



# 2021 Employee Benefit Plan Industry Updates and Best Practices

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

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# Introductions:



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**#1**

provider of employee benefit plan audits in the country serving over 3,600 plans

**400+**

employees designated to employee benefit service lines

**EBPAQC**

Member of AICPA Employee Benefit Plan Audit Quality Center

**Active**

Actively involved on AICPA EBPAQC Executive Committee and Expert Panel



# Learning Objectives

- Recognize legislation and trends that may impact employee benefit plan design
- Identify common administrative practices for employee benefit plans
- Describe effective cybersecurity practices for your employee benefit plan
- Outline plan fiduciary compliance updates
- Determine how your retirement plan can help you recruit and retain employees



# Legislation and Trends

Required Actions

Accounting and Auditing Matters

Cybersecurity

SECURE ACT 2.0



# Required Actions

- CARES Act
  - Brief Summary – March 2020 - COVID related distributions, enhanced plan loan provisions, RMD delays, relief for single employer defined benefit plans.
  - Provisions expired at end of 2020, but those that adopted these provisions are required to formally amend their plan by the end of 2022.
- Cycle 3 Restatement – all qualified pre-approved 401(k) plan documents will need to be amended, certified by the IRS, and adopted by the plan sponsor by 7/31/22. Covers all legislation through January of 2017.





# Accounting and Auditing Matters

- SAS No. 136
  - Effective for periods ending on or after 12/15/2021 (extended).
  - Clarify reporting requirements and increase transparency of the auditor's report.
  - Elimination of "DOL limited scope" audit terminology, which resulted in a disclaimer of opinion.
  - Now be referred to as "ERISA section 103(a)(3)(C)" audit. No longer be considered to have a scope limitation but rather permit the auditor to issue an unmodified opinion.
  - Auditor's report will instead include a new, two-pronged opinion distinct to ERISA EBP audits.
  - Addresses both the auditor's and management's responsibility.
  - Includes new requirements for auditors for engagement acceptance, risk assessment, review of Form 5500, obtaining representations from management, and communication of reportable finding with those charged with governance.



# Accounting and Auditing Matters

- Form 5500 Changes to Conform to New SAS 136
  - Schedule H, Part III, regarding the accountant's opinion have been revised.
  - Line 3a has been updated to note that SAS 136 permits the issuance of an unmodified opinion under an ERISA section 103(a)(3)(c) audit that had no modifications.
  - Line 3b has also been updated to replace a yes/no question with appropriate options to permit filers to indicate more accurately whether there have been any permissible limitations on the scope of the audit pursuant to the DOL's regulations.
  - These changes have already been reflected on the 2020 Form 5500 due to the fact that it was updated for SAS 136 prior to the delay of the effective date.



# Accounting and Auditing Matters

- ASU 2018-13
  - The Financial Accounting Standards Board (FASB) issued ASU 2018-13, *Fair Value Measurement (Topic 820) Disclosure Framework-Changes to the Disclosure Requirements for Fair Value Measurement*, in August 2018, which amended certain fair value disclosures.
  - The amendments remove certain requirements related to the transfer between Level 1 and Level 2 investments, as well as modify certain disclosures currently required for Level 3 investments.
  - The ASU is effective for fiscal years beginning after December 15, 2019.



# Accounting and Auditing Matters

- Changes to disclosure requirement for Defined Benefit Plan.
- Majority of changes likely only have an impact on corporate financial statements.
- Effective for fiscal years ending after December 15, 2021.



# Accounting and Auditing Matters

- Consolidated Appropriations Act, 2021
  - In December 2020, the *Consolidated Appropriations Act, 2021* was signed into law as part of the latest COVID-19 relief bill.
  - Extended distribution and loan provisions for participants affected by disasters other than the COVID-19 pandemic.
  - Partial Plan Termination Relief
    - A plan shall not be treated as having a partial plan termination if, as of March 31, 2021, the plan still covers at least 80% of the active participants as of March 13, 2020.



# Cybersecurity

- This year the U.S. Department of Labor announced guidance for plan sponsors, record keepers, plan fiduciaries, and plan participants on the best practices for maintaining cybersecurity.
- Out of the thousands of retirement plans, it is estimated there is in excess of \$9.3 trillion in U.S. retirement plan assets. Retirement plans often hold millions of dollars or more in assets and maintain personal data on participants, which can make them attractive targets for cybercriminals.
- Plan governance/fiduciaries have the responsibility to maintain proper controls and practices to keep these assets safe.
- A list of best practices was prepared and issued by the Employee Benefits Security Administration United States Department of Labor.
- CLA provided a webinar on this topic in October 2021; see an [archived copy](#).



# Accounting and Auditing Matters

- SECURE ACT of 2019
  - Increasing the required minimum distribution (RMD) age for retirement accounts from age 70½ to age 72.
  - Giving employees the ability to participate in 401(k) plans if they worked more than 1,000 hours in one year, or 500 hours in each of three consecutive years.
  - Allows unrelated employers to establish a shared defined contribution plan, called a multiple-employer plan (MEP).
  - Also provides an exemption, under certain circumstances, to the application of the “unified plan rule” also referred to as the “one-bad-apple rule.”



# SECURE ACT 2.0

- Securing a Strong Retirement Act
- Expected Provisions:
  - Expand automatic enrollment
  - Raise catch-up contribution limits
  - Increase tax credits for savers and small businesses
  - Offer extra assistance to student loan borrowers
  - Delay or remove required minimum distributions
  - Make it easier to purchase annuities
  - Ease reporting requirements and penalties





# Best Practices for Year-End

## Reconciliation of Recordkeeper System

- Do payroll and participant records match trust statements and TPA reports?

## Definition of Compensation

- Are all pay codes setup appropriately in your payroll system?

## Defined Contribution Plan Loans

- Is there a loan policy in place?
- Are delinquent loans properly tracked and defaulted?
- Is the interest rate being charged appropriate?

## Required Minimum Distributions

- Who is in charge of monitoring RMD compliance?
- New provisions introduced by the SECURE Act in place?

## Internal Controls

- Segregation of Duties wherever possible



# Best Practices for Year-End

## Plan Document and Summary Plan Description

- Does your summary plan description accurately state your plan's provisions?

## Accounting and Administration Guide

- If you have turnover in staff overseeing your plan, are your administration steps written out?

## Eligibility

- Are you leasing any employees?
- Do your actual practices align with your plan document?

## Missing Participants

- Take the steps needed to track down missing participants and distribute plan assets.

## Contributions

- Are all contributions remitted to the plan as timely as possible?

## Fidelity Bond Compliance



# Best Practices for Year-End

## Plan Merger/Acquisition Activity or New TPA

- Ensuring all assets transferred appropriately
- New Amendments and/or Plan Documents/SPD are appropriate
- Eligibility considerations
- New pay code considerations
- Roles and responsibilities defined
- Brokerage accounts
- Certification
- Due diligence



# Best Practices for Plan Management

Pep Update – Increase in 3(16) Adoption

Portfolio Considerations

advancements in participant support

PLAN DESIGN TO ACHIEVE ORGANIZATIONAL GOALS



# Update: Pooled Employer Plans (PEP)

- Adoption has been roughly 50% of what was expected
  - Unfulfilled commitments can lead to problems i.e.:
    - \$25 mil commitment - currently 14 plans with <\$1 mil in total assets – Recordkeeper is raising fees by 84 basis points
- *Assess the quality of the PEP and its providers*
- “Group of Plans” will be available 1/1/2022 but will require individual audits and 5500s.



# Increased use of 3(16) Fiduciaries

## Administrative fiduciary responsible for:

- Prepare/review and sign 5500
- Approve and monitor: loans, distributions, QDRO
- Retain auditor and other required professionals
- Deliver all required notices
- Ensure timely submission and validation of payroll accuracy
- Determine eligibility ....

***Be aware that some 3(16)s are “limited scope”***



# Fiduciary Best Practices

- **Audits are consistently asking for:**
  - Investment Policy Statement
  - Portfolio analysis and recommendations – (*Independent*)
  - Plan committee notes
  - Benchmarking of fees
    - Note: Fees paid at an entity level eliminates ERISA concerns, is generous to participants, is tax deductible



# Portfolio Considerations – Morningstar Research

## “**Bigger Is Better**, Defined Contribution Menu Choices With Plan Defaults”

David Blanchett, PhD, CFA, CFP®; Michael Finke, PhD, CFP®. 11/12/19

“...increasing a plan menu from 10 to 30 funds could result in an approximate 10-basis-point increase in the total expected risk-adjusted return (i.e., alpha) for a defined contribution plan when considering the dual benefit of higher default investment acceptance and more-efficient portfolios among participants who choose to build their own portfolios.”





# Portfolio Considerations – Morningstar Continued

- Previous studies didn't consider a default investment alternative
- Portfolios with roughly 10 investment choices:
  - 74% of participants adopted qualified default
  - Self Directed portfolios averaged 4.4 investments
- Portfolios with roughly 30 investment choices:
  - 87% of participants adopted qualified default
  - Self Directed portfolios averaged 8.7 investments

2021- Billion \$ plans have a median of 16 funds



# Portfolio Considerations – TDFs and ESG

- **Target Date Analysis (TDF)–**

- TDF analyzer reports – most proprietary but valuable
- Consider DOL guidance to analyze TD Funds

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/target-date-retirement-funds.pdf>

- **Environmental, Social, Governance (ESG)**

- DOL proposed guidance on Oct 14<sup>th</sup>. Acting Assistant Secretary for Employee Benefits Security Administration Ali Khawar: “A principal idea underlying the proposal is that climate change and other ESG factors can be financially material, and, when they are, considering them will inevitably lead to better long-term risk-adjusted returns, protecting the retirement savings of America's workers.”



# Portfolio Considerations – Managed Accounts

- **Managed Accounts adoption is 25.7% and growing**
  - One data point to determine allocation is fine for younger investors but with the number of data points Record Keepers have, customization the natural advancement.
  - Additional charges range from 20-75 bps
  - Wide range of additional services:
    - Call Centers
    - Custom “financial plan” reporting
    - Online tools to assist employees in planning



# Vendor Advances

*39% of Americans could pay for a \$1,000 unexpected expense (Bankrate.com)*

*25% of US adults have no retirement savings (Federal Reserve)*

## Vendor Solutions

- Extensive education and planning tools
- Multi lingual call centers providing coaching
- Healthcare savings accounts
- College loan assistance
- Emergency savings accounts



# Plan Design Considerations – Key Employees

- **Goal: Win the Recruiting and Retention War**
  - Quicker eligibility
  - Shorten vesting periods
  - Utilize Safe Harbor if ACP/ADP testing is a problem
  - Consider discretionary profit sharing for key groups
    - NHCE's can't be discriminated in favor of
    - Non-Qualified plans can augment ERISA limit constraints
  - Plan investment committee can include key employees



# Plan Design Considerations – All Employees

- **Goal: Help Employees to Reach a Dignified Retirement**
  - 49.1% of companies use Auto Enrollment
  - 24.2% of companies use Auto Escalation
  - Consider a “Stretch Match” to encourage higher savings
    - 41% match (0-6% of salary), 10% match more than 6%, average is 3.5% (Bureau of Labor Statistics)
  - 59% of organizations offer a Roth 401(k) (SHRM)
  - Limit or eliminate loans and/or hardship
  - Rotate employee participation on Investment Committee



# Plan Design Considerations – Principal Focused

- **Goal: Help Owners and Principals to Save More**
  - Consider Cross testing profit sharing
  - Consider adopting a Cash Balance Plan



# Summary

Consider the information that we covered and how it may impact the benefits of your organization.

Remember required actions (slide 7)

Consider Cycle 3 to take advantage of additional amendments

Contact CLA if we can be of additional assistance







# Questions

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# Thank you!

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