ERISA ROUNDUP

A quarterly recap of recent publications from BDO's ERISA Center of Excellence

Q4 2021

A NOTE FROM BDO'S NATIONAL ERISA PRACTICE LEADER

We hope you enjoyed the holiday season and are looking forward to a fresh start in 2022 as much as we are. As you wrap up the old year and welcome in the new, it's a great time to catch up on our most recent insights and podcast episodes compiled in this fourth quarter ERISA Roundup.

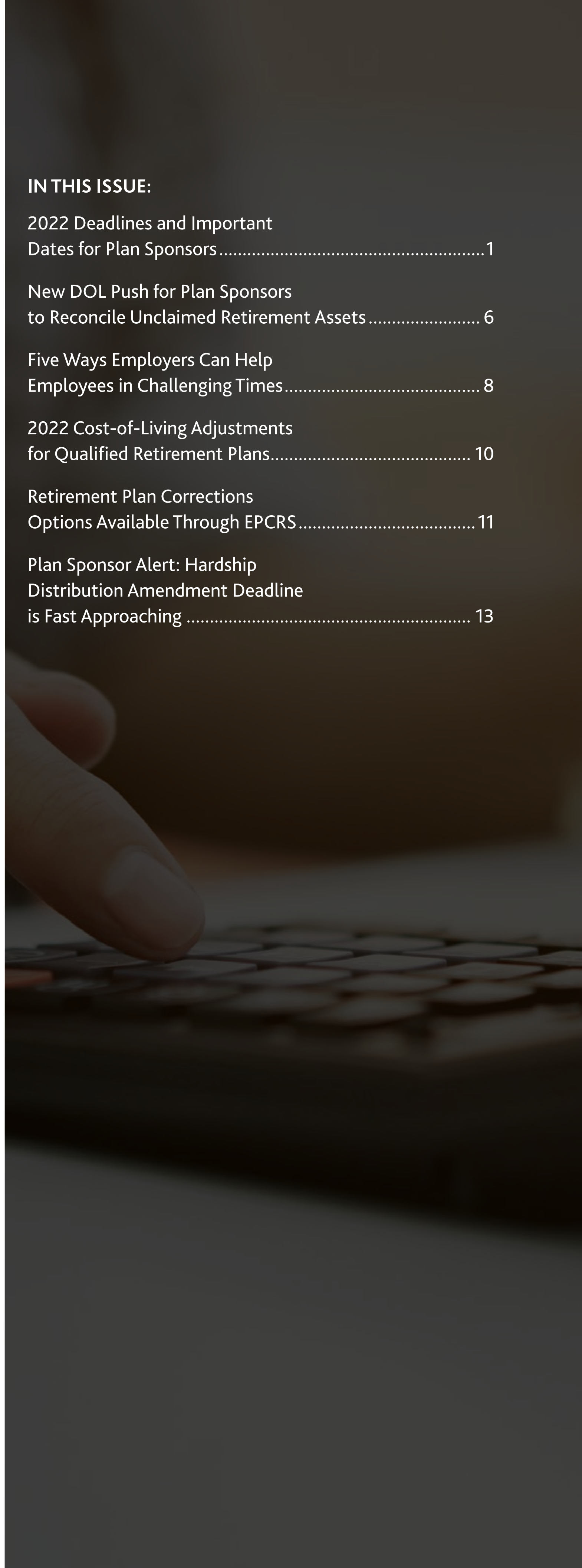
Amidst historically high levels of employees quitting their jobs (which has been dubbed the "Great Resignation"), we have focused this quarter's content on helping employers and human resource professionals find creative ways to retain their existing workforce, while also providing tips and resources to help if your company is experiencing high turnover. You will also find in this issue a discussion of plan correction options available through EPCRS and insight into the Department of Labor's initiative pertaining to unclaimed retirement plan assets.

If your New Year's resolutions include staying current on ERISA topics, we invite you to follow along with our regular insights at www.bdo.com/erisa and our podcast series ***BDO Talks ERISA***. Feedback on our content is always welcomed - you can reach us at **BDOTalksERISA@BDO.com**.

Wishing you all the best for 2022,

BETH GARNER
National Practice Leader, EBP and
ERISA Services

BDO's ERISA Center of Excellence is your source for insights on emerging regulations, industry trends, current topics, and more. Visit us at www.bdo.com/erisa or follow along on Twitter: @BDO_USA and #BDOERISA.



IN THIS ISSUE:

2022 Deadlines and Important Dates for Plan Sponsors

Sponsors of defined benefit and defined contribution plans should keep the following deadlines and other important dates in mind as they work toward ensuring compliance for their plans in 2022. Dates assume a calendar year plan. Some deadlines may not apply or may have dates shifted based on your organization's fiscal year. For additional support, please contact your BDO representative.

JANUARY

- **15** / Possible fourth quarter 2022 contribution due for defined benefit pension plans.
- **27** / Action: File PBGC Form 200 by Jan. 27, Notice of Failure to Make Required Contributions, if plan sponsor of a single-employer defined benefit plan does not make a Jan 18 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **31** / Action: Census data due Jan 31. Plan sponsor confirms the accuracy of the prior year's census data to the recordkeeper. This information is used for ADP/ACP testing.
- **31** / Action: Form 945 must be filed with the IRS by Jan. 31.
- **31** / Distribution: Distribute IRS Form 1099-R to participants by Jan. 31.
- **31** / Distribution: Distribute Form 1095-C to employees by Jan 31, to give information on health care coverage for 2020.

FEBRUARY

- **15** / File PBGC Form 10, by Feb 15, if a defined benefit plan with >100 participants 1) missed its Jan 15 required contribution, 2) the contribution is still unpaid as of Feb 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.
- **15** / Action: Review and approve compliance testing results sent by plan administrator by Feb. 15.
- **28** / Action: File Form 1096 paper transmittal by Feb. 28 for 2020 tax year.
- **28** / Action: Employers choosing to file paper Form 1094-C must do so by Feb. 28, to prove compliance with the Employer Shared Responsibility Mandate of the Affordable Care Act (ACA).
- **28** / Action: File form 1099-R in paper format by Feb. 28.

MARCH

- **1** / Action: Multiple employer welfare arrangement (MEWA) plans must file the annual form M-1 by March 1.
- **15** / Action: Highly compensated employees who fail ADP/ACP test for prior plan year must have refunds processed by March 15 (other than eligible automatic contribution arrangements).
- **15** / Fund: Partnerships and S Corporations that are not getting an extension must fund employer contributions by March 15 to receive tax deduction for the prior year.
- **30** / Action: Plans with publicly traded employer stock that follow Article 6A of the Regulation S-X (SEC format) must file Form 11-K with the Securities and Exchange Commission by March 30.
- **31** / Action: Employers choosing to file electronic Form 1094-C must do so by March 31, to prove compliance with the Employer Shared Responsibility Mandate of the Affordable Care Act (ACA).
- **31** / Action: Recordkeeper (or other responsible party) completes and files Form 1099-R electronically with the IRS by March 31.

APRIL

- **1** / Action: Hire auditor (if needed) by April 1.
- **1** / RMD: April 1 Deadline for 5% business owners and terminated participants who turned 72 in 2021 to receive their required minimum distribution (RMD). Participants who turn 72 during 2022 will be required to start by April 1, 2023.
- **15** / Fund: C-Corporations and Sole Proprietors that are not getting an extension must fund employer contributions by April 15 and receive tax deduction for the prior year.
- **15** / Possible first quarter 2022 contribution due for defined benefit pension plans.
- **15** / Fund: IRA contributions for the prior tax year must be funded by April 15.
- **15** / Fund: Participants who contributed over 402(g) or 415 limits in the previous year must be refunded the excess amount by April 15.
- **15** / Action: File PBGC Form 4010 by April 15, Notice of Underfunding for single-employer defined benefit plans with more than $15M aggregate underfunding.
- **25** / Action: File PBGC Form 200 by April 25, if plan sponsor of a single-employer defined benefit plan does not make the April 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **30** / Distribution: Send annual funding notice to participants of single- and multi-employer defined benefit plans over 100 participants by April 30.
- **30** / Distribution: Single-employer defined benefit plans that are less than 60% funded must inform participants by April 30 or 30 days after the benefit restriction is determined.

MAY

- **16** / File PBGC Form 10, by May 16, if a defined benefit plan with >100 participants 1) missed its April 15 required contribution, 2) the contribution is still unpaid as of May 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.
- **16** / Action: File PBGC Form 10 by May 16, Post-Event Notice of Reportable Events if plan sponsor of a single-employer defined benefit plan does not make an April 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.

JUNE

- **30** / Action: Plans with publicly traded employer stock that use an ERISA format must file Form 11-K with the Securities and Exchange Commission by June 30.
- **30** / Action: Highly compensated employees who fail ADP/ACP test for prior plan year must have refunds processed by June 30, if an eligible automatic contribution arrangement.

JULY

- **15** / Action: Plans with publicly traded employer stock that use an ERISA format that requested a 15 calendar day extension (Form 12b-25) for the Form 11-K must file the Form 11-k with the Securities and Exchange Commission by July 15.
- **25** / Action: File PBGC Form 200 by July 25, if plan sponsor of a single-employer defined benefit plan does not make a July 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **15** / Possible second quarter 2021 contribution due for defined benefit pension plans.
- **31** / Action: Defined Contribution Post-Restated plan documents must be completed by July 31.

AUGUST

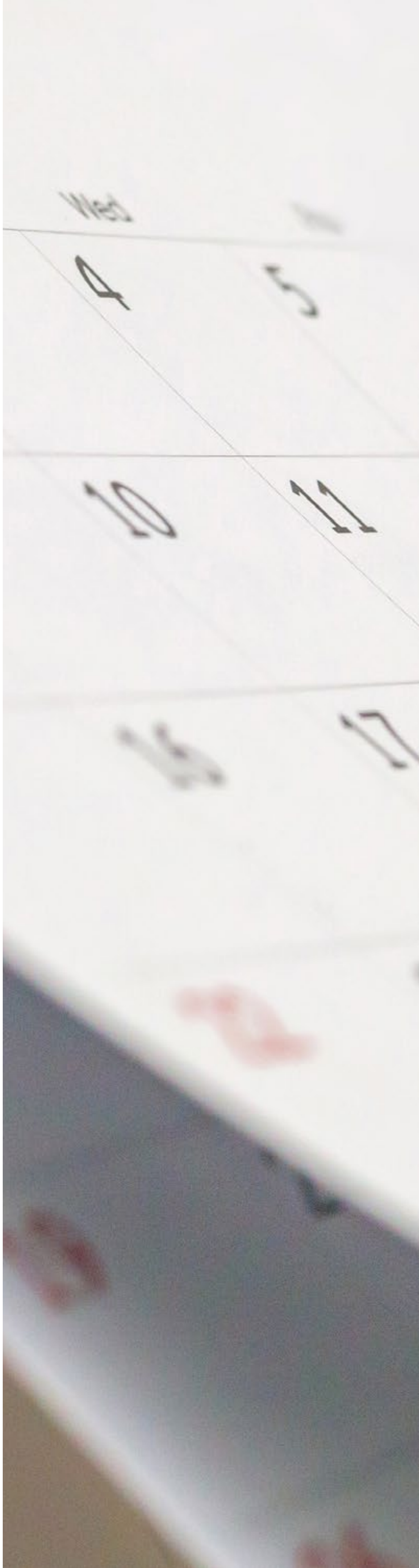
- **1** / Action: Large plan audit must be completed by August 1 to avoid requesting Form 5500 extension.
- **1** / Action: IRS Form 5500 and 8955-SSA must be filed by August 1.
- **1** / Action: To request a Form 5500 extension, Form 5558 must be filed on paper by August 1.
- **1** / Action: Pay Patient-Centered Outcomes Research Institute (PCORI) fee by August 1. Self-insured health plans must pay $2.54 per person (covered by health plan).
- **15** / File PBGC Form 10, by Aug 15, if a defined benefit plan with >100 participants 1) missed its July 15 required contribution, 2) the contribution is still unpaid as of Aug 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.
- **31** / Best Practice: Plans that failed compliance testing may take this mid-year opportunity to run compliance tests.

SEPTEMBER

- **15** / Fund: If an extension was filed, Sept. 15 is the deadline to fund employer contributions for Partnerships and S-Corporations.
- **15** / Fund: Minimum funding deadline for single and multi-employer defined benefit plans.
- **15** / Last date to make 2021 contributions for defined benefit pension plans.
- **15** / Action: File PBGC Form 200 by Sept. 26, if plan sponsor of a single-employer defined benefit plan does not make the Sept. 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **30** / Distribution: Summary Annual Report sent to participants with Dec. 31 plan year end.

OCTOBER

- **1** / Best Practice: Make sure procedures align with language in plan document. Oct 1.
- **1** / Distribution: Annual notices to participants begin Oct. 1, including 401(k) Plan Safe Harbor Match Notice, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and qualified default investment alternative.
- **17** / File PBGC Form 10, by Oct 17, if a defined benefit plan (of any size) 1) missed its Sept 15 required contribution, 2) the contribution is still unpaid as of Oct 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.
- **15** / Possible third quarter 2021 contribution due for defined benefit pension plans.
- **15** / Action: Oct. 15 is the extended deadline for filing Form 5500 & 8955-SSA, including Schedule SB (single employer defined benefit plans) or Schedule MB (multiemployer defined benefit plans).
- **15** / Action: Oct. 15 is the extended deadline for filing individual and C-Corp tax returns.
- **15** / Fund: If an extension was filed, Oct. 15 is the deadline to fund employer contributions for C-Corporations and Sole Proprietors.
- **15** / Action: Oct. 15, multi-employer defined benefit plans file PBGC Comprehensive Premium document and pay $29 per participant flat-rate premium.
- **15** / Action: Oct. 15 to open a Simplified Employee Pension (SEP) plan for extended tax filers.
- **26** / Action: File PBGC Form 200 by Oct. 26, if plan sponsor of a single-employer defined benefit plan does not make the Oct. 17 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **30** / Distribution: Single-employer defined benefit plans that are less than 60% funded must inform participants by October 30 or 30 days after the benefit restriction is determined.



NOVEMBER

- **15** / File PBGC Form 10, by Nov 15, if a defined benefit plan with >100 participants 1) missed its Oct 17 required contribution, 2) the contribution is still unpaid as of Nov 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.

DECEMBER

- **1** / Distribution: Annual Participant notices must be distributed by Dec. 1. These include: 401(k) Plan Safe Harbor Match Notice, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and qualified default investment alternative notices.
- **15** / Action: Dec. 15 is the extended deadline to distribute Summary Annual Report (SAR) for calendar year plans.
- **31** / Action: Dec. 31 is the final deadline to process corrective distributions for failed ADP/ACP testing; a 10% excise tax may apply.
- **31** / Action: Amendments to change traditional 401(k) to Safe Harbor design, remove Safe Harbor feature or change certain discretionary modifications must be completed by Dec. 31. Amendments to change to Safe Harbor nonelective design must be completed by 12/1 of given plan year for 3% or by 12/31 of the following year for 4% contribution level.
- **31** / Action: Plan sponsors must amend plan documents by Dec. 31 to account for any discretionary changes made during the year.
- **31** / Action: Ongoing required minimum distributions for 5% business owners and terminated participants must be completed by Dec. 31 for calendar plan years. Required distributions for 5% business owners and terminated participants who turn 72 during 2021 will be required to be completed by December 31, 2022.

CONTRIBUTION PLAN LIMITS AND OTHER ROLLING NOTICES FOR 2022

In addition to those important deadlines and dates, plan sponsors should be aware of the contribution plan limits and other rolling notices for 2022:

- Employee salary deferral limits for 401(k), 403(b) and 457 plans will be $20,500. Age 50 catch-up contribution limit increases to $6,500.
- Health Savings Account contribution limit is $3,650 (single) and $7,300 (family). Age 55 catch-up contribution stays at $1,000.
- Traditional and Roth Individual Retirement Account contribution limit will be $6,000. catch-up contributions for participants age 50 and over is $1,000.
- Limitation for the annual benefit under a defined benefit plan under Section 415(b)(1)(A) will be $245,000.
- The dollar amount used to define “highly compensated employee” under Section 414(q)(1)(B) will be $135,000.
- Newly eligible employees must receive a Summary Plan Description (SPD) within 90 days after becoming covered by the plan.

In February, our ERISA Center of Excellence launched a monthly podcast - BDO Talks ERISA! This series covers best practices around all things ERISA and any other HR-related topics, including:

- How to avoid common compliance issues
- How to navigate the ins-and-outs of ERISA's fiduciary provisions
- Our own experiences working for BDO's ERISA Services group
- A deeper dive into the insights we share through our BDO ERISA Center of Excellence

Listen to new episodes at BDO.com/BDOTalksERISA or subscribe on Apple Podcast or Spotify. If you have suggestions for future topics or have a question for us to answer, send an email to BDOTalksERISA@bdo.com.

RECENT EPISODES

Episode 12: Drum Roll, Please: Top 10 ERISA Violations You Need to Know

Our hosts Beth Garner and Joanne Szupka take a break from deadlines to talk about ERISA Violations. The GAO released an in-depth report on some of the biggest violations happening within this space. Our hosts cover everything from duty of disclosure to fiduciary self-dealing. This is an important episode you don't want to miss.

LISTEN TO EPISODE 12 NOW

Episode 13: ESOPs: What Does It All Mean?

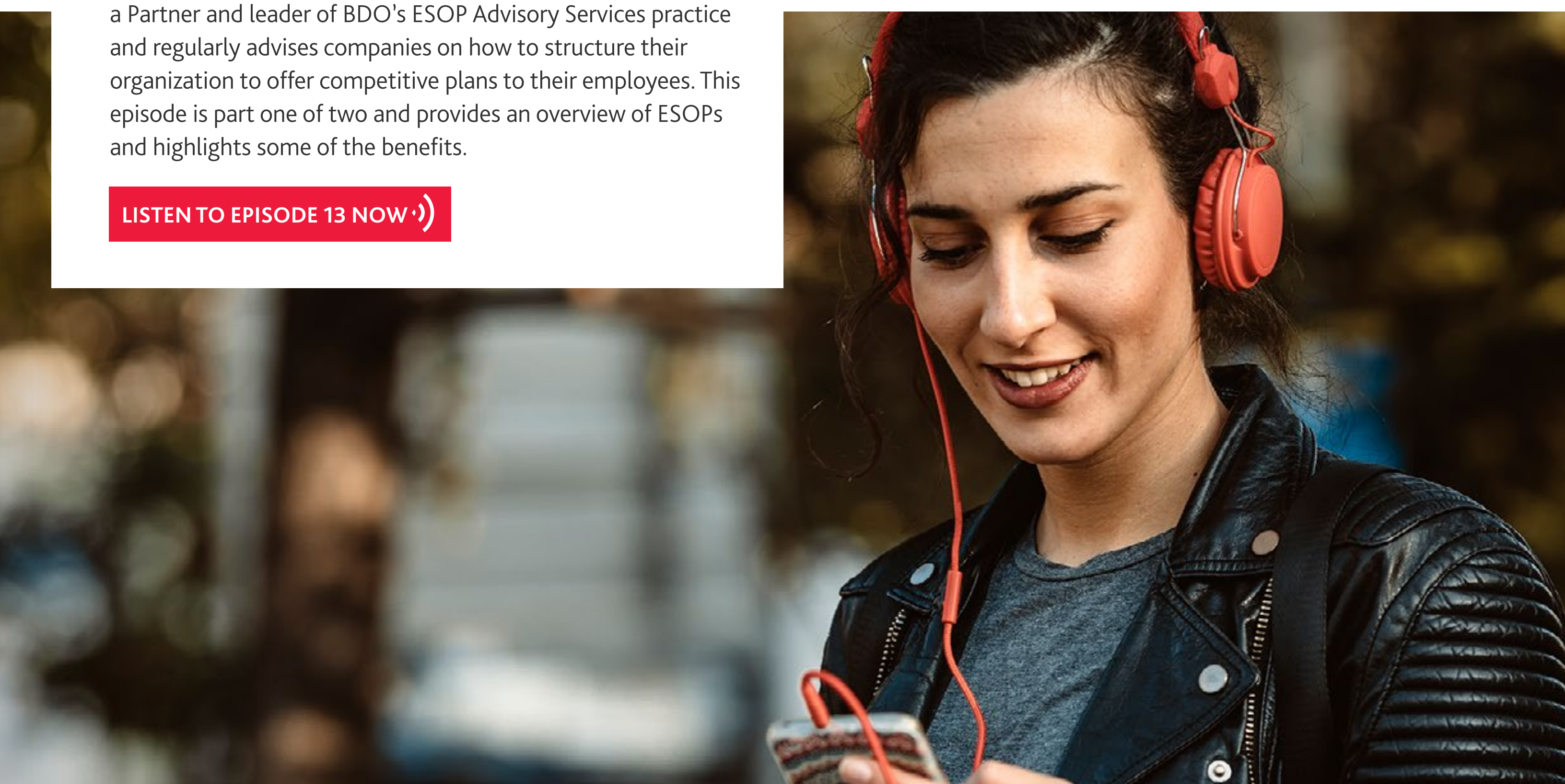
On this episode host Joanne Szupka sits down with BDO's Blake Head to talk about Employee Stock Ownership Plans (ESOP) and what it means for an organization to offer an ESOP. Blake is a Partner and leader of BDO's ESOP Advisory Services practice and regularly advises companies on how to structure their organization to offer competitive plans to their employees. This episode is part one of two and provides an overview of ESOPs and highlights some of the benefits.

LISTEN TO EPISODE 13 NOW

Episode 14: Minimizing Uncertainty During the Great Resignation

In our December episode BDO's Jason Brooks, Managing Director and Compensation Consulting Leader, joins Joanne Szupka to discuss the Great Resignation and the challenges companies, employers, and HR professionals are currently facing. Jason shares his insights on the remote work environment, talent retention, creative ways to structure benefit plans, and so much more.

LISTEN TO EPISODE 14 NOW



New DOL Push for Plan Sponsors to Reconcile Unclaimed Retirement Assets

A **new report** from the U.S. Department of Labor (DOL)'s Bureau of Labor Statistics found that U.S. workers born between 1957 and 1964 hold an average of 12.4 jobs between the ages of 18 and 54. It's not just the baby boomers in America's workforce who are on the move: recent news articles have focused on the relocations of younger workers during the COVID-19 pandemic. These relocations are being attributed to the increasingly remote working environment, as well as the search for better employment opportunities. The job-switching trend doesn't show any signs of slowing down, as over 25% of workers in the recent ***Prudential Pulse of the American Worker Survey*** said they plan to change jobs post-pandemic.

A PERFECT STORM

As U.S. employees move from job to job over the course of a career, some retirement assets held in employer-sponsored plans get left behind and forgotten. Combine an "out-of-sight-out-of-mind" mentality of on-the-move employees and the force-out provision found in many retirement plans (i.e., the provision requiring sponsors to involuntarily distribute vested account balances below a certain dollar threshold for terminated employees) and the result is a "perfect storm" — distribution checks that are cut to former employees but are never claimed or cashed by those payees.

The reasons why checks remain uncashed vary. A participant may move without notifying the former employer, so the check is mailed to the incorrect address. In addition, a participant may simply forget to deposit or cash a check. Regardless of the reason, as long as a check remains uncashed and the participant doesn't step forward to claim their vested account balance, the money remains an asset of the plan. Because the participant is no longer an employee of the sponsor and their plan account is already closed, there is the potential for these monies to be less closely monitored. Turnover in plan management and changes in recordkeepers can also contribute to uncashed monies dropping off the plan's radar — in essence, the monies can become "lost."

While the cash-out provision only applies to account balances of less than $1,000, the cumulative impact of these checks can add up to substantial numbers. The Department of Labor (DOL) estimated in 2011 that $15 million in retirement plan distribution checks go unclaimed each year.[1] Reviewing just the ten-year period since the DOL made this estimate, the theoretical accumulation would be approximately $150 million. Given the potential magnitude, it comes as no surprise that unclaimed checks are a focus of the DOL.

1 Gina Martellacci, CPA, "Uncashed Checks – A Plan Sponsor's Headache," December 11, 2012

NEW DOL INITIATIVE

In 2021, the DOL initiated a direct letter-writing campaign to inform certain plan sponsors of unaccounted-for distribution checks from their plans and urge them to work with the appropriate service providers to reconcile these amounts (which would then reunite plan participants with their distributed, but unclaimed, retirement plan assets). The campaign is considered an expansion of the DOL's **missing participant guidance** (issued in January 2021), which outlined the DOL's perspective regarding best practices for searching for missing participants. The DOL's guidance also discussed its enforcement process under its missing participant initiative (for more on this earlier 2021 guidance, we invite you to read our previous **article**).

WHAT DO THE DOL'S LETTERS SAY?

The DOL has not provided public examples of the letters thus far. What is known about the content of the letters is based on information shared by ERISA legal counsel from letters received by their clients. According to one law firm (**Morgan Lewis**) who reports having reviewed DOL letters sent to some of its clients, the DOL's tone in the letters was quite general; the letters cited basic ERISA guidance pertaining to the plan fiduciary's role in ensuring that plan participants receive all their entitled benefits. From what has been shared, the DOL expects plan sponsors to make a good faith effort to investigate each occurrence of lost or unclaimed funds and provide documentation to the DOL that confirms those funds have been restored to the appropriate individuals, no matter how small the sum. There have been no indications that the DOL has set a deadline for the contacted sponsors.

ACTION ITEMS FOR ALL PLAN SPONSORS

Given this initiative and the DOL's recommendations made earlier this regarding missing participants, we think it makes sense for all plan sponsors to review their processes and procedures for dealing with uncashed checks and outstanding distribution payments. Steps that all plan sponsors should consider taking include:

- Maintain regular contact with your employees, retirees, and beneficiaries to ensure that the contact information that you have on file is complete and up-to-date. Keep good records of your outreach attempts.
- Consider whether your plan has any unclaimed plan assets. If needed, contact both current and former recordkeepers of your plan and check for any outstanding unclaimed plan assets. If considering a change in recordkeepers, monitor the detail of unclaimed plan assets **before, during** and **after** the provider change.
- Review your plan's service provider contracts for language that addresses the handling of uncashed checks. Consider whether the process aligns with what regulators have identified as expected best practices, and work with the provider to adjust the process as needed.

BDO INSIGHT: Bring A Trusted Advisor on Board

Unclaimed retirement plan assets are a complex area of plan operations for sponsors to manage. Your BDO representative is ready to assist you in reviewing your plan with a focus on identifying and rectifying any potential issues.

Five Ways Employers Can Help Employees in Challenging Times

Since March 2020, many employers have scrambled to find ways to help employees deal with hardships caused by the pandemic. Whether employees are dealing with problems caused by the pandemic and natural disasters or confronting more personal issues — such as an illness in the family or challenges with childcare — employers understandably want to help their people deal with setbacks. But some employers and employees don't understand the rules related to providing such assistance and have been surprised to learn of the potential tax implications of providing financial support to team members.

Now that we have moved into the next stage of pandemic recovery, it is a good time to review the ways employers can help employees, so they are better prepared for the next crisis. We describe five ways that employers can provide financial assistance to employees in challenging times.

1. QUALIFIED DISASTER RELIEF

In March 2020, President Trump declared the COVID-19 pandemic a national emergency. That declaration triggered the use of Internal Revenue Code (IRC) Section 139, which allows employers to make tax-free, tax-deductible qualified disaster relief payments or reimbursements to employees. Those payments include any COVID-19-related personal, family, living or funeral expenses, as well as reimbursement or payment for necessary expenses related to the repair of a personal residence attributable to a qualified national disaster. Payments that qualify under IRC Section 139 are tax-free for employees and generally tax-deductible for employers.

The rules for paying Section 139 expenses aren't very onerous. Employers don't need a written plan, although it is a good idea to have one to explain the program to employees. Recipients also don't need to provide receipts or other proof of expenses, but employers may want employees to sign a document that describes the nature of the expense and the amount. Also, unlike many other employee benefit programs, Section 139 does not require non-discrimination testing, so employers can provide different amounts to different employees.

2. INTEREST-FREE LOANS

IRC Section 7872(c) allows employers to make interest-free loans of up to $10,000. If an employee already has a loan from the employer, the employer can make an additional loan if the interest rate is at least equal to the applicable federal rate. Loans are not taxable wage income unless repayment is forgiven. If the employer forgives the loan, then the amount forgiven is subject to income and employment taxes, as if it were a cash bonus.

3. EMPLOYEE-TO-EMPLOYEE PAID TIME OFF (PTO) DONATIONS

Employers can establish PTO banks through which employees donate their unused PTO to others for one of two IRS-approved reasons: medical necessity and in response to a natural disaster. In this setup, employees donate available PTO hours to a PTO bank, and an employer-sponsored committee determines the rules for who receives donated hours, as well as the process for paying them out. Note that employees who donate hours can't designate who will receive those donated hours; that decision is made by the employer and subject to the rules of the plan.

For PTO donations, employers must have a written plan outlining the program and the application and distribution process. When these programs are set up correctly, only the employee who receives the donated PTO hours will pay income and employment taxes on those PTO hours, based on their regular rate of pay. But when they aren't set up correctly, both the employee donating the PTO and the recipient could pay income and employment taxes, and the employer may be on the hook for its share of FICA payroll taxes on both ends.

4. EMPLOYER-FACILITATED EMPLOYEE-TO-EMPLOYEE GIFTS

In many instances, employees may want to "pass the hat" to raise money for colleagues dealing with challenging circumstances. This activity is acceptable in a work environment, and employers can even choose to serve as the "middleman" for a short period of time if they want to help, including pooling cash donations in a separate bank account that is clearly earmarked for this purpose. But keep in mind that only employee-to-employee giving is acceptable in those circumstances and all funds donated by employees are made with after-tax dollars.

5. CHARITABLE FOUNDATIONS

Employers that are interested in greater flexibility to provide financial assistance to employees may want to consider setting up a charitable foundation in the form of an IRC Section 501(c)(3) organization. Once certain conditions are met — including creating a selection committee, establishing objectives for the charity and identifying a group of potential beneficiaries— employers and employees can make tax-deductible contributions to the foundation. Selected recipients receive this financial assistance as a tax-free gift.

The main downside to this approach is the amount of time and resources required to establish a charitable foundation. Getting approved by the IRS for tax-exempt status, for example, historically takes at least six months, and delays in the application and approval process are very common. There are also annual reporting requirements, fees and other administrative issues when establishing a Section 501(c)(3) organization.

BDO INSIGHT: Get your employee-assistance house in order before the next crisis hits

Perhaps now more than ever, employers have first-hand knowledge of the personal challenges their employees can encounter, and many want to be prepared to provide financial assistance to team members. But these programs take time and resources to implement in a way that is manageable and compliant with existing tax law.

Don't wait until the next disaster hits to have your workplace financial assistance programs and policies in place. Your BDO representative can help explain the various options and design a well-suited plan for your organization.

2022 Cost-of-Living Adjustments for Qualified Retirement Plans

The Social Security Administration (SSA) and Internal Revenue Service (IRS) have announced the government's annual cost-of-living adjustments (COLA) for 2022:

- There was a notable 5.9% increase in Social Security and Supplemental Security Income benefits, which represents the largest benefits increase since 1982 (2008 comes in a close second with a 5.8% increase).
- The IRS adjustments consist of generally across-the-board increases, including the IRS annual compensation amounts and limits for elective deferrals. These and other increases reflect the current inflationary environment, in sharp contrast to 2021's relatively flat adjustments. However, catch-up contribution limits for 2022 remain unchanged.

Refer to our alert for more details on the IRS and SSA amounts. To hear more discussion on current event impacts on retirement plans, subscribe to our all-things-EBP podcast series, **BDO Talks ERISA**.

CODE SECTION	2022	2021	2020	2019	2018
401(a)(17)/404(l) Annual Compensation	$305,000	$290,000	$285,000	$280,000	$275,000
402(g)(1) Elective Deferrals	20,500	19,500	19,500	19,000	18,500
408(k)(2)(C) SEP Minimum Compensation	650	650	600	600	600
408(k)(3)(C) SEP Maximum Compensation	305,000	290,000	285,000	280,000	275,000
408(p)(2)(E) SIMPLE Maximum Contributions	14,000	13,500	13,500	13,000	12,500
409(o)(1)(C)(ii) ESOP Limits	1,230,000 245,000	1,165,000 230,000	1,150,000 230,000	1,130,000 225,000	1,105,000 220,000
414(q)(1)(B) HCE Threshold	135,000	130,000	130,000	125,000	120,000
414(v)(2)(B)(i) Catch-up Contributions	6,500	6,500	6,500	6,000	6,000
414(v)(2)(B)(ii) Catch-up Contributions	3,000	3,000	3,000	3,000	3,000
415(b)(1)(A) DB Limits	245,000	230,000	230,000	225,000	220,000
415(c)(1)(A) DC Limits	61,000	58,000	57,000	56,000	55,000
416(i)(1)(A)(i) Key Employee	200,000	185,000	185,000	180,000	175,000
457(e)(15) Deferral Limits	20,500	19,500	19,500	19,000	18,500
1.61-21(f)(5)(i) Control Employee	120,000	115,000	115,000	110,000	110,000
1.61-21(f)(5)(iii) Control Employee	245,000	235,000	230,000	225,000	220,000
219(b)(5)(A) IRA Contribution Limit	6,000	6,000	6,000	6,000	5,500
219(b)(5)(B) IRA Catch-Up Contributions	1,000	1,000	1,000	1,000	1,000
Taxable Wage Base for Social Security	147,000	142,800	137,700	132,900	128,700

Retirement Plan Corrections Options Available Through EPCRS

Earlier this year, the Internal Revenue Service (IRS) issued **Revenue Procedure 2021-30**, which provides retirement plan sponsors additional opportunities to use voluntary and self-correction features of the Employee Plans Compliance Resolution System (EPCRS). This guidance continues a trend of the IRS seeking ways to make it easier for plan sponsors to correct errors that may occur in running a tax-qualified retirement plan.

ABOUT EPCRS

EPCRS consists of three tiers of correction—the Self Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (CAP). As their names imply, both the SCP and the VCP are user-initiated programs while the Audit CAP applies to plans undergoing an audit initiated by the IRS. **Learn more about EPCRS** and the types of errors that can be corrected under the three levels.

SUMMARY OF RECENT CHANGES

IRS Rev. Proc. 2021-30 makes a host of changes that affect the ways plan sponsors can address errors through EPCRS. The most prominent of these changes include:

Replacing anonymous VCP submissions with anonymous, no-fee VCP pre-submission conferences:

Starting January 1, 2022, the anonymous submission procedure under VCP will be replaced by an anonymous, no-fee, pre-submission conference. Some plan sponsors may view this change as negative because they will no longer be able to file a submission anonymously, but the new system may be even more advantageous for plan sponsors. With the pre- submission conference, plan sponsors can still confer with the IRS anonymously on complex issues and, notably, will not owe a fee if they decide not to move forward with a submission.

Expanded opportunity to self-correct errors by amending the plan document:

The notice makes it easier for plan sponsors to self-correct an operational failure by making a retroactive plan amendment. Starting July 16, 2021, plan sponsors can amend the plan document to reflect an increase in a benefit, right, or feature— even if that correction applies to only those participants affected by the problem. In the past, such a correction via plan amendment would have had to apply to all eligible participants.

Extended timeframe for self-corrections:

The time allotted to correct certain "significant" operational and plan-document failures has been increased from two years to three years from the year in which the error occurred. Similarly, the notice extends the sunset of the safe harbor correction method for automatic enrollment failures by three years (from December 31, 2020, to December 31, 2023), giving those sponsors who may have missed the earlier deadline for correcting missed elective deferrals more time to act.

New methods for recouping defined benefit plan overpayments:

The IRS expanded and simplified the correction practices plan sponsors can use when participants or beneficiaries of defined benefit plans receive annuity payments above what is stipulated by the plan document. The update includes two new overpayment correction methods that further ease the repayment burden of participants and beneficiaries and, if the plan meets certain funding requirements, relieves plan sponsors of the administrative burden of implementing a plan repayment process.

Increased threshold for de minimis failures:

Previously, the IRS didn't require plan sponsors to correct plan overpayments or excess employee or employer contributions of $100 or less. The recent notice increased this de minimis threshold to $250, a change that could reduce administrative stress. For example, if the overpayment is $250 or less (after adjusting for earnings), the plan is not required to seek the return of the overpayment from the participant. The plan is also not required to notify the participant that the overpayment was not eligible for tax-free rollover (unless the overpayment resulted from exceeding a statutory limit). Defined contribution plan sponsors must still contribute any shortages and can still rely on the $75 de minimis rule, which allows the plan to ignore the need for a distribution if the cost of making the distribution exceeds the benefit (up to $75).

BDO INSIGHT: Adopt a Procedure for Identifying Mistakes

With the level of complexity involved in maintaining a retirement plan, the occasional procedural mistake is bound to occur. When it does, plan sponsors should act swiftly to self-identify the issue and use the SCP or VCP to begin the resolution process.

As a first step, however, plan sponsors must adopt a procedure for quickly identifying mistakes. In fact, having a procedure in place is a requirement for accessing the SCP. Once established, plan sponsors should conduct regular internal audits to ensure that their procedures remain effective in identifying plan violations and continue to reflect current compliance parameters.

Your BDO representative can assist you in implementing an internal procedure for identifying plan errors or with any aspect of the EPCRS process.

Plan Sponsor Alert: Hardship Distribution Amendment Deadline is Fast Approaching

Over the past few years, several laws and regulations were passed to loosen rules on hardship distributions for 401(k) and 403(b) retirement plans. These new provisions came in handy for many participants who needed an easier way to access retirement accounts during the pandemic. While there was an extension to give plan sponsors more time to revise plans to reflect the changes, the final day to amend pre-approved qualified retirement plans that adopted hardship distribution regulations is Dec. 31, 2021.

While it is not required, plans can include provisions that allow in-service distributions if the participant has an immediate and heavy need and the withdrawal is necessary to meet that need. BDO wrote about these changes in detail in our **Industry Insight** published in March 2021.

In summary, here are the five ways that plans could have been changed to make hardship withdrawals:

- Eliminate the six-month suspension on contributions after hardship withdrawal
- Expand safe harbors to include federally declared disaster-related expenses
- Replace facts and circumstances test with three-part test to determine financial need
- Eliminate need of loan requirement prior to hardship distribution
- Expand sources of funds for hardship distributions

Plans need to have the proper amendments if hardship withdrawals were allowed on or after Jan. 1, 2020.

BDO INSIGHT: Review Plan Operations and Amend Plan Documents as Needed

With the Dec. 31 deadline approaching, plan sponsors should act quickly to examine whether these changes were made to their plans. As listed in our previous **Insight**, some of these changes were mandatory, while others were optional. Pre-approved plans should contact service providers to see whether amendments were added to the plan document. In addition, safe harbor plans should ensure that the safe harbor notice includes the proper hardship withdrawal information.

Your BDO representative can help review your plan and its operations to determine whether hardship distribution amendments are necessary ahead of the approaching deadline.

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