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NATIONAL ASSOCIATION OF PLAN ADVISORS

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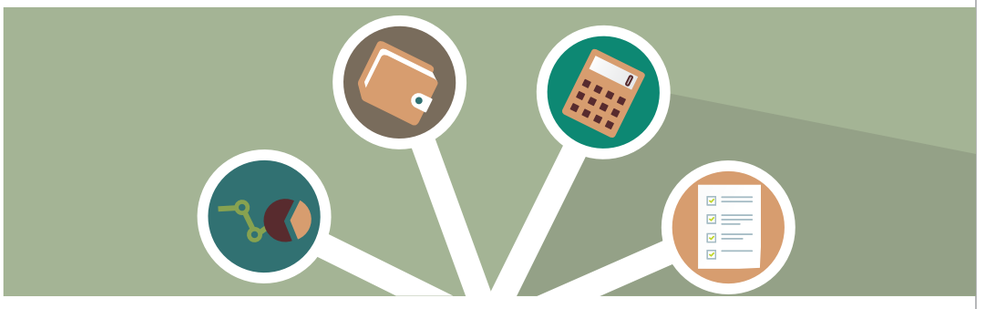

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Ten Years and Change

The Pension Protection Act of 2006 changed the DC game forever.

In 2006 the MacBook was launched, Blu-Rays were introduced, Twitter was launched, Microsoft's Zune debuted (and bombed), and the Pension Protection Act of 2006 was signed into law.

Yes, it's hard to believe, but the Pension Protection Act of 2006 is now a decade old. It drew its name from the portions targeted at defined benefit plan funding (and PBGC funding, I suppose), though at the time I remember most people thinking it was an ironic name, in that it may have been intended to secure the pensions that were already in existence, but might well accelerate the demise of some on the cusp, and in any event was unlikely to help spur any new growth in that area. Some went so far as to call it the Pension Destruction Act.

That said, the aftermath of the PPA on the defined contribution side has been nothing short of extraordinary. Sure, it was all voluntary — the use of carrots like safe harbors for automatic enrollment, rather than the sticks that accompanied the defined benefit provisions. And yet, seemingly overnight, and without a government mandate or regulatory imperative, the mandate of the decades-old concept of "negative election" (now "rebranded" as automatic enrollment) became part of every credible retirement plan advisor's toolkit.

Without mandating the adoption of automatic enrollment, nearly overnight the paradigm shifted. Sure, it's still far more common among larger employers than those downstream — and yet those larger plans are where most participants are. And if the adoption of contribution acceleration has lagged behind automatic enrollment, it is nonetheless far more advanced than it would have been in the absence of the PPA.

> "The aftermath of the PPA on the defined contribution side has been nothing short of extraordinary."

The biggest impact of all may have been the rapid expansion of the qualified default investment alternative (QDIA) as *the* plan default investment option, and one need look no further than the millions in retirement savings that have been channeled into a range of professionally managed asset allocation solutions to appreciate the impact that change has had. All have significantly and positively moved the needle in helping enhance the ultimate financial security of thousands, if not millions, of American workers.

The work is not done, of course. Innovative retirement income offerings continue to be introduced, but can't seem to find traction; the focus on outcomes (these days generally under the banner of financial wellness) is still nascent; and the challenges of compliance with the (still) new fiduciary regulation lie ahead.

But think of how far we've come in just the past 10 years — and what could be accomplished in the next 10.

This is, of course, an election year — and a big one. NAPA PAC's engagement with candidates at the federal and state level will continue to pay dividends, in terms of helping this incoming crop of lawmakers understand and appreciate the importance of the nation's retirement system, and the role of retirement plan advisors in supporting and sustaining America's retirement future.

WHAT'S NEW AT NAPA NET

We have more people visiting the site, and more pageviews than ever before: nearly 56,000 sessions per month compared with 30,000 in 2013, more than 26,000 unique visitors/month versus 15,000 in 2013, and more than 85,000 page views in 2016 compared with 66,000 in 2013. Additionally, average total opens, total clicks, and average unique open rates are up for the *NAPA Net Daily* as well.

This month we are also launching the NAPA App, which will, among other things, make it possible for you to not only access this publication via smartphone or tablet, but will make it easier for you to access and reference the resources available to you at www.napa-net.org. You'll find details on page 10 — and the NAPA App in both the Apple Store and Google Play.

As always, let me know what you think — email me at nevin.adams@usaretirement.org.

It may seem naïve at this vantage point to hold out hope that the nation's legislative bodies could put their heads together and work as constructively with the administration as they did in 2006.

But one can hope.

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WELLNESS WORKS

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Next Generation Thinking

Financial wellness has gone from buzzword to essential business element for DC plan sponsors and the advisors who work with them. The reasons are clear: financially healthy employees are less stressed, more productive and better able to save for retirement. And advisors who can strategically deliver wellness today will be in a strong position to continue guiding their clients tomorrow. We can help—with actionable insights and practical tactics. **troweprice.com/wellnessworks** | **#TRPFinWell**

NAPA: Part of History, Making History

Be a part of it.

BY SAM BRANDWEIN

NAPA is a relatively young organization, and as such, our growth has been spectacular. In four short years, we have grown from a start-up to 12,000 members and 170 firm partners. However, the history and legacy of NAPA stretch back much further than four years. NAPA's roots actually go back 50 years, as NAPA was created by the American Society of Pension Professionals & Actuaries (ASPPA), which is celebrating its 50th anniversary in 2016. To put that in perspective, ASPPA was well into its second decade when the very first 401(k) plan was implemented. NAPA and ASPPA are now under the same parent association umbrella, the American Retirement Association (ARA), along with two other professional associations, ACOPA and NTSA.

NAPA was created by and for retirement plan advisors. As plan advisors, our work is critical to our nation's future. Consider that the total of pre-tax retirement plans in the U.S. is $24 trillion. This amount is greater than the entire stock market capitalization of all U.S. publicly traded stocks. We are truly working for America's retirement, and NAPA, through engagement and advocacy, is working to create a framework of policy that gives every working American the ability to have a comfortable retirement.

A perfect example of this is the work done by NAPA's Government Affairs Committee in regards to the Department of Labor's new fiduciary rules. Although the final rules were just released the day before I wrote this column, and will be subject to months of analysis, it is evident that our members' voices were heard loudly and clearly by lawmakers and regulators.

> "NAPA, through engagement and advocacy, is working to create a framework of policy that gives every working American the ability to have a comfortable retirement."

Our Government Affairs Committee successfully advocated for a number of changes to the rules proposed by the DOL several months ago. Among the most important of these changes to the final rules was the inclusion of a streamlined exemption for "level-to-level" advisor compensation. This is a major victory for retirement plan advisors and participants, as it helps to ensure that plan participants can continue their relationships with their plan advisors, as the relationship transitions from the employer plan to an IRA.

NAPA has continued to make history in other respects as well. Last year, we rolled out the CPFA credential (Certified Plan Fiduciary Advisor), which we believe will become the most sought after credential for retirement plan advisors. Our most recent DC Fly-In Forum and NAPA 401(k) SUMMIT both set attendance records. Finally, we are rolling out NAPA Connect this summer, a one-of-a-kind gathering for women advisors who share a commitment to the retirement plan market.

Let me wrap up this column by saying I am extremely proud and honored to be part of, and help lead, an organization that is fundamental to the American retirement system. I am excited to work with ARA CEO Brian Graff and the incredibly talented staff at the American Retirement Association. Finally, I know I have very big shoes to fill, as NAPA has been blessed to have three exceptional past presidents in Marcy Supovitz, Steve Dimitriou, and Joe DeNoyior. NAPA wouldn't be what it is today without them.

Let's keep making history!

» Sam Brandwein is NAPA's President for 2016-2017 and is an original member of NAPA's leadership council. Sam is a First Vice President/401(k) Consulting Director with Morgan Stanley.

The Judy Miller Story

Retirement happens.

BY BRIAN H. GRAFF

Judy Miller, the Director of Retirement Policy at the American Retirement Association, is going to retire at the end of August. Yes, retirement happens. And frankly, it's a good thing that the Director of Retirement Policy at the American Retirement Association is prepared to retire, because if she weren't, it would certainly not bode well for the rest of us.

That said, it's an enormous loss for this organization and the retirement industry overall. Judy's contributions to retirement policy since coming to Washington have been significant. Even more impressive, she garnered the equal respect of both Democrats and Republicans, having testified on behalf of both parties on retirement issues. Rep. John Boehner, the former Republican Speaker of the House, said of Judy that the Pension Protection Act of 2006 would not have happened without her. Judy was a Senate Finance Committee staffer for the Democrats at the time. In this era of partisan politics, her ability to cross the political divide was a rare skill and one she employed deftly. It's a credit to her notable policy acumen, but even more so her remarkable skills as an advocate. Judy was seen in Washington not as a lobbyist but as a trusted counselor. Not bad for an actuary.

As much as we may not like it, at the American Retirement Association we do have to let people retire. But before Judy goes, you should hear the story of how she got to Washington, DC. It's a good story.

In 2003, I got a call from Russ Sullivan, the Chief Tax Counsel for the Senate Finance Committee Democratic Staff. Russ was a friend, and we worked together for Congress in the mid-1990s. He told me that due to the increased focus on defined benefit plans, they wanted to have an actuary on staff. I, of course, told him that made a lot of sense. However, he said the actuary needed to be from Montana because the senior Democrat on the committee, Max Baucus, hailed from that state.

> "Judy was seen in Washington not as a lobbyist but as a trusted counselor. Not bad for an actuary."

What? I responded that I wasn't sure how many pension actuaries were actually in Montana, but I would try.

So after hanging up with Russ, I grabbed my ASPPA membership directory (which was still printed at the time) and went to the Montana list of members — only to discover there was a total of three actuaries in Montana. Not what you would call a large pool, but at least it wasn't zero, I thought. So I called the first name that jumped out at me — Judy Miller — and she answered the phone. I proceeded to tell her about this really cool opportunity in Washington: "You know all those retirement plan rules that drive you crazy? You would be in a position to do something about them," I said — maybe a little bit of an exaggeration.

To my shock, she didn't laugh at me and say no. She wanted to think about it. So after talking some more, I suggested she meet with the Senate Finance Committee staff while she was in town for the Enrolled Actuaries meeting. Of course, they fell in love with her. She even met some of the Republican staff and they were impressed as well.

But then back in Montana, Judy started to get cold feet. If you lived in Montana, wouldn't you? Judy told Russ that as much as she was intrigued by the position, she thought it would be better to stay in Montana.

So I got another call from Russ. This time he said, "We loved Judy and we have to have her on staff, and Sen. Baucus is counting on you to convince her to come. Okay?" So I called Judy and laid it on thick — I am a lobbyist, after all. I told her that they are going to work on defined benefit plan legislation, and if you're not there, who knows what kind of mess they will make? I told her that if she doesn't take this job she will regret it for the rest of her life. I think I said something comparable to that six different ways. She finally said yes.

Of course, Judy did an amazing job while on staff. And yes, who knows what a mess they would have made of the Pension Protection Act without her presence. But the story doesn't end there.

In 2008, I asked her to come to lunch with me. ASPPA was in the process of forming the ASPPA College of Pension Actuaries (ACOPA) to ensure that our actuaries continued to have a strong voice as the overall organization continued to grow. It would clearly be best if an actuary were going to lead the group. Needless to say, a bunch of really smart pension actuaries are only going to listen to another really smart pension actuary — right? We were also in the very early stages of building a group for 401(k) plan advisors — the precursor to what ultimately became NAPA — and we needed someone with the right skill set to lead our policy and lobbying efforts on Capitol Hill so that I could focus on organizational growth.

Judy Miller testifies at a Senate Finance Committee hearing, May 17, 2016.

Judy was the obvious choice and I sold her hard. Fortunately, she was intrigued. She had recently finished the Pension Protection Act, which was an incredible amount of work, and she needed a change of scenery. So we talked about the fact that before we moved any further we needed to inform her immediate boss, Russ Sullivan, who at that point was the Chief of Staff of the Senate Finance Committee. (It's common courtesy to do that when recruiting someone from Capitol Hill.) We were relieved that Russ gave us the thumbs-up.

So Russ informed Sen. Baucus, who had become Chairman of the Senate Finance Committee, that Judy was leaving. To say the least, he was not happy. He did not like losing his actuary from Montana, and he really didn't like the fact that no one asked him if he was okay with her leaving. Things got quite a bit worse from there.

Sullivan got yelled at, and I got a call from Jim Messina — also a friend — who was Sen. Baucus' personal Chief of Staff. You may have heard that name before. Jim went on to become White House Deputy Chief of Staff for President Obama and then Obama's campaign manager in 2012 — kind of a big deal. He told me that despite the fact that we did discuss Judy with Russ, I was going to be banned from meeting with anyone on the Democratic Staff of the Senate Finance Committee. But because of our relationship, he convinced Sen. Baucus to only ban me for a year. Many lobbyists have been banned from meeting with certain committees for various reasons, but as far as I know I'm the only one to be *temporarily* banned from the Senate Finance Committee.

Still, it was a pretty big deal. *Roll Call*, the Capitol Hill newspaper, wrote a story about me being banned. Naturally, the ASPPA Board was concerned that it would impair our ability to be effective advocates for the membership. I told them that the year would go by quickly and the likelihood of any pension legislation, given the recent enactment of the PPA, was remote. More importantly, I promised them that Judy Miller would be worth it.

There is not enough space in this magazine to outline all that Judy has accomplished for the American Retirement Association. Most recently, Judy was instrumental in our effort to get Treasury to withdraw its misguided proposal to change the nondiscrimination "cross-testing" rules. As my actuary friends will appreciate, watching Judy go at it with Treasury's Harlan Weller is a joy to behold.

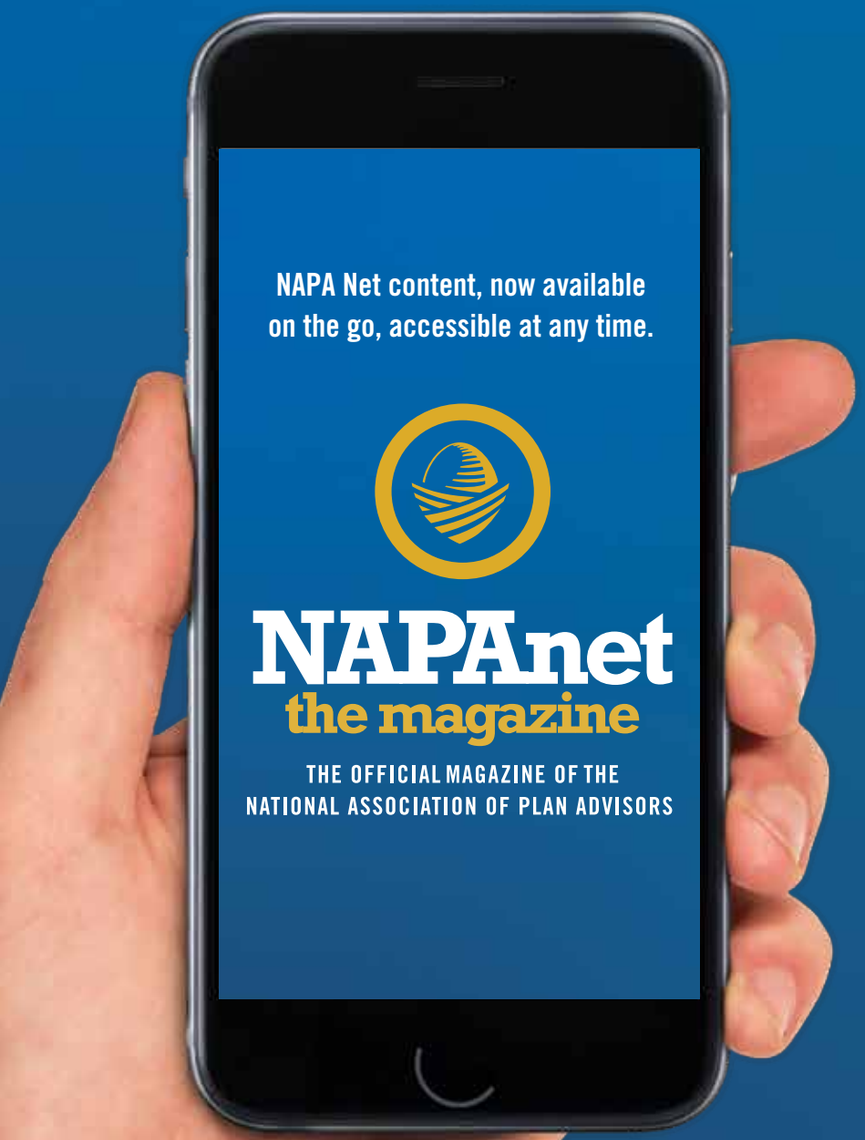
Judy's efforts were also critical to our lobbying efforts on the fiduciary rule. She led our education efforts with Democratic senators on the need to have a level-to-level exemption, which was ultimately included in the final rule. Yes, an actuary lobbied on the fiduciary rule, and successfully so, I might add.

Since Judy announced her retirement, many folks in Washington and members of the organization have asked me what I'm going to do without her. My response is that it's like losing your right arm. But I would rather lose my right arm than never have had a right arm at all. I can say without any hesitation or equivocation that the American Retirement Association would not be where it is today without Judy Miller.

Yes, Judy, you were totally worth it!

» Brian H. Graff, Esq., APM, is the Executive Director of NAPA and the CEO of the American Retirement Association.

The NAPA App



One of the more popular benefits of NAPA membership is *NAPA Net the Magazine*. While there's nothing quite like the tactile feeling of opening and reading the magazine, NAPA members are a mobile group. Much as we know you appreciate the look and feel of the magazine, we know there are times when you'd like to read — and share — the information available here.

We are pleased to formally announce the availability of the NAPA App. For the most part, it's *NAPA Net the Magazine* in a new digital format, available both for iPhone users (via the Apple Store) and Android users (via Google Play). With this new "app," you'll be able to access current and archived issues of the magazine, search by word, or use hyperlinked indexes, and share content via email, LinkedIn, Facebook, and Twitter, as well as other social media platforms.

Use the app to quickly navigate to a wide variety of resources on the NAPA Net website:

Business Intel
Access to our various lists, including Top 50 Advisors Under 40, Top Women Advisors, Top DC Wholesalers, and DC Broker-Dealers.

Professional Development
Links to information about NAPA certificates and credentials, webcasts, conferences, events, and continuing education opportunities.

Advocacy
Information about NAPA PAC, and how you can get involved.

NAPA Partner Corner
Information about NAPA's Firm Partners, including the nation's leading recordkeepers and DC Investment Only (DCIO) providers.

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From the main menu, you can access the current issue of the magazine, as well as key areas of the NAPA Net site.

03
Once you select the magazine, you can access not only the current issue, but an archive of recent issues.

04
Once the issue has been downloaded, you can page through the issue just as you would the regular magazine; or tap to a story

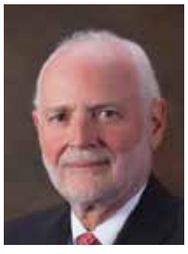
05
You can select and share articles, or sections of articles, via a variety of social media platforms.

IRS Limits

401(k) SUMMIT

It also features quick links to the IRS benefit and contribution limits, the NAPA 401(k) SUMMIT page, NAPA DC Fly-In Forum information — and much, much more.

So download the NAPA App — give it a spin — and let us know what you think.



BY JERRY BRAMLETT

Plan Advisor as Choice Architect

By utilizing choice architecture in designing investment lineups, advisors can be assured that participant outcomes will be optimized.

Choice architecture, a term first coined by Richard Thaler and Cass Sunstein in their 2008 book, *Nudge: Improving Decisions About Health, Wealth and Happiness*, incorporates the somewhat obvious (but often poorly recognized) observation that individual choices are affected by how they are presented.

Thus, a "choice architect" is anyone who influences the way people choose. An investment professional who provides advice to self-directed DC plans certainly fits the description of choice architect. Acting in a fiduciary capacity further emphasizes the need for advisors to understand the academic theories supporting choice architecture. It is by utilizing these principles in the design of investment offerings that advisors can be assured that participant outcomes will be optimized.

DC Investors Confused by Choice

Looking back over three-plus decades during which DC plans with a 401(k) feature have been around, it is quite astounding that it has taken the industry as long as it has to recognize just how lost most DC investors are when it comes to managing their own plan investments. A chief cause for this disconnect has been what many consider to be an overreliance on education programs.

Many advisors, relying mostly on their own anecdotal experiences, have concluded that education does little to enhance investment outcomes. But it took the work of two prominent researchers, Shlomo Benartzi and Thaler, to validate that financial education programs have a minimal impact on financial literacy:

> *A large employer offered its employees a financial education program [which cost the employer millions to implement] free of charge. The employer measured the effectiveness of this education by administering a before-and-after test of financial literacy. The quiz used a True/False format, so random answers would receive, on average, a score of 50 percent. Before the education, the average score of the employees was 54; after the education, the average score jumped to 55. (*Journal of Economic Perspectives, *2007, "Heuristics and Biases in Retirement Savings Behavior.")*

Around the turn of the century, after two decades of ever-increasing evidence that educating participants on how to invest is mostly a lost cause, industry providers began to coalesce around target-date funds as an effective "one and done" asset allocation solution. When target-date constructs are offered, DC investors need only determine the year they plan to retire and check the box. It was supposed to be just that easy.

Well, not quite. Target-date funds, when simply offered as a fund option alongside other fund options, have proven not to be as effective as once assumed. According to a recent study by Financial Engines, the majority (62%) of TDF users invest *only part* of their plan assets into TDFs. (*For more about the Financial Engines study, see Lisa Greenwald Schneider's "Inside the Generations" column on page 24 of this issue — Ed.*) Additionally, the study found that "this partial-TDF approach resulted in 2.11 percent lower median annual returns, net of fees, than investors who held almost all of their retirement assets in TDFs."

Making it even more confusing for many participants is for them to be offered target-date funds, managed accounts, single asset class funds and self-directed brokerage all within the same lineup. Talk about poor choice architecture.

> "An investment professional who provides advice to self-directed DC plans certainly fits the description of choice architect."

Optimizing Choice Architecture

No one questions that the most important decision a participant makes (beyond the decision to save) is how to allocate their plan assets. But more often than not, this message does not get through to the average participant.

Just query the average DC investor about the key to successful investing. Typical responses are that it is about choosing the best performing fund, timing the market or getting good investment tips. Having a good asset allocation strategy is rarely viewed as the way in which investment return is maximized.

Given that investors are constantly bombarded in the media by sales pitches for individual investment vehicles that tout past performance, the fact that asset allocation is not at the forefront of investors' minds should not come as a surprise.

A second challenge is that most participants do not understand when they are actually engaged in doing their own asset allocation and when it is being done for them. As the Financial Engines study attests, the majority of target-date users are only partially invested in TDFs. Most of these participants are not invested in both TDFs and single asset class funds by design but out of ignorance as to when they are the asset allocator and when someone else is performing this task for them.

It is standard practice to offer a series of TDFs and a fund lineup of single-asset classes in the same plan. But given the above two challenges, such a structure almost guarantees that the majority of DC investors will fail to achieve optimum investment results. There are, however, ways to design an investment lineup (*e.g.*, choice architecture) so as to make it either impossible for participants to misallocate between asset classes or, at least, make it much more difficult to do so.

One simple solution is to present a fund lineup that consists of only target-date funds or managed accounts. If target-date funds are offered, participants would only be allowed to invest in one fund at a time. In the case of managed accounts, by design, participants would have one option, which would be professionally managed. Such a program would, no doubt, be viewed as overly restrictive by most (if not nearly all) plan sponsors. On the other hand, this choice architecture would mostly put an end to poor (*i.e.*, nonprofessional) asset allocation decisions.

Another, less restrictive, alternative would allow participants to invest in either a target-date fund, a managed account program or mix their own asset classes. However, they would be required to choose which of these three strategies to invest, since they would not be allowed to pursue more than one of these investment approaches at the same time. In this structure, the previously mentioned statistic of 62% of TDF users being only partially invested in TDFs would drop to zero. This type of choice architecture has been adopted by a small number of larger plan sponsors that view it as the best means to ensure that there is proper asset allocation alignment at the individual participant level.

Conclusion

When acting as a choice architect, plan advisors should consider some hard realities about DC investors:

- Investment education programs cannot be relied upon to ensure that the majority of participants will implement risk appropriate asset allocation solutions.
- A majority of DC investors do not understand the full impact of asset allocation, nor do a majority of participants know when they are making a choice to engage asset allocation help and when they are doing it themselves.
- Allowing participants to freely choose from a mix of asset allocation and single asset class funds in the same lineup is a recipe guaranteed to create confusion for all but a minority of DC investors.

Once these conclusions are accepted, the prudent choice is to design a choice architecture that serves the majority of participants — investors who are otherwise mostly lost when it comes to implementing an effective asset allocation strategy. No doubt there is a minority of participants who can (or think they can) better allocate their assets than a professional asset allocator. Nonetheless, providing these more "sophisticated" investors with an investment structure suiting their demand for flexibility provides for a poor choice architecture for the majority of participants who are not prepared (and cannot be prepared through education) to navigate the complexities of asset allocation.

» Jerry Bramlett is the Managing Partner of Redstar Advisors, a boutique consulting firm focused on digital advice solutions. He has also served as the CEO of three full service DC providers: The 401(k) Company, BenefitStreet and NextStepDC.

WARREN CORMIER

The Path to Retirement Readiness is Paved with Trust

Research finds a positive, causal relationship between recordkeeper trust and income/match-adjusted deferral rates.

The recently completed National Association of Retirement Plan Participants (NARPP) Participant Trust and Engagement study revealed substantial and worrying drops in participant recordkeeper trust levels.

This year, only 8% of our sample of 5,000 active participants gave financial institutions in general a rating of, "I can trust them just about always to do the right thing" — down even further from an already low 13% in 2015. This rating, used in academia — most notably by Dr. Lindsey Owens of Stanford — is actually not a very high bar to surmount. It's not saying the financial institutions *always* do the right thing, but rather financial institutions *just about always* do the right thing. Imagine if your family or friends gave you the same rating. I would like to think my family and friends can rely on me to *always* (not "just about always") do the right thing!

(By the way, participants' trust rating for professional financial planners and advisors was only 9%. Apparently, they see advisors the same way they see all financial institutions.)

It is also particularly noteworthy that participants' trust in their recordkeeper stayed steady over the last year, with about one in four (26%) feeling they could "just about always trust them." This is the same trust rating level they give their employer, which is not a coincidence. Essentially, the association with the employer and concomitant implied endorsement of the recordkeeper by the employer bleeds into the recordkeeper's perceived trustworthiness. Without it the recordkeeper's rating would be similar to the level for all financial institutions. The same is true for advisors. If the employer endorses the advisor, then participants' perceived trustworthiness of the advisor rises.

The two obvious questions are:

- Why the drop in trustworthiness of financial institutions?
- Why should we care?

Let's consider the first question: Why the drop in trustworthiness? Part of the answer is cultural and part is self-inflicted. First the cultural part. The typical participant, even if he or she is hardly paying attention, is being subjected to a drumbeat of messages that large financial institutions cannot be trusted. Frequently, for example, we read the news that another financial institution agreed to pay a multi-billion dollar settlement for wrongdoing without anyone being held criminally responsible.

Consider also, for example, that box-office blockbuster ($70MM so far) *The Big Short*, an Academy Award-nominated film, is basically a dramatization of why financial institutions can't be trusted to do the right thing. *The Big Short* follows 2013's *The Wolf of Wall Street* ($116MM), and Gordon Gekko preaching in *Wall Street* (1987, $43MM) that "greed is good."

Next, consider that we are about a year into a presidential election cycle in which all the major candidates are promising to make large financial institutions stop acting badly and always do the right thing.

Finally, if someone is really paying attention and reads the financial pages, they hear that specific new rules were needed to make advisors act in the best interest of their clients and not their own.

"The typical participant, even if he or she is hardly paying attention, is being subjected to a drumbeat of messages that large financial institutions cannot be trusted."

Is all this criticism fair or is it over-simplification? Probably some of both. Nonetheless, the drumbeat is taking a severe toll on the credibility of financial institutions and advisors. In light of the drop in trust, perhaps a better question to ask is, "What have financial institutions and the advisor community done in the past year to raise their perception of trustworthiness?"

Now let's see what is self-inflicted. Communication style is a very powerful factor in building or destroying trust. The way we talk to participants matters when it comes to trust.

Let's look at the study results again. Fewer than half of the participants agreed that the plan communications they receive from their recordkeeper or employer are:

- In their best interests ("Do you care about what's good for me?")
- Motivational (spurring action)
- Presented in a way that is easy to understand ("Do you know who I am?")
- Relevant to their personal situation ("Do you know what I am going through?")

Only 5% agreed with all four. These are important findings because all four are causally related to trust levels. (Also, common DC design conventions, like a cluttered look and small print, are known to reduce trust in the communicator.)

Imagine trying to take the direction and advice on saving for retirement from someone you don't believe "just about always does the right thing," doesn't care about you, and doesn't know who you are or what you're going through. Participants want and need to trust financial institutions to help them save for retirement. They just aren't getting enough reasons to do so.

Proceeding to the next question: Trust matters because everything we are asking the participants to do is highly trust-dependent. A prime example: We are asking participants to set aside immediate gratification (which often includes things like simply having the peace of mind of making ends meet each month) and place their hard earned money into an account. And that account that will miraculously grow enough to allow them to live in a reasonable lifestyle after they stop working, and last for many years.

Another example: We are telling participants that the amount they are deferring is not nearly enough and they better up the ante or there will be dire consequences. But perhaps the most trust dependent example is this: We are telling participants (via negative elections), "Trust us and we will automatically take care of all the decisions for you!"

Engagement Matters

Next let's consider engagement and how it connects to trust. Employees' engagement with the core objective of achieving retirement readiness, as well as with the retirement plan and the recordkeeper, has long been regarded as critical to their success. Without engagement, we as an industry argue, participants' chances of reaching retirement readiness are very low, especially if they have income and asset limitations. (That describes about 90% of all participants.)

In our study, we set out to accomplish defining and measuring engagement. Doing this is critically important for several reasons. First, without a statistically valid index/definition of engagement, it will remain a conceptual goal with little practical use.

Secondly, once engagement is defined and validated, we are in a position to measure it, assess levels of engagement, and determine how much work is ahead of us.

Finally, by defining and measuring it, we are in a position to determine both the causes of engagement and its effect on essential behaviors such as setting deferral rates.

The elements of our engagement index are the frequency of:

- recordkeeper interaction (visiting the website, calling the call center, using web-based tools and calculators);
- reviewing investment performance and alternative investment options; and
- reviewing the deferral rate and considering a change.

Our modeling identified the factors that lead to higher engagement. Raising engagement lies within the control of the recordkeeper, and by extension, the advisor and plan sponsor. The drivers of engagement can be distilled to four factors:

- Positive motivation to prepare for retirement.
- Creating a belief that retirement readiness can be achieved.
- Empowering the participant with a sense that one can be, or is, in control of outcomes and the process.
- Providing a vision of what success looks like.

Importantly, these four factors must be laid upon a foundation of trust in the employer and recordkeeper to be catalyzed. Interestingly, we discovered a feedback loop: As engagement increases, so does trust in the recordkeeper; and as trust increases, so does engagement. Familiarity and interaction can and does breed trust — provided the interaction is positive.

The Path to Greater Participant Trust in the Recordkeeper

Recordkeeper trust among participants is created by many coalescing factors, but communication styles with the participant, taken collectively, are clearly the driving force. Specifically, the most powerful driver of recordkeeper trust (four times stronger than the second most powerful driver) is presenting information to participants in a way that is perceived as being in their best interest.

Conversely, one variable that proved to be a factor in lowering recordkeeper trust is the materials containing complicated financial language. When participants don't understand what is being said to them (particularly when trying get them to voluntarily reduce their seemingly already scarce take-home pay), trust drops.

Importantly, participants want to feel in control of the retirement savings process. To participants, being in control doesn't require high levels of financial literacy or excessive information and data. Participants' form of control may be to decide to use a managed account, an advisor, or a target-date fund. That is, to some participants, being in control is deciding to give discretionary power to someone else. Importantly, they were in control to make that decision. When using complicated financial language, that sense of control is taken away from the participant, thereby reducing trust. Keeping it simple allows participants to feel they are participating in the process and have a voice at the table.

> "We discovered a feedback loop: As engagement increases, so does trust in the recordkeeper; and as trust increases, so does engagement."

Beyond communications style, helping the participant have an optimistic view of his or her financial future is important to building trust. A coaching, encouraging style is more effective than constant messages that time is running out to save, and the future looks bleak or scary. That doesn't help to build trust given that they think they are already doing all they can.

In fact, our model shows that having the expectation that participants can or will be successful in achieving retirement readiness is the most important non-communications-style driver of recordkeeper trust. That doesn't suggest we should mislead participants who appear to be behind the savings curve. Rather, it suggests showing them a practical and feasible path to retirement with dignity. It also means giving them a way to feel comfortable with the retirement planning process (a key driver of trust). Unfortunately, online tools and calculators have not yet proven to be effective in that regard.

The Path to Higher Deferral Rates

Perhaps the most broadly shared goal among plan sponsors, recordkeepers, advisors and policy makers with respect to participant behavior is increasing deferral rates. We see deferral rates, on average, naturally rise with income and match rate, so we calculated a deferral rate that is adjusted for these factors. Essentially, we built a model that describes how to get participants to raise deferral rates beyond what would normally be expected with rising income and match level.

The results were highly significant and intuitive. The path begins with a composite measure of recordkeeper performance (*i.e.*, overall satisfaction, partnering with the participant's success, trustworthiness, and satisfaction with information provided).

We found a direct causal relationship between our composite index of recordkeeper performance and our engagement index. Specifically, as the recordkeeper performance index rises, so too does participant engagement. But the most interesting part is that there is a positive, causal relationship between engagement (which is driven by trust) and income/match-adjusted deferral rates.

Essentially, the NARPP model was showing that when the recordkeeper is performing well, both engagement and "financial courage" (*i.e.*, resiliency, or the willingness to take risks and persevere in retirement saving despite life's ups and downs) rise. When both these factors are in play positively, income/match-adjusted deferral rates rise.

Advisors are encouraged to consider their brand personality (a behavioral finance concept identified by Dr. Meir Statman) among prospects and clients. Does it include trustworthiness? Is it more prudent to assume it doesn't, and develop a plan to build it? Also, advisors should consider the trustworthiness of the recordkeeper when they select one to service their DC accounts. Our rankings of participants' and plan sponsors' perceived trustworthiness of recordkeepers vary widely. It could make all the difference in an advisors' experience with the account.

» Warren Cormier is the president and CEO of Boston Research Technologies and author of the DCP suite of satisfaction and loyalty studies. He also is cofounder of the Rand Behavioral Finance Forum, along with Dr. Shlomo Bernartzi.

Coming up in the Fall issue of NAPAnet the magazine

Our Annual Top DC Wingmen

Only plan advisors know how important their DC wholesaler can be in building, managing and growing their practice. We call them "DC Wingmen" because if they are doing their job, they have your back.

And only advisors know which Wingmen are really good and truly add value.

That's why NAPA set out to identify the top wholesalers who serve the DC market — the truly elite Wingmen. Now in its third year, NAPA's DC Wingmen issue is something you'll want to see — and be part of.

QDIA Essentials: The Definitive Guide to Target Date, Target Risk Balances & Other QDIA-eligible Funds

While target-date funds have garnered most of the attention (and money), the Department of Labor's QDIA definition is broader, encompassing both managed accounts and balanced fund offerings.

In this special NAPA Net supplement, you'll find detailed listings of NAPA DCIO Firm Partners' target-date, managed account, and DCIO offerings, as well as those who support the construction and monitoring of these offerings.

BY JANIA STOUT

4 Steps to Evaluating a Financial Wellness Partner

Provide value to your clients by helping them ensure that their financial wellness partner is aligned with their goals and budget.

A recent AON study reported that 56% of employers have financial wellness as the #1 focus for 2016. The next logical task: Determining which financial wellness partner is the right choice.

There are dozens out there, and they come in all shapes and sizes. Many of them are attached to the 401(k) provider and come at no additional cost to the employer; others have a fee structure. Since financial wellness is something of a newer trend, many advisors and their clients are venturing into uncharted territory. Like so many things, it all starts with a budget — or lack thereof. Once a budget (or the lack of one) has been established, there are four steps to consider in choosing the right financial wellness partner.

Step 1: Set a budget for the program.

Most of our clients have found that just adding financial wellness to the existing health and wellness strategy is the easiest route to take. Many of them already have a wellness committee, but up until now, the topic of financial wellness was rarely included in their purview. This committee needs to first determine whether there is a budget for implementing a financial wellness strategy. The answer will have a big impact on what type of partners a committee will want to evaluate. And understanding what the wellness committee's goals are may help you figure out what the right type of financial wellness partner should be.

So let's explore two different paths:

Yes, we have a budget.

Great! Once a budget is established, the committee will want to consider sending a Request for Proposal to a handful of financial wellness providers. There are many out there and new ones popping up all the time. Some of the popular ones we have evaluated are Smart Dollar, Financial Finesse, LearnVest, Hello Wallet, RetireMap, and Edu(K)ate. Each of these providers offers a financial wellness platform for a fee. Plan sponsors can pay out of pocket, pay using ERISA budget accounts, or apply these fees to the plan trust (the participants).

Recordkeepers are just now starting to either partner with a third party or build it themselves. For example, T. Rowe Price recently announced a partnership with Smart Dollar, and is investing money and resources into integrating their systems.

Having an integrated model might increase utilization. For example, when a participant is speaking with a call center rep and that rep notices certain behavior (like needing a loan or asking about how to get their money out), they might suggest the wellness program Smart Dollar. There is a discount clients get when using Smart Dollar and T. Rowe Price together, but there still is a fee — so understanding your budget will be important.

No, we don't have a budget — and don't want to charge participants.

If there is no budget for implementing a financial wellness program, your only option is to evaluate the tools and services provided by the 401(k) recordkeeper — and, of course, any support from the plan advisor.

> "Since financial wellness is something of a newer trend, many advisors and their clients are venturing into uncharted territory."

Just because there is no money to go out and engage a third-party provider, it doesn't mean you have no other options. Many of the large 401(k) providers have recently enhanced or completely revamped the way they handle education. Some have even rolled out new tools and websites focused entirely on financial wellness. Recently, a few made big investments in enhancing their services around financial wellness, including Fidelity, Empower, Transamerica and John Hancock.

Step 2: Evaluate the providers to understand why they are in the business and the services they provide.

The providers of financial wellness services are in the business for different reasons. In evaluating their services I have spent a good bit of time with many of them. They all say the same things, but when you dig deeper you can see there may be different motivations for each. They all have a focus on providing some level of financial education, but some are heavily focused on the tools they offer, like fancy apps and great websites.

Others are more about providing inspiration and motivation to keep the participants engaged. And for some, providing financial wellness services is just a means to an end, like offering the participant the ability to use their managed account services or going through a financial plan.

Step 3: How will the providers help you implement the program and provide ongoing support?

Make sure to ask lots of questions about how the program will be communicated and rolled out to the employees. Will the plan sponsor be responsible for all communication, or will they provide this for you? Will you have a dedicated relationship manager assigned to your plan? These are good questions to answer before making your selection.

Step 4: What type of reporting is available to measure the results and impact of the program?

To me, this is the most important part of finding the right provider — if you can't measure the engagement rate, there is no way to know how the program is really doing. Depending on which provider you are looking at, you will find a variety of answers to this question. Make sure to ask for a complete list of available reports, including their frequency.

Conclusion

As you can see, there are many different types of providers that offer financial wellness solutions. Some of free, some are not, and there is a huge disparity in the type of ongoing support and reporting they offer. As plan advisors, our role has expanded into much more than just an investment advisor. We can provide value to our plan sponsor clients by helping them understand what their options are, and helping ensure that the financial wellness partner they select is aligned with their goals.

» Jania Stout is the managing director and co-founder of Fiduciary Plan Advisors at HighTower. She received the NAPA 401(k) Advisor Leadership Award in 2013, and currently serves on NAPA's Leadership Council.

Trends Setting

This issue we look at a study that quantifies the effect of behavioral biases on saving, and the toll stress takes at work, as well as surveys that look at retirement confidence, retirement plan reviews and generational gaps in savings attitudes.

BY NEVIN E. ADAMS, JD

01

Bias 'Says':
Study suggests that eliminating behavioral biases could boost retirement savings.

A recent study suggests that if we could overcome certain behavioral tendencies, we could increase retirement savings by at least 12% — and perhaps quite a bit more.

In "The Role of Time Preferences and Exponential-Growth Bias in Retirement Savings," a team of academics examined two specific behavioral aspects:

- present bias (the tendency to value things in the present over the future in what the researchers called a "dynamically inconsistent way"); and
- exponential-growth (EG) bias (the tendency to neglect or underestimate the benefits of compounding).

The researchers maintain that these factors, and the long-run discount factor, are all highly significant in predicting retirement savings, even when controlling for measures of IQ and general financial literacy. Additionally, they found that the effects are even worse (specifically, it has "an additional independent negative impact on retirement savings") when individuals are unaware of their biases.

Behavioral Inclinations

The paper says that people with present-biased preferences may intend to save more in the future but never do so. Moreover, they may procrastinate on the decision to enroll in a tax-deferred savings plan, also resulting in lower savings. Those with EG bias will underestimate the returns to savings and the costs of holding debt, according to the report.

How many people are we talking about? While the researchers found that, on average, the population is time-consistent, what they termed as a "large fraction" are present-biased. Moreover, drawing on and replicating previous research, they claim that a "large fraction of the population" also exhibits EG bias.

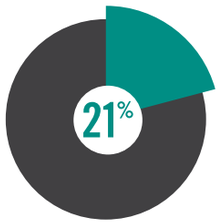
As is the case with a lot of behavioral science research, most of their findings were based on what people would do, or say they would do, in hypothetical situations. Even when the situations were "real," it was about trade-offs that didn't actually affect how much people were saving — just their expressed tendencies. That doesn't mean the findings are invalid, of course, just that we all know that sometimes what people say they would do, they don't always do when presented with the real situation.

Nonetheless, the researchers conclude that eliminating both present bias and EG bias from their study sample would lead to a 12% increase in overall retirement savings. Moreover, they maintain that the "regression coefficients are likely to understate the true association between retirement savings, time preferences and EG bias due to attenuation bias by measurement error" (a fancy way of saying the 12% is a conservative read). And therefore, "after employing an instrumental variables strategy to correct for classical measurement error, a causal interpretation of our estimates suggests retirement wealth could increase by "as much as 70% if [present bias and EG bias] were eliminated."

Now we just have to figure out how to go about eliminating those factors…

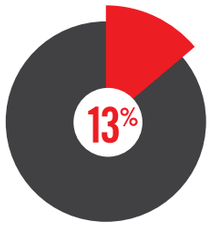
Despite taking a reading during a tumultuous period in the markets, America's retirement confidence proved to be resilient, if not its level of preparation.

According to the 26th wave of the Retirement Confidence Survey, the percentage of workers very confident about having enough money for a comfortable retirement held strong at 21% in 2016, compared with 22% a year ago, and 13% as recently as 2013. Increases in the percentage of those somewhat confident were also found, as were decreases in the not-at-all-confident. Moreover, this move out of the not-at-all-confident group was observed primarily among those reporting they or their spouses do not have a retirement plan (defined benefit, defined contribution, or individual retirement account).

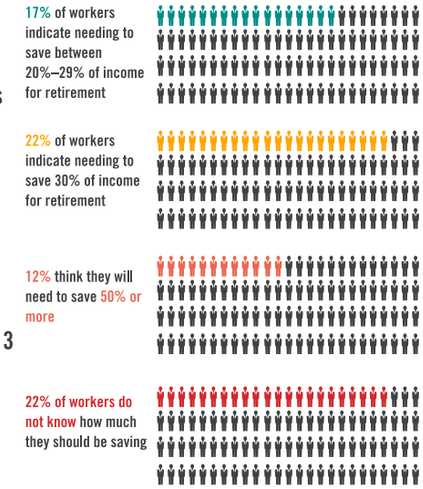


As of 2016, 21% of workers are very confident about having enough money for a comfortable retirement.

8%



Only 13% of workers in 2013 were very confident about having enough money for a comfortable retirement.



Retirement Plan Matters

Indeed, retirement confidence is strongly related to retirement plan participation. Workers reporting they or their spouses have money in a DC plan or IRA or have benefits in a DB plan from a current or previous employer are more than twice as likely as those without any of these plans to be very confident (26% with a plan vs. 10% without a plan). Additionally, workers without a plan are more than three times as likely to say they are not at all confident about their financial security in retirement (11% with a plan vs. 38% without a plan).

Interestingly enough, while the increase in confidence between 2013 and 2015 occurred primarily among those with a plan, the changes in confidence in 2016 occurred among those without a plan. Among those without a plan, the percentage somewhat confident increased from 21% in 2015 to 29% in 2016, and the percentage not-at-all-confident decreased from 44% to 38%, though the percentage very confident remained statistically unchanged among those without a plan (12% in 2015, 10% in 2016).

Savings Levels

But while confidence is one thing, justification in that confidence may be something else. Among RCS workers providing this type of information, just over half (54%) report that the total value of their household's savings and investments, excluding the value of their primary home and any DB plans, is less than $25,000, including 26% who say they have less than $1,000 in savings.

However, the data not as likely to make its way into a headline is the gap between those who have a retirement plan and those who don't. Two-thirds (67%) of those without a retirement plan say their assets total less than $1,000, compared with fewer than 1 in 10 of those who have a plan. Correspondingly, workers without a retirement plan are far less likely than those with a plan to report assets of $100,000 or more (5% vs. 34%). The same differences in asset holdings among retirees having and not having a retirement plan were also found.

Another distinction likely to be obscured in the coverage is age; while 75% of workers ages 25-34 say they have total savings and investments of less than $25,000, that's the case for just 33% of those 55 or older. At the same time, 30% of workers ages 55 or older cite assets of $250,000 or more (vs. 2% of workers ages 25-34).

Regardless, an important aspect to keep in mind is that without knowing individual factors like age or income, it's impossible to discern whether those amounts are woefully inadequate or reasonable.

Savings Goals?

Not that workers aren't aware of the need; 17% say they need to save between 20% and 29% of their income in order to live comfortably through retirement, while another 22% indicate they need to save 30% or more. On the other hand, roughly one in five (22%) say they do not know how much they should be saving — oh, and 12% think they'll need to save 50% or more.

Some of that savings may have been directed toward debt reduction, since Americans are less likely now than in the early years of this decade to describe their debt as a problem; 15% of workers (down from 22% in 2011) and 8% of retirees (compared with 15% in 2011) report their level of debt is a major problem, while an additional 40% of workers and 24% of retirees describe it as a minor problem. Similarly, nearly half (47%) of workers say debt is not a problem for them, an increase from the 37% measured in 2011. A full two-thirds (67%) of retirees surveyed report they do not have a problem with debt, up sharply from the 55% who said the same in 2014.

As has been the case in previous iterations of the RCS, fewer than half (48%) of workers report they and/or their spouse have ever tried to calculate how much money they will need to have saved so that they can live comfortably in retirement.

These findings are part of the 26th annual Retirement Confidence Survey, which gauges the views and attitudes of working-age and retired Americans regarding retirement, their preparations for retirement, their confidence with regard to various aspects of retirement, and related issues. The survey was conducted Jan. 2-Feb. 3 via 20-minute telephone interviews with 1,505 individuals (1,000 workers and 505 retirees) age 25 and older in the United States.

03 Stress Tested

Financial stress takes a toll at work.

More than a quarter (28%) of people who are struggling with their finances admitted that it prevents them from doing their best at work, according to a recent survey by Willis Towers Watson.

The survey also found that higher levels of absenteeism can occur in employees with financial concerns: People who are not worried about their finances reported they took an average of 1.9 absence days from work per year, while employees who are struggling financially are absent for an average of 3.5 days per year, according to the report.

Furthermore, those who are struggling financially report being highly distracted on the job 12.4 days per year on average, compared with 8.6 days for those who are not worried about their finances, according to the Willis Towers Watson 2015 Global Benefits Attitudes Survey.

Little wonder that financial wellness is one of the hottest topics in our industry today.

Interestingly, the survey found that more than 6 in 10 employees (61%) believe their employers should actively encourage them to save for retirement. However, employees are less comfortable with their employers becoming involved in their personal financial issues — and are particularly uncomfortable with targeted messages.

Only 4 in 10 (41%) are open to having their employers encourage them to better manage their personal finances. Even fewer — 30% — feel comfortable with their employers sending targeted messages to employees with financial issues.

OF EMPLOYEES **ADMIT THAT FINANCIAL STRUGGLES** PREVENT THEM FROM DOING THEIR BEST AT WORK

6 in 10 employees believe employers should actively encourage them to save for retirement.

04 Review Views

Survey finds gaps in plan review focus.

A new survey suggests that plan sponsors are interested in more frequent plan reviews — but whether workers are saving enough is way down the focus list.

More than half (57%) of plan sponsors surveyed said they want advisors to help them review their retirement plans semiannually or more often, something that only 44% report currently takes place, according to the 2016 MassMutual Retirement Plan Review Study. The survey does note that sponsors who rely on advisors typically review their retirement plans more often than sponsors who do not use an advisor.

The survey did find other differences in emphasis in plan review between situations where plan sponsors work with advisors versus those who do not. Perhaps not surprisingly, those with an advisor are more inclined to focus on satisfaction with their plan provider (79% versus 71% without), investment performance (76% versus just 59% without), and the effectiveness of education and advice (50% versus 31% without). Plan reviews among those using an advisor also showed gaps in their focus on participation rate (45% among those with an advisor versus 34% without), and the time and effort to administer plans (43% among advisor plans, and just 28% among those without).

The gaps were smaller on issues like fees (71% among those with advisor, versus 73% without), and — as noted above —-whether employees are saving enough was the lowest item on the focus list: 27% among those with advisor versus 25% without.

The study polled 565 employers that sponsor retirement plans, including 449 that worked with an advisor and 116 that did not, with retirement plan recordkeeping assets ranging from less than $1 million to as much as $75 million. In addition, the research included two focus groups with plan advisors. The research was conducted in 2015 by Greenwald & Associates.

OF PLAN SPONSORS WANT ADVISORS TO HELP THEM REVIEW THEIR RETIREMENT PLANS SEMIANNUALLY OR MORE OFTEN

The generation gap also has gender gaps

While a number of critical gender gaps have been closed by the Millennials, key differences still exist between women and men in their decision-making styles, investing behaviors and views on technology.

Consider that Millennial women prioritize growing wealth almost as much as Millennial men, representing a potential generational shift as women in older generations are less likely to think this way. However, Millennial women continue to place a much higher emphasis on paying off debt (57% see it as their most important goal) compared with Millennial men (40%) according to the latest Global Investor Pulse survey from BlackRock.

However, while both women (43%) and men (41%) put a high priority on saving to ensure they live comfortably in retirement, women are considerably less likely than men to actually be saving for retirement (55% vs. 65%). And perhaps not surprisingly, women also happen to be more concerned than men (75% vs. 68%) about their ability to meet their retirement goals.

Additionally, just 44% of Millennial women claim they are on track to achieving their retirement goals, compared with 70% of Millennial men. Only about a third (31%) of Millennial women feel they don't have to worry about money, while just over half (53%) of Millennial men say they don't have to worry about it.

About half (51%) of women report feeling positive about their financial futures, compared with 46% one year ago, and 42% say they are confident they are making the right savings and investment decisions, compared with 34% one year ago.

Millennial women are still far more risk averse than Millennial men, and report lower knowledgeability and engagement with learning about investing than Millennial men. Millennial women do report higher knowledgeability about investing than older generations, but self-reported knowledgeability is only slightly higher for Millennial women than for older generations, while Millennial men show a sharper increase in self-reported knowledgeability compared with older generations of men. The same pattern is shown for the percentage of women who say they enjoy managing their investments.

In some ways the money attitudes of younger women are diverging from those of older women. About 3 in 10 Millennial women (age 25 to 34) say they enjoy managing investments, compared with just 21% of Boomer women (age 51 to 69), and 37% have prioritized growing wealth (vs. just 22% of Boomer women). However, just 53% of Millennial women are saving for retirement compared with 71% of Millennial men.

Robo 'Cope'

Generally, men are more interested than women in robo-advisors, including 72% of Millennial men vs. 45% of Millennial women. That said, Millennial women express more interest in these digital platforms than women in any other generation; for example, just 23% of women aged 55 to 64 are inclined toward these services.

Most Millennial investors are interested in digital financial advice. However, Millennial women express much lower levels of interest in robo-advisers (45%) than Millennial men (72%). Their top three reasons for robo affinity are:

- convenience (43%)
- simplicity (38%)
- lack of product push (31%)

On the other hand, the things they find most off-putting are:

- don't have enough money (43%)
- prefer personal interaction (34%)
- not interested (21%)

Millennial women and men are not in agreement about many of their feelings for their financial future. While 72% of men are positive about their financial future, just 59% of women feel that way. Male Millennials are clearly much more confident, according to the survey — 71% are confident and 79% feel in control, compared with just 42% and 56% of women, respectively. There is also a significant gap in their perception about the biggest risks to their financial future: 62% of women cite the high cost of living, compared with just 48% of men.

TDFs: Misused and Mismatched on Risk Tolerance

Recent research helps us understand participants' partial use of TDFs.

BY LISA GREENWALD SCHNEIDER

There's little doubt target-date funds (TDFs) are growing in popularity, allowing hands-off investors to select a simple investment that gradually adjusts their allocation for them. What many research studies have also shown is how little investors actually understand these investments, and how few use them as the one-stop-shop they were designed to be.

A recent study conducted for Financial Engines revealed that just one in four TDF investors (26%) are "full users" with all or nearly all of their plan assets invested in this type of fund. These full users tend to be younger; about six in 10 are under age 45. They are also slightly more likely to have plan assets under $75,000. Full users demonstrate a stronger belief in how TDFs were designed to work, seeing it as an advantage that the fund is intended as a place for them to put all their money, describing TDFs as age-appropriate and as one-stop-shop solutions.

Yet, this data does not convince me that full users have chosen these funds and their "full" allocation due to a greater understanding and more educated choice. More telling, majorities of full users indicate that they prefer to set-it-and-forget-it. More than four in five full users prefer to select an investment option that requires "little or no action" on their part. They believe an advantage of TDFs is that they don't have to make too many decisions. Full users, it seems, are selecting these investments because of ease or perhaps just plain laziness. Regardless of their motivations, their "full," proper use of TDFs is likely to pay off in the long run. They have chosen an effective investment that matches their investment style.

That leaves closer to two-thirds of TDF investors (64%) who are "partial users" and another 10% who couldn't be categorized because they didn't know how much is allocated to TDFs. Partial users and even non-users — 58% of all plan participants who have a TDF available to them have not selected this option at all — are particularly interesting groups. It would be easy to dismiss them as just wrong, misunderstanding the purpose of TDFs or underestimating their value and why they should be used, but reasons for partial and non-use appear more nuanced than that.

> "Some non-users and partial users may be chasing investment performance rather than staying the course for the long term."

To start, even though a majority of partial users describe TDFs as diversified, "diversification" is the top reason they give for investing in other funds in addition to their TDF. Sure, there are other forms of diversification, but given the financial literacy and sophistication of the average plan participant, I doubt they are all seeking fund manager diversity. To me, this means there is an opportunity for plan advisors to further educate on diversification and to meet with these participants to understand their reasons for partial use and develop an allocation that aligns with their goals and investment style.

Perhaps even more compelling and, quite frankly, more legitimate, partial users and non-users suggest TDFs do not match their risk tolerance. Whether they want to be more conservative or more aggressive — a choice for which age is not the only indicator — many in these groups say TDFs are misaligned with their risk tolerance. "A target fund is default selection for conservative investment," said one 67-year-old man. More often, the complaint is that these funds are too conservative, but some feel they are too aggressive.

Relatedly, some plan participants are just control freaks. Non-users in particular say they do not use TDFs because they prefer to select their own investments. Half of non-users and a third of partial users describe themselves as do-it-myself investors, while six in 10 full users are do-it-for-me types. Non-users' version of do-it-for-me is delegating to an advisor, not an automatic investment. Moreover, some non-users and partial users may be chasing investment performance rather than staying the course for the long term. Seeking better performing funds was the second biggest reason for non-TDF use and was among the top five reasons for partial use. These participants' accounts are ripe for review by a plan advisor, or any financial advisor, to ensure their tinkering is actually yielding an appropriate and effective allocation.

The Financial Engines research helps us understand some of the psychology behind the allocation choices plan participants make. Most of us know from experience that participants' decisions aren't always rational. While partial use of TDFs is an irrational misuse of the investment, the desire for greater diversification or for a more or less aggressive approach may be quite legitimate, especially if you factor in actual retirement plans, how non-plan assets are invested, and the participants' general comfort level with investment risk. Understanding a participant's attitude toward and use of TDFs may provide plan advisors with insight to help participants select a more custom, appropriate asset allocation.

» Lisa Greenwald Schneider is an AVP at Greenwald & Associates, an independent research firm specializing in research for the retirement and financial services industries.

NAPA NET
National Association of Plan Advisors

Industry Voices

Our columnists include some of the best known thought leaders in the industry. Here's some recent commentary:

David N. Levine

"As the DOL fiduciary regulation changes the business marketplace, financial wellness could directly impact service provider business models. This disruption creates opportunities for both new solutions for employers and their employees and new service models for those advising employers and employees. These new solutions and service models may be educational in nature, advisory in nature, or a combination of both."

Fred Barstein

"Why risk getting into a new business like health care, spending time and resources, when things are going so well? Some entrepreneurs follow a different adage: "If it ain't broke, break it." Take the risk to go into new but complementary businesses when things are going well; don't wait for a crisis. That thinking entails short-term risk, as well as more people, technology and resources. It's hard to argue that with so much change happening, advisors should be taking on more risk."

Nevin E. Adams, JD

"I've always been proud of my parents, who sacrificed so much along the way to give us the best they could. I'm also proud — and more than a little impressed — of how committed they were to saving what they could, when they could, long after pundits would likely have told them it was "too late" — and the results of that commitment … My parents' example still reminds me — and hopefully you — that the decision to save is just that: a decision, a choice."

Engage!

NAPA Net readers engage with our news and commentary — and with each other. Here's a sample of recent comments:

While our industry is again a "last mover" (look how long it took b/ds to accept email), to ignore social media or brush it aside will limit your knowledge and, potentially, your ability to grow and understand your future (and present) customers. — *Mark Luckinbill*

If record keeping was actually a commodity, consolidation would be a natural. But, the truth is, if you are really interested in your clients' best interests, and as a fiduciary you are committed to that policy… examination and decision making about the record keeper is an important duty. — *John Blossom*

I have not heard of forfeitures being off limits to fund QACA safe harbor matching contributions. It is well known that traditional safe harbor contributions cannot be funded by forfeitures. It doesn't make much sense given the fact that QACA has a 2-year vesting schedule. What should the client be using the forfeitures for if plan fees are coming from assets? I'd bet that the majority of QACA plans are indeed using their forfeiture to fund the SH match.
— *Brady Dall*

Nearly EVERY state run pension is underfunded and under attack on distributions. The states and the federal gov't have shown themselves to be poor custodians of public funds collected for retirement security. Think Social Security. While the idea is a good one, the application and the ongoing management necessary just stink of mismanagement and corruption to a class of investors that can afford this the least.
— *Ciro Longobardi*

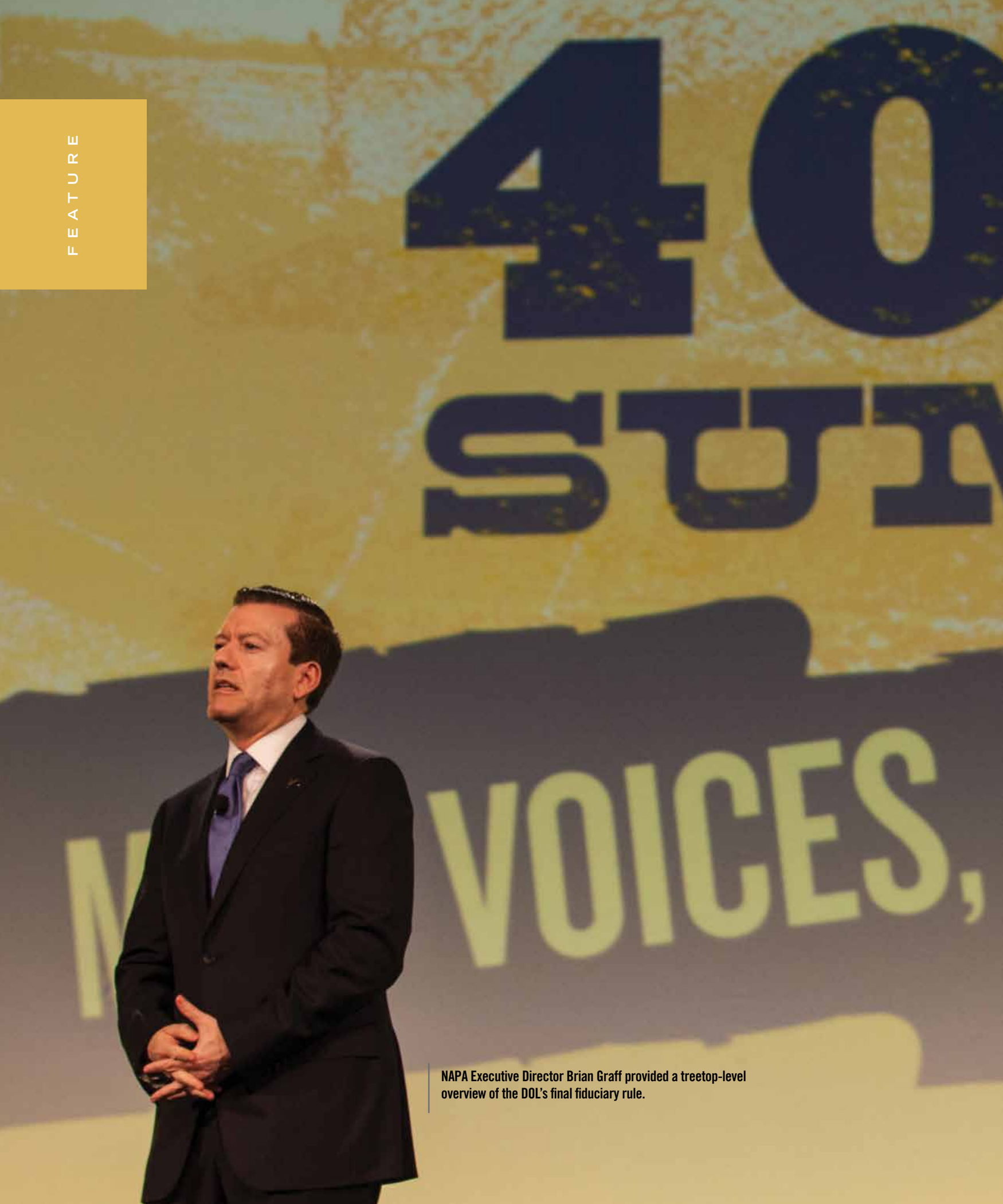
What's New?

- Our new DOL Fiduciary Rule Resource Center provides a one-stop shop for news, analysis, commentary and DOL guidance on the final rule. You'll find it in NAPA Net's "Industry Intel" tab.
- Check out our comprehensive news coverage of the 2016 NAPA 401(k) SUMMIT in Nashville. Enter "Tennessee" in NAPA Net's search box and click on "NAPA Wins in Tennessee Primary" for a list of news posts from the Summit.

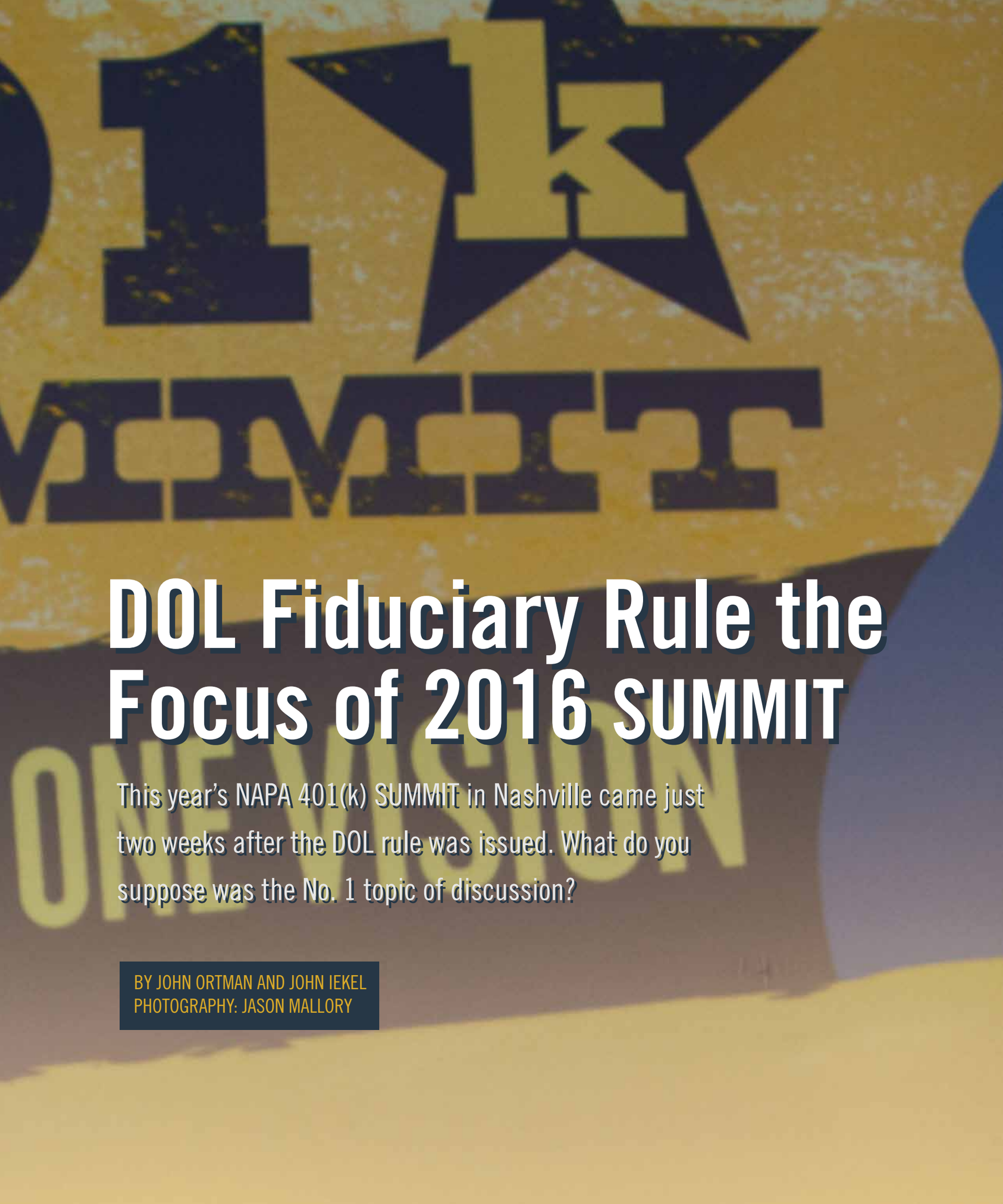
WHAT ADVISORS ARE READING

Here's a rundown of the most-read posts on NAPA Net in April:

1. The Final Fiduciary Regulation: A Game Changer
2. DOL Fiduciary Regulation: The Wait Is (Almost) Over…
3. Fitch Finds Another Fiduciary Rule Casualty
4. Level Best: Fiduciary Regulation Incorporates NAPA's Level-to-Level Comp Recommendation
5. Final Fiduciary Reg Relents on Key Education Provision
6. Bad Recordkeeping (and High Fees) Costs Plan Fiduciary
7. It's Official: DOL Unveils Final Fiduciary Rule
8. DOL Rule's Impact: Industry Execs See Opportunity in Disruption
9. House Formally Disapproves Fiduciary Regulation
10. Graff: Meet the New Reality



NAPA Executive Director Brian Graff provided a treetop-level overview of the DOL's final fiduciary rule.



DOL Fiduciary Rule the Focus of 2016 SUMMIT

This year's NAPA 401(k) SUMMIT in Nashville came just two weeks after the DOL rule was issued. What do you suppose was the No. 1 topic of discussion?

BY JOHN ORTMAN AND JOHN IEKEL
PHOTOGRAPHY: JASON MALLORY

Like most 15-year-olds, this year's NAPA 401(k) SUMMIT was a little bit rowdy, a little bit refined — and a whole lot in between. Most of all, though, the SUMMIT's first visit to downtown Nashville was, by all accounts, the biggest and best ever.

In its 15th year, the 2016 SUMMIT — now the largest annual gathering of 401(k) advisors, service providers, industry insiders and thought leaders in the industry — drew nearly 1,700 attendees for its general sessions, workshops and networking opportunities. Not to mention a block party featuring a charity concert by singer/actor Charles Esten benefiting the Leukemia and Lymphoma Society.

Let's take a look at some of the highlights of this year's SUMMIT.

Graff: Meet the New Reality

"We can't walk away from this. It's not going anywhere." American Retirement Association CEO and NAPA Executive Director Brian Graff captured the new environment ushered in by the Department of Labor in its final fiduciary rule, opening the SUMMIT with a discussion of the rule and some of the most important ways that it affects the industry.

"We've got to recognize that today the DOL is America's retirement sheriff," Graff said. But, he also noted, "We are very much in the figuring-this-out mode." American Retirement Association President Marcy L. Supovitz, in her remarks immediately before the session, expressed a sentiment similar to Graff's assessment, remarking, "Now the emphasis shifts from 'whether' to 'how.'"

But the "how" is not what it could have been. NAPA President Joseph DeNoyior, as well as Supovitz and Graff, noted the role that ARA and NAPA had in making comments and influencing the DOL as it revisited and modified the rule when it was in its proposed form.

The NAPA PAC "made a difference," said Graff, concerning the way the rule addresses rollovers, which he called "a huge issue for us." When the rule came out, he said, it was "very restrictive," but that changed after "many, many meetings" and much other activity by NAPA PAC members. Among the results of that effort was that the DOL changed the rule to clarify what constitutes advice in the context of rollover compensation; another was the level fee funding exemption. "Critically," said Graff, "as compared to the full best interest contract (BIC) exemption, this streamlined exemption gets you out of the contract requirement."

Enforcement by Litigation?

Graff pointed out that the DOL "did a lot of things with the contract that improved it," but also noted that the DOL left intact the ability of trial lawyers to pursue class action lawsuits. The full BIC contract is not under ERISA, Graff said — it is a contract under

STONESTREET ADVISOR GROUP WINS 401(k) LEADERSHIP AWARD

The advisory team at StoneStreet Advisor Group in Pearl River, N.Y. is the winner of the 2016 NAPA 401(k) Advisor Leadership Award.

Barbara J. Delaney, AIF™, the firm's founder and Principal, received the award on behalf of the team during a general session at the NAPA 401(k) SUMMIT in Nashville. She was joined by representatives of the other two finalists for this year's Leadership Award:

- LeafHouse Financial Advisors, in Austin, Texas
- Plante Moran Financial Advisors, in Southfield, Mich.

Delaney has been in the financial industry since 1981. In 2009 she merged her firm with Avenir Equity and Wall Street Access and renamed the new firm StoneStreet Equity. Recently, she formed StoneStreet Advisor Group to support their continuing efforts in supporting Worksite Financial Solutions, an innovative way to engage participants in every step of their careers. **For more on all three finalists, see page 36.**

Members of "Grand Theft Audio," composed of students at the W.O. Smith Music School in Nashville, entertained the opening night crowd — and accepted a donation to the school from NAPA.

state law principles. As a result, "There's going to be a cottage industry of lawyers who are going to be BIC arbitrators" and who will be looking to pursue class action lawsuits under the full BIC.

BIC or BIC Lite?

He also emphasized the importance of the provisions that concern being a level fee fiduciary. "This is very important. The only thing that you can get in connection with the advice to the plan or the IRA," said Graff, "is a level fee. There is no other remuneration beyond the fee."

Graff said that he sees the rule's treatment of rollovers as universal, noting, "This thing covers everything." Still, he said that while all transactions are covered, it will take future guidance from the DOL to clarify how some of the details regarding how the rollover rules will be applied.

A key question a firm must answer, said Graff, is "Is it BIC? Or is it 'BIC Lite' (*i.e.*, the rule's level comp exception)?" With the BIC, an advisor has more liability and more compliance costs, but also greater flexibility. With BIC Lite, there is less liability, less compliance costs, but also much less flexibility. Each community "must decide for themselves what makes the most sense," he said.

Participant Education and Distributions

Another important matter, Graff noted, is plan education. As originally drafted, he said, the rule would have stopped advisors from providing important education "that connects the dots between what the plan provides and what the employee or participant needs." But now "basically, it does a pretty good job of getting us to the place we were before."

And the original rule did not allow an exemption for distributions from small 401(k) plans. This is another matter about which the ARA and NAPA testified. "Now if you want to use a full BIC on a 401(k), you are free to do so," Graff said, noting that "we're very grateful that they changed that."

DOL Rule's Impact: Industry Execs See Opportunity in Disruption

How one views the DOL's final fiduciary rule depends on your vantage point and how you will have to apply the rule. That was the message of three prominent industry execs who participated in a panel discussion on the impact of the rule on their business models and operations.

Offering their insights were J. Fielding Miller, CEO of CAPTRUST Financial Advisors; Edward O'Connor, Managing Director for Retirement Strategy at Morgan Stanley; and William R. Chetney, CEO of GRP Advisor Alliance.

"This is a big win" for the RIA model, said Miller. Chetney said he considers it "interesting to see how broker-dealers react" and that it is a little challenging for them from some perspectives, but that it also creates some clarity. To O'Connor, "it's a matter of interpretation" and the biggest challenge is that now "we have to think of the best way to document the best interest consideration for investors and to demonstrate it when challenged."

All three were relieved that the point-of-sale provisions that were in the rule in its proposed form were removed from the final rule.

Disruptive Impact

The disruption is "tremendous" for advisors, in Chetney's view. O'Connor agreed, saying that "there are going to be a lot of smaller firms that will be struggling to comply with the rule." Miller was the most blunt of all, saying, "This is going to thin out the herd," and calling it "prime hunting season for our industry."

TOP PHOTO: NAPA's 2016-2017 President Sam Brandwein (R) congratulated predecessor Joe DeNoyior.

MIDDLE: Panelists Marcy Supovitz, Brad Campbell, David Levine and John Carl (L-R) provided expert insight into the DOL's final fiduciary rule.

BOTTOM: Charles Esten with Marcy Supovitz, NAPA's Founding President.

For good measure, O'Connor reminded attendees that the other shoe has yet to drop. "And let's not forget, the SEC is coming. This is going to continue," he said.

Stay Put?

Moderator Nevin Adams posed a question to the panel: Will the rule result in a trend of encouraging participants to keep their assets and accounts where they are, and to forgo the common practice of transferring them at times such as changing jobs?

Miller said he thinks so, responding that he thinks there will be less movement out of plans and that one of the results will be that there will be a lot more money in plans and left in plans. Chetney agreed, and said that because of the rule, plan sponsors and participants won't leave as much of a trail as they had in the past as a result of changing jobs.

Advisors Still Needed

Does the rule put advisors in jeopardy? Not necessarily, the panelists said. "I don't think we've dis-invented the advisor," said Chetney. O'Connor was even more confident, remarking, "Clearly there's a huge need for Americans to be helped" in building retirement income, and "individual responsibility is not going away. Individuals have to take care of their own lives."

Gaze into the Crystal Ball

Adams asked the panelists to gaze into the crystal ball and offer their take on the rule's effects five years from now.

"We see this as a really, really good opportunity to grow," said Miller. Plan sponsors, he said, are "inundated with lots of information," and his firm hopes that results in requests for proposals. "There is opportunity" in the disruption the rule creates, he said.

But Miller added that there is a risk — the rule could result in a disclosure that nobody reads.

O'Connor said that the rule emphasizes that "you need to be a specialist in this business" and that as a result of the rule's promulgation, "rollovers will be less important in anyone's business model" and that the multiple employer plan model will be embraced and accepted to a greater degree than it is now.

There is a "real opportunity for people to consider what they can do for customers that they don't do now," said Chetney, adding that the rule provides "a real opportunity to re-envision what we do for plan sponsors and participants."

Campbell: 3 Ways Forward Under BIC Exemption

As ERISA attorney and former head of the EBSA Bradford Campbell sees it after a little more than a week of study, advisors essentially have three options for dealing with the best interest

Some of the nation's top plan advisors under 40 — the 2016 NAPA "Young Guns" — shared the stage at the block party.

contract (BIC) exemption in the DOL's final fiduciary rule:

- Use the level fee option in the BIC exemption (or so-called "BIC Lite"). This approach offers the easiest compliance and little legal risk, but may not be available where affiliates receive compensation.
- Use the BIC exemption in the rule, with variable compensation for both the advisor and the financial institution. This approach entails the most compliance issues and risk of a lawsuit.
- Use the BIC exemption, with flat compensation for the advisor but variable comp for the financial institution. This approach requires complying with the full BIC conditions, but is easier to meet the incentive condition and entails somewhat less legal risk than full variability.

Advisors may also be able to avoid the need for the BIC exemption by providing education, not advice, to participants; using computer model-based advice; or offsetting some fees.

Campbell was joined by Joan Neri, a fellow counsel at Drinker Biddle & Reath LLP, at a crowded workshop session on the SUMMIT's opening day.

Better But Not All That Much

Campbell cautioned the packed room not to get too carried away with the current wave of enthusiasm over the many improvements in the final version of the rule. "Remember that the baseline here was a proposed rule that *did not work*," he declared. "The final rule *will*, but will require significant costs and changes." He offered an example: "Disclosures have gone from impossible [conflicting with securities laws] to painful" — *i.e.*, a financial institution must disclose on its website how it compensates advisors, and recruits and retains them.

Patience, Patience

At this early stage, advisors need to be patient as financial institutions work through the complexities of the 1,000-plus page rule. "You're going to see a lot of different approaches by financial institutions," he advises. "Be patient; it will take a little while until you get answers you can implement." And be prepared for some pretty big changes as well: "This rule will significantly distort the marketplace," Campbell declared.

Tips on Negotiating Fees

While advisor fees have gotten a lot more "reasonable" — meaning lower — in recent years, greater litigation risks resulting from the DOL's final fiduciary rule may create a counterweight, exerting upward pressure on fees, according to CapTrust's James E. ("Jeb") Graham.

Graham offered his take on best practices in effective fee negotiating at a workshop session. He was joined by panelists Douglas G. Prince, Principal and CEO of ProCourse Fiduciary Advisors, and Tim B. DiSette of Trinity Planning Group, LLC.

The trio identified the four factors that affect fees:

- Scope of service
- Cost of service (*e.g.*, overhead and size of the service team)
- Profit margin
- Industry comps for fees and services

Led by Ann Schleck (L), HR execs Kathryn Wall, Rhonda Curry and James Bunt (L-R) talked about what keeps them up at night — and how their plan advisors help.

Scope of Service

At ProCourse, Prince said, about 90% of their clients are full-service, and the rest (mostly small plans, with the CFO typically responsible for HR) are in the stripped-down, "lite" version. Participant education is priced separately because of the legal risk they perceive in offering a certain number of onsite participant days, but subsequently delivering fewer days for one reason or another.

At ProCourse, it's standard practice to map out ROI for each step in the client service process. "This helps us find inefficiencies and improve them," said Prince.

At ProCourse, said Prince, they spent a lot of time determining the core services they will offer, and their business is focused on those core services. The firm was built in the $2-$50 million space, but is committed to growth, he says. ProCourse offers three basic services models, and adjusts fees with each add-on.

Value Prop

In communicating the firm's value proposition, DiSette says, "it's important to play offense, not defense." For example, Trinity documents all meetings and participant calls into the service center. Then, at the annual fiduciary review meeting, DiSette says, "I turn the laptop around and show the committee the detailed logs" of how each caller's concerns were resolved. "We all do so much work," DiSette says, "but the CEO and CFO are too busy to see how much we do."

Graham agrees with the importance of sweating these kinds of details. "If you're not doing this kind of thing," he asserts, "you should be."

Be Ready with an Answer

How do you justify your fee calculations to the CEO? "You need to have an answer to that question," admonished Graham. He recommends describing the calculation as "part fixed, and part variable." Your fee has to cover your fixed costs; "You shouldn't take the case otherwise," he said. The variable cost, he explained, is essentially a fiduciary risk premium. Additionally, it's important to factor in complexities like location, which can necessitate higher-than-average travel expenses, he noted.

From Asset-Based to Flat Fee

All of ProCourse's clients are now on a hard-dollar fee arrangement, says Prince. At Trinity, said DiSette, two-thirds are a flat fee basis, with an automatic 3% annual cost-of-living increase. The firm will also lower its fees where that's appropriate, he noted. As for when asset-based fees may still be the right choice in the small plan market, DiSette suggested that they may be most appropriate for small, growing firms.

The RFP as Time-Waster

The panelists agreed that dealing with RFPs in cases where advisors are being used to benchmark the current advisor's fees, or when the choice is predetermined, can be a frustrating waste of time. DiSette has a set of pointed questions for the plan sponsor (or, increasingly, consultant or law firm) that has issued the RFP, and won't respond to the RFP without satisfactory answers.

DiSette recommends using LinkedIn to look for professional relationships between execs at the plan sponsor and other advisors. This can serve two purposes: as a way to flag

Singer/songwriter/actor Charles Esten (who plays Deacon Clayborne on the hit ABC series, "Nashville") rocked the SUMMIT Block Party. Esten, a supporter of the Leukemia and Lymphoma Society, played for free, and NAPA donated $10,000 to the Society.

potentially "wired" RFPs, as well as helping you win the case by flagging third party professional connections linking you to the decisionmakers at the plan sponsor.

Climbing Everest: A New Perspective on Helping Pre-Retirees

Is a DC plan enough to get participants to where they need to be financially when they make that jump into retirement? What practical steps can advisors take to help participants get on track and stay there?

Jeanne Thompson, Fidelity Investments' VP of Thought Leadership, revealed findings from new Fidelity research into those questions at a SUMMIT general session — research that offers a new way of looking at pre-retirees.

What drives the decision to retire? Fidelity's research identified five factors driving the decision to retire, Thompson said:

- **Financial** (assets, debt and the cost of health care)
- **Family** (caregiving responsibilities, grandchildren, spouse/partner)
- **Lifestyle** (desire for leisure, structure, meaning in life)
- **Job** (passion, recognition, sense of identity)
- **Health** (stress level, physical stamina, mental acuity)

The research led the team at Fidelity to develop a three-stage model to better understand the changes that pre-retirees go through in the latter stages of their careers, Thompson explained — an evolutionary step from the traditional view of pre-retirees as a homogenous group. Using the challenge of climbing Mt. Everest as a context, the three stages are, in chronological order:

- **Climbing**. Ending about 10 years before retirement, in this phase the pre-retiree is in good health and happy with his or her job. Finances are the main concern. Climbers are seeking help with understanding Social Security, financial planning, and working part-time with benefits.
- **Base Camp**. Stretching from about 9 years to about 2 years from retirement, in this phase pre-retirees are starting to feel like they've had enough; they're less interested in new opportunities; and their physical stamina starts to decline. Base Campers are seeking help with understanding Social Security, financial planning, retirement income help, and understanding health care options.
- **Summit**. This is typically the last 2 years or so before retirement. Pre-retirees have significantly less debt and more job-related stress, and want to spend more time with family. Summiteers are seeking help with retirement income help and understanding post-retirement health care options.

What Keeps HR Execs Up at Night?

A panel of three HR executives shared their experiences, perspectives and challenges, as well as what they value in their advisors, at a general session.

The panel, moderated by Ann Schleck of Ann Schleck & Co., featured:

- Rhonda Curry from Hornet Sports & Entertainment in Charlotte, N.C. (parent of the NBA's Charlotte Hornets) (188 participants, $6 million in assets);
- Kathryn Wall from Mary Washington Healthcare in Fredericksburg,

Keynote speaker Dr. Joseph Coughlin shared the results of research by the MIT AgeLab into the future of retirement advice.

Va. (5,710 participants, $226 million in assets); and

- James Bunt from Continental Resources, Inc., in Bedford, Mass. (302 participants, $36 million in assets).

Evolving Benefits Landscape

So what's keeping the three HR execs up at night? The complexity of today's benefits offerings, especially compliance requirements, topped Wall's list. She also cited the cost of benefits, ruing the increasing prevalence of benefits decisions that are driven by cost factors today; coping with employees' desire for transparency via things like social media and interactive communication; and the changing relationship with employees. That relationship, said Wall, has shifted from the employer's goal of taking care of participants' retirement readiness to providing tools that they use to take responsibility for that themselves. Mary Washington Healthcare's advisor is Jania Stout at Fiduciary Plan Advisors.

Curry said she depends on her advisor, Kathleen Kelly at Compass Financial Partners, to be an expert on changes in the field. "What's evolving? What does the fiduciary rule mean to me? Tell me what I need to do," she said. "Give me a 1-page summary and action steps." Curry suggested a general goal for advisors: Help her minimize the time she spends studying important issues and emerging trends and developments by emailing her succinct "must-read" lists of recommended content on the web.

Bunt shares his CEO's concern about translating today's complex benefits landscape to employees effectively. "We rely on our advisor (Jim Phillips at Retirement Resources) to do that," Bunt says. In particular, he says, employees are concerned about market volatility and its effect on their account balances. "'What do I do?' they ask. How do you calm their fears and give them the right kind of guidance?" Bunt said he measures an advisor's success largely by looking at whether participants are getting the right information to tackle this issue, including appropriate benchmarks for deferrals and account balances.

Justify Your Life

To fight commoditization, how does an advisor most effectively justify the "premium" charged for exceptional service? For Wall, it's the need for the advisor to help her integrate all the benefits they offer, not just retirement, in a true Total Rewards concept — addressing health care and voluntary benefits as well as the retirement plan. Wall values advisors who can "be an integrator," she said, providing simple, easy-to-grasp information for her participants, like infograms, and can connect her with experts when that's needed.

To Curry, it's important to have an advisor who "gets me," she said, and can provide a frank evaluation of her "wild ideas" — as Schleck put it, "thinking outside the box but listening [to the client] and focusing on the client's business."

Bunt addressed the difference between average, "me too" advisors and extraordinary ones. In his opinion, there are two key differentiators:

- the interaction of the advisor with participants — in particular, the advisor's use of tools, and the independence and impartiality of the advisor's advice to participants; and
- the advisor's ability to provide "throughput" information — for example, aggregated data provided at quarterly investment committee meetings that leads directly to improvements and new features in the plan.

The exhibit hall was a prime location for networking, learning and catching up.


NAPA

Leader Shifts'

The 2016 NAPA 401(k) Advisor Leadership Award

BY NEVIN E. ADAMS, JD

Helping workers prepare for retirement — and helping employers design and maintain plans that support that process — have long been integral to the retirement plan advisor role. Today retirement readiness at the individual and overall retirement plan level increasingly dominate the focus of leading retirement plan advisors. That said, the challenge that looms largest for a growing number of employers is workforce management, a process that goes beyond the traditional focus on benefit programs as a way of attracting and retaining talent, to the critical planning issue of helping assure an orderly flow of workers into a financially sustainable retirement.

The NAPA 401(k) Advisor Leadership Award was created to recognize a leading financial advisor or team for contributions that exemplify leadership, experience and expertise in the retirement plan industry. The award reflects the multifaceted efforts of advisors to serve their clients (plan sponsors and participants), act as a mentor, maintain high ethical standards, and consistently improve their practices and services in the retirement industry.

In view of this critical workplace planning role and its expanding focus by the "C-Suite" (even among firms too small to have a C-Suite), the focus of this year's NAPA 401(k) Advisor Leadership Award was on innovation and accomplishment in workforce management. We recognized individuals and teams who have gone beyond the installation of automatic enrollment and qualified default investment alternatives, who have demonstrated leadership both in their innovative recommendations, and their prescience in helping their clients incorporate forward-thinking designs that work to the benefit of those participants, the employers they work for, and the nation's retirement system in general.

Eligible nominees include any individual or team (group of individuals) active as financial advisors to 401(k) plans. Nominees must be SEC registered investment advisors and/or FINRA registered representatives who are primarily in the business of providing investment advisory and other services directly to retirement plan sponsors and/or participants. NAPA membership is not a requirement or a consideration in the judging process.

> "Today retirement readiness at the individual and overall retirement plan level increasingly dominate the focus of leading retirement plan advisors."

And with that, let's meet the finalists — and winner — of the 2016 NAPA 401(k) Advisor Leadership Award.

2016 NAPA 401(k) Advisor Leadership Award Winner: StoneStreet Advisor Group

StoneStreet Advisor Group was founded many years ago, first as Fundamental Foundations in 1989. From the beginning their business model was focused on enrolling everyone in the plan, with a focus on asset allocation and higher deferral percentages. But then, other factors began to dominate — founder Barb Delaney notes that the practice began more stringently focusing on fees, funds and fiduciary practices. And though StoneStreet began emphasizing automatic enrollment a year before the Pension Protection Act of 2006 fueled an industry-wide embrace of that concept, Delaney acknowledges that with that emphasis, "we found ourselves less engaged with participants."

That was until a couple of years ago, when the growing significance of health care costs led them to became aware of the need for a more meaningful application of financial literacy in a broad-based sense, not just the 401(k). That epiphany was, as such things often are, highlighted by Delaney's business relationships with two pioneers in the expansion of this kind of focus. "Most of us during our careers meet folks along the way that have special talents in unique areas," notes Delaney. "I have been privileged enough to get to know Liz Davidson and Kelli Hueler. These ladies were and are still very successful in the large plan market, Liz for her award-winning Financial Wellness programs and Kelli for providing a true income solution by providing participants with a competitive bidding process for guaranteed income for life. I found it beneficial to bring their thought leadership to a much needed space in mid/small market. It is these plans that need the most help, as they are typically comprised of sponsors with limited resources, regardless of their generous intent."

That's when, acting on "pure gut instinct with no formal plan," Delaney asked Davidson and Hueler to meet with two of her best clients in Washington, D.C. to talk about wellness programs and income solutions. "I was not sure how we would be perceived, three women without any props, per se, walking into a client and sharing ideas on how the larger market was accomplishing greater outcomes with real solutions," Delaney says. Instead, she was overwhelmed with the positive response.

Today Delaney notes that while historically workforce management encompassed many things, such as time and attendance, payroll/benefits talent management, career planning, etc., her team focus is that if an employee is not taking care of him or herself — both physically and financially — that will lead to many more problems for plan sponsors in their basic work flow management.

Today this focus on full workforce management is an integral part of StoneStreet's Investment Committee meetings, though it was slow to get underway. "At first, committees did not understand where we were going with this," Delaney recounts, "but after implementing programs and showing year over year results, we now have committees looking to us for the next trend in helping employees achieve a comfortable retirement and have an understanding of what they need to do."

Indeed, while financial wellness has become something of a buzzword in advisor circles, the focus of those programs on what is sometimes called "workforce management" has not yet found its way into the parlance of RFPs. In fact, Delaney explains that many plan sponsors don't know what to ask for. However, change is afoot — she notes that the last few RFPs received by her firm asked for an explanation of the firm's financial wellness programs. "These programs are just recently coming to plans with fewer than 2,500 employees and it is taking a considerable amount of time to educate current clients while using it as a differentiator in the sales process," she explains.

Partner Solutions

An essential part of StoneStreet's outreach to plan sponsors on the impact of these programs is being able to quantify the bottom line impact that unprepared workers hanging on past their preferred retirement date can have. Delaney's team has partnered with Hugh O'Toole's PlanOutcomes (now a part of MassMutual) to provide statistics that project the cost of retaining an employee encompassing health care, workers' compensation, absenteeism and other factors. "This puts the cost of an unfunded DC plan back on the sponsor's balance sheet, something no one has presented in the past," she explains. "Sharing this data with our client will surely provide a more robust budget for wellness programs."

StoneStreet's client base includes plans that have either frozen and/or terminated their DB plans, a shift that Delaney recognized could leave participants without a systematic means of structuring a guaranteed income for life. Finding that many of the in-plan options currently available were not truly portable, or were expensive (or both), StoneStreet partnered with Kelli Hueler's Income Solutions to offer an institutionally priced annuity option — despite pushback from recordkeepers who had competing products.

Next up? Health savings accounts (HSAs), which Delaney sees as an "integral part of the retirement puzzle." Some of the firm's more sophisticated clients have already asked StoneStreet to work with them to coordinate building up HSAs with respect to the fund choices. "We have now embedded HSA discussions into our quarterly reviews on all of our plans and can provide our clients a database for due diligence on more than 300 HSA providers," Delaney explains, in addition to working with participants on how much should be allocated to their HSA savings and 401(k) plan.

"We believe our role in 5 years will be that of helping participants understand all their options and ultimately finding ways and/or products to manage a systematic guaranteed drawdown," she says. "Thus, our role will be helping plan sponsors measure the ROI and wellness/financial wellness and providing institutionally priced, multi-insurer annuity options to participants, along with meaningful wellness programs."

STONESTREET ADVISOR GROUP

Pearl River, NY

Assets Under Advisement: $2.5 billion

Number of Plans: 80

Mission Statement: Informed, Involved, Impartial.

2016 NAPA 401(k) Advisor Leadership Award Finalist: Plante Moran Financial Advisors Institutional Investment Consulting Group

Plante Moran is not only the nation's 14th largest certified public accounting and business advisory firm, it is an organization with a rich history of extending its knowledge and experience as an employer to the organizations it serves.

And, with a staff of more than 2,000 professionals in 22 offices throughout Michigan, Ohio and Illinois — not to mention Monterrey, Mexico, Mumbai, India and Shanghai, China — that breadth of supporting resources has played an integral role in the focus on workforce management that Plante Moran Financial Advisors' Institutional Investment Consulting group (PMFA) brings to its customers as well. PMFA, as a wholly owned affiliate of Plante Moran, utilizes the vast resources of the firm to serve its clients holistically.

"When we first started providing services to plan sponsors over 20 years ago, much of the attention was on education meetings focused on getting participants to contribute to the plan," explains Susan Shoemaker, leader of Plante Moran Financial Advisors DB/DC practice and a Partner of Plante Moran. "We started talking to our clients about automatic enrollment and automatic increase several years ago. Talk about an effective workforce management tool! We have several manufacturing firms that have over 90% participation rate and deferral rates increasing each year. We have one manufacturing client that put their automatic increase cap at 20%. They said, 'If we put it high enough, eventually they will get engaged and, if not, they should have a good amount for retirement.'"

Beyond Auto

That said, PMFA long ago recognized that participation rates and deferral rates were just part of the overall picture. As a result, Shoemaker explains they have worked with clients to implement wellness programs, such as offering third party solutions to participants, providing participants with education surrounding topics such as estate planning, Social Security, 529 plans, long-term care, etc. "We have coordinated these efforts with the full service providers in providing data that shows clients how participant wellness rates have risen as a result of this targeted education," she explains.

Indeed, both in terms of the customers it serves, and as a large employer itself (and one that, for the past 18 years, has been on *Fortune* magazine's list of the "100 Best Companies to Work For" in America), Plante Moran has long had an appreciation for the education needs of the workforce. For example, when there was an opportunity for Roth conversions, they had one of their internal tax experts meet with certain groups of participants to discuss tax ramifications, the best ways to implement, etc. Other experts in the firm have educated participants on the intricacies of 529 plans, long-term care insurance, estate planning, tax planning opportunities, and Social Security strategies.

Says Shoemaker, "We know that a successful retirement is not just tied to the amount an individual has saved, but their overall financial health. Having a 'balance sheet focus' has enormous applicability for participants. We expect to bring more and more education and resources to our benefit plan clients to help their participants

improve their overall financial acumen and health as part of their journey toward financial independence."

"As we have helped clients become more aware of big-picture issues that affect their plans, our role has changed," Dori Drayton, Partner of Plante Moran explains. "We are finding more and more that our clients are interested in a broader view of our value — how we can support them in all their needs and our ability to act as the *de facto* 'CFO' for their entire plan."

As for the future, Drayton notes that communication methods are changing almost faster than technology can adapt. "As more and more Millennials enter the professional workforce and begin planning for retirement, we need to be able to connect with them on their terms. Our client-service model depends on adopting technology to ensure we can connect our clients and their participants with the information, education, and insights that will help them thrive."

That means an expanding emphasis into compliant social-media engagement to allow clients and contacts to connect with their advisors, and receive timely market updates and other critical insights via social media. "While we will continue to support onsite education meetings, we plan to leverage technology, in collaboration with service providers, to further supplement the education/communication strategy topics such as debt management, college planning, income planning, life insurance and loans, which are typically covered in meetings or mailings," she explains.

On the plan sponsor side, PMFA expects to be working to help them maximize their benefit budgets. "Budgeting for employer contributions to the retirement plan may become a bigger issue over the next five years," Shoemaker notes. "In conjunction with Plante Moran's employee benefit consulting and health and welfare group benefit teams, we have the opportunity to identify potential cost cutting ideas in addition to helping plan sponsors understand the business risk of an older workforce that cannot afford to retire." PMFA's focus on helping participants grow their account balances and retire successfully, will, she says, give plan sponsors the opportunity to increase productivity and reduce health care costs, potentially allowing employers to make higher contributions to retirement plans.

PLANTE MORAN FINANCIAL ADVISORS INSTITUTIONAL INVESTMENT CONSULTING GROUP

Southfield, MI

Assets Under Advisement: $12.1 billion

Number of Plans: 170+

Mission Statement: To understand our clients' responsibilities, and provide in-depth research, expert support and information so that fiduciaries have peace of mind about the investment decisions they make, ensuring that our fiduciary clients know that PMFA will support them in discovering and implementing the best solutions for their unique needs.

"We believe that our holistic approach to serving clients, and their participants, is in direct alignment with the concept of workforce management, and our client satisfaction results are proof that it is working," says Shoemaker.

2016 NAPA 401(k) Advisor Leadership Award Finalist: LeafHouse Financial Advisors, LLC

Austin, Texas-based LeafHouse Financial Advisors, LLC is the creation of financial planners Neal Weaver and Todd Kading. Prior to founding LeafHouse, the pair had, for more than a decade been partners in Weaver, Kading & Associates, a financial advisory practice within a major broker-dealer. Then in 2008 they decided to make a break — and sold their practice.

It wasn't long, however, before the pair was reengaged in the retirement business. In 2009 they "reset" their practice and began designing a retirement plan "outcomes" tool from the ground up. "C-Suite executives (CFO, CEO, HR, Controller) have become disengaged from plan outcomes because they believe they have pawned off the costs to the participants," notes Weaver.

"What good is a retirement plan if no one can retire? We wanted to focus on the outcome," Weaver explains. Not that the pair has set aside a focus on the so-called "3 Fs":

fees, funds and fiduciary services, but they realized early on that "efficiency" does not equal effectiveness. "For plan effectiveness we must not only deal with the 3Fs, but we also must provide the tools necessary to give participants the ability to offload themselves from the workplace, when and how they desire," explains Kading. "By doing this, we add tremendous value to the organization in many ways, including an increased net present value of the company."

Measuring 'Cut'

"First we have to be able to measure how effective the plan is and then we have to offer solutions which can affect as many participants as possible. This is where many advisors have challenges. They either don't have an effective system to evaluate the 'outcomes' discussion or they don't have an effective way to affect change within an organization. Workforce management is the driving force behind everything we do."

That emphasis started with the development of the LeafHouse "Trac(k)ing™ Retirement Readiness" system which, like other readiness tools available today, purports to measure the number of participants on "trac(k)" to retire. However, rather than making assumptions outside the purview of the plan sponsor — such as other outside assets and Social Security benefit predictions — their system focuses on the retirement plan in a "silo." It calculates a number for the plan sponsor which can then be used as a test to judge the "effectiveness" of the retirement plan instead of, as they put it, "only looking at the plan's 'efficiency.'" It can also be used to quantify how well LeafHouse is doing to effect positive change over time as the plan's advisor.

"We don't put each plan into the same cookie cutter design machine," explains Weaver, a strategy that LeafHouse says has paid off by allowing customization of both the participant and plan sponsor experience. And while a customized approach is often invoked as the optimal engagement strategy, Weaver explains that LeafHouse's system "allows a plan sponsor to look at outcomes in a way that re-engages them by making them consider the financial fallout of poor outcomes to the company's bottom line."

"In order to make sure folks can retire, we focus most on maximizing participants' Trac(k)ing™ Retirement Readiness score," explains Kading. "We do this in different ways. Sometimes we reframe the conversation to convince C-Suite plan sponsors to make correct decisions. Other times we use data and flexibility to create custom models, target dates or allocation funds for plan sponsors."

LEAFHOUSE FINANCIAL GROUP

Austin, TX

Assets Under Advisement:
In excess of $1 billion

Number of Plans: More than 200

Mission Statement: To fix the United States retirement plan system, even if we have to do it one plan and one advisor at a time.

RAMP-ing Up

The pair also turned their attention to developing a proprietary investment monitoring system to evaluate plan investments in order to retain more control and "flexibility" into their 3(38) offering. And then they started the Retirement Advisor Management Partnership (RAMP), a network that consists of advisors, brokers and fiduciaries mutually deciding to partner with each other to offer vast services to a larger geographic area of plan sponsors. Currently there are more than 75 advisors and staff in the RAMP network, representing more than $5 billion in assets.

That said, "We believe the fiduciary business will look completely different in 5 years versus today," says Weaver. "Proper workforce management requires access to data. We are currently working on a proprietary data aggregation system that will allow LeafHouse the capability to analyze workforce management issues on a scale not seen today."

LeafHouse hopes to change this for the benefit of the plan sponsor by allowing "deep dives" into the data to directly respond to individual retirement plan participant needs, and in 5 years LeafHouse hopes to use this data aggregation to provide more individualized advice to more participants at fractions of what it costs today. A business model that the pair believes will be "massively disruptive in a fantastically positive way."

More recently, LeafHouse has entered into a partnership with a third party technology company to allow them to manage individual participants' money based on funds vetted and selected via their 3(38) fiduciary solution. Once there they note that the firm can completely manage (online) a participants' money, take full fiduciary responsibility for each participant and provide them professionally managed solutions.

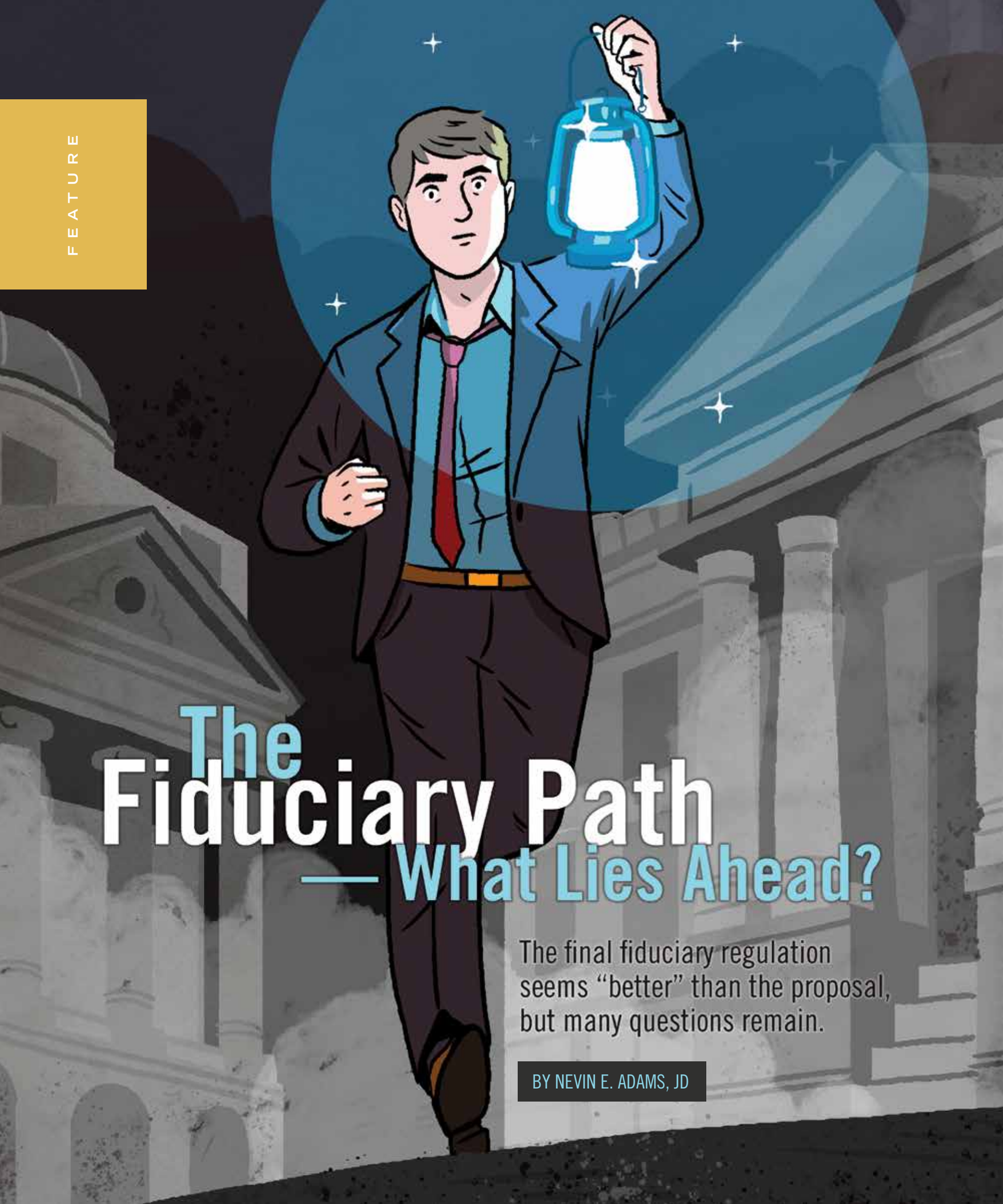
Tailoring the Message

Another factor of distinction: LeafHouse also implements the use of the Kolbe A™ Index into their plans and, as far as they know, they are the only ERISA specialists in the country who are currently Kolbe-certified. The Kolbe A™ Index measures a person's conative strengths — "how we do" versus cognitive, which deals with "how we think," and affective ("how we feel").

LeafHouse uses this Kolbe A™ Index to understand "how" a plan sponsor *needs* to do something, using four action modes to evaluate an individual ranging from how much detail one needs to how much change someone needs.

"Once we understand 'how' a person needs to communicate and interact, we can tailor our involvement to best suit the plan sponsor," explains Weaver, who goes on to note that this has worked very well because some plan sponsors don't react the same way to the same reports and data. "By tailoring the message to the conative needs of the plan sponsor we can remove a source of potential conflict and can focus on the solution."

FEATURE



The Fiduciary Path — What Lies Ahead?

The final fiduciary regulation seems "better" than the proposal, but many questions remain.

BY NEVIN E. ADAMS, JD

After a 5-month comment period, 4 days of public hearings, more than 3,000 comment letters, some 300,000 petitions, and more than 100 meetings with stakeholders, and nearly a year to the day that the Labor Department unveiled its "conflict of interest" proposed rule, we have a final fiduciary regulation.

In the intervening weeks it seems that nearly every legal and consulting firm in the United States has weighed in with an analysis of what the regulation — or at least our current understanding of the regulation — could mean. It is, by some accounts, the end of affordable investment advice. By other accounts, it marks the beginning of a new era of innovation, stripped of the inherent conflicts of interest that have long plagued the variable compensation model. Either way, it certainly moves the needle sharply when it comes to advice offered to the largest pool of retirement savings in America today — the $7 trillion IRA market. It is, depending upon whom you choose to believe, the best of times — the worst of times — or, more likely, something in-between.

So, what's in the final regulation?

The 'New' Fiduciary

First off, any individual receiving compensation for making investment recommendations that are individualized or specifically directed to a particular plan sponsor running a retirement plan, plan participant, or IRA owner for consideration in making a retirement investment decision, is now a fiduciary; more specifically, if you provide recommendations regarding retirement accounts, you will be a fiduciary under ERISA. Being a fiduciary under the final regulation means that an advisor must provide impartial advice in the client's best interest and cannot accept any payments creating conflicts of interest — this would be compensation that varies based on the recommendation — unless the advisor qualifies for an exemption to what would otherwise be considered a prohibited transaction.

This exemption — designed to ensure that the customer's interests are protected — comes in the form of a modified version of the Best Interest Contract unveiled in the proposed regulation — the "BIC."

> "It certainly moves the needle sharply when it comes to advice offered to the largest pool of retirement savings in America today — the $7 trillion IRA market."

The BIC

For advisors who are interested in preserving (or establishing) a variable compensation model, the Labor Department has preserved a path, though one fraught with a number of complicated and potentially expensive disclosures. That said, the final fiduciary rule includes some improvements in the BIC exemption presented in the 2015 proposal. Variable compensation is, as it was in the original proposal, allowed under a BIC exemption. The BIC is subject — as it was in the previous proposal — to a commitment by the firm and the advisor to:

- provide advice in the client's best interest;
- charge only reasonable compensation;
- avoid misleading statements about fees and conflicts of interest;
- adopt policies and procedures designed to ensure that advisors provide best interest advice; and
- prohibit financial incentives for advisors to act contrary to the client's best interest.

The Labor Department says it has taken a number of steps to streamline the BIC exemption to lower compliance costs for firms implementing it and to ensure that firms can continue offering commission-based advice to clients for whom it is the best option. Advisors recommending any asset — not just those on the asset list included in the proposed regulation — can take advantage of the BIC exemption, including proprietary products (and things like listed options and non-traded REITs).

As was the case in the proposed regulation, the advisor firm must direct customers to a web page disclosing the firm's compensation arrangements and make customers aware of their right to complete information on the fees charged. However, the final regulation revises existing exemptions, including limiting the so-called "insurance exemption" to recommendations of "fixed rate annuity contracts."

Transaction Disclosures

Under the final regulation's exemption, the transaction disclosure has been simplified, and the requirement of 1-, 5-, and 10-year projections has been eliminated, as has the requirement of an annual disclosure. Instead, the Labor Department says that clients can request more detailed disclosures on costs and fees; that way, they can get the information they need at less cost to firms.

In response to concerns that firms would be required to retain detailed data on inflows, outflows, holdings, and returns for retirement investors, the regulation says that firms have to retain only the records that show they complied with the law (in this case, the BIC exemption), as they would in other situations.

The BIC exemption contains special provisions clarifying how it can be used for recommendation of proprietary products, including a requirement that firms determine that the limitations are not so severe that the advisor will generally be unable to satisfy the exemption's best interest standard and other requirements.

BIC and BIC 'Lite'

The advantage for firms embracing the BIC approach is that they can continue, at least in large part, to do business the way they did prior to the new regulation. Relying on the BIC means the potential for greater liability — perhaps the real cost here — as well as additional costs in compliance, but also more flexibility in how you do business. That said, many will likely be willing to trade off some of that flexibility for the lower costs and liability associated with an approach that has been termed BIC "Lite."

Under BIC Lite, you don't need a contract, nor must you provide warranties,

LEVEL BEST

Final regulation incorporates NAPA's "level-to-level" comp recommendation

In a big win for NAPA advocacy efforts and the ability for plan advisors to help participants with rollover decisions, the DOL's final fiduciary regulation provides a streamlined exemption for "level-to-level" advisor compensation.

The level-to-level compensation provision enables advisors and firms that receive only a "level fee" in connection with the advice they provide to rely on the exemption without entering into a contract so long as special attention is paid and documentation is kept to show that certain specific recommendations are in the customer's best interest — including a recommendation to roll over assets from an employer plan to an IRA. Level fee fiduciaries receive the same compensation regardless of the particular investments the client makes, whether based on a fixed percentage of assets under management or a fixed dollar fee.

Original Proposal

Under the proposed fiduciary rule, unless compensation did not increase at all when a rollover from an employer-sponsored plan to an IRA occurs (which is, of course, uncommon due to the customized services typically provided within the IRA), advisors would have only been able to help participants on the rollover if they first complied with the complex and cost-prohibitive Best Interest Contract (BIC) exemption. In fact, under the original proposal, advisors with any investment discretion wouldn't even have been allowed to use the BIC, and thus would have been legally prohibited from working with a participant on the rollover transaction if there were any differential compensation.

That would have effectively penalized the advisor for engaging in the rollover transaction — and would put retirement plan advisers at a competitive disadvantage vis-à-vis advisors who had no previous relationship with the participant in the plan. This issue was raised in testimony during the DOL's public hearings by Marcy Supovitz, NAPA's Founding President and then-President-Elect of the American Retirement Association, and subsequently embraced during the comment period on the proposed regulation by a number of Democratic senators.

— NEA

disclosures, or the web information described above, nor are you required to provide disclosures to the Labor Department.

In order to use BIC Lite, you need to be a level fee fiduciary (see sidebar at left). That means *no* remuneration beyond the fee received by the adviser, financial institution and any affiliate in connection with advice to the plan or IRA. That level fee is disclosed in advance to the investor, and is compensation based on a fixed percentage of assets or a set fee that does not vary with the investments that are recommended.

Investment Education

The final regulation clarifies what does and does not constitute fiduciary advice, and includes examples of communications that would not rise to the level of a recommendation and thus would not be considered advice. One significant modification in the final regulation: It specifies that education is not included in the definition of retirement investment advice so advisors and plan sponsors can continue to provide general education on retirement saving without triggering fiduciary duties.

It also expressly provides that communications that a reasonable person would not view as an investment recommendation are, in fact, not considered a recommendation under the final regulation, including general circulation newsletters, television, radio, and public media talk show commentary, remarks in widely attended speeches and conferences, research reports prepared for general circulation, general marketing materials, and general market data.

Significantly, a side-by-side comparison of the original proposal and the final regulation explains that education to plan participants including naming specific funds would be permitted "if certain conditions are met." The original proposal would have restricted plan advisors from being able to mention specific funds in the plan menu in asset allocation education materials.

However, in the context of IRAs, the Labor Department notes that there is no independent fiduciary to review and select investment options, and so references to specific investment alternatives will be considered advice, not education.

Seller's Exception

Under the final rule, recommendations to plan sponsors managing more than $50 million in assets (vs. $100 million in the proposed rule) will not be considered investment advice if certain conditions are met and hence will not require an exemption.

Litigation

The rule and exemptions ensure that advisors are held accountable to their clients if they provide advice that is not in their clients' best interest. If advisors and firms do not adhere to the standards established in the exemption, retirement investors will be able to hold them accountable — either through a breach of contract claim (for IRAs and other non-ERISA plans) or under the provisions of ERISA (for ERISA plans and participants).

Transition Timing

There will be more time to implement — but not a lot more. In April 2017 (one year after the rule's publication), the broader definition of fiduciary will take effect, but to take advantage of the BIC exemption, firms will be required to comply only with a subset of conditions, including:

- acknowledging their fiduciary status;
- adhering to the best interest standard; and
- making basic disclosures of conflicts of interest.

The other requirements of the exemption will go into full effect on Jan. 1, 2018.

The DOL has said it intends to focus during that time on providing compliance assistance to help plan fiduciaries and fiduciary investment advisors make the transition to the new rule, exemptions, and consumer protections for investment advice.

No Contract Requirements for ERISA Plans

The new rule eliminates the contract requirement for ERISA plans and their participants and beneficiaries that had been included in the proposed regulation. Firms must acknowledge in writing that they, and their advisors, are acting as fiduciaries when providing investment advice to the plan, participant, or beneficiary, but no contract is required.

The final exemption simplifies the contract requirement so that it is only between the firm and the client, and notes that there does not have to be a new contract for each interaction with a different employee of the same firm, such as call centers.

TPAs OK?

Third-party administrators mostly untouched by the final regulation

Third-party administrators got some good news, and some much-need clarity, in the final fiduciary regulation. While "producing" TPAs that act as a plan's investment advisor would, of course, need to keep in mind the provisions of the new regulations that focus on the advisor role, the new fiduciary regulation made clear that a TPA's recommendation of a record keeper would not constitute a "recommendation," and thus would not result in fiduciary status for the TPA, even if there was a differential in compensation as a result.

Additionally, the platform exception was simplified and broadened in the final regulation, addressing ambiguity that had caused concern in the 2015 proposal. Specifically, the final regulation made clear that there are:

- no restrictions on proprietary investments on the fund platform; and
- no requirement or limit as to the number of investments.

It was also spelled out that so-called "segmented" platforms were permitted. This would include differentials in, say, the menu of funds offered to plans in a certain size segment. As long as the segmentation isn't to a specific plan, these segmented platforms are allowed under the final regulation.

Of course, that doesn't mean that there are no considerations for TPAs. Activities such as helping plan sponsors choose investments, making a recommendation as to the selection of an advisor (and receiving compensation for that advice) would constitute recommendations, and establish fiduciary responsibility. Similarly, if a TPA were to make a recommendation regarding a rollover transaction and receive a referral fee for that service, it would likely be considered advice.

One item that wasn't included in the final regulation (though it was acknowledged) is a platform exception for IRAs. As stated in the regulation, the lack of an intervening, independent fiduciary in reviewing the funds (as there is in ERISA plans) concerned the Labor Department. While the regulation acknowledges that in the presence of such an entity could provide the desired shield, the particulars of that situation are not yet clear, and would require additional research.

— NEA

IRA Advice Contracts

As for advice to IRA holders, the final BIC exemption makes clear that the contract can be signed at the same time as other account opening documents. However, any advice given before the contract was signed must be covered by the contract and also meet a best interest standard. The exemption also permits existing clients to agree to the new contractual protections by "negative consent."

Grandfathering

The BIC exemption includes a grandfathering provision that allows for additional compensation from previously acquired assets. The grandfather provision includes recommendations to hold, as well as systematic purchase agreements, but requires that additional advice satisfy basic best interest and reasonable compensation requirements.

(continued on page 48)

EXPERT OPINIONS

Though we've had the final regulations to study for some time now, advisors, consultants, home office staff and the legal community are still scrutinizing the text to evaluate its impact on business practices, compliance requirements, and revenue structures. And will likely be doing so for some time to come.

For some perspective on the regulation, we reached out to four of the nation's leading ERISA legal experts — former Assistant Secretary of Labor Brad Campbell (now with Drinker Biddle & Reath), Groom Law's David Levine, Marcia Wagner of the Wagner Law Group, and Fred Reish of Drinker Biddle & Reath — to get their take on the final fiduciary regulation, and how they think we'll look back on its impact(s).

What were you *most* pleased to find in the final regulation?

Campbell: While "pleased" is not the word I would use to describe my reaction to the final rule, the most useful addition is the level fee option in the Best Interest Contract (BIC) exemption, despite the limits on its application.

Wagner: The inclusion of the negative-consent BIC, the ability to grandfather old accounts, and the elimination of the most onerous disclosure rules.

Levine: The inclusion of the level fee "BIC Lite" exemption like the ARA's level-to-level proposed exemption and the simplification of the BIC disclosures. These changes make the BIC a more workable (although not without challenges) solution.

Reish: The most important change, and the one that I felt was most needed, was the simplification of the requirements for the BIC exemption. As drafted, the exemption would not have been workable, which would not have been in anyone's best interest.

What were you most disappointed *not* to find there?

Wagner: Additional time. April 10, 2017 and Jan. 1, 2018 will not be enough time for the largest entities to respond.

Levine: More clarity and flexibility in the platform exception (formerly carve-out) to the definition of fiduciary. As advisors have taken on more roles and the lines between advisors, investment managers, and other service providers continue to blur, the concept of what is a "platform" becomes more important than ever.

Reish: I believe that the usefulness of the disclosures have been diminished by the fact that the financial disclosures are not required to be made in dollar amounts…for costs and compensation. At this time, though, it may not be possible. For example, the systems changes would have been very expensive and would have taken longer than the applicability dates allow. But, in due course, I hope that dollar amount disclosures are required for costs and compensation. That is because, while percentage disclosures may be effective for plan sponsors, I think that there are a fairly large number of individual IRA investors who will not take the time to read all the materials that are given to them, to visit the website, to request additional disclosures, and then to do the calculations necessary to understand the impact.

Campbell: I was most disappointed by the absence of a broad exclusion for sales activity. Much of the difficulty posed by the rule is that it runs counter to securities and insurance regulation — rather than simply establishing a standard of care to govern proper sales conduct, the rule generally prohibits the sale of many affiliated products unless one complies with the onerous conditions and accepts the frivolous litigation risks presented by the BIC exemption.

What is the aspect of the fiduciary regulation that you find/think that advisors haven't focused on yet — that you think they should be?

Campbell: First, I think too many advisors believe that if they are already charging a level fee then they have nothing to worry about under the rule. That is simply not the case — almost all advice regarding rollovers, for example, results in a prohibited transaction under the rule, whether you charge a level fee or not. Second, I think too many advisors don't fully appreciate the scope of the rule with respect to distribution advice. Many recommendations that financial professionals would not think of as retirement savings advice could be subject to the rule. For example, recommending that a distribution from an IRA be used to purchase life insurance for estate planning purposes, or to purchase a long-term care policy, would be fiduciary advice.

Levine: The need to truly "unpack" their activities. From theories that saying "hire me" covers a broad range of activities — including specific recommendations — to the complexities of managed account solutions where an advisor plays a role, a deeper dive will be necessary.

Reish: I believe that the long-term impact of the fiduciary regulation is not yet commonly understood. For example, in order to make a prudent recommendation of an insurance product (*e.g.*, a traditional fixed rate annuity or an individual variable annuity), an adviser needs to consider the financial stability of the insurance company and its anticipated ability to make payments 20, 30, 40 or more years in the future. That requires a degree of sophistication and a fair amount of work. Also, I am concerned that some advisers have not yet focused on the fact that BIC exemption refers to IRA investors as "retirement investors." I believe that terminology reflects the Department of Labor's belief that IRA money is held for retirement and should not be treated simply as a personal investment sandbox. In other words, the investment and insurance recommendation should be consistent with providing benefit adequacy and retirement income after the IRA owner has retired.

Wagner: How the grandfathering rule will apply to a previous book of business that an advisor does not want to transition. For example, the rule requires the compensation to be reasonable before the grandfathering rule can take effect.

Five years from now, what do you think we'll think of the fiduciary regulation?

Levine: The fiduciary regulation imposed new process and compliance requirements that were burdensome but have been heavily systematized. It will likely be viewed as reshaping who plays what role in the retirement services industry. However, depending on the DOL's additional interpretations, we may also be looking at a more complex enforcement and litigation landscape 5 years out from the regulation.

Campbell: I think we will look back and shake our heads that we spent so much time and treasure on comprehensive change that provided no real benefit in relation to its costs. The winners will have been the lawyers, and the losers will have been the small plan participants and small-account-balance IRA owners.

Wagner: I believe these regulations are a watershed moment for the industry and will have a much bigger lasting impact than any other major regulation since PPA 2006. We will have seen them reshape the entire industry in a more dramatic fashion than 408(b)(2) or 404a-5.

Reish: I believe that the fiduciary regulation will be viewed favorably 5 years from now. However, in saying that, I am separating the regulation from the exemptions. With regard to the exemptions, I believe that BIC exemption will need to be modified in the future, as the Department of Labor learns about unforeseen difficulties and consequences, as well as deficiencies that should be improved.

Any words of counsel or caution for those trying to comply with the fiduciary regulation?

Reish: For small advisory firms, I believe they should consider pure level fee advice to IRAs. The cost and difficulty of satisfying the BIC exemption conditions will probably be too burdensome for small firms. Generally, for advisers, I believe that the greatest potential for unknowing violations lies in capturing rollovers and in recommending the transfers of IRAs. In both of those cases, advisers should work with knowledgeable attorneys to develop their systems, policies and documentation. There is risk in recommending rollovers and IRA transfers.

Wagner: Get help. Do not go it alone. Either from your home office or from competent ERISA counsel. The new rule is filled with landmines.

Levine: If it looks too good to be true, it probably is. While there will be commonalities among many compliance strategies, because each advisor or service provider is structured differently, careful attention needs to be paid to each organization's operational structures at a granular level.

Campbell: For advisors: Be patient, be flexible, and don't panic. As frustrating as it is to wait, the financial institutions with which you are affiliated have to make major business decisions based on a very complex set of rules where there is no one-size-fits-all compliance solution. This takes a little time. When a decision is made, it will almost certainly result in significant changes to the process and documentation related to your investment recommendations, and it may materially change your compensation arrangements. Change is coming, and we are going to have to adapt. However, don't panic — we will get through this and you will be able to help your clients.

— NEA

MODEL CITIZENS

At the 2016 NAPA 401(k) SUMMIT, three prominent industry execs weighed in on the potential impact of the fiduciary regulation on different business models

"This is a big win" for the RIA model, said J. Fielding Miller, CEO of CAPTRUST Financial Advisors. William R. Chetney, CEO of GRP Advisor Alliance said he considers it "interesting to see how broker-dealers react" and that it is a little challenging for them from some perspectives, but that it also creates some clarity. Edward O'Connor, Managing Director for Retirement Strategy at Morgan Stanley, noted that the biggest challenge is that now "we have to think of the best way to document the best interest consideration for investors and to demonstrate it when challenged."

All three were relieved that the point-of-sale provisions that were in the rule in its proposed form were removed from the final rule.

The disruption is "tremendous" for advisors, in Chetney's view. O'Connor agreed, saying that "there are going to be a lot of smaller firms that will be struggling to comply with the rule." Miller was the most blunt of all, saying, "This is going to thin out the herd," and calling it "prime hunting season for our industry."

For good measure, O'Connor reminded attendees that the other shoe has yet to drop. "And let's not forget, the SEC is coming. This is going to continue," he said.

Will the rule result in a trend of encouraging participants to keep their assets and accounts where they are, and to forgo the common practice of transferring them at times such as changing jobs? Miller said he thinks so, responding that he thinks there will be less movement out of plans and that one of the results will be that there will be a lot more money in plans and left in plans. Chetney agreed, and said that because of the rule, plan sponsors and participants won't leave as much of a trail as they had in the past as a result of changing jobs.

Does the rule put advisors in jeopardy? Not necessarily; "I don't think we've dis-invented the advisor," said Chetney. O'Connor was even more confident, remarking, "Clearly there's a huge need for Americans to be helped" in building retirement income. "Individual responsibility is not going away. Individuals have to take care of their own lives."

What about the future? "We see this as a really, really good opportunity to grow," said Miller. Plan sponsors, he said, are "inundated with lots of information," and his firm hopes that results in requests for proposals. "There is opportunity" in the disruption the rule creates, he said.

But Miller added that there is a risk — the rule it could result in a disclosure that nobody reads.

O'Connor said that the rule emphasizes that "you need to be a specialist in this business" and that as a result of the rule's promulgation, "rollovers will be less important in anyone's business model" and that the multiple employer plan model will be embraced and accepted to a greater degree than it is now.

There is a "real opportunity for people to consider what they can do for customers that they don't do now," said Chetney, adding that the rule provides "a real opportunity to re-envision what we do for plan sponsors and participants."

— *John Iekel*

> "After a 5-month comment period, 4 days of public hearings, more than 3,000 comment letters, some 300,000 petitions, and more than 100 meetings with stakeholders, and nearly a year to the day that the Labor Department unveiled its "conflict of interest" proposed rule, we have a final fiduciary regulation.

Insurance Sales

Under the final regulation, firms can use the BIC exemption to sell other insurance products like variable and indexed annuities. Additionally, the new regulation contains new preamble language emphasizing that fees are not the only factor in making investment decisions, while giving firms more flexibility on how to comply with disclosure provisions. The DOL says this should make it easier for insurance firms to recommend their products.

So, will this be the best — or worst — of times? As is often the case, the answer will depend on where you stand now, and how you plan to structure your practice in the future — and the answers to the questions that are only just now beginning to be asked.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BY DONALD B. TRONE

Why the DOL's Fiduciary Rule Will Fail to Inspire

Seven charts show how the DOL failed to understand that you can't regulate discernment or engagement.

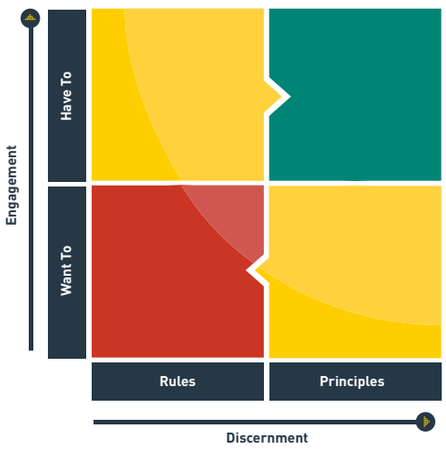
The DOL has won the regulatory battle, but has lost the war to inspire and engage advisors and brokers to act in the best interests of plan participants and plan sponsors.

The DOL was ill advised during its regulatory reform campaign. Rather than lead, the Department was prodded by outside special interests groups to bully (a term credited to Speaker of the House Paul Ryan). Rather than encourage the retirement industry to seek higher professional standards, the DOL chose to eviscerate the very infrastructure that is needed to help American workers save for retirement.

The DOL is not feeling loved, and for good reasons.

Following are seven graphs to help you visualize the concepts associated with moral and ethical decision-making. Each graph builds upon the previous one. It's important that you appreciate the fact that these concepts are universal. We're going to apply them to the DOL, but they are applicable to any industry sector, and to any domain — even to running your own retirement practice.

Graph #1: The Two Dimensions: Discernment and Engagement



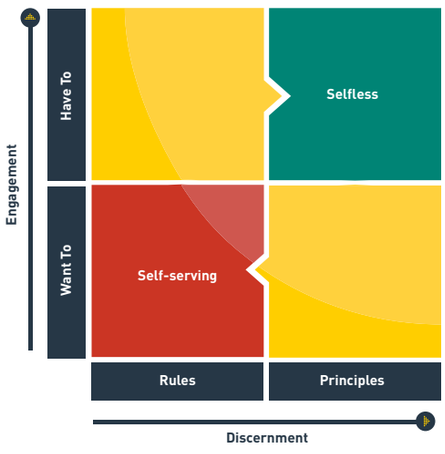
The next six graphs are going to be based on this first one.

The horizontal axis is Discernment — defined as your *ability* and *capacity* to judge wisely and objectively. Low discernment requires rules; high discernment requires principles.

Discernment is affected by your training and experience. The DOL has failed to account for the fact that new brokers and advisors may lack the capacity to serve in a fiduciary capacity; they have neither the training nor experience to discern what's in a participant's best interests. Simply stated, you can't regulate discernment. I think it takes an average of five years of industry experience before a person is ready to serve in a fiduciary capacity.

The vertical axis is Engagement — defined as your *willingness*, or *passion*, to judge wisely and objectively. Again, you can't regulate engagement.

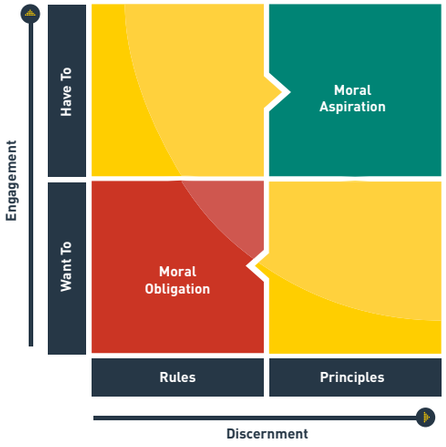
Graph #2: Self-serving vs. Selfless



A self-absorbed person needs rules to govern their conduct. A two-year-old needs rules, while a six-year-old begins to demonstrate an awareness of discernment — of putting the interests of others first. When first graders are asked to draw a picture of what they want to become when they grow up, almost all draw a selfless servant — a teacher, nurse, doctor, police officer or firefighter.

As a professional, you will feel the greatest satisfaction when you have found ways to reconnect with the selfless servant you drew in first grade. In turn, the further removed you are from the selfless servant, the more you'll experience tension and anxiety.

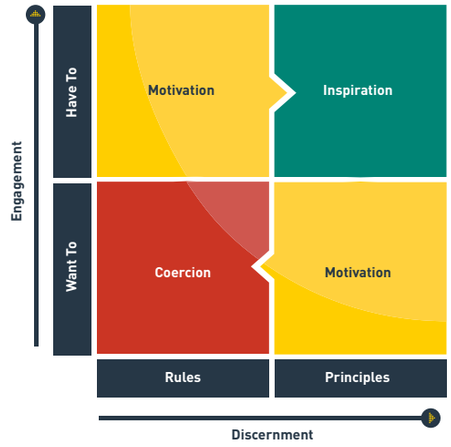
Graph #3: Moral Obligation vs Moral Aspiration



Ask yourself, when are you most engaged and effective — when you're told you *have* to do something, or when you *want* to do something?

If you're not sure of the answer, ask a teenager.

Graph #4: Coercion, Motivation and Inspiration

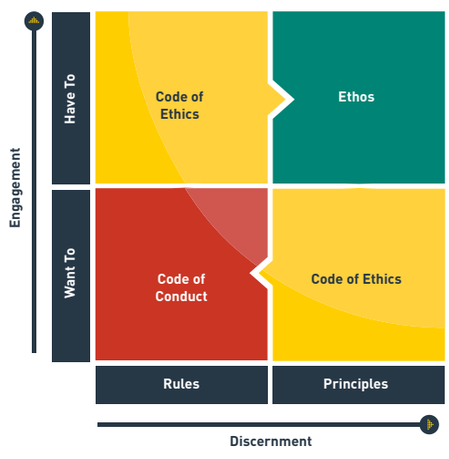


If you want to have a positive, long-lasting, material impact on others, you must be viewed as a point of inspiration.

In contrast, if you coerce someone to do something, they will rebel at the first opportunity.

Motivation often is used interchangeably with inspiration, but it shouldn't. Motivation is merely a step up from coercion, often being linked with negativity and self-serving interests. For example, most of Wall Street is fueled by negative motivation, as opposed to positive inspiration.

Graph #5: Code of Conduct, Code of Ethics and Ethos

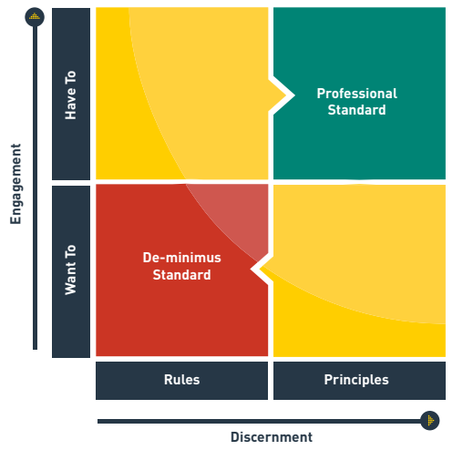


A code of conduct is rules-based, while a code of ethics is based on principles — or at least, it should. Unfortunately, most codes of ethics are actually a form of a code of conduct. When a code starts reading like the Ten Commandments — *thou shall not* — it's a code of conduct.

Ethos and *ethics* are derived from the same ancient Greek concept of moral behavior, but ethos requires a greater capacity for discernment.

For example, an *ethotic* professional is one who can demonstrate a consistency and continuum among his or her behavior, core values and decision-making process.

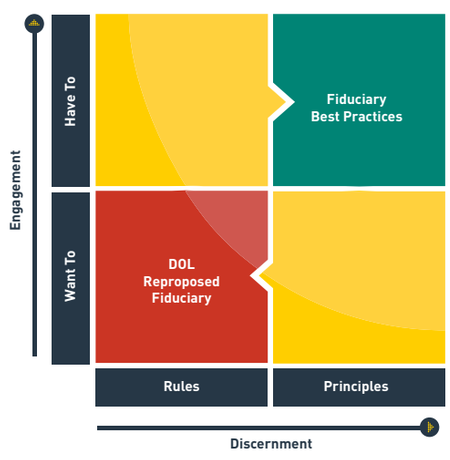
Graph #6: De Minimis Standard vs. Professional Standard



A *de minimis* (insignificant) standard of care is a floor. It represents the minimum requirements one must meet in order to conduct business.

A professional standard, on the other hand, is a ceiling. It represents "reliable fixed standards where the facts are murky or the temptations too strong." (Dr. Robert Kennedy, St. Thomas University)

Graph #7: DOL's Reproposed Fiduciary Standard vs. Fiduciary Best Practices



Do you see why I used the previous six graphs to help illustrate why the DOL's current debacle was entirely predictable? The DOL has published hundreds of pages of complex rules inside a wrapper that reads: "Do it, or else!" The DOL has failed to inspire.

The financial services industry is very resilient. The industry will find a way to deal with the new rules, but it's going to be a long time before it forgets the DOL's punitive action.

Those who have been involved with the fiduciary movement for the past 30 years are appalled at what the DOL has done. The pioneers focused on defining best practices, and their work was having a positive impact because the practices were voluntary and inspiring. Now, that "fiduciary point of differentiation" — the fiduciary gold standard — has been regulated away.

For advisors still desirous of being seen by their clients as ethotic, selfless leaders, the way forward is best illustrated by Graph #6 — by focusing on a professional standard of care. In my next column, I'm going to outline the 7 Signs of a Profession.

Opinions expressed are those of the author, and do not necessarily reflect the views of NAPA or its members.

» Don Trone, GFS® is one of three co-founders of 3ethos. 3ethos provides training and conducts original research on the interrelationships between leadership, stewardship and governance.

BY FRED BARSTEIN

The Times, They Are A-Changing

For many record keepers, it's time to sink or swim.

Chaotic times can seem overwhelming to those who are just trying to keep up or do not embrace change. But for others, it offers huge opportunities. The DOL's conflict-of-interest rule and the surge of states getting into the retirement plan business highlight the government's growing interest in our business and the fact that retirement is becoming one of the biggest issues, especially in the U.S., but also globally.

> With high levels of compliance, expensive technology and imbedded distribution systems that often depend on personal relationships, new companies have a really hard time making a major impact in the financial services industry."

So which record keepers will step up and take advantage?

There are inherent deterrents to massive change in the financial services industry because it's harder for new entrants to become major disruptors than in, for example, the tech industry. With high levels of compliance, expensive technology and imbedded distribution systems that often depend on personal relationships, new companies have a really hard time making a major impact in the financial services industry. As a result, incumbents doing well in the current systems become complacent, resisting change and relying on acquisition rather than innovation.

So let's review the opportunities for DC providers and offer some suggestions as to why some record keepers are not taking advantage or even backing off.

The DOL conflict-of-interest rule promises to accelerate the move away from emerging advisors to more experienced professionals. This is good for business — lower costs of acquisition and service as well as higher retention rates. It's also an opportunity for record keepers to go deeper with Elite Advisors and specialty groups aggregators.

More assets might stay in the plan rather than roll over to an IRA. And plan sponsors are getting smarter and more likely to work with experienced advisors.

State initiatives will certainly mean that more emerging companies will be offering their employees a retirement plan at work.

To retain more assets in DC plans, access to participant data becomes critical. And though Elite and Core Advisors want to consolidate the number of record keepers they work with, it's time consuming and costly to convert plans.

But rather than openly share data with advisor groups and third party distributors, which seemed to be a real possibility in 2014, there has been little movement since then, with some advisors indicating a recent retreat. And rather than going deeper with Elite Advisors to offer customized MEP-like plans and helping them convert books of businesses with disparate record keepers, record keepers seem to be stalling on these discussions and initiatives.

Why? Consolidation has hit advisor sold record keepers in the under-$250 million market very hard, with seven of the eventual nine spots secured and more than seven other major providers with significant books of business jockeying for the final two seats. The seven providers that seem to have safely secured their positions are dealing with internal issues — consolidating businesses and technology, becoming more advisor-focused or dealing with senior and middle management turnover. The seven on the outside looking in have to figure out how to win one of the final two spots by expanding up- or down-market or fixing internal issues that have festered for too long.

Sharing data is a problem for many record keepers that have disparate systems and whose data is not uniform. Like participants with very little saved who are too embarrassed to meet with an advisor, record keepers don't want to admit that they can't easily share participant data.

Most importantly, if a new initiative does not promise to result in big savings or additional revenue short term, or if it is not required because of a new law, the initiative becomes hard for record keepers to focus on. Will the CEO be willing to allow their DC groups to invest when it does not help and possibly hurts quarterly earnings?

Possible solutions? Record keepers should make big bets on DC advisor aggregators and:

- Create customized MEP-like programs for smaller plans.
- Imbed people in big advisory practices, offering to help convert their books of businesses from other record keepers.
- Convert those imbedded people into specialized service reps.
- Share data to help these advisor groups retain assets in the DC plan.
- Partner with DCIOs that are creating customized CITs that promise to lower investment costs and/or increase advisor revenue.

As Bob Dylan warned in the 1960s, "You better start swimming, or you'll sink like a stone. For the times they are a-changing." Which means you have to jump in, get wet and even risk drowning.

Opinions expressed are those of the author, and do not necessarily reflect the views of NAPA or its members.

» Fred Barstein is the founder of The Retirement Advisor University (TRAU) and The Plan Sponsor University (TPSU). He serves as NAPA's Industry Ambassador and contributes to NAPA Net and *NAPA Net the Magazine.*

BY STEFF C. CHALK

Fortune 500 Plans in the Crosshairs

Excessive-fee cases are forcing corporate risk managers to rethink their 401(k) plans.

An employer that sponsors a 401(k) plan normally appoints a team of internal resources to be responsible for prudently overseeing the plan. These plan fiduciaries accept a high degree of risk as they face ERISA's complex set of fiduciary rules. They are responsible for protecting plan assets and keeping a watchful eye on plan-related expenses to be certain that all qualified retirement plan fees remain reasonable.

One single mistake in plan administration can create financial exposure that may lead to a catastrophic loss. And a poor decision made by plan fiduciaries related to the reasonableness of fees can result in an unplanned change in advisor.

Plaintiff's Counsel

The law firm of Schlichter Bogard & Denton is currently the most feared counsel in the 401(k) industry. The firm has built its reputation by representing class-action plaintiffs, obtaining settlements totaling approximately $300 million on its cases, some of which involve alleged excessive fees in 401(k) plans.

This appears to be a lucrative business; in one case alone, the settlement awarded was $62 million, with the firm receiving $22.3 million — more than a third of the settlement.

Their strategy? The firm argues that based upon facts and circumstances, fees being paid to service providers are not reasonable or in the best interest of plan participants.

The firm was praised by one U.S. district court judge recently: "The court admires class counsel's exceptional commitment and perseverance in representing employees and retirees seeking to improve their retirement plans," the judge wrote. "The firm has demonstrated its well-earned reputation as a pioneer and the leader in the field of retirement plan litigation."

> "In one case alone, the settlement awarded was $62 million, with the firm receiving $22.3 million — more than a third of the settlement."

Reactions

Due largely to Schlichter Bogard & Denton's success, corporate America is reassessing the 401(k) plan. A well-founded fear of being involved in an excessive-fee case is forcing corporate risk managers to rethink their retirement plan offerings. When gathering facts, assessing exposure, running the analysis and estimating resource costs associated with defense litigation, risk managers no longer categorize the company 401(k) plan solely as a benefit to the organization. A good risk manager will identify potential risk and assign it an appropriate numeric. Today's 401(k) plan is moving from an off-the-balance-sheet-trust item to an off-the-balance-sheet potential liability — a liability that increases with the passing of every pay period. For corporate risk managers, being correct that a fiduciary breach did not occur is of little consolation compared with the cost of a protracted battle in court.

Questioning the Future

These are unusual times for the 401(k) plan, once considered the replacement for the defined benefit plan in the CFO suite. Questions abound regarding the current state of the 401(k), and plan sponsors want answers to some unusual questions:

- Taking a page from ERISA, an easy question becomes, "Is a $22.3 million fee for a $62 million settlement reasonable?" Unquestionably, it is legal; however, the courts have schooled the industry well in the differences between legal and reasonable.
- Does participant data constitute an asset of the trust? If one believes that to be the case, the specific question becomes, "Does using the assets of the trust (data, information, committee minutes, participant records, etc.) to generate a $22.3 million fee violate the spirit of ERISA's exclusive benefit rule?" Stated differently, were plan assets used for the exclusive benefit of plan participants and beneficiaries?
- Is there a process or structure that could circumvent the need for the orderly distribution of ERISA-based settlements, and employ a formula other than a one-third/two-thirds calculation? Perhaps the DOL could provide a value-add service that would notify plan sponsors of such violations. Perhaps, during a plan audit, the audit firm checklist could include "fee reasonableness" as a line item.

Retirement plans, from contributions to distributions, from the individuals who sell them to the products used, are highly regulated. Few in this industry would call for even more oversight. But perhaps change *should* be on the horizon.

» Steff C. Chalk is the executive director of The Retirement Advisor University (TRAU) and The Plan Sponsor University (TPSU).

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The Final Fiduciary Rule: 6 Action Steps in Plain English

Six steps to keep in mind as you look at life under the final rule.

BY DAVID N. LEVINE

The final fiduciary rule is here. Dozens of webinars later, never-ending articles written, and questions and answers published, what is left to say? A lot.

When writing a quarterly column, you often write it a few months in advance of publication, forcing you to make some guesses as to what might have changed before the article winds up in print. This quarter, rather than just give another recitation of what the rule says, I'll suggest six concrete action steps advisors should keep in mind as they look at life under the final fiduciary rule.

1. Take time to breathe.

Yes, there are some odd consequences of the rule, but on the whole, it really starts to kick in on April 10, 2017. Yes, it will take time to get your business adjusted for the many changes that affect you — including many "level fee" advisors — but you still have a good bit of time.

2. Figure out what you personally are responsible for.

As we work with broker-dealers, RIAs, and insurance agents, a key question we ask is, "Who is handling what part of compliance?" If you are in the home office of a national organization, you may have ownership for the activities at both the home office and investment advisor representative and/or registered representative level. However, if you are an investment advisor representative or a registered representative, your main compliance organization may be taking the lead on compliance efforts and you won't want to take steps that, at best, duplicate or, at worst, fail to line up with your centralized compliance organization's approaches to compliance.

> "In plain English, if someone tells you 'it is easy to comply,' it may just be too good to be true."

3. Identify your key business activities.

Department of Labor officials have repeatedly said in public meetings that service providers should not read the exceptions and special rules permitting flexibility in the final rule as overly broad. In plain English, if someone tells you "it is easy to comply," it may just be too good to be true. So how do you go deep enough but not drive yourself crazy? Start with a list. Identify your key business activities and each step involved. For example, if you do rollovers, what do you do? Do you do recommendations to do rollovers? Do you recommend rollover vehicles? Do you recommend that you be hired to advise on investments in a rollover vehicle?

4. Identify the legal compliance issues for each step.

Among advisors who normally focus on FINRA requirements, there is a common belief that "disclosure shall set you free." Alas, that is not the case in the land of ERISA and the new fiduciary rule. Legal compliance will often involve two basic questions: (1) am I fiduciary when I engage in this specific activity and (2) am I engaging in a prohibited transaction?

5. Address potential prohibited transactions.

The simplest potential prohibited transaction is the payment of compensation to you as an advisor. In that case, disclosure and approval of its reasonableness by an unrelated third party under the rules of ERISA section 408(b)(2) makes most day-to-day compensation permissible. However, where the process becomes more complex is whether, regardless of the reasonableness of compensation, the activity is a prohibited transaction because you are using your role with respect to a plan or IRA to enrich yourself by recommending yourself for additional compensation when giving fiduciary advice. (Despite what some people might tell you, it isn't easy in the final rule to write around this requirement, as many advisors attempted to do under the old Advisory Opinion 2005-23A rollover framework.) In this case, you'll need to step carefully and decide whether you can use the Best Interest Contract (BIC) exemption, "BIC Lite" (also called the level fee exemption by some), or some other exemption strategy. In short, just because something is good for a plan and comes with a reasonable cost, it doesn't necessarily prevent a self-dealing prohibited transaction.

6. Be willing to adapt.

While these new rules are challenging, there are opportunities. As the rules push industry players to focus on different market segments, there is already (and will be in the future) room for new value added services from advisors that help their clients. Being open to these changes can help an advisor evolve and flourish under the new rules.

Conclusion

Advisors are well served to begin the process of addressing the final fiduciary rule now with simple initial action steps. However, as they proceed, it is key to keep in mind that for everyone, it is going to be a marathon, not a sprint, to full implementation by the rule's April 10, 2017 and Jan. 1, 2018 deadlines.

» David N. Levine is a principal with the Groom Law Group, Chartered, in Washington, DC.

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Try, Try Again...

Tibble gets another shot, but… Fifth Third settles, and yet… and did you hear the one about the participant who sued because he was getting too many plan-related emails?

BY NEVIN E. ADAMS, JD

ANOTHER SHOT

Tibble Gets Another Shot, But Comes up Short

The U.S. Supreme Court may have acknowledged an ongoing fiduciary duty to monitor plan investments, but you have to raise the issue if you want to win in court.

That was the ruling in the most recent case of *Tibble v. Edison International*, remanded to the 9th U.S. Circuit Court of Appeals in San Francisco by the high court last year.

In its April ruling in the high-profile case, the 9th Circuit noted that the plaintiffs never asserted that the plan fiduciaries violated their duty by failing to monitor the retail-class mutual funds — "they asserted only that we ought to read ERISA as excusing an otherwise time-barred lawsuit where the effects of a past breach continue into the future." And since the court was not presented with an argument about the ongoing duty to monitor, it is "elementary" that beneficiaries should not be allowed a second bite at the apple on remand."

The 9th Circuit ruling said that the plaintiffs admitted during trial they did not argue that Edison violated its duty of prudence by failing to monitor retail-class mutual funds added to its 401(k) plan in 1999, but rather pursued a theory that "significant changes" in these funds ought to have triggered a due diligence review.

Furthermore, the court said that plaintiffs were now arguing that their failure to present a continuing-duty-to-monitor argument ought to be excused, because the district court's summary judgment order precluded "any claim" of this type.

That, however, is not how the 9th Circuit saw things. While it acknowledged that the district court's order "certainly precluded beneficiaries from arguing that Edison breached its duty by selecting retail-class mutual funds in 1999" (by placing that decision beyond the reach of the 6-year statute of limitations). However, the 9th Circuit said that nothing in that decision precluded plaintiffs from making the argument that the duty to monitor applied after that initial decision — and that, the 9th Circuit said — they did not choose to do, despite what it saw as opportunities to do so. "Beneficiaries' trial strategy was their own choice, not one mandated by the court."

The 9th Circuit, perhaps airing a bit of frustration at having its original judgment questioned, went on to say there had been no "change in the law" that could justify beneficiaries' failure to raise a duty-to-monitor argument about the mutual funds, since no law actually forbade them from bringing it, nor in its opinion was this "the exceptional case" that warranted a special consideration to make allowances.

Rather, the court said that the beneficiaries "did not present their duty-to-monitor argument sufficiently for the trial court to rule on it — indeed, they failed to present this argument in relation to the contested mutual funds at all, despite the clear opportunity to do so."

And just in case there was any doubt, the 9th Circuit went on to note that, "Even setting aside beneficiaries' failure to raise their continuing-duty-to-monitor argument to the trial court, there is little doubt they forfeited the argument by failing to present it to us in their initial appeal. Thus, the claim is doubly forfeit."

Case History

In considering the case a year ago, the Supreme Court only looked at the application of ERISA's 6-year statute of limitations, specifically whether the initial decision to place certain retail class mutual funds on the plan menu in 1999 precluded a suit that challenged the prudence of that selection. Both the district court and the 9th U.S. Circuit Court of Appeals had rejected that challenge, holding that the complaint was untimely since they had been put on the menu more than 6 years before the lawsuit, and that circumstances had not changed sufficiently since then to compel the plan fiduciaries to revisit that decision and replace them with institutional class funds.

The Supreme Court, invoking principles of a continuing duty of review found in the common law of trusts, rejected the conclusions of the lower courts, and sent the case back to the 9th Circuit for reconsideration — which has now done so, not that it has done the plaintiffs in this case much good.

EXCESSIVE FEES

The Latest Excessive Fee Suit… Excessive Participant Mailings

A new excessive fee class action has been brought against a large retirement services provider for breaching its fiduciary duties under ERISA by "engaging in expensive duplicative mailings to beneficiaries in retirement plans it administers, unnecessarily mailing individual monthly statements to beneficiaries in separate mailings."

The complaint, filed March 15 in the U.S. District Court for the Southern District of New York, alleges that TIAA's duplicative mailing practices resulted in unnecessary, unreasonable and excessive costs in the millions of dollars paid by the plans — expenses that it says were not disclosed to participants in violation of ERISA.

The plaintiff in the case, Harold Jay Lefkowitz, a retired certified public accountant, is a participant and beneficiary of a number of retirement plans administered by TIAA (seven, according to the suit). The suit claims that Lefkowitz receives 15 separate mailings of account each month, and that TIAA was aware of the problem for years, "…yet has failed to take any remedial steps, despite repeated promises to correct the problem, and continues to waste literally millions of dollars on unnecessary mailings." The suit is being filed on behalf of "all persons who are or have been participants in and beneficiaries of retirement plans administered by Defendants who were affected by Defendant's conduct set forth in this complaint (to wit, Defendant's failure to change its mailing systems to avoid multiple separate mailings of account statements) as well as those who will become participants or beneficiaries of plans administered by Defendant in the future."

The Mailings Multiply

The suit notes that when Lefkowitz began to receive his retirement statements, TIAA used what is called a "household mailing," meaning that statements and account mailings for multiple accounts belonging to the same person and the same address were combined, thus reducing mail volume and expenses. Approximately eight years ago, however, TIAA ceased this approach, and began to send individual statements in separate envelopes with separate postage to Plaintiff. Beginning in August 2008 Lefkowitz began by writing to a TIAA representative about the problem — and got no response. In January of the following year the suit claims that he wrote to Roger W. Ferguson, President and CEO of TIAA-CREF, got a response confirming receipt thanking him and telling him he could expect a written response, which he claims he didn't get.

Over the next three years Lefkowitz wrote to — well, just about everybody: the Trustees of TIAA CREF, his senators and representatives, including Sen. Kirsten Gillibrand (D-N.Y.), who forwarded Lefkowitz' complaint to the Department of Labor (which corresponded with TIAA), the AARP, the Chairman of the PBGC and others (and some more than once, according to the suit).

The Cost of the Mailings

As for how much this mailing was costing, on May 30, 2010, he sent another letter to Ferguson marked "Personal and Confidential" "in the hope that this will reach you and not be buried in the corporate bureaucracy where my numerous previous requests have been buried" that noted that receiving 15 confirmations a month cost $60.48, compared with $5.04, and that, if the statements were consolidated, and assuming a minimum of 1 million pensioners similarly situated, this was costing TIAA at least $60 million a year.

While he received a number of sympathetic acknowledgements from TIAA, he finally got a response that acknowledged that "the cost of pursuing a quick fix to this problem is prohibitive at this time. Presently, we are in the midst of a multiyear transition to replace and upgrade our technology… The good news is that the completion of this plan will make it easier for us to implement the solution you recommend… We are sorry that a nearer term fix does not make financial sense at this time."

The Claims

The suit notes that while "TIAA has no control over market fluctuations which affect the accounts of participants in the plans it administers, but it does have control over the fees and expenses, which should be reasonable, incurred solely for the benefit of participants, and fully disclosed." The suit also notes that "TIAA has access to enormous computer programming technology that could be used to provide multiple notices economically in combined mailings" and that "it has a fiduciary duty to administer the plans under its care economically."

As for damages, the suit asks that TIAA "make good to the plans it administers all losses that the plans incurred as a result of the conduct" described above and restore the plans to the positions they would have been in but for the breaches of fiduciary duty, be ordered to "develop cost-effective systems for notifying beneficiaries of deposits to their accounts," and that the class, if approved, be awarded "…actual damages to the plans in the amounts of their monetary losses resulting from the breach of duty."

In response to a request for comment, a TIAA spokesperson said, "We believe these claims are without merit and will vigorously defend ourselves."

The case is *Lefkowitz v. Teachers Ins. and Annuity Assn.*, S.D.N.Y., No. 1:16-cv-01932.

$6M AND CHANGE

Fifth Third Settles for $6 Million and 'Change'

A federal district court has approved a preliminary settlement in one of the cases cited most often in employer stock litigation. You could think of it as a "Six Million Dollar 'mien.'"

The settlement calls for $6 million to be set aside in an escrow account to be distributed to the affected parties. Additionally, Fifth Third agreed to a number of plan design changes, including:

Participants will be prohibited from investing all future employee, employer and rollover contributions into the Fifth Third Stock Fund, and no new participants will be permitted to invest in that fund. Nor will participants be allowed to transfer existing balances into this fund, though those with balances in that fund will be allowed to

transfer out (once out, they can't transfer back in, however). Dividends on the holdings in that fund can be reinvested.

Fifth Third agreed to develop a communication strategy to educate participants about these changes and the benefits of asset allocation and diversification. The defendants also agreed that the plan will send an annual notice to participants who have more than 20% of their account invested in Fifth Third Stock Fund and educate them about the benefits of asset allocation and diversification.

Fifth Third will fund plan contributions in the form of cash (not shares) and agrees not to change this for at least the next eight years.

While the Fifth Third Bancorp Pension, Profit Sharing, and Medical Plan Committee members receive annual fiduciary training, Fifth Third agrees to increase this training to be conducted at least twice annually.

While final settlement distributions are still to be worked out, the settlement agreement states that attorneys for the plaintiffs' class may move the court for a Case Contribution Award, which shall not exceed $10,000 per Named Plaintiff. Defendants also agreed not to take a position on any fee motion submitted by plaintiff's attorneys, so long as it is not in excess of one third (33 1/3%) of the Settlement Fund.

Case History

The original lawsuit, filed back in 2008, was filed by John Dudenhoefer, a Fifth Third employee from Collier County, Fla., who charged that the bank hid its true financial picture, and then the stock suffered a major plunge in its share price when the company's financial problems were revealed.

In 2010, a federal judge in Ohio rejected arguments of a fiduciary breach, resting that decision on the so-called "presumption of prudence" established in the 1995 decision *Moench v. Robertson*, an oft-cited decision in a large number of these "stock drop" cases. In *Moench*, the 3rd Circuit affirmed the duty of prudence, but looked to ERISA's diversification requirement and the allowances made for employer stock holdings in an employee stock ownership plan (ESOP), and found a rebuttable presumption that an ESOP fiduciary that invested plan assets in employer stock acted consistently with ERISA.

However, the 6th U.S. Circuit Court of Appeals reversed the *Dudenhoefer* decision, saying that the "legislative history combined with a natural and clear reading of Section 404 [of the Employee Retirement Income Security Act (ERISA)] [led] to the inexorable conclusion that ESOP fiduciaries are subject to the same fiduciary standards as any other fiduciary except to the extent that the standards require diversification of investments." The U.S. Supreme Court subsequently agreed to weigh in on the presumption of prudence issue, and in June 2014 decided fiduciaries of employee stock ownership plans (ESOPs) were not entitled to any special presumption of prudence under ERISA.

What's the Result(s)

Since that decision, a number of the stock drop cases have been rearisen to be evaluated on the post-*Fifth Third* basis. While legal pundits said the decision foreshadowed a new era in this type of litigation, the results have continued to favor defendants in a wide variety of jurisdictions without regard to the "presumption of prudence" that had triggered their dismissal prior to the Supreme Court's ruling, including BP, Delta Air Lines, Lehman, GM, and even a so-called "reverse stock drop" case involving RJR.

NAPA's Upcoming Industry Lists

NAPA
National Association of Plan Advisors
Part of the American Retirement Association

NAPA's unique lists highlight three critical elements of the retirement industry:

"Wingmen," listing the DC industry's top wholesalers, "Young Guns," our list of the top plan advisors under 40, and NAPA's Top Women Advisors.

One of the things that sets these lists apart from other published lists is that they are based on a nominating/voting/selection process that taps the knowledge of NAPA's 10,000+ members. Look for more information about the upcoming editions of all three lists on the NAPA Net portal and in the *NAPA Net Daily.*

NAPA W 2016
DC TOP INDUSTRY WHOLESALERS

IN A LEAGUE OF THEIR OWN
NAPA'S TOP WOMEN ADVISORS 2016

NAPA YOUNG GUNS
TOP PLAN ADVISORS UNDER 40

FALL 2016

A plan advisor usually decides to work with a provider — especially a DCIO — based primarily on the quality of their local wholesaler. So we created the first "Wingmen" list of top DC wholesalers. The 2016 list will be published in our Fall issue and posted on the NAPA Net web portal.

For information on how to participate in the voting and selection process, go to NAPA Net (napa-net.org). Click on the "Industry Intel" tab in the nav bar, then on "Industry Lists." And for DCIOs that would like to congratulate Wingmen who make the list via an ad in the Fall 2016 issue, please email Erik Vander Kolk at evanderkolk@usaretirement.org.

WINTER 2016

In what has long been a male-dominated profession, a growing number of women are today making significant contributions to this field. NAPA's "Top Women Advisors" list, launched in 2015, honors the best and brightest women in the industry, in four separate categories. The 2016 list will be published in our Winter issue and posted on the NAPA Net web portal.

For information on how to participate in the voting and selection process, go to NAPA Net (napa-net.org). Click on the "Industry Intel" tab in the nav bar, then on "Industry Lists." And for firms that would like to congratulate Top Women Advisors who make the list via an ad in the Winter 2016 issue, please email Erik Vander Kolk at evanderkolk@usaretirement.org.

SPRING 2017

NAPA's 2017 annual list of the top plan advisors under 40 — the profession's "Young Guns" — will be published in our Spring 2017 issue and posted on the NAPA Net web portal.

For information on how to participate in the voting and selection process for the 2016 list, go to NAPA Net (napa-net.org). Click on the "Industry Intel" tab in the nav bar, then on "Industry Lists." And for firms that would like to congratulate Young Guns who make the list via an ad in the Spring 2017 issue, please email Erik Vander Kolk at evanderkolk@usaretirement.org.

What's New with RFPs?

NAPA Net readers weigh in on Requests for Proposals.

BY NEVIN E. ADAMS, JD

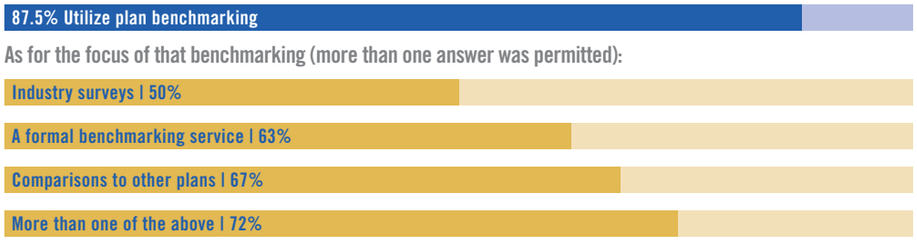
Every situation is unique, of course, but experience teaches us that there are certain patterns that make sense when it comes to evaluating plan designs and plan providers. In a NAPA Net reader poll taken in March, nearly two-thirds (63%) of this week's respondents said they recommended that plan sponsors conduct an RFP every three to five years, with another 32% advocating at least every five years, and the rest basically recommending "as needed."

As one reader noted, "ERISA stipulates that expenses are reasonable. Fee benchmarking through RFIs and third-party services can tell us if fees are reasonable. If they are and if the plan sponsor is happy with the services of the provider, we don't conduct needless RFPs."

As for RFIs — well, they were less common. Half of the respondents do recommend them, while the rest opted for "it depends." As one reader noted, "If they aren't doing an RFP every 3-5, they should at least do an RFI. They are the same thing — but one has more questions and candidates. The actual 'difference' between an RFI and RFP is very subjective." Another reader explained, "For fiduciaries, RFIs are much more important."

Regarding RFI frequency, a quarter said 2-3 years, 38% said 3-5 years, and one in eight said at least every 5 years. The remaining 24% said that they didn't generally recommend RFIs.

The vast majority — 87.5% — said they do plan benchmarking, and the rest said "it depends."



How Have RFPs Changed?

So, how have RFPs changed over the past 5 years? Readers offered the following observations:

- More plan design questions.
- Volume. We receive more/more often than we did 5 years ago.
- More often, more credible, more insightful than ever before.
- Shortened, with more emphasis on client service.
- Much more concise.
- Fewer really full scope RFPs, more RFIs.
- Most Important Questions

Readers also provided suggestions as to what they considered to be the most important question on the RFP, including:

- "How many clients do RMs have?"
- "Customer service, past history with compliance issues/help for customers with compliance issues, and a standard fee grid."
- "The 3 most important are experience w/ plans of our size and type, services offered (related to what we receive currently) and what should we consider upgrading to, and lastly fees. Experience, Services and Fees."
- "A series of question that helps answer the following question: What kind of experience do you have with plan sponsors just like us?"
- "Questions relating to responsiveness and client communication, and the expectation of same."
- "It depends on the client," noted one reader.
- "Typically, the most important question is the one that is the one that is most meaningful to the plan sponsor. I can't think of a single question we ask that is consistently the most important question. We have clients that have issues with administration so that is the most important area to address, whereas others are concerned about the participant experience."

Missed 'Takes'

But what about the question(s) that is most often "missed," either in terms of the "right" answer, or a (fully) truthful one? Here's a sampling:

- How many clients do RMs have?
- Average client tenure.
- How many lost clients in the last 3 years.
- Not providing thoughtful feedback on the current plan.
- Any question surrounding plan retention.
- The toughest part is comparing apples to apples. Whereas someone's bps fee might look competitive, if a plan typically has 300 distributions a year and if a provider is charging for distributions and another is not, that can be a significant income to provider. What do they charge for mailing notices?
- What are the few key areas that differentiate you from competitors and how do those characteristics tie into your organization's long-term profitability/viability goals?
- How much will the recordkeeper make on the plan? Despite all efforts at disclosure, they hide revenue very well and are incredibly creative at creating revenue.

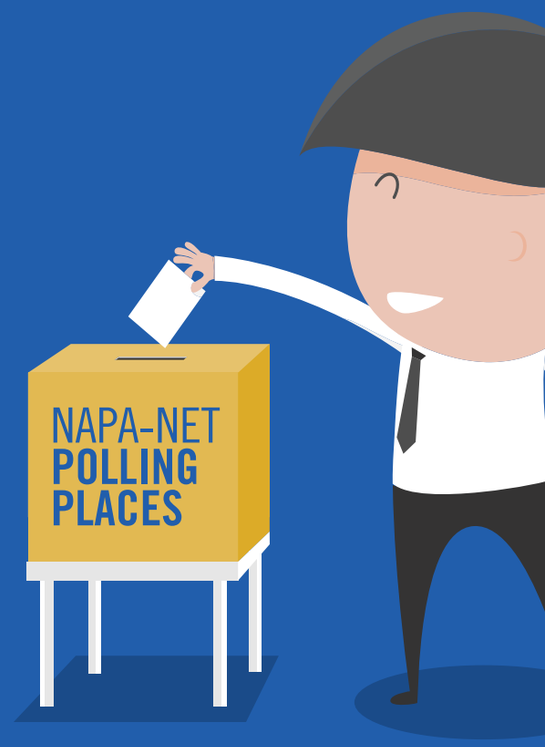
However, one reader — who is "on the other side" (the responder) said that "sometimes the questions are not at all clear and difficult to interpret — I am sure those receive the most 'wrong' answers!"

Other comments about RFPs, RFIs, benchmarking and "the process":

- "Companies should understand the questions they are asking before sending out an RFP – don't just put a new name on a template document and send. I can't imagine that is very useful to anyone but it is a lot of work and would be an awful lot of information to work through once received."
- "Unfortunately RFPs get a bad name from groups that 'do them just to do them' rather than taking them seriously and doing them thoughtfully. Thankfully, this is changing. It is truly the only prudent method to evaluate and hire for fiduciaries (any vendor: advisors, recordkeepers, actuaries, custodians). There is also a delicate balance between evaluating for experience, fees and services and fit — they are qualitative and quantitative."
- "Most RFPs that I have received are not well thought out, are too general in nature, and appear to be a 'check-box' approach to a serious undertaking. To quote the well know philosopher Yogi Berra… 'if you don't know where you're going, you will wind up somewhere else'… too many seem to be going thru the motions, with no goal in mind."
- "The industry and fees have become so compressed that RFPs don't provide the value that they once did. For example, whereas there used to be dozens of providers specializing in the $20 million and up space there are realistically less than a dozen that do a decent job. Ten years ago when doing an RFP, the differences in fees were significant and now everyone is typically within 5 bps for same services (including ancillary fees such as distribution, etc.). Also, there was a significant difference in services, technology, etc. and providers are looking more alike than different."
- "Unfortunately, the key in all of these steps is being able to provide to plan sponsor clients very short bullet points that they can easily digest and repeat. Without those, the entire process is not that helpful."

But this reader poll Editor's Choice goes to the reader who said:

> "This is very tough as no provider can answer the question which is most important to the plan sponsor: 'how are you going to take care of my employees?' "



Thanks to everyone who participated in our NAPA Net reader poll! Got a question you'd like to run by the NAPA Net readership? Email me at nevin.adams@usaretirement.org

5 Big Ideas from the Retirement Confidence Survey

Reflections on this year's landmark annual survey.

BY NEVIN E. ADAMS

A survey as sweeping and long-standing (26 years) as the Retirement Confidence Survey is, it has plenty of insights to draw on — but, boiled down to its essence, these are what I think are the key points.

1. Those with a plan are in much better shape from a savings standpoint than those without one.

While this data has probably lain within the RCS findings for a while now, it was only in the last three years that it became headline material. While some may consider it to be self-evident, workers with a retirement plan (DC, DB or IRA) have significantly more in savings and investments than do those without a plan, and even on a household level, these workers tend to have retirement savings in multiple vehicles. Moreover, the vast majority (90%) of workers with a DB plan through their current or previous employer also have money in an employer retirement savings plan.

It follows then, that they are more confident — and doubtless more justified in being confident — than those who do not have a plan.

One note of caution: Although 56% of workers say they expect to receive benefits from a DB plan in retirement, only 35% report that they and/or their spouse currently have such a benefit with a current or previous employer. Wishful thinking?

2. Debt is a burden on both retirement savings and confidence.

In the 2016 RCS, just 9% of workers who describe their debt as a major problem say they are very confident about having enough money to live comfortably throughout retirement, compared with 32% of workers who indicate debt is not a problem.

On the other hand, half of workers with a major debt problem are not at all confident about having enough money for a financially secure retirement, compared with just 12% of workers without a debt problem.

3. Those who are counting on working past age 70 probably shouldn't.

The RCS has consistently found that a large percentage of retirees leave the workforce earlier than planned (46% in 2016, in fact). Many who retired earlier than planned did so because of a hardship, such as a health problem or disability (55%), though 33% said they could afford to, and a quarter wanted to do something else.

Just 8% of workers say they plan to retire before age 60, compared with 36% of retirees who report they retired that early.

Bottom line: You're at least as likely (and probably more so) to find yourself coping with an unexpected (and early) retirement than to have an extended career.

4. Workers are much more confident about their ability to fund "regular" expenses in retirement than health care and long-term care. Retirees even more so.

Forty-three percent of workers are now very confident that they will have enough money to pay for basic expenses during retirement (up from 37% in 2015 and 25% in 2013).

Setting aside confidence, compared with what they expected when they first retired, retirees are more likely to say their expenses in retirement are higher than expected (38%) rather than lower (21%). However, 38% say their expenses are about the same as expected. Similarly, 37% retirees report that the level of their savings and investments is lower than expected at this point in their retirement, while slightly more (39%) report that the level is about what they expected. Just over one in five (22%) find it is higher than expected.

Bottom line: Concerns about future health care costs loom large. And retirement expense expectations are something of a crapshoot (of course, since fewer than half have made any attempt to ascertain those needs, their expectations could be wildly unrealistic).

5. Some of that retirement confidence looks to be based on some pretty low — and largely uninformed — replacement rate assumptions.

In the 2015 RCS, nearly a quarter (22%) of workers thought they could manage in retirement with less than half of their preretirement income, and another third (34%) were targeting 50%-70%. Perhaps not surprisingly, they were pretty confident of achieving those targets; nearly 4 out of 10 (36.5%) of those targeting less than half their pre-retirement income were very confident of their retirement prospects, as were nearly a quarter (22.7%) of those targeting between 50% and 70%.

In the 2016 RCS, just 48% said that they (or their spouse) had tried to figure out how much money they would need to live comfortably in retirement — and that's been a pretty consistent read over time. Sadly, of those people, 39% merely guessed (26% did their own estimate, 22% asked a financial adviser, and 10% each used an online calculator or read/heard how much was needed).

If the survey respondents were not putting themselves in a position to do the evaluation, I am even less equipped to do so. That said, even those nearing retirement — roughly 4 in 10 workers ages 55 and older — have not yet tried to calculate how much money they will need to have saved to live comfortably in retirement.

Bottom line: Ignorance may be bliss — but it may not last long.

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