ERISA ROUNDUP

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

Q1 2023

A NOTE FROM BDO'S NATIONAL ERISA PRACTICE LEADER

We hope you have had a great start to the 2023 New Year. With the new regulations being in place such as the SECURE 2.0 Act, the Department of Labor (DOL) independence update, and the Pension Benefit Guaranty Corporation (PBGC) withdrawal liability, we have compiled our most recent insights and podcast episodes in this first quarter ERISA Roundup to help you plan for 2023.

In this issue of the 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 examine the clear rules for setting liability rates that affect ongoing multiemployer plans by PBGC.

SECURE 2.0 was signed into law on December 29, 2022, which made extensive changes to retirement saving plans. Before plan sponsors can take advantage of the over 90 provisions in SECURE 2.0, the regulatory agencies such as the Department of Labor (DOL) and IRS will need to provide additional regulations and guidance on some of the provisions. Our goal was to offer you insight on DOL's 2023 agenda and explore the SECURE 2.0 provisions.

Staying current on ERISA topics is simplified with BDO as we invite you to follow along with our regular insights at our **BDO ERISA Center of Excellence** and our podcast series **BDO Talks ERISA**. We welcome any feedback on our content at **BDOTalksERISA@BDO.com**.

Best,

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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.

IN THIS ISSUE

2023 DEADLINES AND IMPORTANT DATES 1

SECURE 2.0 ACT OF 2022 INTRODUCES KEY CHANGES FOR WORKPLACE RETIREMENT PLANS 4

MULTIEMPLOYER PLAN UPDATE: PBGC AIMS TO CLARIFY WITHDRAWAL LIABILITY RULES 10

DOL UPDATED GUIDANCE ON BENEFIT PLAN AUDITOR INDEPENDENCE COULD LEAD TO IMPROVED QUALITY OF AUDITS 12

STAY UP TO DATE WITH OUR PODCAST, *BDO TALKS ERISA* 13

DEPARTMENT OF LABOR UNVEILS REGULATORY AGENDA FOR 2023 14

PLANNING FOR THE END OF THE COVID-19 PUBLIC HEALTH EMERGENCY AND OUTBREAK PERIOD 16

COLLECTIVE INVESTMENT TRUST — WHAT PLAN SPONSORS NEED TO KNOW 18

WHAT TO KNOW ABOUT SERVICE PROVIDER CONSOLIDATION 20

BDO SERIES ON DIGITAL ASSETS, PART 5
WHITE HOUSE PLAN TO FIGHT ILLICIT FINANCING RISKS OF DIGITAL ASSETS 22

BDO SERIES ON DIGITAL ASSETS, PART 6
REINFORCING U.S. LEADERSHIP AND COMPETITIVENESS IN DIGITAL ASSETS 24

BDO SERIES ON DIGITAL ASSETS, PART 7
POTENTIAL U.S. CENTRAL BANK DIGITAL CURRENCY SYSTEM - WHAT PLAN SPONSORS SHOULD KNOW 26

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 dates may shift based on the plan sponsor's fiscal year.

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 73 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.

SECURE 2.0 Act of 2022 Introduces Key Changes for Workplace Retirement Plans

The Consolidated Appropriations Act, 2023 (**Public Law No. 117-328**) that was signed into law on December 29, 2022 by President Joe Biden includes the SECURE 2.0 Act of 2022, which introduces over 90 changes to the federal rules governing workplace retirement plans.

This landmark legislation builds on the original SECURE Act that was enacted on December 19, 2019, and aims to expand coverage and increase retirement savings while simplifying and clarifying retirement plan rules. (For prior coverage, see **New Opportunities for Workplace Retirement Plans Under the SECURE Act | BDO**).

Every employer, whether for-profit or tax-exempt, that currently maintains a qualified retirement plan or is evaluating a future plan should consider implementing these new rules, since the changes are generally beneficial for employees.

Unless the Internal Revenue Service (IRS) announces otherwise, employers that operate in accordance with the mandatory or optional changes in the law as of the provisions' applicable effective date have until the end of the plan year beginning in 2025 to adopt the written amendment. Government employers have until the end of their 2027 plan year to amend the plan document.

To help prioritize the evaluation of the changes, the following summary of the SECURE 2.0 provisions is organized by the year in which the change is required or may be incorporated into plan operations, without regard to the plan type. Future articles will discuss various aspects of SECURE 2.0, including strategic opportunities and implementation challenges for employers.

CHANGES WITH IMMEDIATE EFFECTIVE DATES

BDO Insight: Employers need to consider immediately updating employee notices and plan procedures for these important changes in the law.

- **Later required minimum distributions (RMDs).** SECURE 2.0 increases the age at which retirement plan participants must begin receiving RMDs from 72 to 73, starting January 1, 2023. The original SECURE Act increased the starting age for RMDs from 70½ to 72. Then, starting January 1, 2033, the starting age for RMDs increases from 73 to 75.
- **Aggregation of distributions on tax-preferred retirement accounts that hold annuities.** Effective December 29, 2022, RMDs can be determined by aggregating distributions from both the annuity and non-annuity investments.
- **Reduced excise tax for a failure to take RMDs.** Effective for taxable years beginning after December 29, 2022, the excise tax rate is reduced from 50% to 25% of the missed RMD for workplace retirement plans and IRAs. Further, if an IRA makes a corrective distribution generally within two years, the excise tax is reduced to 10% for the IRA (but not for workplace retirement plans).
- **Encourages life annuities.** SECURE 2.0 eliminates certain actuarial tests in the RMD regulations that operated as barriers to the availability of life annuities in qualified plans and IRAs. Effective for contracts purchased or received in an exchange on or after December 29, 2022, SECURE 2.0 repeals the 25% limit and allows up to $200,000 (indexed) to be used from an account balance to purchase a qualifying longevity annuity contract (QLAC). It also clarifies that "free look" periods are permitted up to 90 days for contracts purchased or received in an exchange on or after July 14, 2014.
- **Reduces disclosures for unenrolled employees.** Effective for plan years beginning after December 31, 2022, employers are no longer required to provide most notices under ERISA or IRS rules to employees who do not participate in the employer's retirement plan. However, employers must provide an annual reminder of the employee's eligibility and deadline, if applicable, to participate in the plan. Employers must also provide such individuals with any plan documents they request.

- **Allows incentives for 401(k) and 403(b) elections.** Effective for plan years beginning after December 29, 2022, employers may provide de minimis financial benefits, such as low-value gift cards, as an incentive for employees to elect to contribute to a 401(k) or 403(b) plan without violating IRS's "contingent benefit rule."

BDO Insight: The legislation does not define what dollar amount would be considered de minimis, so IRS guidance is needed. Based on long-standing IRS guidance in other contexts (for example, "de minimis" fringe benefits) the dollar value threshold is very low, which may not be sufficient to motivate anyone to enroll in the plan. The incentives cannot be paid from plan assets.

- **Employer contributions may be designated as Roth contributions.** Effective December 29, 2022, employers may allow plan participants to designate employer matching and nonelective contributions as after-tax Roth contributions. Such contributions would be included in the participant's taxable wage income for the year made. Employer contributions designated as Roth contributions must be immediately 100% vested.
- **Permanent relief for federally declared disasters.** Effective for federally declared disasters occurring on or after January 26, 2021 (i.e., this provision is effective retroactively), plans or IRAs may allow affected participants additional access to retirement funds. Penalty-free distributions up to $22,000 per participant, per disaster may be taken into taxable income over three years and participants can recontribute those amounts to a tax-preferred retirement account within three years. Plans can also increase the affected participant's loan limit to $100,000 (instead of the regular $50,000 loan limit) or the participant's vested account balance. Also, if the affected participant has a non-disaster plan loan outstanding the repayment period can be extended by one year.

BDO Insight: This is permanent relief that eliminates the need for specific disaster relief to be issued by the IRS.

- **Reliance on employee's certification for hardship distributions.** For plan years beginning after December 29, 2022, plan sponsors can rely on employees' self-certification that the employee has experienced a deemed hardship for purposes of taking a hardship withdrawal from a 401(k) or 403(b) plan and that the distribution is not in excess of the amount required to satisfy the financial need. Future regulations might restrict reliance if the sponsor has information that contradicts the employee's certification.
- **10% early withdrawal penalty waived for terminally ill.** Effective for distributions made after December 29, 2022, the 10% penalty on early withdrawals before age 59 1/2 is waived for distributions to terminally ill individuals whose physician certifies that they have a condition that is expected to result in death within 84 months.
- **Repayment of qualified birth or adoption distributions.** Effective for distributions made after December 29, 2022 (and retroactively to the three-year period beginning on the day after the date on which such distribution was received), repayment of qualified birth or adoption distributions are limited to three years. Previously, such distributions could be recontributed at any time, but due to the IRS's three-year statute of limitations to amend an income tax return, taxpayers might not receive a refund of the taxes that were paid in the year of withdrawal. This change aligns the repayment period with the eligibly for refund.
- **Cash balance plan interest crediting rates.** Effective for plan years beginning after December 29, 2022, cash balance plans with variable interest crediting rates may use a projected "reasonable" interest crediting rate that does not exceed 6%. This means that those plans can use graded pay credits that increase for older, longer service workers without risking failing the anti-backloading rules that otherwise may create problems for cash balance plans that use market-based interest crediting rates.
- **Elimination of variable rate premium indexing.** Effective on December 29, 2022, SECURE 2.0 replaces the "applicable dollar amount" language for determining the premium funding target for purposes of unfunded vested benefits and replaces it with a flat $52 for each $1,000 of unfunded vested benefits.
- **Correction of mortality tables.** Effective December 29, 2022, pension plans are not required to assume certain mortality improvements. The IRS must amend the applicable regulations within 18 months.
- **403(b) investments in collective investment trusts (CITs).** Effective December 29, 2022, CITs are permissible investments for 403(b) plans. Previously, under IRS rules, 403(b) plans could invest only in mutual funds or annuity contracts, which generally have higher fees than CITs.

BDO Insight: Although this changes the tax rules, it appears that federal securities laws will need to be updated before 403(b) plans can invest in CITs.

- **Multiple employer 403(b) plans.** Effective for plan years beginning after December 31, 2022, 403(b) plans can participate in multiple employer plans (MEPs).
- **Expanded Employee Plans Compliance Resolution System (EPCRS)**. Effective December 29, 2022, SECURE 2.0 enhances the IRS's self-correction program to: (1) allow more types of errors to be self-corrected without an IRS filing, (2) apply to inadvertent IRA errors, and (3) exempt certain RMD failures from the otherwise applicable excise tax. For example, operational errors that can be self-corrected without an IRS filing now include significant errors and plan loan errors, provided the error is corrected within a reasonable time after it is discovered (and the IRS has not identified the error). Employers are no longer required to attempt to recoup certain overpayments made to participants. The IRS was directed to update the EPCRS revenue procedure accordingly within two years and the U.S. Department of Labor (DOL) is required to coordinate its Voluntary Fiduciary Compliance Program (VFCP) accordingly.
- **Auditor's report for "group of plans".** Effective December 29, 2022, defined contribution plans filing a single Form 5500 as a "group of plans" must submit an auditor's opinion if any plan in the group, individually, has 100 participants or more at the beginning of the plan year. The auditor's report will relate only to each individual plan that would otherwise be subject to an independent accountant's report. Thus, the DOL and the IRS will continue to receive the same number of audit reports (and content) about plans with 100 or more participants that would be filed if the "group of plans" was not filed as a single Form 5500.
- **$500 small plan tax credit for military spouses.** Effective for taxable years beginning after December 29, 2022, employers with 100 or fewer employees earning at least $5,000 in annual compensation can receive a general tax credit of up to $500 for three years, if they make military spouses (1) eligible for defined contribution plan participation within two months of hire; (2) upon plan eligibility, they are eligible for any match or non-elective contribution that they would have been otherwise eligible for at two years of service; and (3) 100% vested in employer contributions. The credit is $200 per participating non-highly compensated military spouse, plus 100% of employer contributions made to the military spouse, up to $300. No credit is available for highly compensated employees. The credit is available for the year the military spouse is hired and the two succeeding taxable years. Employers may rely on the employee's certification that they are an eligible military spouse.
- **Small employer plan start-up credit.** Effective for taxable years beginning after December 31, 2022, the start-up credit for adopting a workplace retirement plan increases from 50% to 100% of administrative costs for small employers with up to 50 employees. The credit remains 50% for employers with 51-100 employees. Employers with a defined contribution plan may also receive an additional credit based on the amount of employer contributions of up to $1,000 per employee. This additional credit phases out over five years for employers with 51-100 employees. The start-up credits are available for three years to employers that join an existing MEP, regardless of how long the plan has been in existence. The MEP rule is retroactively effective for taxable years beginning after December 31, 2019.
- **SIMPLE and Simplified Employee Pension (SEP) Roth IRAs.** Effective for taxable years beginning after December 31, 2022, SIMPLE IRAs can accept Roth (i.e., after-tax) contributions. In addition, employers can offer employees the ability to treat employee and employer SEP contributions as Roth contributions (in whole or in part).
- **SEPs for Domestic Workers.** Effective for tax years beginning after December 29, 2022, employers of domestic employees (nannies, housekeepers, etc.) can provide retirement benefits for those employees under a SEP. Previously, employers were not permitted to offer domestic employees a workplace retirement plan because the employer was not engaged in a trade or business.

CHANGES EFFECTIVE IN 2024.

The following changes take effect in 2024. Employers should consider how these changes may affect their plan document and operation.

- **Elimination of RMDs for Roth 401(k) and 403(b) plans.** Currently, Roth IRAs are not subject to RMDs before the account owner's death, but RMDs from Roth 401(k) and 403(b) plans generally must begin at age 72. Effective for taxable years beginning after December 31, 2023, SECURE 2.0 eliminates the pre-death RMD requirement for Roth 401(k) and 403(b) plans. However, this change does not apply to distributions that are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after that date.
- **RMDs for surviving spouses.** Effective for calendar years beginning after December 21, 2023, surviving spouses can elect to be treated as the deceased employee for purposes of the RMD rules.

- **Student loan repayments matching contributions.** Effective for contributions made for plan years beginning after December 31, 2023, employers may treat an employee's qualified student loan payments as employee contributions to a 401(k) plan, 403(b) plan, governmental 457(b) plan or SIMPLE IRA that is entitled to an employer matching contribution. For nondiscrimination testing of elective contributions, plans may separately test the employees who receive matching contributions on student loan repayments. Eligible student loan repayments include any indebtedness incurred by the employee solely to pay his or her qualified higher education expenses (in other words, student loan debt for an employee's children is not eligible).

BDO Insight: This provision is in response to years of retirement industry pressure, based on the notion that employees who are overwhelmed with student debt may not be able to save for retirement and are missing out on available matching contributions.

- **Emergency savings accounts.** Effective for plan years beginning after December 31, 2023, employers may amend their defined contribution plans to offer short-term emergency savings accounts to non-highly compensated employees. These accounts will be funded with after-tax Roth salary deferrals up to $2,500 (indexed for inflation). Participants can make up to one withdrawal per month. Employers may automatically enroll employees into these accounts at no more than 3% of their salary. Contributions are treated as after-tax elective deferrals and are eligible to receive matching contributions. The first four withdrawals each plan year cannot be subject to any withdrawal fees. When employees terminate employment, they may take their emergency savings accounts as cash or roll them over into their new employer's Roth 401(k) plan (if any) or into a Roth IRA.

BDO Insight: Although this sounds simple, over 33 pages of legislative text amending both ERISA and the Internal Revenue Code (IRC) were needed to create this new law. IRS and/or DOL guidance will be needed before employers can implement this optional plan design feature.

- **Rothification of catch-up contributions for high earners.** Effective for taxable years beginning after December 31, 2023, catch-up contributions for participants who are 50 or older and who earned more than $145,000 in the prior year (indexed for inflation) must be made on a Roth (after-tax) basis. Also, retirement plan service providers can provide automatic portability services (that is, the plan automatically could move such forced cash-outs into a default IRA or into the employee's new employer's retirement plan, unless the participant opts out).
- **Higher forced rollover limit.** The involuntary IRA rollover limit is increased from $5,000 to $7,000 for distributions made after December 31, 2023. Thus, workplace retirement plans can force a tax-free rollover distribution without the participant's consent if the participant's account is over $1,000 but less than $7,000, when the participant is otherwise eligible to receive a distribution from the plan.
- **Retroactively amending plan to increase benefits for prior plan year.** Effective for plan years beginning after December 31, 2023, employers can retroactively amend a workplace retirement plan to increase participants' benefits for the prior plan year, so long as the amendment is adopted no later than the extended due date of the employer's federal income tax return for such prior year.

BDO Insight: For decades, employers could fund a workplace retirement plan for the prior year, so long as the contribution was deposited into the plan no later than the extended due date of the employer's federal income tax return. The original SECURE Act improved on that concept by allowing employers to retroactively adopt a new workplace retirement plan (e.g., an ESOP, cash balance plan or profit-sharing plan) for the prior year, so long as it was adopted no later than the extended due date of the employer's federal income tax return for the prior year. That change allowed employers to finalize their financials for the tax year before contributing to the retirement plan. SECURE 2.0 further expands employer flexibility by allowing employers to retroactively adopt amendments to increase plan benefits for the prior plan year.

- **Waiver of early withdrawal penalties for certain distributions.** Effective for distributions made after December 31, 2023, the 10% penalty on early withdrawals before age 59 1/2 is waived for certain distributions. Participants can self-certify that they meet the criteria for (i) up to $1,000 per year for certain unforeseen personal or family emergency expenses, and (ii) up to the lesser of $10,000 (indexed for inflation) or 50% of the participant's vested account balance for distributions in connection with domestic abuse (for example, when the participant needs funds to escape an unsafe situation). Participants may repay the withdrawn money over three years and claim a refund for the income taxes paid on the distribution. However, additional emergency distributions are prohibited for three years unless repayment occurs.
- **Permanent safe harbor for correcting auto-enrollment and auto-escalation failures.** Effective for errors that occur after December 31, 2023, the current safe harbor for correcting employee elective deferral elections becomes permanent. The existing safe harbor was scheduled to expire on December 31, 2023.

BDO Insight: Plans that use auto-enrollment and auto-escalation can avoid significant penalties for honest mistakes if notice is given to the employee, correct deferrals begin within certain time periods and the employer provides the employee with any matching contributions that would have been made had the failure not occurred. Corrections generally must be made before 9 ½ months after the end of the plan year in which the mistakes were made.

- **Uniform rollover forms.** No later than January 1, 2025, the IRS must issue sample forms for direct rollovers that may be used by the distributing or receiving retirement plan or IRA. This is intended to simplify and standardize the tax-free rollover process.
- **403(b) hardship distributions conform to 401(k) rules.** Effective for plan years beginning after December 31, 2023, SECURE 2.0 aligns the 403(b) plan hardship distribution rules with the 401(k) plan hardship distribution rules. This change brings the rules for the operation and administration of 403(b) plans closer to those for 401(k) plans.
- **Starter 401(k) or 403(b) plans.** Employers that do not sponsor a workplace retirement plan may offer a new, safe harbor "starter" deferral-only plan that automatically enrolls employees at 3% to 15% of their compensation. The annual contribution limit is the same as for IRAs ($6,500, with an additional $1,000 for catch up contributions for employees who are age 50 or older). Starter plans are exempt from most nondiscrimination testing rules. This change is effective for plan years beginning after December 31, 2023.
- **Separate top-heavy tests allowed.** Effective for plan years beginning after December 31, 2023, employers can separately test excludable and non-excludable employees when determining whether the plan is top heavy.

BDO Insight: This change may increase retirement plan coverage for more workers because it removes the general requirement for employers to contribute 3% of compensation to all employees who are eligible to participate in a top-heavy plan.

- **SIMPLE plan updates.** Effective for plan years beginning after December 31, 2023, employers may replace a SIMPLE IRA during the plan year with a SIMPLE 401(k) that requires mandatory employer contributions. Also, employers with SIMPLE plans may make additional employer contributions above the existing 2% of compensation or 3% of employee elective deferrals requirement. Additional employer contributions must be uniformly made and cannot exceed the lesser of 10% of compensation or $5,000 (indexed for inflation). In addition, the annual deferral limit and the catch-up contribution at age 50 is increased by 10% percent in the case of an employer with no more than 25 employees. An employer with 26 to 100 employees would be permitted to provide higher deferral limits, but only if the employer either provides a 4% matching contribution or a 3% employer contribution.
- **Reform of family attribution rules.** Effective for plan years beginning after December 31, 2023, two changes to the family attribution rules provide relief to certain related businesses. One change addresses inequities between spouses with separate businesses who reside in a community property state and spouses who reside in a separate property state. The other change modifies attribution of stock ownership between parents and minor children.

BDO Insight: These changes will help businesses owned by each spouse provide retirement benefits to their respective employees only.

- **Improved defined benefit plan annual funding notices.** Effective for plan years beginning after December 31, 2023, defined benefit plan annual funding notices will be revised to identify more clearly the plan's funding status.
- **Indexing IRA catch-up limit.** Effective for taxable years beginning after December 31, 2023, the $1,000 catch-up limit for IRAs for individuals 50 and older will be indexed annually for inflation, in multiples of $100 (rounding down to the next lower multiple of $100).
- **Section 529 rollovers.** Effective for distributions after December 31, 2023, beneficiaries of an IRC Section 529 college savings account that has been open for more than 15 years can roll over up to $35,000 from any 529 account in their name to a Roth IRA over the course of their lifetime. Such rollovers are subject to annual contribution limits to Roth IRAs. This new rollover feature may encourage contributions to 529 plans since they can now be used for retirement and not just for college.
- **Retirement savings lost and found.** DOL must create a lost and found database no later than December 29, 2024, to help reunite participants with money that they may have left behind in workplace retirement savings plans.

BDO Insight: This may help employers deal with missing participants and uncashed checks.

CHANGES EFFECTIVE IN 2025

The following changes take effect in 2025. Employers should consider how these changes may affect their plan document and operation.

- **Mandatory automatic enrollment for new plans.** New 401(k) and 403(b) plans adopted after December 29, 2022, must provide for automatic contributions for plan years starting after December 31, 2024. The deferral percentage must be between 3% and 10% of compensation, with automatic escalation of at least 1% per year up to a deferral rate of not less than 10% but not more than 15% (10% until January 1, 2025). Participants can opt out of automatic enrollment or automatic escalation.

BDO Insight: Plans in effect on or before December 29, 2022, are exempt from the new requirements.

- **Catch-up contribution increases.** Participants age 50 and older can make a catch-up contribution in 2023 of $7,500, as indexed except in the case of SIMPLE plans that are limited to $3,500, as indexed. Effective for taxable years beginning after December 31, 2024, the catch-up contribution limits for participants who are age 60 to 63 will increase to the greater of (i) $10,000 or (ii) 150% of the regular catch-up contribution limit for 2024 (indexed for inflation after 2025).
- **Coverage of long-term part-time employees.** Under the original SECURE Act, part-time employees who work at least 500 hours per year for at least three consecutive years, and who have reached age 21 as of the end of the three-year period, must be allowed to enroll and make elective deferrals under the employer's 401(k) plan at the end of the three-year period. Those employees also earn vesting credit for years with 500 hours of service. Effective for plan years beginning after December 31, 2024, SECURE 2.0 reduces the three-year period to two years and disregards service before January 1, 2021, for both eligibility and vesting. It also extends the rule to 403(b) plans that are subject to ERISA (not all 403(b) plans are subject to ERISA). This rule does not apply to union plans or defined benefit plans.
- **Distributions for certain long-term care premiums.** Effective December 29, 2025, retirement plans can distribute up to $2,500 per year to pay for certain long-term care insurance premiums. Such distributions are exempt from the 10% early withdrawal penalty that might otherwise apply.

NEXT STEPS

While many of the retirement plan provisions in SECURE 2.0 are not effective until later years (including some, like the new federal "Saver's Match" and mandatory paper benefit statements, that will not take effect until 2026), a number of important provisions require immediate attention. Some of the changes are especially helpful to small employers.

Almost all workplace retirement plans will need to be reviewed for possible amendments and operational changes to reflect SECURE 2.0.

While further guidance on many of the new provisions is needed, employers should review their plan document and operations in the meantime to determine what, if any, amendments will be needed, what operations need to be changed and what systems or processes should be updated.

Employers may want to consult with BDO to address how SECURE 2.0 presents new opportunities and what steps are needed to minimize the impact of unfavorable changes.

Multiemployer Plan Update: PBGC Aims to Clarify Withdrawal Liability Rules

Determining the cost of exiting a multiemployer plan (MEP) has long been a complicated process fraught with ambiguity and, sometimes, protracted litigation affecting plan sponsors. Now, the Pension Benefit Guaranty Corporation (PBGC) is stepping in with a proposal to clarify withdrawal liability rules.

Here, we describe what plan sponsors need to know about the PBGC's proposed rule change to help them update withdrawal assumptions and prepare for discussions with actuaries and plan participants.

WHY EMPLOYERS WITHDRAW FROM MEPs

Employers leave multiemployer plans for various reasons – sometimes due to insolvency or bankruptcy, which renders them unable to fund the cost of participating in the plan. MEPs tend to be specific to industries or service sectors, such as building trades, sanitation workers, or firefighters. These plans, commonly referred to as Taft-Hartley plans, are typically used by labor unions, which are governed by collective bargaining agreements. In these cases, employers may leave a MEP to establish a separate plan to provide more tailored retirement benefits negotiated for workers through the collective bargaining process.

Regardless of the circumstances, when employers leave a MEP, current participants and retirees still have vested balances in the plan that require funding. In this way, withdrawal liability payments help to ensure the plan continues to pay these benefits.

HOW WITHDRAWAL CALCULATIONS CURRENTLY WORK

As set forth by the Employee Retirement Income Security Act (ERISA), when withdrawing from a multiemployer plan, an employer may owe a calculable share that represents the amount by which the current value of participant benefits exceeds the current plan assets. It is up to the plan actuary to determine this sum.

For its part, the PBGC currently offers two general approaches for plan actuaries to use when calculating an employer's withdrawal liability:

- The first such option suggests that the liability rate must be "reasonable" based on prevailing conditions and the specific characteristics of the plan in question.
- The second option states that employers do not have to consider the specific features of the plan when calculating a rate but instead can use a rate that falls within a specified range.

This general lack of clarity can render the process subjective, open to interpretation and ultimately lead to arbitration and litigation. "Without clearly delineated rules, actuaries' calculations can be all over the map depending on the assumptions they make regarding current market conditions and the demographics of the plan," commented Michael Belonio, Audit Director at BDO.

WHAT'S NEW ABOUT THE PBGC PROPOSAL

For the first time, the PBGC has stepped forward with clear rules for setting liability rates that affect an ongoing plan. Specifically, the proposal states that it is acceptable in all instances for plan actuaries to base their withdrawal liability calculations on ERISA 4044 rates. The PBGC's proposed rule specifically instructs plans to use the settlement interest rate — equivalent to the market price of purchasing annuities from private insurers — either alone or combined with other interest rate assumptions. The PBGC's rule changes will apply to all MEP withdrawals that commence on or after the final rule is published.

In a **press release**, PBGC Director Gordon Hartogensis said, "This proposed rule provides the clarity that many multiemployer plans need to determine an employer's withdrawal liability and protect the retirement security of the workers and retirees covered by the plan."

POTENTIAL IMPLICATIONS OF THE PBGC'S PROPOSED RULE

The **PBGC's formal proposal** outlined predictions for an increase in future withdrawal liability payments and reduced legal expenses. For instance, in the 20 years following the rule's effective date, the PBGC says that with more employers using ERISA 4044 rates, withdrawal liability payments will grow between $804 million and $3 billion. Additionally, because the rule would offer greater clarity around determining liability amounts, the industry should see savings of between $500,000 and $1 million annually in reduced arbitration/ litigation costs.

Reflecting on how the MEP community may receive the proposal, BDO's Belonio stated, "I imagine this will be a welcome change, because greater clarity is better for everyone. As a practical matter, the proposed rule can also be viewed as a future planning tool that plan sponsors can use to calculate in advance what they may need to fund going forward."

BDO Insight: Start Preparing for the Change Now

The PBGC's bid to streamline the MEP withdrawal process is something plan sponsors and the entire MEP community have been anticipating for years. Even though the PBGC's change is still in the proposal stage, plan sponsors should keep close watch over developments — specifically, the rate language included in the final guidance — as it can serve as a planning tool to calculate a potential liability payment in the future or to facilitate a litigation or negotiation happening today.

DOL Updated Guidance on Benefit Plan Auditor Independence Could Lead to Improved Quality of Audits

Recent changes to a Department of Labor (DOL) rule governing the independence of employee benefit plan auditors are expected to allow plan sponsors greater flexibility in choosing a qualified auditing firm. At issue is the removal of an impediment that had existed since 1975 — when the previous rule was established — while still preventing conflicts of interest in the auditing process. Effective September 6, 2022, this new rule went into effect.

This is good news for benefit plan sponsors, because they will have a greater chance to work with the most highly qualified audit firms.

FIRST CHANGE: AUDITORS MUST DIVEST ASSETS BEFORE BEGINNING AN AUDIT

Until now, auditors were disqualified from being hired to conduct an audit on any company in which they held a financial interest during the period under audit. In contrast, the DOL's **new rule** allows an auditor to divest any financial holdings in a publicly traded security before signing an initial engagement letter to perform an audit or before beginning to conduct the audit, whichever is earlier.

Previously, to be eligible to conduct an audit, an auditor would have to divest of any relevant assets a year in advance, to be free from a financial interest during the period to be audited. The change brings the rule into alignment with the Securities and Exchange Commission's (SEC) rule governing audits.

Ali Khawar, Acting Assistant Secretary of Labor for the Employee Benefits Security Administration, said the overall goal of the DOL's rule change was "to continue to foster proper auditor independence while removing outdated and unnecessary barriers to plans accessing highly qualified auditors and audit firms."

By clearing the way for more auditors to be considered and hired to audit benefit plans, the updated rule is expected to lead to a wider pool of qualified accountants. That, in turn, is expected to improve the quality of audits by allowing highly qualified auditors — who may have been ineligible under the old rule — to be hired.

SECOND CHANGE: DEFINITION OF "OFFICE" IS NOT LIMITED TO A PHYSICAL SPACE

In 1974, when the DOL defined an "office" in the Federal Register, telecommuting did not exist. The world has changed since the DOL originally outlined the meaning. In this new ruling, the DOL incorporates a broader and more current definition of the term "office" used for determining who is considered a "member" of an auditing firm. The previous definition of "member" relied on working within an auditing firm's physical office location.

The updated definition is more accurate and current — it reflects the ability to work from multiple physical locations. This update brings DOL rules on this topic in line with those of the American Institute of Certified Public Accountants (AICPA).

BDO Insight: Broaden Your Search for the Best Auditors

The update on auditor independence is good news for benefit plan sponsors and for highly qualified auditing firms. The field of eligible auditors has expanded, which should allow the quality of audits to improve. Your BDO representative is available to help you navigate the new rules.

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Co-hosts Beth Garner and Joanne Szupka are joined by Antony Hacking, partner with C-Global Consulting to discuss courageous leadership, the importance of psychological safety and managing difficult conversations. The discussion focuses on actionable tactics and techniques to strengthen your professional relationships.

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Episode 28: Exploring SECURE 2.0

In this episode, Joanne Szupka is joined by Norma Sharara, BDO Managing Director, National Tax Office, Compensation & Benefits to discuss potential challenges with automatic enrollment and long-term part-time employees, including historical context and expansion to 403(b) plans.

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Episode 29: SECURE 2.0 + ESOPs

In this episode, Joanne Szupka is joined by Maria Thiel & Blake Head to discuss the world of Employee Stock Ownership Plans (ESOPs) & SECURE 2.0.

LISTEN TO EPISODE 29 NOW

Department of Labor Unveils Regulatory Agenda for 2023

SECURE 2.0 was signed into law on December 29, 2022, makes sweeping changes to retirement savings plans. Before plan sponsors can take advantage of the many provisions in SECURE 2.0, the DOL will need to provide additional regulations and guidance on some of the provisions. In other words, there is more to come on SECURE 2.0.

In the meantime, the DOL is focused on 17 items recently released in its biannual **regulatory agenda**. Plan sponsors and other industry experts should pay attention to this agenda to be sure they understand how these changes may affect them—particularly in areas such as changes to the fiduciary rule, updates on pooled employer plans, and final rules on lifetime income illustrations.

In total, the Employee Benefits Security Administration (EBSA) listed three pre-rule stage items, nine proposed rule stage items, and five final rule stage items in its recently released regulatory agenda.

PRE-RULE STAGE

- **Improving Participant Engagement and Effectiveness**: The DOL's EBSA has been tasked with finding ways to improve retirement plan disclosures to enhance outcomes for employees. The EBSA will start by consulting with plan sponsors and other stakeholders to explore ways to improve such disclosures.
- **Pooled Employer Plans**: The SECURE Act of 2019 amended the Employee Retirement Income Security Act of 1974 (ERISA) to allow pooled employer plans to be a type of single employer pension benefit plan. The EBSA will begin exploring the need for regulatory guidance to run these plans.
- **Requirements Related to Advanced Explanation of Benefits and Other Provisions Under the Consolidated Appropriations Act of 2021**: The EBSA is reviewing whether regulation or guidance is needed to ensure patients have transparency in their health care treatment options and expected costs before a scheduled service. Request for comments closed in November 2022 and an analysis is expected in April 2023.

PROPOSED RULE STAGE

- **Definition of the Term "Fiduciary"**: The DOL's is proposing to amend ERISA's definition of fiduciary to more closely reflect today's relationships between participants, service providers, and others who provide investment advice for a fee. This proposal has been carried over since the **Spring 2021 regulatory agenda** and has no timeline for completion.
- **Improvement of the Form 5500 and Implementing Related Regulations**: Working with the Internal Revenue Service and Pension Benefit Guaranty Corporation, the DOL intends to modernize the Form 5500 to make investment data more mineable. This proposal has been carried over since Fall 2021 and movement on it is expected by June 2023.
- **Definition of Employer Under Section 3(5) of ERISA – Association Health Plans**: The EBSA will explore whether to replace or remove its 2018 final rule that set alternative criteria when an employer association could act on behalf of an employer to create a multiple employer group health plan. Action on this is expected in March 2023.
- **Adoption of Amended and Restated Voluntary Fiduciary Correction Program**: The EBSA took public comments until January 20, 2023 on its plan to expand the scope of transactions eligible for self-correction.

FINAL RULE STAGE

- **Pension Benefit Statements – Lifetime Income Illustrations:** The SECURE Act added a lifetime income illustration requirement for certain defined contribution plans. The final rule is expected to be released in May 2023.
- **Prohibited Transaction Exemption Procedures**: An April 2023 final rule is expected that would modify the DOL's process for granting prohibited transaction exemption.

INDEPENDENT CONTRACTOR CLASSIFICATION

Under the Wage and Hour Division agenda, the DOL announced that it expects to issue a **final rule** clarifying independent contractor status in May 2023. This ruling has been issued, delayed, and debated in court by the Biden and Trump administrations. The current administration believes the 2021 regulation does not reflect what is written in the Fair Labor Standards Act and will issue its updated rule to complement the law.

Understanding the DOL's priorities can help plan sponsors and other industry players plan more strategically for the year ahead. If you are interested in learning more about the DOL's regulatory agenda, your BDO representative is available to help.

Planning for the End of the COVID-19 Public Health Emergency and Outbreak Period

On March 29, 2023, The Biden Administration issued **FAQ** on the impact of the anticipated end of the COVID-19 Public Health Emergency (PHE) and the COVID-19 National Emergency (NE) on participants, beneficiaries, and enrollees of group health plans and group and individual health insurance coverage.

To help the American public endure the COVID-19 pandemic, Congress passed laws that provided billions of dollars in emergency funds to buy vaccines, tests, and other treatments that were free to the public. In addition, Congress enabled many federal departments and agencies — including the Department of Labor (DOL) and Internal Revenue Service (IRS) — to adjust rules, compliance regulations, and deadlines affecting health and welfare and retirement plans. BDO tracked these developments during the early stages of the pandemic, including our article on **deadline extensions**.

Plan sponsors should be aware of the changes when the pandemic ultimately runs its course. Here we will outline the two separate coronavirus emergency periods that would end — the Public Health Emergency and the COVID Outbreak Period — and what plan sponsors should do to prepare for a transition.

END OF THE PUBLIC HEALTH EMERGENCY

On Jan. 27, 2020, the Department of Health and Human Services (HHS) declared a Public Health Emergency (PHE) that has since been renewed by law every 90 days. President Joe Biden announced on January 30, 2023, that the PHE will end on May 11, 2023.

Key issues for plan sponsors to be aware of when the PHE expires:

- Plans will no longer be required to cover costs of COVID tests and other related services, nor will they be required to cover COVID vaccines (including boosters) and boosters from out-of-network providers without cost-sharing (e.g., deductibles and co-pays), prior authorization, or other medical management requirements.
- Plans will still be required to cover vaccines from in-network providers for free according to the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
- Plan sponsors can no longer offer free telehealth and remote care services for participants who aren't eligible for major medical coverage.

Plans should consider whether they will continue to cover COVID testing and out-of-network vaccines given the changes in coverage outlined above. At a minimum, plan sponsors should review plan documentation and participant communications to be sure that everything accurately reflects the correct coverage, exclusions, and limitations that will result from the end of the Public Health Emergency.

END OF THE COVID OUTBREAK PERIOD

On March 13, 2020, President Donald Trump issued a National Emergency concerning the COVID-19 pandemic. Since then, the relief period — now called the Outbreak Period — has been renewed annually. President Joe Biden announced on January 30, 2023, that the Outbreak Period will also end on May 11, 2023. Benefits plan sponsors will have 60 days after the announced end of the Outbreak Period to revert to several tighter deadlines associated with pre-pandemic conditions, including:

- Thirty-day period (or 60-day, if applicable) to request Health Insurance Portability and Accountability Act of 1996 (HIPAA) special enrollment
- Sixty-day election period for Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage
- Date for making COBRA premium payments
- Date for participants to notify a plan of a COBRA qualifying event or new disability
- Due date for plan sponsors to provide a COBRA election notice
- Due date for participants to file a benefit claim under the plan's claims procedures
- Deadline for internal and external appeals requests for unfavorable benefits determinations

Plan sponsors should review their plan documents and communications to make sure everything matches the necessary deadlines and it is clear to participants that such deadlines are

no longer extended. They should also check that references to "Outbreak Period" are removed from plan documents.

Be mindful that participant and beneficiary deadlines will vary, and plan sponsors should prioritize sending notices to participants whose deadlines are fast-approaching. Lastly, plan fiduciaries may consider extending certain deadlines (e.g., for 30 to 60 days) to help reduce the shock of these changes to participants.

The CARES Act delayed certain notices that retirement plan sponsors were required to send to participants. Many plan sponsors continued sending notices on schedule. But for those who didn't, now would be a good time to review your history to determine which notifications were delayed and ensure you can satisfy the required deadlines.

BDO Insight: All benefits plans should check for compliance

Regardless of how organized you have been throughout the COVID-19 pandemic, all plan sponsors should prepare for the transition out of the COVID Outbreak Period and PHE. These past two years have brought myriad changes for organizations, including hirings and terminations, mergers and acquisitions, and other activities that may have impacted benefits operations. It is vital to ensure your plan is up to date on the required changes and ready for an eventual transition, because the consequences could be significant.

For example, COBRA violations and potential litigation may increase when we emerge from these pandemic periods. Employers who outsource benefits such as COBRA should connect with their provider to ensure they have the information needed to issue the correct notices on time.

The earlier you get started, the more prepared you will be when these COVID periods end. Your BDO professional can help answer questions concerning the end of the PHE and Outbreak Period and what this transition means for your organization.

Collective Investment Trust — What Plan Sponsors Need to Know

Collective investment trusts (CITs) comprise nearly half of all assets in target date funds and are on track to surpass mutual funds as the most popular investment in that strategy, according to independent **research by Morningstar**. Many plan sponsors are adding CITs to their lineup because CITs are touted to be less expensive and more flexible than mutual funds. While CITs may be a valuable tool to help participants achieve their retirement goals, plan sponsors should be mindful of the various disclosure and compliance requirements associated with CITs as well as their risks and limitations.

WHAT IS A CIT?

CITs—also known as collective investment funds (CIFs)—are professionally managed, pooled investment vehicles that are organized as trusts. Like mutual funds, they pursue a stated investment strategy and follow specific rules. Each CIT is managed and operated in accordance with the applicable trust's governing documents.

CITs generally are only available to certain qualified retirement plans. They are privately held and therefore can't be purchased in the retail market like mutual funds. Most CITs qualify as exempt from U.S. taxes because they are "group trusts" under IRS Revenue Ruling 81-100.

Key differences between CITs and mutual funds include:

- **Management:** Banks or trust companies manage CITs and act as fiduciaries. Each year, CITs are required to issue audited financial statements and report pro rata shares on the plan's Form 5500.
- **Regulation:** CITs are regulated by the Internal Revenue Service (IRS), Department of Labor (DOL), and Office of the Comptroller of the Currency (OCC); they are exempt from registration with the Securities and Exchange Commission (SEC).
- **Cost:** Since they are privately held, CITs don't carry advertising costs like mutual funds. Because of their exemption from SEC reporting, they tend to carry lower regulatory costs.

CLOSER LOOK AT CIT-SPECIFIC REQUIREMENTS

Lower costs are certainly a major consideration in favor of adopting CITs. However, plan sponsors should be aware of how investing in a CIT affects the Plan's audited financial statements, Form 5500, and participant communications.

CITs require annual audited financial statements, and the pro rata shares in the investment must be reported on Schedule D of the plan's Form 5500. Some banks and trust companies report their CIT holdings directly to the DOL, which allows plan sponsors to reduce the disclosures for those certain investments under ASC 820.

CITs are tax-exempt if they are exclusive to participants in a qualified retirement plan. While banks or trust companies aren't required to get an IRS determination letter to verify the tax-exempt status, plan sponsors should request it to ensure the CIT will not be taxed as a corporation.

CITs are flexible investment vehicles that can be customized to include unique features such as trading frequency. Participants may not be able to trade their investment daily as they would when invested in a mutual fund. In addition, plan sponsors may be restricted when trying to exit a CIT. These features would be outlined in the CITs declaration of trust. Plan sponsors should be aware of what is in the CIT declaration of trust to understand redemption schedules and ensure clear communications with participants.

BDO Insight: Beware of potential blind spots with CITs

CITs can be beneficial to plan sponsors and participants; however, plan sponsors need to fully understand the investment structure be reading the declaration of the trust. Plan sponsors should ensure they have received all the necessary information to accurately report the investment on their financial statements and Form 5500.

What to Know About Service Provider Consolidation

Consolidation among service providers has been a long-developing trend. Empower, the nation's second largest recordkeeper, has made headlines over the past few years with several large acquisitions including Personal Capital, Mass Mutual, and Prudential. Smaller deals are making headlines as well.

Consolidation activity can affect retirement plans of all shapes and sizes. As clients of service providers that may be affected by consolidation activity, plan sponsors will need to evaluate how that activity affects them. Some plan sponsors may welcome the new relationship, while others may use the change as an opportunity to examine the value being provided and search for new providers.

While areas like payroll integration can be rather straightforward when transitioning service providers, plan sponsors should be careful to ensure the particulars of the plan document are being satisfied. For example, auto-enrollment procedures, investment allocations, vesting schedules, and processes for uncashed checks are areas that may require attention.

THE PROS AND CONS OF CONSOLIDATION

When a service provider is acquired benefits to plan sponsors may include:

- Lower fees
- Access to better technology and tools, such as retirement analyses for participants
- Greater security resources and controls over processes
- Expanded investment offerings and share class offerings
- Better service, such as dedicated contacts rather than generalist account managers
- Opportunity to assess whether the new relationship meets the goals of the plan

Potential drawbacks and challenges may include:

- Lack of advance notice of the deal for plan sponsors
- Timeline uncertainty as many acquisitions take years to fully complete
- Need to thoroughly monitor data migration
- Potential for errors, such as incorrect dates and allocation amounts
- New account manager(s) and other contacts
- Current investments may not be available with the new provider, which may require a new investment allocation analysis

HOW TO PREPARE FOR SERVICE PROVIDER CONSOLIDATION

Fiduciaries need to act in the best interests of plan participants. If your service provider is acquired, plan management should contact their existing service provider representative to understand the short-, mid- and long-term goals relating to the acquisition and the impact(s) to their plan.

BDO Insight: Being Proactive Is Being Prepared

Getting a "new" service provider as a result of a merger or acquisition can be tricky even for the savviest plan sponsors. If your service provider is going through a transition, your BDO representative can help you navigate the process.

BDO SERIES ON DIGITAL ASSETS, PART 5

White House Plan to Fight Illicit Financing Risks of Digital Assets

The White House's Comprehensive Framework for Responsible Development of Digital Assets would not be complete without an action plan to fight the illegal use of virtual currencies. These assets have already been used in money laundering schemes to finance terrorism, illegal drug production and distribution, and other crimes, and such actions pose a threat to the global economy and market stability.

As directed by the White House, the Treasury Department coordinated with several departments and agencies to examine developing threats in digital assets and offered an **action plan** to rein in these risks. Plan sponsors — even those that aren't interested in offering digital assets like cryptocurrencies in their 401(k) plans — should pay attention to these developments because the ongoing risks in the digital asset space have the potential to harm the financial system, national security, and ultimately assets in participant accounts.

THREATS, VULNERABILITIES, AND RISKS

The scale of money laundering is hard to quantify; however, it is considered to be significant. The United States is vulnerable to this illegal activity given the size of our financial system. While the U.S. government has worked hard to combat money laundering, criminals have quickly improved their methods and techniques. In addition to well-known strategies such as ransomware, fraudsters have recently started using "mixers" — virtual asset service providers (VASPs) like crypto exchanges or software designed to hide owners of certain virtual assets.

The Covid-19 pandemic also opened the door for bad actors who exploited the crisis, according to a recent **Treasury report**. The pandemic increased the opening of bank accounts, payments, and lending, and increased the digitization of finance, providing additional avenues for fraud.

Today, the United States faces five specific and significant challenges in fighting illegal finance activity, including:

- Weak or non-existent reporting and disclosure requirements for new companies and non-financed real estate transactions
- Lack of comprehensive Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) requirements
- Weakness in foreign AML/CFT regulations for virtual assets
- AML/CFT compliance issues for U.S. financial institutions
- Difficulty finding and seizing illicit cash profits and locating participating service providers

WHITE HOUSE ACTION PLAN

In its report, the White House touted its leadership in applying its AML/CFT framework in the digital assets space but recognized that more work must be done. To fight illegal activity, the White House outlined four main action areas:

- Amend the Bank Secrecy Act (BSA), certain statutes, and laws against unlicensed money transmitting to explicitly include VASPs. Penalties for unlicensed money transfers may also increase.
- The Treasury Department will conduct an illicit finance risk assessment on decentralized finance by the end of February 2023, and an assessment on non-fungible tokens (NFTs) by July 2023. The United States and its enforcement arms will continue to monitor the digital asset space for risks as well as gaps in legal and regulatory systems.
- Relevant departments and agencies will continue to expose bad actors and address the abuse of digital assets.
- The Treasury Department will ensure private sector organizations understand the rules and illegal financing risks associated with digital assets. The Treasury Department recently closed **comments** on its request to the public for input on illicit finance and national security risks in this space.

BDO Insight: Evaluate efforts before considering crypto investments

According to an October study by Charles Schwab, nearly one-third of U.S. savers would like to invest in cryptocurrencies in their company 401(k) accounts. Some service providers are beginning to have crypto offerings available to plan sponsors. Plan sponsors should keep up with developments in the digital assets space so they can evaluate whether government oversight is sufficient to offer crypto investments in 401(k) accounts. As always, it is critical to remember plan sponsors' fiduciary duty to act in the best interests of participants.

BDO SERIES ON DIGITAL ASSETS, PART 6

Reinforcing U.S. Leadership and Competitiveness in Digital Assets

Recent volatility in the digital assets market doesn't appear to be slowing down its growth. In fact, Fidelity recently found that nearly 90% of institutional investors find characteristics of digital assets appealing.[1] As investor interest continues to grow, retirement plan sponsors should pay close attention to developments in the digital assets industry, as plan sponsors may soon need to decide whether to add digital assets to their plan's lineup.

To help educate plan sponsors on digital assets, BDO is covering the White House's **Comprehensive Framework for Responsible Development of Digital Assets**. In this article, BDO describes another key section of the White House's framework related to global infrastructure.

BACKGROUND ON U.S. HISTORY IN DIGITAL ASSETS

Over the last several years, the United States has led the global conversation on how to develop a safe and stable system for digital assets. For example, the United States led the development and adoption of the first international standards on digital assets in 2018 and spearheaded the creation of the G7's Digital Payments Experts Group to examine digital payment systems and the potential for a digital dollar in 2020.

1 Business Wire, "Fidelity Digital Assets Research Finds Increased Adoption of Digital Assets Among Institutional Investors in U.S. and Europe," October 27, 2022.

REINFORCING U.S. FINANCIAL LEADERSHIP

In mid-2022, the Treasury released the following framework for international engagement on digital assets:

- **Standards:** The United States will use its leadership positions in specific organizations including the G7, G20, Organization for Economic Cooperation and Development, Financial Stability Board, Financial Action Task Force, and International Organization for Standardization to promote standards that reflect our values in areas like data privacy, free and efficient markets, financial stability, consumer protection, law enforcement, and environmental sustainability.
- **Enforcement:** The State Department, Department of Justice and other enforcement agencies will enhance partnerships with foreign countries and global enforcement organizations to improve the ability to achieve common goals.
- **Technical assistance:** The State Department, Department of the Treasury, USAID, and other agencies will extend technical assistance to developing countries, including legal and regulatory frameworks and information on the risks and opportunities of digital assets.
- **Business development:** The Department of Commerce will introduce or help strengthen the presence of U.S. financial technology and digital asset businesses in global markets.

Being a world leader in the financial industry helps the United States maintain its technological edge and ensures the country remains competitive as digital payments take on a more significant role in the global economy. Additionally, the United States plans to partner with countries that have yet to set up their digital asset systems. These policy recommendations, continued U.S. research and other goals will help to set standards for the world and minimize fraud and other nefarious actions.

DIGITAL ASSETS ARE A GROWING FOCUS. HOW ARE YOU STAYING AHEAD OF THE CURVE?

BDO will cover the potential development of a digital dollar in our continuing series on the White House's digital assets initiatives. In the meantime, please reach out to your BDO representative if you are interested in learning more about the steps the White House is taking to bolster our position as a global financial leader.

BDO SERIES ON DIGITAL ASSETS, PART 7

Potential U.S. Central Bank Digital Currency System - What Plan Sponsors Should Know

The United States is exploring the idea of a digital dollar, which is a digital asset backed by a country's government and created by its central bank. A digital dollar has potential benefits, such as speeding up payment processing and spurring further innovation, as well as drawbacks, including potential security risks. Plan sponsors should understand the concept of a digital dollar and its benefits and risks, so they are prepared if and when the United States and other countries decide to adopt one.

In the last section of the White House's **Comprehensive Framework for Responsible Development of Digital Assets**, the Biden Administration tasked the Federal Reserve to put more resources toward its research in advancing a Central Bank Digital Currency (CBDC) or digital dollar. While the United States hasn't decided whether it will establish a CBDC, the Executive Order certainly recognizes the potential for it to become part of our economy.

Here, we will review the White House policy objectives for a potential digital dollar as well as the benefits, risks, and takeaways for plan sponsors.

OBJECTIVES INCLUDE ENSURING A MORE TRANSPARENT FINANCIAL SYSTEM

In considering the move to a digital dollar, the White House's **policy objectives** stressed the importance of additional research to ensure a potential U.S. digital currency system supports the following goals:

- Benefit and curb risk for consumers, investors, and businesses
- Promote economic growth and financial stability and ease systemic risk
- Improve payment systems
- Ensure a transparent, more connected global financial system with the ability to interact with other platforms
- Expand financial access and inclusion
- Promote national security
- Respect democratic values and human rights
- Promote an environmentally sustainable system and protect financial privacy

The White House has encouraged the U.S. Federal Reserve to experiment with systems to see whether it can successfully support these objectives. Already, the Federal Reserve Bank of Boston has spearheaded **Project Hamilton**, an experiment that tests different ways to build a digital dollar's processing systems. The goal is to complete 100,000 transactions in one second; by comparison, Visa can process 24,000 transactions per second and Bitcoin only processes seven transactions per second.

PROS AND CONS OF A CBDC

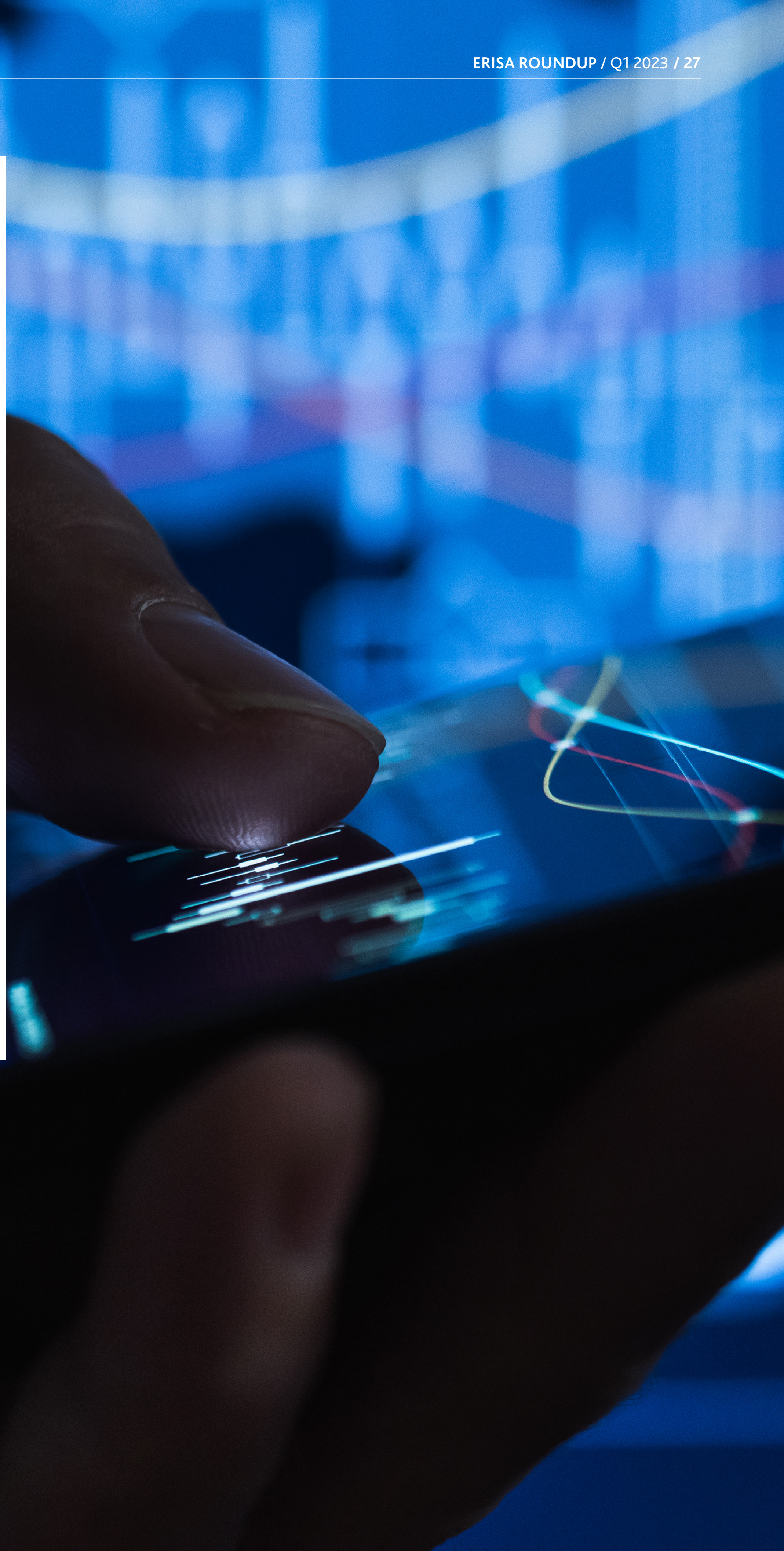
Simply Google "Central Bank Digital Currency," and many advertisements, papers, and other materials will pop up—often with the intention of promoting the idea. On the positive side, a digital dollar could help create a more efficient payment system, serve as a catalyst for further technical innovation, improve the efficiency of global transactions, increase access to consumers, and promote economic stability.

Naysayers, including some Federal Reserve Bank Chairs, are highly skeptical of a digital dollar. In an October speech, Federal Reserve Board Governor Christopher Waller said there isn't a compelling need to create a digital dollar. Aside from the security risks digital dollar poses, Waller said the U.S. dollar is already the most prevalent global currency and is highly used as reserves in foreign countries and in international trade; the risks that a digital dollar poses might harm, not help the U.S. dollar's global dominance. He added that because CBDCs would make it easier for a country to monitor transactions, certain companies may be less inclined to use that currency.

BDO Insight: CBDC is a long-term research project, but plan sponsors should pay attention now

While the United States is a dominant force in the global economy, it lags other countries when it comes to developing a CBDC. More than two dozen countries, led by China, have already launched either a pilot or actual government-backed digital dollar, according to the **Atlantic Council**. Experts have speculated whether the United States will be pressured to create a digital dollar to keep up with other G20 countries that are using a CBDC.

A next-generation payment system may take years to develop and implement. The government will be seeking public-private partnerships to help with pilot programs for a digital dollar. Plan sponsors' commercial banks and other service providers may play a role in this stage of possible adoption. Plan sponsors should consider having discussions with service providers to understand how these developments will affect them.



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