



ERISA ROUNDUP

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

Q1 2022

A NOTE FROM BDO'S NATIONAL ERISA PRACTICE LEADER

Many of us are welcoming Spring weather and a renewed sense of energy for 2022. While these are trying times for many across the world, we hope you are able to find peace and gratefulness in your everyday work and home life. For your reference and convenience, we have compiled our most recent insights and podcast episodes in this first quarter ERISA Roundup.

The "Great Resignation" and its subsequent effects have continued into 2022. The administrative tasks involved with high employee turnover is something employers and human resource professionals contend with daily. Our goal was to offer you insight into how to manage the trend of high turnover, while strengthening the efficiency of your organization for the future. You will also find in this issue, a summary of the Government Accountability Office (GAO) Report on the lack of participant understanding of fee information – and how the Department of Labor (DOL) could take additional steps to help.

Staying current on ERISA topics is simplified with BDO as 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,

BETH GARNER
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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.

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2022 Deadlines and Important Dates

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.

APRIL

- ▶ **1** / Distribution: April 1 Deadline for 5 percent 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** / April 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 percent 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

- ▶ **29** / Action: 401(k) plans with publicly traded employer stock that use an ERISA format must file Form 11-K with the Securities and Exchange Commission by June 29.
- ▶ **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 (EACA).

JULY

- ▶ **14** / Action: 401(k) 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 14.
- ▶ **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** / July 15, possible second quarter 2022 contribution due for defined benefit pension plans.
- ▶ **31** / Action: Preapproved defined contribution plans must sign and date restated plan documents by July 31.

AUGUST

- ▶ **1** / Action: Large plan audit must be completed by August 1 to avoid requesting Form 5500 extension.
- ▶ **1** / Action: Form 5500 and Form 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.
- ▶ **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.
- ▶ 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** / Sept 15, last date to make 2021 contributions for defined benefit pension plans.
- ▶ **26** / 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: Sept. 30, Summary Annual Report sent to participants with Dec. 31 plan year end.

OCTOBER

- ▶ **1** / Distribution: Annual notices to participants must be given no earlier than Oct. 1 and no later than Dec 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** / Oct 15, possible third quarter 2022 contribution due for defined benefit pension plans.
- ▶ **17** / Action: Oct. 17 is the extended deadline for filing Form 5500 and Form 8955-SSA.
- ▶ **17** / Action: Oct. 17 is the extended deadline for filing individual and C-Corp tax returns.
- ▶ **17** / Fund: If an extension was filed, Oct. 17 is the deadline to fund employer contributions for C-Corporations and Sole Proprietors.
- ▶ **17** / Action: Oct. 17, multi-employer defined benefit plans file PBGC Comprehensive Premium document and pay \$32 per participant flat-rate premium.
- ▶ **17** / Action: Oct. 17 to open a Simplified Employee Pension (SEP) plan for extended tax filers.
- ▶ **25** / Action: File PBGC Form 200 by Oct. 25, if plan sponsor of a single-employer defined benefit plan does not make the Oct. 15 required contribution, causing the plan to have more than \$1 million in unpaid contributions.
- ▶ **31** / Distribution: Single-employer defined benefit plans that are less than 60 percent funded must inform participants by October 31 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 15 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).
- ▶ **31** / Action: Dec. 31 is the final deadline to process corrective distributions for failed ADP/ACP testing; a 10 percent 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 Dec 1 of given plan year for 3% or by Dec 31 of the following year for 4% contribution level.
- ▶ **31** / Action: Plan sponsors must amend plan documents by Dec. 31 for any discretionary changes made during the year.
- ▶ **31** / Action: Ongoing RMDs for 5 percent business owners and terminated participants must be completed by Dec. 31.

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 remains at \$6,500.
- ▶ 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.
- ▶ Provide quarterly statements and fee information to defined contribution plan participants.
- ▶ Provide annual lifetime income illustrations to defined contribution plan participants.



Stay Up to Date with Our Podcast, BDO Talks ERISA

Our ERISA Center of Excellence releases 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](https://www.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 15: The Cost Savings of Dependent Eligibility Audits

In this episode, we are joined by Howard "Howie" Gerver, the Founder and President of HR Best Practices and self-proclaimed "HR Data Geek." HR Best Practices is a leading health insurance/benefits administration and technology company specializing in eligibility, benefits administration, Affordable Care Act IRS compliance, performance integrity and health equity. Howie shares his insights on dependent and working spouse audits and how they can bring about cost savings.

[LISTEN TO EPISODE 15 NOW ↪](#)

Episode 16: ESOPs: What's the Latest in Administration and Auditing?

Beth Garner and Joanne Szupka follow up on their ESOP series and sit down with Laura Robertson to talk more about ESOP administration and auditing practices. Laura is a Senior Manager in Retirement Plan Services within BDO's Global Employer Services practice. She brings with her 20 years of experience in retirement planning and 10 years with ESOP administration and setup. This episode is Part 2 of our ESOP series and provides more insight into the latest with ESOPs.

[LISTEN TO EPISODE 16 NOW ↪](#)

Episode 17: Your Remote Workforce: The Obligations and Tax Implications

Ronii Rizzo is a Managing Director with BDO and the Global Payroll and Employment Tax Services National Leader. Ronii assists her clients with expatriate tax and payroll matters. In this week's episode, she discusses how international, federal and state governments are aware of the current workforce trends and how they are prepared to audit and enforce tax law. Ronii offers insight into how to keep you, your employees, and your company compliant with the latest regulations.

[LISTEN TO EPISODE 17 NOW ↪](#)

ERISA Update and Outlook for 2022

Employers have spent the last two years dealing with many challenges and disruptions, and they are now looking to move forward in 2022 against a backdrop of economic and pandemic-related uncertainty and market volatility. To help plan sponsors navigate the challenging road ahead, professionals from BDO's ERISA Center of Excellence held a year-end webinar: ERISA Update — Past, Present and Future. Here, we outline four themes that plan sponsors should be keeping a close eye on in 2022. To learn more, view the entire [webinar on-demand](#).

THE #1 FINANCIAL STORY OF THE YEAR: INFLATION

You can't go anywhere without hearing about inflation — and for a good reason. The Consumer Price Index (CPI) [rose 6.8%](#) from November 2020 to November 2021, the largest 12-month increase in nearly 40 years. But how do increases in prices for gas (up 58%), meat (up 13%) and cars (up 31%) affect retirement accounts?

For participants in defined contribution plans, these price hikes mean that their paychecks don't go as far in covering living expenses. As a result, some participants may choose to decrease their plan contribution rates to increase the amount of take-home pay. A significant number of participants may stop contributing altogether, which could alter the plan's fee structures. Rising prices could also lead to increases in loans and hardship withdrawals. Finally, while financial wellness plans have been in place at many organizations for some time, plan sponsors should consider whether such benefits properly address participants' concerns about inflation.

NEW STRATEGIES FOR MASSIVE SHIFTS IN THE LABOR MARKET

The coronavirus pandemic caused many companies to shut their doors and employees to work from home. As a result, the hybrid and remote work environment evolved faster than expected. In addition, there was a massive exodus from traditional 9-to-5 jobs in America. According to [data from the Bureau of Labor Statistics](#) (BLS), 6.3 million people left the workforce in November 2021 alone.

In response to the tight labor market, employers should consider a variety of strategies to attract and retain top talent. Potential solutions include stronger retirement benefits (such as matching contributions), referral bonuses, more flexible hours, remote work stipends, childcare assistance or parental family leave and shorter work days around holiday time.

CYBERSECURITY PRACTICES DRAW INCREASING DOL SCRUTINY

Last April, the Department of Labor (DOL) released its first-ever [guidance on cybersecurity](#) best practices for fiduciaries, recordkeepers and participants. Soon after that, the DOL began conducting investigations on retirement plan cybersecurity practices. The DOL has asked for a comprehensive set of documents related to the plan's cybersecurity or data security practices to assess cybersecurity risk and the safety of plan data. The DOL is also reviewing relationships with service providers, such as recordkeepers, attorneys, investment managers, and advisors, to ensure that they are doing their part to protect plan data.

Plan sponsors should take a proactive approach to cybersecurity in 2022, including reviewing the DOL's guidance and comparing it to their plan operations to determine whether operational changes are required. Plan sponsors also should discuss cyber risk measures with service providers to learn about their cybersecurity protocols. In particular, plan sponsors should review whether service providers are contractually permitted to cross-sell participant data. Lastly, plan sponsors should carefully review providers' SOC1 reports, which is an essential step to monitor service providers properly.

GROWING INTEREST IN ESOPS

At BDO, we are receiving many inquiries about setting up and administering Employee Stock Ownership Plans (ESOPs), which are qualified defined contribution plans available for S corporations and C corporations. Starting in 2020, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 allows employers to retroactively adopt and fund a tax-qualified retirement plan, including an ESOP, by the extended due date of the employer's federal tax return, creating a retroactively effective tax deduction. The National Defense Authorization Act signed into law on December 27, 2021 contains the first-ever government contracting program to specifically encourage ESOPs. Section 874 of the new law creates a five-year Department of Defense pilot program that allows companies that are or become 100% ESOP-owned to receive noncompete follow-on contracts for federal government work. In addition, pending bills in Congress include provisions that may encourage more employers to pursue this structure.

ESOPs can be an attractive exit strategy for employers who want to leave their business in employees' hands, protect their legacy and continue to influence the company's trajectory after the transaction. The latest figures (2019) show that there are nearly 6,600 ESOPs in the U.S., covering 14 million participants with \$1.7 billion in plan assets.

BDO INSIGHT: Do Your Homework to Hit the Ground Running in 2022

While the direct health implications of the COVID-19 pandemic continue to dominate headlines, issues created in the wake of this crisis will garner increased attention in 2022. Inflation, the rapidly changing workforce, cybersecurity and other audit concerns are areas that plan sponsors will need to focus on in the upcoming year. BDO is here for you and has several resources to help you manage the uncertain road ahead.

We encourage you to watch our entire year-end webinar, [ERISA Update — Past, Present and Future](#), which addresses many of these issues in more detail. BDO also has several online resources, including the [ERISA Center of Excellence](#), [BDO Podcast Series](#) and the [Spotlight on Human Resources and Cybersecurity](#). Your BDO representative is available to help you navigate 2022 with confidence — please don't hesitate to contact us.



100% ESOP-Owned Defense Department Government Contractors Eligible for Sole Source Awards on Follow-On Contracts

With President Biden's signing of the [National Defense Authorization Act for Fiscal Year 2022](#) (Public Law No. 117-81) (the NDAA) on December 27, 2021, employee stock ownership plans (ESOPs) have become more attractive for Department of Defense (DoD) government contractors.

BACKGROUND

The NDAA includes the first-ever government contracting program to encourage employee ownership. Specifically, Section 874 of the new law creates a DoD pilot program that allows contractors that are (or become) 100% ESOP-owned to receive automatic follow-on contracts to continue performing the work. The follow-on contract awards under this pilot program will be contingent on whether the contractor's performance on the prior contract is rated as satisfactory or better.

The pilot program begins January 1, 2022 and runs for five years. DoD will look at "acquisition authorities that could be used to incentivize businesses to become qualified businesses wholly owned through ESOPs and to overcome challenges to partnering with the Department." The Government Accountability Office is required to provide an assessment of the program within three years after enactment.

Section 874 of NDAA states: *"Notwithstanding the requirements of section 2304 of title 10, United States Code, in the case of a follow-on contract for the continued development, production, or provision of products or services that are the same as or substantially similar to the products or services procured by the Department of Defense under a prior contract held by a qualified business wholly owned through an Employee Stock Ownership Plan, such products or services may be deemed to be available only from the holder of the prior contract and may be procured by the Department of Defense through procedures other than competitive procedures if the performance of the qualified business wholly owned through an Employee Stock Ownership Plan on the prior contract was rated as satisfactory (or the equivalent) or better in the applicable past performance database."*

WHAT DOES THIS MEAN?

For minority-owned ESOP government contractors who meet set-aside criteria (such as 8(a) designation), the NDAA would allow them to transition to become 100% ESOP-owned and qualify for a sole source award on a follow-on set-aside contract, even after they surpass small-business status.

For small-business government contractors considering an exit via ESOP, this bill would allow them to maintain their current backlog of set-aside contracts, which provides confidence to all stakeholders in the transaction.

BDO INSIGHTS:

The NDAA language does not provide for small business set-aside status for an ESOP-owned government contractor competing for a new contract.

The NDAA is unclear on whether the pilot program would apply if government contractors no longer meet the small business requirements (e.g., employee headcount, revenue thresholds). Guidance is needed on that and other practical aspects of how the program will be operated.

GAO Report: Participants Don't Understand Fee Information

The Department of Labor (DOL) released a groundbreaking [final rule](#) in 2012 that required plan sponsors to issue plainly written information about 401(k) fees. The Government Accountability Office (GAO) issued a [study](#) showing that despite plan sponsors' efforts, 41 percent of plan participants don't think they pay a dime for their 401(k)s.

Helping participants better understand 401(k) fees not only can improve participants' financial wellness — it may reduce the risk of litigation for plan sponsors.

BOTH THE DOL AND PLAN SPONSORS HAVE FALLEN SHORT

The DOL's [regulation](#) in 2012 aimed to give plan participants the information necessary to make informed decisions on investments in their 401(k) accounts. The rule required plan sponsors to provide investment and administrative fee information on an ongoing basis. Plan sponsors must clearly show participants' account-specific fees on a quarterly basis.

For many participants, disclosure statements can be confusing, the GAO found. For example, the DOL regulation does not specify or define the proper terminology for investment fees. As a result, the GAO found that 10 large 401(k) plans use 11 different terms for investment fees. This inconsistency in terminology may make it challenging for plan participants to compare fees on their plan investments versus other investment options.

The GAO made five specific recommendations for the DOL to amend its original regulation:

1. Require consistent terms and measures for investment fees
2. Show the actual cost of the investment fees.
3. Educate participants on the cumulative effect of fees over time.
4. Require fee benchmark information so participants can weigh the competitiveness of their investments.
5. Require investment ticker information so participants can research and compare their options.

In its response to the GAO report, the DOL admitted that plan and investment fee information can be very complicated and that the GAO's study demonstrated this. The DOL said the recommendations pose significant technical and feasibility challenges, and applying the suggestions would force it to forgo other initiatives. The GAO noted that the status of the recommendations remains open.

PLAN SPONSORS CAN HELP THEMSELVES WHILE HELPING PARTICIPANTS

Ensuring that their participants get the information they need to make informed decisions is especially important given the recent uptick in fee-related litigation targeting plan sponsors. There are several ways that plan sponsors can implement changes before being on the defense in court.

A sensible place to start is with service providers. The DOL requires service providers to disclose their fee information to 401(k) plan fiduciaries. Plan sponsors must review and clearly understand this data, because any lack of clarity about the fees charged by service providers may eventually lead to confusion about participants' fees.

The GAO reviewed methods used in Europe, Australia and New Zealand to improve participants' understanding of fees and other plan-related information. Examples include:

- ▶ **Financial literacy:** Educate participants on basic financial concepts such as compound interest.
- ▶ **Visual elements:** Use histograms and icons to show cost information.
- ▶ **Cost breakdowns:** Instead of issuing one final figure, break down fee information so participants can compare investment options.
- ▶ **Performance and fee information:** Provide investment return estimates on participants' accounts.
- ▶ **Page limits:** Use fewer pages to help empower participants, not overwhelm them.
- ▶ **Standardized formats:** Provide uniform retirement plan and product information to help participants compare investment options.
- ▶ **Promotion of fee awareness:** Use advertising, social media, television and other outlets to increase fee awareness.

BDO INSIGHT: Get to Know Your Participants

Before embarking on a financial education campaign or revamping your communications, plan sponsors should start by engaging with their participants to gain a better understanding of their specific needs. Some participants may need financial literacy education, while others may need visual or auditory elements to help with their decision making. Plan sponsors should seek to develop a plan that works for their particular group of participants.

Your BDO representative can help you brainstorm ways to improve the fee information you provide to participants.



Abandoned 401k Accounts and the Great Resignation

The trend of U.S. workers leaving their jobs and employers struggling with high levels of employee turnover continues to gain momentum. Another 4.5 million U.S. workers quit their jobs in November alone, according to data from the [U.S. Bureau of Labor Statistics](#). Meanwhile, the number of job openings in the United States remains elevated at 10.6 million, as companies across sectors and industries continue to have a hard time recruiting and retaining employees.

How are the issues related to what is now called the “Great Resignation” affecting plan sponsors in particular? The current environment not only makes it hard to build and manage an effective workforce, but plan sponsors also may face problems down the road when departing workers leave their 401(k) balances with their previous employers.

GROWING CONCERN OF ABANDONED 401(K) ACCOUNTS

An estimated 2.8 million 401(k) accounts are forgotten, left behind, or abandoned each year, representing an average account size of \$55,400, according to [Capitalize](#), a fintech company that consolidates 401(k) plans. (For the purposes of this article, we use the term “abandoned” to cover these accounts whether they are forgotten or left behind intentionally at a previous employer.)

Abandoned accounts aren't just a potential issue for employees — they can lead to penalties and administrative challenges for employers, too. Capitalize notes that abandoned 401(k) accounts can cost employers up to \$700 million in administrative fees. Failing to follow missing participant guidance or forfeiture rules also may lead to penalties for plan sponsors.

HOW CAN PLAN SPONSORS RESOLVE THESE ISSUES?

Fortunately, there are some easy ways for plan sponsors to limit the potential burden of abandoned 401(k) accounts. Plan sponsors should start by ensuring that they have up-to-date contact information before an employee's final day with the organization. Cell phone numbers, email addresses, and mailing addresses are critical data points to gather. Email addresses and other digital contact information are especially important in today's increasingly digital world.

Existing rules can help employers resolve smaller accounts that are abandoned. By law, employers are allowed to cash out small, vested accounts of \$1,000 or less. For vested account balances between \$1,000 and \$5,000, employers are permitted to move these assets to an Individual Retirement Account (IRA).

Currently, there is no specific guidance for account balances larger than \$5,000. Because of this, employers have relied on [Field Assistance Bulletin \(FAB\) 2014-01](#), which is meant for participants in terminated defined contribution plans. Under this bulletin, plan sponsors are instructed to send a certified letter to the participant's last known address; keep records on attempts to reach the missing participant; ask co-workers how to find the missing participant; and call the missing participant's cell phone, among other instructions.

To help mitigate these issues in the future, some employers are adopting auto-portability benefits. These tools automatically transfer small balances to new employers. Plan sponsors that offer auto-portability benefits should explain how this tool works to departing employees.

PLAN DOCUMENT LANGUAGE ON FORFEITURES AND CASH-OUTS

For participants who leave before they are fully vested in a 401(k) plan, employer contributions are typically placed in forfeiture accounts. This section of the plan document can be written in a variety of ways, so it is crucial to understand how the timing and use of the forfeiture account is established in your specific plan.

For example, forfeitures can be paid at the time of termination or when the participant hits a five-year break in service. Employers wanting to access non-vested amounts more quickly should consider amending the plan document to allow access to non-vested amounts at the time of termination (as opposed to the time of distribution).

While plan documents can set cash-out thresholds (within the minimum and maximum allowable amounts), plans may elect the small balance cash-out option for accounts under \$5,000. Rollover balances also can be disregarded when determining the \$5,000 threshold, but this caveat must be written into the plan document.

BDO INSIGHT: Don't Waste a Plan Restatement Cycle

Every six years, the Internal Revenue Service (IRS) requires employers with qualified, pre-approved plans to have their basic plan documents re-written or restated onto new plan documents. The current restatement cycle for defined contribution plans will close on July 31, 2022. BDO provides more information on the plan restatement process [here](#).

The current restatement cycle provides an opportunity to amend your plan to make it beneficial to employers and employees when team members leave your organization. Your BDO representative can help review your plan documents and make the most of your plan restatement process in the context of current trends in the labor market and your organization's objectives.



Pooled Employer Plans – What’s New in 2022

Beginning January 1, 2021, pooled plan providers could start Pooled Employer Plans (PEPs), which Congress created to expand access to retirement benefits by allowing companies in unrelated industries to participate in a multiple employer plan (MEP).

THE STORY OF PEPS, FROM THE SECURE ACT TO TODAY

The Setting Every Community Up for Retirement Enhancement (SECURE) Act became law on December 20, 2019, and made several changes aimed at increasing access to workplace retirement plans, including the creation of PEPs. The rationale underpinning PEPs is that companies can benefit from their pooled buying power to lower administrative and investment costs and transfer some fiduciary liabilities and administrative burdens to third-party pooled plan providers.

The pooled plan provider is the ERISA named fiduciary for the plan and has several responsibilities, including assuming administrative duties, filing the annual Form 5500 on behalf of the participating employers and responding to Department of Labor (DOL) and/or Internal Revenue Service (IRS) audits and investigations. The pooled plan provider must be insured and may be responsible for investment selections, depending on how the plan is designed.

Even though the pooled plan provider has the ERISA fiduciary duty to run the PEP in the best interests of participants, the participating employers are still responsible for making sure that the provider is qualified to administer the plan.

In addition, participating employers must provide accurate data to the pooled plan provider, including new hire dates, deferral amounts, loan repayments and more. Participating employers must also remit contributions on time to the PEP and provide complete and accurate contribution data.



In creating PEPs, the SECURE Act sought to address some of the restrictions and perceived drawbacks of MEPs while creating additional benefits for PEP participants. Some notable potential benefits of PEPs include:

- ▶ **Tax Credits:** Eligible employers can receive up to \$5,000 in tax credits to offset startup costs and receive a \$500 tax credit annually for the first three years for automatically enrolling participants in the plan.
- ▶ **Bad Apple Rule:** The SECURE Act also eliminated what many employers thought was a major obstacle in joining a MEP: the “one bad apple” rule. Historically, the entire MEP could be disqualified if one participating employer failed even one of the many plan qualification rules. But with a PEP, the SECURE Act provides a remedy if the PEP can show that it has a corrections program to help promote compliance among participating employers.

ANNUAL AUDIT AND FORM 5500 FILING REQUIREMENTS

In December 2021, the DOL issued [changes to Form 5500](#), including an instruction that PEPs must check the MEP box in Part A of Form 5500. Participating employers who have 100 or more participants in the PEP will need to provide a qualified independent accountants report (often called a “plan audit”) for their portion of the PEP, which must be attached to the PEP’s Form 5500.

PEPs are required to undergo an annual audit unless they satisfy the exemption rule. No annual audit is needed if each participating employer has 100 or fewer participants and there are fewer than 1,000 total participants in the plan.

The new rules require PEPs to confirm compliance with the Pooled Plan Provider Registration Form ([Form PR requirements](#)). PEPs must also provide the AckID number for its latest Form PR filing. In addition, PEPs with more than 100 employees must file a Form 5500 and cannot file a Form 5500-SF.



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