ERISA ROUNDUP

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

Q1 2019

BDO

A NOTE FROM BDO'S NATIONAL ERISA PRACTICE LEADER

Spring is here and BDO's ERISA Center of Excellence is celebrating a fantastic first quarter along with National Employee Benefits Day on April 2.

In the past quarter, we've stuck to our resolutions to bring new insights and resources we hope you'll find helpful – a new interactive requirements calendar to help you stay on top of deadlines, best practices around remittance schedules and corrections programs, and more.

In May, our team will be headed to New Orleans for the AICPA Employee Benefit Plans Conference. We look forward to sharing our learning and other industry trends as we head into filing season. You can always follow along with us at www.bdo.com/erisa.

Sincerely,

BETH GARNER
National Practice Leader, ERISA

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

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WHERE TO FIND US

This May, our team will be heading to New Orleans, Louisiana for the AICPA's Employee Benefit Plans Conference. The Conference will start Sunday, May 6th and conclude on Wednesday, May 8th. Kim Flett will lead a half-day workshop on Form 5500s as well as two sessions – one on 401(k) Testing and Alternatives and the other on 404(c) and 404(a)(5) Compliance Fund Selection Process. Please reach out to Kim at kflett@bdo.com to connect at the conference.

2019 Deadlines and Important Dates for Plan Sponsors

APRIL 2019

- **1** / Hire auditor (if needed) by April 1.
- **1** / Employers choosing to file electronic Form 1094-C must do so by April 1, to prove compliance with the Employer Shared Responsibility Mandate of the Affordable Care Act (ACA)
- **1** / April 1 Deadline for 5 percent business owners and terminated participants who turned 70 ½ in the prior year to receive their required minimum distribution (RMD).
- **15** / Corporations and sole proprietors that are not getting an extension must fund contributions by April 15 and receive tax deduction for the prior year.
- **15** / IRA contributions for the prior tax year must be funded by April 15.
- **15** / Participants who contributed over 402(g) or 415 limits in the previous year must be refunded the excess amount by April 15.
- **15** / File PBGC Form 4010 by April 15, Notice of Underfunding for single-employer defined benefit plans.
- **25** / File PBGC Form 200 by April 25, if plan sponsor of a single-employer defined benefit plan does not make the April 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **30** / Send annual funding notice to participants of single- and multi-employer defined benefit plans by April 30.

MAY 2019

- **15** / File PBGC Form 10 by May 15, Post-Event Notice of Reportable Events for single-employer defined benefit plans.
- **15** / Defined contribution plans must send fee and benefit information to participants by May 15.

JULY 2019

- **1** / Plans with publicly traded employer stock must file Form 11-K with the Securities and Exchange Commission by July 1.
- **25** / File PBGC Form 200 by July 25, if plan sponsor of a single-employer defined benefit plan does not make the July 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **31** / Large plan audit must be completed by July 31 to avoid requesting Form 5500 extension.
- **31** / IRS Form 5500 must be filed by July 31.
- **31** / To request a Form 5500 extension, Form 5558 must be submitted by July 31.
- **31** / Pay Patient-Centered Outcomes Research Institute (PCORI) fee by July 31. Self-insured health plans must pay $2.45 per person (covered by health plan).

AUGUST 2019

- **14** / File PBGC Form 10 by Aug. 14, Post-Event Notice of Reportable Events for single-employer defined benefit plans.
- **31** / Plans that failed compliance testing may take this mid-year opportunity to run compliance tests. Aug. 31

SEPTEMBER 2019

- **15** / If an extension was filed, Sept. 15 is the deadline to fund employer contributions.
- **15** / Minimum funding deadline for single- and multi-employer defined benefit plans.
- **25** / File PBGC Form 200 by Sept. 25, if plan sponsor of a single-employer defined benefit plan does not make the Sept. 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **30** / Sept. 30, Summary Annual Report sent to participants with Dec. 31 plan year end.

OCTOBER 2019

- **1** / Make sure procedures align with language in plan document. Oct 1.
- **1** / Annual notices to participants begin Oct. 1, including 401(k) Plan Safe Harbor Notice, automatic contribution arrangement safe harbor and qualified default investment alternative.
- **15** / File PBGC Form 10 by Oct. 15, Post-Event Notice of Reportable Events for single-employer defined benefit plans.
- **15** / Oct. 15 is the extended deadline for filing Form 5500.
- **15** / Oct. 15 is the extended deadline for filing individual and C-Corp tax returns.
- **15** / Oct. 15, multi-employer defined benefit plans file PBGC Comprehensive Premium document and pay $29 per participant flat-rate premium.
- **15** / Oct. 15 to open a Simplified Employee Pension (SEP) plan for extended tax filers.
- **25** / File PBGC Form 200 by Oct. 25, if plan sponsor of a single-employer defined benefit plan does not make the Oct. 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.

NOVEMBER 2019

- **14** / File PBGC Form 10 by Nov. 14, Post-Event Notice of Reportable Events for single-employer defined benefit plans.

DECEMBER 2019

- **1** / Annual Participant notices must be distributed by Dec. 1. These include: 401(k) safe harbor, annual automatic contribution and qualified default investment alternative (QDIA) notices.
- **15** / Dec. 15 is the extended deadline to distribute Summary Annual Report (SAR) for calendar year plans.
- **31** / By Dec. 31, process corrective distributions for failed ADP/ACP testing; a 10 percent excise tax may apply.
- **31** / 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.
- **31** / Required minimum distributions for participants age 70 ½ must be completed by Dec. 31 for calendar plan years.
- **31** / Plan sponsors must amend plan documents by Dec. 31 to account for any discretionary changes made during the year.

CONTRIBUTION PLAN LIMITS AND OTHER ROLLING NOTICES FOR 2019

In addition to those important deadlines and dates, plan sponsors should be aware of the contribution plan limits and other rolling notices for 2019:

- Employee salary deferral limits for 401(k), 403(b) and 457 plans will be $19,000. Age 50 catch-up contribution limit stays unchanged at $6,000.
- Health Savings Account contribution limit is $3,500 (single) and $7,000 (family). Age 55 catch-up contribution stays at $1,000.
- Traditional and Roth Individual Retirement Account contribution limit will be $6,000. Catch-up contributions for participants age 50 and over stays at $1,000.
- Limitation for the annual benefit under a defined benefit plan under Section 415(b)(1)(A) will be $225,000.
- Newly eligible employees must receive a Summary Plan Description (SPD) within 90 days.
- Provide quarterly statements and fee information to participants.

Employee Benefits Trends to Watch in 2019

Last year brought several changes that had a direct impact on the employee benefits world, including wide-ranging tax reform, new European protections on electronic data, and a host of ERISA-specific regulatory changes.

In addition to these developments, a tightening labor market and the continued growth of the "gig" economy caused many companies to rethink their approaches to using their benefits programs as a tool for attracting and retaining top talent. As part of these efforts, many companies have increased their efforts to help employees save for retirement and live healthier lives.

As plan sponsors outline their strategies for 2019, we have identified several trends that are shaping the employee benefits landscape and creating opportunities for employers to implement best practices to meet the needs of their workforces.

INCREASING FOCUS ON EMPLOYEE WELL-BEING

Over the past several years, terms like "well-being" and "wellness" have become increasingly common in discussions about employee benefits. Today, many employers are working harder to offer effective programming that goes beyond traditional benefits offerings to focus on employees' comprehensive financial, physical, social and emotional health.

About half of employers today offer financial well-being tools, and we expect the growth of these offerings to continue in 2019. As benefits providers continue to roll out new technology, and as methods and strategies to help make financial well-being become a more effective offering for employees, plan sponsors should keep a close eye on opportunities to enhance employee engagement through these offerings.

EXPANDING AUTO-ENROLLMENT

Auto-features for defined contribution plans continue to gain popularity, with more than half of employers automatically enrolling new employees into the company 401(k), according to the **Plan Sponsor Council of America's (PSCA) 61st Annual Survey**. Recently, the auto feature trend has moved into new areas. In November 2018, the Department of Labor (DOL) **proposed a rule** that would **automatically transfer participant retirement balances** left behind at an old job to their new employers' 401(k) plan. The DOL is continuing to define the final rule.

OFFERING NEW FINANCIAL BENEFITS TO ENHANCE EMPLOYEE RETENTION

Retaining employees is a major challenge for employers as the unemployment rate remains near historic lows. As a result, companies are looking for additional financial benefits they can provide to enhance retention, such as student loan repayment and enhanced retirement options.

Plan sponsors may be more receptive to helping employees pay off student debt thanks to an Internal Revenue Service (IRS) **private letter ruling** that permitted a company to contribute to an employee's 401(k) account when the employee used at least 2 percent of pay to pay down student debt. In addition, employers are recognizing employees' desire to diversify tax exposure, and nearly two-thirds of companies are offering Roth 401(k) options to workforces, according to the PSCA survey. Expect to see this, as well as low-fee options like target-date funds, continue to expand in 2019.

USING CASH BALANCE AND ESOPS AS AN EXIT STRATEGY

With nearly 10,000 baby boomers retiring every day, many business owners in this generation are reviving defined benefit cash balance plans as well as employee stock ownership plans (ESOPs). Both strategies work well when owners are looking to generate liquidity from their equity. Owners can increase cash balance plan contributions as they age, and ESOPs help transfer ownership of the company to employees as an addition to his or her retirement account.

ASSESSING LEGISLATIVE PRIORITIES

In 2018, Congress and the Trump Administration inched forward on strategies to expand 401(k) coverage in the workplace. In August 2018, President Trump issued an executive order directing the DOL to look at ways to expand multiple employer plans (MEPs) for small businesses. Meanwhile, a similar initiative showed up in the Retirement Enhancement and Savings Act (RESA), which also included other provisions that would help plan sponsors include lifetime income options within 401(k) plans.

MONITORING REGULATORY PROGRESS

The IRS and DOL are making progress in implementing changes to retirement plan policies. The **IRS proposed amendments** for new hardship distribution rules, reflecting the changes passed in the Bipartisan Budget Act of 2018. With the comment period over the agency is expected to finalize the rule soon.

PROTECTING EMPLOYEES' ONLINE DATA

The European Union moved ahead with its **General Data Protection Regulation** (GDPR) in 2018, heightening the importance of safeguarding online information. More than two years ago, the DOL's Advisory Council on Employee Welfare and Pension Plans released **Cybersecurity Considerations for Benefit Plans**, suggesting plan sponsors create cyber fraud policies. Today, many plan sponsors continue the process of assessing their risk exposure and creating plans to respond to the increasing threat of cyberattacks on 401(k) plans.

BDO INSIGHT: CAPITALIZE ON OPPORTUNITIES TO STRENGTHEN YOUR BENEFITS

In 2019, plan sponsors have tremendous opportunities to implement programs to reduce employee financial stress, increase coverage and offer more benefits that are tailored to the needs of their employees. But understanding how these broader trends can be applied to your workforce requires carefully considering all of the new options and regulations.

To learn more about how BDO can help prioritize your company's benefits needs in 2019, contact your representative.

Forfeiture Accounts: Not Just Another Participant In Your 401(k) Plan

January 1st was the start of a new plan year and for many employee benefit plans and those charged with governance may take the first quarter of 2019 to review plan provisions, benchmark investments or evaluate service providers. One area that should be reviewed is the balance in the forfeiture account.

It's the responsibility of those charged with governance for the plan to ensure these forfeitures are handled properly and in accordance with the plan document. While the process seems simple, the forfeiture account can be challenging to manage.

KEEP GOOD RECORDS

A forfeiture account is often a catch-all for forfeitures from a variety of sources, including non-discrimination testing failures, certain participant breaks-in-service, account balances for lost participants and uncashed checks. It's important to track the source of forfeited assets as some funds, such as uncashed checks, represent fully vested balances that have restricted use. Keeping good records also simplifies the transition process when changing service providers as trying to recreate and/or reconcile details of the forfeiture account can be a significant headache.

FOLLOW THE PLAN

By law, forfeited assets must be distributed in ways that benefit the plan and participants. In general, the assets may be used to pay plan administrative expenses, reduce employer contributions, allocate an extra contribution to all participants or restore forfeited assets (such as for rehired employees). Some plans have very specific restrictions on how and when forfeitures may be used. Plans risk disqualification if forfeited assets are spent in ways not outlined by the plan document.

When using forfeitures to reduce employer contributions, those charged with governance need to verify that only nonvested assets are used. For example, if the forfeiture account has a $10,000 balance, of which $6,000 is nonvested assets and $4,000 is uncashed checks, the $4,000 cannot be distributed for the benefit of the plan or its participants since uncashed checks are fully vested.

BE ON TIME

The plan document should note when the assets are to be distributed. As a general rule, forfeitures must be used by the end of the plan year during which they were transferred to the account, but in certain cases may be used by the end of the plan year following the year of transfer. It's critical to remember forfeitures cannot be rolled over year after year; follow the plan document to prevent this from happening.

Recordkeepers can help manage these distributions with quarterly or other timely reminders reporting the forfeiture account balance. Those charged with governance should check with the service provider to see what notification or other assistance is available.

The Internal Revenue Service (IRS) and the Department of Labor (DOL) also expect plans to allocate forfeited assets on a timely basis. Forfeitures held unallocated for longer than permitted by the plan document, may be corrected using the IRS **Employee Plans Compliance Resolution System** (ECPRS). It may also be possible to go through the voluntary correction process without having to involve the IRS.

NEW USE FOR FORFEITURES

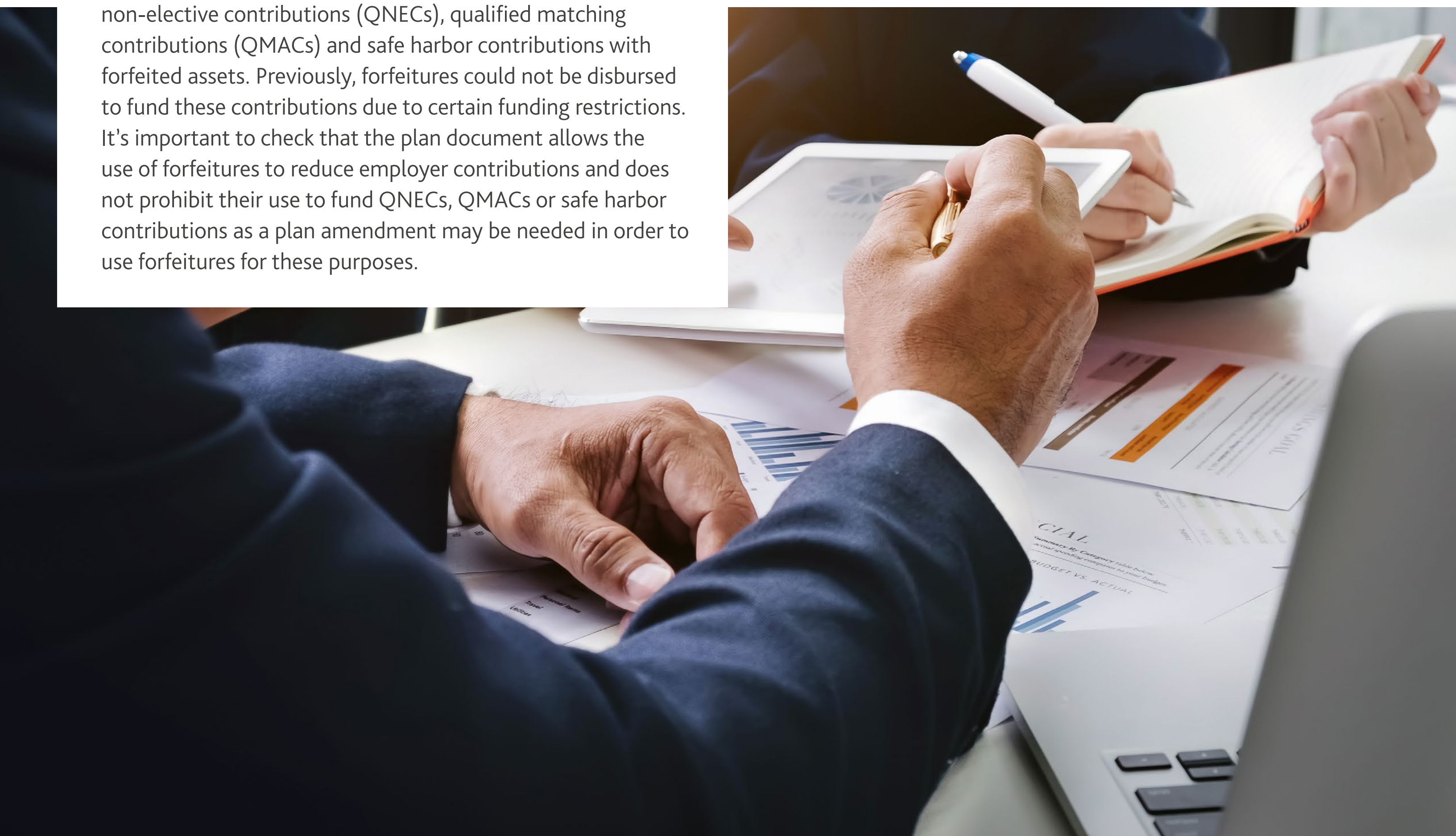
Recently released IRS **final regulations** permit funding non-elective contributions (QNECs), qualified matching contributions (QMACs) and safe harbor contributions with forfeited assets. Previously, forfeitures could not be disbursed to fund these contributions due to certain funding restrictions. It's important to check that the plan document allows the use of forfeitures to reduce employer contributions and does not prohibit their use to fund QNECs, QMACs or safe harbor contributions as a plan amendment may be needed in order to use forfeitures for these purposes.

BDO INSIGHT: KNOW YOUR RESPONSIBILITIES

Managing the forfeiture account requires diligence, which starts with understanding the plan document provisions. Procedures related to forfeitures may be clearly outlined in the plan document, but are not always followed in practice. Keeping detailed records also ensures proper disbursements.

Next, good communication between those charged with governance and recordkeepers is essential in knowing the status of the account. Neglecting needed disbursements or corrections can expose the plan to potential prohibited transactions, open the plan up to IRS and/or DOL audits or - worse - jeopardize the tax qualification of the plan.

For more information about overseeing this important part of your 401(k) plan, please reach out to your BDO representative.



Labor Department Proposes Auto-Transfer Plan For Small 401(k) Accounts

Each year, nearly 15 million American workers change jobs, with many leaving their 401(k) accounts behind. The Department of Labor (DOL) is trying to relieve this headache for plan sponsors and keep employee accounts more complete by proposing a rule that would transfer retirement balances left behind to participants' 401(k) plans at their new employers.

If the **proposed rule** is finalized, it would clear the way for companies to automatically transfer abandoned 401(k) accounts between $1,000 to $5,000 to financial technology firm Retirement Clearinghouse LLC (RCH) of Charlotte, N.C. RCH would hold the assets in an individual retirement account (IRA) when an employee leaves a job or if the plan is terminated; the assets would then automatically transfer when the employee moves to a new company and opens a corresponding 401(k) account.

RCH needs the DOL approval because current law bans the firm from accepting a fee for the automatic transfer on behalf of the participant from the old employer to the new one. RCH said it uses locate, match and transfer technology that scans record keepers—who voluntarily provide data—to determine whether the participant has found a new job.

SLOWING THE LEAKAGE

This auto portability proposal is in line with other automatic 401(k) plan features, like auto enrollment and escalation, that are designed to encourage saving for retirement. It also addresses what RCH calls a cash out, or leakage, crisis.

RCH runs a National Retirement Savings Cash Out **Clock**, which shows that nearly $62 billion has been cashed out of 401(k) plans this year. Of the nearly 15 million defined-contribution participants who change jobs annually, RCH notes about 40 percent cash out of their 401(k). This leakage can have a damaging impact on the total amount participants save for retirement. Additionally, money taken out of retirement accounts before age 59 ½ is subject to regular income tax plus a potential 10 percent penalty tax.

The proposal may stem the flow of the largest source of leakage from 401(k) accounts today. The Employee Benefit Research Institute estimates that the proposed rule would reduce cash outs by nearly half.

Currently, employees are left with the responsibility to transfer 401(k) assets from one company to another. Moving to a new job can create a lot of stress, and adding the transfer paperwork only adds to that burden. Many employees choose to do nothing, leaving the employer with the added account to manage.

Today's employers have options, too, when it comes to managing assets left behind. If the amount vested is under $1,000, employers who have it written in their plan documents may send a check to the employee; often this is done as soon as administratively possible. For vested accounts between $1,000 and $5,000, the employer may elect to distribute as well, but this amount must be transferred to a newly created IRA for the participant.

Before any involuntary distributions, plan sponsors must give 30-days notice to participants so they can decide whether they agree with the plan.

The proposed rule would also relieve plan sponsors of any fiduciary liability when handling the transfer of 401(k) accounts. As with any decisions concerning 401(k) plan management, plan sponsors must act in the best interest of the participant. Under the proposal, once the assets are moved to RCH's IRA, plan sponsors would no longer have any fiduciary responsibilities to that participant's account. Moreover, removing these low and often inactive accounts will most likely reduce administrative costs.

POTENTIAL DRAWBACKS TO CONSIDER

While the new rule could be helpful in limiting some of the leakage issues affecting workers, the proposal has not received universal support from employers or from employee advocates. Despite the DOL's best efforts to formulate an effective solution, plan sponsors may not want to have participants' accounts automatically transferred. In some cases, the transfer may not be a good option because assets may not be invested optimally for a participant's needs. In addition, plan sponsors might not be keen on sharing participants' personal information with the clearinghouse.

BDO INSIGHT: A PROPOSAL WORTH WATCHING

Preventing money from being cashed out of 401(k) plans helps participants build retirement nest eggs over time. The proposed rule, which would automatically transfer low-balance 401(k) plans from one employer to another on behalf of a participant, could be helpful in limiting this leakage and reducing cash outs. But with any proposed rule or law, it's important to think through any potential unintended consequences and how they could affect employees and plan sponsors.

Your BDO representative can help review the terms of the proposal to see how it may work with your plan's needs and how it could affect your plan participants.

International Assignments: Managing Benefits and Taxes for Expatriate Employees

Given the complexity of the U.S. tax code and the myriad regulations related to ERISA plans, managing benefits for domestic employees is a complicated undertaking. But managing benefits for employees who your U.S. company sends to work overseas—known as expatriates, or expats—adds several layers of complexity.

As globalization continues to be a defining characteristic of the economy, many U.S. companies are finding opportunities to grow abroad. But before their employees ever step on foreign soil, employers need to learn about the various taxes other governments may impose on benefits and compensation and think through the various questions that go into developing a sound policy for managing benefits for expatriate employees. Employers also need to help their employees understand what the foreign assignment means to them with respect to taxes and benefits.

UNDERSTAND THE BASICS OF EXPATRIATE TAXATION

For purposes of this article, an expatriate is a U.S. citizen or green card holder who is sent by their U.S. employer to work at a branch or other linked organization in a foreign country. Assignment duration may vary anywhere from six months to several years. Employees must obtain a work visa, and—depending upon the host country—may be eligible for certain benefits offered by that country while working abroad.

U.S. citizens, green card holders, and their employers need to understand that expatriates will still have an income tax liability and income tax return filing obligation at home regardless of where they work globally. The United States is unusual in this regard with respect to taxing their citizens and permanent residents (green card holders) who are living and working abroad; many foreign governments allow their citizens to fall under the host country's tax code when working abroad and home country taxation is often suspended until the individual returns to their home country.

The United States' unusual approach, however, doesn't mean that U.S. expatriates will always face double taxation. The U.S. tax code looks to offset this, at least partially, by allowing certain foreign tax credits and/or the foreign earned income exclusion. Employers take these credits, the foreign earned income exclusion, and the foreign country's tax policies into consideration when developing the compensation package for the employee.

In addition to understanding how the U.S. will tax the expatriate's foreign compensation and benefits, employers also need to understand how the host country will tax this income. Almost every country requires some kind of tax to be paid by foreign workers. While taxation of salary and bonuses may be relatively straightforward, things can get quite complicated when it comes to how benefits—such as retirement matching contributions or profit sharing—are taxed.

CONSIDER YOUR OPTIONS FOR MAKING EXPATRIATES WHOLE

Employers need to study foreign countries' tax laws and be aware of each country's nuances so a fair, balanced and competitive compensation package is developed. The good news is that employers have flexibility in navigating these issues and developing their policies.

The first option is to do nothing. Sometimes, in this scenario, the expatriate is responsible for the taxes and other costs incurred while working in the host country. A more common strategy is to equalize the tax burden on the employee. This is a tax-neutral policy, often referred to as tax equalization, where the employee is no worse or better off while working abroad. In this case, the goal of the compensation package is to keep employees whole—which means maintaining roughly the same financial standards they would have experienced at home.

BEWARE DOUBLE TAXATION OF RETIREMENT BENEFITS

Expatriates are allowed to participate in U.S.-based retirement plans while working abroad. They can contribute pre-tax dollars to their traditional 401(k) plans, and employers can offer a match to the employee deferral. Unfortunately, many foreign countries consider the deferral to be taxable income.

What's more, the employer contribution may be considered regular income subject to foreign taxes as well. In this case, the employee is double taxed: first by the host country for the "income" sent to the retirement plan, and then by the United States when it's time for the participant to withdraw assets. (Double taxation may also happen in a Roth situation, where participants pay taxes up front when making the deferral.)

In these situations, employers will need to decide whether expatriates should be excluded from the plan and possibly compensated outside of the benefit to avoid the double taxation—or utilize a tax equalization policy where the expatriate is made whole. The latter approach would be in keeping with the U.S. system, in which qualified retirement plan contributions are only taxed once when the employee takes a distribution from the plan at or after retirement.

BDO INSIGHT: TAKE A "NO SURPRISES" APPROACH TO YOUR EXPATRIATE BENEFIT POLICY

The goal of any expatriate compensation package should be to ensure that neither the employee nor the company encounter any surprises. To achieve this, employers need to think through many issues well before sending an employee abroad.

The first issue is to decide whether or how to make employees whole. After that major issue is resolved, employers need to focus on finer points such as evaluating foreign tax policies, reviewing plan documents to determine eligibility and analyzing foreign tax credit structures to maximize value.

It's also important to have strong communication strategies and resources for employees. A solid two-way communication plan aids expatriates in clearly understanding what they will be receiving and responsible for, and offering them access to experts who can help them feel that they are not alone in navigating the oftentimes complex tax structures in host countries.

Employees working at different companies often compare notes about their employer's compensation policy for expatriates with other expatriates they meet abroad, so understand that there are competitive reasons for developing a fair, robust approach.

When sending employees abroad, employers have a lot to manage from a benefits perspective, between adequately rewarding employees, understanding individual countries' tax rules, filing the appropriate forms in the foreign jurisdictions and keeping costs under control. For more than 30 years, BDO's Global Employer Services Expatriate Tax professionals have been helping organizations navigate these issues and can help ease the burden of program administration and global compliance.

Helping Participants Understand Tax Diversification Strategies for Retirement

Diversification is an important principle of risk management when it comes to saving for retirement. While many investors understand the benefits of spreading their risk exposure across asset classes in their portfolios, many don't realize that diversifying their tax exposure can have benefits in terms of managing cash flow in retirement.

Despite the potential benefits of diversifying tax exposure, few participants do so, even though these options are offered by many plans. Today, 70 percent of employers offer a Roth 401(k) option, according to the Plan Sponsor Council of America's (PSCA) **61st Annual Survey Reflecting 2017 Plan Experience**, but only 20 percent of employees take advantage of the strategy.

Employers who are concerned about employees' financial well-being should take the opportunity to educate employees about the potential benefits of saving retirement dollars in plans that are taxed differently. Employers who offer traditional and Roth 401(k) options should make user-friendly information available so participants can make decisions appropriate for their risk tolerance, timeframe and retirement goals.

PAY TAXES NOW OR LATER?

First, it's important to know the basics between a traditional vs. Roth 401(k) employer-sponsored retirement plan, as well as their retail cousins, the traditional and Roth Individual Retirement Account (IRA). In a traditional 401(k) plan, participants make tax-free contributions from their paychecks. The money grows tax-deferred, but the full amount gets taxed at the participant's income tax rate when it is withdrawn. There are penalties when money is taken out before reaching age 59 ½. Contributions to a traditional IRA may be fully or partially deductible, and the tax consequences of withdrawals are the same as with a traditional 401(k).

With a Roth 401(k), the taxation is basically reversed, and contributions are taxed at the participant's income tax rate at the time of the contribution. But, once the participant has reached age 59 ½, withdrawals from a Roth account are tax-free, including the growth of the funds. Roth IRAs have income eligibility limits, but work similarly to the Roth 401(k) in terms of the timing of when taxes are paid. Also, it's important to note that participants need to hold onto their Roth account for a minimum of five years before withdrawing funds to receive the full benefits.

Roth users are typically betting that they will be at a higher tax rate when they withdraw funds in retirement than when they are contributing during their working years. This theory is particularly appealing for younger workers who have yet to reach their peak income years and will have many years of growth before they begin withdrawing funds.

SHOWING THE IMPACT OF TAXATION

There is much debate among investors about which vehicle provides higher income at retirement after tax considerations – traditional pre-tax or Roth retirement accounts. What many people don't realize is that the decision does not have to be made exclusively for one account or the other.

While participants can contribute a maximum of $19,000 into all types of 401(k) accounts in 2019, there is no playbook outlining how those deferrals may be split between traditional and Roth accounts.

Participants may think paying taxes up front on Roth contributions might be too steep, but they may reconsider this upfront cost when learning what may happen in retirement if they are solely invested in a traditional account.

For example, a retiree may need to pay for a major expense in retirement, like a new car, a new home (that is not a first home purchase) or a significant medical expense. Taking a large withdrawal from a traditional 401(k) plan to pay for these expenses may bump the retiree into a higher tax bracket. Withdrawing funds from a Roth account, however, won't have that effect.

The Tax Cuts and Jobs Act of 2017 (TCJA) made significant changes to the tax code, including lowering many people's rates—and with them the rates that participants pay on Roth contributions. The fact that these tax cuts are scheduled to "sunset" and return to pre-2018 levels in 2026 highlights the unpredictable nature of taxes. Employers can explain that contributing to a Roth is one way to mitigate the unpredictability of tax rates. For funds that have been contributed to a Roth, participants don't need to worry about what Congress may do about tax rates in the future.

OTHER ROTH OPPORTUNITIES AND RESTRICTIONS

Some employers allow traditional plan participants to convert all or a portion of their assets into a Roth 401(k), but assets in a Roth cannot be converted to a traditional 401(k). Rules allow high-income earners to convert their traditional IRA to a Roth IRA, so long as they are able to pay the appropriate taxes at the time of the conversion. Previously, only people earning less than $100,000 could do this. A new drawback to a Roth conversion is that it cannot be reversed. The TCJA removed the ability to undo the conversion to Roth by a later characterization back to a traditional IRA. So if the asset value declines before the income taxes are paid, you will still owe the taxes on the value at the conversion date.

In addition, traditional 401(k)s and IRAs require participants to take a Required Minimum Distribution (RMD) each year, starting at age 70 ½. While RMD rules don't apply to Roth IRAs, these rules do apply to a Roth 401(k). This distribution requirement can be avoided by rolling the Roth 401(k) assets into a Roth IRA upon retiring or leaving the company.

Roth IRA accounts can be passed along to spouses tax-free when the retiree dies, and non-spouse heirs may be able to spread RMD's over their own life expectancies, effectively extending the tax deferral period even longer.

Roth accounts are more flexible than traditional accounts. For example, after the Roth account has been open for five years, a retiree can take out the principal any time they want tax-free. And the IRS allows exceptions to the 10% early withdrawal penalty before age 59-1/2 for the first-time purchase of a home or for college expenses. Aside from the many advantages of Roth accounts, an individual should contribute enough to their employer's plan to get the match, before they contribute to a Roth IRA. Getting the full employer match is almost always more valuable than tax differences between traditional and Roth accounts.

Lastly, it's important for participants to realize that company matching 401(k) contributions must go into a traditional account even if the participant uses a Roth 401(k) for his or her own contributions.

TIME TO BOOST ROTH EDUCATION

Understanding the tax rules about the various types of retirement accounts can be tricky, even for the savviest of investors. The lack of understanding surrounding Roth accounts may explain why they aren't very popular with plan participants. Even when they are used, PSCA found that contribution rates are lower in Roth than in traditional accounts.

Plan sponsors can play an important role in outlining the differences so participants can think strategically about taxes and retirement. In addition, plan sponsors have a unique opportunity to help participants understand that diversifying their retirement dollars across traditional and Roth accounts can be an effective way to mitigate some of the risk related to taxes in retirement.

Explaining the nuances of the various savings strategies can be difficult as well. Your BDO representative can walk you through simple steps to help educate plan participants on their tax diversification options.

Remittance Schedules: How to Know and Meet Your Deadlines

Part of offering a defined contribution plan, whether a 401(k) or a 403(b) plan, is making sure that the money participants contribute from their paycheck is deposited in their retirement account in a timely manner. While this might seem like a relatively minor and simple task in the scope of a plan sponsor's fiduciary duties, the Department of Labor (DOL) views non-compliance with remittance rules as a major issue, and missing deadlines for deposits—even by a couple of days—can carry significant penalties.

Unfortunately, there is much confusion about how quickly plan sponsors are required to make these deposits. The DOL expects plan sponsors to separate employee elective deferrals and loan repayments from the employer's general assets as soon as reasonably possible, but no later than the 15th business day of the following month. Small plans, which have fewer than 100 participants, have a safe harbor of seven business days to make this transaction happen, but larger plans are expected to do this as soon as reasonably possible.

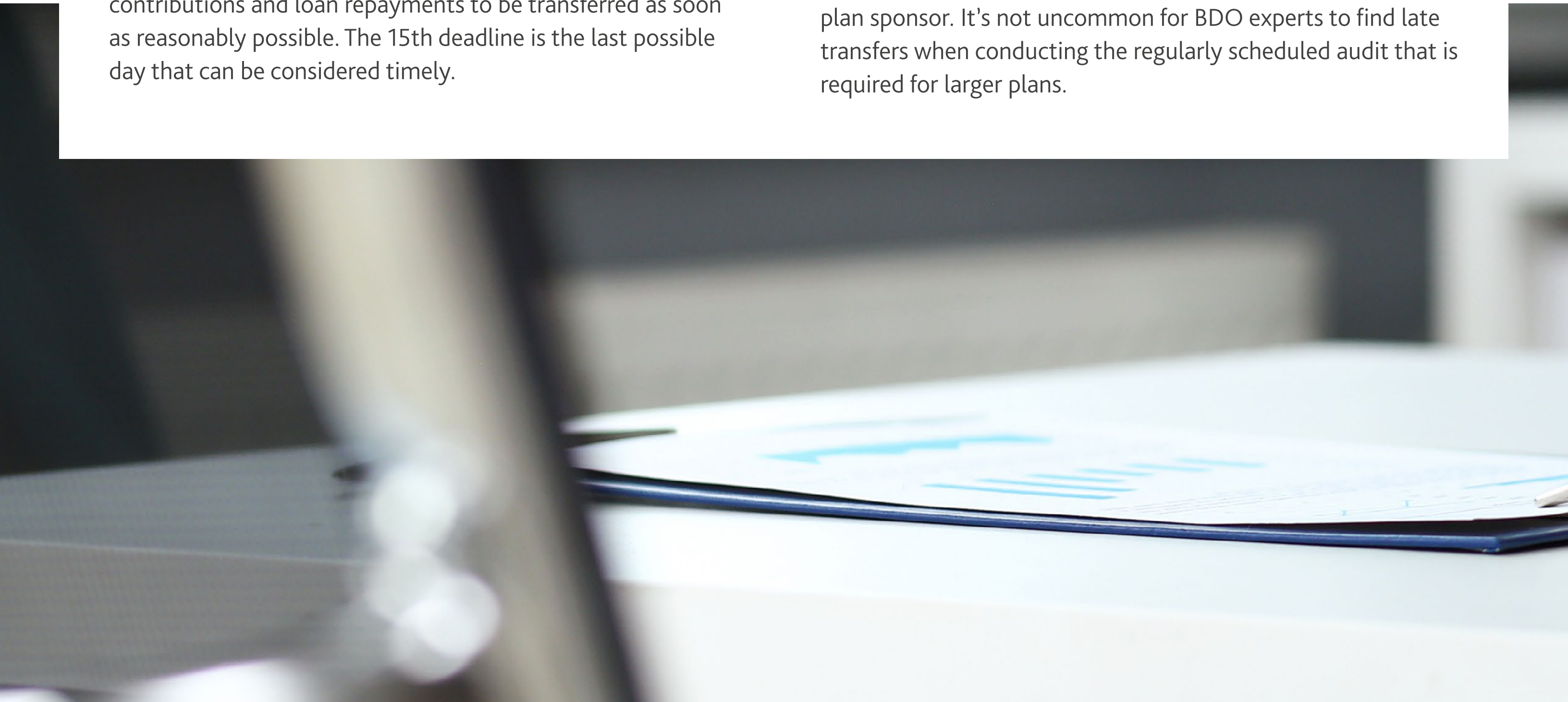
Many plan sponsors mistakenly—and understandably—think this means that they have until the 15th of the next month, which is just what the DOL says. They see this as a safe harbor—which it is not. The DOL requires participant contributions and loan repayments to be transferred as soon as reasonably possible. The 15th deadline is the last possible day that can be considered timely.

DEFINING WHAT IS "REASONABLE"

So what is reasonable? It varies depending on the company's circumstances. For companies with more streamlined operations, it may be within a few business days of completing payroll withholding taxes. But some companies with multiple locations, it may be up to eight days to be reasonable. Others differentiate between regular and business days. Many companies outline the remittance schedule in the plan document. Whether the plan has a remittance policy or not, the DOL will look at the deposit history and assume that the pattern established by the plan sponsor is the default procedure.

The DOL considers late participant contributions and loan repayments to be prohibited transactions under the 1974 Employee Retirement Income Security Act (ERISA); they are subject to an excise tax based on the amount of the late remittance as well as other possible penalties. After a late remittance is determined, plan sponsors need to report the transaction on their Form 5500.

Often, plan sponsors are unaware of remittance violations. Holidays, key employee absences or other factors could play into the delayed remittance that may go unnoticed by the plan sponsor. It's not uncommon for BDO experts to find late transfers when conducting the regularly scheduled audit that is required for larger plans.



AVOIDING MISSED REMITTANCE DEADLINES

Given the lack of clarity about remittance rules, what can plan sponsors do to strengthen their practices related to depositing employee contributions? First, it's important to think about what works for your company. If the company has multiple locations, do you need more time to organize the remittance? And how often are you able to review your transactions to make sure you're meeting deadlines?

Many organizations find that it's helpful to review the remittance schedule on a quarterly basis and to tie the 401(k) remittance schedule to the payroll tax withholding timetable. Reviewing the remittance schedule on a quarterly basis will speed up the correction process, making it easier and less expensive to address any mistakes. Delayed deposits mean missed opportunities for employees to earn interest and capital gains from the funds, so the longer the money is missing, the more expensive it will be to make up lost earnings.

Another added protection is to develop a backup strategy. People get sick and go on vacation, so it's a good idea to have multiple employees trained in completing the remittance procedures. Reviewing possible holidays each quarter also may help in planning around those days when the company, financial institutions or other partners are closed.

Lastly, if there is a late remittance, it's critical to document why the transaction was delayed. This helps your auditor and the DOL understand the situation and your actions to apply a remedy.

BDO INSIGHT: MAKE REMITTANCE COMPLIANCE A TOP PRIORITY

Protecting participants' retirement accounts is a top priority for the DOL and making sure plan sponsors stick to a regular remittance schedule is something the DOL monitors very closely. Many plan sponsors are under the false assumption that they have a good bit of time each month to complete the task. The DOL wants it done as soon as reasonably possible—and on a regular basis. Your plan document may help in guiding this schedule, but the DOL looks at the remittance history and considers that as policy.

Following a regular remittance schedule – whether formal or informal – may seem like an easy task, but holidays, employee absences and other unexpected issues may hamper your ability to follow your procedures. Our next **post** will explain what steps can be taken in the event of a late remittance. In the meantime, if you have questions about depositing employee elective deferrals, please contact your BDO representative.

Correcting Late Deposits: Steps to Take When You Miss a Remittance Deadline

We recently wrote about **remittance schedules** and discussed things plan sponsors can do to help them meet the deadlines for depositing employee contributions in a timely manner. But even plan sponsors with the best intentions and safeguards in place occasionally miss their remittance deadlines.

So, when this happens, the question becomes: What steps do you need to take to correct the late remittance?

The Department of Labor (DOL) takes this issue very seriously; late remittances are a breach of a plan sponsor's fiduciary responsibilities and are treated as prohibited transactions. Thus, it's important to get started on a remedy as soon as possible. There are two options for fixing the problem: self-correction and the DOL's Voluntary Fiduciary Correction Program (VFCP). Before analyzing the pros and cons of each approach, it's important to understand some of the preliminary steps involved in correcting a late deposit.

START BY DEPOSITING THE MONEY

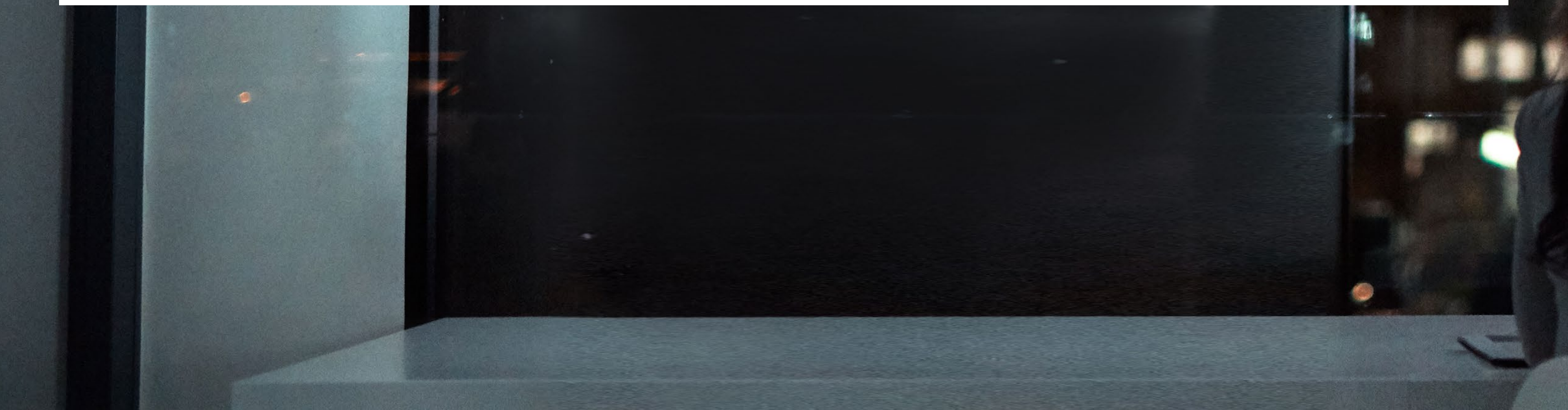
As soon as a late deposit is discovered, plan sponsors need to work quickly to move the contribution from the company's ledger to the trustee or custodian for the 401(k) or 403(b) plan. In addition, plan sponsors need to determine the earned interest participants would have received had the funds been transferred on time.

The DOL provides a **calculator** plan sponsors can use to figure out lost earnings. It isn't mandatory to use this calculator, but it can be a good starting point. Plan sponsors using self-correction, however, should be aware that the DOL won't automatically accept the amounts determined by the calculator as satisfying the requirement to make participants whole. The DOL explains that the calculator can only be used for plan sponsors who are applying for the VFCP; the calculator might not provide the precise amount needed for a self-correction under the regulations.

FILLING OUT THE RIGHT FORMS

After adding the late deposits and making the additional contribution to cover lost earnings, plan sponsors should fill out Internal Revenue Service (IRS) Form **5330** and pay the excise tax—usually equal to 15 percent of the lost earnings. Employers need to pay this tax; it cannot come from plan assets. In addition, all expenses associated with fixing the mistake need to be paid by the employer, not the plan.

The error also needs to be reported on the Form **5500**. If you report the error, but don't make a correction, expect to get a sternly-worded letter from the DOL reminding you of the consequences if a remedy is not applied. Best practice is to respond to the DOL letter, regardless if the mistake has been resolved upon receiving the letter, with either the correction method taken or the correction method to be taken. Recipients of this communication have 60 days to submit an application to the VFCP before the DOL considers further action.



VFCP VS. SELF-CORRECTION: WEIGHING THE PROS AND CONS

Using the VFCP—and properly following its protocols—protects the plan sponsor from the DOL possibly taking any enforcement or audit action. In some cases, the IRS also may relieve the plan sponsor from paying the excise tax on the missed earnings, as well as other penalties. Another potential benefit of using the VFCP is that the missed earnings calculations are based on the IRS rate for underpayment, which is often lower than the plan's rate of return.

Under the VFCP, the plan sponsor has to make the corrections and then apply to the program, showing the fixes made to the plan. If the corrections are approved, the DOL will issue a "no action" letter that frees the plan sponsor from enforcement procedures.

The VFCP can be a time-consuming and expensive process. As a result, some plans choose the self-correction route, which can be quicker and cheaper. But in some cases, self-correction ends up being more expensive.

This is because some plan sponsors, to decrease the chances of an audit or further enforcement actions from the DOL, error on the side of safety when determining the amount needed to make employees whole and wind up paying more than necessary. To calculate the correction amount, plan sponsors generally use the greater of the plan's actual rate of return or the rate set by the IRS for underpayment.

Another potential drawback of self-correction is that plan sponsors who use this method forfeit the opportunity to have the excise tax waved.

BDO INSIGHT: DEVELOP A PLAN FOR MAKING CORRECTIONS

Ignoring a late deposit of your participants' contributions, no matter how small, can have massive consequences to fiduciaries and the plans they oversee. These issues need to be addressed quickly and exactly to avoid further dealings with the DOL. In addition to reviewing their remittance procedures and developing strategies to avoid missing deposit deadlines, plan sponsors also need to think about how they will correct any late deposits that do occur. Documentation of the event and timely restoration are keys to avoiding DOL action.

In situations where the missed deadlines involve a relatively small number of transactions or occur over a shorter time period, self-correction may be an appropriate approach. Conversely, if there were multiple mistakes or the issue spanned more than one plan year, or if the plan sponsor wants to make sure that the DOL will not audit the plan after the correction has been made, using the VFCP may be the appropriate strategy. Your BDO representative is here to help you understand your options and take the proper steps to ensure that any mistakes are corrected as quickly and thoroughly as possible.

De-Risking Pension Plans: Evaluating Plan Sponsors Options and Obligations

Identifying and mitigating risk across an organization is a core tenet of sound corporate financial management. For companies that maintain a defined benefit (DB) pension plan, these liabilities can represent one of a company's greatest sources of risk.

Against a backdrop of longer life expectancies, rising Pension Benefit Guaranty Corporation (PBGC) premiums and other administrative costs, as well as volatile equity markets, many plan sponsors are looking for ways to reduce or eliminate risk entirely with their pension plans. As a result, de-risking has become increasingly popular among the shrinking number of companies that maintain DB plans.

De-risking DB plans is a way for plan sponsors to modify plans to mitigate obligation risk or to transfer the risks associated with current and future liabilities to a third party. In fact, a January 2019 survey by MetLife found that 76 percent of the plan sponsors that intend to de-risk expect to completely divest all DB plan liabilities.

While de-risking can be an effective way for organizations to focus on core business objectives instead of nagging pension issues, there are many decisions involved in determining an appropriate de-risking strategy.

MOUNTING HEADWINDS FOR PENSIONS

For decades, pension plans provided assurances to employers and employees. For many employers, DB plans have been a great retention and workforce management tool. Pensions are designed to allow qualifying employees to focus on their jobs without having to worry about managing investments, contributions and account balances like today's defined contribution plan participants.

Over time, volatility in financial markets, strict federal funding rules, mounting administrative costs and rising life expectancies have made DB plans increasingly difficult for employers to maintain. For example, plans are required to pay an annual premium to the PBGC, the federal insurance agency that backstops DB plans. The PBGC charged single-employer sponsors of pension plans $35 per participant in 2012; that same rate ballooned to $80 per participant in 2019. In addition to this per-participant charge, any plan that is not 100 percent funded pays an additional premium based on the total dollar value of underfunding. This started at $9 per $1,000 of underfunding in 2012 and is now $43 per $1,000 for 2019 (capped at $541 per participant). This means PBGC premiums have increased by two to four times for most sponsors in just seven years.

In addition to PBGC costs, other expenses like investment management fees, actuarial, legal, accounting and other administrative charges can add to a plan's overall liability. In fact, it has gotten to the point where the investment returns on some plans do not cover these administrative costs.

Even though 2018 wasn't a good year for equity investors, rising interest rates helped many DB plans improve their funded status. Still, the prospect of the nearly decade-long bull market ending, coupled with uncertainty about the pace of interest rate increases, present major challenges for sponsors of DB plans. While plan sponsors may see some relief in funding obligations this year, they may want to evaluate whether there are opportunities to minimize or eliminate risk in their DB plans.

DE-RISKING OPTIONS FOR PLAN SPONSORS

Plan sponsors have several de-risking options, so it's important to evaluate which strategy—or combination of strategies—might work best for the organization.

One option is to take participants off the balance sheet by offering lump-sum payouts. While this may have a higher short-term cost, it is an effective way to reduce the number of terminated vested participants while also reducing the plan's overall obligation. Many participants like it because they are able to use or invest that money as they see fit.

A similar option may be an annuity buyout. In this strategy, participants are still given an annuity payout, but that obligation gets shifted to an insurance company. Unlike a lump-sum payout, retirees earning a benefit may be considered in this strategy. According to the MetLife survey, 67 percent of plan sponsors that plan to de-risk expect to do so by using an annuity buyout, while 50 percent expect to use a combination of the two alternatives.

Liability Driven Investing (LDI) may serve plan sponsors who want to keep participants in the plan, while mitigating the plan's overall risk. With LDI, the investment portfolio is closely matched with the duration of the pension liability. In other words, the goal of the fund is to earn enough on returns without bearing too much risk so the fund is able to meet its obligations to participants over time. Again, plan sponsors need to take care in this strategy that they make appropriate adjustments for the high administrative costs of the plan.

BDO INSIGHT: CONSIDER DE-RISKING DECISIONS FROM ALL ANGLES

As with any strategy, plan sponsors have many factors to evaluate when it comes to de-risking a pension plan. First, plan sponsors should look at how de-risking will affect the organization's goals and objectives, particularly in terms of retaining a motivated workforce. If de-risking makes sense, plan sponsors need to decide which option or combination of options will be best to meet the objectives and how that strategy would affect the company's cash flows.

In addition to these financial considerations, plan sponsors need to think about how de-risking might affect the company culture. Once a decision to de-risk has been made, plan sponsors must begin thinking about how they will communicate the decision to their employees. Developing a plan to educate employees about their options and providing them resources about how the de-risking will impact them is especially important.

Rising interest rates, renewed equity market volatility and an expanding field of annuity providers may make de-risking options more attractive to plan sponsors today. Your BDO representative can help explain the various choices as well as the outcomes they can provide for your organization.

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