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Federal Guidance Could Help Mitigate Cybersecurity Risks in 401(k) and Other Retirement Plans

Executive Summary

The Government Accounting Office ("GAO") recently completed a study with respect to cybersecurity and its impact on retirement plans. The study concluded with two specific recommendations for the Department of Labor (DOL). The recommendations are for the DOL to formally state whether it is a fiduciary's responsibility to mitigate cybersecurity risks in Defined Contribution (DC) plans and to establish minimum expectations for addressing cybersecurity risks in DC plans. The DOL agreed with GAO's second recommendation but did not state whether it agreed or disagreed with the first one. The GAO believes both recommendations are warranted.

Overview

The GAO recently completed a study with respect to cybersecurity and its impact on retirement plans. The GAO's concern centered on defined contribution plans and the recent breaches by malicious groups and individuals who steal identities and/or steal funds from participant accounts. The study focused on the security of data and mitigation of cybersecurity risks. The GAO reviewed how data is exchanged for typical DC plans and what data is exchanged, including personally identifiable information (PII) such as participant name, Social Security number, date of birth, address, and username/password. They also noted that plan asset information may include account numbers for both retirement plans and bank accounts. The GAO stated that sharing and storing of this information can lead to significant cybersecurity risks for plan sponsors and their service providers, as well as plan participants. The GAO concluded that Federal requirements and industry guidance exist that could mitigate cybersecurity risks in DC plans, however, they have a

concern that not all entities involved in DC plans are required to follow these requirements. While Federal law requires plan fiduciaries to act prudently when administering plans, the GAO noted that the DOL has not clarified fiduciary responsibility for mitigating cybersecurity risks. The GAO states that the DOL has not established minimum expectations for protecting PII and plan assets. DOL officials told the GAO that they intended to issue guidance addressing cybersecurity-related issues, and has since issued such guidance in the form of cybersecurity program best practices, which was released by the DOL's Employee Benefits Security Administration (EBSA) on April 14, 2021.

GAO Recommendations and DOL Responses:

1. GAO Recommendation: The Secretary of Labor should formally state whether cybersecurity for private sector employer-sponsored defined contribution retirement plans is a plan fiduciary responsibility under ERISA. (Recommendation 1). DOL Response: When we confirm what actions the agency has taken in response to this recommendation, we will provide updated information.
2. GAO Recommendation: The Secretary of Labor should develop and issue guidance that identifies minimum expectations for mitigating cybersecurity risks that outline the specific requirements that should be taken by all entities involved in administering private sector employer-sponsored defined contribution retirement plans. (Recommendation 2). DOL Response: DOL Response: When we confirm what actions the agency has taken in response to this recommendation, we will provide updated information.

Conclusion

Cybersecurity is a serious issue and a serious concern. Pentegra has implemented security measures which provide security with respect to client and participant data and we remain steadfast in our continuing efforts to diligently protect all data in our possession as we do the utmost to protect you and your plan participants. We will keep you posted as this develops further.

A To-Do List for Retirement Planning This Year

The uncertain times we have been living in for the past year-plus may – and I emphasize "may" – finally be on the decline.

While we are plainly not out of the woods yet, I believe the time has come to at least consider, if not act upon, five retirement-related "to-do" items for this year.

Focus on saving money for retirement. This is of course a long-lived mantra, yet according to a CNBC report in February, roughly 25% of workers in the U.S. have less than $10,000 saved for retirement.

Obviously, COVID-19 did not help the situation. Through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the federal government offered a variety of lifelines to struggling Americans, including waiving the 10% tax penalty for early distributions from IRAs, 401(k), 403(b), and 457(b) plans (under certain circumstances), and increasing the maximum amount of a 401(k) loan to the lesser of $100,000 or 100% of the participant's vested assets.

We had no argument with that approach; after all, many people – through reduced hours or even job loss -- needed sources of income and they needed them immediately.

And, to be sure, the nation is still facing a dramatic economic crisis, as evidenced by the recent passing of the $1.9 trillion American Rescue Plan (ARP) Act of 2021.
Even so, as vaccinations nationwide increase and COVID cases decline, it may be time to consider putting one's retirement savings strategy back on its feet. A trusted professional can certainly help to navigate the unprecedented waters we all are facing.

Stay informed about legislative developments. CARES and ARP may be headline-makers, but their potential effects on retirement savings are not always spelled out by the mainstream media. In addition, the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) frequently issue updates and guidance on a wide range of regulations – moves that, again, are not always widely reported. A reputable adviser with a track record of monitoring such activities can be of immeasurable value here.

Consider outsourcing fiduciary responsibility. This is another tip that we regularly share, but it bears repeating as we (hopefully) start returning to "normalcy." Outsourcing fiduciary responsibility to a dependable, proven company can free up time and help protect both plan sponsors and their organizations from potential litigation.

Keep in mind other sources of retirement income. Besides 401(k) plans and IRAs, defined benefit (pension) plans, employee stock-ownership plans, and of course Social Security should all be factored into participants' calculations of what they can expect their golden-years income to be – and what they can do to adjust that expected income *now*.

Look at ways to improve retirement outcomes. Related to the above point, the DOL has issued an interim rule that will require plan administrators to issue annual statements to participants illustrating how much income they can expect from their ERISA-governed retirement account, as a single life annuity, as well as via a qualified joint and survivor annuity that includes a survivor benefit.

The sums that appear on the statements can then be divided to see what the participant's annual monthly income could look like.

The idea behind those annual statements is to afford participants the opportunity of estimating what their lifetime retirement incomes could be, with the byproduct being to encourage those participants to re-examine, and possibly reconfigure, what they are putting into their retirement savings fund(s) to allow them a comfortable retirement.

Questions that should follow are determining what parts of the sum are secure, reliable and will be available on a regular, ongoing basis (Social Security, pension, etc.) and how much is not (stocks, etc.).

There are – and will be – more issues to consider as the year unfolds, especially as the COVID situation develops and as the Biden administration continues to sort through an ever-changing array of priorities. But these five points should serve as a solid start for plan advisers, sponsors, and participants alike.

ARP 2021 – More Relief and Guidance for Retirement Plans

After a brief pause, it looks like the breakneck pace of enacting and/or amending federal legislation and regulations in 2020 is back in full force. Although we are still awaiting updates on the Securing a Strong Retirement Act (SSRA) – details of which can be found here – there is now the American Rescue Plan (ARP) Act of 2021, which is the federal government's latest economic stimulus package and the first under President Biden.

The $1.9 trillion ARP includes:

- Extending expanded unemployment benefits with a $400 weekly supplement through the end of September; those benefits had been set to expire on March 31.

- $1,400 direct payments to qualifying persons (individuals with incomes of $75,000 or less and couples with incomes of $150,000 or less, plus $1,400 for children and adult dependents).
- $20 billion for a national COVID-19 vaccine program.
- $7.6 billion to hire 100,000 public health workers.
- Emergency paid leave for over 100 million American employees.
- Tax credits for families to offset up to $8,000 in annual child care costs.
- $15 billion in loans to small businesses, $25 billion in grants to bars and restaurants, and $25 billion for the Paycheck Protection Program.

The original House Bill also included an increase in the hourly minimum wage to $15, but that was struck down by the Senate.

ARP includes the following items that will impact retirement plans:

Defined Benefit Single Employer Plan Funding Relief *

- Extended amortization for single employer defined benefit plans. In essence, all plan funding shortfalls are set to $0 and a fresh start amortization over 15 years is put in place. This would have a material positive impact for many defined benefit plan sponsors by lower funding requirements.
- Extension of pension funding stabilization percentages for single employer plans by revising the specified percentage ranges used to determine whether a segment rate must be adjusted upward or downward. The specified percentage range for a plan year would be determined by reference to the calendar year in which the plan year begins
- Special Rules for Community Newspaper Plans which expands the special funding rules enacted under the SECURE Act to certain community newspaper pension plans that did not qualify under the eligibility rules. In general, the legislation allows community newspapers to reduce the amount they contribute to their pension plans by choosing a higher interest rate of 8%, and allow plans to fund their shortfall over a period of 30 years.

* This includes multiple employer defined benefit plans like the Pentegra Defined Benefit Plan for Financial Institutions

Defined Benefit Multiemployer Plan Funding Relief **

- Adjustments to funding standard account rules for multiemployer plans.
- Temporary delay of designation of multiemployer plans as in endangered, critical, or critical and declining status.
- Temporary extension of the funding improvement and rehabilitation periods for multiemployer pension plans in critical and endangered status for 2020 or 2021
- Special financial assistance program for financially troubled multiemployer plans

** This does not include defined benefit multiple employer plans like the Pentegra Defined Benefit Plan for Financial Institutions

The House Bill originally contained a freeze in the annual cost-of-living adjustments for retirement plan salary limits and for overall contributions to defined contribution plans, as well as the maximum annual benefit under a defined benefit plan. The

good news for retirement plan participants is that these provisions were eliminated from the House Bill in the final version signed into law.

Most of the retirement plan proposals are related to defined benefit (DB) plans, although the cost-of-living freeze will also impact defined contribution plans since salary and contribution limits would be frozen.

The most significant DB plan item is the extended amortization period for single employer plans (this would include the Pentegra DB Plan for Financial Institutions). In essence, setting all plan shortfalls to $0 and having a "fresh start" amortization over 15 years would have a material positive impact -- i.e., lower funding requirements for many of our DB plan clients.

Other notable provisions include establishing a special financial assistance program for financially troubled MEPs; the temporary delay of designating MEPs as being in endangered, critical, or critical and declining status; a temporary extension of the funding improvement and rehabilitation periods for MEPs in critical and endangered status for 2020 or 2021; and the modification of special rules for minimum funding standards for community newspaper plans.

Will ARP meet all of its intended goals? It is of course too soon to say. But as the nation – and the world – go about putting COVID-19 in the rearview mirror, this looks like the right kind of strategy to help us all get back on our feet.

Record Gains and New Highs: There Is Some Good News, After All

Do you feel like you spent the last year gripping the steering wheel and waiting to see what would happen? You aren't alone. Still, as we collectively look ahead and the chaos wanes, bits of good news are emerging.

In the investing world, 2020 was a year of records and firsts. The Dow Jones Industrial Average closed out the year at well over the 30,000 mark, setting a new record high as it increased more than 7% from the beginning of the year.

And right on the heels of that good news comes the annual survey from the Profit Sharing Council of America (PSCA). Based upon 2019 data — the most recent available — and released in December of 2020, the PSCA 63rd annual survey showed some record-breaking statistics. This industry-leading survey is eagerly anticipated each year because of the wealth of information presented and the large number of plans involved.

According to the report, 2019 was the third year in a row when new records were set in contribution and participation. More than 90% of employees eligible to participate

had a balance in the plan, and nearly the same percentage (87.3%) of eligible employees contributed during the year — an increase from the previous year's record high of 84.2%. On average, participants are contributing 7.6% of their pay, whereas their employers put in an average of 5.3% of pay, also hitting a new high. Between the two, participants were adding 12.9% of pay in 2019.

Roth Accounts, Target Date Funds Among Design Trends

There were some notable changes in plan design trends for 2019. The availability of Roth accounts within 401(k) plans climbed during the year, reaching 75.1%. There has been a steady increase in the availability of Roth accounts over the last decade, rising from 45.5% in 2010. More than one-quarter of employees took advantage of the availability of Roth accounts in 2019, reaching 26.4%, an increase of 3.4% from the prior year.

In 2019, 80% of plans offered a target date fund, which is a significant increase from 2018 when 68.6% made them available. One investment trend that seemed to lose a little traction was in the socially responsible investment (SRI) arena. ESG, or environmental, social, governance and SRI investments accounted for less than 0.1% of plan assets in 2019, and fewer than 3% of plan sponsors responding to the survey reported including such options on their investment menu — representing a slight decrease from 2018. The smallest plans, those with 50 or fewer participants, and the largest — with more than 5,000 participants — were most likely to offer ESG/SRI options: 4.2% of the largest plans and 4.4% of the smallest had them on the menu.

There is much more information available from the PSCA report. View the full report here.

COVID-19 Impacts Retirement Prospects for Each Workforce Generation

Let's play a little fill-in-the-blank game. Complete the following sentence:

Those poor (Millennials, GenXers, Boomers)! They really got the short end of the retirement stick, especially in light of the pandemic.

Which is the correct answer? Brace yourself for a difficult truth: all of them did. Here's how.

Millennials started out behind in some respects, coming of age as they did during the Great Recession. They watched their parents struggle through the financial challenges of that time, then entered the workforce well-educated but with a huge amount of student loan debt. Many among this group believe Social Security will be bankrupt long before they can get it, and worry they won't be able to save enough

to retire comfortably on their own. Still, those Millennials who began investing early have enjoyed one of the longest bull market cycles in history.

Generation X was present in the workforce during the decline and fall of the pension empire — and the concurrent rise of the 401(k) plan. As such, many started saving for their own retirement early in their careers, although they took a significant hit to their savings during the Great Recession. Now that these "sandwich generation" folks are caring for both children and parents, many have been unable to recover the losses in spite of the bull market. And now, along comes a pandemic that further impacts their jobs and thus, their ability to save for the future.

Baby Boomers were well-established in their pension-earning careers when the shift to 401(k) plans began. While they were in the midst of their peak earning years, many did begin to save on their own. The Great Recession affected their balances, of course, and unlike their younger colleagues, they have less time left to recover. Simply because of age, they are more likely to be laid off or let go when the economy shifts as it did in 2020; members of this generation have lost jobs at almost the same rate as the Millennials.

The pandemic's impact on jobs and savings is undeniable, yet workers across all generations continue to have an optimistic viewpoint of how retirement will look for them. The data, from the Transamerica Center for Retirement Studies, report that 70% of people who responded to their recent survey say they are looking forward to retirement.

Pentegra in the News

- Fiduciary Scorecard From Pentegra Can Help Measure Plan Success *Plansponsor*
- Pentegra Introduces Fiduciary Scorecard to Measure Plan Success *PlanAdvisor*
- Pentegra, EPIC Offer Comprehensive 3(16) Fiduciary Solution *PlanAdvisor*
- Pentegra, EPIC Launch New 3(16) Fiduciary Solution *NAPA Net*
- Epic Plugs In to a 316 and Possible PEP Partner *401kWire*
- FAs Can Influence This PEP's Menu *401kWire*
- Independent PEP launched by Pentegra, The 401(k) Plan Company*401kSpecialist*
- The Keys to Unlock Retirement Readiness (Part 2) *NAFCU Services*
- How The Pandemic Actually Increased Financial Literacy *Forbes*
- Not So PEPpy? Think Group of Plans *401kWire*
- The Pentegra Fiduciary SmartPath: A Guide to Understanding Your Responsibilities *ABA Quarterly Spotlight*

- The Keys to Unlock Retirement Readiness (Part 1) *NAFCU Services*
- Pentegra's Retirement Study *NAFCU Services*

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