

Under Russia's Threat, Revisit the DOL's Cyber Basics

"Maybe not today, maybe not tomorrow, but soon..." Rick Blaine, Moroccan saloon operator and drunkard

The White House has repeatedly warned that the Russian government may be exploring launching cyberattacks against U.S. critical infrastructure. In 2021, the Department of Labor (DOL) refreshed its cybersecurity guidance for plan sponsors, fiduciaries, service providers, and participants. We'll review the threat, the DOL's guidance, and offer some thoughts of our own.

SUMMARY

- The White House has issued multiple warnings of potential Russian cyberattacks against critical U.S. infrastructure
- While state actors likely won't focus on retirement plans the way criminal actors have, associated financial institutions, companies, and governments may be prime targets.
- Though plan fiduciaries may offload financial liability for cyber breaches to vendors, they're still subject to ERISA's duties of prudence and care in selecting and monitoring vendors
- The DOL's 2021 releases regarding cybersecurity offer reminders of fiduciary responsibilities and basic best practices for sponsors, providers, and participants.

THE GOVERNMENT'S WARNING

On March 21st, the White House issued a statement amplifying previous warnings that the Russian government is exploring "options for potential cyberattacks" targeting U.S. critical infrastructure. Intelligence officials have indicated that there is no current evidence of any specific Russian or Russian-sponsored cyberattack. However, with Russia's military efforts in Ukraine falling well south of expectations, Russian leadership exhibiting signs of severe frustration and pressure, and rhetoric and threats against the "West" heating up, it's not hard to believe that the government's warnings should be taken seriously.

Even in less perilous times, Russian actors have been implicated in a litany of malicious activities. Attacks include the 2020 compromise of SolarWinds' software supply chain, the 2020 targeting of U.S. companies researching COVID-19 vaccines, the 2018 targeting of U.S. industrial control systems infrastructure, the 2017 NotPetya ransomware attack on organizations worldwide, and the 2016 leaks of documents stolen from the U.S. Democratic National Committee. The Center for Strategic and International Studies keeps a relatively comprehensive list of cyber-attacks [here](#).

Though criminal cyber fraud directed at retirement plans and participants has increased in recent years, the diffuse nature of the retirement industry may make it a somewhat less attractive direct target for state or state-sponsored actors. State-backed "wartime" cyberattacks may focus on targets where the most significant impact can be made for the most efficient effort. For example, European and U.S. regulators have warned banks to prepare for Russian cyberattack threats since early this year, prior to the Russian invasion of Ukraine.

Nonetheless, it makes sense that such cyberattacks could impact retirement plans. Factors include:

- Many providers (as major financial institutions) and sponsors are prime targets in their own right.

- Most retirement plans are sponsored by smaller organizations, which may lack larger organizations' cybersecurity resources and expertise. According to Verizon's [2019 Data Breach Investigation Report](#), small businesses were the targets of 43% of all cyberattacks, making the group the most common target Verizon studied.
- The collective volume of personal identifiable information (or PII, including Social Security numbers, birthdates, addresses, etc.) involved in administering the nation's retirement plans is incredible.
- Over a third of household wealth is invested in retirement accounts, according to the [Investment Company Institute](#). Defined contribution plans are worth over \$10 trillion, and more than half of the nation's employers sponsor DC plans.

Regarding PII, it's important to note that current privacy and data-security laws place the responsibility for properly safeguarding participant PII with plan sponsors or multi-employer plan trustees (who act as "data controllers"). It's best (and common) practice for plan sponsors or trustees to transfer financial liability related to PII exposure to a vendor (e.g., a recordkeeper) through contractual indemnification. However, plan sponsors and trustees still have legal liability based on the fiduciary duties owed to participants under ERISA. Hence, the standard of care maintained in vendor selection and monitoring is critical. (Note that whether a cybersecurity breach constitutes a violation of fiduciary duties depends on the particular facts and circumstances of the breach.)

THE DOL'S GUIDANCE

In 2021, the Department of Labor released a refresh of its cybersecurity guidance. While it didn't change plan sponsor or fiduciary responsibilities, it did offer an improved framework for managing processes and decisions. In addition to tips and best practices, the guidance reinforced ERISA's requirement that fiduciaries adhere to the duty of prudence when selecting and monitoring those service providers.

The release came in three components. Aimed at a broad audience, the guidance is relatively easy to digest (considering the topic). Rather than summarize, we thought it best to link directly:

- [Cybersecurity Program Best Practices](#) - Best practices for plan fiduciaries' vendor hiring decisions and recordkeepers' and other service providers' management of cybersecurity risks
- [Tips for Hiring a Service Provider with Strong Cybersecurity Practices](#) - Guidance to plan sponsors and fiduciaries regarding how to prudently select service providers with robust cybersecurity practices and procedures
- [Online Security Tips](#) - Tips for participants on enhancing online account security and preventing cyber fraud

OUR PERSPECTIVE

While smaller-scale cyber fraud may be a more prevalent daily threat to retirement plans, sophisticated and well-resourced state actors pose a substantial challenge to the entire financial services industry. In light of the current situation with Russia and the potential for particularly destructive behavior that goes with it, we recommend that plan fiduciaries:

- Review their own existing cybersecurity policies and procedures (sponsors are often more likely to be a weak link than providers)
- Review fiduciary liability insurance policies to see if retirement plan cybercrime is covered



- Review vendor selection and monitoring processes to ensure cybersecurity is appropriately addressed
- Ensure that selection and monitoring processes are well documented and ask vendors to confirm, in writing, how they address the DOL’s 12 best practices
- Identify vendors that maintain plan data, and review those contracts for indemnification provisions
- Reinforce to participants the critical role they have in safeguarding their own information and assets against cyber fraud

In closing, we’ll reemphasize that the ERISA exposure to plan fiduciaries created by cyber threats is actual, and fiduciaries should carefully adhere to high standards of prudence and care as an ongoing practice. As Lewis Howard Latimer put it, “Habit is a powerful means of advancement, and the habit of eternal vigilance and diligence rarely fails to bring a substantial reward.”

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CYBERSECURITY PROGRAM BEST PRACTICES

ERISA-covered plans often hold millions of dollars or more in assets and maintain personal data on participants, which can make them tempting targets for cyber-criminals. Responsible plan fiduciaries have an obligation to ensure proper mitigation of cybersecurity risks.

The Employee Benefits Security Administration has prepared the following best practices for use by recordkeepers and other service providers responsible for plan-related IT systems and data, and for plan fiduciaries making prudent decisions on the service providers they should hire. Plans' service providers should:

1. Have a formal, well documented cybersecurity program.
2. Conduct prudent annual risk assessments.
3. Have a reliable annual third party audit of security controls.
4. Clearly define and assign information security roles and responsibilities.
5. Have strong access control procedures.
6. Ensure that any assets or data stored in a cloud or managed by a third party service provider are subject to appropriate security reviews and independent security assessments.
7. Conduct periodic cybersecurity awareness training.
8. Implement and manage a secure system development life cycle (SDLC) program.
9. Have an effective business resiliency program addressing business continuity, disaster recovery, and incident response.
10. Encrypt sensitive data, stored and in transit.
11. Implement strong technical controls in accordance with best security practices.
12. Appropriately respond to any past cybersecurity incidents.

1. A Formal, Well Documented Cybersecurity Program.

A sound cybersecurity program identifies and assesses internal and external cybersecurity risks that may threaten the confidentiality, integrity, or availability of stored nonpublic information. Under the program, the organization fully implements well-documented information security policies, procedures, guidelines, and standards to protect the security of the IT infrastructure and data stored on the system. A prudently designed program will:

Protect the infrastructure, information systems and the information in the systems from unauthorized access, use, or other malicious acts by enabling the organization to:

- **Identify** the risks to assets, information and systems.
- **Protect each of the necessary assets, data and systems.**
- **Detect and respond to** cybersecurity events.
- **Recover** from the event.
- **Disclose the event as appropriate.**
- **Restore normal operations and services.**

Establish strong security policies, procedures, guidelines, and standards that meet the following criteria:

- Approval by senior leadership.
- Review at least annually with updates as needed.
- Terms are effectively explained to users.
- Review by an independent third party auditor who confirms compliance.
- Documentation of the particular framework(s) used to assess the security of its systems and practices.

- Formal and effective policies and procedures governing all the following:
 1. Data governance and classification.
 2. Access controls and identity management.
 3. Business continuity and disaster recovery.
 4. Configuration management.
 5. Asset management.
 6. Risk assessment.
 7. Data disposal.
 8. Incident response.
 9. Systems operations.
 10. Vulnerability and patch management.
 11. System, application and network security and monitoring.
 12. Systems and application development and performance.
 13. Physical security and environmental controls.
 14. Data privacy.
 15. Vendor and third party service provider management.
 16. Consistent use of multi-factor authentication.
 17. Cybersecurity awareness training, which is given to all personnel annually.
 18. Encryption to protect all sensitive information transmitted and at rest.

2. Prudent Annual Risk Assessments.

A Risk Assessment is an effort to identify, estimate, and prioritize information system risks. IT threats are constantly changing, so it is important to design a manageable, effective risk assessment schedule. Organizations should codify the risk assessment's scope, methodology, and frequency. A risk assessment should:

- Identify, assess, and document how identified cybersecurity risks or threats are evaluated and categorized.
- Establish criteria to evaluate the confidentiality, integrity, and availability of the information systems and nonpublic information, and document how existing controls address the identified risks.
- Describe how the cybersecurity program will mitigate or accept the risks identified.
- Facilitate the revision of controls resulting from changes in technology and emerging threats.
- Be kept current to account for changes to information systems, nonpublic information, or business operations.

3. A Reliable Annual Third Party Audit of Security Controls.

Having an independent auditor assess an organization's security controls provides a clear, unbiased report of existing risks, vulnerabilities, and weaknesses.

As part of its review of an effective audit program, EBSA would expect to see:

- Audit reports, audit files, penetration test reports and supporting documents, and any other analyses or review of the party's cybersecurity practices by a third party.
- Audits and audit reports prepared and conducted in accordance with appropriate standards.
- Documented corrections of any weaknesses identified in the independent third party analyses.

4. Clearly Defined and Assigned Information Security Roles and Responsibilities.

For a cybersecurity program to be effective, it must be managed at the senior executive level and executed by qualified personnel. As a senior executive, the Chief Information Security Officer (CISO) would generally establish and maintain the vision, strategy, and operation of the cybersecurity program which is performed by qualified personnel who should meet the following criteria:

- Sufficient experience and necessary certifications.
- Initial and periodic background checks.
- Regular updates and training to address current cybersecurity risks.
- Current knowledge of changing cybersecurity threats and countermeasures.

5. Strong Access Control Procedures.

Access control is a method of guaranteeing that users are who they say they are and that they have the appropriate access to IT systems and data. It mainly consists of two components: authentication and authorization. The following are best security practices for access control:

- Access to systems, assets and associated facilities is limited to authorized users, processes, devices, activities, and transactions.
- Access privileges (e.g., general user, third party administrators, plan administrators, and IT administrators) are limited based on the role of the individual and adhere to the need-to-access principle.
- Access privileges are reviewed at least every three months and accounts are disabled and/or deleted in accordance with policy.
- All employees use unique, complex passwords.
- Multi-factor authentication is used wherever possible, especially to access the internal networks from an external network, unless a documented exception exists based on the use of a similarly effective access control methodology.
- Policies, procedures, and controls are implemented to monitor the activity of authorized users and detect unauthorized access, use of, or tampering with, nonpublic information.
- Procedures are implemented to ensure that any sensitive information about a participant or beneficiary in the service provider's records matches the information that the plan maintains about the participant.
- Confirm the identity of the authorized recipient of the funds.

6. Assets or Data Stored in a Cloud or Managed by a Third Party Service Provider are Subject to Appropriate Security Reviews and Independent Security Assessments.

Cloud computing presents many unique security issues and challenges. In the cloud, data is stored with a third-party provider and accessed over the internet. This means visibility and control over that data is limited. Organizations must understand the security posture of the cloud service provider in order to make sound decisions on using the service.

Best practices include:

- Requiring a risk assessment of third party service providers.
- Defining minimum cybersecurity practices for third party service providers.
- Periodically assessing third party service providers based on potential risks.

- Ensuring that guidelines and contractual protections at minimum address the following:
 - » The third party service provider's access control policies and procedures including the use of multi-factor authentication.
 - » The third party service provider's encryption policies and procedures.
 - » The third party service provider's notification protocol for a cybersecurity event which directly impacts a customer's information system(s) or nonpublic information.

7. Cybersecurity Awareness Training Conducted at Least Annually for All Personnel and Updated to Reflect Risks Identified by the Most Recent Risk Assessment.

Employees are often an organization's weakest link for cybersecurity. A comprehensive cybersecurity security awareness program sets clear cybersecurity expectations for all employees and educates everyone to recognize attack vectors, help prevent cyber-related incidents, and respond to a potential threat. Since identity theft is a leading cause of fraudulent distributions, it should be considered a key topic of training, which should focus on current trends to exploit unauthorized access to systems. Be on the lookout for individuals falsely posing as authorized plan officials, fiduciaries, participants or beneficiaries.

8. Secure System Development Life Cycle Program (SDLC).

A secure SDLC process ensures that security assurance activities such as penetration testing, code review, and architecture analysis are an integral part of the system development effort. Best practices include:

- Procedures, guidelines, and standards which ensure any in-house applications are developed securely. This would include such protections as:
 - » Configuring system alerts to trigger when an individual's account information has been changed.
 - » Requiring additional validation if personal information has been changed prior to request for a distribution from the plan account.
 - » Requiring additional validation for distributions (other than a rollover) of the entire balance of the participant's account.
- Procedures for evaluating or testing the security of externally developed applications including periodic reviews and updates.
- A vulnerability management plan, including regular vulnerability scans.
- Annual penetration tests, particularly with respect to customer-facing applications.

9. A Business Resiliency Program which Effectively Addresses Business Continuity, Disaster Recover, and Incident Response.

Business resilience is the ability an organization has to quickly adapt to disruptions while maintaining continuous business operations and safeguarding people, assets, and data. The core components of a program include the Business Continuity Plan, Disaster Recovery Plan, and Incident Response Plan.

- The Business Continuity Plan is the written set of procedures an organization follows to recover, resume, and maintain business functions and their underlying processes at acceptable predefined levels following a disruption.
- The Disaster Recovery Plan is the documented process to recover and resume an organization's IT infrastructure, business applications, and data services in the event of a major disruption.
- The Incident Response Plan is a set of instructions to help IT staff detect, respond to, and recover from security incidents.

An effective Business Resiliency Program should:

- Reasonably define the internal processes for responding to a cybersecurity event or disaster.
- Reasonably define plan goals.
- Define the documentation and reporting requirements regarding cybersecurity events and responses.
- Clearly define and describe the roles, responsibilities, and authority levels.
- Describe external and internal communications and information sharing, including protocols to notify plan sponsor and affected user(s) if needed.
- Identify remediation plans for any identified weaknesses in information systems.
- Include after action reports that discuss how plans will be evaluated and updated following a cybersecurity event or disaster.
- Be annually tested based on possible risk scenarios.

10. Encryption of Sensitive Data Stored and in Transit.

Data encryption can protect nonpublic information. A system should implement current, prudent standards for encryption keys, message authentication and hashing to protect the confidentiality and integrity of the data at rest or in transit.

11. Strong Technical Controls Implementing Best Security Practices.

Technical security solutions are primarily implemented and executed by the information system through mechanisms contained in the hardware, software, or firmware components of the system. Best security practices for technical security include:

- Hardware, software and firmware models and versions that are kept up to date.
- Vendor-supported firewalls, intrusion detection and prevention appliances/tools.
- Current and regularly updated antivirus software.
- Routine patch management (preferably automated).
- Network segregation.
- System hardening.
- Routine data backup (preferably automated).

12. Responsiveness to Cybersecurity Incidents or Breaches

When a cybersecurity breach or incident occurs, appropriate action should be taken to protect the plan and its participants, including:

- Informing law enforcement.
- Notifying the appropriate insurer.
- Investigating the incident.
- Giving affected plans and participants the information necessary to prevent/reduce injury.
- Honoring any contractual or legal obligations with respect to the breach, including complying with agreed upon notification requirements.
- Fixing the problems that caused the breach to prevent its recurrence.





TIPS FOR HIRING A SERVICE PROVIDER WITH STRONG CYBERSECURITY PRACTICES

As sponsors of 401(k) and other types of pension plans, business owners often rely on other service providers to maintain plan records and keep participant data confidential and plan accounts secure. Plan sponsors should use service providers that follow strong cybersecurity practices.

To help business owners and fiduciaries meet their responsibilities under ERISA to prudently select and monitor such service providers, we prepared the following tips for plan sponsors of all sizes:

1. Ask about the service provider's information security standards, practices and policies, and audit results, and compare them to the industry standards adopted by other financial institutions.
 - Look for service providers that follow a recognized standard for information security and use an outside (third-party) auditor to review and validate cybersecurity. You can have much more confidence in the service provider if the security of its systems and practices are backed by annual audit reports that verify information security, system/data availability, processing integrity, and data confidentiality.
2. Ask the service provider how it validates its practices, and what levels of security standards it has met and implemented. Look for contract provisions that give you the right to review audit results demonstrating compliance with the standard.
3. Evaluate the service provider's track record in the industry, including public information regarding information security incidents, other litigation, and legal proceedings related to vendor's services.
4. Ask whether the service provider has experienced past security breaches, what happened, and how the service provider responded.
5. Find out if the service provider has any insurance policies that would cover losses caused by cybersecurity and identity theft breaches (including breaches caused by internal threats, such as misconduct by the service provider's own employees or contractors, and breaches caused by external threats, such as a third party hijacking a plan participants' account).
6. When you contract with a service provider, make sure that the contract requires ongoing compliance with cybersecurity and information security standards – and beware contract provisions that limit the service provider's responsibility for IT security breaches. Also, try to include terms in the contract that would enhance cybersecurity protection for the Plan and its participants, such as:
 - **Information Security Reporting.** The contract should require the service provider to annually obtain a third-party audit to determine compliance with information security policies and procedures.

- **Clear Provisions on the Use and Sharing of Information and Confidentiality.** The contract should spell out the service provider's obligation to keep private information private, prevent the use or disclosure of confidential information without written permission, and meet a strong standard of care to protect confidential information against unauthorized access, loss, disclosure, modification, or misuse.
- **Notification of Cybersecurity Breaches.** The contract should identify how quickly you would be notified of any cyber incident or data breach. In addition, the contract should ensure the service provider's cooperation to investigate and reasonably address the cause of the breach.
- **Compliance with Records Retention and Destruction, Privacy and Information Security Laws.** The contract should specify the service provider's obligations to meet all applicable federal, state, and local laws, rules, regulations, directives, and other governmental requirements pertaining to the privacy, confidentiality, or security of participants' personal information.
- **Insurance.** You may want to require insurance coverage such as professional liability and errors and omissions liability insurance, cyber liability and privacy breach insurance, and/or fidelity bond/blanket crime coverage. Be sure to understand the terms and limits of any coverage before relying upon it as protection from loss.





ONLINE SECURITY TIPS

You can reduce the risk of fraud and loss to your retirement account by following these basic rules:

• REGISTER, SET UP AND ROUTINELY MONITOR YOUR ONLINE ACCOUNT

- Maintaining online access to your retirement account allows you to protect and manage your investment.
- Regularly checking your retirement account reduces the risk of fraudulent account access.
- Failing to register for an online account may enable cybercriminals to assume your online identity.

• USE STRONG AND UNIQUE PASSWORDS

- Don't use dictionary words.
- Use letters (both upper and lower case), numbers, and special characters.
- Don't use letters and numbers in sequence (no "abc", "567", etc.).
- Use 14 or more characters.
- Don't write passwords down.
- Consider using a secure password manager to help create and track passwords.
- Change passwords every 120 days, or if there's a security breach.
- Don't share, reuse, or repeat passwords.

• USE MULTI-FACTOR AUTHENTICATION

- Multi-Factor Authentication (also called two-factor authentication) requires a second credential to verify your identity (for example, entering a code sent in real-time by text message or email).

• KEEP PERSONAL CONTACT INFORMATION CURRENT

- Update your contact information when it changes, so you can be reached if there's a problem.
- Select multiple communication options.

• CLOSE OR DELETE UNUSED ACCOUNTS

- The smaller your on-line presence, the more secure your information. Close unused accounts to minimize your vulnerability.
- Sign up for account activity notifications.

• BE WARY OF FREE WI-FI

- Free Wi-Fi networks, such as the public Wi-Fi available at airports, hotels, or coffee shops pose security risks that may give criminals access to your personal information.
- A better option is to use your cellphone or home network.

• BEWARE OF PHISHING ATTACKS

- Phishing attacks aim to trick you into sharing your passwords, account numbers, and sensitive information, and gain access to your accounts. A phishing message may look like it comes from a trusted organization, to lure you to click on a dangerous link or pass along confidential information.

- Common warning signs of phishing attacks include:
 - » A text message or email that you didn't expect or that comes from a person or service you don't know or use.
 - » Spelling errors or poor grammar.
 - » Mismatched links (a seemingly legitimate link sends you to an unexpected address). Often, but not always, you can spot this by hovering your mouse over the link without clicking on it, so that your browser displays the actual destination.
 - » Shortened or odd links or addresses.
 - » An email request for your account number or personal information (legitimate providers should never send you emails or texts asking for your password, account number, personal information, or answers to security questions).
 - » Offers or messages that seem too good to be true, express great urgency, or are aggressive and scary.
 - » Strange or mismatched sender addresses.
 - » Anything else that makes you feel uneasy.

• USE ANTIVIRUS SOFTWARE AND KEEP APPS AND SOFTWARE CURRENT

- Make sure that you have trustworthy antivirus software installed and updated to protect your computers and mobile devices from viruses and malware. Keep all your software up to date with the latest patches and upgrades. Many vendors offer automatic updates.

• KNOW HOW TO REPORT IDENTITY THEFT AND CYBERSECURITY INCIDENTS

- The FBI and the Department of Homeland Security have set up valuable sites for reporting cybersecurity incidents:
 - » <https://www.fbi.gov/file-repository/cyber-incident-reporting-united-message-final.pdf/view>
 - » <https://www.cisa.gov/reporting-cyber-incidents>

