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Morgan Lewis

Agenda

- **Mental Health Parity**

  Sage Fattahian

- **Proposed Tax Reform Impact on Employee Stock Ownership Plans (ESOPs)**

  Brian Hector

- **Special Financial Assistance for Troubled Multiemployer Pension Funds**

  Ben Kelly

- **New DOL ESG Rule**

  Liz Goldberg

- **Retirement Plan Issues and Considerations**

  Sean Callaghan

Mental Health Parity

Basics of Mental Health Parity

- Group health plans that provide medical/surgical benefits and mental health or substance use disorder benefits must comply with mental health parity requirements under the Mental Health Parity Act (MHPA) (1996) and the Mental Health Parity and Addiction Equity Act (MHPAEA) (2008) requirements:
  - Annual or lifetime limits
  - Parity as to financial requirements and quantitative treatment limitations
  - Parity as to nonquantitative treatment limitations
- No requirement to offer mental health or substance use disorder benefits

How Are Mental Health Benefits Defined?

- Three tools can be used to define mental health benefits:
  - Current version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5);
  - Current version of the International Classification of Diseases (ICD-10); or
  - State guidelines
- Substance use disorder benefits can be defined in accordance with applicable federal and state law and generally recognized standards of current medical practice

Parity Requirements

- **Lifetime & Annual Dollar Limits**
  - May not impose a lifetime dollar limit or an annual dollar limit on mental health substance use disorder benefits that is lower than the lifetime or annual dollar limit imposed on medical/surgical benefits
  - Consider Essential Health Benefits under the Affordable Care Act (ACA)
- **Financial Requirements and Quantitative Treatment Limitations**
  - May not impose a financial requirement (deductibles, copay, coinsurance) or quantitative treatment limitation (visit limitations, treatment limitations) in any benefit classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation of that type of benefit that is applied to substantially all medical/surgical benefits in the same classification

Parity Requirements

- Classifications include:
  - Inpatient, in-network;
  - Inpatient, out-of-network;
  - Outpatient, in-network;
  - Outpatient, out-of-network;
  - Emergency care; and
  - Prescription drugs

Parity Requirements

- **Nonquantitative Treatment Limitations* (NQTLs)**
  - Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;
  - Prior authorization or ongoing authorization requirements;
  - Concurrent review standards;
  - Formulary design for prescription drugs;
  - For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;
  - Standards for provider admission to participate in a network, including reimbursement rates;
  - Methods for determining usual, customary, and reasonable charges;
  - Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective;
  - Exclusion of specific treatments for certain conditions; and
  - Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan

*Not an exhaustive list

Consolidated Appropriations Act (CAA)

- The CAA now imposes a statutory obligation on plans that provide medical/surgical benefits and mental health or substance use disorder benefits to perform and document comparative analyses of the design and application of the plan's NQTLs that are imposed on mental health or substance use disorder benefits.
  - Effective February 10, 2021.
  - If the plan is not in compliance with this requirement, there is a 45-day corrective-action period.
  - If noncompliance is not corrected within the 45-day corrective-action period, notification must be sent to all individuals enrolled in the plan that the plan is not in compliance.

Comparative Analysis

- Comparative analysis must be sufficiently specific and detailed to demonstrate processes, strategies, evidentiary standards, or other factors used in developing NQTLs that are comparable and applied no more stringently on mental health/ substance use disorder (MH/SUD) benefits than on medical/surgical benefits
- FAQ guidance – at minimum the comparative analysis of each NQTL must meet nine specific elements:
  - Clear description of the specific NQTL, plan term, and policies at issue
  - Identification of the MH/SUD and medical/surgical benefits to which the NQTL applies within each benefit classification, and a clear statement as to which benefits identified are treated as MH/SUD and which are treated as medical/surgical

Comparative Analysis

- FAQ guidance – at minimum the comparative analysis of each NQTL must meet nine specific elements (cont.):
  - Identification of any factors, evidentiary standards or sources, or strategies or processes considered in the design or application of the NQTL and in determining which benefits, including both MH/SUD benefits and medical/surgical benefits, are subject to the NQTL. Analysis should explain whether any factors were given more weight than others and the reason(s) for doing so, including an evaluation of any specific data used in the information
  - To the extent the plan or issuer defined any of the factors, evidentiary standards, strategies, or processes in a quantitative manner, it must include the precise definition used and any supporting sources

Comparative Analysis

- FAQ guidance – at minimum the comparative analysis of each NQTL must meet nine specific elements (cont.):
  - The analysis (for each NQTL) should explain whether there is any variation in the application of a guideline or standard used by the plan between MH/SUD and medical/surgical benefits and, if so, describe the process and factors used for establishing that variation
  - If the application of the NQTL turns on specific decisions in the administration of the benefits, the plan should identify the nature of the decisions, the decisionmaker(s), the timing of the decisions, and the qualifications of the decisionmaker(s)
  - If the plan's analyses rely upon any experts, the analyses should include an assessment of each expert's qualifications and the extent to which the plan ultimately relied upon each expert's evaluations in setting recommendations regarding both MH/SUD and medical/surgical benefits

Comparative Analysis

- FAQ guidance – at minimum the comparative analysis of each NQTL must meet nine specific elements (cont.):
  – A reasoned discussion of the plan's findings and conclusions as to the comparability of the processes, strategies, evidentiary standards, factors, and sources identified within each affected classification, and their relative stringency, both as applied and as written. Include citations to any specific evidence considered and any results of analyses indicating the plan is or is not in compliance with MHPAEA
  – The date of the analysis and the name, title, and position of the person or persons who performed or participated in the comparative analysis
- Supporting documentation
- Department of Labor (DOL) self-compliance tool

What We Are Seeing

- Group health plans under a current DOL audit have been subpoenaed for the comparative analyses
- Short turnaround times to produce (generally two weeks)
- Insufficiency letters if nine requirements are not addressed
  - A deeper probe, including claims data
  - Short turnaround times (generally two weeks)
- Initial findings letter
  - 45-day corrective-action period
- If still not in compliance
  - Seven-day period to notify participants

Comparative Analysis: Self-Insured Plans

- Self-insured group health plans likely do not have access to the medical policies, management standards, provider payment schedules, and other NQTL documentation needed to complete comparative analyses
  - Must coordinate with third-party administrator for medical and Rx benefits
  - Administrative services agreement
- Don't wait; ensure that comparative analyses are complete and ready for disclosure

Proposed Tax Reform Impact on ESOPs

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What Type of Tax Changes Could We See in 2022 That Could Impact ESOPs?

Under President Biden's administration's current proposed tax reform, known as the "American Families Plan" (AFP), we could see the following tax changes that affect ESOPs:

- Increase in capital gains tax rate
- Increase in corporate tax rate
- Elimination of step-up in basis in QRP at shareholder's death

What Type of Tax Changes Could We See in 2022 That Could Impact ESOPs?

- Under the AFP, the current 23.8% capital gains tax could increase to 43.4%, inclusive of the 3.8% Medicare surcharge—a roughly 82% increase in the capital gains tax rate!
- With this proposed capital gains tax rate increase, a business owner stands to lose a large portion of the wealth that he or she has worked hard over several years to accumulate when he or she sells his or her business.
- Also, if a selling business owner lives in a state with high income tax rates, such as Minnesota or New York, the owner would be subject to an additional 9% to 13% capital gains tax in addition to the federal capital gains tax rate. Thus, taxes on the transaction could eliminate more than half of the business owner's wealth, regardless of whether the owner's stock is redeemed or sold to a third party.

What Type of Tax Changes Could We See in 2022 That Could Impact ESOPs?

- The chart below illustrates the tax savings a business owner could enjoy by selling his or her stock to an ESOP in a 1042 Transaction versus the more conventional sale of stock to a third-party buyer, applying the proposed capital gains tax rate under the AFP. The example in the chart below assumes the business and business owner are in New York.

	Regular Sale	1042 ESOP Sale
Sale Price	$100,000,000	$100,000,000
Basis	10,000,000	10,000,000
Taxable Gain	90,000,000	90,000,000
Federal LT Capital Gains Tax (43.4%)	$39,060,000	$ 0
Minnesota LT Capital Gains Tax (9.85%)	$8,865,000	$ 0
Total Tax	$47,925,000	$ 0
After-Tax Proceeds	$56,790,000	$100,000,000
Tax Deferral Savings		$47,925,000

- As the chart shows, the tax savings from an ESOP transaction would be quite significant if the capital gains tax rate under the AFP is passed into law.

What Type of Tax Changes Could We See in 2022 That Could Impact ESOPs?

Another significant proposal under the AFP is the increase in the federal corporate income tax rate from 21% to 28%. Such a higher income tax rate obviously increases the value of corporate deductions. The chart below shows the tax savings using an ESOP, assuming the corporation is a C corporation in Minnesota.

Taxable Income Per Year	State Corp Tax Rate	AFP Federal Corp. Tax Rate	Taxable Income Without ESOP	Taxable Income With ESOP
$50,000,000	9.8%	28%	$50,000,000	$40,000, 000*
Tax Savings from Principal and Interest Deductions **Per Year over 10 Years (life of ESOP loan)			$0	$5,670,000 – Year 1 $5,481,000 – Year 2 $5,292,000 – Year 3 $5,103,000 – Year 4 $4,914,000 – Year 5 $4,725,000 – Year 6 $4,536,000 – Year 7 $4,347,000 – Year 8 $4,158,000 – Year 9 $3,969,000 – Year 10
Total Tax Savings from Principal and Interest Deduction over 10 Years (life of ESOP loan)***			$0	$48,195,000

*Calculated as $50,000,000, less the $10,000,000 ESOP loan payment.
**Deduction calculated based on the $10,000,000 plus a 5% interest rate x 34.4% (28% federal corporate tax rate plus 9.8%; Minnesota state corporate tax rate, less 3.4% federal deduction for state income tax expense). This calculation does not take into account any additional taxes that may apply under current local law.
***The term of an ESOP loan can vary and can be as long as 50 years.

Special Financial Assistance for Troubled Multiemployer Pension Funds

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American Rescue Plan Act of 2021

- Congress passed the American Rescue Plan Act of 2021 (ARPA) in March 2021. ARPA includes provisions for multiemployer pension plan relief.
- ARPA provides "special financial assistance" (SFA) in the form of a lump-sum payment to certain of the most troubled multiemployer pension plans.
- SFA is intended to keep plans solvent through 2051.
- SFA is administered by the Pension Benefit Guaranty Corporation (PBGC) using Treasury funds.

Eligibility for SFA under ARPA

To be eligible to apply for SFA under ARPA, a fund must meet one of four conditions:

1. Be insolvent;
2. Have previously imposed a benefit suspension under the Multiemployer Pension Reform Act (MPRA) (2014 pension relief legislation);
3. Be in critical and declining status in 2020, 2021, or 2022; or
4. Be in critical status, have a modified funded percentage of less than 40% on a current liability basis, <u>and</u> have a ratio of active to inactive participants of less than 2-to-3.

PBGC'S Interim Final Rule

PBGC published an interim final rule (the Rule) on July 12, 2021, implementing the SFA program. The Rule's comment period closed on August 11.

- The Rule provides detailed guidance on a variety of substantive topics, as well as the application process
- Estimates payments of $94 billion
- Comments to the Rule express a high level of dissatisfaction
- Final rule expected at some date in the future
- Technical-correction bill possible

Overview of SFA Under PBGC Rule

- **Amount of SFA**
  - Calculated based on difference between "plan obligations" and "plan resources"
  - The Rule rejects the notion that SFA should be the full amount required to pay benefits through 2051
  - Interest rate utilized for calculating SFA just under 5.5% at present
- **Use of SFA**
  - May only be used for plan benefits and expenses
  - May be used prior to other plan assets
- **Investment of SFA**
  - "PBGC permissible investments" (fixed income) estimated to earn 2–3%
  - Negative arbitrage issue – may make it difficult for some plans to survive until 2051
- **Investment of Non-SFA Plan Assets**
  - One year of benefits and expenses must be allocated to PBGC permissible investments

SFA Applications

The Rule creates different priority-group deadlines:

1. Plans that are insolvent or expected to go insolvent prior to March 11, 2022 – immediate
2. Plans that have suspended benefits under MPRA – January 1, 2022
3. Plans that are in critical and declining status – April 1, 2022
4. Plans that are projected to become insolvent before March 11, 2023 – July 1, 2022
5. Plans projected to become insolvent before March 11, 2026 – TBD, but not later than February 11, 2023
6. Plans for which PBGC computes the present value of financial assistance paid under ERISA 4261 > $ 1 billion – TBD, but no late than February 11, 2023
7. Other plans as specified by PBGC – TBD

Impact of SFA on Benefits and Contributions

- SFA may not be used to increase benefits
  - Exception for future service improvements funded by new contribution-rate increases
- SFA may not be used to decrease employer contributions below the rate in effect as of March 11, 2021
  - Exception for circumstances where the plan demonstrates that a decrease would lessen risk of loss to participants and beneficiaries
  - PBGC approval required if a contribution-rate reduction will affect contributions more than $10 million and more than 10% of all employer contributions
- Implications for Multiemployer Fund Contribution Rates
  - Any push for contribution-rate increases seemingly will come through collective bargaining rather than from the Fund
  - Contribution-rate decreases unlikely

Impact of SFA on Withdrawal Liability

- SFA will be taken into account for purposes of calculating withdrawal liability
  - For must funds, this will mean lower unfunded vested benefits and lower withdrawal liability assessments
- Plans receiving SFA must, however, must use the mass-withdrawal liability discount rates when calculating withdrawal liability
  - The rates are very low (e.g., for July 2021, the applicable interest rate is 2.1%), which results in higher assessments
- Implications for Funds using the Segal Blend or Other Low-Discount Rates
  - Many funds use the Segal Blend to calculate withdrawal. The Segal Blend is a blend of the PBGC rate and the plan's funding rate. Other funds already use the PBGC rates.
  - For funds that use lower rates to calculate withdrawal liability than are used for funding purposes, the change in discount rate mandated by the Rule will not be as significant as for other plans.
  - Receipt of SFA is expected to lower withdrawal liability for contributing employers.
  - For employers whose withdrawal liability payments are limited by the 20-year payment cap, the "effective" withdrawal liability paid may remain the same even if gross withdrawal liability is lower.

Comments on the PBGC Rule

Many comments to the Rule focused on similar issues:

1. Negative Arbitrage. The mismatch between a 5.5% interest rate used to calculate SFA and a 2–3% return on fixed-income investments will result in plan insolvencies pre-2051.
2. Investments Other Than Fixed-Income. PBGC should permit plans to invest SFA in equity, real estate, private credit, and other non–fixed-income securities.
3. Withdrawal Liability. Withdrawal liability calculations should not include SFA so as not to incentivize employer withdrawals.

Employer Takeaways

- SFA is not a long-term fix and may not keep troubled funds solvent past 2051
- Unlikely that any funds will receive SFA prior to 2023, but it is possible because PBGC has the ability to open priority groups early
- Troubled funds may have a renewed commitment to continued employer participation, as well as contribution-rate increases/benefit improvements
- Withdrawal liability modeling in the near term is advisable, based on the anticipated receipt of SFA
- Remain flexible, as final rule will likely include changes and additional legislative action is possible
- Consider an interim communications strategy for employees and unions

New DOL ESG Rule

Environmental, Social, and (Corporate) Governance Factors and Considerations

E

Environmental

- Climate Change
- Biodiversity
- Natural Resources
- Carbon Emission
- Air and Water Pollution

S

Social

- Health and Safety
- Labor Standards
- Product Liability
- Privacy and Data Security

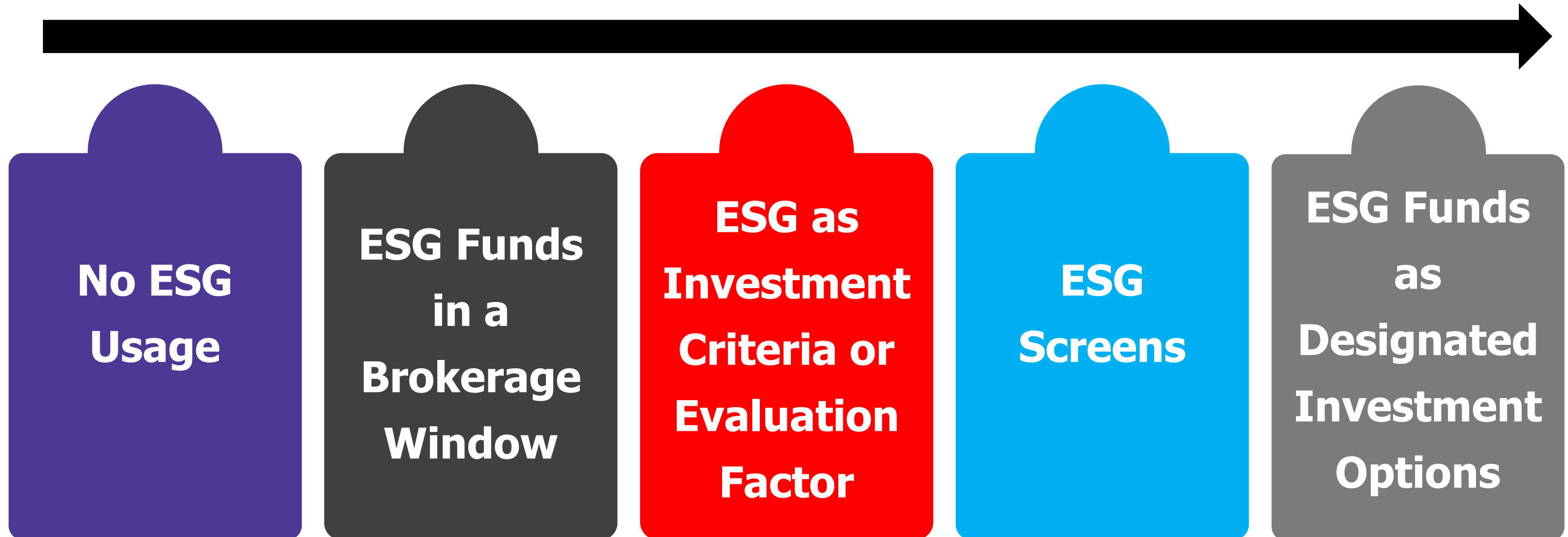
G

Governance

- Diversity and Inclusion
- Transparency
- Board Independence
- Ownership and Ethics
- Executive Compensation

Spectrum of How ERISA Plans Might Use ESG

From Least Utilization to Most



ERISA's Fiduciary Duties and ESG

ERISA's duty of prudence
Requires fiduciaries to act with prudence and diligence.

ERISA's duty of loyalty
"A fiduciary shall discharge his or her duties . . . solely in the interest of the participants and for the exclusive purpose of (i) providing benefits to participants; and (ii) defraying reasonable expenses."

The key issue is how ESG fits within these duties.

DOL view: A "fiduciary may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote non-pecuniary benefits or goals."

So, the heart of the matter is this—Is the consideration of ESG in the interest of participants or is it to further some other purpose?

ESG DOL Regulatory History

Clinton Administration

Interpretive Bulletin 94-1

- "ETIs" are subject to the same standards as any other investment.
- If an ETI can meet prudence requirements, a fiduciary can elect to invest in an ETI.

Bush Administration

Interpretive Bulletin 2008-01

- "ERISA's plain text does not permit fiduciaries to make investment decisions on the basis of any factor other than the economic interest of the plan."
- ETI could be a tiebreaker in the case of two identical investments.

Obama Administration

Interpretive Bulletins 2015-01 and 2016-01

- ESG may be a proper component of the economic merits of an investment.
- ESG factors are not "inherently suspect or in need of special scrutiny."

Trump Administration

Regulation Amending 29 C.F.R. Section 404a-1

- Adds new standards around reviews of investments, including the use of ESG factors.
- Adds a new section on proxy voting.

Biden-Harris Administration

Proposed Regulation Amending 29 C.F.R. Section 404a-1

- Proposes to amend 2020 standards around reviews of investments, including the use of ESG factors.
- Proposes to amend section on proxy voting.

The key difference is the extent to which the DOL believes that ESG factors are:

(a) part of the economic consideration of an investment or

(b) collateral to the economic considerations and instead reflect public policy or political objectives.

2020 Pecuniary Factors Rule

- **The Trump administration issued two final regulations on ESG-related topics in its last weeks:**
  - One dealt with plan investing generally and focused on the concept of "pecuniary" vs. "non-pecuniary" factors.
  - The other dealt with proxy voting and the exercise of other shareholder rights.
- The DOL also spent much of 2020 conducting ESG investigations.
- But in March of 2021, the Biden administration announced it would not enforce those rules.
- In May, President Biden issued an Executive Order directing the DOL to propose a new rule to "suspend, revise or rescind" the Trump-era rules.

2021 Proposed Ruled

- **Proposed Rule: "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights"**
  - The Proposed Rule is a departure from the 2020 Rule. The question is how much of a departure.
  - The Proposed Rule would specifically authorize plan sponsor fiduciaries making investment decisions to consider any factors, including but not limited to ESG factors where such factors are "material to the risk-return analysis."
  - Overall, the Proposed Rule appears to provide fiduciaries with more comfort to consider ESG factors when making investment decisions.
  - But doubts may remain due to the DOL's history on the issue, the remaining fact specific nature of the standard and potentially different views by courts.

Preliminary Key Takeaways

- **Five preliminary key takeaways:**
  - The DOL proposes to eliminate the 2020 pecuniary factors standard.
  - The DOL either views ESG as a neutral consideration (meaning, it should be treated like any other appropriate factor for investment decisionmaking) or comes closer—but certainly not all the way—to endorsing it as a ‘mandatory’ factor for consideration.
  - The DOL proposes to eliminate the special treatment for ESG in QDIAs — meaning QDIAs can use ESG factors if appropriate.
  - The DOL proposes reverting back to the ‘old’ rule on proxy voting, meaning fiduciaries must consider in accordance with their fiduciary duties, how to vote proxies (as opposed to needing to decide in the first place whether to vote).
  - The DOL retains a tie-breaker test but with less onerous requirements.

Retirement Plan Issues and Considerations

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Retirement Plan Issues and Considerations

- New updates to the IRS’ voluntary correction procedure – Employee Plans Compliance Resolution System (Rev. Proc. 2021-30)
- DOL guidance clarifying lifetime income illustration rules under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act)

New IRS Correction Procedure (Rev. Proc. 2021-30)

- On July 16, 2021, the IRS issued an updated Employee Plans Compliance Resolution System (EPCRS) in Rev. Proc. 2021-30 that expanded plan sponsors' ability to self-correct certain operational failures.
- The most notable changes in the updated EPCRS include:
  - expansion of the ability to self-correct operational failures by plan amendment,
  - increased flexibility for the correction of certain failures involving overpayments from retirement plans,
  - elimination of the ability to submit an anonymous voluntary correction program (VCP) submission, effective December 31, 2021 (Instead, the IRS *may* allow anonymous VCP presubmission conferences),

New IRS Correction Procedure (Rev. Proc. 2021-30)

- The most notable changes in the updated EPCRS include (cont.):
  - extension of the deadline to self-correct “significant” operational failures from two to three years, and
  - an extension to a safe harbor for correction of missed deferral failures for automatic contribution features until December 31, 2023.
- Action Item:
  - Plan sponsors generally do not need to take any action at this time. However, to the extent that a plan sponsor would like to submit a VCP submission on an anonymous basis, the last chance to make such a filing is on December 31, 2021.

SECURE Act Requirement – Lifetime Income Illustrations

- Background
  - Enacted in December 2019, the SECURE Act of 2019 requires defined contribution plans to provide “lifetime income illustrations” to participants at least annually as part of participant benefit statements.
  - Lifetime income illustrations for plans is not a new concept (e.g., advance notice of proposed rulemaking published by DOL in 2013).
- The purpose of this requirement is to help participants understand how their defined contribution plan accounts may translate into an income stream in retirement.
- These illustrations must show the current value of the participant’s account converted to an immediate life annuity and a joint and survivor annuity.
- The illustrations must also contain a number of required explanations.

DOL Interim Final Rule on Lifetime Income Illustrations

- On August 18, 2020, the DOL issued an Interim Final Rule (Rule) that sets forth the parameters and disclosures required to implement the lifetime income illustrations, which sets forth:
  - a detailed roadmap for calculating the required lifetime income illustrations,
  - specific assumptions for calculating lifetime income amounts,
  - model disclosure language, and
  - certain liability protections to plans that provide lifetime income illustrations in accordance with the Rule.

DOL Guidance Clarifying Lifetime Income Illustrations

- On July 26, 2021, the DOL issued a brief set of FAQs to address some outstanding questions regarding the Rule:
  1. Effective date of the Rule – September 18, 2021
     – Individual account plans with participant-directed investments must furnish the first income illustration on a quarterly benefit statement no later than the last calendar quarter ending within 12 months after the September 18, 2021 effective date (i.e., on the benefit statement for the calendar quarter ending June 30, 2022)
     – Individual account plans that do not provide participants with the opportunity to direct investments must include the lifetime income illustration on the annual statement issued for the first plan year ending on or after September 19, 2021

DOL Guidance Clarifying Lifetime Income Illustrations

2. Alternative Lifetime Income Illustrations – plans can provide participants with additional and alternative lifetime income illustrations to those required by the DOL, and
3. Final Rule – the DOL intends to adopt a final rule, but there is no clear indication of when this might be released.

- Action Items:
  - Fiduciaries of defined contribution plans should confirm that their recordkeepers are taking steps to prepare and distribute lifetime income disclosures that satisfy the DOL's lifetime income illustration disclosures.
  - If plan sponsors or their recordkeepers intend to (1) provide disclosures other than the DOL model notice, (2) make other lifetime illustration calculators or tools available, or (3) modify the DOL model notice to include supplemental language or disclosures, then plan sponsors should consult with counsel to confirm that this is permissible and does not undermine compliance with the DOL's rules and requirements.

Coronavirus COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

To help keep you on top of developments as they unfold, we also have launched a resource page on our website at **www.morganlewis.com/topics/coronavirus-covid-19**

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to **subscribe** using the purple "Stay Up to Date" button.

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Biography

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Sage counsels clients on all aspects of health and welfare plans. She works with clients to comply with the complicated, shifting requirements under the US Internal Revenue Code, ERISA, ACA, COBRA, HIPAA, MHPAEA, GINA, and state and local laws. She assists health and welfare plans and their sponsors with daily operations and plan administration, including preparing and maintaining plan documents and related materials; reviewing and negotiating services agreements with third parties; consulting on operational issues; and assisting with claims and appeals.

Sage also consults with clients to design and implement innovative, cost savings designs, such as high-deductible health plan/health savings account (HDHP/HSA) combinations, health reimbursement arrangements (HRAs), and health flexible spending accounts (FSAs). Sage represents health and welfare plan clients facing federal agency audits and helps them to limit their liability through comprehensive legal review.

Biography

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Liz advises employee benefit plan sponsors and service providers to those plans (including financial service firms) on ERISA US Department of Labor (DOL) enforcement investigations, DOL ERISA regulatory matters, and ERISA fiduciary counseling and compliance.

Liz has broad experience representing both plan and service provider clients in DOL ERISA investigations. Liz has worked on more than 30 such DOL investigations including matters that have involved significant monetary disputes or enterprise risk. In assisting in such matters, Liz draws on her prior work experience that includes six years at the DOL's Office of the Solicitor, primarily as an ERISA litigator.

Biography

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Brian counsels clients on Employee Retirement Income Security Act (ERISA) and employee benefits issues, including employee stock ownership plans (ESOPs), qualified benefits plans, executive compensation, fiduciary liability, and related securities matters. As head of Morgan Lewis's ESOP Task Force, he advises public and private ESOP clients on corporate governance, succession planning strategies, ownership transition issues, and liquidity transactions. He also represents enterprises before the US Internal Revenue Service (IRS) and Department of Labor (DOL) in a range of ESOP and employee benefits matters.

With more than 25 years of experience addressing employee benefits and executive compensation issues, Brian is a member of, and lectures frequently before, the ESOP Association and the National Center for Employee Ownership. He also teaches executive compensation classes as an adjunct professor at John Marshall Law School, and he contributes regularly to the *New York University Review of Employee Benefits and Executive Compensation*.

Biography

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Sean advises clients on employee benefits and executive compensation law. Sean counsels clients on a broad range of matters involving tax-qualified retirement plans, nonqualified deferred compensation plans, health and welfare benefit plans, and fringe benefits. His practice includes advising clients on Internal Revenue Code and Employee Retirement Income Security Act (ERISA) compliance, providing support on employee benefits aspects of corporate transactions, and assisting clients in complying with ERISA's fiduciary duties. In addition, Sean helps clients with audit and correction matters before the Internal Revenue Service (IRS) and the US Department of Labor (DOL).

Biography

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Ben's practice focuses on multiemployer pension and welfare plans. Ben counsels on compliance with ERISA, the Internal Revenue Code, the Affordable Care Act, the Multiemployer Pension Protection Act, the Pension Protection Act of 2006, and the Multiemployer Pension Reform Act of 2014. Prior to joining Morgan Lewis, Ben worked for the US Department of Energy's Office of General Counsel for Labor and Pensions and for the US Department of Labor.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

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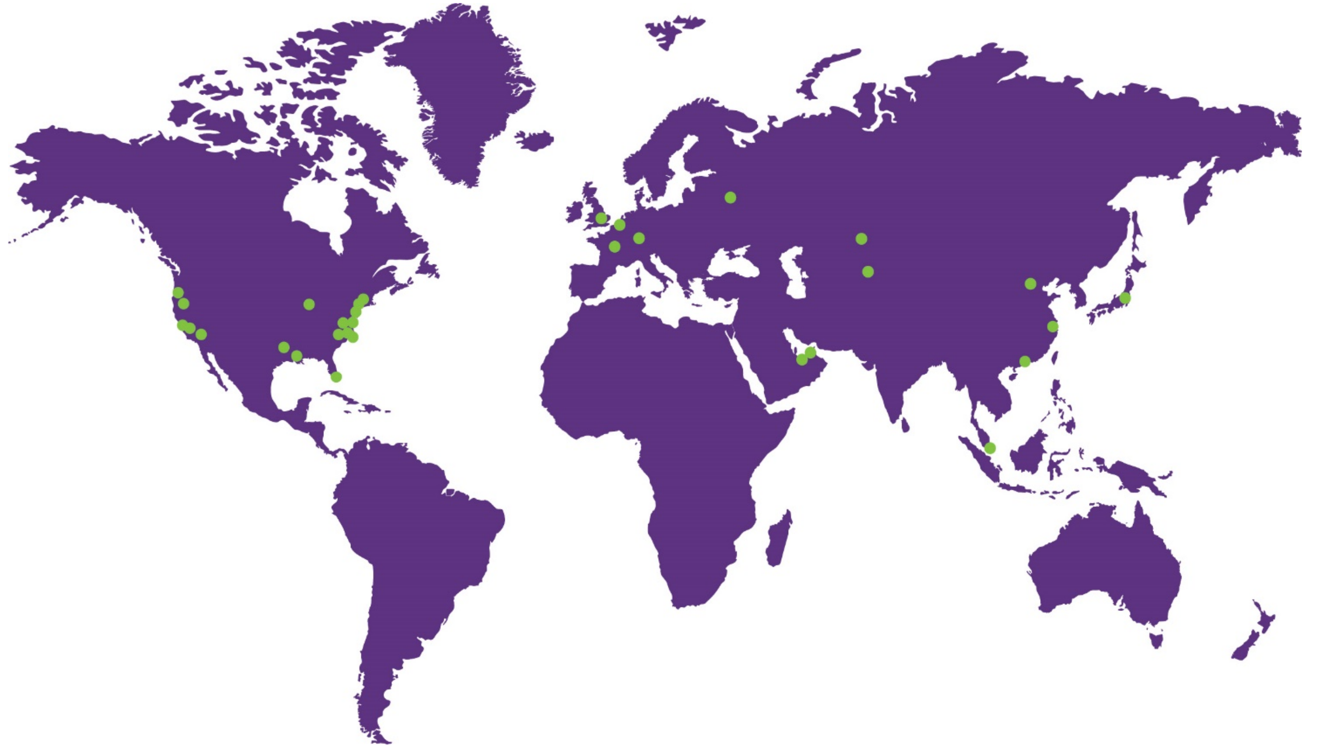
Almaty
Beijing*
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong*
Houston
London
Los Angeles
Miami
Moscow
New York
Nur-Sultan
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Shanghai*
Silicon Valley
Singapore*
Tokyo
Washington, DC
Wilmington



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