ERISA ROUNDUP

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

Q4 2020

A NOTE FROM BDO'S NATIONAL ERISA PRACTICE LEADER

The start of a new year is a momentous occasion. For many of us, that's especially true this year as we look forward to 2021 as a fresh beginning.

In the Employee Benefit Plan arena, we are anticipating a continued focus on telehealth and expanded benefits offerings as well as increased leveraging of employer digital communications for a work-from-home world. Additionally, Statement in Auditing Standards (SAS) 136 will bring significant changes to the industry - we at BDO are working diligently to lead implementation and share insights as we adopt the new standard.

In this issue of our ERISA Roundup, you'll find informative pieces discussing ESOPs – one specifically geared toward architecture and engineering firms and another piece on potential exit strategies for retiring business owners. As always, I encourage you to follow along with our regular insights at www.bdo.com/erisa.

Wishing you the very best in the new year,

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.

IN THIS ISSUE

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2021 Deadlines and Important Dates for Plan Sponsors

Sponsors of defined benefit and defined contribution plans should keep the following deadlines and other important dates in mind as they work toward ensuring compliance for their plans in 2021. Dates assume a calendar year plan.

JANUARY

- **2021 only, 4** / Final deadline for defined benefit plans to make contributions ordinarily due in 2020 under the CARES Act.
- **15** / Possible fourth quarter 2020 contribution due for defined benefit pension plans
- **25** / Action: File PBGC Form 200 by Jan. 25, Notice of Failure to Make Required Contributions, if plan sponsor of a single-employer defined benefit plan does not make a Jan 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **31** / Action: Census data due Jan 31. Plan sponsor confirms the accuracy of the prior year's census data to the recordkeeper. This information is used for ADP/ACP testing.
- **31** / Distribution: Distribute IRS Form 1099-R to participants by Jan. 31.
- **31** / Action: File Form 1096 paper transmittal by Jan. 31 for 2020 tax year.

FEBRUARY

- **1** /Action: Form 945 must be filed with the IRS by Feb 1.
- **15** / File PBGC Form 10, by Feb 15, if a defined benefit plan with >100 participants 1) missed its Jan 15 required contribution, 2) the contribution is still unpaid as of Feb 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.
- **15** /Action: Review and approve compliance testing results sent by plan administrator by Feb. 15.
- **28** /Action: Employers choosing to file paper Form 1094-C must do so by Feb. 28, to prove compliance with the Employer Shared Responsibility Mandate of the Affordable Care Act (ACA)

MARCH

- **1** / Action: Multiple employer welfare arrangement (MEWA) plans must file the annual form M-1 by March 1.
- **2** / Distribution: Distribute Form 1095-C to employees by March 2, to give information on health care coverage for 2019. (IRS changed this date from Jan. 31.)
- **15** / Fund: Highly compensated employees who fail ADP/ACP test for prior plan year must have refunds processed by March 15.
- **15** / Fund: Partnerships and S Corporations that are not getting an extension must fund contributions by March 15 to receive tax deduction for the prior year.
- **30** / Action: Plans with publicly traded employer stock that follow Article 6A of the Regulation S-X (SEC format) must file Form 11-K with the Securities and Exchange Commission by March 30.
- **31** / Action: Employers choosing to file electronic Form 1094-C must do so by March 31, to prove compliance with the Employer Shared Responsibility Mandate of the Affordable Care Act (ACA).
- **31** / Action: Recordkeeper (or other responsible party) completes and files Form 1099-R with the IRS by March 31.

APRIL

- **1** / Action: Hire auditor (if needed) by April 1.
- **1** / RMD: April 1 Deadline for 5 percent business owners and terminated participants who turned 70 ½ in 2020 to receive their required minimum distribution (RMD). Participants who turn 72 during 2021 will be required to start by April 1, 2022.
- **15** / Fund: 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** / April 15, possible first quarter 2021 contribution due for defined benefit pension plans
- **15** / Fund: IRA contributions for the prior tax year must be funded by April 15.
- **15** / Fund: Participants who contributed over 402(g) or 415 limits in the previous year must be refunded the excess amount by April 15.
- **15** / Action: File PBGC Form 4010 by April 15, Notice of Underfunding for single-employer defined benefit plans with more than $15M aggregate underfunding.
- **26** / Action: File PBGC Form 200 by April 26, 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.
- **28** / Distribution: Send annual funding notice to participants of single- and multi-employer defined benefit plans over 100 participants by April 28.
- **30** / Distribution: Single-employer defined benefit plans that are less than 60 percent funded must inform participants by April 30 or 30 days after the benefit restriction is determined.

MAY

- **14** / File PBGC Form 10, by May 14, if a defined benefit plan with >100 participants 1) missed its April 15 required contribution, 2) the contribution is still unpaid as of May 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.
- **14** / Distribution: Defined contribution plans must send fee and benefit information to participants by May 14.
- **15** /Action: File PBGC Form 10 by May 15, Post-Event Notice of Reportable Events if plan sponsor of a single-employer defined benefit plan does not make an April 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.

JUNE

- **29** / Action: Plans with publicly traded employer stock that use an ERISA format must file Form 11-K with the Securities and Exchange Commission by June 29.

JULY

- **14** / Action: Plans with publicly traded employer stock that use an ERISA format that requested a 15 calendar day extension (Form 12b-25) for the Form 11-K must file the Form 11-k with the Securities and Exchange Commission by July 14.
- **26** / Action: File PBGC Form 200 by July 26, if plan sponsor of a single-employer defined benefit plan does not make a July 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **15** / July 15, possible second quarter 2021 contribution due for defined benefit pension plans

AUGUST

- **2** / Action: Large plan audit must be completed by Aug. 2 to avoid requesting Form 5500 extension.
- **2** / Action: IRS Form 5500 must be filed by Aug. 2.
- **2** / Action: To request a Form 5500 extension, Form 5558 must be submitted by Aug. 2.
- **2** / Action: Pay Patient-Centered Outcomes Research Institute (PCORI) fee by Aug 2. Self-insured health plans must pay $2.66 per person (covered by health plan).
- **13** / File PBGC Form 10, by Aug 13, if a defined benefit plan with >100 participants 1) missed its July 15 required contribution, 2) the contribution is still unpaid as of Aug 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.
- **31** / Best Practice: Plans that failed compliance testing may take this mid-year opportunity to run compliance tests. Aug. 31

SEPTEMBER

- **15** / Fund: If an extension was filed, Sept. 15 is the deadline to fund employer contributions.
- **15** / Fund: Minimum funding deadline for single- and multi-employer defined benefit plans.
- **15** / Sept 15, last date to make 2020 contributions for defined benefit pension plans.
- **25** / Action: 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** / Distribution: Sept. 30, Summary Annual Report sent to participants with Dec. 31 plan year end.

OCTOBER

- **1** / Best Practice: Make sure procedures align with language in plan document. Oct 1.
- **1** / Distribution: Annual notices to participants begin Oct. 1, including 401(k) Plan Safe Harbor Notice, automatic contribution arrangement safe harbor and qualified default investment alternative.
- **15** / File PBGC Form 10, by Oct 15, if a defined benefit plan (of any size) 1) missed its Sept 15 required contribution, 2) the contribution is still unpaid as of Oct 15, 3) the contribution could not have been met with a Prefunding or Carryover Balance election and 4) a PBGC Form 200 was not already filed for the same event.
- **15** / Oct 15, possible third quarter 2021 contribution due for defined benefit pension plans
- **15** / Action: Oct. 15 is the extended deadline for filing Form 5500, including Schedule SB (single employer defined benefit plans) or Schedule MB (multiemployer defined benefit plans)
- **15** / Action: Oct. 15 is the extended deadline for filing individual and C-Corp tax returns.
- **15** / Action: Oct. 15, multi-employer defined benefit plans file PBGC Comprehensive Premium document and pay $29 per participant flat-rate premium.
- **15** / Action: Oct. 15 to open a Simplified Employee Pension (SEP) plan for extended tax filers.
- **25** / Action: File PBGC Form 200 by Oct. 25, if plan sponsor of a single-employer defined benefit plan does not make the Oct. 15 required contribution, causing the plan to have more than $1 million in unpaid contributions.
- **30** / Distribution: Single-employer defined benefit plans that are less than 60 percent funded must inform participants by October 30 or 30 days after the benefit restriction is determined.

NOVEMBER

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

DECEMBER 2021

- **1** / Distribution: 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. Effective in 2020, plans that provide the Qualified Non-Elective Contribution Safe Harbor and are not subject to automatic enrollment are not required to provide a written annual notice.
- **15** / Action: Dec. 15 is the extended deadline to distribute Summary Annual Report (SAR) for calendar year plans.
- **31** / Action: Dec. 31 is the final deadline to process corrective distributions for failed ADP/ACP testing; a 10 percent excise tax may apply.
- **31** / Action: Amendments to change traditional

In addition to those important deadlines and dates, plan sponsors should be aware of the contribution plan limits and other rolling notices for 2021:

- Employee salary deferral limits for 401(k), 403(b) and 457 plans will be $19,500. Age 50 catch-up contribution limit increases to $6,500.
- Health Savings Account contribution limit is $3,600 (single) and $7,200 (family). Age 55 catch-up contribution stays at $1,000.
- Traditional and Roth Individual Retirement Account contribution limit will be $6,000. catch-up contributions for participants age 50 and over is $1,000.
- Limitation for the annual benefit under a defined benefit plan under Section 415(b)(1)(A) will be $230,000.
- The dollar amount used to define “highly compensated employee” under Section 414(q)(1)(B) will be $130,000.
- 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 participants.

Benefits Outlook for 2021: Telehealth, Mental Health, Digital Communications

The year 2020 was notable for the COVID-19 pandemic changing not only how and where people work, but also shifting (often dramatically) employee benefit needs. In 2020, benefits such as telehealth and mental health services that may have been viewed primarily as "nice-to-have" perks suddenly became necessities. Human resource departments were forced to quickly improve digital capabilities to ensure employees continued to receive the information required to make benefits selections for their rapidly changing needs. Organizations also had to address these issues while simultaneously determining how to remain profitable and competitive in a wildly unfamiliar and uncertain business environment.

The so-called "new normal" doesn't mean that traditional benefits are going away. But, the changes necessitated by the pandemic have resulted in a new array of unconventional and personalized offerings. As a result, employers are encouraged in 2021 to carefully review plan offerings, integrate pandemic-related benefits solutions into sustainable longer-term offerings and improve employee benefit communications.

TELEHEALTH VAULTS UP THE PRIORITY LIST

In 2016, the National Business Group on Health's Large Employers' *Health Care Strategy and Plan Design Survey* found that 90 percent of large companies offered telehealth benefits, but that only 3 percent of employees used such benefits. Flash forward to 2020: likely as a result of greater employee demand for telehealth during the pandemic, 53 percent of the large employers polled in the 2020 edition of the **survey** indicated that adding more virtual care solutions would be their highest priority in 2021 and beyond.

While telehealth is expected to play a critical role in delivering healthcare in 2021, plan participants will still want (and need) in-person visits with providers. This highlights the need for tiered benefit structures that include both virtual and in-person options for participants. In the push to provide virtual care benefits, employers still must perform adequate due diligence to ensure that telehealth providers have the appropriate cybersecurity measures in place to protect patient privacy needs. Remote monitoring, Health Insurance Portability and Accountability Act of 1996 (HIPAA) compliance and other sensitive information safeguards should be standard requirements for any provider. The employer's responsibility extends to ensure its contracted providers also protect the personally identifiable information (PII), personal health information (PHI) and electronic PHI (e-PHI) of employees.

The employer may also want to consider…

ADDRESSING THE GROWING MENTAL HEALTH CRISIS

Similar to telehealth, the need for mental health services increased in 2020. Research conducted by the Society for Human Resource Management (SHRM) showed that the pandemic affected nearly every aspect of employee lives. Employees reported negative effects on their sleeping, eating, and exercising habits, as well as increased anxiety related to their health and finances.

Employers can play an important role in addressing these issues by gaining an understanding of employee needs and adjusting benefit offerings to better meet those needs. Technology has helped provide effective ways to access mental health care, including allowing employees to remain anonymous while seeking help. Employers may want to consider expanding employee assistance programs (EAPs) offerings and making EAPs more accessible to employees.

Employers also should watch for new mental health stressors that may arise during the pandemic. Clear and consistent communication, as well as management training to recognize at-risk behaviors, will be key factors in maintaining an emotionally healthy workforce in the year ahead.

DIGITAL BENEFIT COMMUNICATIONS

Many of the benefits crucially important to employees today were not key features of benefit offerings even just a year ago. Along with the need to timely communicate changing benefits, employers are looking for ways to communicate benefit changes to employees who are working remotely. There are a variety of digital communication strategies that employers can consider using to engage their employees, including smartphone apps, desktop-ready modes of communication, text messages, social media posts, and QR codes to link together various digital programs. Videos, as well as virtual guided programming, also may be useful tools in educating employees about their benefits. Employers can work with their service providers to analyze communication strategies and identify opportunities to incorporate these new technologies.

While increasing online communications is an obvious focus area, many employers have deskless employees (such as hospitality, construction and manufacturing workers) who may have difficulty accessing digital communications. Management can play a meaningful role in delivering messages to employees, but proper training and resources are critical to ensure a consistent message is given to employees to help them make informed benefit decisions.

BDO INSIGHT: TURN QUICK FIXES INTO SUSTAINABLE PLANS

While no one can predict what 2021 will entail, addressing employee benefit needs is a clear priority for employers. The pandemic has highlighted the importance for employers to provide benefit options reflective of employee needs and the importance of a robust benefit communications strategy.

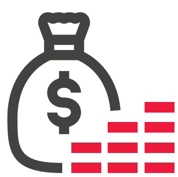
A new year brings an opportunity for organizations to rethink and improve their benefits offerings for 2021 and beyond. Your BDO representative is available to discuss and help identify potential solutions for your organization.

Tech Re-strategizes Amid COVID-19 Complications

COVID-19 has caused disruption across all industries, forcing tech companies to evolve their strategies in order to weather the storm and capitalize on changes in customer need.

During a recent webinar, “How Tech Companies Can Evolve Their Workforce and Capital Strategies Amidst COVID-19,” we surveyed participating technology executives to get their take on raising capital during COVID-19, remote work and relocation, major human capital management focuses in the next year and more.

KEY TAKEAWAYS



CAPITAL

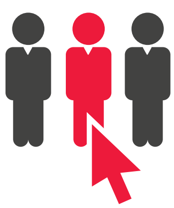
60% of tech leaders are still raising capital in some form despite COVID-19.

HEALTH

Employee safety—both mental and physical—is set to be a top focus for business leaders over the next year.

FLEXIBILITY

Remote work isn't going away, with **56% of employers planning to offer some form of flexible work schedule** or remote work option in the long-term.



REMOTE RECRUITING

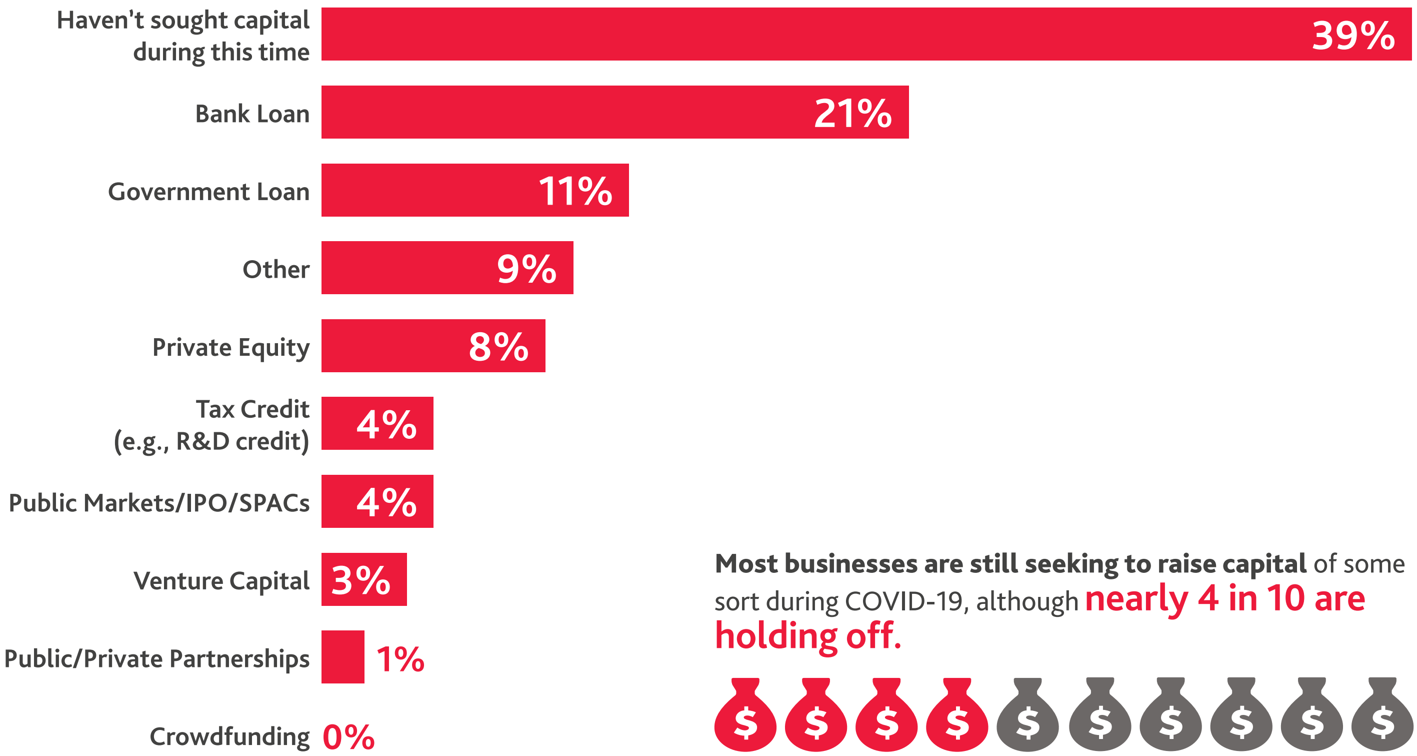
The remote hiring and onboarding process isn’t yet perfect, but **confidence in effectiveness** is generally high.

RELOCATION

Relocation packages are not a priority right now, with only 20% of leaders implementing them, but that may change in the future.

CAPITAL RAISES CONTINUE AMID COVID-19

From which of these sources has your organization sought capital during COVID-19?



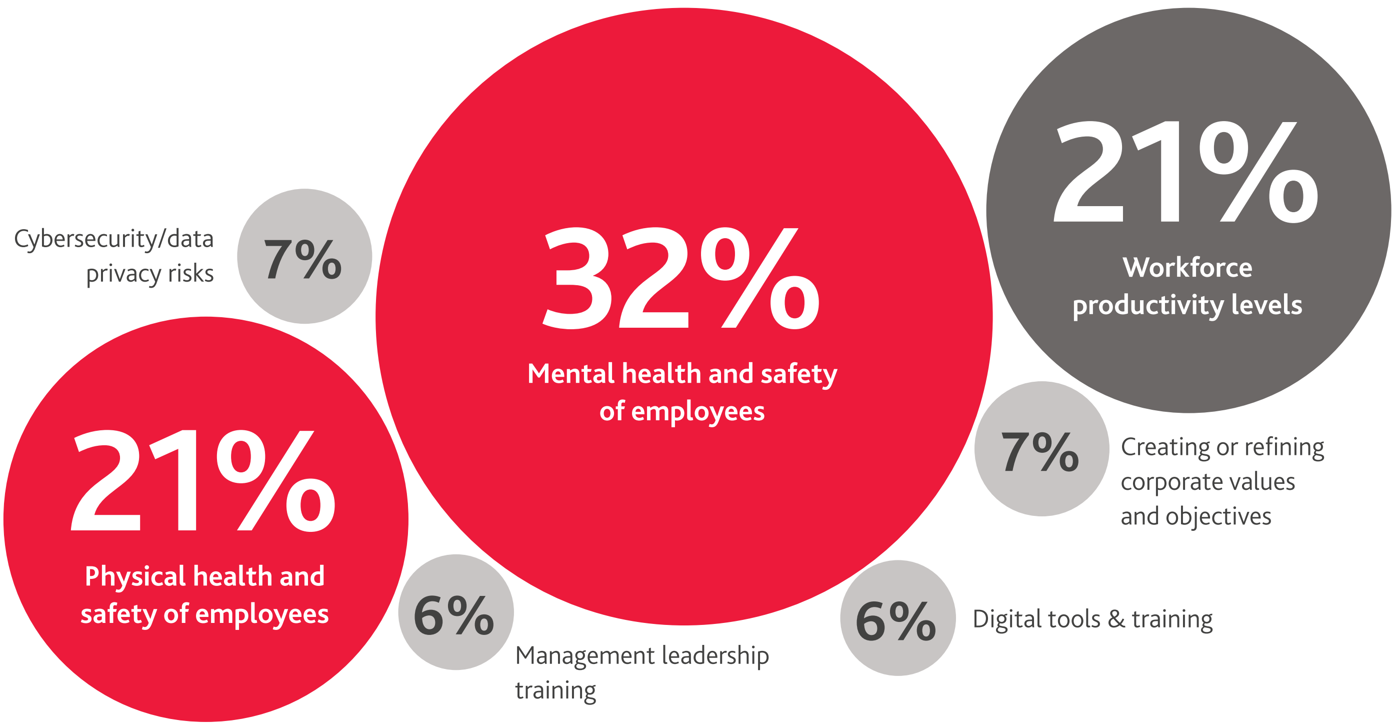
Most businesses are still seeking to raise capital of some sort during COVID-19, although **nearly 4 in 10 are holding off.**

REMOTE WORK IS HERE TO STAY

What best describes your organization's long-term view on remote working?

HEALTH AND SAFETY CONCERNS

Which of the following do you think you will focus most on over the next 12 months from a human capital management perspective?



ONBOARDING AND TRAINING FROM HOME

How would you rate your organization's remote hiring and onboarding process, with 1 being the least effective and 10 being the most effective?

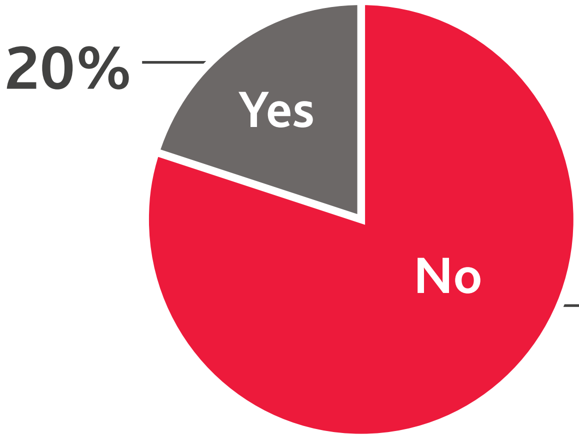
LEAST EFFECTIVE ⟷ MOST EFFECTIVE

1	2	3	4	5	6	**7**	**8**	9	10
2%	4%	6%	8%	15%	7%	24%	21%	8%	5%

Confidence in remote hiring and onboarding processes is relatively high, although many see room for improvement.

RELOCATION PACKAGES TAKE A BACKSEAT

Has your organization created or implemented a new relocation package during the past several months in response to COVID-19 and a desire from employees to work remotely?



Despite growing **interest in remote working** and plans for it to continue in some form post-COVID-19,

80% of organizations are not yet creating relocation packages.

Missed out on the webinar? You can access the recording online.
Get ready for what's next by subscribing to our COVID-19 updates here

Why ESOPs Are Becoming More Popular Among Architecture and Engineering Firms

Every year, the National Center for Employee Ownership (NCEO) publishes a list of the nation's 100 largest employee-owned companies. In 2020, architecture and engineering (A&E) firms accounted for 17 of these companies making the industry one of the most prominent on the list. Over 80% of those A&E firms utilize an Employee Stock Ownership Plan (ESOP) to achieve broad employee ownership, as opposed to other employee ownership options, such as worker cooperatives. An ESOP is a unique ownership transition tool that allocates a firm's stock to employees over time, capturing value attributable to future growth, motivating employees and empowering them to think like owners.

ESOPs are qualified retirement plans, regulated under the Employee Retirement Income Security Act of 1974 (ERISA), which allocate shares to employees over time, typically as a percentage of total compensation. Using an ESOP as a succession planning strategy can help clearly define a firm's ethos, especially for A&E firms that thrive on reputation, legacy and employee morale.

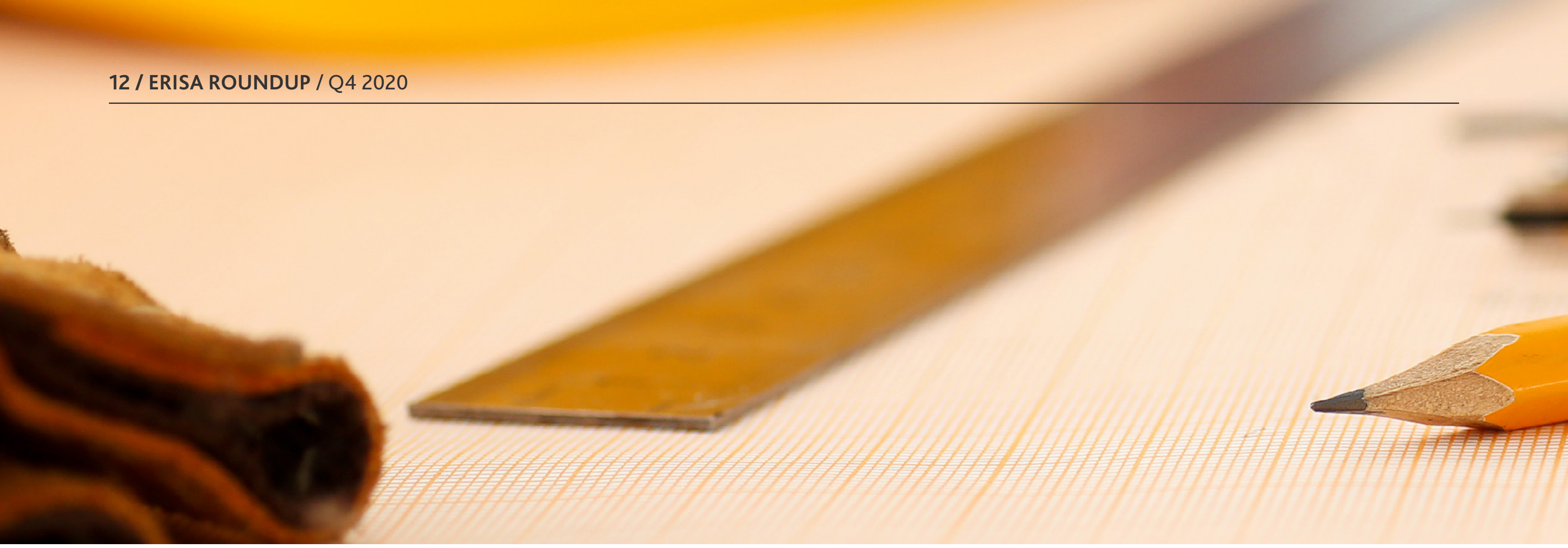
MAINTAINING REPUTATION AND CULTURE

A&E firms are typically founded by a few practitioners who build a reputation that is tied directly to the founder's name(s) and core principles. As founding shareholders approach retirement, maintaining their longstanding reputation in the community becomes one of their primary goals. A founders' legacy is at greater risk with a typical outside sale. For example, a financial buyer will be driven to achieve a certain return and, therefore, may look to reduce overhead and other fringe benefits and a strategic buyer may have an entirely different culture to the detriment of current employees. ESOPs can create a flexible path for shareholders to transition ownership at fair market value while preserving the legacy and culture of the business.

EMPLOYEE RETENTION

A&E professionals are in high demand with many A&E firms facing the ongoing challenge of qualified talent shortages. This demand leads to competing firms poaching top talent by offering higher salaries and/or better benefits.

An ESOP is an effective tool to both attract and retain talent that provides year-over-year value to professionals, especially those with the longest tenure. An employee that is an ESOP participant will need to consider the "switching cost" or opportunity cost before moving to another firm. From a recruitment perspective, an ESOP makes attracting young and qualified professionals easier by enticing them with an immediate opportunity to build equity in the business and could be the key differentiator, not only due to the financial benefits but also due to the culture of the business. There has been a pattern of established A&E firms that have a group of key managers that are ready to become owners but do not have the financial resources to buy out current shareholders. This creates a dilemma for A&E firms that would like to retain their most senior and key employees that are seeking ownership but do not have a mechanism to provide meaningful ownership in the firm. An ESOP can be an attractive option for these firms.



TAX BENEFITS

ESOPs can provide a range of tax benefits to the sellers and the firm, including potential deferral of capital gains for the seller on the sale of the business, reduction or elimination of the income tax burden to the firm, deductibility of ESOP contributions and an opportunity for tax-deferred growth on the retirement benefit to employees.

If the firm transacts as a C Corp, according to Section 1042 of the Internal Revenue Code, the sellers may be able to indefinitely defer paying tax on capital gains derived from the sale. When the seller passes away, his or her estate receives a step-up in basis, making the deferral permanent. If following the sale, the ESOP-owned firm is an S Corp, all income that is attributable to the ESOP shares is passed through to an income tax-exempt qualified retirement plan, making that income exempt from federal income taxes and most state income taxes. This creates a cash flow advantage for the firm, with the extra cash available to be used to pay off debt created by the leveraged ESOP sooner and grow the business in a more efficient and effective manner.

In the case of a legacy C Corp transaction where a seller elects Section 1042 treatment, in some circumstances, the firm can immediately convert to an S Corp following the transaction, enabling both capital gains tax deferral for the seller and an income tax exemption for the firm. If the firm chooses to convert from an S Corp to a C Corp for the transaction, the firm must remain a C Corp for five taxable years. Thereafter, the firm can make an "S" election and benefit from an income tax exemption. As an employee-owned C Corp, the firm realizes a tax benefit through the deductibility of ESOP contributions and optional dividends to the ESOP. Finally, since the ESOP is a qualified retirement plan, much like a 401(k) plan, participants benefit from tax-deferred growth, paying ordinary income tax when distributed from the plan, usually when the employee retires. There are clear tax advantages for all parties in an ESOP transaction, making the ESOP structure a win-win scenario for all.

ESOP ISSUES UNIQUE TO A&E FIRMS

The A&E professions are highly regulated, demanding a proactive approach to compliance and posing significant challenges with respect to the sale of stock. Each state has unique requirements and restrictions on corporate structure, ownership, nomenclature and supervisory functions. These requirements can vary by type of license that the firm is seeking—architecture, landscaping architecture, engineering, surveyor, geologist, etc. Any transaction will directly affect corporate structure and ownership. In most cases, entity type will not prevent an A&E firm from doing business, but it is important to ensure that the transaction structure follows the relevant rules in each state. With respect to an ESOP transaction, close attention should be paid to ownership restrictions in each state in which the firm does business or plans to conduct business. In an ESOP structure, a trust becomes the direct owner of the shares, while the employees are considered beneficial owners once vested. When applying ownership rules, states may look at the trustee(s) of the ESOP, the beneficial ownership of the participants or neither.

Here are several examples of differences in state licensing and ownership rules:

- **Arizona:** The voting shares of a professional corporation are limited to licensed individuals, certain partnerships, other persons if total ownership of other persons does not exceed 49% and ESOPs. In the case of an ESOP, all voting trustees of the plan are required to be licensed in Arizona and the ownership interest must be directly owned by the employee stock ownership trust or licensed professionals.
- **Iowa:** There are no specific ownership restrictions for architecture or engineering firms, but professional services are limited to firms that regularly employ one or more licensed professionals who directly control and service any professional work.
- **North Carolina:** Professional corporations that practice architecture or engineering must be at least two-thirds owned by licensed professionals in the relevant profession and at least one licensee must be a North Carolina licensee, as well as an officer, director or shareholder. IRC section 401(a) qualified defined contribution plans, such as an ESOP, are considered "licensed" if the trustee or trustees of the plan are licensees. To further add to the complexities, North Carolina does not allow business entities to be owners in a professional corporation, which can limit the transaction structure possibilities in any M&A transaction.
- **Ohio:** Architecture firms must be owned 50% or more by licensed professionals. In the case of an ESOP, 50% of the trustees must be licensed in the relevant profession. There are no specific requirements for engineering firms, however, each firm must designate one or more owners or directors as being responsible for and in charge of professional activities.

These examples clearly illustrate that understanding and navigating state licensing and ownership requirements is challenging and requires expertise. In any transaction, extensive state-by-state due diligence should be performed.

CLIENT SUCCESS STORY: REAL LIFE EXAMPLE

A civil engineering firm (Firm) recently decided to pursue an ESOP using BDO's ESOP Advisory Services team as their exclusive financial advisor to the transaction. The Firm was founded over 60 years ago, headquartered in the mid-Atlantic, offering a variety of engineering services to a diversified group of markets in the public and private sectors. At the time of the transaction, the Firm conducted business in seven states (including North Carolina) and had plans to expand into four additional states in the immediate future. While most of these states did not provide any challenges to the ESOP structure, North Carolina's ownership restrictions created a significant transaction hurdle. As described above, North Carolina requires that at least two-thirds of the owners be licensed professionals. A look through to the trustee(s) or participants is not acceptable.

After careful research and analysis, BDO advised the Firm of an exemption to the ownership requirement. For engineering firms doing business in North Carolina, there is an exemption for corporations or limited liability corporations that were permitted by law to practice engineering before June 5, 1969. These "pre-1969" entities must apply to the North Carolina Board of Examiners for Engineers and Surveyors for the exemption. However, for architecture firms, this exemption must have been applied for from the North Carolina Board of Architects before October 1, 1979.

Having advised and structured several ESOP transactions for A&E firms across the country, BDO was able to give the owners comfort on licensure requirements, as well as safeguard that future growth plans would not be limited by the transaction. BDO successfully facilitated the Firm's transition to a 100% employee-owned company, allowing it to realize many of the benefits outlined above.

What makes a company a good ESOP candidate? **Learn more about structuring a successful ESOP**.

Documenting Late 401(k) Plan Deposits Due to COVID-19

Plan sponsors have a fiduciary obligation to ensure that participant 401(k) contributions (including participant loan repayments) are deposited into participant accounts as soon as reasonably possible. The COVID-19 pandemic, however, has caused many issues for plan sponsors trying to remit those deposits on time. The Department of Labor (DOL) has provided relief for plan sponsors who have been late remitting employee contributions to their service providers because of the pandemic, but plan sponsors still have an obligation to accurately document what caused the delay.

USUAL REMITTANCE TIMING REQUIREMENTS

Under normal circumstances, plan sponsors must separate employee elective deferrals from the employer's general assets as soon as reasonably possible, but no later than the 15th business day of the following month. Plans with fewer than 100 participants are permitted seven business days to complete the transaction, but large plans with 100 or more participants are held to the "as soon as reasonably possible" standard. Failing to comply with these requirements may trigger a prohibited transaction and carry significant penalties, including plan disqualification.

RELIEF FOR COVID-19 REMITTANCE DELAYS

In recognition of the logistical challenges that plan sponsors are facing during the pandemic as many plan administrators are working remotely or have limited access to their offices, the DOL's Employee Benefits Security Administration (EBSA) issued **Disaster Relief Notice 2020-01**. The Notice covers a variety of reliefs relating to various requirements and deadlines, including late participant remittances. Under the relief measures, the DOL would not take enforcement action against plan sponsors who were delayed with their participant 401(k) contribution deposits from March 1, 2020, until the 60th day following the announced end of the National Emergency resulting from the COVID-19 outbreak. For delays caused by the pandemic that have been properly documented, the DOL does not require plan sponsors to report those remittances as late nor calculate lost earnings on those remittances.

To qualify for the disaster relief, the late deposits must be attributed directly to the pandemic. The plan sponsor must document the cause of the delay, including specific dates and other details. As the work environment continues to change, a best practice is to document each event as it occurs (while still current), rather than waiting and attempting to later document the details when auditors and/or DOL officials ask for the information.

Service providers for the plan also may be able to help the plan sponsor detail the history of the company's contribution deposits. For instance, service providers often can provide quarterly reports on transactions, account balances, reconciliation issues, and more that can assist the plan sponsor in documenting the causes of late remittances.

BDO INSIGHT: CREATE A REMITTANCE HISTORY

The DOL is providing a significant amount of flexibility and relief to sponsors struggling to remit timely during the pandemic. Plan sponsors have a responsibility to act reasonably, prudently and in the interest of participants. They must comply as soon as administratively practicable under the pandemic circumstances.

Documenting contributions that were not able to be deposited within the prescribed timeframes were caused solely by the COVID-19 outbreak is an important task for plan sponsors. Creating a detailed remittance history (starting with March 1, 2020) can a helpful way for the plan sponsor to explain how the delays were related to COVID-19.

If you have questions about documenting your remittance history as a result of COVID-19, **Disaster Relief Notice 2020-01**, or how this relief might relate to your 401(k) plan deposits, please contact your BDO representative.

2021 Cost-of-Living Adjustments for Qualified Retirement Plans

The government's annual cost-of-living adjustments (COLA) for 2021 have been announced by the Internal Revenue Service (IRS) and the Social Security Administration (SSA). The COVID-19 pandemic's continuing impact on the U.S. economy contributed to relatively flat changes in the 2021 COLA amounts as U.S. economic deflation during the first half of 2020 impacted the COLA metrics. The IRS increased the IRS annual compensation amounts, but limits for elective deferrals and catch-up contribution limits for age 50+ employees remained largely unchanged. The SSA's 1.3 percent increase in benefits is one of the smallest increases historically for Social Security and Supplemental Security Income beneficiaries. View the alert for key IRS COLA amounts and the SSA taxable wage base amounts.

CODE SECTION	2021	2020	2019	2018	2017
401(a)(17)/404(l) Annual Compensation	$290,000	$285,000	$280,000	$275,000	$270,000
402(g)(1) Elective Deferrals	19,500	19,500	19,000	18,500	18,000
408(k)(2)(C) SEP Minimum Compensation	650	600	600	600	600
408(k)(3)(C) SEP Maximum Compensation	290,000	285,000	280,000	275,000	270,000
408(p)(2)(E) SIMPLE Maximum Contributions	13,500	13,500	13,000	12,500	12,500
409(o)(1)(C)(ii) ESOP Limits	1,165,000 230,000	1,150,000 230,000	1,130,000 225,000	1,105,000 220,000	1,080,000 215,000
414(q)(1)(B) HCE Threshold	130,000	130,000	125,000	120,000	120,000
414(v)(2)(B)(i) Catch-up Contributions	6,500	6,500	6,000	6,000	6,000
414(v)(2)(B)(ii) Catch-up Contributions	3,000	3,000	3,000	3,000	3,000
415(b)(1)(A) DB Limits	230,000	230,000	225,000	220,000	215,000
415(c)(1)(A) DC Limits	58,000	57,000	56,000	55,000	54,000
416(i)(1)(A)(i) Key Employee	185,000	185,000	180,000	175,000	175,000
457(e)(15) Deferral Limits	19,500	19,500	19,000	18,500	18,000
1.61-21(f)(5)(i) Control Employee	115,000	115,000	110,000	110,000	105,000
1.61-21(f)(5)(iii) Control Employee	235,000	230,000	225,000	220,000	215,000
219(b)(5)(A) IRA Contribution Limit	6,000	6,000	6,000	5,500	5,500
219(b)(5)(B) IRA Catch-Up Contributions	1,000	1,000	1,000	1,000	1,000
Taxable Wage Base for Social Security	142,800	137,700	132,900	128,700	127,200

Employee Ownership: Employee Stock Ownership Plans and Employee Ownership Trusts

As business owners inch closer to retirement, the decision about what should happen to their business, and to some degree their legacy as a business owner, becomes more pressing. With global tax rates only expected to increase to pay for costs associated with the coronavirus pandemic, many shareholders are actively looking to accelerate the timing of corporate transactions. There are many exit strategies to consider, such as selling to a third party or transitioning the business to senior management or family. This decision can weigh heavily on the minds of business owners, as they worry about a fair return for their years of hard work, as well as their legacy and the wellbeing of their employees. While many options exist, one that has seen an increase in global popularity is selling a majority or minority stake in the business to the employees of the company. As outlined below, there are substantial tax incentives associated with such a sale.

EMPLOYEE OWNERSHIP TRUST VS. EMPLOYEE STOCK OWNERSHIP PLAN

The two countries that have some of the more favorable tax laws relating to employee ownership are the UK and the U.S. The current tax laws in both countries favor employee ownership and there has never been a better time for directors and shareholders to sell the business to the employees of the company. The Employee Ownership Trust (EOT) in the UK and the Employee Stock Ownership Plan (ESOP) in the U.S. are true employee ownership models in that the company is sold to the employees through a trust for the benefit of the current and future employees of the firm. The key benefits of the EOT and the ESOP are that they create an immediate purchaser for the company, they address succession issues that can be a real challenge for family-owned businesses, and they allow employees to take a more active and constructive interest in the company. Research in both countries has found that when the employees are a company's greatest assets, the employee-ownership model can be the "go to" model for a corporate sale as it offers greater employee engagement and commitment, greater drive for innovation and improved business performance.

The key difference between the EOT and the ESOP model is that in an ESOP, the employees receive beneficial shares in individual retirement accounts and when they leave the company or retire, they receive payment from the company for the value of those shares. Under the EOT model, the employees do not receive actual shares; instead, the trustee of the EOT holds the shares for and on behalf of all employees in the company.

Another stark difference between the ESOP and EOT model relates to a minority sale of a business. An EOT must have a controlling interest in the company, whereas an owner can sell a minority interest to an ESOP. In both models, if the company is sold, the employees share in the proceeds from the sale. If the trustee of the EOT sells the company to a third party, and the former shareholders receive all their proceeds from the transaction, any excess proceeds would be divided amongst the employees after any capital gains tax liability has been paid. The sales proceeds can be split equally between all group employees, or the trustee of the EOT can divide the proceeds between the group employees based on one or more of the following three criteria: (i) length of service; (ii) hours worked; and / or (iii) levels of remuneration. Most companies that are sold to an EOT put in place new, tax-efficient share plans to lock-in, incentivize and reward key management post-disposal of the company to the EOT. In contrast, an ESOP allocates proceeds based on vested shares. A recent and powerful example of this is the sale of New Belgium Brewing, headquartered in Fort Collins, Colorado. New Belgium was 100% ESOP-owned and was sold to Lion Little World Beverages in Australia for $190 million, which was split among employees based on their total vested shares in the ESOP plan.

TAX ADVANTAGES OF EMPLOYEE OWNERSHIP

The UK and U.S. governments have continued to add various tax breaks for both sellers and the operating company in the EOT and ESOP models, respectively. The UK government strongly supports the idea of employee ownership and has offered substantial tax exemptions to shareholders and employees that move to an employee ownership model. UK tax resident shareholders are able to sell their shares in a qualifying trading company for full market value and claim a full statutory capital gains tax exemption so that they receive the full gross disposal proceeds. In addition, any company that is controlled by the trustee of an EOT can make tax-free bonus payments of up to £3,600 per employee per annum.

In the U.S., a selling shareholder of a C Corporation ESOP can defer capital gains if proceeds are invested in a certain way. The key difference in tax law relates to the operating entity and the applicable tax deductions. In the UK, the trading company is not able to claim a corporation tax deduction for any payments that it makes to the EOT (which will be used by the EOT trustee to pay the former shareholders their deferred disposal proceeds) on the basis that the payments are deemed to be capital rather than revenue in nature. An ESOP in the U.S. can take tax deductions based on the total eligible payroll. If the operating company is an S Corporation and a company sells 100% to an ESOP, it can be fully exempt from federal and most state income taxes.

The ESOP may be the most well-known employee ownership vehicle in the U.S., but the EOT model is also possible in the U.S. through a perpetual trust. The tax advantages are not yet as great as those related to an ESOP sale, but there are efforts in motion to ensure that the EOT model in the U.S. has similar tax benefits as the UK EOT model. Currently, Maryland, New York and Wisconsin offer a state capital gains tax exemption if selling a majority portion of the business to an EOT.

The below grid compares the two employee ownership models:

TRANSACTION	EOT	ESOP
Sold at fair market value	Yes	Yes
Trustee (U.S.) or Corporate Trust (UK) becomes sole shareholder in a majority transaction	Yes	Yes
Ability for owners to participate in warrants as part of consideration of sale	No	Yes
Ability to use third-party debt to accelerate payment of purchase price	Yes	Yes
Ability to structure incentive plans for senior leaders and wider work force	Yes	Yes
Company cash flows used to repay transaction debt	Yes	Yes
Ability to sell less than 100% of business	No	Yes
TAX IMPLICATIONS		
Tax deductions for company	No	Yes
Limited tax-free distributions to employees	Yes	No
Ability for owners to defer capital gains on sale	Yes	Yes
ONGOING ADMINISTRATION		
Employees receive shares based on total compensation and/or tenure	No	Yes
Individual retirement account for employees	No	Yes
Repurchase obligation of shares of employees who have left company	No	Yes
Need for shares to be valued every year	No	Yes
Need for third-party administrator	No	Yes
EMPLOYEE OWNERSHIP		
Employees indirectly own the company	Yes	Yes
Employees able to exert more influence over company post-transaction	Yes	Yes
Intangible benefits associated with more engaged workforce	Yes	Yes
Ability for secondary sale if in best interests of employees	Yes	Yes
Proceeds from any third-party sale shared amongst employees	Yes	Yes

EMPLOYEE OWNERSHIP ACROSS BORDERS

For multinational companies, employee ownership requires collaboration across borders and consideration of complex international accounting and tax issues. When a company based in either the UK or the U.S. decides to transfer ownership to employees, one challenge that may arise is that other countries do not share the same benefits of employee ownership. For instance, if a U.S. company sells to an ESOP but has operations in Canada, France, Italy, Spain or the United Kingdom, employees in those countries may participate in the ESOP but would have to pay taxes on the allocated shares. It would not make sense to include those employees in the ESOP plan, but they may participate in a benefit plan that mirrors the benefits other employees receive from the ESOP. These plans can take various forms, whether it be through a **management incentive plan**, phantom shares or a defined benefit plan. By leveraging tax technology and automation, the reporting and tax rules by jurisdiction can be easily understood and applied. **BDO's Global Equity Mobility Solution** (GEMS) considers specific compensation data, employee mobility and local tax code to deliver an advanced knowledge base and tax requirements that can be dispersed to payroll, equity administrators, employees and tax service providers to help companies maintain global compliance.

BDO UK and BDO USA have dedicated employee ownership practices that advise business owners who wish to sell or transfer their business. BDO is a leading advisor on both sides of the Atlantic and together our teams can advise shareholders throughout the entire sale and ensure that benefit plans and tax strategies align across a global business.

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PBGC Revises Timeline to Calculate Premiums

The Pension Benefit Guaranty Corp. (PBGC) recently issued new **guidance** that gives single-employer pension plan sponsors an opportunity to reduce the variable-rate premiums that they owe for 2020, if they were planning on delaying their 2019 contributions until after they filed their premiums.

The new guidance, which was issued on Sept. 21, complements changes in defined benefit plan contribution schedules made by the Coronavirus Aid, Relief and Economic Security (CARES) Act. The guidance allows plan sponsors to potentially get a refund on previously paid premiums in 2020 by counting 2019 contributions made through the end of the year toward their variable-rate premium calculations.

ALIGNING VARIABLE-RATE PREMIUM CALCULATIONS WITH CARES ACT DEADLINES

The CARES Act, passed in March, allows plan sponsors to suspend required contributions to pension plans until Jan. 1, 2021. It does not, however, make any accommodations for determining variable-rate premium payments, which are calculated based on the funded status of the plan.

Under normal rules, the funded status for 2020 premiums can be reduced with 2019 receivable contributions made during 2020, but only if they are made by the date of the filing.

Under the new PBGC guidance, plan sponsors still need to adhere to the Oct. 15 deadline to pay premiums based on the contributions made by that date. But now, when 2019 plan year contributions are made between Oct. 15 and Jan. 1, 2021, plan sponsors can amend their premium filings with the lower funded status and request a refund for the reduced amount. This is now similar to the DOL's guidance on amending the Form 5500 after making 2019 receivable contributions.

SEPTEMBER GUIDANCE OVERRIDES JULY Q&A

The September guidance reverses guidance that the PBGC gave in its **July Questions and Answers**. The July Q&A said that even though plan sponsors had until Jan. 1, 2021 to make contributions, 2020 premium payments would continue to be based on contributions up until Oct. 15, based on the rules already in place. The new September guidance changed the PBGC's position from the Q&A, allowing contributions after the Oct. 15 filing date to count toward the premium payment for this year.

BDO INSIGHT: NEW GUIDANCE DOESN'T CHANGE OCT. 15 PAYMENT DEADLINE

It is important to reiterate that plan sponsors still need to make their PBGC premium payments by Oct. 15. But plan sponsors planning on making contributions later in the year don't need to rush those contributions to get the benefit of lower premiums for 2020.

Getting that refund requires the additional administrative step of refiling at the end of the year, but savings could be significant. This year, the variable-rate premium is $45 per $1,000 of unfunded vested benefits (capped at $561 per participant). That means premiums get reduced 4.5 percent of contributions, up to the per-participant cap (or upon reaching 100% funding).

Your BDO representative is available to help review the new guidance, assist with the calculation of your PBGC premium, and amend a premium filing in order to get a refund.


Age 年歲
Personal contribution
個人供款
HKD 港元
Voluntary contribution
自願性供款
Total
benefits
總預計估值
HKD 港元

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