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THE OFFICIAL MAGAZINE OF THE NATIONAL ASSOCIATION OF PLAN ADVISORS

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THE NORTH STAR

WHAT STEWARDSHIP MEANS FOR YOUR PRACTICE

- **NAPA Top Women Advisors**
- **Rollovers and the SEC's Reg BI**
- **Avoid Jargon in Communications**
- **New NAPA-Net Virtual Tour**

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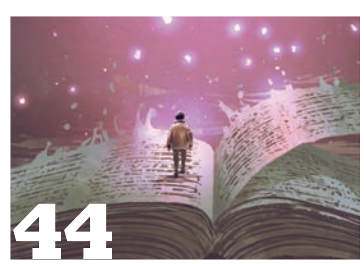

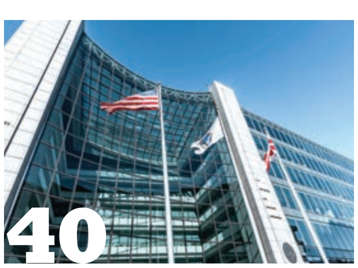

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COLUMNS

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REACH FOR BETTER®

Education Precedents

A new industry credential for plan sponsors is right around the corner.

I've been working with retirement plans for my entire professional career, during which I have met, spoke with, and written to tens of thousands of plan sponsors. And yet, in all that time, and with all those people, I've not met more than a handful who had chosen that specific role as a career path. More often than not, they've found themselves in that role with no training, education or background in the role beyond an out-of-date plan document and the cryptic notes left behind by a harried predecessor.

Indeed, there's more than a bit of irony that individuals who find themselves in a job with personal liability for their actions (and the actions of their co-fiduciaries) alongside an expectation of prudence that courts have described as the "highest known to man" have had little in the way of practical retirement plan-focused training.

"Every quality advisor I've ever met much prefers working with plan sponsors who know their job and responsibilities well enough to appreciate the value and contribution of a trained professional."

That's a problem for those plan sponsor fiduciaries, of course, but also for the plan advisors who support them. While some may find it easier to lead someone who doesn't know any better, every quality advisor I've ever met much prefers working with plan sponsors who know their job and responsibilities well enough to appreciate the value and contribution of a trained professional.

NAPA members have long valued the benefits not only of education in the field, but the ability – the critical need – to be able to stay up to date on the latest legal and regulatory developments. In addition to conferences, webcasts and the *NAPA Net Daily*, we've helped you do just that. In the past few years, we've launched several NAPA credentials and certificates – the Certified Plan Fiduciary Advisor, and more recently the Nonqualified Plan Advisor, as well as NAPA PracticeBuilder and Qualified Plan Financial Consultant (QPFC).

Now it's time for plan sponsors.

This need for education – and acknowledgement of expertise – of plan sponsors was one of the first items discussed with the Plan Sponsor Council of America as they joined the American Retirement Association. We've spent the past year in close collaboration with various subject matter experts, including volunteers and the leadership of the PSCA not only discussing this scope of this education need, but developing a solution.

On March 27, we'll be unveiling a new industry credential: the Certified Plan Sponsor Professional (PSCA CPSP), and – coincident with the NAPA 401(k) Summit – extending to NAPA Certified Plan Fiduciary Advisors the opportunity to extend complimentary access to some of their plan sponsor clients and prospects access to an education program associated with the CPSP credential.

Leveraging the latest in online education technology and adult learning methods, this three-course, nine-module online program was developed by plan sponsors and some of the nation's leading retirement experts to improve and enhance plan sponsors' understanding of how to effectively evaluate, design, implement and manage a comprehensive employer-sponsored retirement plan. It deals with establishing organizational objectives, plan design, behavioral finance and employee engagement, investment concepts, fiduciary oversight and risk management, compliance, and even vendor management. In sum, it deals with a broad spectrum of issues, concerns and insights regarding retirement plan design and administration.

The education program is designed so that plan sponsors with varying levels of experience and expertise can move through the course flexibly – but provides enough detail and supporting resources that those who are still relatively early in a plan sponsor role can focus on needed knowledge points. Ultimately, those who attain the CPSP credential, by possessing the requisite experience, and passing the rigorous credentialing exam will have demonstrated that they have the knowledge and practical application skills needed to protect their organization from unnecessary fiduciary risk while helping their plan participants achieve better outcomes.

We're excited about this new credential and its prospects – not only for enhancing the knowledge and appreciation of dedicated plan sponsors, and for helping advisors add value to their relationships, but also for the positive impact that valuable, practical, timely education in the hands and minds of dedicated retirement plan professionals surely has on the outcomes from our nation's retirement system.

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The Future is Now!

We must maintain our seat at the table and be considered part of the solution and not part of the problem, as many of our critics believe us to be.

BY JEFFERY ACHESON

As I sit here on New Year's Day writing this, my final column as NAPA President, I can't help but reflect on the musings and observations within my previous columns and try to reconcile those thoughts with the announcements and observations of late by others. The predominant issues of the past will not likely drive our relevance or success in the future as advisors or as an association. Instead, it is likely that three issues will determine the future for those of us working for America's retirement:

- access and coverage;
- retirement readiness determining the point of departure from the workforce; and
- the unknown costs of longevity and health care and their impact on the sustainability of a dignified retirement to the very end.

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In physics it is said that nature abhors a vacuum and will try to fill the void in one manner or another. The same could be said about business innovation and even government involvement, especially when the void impacts what is deemed effective (or ineffective) social policy by any number of groups. Need proof that powerful forces are already at work on important issues? If so, consider the following news reports.

First, in the Dec. 10, 2018, issue of *Pensions & Investments*, one front page article's headline was, "After 40 years, some say the 401(k) is due for a facelift," including comments from Ted Benna, the acknowledged father of the 401(k), about his suggestions for improvement, along with the views of others. While the article did a good job of documenting the success of 401(k) plans, which "…helped tens of millions of workers save between $10 trillion and $15 trillion when you count the money that has been transferred out of 401(k)s into IRAs," it also went on to discount that success by lamenting that the aggregate accumulation includes "paltry amounts for many" and the estimate that employer-sponsored plans are only available to about half of working Americans. The latter statistic, one that has barely budged in the last 40 years, is often pointed out by industry critics.

Second, ThinkAdvisor.com reported on the announcement in *The Wall Street Journal* of a new partnership focused on a new paradigm for retirement plans to help address the issues stated above. The article, "Microsoft, BlackRock Partnering on Retirement Platform," which ran on Dec. 13, 2018, included the following statements by BlackRock CEO Larry Fink and Microsoft CEO Satya Nadella. "Retirement systems worldwide are under stress and providing financial security to retirees has become one of the most defining societal challenges of our time. Working with Microsoft will enable us to build a powerful solution for millions of hardworking Americans," said Fink. "Our two firms will apply the power of the cloud and AI to introduce new solutions that address this important challenge and reimagine retirement planning," said Nadella. This development is simply an evolution of the existing movement by certain recordkeepers and custodians in offering account aggregation technology and proactive in-house advisory services and managed account solutions. It begs the questions, how far behind is Bezos and Amazon and who will their industry partner(s) be? And will advisors be factored into the equation?

So, what's an advisor to do to maintain job security, business sustainability, client loyalty, enterprise value and industry relevance? Let me suggest it is by adopting a "The Future is Now" mindset – meaning trying to determine what will be the norm five to seven years out and charting a plan of action to get there in 2019 to be ahead of the curve. Let me suggest four items for your consideration.

1. Embrace and deliver effective financial wellness programs that focus on moving the participant metrics in the here and now. After all, focusing on retirement readiness out in the future without driving measurable near-term change is like wanting to lose 50 pounds without changing your diet and workout regimen today. This focus will provide an advisor the opportunity to document their impact, build relationships and showcase value creation, all of which are not easily discounted and displaced once in place.

2. Work with plan sponsors in a more holistic manner. Become a multidisciplinary, trusted advisor at the intersection of financial and human capital. Multiple and diversified revenue streams will build a moat around your relationship and allow for pricing flexibility in combatting fee compression driven by the commoditization and technology of large scale providers.

3. Combining #1 and #2, consider doing additional work in the start-up and micro markets. These plans are admittedly a challenge from a profitability perspective until they grow, but perhaps the solution is in the ancillary revenues used as a subsidy until plan profitability manifests. Bottom line, if we individually and collectively don't address coverage, someone else will – and we may not like the solutions. Can we afford to not be relevant to 50% of the market? Do you think it will stop there if successful solutions are implemented?

4. Support NAPA and the ARA's effort to be our voice in DC and across the country in the various state capitols. We must maintain our seat at the table and be considered part of the solution and not part of the problem, as many of our critics believe us to be. There is strength in numbers and we must remain strong and get stronger through the unified voice of the five sisters associations under the ARA umbrella – now led by former NAPA President Steve Dimitriou.

> "The predominant issues of the past will not likely drive our relevance or success in the future as advisors or as an association."

In closing, it has been my honor and privilege to serve the organization and our members for the last year as President. I will continue to serve and volunteer in one capacity or another, as I believe in who we are, what we do and why we do it. The exciting news is that next in line are two very talented and passionate women in Jania Stout and Pat Wenzel. The membership of NAPA will be in good hands with these ladies heading our Leadership Council and collaborating with and supporting the efforts of Brian Graff and his dedicated team as we collectively work for America's retirement.

» Jeffery Acheson, CPFA, is NAPA's 2018-2019 President. He is the founder of Advanced Strategies Group, LLC.

Maryland State House

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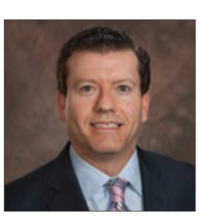
A Federal Case

It's time to make the case for a federal solution to the nation's coverage gap that relies on private-sector innovation.



BY BRIAN H. GRAFF

Lawmakers in our nation's capital may have been focused on shutdowns, declared emergencies and "new" deals, but in state capitals across the nation, legislators and regulators have been proposing, passing and implementing change that could dramatically impact your practices and your practice.

Most pressing – and concerning – to advisors is the emergence of a number of initiatives to implement new state-based fiduciary standards. States are moving ahead with these efforts, ostensibly to fill the gap created by the Fifth Circuit's dismissal of the Labor Department's 2015

> “While the coverage gap is real, and should be addressed, it should be done so at the federal level.”

initiative, without regard to the possible implications for retirement plan advisors or the potential conflict with ERISA.

As you know, NAPA has long supported a federal fiduciary standard for advice given in connection with ERISA-covered retirement plans. And yet, as we go to press, the comment period has just closed in Nevada on draft regulations to implement a 2017 law requiring financial planners operating in Nevada to have a fiduciary obligation to their clients in the state. These draft regulations do not exempt any advice given to plan sponsors or participants in ERISA-covered plans, and provide for a state-based private right of action.

NAPA believes that the Nevada regulations should not apply to ERISA-covered plans since they are already subject to a federal fiduciary standard, and we are forcefully making our case in Nevada and the several other states that are engaged in similar initiatives.

Following in Nevada's footsteps, a bill was reintroduced in the Maryland legislature this year that, like Nevada, grants authority to the state's Commissioner of Financial Regulation to adopt regulations imposing a fiduciary standard for financial service professionals operating in Maryland. The legislation requires that they adhere to a fiduciary duty to act in the best interest of a customer without regard to the financial or other interest of the person or firm providing advice.

New Jersey is also actively engaged in a regulatory project that would subject financial service professionals to a fiduciary standard of conduct with respect to recommendations of investments. In October 2018, the New Jersey Division of Consumer Affairs issued a pre-proposal for amendments to the New Jersey Administrative Code to make broker-dealers, agents, investment advisers and investment adviser representatives subject to a fiduciary duty. A month later, the New Jersey Bureau of Securities held two informal conferences to take testimony from interested parties to gather facts to inform a rulemaking.

NAPA is actively engaged in Maryland and New Jersey to make it clear that advice in connection with ERISA-covered plans should not be subject to these state-based fiduciary standards.

State Auto-IRA Programs

While the nation's private retirement system has many accomplishments to celebrate, those achievements largely belong to those who have access to a retirement plan at work. Despite the industry's efforts, the percentage of full-time workers with access to those plans has barely budged in a generation. Not surprisingly, states are stepping into the void.

Since 2012, 43 states have acted to implement, study or consider legislation to establish state-based retirement plans. In the past year alone, at least 16 states and cities introduced legislation. Ten states and the city of Seattle have enacted some type of retirement program for private-sector workers. Oregon has had a program in place for more than a year now; Illinois has moved past its pilot phase; and California's CalSavers program is slated to open in July.

Meanwhile, as we head to press, a bill establishing the New Jersey Secure Choice Savings Program, the structure of which mirrors the Illinois program, awaits the signature of New Jersey Gov. Phil Murphy (D). The program requires, at minimum, that employers automatically enroll their employees into a payroll deduction IRA program. Like Illinois, the New Jersey program applies to private sector employers with 25 or more employees that do not already offer a plan.

We have become increasingly concerned about the compliance headaches caused by these mushrooming programs, particularly to employers that may operate in multiple states. As an industry, we've long benefited from the consistent set of federal standards established by ERISA. While the coverage gap is real, and should be addressed, it should be done so at the federal level.

Fortunately, the new Chairman of the House Ways & Means Committee, Rep. Richard Neal (D-MA), agrees. A prominent voice in retirement plan policy, he introduced the Automatic Retirement Plan Act of 2017 (ARPA) more than a year ago. ARPA would have required employers with 10 or more employees to maintain a 401(k) or 403(b) plan that covers all eligible employees, exempting governments, churches and businesses not in existence for three years. The bill also allowed for multiple employer plans (MEPs) and increased the start-up credit for small employers.

In sum, it purported to do at a federal level what is at the heart of these state initiatives – but provided a coverage solution at a federal level, rather than the patchwork quilt that is emerging. Importantly, unlike the state-based initiatives, the ARPA legislation did not create a federally run retirement savings program, but instead relies solely on private-sector solutions. We have been closely working with Chairman Neal and his staff, and fully expect a modified version of ARPA to be introduced in this Congress.

As your advocacy voice, NAPA and the American Retirement Association are actively engaged with state regulators and the various legislative bodies as we work together to construct effective solutions to these issues.

It's time to make a federal case for a federal solution – and your continued support and involvement is not only essential to our long-term success, but to the success of America's retirement system! Ⓝ

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

Trends 'Setting'

There's always something going on in the world of retirement industry surveys and research. This issue we get insights on DIY Millennials (who still want help), why workers retire earlier than planned (hint: it's not because they can afford to), the (still) expanding interest in financial wellness, and whether managed accounts are worth the (extra) cost…

COST 'ACCOUNTING'

Are managed 401(k) accounts worth the cost?

While the realized benefits will vary by participants and fees charged for the service, a new white paper suggests that there is strong evidence for using managed accounts.

In fact, two potential outcomes for defined contribution plan participants who use managed accounts are higher savings rates and more-efficient portfolios, better preparing them for a successful retirement, according to the paper by Morningstar.

In "The Impact of Managed Accounts on Participant Savings and Investment Decisions," David Blanchett, head of retirement research for Morningstar Investment Management and author of the paper, explores the impact of managed accounts based on the savings and investment behaviors for nearly 61,000 of the firm's DC participants from January 2007 to June 2018.

Participants were divided into two groups based on investing and saving behaviors. For investing, participants were classified as either "self-directors," or those building their own portfolios before entering managed accounts (71% of participants), and "allocation-fund users," or those using a prepackaged multi-asset allocation strategy, such as a TDF (29% of participants).

For savings, participants were classified as either those forecast to be "not-on-track" to retire successfully (74% of participants) and those who were "on-track" to retire successfully (26% of participants).

Not surprisingly, the research found that participants most likely to benefit include those self-directing investors who are not currently on track to retire successfully. "We found that not-on-track self-directors in our study tend to realize the largest benefit from managed accounts, on average, while on-track allocation-fund users realized the smallest benefit, on average," Blanchett notes.

But even after incorporating a common fee for managed accounts – in this case 40 basis points or 0.4% – the average participant is still expected to have more wealth at retirement in each cohort than if participants did not use the service, according to the report.

The Impact

The change in median expected annual returns for participant portfolios after entering managed accounts was +27 basis points for self-directors and +4 basis points for allocation-fund users. On a risk-adjusted basis, the median differences were +19 basis points for self-directors and +12 basis points for allocation-fund users.

Savings-rate behaviors were significantly different based on whether the participant was forecast to retire successfully. Blanchett notes that the majority of participants who were not on track decided to increase savings rates (71.5%) after entering managed accounts, while the majority of participants who were on track did not change savings rates (64.8%).

"These differences are notable because the savings impact of managed accounts is likely to vary significantly based on the retirement readiness of the participant population," he explains in the report.

And for those who need to save more, deferral rates on average increased by 2 percentage points to 8% of income for

not-on-track participants – a 33% increase, according to the findings.

Additionally, among participants in plans that offered an employer match, the percentage who received the maximum employer match increased by 12% for not-on-track participants versus a 1% increase for on-track participants.

WILLIAM POTTER / SHUTTERSTOCK.COM

More Wealth at Retirement?

The paper further suggests that most participants, when entering managed accounts, would be expected to have more wealth at retirement – especially ones who were not on track for retirement success. Not surprisingly, the research found that the percentage of participants who are better off declines at higher assumed fee levels.

Again, using an annual assumed 40-basis-point fee, the report shows that the expected median increase in wealth at retirement is +15% for not-on-track self-directors, and +14% for not-on-track allocation-fund users. There was no difference, however, for the on-track allocation-fund users and -1% difference for on-track self-directors.

Due to the benefits of compound growth, younger participants would probably realize more annual income in retirement from managed accounts than older participants, the report observes. "If we focus on the youngest age group (25 to 34), we could generally assume that the average 30-year-old participant using a managed accounts service would increase his or her retirement income by $8,232, on average, assuming no managed fee, and $5,548 assuming a 40-basis-point managed accounts fee," Blanchett notes. These correspond to percentage increases of 72% and 56%, respectively, he adds.

— Ted Godbout

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MILLENNIAL MYTHS

Millennials have a DIY mentality, but want help

It's been said that Millennials, whose influence grows daily, generally don't like the name their generation has been given. And while much has been written about them, Millennials do share undeniable characteristics – some of which have important implications for retirement plan advisors.

Speaking at the National Tax-Deferred Savings Association's 30th Anniversary Summit in Tampa, FL, Jan. 27, Lisa Greenwald of Greenwald Associates offered a look at the Millennial generation and how best to engage with them and help them work toward a financially secure retirement.

Why do we talk about them so much? Because they are a huge demographic group, and by 2025 they will be the largest generation in the workforce, Greenwald observed.

It's a generation that presents unique challenges and opportunities, according to Greenwald. And there are myths about them that should be understood – and dispelled, she suggested. For instance, it's a myth that Millennials are all broke and in debt, Greenwald says. It is true, she added, that "they face unprecedented debt levels." But at the same time, she observed, some Millennials already are among the richest Americans. Millennials may be in debt, but they also are "pretty darn good defined contribution plan savers," she said.

The Elephant in the Room

But debt still is a problem for Millennials, Greenwald said, calling it "the elephant in the room.' How big an elephant? She noted that in a poll, 9 out of 10 Millennials told her firm that paying off student loan debt is a major obstacle to saving for the future. Credit card debt is also an impediment.

But emphasis on paying off debt comes with a pitfall, Greenwald suggested. She warned of the "snowball effect," the results of waiting to start saving for retirement until debt is paid off. By then, she says, "it will be too late" to save for it.

Going it Alone

Another myth, Greenwald says, is that Millennials are too young to save for retirement and be concerned about saving for it. She said that her firm found that 9 out of 10 consider it a top financial priority – second only to building general savings. "Millennials know they're not saving enough, but they're optimistic," she said.

And not only do they believe in saving, they also expect to do it themselves. "Millennials are the product of a DC/DIY world," Greenwald said. They believe it is no longer an employer's responsibility to take care of an employee's retirement. "It shows the impact that the DC plan has had on the Millennial world. They're going it alone," she said.

DIY, But…

The fact that Millennials are going it alone and feel alone regarding saving doesn't mean that they don't want help, according to Greenwald. She reported that in her firm's research, 81% of Millennials said they want to talk to a professional, and nearly three-quarters trust an advisor more than an algorithm. "Most would like to manage their retirement accounts primarily online, with the option for in-person help," Greenwald said. They are comfortable with shopping and banking online, she said, but not with investing online. She added that they found that 67% check their bank balances online, but a mere 2% want to select investments online.

Employers have a role in meeting those sentiments, Greenwald indicated. "Most financial professionals that Millennials will encounter are likely to be at the workplace," she said. In addition, the employer match is important. Her firm found that when their employer matches their contribution to their retirement accounts, 50% of Millennials contribute to the level of the match, 14% contribute below it, and 14% contribute above it.

These 'kids' aren't kids anymore," said Greenwald. "They can't really afford to wait. The DC/DIY mentality is there, but they really want help."

— John Iekel

SHOCK 'TREATMENT'

Why do workers retire earlier than planned?

The impact of life's unexpected changes clearly play a large role in early retirement, but there also appear to be other dynamics at work, according to a recent white paper.

In "Retiring Earlier Than Planned: What Matters Most?", authors Alicia Munnell, Mathew Rutledge and Geoffrey Sanzenbacher of the Center for Retirement Research at Boston College set out to determine the impact of unexpected changes in health, employment, family and finances on early retirement, and the prevalence of these shocks.

Citing data from the non-partisan Employee Benefit Research Institute (EBRI), the researchers note that the share of workers reporting that they expect to work past age 65 rose from 16% in 1991 to 48% in 2018. Yet, such intentions often go awry, as findings from the University of Michigan's Health and Retirement Study (HRS) indicate that 37% of workers retire earlier than planned, the paper observes.

To determine which factors play the largest role, the researchers – using HRS data collected between 1992 and 2012 – first define and quantify earlier-than-planned retirements, determine the potential types of shocks and then identify which shocks matter the most, taking into account both their potency and prevalence.

Shocks to the System

Overall, health "shocks" were found to be the most important factor in earlier-than-planned retirement.

"This analysis suggests that health likely plays the largest role in early retirement, both because people in bad initial health overestimate how long they can work and because health often worsens before the age at which they planned to retire," the authors note.

The paper explains that individuals face two kinds of health shocks. The first occurs when existing health conditions affect one's ability to work more than anticipated, while the second occurs when someone's health changes between the age at which they make their plan and their planned retirement age.

The regression results indicate that several shocks have a statistically significant effect on retiring early, the paper notes. For example, for those with an existing health condition at the time they report a planned retirement age, there is a 3.3-percentage-point increase in the probability of retiring early, as people seem to be surprised by how fast their ability to work deteriorates. But each additional condition an individual gets is associated with a 2.2-percentage-point increase in the probability of retiring earlier than planned.

If everyone made their plans in perfect health and had no changes in their health, the overall share of early retirements would drop by 4.8 percentage points, from 37% to 32%.

Following health shocks were involuntary job loss and changes with the family, the paper notes.

The effect of a job loss is very dependent on the worker's ability to find a new job, the authors explain. If a worker finds one, they are 6.6 percentage points less likely to retire early, but if they do not find one, they are 27.6 percentage points more likely to retire early. On the other hand, switching jobs voluntarily is related to a 6.8-percentage-point decrease in the probability of retiring early.

On the family side, having a spouse retire increases the probability of retiring early, and having a parent move in has a strong impact in the same direction. Interestingly, the authors note that financial shocks do not seem to play a significant role.

Yet, a key caveat is that all the shocks combined explain only about a quarter of earlier-than-planned retirements, which suggests that other factors that are harder to measure also play a role.

— Ted Godbout

CENTER 'COURT'

Wellness programs taking center stage in benefit focus

Five years ago, employers were just starting to provide workers with financial benefits beyond their retirement plan, but now financial wellness appears to be firmly entrenched in the benefits space, according to a recent report.

Nearly two-thirds of employers say they are very likely to take steps in 2019 to create or focus on the financial wellbeing of their workers in ways that go beyond retirement savings, according to Alight Solution's 2019 Hot Topics in Retirement and Financial Wellbeing report. In fact, this percentage grew from 30% in 2014 to 65% in 2019, including a 13-point increase from last year.

Alight's 2019 survey features the responses of nearly 175 organizations that employ 7.6 million workers concerning the changes the employers intend to make to their retirement and financial wellness plans in the year ahead.

Holistic Planning

Among the key themes for 2019 is that employers are concentrating most on finding ways to incorporate finances into broader wellness initiatives that include physical, emotional and social wellbeing. This includes adding features that help workers decide between paying down debt, establishing an emergency fund or saving for retirement.

"From helping new-to-the-workforce individuals pay off their student loans to assisting near-retirees with navigating the retirement process, employers are offering a bevy of tools, resources and educational campaigns designed to help workers gain more solid financial footing," the authors write.

As such, workers apparently have access to more financial wellness tools and services than ever before. Alight's data shows that half of all companies now offer a tool, service or educational campaign to their workers about the basics of financial markets and simple investing. This includes services that educate employees about the relationship between risk and return, and the differences between stocks and bonds. Among companies that do not currently offer these services, 82% say they are "very likely" or "moderately likely" to do so in the coming year.

At the same time, financial planning – such as creating a broad financial plan incorporating major purchases, medical expenses, retirement savings and income planning – is another area receiving increased attention. This service is currently offered by 38% of responding organizations – which is a 10% increase from the previous year – while another 74% said they are very or moderately likely to do so in the coming year.

Integrating Decisions

As for further integrating retirement with health and welfare decisions, slightly more employers indicated support for incorporating DC plan elections in annual health care enrollment. When asked how likely it is their organization will address this, 46% said they are either very or moderately likely to do so in the coming year – up from 34% who said the same in the 2018 survey.

In addition, more than 80% of employers with HSAs highlight the long-term savings appeal of the vehicle. According to the report, three-quarters of companies with HSAs send communications to workers highlighting both the short-term and long-term advantages of HSAs, while another 7% focus exclusively on the long-term savings benefits.

While 85% of employers said they currently offer an HSA – up from 80% in the 2018 survey – the one drawback from the survey is that only 2% said they plan to offer one in the coming year, and 13% said they have no plans to offer one.

Interest in Student Loan Programs Still Increasing

Student loan repayment programs is another area that many companies are interested in exploring, but the overall number of companies that have such a program remains relatively low, the study further observes. At the beginning of 2019, only 1 out of every 20 companies had a program in place that provides money to workers to repay their student loans.

And while nearly one in five companies (17%) currently offer tools to help employees consolidate and/or refinance an existing student loans, 61% indicate that they are interested in offering a program.

There has been increased interest following the IRS's private letter ruling to allow employers to make matching contributions to workers' 401(k), 403(b), and SIMPLE retirement plans as if their student loan payments were salary reduction contributions, but it appears the survey did not address this question.

— Ted Godbout

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FINANCIAL WELLNESS – THE NEXT GENERATION

BABU SIVADASAN

Employers today understand that they need an engaged, productive and self-reliant workforce that feels confident in their ability to achieve their financial goals. Employers also appreciate that suboptimal financial practices are taking a toll on the engagement and productivity of their workforce and complicating the transition of older workers out of full-time employment.

Financial wellness is widely touted as something of a cure-all for this workforce "ailment," and advisors stand to play a critical role in this next generation of financial wellness, where wealth management and retirement savings converge in a new digital ecosystem.

NAPA-Net recently spoke with Babu Sivadasan, Group President of Envestnet Retirement Solutions, about the current environment, the impact of technology on those solutions, and the opportunities for retirement plan advisors.

NN: What does a comprehensive, holistic approach to financial wellness entail?

Sivadasan: If workers are financially insecure, their plans for retirement can sometimes be deferred. And, like a traffic backup on the highway, this stress can cascade down to younger employees, raising doubts about their upward mobility and growth potential within their companies.

The goals of financial wellness are relatively straightforward in concept, if complex in reality. Simply stated, workers should be able to stand on a sound financial footing, which is to say manage their current expenses and debts, maintain cash reserves and insurance for emergencies and stay on track with savings for long-term goals like their children's education and retirement. Envestnet Retirement Solutions has brought this capability into a fully integrated managed retirement experience and has long been how advisors supported their high-net worth clients.

NN: One of the biggest concerns of plan sponsors and advisors alike – what's the return on the investment in financial wellness?

Sivadasan: While employers like the idea of helping their employees, and are attracted by the concept of financial wellness, which historically focused purely on qualitative education, they are often ill-equipped to calculate their return-on-investment (ROI) for wellness programs.

This lack of quantitative metrics has until recently constrained the growth of wellness programs, but an industry consensus is emerging to suggest that wellness brings positive ROI, particularly in terms of worker motivation, engagement and productivity and the ability of employers to attract and retain workers in a tight labor market.

At a practical level, employers today perceive that providing financial wellness programs is a competitive advantage, or even a "must-have" for a tight labor market in which quality employees are sought out and recruited aggressively. High employee turnover is expensive and bad for morale; financial wellness programs that maximize engagement deepen the bonds between employees and employers.

NN: What lies ahead in the next generation of financial wellness?

Sivadasan: Financial wellness programs in the future will be piloted by a new generation of financial advisors who embrace financial technology delivering vastly enhanced artificial intelligence (AI) driven services and advice. Far from being a modest nice-to-have enhancement of employee benefits, financial wellness is already driving a revolution in the delivery of financial advice.

We're developing a completely new holistic approach to retirement and wealth management, enabled by recent developments in cloud computing, AI and networked mobile devices.

NN: How can a retirement advisor leverage this information to deliver better more holistic solutions for plan sponsors and their employees and participants?

Sivadasan: Financial wellness promises to change the way advisors think about their work and about their role in the broader retirement and wealth management ecosystem. Data aggregation and integrated solutions allow advisors to concentrate on the big-picture strategies aimed at their clients' financial wellness and will increase the amount of time that they can dedicate to client interaction. The technologies and tools built to serve the goal of financial wellness both empower advisors and make it possible for them to extend their service to many more investors and plan participants.

However, smart algorithms, data science, financial robotics and all the rest will not displace the essential role of advisors. Rather, it will deliver to them a greatly-expanded marketplace, together with digital tools and systems that will allow them to service a broader market – profitably. The human factor is indispensable – and the financial wellness ecosystem will give advisors an efficient new mechanism for corralling more strategies and delivering them to many more investors.

In view of the accelerating complexity of today's financial environment – in which risk management and retirement readiness rests on the shoulders of individual investors – advisors are more necessary than ever.

MRINCREDIBLE / SHUTTERSTOCK.COM

One Event Away from a Crisis

Emergency savings accounts make sense for those living on the financial edge.

BY WARREN CORMIER

In response to the fact that a significant proportion of American households would be placed in financial crisis if they had an unexpected expense of even $400, the payroll deduction emergency savings account concept was born.

To gauge the consumer appeal of a payroll deduction into such an account, AARP fielded a national survey of 2,603 adults ages 25-64 who were employed (but not self-employed), paid by direct deposit, and expect to remain with their current employer for at least one more year. I was fortunate enough to have collaborated with AARP on this project.

The findings confirmed that in fact, many households are living on a financial edge. Specifically, a quarter of respondents (23%) said it would be a "major crisis" and another half (55%) said it would be "difficult" if they had to cover an unexpected expense equal to one month's pay. Furthermore, many households are feeling stress over their financial situation, with one fifth (19%) saying they are "very stressed" and an additional 42% saying they are "somewhat stressed."

And by the way, if past experience is a guide, the chance that they may be hit with a large unexpected expense is quite high, as 6 in 10 respondents (62%) indicated that they have had to deal with a large unexpected expense in just the past year.

Given these data, it is not surprising that the overall response to the program was very positive. In the AARP survey, respondents were shown the following product description:

> "To help you be prepared for emergencies or unexpected expenses, an amount of money you specify will be deducted from each of your paychecks and deposited into a special savings account set up for you at a bank or other financial institution. These transfers from your paychecks to the savings account will continue for as long as you would like and you can stop them at any time. You are free to take the money out of the savings account at any time without paying a penalty. There are no fees on this account. At no time is your account information shared with a third party."

Three quarters (76%) of the respondents found the program attractive (either very or somewhat). Furthermore, 71% said they would be very or somewhat likely to enroll in the program. Of course actual enrollment would depend on many factors such as the final product design and the way in which it is communicated and promoted. Nonetheless, the survey reveals a largely positive reaction to this program.

Among those who said that they would be likely to enroll in the program, the most common explanations given were related to the sense that it would help them save money, that it would reduce the financial stress of unexpected expenses, that they wouldn't have to see or handle the money, and that it would be automatic and easy to set up.

What Drives Likelihood of Adoption?

Perhaps one of the most interesting findings is that psychographic and behavioral factors (67%) as opposed to demographic factors (33%) primarily drive likelihood of adoption. Specifically, high financial stress level, low non-retirement account savings balances, low trust in the employer, and low confidence in the ability to cover a large expense equal to one month's pay were significantly and strongly correlated with likelihood of adoption.

Demographic factors were very weakly correlated with likelihood of adoption. This is consistent with our other studies that have shown that financial wellness is not only experienced by high-income people, and conversely, financial struggle is not only suffered by low-income people. Rather, financial wellness is a matter of psychographics and behavior.

Importantly, the features of an emergency savings account that would maximize its attractiveness follow some familiar behavioral concepts and dynamics. The capability to make withdrawals from the account immediately (i.e., access), to change or end contributions at any time (i.e., control and reversibility), the ability to keep the account when leaving one's employer (i.e. portability), and the employer not having balance or withdrawal history on the account (i.e., privacy) create the highest perceived value.

Similarly, the positioning messages that make employees most interested in using the account are related to control, peace of mind and ease of saving.

Conclusion

As in any product development project, a positive consumer response as measured through a survey is encouraging but there is a great deal of work ahead. Finalizing the product details, creating a communications strategy and having the right amount of promotional effort will largely determine adoption rates. Nonetheless, the findings confirm that many households are one event away from financial crisis and that the emergency savings account concept can reduce the stress of financial uncertainty or vulnerability. Given that one of the primary stated goals of financial wellness programs is to reduce financial stress, it may make sense to consider adding an emergency savings account to any financial wellness program. Clearly, an emergency savings account is a solid, tangible step in that direction. It is also an important step toward reducing leakage.

» Warren Cormier is the Executive Director of the DCIIA Retirement Research Center and President and CEO of Boston Research Technologies. He is the author of the DCP suite of satisfaction and loyalty studies, and cofounded the Rand Behavioral Finance Forum with Dr. Shlomo Bernartzi.

SEBASTIAN DUDA / SHUTTERSTOCK.COM

Finding Your Marketing Zen

The important thing is to find the type of marketing you enjoy. Then keep doing it.

BY REBECCA HOURIHAN

Beep! Beep! Beep! Monday, 5:00 a.m. It's cold and dark outside. I lace up my running shoes and head out the door sluggishly. One mile complete – and guess what, it was terrible. My lungs are burning, it's still dark, and I'm cold. Running is just not my thing.

Tuesday, 6:00 p.m. I fight rush hour traffic and make it to spin class. The music is *loud*. The energy is exciting. The people are stylish. And off we go! Up and down, wheels spinning fast. Propelled by group excitement, the class flies by. Seventy-five minutes of intense cardio. However, the next morning, my muscles are so sore and I can't walk. Cycling is also not my thing.

Friday noon. I walk from our office to a local yoga studio. It's quiet and peaceful. The teacher says, "Welcome everyone, we encourage you to work your 'edge.' Everyone's body is different and you should respect what your body is telling you." Downward dog to chaturangas through shavanasa. This class is bliss. It's the type of exercise and a style of class that I can relate to.

The reason I'm sharing these three different workout experiences is that they are somewhat like your business and style of marketing. You may love cold calling, blog writing, or social media. It's a personal preference. The important thing is to find the type of marketing you enjoy. Then keep doing it.

Here are three kinds of marketing.

- **Solo marketing.** Similar to running, the commitment is up to you. You have to find the time, plan the route, and take the action. Whether it is picking up the phone 40 times a day to connect with plan sponsor prospects or allocating 30 minutes a day to liking, sharing, and posting on social media, you are responsible for the input of effort and you should enjoy it.
- **Outsourced marketing.** Professional instructors guide you through the ups and downs of content development, campaign management, A/B testing, landing pages, remarketing, and analytics that tone your business' marketing machine. It's all about finding a great marketing team that optimizes your performance and zooms you to intense results.
- **Partner marketing.** Stretching you outside your normal activities, yet guided and with alignments to safely bring you to the "edge" of your marketing comfort zone. Partner marketing provides options, so you can use modifications to make it easier or you can challenge your marketing muscles and try advanced campaigns. You find the style and then apply the curated content that works within your specific retirement plan business.

Starting a Marketing Regimen

Start by asking yourself, how would I like to receive information?

Circle three (3) ways you would like to receive information:

Cold calls
Social media posts
Email information
Webinars
Seminars
Blog articles
White papers
Networking events
Videos
Podcasts
Books
Newsletters
Direct mailers
Infographics
Additional ways: __________

This is the base of your marketing regimen. If this is how you like to receive information, then chances are many of the people that you are surrounded by (clients, prospects and centers of influence) also like to receive information in the same way. When you communicate in the way they appreciate, they will reciprocate by listening and actively engaging with you.

Now look at your three circles. Have you tried any of them before? How did it work out? Were you diligent and committed to the regimen? When you do it again, how are you going to improve? What have you learned?

Getting Meaningful Results

We have all had fits and starts with exercise programs – and marketing initiatives. However, they have in common the regret, *"if I had only stuck with it, I would've achieved my goals today."* Which is why we challenge you to think of the type of marketing that you enjoy.

Find What Works for You

Personally, cold calling wasn't for me, though some people love it. Yet, blog writing, social media, conferences (hope to see you at the NAPA 401(k) Summit!) – these are my marketing Zens. Find what works for you.

Then think about the style. Are you solo-motivated or do you need a little push? If you realize a little help would be nice, find the coaches and partners who can guide you to achieve your retirement plan marketing goals. It's your business and we encourage you to respect it and work to your own marketing comfort zone edge.

Thanks for reading – and Happy Marketing!

» Rebecca Hourihan, AIF, PPC, is the founder and CMO of 401(k) Marketing, which she founded to assist qualified experts operate a professional business with professional marketing materials and ongoing awareness campaigns.

'Un-produce' It!

Social media users want to see if you really are who you say you are.

BY SPENCER X SMITH

I start many of my presentations by asking the audience for their reaction to this statement: "Social media is more biological than mathematical." After a short while, they begin to make the connection. "When you're posting and interacting on social media, you are interacting with people," they respond.

When I was just out of college — technically, while I was still in college — I had the good fortune to be hired by IBM. Big Blue describes its three core values as:

- dedication to every client's success;
- innovation that matters, for our company and for the world; and
- trust and personal responsibility in all relationships.

My time at IBM taught me that if you share those core values, *you'd better live them*. Putting clients first, innovating for the sake of mankind and trust all sound like great aspirations, but I saw them in action every day. That's because they were both genuine and authentic.

As a result of that experience, I know the quality of IBM's data is something from which we can learn and take action. For example, a recent IBM study of 4,800 "CxOs" (i.e., CEO, CFO, COO, CIO, CMO, etc.) asked this question: "What is your biggest barrier to an integrated digital-physical strategy?"

The overwhelming response? Sixty-three percent said they lack a cohesive social media plan. What does this tell us? *Determining where social media fits in your existing business is really hard*. What you say (messaging), where you say it (platform), and how often you share (frequency) are all factors — among others — that determine your success. Without a plan, though, how do you know what success really looks like?

Going a step further, if you observe a company actually doing social media well (i.e., large follower counts and high engagement on posts), it may be a little tough to determine why it's actually working. Should you simply emulate what they're doing? What if the techniques they're using are not appropriate for your target audience?

There's one strategy you can implement today that will make things dramatically easier for you. Most of the emerging social media platforms (like Instagram Stories and Facebook Live) can be summed up in one simple word: unproduced. Instead of content that is highly edited or refined by a graphic designer, users are typically uploading photos or videos directly from their phones with very little concern for lighting, sound quality or finishing touches. If any editing is done, it consists of simple captions, a filter to emphasize feeling or highlight a particular location, or even drawings on the screen.

What does the rise of these emerging platforms tell us? People using them desire simple, raw content. They value authenticity first, and production quality second. They want to see if you really are who you say you are.

For example, I regularly advocate or make assertions about steps that, if put into action, can lead to greater success in the realm of communication. To support my assertions, I provide proof on social media documenting how I actually do these things myself. I take a quick snapshot or video with my phone, share the proof with my audience, and get back to work.

Every one of us with a smartphone currently owns our own media company. At any time we can show the world what's going on around us, and our audience can share in our experiences.

As both an individual and as a representation of your business, what are you sharing with the world? Do you highlight your outstanding customer service as a component of your business? Prove it. Show your audience that you're practicing what you preach. Do you tout the quality of your products and production process? You don't need a professional film crew to create a documentary. Use the smartphone in your pocket to provide proof.

Regardless of which social media platforms you use, adopt a culture of genuine, transparent behavior. This mindset will position you as an outlier in the most positive sense possible, and you'll engender trust with your target audience. When developing your social media strategy, start with this word: authentic. N

» Spencer X Smith is the founder of spencerXsmith.com. He's a former 401(k) wholesaler, and now teaches financial services professionals how to use social media for business development. He may be reached at spencerXsmith.com.

SUITE 'SPOT'

CYNTHIA DASH

TIM SLAVIN

In an ever more competitive business environment, employee benefits are a critical compensation component. But at a time when offering a generous retirement plan benefit is almost taken for granted, those who aspire to be employers of choice need a way to stand apart from the crowd.

Broadridge Financial Solutions has a long and storied reputation for the support the firm has provided the advisor community, most recently in the expanding nonqualified deferred compensation plan space. NAPA Net recently spoke with Tim Slavin, Senior Vice President, Retirement, and Cynthia Dash, General Manager and Senior Vice President at Matrix Financial Solutions, Inc., a Broadridge company, for insights on the opportunities for advisors.

NN: Though it's been more than a decade since Section 409A was added to the Internal Revenue Code, there seems to be a recent surge in interest in non-qualified deferred compensation programs. What do you think is behind this trend?

Dash: While there has long been a consistent interest in these programs, there's no question that the improving economy and tightening job market has been a factor in enhancing employer interest in both attracting and retaining key talent. Not only does a nonqualified plan provide the employer with significant flexibility, it's a compelling differential in benefits, particularly for executives who may be constrained by the contribution limits of a traditional 401(k).

Slavin: No executive ever left because his or her 401(k) wasn't vested. If you're trying to encourage a key employee to join your firm, or looking to provide them with a compelling reason to stay, these programs can be a significant influence.

Dash: Increasingly, nonqualified plans are an integral component of a comprehensive benefit strategy for all firms. In addition to their compelling value as a stand-alone offering, they offer the ability to tie in with other programs: defined benefit, defined contribution, and even health savings accounts.

NN: Isn't that combination administratively complex?

Slavin: It certainly can be. That's where having an automated, integrated platform can really make a difference. As a leading fintech provider, our clients look to us to provide a scalable platform. But many firms try to operate a nonqualified plan business on a qualified plan platform – and that often isn't enough for these plans.

Dash: Investment in technology is key. We made a significant commitment to this business in 2015 with the acquisition of the business from Wilmington Trust that brought us not only an automated platform, but also a team of professionals that had been working with these programs for years. That investment has allowed us to offer service that is highly scalable with a personal touch across our entire customer base. Plan sponsors are looking to work with a single provider, if they can find one that has the systems and expertise to pull it all together.

NN: How might expanding their practice to include a focus on non-qualified deferred comp impact a retirement plan advisor's practice?

Slavin: This is still a wide-open market – virgin territory for advisors – and it gives advisors an opportunity to deal directly with the C-suite, the top people in the organization. This connection keeps the relationship between the advisor and the organization "sticky" – and provides an opportunity to handle the high-net worth business of key individuals as well.

Dash: ERISA constrains advisors with its focus on regulations, limits, and conflict of interest rules. While those are important in that context, a nonqualified plan vehicle allows advisors to help key individuals plan for retirement in ways that go beyond ERISA and those limitations. Some of these executives are being tested out of participating in defined contribution plans. The ability to introduce a nonqualified deferred compensation alternative is a way to provide a consultative solution to a painful administrative problem. It's a conversation that isn't focused on fees – and it's a solutions-focused conversation that most advisors still can't have.

NN: How is Broadridge supporting this expansion in interest among retirement plan advisors?

Dash: We've always been a solutions and education advocate for advisors. We've been an early and enthusiastic inaugural supporter of the Nonqualified Plan Advisor Conference developed by the National Association of Plan Advisors (NAPA), and introduced NAPA's Nonqualified Plan Advisor certificate at our annual conference in Keystone, Colorado.

Slavin: These programs help educate advisors on how to identify and qualify a lead, to provide advisors with enough information to engage with the key decision makers and have an initial discussion. Bottom line: We give the advisor who is not a nonqualified plan specialist enough information to have the conversation about the option. Then they can tap into the specialists we have in this critical area that can go deep, and help advisors close the deal.

Dash: And it's a business that is lucrative for the advisor, an ongoing annuity payment stream. It is a benefit that the individual executive receives, but the company owns and is paying for it. This is a way for advisors to add value, to broaden their market, particularly for fee-based advisors. It's the wave of the future – but it's an opportunity today.

STAR POWER

BY NEVIN E. ADAMS, JD

ONE OF THE MORE STRIKING THINGS ABOUT NAPA'S 2018 TOP WOMEN ADVISORS IS THE VARIETY OF EXPERIENCE THEY BRING TO THE PROFESSION.

● From left: Lisa Buffington, *Marsh & McLennan Agency, LLC*; Annie Strout, *Morgan Stanley*

IT MAY SEEM ODD to label as a "rising" star individuals who have already established themselves in the industry over a decade – or more. But when we launched the NAPA Top Women Advisor accolade in 2015, we noted a distinct group of individuals – many of whom did not begin their retirement plan career as advisors, but rather migrated to it following service in a related area.

Reflective of the experience they bring is the book of business for which they bear responsibility; four have responsibility for more than $1 billion in assets, and another six for $250 million to $1 billion. Most of this year's group spend 100% of their time on DC/DB plans, but all spend at least 80%.

So while to be considered in this category, individuals have less than five years of experience as a retirement plan advisor, four of the rising stars in this year's class have more than 20 years working with retirement plans – and only three have less than five years. Indeed, one of the more striking things about this year's class is the variety of experience they bring to the profession.

For all the talk about the obstacles to success in what remains a male-dominated field, these rising stars seemed to see their differences as a key differentiator.

"Women in this industry have a competitive advantage in that we are the minority, which separates us from the rest. My advice to women entering into and/or expanding their retirement plan book would be that being different makes you more memorable, so put yourself out there by speaking at industry events, conferences, prospect panels," noted one this year's "rising stars."

"Be true to yourself," advised another. As a woman-owned business and only women working in the office on retirement plans, we see who we win business with. It usually isn't the old boys club, but we have worked out a niche here that has expanded like wildfire. Because we have stayed true to ourselves and our core company values, we have won some of the best plans for us who value the work we do and what we bring to their companies."

Other words of advice from this year's class: "Don't hesitate. Women have a huge advantage in this space as we can make the sale and execute the service model."

"I think that women have come a long way in the financial industry, but it's still a man's world. I have women approach me all the time and I tell them the following: 1. Do not take it personally. It's not about you. 2. Be better – to have the same stature in our industry, you have to know a little more, be a littler earlier for appointments, dress a little better, etc. Not haughty, just better.

3. Be a friend to everyone, but a friend to no one. Don't get too personal with your business peers. Be 'friendly.' Unless you were friends before business, keep your personal relationships separate. 4. Be yourself. Not everyone is going to like you and/or want to do business with you. You have to be true to yourself. Trying to be someone else is a lot of work, and usually no fun. There are plenty of people out there to do business with that will click with you. 5. Be hungry. When you are just starting out, this is obvious. When you are more experienced, this becomes harder. It's human nature to get comfortable when the pressure is off. But the most successful businesswomen I know are always hungry."

"Go for it! I think women are naturally well equipped to work in this industry (sorry guys!). I think a big part of being a successful advisor isn't just defined by capturing the business and winning new plans, but is also really measured by how well you are able to impact participant and plan outcomes. I think a big part of having successful participant outcomes is being able to educate, relate, and translate difficult concepts. Our role as educators is huge, and I think women are especially great at connecting with people, making us naturally good at working with participants, HR professionals, plan sponsors etc. I also know that statistics show that women control most of the money or spending decisions in today's households (even in the ones where they are not the sole earner), and I think this supports even more why more women should expand into this industry and better represent the demographic of our clients."

From left: Stephanie Hunt, *Atlanta Retirement Partners*; Sara Carvalho, *Marsh & McLennan Agency, LLC*; Connor Catherine Morganti, *Johnson Morganti*

"STICK TOGETHER AND NEVER GIVE UP! While we are making great progress, the retirement industry remains male-dominated. Thanks to the great work of NAPA, we are narrowing the gap. It takes time, but perseverance and collaboration will ultimately lead to continued success. Find a group of women with similar goals and idea-share on a regular basis. We work with several plan sponsors who specifically request to have a female advisor on the team. It helps us to better connect with female Committee members and makes us invaluable to the service team. There is such a wonderful camaraderie among the females in the retirement plan industry. If we keep working together we will continue to move forward!"

These rising stars also had some compelling words of wisdom – and encouragement – for those who are considering pursuing an advisory career:

"Explore ALL the different avenues of vendor, investment, service, and sales related

"THERE IS SUCH A WONDERFUL CAMARADERIE AMONG THE FEMALES IN THE RETIREMENT PLAN INDUSTRY. IF WE KEEP WORKING TOGETHER WE WILL CONTINUE TO MOVE FORWARD!"

roles to develop skills – but most important to discover what you enjoy doing most. Get involved – participate on boards, committees. Network – participate at industry events – demonstrating the eagerness to learn and to contribute."

"Never underestimate yourself, set goals, and work hard to achieve them. Expect setbacks, large and small, and know that you will make mistakes. Learn from these mistakes, rather than dwelling on them. Utilize networking events and conferences to expand your industry knowledge and personal connections."

"Work hard, always act in the best interest of the plan participants, and enjoy the contributions you will make to the industry and more importantly to future retirees."

"It is rewarding. When people ask what I do and I explain that I help achieve their retirement dreams, they always ask for help. Everyone deserves to have financial success and it is comforting to know that I have helped make their retirement goals come true."

"It's a great area of focus and allows the opportunity to build long-term client relationships."

"Go for it! There are lots of opportunities in the market and if you are passionate about helping others this is a wonderful and rewarding field to be in."

"Stay passionate!! Know that we are making a positive difference in people's lives but understand that everyone has a different level of need and understanding. Be flexible in your approach, stay current on new regulations and set goals that are measurable."

"Partner with organizations like NAPA to gain knowledge. Read white papers, join webinars and attend conferences. Our industry is filled with bright and talented individuals who are not only dedicated to this business but also enthusiastic about sharing their ideas."

"This is an incredible career that allows you to help others, interact with and learn about a variety of interesting companies and people, build your own business, and the compensation is directly tied to your success."

ABOUT THE ACCOLADE

Established in 2015, nominations from the list were provided by NAPA Broker-Dealer/RIA Firm Partners. Nominees had to be women, and had to be retirement plan advisors with their own book of business. Nominees were required to submit responses to an application comprised of a series of quantitative and qualitative questions about their experience, size and composition of their practice, awards and recognitions, and industry contributions, which were then reviewed by a panel of senior advisor industry experts, who, based on those criteria, and following a broker-check review, selected the top women advisors.

Within the group of top women advisors, those who were principals, owners or team captains of their organizations were designated as "Captains."

In 2018, we received just over 600 nominations.

NAPA TOP WOMEN ADVISORS 2018

Regarding their aspirations for the future:

"I have a strong passion for driving financial literacy education efforts in students' middle school and high school years. I am an avid supporter of Junior Achievement and I lead the Financial Literacy initiatives in the charter schools that the non-profit Charter Management Organization I'm the Board Chair for oversees in underserved, minority-based, urban communities. I would love to play an influential role that supports the institutionalizing of financial literacy education in all high schools so that young adults understand the importance of financial fitness, including effective debt management, budgeting, and planning for the future, before they receive their first full-time job paycheck."

"My aspirations for the future are to continue to grow in this business and to constantly challenge myself to always be doing better. Whether that is winning more business, communicating more effectively with plan sponsors and participants, or becoming more knowledgeable in the industry... my goal is to never stop challenging myself."

"I aim to be an influential talent among the financial advisor community, as an individual inspired by many of the tenured advisors and consultants I've had the pleasure of working with over the years. I want to play a leadership role in support of advisor advocacy initiatives that allow us to collectively drive retirement and financial wellness outcomes for our clients. In summary – I'm 'all in' for this advisory gig."

"I hope to continue expanding my advisory resources and making a difference in the lives of even more participants in the plans we serve."

From left: Jennifer Hocking, *UBS*; Lauren Loehning, *Baystate Fiduciary Advisors*; Erica Blomgren, *CAPTRUST*

And while there are important insights to be gleaned from all the individuals in this year's list of Top Women Advisors, among the most important things this group of standouts has learned are the following:

"With enough determination, perseverance, and passion, anyone can achieve their goals. Those three things are what get me through some of the most challenging times and allow me to enjoy the most rewarding times."

"Be passionate about what you CHOOSE as a career (I absolutely am)! It is important to be a student of business, and an advocate for your clients & their employees."

"Continue to look for new opportunities to expand my knowledge and develop myself. By continuing to improve myself, I am better able to assist clients with complex issues, provide resolutions, and strengthen our relationships. Throughout my 18-year career in the retirement industry, my

"NEVER UNDERESTIMATE YOURSELF, SET GOALS, AND WORK HARD TO ACHIEVE THEM."

dedication and positive attitude have been critical to my success and the success of my clients."

"Always try to learn from and respect others, and know that honesty, hard work and dedication always provides satisfaction, particularly if you love what you do!"

"Know where to find the answers. Clients don't expect you to know all the answers but they do expect you to go figure it out for them."

"Work/life balance. As a mother of two it is important for me to weigh every new prospect and opportunity and ask… does this make sense for where I am right now? You can spend your whole career striving for more but I have realized that sometimes less is more and building a business that is conducive to your personal life is critical to long-term authentic happiness."

"Never stop learning! The retirement plan landscape is constantly evolving. There will always be new regulations clients must understand and comply with, challenges for participants and ideas that will enhance plan design. I'm proud to say that each year since becoming an advisor I've either earned a new designation or completed a new securities license. To succeed you must have a thirst for knowledge and a passion for helping people."

"Perseverance. We are given the opportunity to work in an industry where we can have a really positive impact on people's lives and their outcomes and with that comes great responsibility. This can be a tough business and when you are dealing with people's money and the uncontrollable (like the market) – it is easy for things to not go your way, or to be the punching bag for people's distress. However, I do believe that perseverance in life and in this industry especially, does pay off in the long run. Like anything, there are highs and lows, but the feeling of knowing you are having a profoundly positive impact on someone's life by helping them to save and be prepared for retirement is a privilege. I feel lucky to be in the position I am in now and be working with the people I get to work with every day."

Indeed!

Our congratulations again – to the rising stars, and all of the 2018 NAPA Top Women Advisors!

NAPA TOP WOMEN ADVISORS 2018

RISING STARS

ERICA BLOMGREN
CAPTRUST Financial Advisors
TWA: 2017

LISA BUFFINGTON
Marsh & McLennan Agency

SARA CARVALHO
Marsh & McLennan Agency

ELAINE FEATHERSTONE
SHA Retirement Group
TWA: 2015

NIKKI HAMBLIN
GRP
TWA: 2017

JENNIFER HOCKING
UBS Financial Services
TWA: 2017

STEPHANIE HUNT
Atlanta Retirement Partners

LAUREN LOEHNING
Baystate Fiduciary Advisors
TWA: 2017

LIZ MARTINIS
Impct Benefits & Retirement

LILY MATIAS
NFP Retirement

CONNOR MORGANTI
Johnson Morganti
TWA: 2017

ANGIE ROSSON
Mariner Retirement Advisors

ABIGAIL RUSSELL
CAPTRUST Financial Advisors

ANNIE STROUT
Morgan Stanley

TRICIA UTTECH
Graystone Consulting

NAPA TOP WOMEN ADVISORS 2018

ALL-STARS

PAMELA APPELL
Plexus Financial Services
TWA: 2017

BERYL BALL
CAPTRUST Financial Advisors
TWA: 2017, 2016, 2015

DEANNA BAMFORD
CAPTRUST Financial Advisors
TWA: 2017

KELLY BEVIS
Alpha Consulting Group of Wells Fargo Advisors

PATRICIA BILLS
CAPTRUST Financial Advisors
TWA: 2017, 2016, 2015

NATASHA BONELLI
Merrill Lynch
TWA: 2017, 2016, 2015

JULIE BRAUN
Morgan Stanley
TWA: 2017, 2016, 2015

PAMELA BROOKS
Oswald Financial, Inc.
TWA: 2017, 2015

GINA BUCHHOLZ
401(k) Plan Professionals

KAREN CASILLAS
CAPTRUST
TWA: 2017, 2016

KELLY CAVES
Morgan Stanley

SUSAN CLAUSEN
CAPTRUST Financial Advisors
TWA: 2017, 2016, 2015

MICHELLE COBLE
Odyssey Financial Group LLC

NICOLE CORNING
Wells Fargo Advisors

SANDRA CUNNINGHAM
UBS Financial Services Inc.
TWA: 2017, 2016, 2015

HEATHER DARCY
CAPTRUST Financial Advisors
TWA: 2017, 2016

KRISTEN DEEVY
Pensionmark
TWA: 2017, 2016, 2015

JEAN DUFFY
CAPTRUST Financial Advisors
TWA: 2017, 2016, 2015

CARMELA ELCO
Blue Prairie Group
TWA: 2017, 2015

JESSICA FITZGERALD
Morgan Stanley
TWA: 2017, 2016

ALLISON KAYLOR FLINK
NFP
TWA: 2017, 2015

MARY M. FRANCISCO
Pensionmark

SUSAN HAJAK
SageView Advisory Group

DIANE S. HALVERSON
Marsh & McLennan Agency

EMILY HING HOPKINS
NFP
TWA: 2017, 2016

SHELLY HORWITZ
Pensionmark

DELPHINE HUNT
SLW Retirement Plan Advisors

JENNY YUN HUNTER
Merrill Lynch

HEATHER JOHNSON
SageView Advisory Group

AMBER KENDRICK
Procyon Partners LLC
TWA: 2017, 2016, 2015

MICHELE LANTZ
Pensionmark

HEATHER L. LEMON
NBT Financial Services

MAUREEN LINDERT
Marsh & McLennan Agency

ALICIA MALCOLM
UBS Financial Services
TWA: 2017, 2015

KARIE O'CONNOR
LPL dba HPL&S Financial Services
TWA: 2017, 2016, 2015

KIMBERLY PRUITT
NFP
TWA: 2017, 2016, 2015

RUTH RIVERA
Bukaty Companies Financial Group

JENNIFER SAN FILLIPPO
Lakeside Wealth Management
TWA: 2017, 2016, 2015

SHELLY SCHAEFER
SageView Advisory Group
TWA: 2017, 2016, 2015

MARY SCOTT
First Interstate Wealth Management
TWA: 2017, 2016

COURTENAY SHIPLEY
Retirement Planology, Inc.
TWA: 2017, 2015

COURTNEY SINDELAR
Fiduciary Plan Advisors

MEGAN SMITH
UBS Financial Services

ANNE SUTCLIFF
UBS Financial Services

VIRGINIA TAYLOR
Taylor Financial Solutions
TWA: 2017, 2015

PAMELA WATSON
NFP

SUZANNE WEEDEN
Spectrum Investment Advisors

LARISSA WHITTLE
SageView Advisory
TWA: 2017

JENNA WITHERBEE
401(k) Plan Professionals
TWA: 2017, 2016

LIMEI YU
UBS Financial Services
TWA: 2017, 2015

NAPA TOP WOMEN ADVISORS 2018

CAPTAINS

KRISTI BAKER
CSI Advisory Services
TWA: 2017

JESSICA BALLIN
401k Plan Professionals
TWA: 2017, 2016, 2015

PAM BASSE
NFP
TWA: 2017, 2016, 2015

CHERYL BESAW
Spectrum Investment Advisors

KATHLEEN BRANCONIER
Fiduciary Retirement Advisory Group
TWA: 2017, 2016, 2015

MARY CABALLERO
Impact Benefits & Retirement
TWA: 2017, 2016, 2015

KERRIE CASEY
SageView Advisory Group

SHAWNA CHRISTIANSEN
Retirement Benefits Group
TWA: 2017, 2016

BARBARA DELANEY
SS/RBA
TWA: 2017, 2016, 2015

DORI DRAYTON
Plante Moran Financial Advisors
TWA: 2017

DEVYN DUEX
CAPTRUST Financial Advisors
TWA: 2017, 2016

JESSICA ESPINOZA
NFP
TWA: 2017

JANET GANONG
The Kieckhefer Group
TWA: 2017, 2016, 2015

LISA GARCIA
FiduciaryFirst
TWA: 2017, 2016, 2015

ADDIE GEORGE
Plan Sponsor Consultants
TWA: 2017, 2016

LISA GIBSON
Morgan Stanley

JAMIE GREENLEAF
Cafaro Greenleaf
TWA: 2017, 2015

DEANA HARMON
ProCourse Fiduciary Advisors, LLC
TWA: 2017, 2015

JAMIE HAYES
FiduciaryFirst
TWA: 2017, 2016, 2015

JENNIFER INGHAM
Ingham Retirement Group

EVA KALIVAS
EPIC Retirement Services Consulting, LLC

KRISTINA KECK
Woodruff Sawyer
TWA: 2017, 2016, 2015

KATHLEEN KELLY
Compass Financial Partners
TWA: 2017, 2016, 2015

JULIE KIM
SageView Advisory Group

NICHOLE LABOTT
SageView Advisory Group
TWA: 2017, 2016, 2015

ELLEN LANDER
Renaissance Benefit Advisors Group, LLC
TWA: 2017, 2016, 2015

SHANNON MAIN
Pensionmark/Fiduciary Retirement Advisory Group
TWA: 2017, 2016, 2015

DEBBIE MATUSTIK
Pensionmark Austin
TWA: 2017, 2016

JANINE J. MOORE
Peak Financial Group, LLC
TWA: 2017, 2016

CINDY ORR
CBIZ Retirement Plan Services
TWA: 2017

JENNIFER PEARSON
Clearview Advisory
TWA: 2017, 2015

LISA PETRONIO
Strategic Retirement Partners

JENNIFER PURISIMA
SageView Advisory Group

KAREN ROBERTS
CBIZ Retirement Plan Services

ANN-MARIE SEPUKA
Raymond James
TWA: 2017

SUSAN SHOEMAKER
Plante Moran Financial Advisors
TWA: 2017, 2015

HEIDI SIDLEY
StoneStreet Equity, LLC
TWA: 2017, 2016

KACI SKIDGEL
Summit Financial Group, Inc.
TWA: 2017, 2016

STEPHANIE STANO
Western Wealth Benefits

LORI STEVENSON
Compass Financial Partners
TWA: 2017, 2015

JANIA STOUT
Fiduciary Plan Advisors
TWA: 2017, 2015

MARCY SUPOVITZ
Boulay Donnelly & Supovitz
TWA: 2017, 2016, 2015

VIRGINIA K. SUTTON
Johnson & Dugan/GRP
TWA: 2017, 2015

BRENDA TARJAN
SageView Advisory Group
TWA: 2017, 2015

JACINTA THOMPSON
VisionPoint Advisory Group

MARY L. TOMANEK
Graystone Consulting
TWA: 2017, 2016, 2015

MEGAN WARZINSKI
HB Retirement

VANESSA WATKINS
NFP

PATRICIA WENZEL
Merrill Lynch
TWA: 2017, 2015

TINA WISIALOWSKI
Graystone Consulting
TWA: 2017, 2016, 2015

THE NORTH STAR

WHAT STEWARDSHIP MEANS FOR YOUR PRACTICE.

BY JUDY WARD


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PLAN ADVISORS

think about stewardship when they evaluate potential environmental, social and governance (ESG) investments for their clients. But what does stewardship mean for an advisory firm itself?

Alex Assaley spends a lot of time thinking about AFS 401(k) Retirement Services' mission, vision and culture. "We use our values as a 'North Star' of where we are going, and how we want to get there," says Assaley, managing principal of the Bethesda, Maryland-based advisory firm, and a member of the NAPA Leadership Council. "I may be romanticizing it a bit, but when you have everybody on your team involved in helping to decide on the mission and then pursuing it, that's when you can accomplish things that didn't seem possible."

To Jason Chepenik, advisory firm stewardship plays out in some non-obvious ways. "Most firms just focus on the three 'F's: fees, funds and fiduciary governance," says Chepenik, managing partner at

Alexander G. Assaley, III, managing principal at AFS 401(k) Retirement Services.

Jason Chepenik (far left), managing partner at Chepenik Financial with his team at the 4.01k Race for Financial Fitness™ in Orlando.

Orlando-based Chepenik Financial. "To be good in this business, you have to have those three nailed down. But the other two 'F's are why we've won a lot of business, and gotten results for our clients: efficacy and fun."

Chepenik Financial is "different, on purpose," as he likes to say, so it does some unusual stuff that blends having fun with helping build a stronger financial future for Americans. In April 2015 it launched the 4.01k Race for Financial Fitness™ in Orlando, to bring attention to the reality that too many American kids grow up without basic financial literacy skills. "If more people enter the workforce understanding the basics of money, they'll save more in their retirement plan," as Chepenik explains the connection to his firm's mission. The family fun run/walk event, which has expanded since its initial success and will happen in 13 cities this year, has raised over $250,000 for Junior Achievement USA's financial literacy education.

And in 2018 Chepenik Financial rolled out its new "Let's Taco-bout Retirement™" food truck for onsite participant education. It pulls up at client events like an employee wellness fair, and an employee who signs up for a quick, on-the-spot meeting with Chepenik Financial gets a free taco. (Those employees who don't sign up get rice and beans.) Chepenik's education specialists usually have a tent set up near the truck for the meetings, with the goal of engaging employees as a first step toward them signing up to participate in the employer's plan. "The food truck generates excitement among the employees," he says. "They laugh when they see it – and every time that happens, we're closer to building a relationship."

WHY IT'S WORTH IT

Bukaty Companies Financial Services zeroed in about 15 years ago on its mission of helping people protect their quality of life and fulfill the American dream. Co-founder Vince Morris says keeping focus on that mission helps a lot in running the Overland Park, Kansas-based advisory firm. "If you don't have a mission of what you are trying to accomplish, how will you know how to get there? It's like buying a plane ticket to nowhere," he says. "You need to have a set of principles and a mission to get your team behind, and every decision you make needs to be with that mission and principles in mind."

Everything an advisory firm does should be rooted in its mission and values, agrees Mark Freid, founder of Orlando-based Think Creative Inc. and its Happiness Counts arm, which consult on branding, marketing, organizational culture and leadership. "And if you don't do this, you are not going to attract the best young talent to your firm," he says, pointing to evolving workforce needs. "Generation Z and Millennials are all demanding what we didn't think we could ask for when we started our careers. For Gen X and Boomers, we deferred any sense of meaning or fulfillment until after we retired. Our thinking was, 'I'm going to work as hard as I can until I'm 65, then I'm going to get the gold watch, and then I'm going

to go on that cruise I've always wanted to go on, or take that class I've always wanted to take.' Our thought process was that a job is a means to an end."

"But the contract between employers and employees has changed," Freid continues. "Millennials and Gen Z saw the instability in the workforce with their parents and they say, 'I'm not waiting, because I don't know if those things are going to be there for me when I'm 65.' They want to have a sense of fulfillment and meaning now, and to live a full life now. And they're saying, 'If you don't give that to me, in two years I'm going to leave and go work somewhere else.'"

Chepenik sees a connection between his firm's mission-driven efforts like the 4.01k Race for Financial Fitness™ and its ability to recruit employees. "It helps me to attract better talent," he says. "People talk a lot about Millennials, and one of the great things about Millennials is that they want to know, 'Why?'" They want to understand, and believe in, the value of an employer's work. "This allows that to happen organically for us," he adds.

IDENTIFYING THE MISSION

Corby Dall envisioned 401k Advisors Intermountain's mission of helping as many people as possible to retire with dignity before he even started the Sandy, Utah-based firm. "When I began my career, I was on the individual side, trying to prepare individuals and families for retirement," recalls Dall, his firm's founder and a member of the NAPA Leadership Council. "Every time I met with somebody, I would sense that there was no preparation – nothing. That happened so often that I found myself trying to find a way to help more people."

So Dall started talking with owners of small businesses – like beauty salons and muffler shops, because he could walk in and find the owner – about setting up a 401(k) plan, an idea just coming into vogue then. "I had an awareness that I could affect so many more people in the same amount of time by partnering with an employer than I could by sitting across the table from Ma and Pa," he remembers.

For advisors who haven't done it already, deciding on their firm's mission may seem like a huge task, Freid says. "Think about why you started your organization in the first place," he suggests. "The default is to think about it from a financial standpoint. But clearly, while we all need money to do the things we want to do in life, and to provide for our family, we're driven by some bigger purpose we're living for. It's different for different people: It could be to do good in the world, or to give back to your community, or to live a life of adventure. But there is a reason why you get up every day."

Jim Phillips worked for large financial-services companies for 14 years before founding Retirement Resources, with the mission of always putting clients first and avoiding all conflicts of interest.

Top: Mark Fried (far right), founder of Think Creative, Inc. Left: Corby Dall, founder of 401k Advisors Intermountain.

"YOU NEED TO HAVE A SET OF PRINCIPLES AND A MISSION TO GET YOUR TEAM BEHIND, AND EVERY DECISION YOU MAKE NEEDS TO BE WITH THAT MISSION AND PRINCIPLES IN MIND."

– VINCE MORRIS (BELOW), CO-FOUNDER OF BUKATY COMPANIES FINANCIAL SERVICES

"There are a lot of really good people in the industry who are very client-centric and very much committed to doing the right thing," says Phillips, president of the Peabody, Massachusetts-based firm and a member of the NAPA Leadership Council. "But there are also a lot of people who are more focused on getting a paycheck. Sometimes, when people are under pressure for monthly production goals, that may point them in a direction where they're prioritizing their own interests over the client's interests."

To identify their firm's mission, Phillips encourages advisors to really think about what they're trying to accomplish: to get clarity on their sense of purpose, and then build their team and infrastructure around that mission. "Don't get hung up on short-term profitability: It's the long term that counts," he recommends. "We're always trying to tell participants that about their investments, and we need to apply the same advice to the way we build our businesses."

Phillips finds a clear relationship between taking good care of clients and a firm's profitability, and Retirement Resources hasn't made a sales call in more than a decade, because it gets all its new clients from referrals. "When you have a business model like a plan advisor does, where you get a very small slice of the pie, to grow your business, you need to grow the size of the pie (the assets), rather than grow the size of the slices (with higher fees). The way to grow the pie is to treat people fairly," he says. "Then they will open up additional pools of assets to you, and that also will line you up for referrals to new clients. And if you help people to be on a secure path to retirement, that also will increase the size of the pie as their assets grow. Really, it's a virtuous circle when you're mission-focused. If you look out for your clients' interests first, then good things will follow from that."

FINDING KINDRED-SPIRIT CLIENTS

Since 1999, Barbara Delaney has always served as a fiduciary to her clients, and her firm SS/RBA, LLC continues to stress its fiduciary approach to plan work. That impacts the type of clients that Delaney, a principal at her firm and member of the NAPA Leadership Council, does and doesn't want to serve.

When talking to potential clients, Delaney feels drawn to working with sponsors who also have a clear awareness of their own fiduciary responsibilities, paired with a keen interest in participant outcomes. "We're looking for employers that are really interested in helping their participants, not only today, but through to retirement," she says. She gets a sense of a potential client's philosophy by asking questions: not just about the participation rate and average deferral rate, but about things like how that sponsor evaluates investments, how it looks at participant outcomes, and what effort it makes to help employees save in a health savings account (HSA).

401k Advisors Intermountain seeks new clients that want long term, financially secure employees. "The companies we're looking for have a strong desire to maintain the same employee base, and to promote the goal of employees retiring from that company," Dall says. "They are trying to affect those people's lives, and help get them to a place where they live within their means and financially stress-free."

When talking to a potential client, 401k Advisors Intermountain unearths that employer's philosophy by having a two-way interview. "We try to make it very apparent to them that we're interviewing

Barbara Delaney, a principal at SS/RBA, LLC.

them, as well as them interviewing us," Dall says. "They like that we're interested in who they are, as opposed to just trying to 'put another notch in our belt.' That's typically so different than the last advisory firm that walked in for a meeting."

AFS 401(k) Retirement Services doesn't seek clients that just want to offer a compliant retirement plan at the lowest cost possible, Assaley says. "We are looking for employers that want to offer a compliant retirement plan with reasonable costs, and to create a benefit that will help employees build a healthy financial life," he says. "So when we're talking to a potential client, we go through a process of listening and learning, about what's important to them and what their priorities are."

Very few companies just come out and say that they don't want to help their employees have a healthy financial life, Assaley says. So he and his team like to ask potential clients some open-ended questions that reveal more about an employer's goals and priorities. One example: If the employer could start from scratch with its retirement plan – a clean slate – what would its retirement plan look like? He's drawn to an employer that talks about priorities like ensuring its match incentivizes employees to take their plan seriously, and having a plan that puts employees on track to save enough for retirement.

LOOKING INWARD

An advisory firm's stewardship also gets reflected in how it builds the firm's staff and infrastructure. "We are an independent firm. We're not 'suits,'" Delaney says of SS/RBA. The firm lets employees work flex hours, for example, and also has allowed employees to change their job description based on what they've seen working and not working about their job. To help employees' long-term independence, SS/RBA also makes an annual 10% profit-sharing contribution to their 401(k) account. "We have to practice what we preach," as she says.

AFS 401(k) Retirement Services' mission and vision propel its approach to running the firm. "They are the drivers of how we hire people to join our team, how we measure success internally, how we do performance reviews, and how we set short-term and long-term goals for our team," Assaley says. Many of its internal success measures relate directly to improving the financial health of clients' participants: Data utilized includes the number of one-on-one participant advice and education sessions done, as well as participants' increase in emergency savings and reduction in "bad" debt. "We set goals based on those metrics, and we complement that with qualitative measures of client satisfaction through committees' feedback and surveys that we send out," he says.

Dall views maintaining the right internal culture as the most important part of his stewardship at 401k Advisors Intermountain. "We're very family-oriented, and that's the most important thing I can point to in our group," he says. "I think that good stewardship begins at home: We need to manage the impact that our business has on our team members just like we do with our family. We strive to have a culture of harmony, and we're very proud of the fact that there's no drama here."

401k Advisors Intermountain controls its culture through a very careful hiring process, and tries to never be in a hurry to hire. "We can afford to be patient and wait for the right person to come along," Dall says. "When that happens, it's an intensive process: Most of our team members spend time with a candidate, and that helps to avoid hiring a bad fit. We get in the weeds with them, and get to know them." Occasionally, a new hire doesn't work out, and he thinks it's best to acknowledge that earlier rather than later. "We hire slowly and fire quickly," he says. "I try not to be that brutal, but if it's not a good fit, that person becomes the 'bad apple' on our team, and it's very counter-productive."

Retirement Resources' focus on always avoiding conflicts of interest for clients impacts its approach to its internal infrastructure. "We are very much committed to delivering a good end result for participants, so we own whatever it takes to deliver that result," Phillips explains. "A lot of advisors rely heavily on their recordkeeper partners: They go onsite to meet with a sponsor once or twice a year, and beyond that, they delegate a lot of the customer service, employee education, and other plan tasks to the provider. The advisors can then use their time instead to go out and find new business."

Retirement Resources takes a different approach. "If you are really committed to helping employees get to a secure retirement, that's a very deliberate process," Phillips says. So his firm allocates a lot of its time to doing employee education and customized, targeted communications campaigns. "It is very much a hands-on service

“DON’T GET HUNG UP ON SHORT-TERM PROFITABILITY: IT’S THE LONG TERM THAT COUNTS.”

– JIM PHILLIPS, FOUNDER, RETIREMENT RESOURCES

approach,” he says, “as opposed to making a sale, delegating the customer service, and then going out to find more new clients.”

For Bukaty, its approach to potential new clients also includes making clear its own organizational values. Its mission and principles appear on the second and third pages of its pitch book, for example. “I don’t know that we always go into a full TED Talk in meetings about our mission,” Morris says. “But it influences our sales process, and it will tend to play well with certain types of clients.” For example, Bukaty’s organizational focus areas include compliance and a meticulous process-driven approach. That makes banks a natural market for the firm, because they share those priorities, and Bukaty has a number of banks as plan sponsor clients.

Following through on those kind of organizational principles also helps an advisory firm to avoid fee compression, Morris says. “If you have principles and goals like that, and you are truly excelling at them in your work with clients, I think that helps you from the standpoint of pricing and margin pressure,” he says. “If you are following through on that, the people who agree with that approach are not going to be as focused on just getting the lowest fee.”

» Judy Ward is a freelance writer specializing in writing about retirement plans.

ANDRIY BLOKHIN / SHUTTERSTOCK.COM

Recommending Rollovers

What the SEC Says Advisors Need to Do

By
Joshua Waldbeser
& Fred Reish

In the Summer 2018 issue of *NAPA Net the Magazine*, we contributed an article titled "Recommending Rollovers: What Advisors (Still) Should Know and Do." Our primary focus was explaining how the Fifth Circuit's ruling to vacate the DOL fiduciary rule, the return to previous DOL guidance on rollover recommendations, and the temporary enforcement policy issued by the DOL and IRS, affect advisors. Readers may wish to review our previous article as a companion piece.

In this article, the focus shifts from the DOL to the SEC. Specifically, this article covers the recent SEC "best interest" proposals and their application to rollovers:

- the interpretation of standards of conduct for Registered Investment Advisers[1] (RIAs) (the "RIA Interpretation"); and
- "Regulation Best Interest"[2] ("Reg BI") for broker-dealers.

While both are labeled "proposals," the SEC explains that its RIA Interpretation "re-affirms" and, in some cases, "clarifies" its view on existing conduct standards – it doesn't establish "new" rules. While Reg BI proposes a new best interest standard of care for broker-dealers, it is, by and large, an "enhancement" of the existing suitability standard. Also, Reg BI draws heavily from the DOL's Best Interest Contract Exemption (BICE).

Similar to the DOL's vacated fiduciary rule and BICE, the SEC imposes a best interest standard on rollover recommendations.

To clarify the reference to rollover recommendations, advisors can provide education to participants about their alternatives and about the advantages and disadvantages associated with each option (for example, keeping their money in plans versus rolling them over to IRAs).

The SEC's 'Best Interest' Standard

Both SEC proposals "cover" distribution and rollover recommendations to participants. This is not at all surprising, because rollovers are already a focal point for the SEC and FINRA. For example, FINRA's 2018 Examination Priorities state that:

> FINRA will focus on the suitability of firms' and registered

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> representatives' recommendations made to plan participants, including Individual Retirement Account rollover recommendations involving securities transactions. FINRA will also review the supervisory mechanisms firms establish for these recommendations.

The RIA Interpretation imposes a best interest requirement on all advice, including rollover advice. Reg BI imposes the standard on rollover recommendations that involve securities transactions… which most do. FINRA Regulatory Notice 13-45, which governs the suitability of rollover recommendations from brokers, explains that rollover recommendations implicitly include two securities recommendations: to sell the investments on the participant's account and to purchase securities in an IRA.

Generally speaking, Reg BI proposes to require broker-dealers and their advisors to:

> exercise reasonable ***diligence***, ***care***, ***skill***, and ***prudence***, to…have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's ***investment profile***… [Emphasis added.]

An investor's "profile" refers to factors such as his or her financial circumstances, objectives and needs. Thus, the SEC standard is very similar to BICE's definition of "best interest," which would require advisors to:

> act with the ***care***, ***skill***, ***prudence***, and ***diligence*** under the circumstances then prevailing that a prudent person…would use…***based on the investment objectives***, ***risk tolerance***, ***financial circumstances***, and ***needs of the Retirement Investor***… [Emphasis added.]

The RIA Interpretation does not offer much detail, but it can be safely assumed that the SEC would not hold RIAs to a lower standard than broker-dealers.

So, under both SEC proposals (and BICE), advisors would need to compare information about the plan and the IRA, and then analyze it in light of the investor's financial circumstances, objectives and needs, to determine if the rollover should be recommended.

But in the SEC's view, what information about the plan and IRA needs to be considered? Again, the RIA Interpretation provides no specifics… but other SEC guidance, including its Retirement-Targeted Industry Reviews and Examinations ("ReTIRE") initiative, cites to Notice 13-45. Reg BI also does not create new substantive rules about what information or factors need to be accounted for, but rather cites repeatedly to Notice 13-45.

Thus, RIAs and brokers alike would need to consider the seven factors listed in Notice 13-45. To briefly summarize them:

- The first three are: (1) investment options, (2) fees and expenses, and (3) services. Here, the advisor must compare them under the specific plan to the proposed IRA.
- The last four are: (4) penalty-free withdrawals, (5) protection from creditors, (6) required minimum distributions, and (7) employer stock. For the most part, these reflect differences as to legal and tax treatment of employer plans versus IRAs generally.

Note that Notice 13-45 says this list is not exhaustive and that other factors may need to be considered in particular cases.

To use the example of investment options, the fact that an IRA has more alternatives than a plan does not necessarily mean this factor favors the rollover; rather, the appropriate inquiry is whether the additional options in the IRA would benefit the investor (and how much, for example in relation to increased costs). Additional factors, including availability of partial withdrawals, other investments, and investor preferences, may also be relevant.

For these reasons, the process needed to satisfy the SEC's best interest standard is the same for broker-dealer advisors and RIAs. It is also basically the same as the process the DOL described in BICE.

> "The RIA Interpretation does not offer much detail, but it can be safely assumed that the SEC would not hold RIAs to a lower standard than broker-dealers."

This latter point is relevant for advisors whose rollover recommendations may be considered fiduciary advice under ERISA (because of an existing fiduciary relationship with the plan)[3] … and thus need to satisfy the DOL's best interest requirement in order to rely on the DOL/IRS temporary enforcement policy.[4]

One final point: A question we often get from advisors is what they should do if a client cannot, or refuses to, provide comparative information about the plan (e.g., investment options, fees, services). The SEC proposals do not answer that question. The DOL, however, issued guidance indicating that in such circumstances an advisor may be able to rely on "alternative" data such as the plan's Form 5500 filings or benchmarking information for similarly-sized plans.[5] While that guidance was, in effect, vacated by the Fifth Circuit decision, we believe that it reflects the DOL's position on a prudent analysis of rollover options.

It is reasonable to expect that the SEC would permit this as well… but advisors should proceed carefully. Even under the DOL guidance, this relief was only available where plan-specific information was not obtained "despite prudent efforts" by the advisor, and both the alternative data's limitations and the reasons why it was deemed reliable were explained to the participant and documented.

Covered Plans – A Key Difference

The SEC and DOL perspectives on "best interest" as to rollovers are strikingly similar – but there is a difference in the types of plans to which the rules apply.

Rollover recommendations to participants in non-ERISA plans were not fiduciary advice subject to the DOL rule or BICE; however, they will be under the SEC proposals. These categories of non-ERISA plans, which are fairly common, include:

- qualified governmental plans, such as state pensions;
- public school and other governmental 403(b) plans;
- governmental 457(b) plans; and
- qualified and 403(b) "church plans" that have not elected ERISA coverage, which may, for example, be sponsored by churches, affiliated hospital systems and private universities.

While rollover recommendations to participants in these plans are not covered by ERISA, they are covered by the SEC's proposed best interest standards.

Summing Up

The death of the DOL's fiduciary rule and BICE did not end the heightened scrutiny of rollover recommendations. The management of risks related to rollover recommendations under the SEC's proposed best interest standards involves a process that is similar to that described in BICE. In the typical case, advisors have an economic interest – and thus, a financial conflict of interest – when "capturing" IRA assets. In addition, the decision to roll over can materially impact, for better or worse, a participant's long-term financial security. As a result, the SEC, FINRA and the DOL will closely scrutinize those recommendations.

Some advisors already utilize a "best interest" process to evaluate whether IRA rollovers would be appropriate for the needs of participants. That process, which was likely developed for ERISA-governed plans, will need to be extended to governmental and other non-ERISA plans if the SEC proposals are finalized.

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[1] SEC Release No. IA-4889; File No. S7-09-18 (Apr. 18, 2018).
[2] SEC Release No. 34-83062; File No. S7-07-18 (April 18, 2018).
[3] *See* DOL Adv. Op. 2005-23A.
[4] DOL Field Assistance Bulletin 2018-02 (May 7, 2018).
[5] DOL Conflict of Interest FAQs (Part I - Exemptions FAQs), Q&A #14 (Oct. 27, 2016).

Plan Participants:

‘Use Plain English and Drop the Jargon’

Words can be informative and engaging, but they can also leave plan participants feeling uncomfortable, overwhelmed and confused.

By Ted Godbout & John Iekel


TITHI LUADTHONG / SHUTTERSTOCK.COM

Recent research shows that retirement plan participants prefer communication that is not riddled with jargon and "inside" terms that, while familiar to plan advisors, sponsors and providers, mean little to those whom the plans serve.

In fact, a recent white paper by the Denver-based Empower Institute reminds industry stakeholders to be mindful that some retirement plan terms have meanings that are completely out of step with the definitions most people associate with them.

"Such multiple meanings can cause confusion and create barriers to confident decision-making," the authors note. What's more, many industry insiders often don't even recognize when they're using jargon.

Consider, for example, how common plan terms have different common meanings, such as:

- **Contribution** generally means a gift or donation to charity;
- **Deferral** means the act of putting something off until later;
- **Match** can mean an athletic competition, dating service or something to light a fire;
- **Rollover** can mean a trick one teaches a dog; or
- **Vehicle** is typically thought of as a car or truck.

The good news is that even small tweaks to how the language is used and presented can help break down complex retirement industry terms and make them much more user friendly and understandable for plan participants.

Jargon-free Zone

In "Boosting the effectiveness of retirement plan communications," Empower suggests that employers and advisors should consider whether the terms they're using might be considered jargon to industry outsiders and focus on simplifying language whenever possible.

"As we strive to encourage more Americans to save for retirement, our research shows that many employees find common finance language confusing," Empower President Edmund F. Murphy III explains in a statement announcing the release of the white paper. "Clarifying the language we use when describing important retirement plan concepts could go a long

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way to improving employee understanding of retirement."

Empower conducted three studies spanning 12 months to find out what individuals do and don't understand when it comes to retirement-industry jargon and what preferences they have for plan communications. As part of their study, the researchers showed respondents more than 20 common retirement planning concepts and asked them to select the most appropriate term for each concept from a list of terms.

The common thread tying all study groups together is that they don't like jargon and prefer simpler, clearer communication. "Overall, we found many commonly used industry terms don't make sense to their intended audience," the authors observe.

Demonstrating this apparent lack of understanding, the studies found that nearly 70% of survey respondents are unclear what the term "asset allocation" means and 66% don't understand "rebalancing investments."

Millennials, in particular, found financial terms difficult to understand. For example, 88% of Millennial respondents were unclear what the term "defined contribution retirement plan" stands for – compared to 76% of total respondents, which one might also argue seems exceptionally high. What's more, 63% of Millennial respondents also found the term "plan participant" to be unclear compared with 44% of total respondents.

While there was no single term that was universally preferred for each concept, the authors explain that some general preferences did emerge.

For example, when asked what their preferred term is for "the amount their employer puts into their workplace retirement account based on some or all of the amount they save," 32% of respondents selected "employer match," compared to just 10% who selected "match" or the more verbose "funds your employer contributes to match some or all of your contribution."

As to their preferred term for the percentage of their paycheck saved in their retirement plan, 43% of respondents selected "contribution rate," rather than "savings rate" (14%) or "deferral rate" (9%).

"Given the lack of clarity across age groups, financial providers clearly have room to improve how they communicate about workplace retirement plans. And it's not just the vocabulary: Workers are also looking for higher quality retirement communications overall," the authors explain.

Correspondingly, survey respondents most preferred to receive messages about their retirement plan through their personal email as opposed to their work email. In fact, 51% of respondents chose personal email as their preferred method, compared to only 26% of respondents who said their work email.

"Employees may prefer to get plan information via their personal email because that inbox is also home to their other financial communications, such as bank statements," the report states. Moreover, the authors emphasize that receiving plan information in the same place "may make it easier for employees to think about their household finances, including retirement, in a holistic manner."

Say What?

An additional study analyzing common language used to describe features of defined contribution plans also reveals an apparent disconnect between what plan advisors and sponsors are saying and what participants are hearing.

Invesco, along with Maslansky + Partners, conducted participant focus

Here's a sample of some terms that the retirement industry uses and what the study respondents prefer:

TERMS USED BY THE INDUSTRY	TERMS PREFERRED BY STUDY RESPONDENTS
Employee; Plan participant; Participant; Account holder; Member; Investor; Customer; Client; Saver; Associate	Employee (**19%**) Plan participant (**19%**)
Employer match; Company match; Employer contribution to your retirement; Amount your employer adds to your retirement savings; Matching what you save; Match	Employer match (**32%**)
Contribution rate; The portion of your paycheck you choose to automatically deposit in your retirement account; Retirement savings percent (or rate); Savings rate; Deferral rate	Contribution rate (**43%**)

Source: *"Boosting the effectiveness of retirement plan communications,"* Empower Institute, Jan. 2019.

"Even small tweaks to how the language is used and presented can help break down complex retirement industry terms and make them much more user friendly and understandable for plan participants."

groups that measured emotional responses to language used in participant communications along with commonly used phrases, testing different versions to uncover what works and why. The focus groups were followed by a survey of more than 800 large-plan participants of various ages, genders and income levels to corroborate the results and obtain additional feedback.

"Our research found that many participants find their retirement plan to be confusing and wish for clearer language to help them better understand their plan's design, investment menu and post-retirement options," explains John Galateria, Managing Director and Head of North America Institutional at Invesco.

In the resulting white paper, "ReDefined Contribution Plans," Invesco provides specific examples of DC plan language that participants found confusing and offers preferred terms to use to drive positive behavior.

'Free Money'

When participants were asked the best reason to take advantage of their employer's matching contribution, nearly 40% of respondents preferred "the match is free money," while 32% preferred "the match allows me to invest more in my 401(k)."

Among the generations, the term "free money" resonated the highest with Gen Xers at 41%, followed by Baby Boomers (37%) and Millennials (34%).

In contrast, only 23% of participants preferred the concept that not contributing enough to take full advantage of the match is like "leaving money on the table."

When asked how they would prefer their employer communicate the benefits of a match, 56% of respondents preferred the phrase, "With our company match, we can significantly increase the total amount you can put away." By comparison, 44% preferred, "The company will match a portion of your contribution each year."

Ultimately, Invesco emphasizes that, when describing the benefit of the company match, personalized language that ties back to a "positive, aspirational goal of a comfortable retirement" resonated with all ages and can help drive higher contribution rates.

TDF Descriptors

The study further examined language the industry uses to define target date funds (TDFs) and what the participant actually hears and/or understands. The results suggest that a focus on plain English, a positive approach and a sense of personalization are critical.

When describing TDFs, the paper notes that all ages gravitated to descriptors of an investment that is "managed for you" and designed to help you "achieve your goals." Using personalized language to explain how TDFs work may help combat their purported misuse, according to Invesco.

Nearly half (48%) of survey participants believed the best reason to put their retirement savings in a single TDF – versus investing in additional options – was due to the TDF's description of "having a customized strategy to help you balance growth potential and risk tolerance as you get closer to retirement." Invesco notes that this description resonated overwhelmingly with all age groups and seemed to best explain the fund's intent.

"Glide path" was another commonly used, but misunderstood, term – ranking the lowest, at 4% of all descriptors understood by participants. By contrast, "risk-reduction path" resonated the highest with participants, at 40%.

As for addressing risk within the context of a TDF, 61% of participants preferred the more positive phrase, "stay on track to achieve my goals" versus "managing risk."

When asked whether they would rather invest in a "target date" or "target risk" fund, participants were near evenly split, with 52% preferring "a target date fund based on the year I want to retire" versus 48% preferring "a target risk fund based on my risk tolerance."

Overcoming Math Anxiety

While much has been said of the need to provide participants with less jargon and more readily understandable information, a specialist in retirement education and employee benefits communication suggests that something else is in play – math.

Dennis Ackley of Ackley Associates certainly does not argue against efforts to simplify the wording and content of materials concerning retirement plans. "In basic 401k information, investment jargon needs to be eliminated or clearly defined repeatedly. If employees don't understand the words in 401k meetings or materials, not much learning will ensue," he explains in a recent blog post. But that is not enough for everyone, says Ackley. "So what about employees who don't understand the math your 401k educator is using? Math illiteracy might be a greater learning obstacle in 401k ed than jargon," he says.

In "Math Without Meaning: A Hidden Flaw in 401k Education," Ackley argues that certain math skills are central to successfully participating in a 401(k) plan and maintaining an account. If employees are to be successful, he says, they must know how to:

- create a realistic estimate of the amount of money they'll need to pay for the lifestyle they want during retirement;
- determine how much money they need

to contribute to build their account,
- invest their account to supplement its growth, and
- make periodic withdrawals in order to have the income they want, while also lasting through their lifetime.

Disparity in Understanding

There are a variety of reasons that math is an obstacle to some participants' understanding of retirement-related materials and their ability to successfully manage their retirement accounts.

Ackley observes that industry stakeholders "already know or readily learn" the math involved in 401(k)s. They may suffer from "the curse of knowledge," he says, which creates a lack of understanding regarding how anyone could find basic math hard, nor how the math involved in 401(k)s could be an obstacle to participants.

But, says Ackley, the U.S. is rife with poor math skills. "Unless your workforce consists only of math majors and math lovers, there's a good chance you've got some math-challenged 401k participants. America is full of them," he writes.

Equation for Improvement

Ackley suggests there are some steps that can be taken to improve the situation:

1. Convince those who are conversant in math and its application to retirement plans that there really are people who do not share their skills.
2. Suggest an approach to retirement plan education that focuses on who will not attend a basic presentation or will not visit a related website.
3. Enlist the help of a retirement plan provider.
4. Make sure that educators making presentations to employees understand that many of them may be math-challenged.
5. Audit materials to be presented at employee education sessions, to make sure employees will readily understand them.

"All employees – not just the number-lovers – deserve a 401k education that will help them learn how to use a 401k successfully," asserts Ackley.

In a Nutshell

Words can be informative and engaging, but they can also leave plan participants feeling uncomfortable, overwhelmed and confused.

"For employees choosing savings strategies for retirement and trying to make sure they'll have enough to live on, the stakes are high. It's important for financial providers and employers to know what employees understand and how best to communicate with them," Empower emphasizes. "By providing clear information via the methods your employees prefer, you can help them be well-informed about their options and confident in their decisions."

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TOUR GUIDE

The new NAPA-Net
– a 'virtual' tour

By Nevin E. Adams, JD

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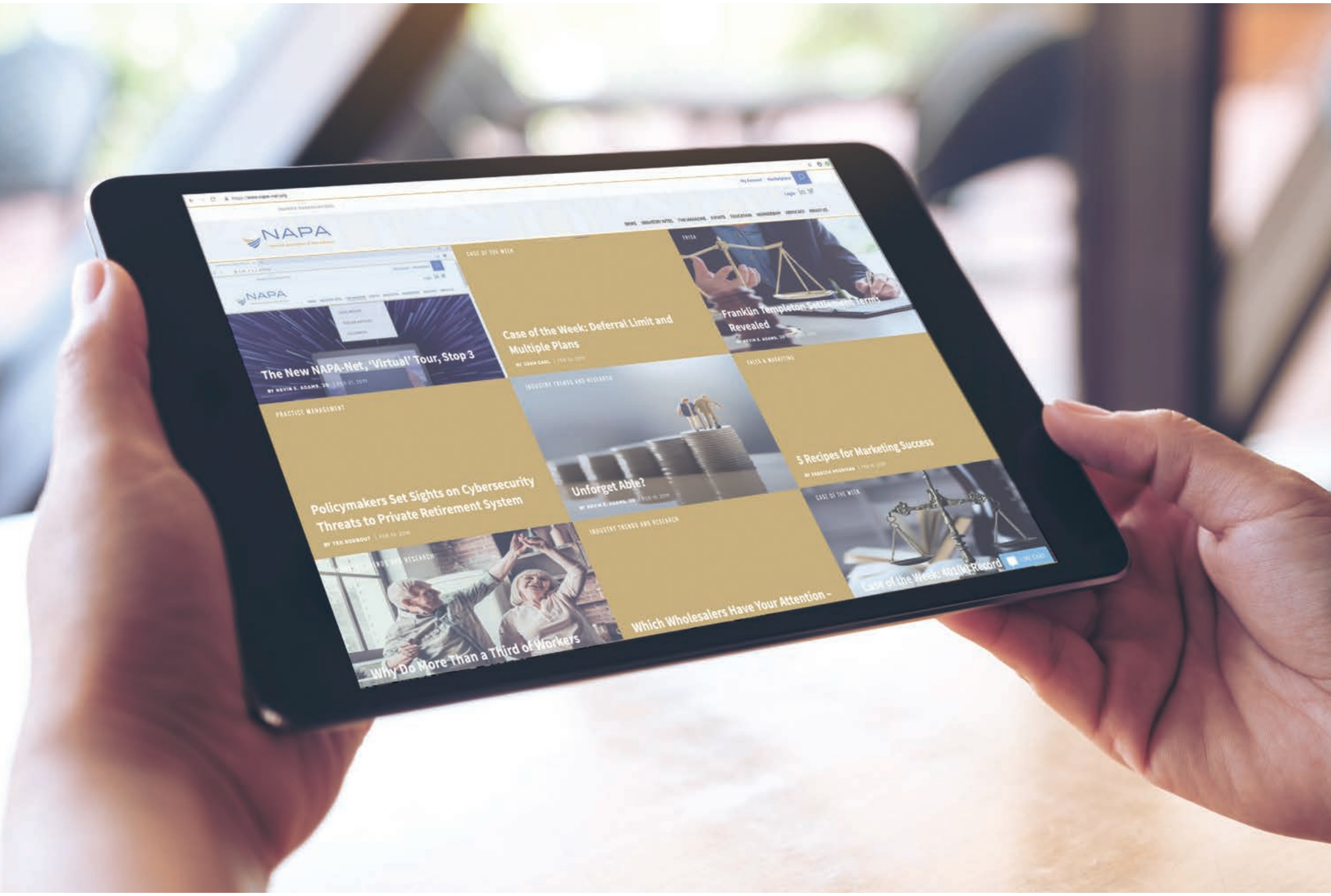

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In mid-February we launched a new NAPA-Net. The new website is cleaner, more modern, and certainly better when viewed on a mobile device, as a growing number of NAPA-Net readers do.

While we have retained nearly all of the resources previously available on the old site, we have done some reorganizing and retitled some of the access tabs that we hope will make it easier for you to find relevant information. However, that may affect bookmarks that you may have established to sections of the old site.

> “Now more than ever, NAPA is the strong, clear voice of the retirement plan advisor in Washington – and the only voice exclusively dedicated to the perspectives and interests of retirement plan advisors.”

You'll note the addition of “related” stories at the bottom of our news articles that can help you delve deeper on areas of interest, and in the months to come, we will be gradually introducing additional features and options.

If you haven't yet had a chance to check it out, please do – and to help you find your way around, join us on this “virtual” tour.

NEWS

Most readers rely on “the daily” NAPA-Net to curate and thus highlight the most important information each day. But sometimes you're looking for a particular article, and sometimes you're interested in specific information on a particular topic. And sometimes you're just trying to find an article written by a specific individual (like yours truly). The new NAPA-Net can help you with all three.

If you mouse over the “News” tab (see below), you'll notice three sub-tabs: news archive, browse topics, and contributors.

- **News archive:** Provides a chronological list of articles. This is the quickest way to find a recent article.
- **Browse topics:** Every article we produce for NAPA-Net is tagged according to specific keywords. These keywords help refine search results, and search engine optimization (SEO), but they are also used to group information in certain key topic areas, specifically “Managing a Practice,” “Plan Optimization,” “Sales & Marketing” and “Technical Competence,” with a series of sub-topics under each. So, if you're looking for marketing ideas, plan-design insights, or tips from behavioral finance – this is the place to go.
- **Contributors:** NAPA-Net and our readers have always benefited from an array of perspectives from the industry's leading minds and voices. Got a favorite author? Missed last week's column? Those who contribute currently are listed here, with a convenient link to all the posts they have contributed to NAPA-Net.

INDUSTRY INTEL

Our expanded “Industry Intel” tab brings together a wide-ranging assortment of materials that summarize the latest industry developments – what's happening, and who's making it happen.

This is where you'll find:

- NAPA's industry standard-setting **Industry Accolades:** our lists (current and historical) of NAPA Top Women Advisors, NAPA Top Young Retirement Plan Advisors (“young guns”), NAPA Top DC Wholesalers (“wingmen”), and our newest recognition, NAPA Top DC Advisor Teams and Multi-Office Firms.
- **Vodcasts:** a new NAPA-Net feature, with insights from some of the industry's leading voices.
- **Executive Interviews:** perspectives from thought leaders and executives about the trends that are shaping our industry and your practice.
- **Summit Insider:** a unique survey of more than 500 retirement plan advisor attendees of the NAPA 401(k) Summit on the latest trends in plan design, what's hot – and what's “over-hyped.”

More than that, here you'll also find easy access to:

- The annual IRS contribution and benefit limits.
- Reference materials related to specific “hot topics,” including participant outcomes, state-run auto IRA plans for private sector workers, and developments regarding the fiduciary rule(s).
- NAPA's Black Book: the ultimate retirement plan advisor guide to firms, products and services that can help you grow and expand your practice.
- Small plan recordkeeping platform assessment tool: developed by a special NAPA task force, this template was designed to make it easier for advisors working with smaller plans to obtain a consistent, apples-to-apples comparison of service features from 401(k) recordkeepers.

> "OUR GOAL IN EVERYTHING WE DO IS TO AID YOUR WORK IN PROVIDING OUTSTANDING RETIREMENT PLAN SERVICES TO THE AMERICAN PUBLIC, AND THIS WEBSITE UPGRADE SHOULD DO JUST THAT."

THE MAGAZINE

It's pretty normal for magazines to expand into a website. But NAPA-Net did just the opposite; we actually had a website (and email newsletter) before we had a magazine.

And while there's certainly carryover between the information on the website, and what finds its way into *NAPA Net the Magazine*, the latter has unique content as well. Unique stories, expanded coverage, and a slate of industry expert columnists.

From the new NAPA-Net.org, you can not only access, but download not only the most recent, but our archive of issues going back to the 2013 launch.

Under a separate "Feature Articles" tab, you can access our… feature articles. And you'll never guess what you'll be able to access under our "Columnists" tab.

That's right – with the new NAPA-Net.org, you get the best of both our online and traditional media products!

EVENTS & EDUCATION

Two of the most popular areas of the NAPA-Net website (besides the news content) are our "Events" page and the "Education" tab. The former is a quick way to check in on upcoming NAPA-Net events – both to register to check out and save the dates for future events (like the NAPA DC Fly-In Forum).

As for Education, the growing number of advisors with a NAPA credential or designation, be it:

- the long-standing Qualified Plan Financial Consultant (QPFC);
- the newer Certified Plan Fiduciary Advisor (CPFA);
- the brand new Nonqualified Plan Advisor; or
- 401(k) Practice Builder (the sales module for new advisors).

This is where you can find information about your credential status, find out about other education programs and credentials, or access your digital content, online subscriptions and account information.

That's right – all in one handy place.

ABOUT US

You likely know that the National Association of Plan Advisors, an affiliate organization of the American Retirement Association, was created by and for retirement plan advisors. As a NAPA member, you probably also know that while the financial services industry is well represented in Washington by a number of trade associations that weigh in on issues affecting advisors, NAPA is the only advocacy group exclusively focused on the issues that matter to retirement plan advisors. This exclusive focus is what sets NAPA apart.

The "About Us" tab is designed to help you introduce us to your colleagues and co-workers, to profile NAPA's current leadership and leadership council, and to connect you with information regarding NAPA's Firm Partners, the latter through an expanded online version of NAPA's Black Book profiling our Partner Corner.

GET (MORE) INVOLVED

The nation's employment-based retirement system is under attack. Congress is constantly looking for tax revenue at the expense of workplace retirement plans, regulators – both federal and state – often embrace rules that are seen as protective, but actually undermine retirement savings, while media – even the trade media – often focus selectively on data points that perpetuate the notion of an unresolvable retirement "crisis." That's why, now more than ever, NAPA is the strong, clear voice of the retirement plan advisor in Washington – and the only voice exclusively dedicated to the perspectives and interests of retirement plan advisors. You can find out more about the initiatives under way – and how you can help – under the "Advocacy" tab.

Our goal – in this, and everything we do – is to aid your work in providing outstanding retirement plan services to the American public, and this website upgrade should do just that.

So, c'mon – check out the new NAPA-Net.org! N

DOL Rule Schooled But Never Ruled

The DOL fiduciary rule was supposed to make all-things-retirement better for everyone. Now what?

BY STEFF CHALK

Reflecting on the DOL fiduciary rule, retirement plan advisors mentally compartmentalized the entire multi-year experience somewhere between "a complete waste of time" and "added expense that contributed nothing to plan participants."

Plan advisors spent copious amounts of time touting the arrival of the rule to plan sponsors, discussing how it would ultimately "make things better" for them and their participants.

Seasoned advisors can recall discussing the rule starting in 2010. As the DOL regulatory procress advanced, advisors shared concepts and what they knew about the thinking among DOL officials. As privileged conversation and meetings became public knowledge, advisors had more to share with clients and prospects. This discussion was commonplace in sales presentations and as agenda items discussed during regular Retirement Committee meetings.

Retirement plan advisors were actively sharing that after the implementation of the rule, no fiduciary would need be concerned with an advisor's intent because plan sponsors' and advisors' interests would be aligned. Upon the implementation of the rule, the investment segment of the retirement industry would be transformed, and best interest contracts and disclosures would protect participants and fiduciaries from the vagaries of investment professionals with bad intent. The message would be clear and there should never again be a concern with whose interest was being served in a retirement account.

This message was just what plan sponsors wanted to hear at the time. Implementation of the fiduciary rule would make all-things-retirement better for everyone!

The Rule Flatlines

Some time between March 15, 2018 (when the 5th Circuit Court of Appeals vacated the DOL fiduciary rule) and June 21, 2018 (when the 5th Circuit Court issued a mandate vacating the rule), the "New Fiduciary Rule" became the "Not Fully Implemented Fiduciary Rule."

Was it Worth the Time and Expense?

The answer to that question from most people remains a resounding "No!" There are many investment, broker/dealer, recordkeeping and insurance-based organizations that spent in excess of $10 million apiece to comply with the rule. Many advisor teams and individual RIAs suspended projects to change affiliations or change business models to comply with it. These expenses and rework contributed zero to plan participant accounts. To find any favorable outcome from the Not Fully Implemented Fiduciary Rule, one must look elsewhere.

The Present-day Plan Sponsor

During fiduciary education programs over the last 6 months, I have been informed by plan sponsors that it is uncomfortable to be told "something is going to be better for us" and then learn "we're no longer going to receive what you told us was going to be good for us."

The coming and going of the fiduciary rule has created an entire generation of informed and more responsible plan fiduciaries. Plan sponsors have been awakened, as active participants in a classic loss-aversion scenario with the Not Fully Implemented Fiduciary Rule. (Loss aversion in the form of "losing something of value" is demonstrated as the monkey-and-pieces-of-apple study in the book, *Save More Tomorrow*, by Richard Thaler and Shlomo Benartzi.) N

» Steff C. Chalk is the Executive Director of The Retirement Advisor University (TRAU), The Plan Sponsor University (TPSU) and 401kTV.

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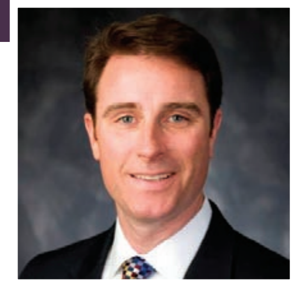
A MUTUAL INTEREST IN FINANCIAL WELLNESS



BOB CARROLL

MassMutual

› *Bob will be speaking at the NAPA 401(K) Summit in April. Please join him on Monday, April 8th during the Breakfast Sessions.*

Employers have long offered workplace retirement plans as a benefit to workers, and one that serves to both attract and retain the workforce they need to sustain their business, particularly in tight labor markets.

To explore these trends further, we recently spoke with Bob Carroll, Head of Workplace Distribution for Massachusetts Mutual Life Insurance Co.

NN: How has the changing landscape impacted an employee's ability to save for retirement?

Carroll: Employees are really crying for help. Surveys indicate that 78% live paycheck to paycheck[1], and 63% of middle-income Americans ($35k-$150k HH income) say they are behind in preparing for retirement[2]. More than half are not only stressed, they expect to have to tap into retirement funds prior to retirement[3].

Employers need to realize there is a large gap between how individuals feel about their finances and where they are. Proximity drives financial decisions, and that means that a lot of those long-term needs like retirement take a back seat to immediate needs.

Once you can help someone better manage their shorter-term financial needs, you can help them find money to save and invest for retirement.

NN: What do plan sponsors need to know about the state of retirement readiness and its impact on their business?

Carroll: Employers are beginning to realize that retirement readiness is about more than just retirement – it's looking at their employees' entire financial picture. And, more than ever before, the interests of the employer and employee are aligned; employees want to retire on their own terms, and for employers, the longer employees must work, the more it impacts their bottom line, in terms of health care, disability claims, worker's compensation. Consequently, today employers are looking at their retirement plans not only as a benefit, but as an investment in their people and in their business.

NN: What should employers look for in an effective financial wellness program?

Carroll: To be truly effective, the program needs to holistically look at each employee's individual needs, and that involves looking at the needs of their current life stage. Financial wellness involves an acknowledgement that there are financial goals that are not only long- but short- and medium-term. Ultimately you need to deliver a solution that can not only analyze those sometimes competing goals for the participant, but develop a plan for what their best next step is based on that.

Now, that's easy to say – but it takes technology and people, whether in-person, on the phone or online, to shape the complex analysis into a simple financial game plan. Not the standard cookie-cutter approach that some rely upon, but one that brings to you real, credible information based on your individual needs, wants and desires.

NN: What's new out there for financial professionals?

Carroll: We've moved beyond financial wellness as a concept. Those who are going to lead are finding that their relationship with recordkeepers is key in order to access the tools and the analytics applied to both the employer and individual employee situations. MassMutual's has introduced a new financial wellness tool – MapMyFinances – that helps employees prioritize their benefits choices based on their personal situation and budget, creating a game plan that updates to keep pace with life changes.

That's why the next 15 years are going to be so exciting in this business. There is no reason we can't do that with financial services in a way that makes it work for all Americans – to provide guidance to plan participants across the board to help them plan and budget for retirement and everything in between – and the easiest way, the best way, to achieve success is through their retirement plan at work.

MapMyFINANCES™

MassMutual is introducing a next-generation financial guidance[4] tool for employees called MapMyFinances. It's a powerful digital planning tool solution, designed to help employees make informed decisions to improve their financial wellness. With minimal effort, MapMyFinances provides a view of an employee's current financial state and generates a financial wellness score based on the information provided.

It also creates a comprehensive game plan for an employee's financial journey through life tailored to their situation and budget. MapMyFinances prioritizes and optimizes financial goals into short-term and long-term categories. And it provides a "to-do" list of simple, actionable ways employees can improve their score.

When combined with MassMutual's flexible plan design and investment options, MapMyFinances gives advisors a holistic approach to delivering solutions to help improve employee financial wellness in the workplace and drive better financial outcomes for their clients

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[1] *2017, CareerBuilder, Living Paycheck to Paycheck is a Way of Life for a Majority of U.S. Workers. http://press.careerbuilder.com/2017-08-24-Living-Paycheck-to-Paycheck-is-a-Way-of-Life-for-Majority-of-U-S-Workers-According-to-New-CareerBuilder-Survey*

[2] *2017, MassMutual Middle American Financial Security Study, 2017. https://www.massmutual.com/~/media/files/MM-Financial-Security-Study-GEN-POP-617*

[3] *2018, PwC, Employee Financial Wellness Survey, 2018. https://www.pwc.com/us/en/industries/private-company-services/library/financial-well-being-retirement-survey.html*

[4] *Guidance may not be available for certain products. Guidance is based on MapMyFinances assumptions and information provided by the employee and the employer.*

Cybersecurity: What's an Advisor to do?

Cybersecurity is much like the rest of the retirement world — all about process.

BY DAVID N. LEVINE

Every week brings a new story of cyber breaches in the retirement industry. Many of these stories focus on service providers such as recordkeepers. Others focus on data and payroll security at plan sponsors. However, not to be forgotten are cybersecurity challenges for advisors.

The Office of Compliance Inspections and Examinations at the Securities and Exchange Commission specifically noted in its 2019 examination priorities that it will continue to focus on cybersecurity practices at investment advisers, with a focus on governance and risk assessment, access rights and controls, data loss prevention, vendor management, training and incident response. Furthermore, now that almost every state has a data breach notification law and with federal legislation at "top of mind" for many members of Congress, the potential responsibilities on advisors continue to mount.

However, recognizing that some advisors are in smaller organizations with limited information technology resources and that cybersecurity is a big step away from the traditional world of retirement advice, what's a plan advisor to do?

As someone who was a geeky programmer as a kid and has always kept one foot in that world, I have three words of advice that may sound familiar: process, process, process. Fiduciary prudence requires process. SEC compliance is a process. And so is cybersecurity.

There are many frameworks for addressing and managing cybersecurity risk and many steps I go through when working with a client – whether an adviser, plan sponsor or other service provider – but it can be distilled to some basic steps. Most importantly, it is important to start with a basic assumption: Bad actors are trying to breach your organization's cybersecurity all the time.

As events affecting even the largest companies have shown, no one is immune to breaches. With that in mind, here are five basic questions to consider as a framework for evaluating your approach to cybersecurity:

1. What data do you have? A key starting point is understanding what data you have – both your own and your clients' – and analyzing what you need and where it is kept (and possibly doing a "data cleanse").

2. What controls do you have on your own data and your clients' data? These controls can be technological limitations, access control, contractual limits on your vendors, and encryption levels, to name a few.

3. What steps have you taken to monitor access to – and attempts to break into – the data you have? These steps can be software driven. They include monitoring controls, agreements with vendors that require data reporting/security flaw reporting, intrusion monitoring and evaluation, and even basic network security processes such as system upgrade standards and testing the ability for others to break into your network (which is referred to as "penetration testing").

4. What duties and obligations do you have to disclose data breaches? Your obligations to disclose breaches can come from many sources, from regulatory and legal requirements to contractual commitments.

5. How do you remedy cybersecurity breaches affecting your business and/or clients? Advisory contracts may provide for liability, and laws and regulations may impose liability for a cybersecurity breach. Cybersecurity insurance can assist with and provide coverage for a breach.

Cybersecurity is an evolving landscape – even for those of us who touch it every day. In the end, however, cybersecurity remains much like the rest of the retirement world – all about process. And as advisors know, an ounce of proactive process truly can be worth well more than a pound of cure. N

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7 Signs of the Times

PSCA's annual 401(k) survey included some valuable insights.

BY NEVIN E. ADAMS, JD

Perhaps the most significant finding of the 61st Annual Survey of Profit Sharing and 401(k) Plans from the Plan Sponsor Council of America (PSCA) – the longest running of its kind – was a record employer contribution rate (5.1% of pay) and a total savings rate in excess of 12%, the highest percentage ever recorded in the history of the survey.

Also noteworthy was that nearly three-fourths (73.1%) of plans now retain an independent investment advisor to assist with fiduciary responsibilities – up from 69.5% in 2016.

But here are some findings from the survey of plan sponsors that you might have missed.

There's less 'waiting.'
Once upon a time, the norm was to have participants wait a year before letting them participate in the 401(k) plan. There was administrative logic in that decision – after all, turnover rates being what they are, why go to the bother of setting someone up to contribute to the plan (and match those contributions) if they were only going to be around for a short time?

But the most recent PSCA survey finds that nearly half (47.2%) of surveyed employers allow for immediate eligibility, and more than half (55.7%) of the largest plans do. In fact, even among the smallest employers, more than a third (35.3%) let workers become participants immediately.

Not to mention that nearly 40% of plans provide immediate vesting for matching contributions.

Sponsors are making savings suggestions.
Nearly a third (31.2%) of plan sponsor respondents say they provide a suggested saving rate to participants, and for more than 4 in 10 that rate is 10% (28.5%) or higher (12.7%).

There's a growing role for rollovers.
Just under 4 in 10 (39.4%) of responding plans say they actively encourage participants to roll assets into their plan (though that was somewhat less common among the largest plans). Little wonder, since more than 95% of 401(k) plan sponsors say they accept rollovers from other plans.

There's a real 'to or through' target split.
More than half (55.4%) say their target-date fund goes "through" retirement, while the rest have embraced a "to" retirement glide path. Wonder if participants in those plans appreciate the difference?

Participant behaviors are being tracked.
Not surprisingly, and for any number of legitimate reasons, contribution levels are the most monitored participant behaviors. The vast majority (85%) of the largest plans do so, as do nearly two-thirds (62%) of the smallest. What's a bit striking is that the second most monitored behavior – and one that held true against nearly all plan sizes (except the smallest, where it was third, after investment allocation) – was loan usage.

Does anything happen with this tracking? About half (45.4%) of plan sponsor respondents said they took action based on what they learned from monitoring participant behaviors.

Many weren't looking to make big changes.
More than a third (34.7%) planned no changes at all, and even more (39.9%) planned only "minor changes to the investment lineup."

Traditional success measures (still) matter most.
While more than three-quarters (84.8%) of the largest plans evaluate whether their plan is successful, the benchmarks used are fairly traditional. Participation rates are the most common (90.8% of all plans), with deferral rates (75.8%) looming large, but a distant second. Fewer than a third (31.4%) use income replacement ratios.

» **NOTE**: There will be a special workshop exploring the survey results and the implications for advisors at the NAPA 401(k) SUMMIT, April 7-9, 2019, in Las Vegas, Nevada.

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Case(s) in Point

The flurry of litigation launched involving university 403(b) plans and a new generation of the so-called excessive fee litigation has finally wound its way through the courts – with settlements, appeals, and even a couple of suits dropped voluntarily. And one key case regarding fiduciary liability looks to be on its way to the United States Supreme Court.

'BRIEF' BOXERS?

ARA backs SCOTUS review of fiduciary breach case

"Fiduciaries that manage employer-sponsored benefits plans will likely get sued no matter what they do." Thus begins a request from a number of retirement industry groups – including the American Retirement Association – that the U.S. Supreme Court weigh in on a controversial fiduciary case.

Said another way, the filing notes that "when the options within those plans go south – or don't go north as quickly as a plaintiff's lawyer would prefer – it is easy (and often lucrative) to claim that it is the fiduciaries' fault: offering different investment options, plaintiffs claim with the benefit of hindsight, would have led to fewer losses or more sizeable returns."

The Suit

The suit, *Brotherston v. Putnam Investments, LLC*, was filed in 2017 by participants in the Putnam Investments plan who alleged that the defendants "loaded the Plan exclusively with Putnam's mutual funds, without investigating whether Plan participants would be better served by investments managed by unaffiliated companies."

That case – which alleged many of the same arguments that have been made in excessive fee/proprietary fund suits – was dismissed in June 2017, only to be revived last October when the appellate court opted to "…align ourselves with the Fourth, Fifth, and Eighth Circuits and hold that once an ERISA plaintiff has shown a breach of fiduciary duty and loss to the plan, the burden shifts to the fiduciary to prove that such loss was not caused by its breach, that is, to prove that the resulting investment decision was objectively prudent."

The Split

Aside from the split in district courts as to where that burden of proof lay – four circuits (the First, Fourth, Fifth and Eighth Circuits) have ruled that an ERISA defendant bears the burden of proof on loss causation, while the Second, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits have left that burden on those bringing suit – in acknowledging that the First Circuit was shifting the burden, Judge William J. Kayatta, Jr. shrugged off arguments that the shift in burden of proof would undermine plan formation and encourage litigation by claiming that "…any fiduciary of a plan such as the Plan in this case can easily insulate itself by selecting well-established, low-fee and diversified market index funds."

The Case

Joining the ARA in petitioning the nation's high court to consider the matter, and taking the side of the Putnam defendants, were the U.S. Chamber of Commerce, the American Benefits Council, SIFMA, the ERISA Industry Committee, the National Association of Manufacturers, and the Business Roundtable. The brief noted that courts are "reluctant to grant motions to dismiss or motions for summary judgment in what they see (rightly or wrongly) as technical, fact intensive cases," and that beyond that the costs of defending themselves are "so high that the game is often not worth the candle, no matter how strong the fiduciaries' defense on the merits."

Ultimately, the brief points out that the *Brotherston* decision will "make a bad situation worse," that "loss and loss causation are essential elements of a claim arising from a fiduciary's alleged breach of duty," and that as such they remain two of the chief bulwarks for stemming the tide of "meritless ERISA litigation."

Instead, the parties argue that the First Circuit's ruling "allows plaintiffs to establish a prima facie case of loss simply by showing, with benefit of hindsight, that the plan's chosen investments did not perform as well as the plaintiff's handpicked comparators over the plaintiff's handpicked timeframe; and it requires defendants to prove that their alleged breaches did not cause those self-identified harms…" and that the elimination of these elements "will harm plan sponsors, plan fiduciaries, and plan beneficiaries" by increasing the "costs of 401(k) litigation generally, leading to fewer 401(k) plans and less generous terms."

Moreover, the brief explains that "by allowing plaintiffs to plead loss as a matter of law by comparing actively managed to

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passively managed funds, it will inevitably lead fiduciaries to prefer passive investment vehicles, reducing plan participants' choices and potentially generating smaller returns."

Other Briefs

Separate briefs in support of the Supreme Court review were also filed by the Investment Company Institute (ICI) and the American Council of Life Insurers (ACLI). The ICI's brief noted that the First Circuit ruling "will inevitably adversely skew fiduciaries' selection decisions," and that the ruling "…gives fiduciaries greater—and potentially overwhelming—incentives to make choices driven by the threat of litigation based on a single point of reference (i.e., index funds), rather than simply by what plan participants' best interests dictate."

Moreover, the ICI brief echoed the comments in the ARA-supported brief that "allowing plaintiffs in ERISA fiduciary breach cases to meet the loss causation element of a fiduciary breach claim solely by comparison to an index-fund-only hypothetical ignores the differences between actively managed investments and index funds," while "assuming that, as a per se matter, a prudent fiduciary would necessarily substitute passively managed funds for active ones no matter the circumstances."

The ACLI's brief affirmed that meritless fiduciary breach lawsuits are on the rise, and that since these claims are "relatively easy for plaintiffs to allege" with the benefit of hindsight, it's critical that courts require plaintiffs to prove that the conduct they challenge caused them losses.

The case is *Putnam Inv., LLC v. Brotherston*, U.S., No. 18-926, amicus briefs 2/15/19.

Stay tuned.

— Nevin E. Adams, JD

PRUDENT MIEN RULES

Prudent process prevails in excessive fee suit

Thanks to a well-documented and prudent process, American Century has beaten back an excessive fee suit brought by a participant in the firm's 401(k) plan.

The trial – which ran for 11 days – consisted of a number of claims common to the dozen or so excessive fee suits brought by participants in the 401(k) plans sponsored by a number of investment management firms. However, Chief Judge Greg Kays in the U.S. District Court for the Western District of Missouri noted (*Wildman v. Am. Century Servs., LLC*, 2019 BL 21670, W.D. Mo., No. 4:16-cv-00737-DGK, 1/23/19) that all of the plaintiffs' claims – breach of fiduciary duty, failure to monitor fiduciaries, and an equitable disgorgement of ill-gotten proceeds – ultimately rested on the notion that the defendants committed a breach of fiduciary duty.

The suit had alleged that "at all stages, both in selecting the Plan's designated investment alternatives and in monitoring those investments, Defendants only considered investments affiliated with American Century, in furtherance of their own financial interests, rather than the interests of Plan participants."

Committee 'Mete-ings'

The defendants here provided committee members with "training and information about their fiduciary duties, including a 'Fiduciary Toolkit,' which outlined their duties as fiduciaries, as well as a summary plan document, and articles regarding fiduciary duties in general." Judge Kays noted that the materials also included a copy of the current Investment Policy Statement, and that "the Committee members read these materials and took their responsibilities as fiduciaries seriously." The committee met regularly three times a year, and had "special meetings if something arose that needed to be discussed before the regularly scheduled meetings." Moreover, the defendants testified that those meetings "were productive and lasted as long as was needed to fully address each issue on the agenda. On average, the meetings lasted an hour to an hour and a half."

Too Many (Duplicative) Funds

With regard to allegations that they offered too many and duplicative funds, Judge Kays noted that "Committee members testified they purposefully offered a large number of investment options because the majority of American Century's employees are sophisticated investors (holding various financial advisor certifications and financial industry regulatory licenses), who preferred the ability to invest their retirement savings more precisely." How sophisticated? Judge Kays wrote that, by the end of 2016, 404 out of the approximately 1,300 plan participants were active employees of American Century who had passed exams allowing them to buy and sell securities.

As for charges that the plan consisted of only American Century funds, Judge Kays

noted that "it contained a diverse array of asset classes and investment styles covering the entire risk/reward spectrum."

"The evidence shows the Committee thoroughly discussed the composition of the Plan's lineup to ensure it covered the entire risk/reward spectrum without duplication," Kays wrote, going on to note that "while the Plan offered a large number of investment options to participants, it was certainly not imprudent to do so given the sophisticated investor base of the Plan participants."

Active Versus Passive

Regarding the decision to provide active, rather than passive investment options, he noted that the Committee members testified they "preferred actively managed funds – the only type of fund American Century offered – because they believed actively managed funds were more responsive to market fluctuations," and that while the committee members were not only "aware of the fee differential between passively and actively managed funds, they believed the benefits outweighed those costs," they also "believed Plan participants preferred actively managed funds, given the employees' enthusiasm in American Century, their investment in American Century products outside of the Plan, and the fact the Committee only once – after this lawsuit – received a question about the lack of passive options in the Plan."

Citing *Deere v. Hecker*, Judge Kays observed that "ERISA does not require a retirement plan to offer an index fund or a stable value fund, and the failure to include either in the Plan, standing alone, does not violate the duty of prudence… Rather, the issue is whether the Defendants considered these options and came to a reasoned decision for omitting them from the Plan."

On that point, Kays noted that the committee "…appropriately considered adding passive options to the Plan… but ultimately decided against it due to the instability in the marketplace." Specifically it was noted that the committee "preferred active management coming out of the financial crisis because financial experts in an actively managed fund could review the actual prospects of the securities being held, and therefore, had a greater ability to manage risk and lessen the effect of downturns in the market."

As for the differential in fees, Kays explained that the committee not only believed that active management's added costs were justified by its performance, but that the human element of active management provided value. "In this case, the Committee monitored the expense ratios of each fund and verified whether their expenses were justified based on performance."

Proprietary Preferences

More than that, Judge Kays noted that the Committee preferred American Century funds because the fund managers were readily accessible to the Committee, and that on several occasions, the Committee heard reports from American Century fund managers about new funds, strategies to combat changes in the market, or management changes in funds suffering from poor performance. "The Committee felt the closeness with the fund managers was advantageous because the Committee (and participants) had an 'insiders' view' into the inner-workings of the fund's investment management team," he wrote.

Beyond that, he noted that "it is not disloyal as a matter of law to offer only

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proprietary funds." Kays went on to explain that "a fiduciary of a plan sponsored by an asset manager is not required to consider competitors' funds if the proprietary funds chosen in the Plan are prudent options," and that "there was significant evidence that other investment management companies administering retirement plans have lineups consisting solely of proprietary funds."

Investment Policy 'Statements'
As for allegations that their actions with regard to fund selection and monitoring were imprudent, Judge Kays noted that the IPS guidelines did not require removal of a fund from the Plan for failure to attain certain metrics, but rather "…provided the Committee with broad discretion, which allowed them to use their investment expertise to determine whether a fund's long-term performance goals could still be achieved despite its underperformance over a specified period." Nor was this an accident. Kays explained that the committee members believed this was preferable because "an IPS that mandated removal of investments that underperformed their benchmarks would be undesirable in that it would always require removing a fund at its low point, incurring a loss, and preventing participants from taking advantage of any subsequent improved performance."

Ultimately, Judge Kays concluded that "the record and testimony demonstrates Committee members made careful investigations of investment decisions and acted in the best interests of the Plan participants. Plaintiffs presented no emails, documents, or testimony suggesting that Committee members placed American Century's interests before Plan participants. Not only did the Committee members truly believe in the quality of American Century's funds, but the Committee members believed having American Century funds was more beneficial to Plan participants because the participants were familiar with the funds offered by American Century, had the ability to more closely monitor their investments, and received direct access to fund managers for consultation." Moreover, he noted that "the Committee had no particular incentive to 'push' American Century's funds" since the plan's investments in American Century funds were only 0.35 percent of all American Century's assets under management, which he described as "a drop in the ocean of assets under American Century's management." Nor had the plaintiffs presented any evidence that any of the Committee members benefited in their role as American Century employees based on the Plan's lineup or performance.

Watch, Listed
Judge Kays noted that while the plaintiffs had an issue with the fact that certain funds remained on the Watch List for many quarters despite their poor performance compared to similar funds – but commented that "a fund's rate of return is only relevant in so far as it suggests the Committee's decision-making process was flawed." To that end, he wrote that committee members explained that "removing funds from the Plan was very disruptive to Plan participants, and the Committee was hesitant to remove a fund simply because it had not performed well in the short term."

Further, Judge Kays noted that although the plaintiffs have alleged the defendants acted imprudently by retaining funds with excessive fees in the plan, but cited precedent in cautioning that "[f]ees, like performance, cannot be analyzed in a vacuum." Moreover, he noted that the Plan's fees ranged from 4 to 158 basis points, similar to those approved of by other courts, "which suggests the fees were not excessive," and that for "a majority of the time, the expense ratios for the funds were below the 50th percentile of the funds in their peer groups." Moreover he explained that from 2014 on, the Committee received and reviewed a report containing each fund's expense ratio compared to mutual funds in the same category, and that, from 2017 on, the Committee also received and reviewed information regarding the funds in the Plan with the median expense ratio of fund within the same Morningstar category. "None of this demonstrates an imprudent process," he wrote.

Revenue Sharing
Another issue raised by plaintiffs was that the Plan did not offer revenue sharing rebates that were provided to other Plans with American Century funds – and had argued, citing the case of *Tussey v. ABB, Inc.* that it was imprudent per se to fail to negotiate a rebate back to the plan participants. "That is not so," concluded Kays, noting that, "In this case, American Century paid the recordkeeping costs, and Plaintiffs produced no evidence that such rebates were available and would have been offered to the Plan prior to 2018."

Loss 'Leanings'
While Kays determined that since there was no breach of fiduciary duty, he did not need to determine the issue of losses to the plan – but outlined its reasoning if that had been an issue "to aid in any appellate review." In essence, Judge Kays determined that the plaintiffs' calculations "did not use suitable benchmarks and relied on unfounded assumptions." Judge Kays explained that, "In this case, where the Plan's philosophy and investment strategy was so dissimilar to the indexes Dr. Pomerantz chose, his choice of indexes is fatal to his analysis, and by extension, Plaintiffs' *prima facie* case of loss. Moreover, nothing in *Brotherston* supports that a loss may be shown by comparing alleged imprudent investments to funds that cannot be said to be prudent."

Summarizing the court's findings, Kays noted that, "After carefully considering all of the evidence presented at trial, the Court finds Plaintiffs failed to prove Defendants breached any fiduciary duty to the Plan participants. Accordingly, the Court finds in Defendants' favor on all counts and claims."

What This Means
The headline says it all – a prudent process prevails. Here many of the allegations that have been widely made in these excessive fee cases were refuted by testimony and documentation that revealed the kind of thoughtful, ongoing, due diligence process that plan fiduciaries are often counseled to undertake.

Many of these cases are still ongoing, or have been settled prior to trial – in fact, this is only the second case filed since 2015 to go to trial. Last year, Putnam Investments LLC defeated similar claims at trial, only to see that ruling by the district court overturned on appeal. However, as noted above, that decision has been appealed to the U.S. Supreme Court.

— Nevin E. Adams, JD

HIGH HURDLE?

Stock suit can't clear 'virtually insurmountable' standard

Exxon Mobil has prevailed a second time in fending off a suit that had alleged it imprudently not only kept, but continued buying employer stock when officials knew a drop in value was imminent.

In this case, the plaintiffs had alleged that Exxon's public statements about the company's financial position were "materially false and misleading" because they failed to disclose that Exxon's reserves had become impaired due to: (1) losses at Exxon's Canadian Bitumen operations; (2) the proxy cost of carbon, which incorporated the future effects of global climate change; and (3) declining oil prices. This in a plan where Exxon stock represented the single largest holding, worth "approximately $10 billion." The plaintiffs further alleged that the Exxon plan purchased at least $800 million of Exxon stock during the Class Period.

The court had previously dismissed the complaint "…because the Plaintiffs failed to meet the very high pleading standards established for this type of claim," noting that they failed to "allege special circumstances that would make the market price unreliable" as a gauge of value, and that "the alternative actions proposed by Plaintiffs were not so clearly beneficial that a prudent fiduciary could not conclude that it would be more likely to harm the fund than to help it," the standard established in *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. ___, 134 S.Ct. 2459 (2014). By way of further clarification, Judge Keith P. Ellison of the U.S. District Court for the Southern District of Texas noted that this court in particular had previously determined that "courts have repeatedly found that early, corrective disclosures do not meet the alternative action standard of a duty of prudence claim."

'Refrain' Refrain?

The plaintiffs argued that Exxon defendants violated their duty to plan participants because they knew that Exxon's stock prices were artificially inflated and yet continued to invest in Exxon stock. Plaintiffs allege one alternative action that Defendants should have taken: "Defendants should have sought out those responsible for Exxon's disclosures under the federal securities laws and tried to persuade them to refrain from making affirmative misrepresentations regarding the value of Exxon's reserves."

In evaluating the applicability of those claims, Judge Ellison noted that generally, ERISA fiduciaries may prudently rely on the market price, but that when it is alleged that defendants violated the duty of prudence on the basis of non-public information, "the plaintiffs must plausibly allege an alternative action that the defendant could have taken that a prudent fiduciary in the same circumstances would not have viewed as more likely to harm the fund than to help it" – and that that alternative action must have been consistent with securities laws. All this a burden that Ellison acknowledged that the Fifth Circuit had said was "significant," going on to note: "As this Court wrote recently, the Court 'is not aware of any post-Amgen case in which a plaintiff has met this significant burden.' The standard is 'virtually insurmountable.'"

Silent 'Screen'?

Ironically, the reality of the drop in the publicly traded stock price undermined the plaintiff's argument here, with Judge Ellison explaining that in its prior ruling, the court found that "the risk that the stock price would drop, lowering the value of the stock already held by the fund, could have convinced a prudent fiduciary that publicly disclosing the negative information would do more harm than good to the fund." As for the notion that convincing those touting Exxon's virtues to be silent on the subject, Judge Ellison wrote "as other comparable companies made corrective disclosures, remaining silent may have communicated to market investors that Exxon was facing the same troubles, which would have had much the same outcome as a corrective disclosure."

Ultimately, Judge Ellison determined that the plaintiffs here "still cannot meet the Fifth Circuit's heightened pleading standard," and that the Court cannot say that attempting to prevent Exxon's alleged misrepresentations would have been "so clearly beneficial that a prudent fiduciary could not conclude that it would be more likely to harm the fund than to help it."

Dismissing the claim, Judge Ellison wrote that, "Thus, Plaintiffs' Second Amended Complaint does not show that a prudent fiduciary could not conclude that remaining silent could have resulted in a drop in stock prices that would have done more harm than good to the Plan," and that "although Plaintiffs argue that the drop would have been minor and temporary, the Court has already rejected that argument as inappropriately relying on hindsight."

All that said, he put some boundaries around his ruling, noting that, "It does not decide whether Exxon or any of its affiliates engaged in false advertising, concealed negative financial or environmental information, or contributed to climate change," but that rather it "decides only the issues raised by Defendants' Motion to Dismiss the Second Amended Class Action Complaint in this ERISA action."

— Nevin E. Adams, JD

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NAPA'S INDUSTRY LISTS

NAPA'S UNIQUE LISTS HIGHLIGHT FOUR 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, our Top DC Advisor Teams 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 four lists on the NAPA Net portal and in the *NAPA Net Daily*.

NAPA YOUNG GUNS — TOP PLAN ADVISORS UNDER 40

Where is the next generation of plan advisors coming from?

To answer that question, NAPA set out to find the top young advisors — the profession's "Young Guns." The result of was our list of the "Top Retirement Plan Advisors Under 40," first published in 2014.

NAPA TOP WOMEN ADVISORS

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Sure, we know it's not just about the numbers – but the reality is that advisors are having a huge impact every single day, not only on the quality of retirement plan advice, but in building a more financially secure retirement for millions of Americans.

NAPA's Top DC Advisor Teams acknowledges the advisor teams that are responsible for at least $100 million in defined contribution plan assets.

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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. Our first annual Top DC Wholesalers list, published in March 2014, quickly became an industry staple.

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QUESTIONS ABOUT THE PROCESS, TIMING, OR ELIGIBILITY FOR THE LISTS SHOULD BE DIRECTED TO NEVIN ADAMS AT **NEVIN.ADAMS@USARETIREMENT.ORG**.

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DROP 'CROP'?

Two excessive fee suits dropped

In the space of three weeks in February, two excessive fee suits against the fiduciaries of a two different university 403(b) plans were dropped – though the same law firm was involved.

The original suit had been filed by two participants on behalf of some 4,000 participants in the 403(b) plan of Long Island University. The plaintiffs claimed that over the past six years the plan had paid "more than two million per year in recordkeeping, distribution, and mortality risk fees (a.k.a. 'administrative fees')" that the suit claims were "roughly ten times what they should be" – and, perhaps needless to say, "grossly excessive."

'Tethered' Call?

The plaintiffs took issue with the fact that the administrative fees paid to TIAA by the plan "are tethered not to any actual services it provides to the Plan, but rather to a percentage of assets in the Plan." In colorful language in the May 2018 suit, the plaintiffs quoted a commentator who "likened this fee arrangement to hiring a plumber to fix a leaky gasket, but paying the plumber not on actual work provided but based on the amount of water that flows through the pipe."

The suit connected itself to "18 separate lawsuits pending in federal district courts around the country," though acknowledged that this one was "narrower in scope." Still, the plaintiffs alleged that TIAA "exploited its rich heritage of being a non-profit, low-cost financial services provider and duped universities into excessive fee arrangements." But then, they noted that "it appears TIAA is willing to meaningfully reduce its fees if universities will just ask." However, "ask" in this case apparently meaning sue, since by reference they cited the $6.5 million settlement in just such a case by the University of Chicago about the time that this suit had been filed.

Now – just like the case against the University of Rochester dropped less than 3 weeks earlier, this suit was also voluntarily dropped by the plaintiffs with prejudice, "with each party to bear its own fees and costs."

The attorneys for the defendants in this case (*Mulligan v. Long Island Univ.*, E.D.N.Y., No. 1:18-cv-02885-ERK-SJB, notice of voluntary dismissal 2/8/19) were Mayer Brown LLP – as they were in the University of Rochester case. The plaintiffs here were represented by Sweet Law Firm PC, Stull Stull & Brody, Zaremba Brownell & Brown PLLC, and Carlson Lynch Sweet Kilpela & Carpenter LLP. The latter also represented the plaintiffs in the University of Rochester suit (and incorporated some of the same language in their suit here).

Nearly two dozen institutions of higher learning have been hit with class suits alleging breach of fiduciary duty/excessive fees since August 2016. St. Louis-based Washington University, New York University, the University of Pennsylvania and Northwestern University have prevailed in making their cases in court. This case is the second to be voluntarily dismissed by the plaintiff. In addition to The University of Chicago, Duke University also settled their suit rather than go to trial, while New York University took their case to court and won.

— Nevin E. Adams, JD

Polling Places

For years, the issue of what to do with ex-employee accounts has festered with plan sponsors. Most seem to be inclined to dispense with those accounts alongside the termination of employment. But a new employer survey paints a different picture. We asked NAPA-Net readers to weigh in.

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'KEEP' SAKES

Mixed messages on keeping ex-participants' accounts

A recent survey of large plan sponsors finds that, for every employer that prefers terminated participants leave the plan, there are more than six that want them to leave their balances behind. But that's not exactly been the experience of NAPA-Net readers.

In response to a reader poll conducted in late January, just 5% answered unequivocally "yes" – while 16% responded "yes, but only above a certain amount." About 10% said "most do, some don't." On the other hand, 38% said "no," and another third said "some do, most don't."

Ah, but has that sentiment shifted recently? Again, for most apparently not. Half said "no, they've never wanted to keep up with these accounts," though 13% said that there hadn't been a shift because "they've always been willing to keep them." Not that some shifts hadn't occurred. Roughly 24% said that while in the past plan sponsors hadn't wanted to keep the accounts, now they did – and 13% said that while they had been interested in keeping them previously, "now they don't."

'Keep' Sakes

The rationale for keeping these accounts was, of course, varied. The most common (by far – cited by 58%) was a desire to boost assets/reduce fees. Other reasons cited (more than one response was permitted) were:

22% - general ambivalence
19% - path of least resistance/communication at termination
17% - pride regarding plan design/fund options
8% - general paternalism

"They *reluctantly* acknowledge that the ones that remain over $5k boost the plan assets for fee reductions," noted one reader.

"The number one reason they encourage former employees to keep their money in the plan is their extremely low cost investment lineup (w CITs and Stable Value they cannot receive in a retail environment). Also, many participants in rural communities don't have access to fee-only financial planners, and keeping them in the plan helps protect them from the wolves," explained another.

> Fiduciary investment advice that's offered by the plan can be less expensive than a retail investment advisor. This can be an additional reason that sponsors want to keep retirees in the plan."

"Most don't even think about the fee ramifications, as far as I can tell, but occasionally someone does bring it up," observed one reader.

"I think many realize that the buying power in a qualified plan is potentially greater than another vehicle," commented another. "So many that see the plan only as an accumulation vehicle have realized that they can provide distribution options to participants that may be of more benefit to participants in retirement. I think many plan sponsors are missing the other half of the equation."

"Close to paternalism, but more a lack of desire to be heavy handed," said another.

On the other hand, one reader noted that, "Clients think that keeping terminated participants in the plan boosts plan assets and reduces fees. But in practice, having 10 to 30 terms with small balances in the plans doesn't move the needle as to boosting assets enough to reach new breakpoints. It just increases their fiduciary liability to track and provide required notices to these former employees."

Recommend 'Ed'

Their inclinations notwithstanding, I asked readers what they recommended to those plan sponsor clients. Once again, the responses were… varied:

39% - to keep the ones above a certain amount
34% - to let them go
22% - don't encourage them either way
5% - to keep them

By the way, as a point of reference, among this week's respondents, 71% said they hadn't "left" behind an old account, 21% had, and the rest "hadn't yet been an ex-participant."

Reader Comments

We also got some interesting reader comments on the subject – here's a sampling:

"The lost participants become a big problem over time that eats up time and resources."

"Our clients understand that it can help drive pricing down (and in general, our clients have generous plans so the term accounts are sizable). We've pushed the envelope further by now allowing terminated employees to borrow from the plan, something they can't do if they roll to an IRA."

"I think there is a lot of education needed on distribution options, installment payment conversations seem to be picking up but many sponsors and participants are unaware of the options, how do I set it up? What does it cost? How do I get my money, etc.? I am hoping recordkeeper technology will help with this process, e.g. apps, ACH options, streamlined tax notifications, etc."

"Fiduciary investment advice that's offered by the plan can be less expensive than a retail investment advisor. This can be an additional reason that sponsors want to keep retirees in the plan."

"The sentiment evolves to 'get them out of here' as employers become more aware of their ongoing responsibility to terminated employees that still have a balance in their plan."

"Cash-out rules, and keeping up with mandatory distributions is something many plans do not utilize. They have the provision written to cash out participants under $5,000, but don't have the IRA established to facilitate the rollover. Particularly those plans that are bundled, they either need to establish their own IRA (and bear the burden of continuing to locate missing participants), or pay another service provider (like MTC) to accept the rollover assets. Also, many plans that cut checks for participants under $1,000 are just creating stale dated checks (not to mention subjecting the distribution to mandatory withholding). The likelihood of issuing a check that's going to be stale dated is worth evaluating what your process as a Plan Sponsor looks like, and what services providers you can engage to reduce administration."

"Ex-participants have no upside, with perhaps the exception of plans with fixed base fees and large ex-participant balances. Ex-participants pose and administrative burden; keeping track of addresses, annual disclosures, deaths, etc."

"Most employers do not want to even see the names of their previous employees, let alone have to send them statements, notices, and reports. We strongly encourage clients to distribute benefit to former employees as soon as possible."

"The biggest reason we encourage them to have participants take their accounts is because people move so much and it's too easy to lose track of them. They do not keep their addresses up to date."

"The ideal plan design would distribute all participant account on separation. However, ERISA is a factor in dealing with participant accounts. Simply presenting separated participants with their distribution options is the only way to go under ERISA."

"I encourage my clients to force out terms with less than $5,000. It reduces their fiduciary liability as they no longer have to provide required notices to former participants that move and don't bother to inform their former employers."

"The SSA (if they're not on furlough) should start paying attention to those optional code Ds. It's hard to prove to a participant that they were paid out 20 years, six recordkeepers and five TPAs ago."

"The risk of keeping them is not worth any potential rewards…"

"We'd prefer that all former employees take their money out of our clients' plans. In my opinion, the majority of those that don't take their money out of the plan typically don't know what to do with their money or are confused by the forms and notices, so they do nothing. Others are simply lazy."

Thanks to everyone who responded to this week's NAPA-Net reader poll!

— Nevin E. Adams, JD

Regulatory Review

While we (continue to) wait for the Securities and Exchange Commission (SEC) to come back with an updated version of Reg BI, not to mention the Labor Department's possible take on a revised fiduciary rule, the states have been busy, working on their own version(s) of a fiduciary rule, not to mention continued interest in expanding the reach of state-run programs for private sector workers.

EXEMPT 'SHUN'

Silver State fiduciary reg skips over ERISA exemption

Broker-dealers and advisors doing business in Nevada will need to pay attention to newly proposed regulations defining the state's new fiduciary standard – especially since there does not appear to be an ERISA exemption.

Nevada's Office of the Secretary of State, Securities Division, released draft regulations on Jan. 18 based on legislation enacted by the state's legislature in 2017 – the first of several states to do so.

The lack of an ERISA exemption could be problematic not only for advisors, but for the Nevada statute generally, according to a comment letter filed in 2017 by the American Retirement Association, the parent organization of NAPA. That letter included a legal analysis conducted by the law firm of Trucker Huss that concludes that courts would find that the Nevada statute is preempted by ERISA to the extent it seeks to regulate financial advisers who provide services to a retirement plan governed by ERISA, to the plan's fiduciaries and/or to the plan's participants or beneficiaries.

That legislation revised the Nevada Securities Act to mandate that any "broker-dealer, sales representative, investment adviser or representative of an investment adviser shall not violate the fiduciary duty toward a client" imposed by another statute, NRS 628A.010, which imposes the "duty of a fiduciary" on all financial planners. However, the legislation also modified the definition of "financial planner" to remove what had been an exclusion from that category for broker-dealers and their representatives and investment advisers and their representatives.

The 2017 legislation also gave the Nevada securities administrator authority to further define the fiduciary duty by defining certain acts as violations or exclusions from the duty and prescribing "means reasonably designed to prevent" violations of acts defined as a violation of the duty.

In general, the draft regulations state that the obligations to a client imposed by the fiduciary duty includes the time period for which the investment adviser or representative of an investment adviser:

- provides investment advice;
- performs discretionary trading;
- maintain assets under management;
- acts in a fiduciary capacity towards the client;
- discloses fees or gains;
- through the completion of any contract; and
- through the term of engagement of services.

ERISA Preemption?

The ARA previously met with the Nevada regulators and in the aforementioned comment letter made the case that there are strong legal and policy arguments for exempting investment advisory services to ERISA-covered retirement plans and their participants and beneficiaries from the regulations – and that it was the intent of Congress in enacting ERISA to provide a uniform set of national rules and causes of action that should be respected by Nevada in promulgating regulations.

To that end, the letter argued that any Nevada regulation of fiduciary advisory services to employer-sponsored retirement plans and their participants and beneficiaries would not only be preempted

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by ERISA, but that even if the “savings clause” in ERISA’s preemption provision were somehow interpreted to cover the Nevada regulation of these activities, it would still require the matter to be referred to federal court.

Episodic Exemption

Meanwhile, the draft regulations do provide for an “episodic fiduciary duty exemption,” such that the duty owed to the client under the exemption ends once the advice is received by the client, the transaction is complete and the required fee and gain disclosures have been made.

The exemption would continue to apply only if certain other requirements are met, including that the broker-dealer or sales representative does not provide ongoing investment advice, perform discretionary trading for the client or otherwise developed a fiduciary relationship with the client from previous or concurrent services.

Permitted Activities

What’s more, the sale of proprietary products by a broker-dealer or sales representative alone would not be a breach of fiduciary duty per se, as long as they met certain conditions, including that they advised the client that the product is proprietary and advised them of all the risks associated with the product.

Similarly, a broker-dealer, sales representative, investment adviser or representative of an investment adviser who holds or manages a client’s position in cash would not breach their fiduciary duty based on that cash position alone, as long as they advised the client of all risks associated with the cash position and complied with all other applicable regulations.

The proposal further explains that transaction-based commissions for sales also would not be a breach of fiduciary duty, provided that it’s in the client’s “best interest to be charged by transaction as opposed to other types of fees and the commission is reasonable.”

Written comments on the proposal were requested by March 1 – the ARA will be weighing in – and you can expect this to be a subject of conversation at the 2019 NAPA 401(k) Summit.

— Ted Godbout

OH, MARYLAND!

The Old Line State crosses a fiduciary line

Another state has moved to impose its own fiduciary standard with no ERISA exemption.

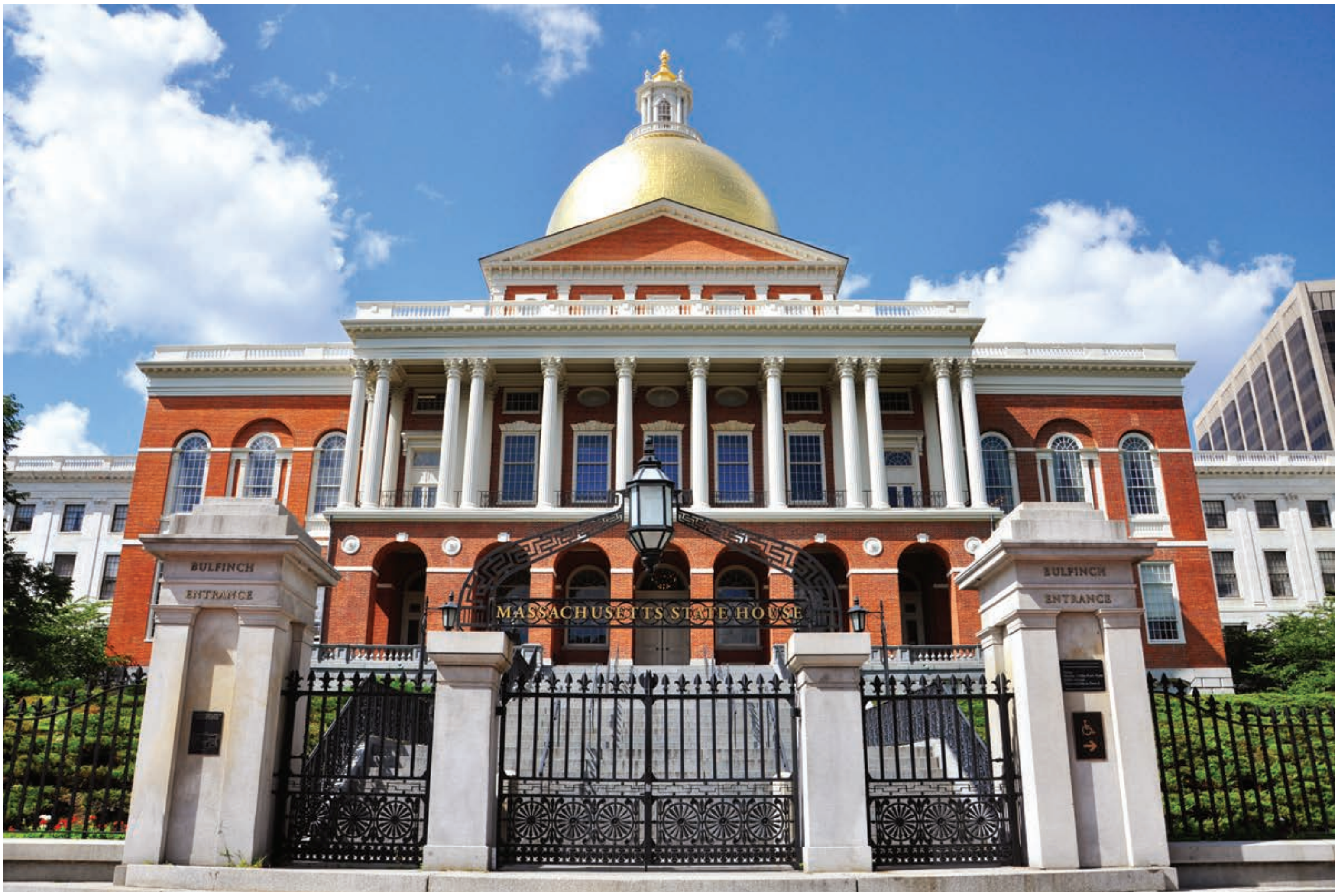
The Maryland legislature aims to implement a state level fiduciary standard through a comprehensive consumer protection bill introduced in early February by State Sen. Jim Rosapepe.

The bill grants authority through the Maryland Commissioner of Financial Regulation to adopt regulations impacting: broker dealers, a broker dealer agent, an insurance producer, an investment advisor, a federal covered adviser and an investment adviser representative. The legislation requires that they now adhere to a fiduciary duty to act in the best interest of a customer without regard to the financial or other interest of the person of firm providing advice.

This directive is very similar to the grant of authority provided to the Nevada Securities Division with regard to their implementation of Nevada’s state-based fiduciary law that was enacted in July of 2017. The proposed rules in Nevada do not exempt any advice given to plan sponsors or participants in ERISA-covered retirement plans. New Jersey is also engaged in a regulatory project that would subject financial service professionals with a fiduciary standard of conduct with respect to recommendations of investments.

The American Retirement Association is actively engaged with these state regulators to inform them that advice to plan sponsor and participants to 401(k) and other tax qualified retirement plans are already subject to a federal fiduciary standard under the Employee Retirement Income Security Act that could come into conflict with these new state standards.

— Andy Remo



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EXPANSION 'TEAM'

Massachusetts lawmakers move to expand Secure Choice, add MEP

Legislation has been introduced in the Bay State that would expand the Commonwealth's auto-IRA program for private sector workers and establish a 401(k) parallel, with an employer mandate.

The first bill, SD 1902, introduced by state senator Patricia D. Jehlen, establishes the Massachusetts Secure Choice IRA savings program and extends the offering of the MA CORE Plan to all employers in the Commonwealth, whereas this was previously only available to non-profits.

The second bill, SD 1858, introduced by state senator Sal N. DiDomenico, seeks to establishes the IRAP Secure Choice Individual Retirement Account Program. But it also would establish the MERP Secure Choice Multiple Retirement Plan – an ERISA qualified MEP. Similar legislation was introduced by Sen. DiDomenico in a previous Congress (2017).

SD 1902

SD 1902 calls for workers to be automatically defaulted into the program at 6% of pay, though they may opt out or change that rate at their choice, subject to IRA contribution dollar limits. The bill authorizes the board of the program to change the default rate at its discretion, as well as the opportunity to implement annual increases in each participant's contribution rate, "by not more than 1% of salary or wages per year up to a maximum of 10%." No employer contributions are required (or permitted).

The proposal calls for keeping the total fees and expenses of the program "as low as practicable and in any event each year not in excess of 0.75 of one percent (75 basis points) of the total assets of the Program," though this limit does not apply for the start-up period of three years beginning with the initial implementation of the program.

The proposal calls for the establishment of rules and procedures governing distributions, "with the objectives of

> Significantly, under this bill the Commonwealth would apply eligibility rules significantly below the current standard of both ERISA and federal tax code of 1,000 hours to 750 hours – potentially wreaking havoc for current ERISA plans (who might then have workers covered by ERISA, but not the state standard)."

maximizing financial security in retirement, helping to protect spousal rights, and assisting Participants with the challenges of decumulation of savings," and grants the board authority, "in its discretion, to provide for one or more reasonably priced distribution options to provide a source of fixed retirement income, including income for life or for the Participant's life expectancy…." The bill also calls for the establishment of rules and procedures "promoting portability of benefits" including the ability to roll program balances to other IRAs or tax-qualified plans, "…provided any roll-over is initiated by participants and not solicited by agents or brokers."

The mandate excludes employers that offer a qualified retirement plan, including 401(k), 403(b), SEP or SIMPLE IRA – or an automatic payroll deduction IRA – at any time within the current or two preceding calendar years. The proposal calls for the program to be administered by a nine-member board, with the state treasurer or their designee serving as chair, and the other members appointed by the governor, the Speaker of the House, and the President of the Senate.

Employer penalties for those subject to the mandate that have not established the program include $250 for each covered worker per year (or portion of year) they were not enrolled.

Furthermore, the bill says that any covered employee or "appropriate official of the State may bring a civil action" to require the enrollment of the worker, and "shall recover such costs and reasonable attorney's fees as may be allowed by the court." Additionally, for each calendar year beginning after the date on which a penalty has been assessed, there is a fine of $500 for any portion of that calendar year during which the Covered Employee continues to be unenrolled without electing out of participation in the Program. Those penalties are waived in circumstances where the employer did not know that the compliance failure existed, and who exercised "reasonable diligence" to meet the requirements.

The bill calls for establishing the program such that individuals can begin contributing no later than Jan. 1, 2022.

SD 1858

Described as "an Act relative to secure choice retirement savings plan," under the legislation an eligible employer is exempted from the program's mandate "to the extent that it offers each of its eligible employees the opportunity to participate in a qualified plan or a payroll deduction IRA."

Significantly, under this bill the Commonwealth would apply eligibility rules significantly below the current standard of both ERISA and federal tax code of 1,000 hours to 750 hours – potentially wreaking havoc for current ERISA plans (who might then have workers covered by ERISA, but not the state standard) – and – designed to be an ERISA qualified plan – triggering concerns about ERISA preemption.

Specifically, it extends eligibility for workers generally to anyone who "for any calendar year has provided (or is expected to provide) 750 or more hours of service to the eligible employer, with eligibility continuing even if service in later years is less than 750 hours," though they would have to be 18 before the beginning of the calendar year.

As for the mandate, the terms of the program are vague – calling for a default automatic contribution rate "for both employers and employees" and a "default escalation of contribution levels," but without specifying the rates or scale of either.

It is paired with a multiple employer plan (MEP) called "MERP," which is designed to be qualified under 401(a) as a defined contribution profit-sharing plan, governed by ERISA, "permitting the voluntary participation of employers with employees working in the Commonwealth," and would allow for employee 401(k) contributions through payroll deduction, as well as employer contributions.

Similarly, the investment of funds with the MEP is outlined only as being "professionally managed" in pooled accounts that could be managed via private sector partnerships, the State Treasurer, or in whole or part under contract with the PRIM Board or private money managers – or both. It would be overseen by a board of seven, which would have the authority to establish "one or more" payroll savings arrangements, employ staff and/or appoint a recordkeeper, investment managers, custodians, trustees, attorneys, etc., and have the authority to make rules and regulations regarding the program – including setting the default rates and escalation mentioned, but not detailed earlier.

As with SD 1902, penalties will be assessed for noncompliance by employers – specifically up to $250 per eligible employee. However, participating employers won't be considered a fiduciary with regard to the operation of the MERP, "except with respect to contribution amounts not remitted in a timely fashion."

With an effective date of Jan. 1, 2020, the legislation contemplates imposition of the mandate three months after the program is opened, though the board is allowed to delay those dates in its discretion.

It's far from certain at this point that either bill will move forward – but these go beyond the state-run IRA design and create mandates for state-run 401(k)s/MEP options that could pose a threat to private sector options.

— Nevin E. Adams, JD

HOUSE 'CALL'

Virginia House considering state-based plan options

Legislation is before the Virginia House of Delegates that would establish the "My Virginia Plan" program, a state-based retirement plan. The bills were prefiled by Del. Luke Torian (D-Dumfries), who introduced them before the new session of the state's General Assembly began on Jan. 9.

H.B. 2431

H.B. 2431 would create a state-based program similar to OregonSaves, the program run by the Oregon Treasury Department that provides retirement benefits for private-sector employees whose employers do not offer a retirement plan. The program, which would be run by the My Virginia Plan Board, would require all private-sector employers, as well as sole proprietors and the self-employed, to offer the program if they do not otherwise have a substitute retirement plan. But the legislation would not impose an explicit financial or tax penalty for noncompliance.

> The program, which would be run by the My Virginia Plan Board, would require all private-sector employers, as well as sole proprietors and the self-employed, to offer the program if they do not otherwise have a substitute retirement plan.

More specifically, H.R. 2431 would:

- allow enrollees to contribute to an account established under the program through payroll deduction;
- require an eligible employer to offer eligible employees the opportunity to contribute to the program through payroll deductions unless the eligible employer offers a substitute retirement plan;
- not require automatic enrollment of eligible employees or enrollees;
- have a default contribution rate, as determined by the Board and promulgated by regulation;
- offer default escalation of contribution levels that may be increased or decreased within the limits allowed under the Internal Revenue Code;
- provide for contributions to the program to be deposited directly with the investment administrator for the program;
- whenever possible, use existing employer and public infrastructure to facilitate contributions to the program, recordkeeping, and outreach;
- not require a participating employer to contribute to the account of an enrollee;
- require the maintenance of separate records and accounting for each account in the program;
- provide for reports on the status of program accounts to be provided to enrollees at least annually;
- allow for an enrollee to maintain an account regardless of his place of employment and to roll over funds into other retirement accounts;
- pool accounts established under the program for investment;
- be professionally managed;
- provide that the Commonwealth of Virginia and participating employers have no proprietary interest in the contributions to, or earnings on, amounts contributed to accounts established under the program;
- provide that the investment administrator for the program is the trustee of all contributions and earnings on amounts contributed to accounts established under the program;
- not impose any duties under ERISA on participating employers;
- keep administration fees in the plan low;
- allow the use of private sector partnerships to administer and invest the contributions to the program under the supervision and guidance of the board; and
- allow eligible employers and participating employers to establish a substitute retirement plan for some or all of their employees.

H.B. 2432

A second bill, H.B. 2432, would also provide retirement benefits for private-sector employees whose employers do not offer a retirement plan. Unlike the plan H.B. 2431 would establish, however, participation would be voluntary for eligible employers. It also would be voluntary for eligible employees.

Also unlike H.B. 2431, the bill would create a plan that was structured in a way similar to the program Washington state began to make available in March 2018. That program is a virtual marketplace in which financial services firms will offer low-cost retirement savings plans to businesses with fewer than 100 employees, including sole proprietors and the self-employed.

H.B. 2432 also would create a My Virginia Plan Board to run the program. It provides that the board would contract with a private entity to assist in carrying out its duties, which would be to:

- ensure that the program provides a range of investment options to meet the needs of investors with various levels of risk tolerance and various ages;
- approve a diverse array of retirement plan options that are available to employers on a voluntary basis; and
- ensure that there are at least two financial services firms offering approved plans.

— John Iekel


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Summit Benefit Solutions, Inc.
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