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PERFECT STORM

New laws, new regulations, a pandemic, work-from-home—2020 was a year unlike any other. How did TPAs weather the storm?

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NEW LAWS, NEW REGULATIONS, A PANDEMIC, WORK-FROM-HOME—2020 WAS A YEAR UNLIKE ANY OTHER. HOW DID TPAS WEATHER THE STORM?

BY JOHN ORTMAN

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In an industry run by executives and business owners with decades of experience in their field, no one had ever seen anything like 2020. Apart from the COVID-19 pandemic and the shutdowns that resulted, they faced the task of coping with multiple COVID relief initiatives from Congress, DOL and IRS that directly impacted their business and their clients, mainly in the form of the Coronavirus Aid, Relief and Economic Security (CARES) Act enacted in March 2020 as the shutdowns began. Other related legislation, as well as regulations implementing those changes, soon followed.

Further complicating matters, the CARES Act's new programs and rules changes came only 90 days after enactment of the wide-ranging Setting Every Community Up for Retirement Enhancement (SECURE) Act, which enhanced many of the federal government's retirement savings provisions and changed many compliance requirements in ERISA and the tax code.

The burden of coping with that legislative and regulatory "perfect storm" fell squarely on the nation's third-party administrators. How did they respond?

THE DELUGE

"Right when we all heard about the SECURE Act, I feel like the whole industry went into three weeks of graduate school—going deep, going hard on everything," recalls Katherine Tipper, the President and CFO of Hunter Benefits

Consulting Group, a national TPA with offices in Chicago, Denver, Seattle and Spokane.

"How do you explain this deluge of regulations that we had to power through?" Kirsten Curry remembers asking at the time. Curry is the founder and President of Leading Retirement Solutions, a national TPA based in Seattle serving about 1,500 clients in all 50 states. "We were having to get our arms wrapped around a set of regulations that affects our entire group of clients in all kinds of different ways, and that's huge."

"It's funny that some of the clients were ready to hear it, but a lot of them really were dealing with their own stuff," observes Tipper, whose 28 employees service about 1,000 plans in 42 states. "In the middle of a crisis, they don't need a big education. They just need to know something's happening—this is briefly what it is—and we're going to help you when you need it."

Amid that deluge of new and modified compliance requirements, being the trusted resource that all clients want in their TPAs became more important than ever. "We all want to lead the charge in educating our clients," Tipper notes. "Some of them have the bandwidth, and some of them at that point didn't, but they still needed the options. But when a loan or a distribution came in, they counted on us understanding it and being able to tell them if there were options on it."

That's where a good team becomes a difference-maker. "I'm a firm believer in surrounding myself with people who are smarter than I am and have talents that I don't have," says Melissa Terito, a partner at Sentinel Pension in Baton Rouge, LA whose team oversees more than 200 plans with assets totaling more than $350 million. "I learned a long time ago I don't have to know everything. I just have to know enough."

CARES ACT LOANS AND DISTRIBUTIONS

The CARES Act included two provisions that impacted TPAs for the rest of the year:

- allowing plan participants affected by COVID-19 to take a new Coronavirus Related Distribution (CRD), withdrawing up to $100,000 from their retirement plan penalty-free until Dec. 30, 2020, and spreading the income tax due on these distributions over a three-year period; and
- creating the Paycheck Protection Program (PPP), a lending program to help small and medium-sized business suffering from liquidity problems.

Those two provisions proved to be the main compliance-and-administration focus of TPAs through the rest of 2020. Not only were they complex, but they also became effective immediately and regulatory guidance would not come for weeks or months—and they came just as industry professionals were starting to gain a full understanding of the SECURE Act.

At Leading Retirement Solutions, "We were thrust into the position of very quickly gaining understanding of new and different regulations because our clients needed to be able to rely on us to help them understand what was going to be allowed," says Curry. "We also had to work really quickly to get new and different forms in place, communication, and all of that kind of stuff, which I think in our industry we've continued to become more accustomed to having to work pretty frantically and fast when things like this happen."

"I had a lot of crying on shoulders to other people in the retirement plan community, trying to figure out what the heck was going on," recalls Shannon Edwards, President of TriStar Pension Consulting, a regional TPA in Oklahoma City, OK whose staff of 8 handles more than 275 clients. "Then we were constantly, as quickly as we could, pushing information out to our clients."

Prior to the CARES Act, Terito and her staff had looked into the SECURE Act and begun to make plans as a team. "Then the CARES Act came and we needed to address that within an hour—a brand new piece of legislation that we all had to figure out, and very quickly. And answer a ton of questions from clients," she recalls. "And so, we just did it. And figure out how the record keepers were going to handle it."

At the same time, Terito's team developed a plan to track their CARES Act-related interactions with individual clients, utilizing Microsoft Teams to share a spreadsheet tracking all interaction starting with initial outreach. "We created an internal amendment, so that we would have the client sign off on it if they were going to adopt the CARES Act provision, because at the beginning we didn't have any legal documentation that they could sign off on. And then we just took it day by day and did the best that we could to help our clients make the determination whether if they should allow these types of distributions from the plan."

Coupled with the challenge of trying to run her own business in the early stages of a pandemic while all this was going on, "it was a lot of pressure," Curry recalls—and many decisions

KATHERINE TIPPER
Hunter Benefits Consulting Group - Chicago Office

"WE WERE HAVING TO GET OUR ARMS WRAPPED AROUND A SET OF REGULATIONS THAT AFFECTS OUR ENTIRE GROUP OF CLIENTS IN ALL KINDS OF DIFFERENT WAYS, AND THAT'S HUGE." —KIRSTEN CURRY, LEADING RETIREMENT SOLUTIONS

had to be made. "Do we default clients into the CRDs or allow them to elect-in and have to make what could be considered big decisions, when we still had questions about what these programs were supposed to look like? We still needed some more guidance around the regulations that had been released."

As it turned out, participant utilization of the new CRDs also turned out to be underwhelming. At Sentinel, "Maybe we had an uptake of a couple of percent," says Terito. "It wasn't the tsunami that we expected it to be." **SB**

The provision was not especially popular with plan sponsors either. "It was surprising to me that very few of our clients added the CARES Act distributions or loans," Edwards notes. "We had a very, very small percentage of clients use those in any way at all or add those opportunities to their plans." At first, TriStar took a strong stance on what it meant to be qualified to take one of those because there was very little guidance. Later, as things changed, she recalls, the DOL "kind of loosened that up and said, 'No, this does include spouses and family members and things like that.' But even after we told clients, 'Now things are more clear and it is a wider group of people who can take these,' our clients still didn't use them, really."

Edwards also perceived regional variances in the pandemic's impact on clients. "It seemed like on both coasts, a lot more people were suffering from the shutdowns and needing access to their money and needing those types of distributions than people in the Midwest" and elsewhere, she recalls. "As I would

CRDs by the Numbers

A January 2021 Vanguard analysis of its 2020 recordkeeping data indicated that 73% of its plan sponsor clients permitted their participants to access retirement funds if needed. Among those clients, 5.7% of participants did so. And among those who initiated a withdrawal, 69% took one distribution, while 31% took multiple distributions.

The average distribution was $15,700 and the median was $6,500. However, since nearly a third of participants who initiated a withdrawal took multiple distributions, the average per-participant distribution was $24,600, with a median of $13,300.

And while those are significant amounts, nearly one in four distributions were for less than $5,000 and 60% of all withdrawals were for less than $20,000. Vanguard also reported that withdrawals of more than $30,000 were less common, and only 4% of participants who initiated a CRD withdrew the maximum amount of $100,000.

talk to people from Oklahoma, Texas and Missouri about what we were experiencing here, we just didn't have as many employers laying people off. Many would tell me, 'No, we've kept our entire staff. We haven't let anybody go.' We did have a really large manufacturer that cut hours a little bit, but they're very intentional about not allowing for certain distributions and keeping money in the plan, so they were not willing or ready to give people another avenue to take money out of the plan."

One reason for the unanticipated lack of interest in the CARES Act distribution option among plan sponsors may be that a PPP was a better choice, especially for smaller businesses. "We do have a decent number of more owner-driven plans where they're smaller owners and more heavily involved, and rather than taking monies out of the retirement plan, they looked to the government for support, whether it be a PPP loan or an EIDL loan," Curry explains. "We saw more utilization by our business owner clients of those funding mechanisms versus taking money out of the plan."

Edwards agrees. "I really think that the PPP loans helped tremendously, especially here in Oklahoma, as far as keeping businesses open and keeping people employed," she says. "Especially when I look at my dentists' offices and doctors' offices, those really helped them keep their staff on, which meant that they did not have to basically open up the floodgates and let all the money out of their retirement plan."

SMALL PLAN START-UP CREDIT

To help small businesses establish retirement plans, the SECURE Act significantly expanded the tax credit available to small business with fewer than 100 employees for starting a plan, as of Jan. 1, 2020. Did it work?

The new tax credit "was a great point to push out to CPAs and advisors, and to market not only the plans, but us as being in front of that," reports Linda Chadbourne, President of Hills Pension Associates, a small boutique TPA in Carver MA. Her team of five handles 200 plans, including doctors, lawyers, dentists and family-owned businesses. "This year's been really, really busy with new plans," Chadbourne adds.

At TriStar and Leading Retirement Solutions, Edwards and Curry are also seeing more startup plans than ever. "All the TPAs that I'm talking to are experiencing the same thing—a lot of us are doing a lot more plans than we thought we were going to be doing this year," says TriStar's Edwards. A lot of those are startups, she adds.

Edwards and Curry attribute the uptick in new business to several factors in addition to the new tax credit—in particular, the growing list of states creating retirement saving programs for private-sector workers. "It's interesting because there are plenty of companies where they're grumbling, 'I'm in California and they're making me put a retirement plan in place for my employees, and I just don't have time to do this,' says Curry. "Then we can say, 'But you can pretty much get this plan started for free, without the pain or burden.' It's been helpful for our sales process."

LTPT EMPLOYEES

In an effort to help long-time part-time (LTPT) employees save for retirement, the SECURE Act included a provision requiring 401(k) plans to adopt a new, dual-eligibility requirement under which an employee must complete either one year of service (subject to the 1,000-hour rule) or three consecutive years of service with at least 500 hours of service. The plan sponsor may choose to exclude employees eligible solely on the basis of this new three-year rule from the top-heavy, coverage and nondiscrimination rules.

It appears that 2024 is the earliest that employees will gain eligibility under the three-year rule, so plan sponsors and their recordkeepers need to begin tracking LTPT employee data this year. What are the ramifications for TPAs in 2021 and beyond?

At Sentinel Pension, "We are really leaning on our recordkeeping partners being to be able to help us with this," says Terito. Sentinel has also created some videos and a white paper for clients. "But I think there's going to be a lot of cleanup at some points and a lot of unintended, 'Oh, I didn't realize that this was going to happen to me,'" she adds.

The right software is key as well, several TPAs noted. "We do require clients to give us hours so that we can track that," notes Chadbourne. And when her team provides valuations, they usually identify employees who are going to become eligible for the plan. "So this is a focus that we're going to have to shift a little bit more to let them know how it's going to impact their plan," she adds.


SHANNON EDWARDS
TriStar Pension Consulting

The new rule is not going to be a big problem for larger firms that track time well, Tipper believes, but smaller firms that do their own payroll might have a problem—especially owner-only plans. "Right now they can qualify as owner-only, but do they have support staff? Do they have big projects? Are they going to go back themselves and look at their part-time workers and how they use them?" she asks. "I think that there's going to be some time bombs in there, and that clients who want owner-only plans might not realize what they're getting into."

At Leading Retirement Solutions, Curry reports, they started to get more bullish about the rule in 2020, communicating to clients that there is an expectation that they provide all employee data so that everyone is prepared for the LTPT rule. Today they are encouraging clients to assume that at some point most, if not all, of their employees will be eligible for the plan—not only in part because of LTPT employee rule, but also what they anticipate will be coming down the road if the SECURE 2.0 legislation is enacted. "We are bringing a lot more of that message into our sales process particularly, especially when the part-timer conversation comes up," says Curry.

LINDA CHADBOURNE
Hills Pension Associates

MEPS AND PEPS

Multiple Employer Plans have been around for years, of course, but they were constrained by regulatory requirements—mainly the commonality and one-bad-apple rules. Now that the SECURE Act has eliminated those barriers and streamlined reporting and administration, how do TPA owners view MEPs and the new Pooled Employer Plans (PEPs)?

"We're bullish on the concept. If it means more access, and we can make it work, then that's fantastic. But right now, regarding the details on what it takes to make it work and to make it useful, we don't feel that's quite settled yet," says Hunter's Tipper. "People are still talking more optimistically about how well it's going to work, but the details need to come through so we know how it actually happens."

For her, the question is, "What's the real magic in it?" Tipper says. "If the magic is just that I'm going to save money, it's not as magic as it sounds. But hey, if we can put together a great one, we would do it. It's about how to do it well."

At Leading Retirement Solutions, Curry reports, a lot of different groups want to have conversations around MEPs and PEPs. "One thing that I find interesting is that with these various companies that are considering deploying a MEP or a PEP, there seems to be this initial expectation and desire that the MEP or PEP has total flexibility and customization—where every member that comes into the MEP or PEP can have their own plan design, and even more flexibility than that," she continues. "That kind of strikes me, because one of the value propositions behind MEPs and PEPs is standardization, whether it be plan design, investments or service offerings, and thus you get decreased fees, minimized liability and the like.

"I think investment advisory firms looking at PEPs would be a good example, where you have that conversation and then it maybe becomes less appealing to them. They start to go back to considering, 'Well, why don't I just do a standalone plan for my client?'" Curry says.

TriStar's Edwards finds MEPs and PEPs underwhelming. "I think they're much ado about nothing—at least that's what we're seeing in our market," she says. "We're not having any questions about them. We're not having the advisors that we normally work with running to them."

Ultimately, TPA owners view their biggest value proposition—the high level of personal service they offer their clients—as a key differentiator that sets them apart from MEPs and PEPs. "It's the same value proposition that we've been using for years against bundled service providers," says Edwards. "It's the difference between, 'Do you want this huge service provider, this 800 number, nobody local to talk to, you might get a call back in several days? Or do you want somebody who's in your backyard, who can sit down with you, who returns phone calls?' I think we're going to be fighting the same battle against PEPs and MEPs."

For her, "It's about knowing your value and what you bring to the table as a local TPA and actually being able to deliver on those promises, both for your financial advisor and your clients." Furthermore, Edwards notes, the early information on PEPs indicates that they are not really less expensive. "So if

“I’M A FIRM BELIEVER IN SURROUNDING MYSELF WITH PEOPLE WHO ARE SMARTER THAN I AM AND HAVE TALENTS THAT I DON’T HAVE. I LEARNED A LONG TIME AGO I DON’T HAVE TO KNOW EVERYTHING. I JUST HAVE TO KNOW ENOUGH.” — MELISSA TERITO, SENTINEL PENSION

you’re not saving money and you’re not getting a high level of service, hopefully you’re going to choose a local TPA that’s going to give you more ‘touch,’” she believes.

Tipper’s view is similar. “The plan part you can work out, but then there’s the people part, where things go wrong and people need help,” she says. “I think TPAs are excellent at doing that. Having a great structure still doesn’t mean that employers don’t need support. So, the question is, how do you support them and have it be fair in terms of price for both parties?” In general, Tipper says, “What we have to figure out is what parts you can automate and in what parts you need the human touch. And the question is, can you find some balance in there where there’s help from a great TPA behind it if you need it?”

Looking to the future, Curry sees a rising tide lifting all boats. “I support the concept of MEPs and PEPs—I think they’re a good solution for certain types of clients,” she says. “But standalone plans are a great solution for just as many. So I think there are plenty of companies to go around, whether they choose a MEP or PEP, or a standalone plan. And with more states adopting state-mandated retirement plan requirements, there’s going to be exponentially more clients for us all to serve.”

SECURE 2.0

Following on the heels of the SECURE Act and the legislation subsequently enacted in 2020 and early 2021, the comprehensive “SECURE 2.0” bill has been pending in Congress since last Spring. Are TPA owners making plans now in anticipation of SECURE 2.0?

At TriStar, they are already considering staffing up, Edwards reports. “I think that some of the things in SECURE 2.0, like increased tax credits for establishing a plan and auto enrollment coupled with the fact that so many states have or are considering mandated retirement savings vehicles of some sort for small employers, are going to push more employers to put in qualified plans versus going into some type of mandatory retirement program,” she says. “Auto enrollment is going to push up the number of participants, so we’re going to have larger plans. The long-term part-time employee provisions is also probably going to push up participant counts.”

Given the staffing shortage now facing TPAs, however, Edwards sees problems ahead. “We’re looking at the potential for this huge explosion of new plans if SECURE 2.0 passes and states continue to pass mandates for retirement savings vehicles, and there’s nobody to do the work. Every third party administrator you talk to has openings and is looking for people. And you have large recordkeepers on both coasts, and large bundled providers, paying outrageous wages for the level of experience that people have—we’ve seen probably a 20 to 25% wage increase in our industry alone since COVID started,” Edwards notes.

“SECURE 2.0 is going to bring a lot more business to the industry as a whole,” she believes. “I’m really excited about it—and about the fact that it’s going to increase coverage for plan participants. That’s awesome. I just hope we can find the people to do the work.” PC