Second **Quarter** 2023

Aon Quarterly Update

Retirement Legal Consulting & Compliance

In this Issue

Editor’s Note

by Susan Motter

Spring is here, conjuring up thoughts of “spring cleaning.” For our readers who sponsor retirement plans, you might be thinking of “spring cleaning” your retirement plans! In this context, especially after the passage of the Secure Act of 2022 (SECURE 2.0), plan sponsors should be planning to take a look at their retirement plan designs, plan documents, and plan administration practices and procedures.

We open this edition of the *Quarterly Update* with a trio of articles describing how SECURE 2.0 has incentivized plan sponsors to “spring clean” their retirement plans (i.e., identify and correct/clean up their plans for operational or document failures). Our first article addresses the many challenges that plan sponsors face with maintaining complete and accurate retirement plan data, as well as the risks associated with this data. But with risk comes opportunity—and SECURE 2.0 provides an opportunity for plan sponsors to clean plan data and thereby reduce fiduciary exposure. Our second article addresses a frequent area of concern that most retirement plan sponsors face—corrections of plan overpayments—and SECURE 2.0’s new limitations on the ability of a retirement plan to attempt to recover inadvertent overpayments to participants or beneficiaries. Rounding out our trio of articles is our reporting on the expansion of self-correction strategies under the Internal Revenue Service Employee Plans Compliance Resolution System (or EPCRS) for retirement plan operational or document failures.

Two hot areas of interest to our readers involve potential defined contribution (DC) plan design changes spurred on in part by SECURE 2.0: student loan repayment strategies and retirement income solutions. This *Quarterly Update* will provide you the latest reporting on how DC plan sponsors are looking to use student loan repayment strategies as a means to attract and retain employees while at the same time increase the retirement readiness of their employees saving for retirement. In addition, we report on the latest developments in retirement income solutions addressing the desire of many DC plan sponsors and plan participants for some form of guaranteed income in retirement provided by their DC plans.

With so much to weigh and consider with respect to SECURE 2.0, are our readers ready to implement the changes brought by SECURE 2.0? We close out this edition of the *Quarterly Update* informing our readers of our client-specific Action Plans to assist you with compliance and choosing a plan design that best meets the needs of your participants and beneficiaries.

If you have any questions or need any assistance with the topics covered, please contact the author of the article or Tom Meagher, our practice leader.

SECURE 2.0 Increases Need for Clean Data

by Stephan Bazin, Jeff Forman, and Stefanie Ray

Maintaining complete and accurate (i.e., "clean") retirement plan data is a long-running challenge for many plan sponsors. The lack of a true database of record, multiple historical system transitions, inconsistent processes, merger and acquisition activity, staff turnover, and human error are all contributing factors for less-than-ideal data.

Why does clean data matter? Plan sponsors are more strategic now than ever before, looking for ways to improve efficiency, reduce cost, and manage risk. These objectives necessitate the maintenance of complete and accurate data. Many defined benefit (DB) plan sponsors are considering large-scale liability settlement transactions such as lump-sum windows, annuity lift-outs, and plan terminations, all of which require clean data. Even plans that are not considering those strategies often struggle with locating and paying accurate benefits. Unfortunately for plan sponsors, gone are the days when deferring data issues and choosing to address them slowly (e.g., at a participant's event such as termination, retirement, or death) are acceptable strategies.

If plan sponsors needed another reason to address poor data, the SECURE 2.0 Act of 2022 (SECURE 2.0) legislation adds fuel to the already burning fire. SECURE 2.0 introduced both new opportunities and new risks for plan sponsors that impact data. One data-based opportunity is the increased automatic cash-out amount from $5,000 to $7,000 as of January 1, 2024 that will permit employers to distribute plan benefits and avoid costly administrative expenses associated with small plan balances. Three risks resulting from SECURE 2.0 are provisions that (i) limit overpayments; (ii) add another definition of compensation used for purposes of Roth catch-up provisions; and (iii) require the reporting of participants to the Department of Labor (DOL) for a new Lost and Found database. Once again, clean data is at the forefront to capitalize on the opportunities and minimize the risks.

Opportunity: Increased Mandatory Cash-out Threshold to $7,000

Current law allows plan sponsors to include a provision in the plan document to cash out participants' accrued benefits or accounts if the present value is $5,000 or less. SECURE 2.0 provides the ability to increase $5,000 to $7,000 for distributions on and after January 1, 2024. This provision applies to both DB and defined contribution (DC) plans. Assuming the plan document so allows, a plan sponsor may transfer a former employee's retirement account into an IRA if the participant does not elect to take a lump-sum distribution. If adopted by the plan sponsor, the SECURE 2.0 change provides a plan sponsor with an opportunity to automatically cash out a larger cohort of participants. Cashing out participants has multiple benefits for a plan such as mitigating the frequency of "missing participants" (and costs associated with them), reducing the number of participants who receive required notices, lowering PBGC premium costs in the DB plan, and reducing the size of the plan's liability.

In order to be ready for this change, a plan sponsor should prepare and develop clean data now (i.e., confirm eligibility, verify accrued benefits, and perform locator searches, as necessary) for participants with an estimated present value between $5,000 and $7,000 to be distribution-ready in early 2024.

Risk: Recovery of Overpayments

Prior to SECURE 2.0, the Employee Plans Compliance Resolution System set a standard for how to recoup overpayments from plan participants or beneficiaries. The process typically involved having the plan sponsor request the overpayment, with interest, back from the participant. SECURE 2.0 establishes protections for retirees when plan sponsors pursue a recovery for overpayment. For instance, plan sponsors are no longer allowed to recoup payments from participants or beneficiaries if the first overpayment occurred more than three years before the participant or beneficiary is first notified of the error, nor can interest be levied. This provision applies to both DB and DC plans and is effective immediately.

In order to help find potential overpayments before they are paid out or within three years, plan sponsors should perform an immediate one-time sweep to reconcile DB plan payments between the plan's database and the trustee and perform death searches on participants and beneficiaries. Sponsors will also want to enhance ongoing processes to perform such reviews, at least annually, to avoid or catch overpayments early. Furthermore, periodic reviews of eligible plan compensation (for both DB and DC plans) and periodic reconciliations of payroll to DC recordkeeper files, can help avoid costly errors including overpayment situations.

Risk: Definition of Compensation Used for Roth Catch-up Contributions

Effective for tax years after December 31, 2023, SECURE 2.0 adds a provision that employees participating in a DC plan and earning more than $145,000 in wages in the prior calendar year must make their catch-up contributions as Roth contributions, made with after-tax dollars. The potential risk here is that the way an employer determines if the participant earns $145,000 is based on compensation defined by Section 3121(a) of the Internal Revenue Code (Code), which typically differs from the plan's compensation definition. Plans and service providers will need to establish a process for identifying these high-paid participants using the "3121(a) definition," then check how the definition is coded for eligible pay for contributions purposes to compare with Section 3121(a) of the Code. Adding this layer of complexity is the perfect time to have a check-up on how compensation is payroll-coded for purposes of eligible compensation for determining contributions under the plan, to determine whether this coding is consistent with the plan's terms, and to establish a mechanism for flagging these participants who earned more than $145,000.

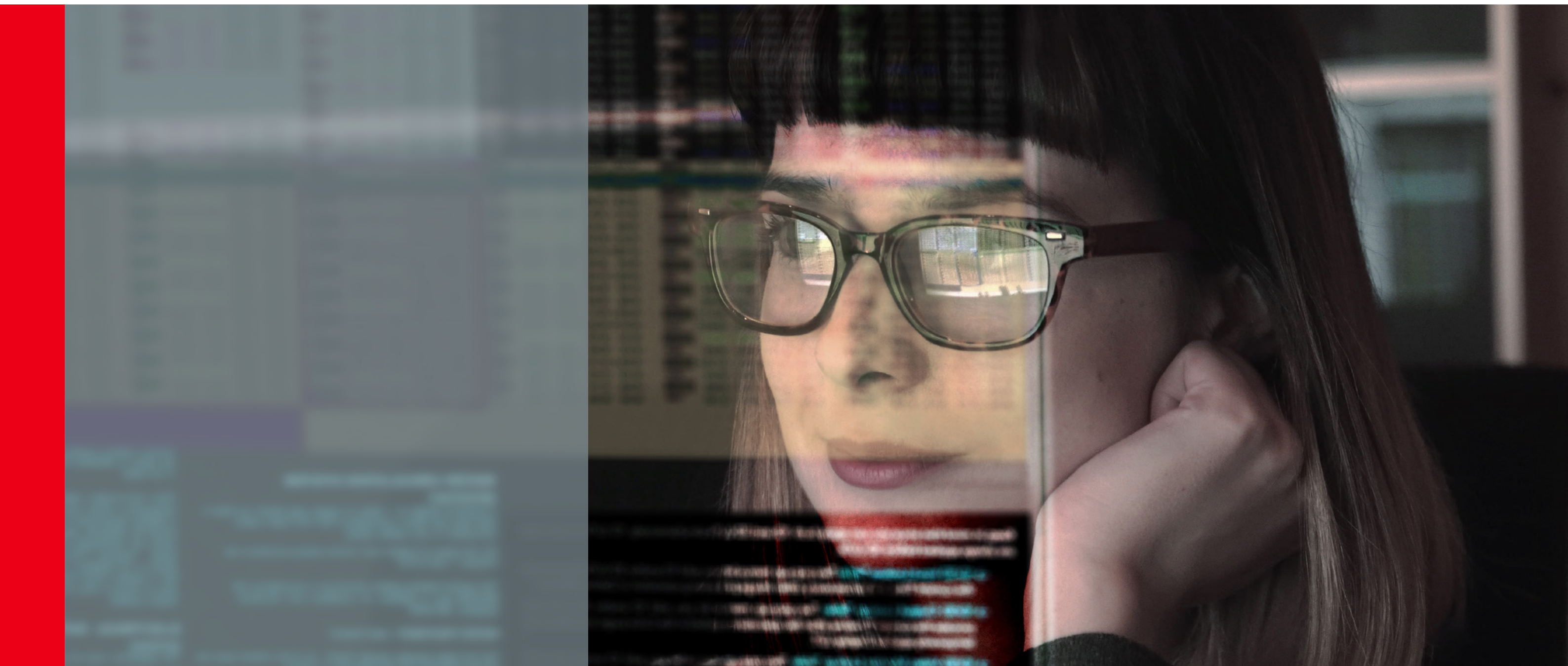
Risk: Establishment of the Retirement Savings Lost and Found

For the past few years, the DOL has been auditing DB and DC plans with an enhanced focus on missing participants. As previously reported in the **Second Quarter 2021** issue of our *Quarterly Update*, the DOL issued guidance on "best practices" in order to help plan sponsors find these missing participants. Based on the SECURE 2.0 directives, the DOL is creating a searchable, national online database to track participants and help participants find plan administrator contact information. In order to populate this database, plan sponsors will need to submit required information for plan years beginning after December 31, 2023. This requirement applies to both DB and DC plans.

This provision is one of the more interesting features in SECURE 2.0 from a data perspective. However, few details are available at the time of this article's publication. Several questions will need to be addressed. For instance, which participants will need to be reported? How often is reporting? What data must be included? One item we know for sure is that this database provides the DOL (and likely the Internal Revenue Service (IRS) since it's a joint effort) with electronically available data about participants and the plan. With access to this data, the DOL and IRS will be able to analyze and identify new audit targets. Plan sponsors will want to take preemptive measures to limit disclosing inaccurate data that the DOL views as "red flags."

Plan sponsors should retain and review third-party commercial locator searches for DOL "red flag" participants for all retirement plans. This includes participants over normal retirement age, participants past their required beginning date, participants with records with unknown beneficiaries, and participants with domestic relations orders.
To further mitigate risk, plan sponsors should consider more robust third-party search services that go beyond basic address and death searches. These searches can provide new leads for plan sponsors looking to contact participants, such as information on participants' relatives, phone numbers, and obituaries. Some of the searches also provide documentation statements for each participant that sponsors can easily share with the DOL or IRS upon audit. Note, once more details about the database are provided, additional action may also be necessary.

Please contact the authors of this article if you would like assistance formulating and executing a 2023 data clean-up plan. Their contact information is included on page **14**.



SECURE 2.0 Limits Ability to Recover Prior Plan Overpayments

by Hitz Burton

Section 301 of the SECURE 2.0 Act of 2022 (SECURE 2.0) places significant new limitations on the ability of a retirement plan to attempt to recover inadvertent periodic benefit overpayments paid to a participant or beneficiary. Absent participant fraud or culpability, recoupment efforts with respect to a monthly annuity or other periodic benefit overpayment discovered after December 28, 2022 are subject to a number of new requirements. While plan fiduciaries may correct the future payments to the correct amount, there are a number of limitations to be considered including (i) the amount recovered each calendar year may not exceed 10% of the full dollar amount of the overpayment; (ii) future periodic payments from the qualified plan must not be less than 90% of the correct monthly benefit; (iii) no interest or other additional charges or fees can be assessed; (iv) no recovery of past overpayments can be made from a participant or beneficiary if the first overpayment occurred more than three years before the participant or beneficiary is first notified of the error in writing; and (v) the plan sponsor cannot generally utilize a third-party collection agency or threaten litigation.

The net effect of these new rules will, among other limitations, typically require plan sponsors to monitor recoupments of prior plan overpayments for a 10-year period even for relatively minor errors. Additionally, these new rules will prevent defined benefit (DB) plan sponsors from correcting overpayment situations through a one-time actuarial adjustment previously permitted under a long-standing correction approach available under the Employee Plans Compliance Resolution System.

Certain scenarios that can lead to benefit overpayments such as relatively minor but technical errors in how eligible pay is developed, how credited service is calculated, or the failure to offset the total accrued benefit at retirement for other retirement benefits like Social Security or prior plan benefits appear to be clearly within the new limitations specified by SECURE 2.0. Additionally, certain examples of participant culpability also appear to be clearly exempt from the new statutory limitations—meaning more traditional methods may be used in those situations to collect overpayments. For example, assume a married participant signs and attests to being single on a benefit election form to avoid the need to obtain a spousal waiver of the 50% joint and survivor normal form of benefit under the plan. A straight reading of the new statute suggests that plan fiduciaries encountering this situation would not be subject to these new limitations and would be permitted to consider other alternative means of recouping the overpayments.

But how SECURE 2.0 will affect other more common overpayment scenarios is, absent additional clarifying guidance from the Internal Revenue Service (IRS) or the Department of Labor (DOL), less clear. For example, consider a married participant who elects a 50% joint and survivor annuity in a DB plan, receives monthly benefits for five years, and then dies. Assume further that the surviving spouse receives the full joint and survivor benefit that would have been payable to the participant had he been living for another six or 12 months after the death of the participant before having the monthly benefit reduced by 50%. It seems reasonable that a fiduciary could argue that there is culpability on the part of the surviving spouse for failing to timely notify the plan of the death of the participant such that the new SECURE 2.0 limitations would not apply. Similarly, if a participant is married, later divorces, and has a qualified domestic relations order assigning 50% of the accrued benefit to a former spouse, would it be reasonable to conclude that the participant is culpable where he requests and receives an unreduced single life annuity benefit from the plan?

In light of the present uncertainty, and in the absence of additional clarifying guidance from the IRS or DOL, Aon's Retirement Legal Consulting & Compliance consultants are available to assist plan sponsors and their fiduciaries as they evaluate their options as to how best to approach various post-SECURE 2.0 overpayment scenarios.

SECURE 2.0 Significantly Expands Self-Correction of Retirement Plan Failures

by Susan Motter

To err is human; consequently, no retirement plan is perfect. The Internal Revenue Service (IRS) has long recognized these basic tenets given the complexities of retirement plan administration. As a result, the IRS has traditionally provided guidance from time to time, providing opportunities for plan sponsors to correct their retirement plan operational and plan document failures through the IRS's Employee Plans Compliance Resolution System (EPCRS). Until the passage of the Secure Act of 2022 (SECURE 2.0), Congress had not addressed the correction of plan failures through legislation.

SECURE 2.0 is not only Congress's first dive into plan correction opportunities, but also is a significant expansion of the self-correction opportunities afforded by EPCRS. Why does expansion of self-correction opportunities matter? Plan sponsors can self-correct their retirement plans' operational and plan document failures and avoid IRS involvement in the correction process (i.e., no IRS filing is required), as well as potentially avoid penalties and plan disqualification.

Prior to SECURE 2.0, EPCRS had limited self-correction to only insignificant failures and significant failures that are corrected within a short period of years. SECURE 2.0 dramatically expands EPCRS to permit self-correction of significant failures and plan document failures regardless of when the failures occurred. Thus, it appears that SECURE 2.0 would permit plan sponsors to self-correct most plan failures without any IRS involvement (i.e., any IRS filing).

New Requirements for Self-Correction under EPCRS

Starting December 29, 2022, a plan sponsor may self-correct any inadvertent plan failure if the failure is (i) not egregious (i.e., not related to the diversion or misuse of plan assets, or directly or indirectly related to an abusive tax avoidance transaction); (ii) corrected within a reasonable time after discovery of the failure; and (iii) not identified by the IRS before the plan sponsor has taken any actions demonstrating a specific commitment to self-correction with respect to the failure. Regarding any required timing of the correction, SECURE 2.0 simply requires that the failure be corrected within a reasonable period of time after discovery. And, more significantly, SECURE 2.0 specifically states that the correction period "is indefinite and has no last day." This means that the driver for qualifying for self-correction is when a plan failure is discovered, not when the failure occurred or whether the failure is "insignificant" or "significant." Consequently, plan sponsors may correct even significant errors that occurred many years ago if they act within a reasonable period following discovery.

What Hasn't Changed: Practices and Procedures Still Matter

SECURE 2.0 still requires for self-correction that a plan maintain practices and procedures designed to prevent failures. This has been a long-time IRS requirement for self-correction under EPCRS. For this reason, now is the time for plan sponsors to be incentivized to review, document, and formalize their retirement plans' administrative practices and procedures.

Special Relief for Plan Loan and Elective Deferral Failures

SECURE 2.0 expands opportunities for self-correction for one of the more common operational failures—plan loans. First, the relief under EPCRS from reporting corrected deemed distributions on IRS Form 1099-R will now also apply to self-corrected plan loan failures. Second, SECURE 2.0 requires that the Department of Labor (DOL) must treat eligible self-corrected loan failures as satisfying the requirements of the DOL's Voluntary Fiduciary Correction Program (or VFCP) for fiduciary breaches.

For nearly a decade, EPCRS has included a safe harbor correction method for elective deferral failures in retirement plans with automatic enrollment or automatic escalation features. This safe harbor correction method provided that no corrective contribution for missed elective deferrals was required if certain requirements were satisfied. However, the safe harbor was limited to elective deferral failures that began on or before December 31, 2023. SECURE 2.0 makes permanent the safe harbor correction method for failures that occur after December 31, 2023.

What Should Plan Sponsors Be Doing?

While plan sponsors wait on updated guidance from the IRS related to the changes brought by SECURE 2.0, plan sponsors should be taking a thorough look at their practices and procedures for administering their retirement plans. Plan sponsors that intend to implement a significant plan transaction (e.g., plan termination, annuity placement, or lump-sum window) may be also considering a data clean-up project. Inevitably such a project may require consideration of correction strategies for discovered plan failures. Many plan sponsors routinely face administrative issues such as overpayments, missing participants, late benefit payments, and other inadvertent failures. With the passage of SECURE 2.0 and the expansion of self-correction, plan sponsors should be incentivized to identify and correct their retirement plan failures without further delay.

Aon's Retirement Legal Consulting & Compliance consultants are here to assist you in reviewing and formalizing your retirement plan's practices and procedures, as well as provide assistance with post-SECURE 2.0 correction strategies.

Student Loan Repayments Can Receive Retirement Plan Match

by Rob Reiskytl and Dan Schwallie

Effective for plan years beginning after 2023, the SECURE 2.0 Act of 2022 (SECURE 2.0) permits 401(k), 403(b), and governmental 457(b) plans to treat *qualified student loan payments* (QSLPs) as elective deferrals to such plans for purposes of providing matching contributions on those payments. A QSLP is the amount of a qualified education loan[1] repayment made by the employee who incurred the loan, provided the employee certifies to the employer making the matching contribution that the QSLP has been made on such loan. This article clarifies the portions of SECURE 2.0 related to QSLPs and provides broader context for employers who may be considering making changes to their tax-qualified retirement plans.

Plan Year Limit on QSLPs

The total of QSLPs of an employee for a plan year is limited to:

- The limits under Section 402(g) of the Internal Revenue Code (Code) ($22,500 for 2023) plus, if permitted by the plan, age 50 catch-up contributions ($7,500 limit for 2023[2]) and, if permitted by a 403(b) plan, the 15-year service catch-up contributions; or
- If less, the employee's compensation as defined for purposes of the limit on annual additions under Section 415 of the Code.

In either case, these limits are reduced by the actual elective deferrals (which include Roth contributions) made by the employee.

Rules for Matching Contributions on QSLPs

An employer contribution to the plan on account of a QSLP is treated as a matching contribution if the plan provides that:

1. Matching contributions are provided at the same rate, whether on account of elective deferrals (which include Roth contributions) or QSLPs;
2. Matching contributions on QSLPs are provided only on behalf of employees otherwise eligible for matching contributions on elective deferrals;

[1] As defined in Section 221(d)(1) of the Code to pay qualified higher education expenses which means the cost of attendance (as defined in Section 472 of the Higher Education Act of 1965 as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997) at an eligible educational institution as defined in Section 221(d)(2) of the Code.

[2] Beginning after December 31, 2024, plan sponsors may choose to increase the catch-up limit for individuals who are at least age 60, but not yet age 64. The details are outside the scope of this article.

3. All employees eligible for matching contributions on elective deferrals are eligible to receive matching contributions on QSLPs; and
4. Matching contributions on QSLPs must vest in the same manner as matching contributions on elective deferrals.

For purposes of rule 3 above and Sections 401(a)(4) and 410(b) of the Code, the matching contribution will not be treated as unavailable to an employee solely because the employee does not have debt under a qualified education loan. These four rules do not apply to 457(b) plans because they are not subject to nondiscrimination testing.

Additional Rules for QSLPs

QSLPs are not treated as a contribution to the plan, except for the purpose of satisfying the actual deferral percentage (ADP) and actual contribution percentage (ACP) safe harbors. A 401(k) plan may apply the ADP test separately with respect to all employees who receive matching contributions on QSLPs. The fact that the employer provides matching contributions on QSLPs in a 403(b) plan does not affect whether the plan satisfies the 403(b) "universal availability" requirements of Section 403(b)(12)(A)(ii) of the Code. A governmental 457(b) plan does not fail to meet the requirements of Section 457(b) of the Code merely because that plan, or a 401(a) or 403(b) plan of the employer, provides matching contributions on QSLPs.

Aon Can Help

Aon's Retirement Actuaries and Retirement Legal Consulting & Compliance Consultants are here to help. Retirement plan sponsors will need to weigh the opportunities introduced in SECURE 2.0 versus other solutions such as debt refinancing/consolidation, student loan debt reduction, or other creative ideas involving unused paid time off. In particular, it will be important for employers to consider strategies for helping employees get out of student loan debt, rather than ensuring they don't miss out on matching contributions in the retirement plan. Some employers are widening their focus beyond student loan debt, with a broader focus on financial wellbeing, through life planning accounts, or other creative solutions. Please reach out to your Aon consulting team for more information.

Is Retirement Income a Solution for Your DC Plan?

by Mark Manning

For decades, the primary focus for defined contribution (DC) plans was savings or the accumulation phase of a participant's lifecycle. The savings focus began with encouraging participation in the plan, through communication efforts to encourage enrollment in the plan or implementing auto enrollment. Then, there was a big push for increasing contribution rates including auto escalation followed by a focus on investment asset allocation coinciding with the emergence of target-date funds. Most of the education, communication, and auto features have solely focused on the savings side of the equation, with little guidance or education on how to decumulate DC plan assets at or in retirement.

It can be argued that savings rates remain the most important variable in ensuring retirement success. However, there are several emerging issues that create an environment in which fiduciary committees should be considering the decumulation phase of a participant's lifecycle. Income needs are increasing as fewer participants are covered by defined benefit (DB) plans, out-of-pocket medical expenses are increasing, and changes to Social Security seem more likely. In 1996, 79% of private sector salaried new hires had a DB plan; in 2020, that number decreased to 14%. Additionally, longevity risk is being realized as life expectancies are increasing. Participants who still have a DB plan are being offered lump-sum payments at an increasing rate, and a high percentage of participants opt for that lump sum. Lastly, organizations are starting to see an increasing need to help facilitate the retirement of aging employees. In addressing this issue, employers are trying to couple that need with a desire to retain assets in the DC plan, which helps employers manage their workforce while improving buying power and reducing investment and administrative fees for the Plan.

According to the **2018 Aon DC and Financial Wellbeing Employer Survey, Living the Dream - U.S. Report**, 80% of employees want some form of guaranteed income in retirement. Additionally, almost 70% of employers believe that DC plans should include lifetime income options while less than 10% of the plans offer in-plan lifetime income solutions, according to the **U.S. 2020 Defined Contribution Employer Survey Report**. Many of the common barriers cited are fiduciary concerns, cost of the solution, complexity, and potentially low usage by participants. Fortunately, the Setting Every Community Up for Retirement Enhancement Act of 2019 helped break down some of these barriers by including an optional safe harbor for selection of an insurer, portability of lifetime income options, and disclosure of monthly income available from the account balance. The SECURE 2.0 Act of 2022 further supports retirement income through expanding access to qualified longevity annuity contracts (QLACs), providing a "free-look" period for participants to rescind a QLAC within 90 days, and modifying Required Minimum Distribution rules.

Innovative plan sponsors have begun implementing custom retirement income solutions for their employees. The spectrum of solutions includes, but is certainly not limited to, the following:

- **Scheduled Payout Solution.** This solution could include either a managed payout through existing funds, a new fund, or a deferred guaranteed withdrawal benefit;
- **Ongoing Guaranteed Income Purchase.** This solution could be offered through a deferred guaranteed income benefit or deferred fixed annuity;
- **Lump-sum Annuity Purchase.** A lump-sum annuity purchase can be completed through an end-of-plan traditional annuity or annuity platform; and
- **Longevity Insurance.** Longevity solutions are offered through the use of QLACs.

There are a variety of types and retirement income alternatives with many continuing to come to market. Perhaps more important than understanding the product, Aon believes it is important to first understand the tradeoffs that each solution type presents and realize that often one size does not fit all. Given the wide range of possible retirement income solutions, it is important for fiduciary committees to consider items such as should the solution be part of the plan or offered outside of the plan, how important is liquidity compared to a guaranteed feature, should the solution be a standalone or built into an asset allocation structure, and should the solution be designed to account for ongoing purchases or be a one-time investment at retirement. The four major trade-offs outlined below are important topics to be examined prior to determining which type of solution is appropriate for a specific DC plan.

Retirement Income Tradeoffs		
In-Plan	⟷	Out-Of-Plan
Guaranteed	⟷	Liquid Access to Capital
Stand-Alone	⟷	Component of Asset Allocation
Ongoing Income Purchases	⟷	Income Purchased at Retirement

As retirement income continues to be an increasingly discussed topic, fiduciary committees will have to determine if they want to continue focusing exclusively on the savings phase of their plan or if they want to develop a more robust retirement plan to help former employees manage down their savings. If supporting retiree objectives is an appealing philosophy, Aon Investments USA Inc. has a thoughtful framework to help fiduciary committees consider and navigate the types of solutions that might best fit your program.

Please see the applicable Disclosures and Disclaimers on page **15**.

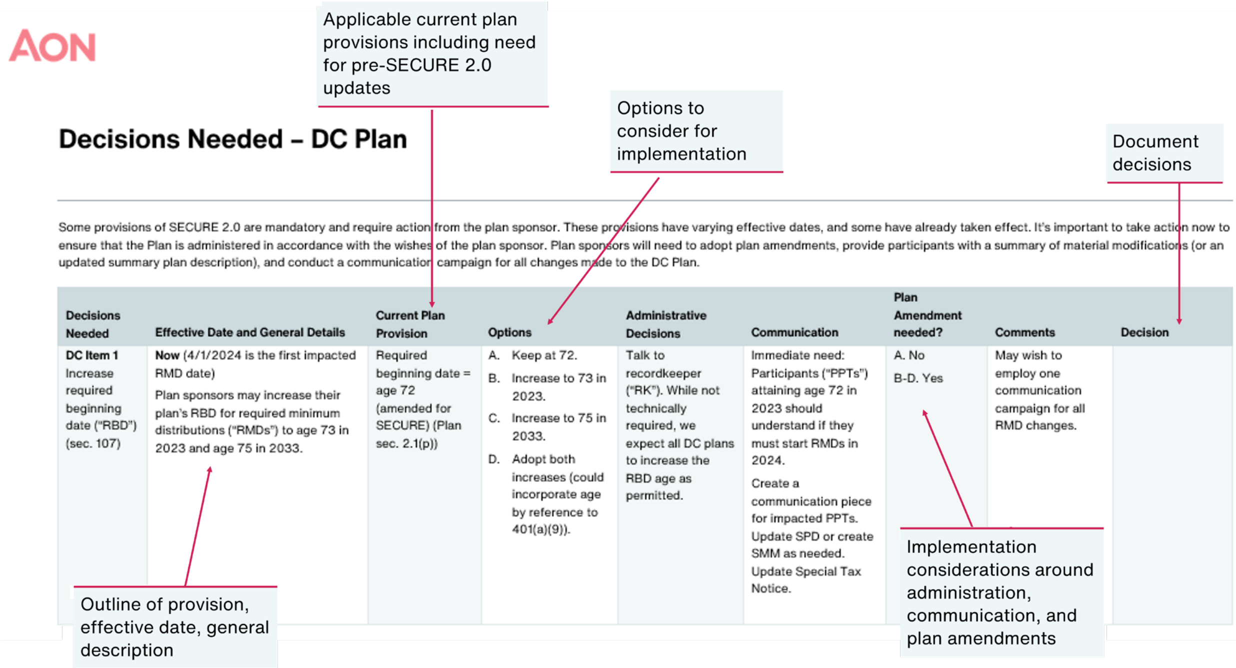
Do You Have an Action Plan for SECURE 2.0 Compliance?

by Jennifer Ross Berrian

There's no bigger news in the qualified retirement plan space than the enactment of the SECURE 2.0 Act of 2022 (SECURE 2.0) at the end of 2022. Many of the provisions will require plan sponsors to change the terms and administration of their plans. In addition, SECURE 2.0 provides for many optional plan design changes and makes a lot of administrative changes.

The amount of information in SECURE 2.0 can be overwhelming and difficult to digest. In order to assist plan sponsors, Aon is preparing plan-specific Action Plans to aid clients with compliance and assist them with choosing a plan design that best meets the needs of participants and beneficiaries. The Action Plan includes a summary of each relevant SECURE 2.0 provision; its effective date; whether it is mandatory or optional; employer considerations based on plan design; legal, administrative, and communication action required; and includes a client-specific meeting to review, discuss, and determine next steps. For example, here is an excerpt from one of our client-specific Action Plans:

An Item-by-Item Review of SECURE 2.0 Provisions and Current Plan Provisions



AON

Decisions Needed – DC Plan

Some provisions of SECURE 2.0 are mandatory and require action from the plan sponsor. These provisions have varying effective dates, and some have already taken effect. It's important to take action now to ensure that the Plan is administered in accordance with the wishes of the plan sponsor. Plan sponsors will need to adopt plan amendments, provide participants with a summary of material modifications (or an updated summary plan description), and conduct a communication campaign for all changes made to the DC Plan.

Decisions Needed	Effective Date and General Details	Current Plan Provision	Options	Administrative Decisions	Communication	Plan Amendment needed?	Comments	Decision
DC Item 1 Increase required beginning date ("RBD") (sec. 107)	**Now** (4/1/2024 is the first impacted RMD date) Plan sponsors may increase their plan's RBD for required minimum distributions ("RMDs") to age 73 in 2023 and age 75 in 2033.	Required beginning date = age 72 (amended for SECURE) (Plan sec. 2.1(p))	A. Keep at 72. B. Increase to 73 in 2023. C. Increase to 75 in 2033. D. Adopt both increases (could incorporate age by reference to 401(a)(9)).	Talk to recordkeeper ("RK"). While not technically required, we expect all DC plans to increase the RBD age as permitted.	Immediate need: Participants ("PPTs") attaining age 72 in 2023 should understand if they must start RMDs in 2024. Create a communication piece for impacted PPTs. Update SPD or create SMM as needed. Update Special Tax Notice.	A. No B-D. Yes	May wish to employ one communication campaign for all RMD changes.	

In addition to assisting clients prepare an Action Plan, Aon has developed the following information on SECURE 2.0 to aid clients with compliance:

- A high-level Client Alert reviewing the broad themes of SECURE 2.0 (click **here** to access this summary);
- An Aon webinar, "SECURE 2.0 in Action: Improving Retirement Outcomes," was held on January 12, 2023; a replay of this webinar can be accessed **here**;
- An Aon webinar, "403(b) Plans and the SECURE 2.0 Opportunity," was held on January 24, 2023; a replay of this webinar can be accessed **here**;
- A Client Alert focusing on defined benefit plan provisions of SECURE 2.0 (click **here**); and
- A Client Alert focusing on defined contribution plan provisions of SECURE 2.0 (click **here**).

Please contact your Aon consultant to schedule time to discuss SECURE 2.0 and the impact that it will have on your retirement plans. We're here to help!

Quarterly Roundup of Other New Developments

by Eric Brager, Anne Jackson, Teresa Kruse, and Mark Manning

Managing Retirement Plan Committee Turnover

The Great Resignation is a term that has been used over the past couple years to describe the number of employees who have left their jobs to retire or to move on to greener pastures. Aon has seen this shift in employment affect retirement plan committees resulting in high levels of turnover. In some committees we work with, the turnover rate has been greater than 50% during the past year.

When replacing committee members, it's important to know committees should be made up of people with the right skill sets to meet the "prudent expert" standard. Members should be comfortable with the personal liability involved, and they must be willing to question others if needed. As a best practice, it may not be appropriate to include junior staff on the committee for this reason because they may not be comfortable confronting a more senior member.

Scheduling fiduciary training is an important first step when acclimating new committee members. Committee members should know and understand their role as a fiduciary, including how their decisions affect plan participants and beneficiaries. It's also important to provide new committee members with a history of committee decisions including investment changes and plan administration responsibilities. If you would like to schedule fiduciary training for your committee, please contact your Aon consultant.

Did the EBSA Have a Strong Year or Was It a Weak Year?

The Department of Labor's (DOL's) Employee Benefits Security Administration (EBSA) collected the lowest amount of federal benefits law enforcement recoveries in the last five years. The 2022 amount of $1.4 billion in retirement and health and welfare benefit plans recoveries is a decrease of 42% compared to 2021 and 54% from the record-breaking 2020 amount of recoveries.

The EBSA oversees 747,000 retirement plans, 2.5 million health plans, and 673,000 other types of welfare benefit plans. They closed 907 civil investigations and investigated 164 criminal cases, 86 of which resulted in guilty pleas or convictions. In addition to the recoveries there were nonmonetary civil corrections where 29 fiduciaries were removed, 35 individuals were barred from being fiduciaries, 30 new fiduciaries were appointed, and improved procedures were implemented for 50 plans.

The investigations helped in the following areas:

- 6,928 terminated vested participants in defined benefit plans recovered $542 million;
- Investigative work allowed the EBSA to recover $931 million;
- Informal resolution of complaints allowed the EBSA to recover $422.1 million;

- Abandoned plan program allowed the EBSA to recover $83.9 million; and
- Voluntary Fiduciary Correction Program (or VFCP) allowed the EBSA to recover $8 million.

The EBSA concluded with closing 168,177 inquiries through its website and phone number. It may not have been the strongest year, but the EBSA still managed to help with many recoveries. DOL enforcement continues to be an important consideration for plan fiduciaries. Contact your Aon consultant for more information about what Aon offers to help monitor these responsibilities.

Dynamic Digital Delivery Drives Participation

The days of white papers and PDFs being enough to drive participant engagement are over. Recordkeepers are finding new ways to leverage digital delivery of retirement plan information to educate participants and drive higher levels of engagement. Research shows participants, including those closest to retirement age, don’t like receiving retirement communications via regular mail and prefer email, texts, and other digital methods of communication.

Providers are experimenting with numerous approaches to reach participants via digital platforms. Some examples of these innovations include displaying recent search topics on their participant sites to prompt education, hypothetical scenarios where participants are presented with an example of a participant retirement savings experience that relates to them, and targeted communications detailing how much to save a year instead of overwhelming retirement age financial goals.

Research confirms the language for effective communication needs to be clear and easy for participants to follow. Materials delivered should provide not only insight on what participants need to do for retirement planning but also reasons for why they should do it. Aon can work with you and your retirement plan vendor to review how your communications are being delivered and if it is the best fit for your participants.

BlackRock TDF Suits Here and Now

How are the 11 BlackRock target-date fund (TDF) series lawsuits trending now? Some judges are taking a hard stance that the lawsuits continue to show weakness as plaintiff complaints continue to fail to present a fiduciary breach. Judges remark that only relying on performance is a failure to state a claim for a fiduciary breach under the Employee Retirement Income Security Act of 1974 (ERISA).

In three recent cases, judges restated that the original complaints failed to set out circumstantial factual allegations showing a failure in the fiduciaries' decision-making process. The amended complaints do nothing more to show any facts about any particularly poor decision-making process undertaken by the fiduciaries. Simple references to statistics do not raise the claims above a participant’s pure speculation that an ERISA breach did in fact occur.

Judges once again are stating that a participant’s disappointment in a fund’s performance is not a fiduciary breach under ERISA. Some judges have responded to amended claims for dismissals “with prejudice,” meaning that they cannot be refiled in the respective courts. The decisions by the judges related to self-dealing and the duty of loyalty are reminders of the importance of monitoring TDFs, as well as all investments available to participants.

Retirement Plan Litigation Update

Retirement plan litigation has been prevalent over the past decade impacting corporate plan sponsors, financial institutions that are also plan sponsors, and universities sponsoring 403(b) plans, among others. Defined contribution plan cases generally fall into the following three areas: inappropriate or imprudent investment choices; excessive fees; and self-dealing. Recently, several cases involving corporations, universities, and other institutions have been dismissed (in full or in part) or settled, including cases involving Cumulus Media, Inc. (settled for $1M, subject to final court approval); Eli Lilly & Co. (dismissed with prejudice); and VCA, Inc. (settled for $1.5M).

Plan sponsors seeking to reduce their litigation risk use a variety of strategies including improving their fiduciary processes for plan governance, increasing the number of passive funds in their plans, and implementing better fee transparency. To the extent helpful, Aon has a team that can review your plan governance as it applies to plan fees, investments, and decision-making processes.

New Retirement Plan Cases

The tap turned off for new litigation in the first quarter of 2023. A few new cases were reported, but nothing near the volume of previous quarters. Although the list of recently filed cases is only illustrative, it is intended to provide a summary of the types of claims being alleged against plan fiduciaries and their committees. An excessive fees case this quarter was brought against U.S. Bancorp (d/b/a U.S. Bank). In addition to the cases brought against plans, two suits were brought against the DOL in regard to the new environmental, social, and governance (or ESG) rule.

Aon will continue to track these cases, and others, as they develop.

Please see the applicable Disclosures and Disclaimers on page 15.

Recent Publications

Considerations When a Safe Harbor Plan Is Involved in an Acquisition
By Daniel Schwallie
Journal of Pension Planning & Compliance (Spring 2023)

Additional considerations, not readily apparent, apply when an acquisition involves an ADP or ACP safe harbor plan of either the seller or the buyer involved in the acquisition. This article illustrates the sort of complications that result and how they might be managed.

Click **here** to download and read the article.

DC Potpourri: A Hodgepodge of Defined Contribution Concerns
By Daniel Schwallie
Journal of Pension Planning & Compliance (Summer 2023)

This article presents a collection of some frequently asked questions (FAQs) about defined contribution plans that individually do not merit an article, including FAQs about the SECURE 2.0 Act of 2022.

Click **here** to download and read the article.

Aon's Retirement Legal Consulting & Compliance Consultants

Tom Meagher
Senior Partner/Practice Leader
thomas.meagher@aon.com

Linda M. Lee
Project Manager
linda.lee.2@aon.com

Jennifer Ross Berrian
Partner
jennifer.ross.berrian@aon.com

Hitz Burton
Partner
hitz.burton@aon.com

Susan Motter
Associate Partner
susan.motter@aon.com

Dan Schwallie
Associate Partner
dan.schwallie@aon.com

Elizabeth Groenewegen
Associate Partner
elizabeth.groenewegen@aon.com

Stefanie Ray
Associate Partner
stefanie.ray@aon.com

John Van Duzer
Associate Partner
john.van.duzer@aon.com

Clara Kim
Associate Partner
clara.kim@aon.com

Beverly Rose
Partner
beverly.rose@aon.com

Guest Authors

Thank you to the following colleagues who contributed articles to this quarter's publication.

Stephan Bazin, ASA, EA
Associate Partner
Wealth Solutions
stephan.bazin@aon.com

Anne Jackson
Consultant
Aon Investments USA Inc.
anne.jackson@aon.com

Rob Reiskytl, FSA, FCA
Partner
Wealth Solutions
rob.reiskytl@aon.com

Eric Brager
Associate Partner
Aon Investments USA Inc.
eric.brager@aon.com

Teresa J. Kruse
Senior Consultant
Aon Investments USA Inc.
teresa.kruse@aon.com

Jeff Forman, FSA
Partner
Wealth Solutions
jeff.forman@aon.com

Mark Manning
Associate Partner
Aon Investments USA Inc.
mark.manning@aon.com

About Aon

Aon plc (NYSE: AON) exists to shape decisions for the better — to protect and enrich the lives of people around the world. Our colleagues provide our clients in over 120 countries and sovereignties with advice and solutions that give them the clarity and confidence to make better decisions to protect and grow their business.

2859797