ERISA ROUNDUP

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

Q4 2022

A NOTE FROM BDO'S NATIONAL ERISA PRACTICE LEADER

We hope you have had a wonderful holiday season and are as excited as we are for a new start in 2023. It's a great time to reflect on our accomplishments from the prior year and prepare for a successful new year.

In this issue of our ERISA Roundup, we outline the implications of the White House's framework for the responsible development of digital assets in a 7-part series and continue our look at DOL's cybersecurity guidance in our 2-part episode of BDO Talks ERISA. We released the requirements calendar and COLA for 2023, reviewed results of our recent LinkedIn polls, examined the benefits of Roth 401(k) and heard from BDO Wealth Advisory leaders on inflation.

To help you ring in the new year, we are hosting the webinar *ERISA: Developments Impacting Benefit Plans.* Register today for even more insights on recent trends.

BETH GARNER
National Practice Leader, EBP and ERISA Services

In This Issue

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.

2023 Deadlines and Important Dates

Sponsors of defined benefit and defined contribution retirement plans should keep the following deadlines and other important dates in mind as they work toward ensuring compliance for their plans in 2023. Dates assume a calendar year plan. Some deadlines may not apply or may have dates shifted based on your organization's fiscal year.

JANUARY

- **13** / **Fund:** Possible fourth quarter 2022 contribution due for defined benefit pension plans.
- **25** / **Action:** File PBGC Form 200, Notice of Failure to Make Required Contributions, by January 25 if plan sponsor of a single-employer defined benefit plan does not make a fourth quarter required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **31** / **Action:** File IRS Form 945, Annual Return of Withheld Federal Income Tax, by January 31 for non-payroll income taxes, such as taxes withheld by retirement plans, during 2022.
- **31** / **Action:** Distribute IRS Form 1099-R to participants by January 31 for 2022 retirement plan distributions.

Best Practice: Plan sponsor should confirm the accuracy of the prior year's census data to the recordkeeper. This information is used for ADP/ACP testing, among other things.

FEBRUARY

- **15** / **Action:** File PBGC Form 10 by February 15, if a defined benefit plan with 100 participants missed its fourth quarter required contribution and it remains uncontributed. Filing is not required if the contribution could have been met with a Prefunding or Carryover Balance election or if a PBGC Form 200 was already filed for the same event.
- **28** / **Action:** File IRS Form 1096, Annual Summary and Transmittal of US Information Returns, with IRS if using paper transmittal by February 28 for 2022 tax year.
- **28** / **Action:** File IRS Form 1099-R in paper format with the IRS by February 28 for 2022 retirement plan distributions.

Best Practice: Review and approve compliance testing results sent by plan administrator.

MARCH

- **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 to receive tax deduction for the prior year.
- **30** / **Action:** 401(k) 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:** Recordkeeper (or other responsible party) completes and files Form 1099-R electronically with the IRS by March 31 for 2022 retirement plan distributions.

APRIL

- **1** / **Action:** April 1 deadline for 5% business owners and terminated participants who turned 72 in 2022 to receive their required minimum distribution (RMD). Participants who turn 72 during 2023 will be required to start by April 1, 2024. **Note:** the IRS "weekend rule" does not roll the April 1 deadline to the next business day if April 1 falls on the weekend or holiday.
- **14** / **Fund:** April 14 possible first quarter 2023 contribution due for defined benefit pension plans (i.e., contribute by April 14 before the weekend, as contribution deadlines are not extended to the next business day).
- **14** / **Distribute:** Participants who contributed over 402(g) or 415 limits in the previous year must be refunded the excess amount by April 14.
- **15** / **Action:** File PBGC Form 4010, Notice of Underfunding for single-employer defined benefit plans with more than $15 million aggregate underfunding by Saturday, April 15 (Aim for filing no later than Friday, April 14, per PBGC rules).
- **18** / **Fund:** C-Corporations and Sole Proprietors that are not getting an extension must fund employer contributions by April 18 to receive tax deduction for the prior year.
- **18** / **Fund:** IRA contributions for the prior tax year must be funded by April 18.
- **25** / **Action:** File PBGC Form 200, Notice of Failure to Make Required Contributions, 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** /**Action:** Send annual funding notice to participants of single and multi-employer defined benefit plans over 100 participants by April 30.
- **30** / **Action:** Single-employer defined benefit plans that are less than 60% funded or are 80% funded and have benefit restrictions triggered must inform participants by April 30 or 30 days after the benefit restriction first applies.

MAY

- **15** /**Action:** File PBGC Form 10, Post-Event Notice of Reportable Events, by May 15, if a defined benefit plan with 100 participants missed its April 15 required contribution and it remains uncontributed. Filing is not required if the contribution could have been met with a Prefunding or Carryover Balance election or if a PBGC Form 200 was already filed for the same event.

JUNE

- **29** / **Action:** 401(k) plans with publicly traded employer stock must file SEC Form 11-K with the Securities and Exchange Commission by June 29 or file an extension on SEC Form 12b-25.
- **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 requested a 15 calendar day extension (SEC Form 12b-25) for the SEC Form 11-K must file the SEC Form 11-K with the Securities and Exchange Commission by July 14.
- **14** / **Fund:** Possible second quarter 2022 contribution due for defined benefit pension plans by July 15 (i.e., contribute by July 14 before the weekend, as contribution deadlines are not extended to the next business day).
- **25** / **Action:** File PBGC Form 200, Notice of Failure to Make Required Contributions, 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.
- **31** / **Action:** File IRS Form 5500, Annual Return/Report of Employee Benefit Plan, and IRS Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, for the 2022 plan year by July 31.
- **31** / **Action:** To request an extension of time to file IRS Form 5500, file IRS Form 5558 by July 31.

AUGUST

- **15** / **Action:** File PBGC Form 10, Post-Event Notice of Reportable Events, by August 15, if a defined benefit plan with 100 participants missed its July 15 required contribution and it remains uncontributed. Filing is not required if the contribution could have been met with a Prefunding or Carryover Balance election or if a PBGC Form 200, Notice of Failure to Make Required Contributions, was already filed for the same event.

Best Practice: Plans may consider doing mid-year compliance testing to avoid failing applicable annual tests.

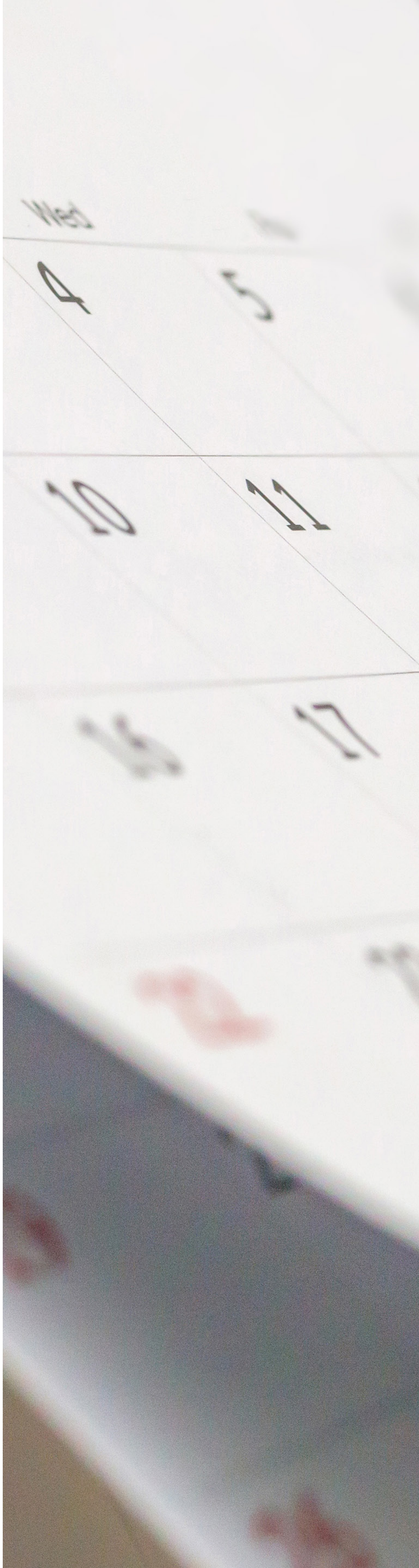
SEPTEMBER

- **15** / **Fund:** If an extension was filed, September 15 is the deadline to fund employer contributions for Partnerships and S-Corporations.
- **15** / **Fund:** September 15, last date to make 2022 contributions for single and multiemployer defined benefit pension plans.
- **15** / **Action:** File IRS Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, if plan sponsor of a single-employer defined benefit plan does not make the September 15 required contribution.
- **25** / **Action:** File PBGC Form 200, Notice of Failure to Make Required Contributions, by September 25, if plan sponsor of a single-employer defined benefit plan does not make the September 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **29** / **Action:** September 29, Distribute Summary Annual Report (SAR) to participants if the Form 5500 was filed on July 31.

OCTOBER

- **1** / **Action:** Distribute annual notices to participants no earlier than October 1 and no later than Dec 1, including notices for: 401(k) Plan Safe Harbor Match, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and Qualified Default Investment Alternatives (QDIA).
- **13** / **Fund:** October 13 possible third quarter 2022 contribution due for defined benefit pension plans.
- **16** / **Action:** October 16 is the extended deadline for filing IRS Form 5500 and IRS Form 8955-SSA.
- **16** / **Action:** October 16 is the extended deadline for filing individual and C-Corp tax returns.
- **16** / **Action:** If an extension was filed, October 16 is the deadline to fund defined contribution employer contributions for C-Corporations and Sole Proprietors.
- **16** / **Action:** October 16 to open a Simplified Employee Pension (SEP) plan for extended tax filers.
- **16** / **Action:** Send annual funding notice to participants of single- and multi-employer defined benefit plans with 100 or fewer participants by October 16.
- **16** / **Action:** File PBGC Form 10, Post-Event Notice of Reportable Events, by October 16, if a defined benefit plan (of any size) missed its September 15 required contribution. A filing is not due if a PBGC Form 200 was already filed for the same event.
- **16** / **Action:** October 16, defined benefit plan PBGC Premium filings and payments due.
- **25** / **Action:** File PBGC Form 200, Notice of Failure to Make Required Contributions, by October 25, if plan sponsor of a single-employer defined benefit plan does not make the October 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **30** / **Action:** Single-employer defined benefit plans that are less than 60% funded or are 80% funded and have benefit restrictions triggered must inform participants by October 30 or 30 days after the benefit restriction applies.

Best Practice: Make sure administrative procedures align with language in plan document.



NOVEMBER

- **15 / Action:** File PBGC Form 10, Post-Event Notice of Reportable Events, by November 15, if a defined benefit plan with 100 participants missed its October 15 required contribution and it remains uncontributed. Filing is not required if the contribution could have been met with a Prefunding or Carryover Balance election or if a PBGC Form 200, Notice of Failure to Make Required Contributions, was already filed for the same event.

DECEMBER

- **1 / Action:** Distribute annual participant notices no later than December 1. These include notices for: 401(k) Plan Safe Harbor Match, Automatic Contribution Arrangement Safe Harbor, Automatic Enrollment and Qualified Default Investment Alternatives (QDIA).
- **15 / Action:** December 15 is the extended deadline to distribute Summary Annual Report (SAR) when the Form 5500 was filed on October 16.
- **29 / Action:** December 29 is the final deadline to process corrective distributions for failed ADP/ACP testing; a 10% excise tax may apply.
- **29 / Action:** Ongoing required minimum distributions (RMDs) for 5% business owners and terminated participants must be completed by December 29.
- **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 December 31 for any discretionary changes made during the year.

CONTRIBUTION PLAN LIMITS AND OTHER ROLLING NOTICES FOR 2023

In addition to those important deadlines and dates, plan sponsors should be aware of the contribution plan limits and other rolling notices for 2023:

- Traditional and Roth Individual Retirement Account contribution limit is $6,500. Catch-up contributions for participants age 50 and over is $1,000, which is fixed by law and not adjusted each year.
- Employee salary deferral limit for 401(k), 403(b) and 457 plans is $22,500. The catch-up contribution limit for participants who are age 50 or older in 2023 is $7,500.
- Maximum annual additions (i.e., employee deferrals, employer contributions and forfeitures) that can be allocated to a participant's defined contribution plan account for 2023 is $66,000.
- Limitation for the annual benefit under a defined benefit plan under Section 415(b)(1)(A) is $265,000.
- The dollar amount used to define "highly compensated employee" under Section 414(q)(1)(B) is $150,000.
- 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.

2023 Cost-of-Living Adjustments for Qualified Retirement Plans

The Internal Revenue Service (IRS) and the Social Security Administration (SSA) have released cost-of-living adjustments (COLA) for 2023 that include some notable increases:

- 401(k) annual contribution limits increased $2,000.
- 401(k) catch-up contribution limits increased $1,000.
- The Social Security Administration's taxable wage base increased by over 8%, which is the largest annual increase since the early 1980's. This change increased both Social Security payments and the portion of income subject to Social Security tax.

For more details on annual limits that plan sponsors can use to educate employees on how to avoid excess contribution deferrals, see our 2023 COLA insert.

DOWNLOAD 2023 COLA SUMMARY ▶

Join Us for the Webinar *ERISA: Developments Impacting Benefit Plans*

Join members from BDO's ERISA Center of Excellence to learn about recent trends in the investment landscape affecting retirement plans, the impact of changing market conditions on retirement readiness, along with legislative and regulatory modifications.

After this session participants will be able to:

- Compare and contrast the pros and cons of crypto-currency investments.
- Demonstrate knowledge of legislative and regulatory changes impacting retirement plans.
- Identify retirement readiness options during changing market conditions.

SPEAKERS

Beth Garner: Partner and National Practice Leader, ERISA Services, BDO USA, LLP

Joanne Szupka: Partner and Regional Practice Leader, ERISA Services, BDO USA, LLP

JANUARY 19, 2023, 1:00PM TO 2:00PM EST

1.0 CPE credit in the field of Accounting will be available for attending this course.

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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 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 24: HR Due Diligence

In many cases, the people costs are some of the highest costs an organization has — which presents both opportunity and risk. Exploring the opportunity and risk ahead of a merger or acquisition is known as the HR due diligence process. Co-hosts Beth Garner and Joanne Szupka sit down with Liz Mack, who is the Managing Director, Workforce in Transactions Leader for Global Employer Services at BDO, USA to discuss the process for and benefits of reviewing how a target supports its workforce before the deal is signed.

LISTEN TO EPISODE 24 NOW

Episode 25: DOL's Cybersecurity Guidance for Retirement Plans (Part 1)

On April 14, 2022, the Department of Labor (DOL) outlined a range of practices for combatting the growing threat of cybercrime to ERISA-covered retirement plans. Co-hosts Beth Garner and Joanne Szupka sit down with Greg Schu, Partner, Cybersecurity – National PCI Compliance Lead, BDO Digital, to discuss the implications of guidelines and what steps plan sponsors can take to help safeguard plan assets and participants' vital information.

LISTEN TO EPISODE 25 NOW

Episode 26: DOL's Cybersecurity Guidance for Retirement Plans (Part 2)

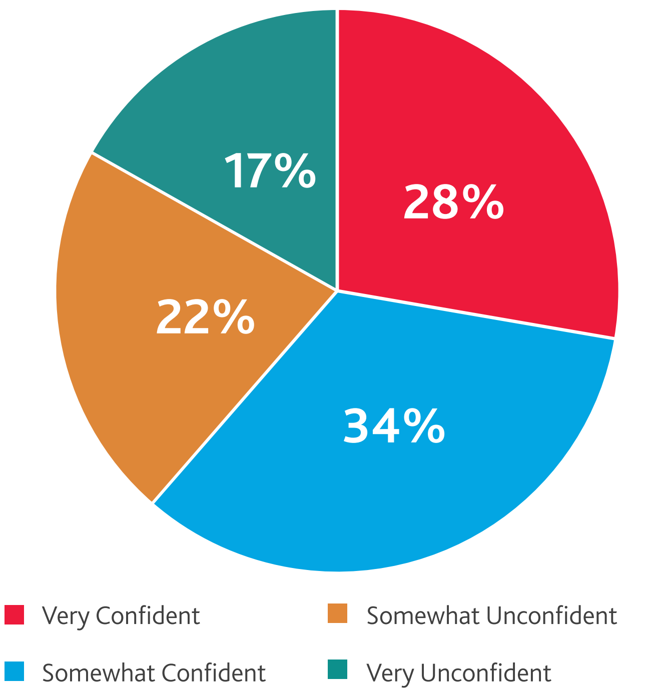
Continuing our two-part series, co-hosts Beth Garner and Joanne Szupka is joined by Steve Combs, Managing Director, Cloud Security & Infrastructure (CS&I), BDO Digital to continue their discussion of DOL's cybersecurity guidance and how it helps combats the growing threat of cybercrime to ERISA-covered retirement plans. Get answers to the key questions plan sponsors might have regarding the scope of the guidance, along with the following three forms that come with it: Tips for Hiring a Service Provider, Cybersecurity Program Best Practices and Online Security Tips.

LISTEN TO EPISODE 26 NOW

ERISA Poll Results

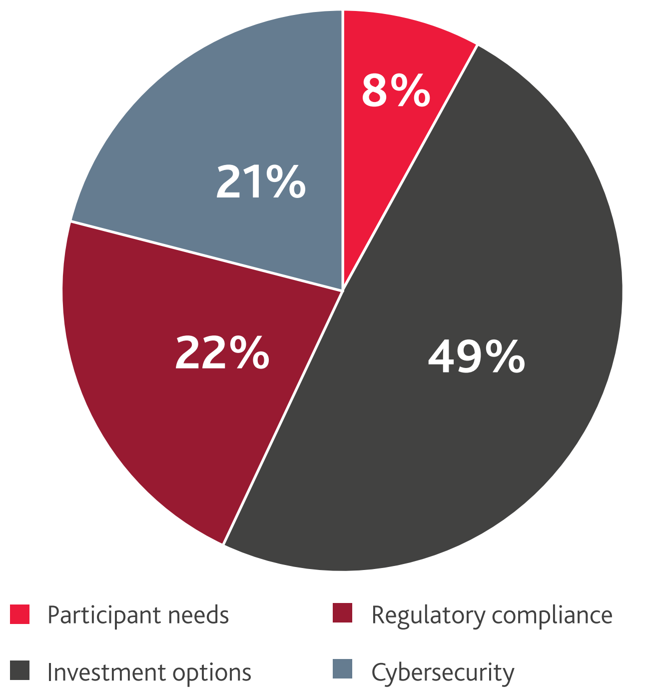
HOW CONFIDENT ARE YOU THAT YOU FULLY UNDERSTAND YOUR RETIREMENT PLAN?

At the beginning of National Retirement Security Week in October, we polled LinkedIn to see how well people understand their retirement plans. Our results showed that only 28% of the people that responded were confident they understand their plan. Whether you're an employee or a plan sponsor, BDO's #ERISA Center of Excellence has #retirement resources for you.



WHAT IS YOUR TOP CONCERN FOR 2023 FOR QUALIFIED RETIREMENT PLANS?

Understanding that 2022 was an especially challenging year for plan sponsors, we polled LinkedIn in December to learn what concerns they had with their qualified retirement plans going into the new year. Close to half of the people that responded that investment options were their top concern for 2023.



BDO SERIES ON DIGITAL ASSETS, PART 1

Digital Assets' Potential Benefits and Risks

Digital assets such as cryptocurrencies and non-fungible tokens (NFTs) are growing and disrupting the way consumers and businesses pay, bank, and invest. A **recent survey by Capitalize** found that 60% of respondents would like a cryptocurrency investment option in their 401(k) plans. Several service providers, including Fidelity, have responded to that request by offering 401(k) participants direct but limited cryptocurrency investment options. Meanwhile, earlier this year, the Department of Labor (DOL) issued a stern **warning about cryptocurrencies** in 401(k) accounts.

To help plan sponsors better understand digital assets and evaluate whether plan offerings focused on digital assets are a potential fit for their organization, BDO's ERISA Center of Excellence is publishing a series of articles about the asset class and recent regulatory developments, including the Biden administration's comprehensive plan for responsible development of digital assets. This first article in the series examines how the federal government is assessing the benefits and risks that cryptocurrencies pose to consumers, investors, and businesses.

WHITE HOUSE CALLS FOR RESEARCH ON DIGITAL ASSETS

In March 2022, the Biden administration issued an **executive order** calling for the federal government to report its findings on the risks and benefits of cryptocurrencies and other digital assets. For six months, various agencies conducted research and offered recommendations for responsibly developing the U.S. digital asset industry. The result of this work was a **fact sheet** that was released in September and outlined six main concepts for the development of responsible digital assets nationally and globally: consumer and investor protection; promoting financial stability; countering illicit finance; U.S. leadership in the global financial system and economic competitiveness; financial inclusion; and responsible innovation.

PROTECTING CONSUMERS, INVESTORS, AND BUSINESSES

The U.S. government believes that without a solid framework of rules and regulations for digital assets, innovations in this sector could be harmful to consumers, investors, and businesses. In response to the White House calling for research on digital assets, several federal agencies issued reports addressing the potential benefits and challenges in protecting Americans from some of the potential risks posed by digital assets.

The **Treasury Department's report** noted that about 12% of Americans own some form of digital asset. While the number of people holding these assets has grown, the volume of fraud and other scams has increased as well. **The Federal Trade Commission (FTC) reported** that more than 46,000 incidents of cryptocurrency-related fraud occurred between January 1, 2021, and March 31, 2022, valued at more than $1 billion.

The Treasury Department's report made four main recommendations:

- **Expand regulatory oversight:** Regulators including the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) should expand and increase investigations and enforcement related to digital assets, especially regarding potential misrepresentations made to consumers. Agencies also should increase their coordination of enforcement efforts between agencies as such efforts have been effective in shutting down fraudulent actions.
- **Increase focus on scams and aggressive marketing:** Online activities like gaming and entertainment are havens for scams, the Consumer Financial Protection Bureau (CFPB) and FTC should expand investigations into consumer complaints. The Department of Labor should also ensure that 401(k) plans and participants are protected from aggressive marketing, conflicts of interest, and bad-faith cryptocurrency investments.
- **Encourage cross-collaboration between agencies:** While several regulatory agencies have issued guidance to deal with increasing cryptocurrency issues, the Treasury Department would like to see more cross-collaboration among agencies to create more comprehensive oversight. Building a more connected, cross-agency response is critical to promote safety and reduce consumer, investor, and business confusion as well as the potential for fraud.
- **Educate consumers on digital assets:** Through its website MyMoney.gov, the Financial Literacy and Education Commission (FLEC) has taken the lead on educating consumers, investors, and businesses on financial issues. Now the FLEC will educate the public on common digital asset risks and scams and ways to report abuse. FLEC member agencies will also review the lack of information available to more vulnerable groups to help better understand the risks and opportunities they face. Lastly, the FLEC will engage with industry experts and academics to promote and coordinate public/private partnerships for financial education outreach.

BDO Insight: Take a long-term approach to digital assets

Financial advisors often encourage investors to focus on the long-term and avoid trying to time the market with their 401(k) investments. Similarly, plan sponsors may want to take a long-term perspective regarding their own approach to digital assets. Given today's massive surge in the variety and scope of digital assets, plan sponsors should seek to understand their role in the financial landscape before rushing to implement changes.

BDO SERIES ON DIGITAL ASSETS, PART 2

Promoting Access to Safe, Affordable Financial Services

While having access to a robust, well-functioning financial services ecosystem may feel like a given for most Americans, nearly 20% of U.S. adults rely on services such as payday loans to manage their finances or do not have a banking account. As part of the Biden Administration's Comprehensive Framework for Responsible Development of Digital Assets, the White House is taking steps to improve access to banking accounts, instant payment systems, and other aspects of the digital financial services ecosystem.

Efforts to improve access to financial services could improve employees' financial wellness and affect the way employees engage with their employers' retirement plans. According to Morgan Stanley at Work's State of the Workplace Financial Benefits Study, 91% of employees surveyed reported having faced personal financial issues this year, with the top three being difficulty with household budgeting (47%), debt reduction (42%) and emergency and short-term savings (30%). The study further states that more than half (59%) of employees said they needed to reduce contributions to savings, debt, or loan payments that occurred across 401(k) savings accounts (29%), long-term savings (28%), emergency and short-term savings (25%), and debt and loan payments (25%). These percentages outline the approximate impact to 401(k) plans and savings; however, plan sponsors need to recognize that workers' personal financial issues negatively impact employee work productivity.

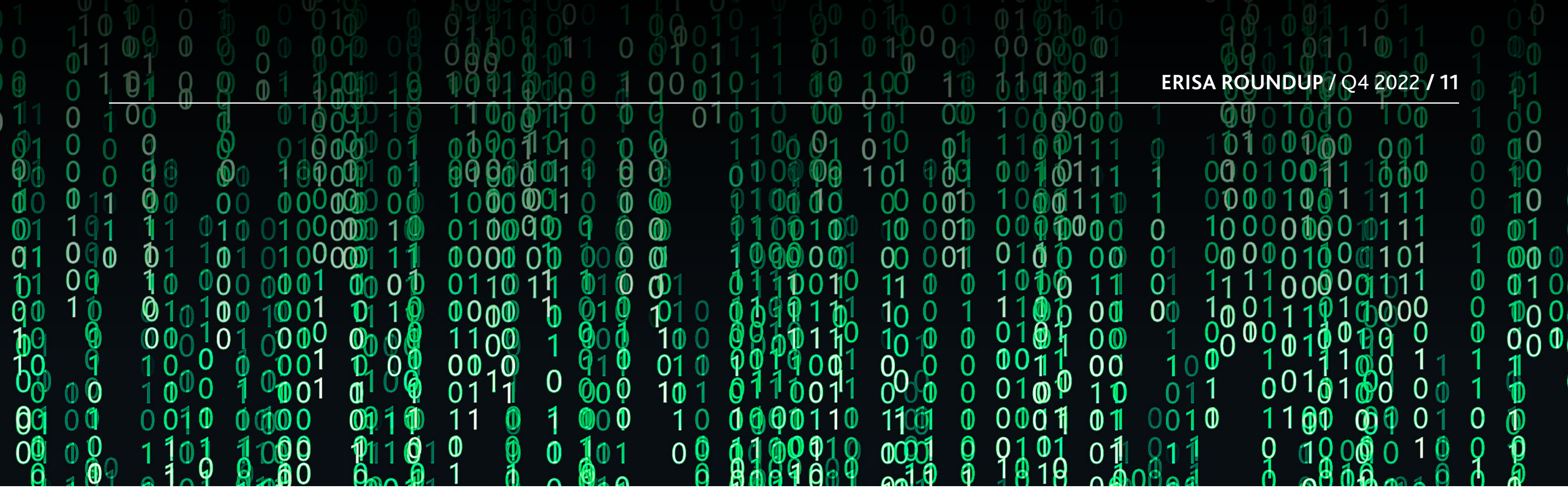
We examine the issue of financial inclusion in the United States and look at how increased access to bank accounts and faster payment systems could affect financial wellbeing for some if not most Americans.

BANKING GAPS IN THE U.S.

More than 80% of U.S. adults are "fully banked," according to the **Federal Reserve's Report on the Economic Well-Being of U.S. Households in 2021**. The report defines "fully banked" Americans as those who have a bank account and didn't use alternative financial services (such as payday loans, pawn shop loans, and tax refund advances) in the past 12 months.

This means that nearly two of every 10 U.S. adults lack full access to banking services. The Federal Reserve found that 13% of U.S. adults are "underbanked" (i.e., have a bank account but used alternative financial services) and an additional 6% are "unbanked" (i.e., don't have a bank account). The report also found that underbanked and unbanked rates are higher among adults with lower income, adults with less education, and Black and Hispanic adults.

More than 90% of unbanked Americans had income levels below $50,000. In addition, those who have bank accounts but make less than $50,000 annually were three times more likely to pay overdraft fees compared to people making $100,000 or more, according to the report.



WHITE HOUSE ACTIONS TO ADDRESS GAPS

As part of an executive order, the Biden Administration laid out four steps federal agencies will take to expand access to digital financial services:

- Federal agencies will promote the continued adoption of instant payment systems like Zelle and PayPal. This effort includes the Federal Reserve launching its **FedNow instant payment** platform in 2023 and federal agencies using instant payment systems to process government-to-consumer payments, such as disaster relief payments.
- To help curb fraud and manipulation, the Biden Administration will look at ways to regulate nonbank payment providers, such as pawn shops and payday loan services.
- Cross-border payment providers can be slow, expensive, and less-than-transparent. The Administration will look at ways to improve efficiency and transparency of cross-border payment systems, while integrating instant payment systems.
- The National Science Foundation will sponsor behavioral economic and other socio-technical research to make sure that digital financial services are equitable, inclusive, and accessible by all groups of Americans.

BDO Insight: Increased access could strengthen participants' financial wellness

With inflation surging and the early signs of a recession looming, the number of Americans living paycheck-to-paycheck increased to 61% in June 2022, up from 55% 12 months earlier, according to a survey by **LendingClub Corporation**. The survey also found that Americans' average savings decreased more than $500 from the previous month.

Having savings accounts and access to instant payments systems could help many Americans navigate financial hardships without using 401(k) hardship distributions, retirement plan loans, or tapping directly into their retirement plan savings and incurring penalties and taxes.

Just as importantly, it's not just the federal government that is looking to enhance financial inclusion. Many banks, asset managers, and insurance companies are working to expand access to financial services to more Americans. Plan sponsors should keep a close eye on governmental and private sector efforts to increase financial inclusion and understand how the issue affects their employees' financial lives. Additionally, plan sponsors should evaluate their financial benefits package as a majority of employees are presently struggling.

BDO SERIES ON DIGITAL ASSETS, PART 3

Advancing Responsible Innovation of Digital Assets

The cryptocurrency market has plunged from a market cap of $3 trillion in November 2021 to about $900 billion as of November 9, 2022, according to CoinGecko. While assets flow out of the crypto market, developers continue to enter the space according to Electric Capital's Developer Report. Continued interest in digital assets from developers and entrepreneurs will likely lead to further innovation and growth in digital assets in the near future. These factors heighten the need for greater regulation on advancing responsible innovation in the space.

In its effort to create a responsible framework for the development of digital assets, the Biden Administration tasked several departments and agencies to make policy recommendations on the role the federal government should play to ensure digital asset innovation is done safely and equitably. In heeding the warning from the Department of Labor (DOL) on the safety of cryptocurrencies in 401(k)s, plan sponsors should pay special attention to the ways the White House intends to make digital assets and blockchain offerings easier to access, safer, and more transparent than current options. The White House's efforts could have a significant effect on whether digital assets are determined to be appropriate investment options for retirement plan participants in the near future.

WHAT EXACTLY IS "RESPONSIBLE INNOVATION"?

Dr. Alondra Nelson, head of the Office of Science and Technology Policy (OSTP) and Deputy Assistant to the President wrote in a blog post that as systems grow, it is important to set goals and provide boundaries and guidance where needed. Without comprehensive oversight, everyday investors may find themselves in a challenging or unexpected investment situation. Cryptocurrency regulations are patchy today, but the White House is working on a comprehensive framework to promote fairness, universal access, and transparency.

The federal government has an important but tricky role to play; it could become a key driver for this new technological frontier, or it could become so restrictive that it stifles innovation. With about half of the world's top 100 financial technology companies located in the United States, the White House cited its historical role in encouraging responsible private-sector innovation, and outlined four major areas of focus:

- The OSTP and National Science Foundation (NSF) will research next-generation cryptography, transaction programmability, cybersecurity, and ways to lessen the environmental impacts of digital assets.
- The Treasury Department and appropriate regulators will provide regulatory guidance and share best practices.
- The Department of Energy and the Environmental Protection Agency (EPA) will track the impact of digital assets on the environment and develop performance standards — preventing hackers from gaming the system requires computing resources that can strain our country's power grids.
- The Department of Commerce will call on stakeholders including federal agencies, industry experts, academics, and other key partners to help shape standards, regulations, guidance, and research.

In June 2022, the Responsible Financial Innovation Act (RFIA) was introduced by Senators Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY). The RFIA's objective is to provide for responsible financial innovation and to bring digital assets within the regulatory perimeter. The sections of the bill are 1) definitions, 2) responsible taxation of digital assets, 3) responsible securities innovation, 4) responsible commodities innovation, 5) responsible consumer protection, 6) responsible payments innovation, 7) responsible banking innovation, and 8) responsible interagency coordination. Currently, the RFIA is with the Senate Banking, Housing and Urban Affairs committee where hearings have been held in July, September, and November of 2022.

BDO Insight: Be Patient but Prepared

A recent Plan Sponsor Council of America survey showed that 57% of respondents would not consider cryptocurrencies as viable investment options which means there is a 43 that does want this investment option. A patient approach may be warranted, but the landscape is changing rapidly. Plan sponsors may have to make decisions quickly and will need to know what is available and how to gain access. Therefore, it may be valuable to monitor developments and consider the various available options to ensure plan sponsors can respond to participants' needs in a timely manner. There are a few service providers that are offering cryptocurrencies right now.

BDO SERIES ON DIGITAL ASSETS, PART 4

Roadblocks to Financial Stability in Crypto Investments

The federal government has long recognized the need to regulate digital assets. However, it has yet to devise an all-encompassing plan to complete the task. As part of the Biden Administration's **Comprehensive Framework for Responsible Development of Digital Assets**, the White House directed agencies to look for ways to strengthen digital asset regulation to help stabilize the digital assets market.

Plan sponsors should pay attention to these developments because there is growing interest by participants to invest in cryptocurrencies through direct investments or in brokerage accounts in their 401(k) plan.

The recommendations coming from the White House initiative could provide a stronger understanding in addition to helping plan sponsors and participants more effectively comprehend the potential benefits and risks of digital assets.

FINANCIAL RISKS AND REGULATORY GAPS

The Financial Stability Oversight Council (FSOC) issued a report in October that outlined several risks and gaps the federal government should consider addressing to stabilize the digital asset marketplace. The FSOC findings include:

- Crypto asset activity could pose risks to the stability of the U.S. financial system if the asset class were allowed to grow without appropriate regulations and enforcement. For example, spot markets (i.e., exchanges that are made on the spot) might not have the right monitoring systems and could be used for fraud.
- The crypto asset business could benefit from a stronger regulatory structure as no single regulator can see possible risks/threats across an entire organization.
- Some crypto asset trading platforms want to offer retail customers direct access to markets through broker-dealers or futures commission merchants. This may negatively impact consumers who are not savvy investors and cannot close failing positions before automated liquidation kicks in.

In addition to these findings, the FSOC recommended that Congress pass laws to:

- Develop the federal regulatory framework for crypto-asset spot market activities.
- Create a comprehensive, practical structure for stablecoins.
- Require crypto-asset companies, their affiliates, and subsidiaries to work under consolidated regulations and supervision by appropriate federal agencies.

BDO Insight: Uncertainty in offering crypto assets as investments

We previously wrote about the DOL's 2022 warning for plan sponsors to use "extreme care" in adding cryptocurrency options to 401(k) investment menus and/or brokerage windows. The DOL said plan sponsors who allow crypto investments on brokerage platforms should expect to be questioned about how they balanced their obligation of prudence given the risks these investments pose.

This stance differs from the DOL's Field Assistance Bulletin 2012-02R, which says that while plan sponsors are responsible for prudent selection of the brokerage window service provider, they are not obligated to monitor the available investment options.

As the White House and federal agencies continue to develop a regulatory framework for digital assets, plan sponsors should pay close attention to how this effort could affect their ability to allow participants to invest their 401(k) funds in digital assets. It is important to monitor this topic so plan sponsors can better understand their fiduciary obligations to participants.

Roth 401(k) Remains Underutilized Despite Potential Benefits

While plan sponsors have been able to amend their 401(k) plans to include a post-tax deferral contribution called Roth for more than a decade, only 86% of plan sponsors have made it available to participants, according to the Plan Sponsor Council of America. Meanwhile, despite the potential benefits of such plans, just a quarter of participants who have access to the Roth 401(k) option use it. Plan sponsors may want to consider adding a Roth 401(k) option to their lineup because of the potential tax benefits and other advantages for plan participants.

A well-designed Roth 401(k) may be an attractive option for many plan participants, and it is important for plan sponsors considering such a feature to design the plan with the needs of their workforce in mind. It is also critical to clearly communicate the differences from the pre-tax option, specific timing rules required, and the tax-free growth it offers. Additionally, plan sponsors should be mindful of potential administrative costs and other compliance requirements in connection with allowing the Roth option.

ROTH 401(K)S: THE BASICS

A Roth is a separate contribution source within a 401(k) or 403(b) plan that differs from traditional retirement accounts because it allows participants to contribute post-tax dollars. Since participants pay taxes on these contributions before they are invested in the account, plan participants may make qualified withdrawals of Roth monies on a tax-free basis, and their accounts grow tax-free as well.

Participants of any income level may participate in a Roth 401(k) and may contribute a maximum of $20,500 in 2022—the same limit as a pre-tax 401(k). Contributions and earnings in a Roth 401(k) may be withdrawn without paying taxes and penalties if participants are at least 59½ and it's been at least five years since the first Roth contribution was made to the plan. Participants may make catch-up contributions after age 50, and they may split their contributions between Roth and pre-tax. Similar to pre-tax 401(k) accounts, Roth 401(k) assets are considered when determining minimum distributions required at age 72, or 70 ½ if they reached that age by Jan. 1, 2020.

Only employee elective deferrals may be contributed post-tax into Roth 401(k) accounts. Employer contributions made by the plan sponsor, such as matching and profit sharing, are always pre-tax contributions. If the plan allows, participants may convert pre-tax 401(k) assets into a Roth account, but it is critical to remember that doing so triggers taxable income and participants must be prepared to pay any required tax. In addition, plan sponsors must be careful to offer Roth 401(k)s equally to all participants rather than just a select group of employees.

Qualified distributions from a designated Roth account are excluded from gross income. A qualified distribution is one that occurs at least five years after the year of the employee's first designated Roth contribution (counting the first year as part of the five) and is made on or after age 59½, on account of the employee's disability, or on or after the employee's death. Non-qualified distributions will be subject to tax on the earnings portion only, and the 10% penalty on early withdrawals may apply to the part of the distribution that is included in gross income.

Participants may take out loans if permitted in the plan document.

FIRST STEPS FOR PLAN SPONSORS

A common misconception among plan sponsors is that a Roth offering requires a completely different investment vehicle. The feature is simply an added contribution option; therefore, no separate product is needed.

When considering the addition of a Roth 401(k) option, it is important for plan sponsors to check with service providers to determine whether payroll may be set up properly to add a separate deduction for the participant. Plan sponsors may also need to consider guidelines for conversions, withdrawals, loans and other features associated with the Roth contribution source to ensure the plan document is prepared and followed accurately.

Education is an important component of any new plan feature or offering. Plan sponsors should check with service providers to see how they may help to explain the feature and optimize its rollout for the plan. One-on-one meetings with participants may be very helpful in educating them about a Roth account.

A WORD ABOUT CONVERSIONS

If permitted by the plan document, participants may convert pre-tax 401(k) plan assets (deferrals and employer contributions) to the Roth source within their plan account. The plan document may allow for entire account conversions or just a stated portion. When assets are converted, participants must pay income taxes on the converted amount, and the additional 10% early withdrawal tax won't apply to the rollover. Plan sponsors should educate participants on the benefits of converting to the Roth inside the company 401(k).

BDO Insight: Collaborate with the right service providers to educate your participants

The right service providers may review your current plan design, set up accounts properly, actively engage and educate your participants and offer financial planning based on individual circumstances to show how design features like a Roth account may benefit their situation. If you would like to start the conversation about adding a Roth option or enhancing your participant education program, BDO is available to help.

Gain Insights on Inflation from BDO Wealth Advisory Thought Leaders

Consumer prices soared 9.1% from July 1, 2021 to June 30, 2022, the biggest annual increase in prices since 1981.[1] Prices for goods and services including gasoline, groceries, and food and dining have risen at an alarming rate, and inflation has in many ways become a defining theme of 2022.

Plan sponsors may want to evaluate how inflation affects their plan participants, because changes in the price level can affect retirement savings and impact key financial decisions. To help plan sponsors understand the state of inflation today and its potential effects, members of BDO's ERISA Center of Excellence recently spoke with investment leaders of BDO Wealth Advisors, a wealth advisory firm affiliated with BDO. Mark Biegel, National Leader of BDO Wealth Advisors, and Matt Gotlin, managing director, provide their insights on inflation below.

Q&A WITH MARK BIEGEL AND MATT GOTLIN OF BDO WEALTH ADVISORS

How serious is inflation today? What is causing the rapid rise in prices?

Matt Gotlin: The consumer price index (CPI), a commonly cited benchmark of inflation that measures the monthly change in prices paid by U.S. consumers, rose 9.1% over the 12 months from July 1, 2021, to June 30, 2022. That is a serious increase — historically, the U.S. Federal Reserve (the Fed)'s inflation goal is an annual rate of around 2%. Prices have risen due to a number of factors, including global supply chain disruptions, growth in consumer demand during the COVID-19 pandemic, and higher energy costs due to the ongoing war in Ukraine.

According to the U.S. Federal Reserve (the "Fed"), elevated inflation may linger a bit longer. In an August speech, Fed Chairman Jerome Powell said restoring price stability would take more time and cause additional pain for households and businesses.[2] Inflation makes it harder for both businesses and individuals to plan ahead — when it is unclear how much goods and services will cost in the future, it is challenging to confidently do things like invest and set budgets. This uncertainty has caused many people who were approaching retirement to continue working due to the higher costs of living.

What can investors do when facing such serious inflation?

Mark Biegel: No matter the environment, we believe investors should avoid the temptation to try to time the market — and plan sponsors may want to help participants avoid falling into that trap. Historical data shows that it is extremely difficult to time ups and downs in the market, and investors who seek to do so often sacrifice significant long-term returns.[3]

We believe that the most important principle for investors to follow in this environment is to have a solid financial plan and stay committed to it. This is especially important during more volatile investment environments, when investors often feel the urge to act and try to adjust the dials on their portfolio to benefit from the prevailing environment. Investors shouldn't be looking for a cure-all to inflation, but there may be ways to lessen its impact over the near- and long-term.

1 PBS, "U.S. inflation at 9.1%, a record high," July 13, 2022

2 U.S. Federal Reserve, "Monetary Policy and Price Stability," speech by Fed Chair Jerome Powell on August 26, 2022 in Jackson Hole, Wyoming.

3 CNBC, "Tempted to Time the Market? Look at these charts first," September 27, 2022.

How can plan sponsors help their participants deal with inflation?

Matt Gotlin: For plan sponsors, today's environment may present an opportunity to revisit their plan's investment lineup and consider new investments. Plan sponsors may want to review their plan offerings and consider whether they are providing the necessary tools to meet participants' long-term goals.

As a starting point, plan sponsors may want to consider how different asset classes perform in an inflationary environment. It is common for 401(k) plan lineups to include target date funds (TDF) and a variety of equity and fixed income funds. While stocks tend to offer inflation-hedging characteristics — for example, companies with pricing power may be able to pass price increases onto consumers and limit the effects of inflation on their bottom line — today's environment highlights the potential opportunity to look beyond stocks and bonds.

Over the long-term, plan sponsors may want to focus more on which asset classes will provide the greatest return for a given level of risk rather than trying to isolate specific factors like inflation.

BDO Insight: Think beyond the portfolio

The ripple effects of inflation go much deeper than just an investment lineup. Plan sponsors may want to take a broader view and seek to understand what inflation means for their workforce. Inflation hurts purchasing power, and that can translate into workers staying on the job longer. It can also increase stress, reduce productivity, and lead to other negative effects for an organization.

Rather than just focusing on the investments that will perform best in an inflationary versus deflationary environment, plan sponsors may be able to make the greatest impact by offering additional resources to optimize outcomes for plan participants. These include educational resources and personal wellness tools that can help participants stay calm, make good decisions, and stay on track.

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