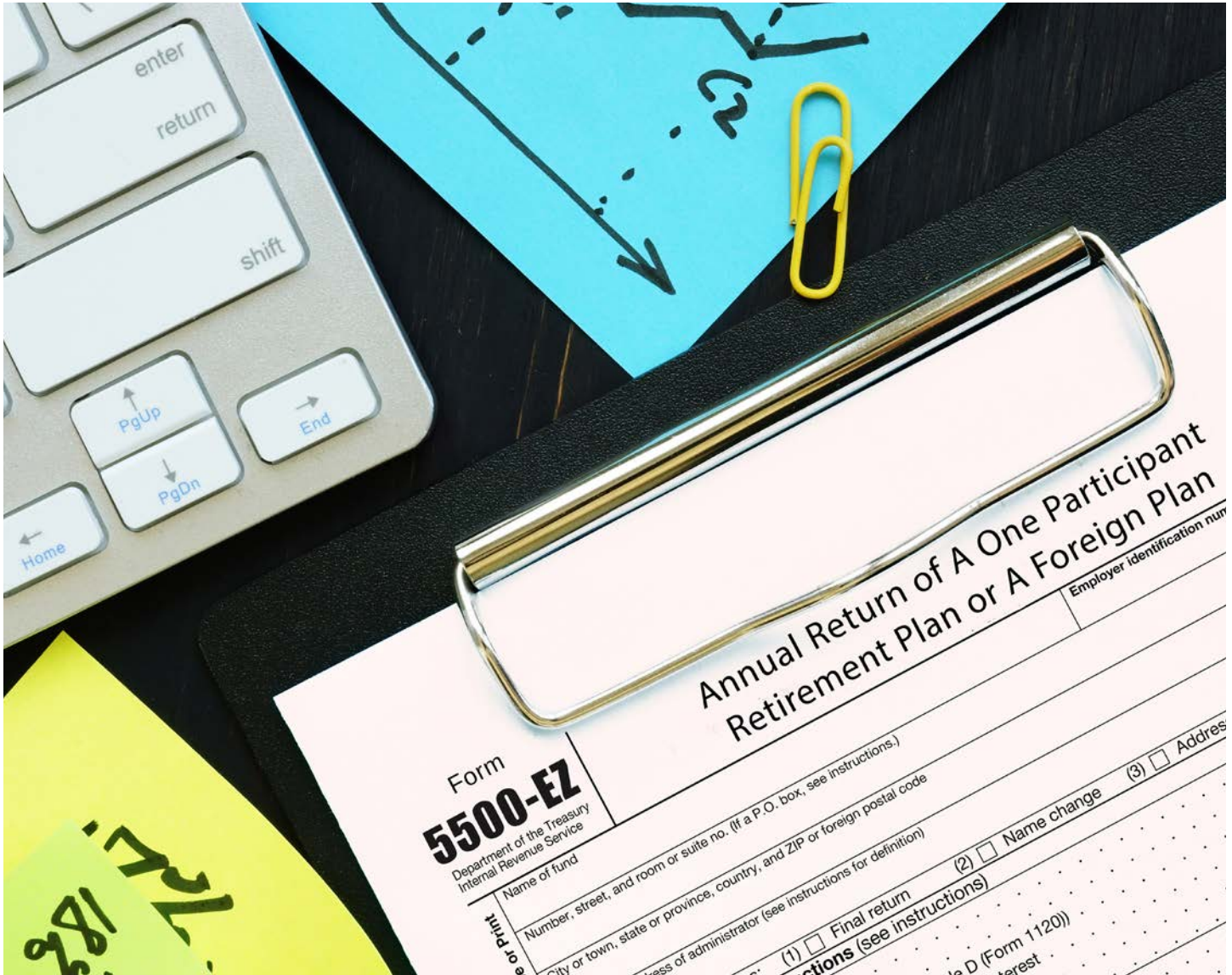
The pandemic has certainly added to the uncertainty of future mortality assumptions for PRT insurers. The next few years will be indicative of whether fundamental changes have occurred in life expectancy or if the pandemic was a temporary blip. As insurers await this experience, their approach to mortality assumptions for PRT business is getting more sophisticated, taking into account as much demographic information as possible that could differentiate mortality. We would expect this to continue to evolve. **PC**

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# SOLO DB PLAN REPORTING

Here's refresher on the reporting and disclosure requirements for solo DB plans. By the 401kinabox Team



**Defined benefit plans offer tremendous tax incentives for the plan sponsor and provide substantial retirement benefits for participants. There are complex rules** and compliance requirements that must be met to maintain the plan's qualification status. Plans that only

cover owners and their spouses have reduced reporting and filing rules. These plans are known as "solo" or "owner-only" DB plans.

The rules governing DB plans are specified in ERISA, the Internal Revenue Code, Treasury regulations and IRS notices. Administrators or sponsors of DB plans are required to report certain information with

the IRS, the DOL and the PBGC, and disclose information to affected parties depending on the plans' type, size, and circumstances. Owners and their spouses are not considered "employees" under ERISA; thus many retirement plan requirements do not apply to solo DB plans.

For DB plans, an Enrolled Actuary must prepare an actuarial valuation



annually to determine the minimum required and maximum deductible contribution each year. The minimum required contribution is due no later than 8½ months after the end of the plan year. To be deductible, the contribution must be made by the filing of the plan sponsor's tax return including extension.

### FORM 5500

Form 5500 is the plan's annual return/report that is provided to various government agencies. The purpose of the form is to provide information with respect to qualification, financial condition, and operation of the plan. For DB plans, a *Schedule SB Single-Employer Defined Benefit Plan Actuarial Information* is required. The schedule contains actuarial information about the funding requirements and reports whether the minimum funding standards have been satisfied. An Enrolled Actuary must certify the Schedule SB.

For "Solo" plans, *Form 5500-EZ Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan* may be filed. This is a simplified version of Form 5500. The deadline to file Form 5500-EZ is the last day of the 7th calendar month after the end of the plan year. A 2½-month extension can be requested using Form 5558. While a Schedule SB is required for DB plans, the schedule is not filed with Form 5500-EZ. Rather it should be maintained with plan records. The IRS may assess a penalty of \$250 per day, up to \$150,000, for failure to timely file Form 5500-EZ.

### AFTAP CERTIFICATION

Another annual requirement for DB plans is the Adjusted Funding Target Funding Percentage (AFTAP) certification. The AFTAP is a measurement of the plan's assets over liabilities. If the AFTAP is above 80%, no benefit restrictions will apply. If the AFTAP is between 60% and 80%, benefit increases are prohibited, and partial restrictions apply to certain forms of payment. If the AFTAP is less than 60%, benefit accruals are frozen and any form of payment that

occurs more frequently than a single life annuity (such as lump sums) are prohibited.

The AFTAP certification is due before the first day of the 4th month of the plan year. If it is not certified by then, the AFTAP is presumed to be 10% less than the prior year's AFTAP until the current-year AFTAP is certified. If the AFTAP is not certified by the first day of the 10th month of the plan year, the AFTAP will be presumed to be below 60% until the end of the year and benefit restriction(s) will remain in place through the end of the year.

Solo plans not subject to ERISA do not require notices to be sent to participants as a result of the AFTAP falling below a particular threshold, although the benefit restrictions still apply.

### PBGC COVERAGE

All DB plans are subject to PBGC coverage. When a plan can no longer pay the benefits due to participants, the PBGC pays participants their earned benefits up to a certain legal limit. Annual comprehensive premium filings and premium payment are required.

However, a DB plan is exempt from PBGC coverage if it is established and maintained by a "professional services employer" and has not covered more than 25 active participants at any time (as described under ERISA 4021(c)(2)(B)). A DB plan that is established and maintained exclusively for substantial owners is also exempt from coverage. Solo DB plans fall into this category.

If PBGC-covered, there are notices and forms that may need to be filed with the PBGC based on plan circumstances.

### FORM 5330

*Form 5330 Return of Excise Taxes Related to Employee Benefit Plans* is used to report excise taxes on minimum funding deficiencies among other situations. When a plan sponsor fails to satisfy the minimum funding requirement in a DB plan, Form 5330 must be filed within 8½ months after the end of the plan year, and an excise

tax of 10% of the funding deficiency must be paid.

Additional notices and forms must also be furnished for DB plans that cover employees if there is a funding deficiency.

### PARTICIPANT NOTICES

The Summary Plan Description must be distributed to participants within 90 days of participation or 120 days after the plan is adopted. The document must include plan name, sponsoring employer information, eligibility requirements, descriptions of benefits, how they accrue, and when a participant can receive those benefits.

A benefit statement showing the participant's accrued benefit must be provided at least once every 3 years for DB plans.

Upon distribution of benefits, disclosures need to be provided. These include the distribution election form, spousal consent waiver of the qualified joint & survivor form of payment, relative value of benefits, and special tax notice regarding rollover options and other considerations. A 1099-R reporting the distribution and must be filed with the IRS by March 31.

A Notice of Reduction in Future Accruals is required when an employer decides to reduce or stop future benefit accruals. For small plans with fewer than 100 participants, the notice must be provided at least 15 days prior to the effective date of the reduction.

Many of the notices described directly above are set forth under ERISA and may not apply to solo DB plans. As with all qualified retirement plans, DB plans must also satisfy nondiscrimination requirements in addition to satisfying minimum funding. This can lead to additional required allocations and/or benefits for non-owner participants in the plan(s). Since a solo defined benefit plan only covers the owner and spouse, it automatically satisfies nondiscrimination requirements. Plan sponsors and administrators need to be aware of potential hurdles when non-owner participants enter solo DB plans. **PC**

# THE STAFFING CRISIS



AT A TIME OF GROWTH, THE RETIREMENT INDUSTRY IS BESET BY RISING SALARIES, CANDIDATE SHORTAGES AND JOB-HOPPING. WHAT ARE INDUSTRY EXECS DOING TO COMBAT THE CURRENT CRISIS IN HIRING AND RETENTION?

BY JOHN ORTMAN

**HOW DID WE GET HERE?** RECRUITER ROBERT BRADY, WHO HAS SPECIALIZED IN SERVING CLIENTS IN THE RETIREMENT PLAN INDUSTRY FOR 30 YEARS, CITES THE COVID-DRIVEN SHIFT TO REMOTE WORK AS A PRIMARY DRIVER.

“When that happened, it seemed to usher in a lot of movement because people who were working for firms that would not allow their employees to work remotely now had plenty of options to work remotely elsewhere,” says Brady.

During the last two years, in Brady’s opinion, so many people were hired away from other firms that it caused a dearth of available candidates. Today, he observes, “The historic ratio of jobs open to candidates available is imbalanced, resulting largely in greater demands on hiring from a shrunken pool of available candidates.”

Shannon Edwards, President of Oklahoma-based TriStar Pension Consulting, knows too well what the consequences of that dynamic look like. “We made an extremely good offer to a candidate a couple weeks ago,” Edwards recalls. “But she didn’t go with us. The firm she ended up going with basically offered her slightly less than we did in salary—but gave her the potential to make something like \$20,000 in bonuses over and above her salary. When I discuss that with my friends around the country, you know, very few of them have bonus structures, and when they do, it’s nothing like that.”

Edwards also recognizes the emergence of the remote or hybrid workforce as a double-edged sword. “I would have thought it was a huge benefit because now I can get employees from anywhere. However, everybody’s doing that now. So [consulting firms] in Oklahoma that previously did not have to compete with California and New York salaries—well, now we do. And I think that part of the problem in the pricing of staff is that we now have both of the coasts looking for our Midwest employees.”

Of course, the dynamic of TPAs and recordkeepers competing against



each other for the same shrinking talent pool will drive up salaries over time. That has happened “pretty quickly,” Brady observes. “Individuals who have, let’s say, 1 to 3 years of experience—they’re very attractive because they can come in and hit the ground running. So that person with 3 to 5 years of experience, who might have been quite happy to accept a \$65,000 offer 2, 3, or 4 years ago, is now getting \$75,000, \$80,000 or even more. I’ve seen some crazy, outlandish offers made by employers, and I’ve had to tell clients, sorry, you lost out on Joe Smith because XYZ Company gave him a \$20,000 raise—or more in some cases.”

Getting the right candidate can become a race for talent, Brady acknowledges. “If you get somebody that you like, please, just move on them as quickly as you possibly can,” he advises. “If your interview process used to be two weeks or longer, try to make it within one week. Some of these good candidates are hitting the job market, getting interviews and finding themselves with an offer in hand three to four days later, or even on the same day.”

“Ascensus, much like many in our industry—and for that matter, pretty much every industry—has been

affected by the Great Resignation for the last year or so,” Tony Petrucelli, VP of Talent Acquisition at Ascensus, notes.

In addition, the technical nature of TPAs’ work exacerbates the problem. Pinnacle Plan Design CEO Amanda Iverson explains: “In the retirement plan industry in particular, there are so many complex rules and regulations, it takes a long time for someone to become an expert or to even feel comfortable, especially on the TPA side, with all the compliance and consulting work.”

That puts the emphasis on hiring more experienced people. At JULY Business Services, “We recently found ourselves hiring people that have more experience,” relates COO Blake Willis. “We found that our biggest need is people with more experience, not junior administrators. Sure, you need both, but I would say that recently we’ve been more focused and spent more time and energy than in years past hiring higher-level, experienced people than we did in prior years.”

#### *The Role of Technology*

Iverson recognizes the challenges of hiring more experienced staff, noting that the compensation requirements of experienced team members have

increased dramatically. “So the challenge is, as businesses, are we going to just increase our fees and hope our revenue is high enough to cover the increases and then continue to do things the same as we always have?” she asks. “Rather than just adding more people, as an industry we have to look at the way we’re doing things and consider what innovation or changes we can make. For example, how can we utilize technology differently—determining where we can create technology solutions to do those tasks that our team members don’t love doing, that don’t create a value-add, or that technology can do for us more efficiently.”

Chad Johansen, a partner and sales director at California-based Plan Design Consultants, agrees, warning that the industry can’t afford to become complacent again. At PDC, he says, “We are not believers that any time you run into a growth or staffing issue, the only thing to do is throw bodies at it. You need to have quality people doing the work. That can never change. But you also need to look at ways within technology to create efficiencies for your team. You need to embrace the way you communicate with clients. You need to require clients to submit data electronically.





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BRADY

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BLAKE  
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JULY  
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SERVICES



You need to have proper cloud storage systems. You need to have good CRMs that allow your team to service clients quicker, more accurately and efficiently. For years, the TPA community has refused to invest in technology because they looked at it as an additional cost, rather than an investment in efficiency and growing the business.”

In addition to search firms and investing in technology, TPA execs identified several other factors that are helping them mitigate the staffing crisis, including outsourcing and an emphasis on workforce retention and corporate culture.

## THE OUTSOURCING SOLUTION

To address their need for experienced, credentialed employees, today more independent TPAs are turning to outsourcing firms for help. “The culture has shifted dramatically in the last two years, with the number of firms that are outsourcing—using an outside company to do the stuff that can be done by someone who doesn’t need to be client facing,” one industry exec observes.

At Infosys, one of the largest providers of outsourcing solutions, the focus is on business operation

outsourcing that reduces cost and optimize productivity, says Martha King, the firm’s Chief Client Officer, Executive Vice President, and head of Infosys’ Retirement Services Center of Excellence. “Our clients look to us to provide staffing of back-office and contact center functions that are generally repeatable, specialized, and lower risk to the business in lower-cost geographies—both on-shore and off-shore,” King explains.

“The retirement services industry is complex in and of itself, and with no industry standard for quality controls, and every TPA has its own approach,” King says, adding that TPAs struggle to find a partner that both understands the industry and has the strategic agility and technical expertise to help them find custom solutions that align with their culture, their expectations, and their mission.

After 2 years of successfully utilizing a firm in Bangladesh for back-office work, Waco, Texas-based TPA/recordkeeper JULY Business Services (founded in 1989 as Texas Pension Consultants) created a company there to provide administrative help. “Our strategy in the beginning was to utilize those employees to just supplement and enhance our staffing,” recalls JULY

President/CEO John Humphrey. “As a record keeper/TPA, we always felt like we never had enough staff. We had a lot of peak periods in the business that were really challenging to manage.”

For the first 4 years, JULY spent a lot of time training their employees in Bangladesh to support the firm’s back office processes. They used ASPPA training materials, starting with the RPF-1 and RPF-2 certificate programs and ASPPA’s other training programs, in some cases earning the QKA credential.

“Working with the folks in Bangladesh really provided a boost to our staffing and helped to serve clients better,” Humphrey recalls. “It allowed us to have employees here in the U.S. more focused on our clients and less focused on the ‘heads down’ work”—like handling year-end compliance testing and contribution allocations work, Form 5500 preparation and distribution adjudication.

Spurred by a client’s request for help building a team, JULY began offering their Bangladesh-based solution as a service. “Basically we hire employees in Bangladesh for TPAs,” Humphrey explains. “We provide them with training, and then we teach the TPAs how to work with them to augment or supplement their staffing here in the U.S.”



“PEOPLE CERTAINLY WANT TO WORK FOR AN ORGANIZATION WHERE THEY CAN BRING THEIR WHOLE SELVES TO WORK EVERY DAY, NOT JUST A PROFESSIONAL PERSONA.” — TONY PETRUCELLI, ASCENSUS

Ten years later, the number of TPA clients using JULY's Bangladesh solution stands at 41 and counting, with a current total of about 150 employees in Bangladesh. “We’ve grown from about 18 to 41 TPAs in the last 18 months,” reports Partner/COO Blake Willis. “There was a lot more growth quicker than we expected.”

Humphrey sees an important benefit to outsourcing that often goes unrecognized. “A lot of times, I think TPAs will come into this thinking, ‘Either I need more staff, or I have an emergency situation, or I lost someone, or I want to reduce some costs.’ But I think the thing that people miss a lot of times is the benefit that this provides to their clients. If you can elevate employees’ responsibilities, that’s where innovation happens. That’s where better client service happens. I think it really frees up people who have experience here in the U.S. to think differently about how to serve their clients and add value to that client relationship.”

Many TPA owners and execs remain opposed to overseas outsourcing, a dynamic of which Humphrey is well aware. “I know that some TPAs may think that this is about cutting U.S. staff. But our

experience has been that having the outsourcing solution floats all boats,” he says. “It improves servicing for clients, and it helps elevate jobs for employees here in the U.S.—they’re taking on new responsibilities and contributing more to process and service innovation. If anything, it’s really about growing larger over time because you’re more scalable, you’re a healthier organization, and you’re a better workplace for your employees.”

### WHAT’S YOUR VALUE PROPOSITION?

In his 8 years at Ascensus, Petrucelli has pursued a robust, two-part talent acquisition operation, supplementing the firm’s traditional recruiting efforts with an in-house strategic sourcing team that functions like a search firm. “A successful talent acquisition structure means nothing without a strong employee value proposition to attract talent,” he believes.

“What’s your employment message?” he adds. “Why do people want to work there? What makes you unique?” Of course, with the Great Resignation and the pressure of having more jobs than there are people, compensation does come into play, Petrucelli acknowledges—but it’s

not everything. “People certainly want to work for an organization where they can bring their whole selves to work every day, not just a professional persona,” he believes—“a place where they share similar values and have the opportunity to grow professionally.”

Corporate culture doesn’t just help with recruiting by becoming an employer of choice, of course—it’s also a prime driver of employee retention. At Pinnacle, “our culture is part of our strategy to retain our great clients, partners and team members,” says Iverson. “I believe a big part of why our team is staying is because of our commitment to the Pinnacle culture. We strive to have a culture of accountability that includes team collaboration, a transparency of expectations, an emphasis on training and professional development, a mentoring program, and an extensive compensation and benefits package. It’s not just one thing—all of those things contribute to who Pinnacle is and create our culture. And I think that because of that culture, team members have been staying and our employee retention continues to be high.”

At successful TPA firms, paying for ASPPA certification also plays a role in retention. At TriStar, says

  
AMANDA  
IVERSON  
PINNACLE  
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CHAD  
JOHANSEN  
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CONSULTANTS



  
JOHN  
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Edwards, “We require that new hires start sitting for the ASPPA exams immediately. Within a couple weeks they’re already doing RPF and then moving on to QKA.” TriStar pays for all the continuing education once an employee passes the exams, and for the employee’s ASPPA membership.

In talking to other TPA firms about the benefits they offer, Edwards is seeing a shift in that direction. “There are firms that have not done that in the past, but are now shifting to paying for more than they used to,” she says.

Johansen attributes Plan Design Consultants’ very low turnover to the firm’s growth and continual reinvestment in their employees. “We’re focused on finding career-oriented folks, and not just people looking to do a job. I think if you’re willing to jump from company to company for a pay bump, then you are not necessarily looking for a career. You’re looking for an income,” he asserts. “I believe as business owners, we have to be clear about what we’re trying to do with our workforce. Are we trying to help people build a comfortable life with their family and have a good work-life balance? Or are we trying to only do a job for clients? If we’re only trying

to do a job for clients, then we’re going to lose employees as they find something that’s slightly better at a different firm.”

After losing three good sales consultants within a short period of time, Johansen recalls, he learned an important lesson. “What I learned in hiring and then losing those folks is that when we teach them this great skill set, growing them, nurturing them, and they may get recruited by our recordkeeper partners, who can offer them much larger paychecks.” To counter that, Johansen believes, “you really have to make sure the culture fits and the people are happy—and you continue to keep a pulse on their happiness and the work that they’re doing so that when that knock does come, they feel like they’re already in the right place.”

### WHAT LIES AHEAD?

What do the industry insiders we spoke with think the future holds?

Looking at the nationwide labor market, Petrucelli sees a rough ride ahead. “This time next year, I think it’s going to be a different story; 2023 is going to be a rough year,” he says. “If the economy continues to decline, it’s not going to be the Great Resignation anymore.”

Petrucelli sees the labor market eventually tightening as layoffs are becoming more commonplace. “The only reason it’s not contracting faster is because the labor participation rate is at a 45-year low. If this trend continues, there will be fewer jobs and even fewer people to fill them.”

Recruiter Brady views retirement industry salaries over time as a big pendulum that is suspended right now at the high-salary side of the spectrum. “But you know, coming out of the Great Recession, that pendulum was on the other end of the spectrum for 7, 8 or 9 years. It was brutal,” he points out. “So now we’re on the other side, and that pendulum is just kind of hung up.”

“I don’t know how salaries could go backwards,” Brady observes. “How could you ask your people to take less money? You could, of course, but I don’t see that happening. But I think at some point the madness has to stop—at a point where everyone eventually finds themselves at an equilibrium. It’ll stabilize and salaries will go back to the traditional 8% raises to leave one company for another. And eventually we’ll have another recession, or something will happen, and hiring will slow down.” **PC**



# WHAT TO **LOVE** (**AND** **FEAR**) ABOUT **SECURE** **2.0** NOW

IT'S COMPLEX, CONFUSING, AND FILLED WITH OPPORTUNITIES FOR RECORDKEEPERS, TPAS, ADVISORS AND—IMPORTANTLY—PARTICIPANTS. WHAT SHOULD RETIREMENT PLAN PROFESSIONALS WATCH, AND WATCH OUT FOR, IN THE LANDMARK LEGISLATION? OUR EXPERTS WEIGH IN.

BY JOHN SULLIVAN & NEVIN E. ADAMS, JD











# “HOW DO YOU EAT AN ELEPHANT?” ONEDIGITAL RETIREMENT + WEALTH’S PHIL TROYER RHETORICALLY ASKED WHEN DESCRIBING SECURE 2.0’S SIZE AND COMPLEXITY. “A BITE AT A TIME.”

In the wake of the passage of the SECURE 2.0 Act of 2022, it’s an attitude emblematic of the industry as a whole. While excited about the potential benefits of the latest retirement plan legislation, its numerous provisions, effective dates, grandfather clauses, and—yes—technical errors make for a heavy lift. With 92 provisions with 358 pages of legislative text, there’s a lot to absorb and assimilate, and its integration into advisor, recordkeeper, and plan sponsor daily processes has the potential to be rewarding—yet challenging.

According to the lawyers, TPAs, recordkeepers, and plan professionals we spoke with, the first step is to focus on the here and now (and in some cases, “then”); the mandatory and optional pieces with either retroactive or fast-approaching implementation dates.

The Wagner Law Group’s Tom Clark compared it to the frenzy and stress of a Disney classic.

“It’s like ‘One Hundred and One Dalmatians,’” he said. “There are a hundred different things in this legislation to figure out. Every advisor I’ve spoken with is super-concerned that [all but the largest] recordkeepers will not be able to build out the technology and workflows fast enough to keep up with the legislative changes.”

## WIN, WHEN

From the perspective of increasing coverage and enhancing retirement benefits, it’s a win, according to Pension Institute and Retirement Law Group’s Jason Roberts. Even when asked for negatives within the act, he remained optimistic about the prospects. While there’s complexity for tax professionals, recordkeepers, and other industry stakeholders, “they’ll sort it all out.”

“All things considered, it’s a good law,” Roberts said. “I see more opportunities for advisors than struggles once they’re educated on the

“ANY NEW LEGISLATION CREATES EXCITING OPPORTUNITIES TO LEARN AND ADVISE PEOPLE...” — FRED REISH, FAEGRE DRINKER BIDDLE & REATH

nuances so that they can go out and convey that to their institutional and individual clients. I don't see anything other than just the technical nature of the tax code as being an impediment.”

“Any new legislation creates exciting opportunities to learn and advise people,” Faegre Drinker Biddle & Reath's Fred Reish added. “So, overall, that's good.”

Reish and others interviewed mentioned the incentives and requirements to encourage small businesses to offer 401(k) plans as the most beneficial provisions—including tax credits, the Starter 401(k), and mandatory auto-enrollment—as well as the newly enhanced (and “branded”) saver's match.

They're especially critical as tools to close both the savings and coverage gap(s), which refers to both a shortfall in needed funds to secure an affordable quality of life in retirement, and the difference in average savings amount among various demographic groups.

The following discussion of some (but not all) of SECURE 2.0's major provisions notes their effective date and whether they are mandatory (M) or optional (O).

### MICRO PLAN BOOST (TAX CREDITS, STARTER 401(k), AUTO-ENROLLMENT)

#### Tax Credits (2023)—O

Secure 2.0 establishes a new tax credit and significantly expands an existing credit. The startup credit is increased to 100% for companies with 50 or fewer employees. The current cap of \$5,000 per employer is retained. The

new credit offsets up to \$1,000 of employer contributions per employee in the first year, phased down gradually over five years.

The credit applies to companies with 100 or fewer employees. However, it is phased out for those with more than 50 employees. There is no credit for contributions to any employee making more than \$100,000 annually (indexed after 2023). Also, there is no deduction for employer contributions that qualify for the credit.

“There is a lot to be excited about, but the top of the list is the New Plan Startup credit,” noted Jake Linney of 401kinabox in Ellicott City, Maryland.

“I think the tax credits are HUGE!” exclaimed Theresa Conti, President of Sun West Pensions in Tempe, Arizona. “I think we need to get that word out there so that everyone understands just how much this can help small employers with startup plan costs and the contribution tax credits!”

“I'm most excited about the tax credit increase,” echoed Megan (Williams) Crawford, of Williams Benefit Consulting LLC, in Quincy, Illinois. “Even though this has added some additional time during tax season to re-work proposals,” she explained, “we can already see a difference in the decision-making process for prospects. It is really hard to say “no thanks” to a good tax credit.”

Also lending her voice to that enthusiastic response, Karyn Dzurisin, TPA Retirement Plan Counselor Manager, Capital Group, commented

that, “People are still seeking to understand how great the impact will be, but once they do, it is such an exciting way to make a difference in the retirement readiness of so many more people.”

Reish agreed, marveling at the tax credits' size, a level not seen in the retirement plan space until now.

“I almost think I would set up a new plan and contribute \$1,000 for every employee,” he explained. “If I had 20 employees, that'd be a \$20,000 contribution as almost a profit-sharing contribution. Not as a percentage of pay, just \$1,000 per employee. Why not? The government will give me that money back. For the first two years, I get all of it back. In the third year, I get 75% back. At least for the first three years, I would just structure it that way.”

#### Starter 401(k) (2024)—O

The Starter 401(k) plan is a new wage deferral-only safe harbor 401(k) plan. According to the American Retirement Association's Andrew Remo, Director of Federal and State Legislative Affairs, employees can save up to \$6,000 per year (with a \$1,000 catch-up contribution) without the administrative burdens or expense of a traditional 401(k) plan. For example, the Starter 401(k) plan does not require employer contributions or complicated non-discrimination testing.

“The primary purpose of the Starter 401(k) plan is to create a 401(k) product similar to the auto-IRA products now being put forward by over a dozen states,” he explained. “It will allow employers that adopt a



## What's Up?

*The new SECURE 2.0 law is already changing the game. Here's what's effective now.*

By ARA Staff

Capping off months of anticipation, the SECURE 2.0 Act of 2022 is now law. Here's what you need to know about the new law now.

### Provisions with Immediate Effective Dates

SECURE 2.0's date of enactment (DOE) was Dec. 29, 2022. Several provisions become effective either retroactively, immediately, or as of Jan. 1, 2023. These include:

#### Coverage and Savings

- Modification of credit for small employer pension plan startup costs (section 102); effective for tax years beginning after Dec. 31, 2022.
- Multiple employer 403(b) plans (section 106); effective for plan years beginning after Dec. 31, 2022.
- Application of credit for small employer pension plan startup costs to employers that join an existing plan (section 111); effective retroactively for tax years beginning after Dec. 31, 2019.
- Military spouse retirement plan eligibility credit for small employers (section 112); effective for tax years beginning after DOE.
- Small immediate financial incentives for contributing to a plan; effective for plan years beginning after DOE (section 113).
- Permit employers of domestic employees (e.g., nannies) to provide retirement benefits for such employees under a Simplified Employee Pension (SEP) (section 118); effective for tax years beginning after DOE.
- Elimination of compensation-based limit for participants who are non-highly compensated employees and participate in a rural electric cooperative retirement plan (section 119); effective for limitation years ending after DOE.
- Permit 403(b) custodial accounts to participate in group trusts with other tax-preferred savings plans and IRAs (section 128); effective after DOE.

#### Income Preservation

- Remove required minimum distribution barriers of life annuities (section 201); effective for calendar years ending after DOE.
- Among other clarifications, repeal the 25% limit and allow up to \$200,000 (indexed) to be used from an account balance to purchase a qualifying longevity annuity contract (QLAC) (section 202); effective for contracts purchased or received in an exchange on or after the DOE; the provision also clarifies that free-look periods are permitted up to 90 days with respect to contracts purchased or received in an exchange on or after Jul. 2, 2014.
- Eliminate penalty on partial annuitization by permitting account owners to elect to aggregate distributions from both portions of their account for purposes of determining minimum distributions (section 204); effective on DOE.

#### Simplification and Clarification

- New rules addressing the application of recovery of retirement plan overpayments (section 301); effective on DOE (the changes also outline how plan fiduciaries may proceed with respect to determinations made prior to the DOE).
- Reduction in excise tax on certain accumulations (i.e., failure to take RMDs) in qualified retirement plans (section 302); effective for tax years beginning after DOE.

- Eliminate the "first day of the month" requirement for governmental section 457(b) plans (section 306); effective for tax years beginning after DOE.
- Repayment of qualified birth or adoption distribution limited to three years (section 311); effective for distributions made after the DOE and retroactively to the three-year period beginning on the day after the date on which such distribution was received.
- Employer may rely on employee certifying that deemed hardship distribution conditions are met (section 312); effective for plan years beginning after DOE.
- Individual retirement plan statute of limitations for excise tax on excess contributions and certain accumulations (section 313); effective on DOE.
- Retroactive first-year elective deferrals for sole proprietors (section 317); effective for plan years beginning after DOE.
- Elimination of unnecessary plan notification requirements related to unenrolled participants (section 320); effective for plan years beginning after Dec. 31, 2022.
- Clarification of tax treatment of IRA involved in a prohibited transaction (section 322); effective for tax years beginning after DOE.
- Exception to penalty on early distributions from qualified plans for individuals with a terminal illness (section 326); effective for distributions made after DOE.
- Special rules for use of retirement funds in connection with qualified federally declared disasters; effective for disasters occurring on or after Jan. 26, 2021.
- Elimination of additional tax on corrective distributions of excess contributions; effective for any determination of taxes, interest or penalties which is made on or after DOE, without regard to whether the act (or failure to act) upon which the determination is based occurred before the DOE.
- Modification of RMD rules for special needs trust; effective for calendar years beginning after the DOE.
- Clarifies that plans filing under a Group of Plans need only to submit an audit opinion if they have 100 participants or more; effective on the DOE.
- Clarifies the application of the Code and ERISA's rules, prohibiting the backloading of benefit accruals, as they relate to hybrid plans that credit variable interest; effective for plan years beginning after DOE.
- Termination of variable rate premium indexing (section 349); effective on the DOE.

#### Revenue Provisions

- Allows SIMPLE and SEP Roth IRAs (section 601); effective for tax years beginning after Dec. 31, 2022.
- Allows DC plans to provide participants with the option of receiving matching contributions on a Roth basis (section 604), effective on DOE.
- Enhancing retiree health benefits in pension plans by extending the sunset date and permitting limited transfers to pay retiree health and life insurance benefits (section 606); effective for transfers made on or after DOE.

See the nearby sidebar regarding all the effective dates under SECURE 2.0.



“THE REQUIRED ROTH TREATMENT FOR CATCH-UP CONTRIBUTIONS IS DEFINITELY ONE OF THE PROVISIONS WHERE OUR CLIENTS HAVE SOME QUESTIONS...” — KARYN DZURISIN, CAPITAL GROUP

plan in those states to choose a private sector 401(k) provider to meet the retirement plan coverage requirement embedded in these laws.

All employees must default into the plan at a 3% to 15% deferral rate. No employer contributions are permitted. However, there will likely be a future technical correction, as the section's text does not match the summary and intent. The summary says its limits will match IRA limits, but the text limits deferrals to \$6,000 rather than including the increased IRA limits for future years.

“I like the new Starter (k) plan because, compared to state-mandated IRA plans, which I do like, they allow the assets to be aggregated,” Reish said. “More services can therefore be provided, along with lower cost investments.”

#### *Auto-Enrollment, Escalation (2025)—M*

All new 401(k) and 403(b) plans adopted after Dec. 29, 2022 (the effective date of the legislation)—except businesses with fewer than 10 employees, new businesses less than three years old, and churches and governments—must though not beginning until 2025, automatically

enroll participants between 3% and 10%. They must also automatically increase the rate by 1% per year to at least 10%, but no more than 15%.

Employees would have at least 90 days to opt out and take a distribution of any automatic deferrals, and the plan must have an Eligible Automatic Contribution Arrangements (EACAs) withdrawal provision. It does not apply to SIMPLE plans (since they're IRAs) but applies to adopting a MEP after the enactment date (based on the employer's adoption, not the effective date of the MEP).

“I think auto-enrollment and having those kinds of paternalistic conversations with plan sponsors is a good thing for advisors who are super-concerned with enrollment and getting the numbers up, which is really the whole reason we do this,” Clark said. “I think that's very positive.”

Reish agreed, noting, “Of the mandatory provisions, I think the new automatic enrollment provision is head and shoulders above the rest in terms of the long-term impact it will have.”

“Study after study has shown that it improves participant outcomes,” noted Shannon M. Edwards, President

of TriStar Pension Consulting in Oklahoma City, Oklahoma. “Ninety percent of people who are opted in don't opt out, and according to some studies, it doesn't matter if you opt them in at 3%, 6%, or 10%. I think the auto-enrollment will be a wonderful success”.

That said, there is some potential downside, Conti added. While she uses it in her own plan and feels it is “extremely important/valuable to employees to be forced to save,” she worries that small employers don't have the “skills” to administer it correctly—and then it becomes a big problem when we have to correct,” she commented, hoping to get “payroll providers on board to help with this!” Crawford shared those concerns and expresses hope that “with this legislation, recordkeepers are able to put more robust systems in place to help plan sponsors with this provision.”

Believing it signals not only a legal change but a cultural change, “If you look out five years from now, we'll begin to view automatically enrolled and automatic [escalation] plans as the norm. It'll be the odd plan that doesn't automatically enroll,” Reish noted.

## SECURE 2.0 At a Glance

The ARA's Government Affairs team has created a table listing all the provisions and effective dates under SECURE 2.0. You can find it online at <https://www.asppa.org/news/key-secure-20-act-provisions-and-effective-dates>.

“THEY WERE UNFAIR TO WOMEN BUSINESS OWNERS. THEY WERE KEEPING PEOPLE FROM STARTING PLANS.” — SHANNON M. EDWARDS, PRESIDENT OF TRISTAR PENSION CONSULTING

#### *Emergency Savings Accounts (2024)—O*

Employers may offer non-highly compensated employees (NHCE) what were called “pension-linked” emergency savings accounts and may automatically opt employees into these accounts at no more than 3% of their salary (despite the pension-linked label, this applies to defined contribution plans). These “sidecar” emergency savings accounts are capped at \$2,500 (or lower, as set by the employer). Contributions are made post-tax but treated as elective deferrals for retirement matching contributions.

Once the cap is reached, the contributions may be stopped or continue as Roth deferrals. The first four withdrawals from these accounts are not subject to fees or taxes.

If a plan matches these deferrals, it must count contributions to the emergency savings account in the same way for the purposes of the match. Upon termination or separation of service, the account balance may be taken as a distribution, rolled into a Roth, or rolled into an IRA.

“While scheduled for 2024, this is a big, complex, high-impact provision that will have lengthy Treasury and DOL regulations, so implementation will be tricky,” Group Plan Systems Managing Partner Pete Swisher said. “2024 is, therefore, probably optimistic.”

#### *Student Loan Matching Contributions (2024)—O*

Acknowledging the enormity of the country’s \$1.75 trillion in outstanding

student loan debt and its likely impact on retirement savings, SECURE 2.0 permits employers to match student loan repayments under 401(k), 403(b), SIMPLE, and 457(b) plans as if those payments were elective deferrals to the plan. It’s intended to help employees who may not be able to save for retirement because they are overwhelmed with student debt and missing out on available matching contributions for retirement plans.

Reish explained that a plan must treat the Qualified Student Loan Payment (QSLP) matches the same as matches on participant deferrals, and an employer can rely on employee certification of payment.

Additionally, a plan may test the matching contributions as a part of its general discrimination testing or as a separate group consisting solely of those receiving matches as a result of payments on QSLPs. Other than for qualification testing, student loan repayments are not treated as contributions to the plan.

That said, Ascensus’ Racine is looking for some clarity on integrating qualified Student Loan payments and obtaining the data to test and validate employer match to these payments. He’s also looking for verification that hardship and new cases of domestic abuse withdrawals can be independently tracked for limits with no integration.

#### *Easier Access to Funds (2024)—O*

The law allows one penalty-free distribution per year of up to \$1,000, with the option to repay the distribution within three years.

No further emergency distribution would be permissible during the three-year repayment period unless a re-contribution is made. An exemption from the 10% penalty applies, and the plan may rely on participant self-certification of the hardship.

Plans may also permit a withdrawal in the case of an eligible distribution to a domestic abuse victim. The amount available is the lesser of \$10,000 (indexed to inflation) or 50% of the account balance. It applies to plans that are not subject to IRC Section 417. The qualified withdrawal is exempt from the 10% penalty. Subject to certain conditions, the funds may be re-contributed to the applicable eligible retirement plan.

“What I’m most excited about is the emergency savings/sidecar along with the \$1,000 penalty-free access to savings,” Clark said. “I’ve been working with clients that are going to combine that, along with the student loan [matching contributions], and really design an aggressive approach to helping Main Street avoid the financial pitfalls and fees that come with average daily working-class living. How many tens and hundreds of billions of dollars are wasted on unnecessary fees, interest, and stuff like that?”

Racine has his recordkeeper’s eye on tracking withdrawals for emergency expenses, as well as the tracking repayment and reporting on both the withdrawals and repayments. He also cited the integration of non-emergency savings accounts - and helping participants with investment allocations where the allocations



for long-term savings may not be appropriate.

#### *Auto Portability (2024)—M*

Most advisors agree that rolling over a retirement plan account should be much easier when a worker changes jobs. The Employee Benefit Research Institute (EBRI) finds that job-switching Americans lose \$92 billion in retirement savings yearly from premature cash-outs. It's mainly seen in workers with less than \$5,000 in their accounts.

EBRI further notes widespread auto-portability adoption could save 67 million Black and minority workers \$619 billion, and 42 million female workers of all ethnicities could save \$365 billion.

It's why portability is the next piece in the auto-revolution (enrollment, deferral, escalation), a concept (process) that Retirement Clearinghouse has advocated for some time. Under current law, an employer is permitted to distribute a participant's account balance without participant consent if the balance is under \$5,000 (an amount increased to \$7,000 in 2024 under SECURE 2.0) and the balance is immediately distributable (e.g., after the termination of employment). Current law also requires an employer to roll this distribution into a default IRA if the account balance is at least \$1,000 and the participant does not elect otherwise.

SECURE 2.0 permits a retirement plan service provider to provide employer plans with automatic

portability services. Such services involve automatically transferring a participant's default IRA (established in connection with a distribution from a former employer's plan) into the participant's new employer's retirement plan unless the participant elects otherwise.

#### *Roth Provisions (2024)—M, O*

For Linney, the biggest concern in the legislation is the requirement that catch-up contributions be Roth for individuals making more than \$145,000/year. Capital Group's Dzurisin concurred. "The required Roth treatment for catch-up contributions is definitely one of the provisions where our clients have some questions," she noted.



Catch-up contributions under a 401(k), 403(b), or governmental 457(b) plan must be designated Roth contributions for participants with wages greater than \$145,000 (indexed to inflation) in the prior year that the contribution is made. For participants with wages less than, or equal to, \$145,000, plans must have a Roth option for the catch-up contribution.

It's important to note that the American Retirement Association recently identified a significant technical error in this section that will likely need a technical correction. Specifically, according to wording in the legislation, beginning in 2024, no participant can make catch-up contributions (pre-tax or Roth).

John Feldt, Compliance Manager at Economic Group Pension Services (EGPS), said, "Some employers have heard the catch-up option got accidentally unplugged, so they are very deeply concerned. They want

catch-ups officially available, many telling us they don't care what the IRS/Treasury says verbally or on their website...They want official guidance or the law fixed".

An additional Roth provision in the legislation allows for tax and penalty-free rollovers from 529 college savings accounts to Roth IRAs under certain conditions. Beneficiaries of 529 accounts can roll over up to \$35,000 as a lifetime limit. Subject to Roth IRA annual contribution limits, the 529 accounts must have been open for over 15 years.

#### *Long-Term Part-Time Workers (2025)—M*

The 2019 SECURE Act required retirement plan eligibility for long-term, part-time (LTPT) workers. SECURE 2.0 builds upon it by requiring that part-time employees who work at least 500 hours a year for two years be eligible to

make employee contributions to an employer's defined contribution retirement plan.

That happens to be Edwards' biggest concern at present. "I think this is going to cause a lot of issues for a lot of clients," she said, though acknowledging that "we shouldn't be able to keep part-time people out of plans." That said, she would have preferred that SECURE 2.0 had also made those individuals eligible for employer contributions. "However, because of the complexity of administering LTPT employees, I am hoping we see more and more employers just letting everyone in," she says.

According to EGPS' Feldt, "Certain employers are concerned about the LTPT employee coverage, two sets of rules, one for 2024, then 2025. They shake their head and mutter".

SECURE 2.0 also provides that pre-2021 service is disregarded for



vesting purposes. While effective in plan year 2025, the vesting change and top-heavy exemption fix are effective as if included in the enactment of section 112 of the SECURE Act. It also extends the long-term part-time coverage rules to 403(b) plans subject to ERISA.

#### *Saver's Match (2027)—O*

The saver match is now a match of 50% of up to \$2,000 in IRA or retirement plan contributions (less the distributions to a participant or spouse if married, filing jointly in the past three years, plus the period before the return is filed), irrespective of tax liability. The match phases out between \$41,000 and \$71,000 in the case of joint returns (\$20,500 to \$35,500 for single and married filing separately; \$30,750 to \$53,250 for head of household).

Under SECURE 2.0, thresholds are indexed to inflation after 2027. The Saver's Match must go into a retirement vehicle (workplace retirement plan or IRA) unless the match is less than \$100. The contribution and match are treated as elective deferral (but don't count toward contribution limits). It's subject to distribution restrictions applicable to deferrals, except that it cannot be withdrawn for hardships.

Detailed rules exist on recapturing early distributions (within the prior two years). They involve separate accounting within the plan because it is not included in top-heavy and special distribution rules.

"What's interesting and gives me a little bit of pause [about the Saver's Match] is how it will be implemented because, essentially, the government is expected to deposit this money into employee accounts," Garcia said. "That will be interesting, but they have a few years to figure it out. It also helps those with lower income and those who don't generally save as much."

#### *Retirement Distributions (2022, 2023)—M*

Finally, SECURE 2.0 includes several retirement income provisions, mainly related to required minimum

distributions (RMD) that are either retroactively enacted or implemented this year.

The required beginning date for RMDs is age 73, beginning in 2023, and age 75, starting in 2033. The hard cut-off is based on birthday (age 72 before 2023 equals age 72; if the participant turns 73 before 2033, the RMD age is 73; if they turn 74 after 2032, the RMD age is 75).

Another distribution provision – and one largely overlooked by many—is that individuals can now buy Qualifying Longevity Annuity Contracts (QLAC) to satisfy their RMD requirements up to \$200,000 (indexed to inflation after 2024).

There is also a modification in the calculation for partial RMD annuitization. Suppose a tax-preferred retirement account also holds an annuity. In that case, current law requires that the account be bifurcated between the portion of the account holding the annuity and the rest of the account for purposes of applying the RMD rules.

This treatment may result in higher minimum distributions than would have been required if the account did not hold an annuity. The provision permits the account owner to elect to aggregate distributions from both portions of the account to determine minimum distributions.

SECURE 2.0 also removes RMD requirements for certain life annuities and reduces the excise tax for failure to take a required minimum distribution (RMD) to 25% from 50%, and further reduces the excise tax to 10% for taxpayers who take the required RMD before an IRS audit or (if earlier) the second year after the year in which the excise tax is imposed.

Despite the changes, Reish is unimpressed with the law's retirement income features overall.

"Still unresolved by Congress is what happens when the money comes out of the plan, and people live for another 20 or 30 years," he concluded. "They addressed how we can increase deferrals and encourage plan sponsorship, but I don't think they addressed the biggest unanswered

question: what happens when somebody retires? There's a little bit about annuities, but nothing that says, 'Hey, annuities got it covered.' SECURE 1.0 was more significant in that regard because of the insurance-company safe harbor."

## OTHER ISSUES

A different provision—and one championed by ASPPA—was cheered by Edwards.

"I am most excited about the provision doing away with the family attribution rules," she said. "They were unfair to women business owners. They were keeping people from starting plans. They caused thousands of dollars worth of errors for unexpecting plan sponsors. They were impossible to administer properly".

Feldt called out that Otherwise Excludable Employees are now separated for top-heavy DC plans, but went on to comment, "Too bad the safe harbor top-heavy exempt plans were not addressed by this same section to clearly state that OEEs who are allowed (or eventually required) to defer will not cause the plan's top-heavy exemption to be lost, because if it does, even though the OEEs might not get the top-heavy under this new rule, a bunch of normal eligible employees not deferring will now get top-heavy."

One of those "need to know more before I know if I'm excited or worried" provisions for Ascensus' Racine has to do with the option for employers to allow employees to opt for employer matching contributions to be treated as Roth—both from a payroll and retirement plan perspective. Crawford shares those concerns; "I think we are all waiting with bated breath to get a better understanding of how this will be reported and how we can advise our clients," she says. "This can be an exciting tax planning strategy once we have more information."

As for the provisions he feels he needs to know about before making a call, "All of them," Linney concluded with a smile. **PC**



# TRAINING, THE KEY TO RETENTION

ARE YOUR NEW-HIRE ONBOARDING AND ONGOING TRAINING PROGRAMS PART OF A SUCCESSFUL STRATEGY TO RETAIN YOUR BEST EMPLOYEES? HERE ARE SOME BEST PRACTICES TO CONSIDER.

BY CHAD JOHANSEN

# HIRING CAN BE FRUSTRATING. TRAINING CAN BE CUMBERSOME. AND HIRING AND TRAINING COMPLIANCE NERDS CAN BE INCREDIBLY CHALLENGING.

Some TPAs have been lucky in finding great folks, while others have failed at that. Some have been strategic about it, and a few have had no need to find new people.

In this article, we'll focus on the practices of those who have already found the right new team members and have been strategically onboarding, training and retaining the kind of employees who help their shop thrive.

Hiring is a natural part of business development, and finding the right people to continue carrying the torch with the same passion and accountability is an art. However, onboarding, training and retention is not a work of art. In fact, it can be a science. Building out your process takes thought and understanding—and most importantly, your actions need to be deliberate.

It is important to understand that different jobs require different training. Different levels of experience require different approaches and different growth trajectories will require a path unique to the individual. But all employees should have a nearly identical onboarding process.

## ONBOARDING

New team members need to quickly feel like a part of your team. The most successful onboarding processes I have seen start with an introduction to the firm's ethos and continue into an understanding of the people, the process and then the work.

### *Your Firm's Ethos and Culture*

TPAs are a unique breed of nerds with personality. With such a strong emphasis on quality of work, it is rare that a TPA business has really taken the time to understand its own culture. TPAs grew up as closely held family style businesses—born out of necessity but raised with compassion and drive that represented a personality. The culture was present in the actions of its leaders and visible in the way they lived within the business.

Well, times have changed, decades have passed, and firms are larger, serving more clients and employing more great people. Culture is no longer a given and witnessing the leaders' ethos has become increasingly difficult. And while a remote workforce has made the compliance world a better place, it

also changed forever the way we need to support our team members.

It is rare to see the members of a TPA shop understand and exude the same culture as their peers working by their side. This ethos should be intertwined into all aspects of daily operations. According to The Tadpole Agency, "Ethos is the characteristic spirit of a culture, era, or community as manifested in its beliefs and aspirations." Employee communications, templated notices, client interactions and company gatherings should all represent the culture of your business. Helping a new hire feel this culture in your actions, understand this culture in your mission statement and see this culture in your way of doing business is crucial to training a long-term asset that will act in the same manner as your leaders.

So, schedule a 15-minute meet-and-greet with each of the department leaders and help your newest team member feel welcome. Provide them with an understanding of your ethos and how it came to be. Provide examples of how this culture is represented in the work your firm provides to your clients, partners and one another. These meetings should also cover the role of their team, how they will interact with one another and a strong understanding of the training path you have paved for them.

## TRAINING PATHS

Training should be structured yet customized for each role. A modern TPA firm is built with individuals who work collaboratively with a team of other professionals to deliver service first and compliance work second. No longer should we be built in the "lone wolf does it all" structure. That model lacks a consistent client experience and puts too much emphasis on one person. Hiring for a team model means you have employees performing distinctly different roles. Dive into the needs of the role you are hiring for and create a different process based on the ideal skill set for that position.

### *Communication Skillset*

Before we get into specific training paths, we should talk about the elephant in the room. Most compliance administrators are incredibly intelligent





TRAINING NEEDS TO BE  
THOUGHTFUL, DELIBERATE  
AND DEEPER THAN JUST  
UNDERSTANDING JOB  
RESPONSIBILITIES. SPEND  
TIME ARTICULATING  
YOUR COMPANY CULTURE,  
PROVIDE ONGOING TRAINING  
ON COMMUNICATION  
SKILLS AND TEACH A  
SERVICE-FIRST MENTALITY.

introverts who are not the greatest communicators. Their skill set in running a cross-tested allocation or a targeted QNEC to save the business dollars in a failed test is not easily translated into words. We tend to speak in jargon and reference the Internal Revenue Code.

Well, we should all be in the service-first business. We need to help our community understand how a service-first TPA operates and help them gain comfort in their communications. I understand that not all roles are going to be client-facing, but all employees still need to work cohesively with their team members and create a collaboratively welcoming environment.

In *To Sell is Human: The Surprising Truth About Moving Others*, Daniel H. Pink asserts that we are all salespeople, whether we work in sales or not. He believes that whether we are helping a client understand the benefits of setting up a new

plan, talking to a partner about our loan process or asking a colleague for guidance on a controlled group scenario, we are always asking others to part with resources. These resources may consist simply of their time, but building a skillset to communicate and correspond in a precise, considerate and understandable fashion is crucial. It will help you elicit the response you are looking for.

Even in your personal life you are always selling. When was the last time you convinced your kids to do something they didn't want to, or pitched a vacation spot to your group of friends, or talked your parents into trying a new place for dinner? Communicating is always a part of our lives—and not just if you are client-facing.

In the financial services world that we all work in, there are many options for building communication skills. Start with checking the resources of your DCIO and recordkeeping partners.



I love to start our new to the industry folks off with Invesco's *Language of Retirement Plans Guide*. This will provide access to some of the most commonly used terms and phrases. For years, John Hancock has delivered "How to Serve" training for our team consisting of a 2-hour session on basic verbal and written communications. They provide guidance on how to create a welcoming start to an email, best practices for supporting an upset plan sponsor, and how to communicate proper follow-up timelines. It's a great refresher for all team members and an ongoing training tool that I strongly recommend.

### TRAINING NEWBIES

Of course, we all got started in the retirement plan space as a newbie—very few of us actually grew up in a TPA office. So don't be afraid to find fresh blood and teach them the way your firm does business. Newbies are less expensive, often more eager to build

a career, and can become a very productive part of your team in a short amount of time.

Training for a newbie with no industry background needs to include three important elements: employee onboarding, the core competencies of ERISA, and 'shadowing' senior colleagues, especially their mentor. Since we have already covered the importance of onboarding, let's jump into teaching ERISA.

### ERISA Basics

Those new to the TPA space need a basic foundation of the parties, roles and the processes of setting up a retirement plan. ASPPA offers a clearly defined process for a new employee with no prior experience. A good first step is the Introduction to Retirement Plans (IRP) course. This lays out the basics of who, what, why and how in a clear manner.



I believe this level of basic training is best done in-house if possible, however. By having a team member complete these early training steps, it provides an opportunity for a mentor to deepen the new hire's understanding of your firm's ethos at the same time they lay the foundation for this person's career. (Naturally, the IRP course does not address that part of the onboarding process.) Then after they master the who, what, why and how of retirement plans, I encourage our newbies to jump straight to ASPPA's Retirement Plan Fundamentals (RPF) course. There is no prerequisite for this course, and our new hires begin it by Week 2.

Merely turning a new hire loose on the modules of a training program is not enough to build a quality understanding. Also, very few people want to study from 8 to 5 every day. So, break up their learning time with shadowing, podcasts and transactional work. Schedule time every other day to sit down and review what they have learned. Have them write down any questions that lead to confusion and allow their mentor to truly be their teacher. I am a firm believer that if the answer should be known, then I don't want a team member spending time Googling it or searching the depths of the ERISA Outline Book. Ask an associate for help and get back to the deeper learning.

Depending on the position of the employee you are training, the next step in deep learning is to take ASPPA's Qualified 401(k) Administrator (QKA) program course. This two-part course is structured to teach the details of plan operations and testing/compliance. You must have completed the RPF or have a minimum of 3 years of experience. There is so much good in this course and the pace at which it teaches. This is not a course to cram—it will test even the best administrators on their understanding of testing techniques and contribution calculations.

### Shadowing

During all of the core competency training, your new hire should be spending time in the seat they will soon occupy. The "shadowing" aspect of the training process is crucial. It will continue to imbed the company ethos, as they see how others respond to communications, work collaboratively and balance ERISA within communications.

Of course, with at-home work playing a larger part of TPAs' structure, shadowing has become increasingly difficult. We have embraced work-from-home options for more than 7 years, and leveraging Zoom for training is easy. In fact, it has shortened the runway to getting a new employee off the ground.

Have a newly hired associate shadow the sales team as well. Allow them to sit in on a prospect meeting with their camera off, or use a "trainee" designation if you prefer. Hearing how consultants

communicate complicated topics to a CEO, break down the numbers for a CFO or pull on the heartstrings of a compassionate HR rep will help them hear the power of clear communication. Zoom makes this so much easier than an in-person meeting.

## ONBOARDING EXPERIENCED HIRES

For years the TPA community searched for and traded experienced professionals from team to team. Top performers rarely left. Just about every specialist learned the business at one shop, spent a few years at another one and looked to finish their career with a different firm. Hiring and training are hard. For this reason alone, retention is crucial. It leads to a more cohesive client experience, less time and energy burnt on training and a far deeper level of intellectual capital to be shared. So you should have a different onboarding and training process for your experienced hires.

After onboarding them, you must get a deeper understanding of their knowledge level. Employees who come in with years of experience but without credentials may want to go through formal ERISA refreshers—there are a number of deep-learning credential programs offered by the ARA and ASPPA.

## CAREER DEVELOPMENT


For the experienced hire (as well as the newbie), outlining a path for professional growth and advancement is key. Too many TPA shops have one level of employee and one level of ownership. This can lead to a feeling of being trapped with no opportunity for professional growth or promotion.

If you have not already built out steps for your team, now is the time. In the compliance path alone there are transactional starting positions, junior administrators, senior administrators, mentors, managers and executives. Set expectations for what success at their new job looks like and how a promotion can be achieved. If you are not growing in a way in which you can offer the opportunity for a new hire to be promoted to a higher-level position, then outline what "crushing it" in their current job looks like and how they can achieve a raise. We all need to be better at motivating our teams, and growth is a key driver.

## 'CONTINUING' EDUCATION

Team member training does not stop once their daily job description takes over. The human spirit has a desire to learn, a desire to grow and a desire for opportunity. The ever-changing compliance landscape will naturally entail an emphasis on learning as limits change and massive legislative overhaul brings in the next generation of retirement planners. With the SECURE Act and the CARES





# A MODERN TPA FIRM IS BUILT WITH INDIVIDUALS WHO WORK COLLABORATIVELY WITH A TEAM OF OTHER PROFESSIONALS TO DELIVER SERVICE FIRST AND COMPLIANCE WORK SECOND.

Act, for example, we found that there were significant changes that needed to be understood and communicated to advisors and their clients.

SECURE 2.0 is an entirely different story. This new legislation should change the way we train our consultants and compliance teams. Designing new retirement plans will be changed forever with the requirement of auto features, part-time employee inclusions, access to new plan types in the Starter(k) and a fantastic tax credit. At my firm, our approach to supporting small business retirement plans has evolved in the last few months, and I have completely redesigned our marketing plans for 2023 and beyond as a result.

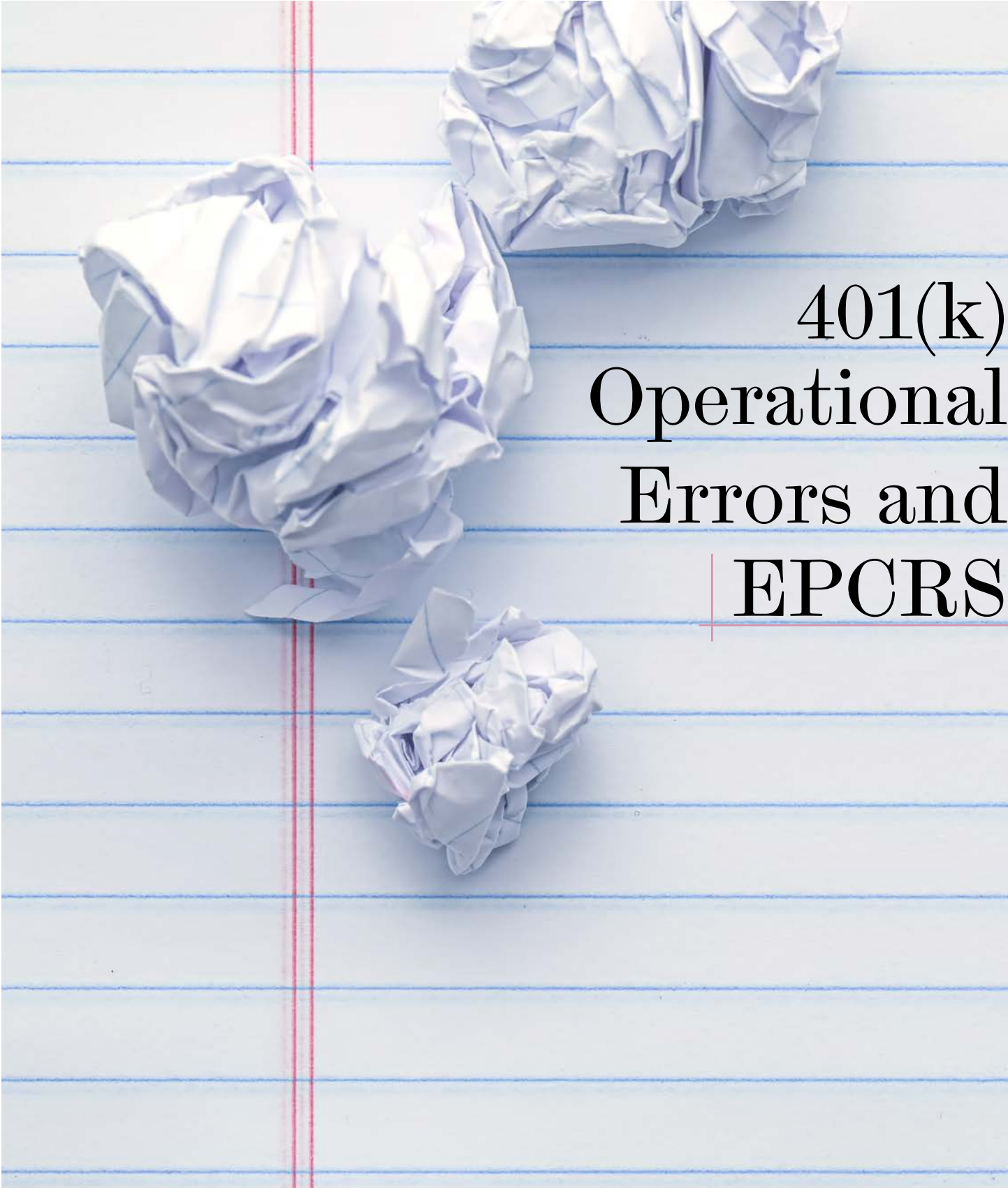
## HELPFUL RESOURCES

With things changing so quickly, it is imperative that we all stay connected and learn from one another.

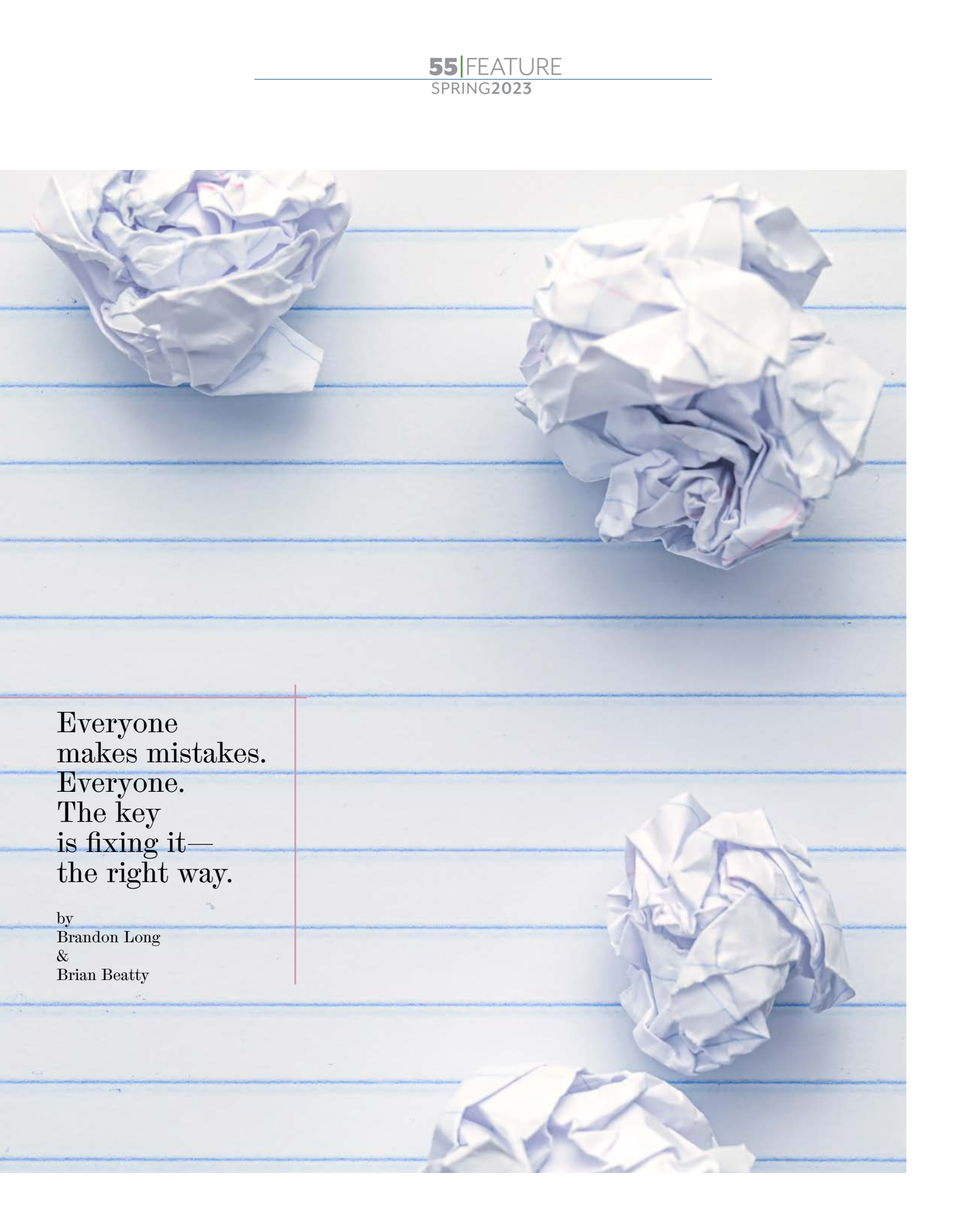
So, what resources should your team be paying attention to in order to keep pace? Well, there are too many to name in this article, but a few must include: this magazine, The American Retirement Association, the Nevin and Fred Podcast, The Retireholics (a self-promotion plug, sorry)—and closely following these LinkedIn “beasts”: Jeanne Sutton and Alex Assaley (advisor insight), Nevin Adams (all things retirement), Brian Graff (Washington updates) and Jason Roberts (legal interpretation).

## CONCLUSION

Training needs to be thoughtful, deliberate and deeper than just understanding job responsibilities. Spend time articulating your company culture, provide ongoing training on communication skills and teach a service-first mentality. Integrate a new hire into the team workflow as soon as possible and help them feel valuable. Start this relationship off right and they will pay you back in spades. **PC**

The background of the page is a photograph of a blue-lined notebook. Three pieces of white paper are crumpled into balls and scattered across the page. One large ball is on the left, another large ball is at the top right, and a smaller ball is at the bottom center. The title text is overlaid on the right side of the page.

# 401(k) Operational Errors and EPCRS

The background of the entire page is a photograph of four crumpled pieces of white paper scattered on a surface with horizontal blue lines, resembling notebook paper. The crumpled papers are located in the top-left, top-right, middle-right, and bottom-center areas. A thin red vertical line is positioned to the right of the main text block.

Everyone  
makes mistakes.  
Everyone.  
The key  
is fixing it—  
the right way.

by  
Brandon Long  
&  
Brian Beatty



## If you are responsible for administering a 401(k) plan, you are probably smart and detail-oriented. You probably

also hate mistakes, and lose sleep over them when they happen. We all try so hard to be perfect, but we are not. Mistakes happen to everyone at some point.

The truth is that every single 401(k) plan on the planet has had an operational failure at some point. Especially in the case of a large 401(k) plan with lots of employees, at some point there will be a disconnect between the plan document and the plan's operation. The good news is that the IRS and now Congress have gone out of their way to put structures in place to encourage early correction.

### Common Mistakes

The No. 1 error by far is a mistake involving the plan's definition of compensation. Bonuses are paid; the plan document says they are included in compensation; and yet no 401(k) deferrals are withheld from bonuses. Or the plan's auto feature results in taxable W-2 income to employees; the plan has no exclusions from the definition of compensation;

and yet 401(k) deferrals are not withheld on these amounts, or matching contributions are not made for them. Or there are a number of "fringe benefits" that result in taxable W-2 income to employees; the plan has no exclusion for "fringe benefits;" and 401(k) deferrals (or matching contributions) are not withheld on these amounts. There are any number of sources of compensation that could create a similar error—especially if the plan document has no exclusions from "compensation."

Other common errors include:

- » An employee is allowed to enter the 401(k) plan before they have satisfied the plan's eligibility requirements, e.g., the plan requires one year of service before someone is eligible to make 401(k) deferrals and yet they are allowed in right away.
- » The plan states that employees of Division A are not eligible for the plan, but yet employees of Division A are allowed to participate.
- » An employee is not notified that they were eligible to join the plan. A year has gone by, and they have lost out on a year's worth of opportunity to defer earnings into the 401(k) plan and receive company matching contributions.
- » An employee elected to defer 10% of pay into the 401(k) plan, but only 5% percent of his pay was deferred. Six months pass before the error is discovered.





# The truth is that every single 401(k) plan on the planet has had an operational failure at some point.

- » The plan states that newly eligible employees are automatically enrolled in the 401(k) plan at 3% of compensation and yet the employer fails to auto enroll someone—or lots of people.
- » Vesting was calculated incorrectly each participant was given one extra year of vesting, allowing participants to borrow more than half of their vested account balance.
- » Participants in the plan take out loans but the employer's payroll system mistakenly fails to withhold loan repayments and the loans go into default.
- » Employees' 401(k) deferrals were not deposited until 10 days after paychecks were issued.
- » The same person who owns 100% of ABC Corporation, the plan sponsor, owns XYZ Corporation, and XYZ Corporation has lots of employees. XYZ Corporation is not allowed to participate in the 401(k) plan and no one has ever looked to determine if this exclusion is discriminatory.
- » An employer has employees who receive their paychecks and W-2s from three companies: Companies A, B, and C. All of these employees participate in the 401(k) plan, and yet only Company A is identified in the plan document as a participating employer.

## Mistake of Fact Almost Never Works

Often, once a mistake is discovered, someone will suggest that the plan administrator can just magically make the problem go away by saying it was a mere "mistake of fact." The idea is essentially that the plan administrator can just ignore it because it was an accident. Unfortunately, "mistake of fact" almost never works. Actually, I would say it never works—absent the most bizarre, unusual circumstances, which I have yet to see.

The concept of a "mistake of fact" can be found in section 403(c) of ERISA. Section 403(c)(1) generally requires that plan assets may not ever be returned to the employer and must be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan. One exception to this general rule is found in ERISA section 403(c)(2)(A)(i), which provides that a contribution may be returned to the employer within one year if there has been a "mistake of fact." Perhaps from this narrow context, the idea of a "mistake of fact" originates and is sometimes suggested as a solution when there is an error.

The problem, however, is that there does not appear to be any clear definition of a "mistake of fact," and regulators, auditors and investigators are very skeptical of its application.

Perhaps the best guidance regarding a "mistake of fact" is provided in IRS Private Letter Ruling 9144041, which

stated in part: "Mistake of fact is fairly limited. In general, a misplaced decimal point, an incorrectly written check, or an error in doing a calculation are examples of situations that could be construed as constituting a mistake of fact. What an employer presumed or assumed is not a mistake of fact."

Because of this narrow interpretation and lack of other guidance, the best practice is to take a very conservative reading of this exception, such as simply transposing numbers or a simple arithmetic error rather than incorrectly implementing an employee's election or compensation-based errors. Frankly, the best approach is to avoid the "mistake of fact" exception (whatever that means) altogether, especially for any plan error covered by the Employee Plans Compliance Resolution System (EPCRS), since EPCRS endorses certain correction methods for a wide variety of errors.

## Fix the Error Quickly Using a Pre-Approved Method

If you discover an error, the best practice is to fix it as quickly as possible. Both the IRS and the Department of Labor have established great programs for fixing errors. Most of the errors that occur with 401(k) plans affect the qualified status of the plan and thus require the use of EPCRS.

EPCRS is divided into three components:

1. self correction (SCP), where the plan administrator fixes the error on their own without any filing or input from the IRS, utilizing certain pre-approved correction methods;
2. voluntary correction (VCP), where the plan administrator fixes the error by filing an application with the IRS, pays a filing fee, identifies the error, identifies the proposed correction, and gets the IRS's blessing on the correction; and
3. audit CAP, which is used to correct errors when the IRS has audited the plan and discovered the error during the audit.

These days, almost anything can be corrected utilizing SCP—especially so-called "operational failures," which are basically errors arising solely from the failure to follow a plan's terms. SCP is available to correct both "significant" and "insignificant" operational failures, provided that:

1. the plan sponsor or administrator had established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with the applicable Internal Revenue Code requirements;
2. these established procedures were in place and routinely followed; and

# There appears to be some dispute regarding whether the new SECURE 2.0 correction rules are applicable now, or whether they will not be applicable until the IRS issues a new version of EPCRS.

3. the operational failure occurred through an oversight or mistake in applying them. SCP may also be used in situations where the operational failure occurred because the procedures that were in place, while reasonable, were not sufficient to prevent the occurrence of the failure.

If a failure is “significant,” two additional requirements apply: (1) the plan must be the subject of a favorable IRS determination or opinion letter; and (2) the correction must be completed or substantially completed by the last day of the third plan year following the plan year for which the failure occurred. Thus, where an error has gone back a number of years (more than three), the plan administrator will need to determine if the error was “significant.”

To determine if an error/failure was “significant” or “insignificant,” SCP requires consideration of the following factors (no single factor is determinative):

1. whether other failures occurred during the period at issue (but a failure is not considered to have occurred more than once merely because more than one participant was affected by the failure);
2. the percentage of plan assets and contributions involved in the failure;
3. the number of years the failure occurred;
4. the number of participants affected relative to the total number of participants in the plan;
5. the number of participants affected as a result of the failure relative to the number of participants who could have been affected;
6. whether correction was made within a reasonable time after discovery of the failure; and
7. the reason for the failure.

If after applying these factors the teeter-totter tips in favor of the error being “insignificant,” it does not matter how far back the error goes and it can be self-corrected at any time. As long as you follow the approved correction method and document what you did, the fix is easy, and you can correct the error on your own, without paying a fee to the IRS.

For more complicated errors, or for errors that are “significant” and go back beyond three years, VCP is an outstanding program that gives you the ability to identify the error, get feedback from the IRS, and ultimately get a letter

from the IRS blessing the correction method. This typically gives clients (and practitioners) tremendous peace of mind.

## SECURE 2.0: Even More Flexibility

On Dec. 29, 2022, President Biden signed the Consolidated Appropriations Act of 2023, which contained the “SECURE Act 2.0,” sweeping retirement plan legislation. One piece of SECURE 2.0 expanded the ability of plan sponsors and administrators to self-correct errors. The limitations described above under the historical SCP program, which provide that a “significant” error can generally only be corrected within three years, have been relaxed.

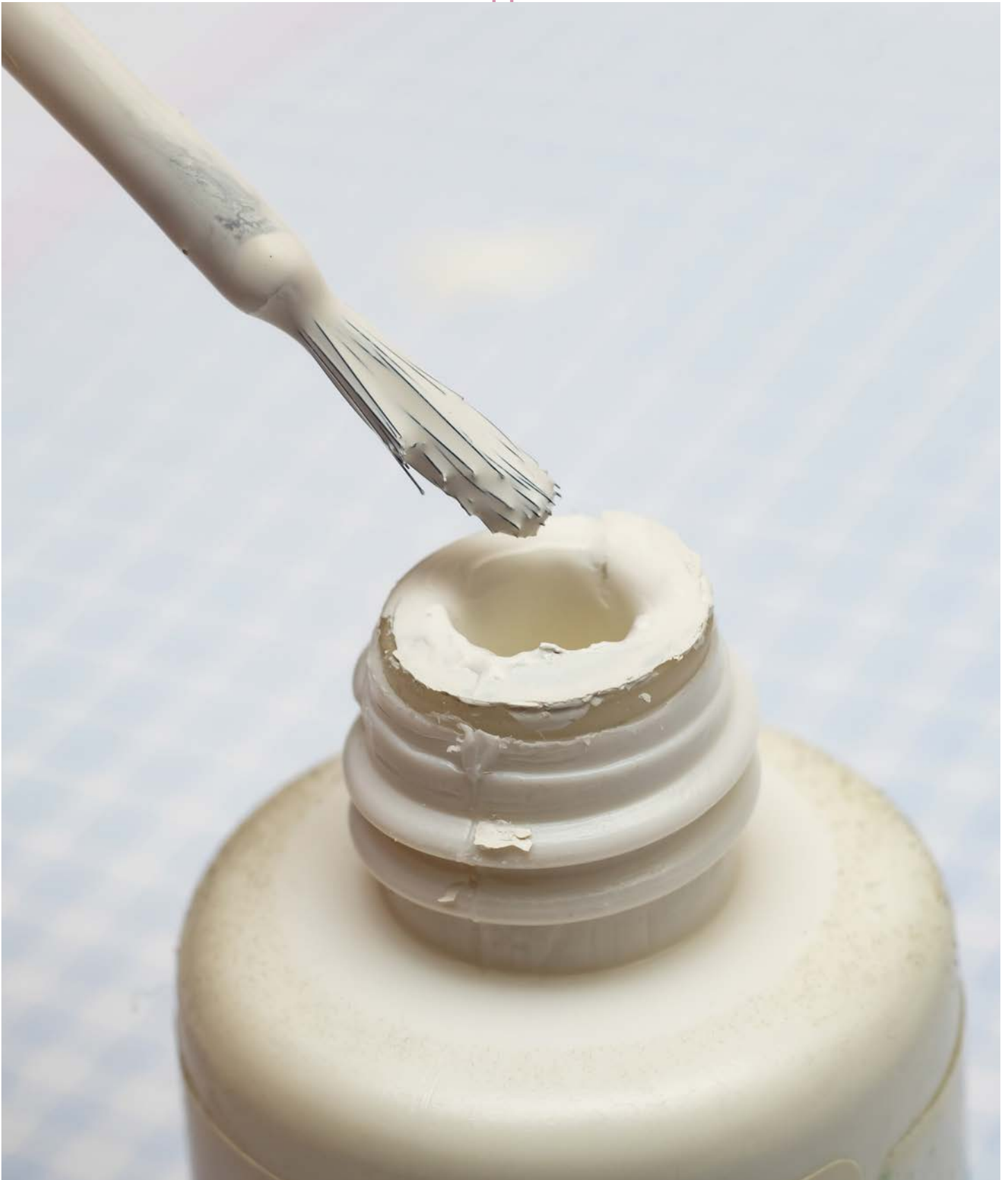
Specifically, self-correction is now generally available for any “eligible inadvertent failure”—with no time limitation/deadline—that occurs despite the existence of practices and procedures that are reasonably designed to promote and facilitate compliance with applicable requirements of the Internal Revenue Code, provided the eligible inadvertent failure was corrected within a reasonable period of time after it was identified.

“Eligible inadvertent failures” do not include any failure that is egregious, relates to the diversion or misuse of plan assets, or is related (directly or indirectly) to an abusive tax avoidance transaction. Eligible inadvertent failures do not include a failure that was identified by the IRS before any actions that demonstrate a specific commitment to implement a self-correction with respect to the failure.

This SECURE 2.0 change means that there is now more flexibility to quickly fix errors that were inadvertent. One thing that is worth noting, however, is that there appears to be some dispute regarding whether the new SECURE 2.0 correction rules are applicable now, or whether they will not be applicable until the IRS issues a new version of EPCRS. Perhaps for now the best practice is to follow the historical rules regarding SCP and VCP.

## Bottom Line

The only thing you can do wrong when you discover an error is ignore it. Once you determine that an error has occurred, figure out the proper and legal way to fix the error, and fix it. Do not allow an insignificant error that no one will fault you for to grow into something more complicated and more expensive. **PC**





## IS IT TIME TO SELL?

Many factors play into a TPA business owner's decision to sell the firm. Here's a look at the initial considerations of the seller—and those of potential buyers. **By Theresa Conti, Linda Chadbourne & Jim Racine**

*EDITOR'S NOTE: This is the first of a three-part series outlining important considerations for TPA business owners thinking about selling the firm.*

**You are ready to sell your TPA business, or have you been contemplating the idea for some time? Selling your business can be emotionally draining. So, when is the right time? Do you have a company or person in mind to continue your legacy? Do you have**

what you need in advance of when that time rolls around?

Based on recent information, in 2022 about 43 independent TPAs sold or merged with 32 different firms. Knowing that there are nearly 1,500 TPAs out there and that many of their owners are facing (or going to

be faced with) various issues over the next few years, it's likely that there will be more merger & acquisition activity to come.

As a business owner, considering whether to sell may be sparked by a variety of personal and business reasons. In addition, we are seeing a rise in business costs, such as the cost of cybersecurity, software and the benefits needed to attract and retain talent. Many TPA owners are also worried about their ability to keep up with regulatory changes while maintaining the firm's growth.

### NO GUARANTEE OF SUCCESSFUL SUCCESSION

Many TPA owners are also facing a lack of succession options within the



business. When considering succession options, many of us hope we can find that “junior” person who we mentor and share our knowledge with, and will embrace the opportunity when we are ready to retire. We hope that this person keeps our legacy going, with the same staff, clients and advisors.

But the reality is that those “junior” people did not build the business, may not work as hard and may not have the skills to run the business. While they may be great at one aspect of it, can they handle the sales, operations and personnel management, and do they have the “personal brand” needed to keep the business’s brand strong?

Some owners who thought their junior person had those attributes have been called out of retirement when the business started to fail. The worst-case result of a failed succession is that the new owner might run your business into the ground—and if you get it back, it may not be worth anything. Also, if you agreed to a compensation arrangement, you may never get paid!

### WHEN IS THE RIGHT TIME?

Are you ready to let go of the business you built from the ground up? If the answer is yes, the next consideration is *when* to sell.

That time might be now. Today the M&A market is strong, with private equity firms jumping in and infusing cash into this market. More and more private firms have sold some or all their business to private equity to gain the cash they need to grow. This infusion of cash is making it very attractive for some firms to sell now.

### THE MATCH GAME

For firms looking to sell, finding the right match is crucial. Here are some questions to ask potential buyers to ensure alignment:

- Is the firm looking to add plans or expand into new territories where they don’t have a presence?
- Is the firm looking to add new capabilities such as 3(16) or actuarial support for DB plans?
- Besides plan administration,

is the firm looking for sales or marketing support your firm may have?

In talking with firms that are acquiring TPAs, here are some of the most important items they are looking at:

1. Is your firm a business or hobby? Is it run well, with a strong management team? Is it a “sticky” business, with long-tenured clients and associates?
2. What are the financials? The potential buyer will want to see some growth and have an EBIDTA of at least 20% of revenue. Most buyers don’t want low-cost TPAs but ones that have value. This means having a strong position on core services along with consistent fee schedules and agreements.
3. What additional services and revenue sources do you offer, like 3(16), recordkeeping or defined benefit administration?
4. What is your firm’s culture? Is there alignment with the core philosophies of the two firms? Do we expect major changes in the roles of associates that may cause significant turnover and affect client retention?
5. What is your service model? Does it align with the buyer’s business(es)? Are you using industry-standard software, or proprietary tools that will require retraining for your associates? Is the team functionalized, or do associates “do it all”?
6. Does the business owner want a role in the new organization? If so, are they willing to hand over leadership and accept a smaller

role? Will the owner serve as an “ambassador” to associates, clients and partners during the transition?

7. Do you have an organizational chart? Do you have employment agreements with your staff? Do they have defined roles and responsibilities? Potential buyers will definitely be looking at your current staff as a way to acquire great talent.

As mentioned above, one important thing to decide early on is your ongoing role. The buyer wants to know your intentions. Do you do you want to grow with the new company, provide advice or just simply walk away? If you want to stick around, have you considered a merger with another firm rather than selling? If you are looking to retire and drive off into the sunset, then being acquired by another company that is currently growing could be a better option.

### CONCLUSION, FOR NOW

We hope this article will help you determine the value of your business to a potential buyer. Normally, that value will include a premium if there is a strong cultural fit and an expectation of high retention among associates and clients. But the value decreases when the integration looks harder—for example, moving manual processes to an automated process or significantly changing the role of associates, who may take the opportunity to move to a different firm.

In the rest of this three-part series, we’ll look at what happens after the acquisition—starting with sales processes and transitioning. **PC**

“SELLING YOUR BUSINESS CAN BE EMOTIONALLY DRAINING. SO, WHEN IS THE RIGHT TIME?”

# STREAMLINING SUCCESS

Here's how to harness the power of technology to increase efficiency. **By Amanda Iverson**

**During the pandemic, at our house we revisited some of our favorite 1980s movies with our kids, including "Short Circuit."** The movie, released in

1986, is a humorous tale about a robot named Number 5 that comes to life and discovers the world. Despite its initial clumsiness, Number 5 eventually proves to be a valuable asset, using its advanced technology to solve problems and complete tasks faster and more efficiently than humans.

In a similar vein, our businesses can benefit from adopting technology in order to streamline processes and stay ahead in a constantly evolving world. From automation to data analysis, technology offers a multitude of tools that can help businesses save time, reduce costs, and improve overall productivity.

When "Short Circuit" was released, I was a six-year-old kid. The advancements in technology since then have been immense, with the rise of personal computing, the internet, mobile devices, robotics and artificial intelligence. The integration of technology in our lives has completely transformed the way we work, communicate and live.

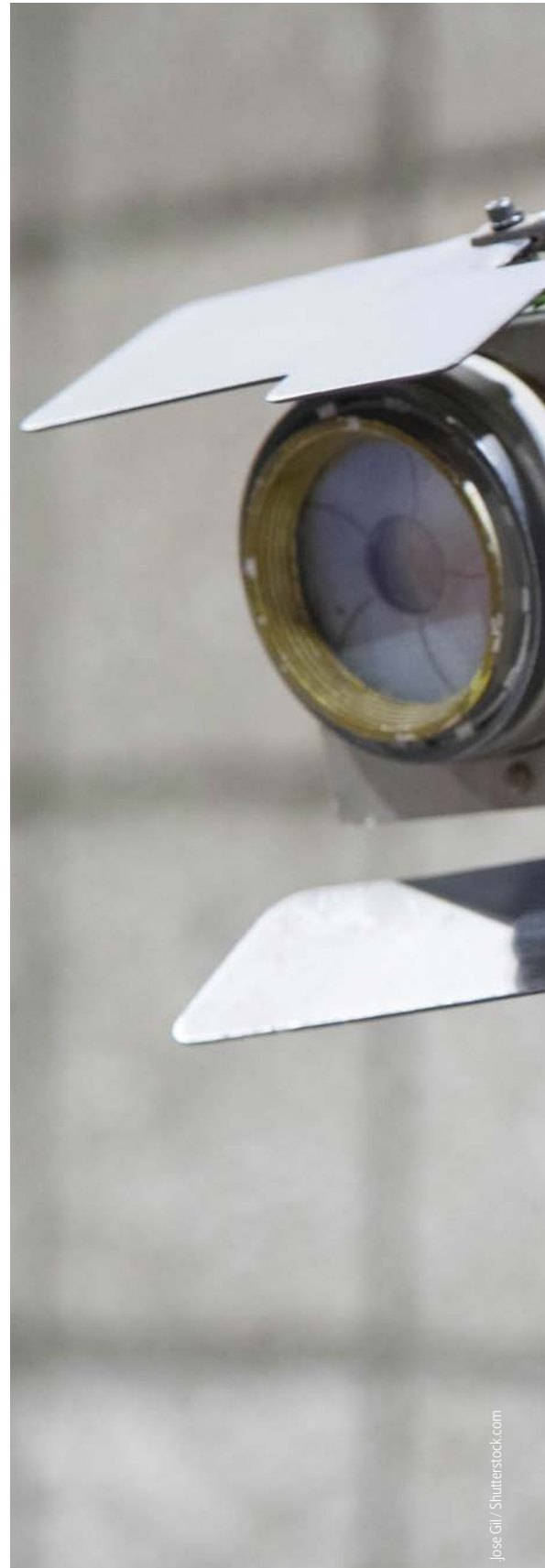
Despite these advancements, some organizations are hesitant to embrace newer technology, due to fear of change, misunderstanding, or perceived costs. However, adoption of technology is no longer a choice but a necessity for businesses to thrive in today's rapidly changing landscape.

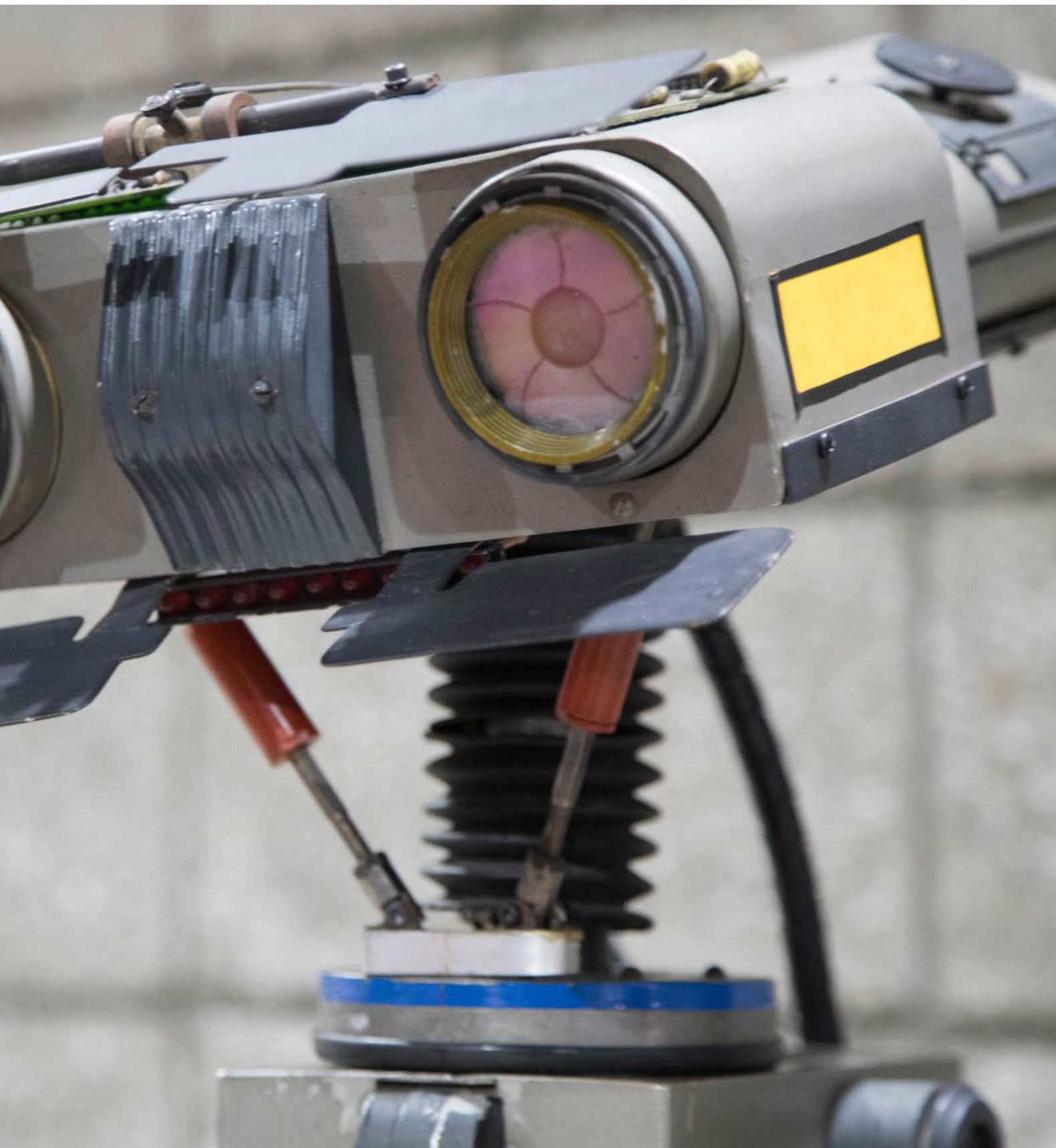
Just like Number 5 in the movie, businesses must be willing to learn and embrace innovative technology or risk being left behind.

## IMPROVE FUNCTIONALITIES IN YOUR FIRM

With tech tools, you can automate manual processes, streamline communication, enhance data management, and access real-time insights. Adopting technology can boost efficiency, improve work accuracy, and enhance overall service. Many TPA firms have already taken advantage of technology to improve their practices. Some examples include:

- **Digital document management:** Implementing a digital document management system can improve document storage and retrieval, saving time and reducing the risk of lost or misfiled documents.
- **Adoption of cloud-based solutions:** Using cloud-based technology can allow TPAs to access data and systems from any location, improving collaboration and reducing the need for on-site data storage. Many firms have moved from traditional on-premises systems to cloud-based solutions that provide increased accessibility and scalability.
- **Mobile and web-based platforms and mobile accessibility:** Some TPAs have developed mobile and web-based platforms that allow clients and partners to









access information and manage processes from anywhere, at any time. Providing mobile access to information increases accessibility and convenience for TPAs, plan sponsors and retirement plan partners.

- **Data analytics:** Implementing data analytics tools can help TPAs make guided decisions by providing insights into production and performance.
- **Cybersecurity measures:** If you are not focused on cyber security, you should be. TPAs have increased their focus on cybersecurity and data privacy, implementing measures such as encryption, two-factor authentication and regular security audits to protect sensitive information.

- **Automation and artificial intelligence (AI):** Automating manual processes such as data entry and report generation can significantly reduce errors and save time. TPAs are now utilizing automation and AI tools to streamline workflows and improve efficiency.

Regarding automation, there are a variety of tools that firms can use to automate various tasks, including:

- **Robotic Process Automation (RPA) software:** RPA software automates repetitive and manual tasks, such as data entry, document processing, and report generation.
- **Chatbots:** Chatbots can be used to provide quick and accurate answers to questions

- **Artificial intelligence (AI) and machine learning (ML) platforms:** AI and ML platforms can be used to automate complex tasks, identify discrepancies, and improve operational efficiency.

#### TECH ADOPTION CAN BE SIMPLE

Recently I was asked if “bots” and AI are the same thing. The simple answer is no. A bot is a software program designed to automate tasks, such as responding to prospect inquiries, processing transactions, and generating reports. Bots can be programmed to perform specific tasks and can interact with users through various channels. AI, on the other hand, is a broader concept that refers to the simulation of human intelligence in machines. AI can be used to power bots, but it



**“COMPANIES THAT STAY AHEAD OF THE CURVE, EMBRACE TECHNOLOGY AND ADAPT TO CHANGE WILL BE BETTER EQUIPPED TO SUCCEED.”**

also encompasses a range of other technologies, such as machine learning, natural language processing and computer vision. AI systems are designed to learn and make decisions on their own, without being explicitly programmed to perform every task. So, while all AI systems can be considered bots, not all bots are powered by AI.

Confused? In “Short Circuit,” Number 5’s mispronunciation of “OK Fred” as “KO DERF” caused comical confusion for Fred, but the confusion was short lived. Don’t let the new tech words that temporarily confuse you stop you! Start small—embracing technology efficiency does not have to be overly complicated. There are many simple technology tools that everyone can use. In Excel, for example, macros can be a highly effective way to automate repetitive tasks. Macros can save a lot of time and effort for tasks that require a series of steps to be performed repeatedly.

Other functions and tools in Excel, such as formula functions, pivot tables and conditional formatting, can help achieve the same goals in different ways. Additionally, basic keyboard shortcuts and “hotkeys” can help you quickly perform common tasks and minimize the need to use a mouse, all of which improve efficiency.

### HELPFUL TOOLS

While these tools are not TPA-specific, and this is not an endorsement for any of them, following are some tools that can streamline processes, increase productivity, increase collaboration, better manage finances and client

relationships and help you to save time.

**Cloud-based project management software and productivity** (Prioritize tasks, set reminders and track your progress)

- Asana, Trello, Monday.com, Todoist, Evernote and Focus To-Do

**Text expansion software**

(Automatically expand abbreviations into longer phrases or sentences; save time and reduce typing errors)

**Training tools** (Record screen for videos and/or automatically create a how-to guide, complete with screenshots, instructions and clicks)

- Scribe, Camtasia, Snagit

**Task automation tools** (Automate a wide range of tasks, sending emails and updating spreadsheets)

- IFTTT, Zapier, Microsoft Power Automate

**Non-industry-specific tools**

- Accounting and invoicing: QuickBooks, Xero, FreshBooks
- Cloud storage and file sharing: Google Drive, OneDrive
- CRM software: Salesforce, HubSpot, Zoho
- Electronic signature and document management: DocuSign or Adobe Sign
- Human resource management: BambooHR, Gusto, CriteriaCorp
- Marketing and graphic design: Canva, Visme, Adobe Creative Cloud Express

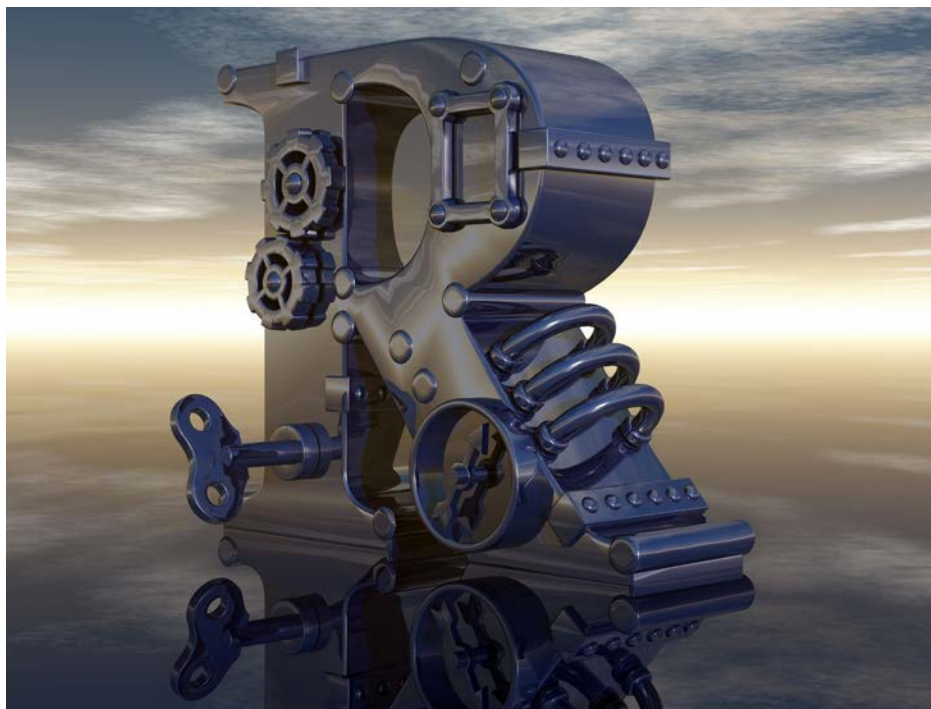
- Marketing and social media automation: Mailchimp, Hootsuite, Buffer
- Password management: LastPass and Dashlane
- Team communication: Slack and Microsoft Teams
- Time tracking and time management: Toggl, Gusto, RescueTime, Focusmate

### CYBERSECURITY

While the focus of this article is not cybersecurity, it would be foolish to overlook its significance. To enhance cybersecurity, a business should invest in employee training, adopt strong passwords and use password management systems, stay current with software updates, enable two-factor authentication, back up data regularly, utilize firewalls, restrict employee access to sensitive information, communicate through encrypted channels, and transfer data securely. These are basic and cost-effective measures that every business should implement.

### CONCLUSION

My favorite quote from Eleanor Roosevelt is: “The future belongs to those who believe in the beauty of their dreams.” It feels appropriate to add this to it: “and embrace and adapt to change.” Companies that stay ahead of the curve, embrace technology and adapt to change will be better equipped to succeed. Embracing technology is no longer a choice but a necessity for businesses. Like Number 5, let’s embrace technology, and reap the benefits it can bring. **PC**



## REMEMBER THE THREE RS

A retirement plan plays a key role in recruiting and retention. Here's a close look—by the numbers. **By John Iekel**

**Reading, writing and arithmetic: basics that have long served us well.** And research teaches that they apply to the current challenging employment environment—in this case, recruitment, retention and retirement.

### NOW HIRING! SO WHAT?

Unemployment figures suggest that employers would be able to fill open positions readily. But these are not conventional times, and many have found it challenging to build or even maintain their workforces.

In early spring of 2021, the National Federation of Independent Business (NFIB) reported that small businesses were having big problems filling open positions. Forty-two

percent of the 514 small employers they surveyed said they had openings they could not fill, which the NFIB said was “a record high.” Even more sobering, 91% of the 514 that were hiring and trying to hire had few qualified applicants—or none at all.

Later in 2021, Willis Towers Watson found that 73% of the 380 U.S. and Canadian employers they surveyed were having a hard time attracting employees. That's up 17 percentage points from the 56% that reported such trouble early in 2021, and up a massive 47 percentage points from 2020, when 26% of the employers they surveyed were having difficulty recruiting.

And recruiting wasn't the only problem, Willis Towers Watson said—

they also found that 61% were having a hard time retaining employees.

### THE THREE RS

That brings us to the three Rs. And, research suggests, a fourth may be in order: remedy.

Fidelity in a 2021 report said as much, suggesting that the millions of open positions in the United States has led to greater interest among employers in enhancing their benefits in order to better accomplish the other two Rs. Similarly, Anna Verasi, in a blog entry for *HR Digest*, argued that better retirement benefits would enhance recruitment and retention. And in the Employee Benefit Research Institute's 2022 Workplace Wellness Survey, Greenwald Research found that among the 1,518 full- and part-time workers age 21–64 they interviewed, not only were retirement benefits among the most common employee benefits, they also were one of the top benefits influencing recruitment and retention.

### RECRUITMENT

Roger Lee in *Workforce* magazine's blog calls a 401(k) “an essential tool” that can help an employer meet the challenge of a tight labor market. And in a 2021 study, Fidelity found that employers offering a defined contribution plan had more success in recruiting employees than those that did not. Subsequently, benefits administrator PeopleKeep in 2022 bolstered Fidelity's findings, reporting that retirement benefits are increasingly important in recruiting employees.

Willis Towers Watson bears witness to the still-growing potency of retirement benefits as a recruitment tool: In 2022, they reported that the usefulness of health and retirement benefits in recruiting employees reached a 10-year high.

### YOUNGER EMPLOYEES

Studies suggest that retirement benefits can be useful in recruiting newer generations entering the workforce and early in their careers. In its 2016 “Strategic Benefits—Wellness Initiatives” report, the Society for

“AN ANALYSIS OF THE POTENTIAL ESOP REPURCHASE OBLIGATION SHOULD BE DONE ON A FREQUENT BASIS TO ENSURE THAT THE COMPANY CAN MEET THE CASH FLOW NEEDS TO OPERATE AND MAINTAIN THE ESOP RETIREMENT PLAN.”

Human Resource Management (SHRM) found that more than 66% of HR professionals said retirement benefits would be among those that would become more important in recruiting Millennials in the three to five years after that, and 60% said that would be the case regarding recruitment of highly skilled employees.

Just one year later, research by Glassdoor bore that out. They found that the younger an employee was, the more important employee benefits were to them: 66% of those age 55-64 said benefits were more important than salary; 70% of those age 45-54 said so, and a whopping 90% of those 18-34 put a higher priority on benefits than pay. Benefits Consulting Group in a 2021 blog entry lent credence to those findings and the expectations retirement professionals shared with SHRM. They reported that retirement benefits were especially attractive to Millennials, who they found were the demographic group most concerned about finances.

### ACCEPTING OFFERS

Retirement benefits can figure heavily in not only in attracting potential employees to apply for a job, but also in their decision regarding whether to accept an offer.

Glassdoor said that 57% of job candidates said benefits and perks were among the biggest factors affecting whether or not they accepted a job offer. *HR Digest* found in 2020 that 37% of job candidates did not take offers of employment because they were disappointed by the retirement benefits their potential employer offered. And *Workforce* magazine's Lee suggests in a blog post that a 401(k) plan can help set

an employer apart and convince an employee to accept an offer.

### RETENTION

In its 2016 report, SHRM said that approximately 60% of HR professionals expected that retirement benefits would become increasingly important in retaining employees in the three to five years to come.

They were on to something, *HR Digest* findings suggest. In 2020, says Verasi, they reported that 40% of employees said they stayed with their employer because of increases and improvements to their retirement benefits.

One year later, Fidelity similarly found in 2021 that employer enhancements to retirement benefits were an important factor in retaining employees. Additionally, studies by PeopleKeep and Willis Towers Watson both found that retirement benefits are growing in importance as a retention tool.

### THE BIG PICTURE

The bottom line is that retirement benefits can be part of the prescription for staffing ills as well as long-term financial vitality. For example, San Francisco RIA Human Interest Advisors' blog contends that using a 401(k) to recruit and retain workers can help small business owners better compete with "big players."

### STEP IT UP

Using retirement plans to improve recruitment and retention can mean more than just offering one. Fidelity argues that just having a plan does not guarantee that recruitment and retention will improve. They suggest that a first step for an employer

when considering modifications to its retirement plan is to better align the plan with the needs of current and future employees.

Fidelity backs that with statistics: they found in 2021 that matching employee contributions dollar for dollar or 75 cents to the dollar was more effective in attracting employees than was the percentage of an employee's salary the employer contributes to an employee's retirement account.

### STAY IN TUNE

PeopleKeep's findings suggest that employers do not grasp how deep employees' appreciation of retirement benefits is. They found in 2022 that 87% of employees said they value retirement benefits, but just over half of employers offer them.

Employers should be mindful of employees' interest in retirement benefits, a 2022 commentary by The Reason Foundation suggests. They said that retirement benefits are important factors influencing employees, and argued that this means that employers probably should place a higher priority on them, especially in view of what employees' interest can mean to an employer's long-term finances.

But there is some good news: Fidelity's research suggests that all is not lost and that employers have at least some appreciation of how important retirement benefits are to employees. They found in a 2021 analysis of 22,000 corporate DC plans that 86% of employers provided a contribution to employees' retirement accounts, even in the face of pandemic-related economic stresses. **PC**

# “LOST” HORIZONS

What should plan administrators do about missing participants?

By Michael Kirschman, Jeff Atwell, Kimberly Shaw Elliott & Thomas E. Clark Jr.

## So, You Have Lost a Plan Participant- In Light of Increased DOL Enforcement but Little Definitive Guidance, What Must the Prudent Plan Administrator Do?

The Department of Labor (“DOL”) failed to provide strict requirements in January 2021 with its release of a three-part package that included “Missing Participants – Best Practices for Pension Plans,” Field Assistance Bulletin No. 2021-01, and Compliance Assistance Release No. 2021-01. Despite this, how plans attempt to locate missing participants remains a focus of increased DOL investigations.

Challenges remain for how to best keep track of individuals entitled to benefits. Plan administrators should work fast to resolve the difficulties of implementation which have come to light, even in the absence of stringently defined criteria.

### WHY THIS IS IMPORTANT

At the core of all fiduciary duties is the obligation of a fiduciary to act for the exclusive purpose of providing benefits to participants and their beneficiaries while defraying all but reasonable expenses of administering the plan. That primary function is defeated when any person entitled to a benefit cannot be found. Similarly, executing procedures to maintain census information that are unreliable or prohibitively expensive cannot be prudent. When one considers that providing benefits to the right individuals is so fundamental, it is no surprise that the DOL has a priority on finding any accountable party who

fails to do so. Typically, this is the Plan Administrator.

EBSA recently launched Terminated Vested Participants Project (“TVPP”) audits, designed to facilitate voluntary compliance efforts by plan fiduciaries.

Focusing on terminated vested participants (“TVPs”), every examination now includes a request for, “Participant census records, noting the employment status of each participant and their contact information, [to] help us to understand whether a plan has demographic and contact information sufficient to determine when benefits are due and to communicate with TVPs in a timely fashion” as well as the plan’s procedures for communicating with TVPs, spouses and their beneficiaries and information about whether the plan takes sufficient steps to address missing participant situations when they occur.

Plan administrators who do not have adequate procedures in place are encouraged to do so and avoid becoming part of future statistics.

### CURRENT PARTICIPANT COMMUNICATION CHALLENGES

#### 1. Defining who is a missing participant:

Historically, if a communication was sent and return mail was received back as “undeliverable,” a participant was considered “lost” and a location process would begin. However, this legacy definition no longer meets the DOL definition of “Missing Participant” because many types of missing participants are not addressed, consider:

**2. A participant moves:** If a participant changes their primary address and fails to change their delivery address with the plan, the Plan Administrator may unknowingly continue to send communication to an old address that is “undeliverable.” The US Postal Service’s National Change of Address forwarding program does not forward mail in perpetuity. Typically, forwarding requests expire after six months. Therefore, if notices continue to be sent to an old address and the mail forwarding has expired, the notices will be delivered to the old address, not returned to the sender, and there is a high chance the participant will never receive the plan’s communication.

**3. Email forwarding:** Many companies do not immediately terminate email addresses for employees who leave a company. In order to prevent a lapse in service, the company instead forwards the original employee’s emails to a new employee who is now responsible for the role. If the original employee utilized this work email address as their primary form of retirement plan electronic communication, a “bounce back” message alerting the Plan Administrator that the notice was not delivered will not occur.

**4. Wrong Email Addresses or cluttered email accounts:** Many people have new daily email accounts, starting with AOL, then switching to their phone or internet company, now to Gmail, Outlook, or iCloud. With the transitions, many do not cancel their old email addresses. If an older







account is listed as a participant's retirement plan communication source, plan information is being delivered to an unmonitored box. Email accounts have also become the home of enormous amounts of spam and advertising. This clutters an account increasing the likelihood of an important, but non-regular email (like a retirement plan notice) of going unread.

**5. Growth in Text Messaging and other forms of communication:** More and more people use text messaging or social media platforms. With this shift in utilization, effective procedures should address how to utilize these alternative forms of communication in addition to email.

**6. Managing the Workload:** Plan Administrators have realized that tracking and confirming accurate delivery of required plan communication requires extra time and staff for the company's HR/benefits team. Many companies lack the resources to dedicate employees to properly manage this process. As a result, many HR/Benefits departments become very reactive, only addressing the blatant issues –

notices that are returned to sender or uncashed checks.

#### THE DOL'S GUIDELINES ON PARTICIPANT COMMUNICATIONS

The DOL's best practices guidelines outline critical areas of concern while allowing the plan to determine its own implementation process. The plan must:

1. Maintain accurate census data for plan participants.
2. Implement effective communication strategies.
3. Conduct missing participant searches.
4. Document procedures and actions proving proper participant communication.

Outlining these expectations clarifies the Plan Administrator's responsibilities but executing these obligations requires a detailed system and active management of the processes.

#### ELEMENTS OF AN EFFECTIVE COMMUNICATIONS POLICY

The plan should develop a Participant Communication Policy addressing

each DOL principle with a process that is both executable and documentable. A sound policy should address these key areas:

##### 1. Protocols to Distribute

###### Notices, Disclosures, and Plan Communications.

The Plan Administrator should define how required notices and plan communications will be disseminated to all plan participants, both active and terminated. The policy should detail a multi-tier approach utilizing electronic and physical mail, complying with the DOL safe harbor regulations, and specifying when and how often each delivery method is used. If a plan elects to utilize the electronic delivery safe harbors provided by the DOL, it should maintain documentation proving the regulatory safe harbor requirements were met.

##### 2. Verify Contact Information.

To maintain the most up-to-date information, Plan Administrators should have processes for regularly confirming the accuracy of the current contact information. It has been found that because most employees receive their paychecks via direct deposit, they do not feel a need to update their contact information when they change addresses because their check still makes it to the bank account. Active outreach by the benefits team reminds retirement plan participants that current contact information is required to ensure timely plan communication.

##### 3. Utilize many channels of

**communication.** Different plan participants have different communication preferences. Plan should not only communicate via the standard methods of US Postal Service Mail and Email, but should also utilize updated methods, like SMS/Text messaging or phone calls. The primary vehicle for communication has moved from computers to phone or handheld devices, so the more touch points of communication the plan offers the higher the chance of reaching the participant.

“EFFORTS TO REACH PARTICIPANTS IS ONLY AS GOOD AS THE PROOF YOU CAN SHOW OF YOUR WORK.”

**4. Verify Distribution and Delivery.**

To prove execution of the plan's Communication Policy, the plan should both confirm the notice was timely circulated and that the intended person, the plan participant, received the information. The Plan Administrator is not relieved of their responsibility by simply sending to the last known address, if the address is no longer accurate for the participant.

**5. Define Missing Participant and Steps to Locate.** By using a system to verify the completion of delivery, the plan should be able to specify how many communication attempts are reasonable before identifying the participant as “lost.” Then, after identifying a participant as “missing,” a procedure detailing the steps and resources the plan will utilize to locate these participants should then be executed. Using the DOL's outlined escalation steps for finding lost participants is the best place to start.

**6. Documentation.** Efforts to reach participants is only as good as the proof you can show of your work. Each attempt to contact should be logged with proof of work. This documentation is your “get out of jail free” card in the case of investigation or litigation. It proves you have fulfilled your obligations regarding reasonable communication attempts.

**7. Educating Participants.** Encouraging participants to open, read, and question all information distributed by the plan generates genuine plan engagement and helps to keep participant contact information current by verifying that the correspondence was received. To help ensure attention and

readability information should be in plain language and a format the employee will understand. Notices and disclosures may need to be in multiple languages. They should not be written with industry jargon, and they should include an introduction which explains the purpose of the information and how it may affect the participant.

**8. Controlling Costs.** New providers are entering the marketplace that specialize in developing and maintaining the proper procedures while deploying expert staff and technology that can implement the processes. These unified services might provide better results and be more cost-effective than what employers engaged in other businesses might produce on their own. Just as is true for any activity that is appropriate for the administration of the plan, reasonable expenses incurred in the effort to locate a missing participant may be charged against all plan assets or allocated to that individual participant's account under the plan.

**UNIQUE ISSUES FOR  
MEPS AND PEPS**

Multiple Employer Plans (MEPs) and a new concept, Pooled Employer Plans (PEPs), allow employers to join a single plan as participating employers of either the MEP or PEP. In both arrangements there is a Plan Administrator, the entity that is sponsoring the MEP or PEP and responsible for the overall governance of either the MEP or PEP. These structures add even more complexity to tracking terminated and missing participants because the Plan Administrator of the MEP or PEP is not in contact with the participants

covered by the plan which has joined the MEP or PEP.

The Plan Administrator of the MEP or PEP should have processes and procedures in place to fulfill their fiduciary responsibilities in properly informing terminated participants as outlined previously in this article. This can be challenging and if an employer who joins a MEP or PEP does not inquire about the Plan Administrator's procedures in tracking and communicating with terminated and lost participants, participating employers in the MEP or PEP could find themselves having to deal with the DOL. Plan Sponsors who are considering joining a MEP or PEP should have documentation on how the Plan Administrator will fulfill the fiduciary responsibility of communicating with terminated participants with an account balance and maintaining terminated participant's contact information.

**CONCLUSION**

In January 2021, the DOL provided guidelines but not a procedure. The Plan Administrator must read and understand the DOL's best practices and convert them into an executable policy addressing the DOL's outlined expectations. The policy should regularly verify the participant census information, confirm both the distribution and receipt of all plan communications, provide participants with access to plan experts who can help them understand notices and disclosures and how it affects their assets, and document proof of execution. Processes developed to meet these goals will significantly reduce the number of missing participants within the retirement plan and meet best practice compliance responsibilities. **PC**



# IF YOU BUILD IT, THEY WILL COME

Marketing yourself as an extension of an advisor's practice leads to greater success. Here are some ways to up your game.

By Theresa Conti & Shannon Edwards

**Have you ever had a financial advisor tell you that they will never go to a sales meeting without you? Have you ever had a financial advisor partner who never uses any other TPAs and would never spreadsheet you against five other TPAs? Can you imagine** if you had a partner like that—and if that partner told all of their financial advisor friends about you?

“People do business with people they know, like and trust.” All of us have heard this saying in sales and

marketing presentations. In fact, Ty Bennett of Relevant Leadership argues that people have to value you as well.

As non-producing, independent TPAs and compliance consultants, most of our new business comes from referrals from financial advisors. Even TPA firms with outside sales staff rely on referrals. So, the question becomes how to make the financial advisors that we rely on for referrals know, like, trust and value us—not just as service providers but as true partners. We want to be an actual extension of their practices. We want to help take

some of the load off of them and their staff so that they begin to rely on us and value what we have to offer them.

In a sense, financial advisors are no different than we are—they are business owners managing a practice just like us. If we look at it from our point of view, what causes us to prefer to do business with one recordkeeper over another? We prefer one over the other based on how easy they make administration for us. How do they save us time and make us more efficient? Do they provide us with tools to improve our firms? Do they respond when we reach out to them? Do they process transactions quickly? Do they keep our clients happy so that we don't have to spend our time addressing frustrations? All those factors that we consider when deciding which recordkeepers we prefer to work with are similar to what financial advisors must consider when deciding which TPAs to partner with.



### BE A TRUSTED RESOURCE

If you have built your practice to be an extension of the financial advisor's practice, how do you market that to them? How do you make them aware that you want to do some of the heavy lifting for them?

Sharing your knowledge openly is one of the first steps in building trust and relationships. Make it clear that you are available to be a resource for advisors, especially new ones. Offer your experience in the industry freely without the expectation that they will do something for you in return. We have spent hours not only educating new advisors on rules and regulations

have to be an expert in investments, legislative and regulatory issues and recordkeeping. Their job is to be an expert in bringing a team of experts together to best serve their clients. Your job is to help them close the sale by not only being the compliance expert but also reinforcing the trust that the potential client already has in the financial advisor as well as building that trust with you as part of the team.

If you do this well, the financial advisor will continue to come to you to assist them in making the sale and will get to a point where they don't want to attempt to make a sale

have not covered anything to do with social media, videos, email campaigns or maximizing SEO. The answer: Some of the best marketing comes through word of mouth and by building your reputation not only as an expert in your industry but also as an exceptional partner. The retirement plan services industry is a small world. As you build a reputation as someone who can be trusted and who cares about the mutual success of your partners, word of mouth becomes more powerful than online marketing.

And don't forget about wholesalers. A good way to get introductions to new advisors is to

“AS YOU BUILD A REPUTATION AS SOMEONE WHO CAN BE TRUSTED AND WHO CARES ABOUT THE MUTUAL SUCCESS OF YOUR PARTNERS, WORD OF MOUTH BECOMES MORE POWERFUL THAN ONLINE MARKETING.”

in the industry but also on the best practices we have seen from advisors who have been successful in the retirement plan industry. We let them know that their success in retirement plans is important to us and that we want to help them be successful and reach whatever goal they have set.

### BE A VALUED TEAMMATE

Once your new advisor partner has established a certain level of trust with you, it's time to let them know you better. Offer to go to the sales presentations with them. Let them be the quarterback. In fact, *coach them* to be the quarterback.

Most often, the financial advisor is the person with the relationship with the client. In some way, the client already knows, likes and trusts them enough to let them submit a proposal for their services as they relate to their retirement plan. However, the financial advisor needs to know that they don't

without you. They will value what you bring to the relationship.

As a good teammate, after the sale we try to do as much of the heavy lifting for the client and the financial advisor as possible. We want to make sure that all of the I's are dotted and the T's are crossed. It's our job to make sure that everything is set up and running the way it is supposed to be. We try to head off any errors before they happen. This level of service is continued throughout our engagement with the client.

As an extension of the advisor, it is also our responsibility to let the advisor know when there is an issue or potential issue. Often the advisor can help with the client. And I would hate for them to be blindsided by any problems that may arise.

### BUILD YOUR REPUTATION

You may be asking yourself what this has to do with marketing—we

work with your local wholesalers and partner with them. They should know your service model in order to connect you with advisors who may be looking for a new partner.

The final point is important: Often the TPA is a business owner and so is the financial advisor and so is our client. While this is not always the case, the point is that we are all interested in growing our business, and having the right partners is always an important piece of the puzzle.

If you build it, they will come. As we noted, it's a small world, so build your reputation as not only an expert but also as a service provider who truly partners with other service providers and their clients. Be a partner who genuinely takes an interest in being an extension of their business and helping them grow and improve. Do that and the business will come. **PC**

# KEEPING CONTROL OF WORK PRODUCTS

It's important to prevent misuse of your work products. Here are some helpful tips. By Lauren Bloom

## **Employee benefit plan professionals produce a variety of work products for various purposes and audiences. Nearly all of a professional's**

work is performed primarily for the benefit of the principal (i.e., the professional's client or employer). However, that work is often distributed to third parties: regulators, other professionals who serve the principal (for example, attorneys, accountants or investment advisors), participants in business transactions like corporate mergers, or even plan participants themselves. Those third parties may rely on the employee benefit plan professional's work, and they or the principal may suffer harm if the work contains significant omissions or mistakes.

In many situations, the employee benefit plan professional will know up front that the work product will be shared with third parties. However, in our digital age where electronic documents can be transferred anywhere in the world with a single click, a professional's work products can easily end up in unexpected hands. Either way, a work product may be taken out of context, misquoted, misinterpreted, put to unintended use—or worse, be used to mislead third parties. Misuse of work products can cost the employee benefit plan professional significant time, money and effort to set the record straight, especially if that misuse triggers a professionalism complaint or lawsuit. It just makes good sense for the professional to address the risk of work product misuse in his or her daily practice.

The ARA Code of Professional Conduct provides guidance in this area:

A Member shall not perform Professional Services when the Member has reason to believe that they may be altered in a material way or may be used to violate or evade the Law. The Member should recognize the risk that materials prepared by the Member could be misquoted, misinterpreted or otherwise misused by another party to influence the actions of a third party and should take reasonable steps to ensure that the material is presented fairly and that the sources of the material are identified.

Three points in this provision deserve particular attention. First, the Code does not prohibit the professional

from providing services only when the professional knows for certain that the work product will be misused. If the professional has reason to believe that the work may be misused, the Code applies. Second, the professional is required affirmatively to recognize the risk of work product misuse; the professional cannot simply overlook the risk. Third, the professional does not have an absolute duty under the Code to prevent misuse of work products in all circumstances. The professional is merely required to “take

“THE BEST WAY TO AVOID MISUSE OF A WORK PRODUCT, AS THE ASPPA CODE RECOGNIZES, IS TO FAIRLY PRESENT ITS CONTENT AND IDENTIFY ITS SOURCES. A WORK PRODUCT THAT IS CLEAR, COMPLETE AND ACCURATE WILL NORMALLY BE INHERENTLY LESS EASY TO MISUNDERSTAND OR MISUSE.”

reasonable steps” to prevent misuse by fairly presenting material in a work product and identifying the sources of that material. Thus, the Code requires the professional to be mindful of the risk of misuse and to mitigate that risk, but does not hold the professional responsible if a work product is misused despite the professional's reasonable efforts to prevent it.

The best way to avoid misuse of a work product, as the Code recognizes, is to fairly present its content and identify its



sources. A work product that is clear, complete and accurate will normally be inherently less easy to misunderstand or misuse. However, it is usually a good idea for the employee benefit plan professional to consider taking additional steps to prevent misuse of his or her work. It is normally beneficial to educate principals about the appropriate use of a work product, explaining what it is, how it is intended to be used and who its intended audiences are. If the work product is intended only for one specific use or a single audience, the professional is normally prudent to say so, preferably in writing in the work product itself. A more general statement in the professional's engagement letter or contract with principal to the effect that work products are only to be used for their agreed-upon purpose and are not for distribution to third parties without the professional's advance written permission may also be helpful. If formal "legalese" feels off-putting, the professional may prefer to use more casual language, though making the statement in writing is probably still a good idea.

To better understand the risk that a particular work product may be misquoted, misinterpreted or otherwise misused, the professional is usually smart to ask about the

principal's circumstances. Why does the principal want the work product? How will it be used? Who, other than the principal, is expected to see and, perhaps, rely on it? If the work product contains information that may become stale over time, how long will the principal plan to use and rely on it? Does the principal recognize that, if questions arise or circumstances change, the professional may need to revise or update the work product? Asking the appropriate questions will help the professional to, first, understand the scope of risk that the work product may be misused and, second, carefully to prepare the work product in such a way that the risk of misuse is mitigated.

If a principal intentionally misleads a professional about intended misuse of a work product, fault rests with the principal, and not the professional. Fortunately, most principals are honest businesspeople who won't intentionally misuse the professional's work. Educating principals and preparing work with an eye toward its intended uses and audiences will normally protect the professional from the professional and legal consequences of work product misuse. **PC**

# THE ECOSYSTEM EVOLUTION

Why nonqualified plans can help—and protect—your practice, revisited. By Jeff Acheson

In the Winter 2019 issue of *Plan Consultant*, I penned an article entitled, “Castles, Moats and Barbarians at the Gate—Why Nonqualified Plans and Planning Can Both Help and Protect Your Practice.” In that article I provided perspective on the importance of keeping one’s value proposition relevant through an evolving business model that adjusts constantly to address and defend against competition from all available alternatives in the marketplace.

My assessment was based on the thesis of a book by Marshall Goldsmith, *What Got us Here, Won’t Get us There*—that is, staying the same rarely leads to growth.

Viable alternative options can come from many directions and may be built upon recent innovations in technology, comprehensive services delivered by scaled industry aggregation and consolidation players, the efficiency allure of yet-to-be proven MEPs, or perhaps fee compression driven by bundled platform providers seeking market share.

My article made a case for why qualified plan TPAs should consider incorporating nonqualified plan consulting into their practices to enhance their value proposition in order to expand their potential opportunities and defend their turf against competitors.

Much has transpired in the 4 years since then. COVID, inflation, the Great Resignation and SECURE Act 2.0 to name just a few, all of which have forced—or will force—change upon all of us. In addition, NAPA and I enlisted the services of renowned ERISA attorney Barry Downey to help

extend and expand the curriculum for the NAPA Nonqualified Plan Advisor (NQPA) program, elevating it from a certificate program to full designation status.

The NQPA designation ([www.napanqpa.org](http://www.napanqpa.org)) launched in 2022 and met with enthusiastic acceptance. Subsequent conversations with several influential ASPPA leaders affirmed what I wrote in 2019—that the real opportunity for TPA/recordkeepers will probably lie in the same place it lies for advisors: being a value-added consultant, especially around integrated qualified and nonqualified plan designs focused on achieving personalized goals and objectives for businesses, business owners and plan participants (see nearby illustration). More on that in a bit.



However, while plan advisors may be more focused on earning money for their efforts through the funding instruments associated with nonqualified plans, TPA/recordkeepers may find their comfort zone in focusing more on fee-for-service consulting around creative plan design, data management and specialty service provider coordination

instead of delivering historically traditional administration and recordkeeping services.

## GROW OR GO?

For any of us or our businesses, the reason for change and evolution is to proactively address the challenges we will always face, such as:

- How do I stay competitively relevant?
- How do I continue to differentiate my business?
- How can I get the attention of key decision makers?
- How can I increase the value I deliver to my clients?
- How do I build a defensive moat around my best clients?
- How can I grow my revenues disproportionate to my overhead?
- How can I scale my business?

If a financial professional, or any business for that matter, is not asking themselves these kinds of questions, one could predict a lackluster if not decaying future. Either that or they are already up for sale and prefer an exit to making a commitment to change and evolve.

## THE ECOSYSTEM EVOLUTION

We need look no further than the 401(k) plan industry’s evolution over the last 40 years to see how change is inevitable and impacts every stakeholder. “What got us here, won’t get us there”—and a new paradigm in the 401(k) industry is already playing out. I view it as consisting of three phases:

1. 401(k) 1.0: Innovation: Focus was on product and platform
2. 401(k) 2.0: Commoditization and Consolidation: Focus was on “3 Fs”—funds, fees and fiduciary services
3. 401(k) 3.0: Evolution: Battle of “The Bigs” vs. “The Boutiques”; advent of the “Integrated Ecosystem” as an optimized business model

Since 2019, the ecosystem construction and evolution process has accelerated through aggregation,





consolidation and acquisition fueled by private equity firms. The goal of the ecosystem approach is to integrate health, wealth and employee benefit offerings in a thoughtful, synergistic and easy-to-access manner. In some cases, aggregation through acquisition is executed at the advisory firm level (e.g., Hub, ONEDIGITAL, Sageview, Captrust).

At another level, especially as it relates to nonqualified plans, ecosystem construction is at the recordkeeper level by those intent on building out a single-sign-on experience. While Principal has offered this functionality for some time, recent acquisitions show a commitment by others to develop that same experience via their platforms. For example, transactions since 2018 have led to Empower now owning Prudential's nonqualified capabilities, Ascensus now owning Newport Group's nonqualified capabilities and Voya owning Pen-Cal Administrators. This list doesn't include other qualified plan recordkeepers that have white- or private-label relationships with nonqualified plan recordkeepers to create this same single-sign-on offering.

In my opinion, however, there are two paths forward. One approach, as described above, would fall into

what I would label the "Controlled Ecosystem," where the components are owned or controlled by a common entity and delivered in a bundled offering.

The other approach is the "Collaborative Ecosystem," where an alliance of independent, like-minded individuals or firms creates a packaged offering to compete with the bundled offerings in meeting the needs of clients and prospects while respecting and enhancing each service provider's value proposition. The synergistic X-factor within this model is the agreed-upon mindset that "none of us is as smart as all of us" and "specialization spells success." The key to a successful collaboration is everybody playing nicely together in the sandbox and to being mindful that "the whole is greater than the sum of its parts," as Aristotle said.

Both integrated ecosystem business models will be huge drivers of success for the new NQPA designation and its role within either of these thoughtfully constructed ecosystems. Just imagine if a traditionally focused ASPPA TPA could bring to the table in-house expertise or in-sourced collaborative relationships as part of their current value proposition. Accomplishing this would expand their value-added solution capabilities to incorporate the

primary purposes of nonqualified plan designs—which include:

- Provide HCEs an additional retirement accumulation vehicle
- Provide the employer a tool for recruiting, rewarding and retaining mission-critical talent
- Enable the employer to provide an additional retirement income benefit to a select subset of employees on a discriminatory basis
- Provide the employer a methodology to give select employees a vested interest tied to the long-term success of the company, i.e., SARs, Phantom Stock, RSAs, RSUs, ISOs, NSOs
- Provide the employer an avenue for financially reprimanding suboptimal performance or undesirable decisions by mission-critical employees (plan designs can include language for withholding or clawing back compensation for suboptimal performance)
- Give an employer the ability to create "golden handcuffs" that reward employee loyalty while monetarily penalizing premature departures or defections to competitors
- Enhance and protect business valuations—the ultimate in wealth management for business owners

## CONCLUSION

The 401(k) 3.0 evolution is here, and no firm will be immune from the associated competition. Continue to do what you do best, but strongly consider adding adjacent expertise, resources and relationships to your repertoire via the NAPA Nonqualified Plan Advisor program. This will be the first step in helping you find a collaborative ecosystem you can plug into and position yourself as the "first responder" who gets the initial call from clients, prospects and centers of influence because they respect and value what you do, what you know and who you know, and who they can partner with even more than they currently do. **PC**



# THE EMPLOYEE REFERRAL SOLUTION

Creating an employee referral program paid off for this TPA. Here are some tips on starting one of your own. **By Megan Crawford**

**We all wish we had a magic wand we could wave and hire the perfect employee. But let's face it: Great employees**

are hard to come by and even harder to keep. But amid the ever-changing landscape of owning a business, there are still ways to hire great employees successfully.

Our firm has been fortunate to find and maintain many great employees over the years. (Several, in fact, were hired shortly after I was born!) Like so many things, hiring has evolved over the last few decades. Remember running an ad in the local paper, waiting for the cover letters and resumes to trickle in,

sorting through the resumes to narrow the pile down to a few prospects, doing a round or two of interviews, and finally hiring a new employee?

That process is a thing of the past. So, what are we doing now that works better?

What if you shifted your focus from hiring candidates who can simply enter data, run compliance tests, process distributions, etc. to hiring ones who can *think* about how to make a process or client experience better? When you have employees who can engage in operations at all levels and think about how to accomplish more faster, their positions

become more meaningful each time they provide input.

How do you find these unicorns?

## IDEAL EMPLOYEE PROFILE

I recently went through a sales training course with [L'areal Lipkins](#). As part of the course, we completed an "Ideal Client Profile." We looked through our block of business and came up with criteria that characterize the best clients and then focused our sales on those clients.

Then it occurred to me: Why not do this in our hiring practice as well? So we started down the path of creating an ideal employee profile, starting by profiling our current team. Using a testing service called Criteria Corp., we had each of our team members complete a Cognitive Aptitude Test and Employee Personality Profile. We were able to look at our top performers and get a baseline for what we want in our new hires in terms of both aptitude and personality.

Most TPAs are looking for similar traits, like great customer service,

“WE ALL RUN OUR FIRMS A LITTLE DIFFERENTLY, AND THAT IS WHAT MAKES EACH OF US UNIQUE IN OUR EVER-CHANGING INDUSTRY. IT IS THOSE UNIQUE TRAITS THAT REALLY HELP NARROW DOWN WHOM TO LOOK FOR AND WHERE TO FIND THEM.”

great with numbers, enjoys using Teams, etc. These things are really your core profile and are most likely found in your job descriptions. But we all run our firms a little differently, and that is what makes each of us unique in our ever-changing industry. It is those unique traits that really help narrow down whom to look for and where to find them.

#### IT TAKES ONE TO KNOW ONE?

Once you know what you are looking for, you have to think about where to find good candidates. First, we reasoned, since our current team is full of people who are ideal for our firm, maybe they know more people like them! So we started asking our current team members for employee referrals.

We always joke with our team that we wish we could just clone one of them every time we need to bring someone new in—and I am happy to say we got pretty close with our first new hire via referral. She took to the industry quickly and understood not only the importance of what we do but also how to juggle many tasks at once. She had already developed essential skills by owning a small business—while also being a kindergarten teacher! Having that background knowledge really translated well to her customer service skills.

We would not have been able to find her had it not been for the referral. As shocking as this may sound, she wasn't scrolling through BenefitsLink looking for this type

of position, and I don't believe the headhunters would be able to find her either.

#### THINK IT THROUGH

If you're considering adding an employee referral program, it is important to think it through first. Here are some helpful points to get you started:

- **Be aware of who is doing the referring.** Obviously, you want these referrals to come from your top-level performers, not the college intern who couldn't show up to work last Friday because of Thirsty Thursday.
- **Communication.** Open communication with the referring employee about their level of comfort working directly/day to day with the person they are referring. Just because they will make a good employee and may be worth referring doesn't mean that your current employee would be happy working with them closely every day. Also, you need to have a very open conversation with the employee to ask why they are referring this person and why he or she would be a good fit for the team. (You want the response to be deeper than, "I want to work with my bestie and go to conferences together.")
- **Implement an employee referral bonus program.** We offer a bonus if the candidate is hired and employed for 6 months. Even though 6 months doesn't seem

very long, we can all tell if a new employee is going to work out in the first 6 days.

- **Follow your normal hiring process.** Don't make exceptions simply because one of your top-level employees has made the perfect "pitch" about a person you don't even have a reason to hire. Follow all your normal procedures and testing protocols.

What if you don't currently have any employees willing to make a referral? Don't worry! Here are a few more tips we have found helpful:

- **Hire qualified people with no industry experience.** While it can be more of a challenge, you get a chance to "build" them from the ground up instead inheriting bad habits they have picked up from your competitors.
- **Look in different places than you normally do.** See a waiter at a restaurant with great service skills who paid attention to your order and made sure it was right before serving it? Recruit them. Teachers leaving their positions are also great candidates; generally they love learning, and you know they can put up with all the excuses your clients can throw at them ("No, your dog didn't eat your payroll report.").

When we are all so focused on finding employees with experience, we may miss out on some great talent that we can bring into our industry! **PC**

# BE A BETTER PLAN SPONSOR PARTNER!

With today's staffing challenges, here's why it's so important for TPAs and advisors to talk to clients about the key role of retirement benefits in a recruitment and retention strategy.

By Barbara Giesing

**“Here we go again,” I grumbled as I read the results of the nondiscrimination testing. I was going to need to alert a few of the executives that they would once again be getting a refund from their 401(k) contributions. Recently**

I had become more involved with the 401(k) plan administration (though not yet an official “administrator”), and I’d learned that our plan typically failed the discrimination testing.

Our small to mid-sized company had a rich benefits package, an important part of which was our retirement plan; having money “refunded” was not typically part of most employees’ compensation plans—especially at the more senior level.

When I became an official plan administrator and went through the process of receiving my Certified Plan Sponsor Professional (CPSP) certification from the Plan Sponsor Council of America, I learned that there were options that we could have used in administering our retirement savings benefits that also could have been beneficial as recruiting tools—including non-qualified deferred compensation (NQDC).

## WHERE WAS OUR TPA?

We had been working with a TPA and a plan advisor for many years, both of which have solid reputations and knowledgeable representatives. However, neither of them suggested to me that we look at these types of options to enhance our retirement savings benefits with the bonus of

aiding in our recruiting efforts, even though as the new plan administrator I’d been asking a lot of questions about how and why things worked within the plan.

Why? Most likely, they were used to working with my predecessor, an individual who was a strong believer in the status quo. If any suggestions had been made in the past, likely they would not have been welcomed.

**“EMPLOYERS MUST BE SMART IN OUR BENEFITS OFFERINGS AND MAKE OUR DOLLARS COUNT IN TERMS OF EMPLOYMENT RECRUITMENT, ENGAGEMENT AND RETENTION. FAILURE TO OPTIMIZE THESE PROGRAMS MEANS MISSED OPPORTUNITIES AT THE LEAST AND ADDITIONAL HURDLES IN RETAINING THE BEST STAFF AT WORST.”**

I’m the first to admit that my eyes would cross at times when our broker or TPA discussed certain plan issues, and it’s easy to simply dismiss advice we don’t necessarily want to hear. However, when I replaced our previous plan administrator, it was an opportunity for our TPA or advisor to look like heroes and help improve our situation. In addition, we would have added more enticements to our benefit

package to help with recruitment and retention.

As plan administrator for a smaller company, I was required to wear the generalized HR hat which included all benefits and personnel actions. As much as I’d like to think I know it all, I have learned enough to know that I can still learn a lot, especially as the world continues to evolve. I must and do rely on the experts to help shore up my knowledge, especially in the retirement plan world.

Administrators like me need our consultants to continue to educate us and help our companies provide the best resources for our staff when it comes to retirement planning. There are times when I need to be told more than once, to really “hear” the message.

## TODAY’S STAFFING CHALLENGE, BY THE NUMBERS

In today’s market, recruitment and retention are extremely hot topics, especially in certain industries.

In July 2022, LinkedIn reported that 63% of recruiters say talent shortage is their biggest problem and 76% of hiring managers admit attracting the right candidate is their greatest challenge. And a 2019 survey of over 1,000 companies by the Society for Human Resource Management found that 83% reported increasing difficulty finding suitable candidates. The same report





discussed skills gaps in problem solving, critical thinking, innovation and creativity. This makes finding the best candidates that much more difficult (and more important).

According to the Bureau of Labor Statistics, 47.8 million Americans left their jobs during FY 2021 and the average turnover rate was 57% (up from 45% prior to the pandemic). Additionally, looking at the number of job openings compared with the number of unemployed Americans illustrates at least in part why employers are having difficulty filling positions—there are many more openings than there are unemployed individuals.

A May 2022 report noted that the most difficult roles to fill were in education, health, social work, government, information technology, telecom, communications and media, banking, finance, insurance and real estate. And most of us are aware that retail and food industry establishments

are also having difficulties finding staff.

Lastly, SHRM posted an article in December 2022 (“Jobless Claims Drop Back to 225K”) that noted a decrease in jobless claims, also noting that most employers are not doing massive layoffs and that there are still nearly two job openings for every unemployed person.

### CONCLUSION

With today’s inflation and market concerns, the spotlight is certainly aimed at company retirement plans. Providing our employees with choices and giving them hope for a stable retirement can be a key to connecting with the best candidates. In addition, there is a definitive need for diversity in many areas. This, too, requires an array of options that can be tailored to more individualized needs.

All of this means employers must be smart in our benefits offerings and make our dollars count in terms of

employment recruitment, engagement and retention. Failure to optimize these programs means missed opportunities at the least and additional hurdles in retaining the best staff at worst.

In determining the best opportunities for employers, TPAs and advisors must consider each client company’s industry, employee demographics and culture. Talk with plan administrators and/or HR staff to find out what they’re looking for and what their biggest concerns are, even if they’re not clearly related to retirement planning. Offering to help with employee surveys or providing industry information related to the topics of concern can go a long way in partnering with administrators.

The bottom line: Most of us want our employees to have the tools necessary to build a successful retirement. Working together to navigate the options, rules and benefits provides a better chance of success for all of us. **PC**

# CHAMPIONS AMONG US

Thank you to the many champions involved in the successful legislative process that resulted in the landmark SECURE 2.0 legislation. By Will Hansen

**It truly does take a village. SECURE 2.0, for example, was years in the making.** While the original SECURE Act was only recently signed into law in December 2020, a number of the provisions in the SECURE 2.0 legislation have been debated on Capitol Hill for nearly a decade.

On behalf of the entire Government Affairs Team at the American Retirement Association, thank you, our members, for your assistance and dedication in getting SECURE 2.0 signed into law. We definitely had some bumps in the road, but whenever the team needed your assistance, you were there to help.

## A NEW APPROACH

For SECURE 2.0, we did a few things differently than in the past. First, we ensured that most of our priority provisions were individual stand-alone bills with bipartisan support. For example, the Starter(k), a basic 401(k) plan design with no employer contributions and no discrimination testing, was introduced in both the House and Senate as stand-alone measure with one Republican and one Democrat as the lead sponsors. Similarly, the emergency savings provision that allows for up to \$1,000

“WE DEFINITELY HAD SOME BUMPS IN THE ROAD, BUT WHENEVER WE NEEDED YOUR ASSISTANCE, YOU WERE THERE TO HELP.”

a year in withdrawals to cover an emergency was a stand-alone measure in both the House and Senate. Overall, five stand-alone bipartisan bills were included in SECURE 2.0—and many other provisions were ideas that came directly from ARA members.

Stand-alone bills enabled the individual elected officials who sponsored the bills to be the champions of the various provisions. These champions were there to push for their individual bills to be included in the final SECURE 2.0 package. We were extremely fortunate to have a number of such champions throughout the process, including staff members who work for the elected officials. In addition, with so many individual bills, we were also able to expand the number of elected officials who sponsored retirement legislation beyond the handful that typically sponsored legislation in the past. And all of this was done in a bipartisan manner.

## ENHANCED DONATION STRATEGY

Behind the scenes, the Government Affairs team focused on expanding the relationships between our members and elected officials. The ARA Political Action Committee's strategy was enhanced to encourage ARA members to give directly to elected officials rather than give to the PAC (don't worry, we still encouraged donations



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

to the PAC for those who didn't want to give to a specific elected official). We held several events across the country, directly in the state or district of the senator or congressman. In attendance at each event were ARA members across the various sister organizations. While the primary topic covered at each event was the importance of retirement policy, building a relationship with the elected official was very important as well.

I and other members of the Government Affairs team can talk about the importance of the employer-sponsored retirement system in America until our we lose our voice. But it is much, *much* more valuable for elected officials to hear directly from their constituents (that's you) about how certain retirement policies will help build a stronger retirement system. In 2022, we focused on six particular elected officials, and we plan on expanding that number by two in the next several years. The PAC will continue to give to a wide array of elected officials, but we hope to continue to expand the new strategy of direct giving by our members.

## THANK YOU!

Once again, I can't emphasize enough the gratitude the Government Affairs team has for ARA members who played a vital role in the success of SECURE 2.0. But our work is not done—now we shift our focus to the regulatory process and the technical corrections that are needed to the text of the SECURE 2.0 law. We will continue to rely on your expertise in ensuring that certain aspects of SECURE 2.0 are implemented properly. **PC**



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