



Hot topics

for defined contribution plans

Q4 | 2022

This quarterly publication highlights recent and ongoing issues and developments that are relevant to defined contribution plan sponsors. In each issue we highlight fundamental areas in plan design and administration, participant engagement, compliance and risk, and investments.

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Talk to us

If you are interested in exploring any of these topics further, contact us at talktous@buck.com or call 1 866 355 6647.



Design and administration

Retiree concerns provide a roadmap for new plan initiatives

EBRI recently surveyed¹ over 2,000 current retirees from Age(s) 62-75 to measure their overall well-being after the COVID-19 pandemic. Key findings included:

- Retiree segments who reported lower senses of well-being included those without defined benefit or other annuity income, those with low financial knowledge, and those without a financial advisor.
- Around 30% of retirees reported not having three months' worth of emergency savings, with African American and Hispanic populations overrepresented in the group.
- 70% said Social Security is a major source of their retirement income.
- For those struggling with managing day to day expenses, concerns about inflation were cited as the major factor by 90% of respondents.

What this means to plan sponsors

This survey provides an important roadmap of issues to address in implementing any plan design (such as adding a Retiree Income option) or financial education initiatives for Age 50+ employees based on the experience of those recently retired.

Plan sponsors should seek ways to increase utilization of financial planning resources and tools, particularly targeting groups more likely to face financial challenges after leaving the workforce.

¹ Bearden, Bridget, "Spending in Retirement 2022," EBRI Issue Brief, no. 572 (Employee Benefit Research Institute, October 6, 2022)

U.S. Department of Labor (DOL) issues proposed rule on independent contractors

The U.S. Department of Labor (DOL) has issued a new proposed rule¹ addressing the distinction between employees and independent contractors under the Fair Labor Standards Act (FLSA).

The proposed rule would replace the generally employer-friendly test announced by the DOL in January 2021, with a test that is decidedly more likely to result in findings that contractors have been misclassified under the FLSA and are entitled to overtime.

What this means to plan sponsors

The rule is only at the proposal stage with the comment period extending until November 28, 2022. If a final rule is issued, it will likely not become effective until the end of 2023, at the earliest. And even after that, expected litigation by employer groups could tie up final implementation for several more years.

Commentators have noted that, even without final implementation, the DOL is now particularly focused on the employee vs. independent contractor distinction in its audit activity.

Plan sponsors should evaluate independent contractors for the benefit of plan purposes, and the potential impact if additional groups were treated as employees.

¹ Regulation Identifier Number (RIN) 1235-AA43

Engagement

Addressing employee financial wellness concerns

Buck's recently completed Wellbeing and Voluntary Benefits Survey¹ reviewed 218 employers and a demographically representative sample of over 600 employees to compare their perspective of employee overall wellness and financial wellbeing.

- One of the most striking findings was that employers **consistently underrated** their employee's financial wellness concerns.
- And 62% of millennials (born 1981 to 1996) as well as 37% of Baby Boomers (born 1946 to 1964) reported living paycheck to paycheck.

What this means to plan sponsors

Our survey highlights that any definition of financial wellness must go beyond traditional measures of retirement readiness; instead, a concerted, on-going effort is required to begin to move the needle on employee financial wellness such as offering voluntary benefit options including:

- Savings and discounts to stretch budgets
- Emergency savings; personal loans
- Long-term care
- 529 plans; college resources
- Financial coaching

Plan sponsors should determine how to best increase their financial wellness efforts based on their organization's human capital objectives as well as soliciting employee input.

¹ <https://buck.com/report-2022-wellbeing-and-voluntary-benefits-survey/>

Compliance and risk

2023 benefit plan limitations

Limit	Internal Revenue Code	2023	2022	2021
Elective Deferrals - 401(k), 403(b), and Most 457 Plans	Section 402(g)(1)	\$22,500	\$20,500	\$19,500
Catch-up Contribution for Elective Deferrals	Section 414(v)(2)(B)(i)	\$7,500	\$6,500	\$6,500
DC Plan Combined Annual Addition Limit	Section 415(c)(1)(A)	\$66,000	\$61,000	\$58,000
Annual Compensation Limit	Section 401(a)(17)	\$330,000	\$305,000	\$290,000
Annual Compensation Limit for Eligible Participants in Grandfathered Governmental Plans	Section 401(a)(17)	\$490,000	\$450,000	\$430,000
Highly Compensated Employee Threshold for Non-Discrimination Testing ¹	Section 414(q)(1)(B)	\$150,000	\$135,000	\$130,000
Top Heavy Plan: Key Employee Compensation Threshold	Section 416(i)(1)(A)(i)	\$215,000	\$200,000	\$185,000
Social Security Old Age, Survivors, and Disability Program (OASDI) Tax and Wage Base	N/A	\$160,000	\$147,000	\$142,800

¹ Limitation applies to compensation earned in prior year. For example, 2023 HCE is anyone who earned at least \$150,000 in 2022

U.S. courts raise the bar for alleging excess investment and administrative fees

A recent ruling¹ by the U.S. 7th Circuit Court of Appeals dismissing a claim against plan fiduciaries that they had violated ERISA by permitting excess investment and administrative fees is seen as raising the standard by which Courts will allow cases to proceed:

- Ruling rejected claim that failure to regularly solicit quotes or competitive bids constituted a breach of duty.
- Plaintiffs challenging recordkeeping fees must allege how such fees were excessive in comparison to the services rendered, rather than merely citing the nominal figure.
- Offering higher-fee actively managed funds is not enough to state a claim without also demonstrating inferior performance.

What this means to plan sponsors

After the recent U.S. Supreme Court decision² which rejected that a defense against excessive investment fees is offering low-cost index funds as an alternative, plaintiffs have tried to argue that the ruling requires fiduciaries to regularly solicit third-party fee quotes for both investment and administrative services.

Recent court rulings have rejected that argument. Rather, courts are requiring plaintiffs to demonstrate that administrative and investment fees are excessive relative to the quality of the services delivered (e.g., fund performance, service quality).

Plan sponsors should adopt a fee review methodology, seeking to benchmark fees based on the detailed quality of services delivered vs. just nominal cost, and how this may mitigate allegations of plan mismanagement.

¹ Andrew Albert v. Oshkosh Corporation, et al., No. 21-2789, 7th Cir., 2022

² Hughes v. Nw. Univ., U.S., No. 19-1401, 1/24/22.



Investments

Consideration of ESG options in the investment selection process

Twenty-four state governments have banned public pensions from investing in funds that consider Environmental, Social and Governance (ESG) factors in their investment screening basis. Government officials instituting these bans claim that considering ESG factors will ultimately lower performance and damage pensioners.

Conversely, the Defined Contribution plans of some non-profits have long offered Socially Responsible Funds – whose criteria have never been fully agreed upon – to address employee concerns about investing in companies seen as contributing to societal ills.

What this means to plan sponsors

Seeing ESG factors solely through a cultural/political lens ignores the investment implications of considering these issues when making fund/manager selection decisions.

As more ESG information is publicly disclosed, it is being integrated into active management and engagement decisions.

ESG integration may also include DEI-related investment issues, both in selecting managers and in the due diligence on how managers make their investment decisions.

Plan sponsors should execute a study of a plan's overall investment menu configuration - reconciling its construction with investment policy - to determine where consideration of ESG factors may enhance participant outcomes and the optimal ways to implement these options.

Source: FTFNEWS.COM, Eugene Grygo, 24 States Forbid ESG Investing via Public Pension Funds

DEI benefits of adding retirement income options to 401(k) plans

Over \$140 billion in U.S. annuity sales were reported in January-June of 2022¹, indicative of the overall interest in securing retirement income. But due to their complex nature and the fact they are sold through advisors targeting higher income groups, African American and Hispanic populations have traditionally had less access.²

A recent seminar³ highlighted that adding a Qualified Life Annuity Contract or QLAC (a deferred income annuity typically commencing at Age 85 to serve as a hedge against longevity risk) to a 401(k) Plan has the additional benefit of making a lifetime income option easily accessible to all, particularly benefiting underserved populations.

What this means to plan sponsors

Academics have long cited the benefits of using a QLAC given its simplicity and alignment with typical retiree spending patterns as an important component of securing lifetime income, particularly as pension benefits have largely disappeared for younger employees.

There is also the added DEI benefit that a 401(k) Plan, as a financial product from a trusted source, is more accessible and better understood by many underserved populations who might otherwise shy away from complex financial products in another context.

Plan sponsors should evaluate the issues around adding retirement income options to their 401(k) plan as well as help to educate participants on the value of these options.

¹ Second Quarter 2022 Annuity Sales, LIMRA

^{2,3} Schmid, Stacy et al, (October 17, 2022), My DB Plan is Frozen: Now What? [Presentation] Conference of Consulting Actuaries, Austin, TX.

Qualified Life Annuity Contract (QLAC) primer

A QLAC is an annuity contract that is purchased from an insurance company for an employee under an eligible employer-sponsored qualified plan or traditional IRA.

Distributions must commence no later than a specified annuity starting date, which is no later than the month following an employee's 85th birthday.

Commutation benefit, cash surrender right or other similar features, are not available.

Premiums are limited to the lesser of:

- 25% of the employee's account balance under the plan, or
- \$145,000¹.

Factors for plan sponsors to consider

- A QLAC is not subject to required minimum distribution (RMD) rules providing an opportunity for employees to defer income from traditional IRA or employer-sponsored qualified plans past age 72.
- The provision of a guaranteed stream of lifetime income commencing on a date selected by the employee.
- Depending on the terms and elections within the contract, while complex, a QLAC may provide a cash refund to the beneficiaries, or commencement or continuance of annuity payments to the spouse.
- May add complexity to plan operations and oversight.

¹ IRS Notice 2021-61

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