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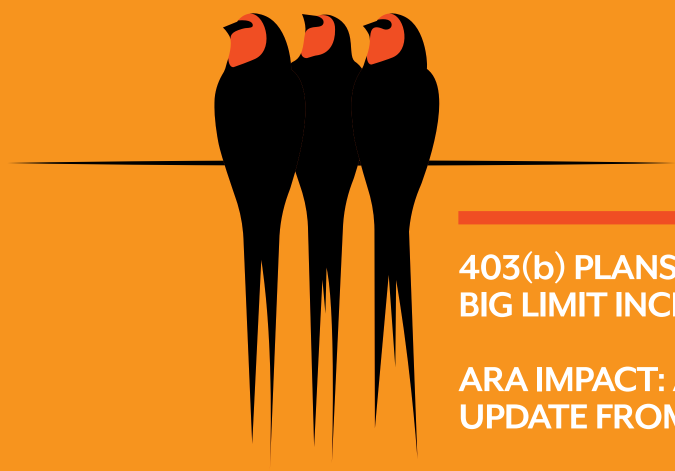
PLANCONSULTANT

SUMMER 2023

THE CHALLENGES OF GOING SOLO (k)

FOR THE SELF-EMPLOYED AND SMALL BUSINESS OWNERS WITH A SOLO 401(k) PLAN, IMPORTANT RULES NEED TO BE CAREFULLY CONSIDERED IN THE COMING YEARS. IT'S WHY WE ASKED THE EXPERTS FOR THEIR THOUGHTS.



403(b) PLANS SEEING BIG LIMIT INCREASES

ARA IMPACT: AN UPDATE FROM DC

RK: STOP REJECTING EXCESS DEFERRALS

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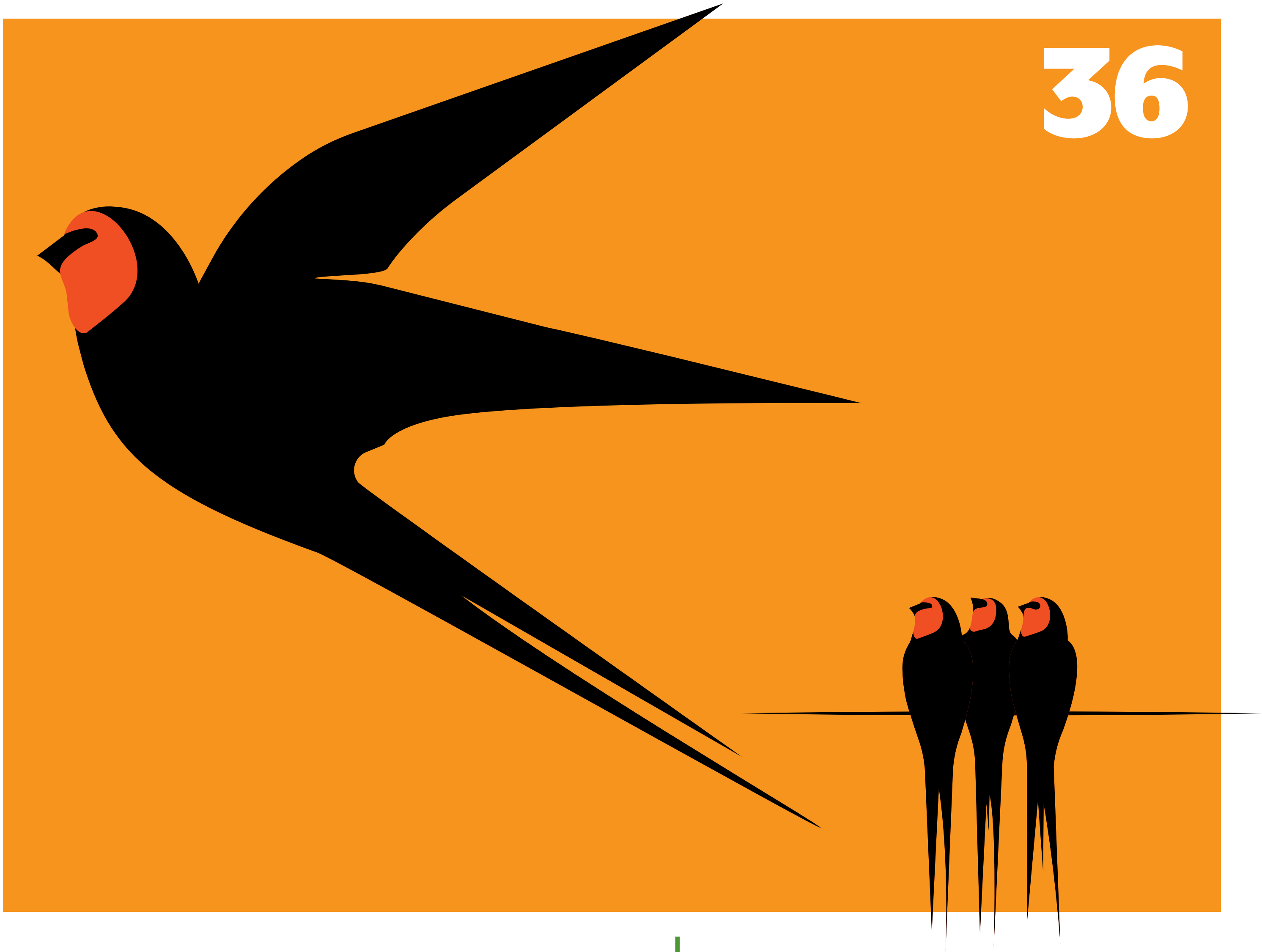

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Amy Ouellette, QPA, QKA, CPFA, TGPC oversees product teams focused on the 401(k) plan experience at Vestwell, enabling financial services and payroll partners in helping their clients have an inexpensive, flexible and easier experience to save for the future. With deep technical expertise mixed with a passion for technology and improving operations, Amy aims to improve the retirement space and make it easier for people to meet their life goals.

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RISE OF THE MACHINES

ChatGPT isn't Skynet but it can be scary. **By Joey Santos-Jones**

This issue, I'd like to address a hot topic surfacing around the retirement plan landscape: the impact of Artificial Intelligence (AI), particularly the emergence of ChatGPT. You know, the looming AI monster that will replace us and send Arnold Schwarzenegger from the future to stop it. There's no place to hide from the countless social media posts and articles detailing its rise. Do we need to fear ChatGPT, or can this new technology open the door to massive opportunity in our industry?

The retirement plan industry has seen a slew of technological advancements in recent decades, from computer systems to the internet and the rise of 'robo-advisors.' Far from rendering human advisors obsolete, these advances have often augmented our work, enhancing our efficiency in back-office tasks, speeding up financial calculations and widening our client reach.

Some apprehensions loom as we stand on the threshold of an AI era. The entrance of ChatGPT onto the scene, with its uncanny proficiency, is undeniably impressive, but it's not without its set of challenges. Much like autonomous cars, AI systems have a significant trust hurdle to cross before they can substitute human input. Self-driving vehicles still fail to outperform human drivers, despite what the Jetsons would have led us to believe. AI systems must prove their efficacy, reliability and safety in handling complex financial situations.

However, focusing solely on the idea of AI replacing retirement professionals would be missing a more practical and immediate benefit. Consider ChatGPT as a highly sophisticated number cruncher. It accepts inputs, digests them then generates outputs that resemble human communication. For retirement plan professionals, it presents an opportunity to enhance client communication by producing written responses faster and more conveniently. Although AI-generated text requires human oversight for accuracy and personalization, it still offers a quicker and easier solution than composing from scratch.

For instance, if a client expresses concern about market volatility and wishes to liquidate their equity holdings, an advisor could use ChatGPT to draft a suitable response. The advisor can further fine-tune the output before sending it. In addition, we can utilize ChatGPT to summarize lengthy documents, draft social media posts and more, facilitating greater productivity and efficiency in our work. AI may ultimately be responsible for creating all of the content on your entire LinkedIn feed.

Reflecting on the broader implications, ChatGPT and similar AI tools just might become indispensable allies in enhancing our productivity. Streamlining middle and back-office tasks can boost firms' profitability or even enable us to deliver services at lower costs, thereby increasing accessibility to financial planning services for a broader consumer base. In other words, AI doesn't pose a threat but presents an opportunity for growth.

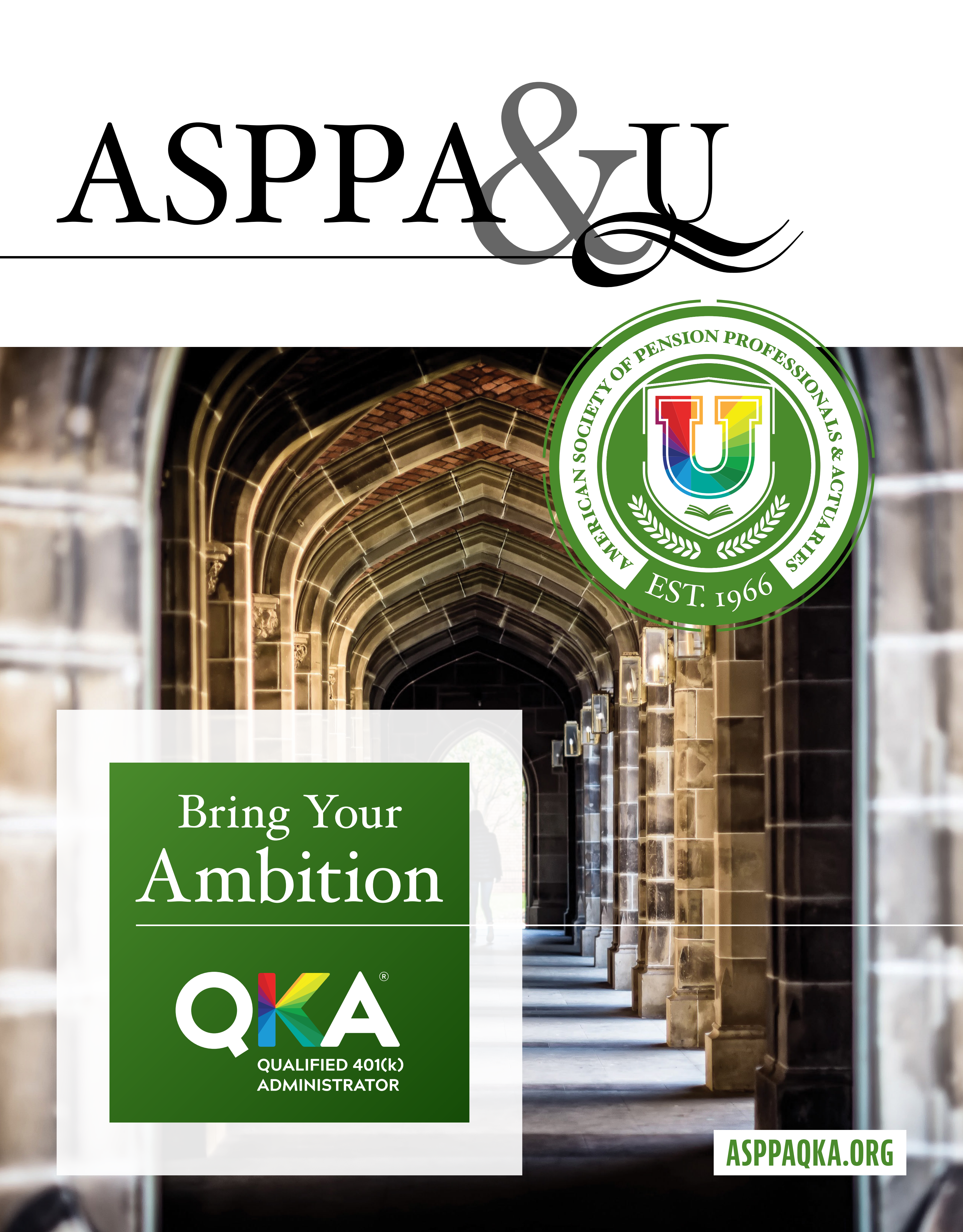
Given the wide-ranging influence of AI innovation across diverse sectors and its significant implications for government, businesses and consumers, it might be appropriate to establish a specialized agency tasked with overseeing, evaluating and regulating AI. A lack of unified oversight could lead to disparate, sector-specific solutions, resulting in various AI regulations across finance, health, transportation, education, housing and employment sectors. This chaotic approach to how humans use AI could prove inefficient in addressing the growing challenges with artificial intelligence and might leave us all with poor results.

The prospect of AI in retirement services is intriguing and encouraging, even amidst uncertainties. As we move forward, our focus should not be on the risk of obsolescence but rather on how we can harness these tools to enrich our services, elevate our efficiency and, ultimately, better serve you, our valued clients.

Here's to embracing the promise of AI and its potential benefits. As we close the tab daily on our ChatGPT prompts, we may mumble to ourselves, "I'll be back!"

In the next few issues, we look forward to exploring prompts, measuring results from different AI systems and reporting real-life applications of ChatGPT.

Joey Santos-Jones
Editor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PERFORM OVER FEAR: THE BENEFITS OF AI TO THE RETIREMENT BUSINESS

AI has the ability to analyze vast amounts of data and automate complex processes. It has an opportunity to transform the retirement administration industry. **By Justin Bonestroo**

As we make our way through 2023, I'm reminded of all the buzz about this thing called "the information superhighway" that I started to hear about in the late 1990s. There was a lot of skepticism about the idea at the beginning but, on the amount of time my kids spend on some sort of device, I think we can all agree that the internet has completely changed nearly every aspect of our world. Now, it seems that you can't turn on the news or open a browser without finding a story about the growth and development of Artificial Intelligence, and I wonder what life will look like in 25 years if history repeats itself.

The retirement industry is in the midst of a profound transformation. This shift is powered not only by significant changes focused on improving retirement outcomes with SECURE 2.0 serving as an obvious example, but also by major advancements in technology being implemented by many firms across the country. The integration of technology, particularly AI, in the retirement industry is a testament to the adaptability and growth mindset within the field, and these advancements are creating a palpable excitement in strategic discussions and planning sessions of many retirement industry firms.

AI, with its ability to analyze vast amounts of data and automate complex processes, has an opportunity to transform the retirement administration industry. With the new requirements and complexities introduced by SECURE 2.0, AI offers an opportunity to manage communication effectively and efficiently. ChatGPT has been all over the news for the better part of 2023, but many similar technologies are also being developed that promise to assist in gathering and manipulating data, automating many tasks of plan administration, communication and deliverables. These changes will allow professionals to focus more on strategic consulting and assisting fiduciaries, as they fulfill their requirements under ERISA.

In the sphere of customer communication, AI-powered chatbots and virtual assistants are making significant strides. Over the past few months, I have started to dabble with using these tools to assist in drafting client communications, providing a very solid starting point to explain the often complicated concepts of retirement administration. While I am careful to review, supplement and edit any content that I put my name on, I've personally saved days worth of time already by using technology to give me a head start. They say you can't edit a blank page, and technology has made it quicker to get to that editing stage.

Aside from advancement and opportunities brought about by technology, SECURE 2.0 represents the second significant legislation in three years that is heavily focused on improving retirement outcomes. The implementation of the SECURE Act and SECURE 2.0 have addressed many barriers within the retirement system but many are already focusing on other areas that can be improved. We acknowledge the pivotal role of the ARA in shaping recent legislation, and I'm confident we will serve a similar role in future legislation and regulation. The visibility achieved through ARA's Political Action Committee (PAC) has been instrumental in this success, amplifying our influence and extending our reach. Joining the PAC can be an excellent way for you to contribute to the progress of our industry and maintain productive relationships with legislators and regulators.

Looking ahead, the future is bright. With the impact of SECURE 2.0, the growth of our PAC, the increasing involvement of AI-proficient professionals and the expanding use of AI, there is no limit to what we can achieve. As we continue to adapt and grow, we are not only serving the present needs of our industry, but also improving the retirement system in the U.S. Let's embrace the changes and opportunities that 2023 brings, powered by the collective expertise of our industry and the opportunities offered by AI. PC

Justin Bonestroo, MSPA, EA, CPC, CPFA, is a Senior Vice President at CBIZ Retirement Plan Services. He serves as ASPPA's 2023 President.

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EMPOWERING 403(b) WITH RETIREMENT FAIRNESS

Nonprofit organizations such as public schools, universities, churches, and charities often struggle with higher retirement plan fees. We've taken the first step to address it. **By Brian H. Graff**

I'm thrilled to share that we're making significant progress with the Retirement Fairness for Charities and Education Institutions Act of 2023. Our aim is to empower 403(b) plans with the option to invest in collective investment trusts (CITs), and we've just taken a giant step forward in the House of Representatives.

In mid-May, the House Financial Services Committee gave a nod of approval to an updated version of the Retirement Fairness for Charities and Educational Institutions Act (H.R. 3063). The vote was fairly bipartisan, with 35 members for it and 12 against. It was a solid result, considering some recent opposition from senior committee members.

This bill, championed by Rep. Frank Lucas, R-Okla., aims to enhance 403(b) plans by including a CIT option. It's all about ensuring equity among retirement fund options—something that SECURE 2.0 initially aimed to achieve but fell short of in its final version in December.

In our May 22 letter to Reps. Lucas, Foster, Gottheimer and Barr, I shared our mission to advance the interest of the 35,000 members of the American Retirement Association (ARA) and the coordination with our affiliated organizations representing the spectrum of the American private retirement system. I commended the four for championing this important piece of bipartisan legislation.

> "OUR PROGRESS HAS BEEN SURPRISINGLY BIPARTISAN, WHICH IS A SIGNIFICANT ACCOMPLISHMENT CONSIDERING THE VOCAL OPPOSITION FROM SOME QUARTERS."

Over the course of the SECURE 2.0 Act development, we played a crucial role in educating our members about taxation issues, paving the way for Congress to focus on the financial services aspect, which H.R. 3063 will address.

For context, CITs are a choice for many participants because of their lower expenses and higher customization and flexibility. Nonprofit organizations, such as public schools, universities, churches and charities, often struggle with higher fees and expenses under the 403(b) plans, something this new legislation aims to address.

Rep. Lucas shared our excitement but also underscored that the journey to equity in retirement fund options should not be this challenging. It's about addressing the gap and providing public servants with the same advantages offered to other retirement plans.

Our progress has been surprisingly bipartisan, which is a significant accomplishment considering the vocal opposition from some quarters. During the bill's consideration, an amendment was proposed to limit CIT investment to only ERISA-subject 403(b) plans. However, it was defeated.

As Rep. Lucas rightly pointed out, we simply want to place public service employees, such as healthcare workers, teachers and nonprofit employees, on equal footing with individuals having 401(k) or 457(b) accounts. If it's good enough for members of Congress, it should be equally accessible to these hardworking public servants.

Now, our mission is to take H.R. 3063 to the full House of Representatives for consideration. It's going to be a part of a legislative package set to appear in the next couple of months. With 11 Democrats supporting the bill in the committee, we are hopeful for a substantial vote in our favor on the House floor.

This journey is a testament to our resilience and commitment, and we remain hopeful and committed to our mission. We'll keep pushing until we bring about the change in which we, and all of our members, believe. PC

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

ASG REFRESHER: HIGHLIGHT ON SERVICE ORGANIZATIONS

Your traditional affiliated service group route should be steered by the service organization—the true guiding star. **By Hannah M.L. Munn**

Most practitioners in the retirement plan space know the broad rule: Entities that are related under the controlled group or affiliated service group rules must be aggregated for certain purposes, including nondiscrimination testing, service counting, distribution timing and loan administration. There are two ways to satisfy the affiliated service group ("ASG") "arm" of this rule—either via the traditional ASG route (A-Orgs and B-Orgs) or via the management function group route. This refresher looks first at the traditional ASG route then highlights the route's guiding star: the service organization.

Traditional ASGs: The Basics. A traditional ASG is made up of: (1) a service organization (called a first service organization or "FSO"), and (2) one or more A-Orgs, one or more B-Orgs, or both.

An A-Org exists in relation to a FSO if the A-Org:

1. Is also a service organization,
2. Is a shareholder or partner in the FSO—meaning that the A-Org must own or be deemed to own an interest (of any size) in the FSO.
3. Regularly performs services for the FSO or is regularly associated with the FSO in performing services for third persons.[1]

A couple of items to note. First, if the intended FSO here is a corporation, it can only be a true FSO to an A-Org if the FSO is a "professional service corporation"—defined for these purposes as a corporation that provides services performed by accountants, actuaries, architects, attorneys, chiropodists, chiropractors, medical doctors, dentists, professional engineers, optometrists, osteopaths, podiatrists, psychologists and veterinarians.[2] This is a very limited definition. Again, though, these limits only apply if the FSO is organized as a corporation. If the FSO is organized as a partnership, for example, then these professional service limits would not apply.

Second, note the directionality of ownership and service here. There is no A-Org relationship where service is only flowing from the FSO to the A-Org or where the only overlapping ownership interest is one in which the FSO has ownership in the A-Org. Instead, it is the A-Org that must have an ownership interest in the FSO and the A-Org that must perform services for the FSO (or regularly be associated with the FSO).

A B-Org exists in relation to a FSO (or an A-Org) if:

1. A "significant portion" of the B-Org's business is the performance of services for the FSO (or an A-Org, or both),
2. Those services are of a type "historically performed" in such service field by employees.
3. 10% or more of the B-Org is owned or deemed to be owned by an HCE of the FSO (and/or one or more of the FSO's A-Orgs).[3]

A few items to note here as well. First, the B-Org—unlike the A-Org—does not have to be a service organization. Like the A-Org analysis, though, directionality of services matters here, as well.

Second, determination of whether the performance of services for the FSO or A-Org constitutes a "significant" portion of the B-Org's business is largely a consideration of facts and circumstances. Broadly, services are also generally considered "significant" if they constitute at least 5% of the B-Org's total annual gross receipts for performing services or if they constitute at least 10% of the B-Org's total annual gross receipts.[4]

Finally, services must be of a type "historically performed" by employees in such service field—meaning for these purposes that the service must have been a usual function for employees in that field on December 13, 1980.[5] As we get further from this date, evaluation here becomes more difficult.

Service Organizations. Whether traveling the A-Org route or the B-Org route (or both), it is crucial to have a solid understanding of the term "service organization." Both FSOs and A-Orgs must be service organizations.

It may be helpful to begin by defining service organizations by what they are not. Though tempting, the term here is generally not analogous with its common usage. It is not intended, for example, as shorthand for restaurants and hotels. (This is a frequent mistake!) The term is much broader, and any traditional ASG analysis should be guided by a methodical analysis of its meaning and applicability.

For these purposes, an organization is a "service organization" if it meets at least one of the following two alternative definitions[6]:

1. An organization is a service organization if it is in the field of health, law, engineering,

architecture, accounting, actuarial science, performance arts, consulting or insurance.

2. Even if an organization does not fit within one of the nine express categories above, it will still be a service organization if capital is not a material income-producing factor. This is determined based on all facts and circumstances.

The proposed regulations here give three examples to demonstrate this concept of capital as a material income-producing factor. First, capital is a material income-producing factor if a substantial portion of a business's gross income comes from investment of capital into things like inventories, plants, machinery or other equipment (meaning, such businesses would not be considered service organizations). Second, capital is a material income producing factor for banks and similar institutions (meaning, they also would not be considered service organizations). Third, capital is not a material income-producing factor if the business's gross income comes principally from fees, commissions and/or other compensation for personal services performed by an individual (meaning, such businesses would be considered service organizations).[7]

The application of these rules can lead to surprising outcomes. A restaurant, for example, derives a substantial portion of its gross income from selling inventory (food). Restaurants also generally make that gross income because they've invested capital into machinery and other equipment to fill the restaurant and make the food. Restaurants, therefore, are generally not service organizations for purposes of the ASG rules—even though a knee-jerk reaction might be to consider them as such.

Takeaway. The ASG rules are not as simple as they seem on the surface. Each instance of related employers should be considered carefully, and the rules should be applied methodically. If there is any uncertainty, confer with competent ERISA counsel to fully evaluate the issue. PC

Footnotes
[1] Code Section 414(m)(2)(A)
[2] Proposed Regulations Section 1.414(m)-1 (upon which taxpayers are entitled to rely)
[3] Code Section 414(m)(2)(B)
[4] Proposed Regulations Section 1.414(m)-2(c)(2) (upon which taxpayers are entitled to rely)
[5] Proposed Regulations Section 1.414(m)-2(c)(3) (upon which taxpayers are entitled to rely)
[6] Proposed Regulations Section 1.414(m)-2(f) (upon which taxpayers are entitled to rely)
[7] Proposed Regulations Section 1.414(m)-2(f)(1) (upon which taxpayers are entitled to rely)

INSECURE ABOUT SECURE

Feeling overwhelmed by SECURE 1.0 and SECURE 2.0? You're forgiven, as there are many provisions with which people are struggling. We can help. Here is a handy side-by-side comparison of the two, with expanded explanations. **By Kelsey Mayo**

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	SECURE 1.0	SECURE 1.0 Earliest Effective Date	SECURE 1.0 Section	SECURE 2.0	SECURE 2.0 Earliest Effective Date	SECURE 2.0 Section
529 Plans	Expands IRC Section 529 qualified tuition program accounts to cover costs associated with registered apprenticeships and qualified education loan repayments.	Applies to distributions made after Dec. 31, 2018	302	Tax and penalty free rollovers from 529 accounts to Roth IRAs, under certain conditions. Beneficiaries of 529 accounts permitted to rollover up to $35,000 (lifetime limit). Subject to Roth IRA annual contribution limits, and the 529 account must have been open for more than 15 years.	Distributions after 12.31.2023	126
Automatic Enrollment	Modifies the automatic enrollment safe harbor to raise the automatic escalation cap from 10% of pay to 15% of pay.	Plan years beginning after Dec. 31, 2019	102	New 401(k) and 403(b) plans must be EACAs. Required to automatically enroll participants at 3-10% and increase the rate by one percent per year to at least 10%, but no more than 15%. Employees would have at least 90 days to unenroll and take a distribution of any automatic deferrals. Must have EACA withdrawal provision. Does not apply to SIMPLE plans; applies to adoption of a MEP after enactment date (based on employers adoption, not effective date of MEP); does not apply to gov't or church plans. Small businesses with fewer than 10 employees, new businesses less than 3 years old, and churches and governments would be exempt.	Effective for plans established after December 29, 2022. Plans established between enactment and 1.1.2025 will have to add autoenrollment and auto escalation by 2025 PY.	101
DB: Funding	This provision provides pension funding relief for community newspaper plan sponsors by increasing the interest rate to calculate those funding obligations to 8%. Additionally, this bill provides for a longer amortization period of 30 years from 7 years. These two changes would reduce the annual amount struggling community newspaper employers would be required to contribute to their pension plan.	Applies to plan years ending after Dec. 31, 2017	115	Generally requires that for purposes of the minimum funding rules, a pension plan is not required to assume mortality improvements at any age greater than 0.78%. Effective after December 29, 2022.	Applicable laws applied as though IRS revised tables on December 29, 2022.	335
DB: INFORM Act				Disclosure requirements for lump sum windows plus reporting to DOL and PBGC (before and after the window). Report must be made publicly available.	Regulations not earlier than 1 year after enactment; regs applicable not earlier than 1 year after issuance.	342

DB: PBGC Premiums	In 2014, different funding rules were adopted for three types of pension plans: single-employer, multiemployer and cooperative and small employer charity (CSEC) plans. The legislation establishes individualized rules for calculating PBGC premiums. For CSEC plans, the legislation specifies flat-rate premiums of $19 per participant, and variable rate premiums of $9 for each $1,000 of unfunded vested benefits.	No effective date	206	No indexing of variable rate premium after 2023; flat $52	2024, PYB	349
DB: Testing Relief	Provides nondiscrimination testing relief for certain defined benefit plans that are closed to new entrants. The nondiscrimination testing relief includes benefits, rights and features relief for the closed participant class; benefit accrual relief for the closed participant class; and minimum participation requirement relief.	Effective on date of enactment, without regard to when the plans are modified	205	For 411(b) accrual rule tests, may use a reasonable projection of interest crediting rates; capped at 6%	2023, PYB	348
Distributions: Qualified Birth or Adoption	This provision creates a new waiver from the IRC Section 72(t) additional income tax on retirement plan distributions used for childbirth or adoption expenses up to $5,000.	Distributions made after Dec. 31, 2019	113	Limits recontribution of QBAD distribution to the three-year period beginning on the day after the distribution date. For QBAD already made, deadline is 12.31.2025	29-Dec-22	311
Group of Plans	Creates concept of a "Group of Plans" to permit separate single-employer plans with similar structures to file a consolidated Form 5500		202	Any 103(a)(3)(C) audit applies only to large plans	2022	345
IRAs: Increasing Contributions	Maximum Age: Repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70½.	Contributions and distributions made for tax years after Dec. 31, 2019	107	Indexing IRA catch-up limit: Catch-up contribution limit to IRAs for those aged 50 and over (currently $1,000) would be indexed to inflation after 2023 (base is 2022; intervals of $100).	2024, TYB	108

Long-term part-time (LTPT) worker	Except in the case of collectively bargained plans, the bill will require employers maintaining a 401(k) plan to have a dual eligibility requirement under which an employee must complete either a one year of service requirement (with the 1,000-hour rule) or three consecutive years of service where the employee completes more than 500 hours of service. In the case of employees who are eligible solely by reason of the latter new rule, the employer may elect to exclude such employees from testing under the nondiscrimination and coverage rules, and from the application of the top-heavy rules.	Applies to plan years beginning after Dec. 31, 2020; 12-month periods beginning before Jan. 1, 2021 shall not be taken into account	112	Requires part-time workers who work for at least 500 hours per year for two years to be eligible to make employee contributions to an employer's defined contribution retirement plan. Adds provision to ERISA, covering 403(b) plans. Such provision ignores service for vesting and eligibility prior to 2023. Changes 401(k) provision, to exclude vesting service prior to 2021. Effective 2025PY, but vesting change and top heavy exemption fix effective as if included in the enactment of section 112 of the Setting Every Community Up for Retirement Enhancement Act of 2019.	2025, PYB	125
Natural Disasters	This provision creates a waiver from the Section 72(t) additional income tax penalty for qualified disaster distributions from retirement plans up to $100,000. Individuals can spread income tax payment on the qualified disaster distribution ratably over a three-year period. Individuals are permitted three years to repay the distribution back into the retirement plan. Individuals who took a hardship distribution from a retirement plan for a first-time home purchase in the disaster area whose transaction was terminated due to the disaster is able to recontribute the amount back into the retirement plan without tax penalty. The loan limits on retirement plans subject to this relief can be increased from $50,000 to $100,000 and retirement plan loan repayment periods extended.	Applies to individuals who suffered losses in a qualified disaster area beginning after 2017 and ending 60 days after the date of enactment.	202 (of Division Q)	Permanent rules for qualified disasters. Provides permanent rules relating to the use of retirement funds in the case of disaster. Distributions are limited to $22,000 per disaster (rather than the usual $100K). May be repaid in 3-year period after distributions. Income inclusion spread over 3 years. Additionally, amounts distributed prior to the disaster to purchase a home would be permitted to be recontributed, and an employer would be permitted to provide for a larger amount be borrowed from a plan by affected individuals and for additional time for repayment of plan loans owed by affected individuals.	Effective for disasters occurring on or after January 26, 2021.	331

PEP: Pooled employer plans	Allows two or more unrelated employers to join a pooled employer plan. The one bad apple rule is eliminated with further guidance forthcoming. Designated pooled plan provider must be a named fiduciary, be responsible as the ERISA Section 3(16) plan administrator, must register with the DOL/IRS, with the ERISA bond limits increased to $1 million. Each adopting employer maintains responsibility for selection and monitoring of the pooled plan provider or any other named fiduciary. IRS and DOL have the authority to audit the pooled plan provider for Code and ERISA compliance.	PYB 2021	101	Permits PEP to designate a named fiduciary (other than an employer in the plan) to be responsible for collecting contributions. Other fiduciary required to implement written contribution collection procedures that are reasonable, diligent, and systematic. Prior to change, duty to collect and hold assets had to be a trustee approved under 408(a)(2).	2023, PYB	105
Plan Amendments: Retroactive Adoptions	Permits businesses to treat qualified retirement plans adopted before the due date (including extensions) of the tax return for the taxable year to treat the plan as having been adopted as of the last day of the taxable year. The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity for employees to receive contributions for that earlier year and begin to accumulate retirement savings.	Applies to plans adopted for tax years beginning after Dec. 31, 2019	201	May amend plan to increase benefits accrued under the plan as of any date in the preceding plan year (other than increasing the amount of matching contributions) as long as it would not otherwise cause the plan to fail to meet any of qualification requirements and the amendment is adopted before the time prescribed by law for filing the return of the employer for a taxable year (including extensions) during which the amendment is effective.	2024, PYB	316
Plan Amendments: To Conform with Act	Provides for a remedial plan amendment period until the 2022 plan year (2024 plan year for Section 414(d) governmental plans) or a later date if Treasury provides. Extended under SECURE 2.0.	No effective date	501	This provision allows plan amendments made pursuant to this bill to be made by the end of 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. Also extends SECURE 1.0 and CARES	2025, Dec 31	501
RMDs: Rules for designated beneficiaries	Modifies the required minimum distribution rules with respect to DC plan and IRA balances upon the death of the account owner. Under the legislation, distributions to individuals other than the surviving spouse of the employee (or IRA owner), disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or child of the employee (or IRA owner) who has not reached the age of majority are generally required to be distributed by the end of the 10th calendar year following the year of the employee or IRA owner's death.	Applies to distributions with respect to employees who die after Dec. 31, 2019	401	Surviving spouse election to be treated as employee. Allows a surviving spouse to elect to be treated as the deceased employee for purposes of RMDs. Effective after 2023.	2024	327

RMDs: Special Needs Trust				Clarifies that that in the case of a special needs trust established for a beneficiary with a disability, the trust may provide for a charitable organization as the remainder beneficiary.	Effective for CYs after December 29, 2022.	337
Safe Harbor Plans	The safe harbor notice requirement for nonelective contributions is eliminated, but maintains the requirement to allow employees to make or change an election at least once per year. The bill also permits plan sponsors to switch to a safe harbor 401(k) plan with nonelective contributions at any time before the 30th day before the close of the plan year. Amendments after that time would be allowed if the amendment provides (1) a nonelective contribution of at least 4% of compensation (rather than at least 3%) for all eligible employees for that plan year, and (2) the plan is amended no later than the last day for distributing excess contributions for the plan year, that is, by the close of following plan year.	Plan years beginning after Dec. 31, 2019	103	New Starter(k) Safe Harbor: Permits an employer that does not sponsor a retirement plan to offer a starter 401(k) plan (or safe harbor 403(b) plan). Requires that all employees be default enrolled in the plan at a 3 to 15% of compensation deferral rate. Could exclude union, non-resident aliens, and age/service excludable. No employer contributions permitted. The limit on annual deferrals is $6,000 with an additional $1,000 in catch-up contributions beginning at age 50. Indexed after 2024. There would be no ADP test or top-heavy test.	2024, PYB	121
Tax Credit: Small Employer Pension Plan Start-up Credit	Increases the credit by changing the calculation of the flat dollar amount limit on the credit to the greater of: (1) $500, or (2) the lesser of: (a) $250 for each employee of the eligible employer who is not a highly compensated employee and who is eligible to participate in the eligible employer plan maintained by the eligible employer, or (b) $5,000. The credit applies for up to three years.	Tax years beginning after Dec. 31, 2019	104	Establishes a new credit and expands an existing credit. Startup credit increased to 100% for companies with 50 or fewer employees. The existing cap of $5,000 per employer would be retained. The new credit offsets up to $1,000 of employer contributions per employee in the first year, phased down gradually over 5 years. Applies to companies with 100 or fewer employees, however, it is phased out for those with more than 50 employees. No credit for contributions to any employee making more than $100k (indexed after 2023). No deduction for contribution qualifying for credit.	2023, TYB	102

To see the full table, click here.

ANONYMOUS NOW: THE IRS' ANONYMOUS REVIEW PROCESS

Before approaching the IRS with an error that may lead to plan disqualification, consider approaching them anonymously. **By Brandon Long & Brian Beatty**

Our Spring 2023 article mentioned that if you are responsible for administering your employer's 401(k) plan, mistakes will happen that cause plan failure. The good news is that you may use the IRS Employee Plans Compliance Resolution System (EPCRS) to fix mistakes, as long as the correction is reasonable and appropriate. It resembles one of the described EPCRS correction methods.[1]

EPCRS is an excellent tool for fixing common plan errors, but what do you do if you encounter a failure that can't be fixed using the described EPCRS correction method, or if you want to use a different correct method? Do you need to come forward to the IRS with your hat in hand, confessing your sins, in order for the IRS to issue a favorable compliance statement? Well, yes, but what if the error is so significant that if the IRS says no to your proposed correction method, it could financially bankrupt the plan sponsor? Or what if the error appears so significant and complex that it's impossible to fix—so that the only possible course of action appears to be plan disqualification? You might first consider approaching the IRS anonymously. This anonymous option allows the plan administrator to "flush out" potential correction methods with the IRS while maintaining the plan sponsor's ability to walk away anonymously. While the IRS has done away with the old anonymous VCP filing process, you can nonetheless use the anonymous pre-submission conference process.

“THIS ANONYMOUS OPTION ALLOWS THE PLAN ADMINISTRATOR TO “FLUSH OUT” POTENTIAL CORRECTION METHODS WITH THE IRS WHILE MAINTAINING THE PLAN SPONSOR’S ABILITY TO WALK AWAY ANONYMOUSLY.”

THE OLD ANONYMOUS VCP SUBMISSION PROCESS[2]

On Dec. 31, 2021, the IRS phased out the anonymous Voluntary Correction Program (VCP) submission program. That former program allowed plan administrators to submit VCP submissions that involved alternative ways to correct plan errors under EPCRS without revealing the identity of the plan sponsor. This allowed plan sponsors to negotiate the correction with the IRS. If the IRS agreed with the correction method, you could come forward, reveal the identity of the plan sponsor and request a favorable compliance statement. And, if you did not come to an agreement with the IRS, you could walk away while still maintaining the plan sponsor’s anonymity—albeit without a compliance statement. This option gave plan administrators much flexibility but was replaced with the VCP pre-submission conference process.

THE CURRENT VCP PRE-SUBMISSION CONFERENCE PROCESS[3]

Effective Jan. 1, 2022, prior to submitting a VCP application, a representative of a plan sponsor may request an anonymous VCP pre-submission conference regarding corrective actions with respect to any failure that is eligible to be submitted under VCP.

A VCP pre-submission conference may be requested only:

1. For matters on which a compliance statement may be issued.
2. With respect to requested correction methods that are not described as safe harbor correction methods.
3. If the plan sponsor is eligible and intends to submit an application under VCP.

VCP pre-submission conferences are held only at the discretion of the IRS and as time permits.

The plan sponsor’s representative must submit the VCP pre-submission conference request via the pay.gov website by submitting Form 8950, Application for Voluntary Correction Program (VCP) Submission under EPCRS. The request should also include the following:

4. A description of the failure(s), including how and why the failure(s) occurred.
5. A description of the proposed method(s) of correction.
6. A description of all relevant facts, including the type of affected participants (for example, highly compensated employees or non-highly compensated employees).
7. Plan provisions and amendments that are relevant to the request.
8. Any other information IRS would need to evaluate the request.

At the conference, IRS will provide the representative of the plan sponsor with oral feedback regarding the failure(s) and proposed correction method(s) described in the request. However, any discussion of substantive issues at the conference is advisory only, is not binding and cannot be relied upon as a basis for obtaining relief under EPCRS. After the conference, IRS will provide written confirmation that the conference took place, and the matter will be closed. If the plan sponsor subsequently files a VCP submission regarding the issues discussed, the plan sponsor must follow the procedures for a VCP submission.

PRACTICE NOTE:

The new pre-submission conference is relatively new, but we have found it extremely helpful so far because it allows you to explore alternative correction methods with the IRS without committing the plan sponsor to one specific correction method. This is particularly helpful when the described EPCRS correction method would otherwise certainly result in a significant financial outlay for the plan sponsor. Simply having the opportunity to hear the IRS provide feedback and/or offer “outside the box” alternatives can be very helpful.

Navigating this process can be challenging, so we recommend you work closely with your consultants and advisors or contact us if you have any questions. PC

Footnotes
[1] Rev. Proc. 2021-30 Section 6.02(2).
[2] Rev. Proc. 2019-19 Section 10.09.
[3] Rev. Proc. 2021-30 Section 10.01(1) through (3).

RECORDKEEPERS: STOP REJECTING EXCESS DEFERRALS

Finding a better solution to for excess deferrals starts with consistent practices, and that starts at the source—payroll. **By Amy Ouellette**

Over the years, I've worked with a mix of daily-valuation recordkeepers and balance-forward pooled plans. One (inconsistent) practice I've observed that I'd like to see stopped: rejecting plan deposits from participants who have met or exceeded the annual limits for individual 401(k) contributions. Allow me to make the case for why this practice harms the participants and what a better practice might be.

But first, why does this issue need to be solved at all? There are multiple parties involved in managing a typical 401(k) plan, and in roles as both TPA and Recordkeeper, I've had inquiries from clients asking why we did not prevent their employees from saving too much in their plan. Making a plan contribution beyond the IRS annual limit is, understandably, distressing, since it can result in extra taxes if not timely corrected, and correcting the issue may take multiple steps with tight tax-time deadlines. That said, the priority should be to stop excess contributions at their source—in payroll.

CONCERN NO. 1 - REJECTED EXCESSES NOT FINDING THEIR OWNER

When a recordkeeper rejects participants' deposits, there is risk in the process that participants will either not get their payroll deductions returned to them, and/or their tax reporting will not be correct, causing further confusion and filing challenges.

As background, when a company submits a payroll file to the recordkeeper in order to process contributions, the payroll has likely already run (or is locked to further editing); the employee has already had this money deducted. The intended plan contributions sit in the employer's bank account until the recordkeeper pulls the funds. If the recordkeeper's system fails to pull those deduction amounts in full, the money stays in the employer's bank account.

My fear is that, even with well-crafted notifications and instructions to employers, a recordkeeper that rejects deposits to the trust is wholly relying on the employer to timely see and act upon those instructions to refund the impacted employee. The employer would need to reverse the excess deduction in a special payroll or the next payroll cycle, adjusting the payroll records within the same year and applying the required tax withholding against those amounts.

This can easily go wrong in many ways:

- Out of confusion or lack of awareness, the employer does not process the reversal and, in effect, keeps the employee's deferrals.
- The excess deferral is rejected near year-end and the employer fails to reverse the deduction in the same calendar year. The W-2 would still reflect the excess deduction in the offending year; if reversed in the following year, the tax reporting would be further complicated.
- The employer tries to correct it by issuing a company check to the employee outside of payroll, but the payroll system and W-2 will still reflect the excess deferrals and the employee would have incorrect reporting and withholdings applied.

Employers have a full plate beyond managing payroll adjustments and their 401(k) plan alerts, further compounded by the hands-off expectation when using payroll integrations. Not only do these rejections cause them extra effort, but they could put the participant in a worse position.

CONCERN NO. 2 - ACCURACY OF RECORDS CAUSING REJECTION

Recordkeepers rely on the data provided to them. Yet, they can, and often do, get inaccurate or incomplete reporting from employers—or data from prior recordkeepers that do not align to their intended use. For example, if the employer changes recordkeepers during the year, the new recordkeeper may receive year-to-date financial activity on a trade-date basis, which include deposits from December completed in January. If the new recordkeeper relies on this data as if it matches payroll year-to-date contributions, the new recordkeeper could mistakenly reject a participant's contribution later in the year as excessive.

The employer may also submit census files with an incorrect date of birth, resulting in inaccurate allowance for catch-up contribution limits. Recordkeepers generally will not, out of concern for being characterized as a fiduciary, make a determination about the accuracy of these records.

WHY TIMELY CORRECTIVE WITHDRAWALS ARE BEST PRACTICE

One argument recordkeepers make for rejecting the excess deposits is to avoid the process and tracking of corrective distributions. That practice, however, only eliminates one very specific type of corrective withdrawals: refunding excess deferrals within the same plan (401(a)(30) limit), with the added risks noted above. It does not eliminate the need for 402(g) limit corrective withdrawals for participants who realize they saved too much over multiple plans during the same year, nor other plan corrective withdrawals. With these other deadline-driven withdrawals for which providers need better processes and tooling, the potential benefit of avoiding a few more excesses and withdrawals is outweighed by the risks and harm to the participants.

Further, the tax treatment is arguably cleaner with standard cash flowing from payroll to plan trust and reportable distributions. The payroll system provides a W-2 that matches what actually happened in terms of withholdings from pay; the trust's 1099-R likewise matches what actually happens in terms of refunded excess amounts (reportable for the year of excess) and associated earnings (taxable in the year of distribution). The employee is capped in terms of deductible contributions for the year of excess, they receive the excess amounts back from the trust and the tax reporting matches the cash flow.

PROCESS AND PLATFORM IMPROVEMENT CONSIDERATIONS

Employers, employees and recordkeepers all benefit from simplifying efforts and getting things right the first time. To this end, there are steps providers can take to mitigate the risk of excess deferral deposits.

- **Conversion-year and ongoing year-to-date data collection**
  When changing recordkeeping platforms, processes or tooling can include a review by the employer to confirm that year-to-date activity from the prior provider matches the actual payroll for the year and does not include prior year deposits. My preference, though, is to focus on getting regular or periodic updates of year-to-date payroll records to verify cumulative information provided to the recordkeeping platform on an ongoing basis. This can be used for additional validations between payroll and recordkeeping platforms, such as identifying missing service records, payroll cycles and bonuses not submitted, as well as payroll adjustments not reported to the recordkeeper.

- **Monitoring and alerting for approaching limits**
  Recordkeepers can help participants by calculating the date they might exceed the annual limit and notifying them with increasing urgency as that limit approaches. For employees who joined their company mid-year, or even for those with multiple jobs, consider how you can help them input year-to-date savings in other jobs to monitor total savings for the year. Make it easy in their portal to cut off their election once they reach the limit. Similarly, show employers, advisors and TPAs in their plan dashboards the employees' approaching limits so they can assist with employee outreach and payroll updates. Employers should also verify whether or no their payrolls will appropriately cap deferrals by default, or it they must manually set or monitor deferral limits.

- **Alerting with simplified actions for exceeding limits**
  If excess deposits are detected, consider simple email- or platform-based tasks for employers to first confirm the excess aligns to their payroll, then timely approve a corrective distribution. Similarly, alert impacted employees to have them set their deduction to 0% in one step (e.g., an email one-touch approval).

If the alerting and tracking is clear to all users involved, we can reduce the agita around this topic!

DEADLINES FOR CORRECTIONS

It's important to remind employers that failing to limit employee deferrals is a correctable operational failure. If recordkeepers provide them with straightforward processing notifications, timelines and tools, they can rest assured that exceeding deferral limits can be painlessly corrected by the April 15 deadline. This is a better outcome than a confused participant who never receives their excess deduction back or gets conflicting reporting of taxable events. PC

PBGC FINANCIAL ASSISTANCE… RULES!

You can request PBGC approval on an exception from withdrawal liability conditions. Of course, that comes under specific circumstances. **By John Iekel**

Two years ago, the Pension Benefit Guaranty Corporation (PBGC) issued an interim final rule implementing a Special Financial Assistance (SFA) Program for financially troubled multiemployer pension plans. One may reasonably assume that means the end is nigh, at least of further regulations in that vein. But one would be wrong.

The PBGC has not been content to leave well enough alone.

BUT FIRST…

On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) was enacted. Among its many effects was adding Section 4262 to ERISA, which created the SFA Program administered by the PBGC.

The PBGC scrambled to ready the SFA Program, which is intended to provide eligible multiemployer pension plans with assistance for those plans to pay all benefits due during the period beginning on the date of payment of SFA through the plan year ending in 2051. It quickly drafted SFA regulations, provided guidance for multiemployer plans, established an SFA application review process and launched the program.

RULES APLENTY

On July 9, 2021, it issued an interim final rule setting forth the requirements for SFA applications and related restrictions and conditions in accordance with ARPA.

The rule:

- set forth what information a plan is required to file to demonstrate

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- eligibility for SFA and the formula to determine the amount of SFA that the PBGC will pay to an eligible plan;
- outlined a processing system, which will accommodate the filing and review of many applications in a limited amount of time; and
- specified permissible investments for SFA funds and establishes certain restrictions and conditions on plans that receive SFA.

One year later (almost exactly, on July 7, 2022), the PBGC issued a final rule setting forth the requirements for SFA applications and related restrictions and conditions in accordance with the ARP and applicable to plans that apply or have applied for special financial assistance. More specifically, this rule set forth the requirements for SFA applications and related restrictions and conditions in accordance with ARPA.

Under the final rule, for a plan that received SFA under Section 4262 of ERISA (which creates a program to enhance retirement security by providing SFA to financially troubled multiemployer plans and sets forth the provisions for SFA) before this PBGC rule is effective:

- ERISA Section 4262.14 will not apply unless and until the plan files a supplemented application. Before the date that the plan does so, the rules under Section 4262.14 in effect before the rule is effective apply to the plan.
- ERISA Section 4262.16(g)(2) also will not apply unless the plan files a supplemented application under this final rule. If the plan does so, Section 4262.16(g)(2) applies to the plan in determining withdrawal liability for withdrawals occurring on or after the date the plan files the supplemented application.

The PBGC on Jan. 25, 2023 announced yet another final rule, this one amending the SFA regulation to add an exception process for certain withdrawal liability conditions that apply to a plan that receives SFA.

It did so in response to public comments it received concerning the SFA final rule it issued the previous July. This latest final rule:

- sets forth what information a plan is required to file to demonstrate eligibility for SFA and the formula to determine the amount of SFA that the PBGC will pay to an eligible plan;
- outlines a processing system, which will accommodate the filing and review of many

"THE PBGC IS ADDING A PROCESS BY WHICH A PLAN SPONSOR CAN REQUEST PBGC APPROVAL FOR AN EXCEPTION FROM THE WITHDRAWAL LIABILITY CONDITIONS UNDER SPECIFIC CIRCUMSTANCES."

applications in a limited amount of time; and
- specifies permissible investments for SFA funds and establishes certain restrictions and conditions on plans that receive SFA.

One commenter had asked the PBGC to grant exceptions from, or modifications to, the withdrawal liability conditions for plans that have unique facts and circumstances — such as a plan that uses an alternative withdrawal liability allocation method—if applying the condition to the plan would result in a lower assessment of withdrawal liability, thereby encouraging contributing employers to withdraw.

After considering the comment, the PBGC determined that adding a process for a plan to request an exception from the withdrawal liability conditions under narrow circumstances is reasonable. Accordingly, the PBGC is adding a process by which a plan sponsor can request PBGC approval for an exception from the withdrawal liability conditions under specific circumstances.

Under the exception process, a plan sponsor may request an exception from the withdrawal liability conditions by demonstrating to the satisfaction of PBGC that the exception lessens the risk of loss to plan participants and beneficiaries and does not increase expected employer withdrawals. The plan sponsor must also demonstrate that the exception does not increase the amount of the plan's SFA or unreasonably increase the PBGC's risk of loss. The plan sponsor or its duly authorized representative must submit a request for PBGC approval of an exception, and it must contain required identifying, actuarial and financial information.

A request for an exception from the withdrawal liability conditions may be submitted to PBGC either before the plan's initial application for SFA is filed or before a revised application is filed. The PBGC encourages a plan sponsor requesting an exception to have a pre-submission consultation with the agency first.

When an application for SFA is prepared, a plan must take plan assets into account in determining the amount of requested SFA. This includes withdrawal liability payments made and expected to be made to the plan during the SFA coverage period taking into account a reasonable allowance for amounts considered uncollectible. Accordingly, if a plan sponsor submits a request for an exception from the withdrawal liability conditions, the plan's application for SFA must take the exception into account in the determination of the withdrawal liability payments expected to be made to the plan and the amount of requested SFA.

The PBGC adds that the exception process added by this final rule is separate from the SFA application process.

MORE TO COME

The PBGC said that two of the comments on the July 2022 final rule requested it review the impact on the assessment of withdrawal liability when a plan that receives SFA is deemed to be in critical status through 2051. One suggested that the PBGC add a condition to require plans that receive SFA to include contribution increases under a rehabilitation plan for withdrawal liability purposes.

The PBGC says this issue raises interpretive issues about Sections 305(g)(3), 305(d)(1)(B) and 305(f)(1)(B) of ERISA, over which the Secretary of the Treasury has interpretive jurisdiction under Section 101 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App.). The PBGC says it is continuing to examine these issues with the Department of the Treasury and, if appropriate, may issue additional guidance if it is appropriate to do so.

OIG's Two Cents. The Office of the Inspector General (OIG) in February 2023 issued a report that adds to the "to-do" list. The OIG found that the PBGC did not conduct all the analyses and assessments that it could have before implementing the program. The OIG suggests that even with the adjustments it has made, the PBGC may have been a bit hasty in crafting the SFA program and implementing its rules. They say that the PBGC did not:
- formally assess and document fraud risks;
- sufficiently define risk tolerances;
- establish review procedures for exceptions;
- formalize final review procedures; nor
- design a control that would ensure timely review of SFA applications.

The PBGC's Office of Negotiations and Restructuring, which oversees much of the review process for SFA applications, did not conduct a fraud risk assessment for the SFA program and specifically document procedures to effectively mitigate potential fraud. A formal fraud risk assessment, the OIG says, might have uncovered additional strategies to mitigate risk. Without such an assessment and other fraud strategies, the OIG warns that the PBGC is at risk for fraud. In addition, it says, eligibility risks will increase as the window opens for multiemployer plans that are not part of a priority group.

Therefore, says the OIG, "current procedures are not sufficient to ensure timely delivery of accurate SFA amounts to eligible plans." Further, it says that while procedures "are adequate for identifying plans eligible for SFA in priority groups," additional procedures are needed as the period for assisting those priority groups ends.

The OIG made eight recommendations for actions that the PBGC Office of Negotiations and Restructuring should pursue to improve the SFA program.

1. Conduct a fraud risk assessment for the SFA program.
2. Develop mitigation strategies for risks that require remediation.
3. Develop procedures to detect multiemployer plans that may manipulate ratios to qualify for SFA.
4. Develop procedures for review of changed assumptions that affect the SFA amount by a threshold percentage.
5. Develop procedures to review certain changed assumptions to ensure in-depth analysis and review of exceptions, as well as consistent review of historical data for outliers, one-time items and other anomalies.
6. Develop procedures for reviewing the impact of inflation on administrative expenses.
7. Develop and document procedures for management reviews of the concurrence package for SFA applications.
8. Review the control for timeliness to help ensure that the SFA application review process is completed in 120 days.

The OIG reports that the PBGC has agreed with the recommendations. Further, the PBGC Office of Negotiations and Restructuring plans to take the following steps:

Step	When the PBGC Plans to Complete it
Conduct a formal fraud risk assessment	June 30, 2023
Develop and implement mitigation strategies for risks requiring remediation	Sept. 30, 2023
Refine procedures to better document eligibility review procedures	June 30, 2023
Develop and add procedures for additional review of certain changed assumptions that affect SFA amount by a threshold percentage	June 30, 2023
Design specific procedures documenting the appropriate analysis and review that should be conducted on exceptions, outliers, and anomalies	Sept. 30, 2023
Document procedures for reviewing the impact of inflation on administrative expenses and saving supporting documentation in the case file	June 30, 2023
Develop and document procedures for management's final review of SFA applications	June 30, 2023
Review the control to ensure timely processing of applications	June 30, 2023

OIG Not Alone. The OIG is not the first agency to issue a cautionary report concerning the still-new SFA Program. In a Sept. 30, 2022, letter to Rep. Virginia Foxx (R-NC), then Ranking Member of the House Education and Labor Committee, and Rep. Jason Smith (R-MO), then Ranking Member of the House Budget Committee, the Congressional Budget Office (CBO) said that it expected that the SFA Program would cost $90 billion in a decade. Its findings included those adjustments the PBGC made to its SFA procedures in 2022 that included the use of the lower assumed rate of return, which would result in lower total assumed earnings on SFA assets—and, therefore, a larger amount of total assistance through the program.

SO FAR

In its Fiscal Year (FY) 2022 Annual Report, the PBGC reports that during FY 2022, the PBGC paid $7.5 billion through the SFA program. "The agency remains committed to implementing the Special Financial Assistance Program and ensuring that millions of America's workers, retirees and their families receive the pension benefits they earned through many years of hard work," Hartogensis said in a press release regarding the report. PC

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LATEST UPDATES FOR 403(b) PLANS

WITH MANY PLANS NEEDING HELP WITH RISING INFLATION THE PAST FEW YEARS, LIMITS ARE SEEING DOUBLE THEIR NORMAL INCREASES.

BY RUSSELL LINDERER

WHEN I FIRST STARTED IN THE RETIREMENT PLAN FIELD, I WORKED IN A SMALL THIRD-PARTY ADMINISTRATION FIRM THAT ORIGINALLY PROVIDED SERVICES TO 401(K) PLANS AND THEN ADDED 403(B) PLANS YEARS DOWN THE ROAD. AT THAT TIME, THE BUILDING WAS A STRIP MALL CONVERTED INTO OFFICE SPACE. EACH 'BUILDING' HOUSED DIFFERENT DEPARTMENTS.

Because of how different the two plan types were, the 401(k) consultants were on one end of the building, and the 403(b) consultants were on the opposite side. Over time, the 403(b)-team started slowly moving across the building until they were among the various 401(k) teams. This parallels one of the themes of Congress over the years: decreasing the differences between 401(k) and 403(b) plans. The latest batch of legislation is no different. In addition, there has been more of a shift at both the federal and state levels to encourage and/or force employees to set aside something for retirement. Hence, they are not solely dependent on Social Security.

The IRS released the new plan limits in Notice 2022-55 on Oct. 21, 2022. To your average American worker, these increases garner about as much excitement as having one's annual physical. Still, to employees who regularly contribute near or at the limits, this is a huge boon to their potential retirement savings. This year's change was the largest since the limits indexed to inflation in 2007.

- The contribution limitation under §415(c)(1)(A) increased from $61,000 to $66,000 ($5,000 or 8.20% increase).
- Elective deferral limits rose from $20,500 to $22,500 ($2,000 or 9.75%).
- The annual compensation limit under several code sections (namely 401(a)(17)) went up from $305,000 to $330,000 ($25,000 or 8.2%).
- Catch-up contributions went from $6,500 to $7,500 ($1,000 or 11.9%).
- The compensation limit for determining highly compensated employees rose from $135,000 to $150,000 ($15,000 or 11.1%).

These are double the normal increase that has been the norm for the last ten years or more. This should help catch plan limits up to the heightened inflation of the past few years.

At the end of 2022, Congress gifted America a late holiday present in the form of the Consolidated Appropriations Act of 2023, the whale-like omnibus spending bill signed on Dec. 29, 2022. Division T of the Act gave us the Setting Every Community Up for Retirement Enhancement Act of 2022, or SECURE 2.0. These 359 pages represent one of the largest blocks of changes to 403(b) plans since the final 403(b) regulations were made effective back in 2008. While many of these changes are fairly minor, there are several that will necessitate much more work and cooperation among Plan Sponsors, service providers and participants.

AUTOMATIC ENROLLMENT EXPANSION - §101

Plan Years Beginning On/After Jan. 1, 2025

To help mitigate the retirement gap many Americans face, any new plans adopted after the effective date must include an eligible automatic enrollment feature (EACA). Plan Sponsors have the discretion to select a starting amount between 3% and 10%. The rate must increase by 1% each year to a 10-15% cap. As with the current automatic enrollment regulations, participants still have the ability to opt out, and they are able to take a permissive withdrawal within 90 days of the first automatic deferral. Government and church plans are exempt from this section. Plan Sponsors will need to be comfortable with how the process works with their internal systems to ensure all of the moving pieces happen as they should. Thankfully, with the enhancements made to EPCRS, more remedies are available to fix automatic enrollment issues.

SAVER'S MATCH - §103

Participant Taxable Years Starting After Dec. 31, 2026

The Savers Credit on your personal income tax is being repealed and replaced with a form of a matching contribution from the U.S. Treasury starting in 2027. It is a 50% match of a retirement plan or IRA contribution up to $2,000 per individual. The match phases out above certain modified adjusted gross income limits. These funds have to be accounted for separately in the plan as they are fully vested, treated like deferrals for distribution restrictions but not eligible for hardship, and they do not count toward contribution limits. Plan Sponsors have the option to allow these contributions into the plan. While certain guidance will be forthcoming, it would make sense that if the plan didn't

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allow these contributions, a participant would need to open an IRA to hold these funds.

MULTIPLE EMPLOYER 403(B) PLANS - §106

Plan Years Beginning On/After Jan. 1, 2022

Multiple Employer Plans (MEPs) have already been assumed to be available to 403(b) plans for some time now. SECURE 1.0 made it easier and safer to form MEPs with its "one bad apple" and more lenient exemptions to the audit requirements. SECURE 2.0 takes it one step further and explicitly allows 403(b) plans, with the exception of church plans, to participate in MEPs and PEPs (Pooled Employer Plans).

CHANGE IN RMD AGE - §107

Jan. 1, 2023 And Jan. 1, 2033

Congress wants participants to actually use their accumulated wealth to live on in retirement rather than use the account to leave a large inheritance to a beneficiary. The current Requirement Minimum Distribution age sits at 72, up from the 70 ½ it started as. With SECURE 2.0, they are pushing the age further out again to age 73, effective Jan. 1, 2023, and then age 75, on Jan. 1, 2033.

ADDITIONAL CATCH-UP DEFERRALS - §109

Plan Years Beginning On/After Dec. 31, 2024

Starting in 2025, plans that allow for the regular Age 50 catch-up will also have to allow a larger catch-up amount to those participants turning ages 60, 61, 62 or 63. This amount will be greater than $10,000 or 50% more than the normal catch-up amount for 2024. For 2026 and beyond, it will be indexed similarly to the other various plan limits.

STUDENT LOAN PAYMENT MATCH - §110

Plan Years Beginning On/After Jan. 1, 2023

Student loans have been a hot topic over the last year, with many Americans, especially young Americans, having to choose to make loan repayments over contributing to their retirement. There are many calculators out there that can show the damage a delay can cause. For a quick example, a person delays starting their retirement contributions for five years while they pay off the loan. Once the loan is satisfied, they start deferring $500 per month. Based on a 6% rate of return and 45 years working, that's $359,000 they don't have at retirement. Depending on their lifestyle and inflation, that represents a few years of retirement they can't afford. The IRS is aiming to mitigate this by giving plan Sponsors the ability to treat these loan payments as deferrals for calculating matching contributions. Employees that are getting the match due to loan payments are able to be tested separately for non-discrimination. However, the group this will most likely benefit is the non-highly compensated employees.

SMALL INCENTIVES TO CONTRIBUTE - §113

Plan Years Beginning On/After Dec. 30, 2022

Employers were previously not allowed to condition any benefits on a participant deferring, with the exception of matching contributions. In order to increase participation, a small, de minimis item is allowable, such as a gift card. I can't wait to start seeing "I Deferred" T-shirts and tote bags.

EMERGENCY WITHDRAWALS - §115

Distributions After Dec. 31, 2023

An additional allowable withdrawal is being added for "emergency personal expense." Only one is allowed per year, can take up to the lesser of $1,000 or vested balance less than $1,000, and can be repaid. No new emergency withdrawals are allowed for three years unless it is repaid. This distribution is exempt from the 10% early withdrawal penalty.

AUTOMATIC PORTABILITY - §120

Distributions After Dec. 29, 2023

Plan Sponsors are allowed to force out small balances, usually to an IRA, without participant consent. This prohibited transaction exemption allows the IRA to automatically roll into the plan of the participant's new employer. This will help keep the assets with the person but will require a lot of cooperation among employers and recordkeepers to have all the information necessary to facilitate these moves.

SAFE HARBOR DEFERRAL-ONLY 403(B) PLAN - §121

Plan Years Beginning On/After Dec. 31, 2023

This section allows an employer not currently sponsoring a retirement plan to set up a safe harbor deferral-only 403(b) plan with employees enrolled at a default 3-15% deferral rate. The limits, however, are the IRA limits of $6,000 with an available $1,000 in catch-up.

LONG TERM PART TIME COVERAGE - §125

Plan Years Beginning On/After Dec. 31, 2024

The LTPT rules laid out in SECURE 1.0 get accelerated here, reducing the required 12-month periods with at least 500 hours from three consecutive years to two and also applying it to 403(b) plans. Now Plan Sponsors will need to be more diligent to catch those who work over 1,000 hours in one year or have two consecutive years over 500 hours to ensure they enter the plan timely.

EMERGENCY SAVINGS ACCOUNT - §127

Plan Years Beginning On/After 2023

It is inevitable that at some point, everyone will have an unexpected expense pop up that strains them financially, whether that be an air conditioner blowing smoke, a car radiator leak or some other calamity. The ESA is meant to be a stop-gap measure, so employees don't turn to their long-term retirement plan for funds. Employers can opt for non-highly compensated employees at up to 3% compensation. The account caps out at a maximum of $2,500. They are treated similarly to Roth deferrals and are subject to matching contributions. The first four distributions from this account each year cannot be subject to fees.

EXPANDING FUNDING CHOICES - §128

After Dec. 29, 2022

Before SECURE 2.0, 403(b) plans were limited to investing in annuities or mutual funds. This greatly limits the breadth of available investment options to the non-profit and governmental space. This restriction has been eased in allowing 403(b) plans to participate in Collective Investment Trusts (CITs). However, securities regulations must still catch up to allow CITs to be held by 403(b) plans.

RECOVERING OVERPAYMENTS - §301

Effective Dec. 29, 2022

An overpayment often won't be discovered for some time after it takes place. ERISA required the Plan Sponsor to make a good faith effort to recover those funds and make the plan whole, which could be difficult to impossible to do. SECURE 2.0 allows Sponsors to not go after overpayments as long as the plan is kept whole somehow.

RMD PENALTY REDUCTIONS - §302

Tax Years After Dec. 31, 2022

The penalty for failing to take an RMD is reduced from 50% to 25% of the missed amount. It can be reduced to 10% if the correction is made by the end of the second taxable year after the year in which the tax is imposed.

RETIREMENT SAVINGS LOST & FOUND - §303

By Dec. 30, 2024

The Department of Labor has been tasked to form a national database to help participants find lost retirement accounts due to employers moving, changing names, going out of business, mergers, etc.

FORCE OUT DISTRIBUTION INCREASE - §30

After Dec. 31, 2023

Raises the maximum plan balance that can be moved to an IRA without participant consent from $5,000 to $7,000.

EPCRS UPDATES - §305

Stay Tuned

The IRS has been given the directive to update EPCRS to add more errors that are eligible for the Self Correction Program (SCP), expand loan corrections and add IRA corrections. Additionally, SCP corrections now no longer have a time limit, as long as the IRS isn't already aware of the error or it isn't corrected within a reasonable time after discovery. We'll have to wait for the newest EPCRS revenue procedure to see what these look like.

HARDSHIP SELF-CERTIFICATION - §312

Plan Years Beginning After Dec. 29, 2022

Plan Sponsors can now rely on participants' self-certification that their hardship satisfies the requirements. This change was brought about by how well the COVID distribution process worked. SECURE 2.0 did include provisions for when the Sponsor knows that the self-certification is invalid (attempting to take hardship to buy a new car, for instance) but defers to the IRS in creating the regulations to deal with those cases.

DOMESTIC ABUSE WITHDRAWALS - §314

After Dec. 31, 2023

Participants who self-certify that they have experienced abuse can take the lesser of $10,000 or 50% of their account balance. This distribution is not subject to the 10% early withdrawal penalty. The participant has up to three years to repay it to recoup the income taxes assessed against it.

REDUCTION OF PLAN REQUIREMENTS FOR UNENROLLED PARTICIPANTS - §320

Plan Years Beginning On/After Dec. 31, 2022

ERISA has been revised to allow plans to reduce the number of notices sent out to the participant after the initial disclosures required upon meeting eligibility. They do have to provide an annual notice that reminds the participant that the plan does exist, they are eligible to participate and shows the key benefits and rights available under the plan, such as contribution types and vesting.

TERMINAL ILLNESS EXEMPTION TO EARLY WITHDRAWAL PENALTY - §326

On/After Dec. 30,2022

Distributions made to participants who have a terminal illness certified by a physician are exempt from the 10% early withdrawal penalty.

FEDERAL DISASTER WITHDRAWAL - §331

On/After Jan. 26, 2021

Distributions up to $22,000 in connection with federally declared disasters are not subject to the 10% early withdrawal tax and are includable in income over three years. Amounts can be repaid back into a retirement account. Amounts distributed prior to a disaster to purchase or build a home can be contributed–i.e., if the development you were building in was flooded and you decided to move to the hills, instead, the funds can be put back in the plan.

PAPER STATEMENT - §338

Plan Years Beginning in 2025

The plan is required to provide at least one paper statement per year unless the participant affirmatively elects electronic delivery.

SAFE HARBOR AUTOMATIC ENROLLMENT FAILURE SUNSET DATE - §350

Failures Occurring On/After Jan. 1, 2024

The original safe harbor correction sunset date for automatic enrollment failures was Dec. 31, 2023; the timing is now modified to 9 ½ months after the end of the plan year in which the error occurred. This increases the window Sponsors have to fix issues.

HARDSHIP SOURCES - §602

Plan Years Beginning After Dec. 31, 2023

Hardships are no longer limited to deferral contributions only starting in 2024. Now anything considered employee money is available, as well as earnings. Aligning with the 403(b) rules with 401(k).

ALL CATCH-UP TO BE ROTH - §603

Taxable Years After Dec. 31, 2023

A participant with compensation above $145,000 (or indexed amount) must have their catch-up contributions made on a Roth basis.

MATCH/NON-ELECTIVE CAN BE ROTH - §604

Dec. 30, 2023

Allows Sponsors to give participants the choice of how their employer contributions are treated for tax purposes.

An additional change that isn't a 403(b) specific item, but is arguably the most exciting recent change, is the new instructions for Form 5500 that will take effect for the 2023 filings. Currently, a "participant" is anyone who is eligible to participate in the plan. For 401(k) plans, that isn't a huge issue, as they can put eligibility requirements on deferrals. For 403(b) plans, this has been a huge thorn in the side since Universal Availability treats the majority of employees as eligible, thus triggering expensive audits for small non-profits. The new definition is "participants with account balances at the beginning of the plan year." This should make for many very pleased Plan Sponsors and auditors at the beginning of 2024.

In the last several months, Congress has given 403(b) Plan Sponsors a lot of homework to do to understand all of the new provisions and determine how to enact them best. Fortunately, all of these items are spread out over the next several years to give everyone time to analyze the changes and find where more guidance is needed or how to handle new situations that may arise. One thing is for certain: Uncle Sam is taking a much more active approach to helping Americans prepare for their retirement. PC

THE CHALLENGES OF GOING SOLO(k)

FOR THE SELF-EMPLOYED AND SMALL BUSINESS OWNERS WITH A SOLO 401(k) PLAN, IMPORTANT RULES NEED TO BE CAREFULLY CONSIDERED IN THE COMING YEARS. IT'S WHY WE ASKED THE EXPERTS FOR THEIR THOUGHTS.

BY NEVIN ADAMS,JD; DICK BILLINGS; SHANNON EDWARDS; JOHN MARKLEY & JUSTIN BONESTROO

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THE SO-CALLED "SOLO(k)" ISN'T A SPECIAL KIND OF 401(k) PLAN. IT'S ACTUALLY JUST A REGULAR 401(k) WITH ALL THE RULES AND REQUIREMENTS OF ANY 401(k). HOWEVER, IT ONLY HAS A SINGLE PARTICIPANT, GENERALLY A BUSINESS OWNER WITH NO EMPLOYEES, OR POSSIBLY THAT PERSON AND THEIR SPOUSE.

But the name has a certain marketing allure, and that, in addition to its special focus on the needs of a single business owner, has produced some confusion in the marketplace. This is particularly true with regard to some new provisions regarding long-term, part-time employees laid out in the Setting Every Community Up For Retirement Enhancement (SECURE) Act. Also, some modifications in the SECURE 2.0 Act of 2022 bring up more questions.

To shed some light on those issues and their implications, a panel of ASPPA members, Shannon M. Edwards, owner of TriStar Pension Consulting, Justin Bonestroo, Senior Vice President at CBIZ, R.L. "Dick" Billings, Senior Document and Compliance Specialist at PCS Retirement, and John R. Markley, now retired, formerly Actuary at Markley Actuarial Services, Inc., sat down earlier this year to discuss what those changes mean—and don't—to the establishment and administration of the one-participant 401(k).

BILLINGS: Arguably, the key considerations coming from the SECURE Act of 2019 include the deadline for establishing the Solo 401(k) plan, the deadline for making a salary deferral election, and the owner's compensation for contribution purposes. More specifically, it delayed the deadline for establishing a qualified retirement plan for a particular tax year until the business's tax return due date (plus extensions). How, if at all, has SECURE 2.0 impacted Solo(k)s?

R.L. "DICK" BILLINGS

PCS RETIREMENT

EDWARDS: I think SECURE 2.0 actually may make administration worse, because the long-term, part-time (LTPT) employee length of service has been dropped down to two years instead of three. With most of our plans, we initially look at anniversary date to anniversary date, then switch to the plan year for eligibility calculations. So, there are going to be instances where you'll have long-term, part-time employees that could meet the new two-year requirement, basically in their first year of employment if you use the "Switch to Plan Year" option for calculating eligibility service. It's going to be a problem for big plans, too, but I think it will be an even bigger problem for these "owner-only" plans who, typically have part-time workers. These LTPT employees could now be eligible participants under SECURE, when the intent is to remain an owner-only plan.

BILLINGS: How do you guard against that?

EDWARDS: One thing we do is to put a vesting schedule in all of our "owner-only" plans, just in case they ever accidentally hire an employee without telling us. We require 1,000 hours of service to be eligible, and then we'll build in an equivalency method for anybody whose hours are not tracked.

We do this because the dentist might not track his hours, but he tracks the hygienist. We don't use immediate eligibility and immediate vesting like we see in a lot of "owner-only" plans that we take over.

BILLINGS: Do you keep the anniversary date rule?

EDWARDS: No, we switch everything to plan year right now. But with the shorter long-term part-time period in SECURE 2.0, depending on the circumstances of a particular employer, you might want to keep the anniversary date rule rather than switching to the plan year. It's going to be a plan design discussion, for sure. But I feel like telling clients, "This is too darn hard to track anymore. Just make everybody eligible when you hire them. Come on, what is a 4% safe harbor going to cost you for a $15-an-hour employee?" Honestly, it would probably be cheaper than the cost of the corrections when they make a mistake.

BILLINGS: How is that going over?

EDWARDS: We have had some Solo 401(k) owners who had some very part-time people, like an administrative assistant, a paralegal or an intern. They wanted to keep those people out of their plan so they could be an owner-only. We would watch them very carefully and tell them, "You know, if she flips to 1,000 hours, she's eligible. We need to catch that beforehand, so you can go safe harbor or do some other things." I think that's where the long-term, part-time provision is going to create problems for some of these people if they're not watching it as closely as they need to be.

BILLINGS: So, in your example where they have these "super part-time" employees, would you tell them to just lower the eligibility and let this person in, just so you don't have to worry about it?

EDWARDS: I would. That is probably going to be my advice going forward, unless they can absolutely guarantee that this person is never going to cross over the long-term, part-time hours, either. Five hundred hours, in reality, is not that many hours. Think about a paralegal and an attorney who gets super busy one year with a huge case. All of a sudden, his paralegal is over the limit. The work has to get done, right? It can be easy to accidentally cross over the 1,000-hour threshold in a year. Now it's going to be even easier with the LTPT rules.

STANDARDIZED VS. NON-STANDARDIZED PLAN DOCUMENTS

BILLINGS: In my old shop, we did offer SIMPLE or Solo 401(k)s, but we had a minimum fee of $1,000, and we just treated it just like every other plan. I think most of those we're talking about are the $250-a-year type—they send you some information, you send it back and nobody ought to look at it and ask questions further. Is that a fair assessment?

EDWARDS: Oh, definitely. We have a lot of advisors that will tell their clients, Just use this document. The biggest problem we see is, those documents never get restated because they don't know it's required. They'll say, "Oh, just use this document. You don't need a TPA until you have to file a 5500 at $250,000." But by the time those plans get to us, we're having to fix them. Now we will go in knowing they have probably not been looked at for the long-term, part-time issue. Most of these plans are designed with immediate entry, full vesting, etc. Unless you have somebody working with the document who knows that having a potentially eligible employee can be a real issue, it can create a real problem.

BILLINGS: I worked on one just the other day that does have employees. It was a standardized prototype, the adoption agreement's just a page and a half long, there's nothing there about vesting, there's nothing there about rules of parity or any of that stuff. We made the assumption that it did have a one-year wait on this particular case. I'm assuming all of these $250 Solo 401(k)s documents are standardized prototypes.

MARKLEY: Yes, I would agree.

EDWARDS: There is at least one recordkeeper that requires use of their document, and their document only

THE BIGGEST PROBLEM WE SEE IS THOSE DOCUMENTS NEVER GET RESTATED BECAUSE THEY DON'T KNOW IT'S REQUIRED.

— SHANNON EDWARDS, *TRISTAR PENSION CONSULTING*

has elapsed time, not hours of service. So, there is another issue to consider.

MARKLEY: There is one provision of the SECURE 2.0 Act that directly affects Solo 401(k)s, and that is section 321. That allows deferrals to be made after the end of the plan year for a sole proprietor.

EDWARDS: Though that's only for the first year.

MARKLEY: Yes. So, you could implement a 401(k) plan for a sole proprietor in March of 2023 for 2022 and even have a deferral. What about testing? I think there's a lot of unanswered questions, as there usually are, but that's interesting, nonetheless.

EDWARDS: You know, one of the things we've seen, too, in the standard prototype is lack of cross-testing. So, you've got an owner and his wife, the owner makes a 25% contribution for himself and nothing for his wife, or 10% for his wife, but the plan document says pro-rata. That is a problem that we've seen in taking over standardized prototypes. They're not following the plan document at all. They're doing whatever they want to, and the plan is not written in a way to give them any flexibility.

AFTER-TAX CONTRIBUTIONS

BILLINGS: So how about after-tax voluntary contributions? I know that in a typical plan with employees, you're always going to fail the ADP (average deferral percentage) test, but what about a Solo(k) that is subject to 415 if you max out the deductible contributions?

MARKLEY: No, you can go up to the 415 limits with deferrals and after-tax —100% pay up to the dollar.

EDWARDS: The after-tax contributions are subject to 415. So, if you had a very low W-2 wage, I guess you could tack on the after-tax provision if the 25% limit was not getting you to the 415 limits. We don't ever get that question, due to that reason, though. We get the question because they want to do the "Mega Backdoor Roth."

BILLINGS: You're right: It's a question that comes up a lot from advisors, but not from plan sponsors. Buyers have read various articles about after-tax, and so, and it's more money in their pocket from a commission standpoint or fee standpoint. So, they liked that.

LIFE INSURANCE IN A SOLO 401(k)

BILLINGS: When I had my own 401(k), my own business, I did a large term policy because I'm buying it with pre-tax dollars. And since it didn't have a cash value, if I died, that would be paid out tax-free—getting tax-free dollars going in and tax-free dollars going out. No one else in my firm wanted to buy life insurance, which was fine, you know, as you're paying for it out of your own (k) account. That's something that could work for any plan. But if you're in a solo, you don't have to worry about offering it to the other employees.

EDWARDS: We just lost an owner-only D.B. because he wanted to fund the D.B. with life insurance. I called the actuary I work with, and they said, "Yeah, no, we don't touch that."

BILLINGS: You can do it—you're doing fully insured, only-insurance products because it's a very low interest rate. And you're paying higher contributions, which is what you want to do. But you're right, you're paying the mortality costs. You're paying all the fees of the contract, and if you have employees then you have to do the same thing for them proportionally.

ADDING A CASH BALANCE PLAN

BILLINGS: This, I guess, goes then to the cash balance plan. Of course, obviously you're no longer going to be max funding the Solo(k) if you're doing the cash balance, because you'll probably maximum fund the cash balance and then put 6% profit sharing into the 401(k) plan.

EDWARDS: It depends. We have a young couple in their late thirties. He's been in the oil business and works for himself as a contractor. Their house is paid off, and they have no debt. We started a defined benefit plan for them a few years back when he was about 35. They've been max funding him in the defined benefit plan, but max funding her in the defined contribution plan. Then when he reaches his limit in the D.B. plan, we'll swap them and start to raise her W-2 income. It's worked out well. However, we told them, "Don't you dare hire an employee without talking to me."

MARKLEY: That's a good example. Another issue that gets confusing is determining compensation when you have a 401(k) plan—maybe with deferrals and employer contribution—and you also have a cash balance plan. Let's say somebody has earned income of $250,000, so they're thinking that's the compensation number. But by the time you have a cash balance and profit-sharing type plan, now you're down to $100,000.

BILLINGS: I guess my question is, you have a regular 401(k) with employees, and then you add a cash balance plan with employees. Obviously, you're shifting—your primary funding vehicle's going to be the cash balance plan. But I think the analogy between that situation with employees, and that situation without common law employees is the same; there's nothing unique about the Solo(k) plan.

MARKLEY: Because SEPs and 401(k)s are so similar, the SEP comes up more often when you're discussing the cash balance plan. So, you find out that somebody's already put in the max SEP contribution, but that 6% of pay also applies to the SEP. That means the SEP has to be written to allow a defined benefit plan. So that can be an issue, as well.

EDWARDS: Yes. Because most of the SEPs use the IRS document, which says you can't have any other plans in the same year.

BILLINGS: One of the things that I run into in fixing Solo 401(k)s is, why have a Solo 401(k) versus just a SEP? You're paying all those FICA taxes, 15% on all the deferral contributions.... I realize your pay has to be pretty high to max out—not terribly high, but certainly in the six-figure range. Every advisor to whom I speak who likes Solo 401(k)s—having a 401(k) plan but not using the deferrals, i.e., profit sharing—that simply isn't part of the equation. They always want to max out on the deferrals. I'm assuming that's been your experience, as well.

EDWARDS: Yes, we actually look at that a lot, Dick, because we find a lot of people that are doing SEPs. We will switch them to 401(k)s so they can do the deferral portion on top of the 25% deductible limit. That gives you a 25% deductible limit, plus your deferrals, plus your catch-up contributions. You can actually reduce the amount you need your compensation to be to hit the 25% if you add the deferrals in, because the 415 limit includes the deferrals, but the 25% limit doesn't.

BILLINGS: So, let's assume a $300,000 salary and it's 25%, and I know you bump into the 415 limit first. I know the 415 limit allows you to put deferrals on top of that, which you can't deduct. I think you can only deduct the catch-up, if I remember right.

EDWARDS: I go at it a different way, though. If you look at 2022, $61,000 is your 415 limits, you take the $20,500 off of it, leaving you $40,500 to max out. What does my compensation need to be to get that $40,000 in? I can lower my W-2 comp down to $162,000 instead of $300,000. Most of the time I'm dealing with people who want to keep their W-2 compensation as low as possible.

BILLINGS: So, you're talking to a client or potential client who is being told they need to have a Solo (k). From a design standpoint, what would you typically tell them?

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BONESTROO: We rarely do Solo 401(k)) only. Most of the time in those situations, the Solo 401(k) plans end up going with either a lower-cost provider or something more direct. Usually when we are putting in a Solo 401(k), it's in combination with a defined benefit plan, usually a cash balance plan. When we do, obviously the very first thing is confirming that there are no employees, there are no other businesses, and that there will be no other employees. And the massive impact of what happens when there is another employee.

BILLINGS: Ever have one slip in on you?

BONESTROO: I have come across situations where, from the time they started it, they hired employees on some sort of a part-time basis. I recently came across one where they did that, unfortunately, their plan had immediate eligibility. One of the things I do, first and foremost, is make sure we put in as long of an eligibility period as possible just to give us time to find the mistake. We can check in at the beginning of the year since we request census information around that time, so at least we know we're at an entry date most of the time if we're using 21 and one with dual entry.

BILLINGS: I'm curious—I know you're charging the normal load for the cash balance plan, and are you providing any "discount" for the Solo 401(k)?

BONESTROO: Our processes just aren't really set up to be super hands-off in the first place. And when we have a cash balance plan in place, there's always so much coordination. It is at somewhat of a discount. But, you know, one of the things I've found personally is when you work for organizations that pride themselves on consulting, and then you try to build a low-cost service, you end up providing high service for low cost. That's because our administrators really don't change their mindset or treat one client differently than any other.

BILLINGS: Any recent developments?

BONESTROO: Recently we've also had a lot of opportunities where some of the Solo 401(k) providers using pre-approved documents are cutting back on certain provisions, like loans. That's been a major one for us recently. A couple of the providers have merged, and the surviving provider doesn't offer loans. I have one advisor who is paying the administration cost for his clients, or at least discounting his fees to the client for our fees, just so that they can move over to us, be on our plan document and offer those types of provisions that they're not getting elsewhere.

MARKLEY: One thing I'll add is that the $250,000 limit, you know, it's the sum of a cash balance and a 401(k) plan, and then you have to file two 5500s. That's often missed.

FORM 5500 FILING

BILLINGS: If you have a Solo 401(k) as a client—forget the cash balance plan—and you're doing the administration, do you charge extra for doing the 5500?

EDWARDS: No, we charge a fee that includes the 5500.

BONESTROO: We do, too.

MARKLEY: Same.

BILLINGS: It's been my experience that doing the 5500 is easy if you're doing the admin, especially with the software.

EDWARDS: The hardest part is getting them to send you the information, especially the W-2s and W-3s, so you can make sure the information is right. And getting them to send you the investment statements. That's where all the time is.

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THERE'S A LIKELIHOOD THAT SOMETHING SOMEWHERE IS GOING TO GO WRONG AND WE WANT TO MINIMIZE THE IMPACT AS MUCH AS WE CAN.

—JUSTIN BONESTROO, *CBIZ*

BONESTROO: We always do what we can up front to get included on brokerage statement mailings. So, we'll work with the advisor to get on that so that we don't have to try to track it down later.

CONTROLLED GROUP/ASG

Billings: Let's talk about controlled groups and affiliated service groups. We all know you're an ASG or a controlled group regardless of what the document says. My question is, assuming for the moment you're a Solo 401(k) and you're using a non-standardized prototype—which I know is unusual, but let's just assume that—and you are in part of a controlled group. Now, I think it would be fair to say if the other company that is part of the group has no plan, you won't pass coverage. But if the other company had a plan, I realize that the Solo 401(k) has not been tested properly over the last X number of years. But in theory, if you had a standardized plan, of course they were supposed to be in the plan. But in a non-standardized plan, assuming you pass the testing, you'd be copacetic, would you not?

BONESTROO: I think one of the things you have to be careful with there is making sure you're comparing provisions, as well—that you're not just passing your compliance test, but you're also passing benefits, rights and features. So that's something I think goes off the rails more often than what gets caught.

BILLINGS: The advisor probably doesn't even know the difference is that they should be using a non-standardized document, which may not even be available.

EDWARDS: We use the same plan document for every client. We don't have an owner-only plan document, we just use our document across the board. But you're right.

BILLINGS: From our standpoint as the TPA, we build it as if they're going to have 10 employees next year.

EDWARDS: Exactly. That's what we do.

BILLINGS: And prepare for that because you're right, rare is the situation where I'm the owner and I'm making a lot of money that I want to put away, and I don't have any support staff.

EDWARDS: One of our biggest problems, too, is that the CPAs don't know the affiliated service group rules. Some don't even know that they exist or what they are.

BONESTROO: Which is why we come across so many SEPs for the lawyer who has his own S corp. as a shareholder in a partnership.

EDWARDS: Or the radiologist, the anesthesiologist. We've got about three that we've taken over, and they're all in VCP right now because they spent years not covering the leased employees that they had.

BILLINGS: And some take the "Solo 401(k)" term literally. "This is my plan. This isn't your plan, even though you're my partner, my employee or whatever. This is my plan."

BONESTROO: Dick, you made a good point a minute ago. You said you put the plan together and you assume that they're going to be at 10 people next year. One of the things that we're doing right now is going through our standard provisions that each of our multiple offices has used as defaults. One of the main concepts that we're following is just looking for all the different areas where there's likely to be a mistake at some point in time, and trying to select the plan provisions that are going to have the least impact or be the easiest to be restrictive and the easiest to give a provision back. For example, the vesting schedule and ensuring that people aren't eligible for the plan unless it's actually written into the plan. There's a likelihood that something somewhere is going to go wrong and we want to minimize the impact as much as we can.

EDWARDS: Years and years ago, I think it was Robert Richter and I were talking, and he was teaching a class at the time. He said, "You know that there's no such thing in the Code as an owner-only 401(k) or a solo k. That is not a term in the code. It is a 401(k) plan for somebody who doesn't have employees." And I've always taken that approach. So why would I design a document any differently than I design any other 401(k) plan document when it's just a 401(k) plan?

JOHN R. MARKLEY

RETIRED

EMPLOYING FAMILY MEMBERS

BILLINGS: What about employing family members? I guess for purposes of staying a Solo 401(k), if they are true ascendants or family members as defined under the controlled group attribution rules, it's still a Solo 401(k). But if they turn 21, does that change?

EDWARDS: No. We had this come up with a child. You can still file the 5500-EZ, it's still an "owner-only." If you think about it, the term owner-only only applies to the fact that you can file an EZ instead of SF, and you don't have any testing, because everybody in the plan is an HCE. But we had that question come up with an adult child. The instructions say you can still file an EZ, that you're still an owner-only, even with an adult child, because of the attribution rules.

BILLINGS: I had this situation where she's a doctor, he's not, but he's going to come over, keep his own job and then work as the accountant or whatever they would call him. You know, they have to pay him a reasonable salary. But you can put away his $20,000 a year in deferrals to do it. That would be a design issue for which you could plan.

EDWARDS: Yes, and it all works really well until the spouse becomes an owner in another business. Then you have a controlled group issue.

MARKLEY: The other issue would be if that spouse is deferring under their 401(k) plan at their other job, then they're limited in their 401(k) deferral through their spouse's business.

EDWARDS: But it works out really well when there are two 415 limits though, and you can do profit sharing.

BONESTROO: That's true. Or after-tax contributions. The other issue with having a child that's participating, or a spouse that's participating and getting $25,000 in W-2 and maximizing their 401(k), is that when you do end up with an employee, now you're really blowing your average benefits test, and it makes it harder and potentially more expensive to cover that rank-and-file employee to ensure you pass testing too.

NON-MARKETABLE ASSETS

EDWARDS: What about the problems with the assets that these owners put in their plans?

BILLINGS: You mean non-marketable assets?

EDWARDS: Yes. If they do that, then does that make them subject to the audit requirements? Or not, since they're not considered an ERISA plan because it's only covering owners. What does it do to the audit requirements if you have land and art and gold?

BONESTROO: You're talking about the Solo 401(k) plan for every single real estate professional that's ever existed—who only wants to invest in real estate. Well, maybe that's a slight exaggeration, but it can sure feel that way sometimes.

EDWARDS: Yes. We don't have any plans with unmarketable assets, but would that take them out of the audit exemption?

BONESTROO: I think the audit is a DOL requirement, isn't it? I think that you don't have a requirement for a Solo(k).

EDWARDS: That's what I would think, too. But still, you have to think about it.

BILLINGS: If I buy this real estate, two things are going to happen. I'm going to buy it for $1, and it's going to be worthless by the time I pull it out or cash it in. And I can't write it off because it's in the tax-exempt trust. On the other hand, it's going to be worth $100 when I sell it or start pulling it out. However, that's going to be in kind or in cash paid with income tax on that, as opposed to capital gains. This is true if it's a ROBS plan or anyone that constitutes, let's say, more than 10% of the assets. I'll say you're not being smart in how you use your plan.

EDWARDS: Or "I bought this land and, oh, by the way, my husband goes and hunts deer on it every deer season."

BILLINGS: Or it's a condo. "We go there and visit it two weeks out of the year." I once had a client, a doctor, who put his daughter's college car in there, a Pontiac Fiero.

EDWARDS: I think that is something to consider. If you don't have a TPA watching you, it's just the Wild, Wild West.

MARKLEY: Then what do you put on the 5500 for assets unless you get it valued, which is highly unlikely. And then over to cash balance, you know, what does the actuary use for the value of assets if you have a piece of real estate in the cash balance plan?

BILLINGS: Unrelated business income tax—you have all kinds of issues. But I think the reason I don't see many Solo 401(k)s with non-marketable assets is because the advisor's selling it. He's not going to make any money off the real estate or the building or any of that other good stuff, right? You know, people treat a Solo 401(k) as "it's my money—I can do whatever I want with it," and so forth. But they really can't, and shouldn't. PC

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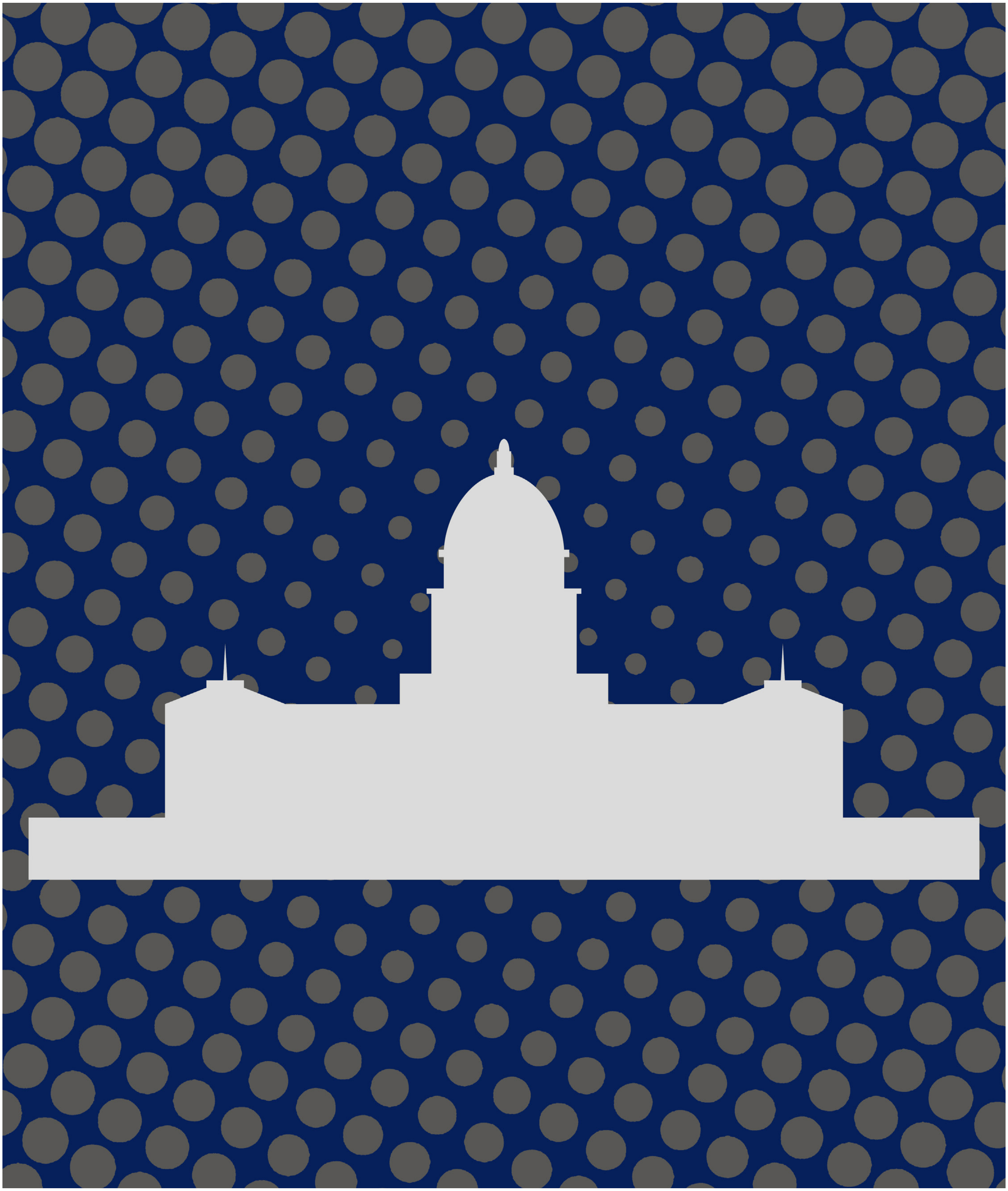
Your Impact on Capitol Hill

By Erika Goodwin

The ARA Government Affairs team continues to focus on the SECURE 2.0 Act implementation issues in 2023. As such, there are a handful of corrections and legislative-related problems that we are working on.



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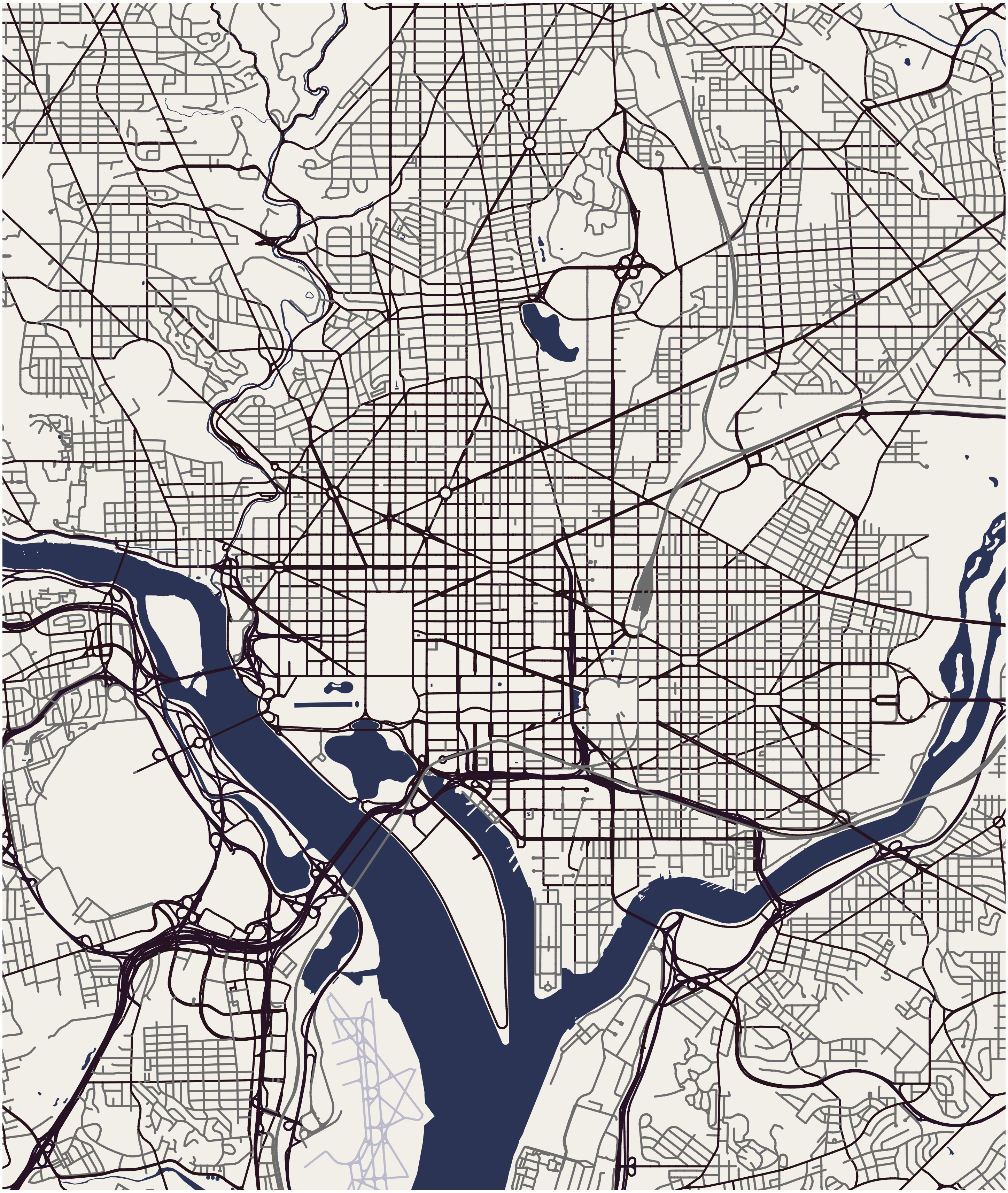

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Elected officials come from all walks of life.

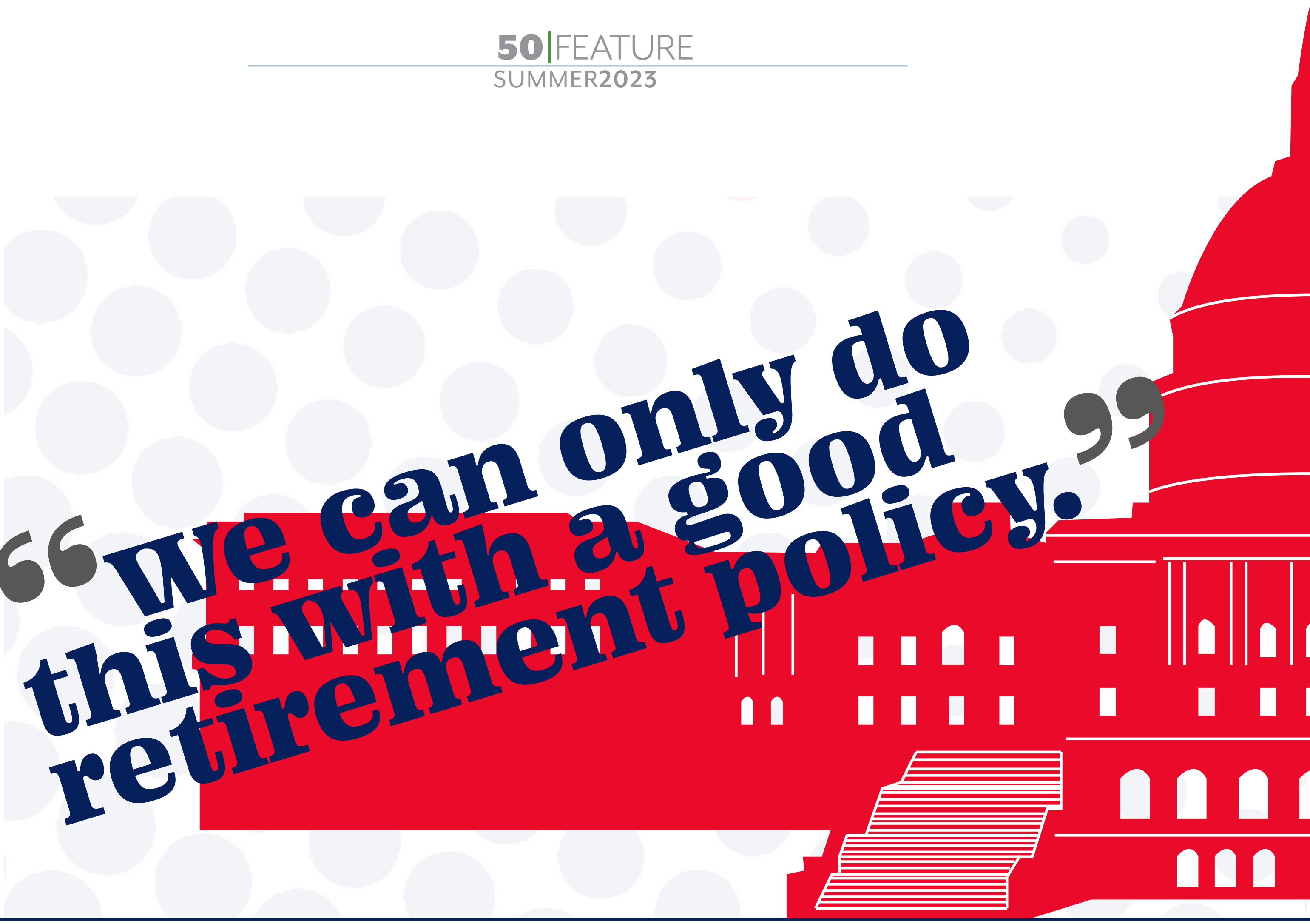
Each of them brings their own professional experiences and the priorities of their constituents to Capitol Hill. They can't be subject matter experts in every industry—but they can be educated on issues of importance. That's where the ARA PAC, our ARA PAC Ambassadors, PAC engagement leaders, and individual members of the PAC step in.

Created in 1988, the American Retirement Association's Political Action Committee is the federal political action committee of the Association. A political action committee (PAC) is a federally regulated way for groups to participate in the electoral process. The ARA PAC is comprised of individual members (of the five sister organizations) who have made personal contributions to support the work of the ARA Government Affairs team as they provide education to members of Congress who have shown support for the private retirement system. The ARA PAC builds relationships with members of Congress in order for them to become retirement system champions of the future.

With the support and input of our members, ARA's Government Affairs team works to ensure our industry and the employer-sponsored retirement system are a priority on Capitol Hill. Our goal is to help businesses of all types implement retirement plans and make it easier for Americans to save for a secure retirement by educating those working in the retirement plan industry and advocating for expanding retirement plan access. We can only do this with a good retirement policy. To help shape good retirement policy, the ARA builds relationships focused on current members of (and upcoming leaders) on committees of jurisdiction who have decision-making authority. The ARA PAC's goal is to support and educate members of Congress on the business of the private retirement system; so that they can make informed decisions on policies that could impact the industry—and your livelihood. Each of our members who contribute to the PAC supports these educational opportunities. The more members participate, the more significant the ARA PAC's impact.

ARA PAC Members Helped Us Make an Impact in 2022

No organization knows the private retirement system better than the 30,000 members of the ARA. The strength of ARA is why we connect our PAC members directly with members of Congress through networking and special events. Our PAC Ambassadors (ARA PAC members who engage with elected officials from their home states on behalf of the ARA PAC) are vital in sharing real-world, practical examples of how proposed legislation can positively or negatively impact how you do your job and the retirement savings outcomes of millions of working Americans. They have conversations and share stories and we hope, over time, they will become a resource for their representatives. In 2022 the ARA PAC identified the first four Savings Supporters (elected officials who have been supporters of the private retirement system) and paired them with PAC Ambassadors from California, Indiana, Oklahoma, and Washington State. ARA members Shannon Edwards, ERPA, CPC, QPA, QKC, QKA, Kaci Skidgel, CPFA, C(k)P®, AIF®, Michelle Coble, AIF®, CRPS, CPFA, and Adam Bahner, CFP®, AIF® had an opportunity to connect with Senator James Lankford (R-OK).



"We can only do this with a good retirement policy."

"We have had the opportunity to meet multiple times with our Senator and his staffers both at home and in Washington D.C., multiple years. You build a real relationship and your voice is being heard with that frequency," said Coble.

ASPPA members Petros Koumantaros and Kirsten Curry connected with Senator Patty Murray (D-WA).

"Grassroots advocacy can take many forms, from writing letters to your elected officials to making phone calls to attending events on behalf of ARA. Each of us has a part we can play," said Koumantaros.

In Indiana, a delegation of members, including Thomas Mayer, Rockford Von Stites, Conni Toth, QPA, QKA, Greg Poplarski, and Peter Welsh, met with Senator Todd Young (R-IN) to share practitioner experience and perspectives on proposed legislation.

In California, NAPA Members Doug Bermudez, Adeline Wong, Michael Curry, Dan Fienberg, Patrick McKernan, and ASPPA President Justin Bonestroo had an opportunity to connect with Congresswoman Linda T. Sánchez (D-CA).

"I make it a priority to support advocacy events whenever I am able. It's an honor to represent our industry at events in my home state," said Bonestroo.

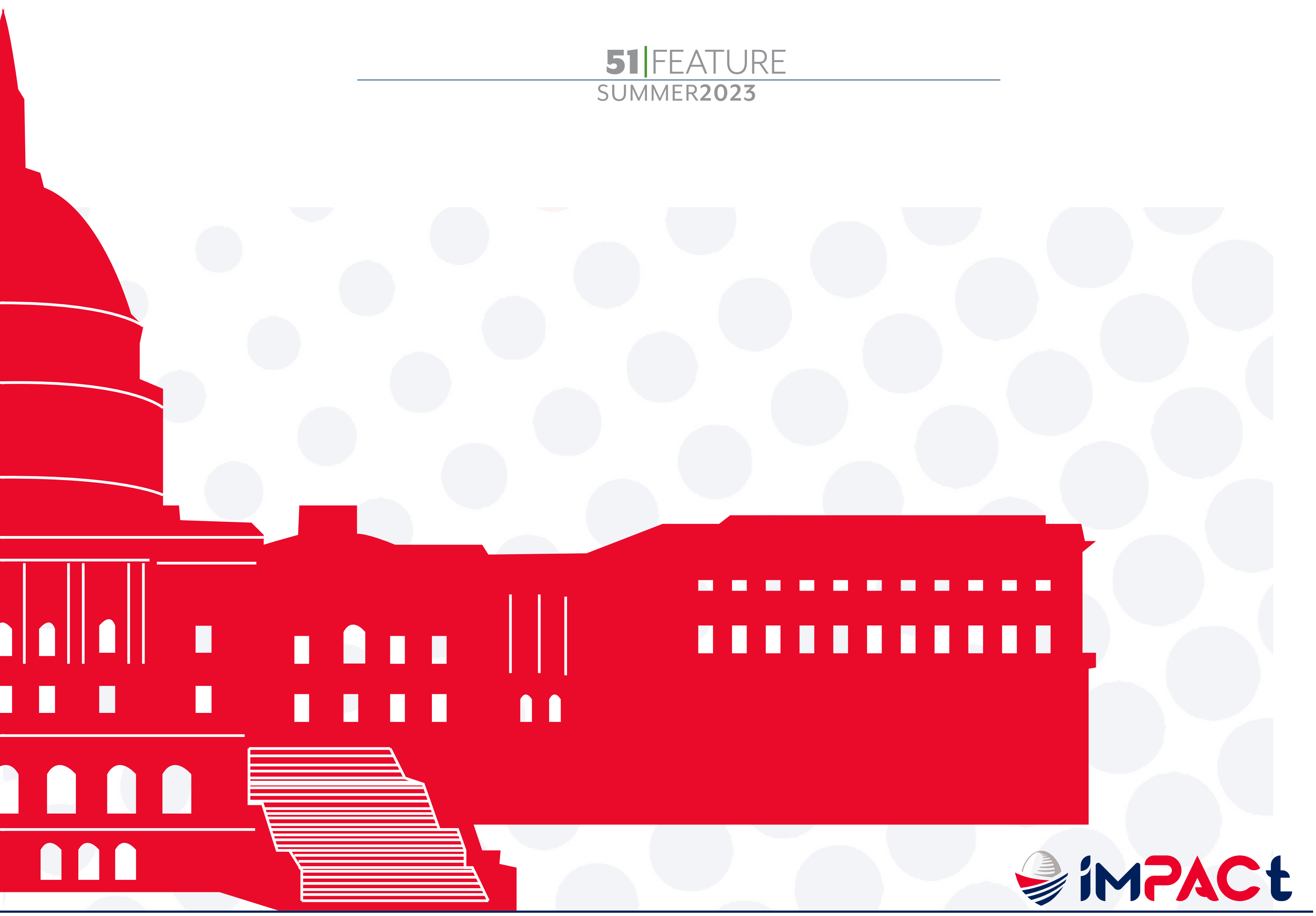
Each of the ARA PAC savings supporters, our ARA PAC ambassadors and PAC contributors made an impact on the success of the ARA Government Affairs team in 2022.

Not every member has the time or capacity to become a PAC Ambassador, but every member can increase our educational opportunities by becoming a member of the PAC. As we increase the number of opportunities to educate Congressional members, we increase the opportunities to enhance ARA's relationships with legislators critical to the industry's future. To this end, our members are stepping up and answering the call—in their own way.

In 2023, we launched the ARA PAC impact campaign at the NAPA 401(k) Summit in April. Led by NAPA's past president and PAC Chair, Corby Dall, five members of NAPA became the first group to participate in a peer-to-peer PAC education campaign. They aimed to encourage more members to advocate by supporting the ARA PAC.

Historically, the PAC has benefited from the support of 300 members who contribute to the PAC annually. These members have allowed the PAC to grow strong roots in relationships with elected officials, and in 2023 we are working to grow our presence.

Doug Bermudez C(k)P®, CPFA®, CFS, Nicole Corning CFP®, CRPC®, AIF®, Kelly Famiglietta C(k)P®, AIF®, CFP®, Alicia Malcolm CRPC®, CRPS, and Greg Marsh AIF® hit the ground on the first day of the NAPA 401(k) Summit on a grassroots campaign to share the importance of the ARA PAC. Part of that campaign was to help



Vincze Szabi / Shutterstock.com

dispel myths about the PAC, answer questions, and invite members in attendance to add their impact to the ARA Government Affairs team's critical work by becoming a PAC member.

With their support, the ARA PAC grew by 50 new members in April. Look for a similar campaign led by your peers at ASPPA Annual in October.

A Look Ahead

The ARA Government Affairs team continues to focus on the SECURE 2.0 Act implementation issues. As such, there are a handful of SECURE 2.0 Act corrections and legislative-related problems that we are working on.

In December 2022, a bicameral and bipartisan group of members of Congress introduced legislation called the Retirement Savings for Americans Act (H.R. 9462/S. 5271). The legislation would create a new government-managed fund for qualifying workers who currently do not have access to a workplace-based retirement plan called the American Worker Retirement Fund. Reintroduction of the bill in this Congress is imminent. We will firmly push back against any legislative proposals that will undermine the employer-based retirement system.

You can help us in this effort by becoming a PAC member or increasing your support for the ARA PAC. It is one of the tools the Government Affairs team will leverage to help strengthen relationships with federally elected officials on Capitol Hill and to provide crucial education on issues like the Retirement Savings for Americans Act.

Adding Your imPACt

We look forward to adding to the impact of our members through upcoming advocacy events this year. In October, ASPPA members will have the opportunity to meet with their members of Congress during ASPPA Hill Day.

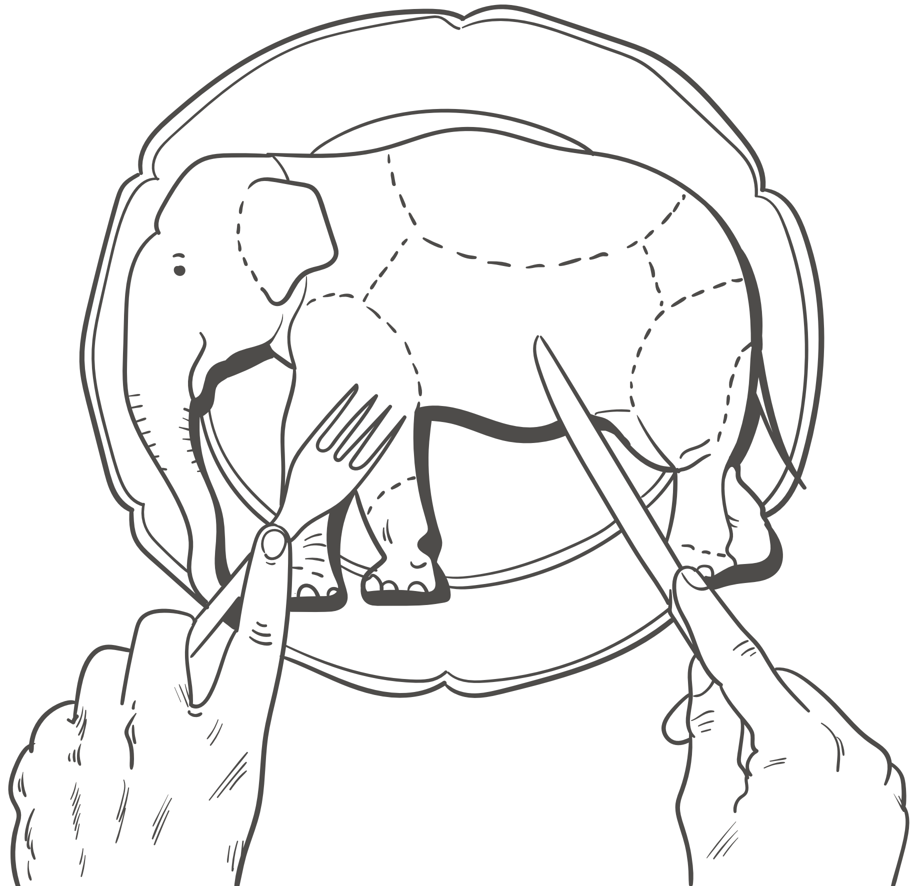
If you are already a member of the ARA PAC (thank you!), consider serving as a PAC engagement team member and educate your peers on the value of the PAC. We will be better and stronger with your support.

It's important to note that contributions to ARA PAC are not tax-deductible. Any contributions must be personal, not business, and are strictly voluntary. You have the right to refuse to contribute without any reprisal. Federal law limits participation to U.S. nationals (U.S. citizens and green card holders). It requires political action committees to do their best to collect and report the name, mailing address, occupation, and employer of individuals whose contributions exceed $200 per calendar year. Contributions may be, at most, $5,000 per calendar year.

For questions, contact Erika Goodwin, Director of Advocacy Engagement (egoodwin@usaretirement.org), for more information. We love to chat about the PAC! PC

A BITE AT A TIME: SETTING THE TABLE FOR SECURE 2.0 IN 2023

Getting a handle on all the new provisions of SECURE 2.0 is a lot for anyone to consume but taking it piece by piece can make it more digestible. **By Theresa Conti & Shannon Edwards**



How do you eat an elephant? According to Desmond Tutu, "There is only one way to eat an elephant; a bite at a time."

Since Dec. 29, 2022, most of us in the retirement plan industry have been asking ourselves and each other how we can eat the elephant that is SECURE 2.0. How do you digest over 90 provisions in one piece of legislation directly affecting our industry? How do you digest them, decide how you will suggest to your clients that they be addressed and then communicate them to your clients, financial advisors and CPAs?

We decided to try it "one bite" or one year at a time. This first article breaks down the oversized items effective upon enacting the legislation and in 2023.

The first item of interest, effective in 2023, is a change to the required beginning age for required minimum distributions. In 2022, the age at which a participant must take a required minimum distribution was raised to 72. This was a huge change since the required beginning age had been 70 ½ forever, or at least as the two of us have been in business. SECURE 2.0 took it a step further and raised the age to 73 for individuals reaching 72 after 2022. The age will increase again to 75 for participants who reach age 74 after 2032.

SECURE 2.0 codified the ability of an employee to self-certify that they have had an event that meets the requirements to receive a hardship distribution. Plan sponsors have always struggled with the hardship provisions. They want to allow participants to access their funds in case of a truer hardship. However, determining whether the employee "has an immediate and heavy financial need based on all relevant facts and circumstances" is often challenging. In addition, is the hardship distribution from the plan necessary to address the need? Does the participant have other resources? There needed to be more clarity throughout the industry. Portions of the industry believed that if the client used the safe harbor definition of a hardship, they could allow the participants to self-certify that they have met the requirements for a hardship distribution. Others didn't, based on an IRS memorandum released in 2017 that suggested plan sponsors must be able to present evidence that the participant met the requirements to receive a hardship distribution.

This was further perpetuated by the fact that during the annual audits of the 5500s for large plans, the auditing firms would also require proof and documentation for their files. Therefore, many compliance consulting firms and clients continued to require proof of hardship for their records instead of accepting employee self-certification. With the passage of SECURE 2.0, the law now reflects the ability of the plan sponsor to accept self-certification without

"HOWEVER, DETERMINING WHETHER THE EMPLOYEE "HAS AN IMMEDIATE AND HEAVY FINANCIAL NEED BASED ON ALL RELEVANT FACTS AND CIRCUMSTANCES" IS OFTEN CHALLENGING."

fear of ramifications. However, it does not require the plan sponsor to accept self-certification. They can, if they prefer, still require proof and documentation. In fact, many of our clients that we have asked intend to continue requiring proof because they do not want to make it easier for participants to take their money out of the plan. Then there are the auditors. Will they continue to require backup documentation as part of their annual audit of Form 5500? This leads to an even nerdier conversation amongst compliance consultants as we sip our wine at happy hours and get deep into the weeds. Does it require proof now that you don't have to increase the client's exposure if they improperly deny a hardship distribution? Food for thought.

There was also a major change to notice and disclosure requirements that had good and bad consequences. The good is that employers will no longer be required to provide certain notices to unenrolled participants who have not elected to participate in the plan. The plan will be required to send an annual reminder notice of the participant's eligibility to participate in the plan with any election deadlines and any requested documentation at any time by the participant. This is great overall but what if the plan sponsor sends their notices themselves instead of relying on a recordkeeper or another provider? This is another thing for them to track and decide who has to get it and who doesn't.

Before SECURE 2.0, employers were not allowed to give any financial incentives to employees to encourage them to contribute to a plan. Now employers will be permitted to provide de minimis incentives (such as a small gift card) to help improve participation in the plan. The gift cannot be paid for from plan assets. Since our plan sponsors have yet to ask to be able to do this, we are not sure how much this will be used or if it will truly be impactful.

SECURE 2.0 allows for the "Rothification" of employer contributions made on behalf of the participants at the participant's request. This means that employees can now request that an employer contribution to the plan be made as a Roth contribution rather than a tax-deferred contribution. Plans may (but are not required) offer employees the option to elect to treat all or a portion of employer matching or non-elective contributions as Roth contributions, provided the contributions are fully vested. Prior to SECURE 2.0, the same result could be accomplished if the plan allowed for it and the record keeper could accommodate in-plan Roth Rollovers and in-plan Roth conversions. Now, if the plan allows for it, the conversion can be done before the money is ever deposited into the plan. This is one of the items included in SECURE that we have seen the most interest in from plan sponsors and participants. The only problem is that we are not sure how to accomplish this yet. No one knows if the contribution is going to be reported on the W2 or a Form 1099. A final consideration is the vesting since the contributions must be fully vested. Will that mean plan sponsors consider making these all fully vested ongoing?

One of the most significant changes with SECURE 2.0 is the tax credits. New plans can take advantage of two types of tax credits: Startup tax credits and tax credits for contributions. First, small employers' existing startup tax credit has dramatically increased. The credit is now 100% of an employer's out-of-pocket costs of starting up a plan, to a maximum credit of $5,000 per year for three years for employers with 50 or fewer employees. The calculation continues to be based on the number of non-highly compensated employees that are eligible to participate in the plan. Therefore, for an employer to get the entire $5,000 tax credit, they would need at least 20 eligible non-highly compensated employees. Since the credits are based on actual fees paid out of pocket by the plan sponsor, consideration should be given to what fees can and should be billed directly to the plan sponsor. Ask the client to consider paying the TPA fees, record-keeping fees and possibly 3(16) fees if they engage one. As a reminder, plan sponsors can also take the $500 tax credit for auto-enrollment in addition to the startup tax credit.

SECURE 2.0 also created a new tax credit for small employers to help offset the cost of employer contributions to the plan. Employers with up to 50 employees that establish a plan will get a tax credit for contributions to employees whose wages do not exceed $100,000. The maximum credit per employee is $1,000 and is available for the first five years the plan exists. The credit equals 100% in the first and second years of the plan, 75% in the third year, 50% in the fourth year and 25% in the 5th year. The credit is phased out for employers between 51-100 employees and does not apply to defined benefit plans. Showing plan sponsors an estimate of all the applicable tax credits during the proposal process may help the plan sponsor to decide on establishing a plan as well as the plan design.

This wraps up most of the big items that are already effective. Remember, the only way to eat this elephant is one bite at a time. PC

VALUING YOUR TPA BUSINESS – PART II: IT IS TIME TO SELL!

Our last issue examined the question: "Is it Time to Sell?" Here we will examine the process's next step for those who have decided it is time to sell. **By Theresa Conti, Linda Chadbourne & Jim Racine**

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

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You have decided to sell your TPA business and will need to navigate the sale process itself.

The process can involve several steps: valuation, listing the business, finding a buyer, negotiating and closing the deal.

The suggested steps below will guide you through the process. Remember to carefully consider how you want the process to go and make sure you retain control throughout the negotiations and sales.

1. Put together your team of advisors and consider the following:
   - Guidance: Do you have someone who has sold their business or is in the business of helping TPAs sell their business?
   - Legal and Accounting: Do your current legal and accounting teams have the expertise to assist with this process or do you need additional support?
   - Key Employees: Have you considered pulling one or more key employees into a non-disclosure agreement to assist with the process?

2. Set your goal for valuation. The goal typically involves a professional business valuation to determine a fair asking price. While you may know what your business is worth based on your financials, a professional valuation is essential for a fair and accurate assessment of your business's value. Valuation considers current revenue, assets, liabilities, potential growth opportunities and market trends. This is also a suitable time to consider your tax consequences and decide on an asset or stock sale.

3. Be able to articulate your reason for selling, whether it be for Retirement, health issues, financial struggles,

"IN MOST DEALS, YOUR EMPLOYEES ARE ONE OF THE MOST IMPORTANT ASSETS THEY ARE PURCHASING."

change of career or simply wanting to capitalize on the business's success.

4. Gather your documentation. In order to sell your business, you'll also need the following documents below:
   - Business financial statements should include income statements, balance sheets, and cash flow statements for the past three to five years. Potential buyers will want to see the financial health of the business and their ability to generate profits.
   - Tax Returns: The business's tax returns for the past three years will be required.
   - Business Contracts: Any legal contracts with suppliers, customers, and employees should be provided.
   - Corporate Documents: The company's articles of incorporation, bylaws, and other legal documents for incorporation should be provided.
   - Intellectual Property Documents: Any patents, copyrights, trademarks, or intellectual property owned by the business.
   - Employee Information: A list of current employees, their roles, salaries, and benefits, as well as any employment agreements, should be provided.
   - Lease or Rental Agreements: Any agreements related to real estate, equipment or other business assets that are under agreement.

5. Finding the buyer. This is where your list of advisors is critical. Our business has seen considerable consolidation in recent years. Your peers and trusted recordkeeping partners know who is looking for deals and what types of firms each acquirer is looking for.

6. Consider yourself and your employees. First, let us look at taking care of yourself. Make sure the terms of any agreement spell out your role, if any, in the company post-acquisition. Is there a non-compete and will this allow you to continue to provide for your family if your ongoing role does not work out? Have you looked at the State laws for how the non-compete clauses could impact your future career?

Is there an earn-out provision? Does the earn-out include both client and employee retention? Does the earn-out provide a bonus if retention is higher than projected? If so, are you confident that the terms of earn-out will be met and have you adjusted the price to compensate you for this risk?

Now let us look at your employees. How do the new company's structure, benefits, and job description align with how your employees work today? Will their new structure provide the job satisfaction they have today?

One of the largest and hardest-to-find assets in our business today is people. In most deals, your employees are one of the most important assets they are purchasing. In most sales, the announcement to the employees is not communicated until the sale is final. Having a thought-out plan to communicate the transaction is critical to employee morale and retention.

7. Maintaining valuable relationships. You have built great relationships with advisors, plan sponsors and CPAs. They trust you and that is why they do business with you. Making sure your services are aligned with the buyer is critical.

While every plan is important, advisors normally have entire books of business that could impact retention and any earn-out provisions. Your communication plan should include reaching out directly to your trusted relationships quickly after your announcement to your employees. This is not the same story as you provided to your employees. Consider why advisors and other referral sources do business with you and provide them confidence in the reasoning for the sale and selection of the acquiring firm. Make sure you can effectively communicate any changes in service model or pricing and the sales process.

Now it is on to who has been paying the bills all these years. While plan sponsors pay the bills, we cannot give them the assurances they need until you have communicated with your employees, advisors and referral sources. So, while they are not the last concern, you need to have a plan in place before announcing the sale. Just like the referral sources, the message to clients will be different. Make sure you address why they do business with you and why this transition is good for them. In the end, making sure client retention is high post-sale is the true legacy of the business you have built. To be honest, most plan sponsors will be "unfazed" by the change if they can deal with the same person who will guide and reassure them through any changes.

We hope all the above items help guide you through the sale of your business.

Remember, due diligence is a two-way street. Even though you may have already selected who will buy your business, continuing your due diligence throughout the sales process is crucial to ensure you have made the right decision.

In the next and final of this three-part series, we will look at what happens when the sale is complete and post-acquisition. PC

APPETITE FOR APPS: PARTICIPANTS HUNGRY FOR TECHNOLOGY

Plan participants are spending less time on desktops and more time on-apps. With financial wellness being on-the-go and it's time to be attuned to younger generations habits. **By John Iekel**

The industrial revolution, 21st century-style, mass-produces information — but at the same time makes it an individual experience. And that includes information about retirement plans and one's own retirement plan and account.

One of the ways in which that information is delivered is via apps. But how interested are participants in that form of access to information? And is there a difference among different generations?

RIPE FOR HARVEST

Plan participants certainly do evince interest in information from their employers and plan providers, as well as interest in receiving it electronically.

For instance, in its study "Financial attention through multiple digital channels," Vanguard said that during the period 2015-2017, the desktop browser was the most popular electronic means of obtaining information. They further said that more than 95% of "attentive investors" who logged in at least once over that period used one. Escalent in its recent study of defined contribution plan participants similarly reported that in 2020, 81% said they logged into plan providers' websites.

MOVE TO MOBILE

During 2015-2017, said Vanguard, while more than 90% of attentive investors who logged in at least once over the study period used a desktop browser, 40% used a mobile device, and just 20% used an app.

Still, during those years, use of mobile technology was growing. Vanguard said that among investors that have only DC plans, use of mobile access increased markedly. Vanguard said that during that period, use of mobile devices complemented desktop use, but they anticipated that it could substitute for desktop use in the future.

The future may have come a bit faster than Vanguard expected. Julie Agnew and Olivia S. Mitchell in "The Disruptive Impact of FinTech on Retirement Systems" wrote in 2019

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that they considered mobile savings apps to be one of the "harbingers of innovations to come."

The Plan Sponsor Council of America, in its PSCA's 64th Annual Survey of 401(k) and Profit Sharing Plans report on the 2020 plan-year experience of 518 plans, said that in the period 2015-2020, the use of mobile apps increased by 80% and that by its end, 64.9% of participants used them. Escalent Senior Product Director Sonia Davis narrowed the focus in remarks about their 2020 study, saying that they found Millennials and members of Generation X to be more attuned to using mobile apps.

In a financial wellness study released early in 2022, T. Rowe Price, Duke University's Common Cents behavioral finance lab, and financial wellness provider Retiremap said they found that financial professionals consider apps that monitor finances and track accounts to be among the most important tools in a financial wellness program.

SIZE MATTERS.

In a survey of 1,903 employers conducted late in 2020, Transamerica found that larger employers were more likely to offer mobile apps to help employees plan and save for retirement *(see below)*.

TO INVESTORS' TASTE

In 2018, Vanguard expressed the expectation that just as consumers were drawn to using mobile devices for shopping, news and social connection, so too would investors be drawn to their use.

Curiosity at Work reported that CNBC found that in 2021, 60% of new investors used a mobile app to invest; that was a whopping 35 percentage points higher than the percentage of those who started investing before 2019.

JD Power in its 2022 U.S. Wealth Management Digital Experience Study said that an increasing number of investors used mobile apps as the first resource they consulted to review investments, conduct transactions, and research. This, they said, was especially true for younger investors. They reported that cohort had much higher overall satisfaction and stronger brand loyalty with frequent use of their firm's wealth management app.

JD Power also found that investors were even more satisfied with retirement plan websites and apps when they offer proactive guidance and help.

APP EFFECTS

Key findings of the J.D. Power study include that apps:

- Are more popular than websites. J.D. Power said that users were more satisfied with U.S. wealth management mobile apps than with wealth management websites. More specifically, they reported that on a 1,000-point scale gauging satisfaction, apps had a score of 731 and websites had a score of 681.
- Attract younger job candidates. J.D. Power suggests that apps could be a helpful tool in recruiting and keeping younger employees. They found that satisfaction with wealth management apps decreases as age increases. It stood at 760/1000 for Generation Y and 720 for Generation Z. For Generation X, Baby Boomers and Pre-Boomers, satisfaction with wealth management apps was lower.
- Drive strong brand loyalty. J.D. Power said that top-performing mobile apps are stronger brand assets than top-performing websites; Net Promoter Scores on a scale of 1-100 stood at 83 for the former and 73 for the latter.

In 2022, J.D. Power further found that those who use apps engage with a brand more often and are more likely to recommend that brand when they have a positive experience.

LOOKING AHEAD

Vanguard has said that despite the common perception that younger people are more likely to prefer access to information via mobile devices, they expect that the passage of time will mitigate that and interest in mobile access will not be isolated to just that demographic group.

And the researchers in the T. Rowe Price/ Duke University/Retiremap study expressed the view that financial wellness solutions "may work best using a range of tactics and resources" —and they include mobile apps. PC

Mobile Technology	% of Small Employers (1-99 Employees) Offering	% of Medium-Sized Employers (100-499 Employees) Offering	% of Large Employers (500 Employees and More) Offering	% of All Employers Offering
Mobile apps to manage accounts	**28%**	**40%**	**42%**	**33%**
Mobile apps that include tools and calculators to project retirement savings and income needs	**29%**	**35%**	**39%**	**31%**

TP-SAY: DISCUSSING THE ALLOCATION FORMULA

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Helping clients gain more knowledge on compliance with their retirement plans is key for a TPA. Getting your clients to learn it—can be a hard door to open. **By Melissa Terito**

I find that one of the hardest aspects of being a TPA is explaining to clients where the allocation numbers come from. In our mind, it all makes sense. We spent hours trying to run an allocation that maximizes both the business owner and upper-level executives while also passing testing. I always have to remind myself that the vast majority of business owners and plan sponsors need to gain more knowledge of compliance associated with the retirement plan. Have you ever encountered a conundrum with a client after sending the allocation report to them? You have worked tirelessly to come up with the "perfect" allocation. The cross-testing works out beautifully, but you have to allocate an additional percentage to a certain rank and file to pass both minimum gateway and 401(a)(4). You are so proud of yourself for "getting it to work" that you didn't even think what the plan sponsor's reaction is going to be. However, after they look at the report, they are just appalled at the total number and cannot grasp why certain employees are receiving an allocation. At this point, they're sure you, the TPA, have done something wrong.

These situations are all too common in our TPA world, but there

"REMEMBER THAT AS TPAS, WE ULTIMATELY PLAY THE ROLE OF TEACHER, TRANSLATOR AND MENTOR."

are steps that you can take to mitigate those uncomfortable conversations.

First, remember that as TPAs, we ultimately play the role of teacher, translator and mentor. Typically, we play all three of these roles simultaneously. One of the first steps is to be proactive and talk to your client on the front end before allocating and testing the plan. I know what you are thinking "Well, we sent a questionnaire with our census data, and they said they wanted profit sharing." But let's be honest, do the clients really understand what that means? Probably not. Most business owners are more than likely googling the IRS contribution limit and thinking they can receive that specific amount for a year. Certainly, they aren't considering the compliance testing associated with the allocation. And this is even if they are aware of the maximum contribution number.

Having an upfront conversation yearly about the goals the owner is trying to achieve and then going on a fact-finding mission to see if there are any changes in the company demographics or operations can be beneficial, saving you time and further solidifying your relationship with the client. However, when asking these questions, especially with a new client, you must explain why you are asking these questions. Otherwise, you look nosy. A word of caution, though, describing why it has to be done in a manner that plan sponsors can understand. You are telling them that hiring Penelope, who is 20 years older than the business owner, will make the testing challenging because of her EBAR; they will look at you like you are speaking another language. And truthfully, we are, but we must also ensure we are translating that language into a language they can understand.

Most business owners have a general concept of the time value of money or at least a concept of the fact that if someone is 25, they have 40 years before the retirement age of 65. A client can understand that, in theory, if a certain dollar amount is invested in someone who is 25, that amount has a longer time to "grow" than, let's say, someone who is 55. And most business owners, once you use the terms "discriminate" and "compliance," shave somewhat of an idea that they must be fair. But no business owner understands it when we say things like EBAR, cross-testing, average benefits, and minimum gateway. I didn't even understand that when I first became a TPA.

I equate being a TPA to being a doctor. While most of us aren't in the medical field, we can relate to the fact that we have been to doctors that talk so technically that you have literally no idea what they are saying. They might have told you that you are fine or you have a terminal illness, but isn't it a miserable feeling when you walk out of a doctor's office and you have no idea what they said? Let's not be those people. Let's empathize with our clients by putting ourselves in their shoes and putting on our patience hat to explain it to them.

This initial conversation can often allow you, the technical TPA, to provide some insight and a slight prediction as to what's to come. Look at the census data and you can see a new participant, Penelope, who is 58 years old and eligible for the plan, and the business owner is 40 years old, with all other employees ten years younger than them. The allocation for that year might look different than the year before. A classic example would be a safe harbor 3% non-elective plan with a profit-sharing, where it works out that the business maximizes, and the employees receive a total of 5% contribution. And this has happened for years. But this year, you, the TPA, either must allocate an additional amount to a younger employee, or everyone gets a higher allocation. This owner would be surprised because that is not what they expect. And we all know when expectations aren't aligned, we get in trouble.

So, in a perfect world, you have this initial conversation, and you use words like compliance, time value of money, requirements for employer contributions as opposed to non-discrimination, EBAR, and allocation condition and you feel like you could not have explained it better. You run the allocation, you send it to the plan sponsor, and they still have questions. If we do run an illustration, I save it so that we can discuss any differences. Additionally, most testing software has one-page reports and when in doubt, I will run the allocation where it fails testing and show them the report that says FAIL. It doesn't always work, but they know I'm not lying about the results.

As I said before, we are teachers, translators, and mentors and serving in that capacity will never stop. We, as practitioners, have to be realistic regarding what our clients understand and clients really appreciate you taking the time to explain it to them. PC

CYBER CRISIS: HOW TO ADDRESS A CYBER BREACH EFFECTIVELY

Are you prepared for a cyber breach? Many aren't, but finding out how to be prepared, can stop a future crisis right in its tracks. **By Paul M. Perry**


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During a crisis, people's responses can vary depending on different factors such as personality, experience, knowledge, and emotional state. The crisis of a cyber breach can be exponentially worse since technology is already a foreign language for some; however, we, as a society and business community, rely on it as much as the air we breathe. Translating that foreign language of technology can push us into a petrified state of mind without knowing the next steps.

This article will explore what a company can do to prepare for this type of incident and factors to consider before a cyber breach occurs.

WHO DO YOU CALL FIRST?

A far too common debate amongst individuals within the information security (Infosec) community; however, it is the most important to get right from the start. Some common answers are federal law enforcement, lawyers, or your cyber liability insurance company. Let's break down each:

1. Federal law enforcement is helpful in all scenarios, especially when money is instantly gone and must be recovered within a 24–36-hour window. Depending on the amount of money, they can mobilize quickly to help stop the flow of funds or be able to track it before it leaves the borders of our states and country.
2. Lawyers can be helpful in these types of scenarios when an immediate response is required and are a good source to try and rally the other two to get everyone on the same page and help control the narrative being communicated.
3. Cyber liability insurance carriers/brokers are helpful when specific consultants are needed to help with triage, investigation and remediation. Your insurance policy usually states pre-approved vendors for various aspects of the incident response. Some companies can get into trouble with reimbursement when using unapproved or not pre-approved vendors for the different stages.

So, the debate continues – all have their place during an incident response – however, having a plan beforehand of who to call is most important and all should be part of the planning discussion. Also, as it relates to federal law enforcement, having a prior relationship before making the call is a best practice—you do not want

"PREPARING FOR AN EVENT OR INCIDENT SHOULD NOT ADD TO THE ANGST ALREADY FELT BY AN ORGANIZATION THAT IS REACTIVE TO ALL MAJOR ISSUES AND CRISES."

the first part of the conversation to be niceties and formal introductions (crisis management is never the best for first impressions).

PREPARING FOR A CYBER BREACH (INCIDENT RESPONSE PLAN)

In the Infosec world, we call this an Incident Response Plan (IRP or Plan). It is vital to have a plan that lays out the stakeholders and their roles, communication protocols and steps for containing the breach. An IRP should include different scenarios for the various incidents that could occur. Some of the different scenarios to include in the Plan are:

- Malware or Virus Attack
- Network Breach or Data Leak
- Denial of Service (DoS) or Distributed Denial of Service (DDoS) Attack
- Physical Security Incident
- Insider Threat
- Social Engineering Attack
- Ransomware

While there may be some similar aspects of each event or incident, the essence of each incident will vary. Two essential aspects of the Plan are (1) keeping an offline copy updated whenever the Plan or responses need change and (2) testing the Plan. Nothing is worse in a crisis like this than being unable to access the Plan and execute as needed – talk about raising your frustration and angst during a stressful moment. Also, the testing of the Plan, also referred to as a tabletop exercise, should be performed regularly (at least annually) to ensure all stakeholders know their roles and are familiar enough with the steps needed to respond appropriately and with minimal disruption to business operations as possible.

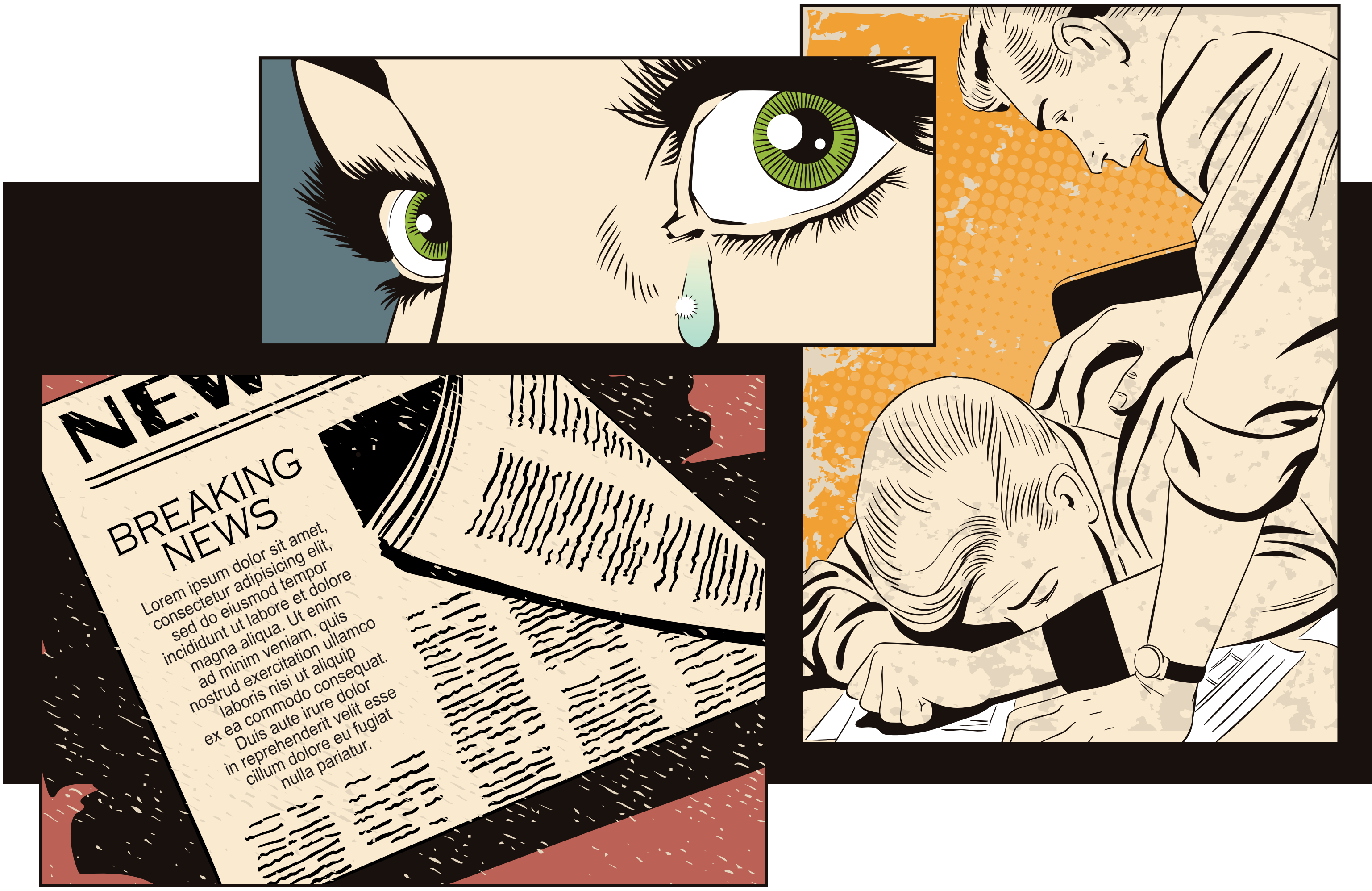
OTHER ASPECTS OF THE RESPONSE

Using the National Institution of Standards and Technology (NIST) Incident Response Framework is a good guideline for other aspects of a cyber breach. It can be helpful when an incident occurs. The four areas of their framework include:

- Preparation and prevention. Discussed above related to the creation of the IRP but also includes best practices that need to be in place to try and prevent the breach from occurring as best as a company can. Remember, there are no foolproof plans for prevention.
- Detection and analysis. This includes determining what happened, what vulnerabilities were exploited, the type (and amount) of data removed or leaked and what systems are affected. Usually, this will be done by a cybersecurity consulting firm since they are used to seeing these types of issues and know how to most effectively stop the bleeding and get some answers as quickly as possible.
- Containment, eradication, and recovery. This stage includes determining the steps needed to contain the issue and minimize its impact, bringing down the systems affected, quarantining the infected systems and assets and coming up with provisional measures to prevent further damage. Recovery includes updating security controls and procedures to implement a long-term solution, restoring affected systems and ongoing education company-wide.
- Post-incident activity includes determining notification of the breach to those required (by regulation or law). Each law has some similar components, laying out some of the reasonable security measures to try and prevent a breach as best as they can, periods needed to notify the appropriate impacted individuals and state authorities and fines that could be levied if the other requirements are not followed in a timely fashion. Each state has its own version of a breach notification law that applies to each state's residents. This means that a company could be subject to multiple state requirements, so it is best to pick the most stringent state and follow their requirements related to timeframe and notification requirements (New York and California are the states used to model the laws for all other states).

It is important to get some help from the experts and consultants that have experience in creating these Plans and responses since no one should be forced to reinvent the wheel as it relates to the most common risk and threat to businesses today.

In summary, preparing for an event or incident should not add to the angst already felt by an organization that is reactive to all major issues and crises. Find some help from others who have the experience and expertise to prepare your organization for some of the most fearful and demanding events that can cause companies to stop in their tracks and not be able to produce or make money. Find the resources before they are needed and be as prepared as you can be (good scout motto) before a cyber-related incident occurs. PC



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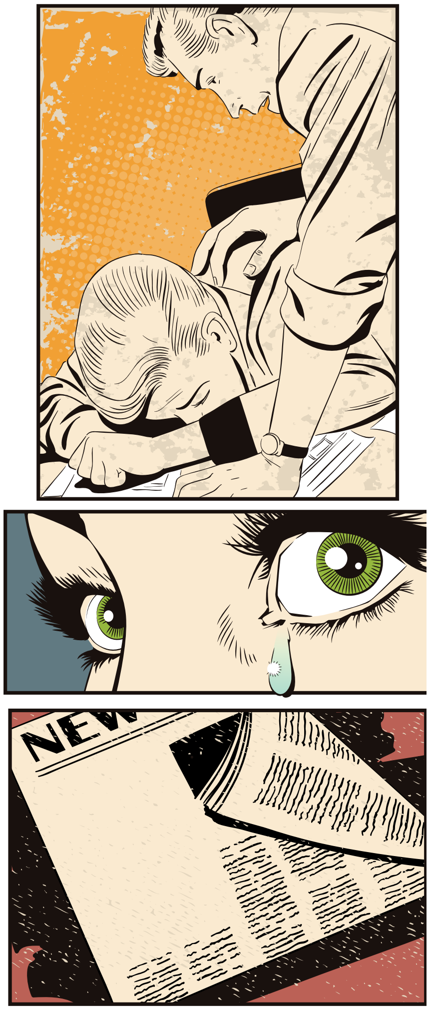
COMMUNICATING BAD NEWS

When the time comes, and it will for all of us at some point, it is important to explain the situation clearly and communicate the bad news. **By Justin Bonestroo**

Delivering bad news to clients is never easy, but it presents an opportunity to build trust and strengthen relationships when handled properly. This especially holds true when you are not part of the problem's origin but can create a solution.

Several years ago, I met with a very small 401(k) plan sponsor to discuss taking over the administration of their plan. After our first call, I sent over a fee structure. They were used to "free" plan administration (they later realized how much they were paying). Later that week, I got accidentally copied on a response that was meant for the plan's investment advisor, saying something to the effect of "Why would I pay this for administration? Don't they push a few buttons?" Luckily, the advisor pushed back and had me review some of their administration. It turns out there was a huge problem that was quite complex and costly to fix. We worked hand in hand over the next several months, and once we finally had everything cleaned up, I got a call from the sponsor who said: "I didn't understand it at first, but now I know why [the advisor] pushed that I hire you." That call is still one of my career highlights. We were the bearer of bad news, but in the end, this client truly appreciated what we had done for them.

In the retirement plan administration industry, external factors such as human error, regulation changes or unexpected events like a global pandemic can impact our clients' retirement plans and businesses. Properly



> "ONE KEY TO EFFECTIVELY DELIVERING BAD NEWS IS BEING TRANSPARENT AND HONEST ABOUT THE SITUATION."

communicating, providing a solution, and turning a challenging situation into an opportunity to strengthen your relationship; alternatively, mishandling the situation can damage the relationship and, at worst, magnify the problem or even bring on unnecessary liability.

One key to effectively delivering bad news is being transparent and honest about the situation. Things happen, and in our industry, they happen often. Many times, we can be fearful of addressing them directly sometimes because we are afraid of our client's reaction, or we don't want to deal with the problem and headaches it will cause for all involved, or sometimes we just feel bad and try to do all we can to make it go away, all in lieu of having a direct and difficult conversation. But this often just postpones the inevitable, causing stress and sometimes magnifying the problem. At the core, TPAs are responsible for assisting their clients to keep their plans compliant, including returning them to compliance if needed. As experts in this field, we are uniquely equipped to guide plan sponsors through these conversations.

When the time comes, and it will for all of us at some point, it is important to explain the situation clearly and provide context for why it happened. In retirement plan administration, if there is an error in plan operation due to problems with census data accuracy, it is important to provide a clear explanation of the error, a digestible description of the laws that apply, and the impact that the error has caused.

It is also important to offer a solution or action plan to address the issue. This shows that the company is committed to resolving the problem and working towards a solution. In retirement plan administration, a solution could be to pursue self-correction options, hopefully with minimum cost, or the solution could be much more in-depth and, unfortunately, more costly.

But once the conversation has occurred, things can get even more interesting. We have probably all heard the saying: "Don't let their problem become your problem," or "The coverup is worse than the crime." I have seen this happen in many ways in my career. I've seen administrators try to "protect" their clients from a problem and take steps on their own accord. Still, I often observe clients attempting to evade the time and money required to correct failures appropriately. This could include asking the TPA to participate in "sweeping it under the rug." This article doesn't aim to focus on the ethics of our industry. Still, I do believe it is important to stress the possibility of bringing on unnecessary liability when this happens.

When we provide a solution, not all clients ultimately follow our advice. However, we must adhere to this step; otherwise, we may face the risk of the plan undergoing an audit, with the plan sponsor potentially pointing the finger at us. They could claim reliance on our expertise without receiving a proper solution.

On the other hand, most plan sponsors take their fiduciary responsibilities seriously and want to pursue complaint resolution. Compliance errors can be very scary for those involved, and it is important to acknowledge the impact that the situation may have on them and offer assistance in any way possible.

Delivering bad news in retirement plan administration can be particularly challenging when the company does not cause the bad news. For example, while taking over the administration of existing plans, you often find many operational errors. Prior service providers or previous sponsor employees might have caused some of these errors, which could make our clients feel frustrated. They may perceive themselves as addressing a problem they didn't create. However, this situation allows you to build trust and strengthen your relationship through your proactive response.

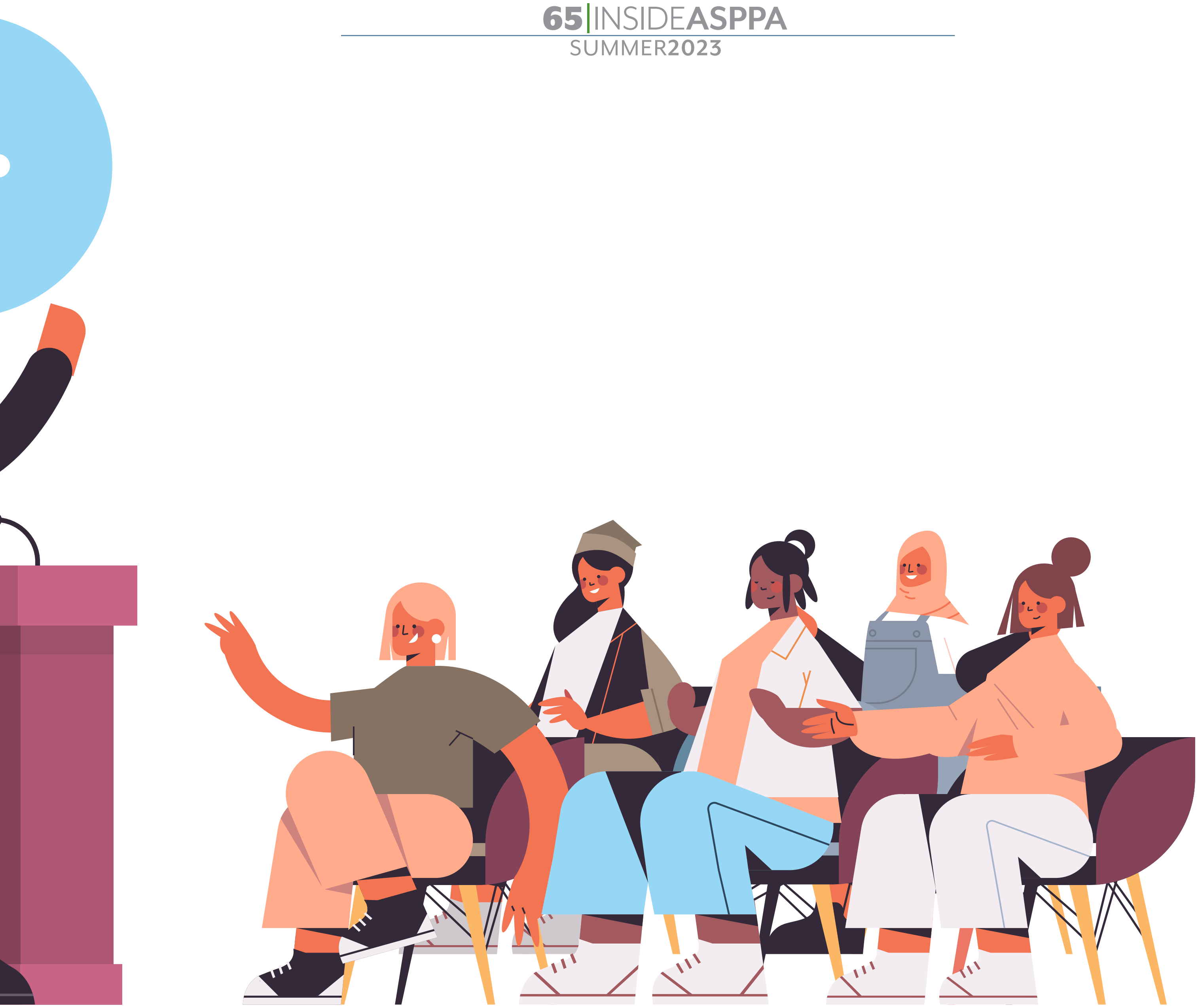
By taking a proactive approach to delivering bad news and offering a solution, even when the company does not cause the situation, the company can demonstrate its commitment to finding a solution and building a strong relationship with its clients in the retirement plan administration industry. PC

THE RECAP: WIR CONFERENCE 2023

ARA's one-of-a-kind conference brought together women leaders from all five of ARA's organizations for a unique experience like no other. **By Kirsten Curry**

Women in Retirement ushered in the American Retirement Association's (ARA) first conference of 2023, with the Women in Retirement Conference in sunny and warm enough Phoenix, AZ. WiRC is an annual conference that brings women leaders of all five organizations of the ARA together to learn and collaborate about industry leadership, advocacy, practice management, professional development, sales & marketing.

At this one-of-a-kind ARA conference, women leaders from all five of the ARA organizations, including the American Society of Pension Professionals & Actuaries (ASPPA), the American Society of Enrolled Actuaries (ASEA), the National Association of Plan Advisors (NAPA), the National Tax-deferred Savings Association (NTSA), and the Plan Sponsor Council of America (PSCA) experience unique opportunities to network and engage



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with fellow leaders from all aspects of the retirement industry.

This year, nearly 200 retirement industry leaders gathered at the Wigwam resort to learn modern tips, tools, and industry trends. Attendees include administrators, plan consultants, actuaries, business owners, insurance professionals, investment advisors, plan sponsors, accountants, recordkeepers, ERISA attorneys, payroll providers and human resource professionals. Apryl Pope, Owner of Pope Financial Planning, LLC, mentioned, “Our industry is full of men who are usually the CLEAR majority at most conferences. In contrast, when you go to WiRC, you see that there are plenty of talented, powerful, and extraordinary women in all areas of the retirement plan industry.” With such a collaborative conference, attendees have expanded opportunities to network and engage in business development. The depth this affords provides a bridge for a member of one organization to connect easily with members of the other ARA organizations. Such a bridge is invaluable to attendees looking to be more influential and impactful within the retirement plan industry.

WIRC KICK-OFF AND OVERWHELMING SPONSOR SUPPORT

The conference kicked off mid-week with a new attendee orientation session, wrapping up with a happy hour and get-to-know/networking opportunities, and, finally, dinner! New attendees got to meet other new attendees by breaking up into groups of four and learning three things the entire group had in common, which is not as easy as you would think!

Thank you, sponsors, for your support, camaraderie and leadership! Sponsors from all aspects of the retirement industry championed the kick-off of our conference. They made the conference possible, including Allianz, Allspring Global Investments, Ascensus, Capital Group – American Funds, Fidelity, HUB, John Hancock, Lincoln Financial

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Group, Marsh McLennan Agency, Nuveen, NWPS, OneAmerica, PenChecks Trust, PensionPro, State Street Global Advisors and The Standard.

WIRC SESSIONS SHARE INDUSTRY TRENDS

We dove in on Thursday with Situational Leadership® led by Rosemary Laack, a certified trainer for The Center for Leadership Studies. Situational Leadership® provides a framework for leaders to create the highest probability of success when it comes to influencing the behavior of others with a focus on four core competencies: Diagnose, adapt, communicate and advance. We learned how, as leaders, we can engage in effective performance conversations with our team members and colleagues that build trust, increase productivity and drive behavior change. We wrapped up this session by sharing the results of an assessment exercise we had engaged in with our team members before the conference.

Next, we heard from a master coach, author and speaker, Sophia Hyde. Sophia's guidance focused on how our world is shifting to one that is increasingly more customized. As leaders, if we want to guide our teams well and serve our client's best interests, we have to lean into this customized approach. Through thought management, we can help those we lead to define their favorite selves and reveal how to help them achieve their goals and maximize results.

Marquette Payton, Retirement Director with Janus Henderson, presented on modern prospecting and expanded conversation around the customization concepts shared by Sophia. We dusted off some business development fundamentals and uncovered an unlimited supply of new and creative ways to engage with the individuals we prospect to during this session. Attendees came out of this session understanding our clients' unique and niche needs and how not understanding those needs more often holds back a successful sale in this modern age of prospecting.

The day's final session was a panel discussion on practical ways to foster diversity, equity, inclusion and belonging in our workplaces. The panel included WiRC committee co-chairs Leah Sylvester, Partner & Director of Retirement Plan Services at Shepherd Financial; Kirsten Curry, CEO, Attorney & Founder of Leading Retirement Solutions and Deena Rini, Vice President & Practice Leader of Retirement Plan Services at Oswald Financial. The panelists shared their experiences and their work around overcoming common DEIB challenges. Discussion included addressing biases in the workplace and how the retirement plan industry can support DEIB

> “THROUGH THOUGHT MANAGEMENT, WE CAN HELP THOSE WE LEAD TO DEFINE THEIR FAVORITE SELVES AND REVEAL HOW TO HELP THEM ACHIEVE THEIR GOALS AND MAXIMIZE RESULTS”

initiatives through mentoring programs, practice management workshops, and more.

Thursday wrapped up with a highly energized margarita (including a mocktail) and salsa competition. Attendees teamed up in groups of eight. Led by master bartenders and southwestern chefs, each team made and presented for judging the best salsa and drinks the WiRC attendees could invent! It was an exciting competition, with teams selecting logos, names for their creations and more.

WIRC ATTENDEES ADVOCATING FOR THE RETIREMENT INDUSTRY

The last day of WiRC started with Kelsey Mayo, Director of Regulatory Affairs for the ARA and Partner at Poyner Spruill, sharing with the audience how we can find our mark and secure our place in advocacy for the retirement plan industry. With advocacy being such a powerful and essential catalyst for change, Kelsey shared, during this interactive session, how we can have more of a voice in advocacy, including opportunities available to us through the ARA Government Affairs team, supporting the work of the Government Affairs team by supporting the ARA PAC, sharing our expertise, experience, and insights and how our participation brings so much value to the advocacy process.

Kelsey introduced special guest Congressman David Schweikert from Arizona’s 1st District. Representative Schweikert is a Senior House Republican Member of the U.S. Congress Joint Economic Committee and shared his advocacy work particularly related to retirement savings and protections. He is the sponsor of the pending Retirement Protection Act of 2022, the provisions of which intend to increase retirement savings and simplify retirement plan rules. Schweikert identified the WiRC audience as part of Congress’s solution because the retirement plan industry is trusted. We had the opportunity to learn from Representative Schweikert how to get connected with regulatory agencies and representatives that need to hear from us.

The conference wrapped up on Friday with saying less and getting more through unconventional negotiation techniques. Fotini Iconomopoulos, negotiation consultant and author of *Say Less Get More* shared how we can tap into negotiation skills and strategies to get the best outcome for the team members and clients we advocate for and ourselves. Fotini addressed how women are more often penalized for negotiating. We learned many communication tricks, tapping into our superior trust and empathy skills, making us ideal negotiators and getting to that assertive rather than aggressive labeling when going after what we want or need.

CONSIDER ATTENDING WIRC, SUPPORTING WIRC, OR BOTH

Leaders of our retirement plan industry largely attend WiRC and it is such an impactful group of women to connect with, network with and support.

On the opening night, Mickie Murphy, President of Blue Benefits Consulting, Inc., told the group, “I never felt the need to be involved in women’s groups, but attended my first WiRC event years ago and discovered I was with my people! WiRC is the conference I choose to attend each year so that I can be fed with networking, building relationships with colleagues, and diving into career development topics. I won’t miss it!”

I hear that Mickie Murphy, WiRC’s ASPPA Co-Chair, and Leah Sylvester, NAPA’s Co-Chair, are already starting to plan next year’s conference. Whether you plan on attending the WiRC 2024 conference or supporting WiRC via sponsorship, we look forward to seeing you next year!

Finally, a huge thanks go out to the ARA team members supporting conference planning and the WiRC Committee, including Kirsten Curry & Mickie Murphy, ASPPA representatives; Leah Sylvester & Apryl Pope, NAPA representatives; Michelle Engel, NTSA representative; Kathleen Tompkins, ASEA representative; Gabrielle Turner, PSCA representative; as well as Amanda Iverson, ASPPA LC Liaison and Renee Scherzer, NAPA LC Liaison. PC

NEW & RECENTLY CREDENTIALED MEMBERS!

WELCOME

MSEA
Remington Rable

QPA
Graeme Hansell
Shawn Marnell
Mariah Melanko
John Public
Allison Willingham

QKC
Joseph Buczek
Amanda Calvert
Shane Cody
James Coop
Ryan Countrymen
David Culpepper
Jim Deasy
Nathan Deege
Shawna Della-Hammer
Lindsey Dolbeer
Nicholas Fast
Michelle Freiholtz
Philip Germani
Cynthia Grady
Janet Hanson
Stephanie Hepler
Jordan Kilts
Suzanne Lawson
William Lester
Steven Matthews
Miguel Mazzilli
Connie McCleary-Geiger
Jillian Patrick
Robert Pickett
Lee Porter
Sarah Voigt Pritchard
Robert Walsh
Andrea Zimerman

QKA
Karen Barta
Tristan Barton
Chris Becker
Brylee Beverage
Nolan Bowar
Michael Costello
Danielle Davenport
Brenna Deland
Zachary Delano
Dolores Delgado
David Dilorenzo
Michelle Disharoom
Sarah DuRee
Diane Ellis
Melissa Fellows
Sue Freudenthal
Brendan Furtek
Samantha Garofola
Cyndi Harris
John Harvey
Taylor Hoff
Marjorie Hohwald
Nanette Hutchison
Jennifer Jackson
Jennifer Jensen
George Kanakis
George Karegeannes
Amy Kilburg
Katherine Killeen
Kenzie Kloke
Ronald Kolodziej
Gigi Krisnitski
Dustin LaCook
Connie Lee
Carol Lewin
Megan Lewis
Jason Lintner
Brad Loween
Tricia Marcos
Jessica McDevitt
Imani Minor
Kate Moreton
Lisa Napier
Lauren Payne
Jillian Pender
Samuel Pimentel
Naida Pourfathi
John Public
Becky Rasmussen
Maria Reyes
Morgan Robertson
Kathryn Rossano
Jana Samek
Christopher Schwab
Rhonda Smith
Kelli Soderlund
Ryan Stamper
Lucas Stang
Stephen Stefanko
Jennifer Thacker
Jennifer Tripp
Laurie Woodworth
Michael Zehnder

APM
M. Gage Stromberg

ASPPA
WINTER
SYMPOSIUM

SAVE THE DATE

DECEMBER 4-5, 2023