AN OFFICIAL PUBLICATION OF ASPPA

PLAN CONSULTANT

SUMMER 2021

100 days

WHAT DO THE INITIAL MONTHS OF THE BIDEN ADMINISTRATION TELL US ABOUT ITS IMPACT ON THE INDUSTRY?

TECH INFLECTION POINT

403(B) PLAN GOVERNANCE

CLIENTS AND THE NEW NORMAL

REGISTRATION IS OPEN!
LEARN MORE
RECONNECT
ASPPA ANNUAL 2021
ASPPA
October 17–20
Gaylord National Harbor, MD
www.asppaannual.org

INSIDETHISISSUE

lev radin/ Shutterstock.com

COVERSTORY

FEATURES

QR Code to Digital Version*

Use your phone to link directly to the Online Version!

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

Prostock-studio / Shutterstock.com

Bring **state-of-the-art training** to your team.

The Qualified 401(k) Administrator (QKA)™ credential is all **NEW in 2020!**

ASPPA

www.asppaqka.org


JOSEPH B. BELLERSEN, JR.


JOSEPH M. BURT


LINDA M. CHADBOURNE


KRISTINE J. COFFEY


THERESA CONTI


SUSAN D. DIEHL


SHANNON M. EDWARDS


SHERI FITTS


MELISSA R. GRIM


LISA K. LOESEL


MICHELLE G. MURPHY


CHRISTIAN A. PFEIFFER


PATRICK SHELTON


PETE SWISHER

Joseph B. Bellersen, Jr. started Qualified Annuity Services, Inc., a pension risk transfer advisory firm, in 1981 and now provides de-risking advice to DB clients ranging in size from several million to nearly $3 billion.

Joseph M. Burt, ERPA, APA, QPA, QKA, is the President of Pension Plan Specialists P.C., a TPA based in the Pacific Northwest. A frequent speaker at both industry and non-industry events, Joe has 23 years of experience and serves as 3(16) fiduciary for some clients.

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

Kristine J. Coffey, CPC, CPFA, CRES, is the Executive Vice President of CPE Associates, Ltd., SOUTHWEST and MIDWEST. She has served on the ASPPA Board of Directors and Leadership Council, as NTSA President, and currently on the ARA Council for Women.

Theresa Conti is the President of Sunwest Pensions in Tempe, AZ, a Founding Member firm of The Cerrado Group, a 501(c)(6) trade association dedicated to supporting the retirement plan consultant/TPA industry.

Susan D. Diehl, QKA, CPC, ERPA, CBFT™, is the President of PenServ, a national pension consulting firm based in Horsham, PA. She has served as President of the NTSA and currently serves as the Chair of the NTSA Government Affairs Committee.

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

Sheri Fitts helps advisors, plan sponsors and TPAs broaden their sales reach through digital emotional intelligence (digital EQ™), a virtual sales and marketing process that empowers more empathetic and personalized client engagement.

Melissa R. Grim is a partner at Honigman LLP. She advises clients on a wide range of employee benefits-related matters, including plan design, structuring, implementation and administration.

Lisa K. Loesel is a partner at McDermott Will & Emery LLP. She advises clients on a wide range of employee benefits-related matters, including plan design, structuring, implementation and administration.

Michelle G. Murphy, ERPA, QPA, QKC, is the Senior Manager and practice leader of Blue Benefits Consulting, Inc. In addition to management and oversight of the TPA's locations in Indiana and Ohio, Mickie is responsible for business growth and sales.

Christian A. Pfeiffer is Legal Counsel for PCS Retirement, LLC, where he provides counsel to business partners on a wide variety of issues.

Patrick Shelton is Chief Believer of Benefit Plans Plus in St. Louis, MO, a Founding Firm of The Cerrado Group, a 501(c)(6) trade association dedicated to supporting the retirement plan consultant/TPA industry.

Pete Swisher, CFP®, CPV, QPA, TGPC, is the President of Waypoint Fiduciary LLC. He is a prolific writer and speaker for the financial industry, and an expert in PEPs, MEPs and other group retirement programs.

Plan Consultant is Published by

ASPPA
American Society of Pension Professionals & Actuaries

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

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

EDITOR
John Ortman

SENIOR WRITERS
Ted Godbout, John Iekel

ART DIRECTOR
J.Ethan Duran

ADVERTISING SALES
Erik Vanderkolk
evanderkolk@usaretirement.org

DIGITAL SALES
Tony DeScipio
tdescipio@usaretirement.org

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

COVER
Naresh777 / Shutterstock.com

ASPPA Officers

PRESIDENT
Frank Porter, QPA, QKA

PRESIDENT-ELECT
Natalie Wyatt, QKA, QPFC

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

IMMEDIATE PAST PRESIDENT
Missy Matrangola, QPA, QKA

Plan Consultant is published quarterly by the American Society of Pension Professionals & Actuaries, 4401 N. Fairfax Dr., Ste 600, Arlington, VA 22203. For subscription information, advertising, and customer service contact ASPPA at the address above or 800.308.6714, customerservice@USAretirement.org. Copyright 2021. All rights reserved. This magazine may not be reproduced in whole or in part without written permission of the publisher. Opinions expressed in signed articles are those of the authors and do not necessarily reflect the official policy of ASPPA. **Postmaster:** Please send change-of-address notices for *Plan Consultant* to ASPPA, 4401 N. Fairfax Dr., Ste 600, Arlington, VA 22203.

FSC
www.fsc.org
MIX
Paper from responsible sources
FSC® C084269


EOB 2021 NOW AVAILABLE!
Get yours TODAY!
The trusted, single source of intel and insights every retirement plan professional needs.
ASPPA
ERISA
OUTLINE BOOK
2021
VOLUME 1 Chapters 1A, 1B and 2
Sal L. Tripodi, J.D., LL.M.
with updates provided by Robert M. Richter, J.D., LL.M.
Available in print & online
www.asppa.org/eob
ASPPA

TEMPUS FUGIT

Let's take a moment to acknowledge the enactment of four game-changing laws.

By John Ortman

As we hit the halfway mark of 2021, there are a few anniversaries this year that are worthy of note before the year starts to slip away. No, not *that* kind of anniversary—I'm thinking of *legislative* anniversaries, and four laws in particular that changed the industry.

15 Years: PPA '06

When President Bush signed the Pension Protection Act of 2006 into law on Aug. 17, 2006, he called it "the most sweeping reform of America's pension laws in over 30 years"—a reference to ERISA, of course.

The origins of PPA '06 go back several years before its enactment, when Rep. Charles Grassley (R-Iowa) and other members of Congress began to work toward an overhaul of pension law. Their main focus was to reform the funding rules for DB plans, including those for single employer plans, but because of ASPPA's efforts, the law as enacted included other important provisions as well.

"Other aspects of the law turned out to be significant," recalled ACOPA (now ASEA) Executive Director Judy Miller in 2014. "It allowed for the automatic enrollment of employees in DC plans, which has had huge ramifications, and raised the limits for both DC and DB plans." In addition, PPA '06 gave employees more control over the investment of their accounts. Some of these additions to the legislation came about after strong advocacy efforts by ASPPA.

"The automatic enrollment provisions and the cash balance funding provisions will be the lasting mark of PPA '06 on the progress of our retirement system," Miller said.

20 Years: EGTRRA

The Economic Growth and Tax Relief Reconciliation Act of 2001, signed into law on June 7, 2001, permitted Roth IRAs to be provided in 401(k) and 403(b) plans, created the small business pension start-up credit and the Saver's Credit, and raised the employee and employer contribution limits and indexed them annually for inflation. It also allowed catch-up contributions for participants age 50 and over, removed the 25% compensation cap on employee contributions, raised the contribution limits for IRAs and Roths, waived the 60-day rollover rule in cases of hardship, created 414(h) "pickup" plans for employees of state, local and federal governments, and simplified certain pension rules, including the multiple-use test and the top-heavy rules.

25 Years: SBPJA

President Clinton signed the Small Business Job Protection Act of 1996 in law on Aug. 20, 1996. Designed to help increase the competitiveness of small businesses, the law made it far simpler for small employers to offer 401(k) plans. It modified provisions regarding the definition of HCEs, Section 415 compensation, involuntary cash-outs, excess contributions, family aggregation rules, minimum participation rules, safe harbor rules, notice requirements, limits on matching contributions, distributions of excess contributions, elective deferrals included as compensation, early participation nondiscrimination rules, plan distributions and QJSA waivers and the GATT interest and mortality rate rules.

35 Years: TRA '86

The Tax Reform Act of 1986 was signed into law by President Reagan on Oct. 22, 1986. In terms of its impact on the retirement industry, it was the most damaging legislation ever enacted, including limiting contributions and deferrals and creating the nondiscrimination testing rules, among other things.

Ed Burrows, ASPPA's President that year, called the TRA 86 "one of the great disasters of 1986—actually just the climax of a five-year disaster which included TEFRA, DEFRA, REA '84 and the Tax Reform Act of 1986," all of which impacted the livelihoods of ASPPA members and damaged the viability of DB plans.

And before we depart Memory Lane, just one more thing: Happy 55th Anniversary, ASPPA Nation!

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

Editor

Follow the Discussion… @ASPPA groups/796907 @ASPPA1

NEW & RECENTLY CREDENTIALED MEMBERS!

WELCOME

QPA
Daniel Bach
Thien Bui
Megan Crawford
Samuel LaLonde
Elizabeth Lopes
Laurissa Matesevac
Carrie McColloch
Mark Monasky
Sonia Murphy
Yetunde Odewunmi
Karyn Ramsey
Mary Rodriguez
Jessica Soung
Susan Watts
Christine Weigel

QKA
Michael Adams
David Allen
Stephanie Anthony
Michael Aure
Holly Baker
Katherine Barclay
Leslie Bartels
Dionne Beasley
Kaitlyn Brown
Samantha Browne
John Bushell
Blake Butterfield
Tom Chambers
Mehnaz Chowdhury
Tyler Clark
Sondra Coleman
Rebekah Curran
Sarah Detzler
Sonja Eder
Siobhan Evans
Nicholas Farr
Sonal Fernandez
Lisa Ferranti
Robert Ferris
Ronelle Flint
Cherie Franklin
Izaak Fulmer-Moffat
Logan Fuzetti
Mark Gajowski
Laura Garcia
Amy Garman
Peter Gebre
Terry Gensler
Grant Goheen
Francis Golden
Ivan Gonzalez
Jason Gravlin
James Green
Sheila Hammel
Karl Hanson
Kathleen Hanssen
Dawn Harkness
Luci Hartman
Tina Hauer
Cole Hegstad
Michelle Hilde
Tiffanie Hill
Ashlynn Holbert
Megan Holm
Iain Hooker
Josh Hooyman
Haley Hopkins
Brandon Hughes
Kelly Hummel
Jeff Jensen
Elizabeth Johnke
Sarah Johnson
Zachary Johnston
Katherine Johnston
Alan Kingman
Paul Klehr
Frank Kortenkaemper
Jessica Krumlauf
Kyle Kubeczka
Samuel LaLonde
William Lester
Melissa Licari
Caramia Lissade
Jennifer Logan
Laura Losee
David Lyons
Havila Mamea
Mary Martin
Emily Martin
Lauren May
Katie Mayberry
Carrie McColloch
Jeffrey McCrea
Annie Messer
Ashley Mohr
Mark Monasky
Robert Mounce
Jessica Moxon
Timothy Mueller
Andrew Noplock
Derwin Osada
Christina Pappa
Drew Petit
Karen Pickering
Melissa Pignatiello
April Piziali
Jennifer Plesniak
Elaine Prewitt
Ellen Pyle
Brandon Ramunto
Rebecca Raymond
Michelle Redington
Phyllis Reid
Nicholas Rice
Ricardo Rodriguez
Suzanne Ronyak
Meghan Rooney
Courtney Saddler
Jacques Samuels
Daniel Schieben
David Shepard
Mary-Beth Smith
Joshua Steinberg
Rich Swanner
Michael Syrowski
Jennifer Tammany
Yousaf Tareen
Katch TerKasarian
Boliam Trinh
Matthew Vandiver
Charles West
Eric Willadsen

WHAT DOES IT MEAN TO RETIRE IN AMERICA?

…and what will it mean in the future? **By Frank Porter**

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

It's time to start talking about retirement in America and how we need to reframe the way we look at our industry.

We must explore the increasing pressures surrounding the retirement industry and the merging and overlap of industries such as investment management, insurance, and banking to address the adapting needs of retirement participants. Third party administrators are not left out of this equation as they play a pivotal role in connecting these industry groups together and can be an agent of change in this evolving industry.

The retirement system has experienced intensifying pressures in recent years, leaving the industry with a slowing revenue growth outlook. Many of these challenges are not likely to ease due to the underlying structure of the system, such as unfunded retirement plans, an aging population and fee pressures.

Many retirement providers have been hit hard by fee pressures, with average expense ratios declining by a third in the past decade. And recordkeeping fees that have decreased by as much as 2% per year since 2015. Fee pressures have forced some retirement firms to consolidate, exit or shift to lower turnkey programs. The ability to innovate for many is completely out of the question, especially for firms that do not have significant scale.

> "THE KEY IS TO REMAIN RELEVANT AND KICK-START GROWTH IN AN INCREASINGLY CHALLENGING INDUSTRY."

All is not lost, however. There are opportunities for firms to adapt. Studies show that there is an additional $5 trillion in retirement assets that can be unlocked if firms focus on the evolving needs of participants by addressing individual challenges through new product offerings and full-service advice.

The challenges can be fierce for smaller firms. Such organizations have to answer the question, "How can we change the experience or innovate to foster higher levels of plan participation?" Firms must look for ways to generate scale for distribution, innovate with new technologies and expand benefit offerings to help address gaps in the market. Firms must find out what the key metric drivers are for their large firm partners and help push those services. This will shift the trade winds in their favor, and such alliances will be a powerful force in delivering quality services as well as top-line revenue. While some of the structural issues and fee pressures will likely remain for many years, the ability to meet changing participant needs with new financial and wellness products or shifts to allow greater access to retirement products will help navigate through some of today's challenges.

Expanded access via new products will create challenges for some firms that do not adapt, but for other firms will prove to be great opportunities. Studies have shown that half the U.S. workforce, roughly 63 million people, does not have access to or participate in an employer-sponsored retirement program. Pooled employer plans (PEPs) present an opportunity for retirement firms to work directly with small and mid-size companies to help increase retirement participation. In addition, mandatory plan requirements for small employer products could be something we see come out of a Democratic-led House and Senate over the next couple of years. These two scenarios could be devastating to some firms, while a godsend for others. The key is to remain relevant and kick-start growth in an increasingly challenging industry. If this is too far of a reach for your firm, there are still other options that might provide a considerable solution:

- Offer products and services in new ways in order to find and meet the differing needs of participants. For example, we have seen debt repayment programs become popular and will see decumulation strategies grow in the near future.

- Look for key factors in engaging with new participants early to capture a greater share of the 19 million-plus individuals who do not participate in the retirement plans that have been made available to them.
- Add services that meet the needs of an evolving retirement marketplace. The firms that can extend beyond the current playing field can prove to be more effective.
- Make the participant experience an integral part of everyday life by building greater convenience and personalization. Tie spending, debt, investing and simple steps such as mapping an individual's retirement plan to routine checkups and measurements to help anticipate needs as a way to not only help in reducing employees' financial concerns, but increase engagement and asset retention as well.
- Lead with a digital platform and provide a complete financial wellness experience for retirement plan participants and individuals investing on their own. Through offering improved financial wellness benefits by providing a singular view of their entire financial picture, firms will be situated to serve the growing segment of consumers who seek a combination of digital and human advice.

This all takes careful reevaluation of where and how to participate in an industry that is inundated by rapidly occurring consolidation and product commoditization. It is clear that the status quo will be upended by nimble technology-based solutions. We are just starting to see agile, tech-savvy competitors enter the space and beginning to fill in parts of the retirement system, but for existing firms that adapt, there is room to grow. Firms that can successfully adjust to the changing needs of retirement plan participants with new offerings will carve out space for growth in an increasingly contested and commoditized marketplace.

The best way to predict the future is to create it. – *Peter Drucker* **PC**

thought leader noun

\ thȯt \ lē-der \

Definition:
A person who is recognized as an authority in a specialized field and whose expertise is sought and rewarded.
See also: ASPPA member.

Are you a thought leader? Well then, we've got a place for you – right here, in the pages of *Plan Consultant*. We're always on the lookout for ASPPA members with an idea for a column or feature article in their area of expertise, and an interest in writing about it. In fact, if you have a good idea for an article, but don't want to write the article yourself, we'd love to hear from you too.

As an ASPPA member, this is your magazine – it's an exclusive, members-only publication produced by members, for members. So share your knowledge and expertise. Be a thought leader. And engage with *Plan Consultant* as an author or thought leadership rainmaker.

To get started, just email *Plan Consultant* Editor John Ortman at jortman@usaretirement.com.

ASPPA

CHANGING OF THE GUARD

A change in administrations inevitably brings with it both new regulations and differences in how existing regulations are viewed. **By Brian H. Graff**

We've all had to embrace change and "pivot" to new ways of doing things over the past year—and the work of retirement plan advocacy has been no exception.

While we all know that elections have consequences—over the last couple of election cycles, some outcomes have been unexpected, and thus while not entirely unanticipated, our advocacy efforts have had to pivot—literally overnight—as the balance of power in our nation's capital and state capitals across the nation have shifted.

Shifts in power following the 2016 election meant that late actions taken by the prior administration to clarify potential issues of ERISA preemption with regard to state-run IRA plans for private sector workers were wiped out almost overnight. It meant that a potential fight or change of venue in support of the Obama administration's fiduciary rule didn't happen—and, ultimately, that a new version would emerge. One that the Biden administration has left in place for now, though few expect it to prevail in its current form. It meant that previous sub-regulatory guidance on matters such as environmental, social and governance (ESG) investing would shift from an "all things equal" perspective—one widely viewed as supporting those considerations—to a rule that abruptly and unreasonably precluded them. One that the Biden administration has already announced it will not enforce, pending a review of its impact and consultations with stakeholders.

Of course, it's not just elections that impact advocacy. This past year we've all pivoted from understanding, adopting and implementing the positive, coverage expanding provisions of the SECURE Act to the urgently needed pandemic-focused emergency relief of the CARES Act, as well as the Paycheck Protection Program—all of which involved significant involvement not only with those crafting the legislation, but intensive discussions with the various regulatory agencies to help ensure that the implementation and application would, in fact, be meaningful.

More recently we were successful in fending off an attempt to cap basic cost-of-living adjustments for retirement plans to "pay for" an assortment of unrelated items in the COVID relief package. Many of you will remember the last time that was done (1987)—the more than a decade-long struggle to restore rationality to those limits—and the impact that had on new plan formulation. Who might that change have impacted this time? Nearly two-thirds (64%) of workers who make the maximum allowable employee contribution to a DC plan are aged 45 to 64—and more than 4 in 10 (43%) had adjusted gross income of less than $200,000. Yet, we—with your support—were the only retirement industry organization lobbying to have this provision removed.

We're still very much enmeshed in the fight to protect retirement savings from the sweeping impact of a financial transaction tax—not only in fighting to exempt retirement plan assets from its reach, but more recently in supporting legislation (The Protecting Retirement Savers and Everyday Investors Act) that would shield those savings from the impact of that brand of legislation. The ARA's advocacy helped ensure that the new state-run IRA program unveiled by the state of Virginia allows employers which offer automatic enrollment payroll deduction IRA programs to be excluded from the mandate, and more recently we've championed protections for small business owners contained in the Family Attribution Modernization Act, backed legislation (the Retirement Parity for Student Loans Act) that would allow employers to match student loan repayments, and most recently worked on the Enhancing Emergency and Retirement Savings Act of 2021, which provides a "penalty free" emergency distribution option. And, of course, we are continuing to work with Chairman Richie Neal (D-MA) and Ranking Member Kevin Brady (R-TX) on the House Ways and Means Committee as the Securing a Strong Retirement Act of 2021, commonly referred to as "SECURE 2.0," develops.

Without question, the last several months have been a period of extraordinary challenge, both physically and financially for our nation, our industry—and you. The issues that confronted us prior to the pandemic remain—and many have, in fact, been exacerbated in the interim. It's said that desperate times call for desperate measures, and there's little doubt that, in the months ahead, well-intentioned efforts to solve one problem will, if not remedied, create others. We all know that Americans' retirement savings remain a tempting target for unrelated legislative initiatives—and that a change in administrations inevitably brings with it both new regulations and differences in how existing regulations are viewed.

Margaret Mead once commented, "Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed, it is the only thing that ever has."

Rest assured that, pandemic notwithstanding, your Government Affairs team continues to be actively engaged—and that with your involvement and support, we'll all continue to keep working for America's retirement. PC

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

ASPPA RETIREMENT PLAN SERVICE PROVIDER

CEFEX CENTRE FOR FIDUCIARY EXCELLENCE

ASSESSMENTS PERFORMED BY CEFEX, CENTRE FOR FIDUCIARY EXCELLENCE

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

ADMIN SUPPORT GROUP
Barreal de Heredia, Costa Rica

ALLIANT EMPLOYEE BENEFITS
New York, NY
alliant.com

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

APS PENSION
Melville, NY
apspension.com

ASC TRUST
Hagatna, Guam
asctrust.com

ASPIRE FINANCIAL SERVICES, LLC
Tampa, FL
aspireonline.com

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

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

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

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

BEASLEY & COMPANY
Tulsa, OK
bco.cc

BENEFIT MANAGEMENT INC.
Providence, RI
unitedretirement.com

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

BENEFIT PLANS, INC.
Omaha, NE
bpiomaha.com

BENEFITS ADMINISTRATORS, LLC
Lexington, KY
benadms.com

BLUE RIDGE ESOP ASSOCIATES
Charlottesville, VA
blueridgeesop.com

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

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

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

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

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

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

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

FUTUREBENEFITS OF AMERICA
Arlington, TN
futurebenefitsofamerica.com

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

INGHAM RETIREMENT GROUP
Miami, FL
ingham.com

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

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

LATITUDE SERVICE COMPANY, INC
Plymouth, IN
latituderetire.com

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

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

PCS RETIREMENT, LLC
Philadelphia, PA
pcscapital.com

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

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

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

PENTEGRA RETIREMENT SERVICES
Columbus, OH
pentegra.com

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

PREFERRED PENSION PLANNING CORP
Bridgewater, NJ
preferredpension.com

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

QRPS, INC.
Raleigh, NC
qrps.com

REA & ASSOCIATES
New Philadelphia, OH
reacpa.com

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

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

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

RPG CONSULTANTS
Valley Stream, NY
rpgconsultants.com

SAVANT CAPITAL MANAGEMENT
Rockford, IL
savantcapital.com

SECURIAN RETIREMENT
St. Paul, MN
securian.com

SENTINEL BENEFITS & FINANCIAL GROUP
Wakefield, MA
sentinelgroup.com

SI GROUP CERTIFIED PENSION CONSULTANTS
Honolulu, HI
sigrouphawaii.com

SLAVIC401K.COM
Boca Raton, FL
slavic.net

SOUTH STATE RETIREMENT PLAN SERVICES
Charleston, SC
southstate401k.com

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

TPS GROUP
North Haven, CT
tpsgroup.com

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

**as of March. 05, 2021*

GETTING OUT, PART 2

There are some special considerations when exiting a professional employer organization (PEO).

By Pete Swisher

Editor's Note: This is the conclusion of a two-part series on best practices in getting out of a MEP, PEP or PEO. Part 1 appeared in our Spring issue.

Professional employer organizations (PEOs) act as "co-employers" with their worksite employer customers, whom the IRS refers to as "recipient employers" when talking about PEO MEPs.[1] The PEO assembles a package of human resources support, payroll, legal, government filings, compliance with OSHA[2] and other rules, and a full package of employee benefits. The idea is that the employer can focus on what it does best and leave the administrative side to the PEO, who becomes the "employer" for most purposes other than fulfilling the company's mission.

The recipient employers control the workers, so they are the common law employers—not the PEO. Thus, even though the workers get their paycheck from the PEO, they are common law employees of their worksite employers, with few exceptions. Thus, they cannot participate in the PEO's own 401(k).[3]

Administrators or recordkeepers who have taken over a plan that is exiting a PEO might be familiar with how the conversation often goes:

> **Advisor, phoning urgently on Dec. 4:** "My client is exiting a PEO and the PEO is turning off access to the 401(k) on Jan. 1, so I need a new plan set up by then. Can you do it?"
> **TPA/recordkeeper:** "No."

The full answer is a bit more nuanced than just "No," of course. The problem is the timing. An employer that is struggling financially

Dooder / Shutterstock.com

"AN EMPLOYER THAT IS STRUGGLING FINANCIALLY AND LEAVES THE PEO TO SAVE MONEY IN THE SHORT TERM—OR WHO JUST MAKES A SNAP DECISION TO GET OUT—TENDS TO MAKE THE DECISION AND CHOOSE A DATE WITHOUT FULLY CONSIDERING THE TIME AND EFFORT REQUIRED FOR THE TRANSITION."

and leaves the PEO to save money in the short term—or who just makes a snap decision to get out—tends to make the decision and choose a date without fully considering the time and effort required for the transition. Often the date is Jan. 1.

The PEO will send a series of messages to the employer saying, more or less, "Sorry to see you go. Be sure to set up payroll, health care, 401(k) and everything else on your own, and be aware that we are cutting you off promptly on Jan. 1." The client and advisor then go into panic mode: "Yikes, we have to have 401(k) set up in time for the first payroll in January." Which is frequently not possible.

In a typical non-PEO service provider change, payroll remains in place, as does the prior plan, so it is not a big deal to schedule the transition over an appropriate time frame. The problem with the PEO exit is that the employer often focuses on getting the new payroll system in place first and waits too long to make a 401(k) decision. The PEO cuts off payroll on schedule, but the new 401(k) may not be ready to receive contributions until February or later. The timing is complicated further by the fact that setting up payroll is a significant challenge in itself, and setting up the 401(k) on the new payroll system may be more difficult than usual due to unfamiliarity.

There are two options for how to handle this:

- **Hold Contributions.** Use participants' current elections and continue to withhold deferral contributions from paychecks. Take your chances with the regulators with respect to timely remission of those contributions to the trust, or go ahead and consider them late, do an earnings calculation, and when the new vendor is ready the participants will have gotten a small earnings boost on the money withheld. In this latter approach, you should file a Form 5330 (or a VFCP[4]) with respect to the prohibited transaction (employer holding onto the money)[5] and reflect late remissions on the Form 5500 for the year. On the other hand, there is an argument to be made that the contributions are not late if deposited by Feb. 15, assuming the new vendor is ready, using our January transition example, but most ASPPA members members need little reminder of the perils of taking that stance.[6]
- **Suspend Deferrals.** Stop taking money from workers' paychecks while working to set up the new 401(k), then restart based on new or mapped elections. As part of the education and communication process of the transition, show them how to increase deferral percentages to make up the lost ground over the course of the year. Be sure to communicate the suspension of deferral withholding appropriately.

Naturally, it would be better for the employer to leave plenty of time for transition—at least four months after selecting the new payroll vendor, for example.

CONCLUSION

Employers who are part of a PEO are well-served to leave themselves a large time cushion—at least six months. Selecting the new 401(k) vendor early in the process, coincident with selecting the payroll vendor, can help ensure better coordination. A key reason it does not occur to many employers to do these things is that they do not have an advisor—the PEO arrangement does not put them in regular contact with the MEP's financial advisor. Hiring an experienced retirement plan advisor and/or third party administrator is therefore the logical first step. PC

Footnotes

1 Revenue Procedure 2002-21
2 Occupational Safety and Health Administration
3 IRC Section 401(a)(2), the exclusive benefit rule
4 Voluntary Fiduciary Correction Program, which helps make the employer safer in event of a DOL audit, and eliminates the need for a Form 5330 since it accomplishes the same thing for participants (lost earnings)
5 ERISA Section 406(a)(1)
6 29 CFR 2510.3-102

WHAT YOU DON'T KNOW CAN HURT YOU

The outdated family attribution rules are hindering the ability of small businesses to adopt new plans and expand participant coverage. It's time for a change. **By Shannon Edwards & Linda Chadbourne**

There once was an actuary who owned his own actuarial firm, had 15 employees, and sponsored a cash balance DB plan combined with a 401(k) profit sharing plan. One day while at the grocery store, he ran into his ex-girlfriend from college. She told him that she was now a successful business owner with 150 employees—and revealed that he was the father of her minor child! After the shock wore off, the actuary realized that he was unknowingly the member of a controlled group. His retirement plans had likely been failing coverage for many years, and he was going to have to file a VCP application with the IRS.

The Code Section 1563 family attribution rules are used in the controlled group provisions established as part of the Revenue Act of 1964. According to an IRS study guide, those provisions "were initially issued as part of a tax reform package intended to encourage small businesses, which operated in the corporate form. Over time some medium and large businesses began taking advantage of the lower tax rates afforded small businesses by organizing their structure into multiple corporate forms."

In 1974, ERISA added Code Sections 414(b) and (c). After their addition, all employees of commonly controlled corporations, trades or businesses had to be treated as employees of a single employer. When enacted, these code provisions used the statutory definition of controlled

Prostock-studio / Shutterstock.com

groups found in Code Section 1563(a), which includes the ownership tests that we are now required to use to determine if a controlled group exists.

Generally speaking, the family attribution rules under Section 1563 required that if two spouses each have ownership in their own individual businesses, their businesses must be considered a single employer for retirement plan purposes when testing the plan for coverage and non-discrimination unless they can meet four exceptions:

1. the individual does not have direct ownership in the spouse's business;
2. the individual is not a director or employee, and does not participate in the management of the spouse's business;
3. no more than 50% of the gross income of the spouse's business for a taxable year is derived from passive investments (e.g., royalties and rents); and
4. the spouse's ownership interest is not subject to disposition restrictions running in favor of the individual or the minor children of the individual and the spouse (e.g., the business owner cannot be required to offer a right of first refusal to his or her spouse or their children before selling the business to a third party).

However, Section 1563 also states that even if two individuals can meet the exceptions above or are not even married, if they have a child together under the age of 21 or live in a community property state, they are still considered a single employer for retirement plan benefits and testing.

The results of the Section 1563 family attribution rules required to be used under Section 414, as illustrated in the story above, are outdated and illogical in the current economic environment. They were enacted long before most households had two working parents. Today, it is more likely that both parents in a household work, and the number of women-owned businesses has increased dramatically. Therefore, it is more likely that both spouses own their own companies and they could potentially meet the non-involvement exception.

Assuming that the individuals either are not spouses or if they are they can avoid being considered a controlled group of entities by qualifying under the non-involvement exception, should they have to be considered a single employer for retirement benefits simply because they have a child under the age of 21? Take it a step further: If the spouses have divorced and have nothing to do with one another besides having a child together who is under the age of 21, why should they still be considered a single employer?

The rules get even more complicated and illogical when you consider the impact of state community property laws. If the spouses start their businesses while living in a non-community property state and then move to a community property state, they are suddenly considered a controlled group when they weren't before. And even if they move back to a non-community property state, they are still considered a controlled group.

The application of these outdated rules is currently affecting the retirement plan industry and hindering the ability of small businesses to adopt new plans and expand participant coverage.

For example, a TPA business owner tells the story of a physician client she took over. His wife owned a gym and they had four kids under 21. They had never covered the gym employees, and no one had ever asked them about owning other companies. If the plan had been failing coverage in prior years when considering the gym employees, the plan would have to go through the IRS VCP program and the doctor and his wife would probably have to either make retroactive contributions to retain the plan's qualified status or retroactively disqualify the plan and pay the taxes and penalties.

Another colleague tells the story of a client who got married to someone with a child from a previous relationship. However, the client could not adopt the child because that would have created a controlled group.

Then there is the situation where one spouse has a very lucrative business and wants to sponsor a cash balance plan for their business but isn't able to because their spouse's less profitable business can't afford the contributions that would be required. This kind of situation is created solely because a minor child is involved.

A LEGISLATIVE FIX MAY BE IN THE WORKS

In late April, a bill was introduced in the U.S. House that seeks to correct the archaic and unfair family attribution rules. The bipartisan "Family Attribution Modernization Act" is championed by the American Retirement Association.

The bill seeks to correct tax laws that automatically consider spouses in nine community property states to own 50% of all property obtained during the marriage thereby creating a controlled group of businesses where both spouses own their own business. It also seeks to address the attribution of shares from parent to minor spouse and back to parent, as is the case in the example in the first paragraph. A similar provision is included in the broader "Securing a Strong Retirement Act" (a.k.a. "SECURE 2.0") legislation also pending in the House.

While we believe in the need to protect plan participants from potential abuses that can occur when individuals own multiple companies or spouses own multiple companies, we also feel that the two issues addressed in this article need to addressed and updated for the current reality because of the number of people who own small businesses and the increase in the number of women-owned businesses. If these two attribution rules are corrected, we believe that the family attribution rules would be far more equitable and would encourage more business owners to adopt retirement plans and increase participant coverage. PC

WHO'S MISSING PENSION BENEFITS?

The DOL continues its investigations to find out.

By Melissa R. Grim & Lisa K. Loesel

Despite the COVID-19 pandemic, the U.S. Department of Labor (DOL) has been quite busy issuing thousands of pages of regulations and guidance and continuing to flex its muscles on the enforcement side. In particular, we continue to see DOL investigations of defined benefit (including cash balance) retirement plans, most of which focus on ensuring that plan sponsors are vigilant in their hunt for "missing" pension plan participants. Are your clients ready if the DOL comes knocking?

According to the DOL website, the DOL's Terminated Vested Participant Project aims to reunite participants with their pension benefits which "may be at risk due to plan sponsor actions or failures to act" (i.e., the failure to maintain adequate records and procedures for contacting terminated participants with vested account balances in a timely fashion to better avoid risk of forfeiture upon death or the imposition of participant tax penalties upon "late" distributions). The DOL has been successful in its quest, touting its "recovery" on behalf of 27,600 terminated participants of their vested benefits under defined benefit and cash balance pension plans totaling $1.48 billion during its fiscal year 2020.[1]

Our focus here is to provide you with practical tips and insights from our experience helping clients navigate these DOL investigations. We know that these investigations are stressful, time-consuming and frustrating for plan sponsors, fiduciaries and service providers alike.

Fer Gregory / Shutterstock.com

THE INITIAL LETTER

Typically, the DOL's initial communication is a written letter sent to the plan sponsor. The DOL rarely discloses why it opens an investigation and even if you ask, the DOL investigator will state that he or she cannot tell you the underlying reason. The investigation potentially could have been initiated following participant inquiries to the DOL or the (relatively) high number of terminated vested participants reported on the plan's Form 5500 as eligible to commence benefits.

The initial letter will include a laundry list of requests for documents and usually a fairly short (2-3 week) deadline for producing them. *This is why quick action is needed upon receipt of this initial letter*. Plan sponsors should take two steps. First, take a deep breath and call the legal counsel who assists with the plan (whether internal or external); he or she will help you manage the process, the timelines (including requesting extensions and evaluating the appropriateness of the scope of the requests), and the interaction with the DOL. Next, make sure that you alert your internal constituents and reach out to your pension plan's service providers because you will undoubtedly need their assistance throughout the investigation. Many service providers also have prior experience navigating the DOL investigation process.

DOL'S BROAD AUTHORITY

Under ERISA, the DOL has broad investigatory authority to determine whether any person has violated or is about to violate Title I of ERISA,

Fer Gregory / Shutterstock.com

which covers fiduciary, reporting and disclosure obligations. Accordingly, you should expect that, over the course of the investigation, the DOL will utilize several approaches to obtain the information it needs. For example, in addition to document requests, the DOL will often request one or more on-site (or online video) interviews with the plan sponsor personnel who are actively involved in the administration of, or have fiduciary obligations to, the plan. The interviews are voluntary, are not recorded, and are not deposition-like (except that to the interviewee, they often *feel* like a deposition!).

Your counsel will work with you to prepare the interviewee because the line of questioning can be daunting and the DOL's initial statements will warn the interviewee that information discussed in the interview can be referred to other agencies, including to the Department of Justice for prosecution. Counsel can (and, we recommend, should) attend these interviews to take notes and monitor the scope of the questions asked.

RESPONDING TO REQUESTS

It's common that the DOL will follow up with several rounds of additional document and information requests. *Good communication between the internal plan sponsor team working on the investigation, the plan's service providers, and the plan's ERISA counsel is essential during this back-and-forth exchange of information with the DOL.* Building a good rapport with the DOL investigator tends to help when extensions are needed, and ERISA counsel and the plan's service providers can assist in prioritizing the responses to certain requests over others.

Note, however, that the DOL also has subpoena authority. We have seen the DOL threaten the use of its subpoena power when the investigator thinks that the plan sponsor/fiduciary is being uncooperative or refuses to provide certain documents or information. We recommend that you work with your ERISA counsel to determine the appropriate response to the often voluminous requests from the DOL, but sometimes having the DOL subpoena the information may be preferable if the documents and/or information requested by the DOL are highly confidential, contain protected

"THESE INVESTIGATIONS ARE STRESSFUL, TIME-CONSUMING AND FRUSTRATING FOR PLAN SPONSORS, FIDUCIARIES AND SERVICE PROVIDERS ALIKE."

health or other personal information, or could cause the plan sponsor or a service provider to breach a corporate (or plan) policy or contract.

PARTICIPANT SEARCH PROCESS

If the plan has missing participants who have not been responsive about commencing (or affirmatively delaying) their benefits, the DOL will typically conduct its own diligent search to find these individuals as part of the investigation. You should be prepared for the DOL to find individuals that you have never been able to find. While this can be upsetting after you feel like you have "looked everywhere," remember that the DOL has access to an extremely robust search database. Furthermore, some "missing" participants are simply more inclined to open a letter or answer a phone call from the DOL than one from a former employer. In fact, the DOL's location of these "missing" or otherwise unresponsive participants is ultimately quite beneficial to the plan sponsor, particularly to the extent the participants take a lump sum distribution.

DEATH BENEFITS

If some of the "missing" or unresponsive participants died before commencing plan benefits, the DOL will shift its focus to any death benefits that might be payable on behalf of the deceased participants. In order to prepare for this question, you should confirm your understanding of which death benefits are payable under the plan's formula(s) and whether you have information regarding participants' marital status and required beginning date (for required minimum distributions (RMDs)). The DOL will sometimes assume that there is a death benefit due on behalf of all participants who died prior to commencing benefits, even though many traditional pension plan formulas only pay a death benefit to a surviving spouse. The DOL will also be looking to determine whether there may be late RMD payments due to a deceased participant's estate.

CLOSING THE INVESTIGATION

In our experience, DOL investigations continue for at least six months to a year and in many cases, extend into multiple years. According to the DOL website, the policy is to promote voluntary compliance (when possible) and impose penalty amounts (when applicable) rather than bring a civil lawsuit with regard to the issues involved.[2] However, realize that it is the DOL investigator's job to find violations under ERISA and that the DOL investigator needs to be able to sufficiently "prove" to his or her supervisor that the investigation was thorough and complete before the investigation can be closed. In other words, the DOL likely will not say, "Well, this is good enough."

Most plan sponsors will ultimately receive a closing letter in which the DOL states its findings (likely including potential violations of ERISA) and indicating either that no action is needed or that sufficient corrective actions have already been taken. In the context of these missing participant audits, we typically do not see the DOL impose fines or refer matters for further legal action.

TAKE ACTION NOW

We recommend that plan sponsors take the following proactive steps to better prepare for a potential DOL investigation:

- Ask your plan service providers and your internal team to provide you with their current procedures for: (1) maintaining participant census data; (2) when and how participants are contacted if they do not commence benefits or are unresponsive or determined to be missing; and (3) the process for handling uncashed checks.
- Review the recent DOL guidance, "Missing Participants—Best Practices for Pension Plans" and Compliance Assistance Release No. 2021-01.
- Set aside time with the plan's ERISA lawyer and service providers to pressure-test these procedures against the recent DOL guidance and determine if any changes or improvements are needed.
- Report your review of these procedures to the plan's fiduciaries. PC

The content in this column is for informational purposes and does not constitute legal advice.

Footnotes

[1] See DOL Fact Sheet (https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/ebsa-monetary-results.pdf), last visited April 18, 2021.

[2] See https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement, last viewed April 18, 2021.

FINALLY: DOL GUIDANCE ON CYBERSECURITY

The April 14 guidance is intended for plan sponsors, plan fiduciaries, record keepers, plan participants and beneficiaries. **By John Iekel**

In April, the Department of Labor issued detailed guidance on cybersecurity. It had nibbled on the edges of the matter before, but had not taken such a full bite of specific cybersecurity guidance before.

The DOL's Employee Benefits Security Administration (EBSA) had issued regulations on electronic records and disclosures to plan participants and beneficiaries before. Just a year earlier, the DOL issued a final rule that provided a safe harbor for electronic disclosures. The DOL considers the new guidance a complement to these and other regulations it already issued concerning electronic records and disclosures.

CALLS TO ACTION

Just two months before, the Government Accountability Office (GAO) issued a report calling on the DOL to set minimum standards for mitigating cybersecurity risks and to formally state whether it is a fiduciary's responsibility to mitigate them. It's not the first time that the GAO has called for action on cybersecurity; in 2018, the watchdog identified critical actions the federal government should take to address major cybersecurity challenges.

Tin February the GAO called for more deliberate, clear guidance from the federal government, and the DOL in particular. "A host of plan administrators share the personal information used to administer these plans via the internet, which can lead to significant cybersecurity risks. In some cases, there is no federal guidance about how to mitigate these risks," said the GAO. "The Department of Labor hasn't clarified whether plan administrators are responsible for mitigating cybersecurity risks and hasn't set minimum expectations for protecting personal information."

But despite that—not to mention the increase in cyber crime that puts assets, plans and participants at risk—federal activity had not been comprehensive, coordinated nor definitive. In fact, the GAO noted, officials from the DOL itself said that, "Although a compelling need exists, DOL has not issued a formal statement, either in a document or on its website, on whether it is a fiduciary's responsibility to mitigate cybersecurity risks in retirement plans." Nor has it set "minimum expectations for protecting personal information," the GAO added.

But now it has. The April 14 guidance is intended for plan sponsors, plan fiduciaries, record keepers, plan participants and beneficiaries. It includes in-depth discussion of best practices to follow when seeking to establish, protect and enhance the security of retirement accounts and the data—and most important, the revenue—around which it all is centered.

The guidance comes in three forms: cybersecurity program best practices for recordkeepers and other service providers, tips for plan sponsors on selecting a service provider, and general online security tips.

SERVICE PROVIDER BEST PRACTICES

EBSA suggests best practices for record keepers and other service providers responsible for plan-related IT systems and data. EBSA says service providers should:

- Have a formal, well-documented cybersecurity program.
- Conduct prudent annual risk assessments.
- Have a reliable annual third-party audit of security controls.
- Clearly define and assign information security roles and responsibilities.
- Have strong access control procedures.
- Ensure that any assets or data stored in a cloud or managed by a third-party service provider are subject to appropriate security reviews and independent security assessments.
- Conduct periodic cybersecurity awareness training.
- Implement and manage a secure system development life cycle program.
- Have an effective business resiliency program addressing business continuity, disaster recovery and incident response.
- Encrypt sensitive data, stored and in transit.
- Implement strong technical controls in accordance with best security practices.
- Appropriately respond to any past cybersecurity incidents.

The full guidance for recordkeepers and other service providers is online at https://bit.ly/3gw8DBr.

TIPS FOR HIRING A SERVICE PROVIDER

The DOL offers tips to help business owners and fiduciaries meet their responsibilities under ERISA to prudently select and monitor service providers.

1. Ask the service provider:
   - about its information security standards, practices and policies, and audit results;
   - how it validates its practices;
   - what levels of security standards it has met and implemented; and
   - whether it has experienced past security breaches, what happened, and how it responded.
2. Look for:
   - service providers that follow a recognized standard for information security and use an outside auditor to review and validate cybersecurity; and
   - contract provisions that give you the right to review audit results demonstrating compliance with security standards.
3. Compare the service provider's standards to those other financial institutions follow.
4. Evaluate the service provider's track record in the industry, including public information regarding information security incidents, litigation and legal proceedings related to its services.
5. Find out if the service provider has insurance that would cover losses caused by cybersecurity and identity theft breaches.
6. Make sure that a contract with a service provider requires ongoing compliance with cybersecurity and information security standards. Try to include terms in the contract that would enhance cybersecurity protection such as the following:
   - **Information Security Reporting.** Require the service provider to obtain a third-party audit annually to determine compliance with information security policies and procedures.
   - **Clear Provisions on the Use and Sharing of Information and Confidentiality.** Spell out the service provider's obligation to keep private information private, prevent the use or disclosure of confidential information without written permission, and meet a strong standard of care to protect confidential information against unauthorized access, loss, disclosure, modification or misuse.
   - **Notification of Cybersecurity Breaches.** Identify how quickly the service provider will provide notification of any cyber incident or data breach, and ensure the service provider's cooperation to investigate and reasonably address its cause.
   - **Compliance with Laws Concerning Records Retention and Destruction, Privacy and Information Security.** Specify the service provider's obligations to meet all applicable federal, state and local laws, rules, regulations, directives and other governmental requirements pertaining to the privacy, confidentiality, or security of participants' personal information.
   - **Insurance.** Consider requiring insurance coverage such as professional liability and errors and omissions liability insurance, cyber liability and privacy breach insurance, and/or fidelity bond/blanket crime coverage.

The tips for plan sponsors and fiduciaries on hiring a service provider are online at https://bit.ly/32LUoA4.

GENERAL ONLINE SECURITY TIPS

EBSA advocates these practices to reduce the risk of fraud and retirement account losses plan sponsors and plan participants face:

- Register, set up and routinely monitor online accounts.
- Use strong and unique passwords.
- Use multi-factor authentication.
- Keep personal contact information up to date.
- Close or delete unused accounts.
- Be wary of free wifi.
- Beware of phishing attacks.
- Use antivirus software and keep apps and software current.
- Know how to report identity theft and cybersecurity incidents.

The list of online security tips is online at https://bit.ly/32K3pK0. PC

COOKING UP PENSION RISK TRANSFER

Cooking is an enjoyable hobby as well as indulging necessity.

By Joseph B. Bellersen, Jr.

When pondering the process for purchasing annuities for a defined benefit plan, there are parallels to tinkering with a favorite recipe. These favorites are dependable, repetitive and enjoyable experiences. So it is with purchasing annuities. And while a recipe may be tried and true, experimentation is always an option. In the institutional annuity marketplace, it's become a necessity.

FUNDING VOLATILITY

The Pension Protection Act of 2006 introduced a 7-year window to amortize gains and losses. The reality is that asset volatility has driven severe changes in funding levels. One significant contributor is the Federal Reserve, which exercises its role in managing macroeconomic conditions. Fed intervention in short-term rates provides stimulus as long-term rates become a casualty. Long-term rates are relied upon to defease pension obligations.

RETIREMENT ACCOUNTS VERSUS RETIREMENT INCOME

The emergence of 401(k) plans, rising PBGC premiums, more workforce mobility and a generational shift in views toward 40-year careers with a single employer have combined to diminish the appeal of DB plans. Thus, plan terminations continue to rise.

When DB plans terminate, all accrued benefits and embedded options must be paid. Sponsors of mature DB plans face the challenge of becoming an expert in settling DB liabilities. Professional advisors must bring the right ingredients to the table as the DB plan universe shrinks. Seasoned DB plan sponsors will likely acquire annuities for retirees as part of the process.

According to LIMRA, there were 432 annuity buyout sales totaling $25.1 billion in 2020. The process for purchasing annuities is generally well known:

1. Gather documentation and data
2. Package the materials in an organized manner
3. Ship them off for bids
4. Close the transaction on the scheduled bid date

The annuity marketplace has changed dramatically over the past decade. New providers enter the market with a risk appetite for retiree-only carve-outs, and not plan termination deals with deferred lives. Retiree carve-outs differ substantially from plan terminations.

PLAN TERMINATION AND PENSION RISK TRANSFER

The decline in U.S. DB plans is sprinkled with opportunities to serve the needs of plan sponsors and participants. To do so, actuarial practitioners should consider how pension risk transfer (PRT) addresses DB risks and plan sponsor objectives. It's like grilling a New York strip versus roasting a whole beef tenderloin: Your appetite is satisfied in very different ways. A New York strip served from the grill to the plate outdoors on a pleasant evening and the tenderloin delivered to a warm festive holiday dinner table are different experiences. (Both enjoyable!)

PLAN SPONSOR OBJECTIVES

Once while I was presenting tools for managing risk to a benefits committee, a committee member asked: "Before I make a motion to retain your firm, is there any way the board will consider withdrawing the plan termination based upon their approach to risk management?" Unfortunately, the answer was "No."

goodluz / Shutterstock.comw

The resulting engagement led my firm, Qualified Annuity Services (QAS), on a journey of education and strategic advice culminating in the purchase of a buy-in contract as a tactical solution. It concluded with a seamless conversion to a buyout contract after PBGC approval of the termination. The journey took 4½ years. However, the client's original timeline had been 7-10 years. It was the slow roasted filet mignon approach, and the financial outcome was delicious.[1]

That project demonstrates the creative application of pension risk transfer solutions within the market today. The goal was *plan termination*. The solution was *pension risk transfer*. It also serves as a reality check since not every DB plan can access the same solution. Said another way: "If you've seen one DB plan, you've seen one DB plan."

DYNAMICS AFFECT OUTCOMES

Market dynamics and constraints drive strategy and outcomes. After placing an annuity for a terminating DB plan, a client asked, "Why did the annuity cost so much?" It was a good question. However, it was the wrong time to ask. The plan sponsor had received estimates from an actuary, the retirement committee had increased that budget, and the board added more to sweeten the pot. Unfortunately, the annuity cost exceeded the generous budget. The problem was fundamental: The plan sponsor lacked essential information about the ingredients to the institutional annuity market, thus leaving an unsavory aftertaste.

SHRINKAGE

Smaller DB plan terminations result in even smaller annuity placements. Smaller deals usually include some deferred terminated vested and active participants. PRT providers need infrastructure and technical support to assume highly regulated DB plan liabilities. New providers have committed to offer full-service underwriting for most DB plan provisions, including cash balance plans.

Annuity deals of less than $1 million are still very common, and there are many more smaller plans that will terminate with a handful of retirees and some deferred lives to be settled in a group annuity format. The recipe mix for deferred lives is intricate to obtaining favorable responses to bid. The plan underwriting is as robust for a $1 million deal as for a larger $50 million, $100 million or larger plan.

ADVICE AND STRATEGY

Higher annuity settlement cost is most often attributed to *following a timetable instead of a strategy*. Advice and strategy are the key ingredients in successful outcomes. The final plan profile after lump sum distributions in a termination can substantially alter the risk profile of longer dated liabilities, which are preferred by some insurers. Plan termination annuity placements follow an agnostic regulatory *timetable*, and not a *tactical strategy*. Outside forces of multibillion-dollar retiree carve-out purchases absorb insurer capacity and can shut the door on those following a timetable.

Amending a plan to eliminate embedded risks can increase annuity provider interest. Delaying an annuity purchase until the PBGC issues its approval can increase the ultimate annuity cost. Take stock of the ingredients for the right recipe in order to mitigate embedded risks. Before beginning the journey, consider these factors:

- Purpose of the DB plan
- Current scheme of benefits
- Participant risks to current macroeconomic events/pandemic
- Attraction and retention
- Workforce growth or shrinkage
- Industry type

> "PROFESSIONAL ADVISORS MUST BRING THE RIGHT INGREDIENTS TO THE TABLE AS THE DB PLAN UNIVERSE SHRINKS."

RECENT HISTORY AND MARKET CONSTRAINTS

In 2016, the annuity marketplace tightened as new providers entered the market, all eyeing retiree carve outs.[2] This activity led to more providers competing for the most attractive deals. Soon, new providers began to entertain projects with deferred life content, which helped the small-end market demand. Often, however, minimums were raised to $25–40 million.

The current market of 19 providers is up from eight since 2012. As the annuity market grows, it will drive more dynamics that may benefit plan sponsors.

CONCLUSION

As practitioners consider offering PRT services, it is important to evaluate how to build out service capabilities and personnel to serve this market. A key question to consider is: How does a practitioner grow market share in a shrinking market place? Partnering with a PRT advisor may be a worthwhile option. PC

Footnotes

[1] See https://prt.pacificlife.com/content/dam/paclife/rsd/prt/public/pacific-life-insurance-company-completes-pension-buy-in-de-risking-transaction.pdf

[2] See https://qualifiedannuity.com/wp-content/uploads/2018/04/CapacityConstraintsImpactPRTMarket.pdf

IN-PLAN ROTH CONVERSIONS

There's value in providing participants with the tools they need to adapt to changing policies and ever-shifting tax obligations. **By Christian Pfeiffer**

The Tax Cuts and Jobs Act enacted on Dec. 22, 2017, made some of the most sweeping changes to the federal tax code in recent years. These changes included new tax brackets, personal exemptions, deductions, capital gains tax rates and more. As the Biden administration forms its own policy agenda, it is unclear whether Trump-era tax cuts will continue. They are currently set to expire in 2025.

But even as the policy agenda of the new administration begins to take shape, the financial services industry has already felt its impact. The third wave of COVID-19 relief, the American Rescue Plan Act of 2021 (ARPA), made significant changes to the retirement plan rules designed to help those affected by the pandemic. For example, ARPA made changes to the way that single employer plans are administered by extending the amortization of funding shortfalls and pension funding stabilization percentages. ARPA also expanded financial relief for multiple employer plans and increased Pension Benefit Guaranty Corporation premiums beginning in 2030.

ARPA was also an attempt by the new administration to shift tax policy in the wake of the global pandemic. Many of us probably encountered these changes, including new and expanded tax credits and changes to the tax treatment of certain forms of compensation in the 2020 tax year, as we prepared our own tax returns. Coupled with subsequent

Dilok Klaisataporn / Shutterstock.com

announcements by the administration, including the proposed changes to the corporate tax rate in the new Biden infrastructure plan, they may signal broader strokes to come. Retirement savers and service providers alike are now left wondering what the future has in store for the taxation of their income in retirement. Given this uncertainty, tax topics in the context of retirement savings are ripe for discussion once more.

With all this in mind, let's review an option that has become more available to retirement plans in recent years: the in-plan Roth conversion.

WHAT IS AN IN-PLAN ROTH CONVERSION?

By now, most of us are familiar with the traditional and Roth 401(k) contribution types—traditional contributions go into a plan before they are taxed, while Roth contributions go into the plan after taxes have been paid. Pretty simple, right? The fundamental question is how to preserve wealth and pay the least amount of tax on retirement savings. Is it better to pay tax now or pay tax later? But what if a plan participant has already decided to contribute traditional assets, accumulated a healthy retirement savings, and now wishes they had chosen Roth instead? Historically there has been no simple way to stay in-plan and move between these account types. Once a deferral election was made, the tax treatment of those assets was sealed.

Enter the in-plan Roth conversion. For more than a decade, consistent changes to the legal and regulatory landscape have made it possible, and incrementally easier, for employers to offer (and for participants to take advantage of) a Roth conversion while remaining in-plan. The Roth conversion presents participants with an important financial planning tool. Essentially, participants are given another chance in the event they decide that Roth tax treatment for their plan assets is more appropriate for them. When viewed in this context, it is clear why in-plan Roth conversions are increasingly adopted by more and more employers. Employers see value in providing their participants with the tools they need to stay nimble in a world where changing policies and ever-shifting tax obligations are a reality.

HOW DOES IT WORK, AND WHAT DOES A PLAN HAVE TO OFFER?

An in-plan Roth conversion is actually quite simple: It allows participants to take traditional 401(k) contributions, pay tax on them, and then reclassify those assets for future Roth treatment. This means that no tax will be paid on the converted assets when they are eligible for withdrawal. When traditional contributions are converted to Roth, the participant pays tax on the amount converted based on their ordinary income tax rate in the year the conversion is made. So, any amount that is converted would be paid in the year of conversion by the retirement saver at the ordinary income tax rate. There are many factors to consider when looking at an in-plan Roth conversion, but arguably the most important is whether the plan allows for it. It may seem obvious, but in order to take advantage of the option, the design of the plan must allow a Roth designation as well as in-plan conversion. The Roth feature must also be disclosed as part of the summary plan description. So, reviewing the plan documentation is the first step but, even if a plan allows it, what are the potential benefits?

"RETIREMENT SAVERS AND SERVICE PROVIDERS ALIKE ARE NOW LEFT WONDERING WHAT THE FUTURE HAS IN STORE FOR THE TAXATION OF THEIR INCOME IN RETIREMENT."

WHY DO IT? ADVANTAGES OF A ROTH

As noted above, the primary advantage to doing a Roth conversion is a tax advantage. Since tax on a Roth conversion is paid up-front, during the tax year of conversion, investors can take eligible tax-free distributions later. The conventional wisdom is that the greatest benefactors of Roth accounts are investors whose marginal tax brackets when they invest in a Roth are less than what they expect them to be when they withdraw the funds. The classic Roth candidate is a young retirement saver who is early in their career; however, that is just conventional wisdom. Roth assets are certainly used more broadly in financial planning. For example, Roth assets can be viewed as a way to tax-diversify a retirement saver's portfolio in retirement. The in-plan Roth conversion then offers a potential benefit to a wide variety of retirement savers through the added flexibility. Thanks to the in-plan Roth conversion, a retirement saver can decide later, based on a variety of considerations in retirement, whether they would like to alter that treatment.

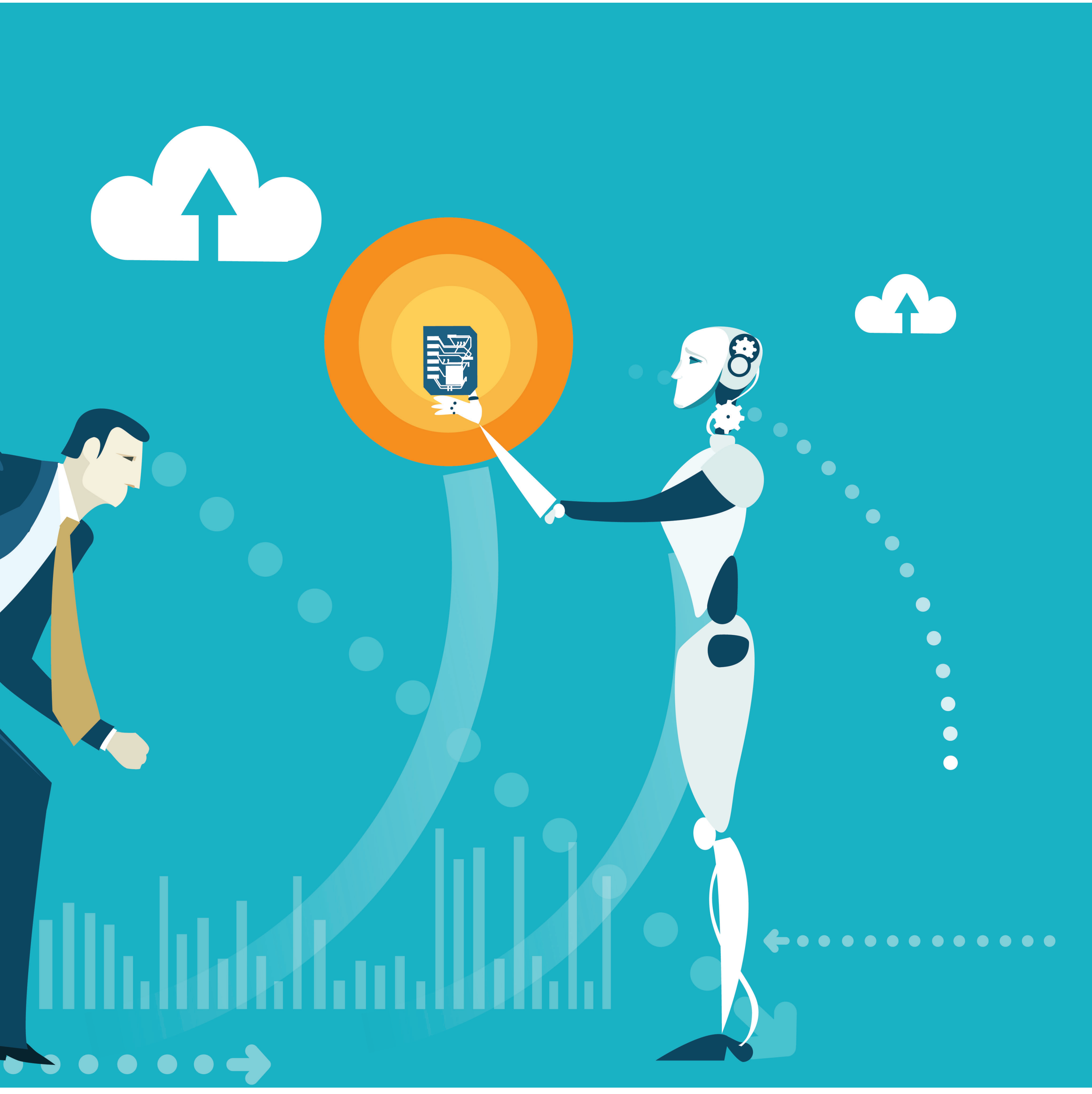
As we have all seen in the last year or more, the world is an unpredictable place. It is increasingly important to have tools available that allow us to adapt and rise to meet new challenges. The in-plan Roth conversion is one such tool for retirement savers as they adapt to these uncertainties–at least for tax planning purposes. PC

This material is not intended to provide legal, tax or other professional advice. The services of an appropriate professional should be sought regarding your individual situation and the taxpayer should seek advice from an independent tax advisor.

The Tech Inflection Point

IR Stone / Shutterstock.com

TPAs need to recognize the Netflix opportunities—and seize them. By Joseph M. Burt



It wasn't long ago at all, I remember, on those rare unaccounted-for weekends I would drive a few miles to a familiar blue and yellow storefront in the local strip mall. The line of customers weaving through aisles of candy, the crisscrossing walls of plastic-wrapped new releases… it was a sort of weekend ritual to walk around perusing the movie titles.

Of course, I'm talking about Blockbuster Video, the former industry-leading rental chain that closed its doors in 2010. While Blockbuster chased their time-honored—and formerly quite effective—tactics, new technologies disrupted their industry. Inside of a decade, they were no more, buried beneath an entirely new landscape of on-demand content ushered in by Netflix. Blockbuster came to a turning point, made a choice, and was consigned to the world of nostalgia.

Across every industry, there's a pattern we can trace around a company's success or failure. It exposes how companies respond to inflection points in their industry or the economy at large—policy changes, industry consolidations, disruptive technologies, those sorts of things. At these inflection points, companies can adapt, innovate and grow, or they can stagnate, refuse to change and slip into oblivion. The latter is grim. It's the Blockbuster story—and we don't want that. As individual firms, and as an industry altogether, we want to embrace change, keep our momentum and grow. We need to recognize the Netflix opportunities—and seize them.

Our Inflection Point

The SECURE and CARES Acts have already mandated significant changes to our processes. Cybercrime is an increasing risk. And technology is speeding along as fast as ever. Add to that an ever-increasing demand to create greater value, coupled with continual fee compression weighing on us all, and the phrase "more for less" starts looking like the understatement of our time. This is our inflection point in the retirement plan industry. Now's the time to make a decision. And that decision is a technology one.

All this puts a fine point on the need to automate. No doubt most, if not all, of you are aware of this. But it's a difficult thing to wrap your head around. The tech changes lightning-fast, and there's a proverbial ton of options available claiming to help you gain efficiencies through automation. An important option for us right now is Robotic Process Automation (RPA).

RPA is in the broad category of Business Process Automation, which includes integration solutions and industry-specific software. Think of RPA as smarter macros for business processes. It's basically a piece of software (a bot) that sits in a computer and does the tedious, repetitive tasks otherwise done by humans—clicking through software programs and websites, opening emails and attachments, downloading and reading files, just about anything that makes your team groan and distracts them from more valuable work.

The RPA market is big, with a few top players like UIPath, Automation Anywhere, and BluePrism. And the implications of RPA are obvious: huge gains in efficiency, less human error, more time for your team to create value for clients, more rewarding work, longer weekends. If that isn't enticing enough, bots are generally quick to implement for repetitive work; they're an affordable ROI project; and they're great for working with legacy software that doesn't provide an API (more on that later). Sound like a win? Of course it does, but like anything, there are risks.

Most RPA providers don't cater to a specific industry, which means you've got to build your own bots to handle your unique processes. Which means IT is almost certainly getting involved. And other key team members can also become heavily involved in managing and maintaining RPA as well. These are added expenses for practices with no internal IT staffers who are savvy about the types of programming that bots require. Even if you do have an IT team, they may not relish the thought of managing the projects as your bot population grows—since RPA works through front-end interfaces, it requires maintenance as websites and apps update. And speaking of growth, RPA can get expensive and complex as it scales, not to mention that most RPA pricing is confusing even for the smallest projects. And then there's security.

Cyber security is complicated as is, and because bots emulate users, they can open you up to security risks. A few points for emphasis:

- Users share logins to bots, which results in unattended, authorized access points. That creates more opportunities for bad actors to take control of sessions.
- Multi-factor authorization used with phones and email help improve security with the initial login process, but given how long an unattended bot session might be, there's more opportunity for access by unauthorized users.
- Most bots are created and run by business users, not by IT, which can result in less security governance around the whole process.

In short, your bots are leaving a footprint, just like a human does. That footprint can be exploited for malicious purposes, opening you up to security breaches, especially when bots are unattended.

None of this is to suggest that RPA is inherently dangerous, just that there are crucial problems to keep in mind ahead of your projects. Automation methods that interact directly with data sources, rather than navigating and interacting with them through interfaces like users would, are the more sustainable, scalable automations. This would be an API, which communicates behind the scenes and isn't subject to the same security risks and interface changes. If a website updates, a bot can go off the rails, but an API will keep working as usual.

IR Stone / Shutterstock.com

So why not just use APIs instead of RPA? Absolutely, APIs are the long-term solution that we should work toward. But they require more work up front and more development and data expertise, and not all of our data sources currently support them. So we need an interim solution—something to solve problems in the meantime. RPA is that quick spot solution while we work with industry leaders to develop APIs. RPA is automation now, when we need it, and it will help lay the foundation for those more robust solutions in the pipeline.

100 M.P.H. Tape

Doing RPA right takes balance, which if achieved can be enormously beneficial. But it's certainly not a fix-all. Your technology and process are an ecosystem, and changing one part of that ecosystem will affect other parts as well. Because of this, RPA won't be right for every process.

In aviation, there's a term for duct tape: "100 M.P.H. tape." It originated from the tape's ability to remain useful up to 100 miles per hour. It's used for quick fixes when there's no time for complete rebuilds, or when maintenance is required but the plane is still needed. You might use 100 M.P.H. tape to temporarily mend a small imperfection on the surface of a wing, but you're not going to tape the whole wing on—at least I hope you wouldn't. The point of the tape is to keep a plane flying effectively and efficiently while major repairs are in the works, or while another, better plane is being built on the ground. When implementing RPA in my practice, we think of it as 100 M.P.H. tape.

We recognize that at some point, bots should be replaced by more robust technology such as APIs, which interact with software on the back end as opposed to the front end, and are thus more stable in the face of website updates, network issues and security concerns. However, while we're working with recordkeepers and major software providers to update standards and provide these APIs, firms like ours can't wait. We have to adapt now. And that means, for the time being, RPA is the way to go.

The quality-of-life improvement achieved by giving our most tedious work to bots cannot be overstated, but we put in the effort to figure out which processes were prime candidates for RPA and which ones weren't. We've diverted our staff away from the most repetitive manual tasks, and they're now run by bots. But we're also talking with leaders in the industry about creating the technology standards necessary to move away from those bots and focus on more comprehensive automation solutions.

Along with helping to develop these industry standards, we're learning how the whole retirement plan industry can benefit from other technologies, like Optical Character Recognition, a proven method of reading images and parsing text out of them. Imagine the opportunities that technology like that holds for streamlining our document reading and generating tasks. In concert with Machine Learning/Artificial Intelligence, new software could drastically improve accuracy and timeliness. No doubt you've heard these buzzwords. Well, they can't continue being remote concepts for our industry. We have to adopt these technologies to stay competitive. Maybe you're not there yet—we're not quite there at my practice—but getting there should absolutely be in your plan.

What's Next

The biggest hurdle is often the first one. Getting started is admittedly daunting for practices like ours, partly because we aren't all technologists, and partly because there's comfort in the status quo (remember Blockbuster). Nonetheless, I can offer my experience as a model for others to

IR Stone / Shutterstock.com

Strengthening our individual practices makes the industry stronger and more resilient, and if the last year taught us anything, it's that resilience is key.

follow—leaving out some of our major mistakes.

Develop a strategy. Whether you audit your team's time and attack the most tedious work first, or go after a legacy app that's still crucial in your process, think through and discuss how best to leverage bots in your practice. Don't just throw an army of them into your business.

Start small and mitigate the risk of an expensive failure. With an incremental approach—taking on small projects first, then building up to larger ones—you'll avoid the most expensive mistakes and get a feel for the idiosyncrasies inherent in both your business and your RPA. Starting small will let your staff learn how best to manage your growing team of bots. Once they see RPA in action—even the easiest example—your team will quickly understand the value and begin driving their own ideas. I can't emphasize this point enough: *Your team will be a crucial innovation resource*.

Partner with IT staff or consultants. It's critical that you don't go it alone. Good technologists have the expertise to assess and reduce risk and the understanding to see which processes are ripe for RPA and which should be avoided. If you can find technologists who know our industry, even better.

Think differently, and think industry. As leaders in the industry, we need to look ahead, recognizing and executing turns when we reach inflection points. Keeping a mindset that encompasses the entire retirement plan industry will help us all move forward and remain profitable, efficient, and, most importantly, able to provide the best value for our clients. Strengthening our individual practices makes the industry stronger and more resilient, and if the last year taught us anything, it's that resilience is key.

Perhaps most importantly, we can partner with one another. As I mentioned earlier, the overwhelming majority of RPA companies aren't making off-the-shelf bots with TPAs in mind. But let my story be evidence that TPAs can still find great success with RPA, and maybe even change how the RPA industry approaches solutions. We found a group of technologists willing to dive deep into our business and help develop bots specific to our processes, many of which I'd imagine translate very closely into other TPA practices. We've built bots for year-end census requests and data scrubbing, safe harbor notices, trust recons, RK statement downloads and fee disclosures. These are valuable, scalable and replicable ways to divert your staff back to work that's more valuable to your clients.

For those looking to automate—which should be every one of us—that means there are examples out there currently in use and driving value, as well as technologists with the industry acumen to plug those bots into any TPA's process. In many ways, the first hurdles have already been jumped and a significant amount of risk absorbed.

A Crossroads

Maybe there was a time when I looked back on the whole experience of renting a movie with a certain fondness. The smell of buttered popcorn as we walked the aisles painstakingly deliberating over which new titles to take home for the weekend. The anticipation of wondering if they'd even have that movie I'd been waiting for or if I'd be too late, forced to settle for my second choice. I'd be willing to bet Blockbuster misses those days, too. But technology fundamentally changed the movie rental business, and it was a change for the better. We can pine for the old days, but that doesn't mean we should want to go back.

The TPA industry is at a similar crossroads. We're faced with an opportunity to go Netflix, or to go Blockbuster. It's an obvious choice, albeit not an easy one. In the end, automation is essential. Retirement plan consulting firms are tasked with more and more work all the time—work that has the potential to distract us from doing what we love to do, what we got into this business to do: make a difference in our communities and our society at large by helping Americans retire successfully. If we strive to make every process as efficient and accurate as possible, we'll continue being able to do that. And our industry will be all the better for it.

But it's going to take our commitment to evolve with technology. It's going to take learning and implementing RPA and other technologies in our day-to-day work, so we can devote more time and energy to our clients. Because at the end of the day, that's what's important.

It's probably obvious by now why I used Blockbuster as an example. My goal is to help grow the retirement plan industry because we'll all benefit from more robust technological standards. But an industry is really just a community of companies, so we all need to update our practices. I want to see all of us become the Netflix of TPAs, driving technological disruption that fundamentally improves how we do business and how our clients benefit from us.

That sounds like a big task, but I know personally we've already got the wheels turning in the right direction. I can tell you that the improvement just from implementing the few automations I mentioned is already making a profound difference.

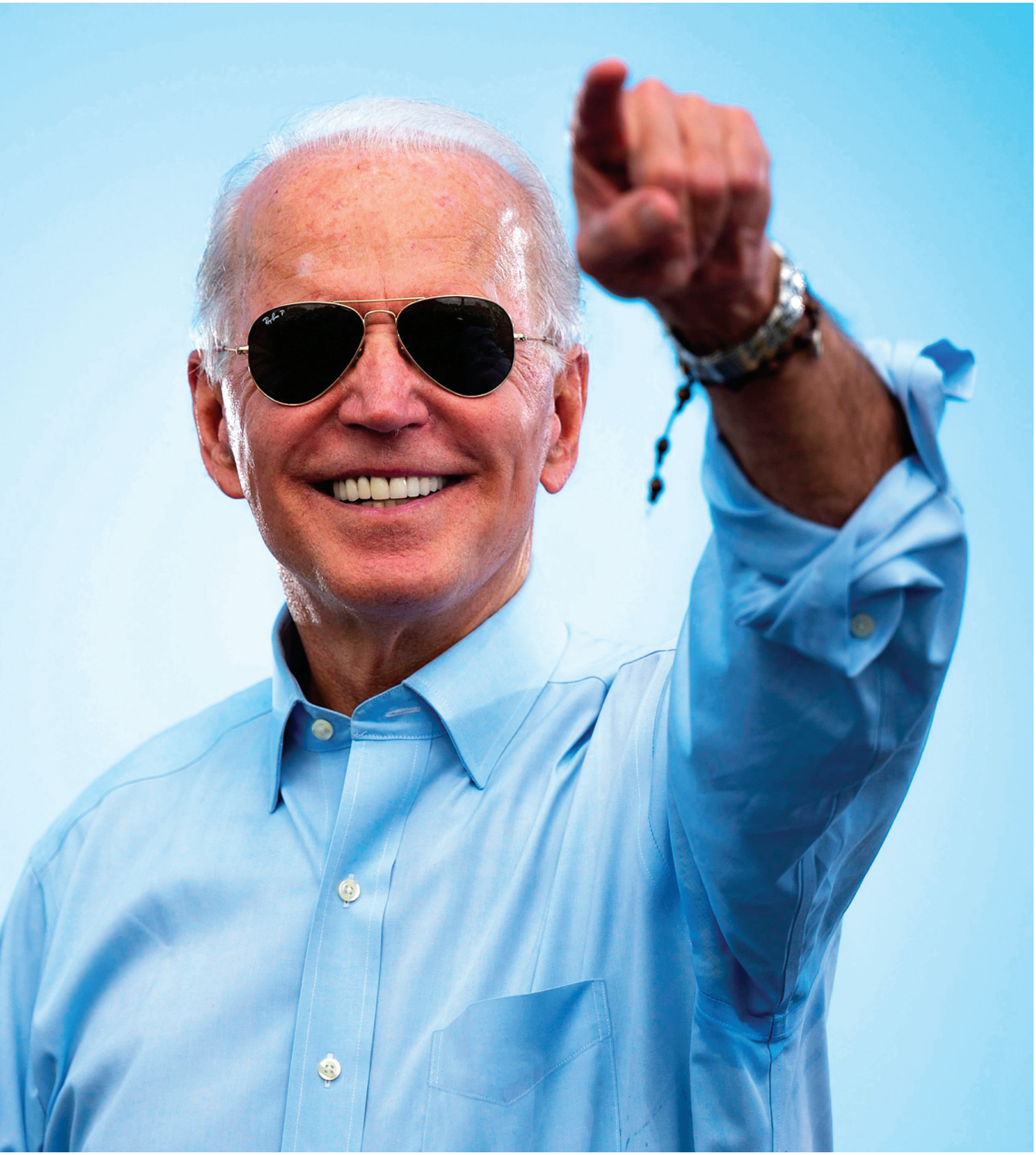
The opportunity is here. Let's not wait until it's rented out. **PC**

100 days

WHAT DO THE INITIAL MONTHS OF THE BIDEN ADMINISTRATION TELL US ABOUT ITS LONG-TERM IMPACT ON THE RETIREMENT INDUSTRY?

BY TED GODBOUT

Stratos Brilakis / Shutterstock.com



days100

lev radin/Shutterstock.com

days 100

During his campaign, candidate Joe Biden promoted an ambitious agenda to protect Americans' retirement security. Among his promises were equalizing the tax treatment of retirement plans and taking action to protect public and private pensions to ensure workers keep the benefits they have earned, especially in multiemployer plans. His campaign platform also called for reversing many of the Trump administration's regulatory initiatives.

After a little more than 100 days into the Biden administration (this article was written in May), where do things stand in Washington? How will the changes so far affect your plans and participants, and what should you keep an eye on? In this article, we'll recap changes and activity at the Department of Labor and other federal agencies, and take a look at what issues are likely to be the focus of attention at the agency level and on Capitol Hill.

Out of the Gate

In the weeks following Inauguration Day, much of the initial focus was on Capitol Hill—passing the American Rescue Plan Act (ARPA) COVID-19 relief bill and confirming the new president's cabinet nominees. As such, many of the retirement-related priorities that Biden laid out on the campaign trail were put on the back burner.

As is customary when there is a change in party control of the White House, one of the first things Biden did upon taking office was to pause all pending and recently issued regulatory projects, including guidance by the Labor Department. The new White House also instructed agency heads to refrain from issuing new rules until they are reviewed by a department or agency head that was appointed after President Biden took office.

With ARPA now enacted into law—including multiemployer pension plan relief—and his cabinet confirmed, the administration officials can now turn their attention to other longer-term projects, including efforts to expand retirement plan coverage and revisit the regulatory landscape. And with the Democrats controlling the White House and both chambers of Congress, Hill Democrats have a sense of urgency to advance long pent-up legislation.

At DOL, Change at the Top

New Labor Secretary Marty Walsh, the former mayor of Boston, was confirmed by the Senate in March. With strong union ties, Walsh brings a significant change in philosophy to the Labor Department. Given Biden's career-long ties to organized labor, it was no surprise that he picked a nominee who made his mark as a labor leader. Walsh now has his work cut out for him as the country recovers from the effects of the pandemic on the American workforce. In addition, he will be involved in the implementation of various aspects of the multiemployer plan relief provisions enacted as part of the American Rescue Plan Act of 2021.

Of course, a key Labor Department official who is heavily involved in regulatory rulemaking is the Assistant Secretary for the DOL's Employee Benefits Security Administration (EBSA). As of this writing in early May, the Biden administration has not yet named a nominee for the spot. This may seem tardy, but consider that Phyllis Borzi was not confirmed until July 2009, and Preston Rutledge was not confirmed until December 2017.

In the meantime, Principal Deputy Assistant Secretary Ali Khawar has been serving as the Acting Assistant Secretary since January. Khawar is no stranger to EBSA, having

WITH THE DEMOCRATS CONTROLLING THE WHITE HOUSE AND BOTH CHAMBERS OF CONGRESS, HILL DEMOCRATS HAVE A SENSE OF URGENCY TO ADVANCE LONG PENT-UP LEGISLATION.

Marty Walsh, Secretary of Labor

martywalsh.org/ / Shutterstock.com

“OBVIOUSLY WE HAVE TO BE DILIGENT ABOUT FURTHER ATTACKS ON THE RETIREMENT SYSTEM.”
— Brian Graff, President/CEO of the American Retirement Association and Executive Director of ASPPA

previously served in a variety of roles at the Department, including as an EBSA investigator, in EBSA’s Office of Enforcement, as EBSA’s Chief of Staff in two administrations, and as a Counselor to former Labor Secretary Thomas Perez.

DOL Do-over

The stage is set for an active regulatory agenda regarding retirement policy issues at DOL. Walsh and Khawar have acknowledged that the Department plans to revisit several of the late-stage regulatory projects implemented in the final months of the Trump administration, including:

- Financial Factors in Selecting Plan Investments; and
- Prohibited Transaction Exemption (PTE) 2020-02.

Financial Factors in Selecting Plan Investments

One of the first issues out of the gate for the Biden administration was an Executive Order calling on the DOL to revisit the rule on Financial Factors in Selecting Plan Investments. Many industry insiders see that order as a sign that the administration will try to increase support for the use of environmental, social and governance (ESG)-themed investments, including by retirement plans.

Subsequently, a March 10 announcement by EBSA provided an additional hint to the direction it plans to take on the recently finalized rules, giving notice that it will not enforce the final rules on Financial Factors in Selecting Plan Investments and Fiduciary Duties Regarding Proxy Voting and Shareholder Rights.

“These rules have created a perception that fiduciaries are at risk if they include any environmental, social and governance factors in the financial evaluation of plan investments, and that they may need to have special justifications for even ordinary exercises of shareholder rights,” Khawar explained in the announcement. “We intend to conduct significantly more stakeholder outreach to determine how to craft rules that better recognize the important role that environmental, social and governance integration can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations.”

Brian Graff, President/CEO of the American Retirement Association and Executive Director of ASPPA, believes the focus on ESG will only increase in the future. “My belief in talking to plan sponsors is that they are increasingly hearing from participants about ESG. It’s something, particularly younger participants, are interested in talking about and a lot of surveys suggest that they’ll save more if they were offered the opportunity to be in ESG investments, so all of that momentum isn’t going away; quite the contrary, it’s going to increase.” Graff adds, however, that he worries that in reversing the Trump administration’s position, the Biden administration may go too far in the other direction.

PTE 2020-02

While many in the industry believed the Biden administration would move to prevent the PTE for investment advice fiduciaries from going into effect as part of a longer-term effort to revive the vacated Obama-era fiduciary rule, the DOL confirmed in early February that it will allow the guidance to take effect as scheduled on Feb. 16, 2021.

“This caught everybody off guard; it was a Trump-era rule,” notes ERISA attorney Fred Reish, a partner in Faegre Drinker’s Benefits & Executive Compensation practice group. “We were all sure that the Biden administration DOL would say, ‘we’re going to kill that because we don’t agree with the Trump era rules,’ but then they surprised everybody.” Reish believes the Biden DOL made a determination that the rule actually days 100

Rena Schild / Shutterstock.com

got them part way to where they want to go, so they let it become effective.

What's more, in April the DOL issued new guidance in the form of FAQs that, while indicating that additional changes may well lie ahead, also provided important insights into the agency's perspective on PTE 2020-02, with guidance for investment advice providers who are relying, or planning to rely, on the exemption, including as it relates to rollover advice.

"I think the biggest surprise politically was that the Trump administration issued an exemption and an interpretation that would be viewed so favorably by the Biden administration—that's really the shock of the shocks here, but it reads very much like something a Democratic administration would have come up with initially, getting halfway to where they want to be," Reish says.

"The April guidance also gave us further indication of what to expect from the Department on the subject of investment advice by building on the statements in the DOL's February 12 news release," notes Jeanne Klinefelter Wilson, the former Acting Assistant Secretary of the Employee Benefits Security Administration who oversaw the drafting of the transaction exemption. (Wilson is now a Principal at The Groom Law Group in Washington.) She notes that the DOL's February news release indicated that DOL was conducting outreach efforts in connection with considering changes to PTE 2020-02 and related exemptions to build on PTE 2020's approach.

Still, there are strong indicators that the DOL may look to reopen the five-part test. Additionally, many within the Democratic party want the DOL to resurrect as much as possible of the Obama fiduciary rule, believing that some changes are viable, notwithstanding the June 2018 decision by the 5th U.S. Circuit Court of Appeals to vacate the rule.

In the meantime, industry stakeholders should still work under the assumption that compliance with

AN ITEM THAT REMAINS ON THE DOL'S UNIFIED AGENDA IS TO STREAMLINE AND CONSOLIDATE THE REPORTING ON THE FORM 5500.

Fred Reish, partner at Faegre & Drinker

days100

"IT'S CLEAR THAT THE DEPARTMENT IS NOT FINISHED WITH THE FIDUCIARY RULE. THEIR STARTING POINT WILL BE PTE 2020-02 AND UNTIL THE PROCESS IS DONE, 2020-02 IS LIKELY TO BE THE BRIDGE TO THE NEXT REGULATORY REGIME."
—Jeanne Klinefelter Wilson, Principal at The Groom Law Group

the rule will take effect as scheduled at the end of 2021. Reish explains that the DOL has extended its temporary enforcement policy stated in FAB 2018-02 until Dec. 20, 2021, such that the Department won't enforce the new rules as long as their "impartial conduct standards" are met—i.e., recommendations must be made in the best interest of the participant, and financial advisors must receive no more than reasonable compensation from a rollover recommendation and make no materially misleading statements.

"It's clear that the Department is not finished with the fiduciary rule. Their starting point will be PTE 2020-02 and until the process is done, 2020-02 is likely to be the bridge to the next regulatory regime," says Wilson.

The ARA's Graff doesn't believe there's going to be a major overhaul of the standards. "Rather, what I would say is they're going to tweak around the edges, but they could be significant for some people," notes Graff. He explains that one of the big things the ARA was able to accomplish was setting out a very clear set of rules that would allow for a 401(k) fiduciary advisor to work with a participant on a rollover transaction. "Before, it was unclear whether that advisor could continue that relationship because of the conflict, but now it's absolutely okay," he notes.

DOL Projects, Current and Future

The DOL also has several guidance projects that remain in the queue:

PEPs and PPPs: The DOL issued a final rule in November 2020 on the registration requirements for pooled plan providers (PPPs), but there still has been no final guidance issued by the DOL and IRS fleshing out the details on the employer and PPP responsibilities, including administrative duties, how to address noncompliant employers with respect to the so-called one-bad-apple rule, and the new reporting requirements.

Streamline Form 5500: An item that remains on the DOL's unified agenda is to streamline and consolidate the reporting on the Form 5500. In 2016, the DOL attempted to revise the Form 5500, but that effort fizzled out with the change in administration. Now, in regard to the new PEPs, the SECURE Act calls for implementation of consolidated annual reports by no later than Jan. 1, 2022, that should apply to return/reports for plan years beginning after Dec. 31, 2021. For part of this project, there is no deadline, but with respect to the SECURE Act changes, time is short, and a legal deadline is looming.

Lifetime Income Illustrations: In September 2020, the DOL published an Interim Final Rule on lifetime income illustrations. That rule will become effective on Sept. 18, 2021, and applies to pension benefit statements furnished after such date, but the DOL has been accepting comments on the rule and additional clarifications are likely. In fact, EBSA's Khawar has indicated that the Department intends to issue additional guidance ahead of the September 2021 deadline.

Electronic Delivery: In May 2020, the DOL finalized the much-anticipated rule providing a safe harbor allowing retirement plan administrators to satisfy their information disclosure requirements under ERISA by distributing documents to employees electronically. It's possible the Biden administration may reopen the e-delivery rules to restore paper delivery as the default option, perhaps under limited circumstances, such as requiring at least one paper benefit statement per year the default. It's also possible that legislation may be acted on seeking to restore the default to paper.

Voluntary Fiduciary Correction Program: The DOL had previously indicated that it is looking at amending and restating the Voluntary Fiduciary Correction Program (VFCP). The amendments supposedly will expand the scope of some transactions currently eligible for correction and streamline correction procedures for certain others. While not clear whether this is still a priority, it's possible that EBSA may issue a restatement of the VFCP in its entirety and request public comments.

Missing Participants: In January, the DOL released a triple dose of guidance on missing participants. Arguably, the guidance, while welcome, seemed to fall short of what plan fiduciaries might have wished for—but it did offer fiduciaries some key insights to avoid future problems. Whether the Biden DOL revisits this guidance or issues new formal guidance remains to be seen.

Treasury and IRS

While much of the policy focus within the Treasury Department is currently on President Biden's infrastructure and families-based tax package, Treasury and the IRS still have a long list of priority regulatory guidance items in the queue.

In Notice 2020-68 the IRS provided some answers to questions concerning the small employer automatic enrollment credit, part-time vesting rules and other provisions under the SECURE Act, but there are still several outstanding issues that need formal guidance, including:

- addressing the exception to the unified plan rule for multiple employer plans;

THE STARS COULD BE ALIGNING FOR ANOTHER BIG PUSH FOR A MAJOR RETIREMENT SECURITY PACKAGE THAT SEEKS TO IMPROVE RETIREMENT PLAN ACCESS.

Rep. Richard Neal (D-MA), Chairman of the House Ways and Means Committee

- guidance on 401(a)(9) required minimum distributions (RMDs);
- rules on the increase in the 10% cap for automatic enrollment safe harbor after 1st plan year;
- rules relating to election of safe harbor 401(k) status;
- guidance on the portability of lifetime income options;
- rules allowing allow long-term employees to participate in the plan;
- addressing penalty-free withdrawals from retirement plans for individuals in case of birth of child or adoption;
- additional rules regarding pension plan funding and benefit restrictions;
- reporting and notice requirements for deferred vested benefits; and
- guidance on nondiscrimination relief for closed DB plans.

Another area that may get attention under a Biden-led Treasury Department is the issue of pension risk transfers. While the ink on the American Rescue Plan Act of 2021 is barely dry, given the changes that the law makes, decisions concerning full or partial pension risk transfer decisions may be affected if PBGC premium rates rise or are uncapped due to lower pension funding by single-employer plan sponsors. If the rates rise, that may accelerate the push for risk transfers.

The IRS, however, may seek to reinstate an Obama-era Notice withdrawn by the Trump administration that effectively prohibited offering a lump sum to former employees in pay status. What's more, the DOL may look to augment the disclosure obligations with respect to risk transfers to emphasize the risks associated with taking a lump sum and the loss of PBGC and ERISA protections in the case of an annuity purchase.

ARA's Legislative Priorities

The ARA has voiced its support for Rep. Neal's Automatic Retirement Plan Act and the "SECURE 2.0" legislation. Its legislative priorities include:

- Allowing employers that wish to join an existing MEP to receive the small employer pension plan startup credit
- Allowing 403(b) plans generally sponsored by charities and public educational organizations to participate in MEPs
- Encouraging retirement plan sponsors to adopt automatic enrollment and automatic escalation features that improve coverage by creating a safe harbor for corrections of enrollment failures
- Providing an additional automatic enrollment safe harbor (a.k.a. the stretch-match safe harbor)
- Fixing a non-discrimination testing issue with the student loan matching design provision
- Clarifying and streamlining the compliance rules for long-term, part-time employees who qualify for plan participation
- Allowing disaggregation of excludable employees from the top-heavy test
- Allowing discretionary amendments to a retirement plan to be adopted up to the due date of an employer's tax return
- Revising the family attribution rules with respect to coverage testing and other non-discrimination tests with respect to a small business that wants to open a 401(k) plan
- Making it easier for plan sponsors to implement beneficial plan features plan expenses by allowing retirement plans to pay for certain expenses relating to optional plan features and programs that will increase retirement savings
- Creating permanent retirement plan distribution and loan rules for victims of natural disasters

Several of these priorities are included in the SECURE Act 2.0 legislation.

Legislative Initiatives

While Congress was primarily focused during first few months of the Biden administration on the COVID-19 relief bill and a major infrastructure package, the stars could be aligning for another big push for a major retirement security package that seeks to improve retirement plan access. Following are the three key bills to keep an eye on.

The Securing a Strong Retirement Act of 2021

The SSRA (a.k.a "SECURE Act 2.0"), introduced by Rep. Richard Neal (D-MA), Chairman of the House Ways and Means Committee, and Rep. Kevin Brady (R-TX), the Committee's ranking Republican, was approved by the committee May 5. Additionally, Brady announced in April that he will not be seeking reelection, which may add to the impetus to get this bill enacted.

Among the key features are an automatic enrollment requirement for new DC plans with a default rate of at least 3% of pay and auto escalation at 1% of pay until it reaches 10%. The bill would also increase the small-employer pension plan start-

IT'S POSSIBLE THE BIDEN ADMINISTRATION MAY REOPEN THE E-DELIVERY RULES TO RESTORE PAPER DELIVERY AS THE DEFAULT OPTION, PERHAPS UNDER LIMITED CIRCUMSTANCES.

up credit to 100% of the cost for employers with up to 50 employees, capped at $5,000. The bill includes more than 40 provisions, including fixing the family attribution rules; a student loan matching program; a safe harbor for corrections of employee elective deferral failures; a new long-time, part-time worker eligibility requirement definition; and a new tax credit to encourage small employers to make direct contributions to their 401(k) plan for their employees.

The Automatic Retirement Plan Act

The ARPA was last introduced by Ways & Means Committee Chairman Neal in 2017, but in the last few months he has floated a discussion draft and plans to reintroduce the legislation soon, possibly with some tweaks. "This is really a key piece of legislation in that it would drastically increase the number of Americans that are covered by a workplace retirement plan," notes Will Hansen, Chief Government Affairs Officer at the American Retirement Association.

Overall, the bill would require most employers to offer a retirement plan. Employers based in a state that has a Secure Choice Plan or an automatic IRA arrangement would meet the requirements of having a retirement plan, but they would have to cover most of their employees.

The bill does include exceptions for small (less than 10 employees) and new (less than three years in operation) employers, as well as governments and churches. It also would grandfather all existing plans, but any new plans would have to have certain features in it, including auto enrollment at a minimum of 6%, auto escalation at 1% per year up to 10%, and a guaranteed income feature. Additionally, for employers with 25 or fewer employees, the bill includes a new start-up credit that covers 100% of the cost of setting up a plan for five years.

Portman-Cardin

In January, Sen. Rob Portman (R-OH) also announced that he will be retiring after his current term expires in 2022. This could add to the impetus for Congress acting on retirement policy legislation. Portman has been a champion of retirement security legislation for more than two decades and has worked with Sen. Ben Cardin (D-MD) on several of the major retirement policy bills dating back to the late 1990s.

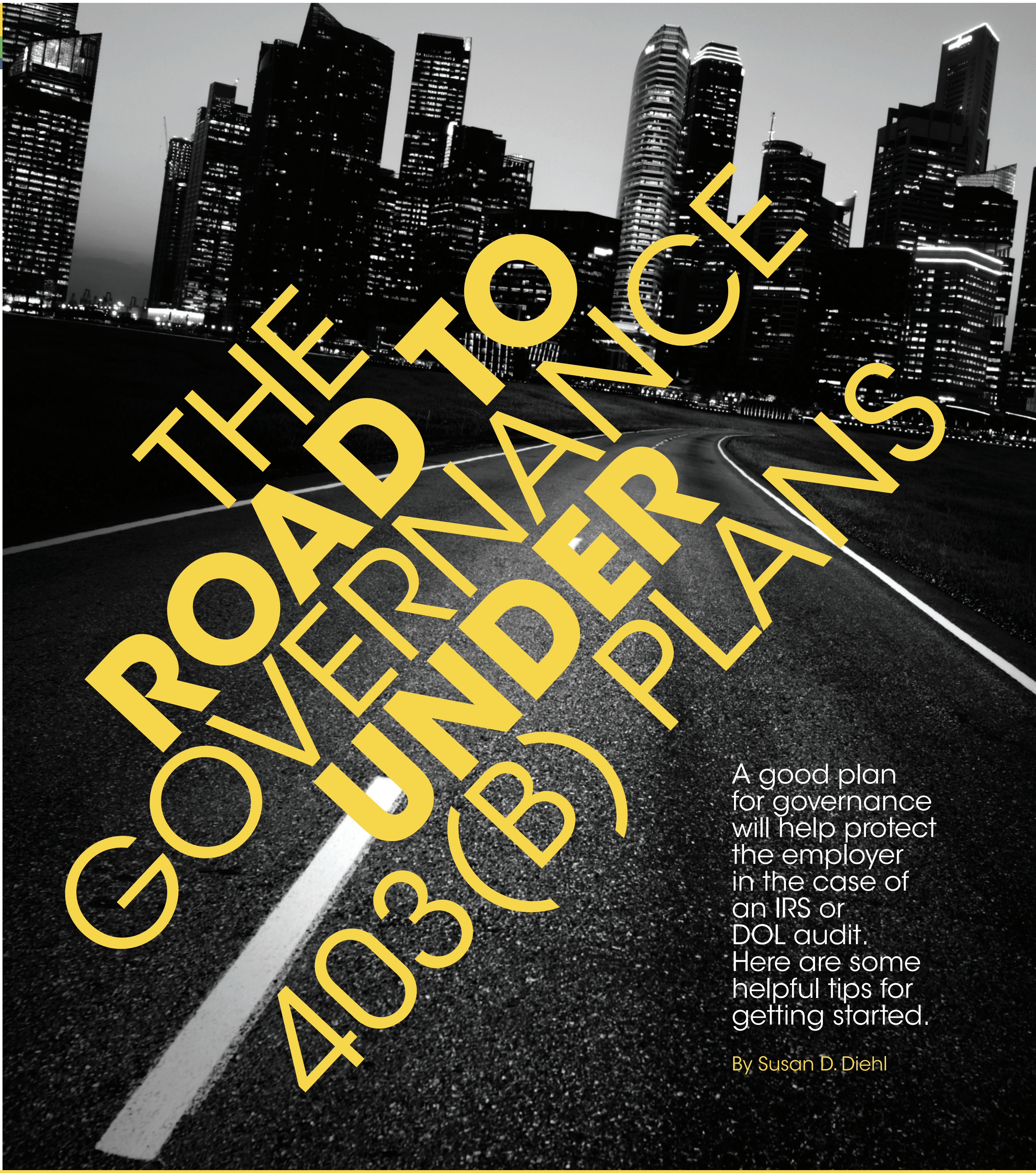
Portman is a senior member of the Senate Finance Committee and reintroduced the Retirement Security and Savings Act (RSSA) with Sen. Cardin on May 21. That bill, which includes more than 50 provisions designed to strengthen Americans' retirement security, could be part of the push to enact retirement security legislation.

The Hill Outlook

While noting that the Biden administration and Congress currently have a lot of their plate, the ARA's Hansen is hopeful there will be additional action this year on retirement policy. There is certainly a good chance that a version of the SECURE Act 2.0 legislation, along with provisions from the Portman/Cardin bill, could be enacted in 2021. In addition, it's possible retirement policy changes could be picked up in a second reconciliation bill.

"The next reconciliation bill is a big one that's going to have infrastructure, some climate change and maybe immigration provisions," Hansen explained in May. "We're hopeful that we can also have included into that the Automatic Retirement Plan Act, the Encouraging Americans to Save Act, which is the overhaul of the Saver's Credit, and then potentially some other one-off provisions that were included in the SECURE Act 2.0 or other ones. We definitely think that there are going to be some other retirement bills included in the next reconciliation process, and I see it as something that would pass probably by the summertime," Hansen noted.

At the same time, Graff warns that the ARA will have to remain diligent in protecting the retirement system from efforts to curtail the contribution limits to help "pay for" other priorities. "We've already seen this sort of attack on the limits with the COLA freeze that was proposed as part of the COVID-relief bill that we were successful in getting removed, but obviously we have to be diligent about further attacks on the retirement system," he emphasizes. PC



THE ROAD TO GOVERNANCE UNDER 403(B) PLANS

A good plan for governance will help protect the employer in the case of an IRS or DOL audit. Here are some helpful tips for getting started.

By Susan D. Diehl

Dudarev Mikhail / Shutterstock.com

OUR REAL-LIFE EXPERIENCES HAVE SHOWN US HOW EASY IT CAN BE TO HEAD DOWN THE WRONG PATH. THE HOPE IS THAT WE CAN PIVOT AND GO BACK TO HEADING IN THE RIGHT DIRECTION.

My favorite illustration of this concept was actually in an enrollment video for the Thrift Savings Plan. The TSP, covering approximately 6 million federal government and civil service workers, is the largest defined contribution plan in the world. The video, many years old now, was a cartoon that featured a couple walking through their life together. They end up at a fork in the road. One path leads to a "comfortable retirement" and the other path is "just getting by." Well, you can guess which path they took! Flying in to rescue the couple is an American eagle who takes them back in time to when they got their first jobs with the government and painlessly explains investments, deferring from income, the importance of savings—and the family dog (named "Taxes") that shows the tax bite if you save less. It is a great educational video to which investors of any level can relate.

In the context of employer plans, the path to governance is very similar. One wrong action (or inaction) can be extremely costly to employers and their employees. But a fork in the road could lead to correcting plan failures, possibly through EPCRS, for example.

Let's begin by looking at how 403(b) plans operate.

OVERVIEW: HOW 403(B) PLANS ARE UNIQUE

403(b) plans have several distinct characteristics:

- The types of employers that are eligible to adopt a 403(b) include nonprofit employers under 501(c)(3); public educational institutions, including public schools and state universities and state colleges; and churches, including religious affiliated organizations and self-employed ministers.
- Though corrections are still required, 403(b) plans are not subject to penalties for late deferrals.
- There is no ADP test on deferrals; the only nondiscrimination requirement for deferrals is the "universal availability rule" (except in the case of churches and QCCOs). Additionally, the top-heavy rules do not apply to 403(b) plans.
- Only those plans subject to ERISA (nonprofit employers under 501(c)(3) or churches that elect to be covered by ERISA).
- 403(b) plan eligibility depends on the type of contribution. For elective deferrals, only very specific employees may be excluded, including employees who typically work less than 20 hours per week (1,000 hours per year), nonresident aliens with no U.S.-source income, employees who are eligible under another deferral plan of the same employer, and certain students (typically on a work-study program). You may not have an age requirement, e.g., 1 or 2 years of service, as is permitted under a 401(k) plan.
- Post-employment employer contributions are permitted to be made for the year of separation from service, and for the next 5 years thereafter. This is very common in 403(b) plans, where it is typically a part of the employment agreement. In the case of a public school, it may be part of the union contract. No other type of retirement plan may accept these contributions after termination of service. It is important to note that if the employer is a nonprofit organization, these contributions will be subject to nondiscrimination testing.
- A significant difference between a 401(k) and a 403(b) plan is that an employer maintaining a 403(b) can "layer on the benefits" by adding on a 401(a) plan where each plan has an overall Section 415 limit of $58,000 (for 2021). In other words, there is no Section 415 limitation aggregation between a 401(a) and a 403(b). This is a strategy sometimes used to offer matching or nonelective contributions outside of the 403(b).
- Investments are limited to mutual funds and annuities, unless the employer maintains a Retirement Income Church Account plan under Section 403(b)(9).

THE RIGHT PATH TO PLAN GOVERNANCE

What is plan governance? The Center for Board Certified Fiduciaries' definition is: Governance is your ability to manage the details of a prudent decision-making process. And the IRS' definition: Governance is the exercise of authority and control over an organization.

While it's not at the top of any plan compliance list, the term encompasses many of the normal administrative features that we all practice, including providing information on plan investments.

While some reasons are obviously more important than others, having a straightforward governance plan in place is of great value. While the benefits are measurable, to be successful the plan must be efficient, comprehensive and—from a practical standpoint—easy to implement.

Dmitry Pistrov / Shutterstock.com

- A good plan for governance will help to protect the employer in the case of an IRS or DOL audit.
- Some employers communicate their governance plans through their bylaws, articles of incorporation, or corporate structure. In the case of a church or religious organization, governance may be spelled out in the ecclesiastical law or canon law or the book of discipline of the organization. Governance requirements may dictate the number of meetings required during a year, and topics (for example the investments) needing a review a specific number of times each year.
- More and more employers, upon advice from counsel, are looking to TPAs for assistance in setting up governance committees.
- Since 2008 the IRS has required Exam Agents and Managers of Governance to complete an internal course designed around governance protocols (see *https://www.irs.gov/pub/irs-tege/governance_course_outline_cpe.pdf*).
- Even non-ERISA plans, K-14 educational organizations and churches—employers not be subject to ERISA—agree to adopt best practices that mimic ERISA rules with respect to administration and investment disclosures.
- Managing assets and investments within a plan requires strict oversight with regard to selecting and monitoring investments. Is that the responsibility of the employer or have they hired a third party?
- Day-to-day administration of the plan is critical. Is that the responsibility of the employer or have they hired a third party?
- A governance committee will document all plan-related decisions—both fiduciary and non-fiduciary decisions.

The argument for maintaining a governance committee can be very compelling. Even the Department of Labor has weighed in supporting the idea: In its April 2021 "Best Practices on Cybersecurity" guidance, the DOL references governance on the topic of classifying and disposing of data.

So document, document, document… You can't go wrong!

A FORK IN THE ROAD?

In this case, there should be *no* fork in the road. Some employers focus solely on the plan's investment lineup, while others focus more heavily on the compliance pieces. *But both need to be considered in equal measure.*

WHILE SOME REASONS ARE OBVIOUSLY MORE IMPORTANT THAN OTHERS, HAVING A STRAIGHTFORWARD GOVERNANCE PLAN IN PLACE IS OF GREAT VALUE.

Courts and legal advisers seem to direct considerable attention to a plan's underlying investments and fees. Conversely, IRS and DOL audits will surely focus on the compliance aspects. In fact, compliance will determine whether a plan passes an audit with no changes or penalties, or whether lengthy and expensive corrections are required to correct certain failures under the plan.

A BUMPY ROAD

As bumpy and inconvenient as they may be, all roads lead to compliance. Some employers attempt to self-administer, often with help from an outside party such as a recordkeeper or TPA. Clearly, not all recordkeepers and TPAs are created equal. It is crucial to be guided competently through the IRS' new audit guidelines, which are creating pitfalls for 403(b) plans.

Rather than investment selection, the IRS will concentrate on how the plan is administered. All of the plan-related agreements will be reviewed, including employment contracts, union contracts and third-party service agreements. A required element under the first-ever 403(b) restatement is the Administrative Appendix. If the plan provider produced the appendix as part of their pre-approved plan, the result outlines all responsibilities and duties related to the plan. Those items not assigned to any of the third parties become the responsibility of the employer or the plan sponsor.

While this is a requirement, not all service providers are created equal. Some go into great detail, in effect preparing the employer for an audit; some simply refer to their service agreement for employers; and others have a very short list of responsibilities which do not reflect some of the most important challenges that employers face. One critical provision that could potentially disqualify a 403(b) plan is not providing the Universal Availability Notice. Yet this is not even on the radar of some recordkeepers and TPAs!

As discussed above, 403(b) plans are unique in many ways and cannot be administered like a 401(k). Therefore, knowledge at the advisor level, as well as by the recordkeeper and TPA, is needed to properly manage the plan.

THE MARKERS IN THE ROAD

The table at the end of this article provides a list of compliance issues that must be addressed annually upon establishment of the plan, such as the types of contributions, testing, fee disclosures, etc. Some items are never addressed in a 401(k) plan audit, but the IRS will request this data for a 403(b). Beginning in 2020, and continuing into 2021, it seems the IRS has put considerable effort into the Information Document Request forms (IDRs), addressing everything they have alluded to since the regulations were issued in 2007. Highlighted below are items that apply to ERISA 403(b) plans for nonprofit organizations, as well as churches and K-14 plans. The legend indicates where they apply. Lastly, the employer should be aware of the party taking responsibility for each item. If the conclusion is that the answer is "no one," it automatically becomes the employer's responsibility.

GOING DOWN THE 'COMFORTABLE' PATH

If an employer uses the checklist to make sure that service providers cover most of these items, then the road ahead will not be as bumpy along the way.

While the right path may involve some work, don't let that American eagle pick you up and take you back to the days before you maintained the plan. Be vigilant, and before selecting service providers, be sure to consider that the compliance list is covered.

By the way, if you are curious and want to view the American eagle and the family dog named "Taxes," follow this link: *https://binged.it/3nvClYK*. I promise you: You will be entertained! PC

ITEMS TO REVIEW UPON TAKEOVER OR IMPLEMENTATION OF A NEW PLAN

A	1	Review and verify accuracy of SPARK File or other Data Sharing Information and notify Vendor of errors. (This includes an annual audit to make sure that all amounts and sourcing were credited to the proper participant in the Plan.) *A SPARK File is the industry's accepted file layout and is uniform between recordkeeper/TPA. There are situations where the SPARK File must be supplemented with other data.*
A	2	Determine that the valuation of plan assets is completed in the manner and at the frequency required by the plan
A	3	If applicable, provide Employee census information prior to each entry date to determine eligibility
A	4	Evaluate eligibility to determine who enters the plan on each entry date *Entry dates for Elective Deferrals cannot exceed 60 days. Prior to the issuance of the final regulations, it was common to have an entry date of 90 days. That ended in 2020.*
A	5	Provide enrollment forms to eligible employee (e.g., deferral elections, investment elections, and beneficiary designations)
A	6	Provide mandatory notices at enrollment when applicable (e.g., Universal Availability, Automatic Enrollment, QDIA, Fees, Diversification, Preemption, 404(c), 415 Notice ("deemed" control group (owning outside business)) *Not providing the Universal Availability Notice (must be a "meaningful" notice) can force the entire plan to become taxable to all! This is one of the top 10 errors found in 403(b) Plans and could have disastrous results.*
A	7	Confirm that proposed deferrals do not exceed plan defined limits or legal maximums *Most recordkeepers/TPAs will monitor these prior to being deposited so that all potential "excesses" are caught before going into the Plan.*
A	8	If Plan does not provide for full and immediate vesting, determine initial vesting computation period
A	9	Analyze eligibility service and vesting service to be credited to rehired employees *Remember the Once-in Always-in ("OIAI") rule applies now to elective deferrals, so any rehire would automatically be eligible to defer.*
A	10	If Plan does not provide for full and immediate vesting, determine forfeitures that must be restored for rehired participants
A	11	If certain types of compensation is excluded, evaluate compensation types for participant and ensure that deferrals are being removed from all relevant compensation types (check exclusions, e.g., stipends, coaching bonuses, club sponsorships) *This is one of the top 10 errors found in 403(b) Plans.*
A	12	Provide completed enrollment forms to Vendor(s) (Agent)
A	13	Maintain copies (paper or electronic) of deferral and investment elections and all changes made
A	14	Collect and maintain copies (paper or electronic) of beneficiary designations and changes to same *Check Plan document for any beneficiary defaults*
A	15	Process and verify deferral elections each payroll period to ensure proper deferral by participant, including deferral changes
C	16	If Universal Availability failed, determine amount to be contributed with lost earnings. Amounts are contributed and earmarked as a QNEC (employer contribution). Amend plan to accept QNECs (if necessary)
A	17	Ensure deposits of salary deferrals are made to Vendor within required timeframe. *Be aware of State laws for non-ERISA plans. For example, New Jersey has a 72-hour deposit rule.*
A	18	Verify that automatic deferral increases (if any) have been performed properly
A	19	Identify census parameters
A	20	Provide census information to determine contribution limits, vesting

Legend:
A = Applies to All Plans; E = ERISA Plans Only; PS = not for public schools; C = not for Churches or QCCOs; D = not for Churches, QCCOs and Non-QCCOs; NQ = Non-QCCOs)

A	21	If Employees are not immediately eligible, determine employees eligible to participate in each type of contribution allocation
A	22	Verify type of contributions made (pre-tax deferral, Roth, employer, rollovers, etc.)
A	23	Determine includible compensation for participant for each type of contribution
A	24	Determine amount of each type of employer contribution for each participant
A	25	If Plan accepts Employer contributions, determine amount of true-up matching contribution at year end (if any)
A	26	If Plan accepts Employer contributions, verify that matching contributions or nonelective contributions do not exceed plan defined limits
A	27	If Plan accepts Employer contributions, determine maximum contribution under IRC §415 and verify that contributions do not exceed that limit
PS D	28	If safe harbor plan, determine amount of safe harbor contribution for each participant
A	29	Determine and maintain records of separate accounting for all types of contributions
A	30	Determine and maintain records of eligibility of rollover contributions
A	31	Determine and maintain records of eligibility of Plan-to-Plan transfers
A	32	Prepare and maintain distribution notices and withholding elections
A	33	Evaluate eligibility to receive a distribution
A	34	Provide distribution forms to participant, including 402(f) notice for rollover information *Remember to include withholding notices, IRS is including them in audit reviews.*
A	35	Review distribution forms to see if fully completed and signed by appropriate parties
A	36	Authorize distributions and other transactions
A	37	Confirm vested interest on termination of employment and determine the amount to be distributed
A	38	If Plan permits Roth Deferrals, determine basis in Roth Distributions and maintain beginning date for Roth qualification period
A	39	If Plan permits Roth Deferrals, determine whether Roth distribution is qualified
A	40	Determine that proper income tax withholding deposit was made and reported to IRS on Form 945
A	41	Prepare Form 1099-R and provide to participant and IRS
PS	42	Determine cash-out amounts for the year (e.g., accounts for terminated participants with less than $1,000 value). Send distribution election forms to potential cash-out participants *Only available for Group Annuities or Group Custodial Agreements.*
A	43	If elected under the Plan, determine amounts to be moved to an automatic IRA rollover (e.g., amounts for terminated participants with $1,000 to $5,000 in value) *Make sure 402(f) Notice has information on the automatic IRA, also if the Plan is subject to ERISA, the SPD should have this information as well.*
A	44	If permitted under the Plan, evaluate eligibility for hardship distribution
A	45	Evaluate proposed QDRO to determine if it qualifies as such. Communicate with participant/former spouse regarding QDRO receipt (and provide copy of QDRO Policy) and QDRO determination. Communicate with participant/former spouse regarding QDRO receipt (and provide copy of QDRO Policy) and QDRO determination. Segregate account and initiate distribution to Alternate Payee *Non-ERISA Plans should not have a QDRO policy that refers to ERISA.*

Legend:
A = Applies to All Plans; E = ERISA Plans Only; PS = not for public schools; C = not for Churches or QCCOs; D = not for Churches, QCCOs and Non-QCCOs; NQ = Non-QCCOs)

A	46	Authorize and verify requirements for Exchanges, Plan-to-Plan Transfers, and Transfers to State DB Plan
A	47	Locate missing participants. If search efforts fail to locate a missing participant, select and implement a distribution option for the benefits of the missing participant. *Be aware that there are missing participant rules for ERISA Plans (from DOL) and those for non-ERISA Plans (IRS).*
A	48	Identify participants required to take a Required Minimum Distribution (RMD), including terminated employees, beneficiaries; provide timely notice of RMD requirement; determine minimum distribution amount; and verify execution of RMD requirement
A	49	Determine and maintain records of vesting service; vested percent; timing of forfeiture; determine use of forfeiture
A	50	Provide copy of loan procedure/policies to participants; prepare and retain loan documents (e.g., promissory note, etc.) for each participant loan; determine maximum amount that may be borrowed; provide Loan Request Forms to participants; approve loan; verify that loan repayments procedure in place
A	51	Verify that proper payroll deduction for loan payments are being submitted to Vendor(s); identify fully repaid loan and termination of payroll deduction; provide information on repayment of loan to terminated participant; provide notice of delinquency to participant, plan sponsor; determine defaulted and offset loans; prepare Form 1099-R on defaulted loan and provide to participant and IRS
A	52	Prepare annual mandatory notices (Automatic Enrollment, QDIA, Fees, Diversification, Preemption, Other) (if applicable)
E	53	Prepare annual 404(a)-5 notice for participants regarding plan investments and fees
E	54	Prepare annual and quarterly 404(a)-5 notice for participants regarding actual fees charged to participant accounts
E	55	Prepare Summary Annual Report (SAR) and provide to participants
E	56	Prepare and provide benefit statements meeting requirements of ERISA
A	57	Prepare and provide benefit statements to participants
E	58	Provide Summaries of Material Modifications (SMMs) or new SPDs to participants
A	59	Prepare and disseminate to participants transaction-based communications (e.g., acquisitions, mergers, conversions)
C	60	Elective Deferrals—prepare and deliver Annual Universal Availability Notice *Best Practice is to develop an Annual Universal Availability procedure for each Plan.*
A	61	Monitor statutory limits annually: annual 415 limit, §401(a)(17) compensation, §414(s) compensation, §402(g) elective deferrals, §414(v) age 50 catch-up, 15-year catch-up
A	62	Determine compensation to use for contributions and testing annually *Testing for ERISA Plans and non-QCCOs only.*
A	63	Determine if additional plans must be aggregated with this Plan for overall limits *It's common for deselected vendors to be ignored for hardship and loan determinations.*
E	64	If safe harbor plan, issue annual safe harbor notice to participants (if applicable)
E NQ	65	Verify Controlled Group Members, Affiliated Service Group Members for inclusion in testing
E NQ	66	Ensure IRC §401(a)(4) nondiscrimination other than ACP test (e.g., contributions including cross-testing, benefits, rights, features, amendments); determine whether gateway benefits have been provided for cross-tested plans
E NQ	67	Analyze effect of acquisitions on testing and limitations (e.g., §401(a)(4), ACP, §414(s), §410(b), §415, §401(a)(17), §402(g), §414(v)); determine if additional plans must be aggregated with this Plan for testing and compliance purposes and instruct service providers accordingly

Legend:
A = Applies to All Plans; E = ERISA Plans Only; PS = not for public schools; C = not for Churches or QCCOs; D = not for Churches, QCCOs and Non-QCCOs; NQ = Non-QCCOs)

A	68	Prepare Plan document and maintain copies available for examination. Does not apply to churches that do not maintain a 403(b)(9), however many adopt as a best practice
E	69	Prepare Summary Plan Description, Summary of Material Modification or other ERISA notice, as applicable, and distribute to participants
A	70	Prepare amendments, required and optional, including 411(d)(6) anti-cutback analysis of amendments
A	71	Submit for IRS favorable opinion letter, when required and if appropriate
A	72	Prepare written procedures/policies, where applicable. Establish Governance committee and rules surrounding that committee
E	73	Retain CPA to perform independent audit (>100 participants with account balances)
E	74	Prepare and file the Annual Fiduciary Report Form 5500 and related schedules (including Form 5558 Application for Extension of Time to File)
E	75	Follow the Plan's claims procedures for participants and beneficiaries whose claims for benefits under the plan have been denied
E	76	Receive and adjudicate claims appeals and communicate appeals decision to participants
A	77	Respond to written participant inquiries and requests for information
A	78	Make sure all fiduciaries are aware of their duties and obligations
E	79	Purchase and maintain fidelity bond to cover every person handling plan funds
A	80	Prepare and maintain investment policy
E	81	Prepare and maintain ERISA §404(c) compliance
A	82	Maintain prospectuses on file
A	83	Provide information to employer regarding funds offered to participant for investment-direction and related fees and benchmarks to comply with 404(a)-5 obligations
A	84	Prepare and maintain evaluation of investment options
A	85	Prepare and maintain employee education on investments
A	86	Prepare and maintain annual review of investment option performance
A	87	Prepare and maintain analysis of reasonable fees
A	88	Determine whether fund options should be maintained or replaced or placed on "watch list"
A	89	Provide "blackout period" notice to participants in a timely manner
A	90	Annually review all vendor documents, including distribution forms, custodial agreements, annuity contracts, withholding notices and elections, etc. *Typically, this is the TPA. Especially important now based on recent audits, where IRS is requesting copies of the withholding notices, elections and procedures.*
A	91	Determine if any prohibited transactions took place
A	92	Locate the Vendor attachment, which is a required part of the plan document *This should indicate active vendors and those that are deselected. Remember a "vendor" according to the IRS definition is "the provider of the custodial agreement or the annuity contract. This means that if there is a Mutual Fund Company and an Annuity Provider, there would be 2 vendors. Some organizations use marketing companies; those are not "vendors." The IRS will ask for copies of the Custodial Agreement or the portions that address certain features. If there is a conflict between the Plan and the underlying agreement, the Plan language rules!*

Legend:
A = Applies to All Plans; E = ERISA Plans Only; PS = not for public schools; C = not for Churches or QCCOs; D = not for Churches, QCCOs and Non-QCCOs; NQ = Non-QCCOs)

HIDING IN PLAIN SIGHT

A new study suggests four steps to kick-start growth. **By Ted Godbout**

Sergey Tinyakov / Shutterstock.com

Several factors are putting pressures on the U.S. retirement system, leaving the industry facing a decelerating revenue growth outlook—but a new report suggests there are "opportunities hiding in plain sight."

Rising industry-wide fee pressure is one area placing constraints on the profitability of U.S. retirement firms, with average 401(k) expense ratios falling by a third over the last 10 years, according to PwC's "Retirement in America: Time to Rethink and Retool" report. According to the PwC analysis, recordkeeping fees are also on a downward trajectory, declining by 8% between 2015 and 2019.

In response, the report notes that some retirement firms are matching fee pressure with cost reductions, while several others have opted to consolidate. Yet, continuous consolidation has further reinforced price competition, with some firms relying on "drastic price modifications" to attract new business. And while thin margins are a threat to the entire industry, smaller firms face even greater headwinds, the report further observes.

A CALL TO ACTION

PwC notes, however, that firms that focus on the evolving needs of participants by addressing individual challenges with new benefit offerings and holistic advice can increase participation.

Moreover, improving access to retirement programs through less expensive turnkey programs specifically designed for small business can unlock an additional $5 trillion in retirement assets, according to the firm's estimates. "The ability to excel in today's environment is closely tied to the extent to which firms can generate scale for distribution, innovate with new technologies and expand benefit offerings to help address gaps in the market," PwC emphasizes.

STICK WITH WHAT YOU CAN CONTROL

Given the industry-wide pressures, PwC emphasizes that it is important to separate actions that are in your control from structural problems that are not. "For example, fee pressure will likely continue to challenge the revenue pool but the ability to meet changing participant needs with new financial and wellness products or expand plan access with instruments such as pooled employer plans (PEPs) can help meet some of today's challenges," the report explains.

Additionally, there may be opportunities that currently exist within a plan's participant coverage. To that end, the research suggests there is a 17-point gap between access and participation rates for DC plans—3.5 times that of a DB plan. "Competing priorities and the lack of financial wellness programs or advice tends to have a direct impact on whether employees forgo participation," the report submits.

The report offers four paths to overcoming the challenges and "kick-start growth":

1. **Adapt to changing participant needs:** Given trends such as rising life expectancies and the changing goals and needs of participants, PwC suggests that new benefit offerings such as debt repayment programs, decumulation strategies and new access points, such as PEP plans, will likely be key factors in engaging with new participants, expanding the addressable market and growing the "overall pie" of retiree assets.
2. **Diversify revenue sources:** Retirement planning is evolving into an "ecosystem of benefits" that cuts across financial planning, health, wellness and financial literacy, PwC observes. As such, firms that can extend beyond the current playing field—typically limited to the DC plan—can be more effective at retaining assets. "Multi-product, cradle-to-grave benefit offerings allow consumers to find and adopt different products as their needs evolve," the report advises.
3. **Reevaluate how you run your business:** With industry consolidation and product commoditization, service providers are conducting a "careful reevaluation" of where and how they participate. PwC notes, for example, that recordkeeping has been upended by lower cost technology and industry concentration. For sub-scale firms to remain competitive, they should determine where to participate and how to scale in a cost-effective manner, the report suggests.
4. **Digitize your business:** To remain competitive, recordkeepers and platform providers must be able to streamline their operations. Given advancements in technologies, PwC notes that there are more opportunities to automate tasks and lower maintenance costs to drive down expenses, while freeing up reinvestment to deliver more beneficial participant experiences. PC

Embracing MEPS and PEPs

Enactment of the SECURE Act changed the climate for multiple employer plans and pooled employer plans. "I think we're just at the beginning of people hearing from the salesforces of industry vendors that MEPs are a good idea. That's going to make a difference and change the marketplace," observed Waypoint Fiduciary President Pete Swisher, at last fall's ASPPA All Access virtual conference. "Clearly, the marketplace is moving toward adopting these structures."

MEPs and PEPs play to service providers' strengths, added co-presenter Theresa Conti, President of Sunwest Pensions. "That is one of the reasons I like working with them—because we can be very efficient, we can be very effective, very out front with that."

Uncertainty over how to make money from the new structures is one source of concern. For instance, the suspicion that MEPs will be less expensive—and therefore, less lucrative—suggests that it may not be worth a service provider's time to work with them.

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

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

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

HOW TO ENGAGE CLIENTS IN THE NEW NORMAL

Opportunities to make sure that your expertise is valued come in many forms.

By Theresa Conti & Patrick Shelton

As we all know, the pandemic brought an unprecedented number of changes to our world and the world of our clients. This means that as retirement plan consultants, we may need to engage our clients differently. What impacts our clients the most and how do we get them to engage on a deeper level?

CONTENT IS KING

The first thing that's important when engaging clients is content. We are the experts when it comes to their retirement plan, and the content that we provide must be genuinely useful to our clients for it to be meaningful. Focusing on educational pieces that help them by answering questions and solving problems helps us to be viewed as the "helping hand." Keep the topics and content short and specific. Experiment with something new, like Zoom webinars or bite-sized videos that can be used on social media platforms.

Right after the CARES Act was enacted, we were very proactive with our clients, holding a Zoom webinar that explained what it means to them. The engagement by our clients with the webinar was phenomenal. It also helped our staff—they weren't bombarded with phone calls by clients, since we had answered a lot of the questions that they needed help with as part of the webinar.

Keep clients in the loop by providing regular content or newsletters that they can access. Consider a quarterly webinar that contains information and updates. Record the webinars and post them on your website so that clients can access them—and keep them as short as you can while still providing valuable information.

ASK, THEN SHARE

There were (and still are) a lot of items that our clients are worried about when it comes to their business. Since most

VectorMine / Shutterstock.com

of us are fellow business owners, we have found that it's useful to ask our clients what they are concerned about and then using stories about our experiences as business owners, trustees and leaders to help with those concerns. Questions we can ask include the challenges they are facing or services that they wish existed. Examples include clever methods you use to motivate employees, unique technology solutions or best practices for retirement plans. Sometimes fellow business owners can get lost in the fact that we are "just" a service provider and they are our client.

Be sure to stay relevant and responsive to client needs as they arise. Highly responsive companies are quick to nip service problems in the bud. Do they have a genuine relationship with us? Are your employees trained to figure out when to bring something to your attention that a client is expressing as a concern?

Opportunities to make sure that your expertise is used frequently come in many forms. Is their plan design still relevant? Do they need more tax savings? Should they add or remove safe harbor provisions? Is the plan close to top-heavy status, and do they know what that means to them? What about partial plan termination? Our clients are not retirement plan experts and they count on us to help them understand the impact of the tax savings of plan design or the risk of partial plan terminations if they were to downsize. Being present and making sure our staff knows how to ask these questions and then provide the right answers is key to showing our value.

CENTERS OF INFLUENCE

Ask to engage with your clients' other trusted advisors, specifically CPAs, attorneys and bankers. Most business owners had more frequent and intense interactions with their these advisors during the pandemic than ever before. This was and is especially true for CPAs related to PPP applications, lines of credit, cash flow and taxes. As plan consultants we also were able to elevate our status with guidance related to the SECURE and CARES Acts.

SOCIAL MEDIA

Social media is another way to interact regularly with your clients. Follow your clients on social media to connect to their day-to-day activity. Make sure your posts are relevant and contain information that they can use. Another important piece of advice is to make sure that you post regularly. If you say you will be doing a weekly series, then make sure you do that. There is nothing worse than saying you will be doing a series and then not following through! We keep a schedule of topics and find relevant articles to use for posts. And doing a blog is even easier—you just need to write a few paragraphs about a topic that you know well, and it allows you to really showcase your expertise.

CHARITABLE ACTIVITY

Another way to inspire is to make a social impact. Volunteering, supporting a local charity, doing a food drive and other kinds of charitable opportunities help your clients to see you in a philanthropic mode. It also helps to involve your employees in these types of volunteer opportunities. Maybe there is something that is near to their heart that you can use as an opportunity to showcase your business and your commitment to your community! Taking an interest in a client's family, favorite sports teams and hobbies are also great ways to connect in a meaningful way.

PAYMENT FLEXIBILITY

Being flexible on bill payment options with your clients can go a long way toward creating loyalty and improving retention for businesses that may be stressed and want to meet their obligations but are struggling due to cash flow pressure. Credit card payments or adjusted payment terms are a great way to build goodwill. For some clients, it may make sense to show voluntary discounts related to COVID on their invoice to demonstrate your commitment to supporting their business in tough times.

CLIENT SURVEY

Our final thought has to do with a client survey. We typically survey our clients every 2 years; 2020 was the year to do that, so even though things were crazy, we took the plunge anyway. We got a lot of favorable comments about how we handled things during the pandemic and how timely the information was for our clients. We always learn from our client surveys, and even though our responses were favorable, we can always find opportunities for improvement. How can you really be sure of the client experience you are providing unless you ask? For your best clients, working on testimonials about your services and reciprocating with the same for their businesses is a unique way to strengthen relationships. PC

"SOMETIMES FELLOW BUSINESS OWNERS CAN GET LOST IN THE FACT THAT WE ARE "JUST" A SERVICE PROVIDER AND THEY ARE OUR CLIENT."

Have a nice day Photo / Shutterstock.com

BRANDING PRIORITIES FOR TPAS IN 2021 AND BEYOND

COVID-19 may be the biggest challenge your business has ever faced, but it won't be the last. Take what it has taught you and apply it to make your business more resilient in the future. **By Sheri Fitts**

TPAs are just now beginning to return to doing regular business, but it's anything but "business as usual." How do you separate what's important in the near term from the actions that build long-term value?

For more than three decades, I've focused on helping TPAs and retirement plan advisors create and implement focused sales and marketing strategies. Needless to say, last year's rolling shutdowns and retreat from the office upended many of the core sales principles I've championed (most importantly, the notion that the whole purpose of digital engagement is to get in front of prospects face-to-face. Ha!) I had to completely retool my approach, pivoting to helping clients master the art of selling and marketing themselves virtually.

Along the way, I did what most of us did in 2020… adapted to a new model of client service and engagement… detoured down a few blind alleys… and learned some things about what I was good at, and what I needed to work on. And the more I thought about my personal response to the pandemic, the more I realized it became a question of what my brand priorities were. And from there, I began to think about how the post-COVID world would impact TPA firms and advisors, so many of whom rely on the trust that is built from forming personal, in-person, relationships.

WHAT DO YOUR BUYERS EXPECT FROM YOUR BRAND? ARE YOU DELIVERING?

Your brand defines who you are and what you stand for, and extends far beyond simply offering TPA services. Amid a resurging global pandemic and social unrest, brand gains special importance as buyers look for brands to act and advocate for change. In the second half of 2020, Edelman, a leading global communications firm, surveyed 33,000+ respondents in 28 countries to explore how the pandemic was affecting trust in government, media, non-government organizations (NGOs) and business. Findings from the 2021 Edelman Trust Barometer reveal that trust is now the make-or-break difference for brands (see infographic).[1]

Who Do You Trust?

51% of survey respondents said that they trusted U.S. companies (all-time low)

61% of survey respondents said that business was more trusted than government (18 of 27 countries)

61% said they trust communications from their employer's media over government, general media, major corporations or advertising sources

Source: 2021 Edelman Trust Barometer

These statistics capture broad attitudes that may not apply directly to the retirement industry. But there are some common brand priorities that may need to be examined through the lens of trust as we all cope with fallout from a global pandemic, economic crises and political instability. Here are my top five branding priorities for TPAs to consider in 2021 and beyond.

#1 REVISIT YOUR BRAND REGULARLY AND MEASURE BRAND EQUITY—NOT NECESSARILY TO MAKE HUGE CHANGES, BUT TO TEST ITS CURRENCY.

Your firm's values should be understood, integrated, assimilated and celebrated by everyone within the business. This is so there's no uncertainty when those values may be challenged, and to free your marketing campaigns to be agile, bold and brand-appropriate. Brand currency allows you to take positive action when most firms have likely been thrown on the defensive.

#2 SET YOUR TOP STRATEGIC IMPERATIVE FOR EACH YEAR.

From a brand perspective, it's important to be able to identify your firm's top strategic imperatives for 2021, whether it's to help co-workers safely return to business as usual, invest in technology or focus on helping plan sponsors address their most significant investment and operational challenges. What is your strategy for client retention and service innovation? How are you bringing your best ideas and recommendations to your clients?

#3 COMMUNICATE THE CHANGE YOU WANT.

Have your firm's mission, vision and values changed post-COVID? If so, how are you communicating that change to clients and prospects? It seems to me that this is a time where bold and authentic action and advocacy are critical—no matter whether your views lean liberal, conservative or not at all. For example, where does your firm stand on politics, environmental/sustainability concerns, or social justice issues? How do your views align with those of your clients?

#4 CHAMPION YOUR CUSTOMERS AS COMMUNITY.

During a crisis, client expectations and behaviors can change dramatically. Most firms will be challenged to keep up. How well are you engaging your audience to become your partners—and not simply treat them as targets or data points? Never forget the emotional connection people should have with your brand. It's the "why" of what you do.

#5 LEARN AND ADAPT.

COVID-19 may be the biggest challenge your business has ever faced, but it won't be the last. Technological, political, social and environmental changes have been rocking the planet for two decades or more, and the pandemic has exposed and amplified deep rifts in society. Take what it has taught you and apply it to make your business more resilient in the future.

"YOUR BRAND DEFINES WHO YOU ARE AND WHAT YOU STAND FOR, AND EXTENDS FAR BEYOND SIMPLY OFFERING TPA SERVICES."

WHAT MAKES A TRUSTED TPA?

The value in your company brand is expressed by what you say (or don't say) versus what you do. Increasingly, in the absence of leadership and bipartisan public policy, we are seeing people turning more to companies to address problems. Increasingly, your buyers are looking at your brand in two ways: "How do you solve for me?" versus "How do you solve for society?"

Social media channels have exploded as marketers and communicators go direct to the end user. The problem, as I see it, is that few people trust what they read on Twitter or Facebook. With trust at such a deficit, the only way for brand messages to resonate is for a company to actively communicate its purpose, integrity and client advocacy with far greater precision than ever before. PC

Footnotes

[1] Edelman's 21st annual Trust Barometer was on online survey of 33,000+ respondents aged 25–65 in 28 countries conducted from Oct. 19 to Nov. 18, 2020 and included a U.S. post-election supplement of 1,500 U.S. respondents fielded Dec. 14–18, 2020.

PROFESSIONALISM AUDIT: DO YOU DO PEER REVIEW?

Peer review can strengthen a retirement professional's ability to provide quality work to clients. Here's how. **By Lauren Bloom**

Gagandeep_Singh / Shutterstock.com

This article continues our series on questions that might be considered in a professionalism audit. Employee benefit plan professionals perform complex, detail-oriented work, often involving massive amounts of participant data. Work products that contain errors can be personally embarrassing, expensive to fix, harmful to client relationships and bad for the professional's reputation. If mistakes are serious enough, they can also lead to lawsuits and professional disciplinary charges. It's simply sensible for employee benefit plan professionals to take reasonable steps to reduce the risk that material mistakes in their work will slip past them.

One way that an employee benefit plan professional can reduce the risk of giving a client flawed work is to engage the services of a peer reviewer. Traditionally, the professional engages a peer who has the necessary qualifications to perform the work to be reviewed, asking the reviewer to assess the quality of the work product. The reviewer does not redo the project. Rather, depending on the nature of the work product, the peer reviewer may:

- independently evaluate assumptions made by the professional;
- evaluate the methods the professional used when completing the work for reasonableness and consistency;

"WORK PRODUCTS THAT CONTAIN ERRORS CAN BE PERSONALLY EMBARRASSING, EXPENSIVE TO FIX, HARMFUL TO CLIENT RELATIONSHIPS AND BAD FOR THE PROFESSIONAL'S REPUTATION."

- assess the work product's compliance with applicable law and professional standards;
- review any research that influenced the professional's work;
- sample underlying data;
- confirm the reasonableness of the professional's conclusions;
- highlight any identified errors in the work; and
- opine on whether the work product is clear, accurate, and appropriate to its intended use and audience.

Even simple typos can get flagged. A peer reviewer might also estimate the various risks associated with the work product and offer recommendations on how to mitigate them. Depending on the circumstances, the peer reviewer and employee benefit plan professional might engage in considerable back-and-forth as the peer review proceeds.

Employee benefit plan professionals can be resistant to obtaining peer review. The process can be time-consuming and expensive and may sometimes identify weaknesses in the work product that the professional would prefer not to address. It can be difficult to persuade clients to pay for peer review ("I'm already paying you for this work, why should I pay somebody else, too? Don't you know what you're doing?"), so the associated costs often come out of the professional's pocket. Some professionals resist spending time and energy on peer review of a completed project, especially when the client is anxious to receive it or they have other work waiting. Others are so prone to procrastinate that they don't leave time for meaningful peer review. Some are so confident in the quality of their work that they believe peer review would be a waste of time and money, and others just flat-out resent having anyone question, much less challenge, any aspect of their work.

Despite these professionals' perceptions, peer review is often well worth the investment of time and money associated with it. Even the best employee benefit professionals are human, and human beings make mistakes, especially when they are stressed, tired, under pressure to meet a looming deadline or produce a particular result or working in an area that is new to them. Mistakes can range from minor math errors to major failures of judgment or skill. Once a flawed work product has been delivered and the client relies upon it in creating, administering or terminating an employee benefit plan, those mistakes can be far more difficult and expensive to fix than peer review would have been.

One way to keep the cost and hassle of peer review in line is by clearly defining the scope and nature of the review in advance. The employee benefit plan professional and the peer reviewer should both agree on how the review will proceed before work begins. If the circumstances warrant it, some aspects of the review may be limited or omitted. The professional may ask to be notified when the cost of the review reaches a certain level or may reserve the right to limit or terminate the review at various points throughout the process. The peer reviewer can perform the review for a flat fee or, if appropriate, swap peer review services with the employee benefit plan professional as a professional courtesy.

If peer review is deemed to be too expensive or cumbersome for much of the employee benefit plan professional's work, the professional may choose to obtain peer review only for especially large or complex projects. If the professional provides repetitive services for a single client or identical services to multiple clients, peer review of a representative work product may be sufficient. Alternatively, the professional may seek peer review on a periodic basis—once a year, perhaps—then incorporate the peer reviewer's recommendations into all work performed between the reviews.

Another way to obtain the benefits of peer review without investing in it for every project is to ask for a process review. For these reviews, the peer reviewer looks at a sampling of the professional's work products not to fully assess the merits of each one but to identify any pervasive shortcomings in the professional's systems and methods. A process review can strengthen the professional's ability to provide quality work to all of his or her clients while keeping financial and time investments within bounds.

Peer review can be of tremendous value to employee benefit plan professionals. Deciding when and how to use it is well worth consideration in a professionalism audit. PC

PLAYING THE 401(k) GAME

Teamwork among multiple service providers and advisors makes for great play—with the plan sponsor coming out as the winner of the game. **By Mickie Murphy**

Recently I had a conversation with a plan advisor that ended with us commiserating over the fact that even though there may be one plan sponsor for a 401(k) plan, in truth we each had multiple "clients" related to that plan that needed to be managed in one way or another. It's no wonder that a plan sponsor may be confused about who they need to contact with a question when there are multiple providers and advisors serving them for different aspects of their plan.

As a plan consultant of one sort or another, we may find ourselves in a similar situation as we try to serve other professionals assisting our client, the plan sponsor, toward the same goals. And while there are many ways these services can be layered, packaged and sold (putting cost and fees aside for a different conversation), managing relationships with a client and all of their plan's providers is primary in being able to serve that client's needs.

WHO'S ON FIRST?

For those who are involved in selling plans, it can become easy to forget that ultimately, we are problem-solving for an employer that needs the best solution for their retirement planning, for both owners and employees. Particularly for smaller plans, that may require more complex plan design to maximize contributions for owners. For large plans, solutions may require additional technology or plan pairing to resolve issues with limits to highly compensated employee deferrals. Whether an advisor, TPA, CPA, investment platform, recordkeeper or ERISA attorney, each problem-solver is generally retained by the plan sponsor to serve in their specific capacity, and yet each are members of the supporting team. How the 401(k) team works together

zieusin / Shutterstock.comw

can mean the difference between a good retirement plan solution for the employer or a lousy one.

WHO'S THE MANAGER?

Often, more than one of the parties with a relationship to the 401(k) plan wants to "own" the client, whether for assets under management, consulting, tax work or plan design advice. They are looking for a "sticky" relationship, a long-term client relationship, a client who treats them like a trusted advisor.

So who gets to "own" the relationship with the plan sponsor?

The truth of the matter is that the employer and its employees are best served when they have a team of trusted advisors working together for them, encompassing investments, tax, plan design, compliance, corrections and recordkeeping, as well as audit services if needed. Are they not all advising the employer in different aspects of the plan? The relationship with the plan sponsor will be stickiest when advisors (using advisor as a general term) act more as team managers than owners, coordinating the team to reach a solution to a particular situation. Managing a team means recognizing the gifts and talents of each player and using that to achieve the best result for the end goal.

When an advisor, a TPA and a recordkeeper show up together and combine their talents, the plan sponsor gets the best result, whether for a sale or for ongoing servicing of the plan. Why? Because typically each of them knows where their responsibilities start and end and where the talents of others begin and end. A wise advisor also knows where to pass things over to their partner and to shine a spotlight on *their* role on the team.

As a TPA, my firm does not sell assets and we work with multiple platforms and many advisors. Our favorite advisors to work with understand the 401(k) rules well enough to discuss them with the client and then turn over plan design or distribution complexities to the TPA and its experts, and explain that that is why they partner with a TPA. That makes the financial advisor look smart because they partner with an expert!

And the TPA should turn to the financial advisor with specific questions about the market, for additional personal financial planning, or for other areas of expertise the advisor may have. The advisor and the TPA should know their investment platform wholesalers well enough to get questions answered regarding pricing and revenue sharing, and the recordkeeping platform teams for assistance with transactional issues. Whether it is a bundled administration/investment/recordkeeping package or unbundled with several plan advisor relationships involved, it is important for there to be a team effort and the members of the team to play well together to accomplish the goals of the employer as the plan sponsor.

WHAT'S THE LINEUP?

Many times, the plan sponsor can feel as if they are in an Abbott & Costello routine as they try to figure out who to call with which problem, even when services are bundled. The more players there are, the more important it is to establish how they will work together. Particularly when there is a team consisting of advisor/TPA/recordkeeper, the aim should be to make sure that the client feels confident that they are able to have their plan served, even if they are not sure which person to call. That does not mean that the financial advisor must handle the plan document technical questions if he gets the client call, but that the client knows he will follow up and make the right connections within the team to handle the issue. Or if the TPA gets the call asking for enrollment materials, the client knows that the TPA will see that their request is taken care of. How those types of things are handled behind the scenes can be decided up front by the parties involved.

So how does a group of firms become a team working for a plan sponsor? First, they agree on a lineup ahead of time. When working with an advisor with whom our firm has not had a relationship with before, we generally have a conversation about the roles played by our firms, how each handles things in general, and how to manage specific tasks between us—for example, whether the advisor wants to be involved in distribution processing or not.

Secondly, they provide the client with the lineup of the usual tasks and players so they know who plays what part, including the client itself as plan sponsor. Many of the investment platforms have a schedule which shows duties of the recordkeeper, TPA and plan sponsor. Some financial advisors provide one that includes their responsibilities as well. While it is a very helpful tool, most of the time the responsibilities grid is provided as part of the plan installment and included with many pages of agreements and fee information from multiple parties. So it is helpful to provide that information to the daily contact again after the plan is set up and running.

HOME RUN

To make the plan sponsor's retirement plan a winner, the 401(k) team must communicate among themselves, create a game plan with a comprehensible lineup, and understand the role that each team member will play and how they will play the 401(k) game together. Sometimes the players change, but the employer sponsoring the plan, and their employees, should always be the winner. Truly, the employer is the owner of the relationships and those servicing the plan may take turns managing the team depending upon their areas of expertise. Each of the players on the team looks smarter and serves the client better as trusted advisors when they build each other up, letting the employer know that they are playing as a team, and that each player counts on the experts they work with to do the same.

It is a home run in the 401(k) game when the team recognizes that the 401(k) team owns the relationship together and everyone works to serve the plan sponsor as a mutual client. PC

insta_photos / Shutterstock.com

RECRUITING MADE VIRTUALLY REAL

What a difference a year makes. **By John Iekel**

Business practices had to change on a dime as the COVID-19 tidal wave swept the familiar out of its way—and with little or perhaps even no notice or time to beta test changes.

Business as usual in the financial services industry "came to a screeching halt" as business were "blindsided" by the COVID-19 pandemic, noted Toni E. Whaley, a financial planner with PlanMember Securities Corporation, in an April 28 webcast concerning technology and financial professionals. "We're told this is a 'contact sport,'" she said, but suddenly it became technology-driven.

You must adopt at least some technology, Whaley said, and if you don't, "you'll be in the dark ages."

COME ABOARD

The sudden shift to virtual work didn't just include revenue-generating functions; recruiting practices were among the flotsam and jetsam.

To be sure, virtual interviews and job application processes that include a video component are not new. But they were always an option, not the expected practice. With the advent of the pandemic, however, virtual recruitment and hiring became de rigueur.

For some, this meant accelerating practices already in place and replacing in-person recruitment efforts entirely with electronic media. But for those who had not yet implemented electronic tools into their recruiting and hiring process, it was a sudden jump into very cold water.

Alorica Inc., a company that works to build and improve the customer experience for its clients, was among those that had already been using electronic tools to recruit potential employees. Alorica has approximately 100,000 employees and 300 recruiters, and has been expanding its staff to meet higher demand for its services. With the onset of COVID-19, the firm's Senior Director of Talent Acquisition Jeff

Luttrell indicates that in part, it was business as usual. Alorica held virtual interviews before the pandemic on a smaller scale for call center roles, and on larger scale for support or corporate roles, he says.

As the pandemic hit and in-person contact plummeted while virtual communication became a necessity, the firm's approach to recruiting was "nothing new," according to Luttrell. "We were already using Text Recruit, AI, chatbots, etc.," he notes. Even so, Alorica's use of electronic means of recruiting grew still more. "We had existing virtual processes, but needed to scale them larger and add in efficiencies," Luttrell says. He reports that the firm changed the way it recruits potential employees by "moving many of our on-site local teams to virtual" and that they also "started recruiting for almost all work-from-home roles."

GETTING TO KNOW YOU

During the last year, business-related meetings are among the aspects of professional life that have changed greatly, observed Whaley. And that includes interviews. As with recruiting, some interviews had been taking place electronically—but with virtually no warning, that practice expanded exponentially.

Alorica's experience illustrates that spike in conducting virtual interviews with job applicants. Luttrell says that 80%-90% of the interviews for its call center jobs are virtual interviews, and nearly all of the interviews to fill other openings are virtual.

Whaley remarked in her webinar that one positive aspect of the shift to using electronic means to do business, perform functions, meet and communicate is that it "shows how technology can help with establishing contact and building a business." Alorica bears that out: Luttrell reports that the virtual interviews Alorica is holding are similar to those they conducted before, but also different. "It is important that we build relationships with potential new employees, and that face to face or recruiter/candidate interaction is critical," he says.

"Pre-pandemic we were almost always in front of the candidates," says Luttrell, continuing, "Now, we spend more time on transitions from step-in process and on building those relationships."

And actual contact with individuals was only part of it, Luttrell indicates. "Community partnerships were a big part of building our funnel and many of those organizations closed or stopped services, so finding new ways to increase recruiting pipelines virtually was initially challenging," he says, and reports that Alorica was "able to find amazing partners in schools, colleges and universities, technical schools, social service organizations, churches and social groups."

The "what" and the "who" are not the only considerations—Whaley pointed out that the "how" is also a critical factor. She suggested that one should remember that a firm will need equipment, internet access and a virtual meeting platform of some kind. Furthermore, she suggested considering how the office compliance team handles rules about meetings and webinars. Luttrell indicates that Whaley is on to something, remarking that Alorica asks interviewees questions about home office set-up; they also confirm other crucial factors such as internet access and speed.

And the results? Luttrell reports that virtual recruiting and interviewing has worked very well for Alorica. "We have been hugely successful," he says, noting that they have filled all of the positions they needed to fill.

WHAT'S NEXT?

Those new recruiting procedures may get more of a workout this year, according to the Society for Human Resources Management (SHRM). According to SHRM, while turnover rates fell sharply during the pandemic-induced economic strains of 2020, experts expect that many more people will leave their jobs for new ones in 2021.

Bureau of Labor Statistics data from the start of the year suggest that so far the experts may be right. Their data show that the January 2021 the "quit" level in the U.S. workforce—the level of people voluntarily leaving their jobs—stood at 3.3 million, and rose in some sectors; it also rose slightly in February (*see table*).

SHRM cites Danny Nelms, President of the Work Institute, as one of the experts who are looking for voluntary turnover to increase; furthermore, they report that he anticipates that this trend will make recruiting even more important.

And what's next for recruiting practices? For Alorica at least, Luttrell says, "We are working on how we can do virtual recruiting better—creating efficiencies and using new tools to help." Beyond that, he says, "We also have to work in a hybrid model, with some on-site and some virtual" and that they need to consider how they can do that, and do it well. PC

Measure	"Quit" Rate	Sectors in Which the "Quit" Rate Rose
January 2021	3.3 million	· Finance and Insurance · Federal workforce
February 2021	3.4 million	· Educational services · Real estate/rental and leasing · State and local government education

Source: Bureau of Labor Statistics, Job Openings and Labor Turnover, January 2021 and February 2021.

YOUR MARCHING ORDERS FOR THE ARA COUNCIL FOR WOMEN

Jacob Lund / Shutterstock.com

A recent survey shines a light on how the new Council should address the pervasive challenges facing women in the industry. **By Kristine J. Coffey**

Thanks for an overwhelming response (far exceeding industry averages) to the first-ever American Retirement Association five-sister organization (ASEA, ASPPA, NAPA, NTSA and PSCA) member survey in March 2021, presented to you by the ARA Council for Women.

In this article we will illuminate major responses, themes and insights from survey participants that will inform the work of the ARA Council for Women as well as its four committees (thus far): the Women in Retirement Conference (WiRC), the Thrive mentoring program, Government Affairs (GAC) and our Engage relationship. We have your marching orders!

Said well by one respondent, "Create the agenda. Don't just make changes to it." Another core insight you challenged us to embrace is, "Women have more advantages than men!"

CREATE THE AGENDA: CONNECT AND COMMUNICATE

Of significant note was the survey respondents' call for our attention to and action for diversity, especially acknowledging the issues on our streets and in our hearts, and their ramifications on our works and policies.

Consistent themes emerged in the survey on the top three issues facing women in the retirement industry:

- Work/life balance, mentioned by nearly 50%

- Respect, recognition, perception, at nearly 30%
- Pay, matched with career development, at nearly 20%

Bias, mentoring and networking are the other priorities for consideration.

How can we connect these issues and communicate positive insights for these pervasive challenges?

Another enhancement we were encouraged to consider is broadening our communication strategy. We hear your requests to tell our story: better, stronger, more relatable and easier to replicate. You asked for leadership and role model stories of advancement, of success, and of overcoming obstacles, with strategies on how to be transformational.

Perhaps consider a multimedia venue like that started by ARA sister organization, the National Tax-Deferred Savings Association (NTSA), called WOWcasts, bringing together members with centers for influence for mutual growth.

To facilitate communication, you call for more networking connections: regionally, topically and virtually, to name a few. In addition, you also promoted resources for stress management, financial wellness and easier access.

Suggestions included a convenient, 24/7 phone app. Many NAPA Firm Partners work consistently and effectively in these venues. We hear that you want even more opportunities consistent with our retirement industry parameters.

Through our communication channels we can connect with each other and refer business. In support of our network we could recreate the past ASPPA public directory proclaiming the qualities for all ARA credentialed and certified professionals, with easy access for quality connections.

ADVANTAGES: EDUCATE AND ENGAGE

Education and advocacy are at the core of the ARA's mission, with more than a half century of ASPPA stewardship in education. However, survey respondents challenged us to expand offerings beyond technical and legislative retirement industry topics to the economics, psychology and philosophy underpinning such endeavors.

Bottom line, we must use our advantages to create policy, not just correct regulations. Strategize with us about public policy led by women's issues, as well as men's. Creating a special outreach to engage with the growing cadre of congressional women to champion our public policy recommendations was suggested in the survey.

In support of our advocacy for women's issues, ARA has a nascent relationship with the Engage initiative. Engage's mission is to promote American women's economic security and advocate for bipartisan solutions. Stay tuned for more on this potential for effective community action.

To encourage more women in the retirement space, survey participants suggested that our members work with their high schools, trade schools and colleges to promote women and to expand representation in our retirement industry—clearly a community responsibility initiative.

You have challenged us to cultivate our full potential. Clearly, WiRC excels at celebrating the whole person. Several survey respondents also challenged the Thrive mentoring program to add a focus on successful members' needs to reach new heights, as well as sunset programs to transition their legacy to new generations of professionals.

SURVEY RESPONDENTS: COLLABORATE AND CULTIVATE

Who are the fellow members who responded to the survey? Quite a few are members of multiple ARA sister organizations. Of course, ASEA actuaries are part of ASPPA, but, did you know that you can become an Affiliate Member of ASPPA, NAPA and NTSA for just $50 a year if you are already a primary member of another ARA organization? And you get full benefits as an Affiliate Member, like more timely access to related information—and discounts. A perfect way to collaborate and cultivate our careers!

Also, several respondents have multiple job categories, especially when we look at the broad employment categories in the retirement industry. Of course, the smaller the firm, the more hats a professional wears; and the larger the firm, the more that professionals can focus intensely—particularly evidenced in our Plan Sponsor Council of America (PSCA) membership—or manage and spur on a whole gamut of related activities.

Even though the WiRC has sold out in its last two in-person conferences, many potential attendees have financial concerns, especially when they don't have a professional development benefit. However, we need to invest in ourselves and our futures, too.

The fairly new ARA Thrive Mentoring Program for Women is known by the WiRC women, but it's still a new benefit to a great majority of members. Go to usaretirement.org/ara-council-for-women to learn more about becoming a mentor or mentee… a great summer project!

AND SOME CAUTION

A few concerned respondents warned about possible exclusivity, divisiveness and/or cliquishness Many issues do not impact women only, but then again, certainly some situations affect women more significantly. It is our task to bring that focus, while we remain keenly aware of the major ARA advocacy and education purposes to preserve and enhance the employer-based retirement plan industry: the whole, the works of ARA.

THANK YOU

With so very many "thank you" responses, so many offering to volunteer, and so many possibilities of significant value, we are here to serve. The ARA Council for Women meets biweekly to lead and advise the five ARA sister organizations on collaborative works.

Our ARA Council for Women's *esprit de corps* is unmatched. Our strategic plan becomes real with our tactical foci. Stay tuned as we maximize our existing resources and create new initiatives unique to your needs.

Thank you for your marching orders to create the agenda, using our advantages. PC

ARE THE RETIREMENT PLAN LIMITS UNDER ATTACK?

On Capitol Hill, changing the limits are in play once again. **By Will Hansen**

In short: Yes, they are. Changing the retirement plan limits is once again on the table as a way to pay for new policy proposals. In recent years, Congress has chosen the path of not paying for large-scale proposals, which has decreased the likelihood of "pay-fors" being used to pass the legislation. Now, however, with the Biden administration proposing a number of major policy proposals, we may hear more "chatter" about retirement limits changing to raise revenue to pay for those proposals.

In fact, we have already seen one such attempt this year. In the first version of the American Rescue Plan Act of 2021 (ARPA), which passed the House of Representatives in February, retirement limits were in play. The legislation included a provision that would have frozen the cost-of-living adjustment (COLA) tied to the Section 415 limit for DC and DB plans. In addition, it would have frozen the COLA for the Section 401(a)(17) definition of compensation. Both provisions would have been effective for plan years beginning after Dec. 31, 2030.

"WE WILL NEED TO REMAIN VIGILANT IN THE MONTHS AND YEARS AHEAD TO ENSURE THAT THE RETIREMENT SYSTEM ISN'T USED AS A PAY-FOR FOR OTHER POLICIES."

The delay in the effective date was a signal that Congress wasn't thrilled about adjusting retirement plan limits as a pay-for for the other provisions in the legislation. A delayed effective date would provide time to remove the freeze down the road. After discussions with Capitol Hill staff, we confirmed that this was the intent—implement it as a pay-for and then replace the pay-for with another provision prior to the effective date.

The bill passed the House and headed to the Senate, and it was going to be nearly impossible to make any adjustments to the legislation since it was essentially negotiated ahead of time with the goal of ensuring there was limited debate and enough votes to pass. But in the Senate there are two senators in particular who support the private retirement system and have sponsored legislation in the past to strengthen retirement plan limits.

Sens. Rob Portman (R-OH) and Ben Cardin (D-MD) have been working together for decades on legislation to enhance the private retirement system. Their coordination dates back to the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), which increased the retirement plan limits. Portman and Cardin were instrumental in the passage of EGTRRA as well as the Pension Protection Act of 2006 that made permanent certain retirement income limits.

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

We worked closely with Portman's and Cardin's offices to remove the freeze on cost-of-living adjustments imposed on certain retirement income limits in ARPA. We were fearful—and remain so—that any implementation of a provision that alters a retirement income limit, whether effective immediately or down the road, would open the door for retirement income limits to be used frequently as a pay-for for unrelated public policies.

Due to the advocacy efforts of the American Retirement Association and the engagement of Sens. Portman and Cardin, the provisions were removed before final passage of ARPA. But it was a lesson that we will need to remain vigilant in the months and years ahead to ensure that the retirement system isn't used as a pay-for for other policies.

Through the rest of this year and into 2022, we will see a number of new large-scale policy proposals introduced, many of which will most likely require a pay-for or offset. Retirement income limits are on the table for the foreseeable future, but we will continue to advocate against any change to those limits that could negatively impact the ability of Americans to invest for a secure retirement. PC

BUILD UP YOUR CE CREDITS VIA *PLAN CONSULTANT* QUIZZES

Did you know that each issue of *Plan Consultant* magazine has a corresponding continuing education quiz?

Each quiz includes 10 true/false questions based on articles in that issue. If you answer seven or more quiz questions correctly, ASPPA will award you three CE credits. And you may take a quiz up to two years after the issue of PC is published. This makes *Plan Consultant* quizzes a convenient and cost-efficient way to earn valuable CE credits anywhere, anytime.

Visit: www.asppa-net.org/Resources/Publications/CE-Quizzes to get started!

ASPPA
American Society of Pension Professionals & Actuaries

MAXIMUM ASSURANCE.
MINIMUM ANNOYANCE.

18 YEARS
of experience auditing benefit plans

300+
Hundreds of plans audited each year

21 DAYS
As little as 21 days to complete the audit

110%
We strive for 110% customer satisfaction

Relax, we are experts when it comes to **auditing 401(k) and 403(b) plans.**

We know how to audit these plans **efficiently and effectively.**

AICPA Defined Contribution Plans Audit Advanced

AICPA EBPAQC Member

LEE CPA AUDIT GROUP

833-401K-CPA or 916-347-7855

www.leecpagroup.com

info@leecpagroup.com