# NAPAnet the magazine

THE OFFICIAL MAGAZINE OF THE
NATIONAL ASSOCIATION OF PLAN ADVISORS

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# Tax Reform

10 Steps to Better Plan Committee Meetings

NAPA NET THE MAGAZINE • THE 2017 IS TAX REFORM THE ENEMY OF RETIREMENT SECURITY?

# SETTING THE BAR FOR EXCELLENCE

LPL Retirement Partners congratulates the following advisors and associates named to the 2016 **NAPA's Top Women Advisors.**

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401(k) Plan Professionals

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Impact Benefits & Retirement

**Laura Carrera**
Carrera Retirement Company

**Shawna Christiansen**
Retirement Benefits Group

**Barbara Delaney**
StoneStreet Advisor Group

**Janet Ganong**
The Kieckhefer Group

**Addie George**
Plan Sponsor Consultants

**Jamie Hayes**
Fiduciary First

**Cynthia Hodges**
Achieve Retirement

**Jennifer Ingham***
Ingham Retirement Group

**Eva Kalivas**
EPIC Retirement Services Consulting LLC

**Kristina Keck**
Woodruff-Sawyer & Company

**Kathleen Kelly**
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**Ellen Lander**
Renaissance Benefit Advisors Group LLC

**Janine Moore**
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VisionPoint Advisory Group

**Jenna Witherbee**
401(k) Plan Professionals

## Rising Stars

**Robin Coggins**
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**Lauren Loehning***
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* Not affiliated with LPL Financial

Nominees were asked to respond to a series of questions, both quantitative and qualitative, about their experience and practice. Those questionnaires were then reviewed on an anonymous basis by a panel of judges who, over the several weeks, selected the women honored in three categories:

**Captains:** All-stars who are principals, owners, or team captains of their organizations

**All-Stars:** Top producers who have their own practice

**Rising Stars:** Top producers who have less than five years of experience with retirement plans as a financial advisor (some have been working with plans longer, but not as a financial advisor)



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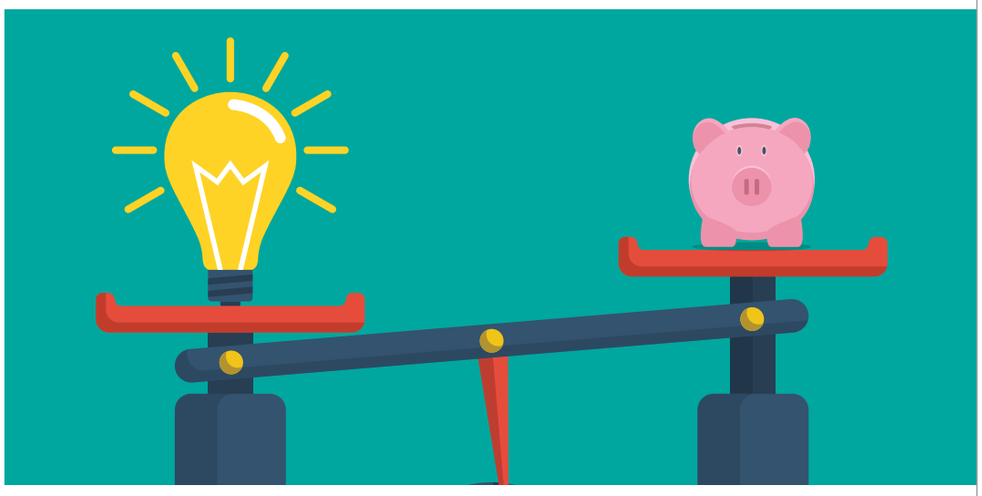
## COVER




## FEATURES



## COLUMNS



NAPA
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**EDITOR-IN-CHIEF**
Nevin E. Adams, JD

**EDITOR**
John Ortman
jortman@usaretirement.org

**ASSOCIATE EDITOR**
Troy Cornett
tcornett@usaretirement.org

**GRAPHIC DESIGNER**
Lisa M. Marfori
lmarfori@usaretirement.org

**ADVERTISING COORDINATOR**
Sydney Henderson
shenderson@usaretirement.org

**NAPA OFFICERS**

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Samuel Brandwein, QPA, CFP, CIMA, CRPS

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# Here We Go Again

## Getting ready for tax reform

Nineteen eighty six was a big year in my life. I got married, hit one of those birthdays with a zero in it, watched my then-hometown Chicago Bears dominate Super Bowl XX, and picked up and moved my new bride (and our three cats) several hundred miles to take on a new job heading up a recordkeeping operation.

Before the end of that year, that recordkeeping operation (and, thanks to a recent bank acquisition, the seven different platforms it was running on) would be struggling to understand, implement and communicate a wide array of sweeping changes associated with the Tax Reform Act of 1986. Even though it came during a period when tax code changes (ERTA, TEFRA, DEFRA, REA) were being thrown at us about every 18 months on average, it's still difficult to absorb the scope and breadth of the work it took to implement the changes that came with TRA '86.

For all the work that had to go into complying with the new regulatory regimen that came with TRA '86, its real impact would come in the years that followed, with the newly established 402(g) limit (back then we simply called it the $7,000 limit), not to mention the multiple iterations of the nondiscrimination testing that often produced problematic refunds for the highly compensated group.

There's little question that those changes (and others) did what they were designed to do — generate additional tax revenue by limiting the deferral of taxes. But what did those constraints do to retirement security? To new plan formation? Much of that damage wasn't repaired until — well, 2001, with enactment of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA).

> "For those of us who remember 1986, the references to TRA '86 as a possible model for tax reform in 2017 are a bit chilling."

For those of us who remember 1986 — or perhaps the years in between TRA '86 and EGTRRA — the references to TRA '86 as a possible model for tax reform in 2017 are a bit chilling. Because when it comes to winners and losers in tax reform, more often than not, not only has retirement come out on the short end, it has routinely been forced to help pay for the short-term expediency of lower tax rates. And it feels a bit like having to bail out your brother-in-law with a loan from your 401(k) — again.

It calls to mind the lyrics of a song that was made popular by Whitesnake the year TRA '86 went into effect:

*I don't know where I'm goin'*
*But I sure know where I've been.*
*Hanging on the promises in songs of yesterday.*
*An' I've made up my mind, I ain't wasting no more time.*
*But here I go again, here I go again.*

For months now we've been talking about tax reform and the potential implications for retirement policy. It will be a big focus at this year's NAPA 401(k) SUMMIT — and likely at this year's NAPA DC Fly-In Forum as well. The reason should be obvious: If you're going to lower income tax rates, taxes on investments, and lower corporate tax rates — and be revenue neutral — the money to offset those tax reductions has to come from somewhere. And traditionally, retirement plans — specifically the tax preferences that foster the growth and expansion of retirement plans and retirement savings — have been a "go to" funding source, perhaps never more so than a generation ago with TRA '86.

The road ahead could be rocky, particularly as it comes in the wake of the application of the Labor Department's fiduciary regulation, whether delayed or not, or perhaps modified. It's said that being forewarned is forearmed, and we've certainly worked to do that over the last several months. You'll want to stay connected on these issues in the weeks and months ahead. This year's NAPA 401(k) SUMMIT is a great place to start, if you haven't already, and we're already making preparations for the NAPA DC Fly-In Forum.

Get informed. Get involved. Before it's too late.

NEVIN E. ADAMS, JD » Editor-in-Chief
nevin.adams@usaretirement.org

# A Time of Transition

## How will our industry be impacted by tax reform and other unfolding developments?

BY SAM BRANDWEIN

I have been in this industry for 30 years and I can't recall a period in which retirement plan advisors have had to contemplate and prepare for the impact of so many significant developments at the same time. Things like:

- **State-Run Retirement Plans: Coverage issues** — more accurately, too many Americans not covered by workplace retirement plans — have prompted a number of states (and, more recently, municipalities) to roll out their own workplace retirement initiatives. We know that middle-income workers, given an opportunity to save at work, are 15 times more likely to save versus saving on their own. Will that hold true for these state-run designs? What will the overall impact be?
- **Multiple Employer Plans (MEPs):** Concerns about coverage may also lead to game-changing new rules for multiple employer plans (MEPs), although the new version may go by a slightly different name (pooled employer plans, or PEPs).
- **Litigation:** Every week seems to bring a new story (or stories) in the news regarding retirement plan litigation.
- **Tax Reform:** And then there is potentially the most significant development of all — tax reform. As I write this in early January I can only speculate as to the likelihood of tax reform — considered to be high, given the recent election results — and the impact on retirement plans, where there is cause for concern based on past history.

For example, the last time a major overhaul of the tax code occurred — the Tax Reform Act of 1986 — elective deferral limits were reduced by 75%. More recently, a draft tax reform plan released in early 2014 by the then-House Ways and Means Committee Chairman, Dave Camp, would have (among other things) frozen retirement plan limits for a decade (meaning no more annual cost of living increases). Furthermore, the ability to make pre-tax contributions would have been meaningfully reduced. Think it can't happen again?

> "This time of transition makes it all the more important for NAPA members to be engaged."

NAPA and its parent association, the American Retirement Association (ARA), are dedicated to protecting and preserving the private retirement system as all these unfolding developments play out.

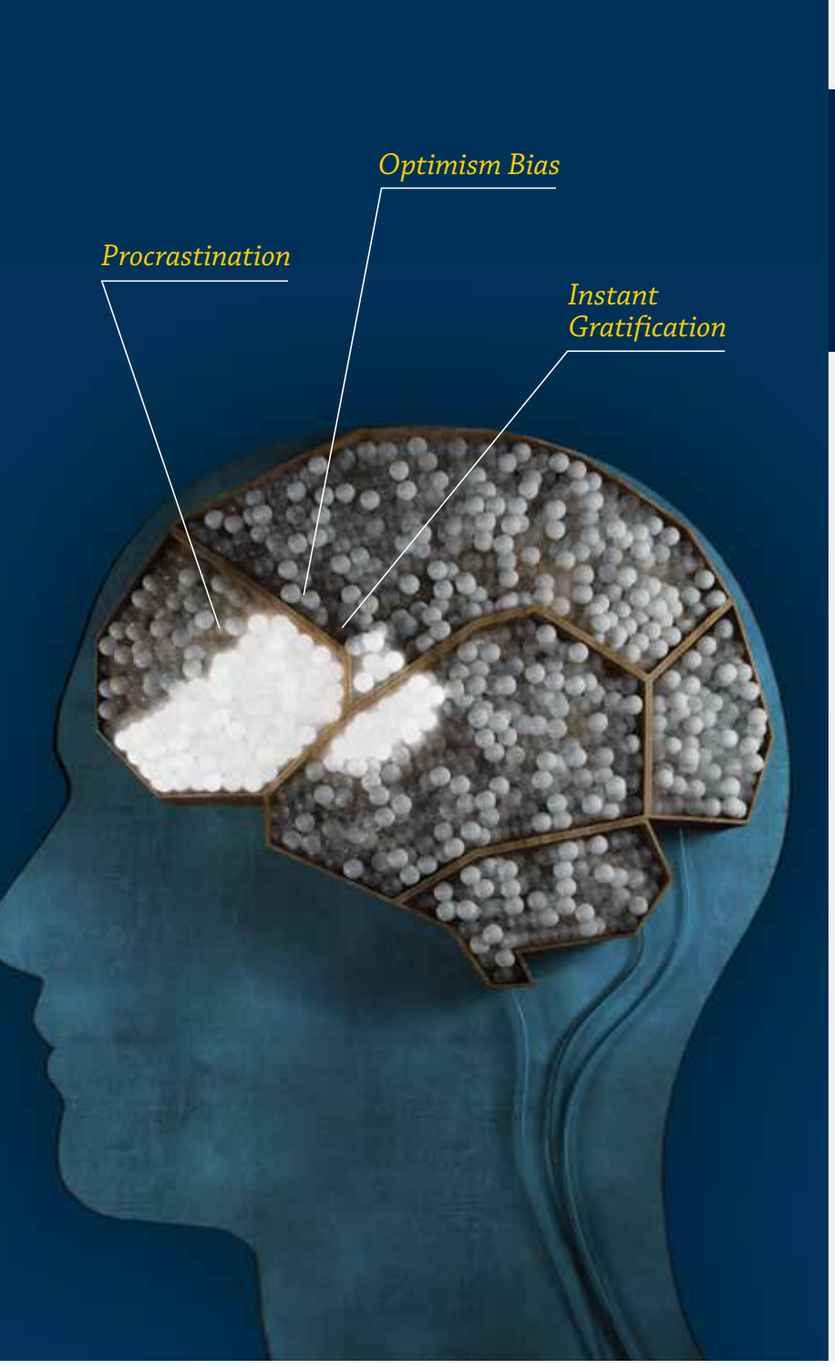
This time of transition makes it all the more important for NAPA members to be engaged. Join a NAPA committee, give NAPA your feedback, and make sure your voice is heard by your political representatives. It is imperative that we, as retirement plan advisors, keep promoting "the greater good" — financial literacy, financial wellness and increased coverage by helping underserved small businesses with start-up plans, SIMPLE IRAs, etc.

As my year as NAPA President comes to a close, I would like to say that I am extremely proud and honored to have helped lead an organization that is integral to the success of the American private retirement system. I want to express my deepest gratitude to ARA CEO Brian Graff for his dedication and tireless efforts. The incredibly talented and enthusiastic staff of the ARA was a source of continual support and inspiration. I'd like to thank the whole staff, but in the interest of space I will single out a few individuals — Nevin Adams, Alisa Wolking, Lisa Allen, Jim Apistolas, Erin Stewart and Troy Cornett.

I'd also like to thank the NAPA Leadership Council and those of you who have served as NAPA committee members. The time and energy you volunteer has resulted in some amazing accomplishments.

Finally, I'd like to thank NAPA Presidents, past and incoming. NAPA wouldn't be where it is today without all of the incredible work done by my predecessors Marcy Supovitz, Steve Dimitriou and Joe DeNoyior. Looking forward, I am honored to pass the President's gavel to Paul D'Aiutolo. Paul has been a fantastic teammate and I know NAPA is in great hands with him.

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

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BY BRIAN H. GRAFF

# Congress Should Pass on Changing the Pass-Through Income Tax Rate

A provision in the GOP tax reform plan could destroy a small business owner's financial incentive to adopt and maintain a qualified retirement plan.

The November election was a shock to many people. Few anticipated the outcome, which created a political environment that is the most conducive to a comprehensive reform of the tax code since it last happened 30 years ago. Given this reality, a close examination of the Tax Reform Blueprint issued in July 2016 by the Republican leadership in the House of Representatives is critical since it will be driving the tax reform process in 2017, at least initially.

The Blueprint is comprehensive and ambitious in scope but light on details in key areas. However, we have to assume it will be the starting point in the process. You have probably heard by now the changes the Blueprint makes to the individual ordinary income and investment income rates, which are sure to affect a small business owner's financial calculus when considering whether to adopt or maintain a qualified retirement plan, irrespective of any possible cuts to the contribution limits.

Putting that aside, we have identified a further concern that would destroy a small business owner's financial incentive to adopt and maintain a qualified retirement plan. More than 90% of businesses are organized in some form of pass-through entity (partnerships, S Corporations, REITs, RICs, and small business limited liability corporations). The Blueprint caps the tax rate on those entities at 25% (in addition to providing the 50% exclusion to the reinvestment of that income). However, the Blueprint applies the ordinary income tax rate on retirement plan distributions — which for many successful small business owners under the Blueprint is 33%.

Thus, the owners of these pass-through entities — 90% of American businesses — would have no incentive to defer their current income in the form of retirement plan contributions. In fact, if the Blueprint is enacted in its current form, these owners will be financially *worse off*.

To illustrate, assume a 50-year-old business owner earns $50,000 per year from her business for the next 16 years and 4% on her investments. Applying the Blueprint's tax rates on pass-through income (25% tax on pass-through income and 16.5% tax on subsequent earnings) leaves a total accumulation of $839,921. If instead the business owner contributes the same $50,000 to a qualified retirement plan and pays tax on the distributions at retirement at the 33% rate provided in the Blueprint, the total accumulation is $793,867. Clearly, the small business owner who invests in a retirement plan will be at a *$46,054 disadvantage*.

Comparing this result to current law, a business owner who saves $50,000 annually in a retirement plan and pays an assumed tax rate of 35% on retirement distributions would accumulate $770,169. The same business owner who forgoes the retirement plan and pays tax on $50,000 of income at current tax rates (35% on the 50,000 of annual income and 20% on capital gains on the earnings) would accumulate $719,330 for a *$50,839 benefit* from investing in a retirement plan.

Fortunately, there is a solution to this vexing problem — one that we have already been advocating for on Capitol Hill. This problem can be corrected by applying the Blueprint's 25% tax rate on pass-through income on retirement plan distributions associated with retirement plan contributions that would otherwise be pass-through income if not contributed. Going back to the first example above, if the maximum pass-through rate is instead applied to the retirement plan distribution, the small business owner *will gain $48,735* by contributing to the retirement plan. This solution effectively approximates the incentive the small business owner gets under current law and would continue to encourage the small business owner to maintain a plan for themselves and — importantly — for their employees.

Furthermore, we believe it is relatively easy to create compliance systems to track and report retirement plan distributions subject to the proposed 25% rate to the small business owners and to the government. It is common practice today by record keepers to track and report different sources of contributions. For example, this is done today to separately track Roth and pre-tax contributions in most 401(k) plans.

With this simple fix, the Blueprint can continue appropriate tax policy for pass-through entities while maintaining the necessary incentive for these entities and their owners to establish and maintain a retirement plan that is so critical for the retirement security of American workers.

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

WELLS FARGO ADVISORS

# Thank you for making a positive difference

The Wells Fargo Advisor's honorees of the 2016 NAPA Top Women Advisors reflect our commitment to excellence and providing unique retirement plan solutions for businesses. The foundation of our commitment combines a comprehensive range of retirement plan solutions from leading providers with a tailored approach that lets business owners select and bundle the services and options that best meet their needs.

Jill Greiner
West Des Moines, IA

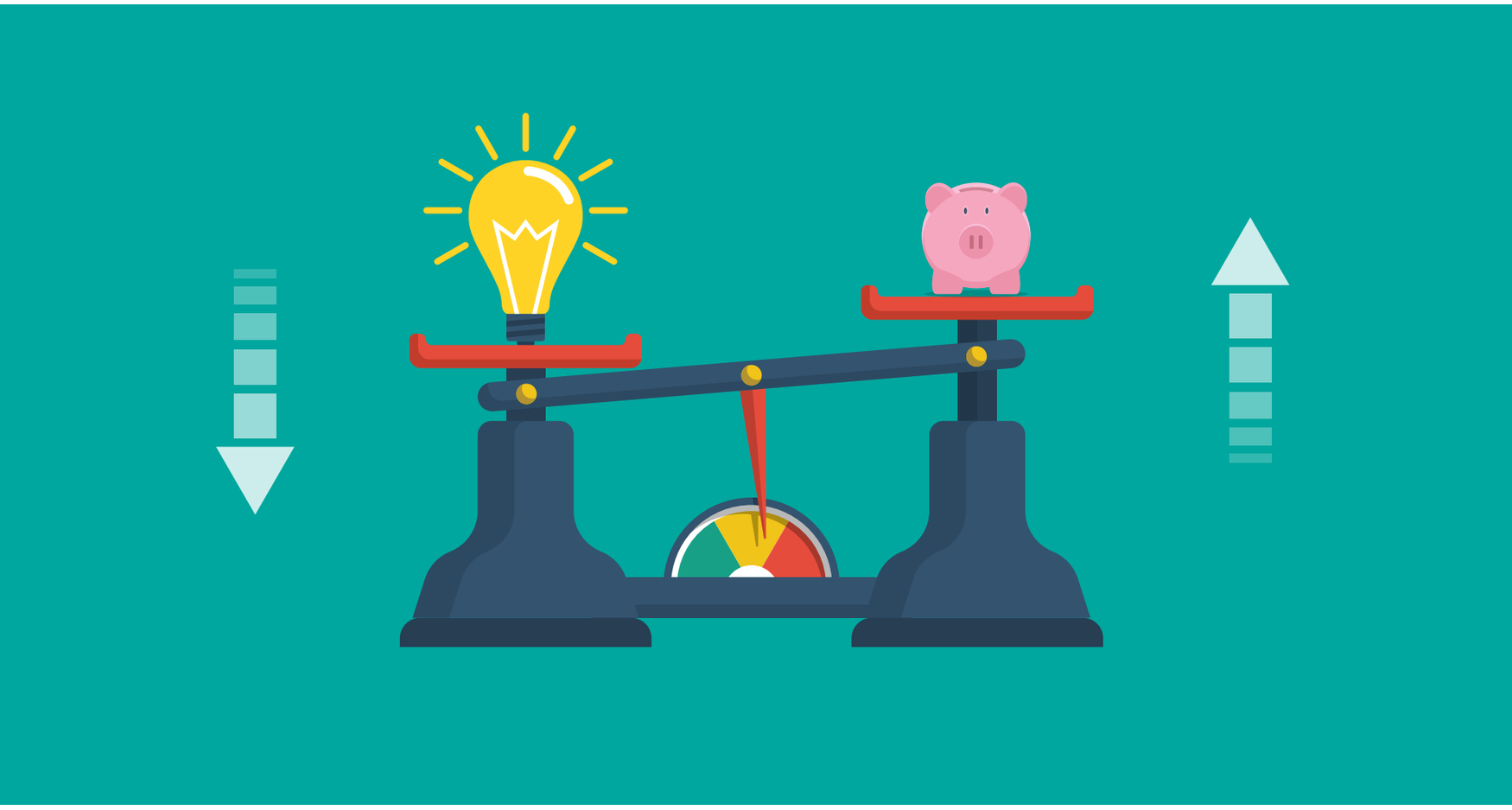
Erin Hall
Rolling Hills Estates, CA

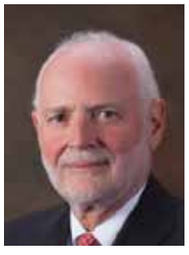
*Congratulations to this year's honorees for exemplifying our focus on client success through flexibility and top-notch service.*

NAPA's Top Women Advisors were nominated and voted on by industry peers and selected by a NAPA panel of judges based on information about their practice, experience, and accomplishments as provided by nominees. Investment performance is not an explicit component.

For more information about NAPA's Top Women Advisors, go to **napa-net.org**.

Together we'll go far





BY JERRY BRAMLETT

# Sell Low, Buy High?

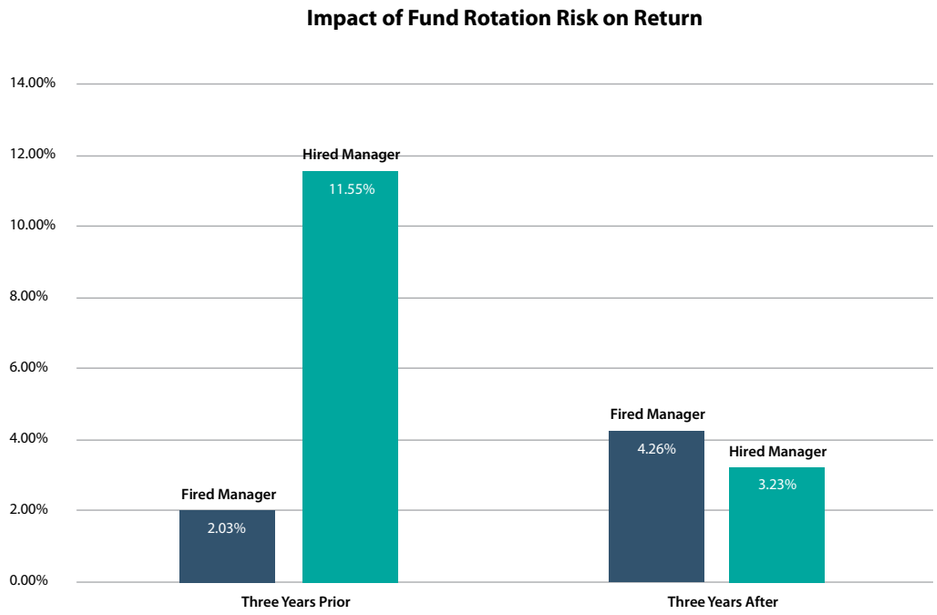
## When plan sponsors chase returns, DC participants may pay the price.

When one hears the term "sell low, buy high," it conjures up images of naïve investors being buffeted about by the twin emotions of fear and greed. The perception is that investors of this type get greedy when asset prices are high and, due to "loss aversion" (as the behavioral finance people like to call it), they tend to retreat in fear when markets recede. These investors are ruled mostly by emotion and do not view market cycles from a rational perspective.

One would think that DC plan sponsors and their advisors — who are supposedly sophisticated and not ruled by emotion — would not fall into the sell-low, buy-high trap. Nonetheless, a review of the academic literature reveals this to be the case.

**Academic Research: Not a Pretty Picture**

Consider the granddaddy of all the academic studies on this subject, "The Selection and Termination of Investment Management Firms by Plan Sponsors," a paper published in 2008 by Amit Goyal and Sunil Wahal. *(Goyal and Wahal)* The study examined the selection and termi-




Source: Amit Goyal and Sunil Wahal, "The Selection and Termination of Investment Management Firms by Plan Sponsors," *Journal of Finance*, August 2008.

nation of investment management firms by 3,400 plan sponsors over a 10-year period. Their findings are illustrated by the accompanying graph, which looks at the history (three years prior) and ultimate impact (three years after) of the plan sponsor's hire/fire decisions.

The upshot is that at the time of the fire/hire decision, the terminated manager had, over the prior three years, 2.03% of excess return, while the newly appointed manager had 11.55%. That sounds like a good reason to change. However, three years later the losers had beat the winners by 1.03% in excess return.

Based on their findings, the researchers concluded that "plan sponsors hire investment managers after large positive excess returns but this return chasing behavior does not deliver positive excess returns thereafter."

Other researchers have validated Goyal and Wahal's findings:

- "When administrators change offerings, they choose funds that did well in the past, but after the change deleted funds do better than added funds." *(Elton, Gruber, and Blake, 2007)*
- "Much like individual investors who switch mutual funds at the wrong time, institutional investors do not appear to create value from their investment decisions." *(Stewart, Neumann, Knittel, and Heisler, 2009)*
- "We find no evidence of improvements in return performance related to departures" *(Kostovetsky and Warner, 2015)*

While these studies have been consistent in their findings, "experience suggests that most investors appreciate this research but then ignore it when making decisions." *(Penfold, 2012)* For DC plan advisors (especially those serving as a 3(38) fiduciary), the question is: Why is there a tendency to essentially ignore this research and continue along the path of "selling low and buying high"?

### Factors Driving (Excessive) Fund Changes in DC Plans

There are forces at work in the DC market which encourage frequent hiring and firing of investment managers:

- An overemphasis on management skill in fund evaluation
- Aggressive sales efforts to grow DC advisory practices
- The emergence of low-cost, automated 3(38) services
- Regulatory and litigation concerns

What many of these academic studies essentially confirm is that managerial skill is only one component of excess return. The other important (and often ignored) elements are the random and cyclical nature of returns. Asset managers have their own distinctive investment philosophy and process. Markets are, of course, cyclical and these cycles can be influenced, set off or terminated by random events. If a manager is underperforming relative to their peers, it is often because their investment style is out of favor, while a period of outperformance is an indication that their views are in favor. Despite the often-touted ability to isolate manager skill, the reality is that this is often hard to do.

> "Despite the often-touted ability to isolate manager skill, the reality is that this is often hard to do."

To grow their practices, plan advisors must often unseat an incumbent advisor. One strategy is to focus on poorly performing funds in an investment lineup. Although the funds may have been fine three years ago, according to a S&P Dow Jones study *(Soe, 2014)*, the chance of a fund remaining in the top quartile three years later is less than 4%. This creates an opportunity for a new advisor to build an alternate lineup with all "top performers," often making it appear that the incumbent advisor is not doing his or her job.

The emergence of automated 3(38) service offerings have further exacerbated the problem of fund rotation. These investment firms often charge only a few basis points to provide a fund lineup as well as monitor and replace funds on an ongoing basis. The low cost of this service almost guarantees that the focus will be on utilizing computer models that rely heavily on quantitative measures of which past performance is the dominant metric. When advisors who for whatever reason do not wish to serve in a fiduciary capacity hire automated 3(38) platforms, it is important to understand what drives the process of hiring and firing managers and any

role it may play in causing excessive fund rotation.

One of the main compliance mantras is that "DC sponsors have a duty to monitor and periodically review their investment lineup." With the plaintiffs' bar aggressively looking for litigation targets, plan sponsors are right to be concerned about the reasonableness and prudency of their investment lineup. Unfortunately, "monitoring and reviewing" is often primarily focused on past performance and, thus, leads to excessive fund turnover.

> "Just as is the case when pursuing a long-view active strategy, the IPS needs to reflect the focus on passive investing."

**The Way Forward**

There are essentially two primary ways out of the fund rotation trap:

- Stick with managers over the longer term
- Utilize all passive investment vehicles

Plan sponsors and their advisors choosing to utilize active managers should focus on managers for which there is every reason to believe that they will be successful — research capabilities, scale, history of adding value over their respective benchmarks, reasonable fee structures and a prudent approach to managing money. The focus should be on long-term performance (10-15 years) rather than on the shorter return periods (3-5 years). The plan's Investment Policy Statement (IPS) should reflect this bias towards management capability, fees and long-term performance. Most importantly, the plan sponsor and the advisor should be prepared to defend their long-view perspective.

The other alternative is to pursue a passive approach to investing, which mostly leaves prior investment performance out of the evaluation equation. Instead of focusing on prior performance, the emphasis is on fees, tracking error and which asset classes are required to create efficient allocation portfolios. Just as is the case when pursuing a long-view active strategy, the IPS needs to reflect the focus on passive investing.

**Conclusion**

Academic studies have consistently shown the deleterious impact that excessive fund rotation has on investment returns. Overemphasis on management skill, aggressive sales tactics, automated 3(38) fiduciary platforms and heightened compliance concerns contributes to an increase in return-destroying fund turnover.

A plan advisor who is focused on enhancing participant outcomes should hit the pause button when it comes to changing out a fund, especially when the move is being driven by short-term (3-5 years) performance. As noted by the legendary investor Warren Buffett, "Frequently, the best decision is to do nothing."

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

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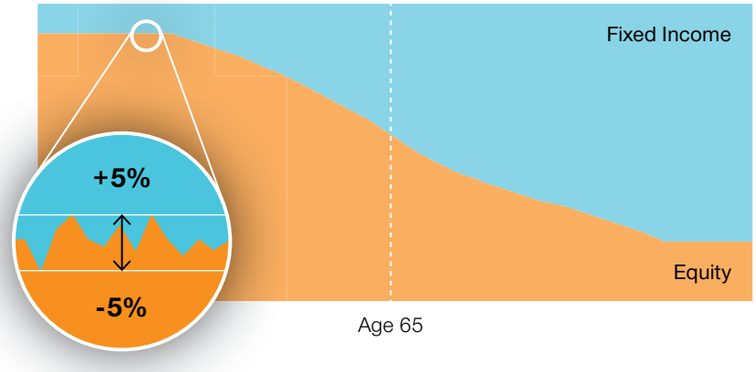


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WARREN CORMIER

# Designing and Marketing Robo-Services

Five key points for product designers and marketers to consider when designing a robo-advisor solution.

As the DC industry moves increasingly to a technology-centric advice and service solution, it becomes helpful to understand DC participants' view of robo-advice services.

So in collaboration with EMI Communications of Boston, I conducted a survey of 762 DC participants on their attitudes toward robo services. Like so many studies, we learned that there are discrete psychographic segments that exist in the population — that is, not all participants are the same.

Specifically, several dimensions emerged that explain the results and are key to organizing marketing and communication efforts:

**Investing Technology Orientation**

- Techies — "Tech is safe and I prefer to use it"
- Tech-Security Skeptics — "Tech is unsafe and I prefer human assistance"
- Tech Rejectors — "I dislike tech and prefer not to use it"

**Personal Investing**

- Proactives — Engaged and confident
- Passives — Disengaged and not confident

It will be critical to profile your participants along these lines to gauge adoption of robo solutions. To drive home this point, Techies' likelihood of embracing technology-based advice and account management systems is twice as high (50%) as Tech Rejectors (25%). Furthermore, likelihood of adoption is higher among Proactives (40%) than Passives (27%).

In terms of positioning, it is important to note that the most important factor in picking an investment advisor is the advisor's reputation for honesty, followed by their performance history or reputation for excellent investment results. But when it comes specifically to deciding to engage with robo-systems, the top four factors in order of importance are:

> "It is more important to be viewed as having financial acumen than technology expertise, but not by much."

1. Being safe and secure
2. Easy to use
3. Low cost
4. Good customer support if something goes wrong or if an error is made

This last point strongly suggests that a system devoid of human contact is hard to sell, at least in the early stages of consumer education about the value of robo-based systems. Specifically, people are expecting they will need human assistance when it comes to answering a few key questions, such as: "Is/will it be hard to figure out?" and "How does it work and what does it cost?"

For that reason, the biggest potential improvement is being able to talk to a human being. Media richness theory tells us that a pop-up chat offering will be far inferior to the opportunity to speak with someone on the phone. In terms of whom they want to talk to, virtually all people said they would prefer to speak to a financial planner or advisor, as opposed to a telephone rep without professional financial knowledge.

With respect to being an expert in finance or technology, it is more important to be viewed as having financial acumen than technology expertise, but not by much — 70% rated financial acumen as important, versus 61% for technology expertise. Through this, the respondents are expressing a need to be assured that both skills must be present in order to be considered a viable solution.

To look beyond the data and get into the mind of the participant, I spoke with Katharine Norwood, a Strategy Director at Odopod in San Francisco and user experience advisor to the National Association of Retirement Plan Participants. Katharine is an expert in the interface between consumer behavior, design and technology. In our interview, Katharine made five key points for product designers and marketers to consider when designing a robo-advisor solution, or any consumer/technology interface.

**Insight No. 1: From Transactions to Experiences**

Our technology has fueled a hunger for rich, meaningful experiences that have greater emotional impact and lasting value than traditional consumerism. Empowered by mobile connectivity, people are not only spending more money on experiences, they are also demanding more experiential relationships with products, services and brands that transcend the fleeting moment of transaction to add ongoing value to their lives. We have to ask ourselves how we might make retirement savings more experiential (and tangible) for participants beyond the transactional moment of enrollment into the DC plan.

**Insight No. 2: Put Users First**

This is the Age of the Customer. We have come to expect that everything works like Uber does (get what you want, when you want it, often at the price you want). With this has come an expectation that our interactions with products and services are customizable or personalized with simple, beautifully designed interfaces that place the highest value on the customer's needs.

When we design experiences, how might we redesign the enrollment and onboarding experiences into the DC plan with the user's needs at the center, rather than the brand or product needs?

**Insight No. 3: Designing Trust**

We now get into strangers' cars just as easily as we book a stranger's bedroom for a weekend getaway. This is the "sharing economy" — and the bedrock of these new transactions is trust. Trust is being explicitly designed for, to facilitate a vast new range of user-first interactions, both online and off. Because without trust, we disengage.

This is a critically important insight. How might we design for trust at every key touchpoint throughout workers' retirement savings journeys — from before they start saving for retirement all the way through to their retirement years?

**Insight No. 4: Design Everything**

Design was once thought to be a creative process applied exclusively to the development of products, packaging and marketing. But increasingly design is being applied to every point in a customer's journey — from discovery to purchase, use and service, and every stop in between. The goal is to create a cohesive experience, from moment to moment, that surprises and delights at every turn.

When it comes to retirement savings, how might we reimagine and design every moment in a worker's savings journey to instill optimism and confidence rather than fear and anxiety?

**Insight No. 5: Data Stories**

Technology has unlocked torrents of information. And this flood isn't slowing down. We are increasingly accustomed to generating and harnessing our own data to learn new things about ourselves and the world we live in. But raw data alone isn't impactful. Data has to be made sense of. And when patterns emerge, data can be visualized to tell stories that make the intangible tangible, the invisible visible.

Finally, consider this: How might we use data to tell the story of retirement savings for workers in a way that makes preparing for the future less scary, more knowable and more tangible?

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

# Trends Setting

Tracking the trends that will shape tomorrow's retirement plan landscape.

BY NEVIN E. ADAMS, JD

01

## Small (Plan) Pox

### Why don't (more) small businesses offer retirement plans?

A recent survey offers insights on why they are reluctant to do so, and what might move that needle.

The Pew Charitable Trusts recently surveyed more than 1,600 small and medium-sized business owners or managers, and found that employers most often cited expense, limited administrative resources and lack of employee interest as main reasons for not offering retirement plans. Among those, 37% cited "too expensive to set up" as a "main" reason, and 71% as a reason. A lack of resources to administer the plan was cited by 22% as a main reason, and 63% as a reason. "Employees not interested" was a reason for half the respondents, and a main reason for 17%.

On the other hand, nearly a quarter (22%) noted they hadn't thought about it. And three-quarters of business owners who do not offer a plan said that under current circumstances, they would be no more likely to offer one in the next two years than they are now.

#### Moving the Needle?

As for what could lead employers to offer a plan, factors include greater profitability, financial incentives and increased demand from employees. Of those factors, an increase in the business's profits was the most-cited item to make it much more likely to offer a retirement plan in the future, but that was not far ahead of "increased business tax credits for starting a plan" in that regard. Increased demand from employees was the third-most likely to make it much more likely.

On the other hand, majorities said that availability of easy-to-understand information, reduced administrative burdens, and greater tax advantages for executives were not as likely to lead to retirement benefit offerings.

#### State-Run Sense

When asked about IRA plans funded entirely by employees that use automatic enrollment and predetermined deductions from their pay, employers without plans were either somewhat or strongly supportive of the concept, and those who did not currently offer a plan and were in favor of the concept were most likely to cite as a reason (76%) that the auto-IRA plan would help their employees.

At the same time, that support varied somewhat depending on which entity served as the program sponsor. Support for an auto-IRA initiative proved highest if the plan would be sponsored by an insurance (72%) or mutual fund company (82%); it dropped if a state (41%) or federal government (44%) ran the program. More specifically, it dropped by half. Still, more than 40% supported a government-run program.

#### 'Opposition' Research

Among those who opposed such a plan, nearly half (42%) said they didn't think workers should be automatically enrolled in a retirement plan, while about a third (31%) said they didn't think their workers want/need a retirement savings program. About 1 in 10 (11%) were worried about the costs of enrolling workers and sending their contributions to the plan.

Those concerned that the advent of state-run auto-IRA programs might undermine existing plans might draw comfort from another of the survey's findings. Specifically, when employers without plans were asked what they would do if they had to choose between a state-run auto-IRA retirement savings plan and starting their own, just over half (51%) said that they would start their own — and only 13% expressed interest in switching to the state-run program.

As for the exchanges that several states have launched to help small business owners find suitable providers, most (86%) employers said that such an approach would be either very or somewhat helpful to them.

## 02 Profession 'Null' Opinions

### Why aren't there more women advisors?

A Cerulli report claims that only about 16% of financial advisors are women today — and offers insights on why that might be the case.

That report finds that close to half (49%) of female advisors believe that a lack of familiarity with the financial advisor profession is a major factor, according to ThinkAdvisor. "As they search for entry-level jobs out of college, look to re-enter the workforce, or decide to pivot into financial services, women often simply do not consider financial advising an option," the report states.

Another current deterrent, according to Cerulli — though one that is changing — is variable compensation structures. "Variable compensation structures present risks that women who seek security and stability from their careers find prohibitive," the report states.

The report notes that increasing the proportion of women advisors brings solid business advantages, not the least of which is a potential solution to the industry's impending succession crisis and talent shortage as advisor retirement accelerates. (Cerulli says that close to 40% of advisors plan to retire within the next 10 years.)

According to Cerulli, the reasons driving women to become advisors can differ from that of men: Nearly all (94%) female rookie advisors — 10 percentage points more than their male counterparts — consider the desire to help people reach their goals to be a major factor for becoming an advisor. On the other hand, Cerulli also finds that the technical aspects of investment management are also less likely to draw a woman to the industry; just 59% of women versus 81% of men cite their interest in investment topics as a major reason to pursue a financial advising career.

The good news is that Cerulli found a slight uptick in female rookie advisors, which it says could indicate a positive trend toward an even gender distribution.

"It is imperative for firms to closely evaluate the gender makeup of their advisor community and gauge influences that negatively contribute to an unequal gender breakdown," the report states. "Skirting the issue may prove disadvantageous in an evolving competitive landscape. Advisor diversity presents more than just an opportunity to vary the perspectives and backgrounds of their advisor force for the sake of inclusion."

Check out NAPA's 2016 Top Women Advisors at http://www.napa-net.org/industry-lists/napas-top-women-advisors-of-2016.

## 03 Drug 'Gist'

### Drug costs drive post-retirement health costs higher

Those projections about how much you'll need to save to cover health care costs in retirement? Better increase them.

New research from the nonpartisan Employee Benefit Research Institute found that the range of retiree health savings targets rose between 0-6% between 2015 and 2016, though that was the first year of increase after several years of decline.

As for the culprit in the increase, while EBRI noted that there were various factors at play, "the main reason for the increase in needed savings is related to the yearly adjustment for out-of-pocket spending for prescription drug use." Since actual out-of-pocket spending for prescription drugs in the most recent data turned out to be higher, future estimates have gone up.

The range of increases depends on how much health expenses a person is likely to have and how high a probability they want to have enough money on hand. Specifically, EBRI found that in 2016, a 65-year-old man would need $72,000 in savings and a 65-year-old woman would need $93,000 if each had a goal of having a 50-50 chance of having enough savings to cover health care expenses in retirement. If they wanted to boost those odds, say to a 90% chance of having enough savings, the man would need $127,000 and the woman would need $143,000.

#### Drugged Up?

Not surprisingly, considering what's driving those costs, those with high prescription drug costs would need to save substantially more. For a married couple both with drug expenses at the 90th percentile throughout retirement who want a 90% chance of having enough money saved for health care expenses in retirement by age 65, they'd need targeted savings of $349,000 in 2016.

One more note of caution: Since this particular EBRI analysis does not factor in the savings needed to cover such things as long-term care expenses, retirement earlier than becoming eligible for Medicare, and higher Medicare premiums related to higher income, "many individuals will need more than the amounts cited in this report." Of course, those who choose to work past age 65 may require less.

EBRI's latest analysis updates its previous estimates on savings needed to cover health insurance premiums and health care expenses in retirement. As before, it points out that projections of savings needed to cover out-of-pocket expenses for prescription drugs are highly dependent on the assumptions used for drug utilization, which is why the analysis provides three sets of estimates for prescription drug use:

- at the median (mid-point, half above and half below) throughout retirement;
- at the 75th percentile throughout retirement; and
- at the 90th percentile throughout retirement.

The report notes that Medicare was never designed to cover health care expenses in full. In 2013, Medicare covered 62% of the cost of health care services for Medicare beneficiaries ages 65 and older, while out-of-pocket spending accounted for 13%, and private insurance covered 13%.

The full report, "Savings Medicare Beneficiaries Need for Health Expenses: Some Couples Could Need as Much as $350,000," is published in the Feb. 1, 2017 EBRI Notes, online at www.ebri.org.

## 04 Auto Pilates?
### Are auto engagement features 'over'?

A recent survey finds that while some automatic plan features may have peaked, others are just beginning to get started.

Use of auto enrollment increased slightly from a year ago (64.9% in 2016 versus 61.0% in 2015), but was significantly ahead of the 52.1% who had that option in place as recently as 2012, according to Callan's 10th annual "Defined Contribution Trends Survey." The vast majority use it primarily for new hires, although one in five employers (21.6%) say they have auto-enrolled existing employees (via one-time sweeps or periodic sweeps), up from 17.7% a year ago.

That said, no plan sponsor respondents were very likely to add auto enrollment in 2017. The most common reason cited was that it was unnecessary (34.2%, participation was adequate), followed — and cited by 23.7% each — by cost concerns and lack of support by upper management. High turnover was noted by 18.4%.

**Escalation Escalates**

Nearly four-fifths of plans that have automatic enrollment also offer automatic contribution escalation (77.0%), and Callan noted that the prevalence of automatic contribution escalation (63.2%) increased significantly compared to previous years: 2015 (45.9%), 2014 (42.1%), and 2013 (42.9%). Among plans not offering automatic contribution escalation, 56.6% said they are somewhat or very likely to adopt this feature in 2017.

In 2016, just over one in five plan sponsors indicated they had ever engaged in an asset reenrollment — defined by Callan as requiring all participants in the plan to make a new fund selection or else be defaulted into the default investment option. Of the plans that have engaged in a reenrollment, the vast majority (85%) did a one-time reenrollment versus 15% engaging in multiple reenrollments. Few plans (3.4%) report that they are planning a reenrollment in the next 12 months — primarily because plan sponsors believe participants would object. As in prior years, "changes to the fund lineup" is the most common motivation for the reenrollment (62.1%).

**Roth Rates**

The prevalence of Roth contributions in DC plans increased, from 61.6% in 2015 to 67.6% in 2016, and somewhat higher in 401(k) plans, where 77.6% offer a Roth contribution feature (compared to 66.7% in 2015). While 21.6% do not allow (and are not considering) Roth-designated accounts, 9.0% of plan sponsors are considering them over the coming year.

The percentage of plan sponsors that have a policy for retaining retiree/terminated participant assets ticked up in 2016 to 48.7%.

Half of plan sponsors offer retirement income solutions, up slightly from 46.3% in 2015. Still, plan sponsors indicate that providing access to their defined benefit plan is the most common retirement income solution offered (27.4%). Very few plans offer in-plan guaranteed income for life products such as in-plan annuities (3.8%) or longevity insurance (1.9%) — and are not likely to offer these in 2017.

Plan sponsors cite a number of reasons for being unlikely to offer an annuity-type product in the near term, primarily because they feel it is unnecessary or not a priority, though being uncomfortable or unclear about the fiduciary implications is also high on the objections list.

## 05 Tool Time?
### Employers ready to ramp up financial wellness tools

There's evidence that interest in financial wellness is growing, and that plan sponsors are looking to beef up the tools to support that focus.

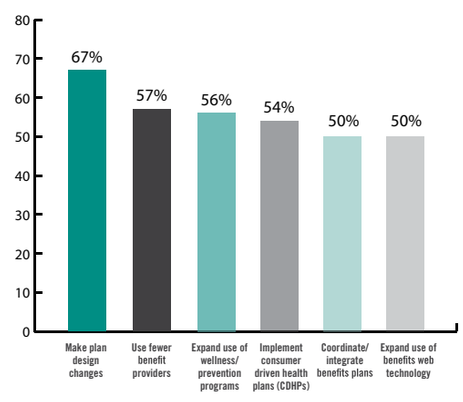
An Aon Hewitt survey of some 250 U.S. employers found that most (60%) feel that the importance of financial wellness has increased over the past two years. The survey finds that this year, nearly all (92%) of the responding employers say they are likely to focus on the financial well-being of workers in a way that extends beyond retirement (such as help with managing student loan debt, day-to-day budgeting and even physical and emotional well-being).

At present, just over half (58%) of the employers polled (which collectively represent about 9 million workers) say they have a tool available that covers at least one aspect of financial well-being. By the end of the year, however, that percentage is expected to reach 84%, according to Aon Hewitt.

Despite strong participation in employer-sponsored 401(k) plans, few employers (15%) are satisfied with their workers' current savings rates, according to the report.

Nearly all employers (90%) are concerned with their workers' level of understanding about how much they need to save to achieve an adequate retirement savings — and nearly as many (87%) of those that are not satisfied say they are likely to take action this year to help workers make plans to reach their retirement goals.

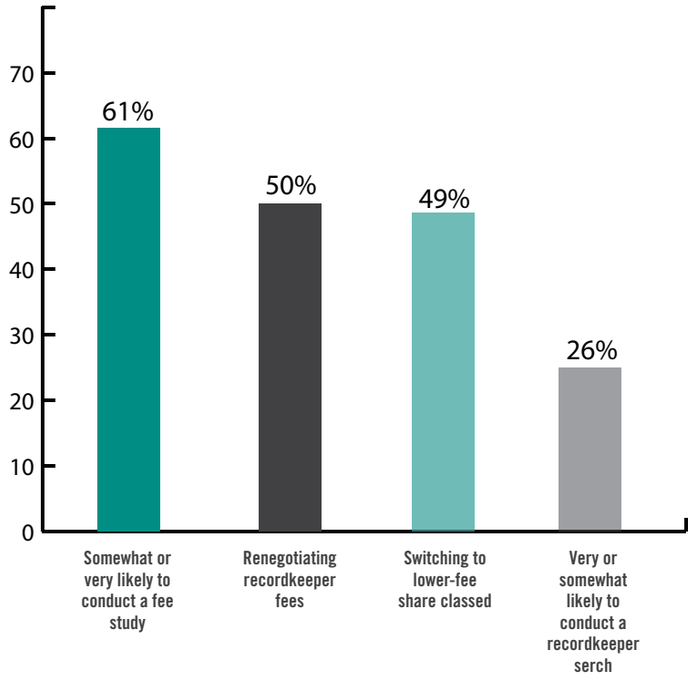
## 06 Control Roles
### Top benefits cost control strategies




Source: Fourth Annual Guardian Workplace Benefits Study

## 07 'Likely" Stories

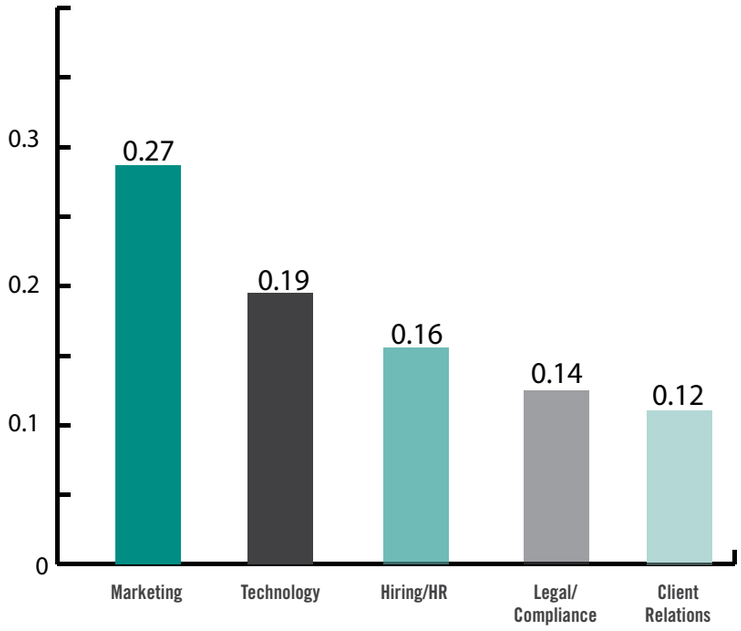
**Plan sponsors who say that, in 2017, they are:**




Source: Callan's 10th annual Defined Contribution Trends Survey

## 08 Marketing Moves

**Top RIA operational spending increases**




Source: TD Ameritrade Institutional 2017 RIA Sentiment Survey

# Boomers Start Taking RMDs

## Will they do so effectively?

BY LISA GREENWALD

Welcome to 2017. Amid all the changes and uncertainty this year has brought so far, it is also the year that the first wave of the Baby Boom generation must start taking required minimum distributions (RMDs), and the number doing so will only grow from this point.

Most plan participants who roll their money out of their retirement plans have financial advisors. Many who keep their money in the plan are unadvised. However, even those who have a financial advisor often do not get that advisor's help on taking RMDs or what to do with the money they withdraw.

How effective will the unadvised be at knowing which investments to draw their RMDs from and how to invest any money they decide not to spend? These decisions are complex. It is difficult for these participants to know how much investment risk they should take to get the investment returns they need to maintain financial security for the rest of their lives without taking on more investment risk than they must. For many retired Boomers, by age 70½, inflation will start to bite into the value of their principal. And further complicating decisions, cognitive decline increases during one's 70s, further impairing the ability to make good investment decisions.

It is one thing to misallocate investments during the accumulation period, when time can allow the value of investments to recover from a down market. But after money comes out, it can never go back in.

It is difficult to evaluate how well people are doing with their decisions about RMDs. My firm's research has found that a fairly wide variety of techniques are utilized. The most common approach is to take the money out of the plan *pro rata*, keeping the asset allocation proportionately the same. A quarter of those taking RMDs do that.

> "A plan advisor offering advice on RMDs may earn trust and benefit from an eventual rollover or the ability to manage and advise on non-plan assets."

One out of every six took the RMD from investments that are not doing well, while an equal share took the RMD only from stocks. Participants with investable assets of $1 million or more were particularly likely to withdraw from stocks only. One-eighth used the RMD to rebalance. Yet, 1 in 10 are not sure how they did it, especially women.

Some of these decisions were probably effective and some probably were not, but my guess is that many could have done better had they had professional support. Both those with and those without an advisor used these tactics equally, leading me to believe that the advisor is often silent on this aspect of retirement income planning.

We have reached an inflexion point. The number of people taking RMDs will be growing for a long while. So what should and will plan sponsors, plan providers and plan advisors do to help people taking RMDs make informed investment and spending decisions?

For employers whose motivation to put retirement plans in place included helping their long-term employees achieve financial security in retirement, this is a time to provide critical help, through a plan provider or advisor. A plan advisor offering advice on RMDs may earn trust and benefit from an eventual rollover or the ability to manage and advise on non-plan assets. Nor should it be an expensive endeavor for plan providers, who stand to gain by retaining or attracting assets. Though these may be competing interests for providers and advisors, Boomers hitting this magic age will benefit from any advice they receive.

This is an opportunity to provide important help to a targeted population and to create a situation in which everyone involved wins and can feel good about it. The identities of the participants starting to take are clear, as are the amounts they must take. This is a population likely in need of help, and plan RMDs providers and advisors are well-positioned to help them and benefit in the process.

» Lisa Greenwald is an AVP at Greenwald & Associates, an independent research firm specializing in research for the retirement and financial services industries. The data referenced in this article are drawn from Greenwald's annual "Retiree Insights" research program.

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FEATURE

# 10 Steps to Better Plan Committee Meetings

Members of NAPA's Leadership Council talk about how an advisor can help.

BY JUDY WARD

A good plan advisor is gifted in the skills of diplomacy, says Paul D'Aiutolo, NAPA's President-elect for 2016-2017. "And my definition of diplomacy is, I want to get the committee to do what I want them to do, but to let them think that it was their idea," he adds.

D'Aiutolo offers a recent example of a client that he knew needed to focus more on participants' retirement readiness and make plan design changes to help improve their outcomes. But D'Aiutolo — Rochester, NY-based founding principal of the D'Aiutolo Institutional Consulting Team, a member of UBS' Institutional Consulting and DC Advisory groups — didn't try to push plan design changes on the committee. Instead, he proactively asked the plan's recordkeeper to run a report on the retirement readiness of participants age 55 and older, and with 10 or more years of service. Then at a meeting, he discussed the results and gave the committee the report, which incorporated readiness data on more than 300 of the company's 1,800 employees.

As the committee members quickly saw, the report revealed that many older employees were in bad shape for retirement. "Some of the committee members got a little ashen in their faces, and said things like, 'Oh my god, we have got people who have been here forever, and they only have $8,000 in their account," recalls D'Aiutolo. "When I introduce a report like that, the committee is not going to immediately say, 'We have to make plan design changes now.' But there will start to be internal champions on the committee." At subsequent meetings, as these champions bring up the need to improve participants' retirement income adequacy, he responds by talking about plan design changes that help — the changes he has known all along the committee needs to make.

D'Aiutolo and five other members of NAPA's Leadership Council talked about how advisors can help committees have more-effective meetings. The result: the following 10 basic elements of running successful committee meetings.

**1. Help Find the Right Committee Members**

A good place to start is helping to get the right people on the committee, recommends Samuel Brandwein, NAPA's 2016-2017 President. Brandwein, Boca Raton, FL-based vice president and 401(k) consulting director at Morgan Stanley, suggests advisors break that down for sponsors into three main considerations. "Number one is that sponsors need people who are going to be engaged as committee members," he says. "These are people who don't feel like they're being forced to be on the committee, who are enthusiastic about serving on the committee, and recognize that it is a serious responsibility."

> "When working with new clients, we find that a lot of committees don't have a process for making decisions: They're flying by the seat of their pants."
>
> *— Jamie Greenleaf, Cafaro Greenleaf*

Second, Brandwein says committees need members with an intellectual curiosity and a willingness to learn about plan-related issues. "Most people who are joining committees are not investment experts or experts on fiduciary policies," he says.

And third, committees need members with diverse skill sets, which helps lead to well-rounded decisions. "If you have a committee that is just four people from finance or four people from HR, it is not as good as if you have one person from finance, one person from HR, one person from sales and marketing, and one person from operations," he says.

**2. Define the Plan's Mission**

Many committees don't spend enough time defining upfront what they want their retirement plan to accomplish, Jamie Greenleaf finds. "So we help committees put together a mission statement," says Greenleaf, lead advisor and principal at Cafaro Greenleaf in Red Bank, NJ. "Usually, it is not even a one-pager: the shorter, the better," she says. "The committee is answering the question, 'What are we hoping to accomplish?' It helps focus people. That helps especially when you are dealing with both finance people, who are looking at the retirement plan from a dollar perspective, and HR people, who are looking at it from a human standpoint."

Defining the mission upfront with a new client provides clarity on the work a committee needs to do, says Alex Assaley, managing principal at Bethesda, MD-based AFS 401(k) Retirement Services. "We start with a blank canvas and say, 'What is it that you want this benefit to do for your employees and your company?' And then we reverse-engineer the process from there," he says.

Once D'Aiutolo has helped a new client define its goal for the 401(k) plan, his team gathers data that helps the committee better understand its workforce demographics. "We try to identify, 'Who is your core employee?' and we define that in terms of average age and average wage," he says. At many employers, he says, three-quarters of employees fall within a narrow demographic range, and committee members need to make plan design decisions with those demographic averages in mind. "If the average employee is 48 years old and makes $52,000 a year, then your goal becomes to get that average employee to replace 35% to 45% of his or her final income in retirement," he says, since Social Security likely will replace another 30% to 40%. "You utilize that as the baseline for making decisions."

**3. Develop Annual Strategic Goals**

With the overall mission defined, Assaley recommends discussing with the committee near each year's end a strategic plan for making progress in the upcoming year. "Help them identify what the priorities are for the retirement plan in the next year," he says. "Then you can use that strategic plan as the focus for your discussions throughout the next year's meetings. As opposed to saying, 'At every meeting, we will spend 45 minutes talking about investments and 30 minutes talking about participation data,'

we focus meetings throughout the year on topics that align with the strategic objectives."

Assaley cites several strategic goals he has seen committees commonly identify for 2017:

- understanding and preparing for the Department of Labor's fiduciary rule;
- protecting their plan from potential participant lawsuits focused on fees or revenue sharing;
- developing financial wellness programs that improve employees' financial literacy and financial decision making; and
- looking at adding benefit programs that work in conjunction with the retirement plan's goals, such as a student-loan repayment program that helps younger employees free up more money to save for retirement.

**4. Educate Members on Fiduciary Basics**

To make sound decisions, committees need to understand how to do so consistent with their fiduciary obligations. "I make it very clear that as fiduciaries we always need to think of the 'Golden Rule': We have a fiduciary responsibility to only do things that are in participants' best interests," says Michael Perry, president of Dallas-based Retirement Advisors, LLC. "So that's my opening line for every committee meeting: 'We are here to review the investments and operations of the plan — and remember that as fiduciaries, we have to make decisions that are in the participants' best interests.'"

In addition to educating committee members on the fundamentals of fiduciary duties, Greenleaf also helps new clients set up a prudent committee decision-making process. That means having something in writing that describes, step by step, how the committee will make fiduciary decisions such as investment changes and provider selections. "When working with new clients, we find that a lot of committees don't have a process for making decisions: They're flying by the seat of their pants," she says. "Committees need a process that is repeatable and unbiased, so that if the plan were sued years later, committee members could go into a court and truthfully say, 'This is the process that we use to make decisions, and we use the same process every single time.'"

**5. Structure Each Meeting's Topics in Advance**

Good advance planning by an advisor pays off in a more-focused discussion by committees, says Jeb Graham, Tampa-based partner and senior investment consultant at CapTrust Advisors, LLC. CapTrust does an annual fiduciary calendar for every client, so that committee members start each year aware of when they can talk in depth about important topics. "That's the key: Committee members know ahead of time what will be discussed at each meeting," he says. Typical fiduciary calendar topics include an investment policy statement review, fee benchmarking, evaluating whether the plan still has the right QDIA for that plan's participants, and a plan-design review.

> "I try really hard not to get frustrated when a committee is not making the right decisions."
>
> *— Michael Perry, Retirement Advisors, LLC*

CapTrust also plans the discussion topics for each meeting beforehand. "Every one of my clients gets an agenda a week in advance of a meeting," Graham says. "I go through the minutes from the committee's last meeting and cross-check that with the fiduciary calendar, and then I know what topics need to be discussed at the next meeting." He does a tentative agenda and sends it to the committee chair, makes any needed revisions, and then the agenda gets distributed to each committee member.

At the meetings, Graham takes responsibility for keeping a committee's time management on track. "Make sure that you are taking on a leadership role at the meetings. That is part of what they are paying you to do, whether that is stated or not," he says. "If you don't help the committee manage the time well, that's going to come back on you." What happens if the committee starts getting bogged down discussing a topic? "I might remind them, 'Okay, we only have 30 more minutes and we have to cover all these other agenda items, so maybe we can schedule a follow-up call to discuss this,'" he says.

**6. Gently Guide the Discussion**

At meetings, advisors need to help steer a committee's decision-making without dominating it. "These committee members are all very smart people who are good at what they do," Graham says. "As an advisor, you have to walk a fine line between leading them and telling them what to do."

Brandwein strikes the right balance by always keeping the conversations interactive. "If I'm presenting to a committee and it's just me rambling on, that's less effective than if I speak for five minutes and then stop to see what thoughts or questions the committee members have, before continuing," he says. "I'm constantly pausing to get their thoughts and their input."

Advisors need to lead while being patient with a committee's reactions about making changes, Perry says. "I know where a plan needs to go, but it is not always easy to convince a committee to make changes. I try really hard not to get frustrated when a committee is not making the right decisions," he says. "I recognize that I'll be back again soon, that I'll have this discussion again with the committee then, and maybe the committee will be more receptive. The more times you come back at them, the more they start hearing you."

And for reluctant committees to truly hear, advisors need to understand how to appeal to the decision-making instincts of different committee members. "Know your audience," Perry says. "There are some people in the room who will want a quantitative illustration of what you're discussing, and others who will deal on emotion. You need to know how to gently guide each of those groups to their decision."

**7. Make the Complex Simple**

Helping simplify complicated issues for committee members is a core part of an advisor's job at meetings, Graham says. "Part of that role is to make complex things intuitive, to help the committees make their decisions in an informed way," he says. "Some advisors want to make the simple seem complex, so that they can justify their fee or show the sponsor how much smarter they are. At the end of the day, it backfires on you if you get 'in the weeds' too much. You need to make

the complex simple."

Keep in mind that advisors may encounter certain committee members who "like the details and need to get more granular," Graham says. "My approach to this is to isolate that conversation away from the meeting in a one-on-one discussion."

When talking about potential fund changes, D'Aiutolo doesn't overwhelm a committee by discussing a lot of technical investment analytics or a large number of replacement fund choices. For example, at a recent committee meeting he talked about potential replacements for three funds on the plan's investment menu. He brought a copy of the report with his team's in-depth analysis of replacement options, but he gave committee members a more-concise report called "Mutual Fund Search."

"I told them, 'We have identified two potential alternatives to each of those three funds. We have pre-reviewed these funds, and also checked with your recordkeeper to make sure they are available on its platform," D'Aiutolo says. "A lot of times we will rank the two fund choices as number one and number two, to make it easy for the committee members."

Then D'Aiutolo walked committee members through a chart comparing data on five key criteria for each of the two pre-reviewed options in the three asset classes: management tenure; expense ratio; 1-, 3-, 5-, and 10-year performance; standard deviation; and the UBS proprietary score for each fund, as well as the Morningstar score. "That makes it pretty simple and understandable for committee members to make decisions," he says. "And there's the 80 other data points in the longer research report, if we have someone on the committee who wants to challenge us on something more complex like Sharpe ratio."

**8. Prevent Investment Myopia**

When talking about investments, Greenleaf says, committees often spend too much time zeroing in on short-term performance data. "Everybody is second-guessing things like, 'Why didn't this fund outperform the index last quarter?'" she says. "They are focusing on the leaf in the forest — investment performance — as opposed to the forest. They need to spend more time thinking about how an investment fits into the overall menu, about usage or lack of usage by participants of an investment, and about how much an investment is helping participants with their retirement outcomes."

> "If you don't help the committee manage the time well, that's going to come back on you."
>
> *— Jeb Graham, CapTrust Advisors, LLC*

Asked how he helps committees look at investments holistically rather than focus on short-term results, D'Aiutolo says that his team doesn't spotlight quarterly performance when doing investment reviews at meetings. "We focus on 3-, 5-, and 10-year performance, and we focus on a fund's percentile ranking for funds in that asset class," he says. "We train our committees that if they can have funds in the lower third of expense ratios compared to peer funds, and with better than 50th-percentile performance over 3, 5, and 10 years, they usually have put together a menu that will help participants achieve the results they need." His clients also have passive funds for core asset classes on the menu, for participants seeking performance that matches indexes.

Over the years, Perry has learned how to talk committees down from making rash fund changes. "This is not a short-term race, it is a long-term race, and even the best managers are going to underperform in the short term sometimes," he says. "I tell them, 'We hired somebody initially because that fund met the criteria of your investment policy statement. Just because there is somebody out there who's short-term hotter, that doesn't mean we need to make a change to chase that performance. What we need to do is follow the investment policy statement, and only fire managers who do not meet its criteria over time.'"

**9. Bring More Attention to Participant Outcomes**

"Sometimes, a committee we just started working with hasn't previously had a focus on participant outcomes," Brandwein says. So he takes the initiative to talk about a plan's key metrics such as average deferral rates, and he explains how these factors connect to participants' retirement readiness. He also offers specific plan design ideas for what a committee can do to help improve outcomes.

"We find that once we start getting into that topic, it becomes the first thing the committee members want to talk about at meetings," Brandwein says. "Now, most committees I work with want to discuss participant outcomes at every quarterly meeting. Five years ago, maybe it was more along the lines of, 'This is something we talk about on an annual basis.' But committee members get it more now, that this is all about getting employees to a comfortable retirement."

**10. Build Connections Outside Meetings**

When starting to work with a committee, make the effort to get to know members individually, Greenleaf suggests. "Try to understand what makes them tick and why they're there, and maybe take that discussion off-line with them," she says. Developing those one-on-one relationships outside of meetings can help an advisor build trust and gain more insight about issues that some members may be reluctant to speak up about in a meeting, in front of their boss.

As for how to get to know committee members, Graham says, "You observe them at meetings, and you go out to lunch with committee members or take some of them out for a beer after a meeting. It also is important that they know you are available and accessible — and that you demonstrate that over time." The more he talks with committee members, the more he understands a committee's dynamics, and can lead its meetings more effectively.

When Brandwein starts working with a committee, he openly encourages the members to call him anytime to talk. "A lot of building those relationships goes into having an open line of communication with all committee members," he says. "Not just a couple of people, but every single person on a committee knows my direct phone number. They all know that they can call me directly and ask me any questions they have."

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

COVER STORY

# Beneath the Surface - Could Tax Reform Sink Retirement?

Is tax reform the enemy of retirement security?

BY NEVIN E. ADAMS, JD

Controversy of one sort or another has swirled around many of President Trump's cabinet picks. But there is one common theme in several key nominations that has drawn relatively little attention: tax reform.

"Our No. 1 priority is tax reform. This will be the largest tax change since Reagan," Steven Mnuchin, President Trump's pick for Treasury Secretary, said in an interview on CNBC last December. The former banker served as Trump's campaign finance chairman.

He was referring, of course, to the Tax Reform Act of 1986 (TRA '86), which significantly simplified and streamlined income tax rates. Of course, it also tightened the nondiscrimination rules, reduced the maximum annual 401(k) before-tax salary deferrals by employees by 70% (by imposing the 402(g) limit), and required all after-tax contributions to DC plans to be counted as annual additions under the Code Section 415 limits. And what did all that do for — or rather, *to* — retirement savings?

## A "Better" Way

Nor is that support limited to the White House. The day after the 2016 election, Rep. Kevin Brady (R-Texas), Chairman of the Ways & Means tax-law writing committee, noted that Trump's tax proposal in many ways mirrors the "Better Way" tax reform blueprint released in 2016 by House Republicans. Brady said that House Republicans were "ready with the agenda we've laid out, especially fixing this broken tax code, replacing Obamacare with real patient health care, and lifting taxes off businesses so they can grow again."

While the "Better Way" blueprint pledges to "continue the current tax incentives for savings," it directs the House Ways & Means Committee to "consolidate and reform the multiple different retirement savings provisions in the current tax code to provide effective and efficient incentives for savings and investment." So while the current retirement savings vehicles, like 401(k) plans, ostensibly would not be removed from the tax code under the House Republican plan, those vehicles could be combined into one "cookie cutter" approach.

> It's not beyond the realm of possibility to imagine that a new discrimination testing regime might emerge.

That might, or might not, mean significant changes for the 401(k), but 403(b)s and potentially even 457(b) programs could be subjected to changes that would render them more like their 401(k) brethren. And of course, it's not beyond the realm of possibility to imagine that a new discrimination testing regime might emerge, as it did with TRA '86.

Additionally, the blueprint directs the Ways & Means Committee to "explore the creation of more general savings vehicles" like so-called Universal Savings Accounts (USAs). These accounts would be individual accounts outside of the employer-based savings system in which account holders make after-tax contributions, much like a Roth IRA works today. But unlike Roth accounts, USA account holders could withdraw both contributions and earnings at any time, and for any reason, without tax penalties.

Indeed, legislation has already been introduced in Congress that would create this new savings vehicle. The question is how these new accounts, combined with other potential changes in the tax code, will affect the relevance of IRAs and possibly even workplace-based savings arrangements.

Nor is the enthusiasm for tax reform limited to the House. Just last month, Senate Finance Committee Chairman Orrin Hatch (R-Utah) told the U.S. Chamber of Commerce that he hopes there will be a tax reform proposal "in the near future" and that "Republicans are united in their commitment to reform our nation's broken tax system." Among the goals is to work toward, he said, a tax system that "picks fewer winners and losers." And he expressed confidence that "because we agree on these principles, there is every reason to believe we can work through the details."

That said, Hatch acknowledged the political realities surrounding tax reform, noting that the Republicans have 52 votes in the Senate, so "the margin for error is only two votes." He said there probably will be a Senate tax bill separate from what the House considers, and that "the Senate will have to work through its own tax reform process if it has any chance of succeeding."

## Once in a Generation?

It's been said that tax reform is a rarity — that it only comes once in a generation. True enough, it's been 30 years since TRA '86, which was itself the first wholesale revision of the tax code since 1954. Indeed, the Code is now named the "Internal Revenue Code of 1986." TRA '86 was the last of four significant tax bills signed into law by President Reagan. (The others were the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), the Deficit Reduction Act of 1984 (DEFRA) and the Retirement Equity Act of 1984 (REA).)

> It is difficult to fully appreciate the sweeping impact that TRA '86 had on America's retirement.

While each of these legislative initiatives had unique motivations and characteristics, they worked to reign in the tax advantages of private retirement plans by significantly reducing the contributions and benefit limits alongside new testing requirements — due to both a pervasive skepticism as to the broad-based apportionment of those benefits to lower income workers, and a desire to use the higher tax revenues derived restricting tax deferrals to pay for the revenue reductions resulting from lowering tax rates.

Still, even in hindsight, it is difficult to

> The tax incentives to establish, fund and contribute to a workplace retirement plan inevitably find themselves in the budgetary crosshairs.

fully appreciate the sweeping impact that TRA '86 had on America's retirement. Consider that it effectively froze the $30,000 maximum annual amount of total contributions (employee and employer) made to any type of DC plan — a freeze that would stand for nearly a decade and a half. TRA '86 also brought us the so-called 402(g) limit that capped the amount of pre-tax deferrals at $7,000 and tightened further the nondiscrimination rules that applied specifically to 401(k) plans. This, mind you, from the hands of a Democratic majority in Congress.

Therein lies what has been the inherent tension between the articulated goals of tax reform in terms of fostering economic growth and spending, and the need to pay for those goals by closing off or accelerating the deferral of taxes via retirement savings.

## 'Camp' Counseling

And while it may have been a generation since tax reform made it into law, we don't have to look very far back to see a potential roadmap. Just three years ago, Rep. Dave Camp (R-Mich.), then Chairman of the House Ways and Means Committee, released a comprehensive tax reform proposal. Sure enough, when it came to the "pay fors" — revenue-raising provisions needed to offset other provisions that would either cost money or result in lower tax revenues — retirement savings was squarely in the crosshairs.

Camp's proposal would have placed a 25% cap on the rate at which deductions and exclusions (including those relating to retirement savings) reduce a taxpayer's income tax liability. That would have subjected individuals (albeit those in a new, and for them lower 35% tax bracket) to a 10% surtax on all

## 'MAY YOU LIVE IN INTERESTING TIMES'

The only thing worse than writing about tax reform after it happens is writing about it while those negotiations are in process. As we head to press, tax reform remains very much in the headlines, though other initiatives — the repeal and/or replacement of the Affordable Care Act, cabinet nominee hearings, Supreme Court nominees and various executive orders — could have an impact.

Regardless, the likelihood that there will be tax reform without some impact on retirement plans seems to fall somewhere between slim and none. Stay tuned to www.napa-net.org for the latest insights on this and other legislative initiatives.

> "Tax reform is ultimately all about reducing the amount of revenue that the federal government takes in."

contributions made to a qualified retirement plan — that is, both employer and employee contributions.

In effect, Camp's proposal would have taxed contributions to qualified retirement plans twice: the 10% surtax when contributions were made to the plan, and then again at the full ordinary income tax rate when the money is distributed from the plan during retirement. In all likelihood, this double penalty would have discouraged many small business owners from establishing — or continuing to maintain — a workplace retirement plan.

Moreover, in a throwback to TRA '86, the Camp proposal would have frozen the limits on contributions to qualified retirement plans for a decade — a change that was projected to raise more than $63 billion over the next 10 years to pay for tax reform.

The Camp proposal would also have subjected all elective deferrals to qualified retirement plans above one-half of the pre-tax deferral limit (then $17,500) to Roth tax treatment. In other words, the pre-tax contribution limit would have been cut in half, with the remainder made on an after-tax basis. This change, along with a requirement that all employers with more than 100 employees amend their plan documents to allow employees to make Roth contributions (if not already permitted), was projected to raise $143.7 billion over the next 10 years — again, not to facilitate or encourage retirement savings, but to pay for tax reform.

## 'Through' Putt?

But that was then, and this is now, right? Not so.

As advisors well know, a not-so-complex financial calculus underpins a delicate balance for small business owners considering offering a retirement plan. As it turns out, the current House Blueprint for tax reform provides a 25% maximum tax rate on income from pass-through entities (partnerships, S corps and small business limited liability corporations). In addition, pass-through income that is reinvested in capital assets will generate earnings that should qualify for a maximum tax rate of 16.5% because of the 50% exclusion under the Blueprint for capital gains income. (You'll find Brian Graff's commentary on this provision on page 8.)

In contrast, retirement contributions (and the accrued earnings on those contributions) will ultimately be taxed at ordinary income tax rates when distributed from the plan. Under the Blueprint, ordinary income tax rates are slated to max out at 33%. As a result, owners of pass-through entities, which are mostly small businesses, will have no incentive to contribute amounts that would otherwise qualify for the 25% pass-through rate and a 16.5% rate on reinvestments. In fact, if the Blueprint is enacted in its current form, these small business owners will take a big financial hit if they defer pass through income

into a retirement plan.

What would small business owners do if presented with this choice? Well, it stands to reason that without some kind of parity between the taxation of retirement plan distributions and non-retirement investments, small business owners who might have considered adopting a new plan will rethink that approach. Moreover, millions of small business owners who do offer a workplace plan will find themselves incentivized to terminate their retirement plan. That would, of course, have a severely negative impact on the availability of these plans to the millions of Americans who work for these small businesses.

And we all know that without access to a workplace retirement plan, millions of middle-income small business employees won't save.

Yes, for all the concerns expressed by those in our nation's capital about retirement security, tax reform is ultimately all about reducing the amount of revenue that the federal government takes in. But with a $20 trillion debt, Uncle Sam will need to find some way to offset the projected loss in revenue — and that's where the tax incentives to establish, fund and contribute to a workplace retirement plan inevitably find themselves in the budgetary crosshairs.

The threats to the retirement system through the tax reform back door are not limited to Republicans. In 2014, Sen. Ron Wyden (D-Ore.), then Chairman of the powerful Senate Finance Committee, claimed that "incentives for savings in the tax code are not getting to the people who need them," and that it was "clear that something is out of whack" with a system that he said taxpayers are "subsidizing" to the tune of $140 billion a year. Yet, Wyden said, "millions" are nearing retirement with little or nothing saved. At the time, Wyden noted that, retirement savings "are going to be a focus in bipartisan tax reform."

While those paying attention to such things realize that most of those tax preferences are temporary — that is, taxes will be paid on those employer pre-tax contributions and the earnings on them when they are withdrawn, the government bean counters look at revenues and expenditures within a 10-year window, and since the payment of most retirement benefits occurs outside that window, the amount of taxes postponed looks, from a budgetary standpoint, to be taxes permanently foregone. And, on that basis, even though the retirement preferences are completely different from other tax deductions, from a budgetary scoring standpoint, it's a big, juicy target.

The bottom line: There remains bipartisan enthusiasm for tax reform, though that interest is generally focused on reducing rates — and those efforts often "pay" tax reform's tab by undermining the incentives that promote, encourage and support the maintenance and creation of workplace retirement plans, specifically among smaller employers.

However one feels about the stated goals of tax reform, to date retirement savings — and retirement security — has largely been viewed as an enabler. Here's hoping it's different this time.

BY DONALD B. TRONE

# Neuro-Fiduciary: Using Neuroscience to Amplify Fiduciary Metrics

## Is it time for a makeover for fiduciary responsibility?

Neuro-Fiduciary is a new industry term that has evolved to represent the use of neuroscience to help amplify, infuse, and improve the quality of a fiduciary's decision-making process. Of particular importance, its framework can be used to illuminate the process for building client trust and loyalty.

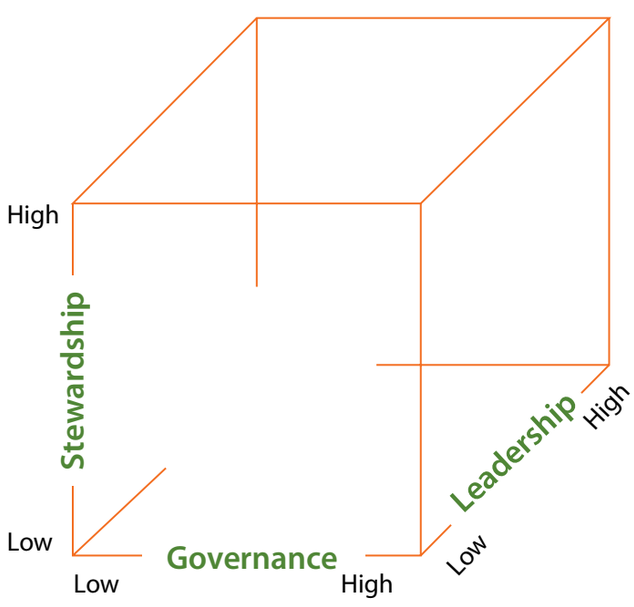
### Background

There have been no real advancements in fiduciary best practices since the Foundation for Fiduciary Studies published the seminal handbook, *Prudent Investment Practices,* in 2003. A lot has changed in the past 14 years, and the subject of fiduciary responsibility warrants a makeover.

Neuro-Fiduciary is focused on the specific leadership and stewardship behaviors that affect the quality of fiduciary metrics. It's a derivative of the research being conducted in the field of behavioral governance, which is focused on improving the decision-making process of leaders who have legal, financial, professional or moral liability for their governance process.

The U.S. Department of Labor has had a big impact — but not for reasons that you would expect. The DOL's conflict-of-interest rules don't define a fiduciary standard, and don't reflect generally accepted best practices associated with the management of investment decisions. In addition, the DOL and its proponents have conducted a very public, derogatory, and inflammatory campaign against the financial services industry. The net effect is that there is even more confusion about what constitutes a fiduciary standard of care, and considerably more mistrust between investors and our industry.

**Fig. 1: Neuro-Fiduciary Framework**




### A Fresh Approach

Neuro-Fiduciary provides a framework that will enable the industry to make exponential strides in its understanding of three factors:

- *what* constitutes a prudent decision-making process;
- *how* the process should be communicated; and
- *why* the process increases the capacity to build trust.

> "A suitability standard is not the opposite of a best interests standard — rather, the two fall along a continuum."

A Neuro-Fiduciary framework is best expressed in three dimensions, as illustrated in Fig. 1.

- **Governance is the x-axis** — the fiduciary's ability to manage the details of a prudent decision-making process.
- **Stewardship is the y-axis** — the fiduciary's passion and discipline to judge wisely and objectively.
- **Leadership is the z-axis** — the fiduciary's capacity to inspire, engage and serve others.

To build trust, you have to develop a client relationship along all three axes. Like the legs of a three-legged stool, there can't be a shortfall along any one axis.

There also is a sequence in the order that trust is established. You must first demonstrate your ability to manage a prudent decision-making process — good governance. Only then will clients begin to consider your stewardship, and then your leadership capacity. (See Fig. 2.)

The Neuro-Fiduciary three-dimensional model also is helpful in illustrating that there are considerable challenges to preparing an advisor or broker to serve in

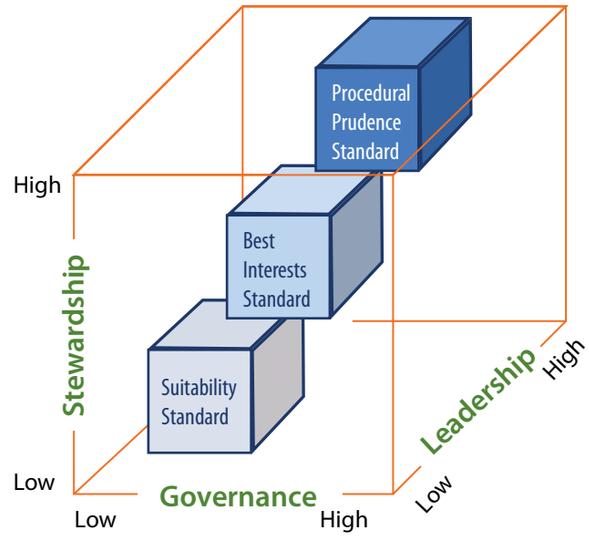
a fiduciary capacity. This is another problem we have with the DOL — it wants to make everyone a fiduciary. Advisors and brokers are being pressed into fiduciary service even when they lack the training and experience to manage a prudent decision-making process, or don't have the inclination or desire to serve as an investment steward.

To this same three-dimensional model we can add the existing regulatory standards of care, as illustrated in Fig. 3.

There are several advantages to viewing the regulatory standards in three dimensions. First, it shows that a suitability standard is not the opposite of a best interests standard — rather, the two fall along a continuum. This helps to explain why the vast majority of investors are not able to discern the differences between a suitability standard and a best interests standard. And when the differences are explained, investors say they still don't care. What they care about is whether they can trust their broker or advisor — hence our focus on building trust.

Second, the DOL rulemaking is having the effect of minimizing ERISA's long-standing procedural prudence standard. A procedural prudence standard requires a fiduciary to not only act in the best interests of a client, but also to demonstrate the details of their decision-making process. A procedural prudence standard defines a higher standard of care than a best interests standard. The DOL's rules are based on a best interests standard, not a procedural prudence standard, and therefore they represent a giant step backwards.

## Fig. 3: Regulatory Standards of Care




### Conclusion

The French sociologist Emile Durkheim (1858-1917) is credited with saying: "When mores [customs and behavior] are sufficient, laws are unnecessary; when mores are insufficient, laws are unenforceable."

Whether or not the DOL's rules become applicable in 2017, we have to fix the numerous problems caused by the regulator and its misinformed advocates. If we don't define the appropriate "mores" for advisors and brokers, regulators will. And, as we have seen with the DOL, we're never going to be happy with the rulemaking of regulators.

Our profession needs to assume the leadership role in defining a uniform standard of care. Such a standard should require all who provide investment advice to demonstrate their:

- **governance** — the details of their decision-making process;
- **stewardship** — the capacity to judge wisely and objectively; and
- **leadership** — the ability to inspire, engage and serve others.

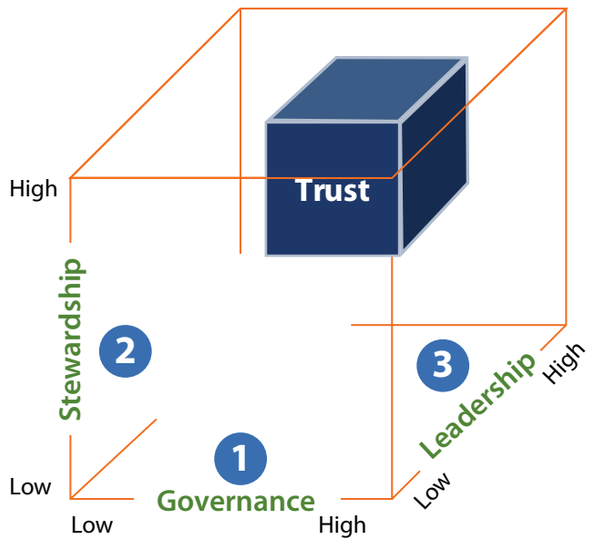
A Neuro-Fiduciary framework provides the metrics for constructing a uniform standard. It also can be used to illustrate the process for restoring and rebuilding investor trust in our industry.

## Fig. 2: Trust and Loyalty: Requirements and Sequence

**1. High Governance**

**2. High Stewardship**

**3. High Leadership**




» Donald B. Trone, GFS® is the CEO and one of five co-founders of 3ethos. The other co-founders include Rear Admiral Steve Branham, (USCG, Retired); Dr. Sean Hannah, Colonel (USA, Retired); Dr. John Sumanth; and Mary Lou Wattman, GFS.

# Is it Time to Go Robo?

Is the retirement industry completely missing an obvious opportunity to utilize robo technology?

BY STEFF C. CHALK

Robo-advisers receive a lot of ink and digitized newsletter space today. Plan sponsors are confused. Plan sponsors who have been at the helm of their qualified plan over the last 20 years have observed investment firms, investment manufacturers, regulators and colleagues extolling the virtues of hiring an investment advisor to assist in navigating the turbulent waters of running a retirement plan.

Plan sponsors' confusion is understandable. They are the customers in an industry where over the last five years, billions have been spent buying platforms, building better algorithms and belittling the historic work product of the financial advisor. Now plan sponsors are being introduced to the concept that they can safely "robo-out" the investment function of their plan to a logarithm they do not understand. Trusting all investment decisions to a robo-adviser translates to a plan sponsor mumbling, "I trust no one" — in other words, "I don't trust myself and I don't trust anyone else. Therefore, I am entrusting a machine with my employees' retirement future."

**Is the Robo-adviser an Easy Decision?**

The selection of a robo-adviser is a fiduciary decision. At a minimum the retirement committee that is planning to connect investment decisions to a robo-adviser should ask the following questions:

1. To what degree does "back-testing" influence the projected returns (versus actual results)?
2. To what degree does artificial intelligence drive the investment decisions for plan participants?
3. (This one is a question to self:) To what degree do I understand the history and the forecasting accuracy from the above responses?
4. (Another question to self:) How will I measure the success or a lack of success with this robo-adviser?

> "Perhaps fast-growing robo-adviser start-ups and investment industry stalwarts, each touting the virtues of their own algorithms, are forcing a square peg into a round hole."

Is it any wonder plan sponsors are confused and struggle when trying to understand how their company retirement plan improves with the insertion of a robo-adviser?

There is a substantial amount of unpredictable work and also a modicum of stakeholder interaction in the traditional human advisor model. Brexit and the ensuing market volatility resulted in robo-adviser resets for a variety of reasons. It is questionable whether a robo-adviser can properly prepare (*i.e.*, anticipate programming for every possible outcome) a truly automated process. For example, the likelihood of a non-politician candidate winning the U.S. presidency may not have been incorporated in the robo-adviser logic in early 2016. How does a new reality become incorporated into back-tested results?

There are social and emotional needs being met when a retirement committee employs and interacts with a human investment advisor. A robo-adviser fails to connect with retirement committee members on logical reasoning and problem solving. Perhaps fast-growing robo-adviser start-ups and investment industry stalwarts, each touting the virtues of their own algorithms, are forcing a square peg into a round hole.

**A Promo for Robo**

Is the retirement industry completely missing an obvious opportunity to utilize robo technology? There is a function where robo technology can deliver a true value-add service and measureable favorable outcomes to a retirement plan trustee or an investment committee. Consider the introduction of the robo-fiduciary. Yes, a robo-fiduciary can play a valuable role for the retirement plan fiduciary who is 75% certain of their duties. A robo-fiduciary can function within parameters where decisions, processes, actions, inactions and overreactions can be anticipated. If they can be anticipated, then they can likely be planned for successfully.

Serving as a plan fiduciary requires a trustee to process information like a computer, question a scenario like a parent, and act with the combined precision of both an accomplished artist and an experienced engineer. The fiduciary world for qualified plans needs to be driven by process. Adherence to process and the support-structure of corresponding documentation simplify and complement fiduciary decision-making. Documenting processes with flowcharts (structured decision-making) successfully convert complex tasks into yes/no decisions.

The advent of the robo-fiduciary is not a prediction of the death of the robo-adviser, but it is a 30,000-foot view of what makes sense for an industry that is forcing technology where it does not necessarily fit.

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

## Industry Voices

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

**David Levine**

"With many advisers already on the path to enhanced compliance efforts, the new Form 5500 will be another step in that process. Could it lead to more enforcement, litigation, and price competition? Yes. But these items will also give advisers another chance — to differentiate, to show how they add value, and to show how they are focused on compliance."

**Don Trone**

"By 2020, elite retirement advisors will be valued more for their behavioral governance than for their technical skills. And other points of differentiation — such as acknowledging fiduciary status — won't mean a darn thing."

**Brian Graff**

"What is most scary about the Empire City 401(k) is that it will have a critical advantage in the marketplace since it will be the only multiple employer plan available to unrelated employers on the marketplace. In other words, whilst DOL giveth to government, it taketh from the private sector."

**Nevin E. Adams, JD**

"It's time to stop lamenting the demise of DB plans — and it's well past time to stop blaming the 401(k) as the culprit. Let's be honest: It was changes in accounting rules, fueled by the occasional market turmoil, and exacerbated by artificially constrained interest rates over a prolonged period, done no good by the stricter (though well-intentioned) funding requirements in the ironically named Pension Protection Act of 2006."

**Christopher Carosa**

"Shouldn't the IRA accounts in state-sponsored auto-enrollment IRAs get ERISA protections if IRAs generally (including, presumably, those that are part of the state-sponsored programs) are important enough to be subject to the investment advice regulation? Is it good policy to eschew ERISA to enhance employee savings opportunities?"

## Engage!

NAPA Net readers engage with our news and commentary — and with each other. Here are a few recent comments:

I am a fiduciary advisor, always have been, for 42 years in the employee benefit business. Even when I was a salaried employee of a major mutual insurance company, I always worked in the best interest of our clients. IMHO, expert advice for a reasonable fee should be every advisor's goal. Simple concept, just "do it", it's your right and privilege to serve.

*— Dan Fields*

I estimate that IRS and DOL regulations consume about 30% of cost for the average plan. With tax simplification, we could eliminate half of this compliance activity, cut back on tax related record keeping costs, and still maintain stringent security measures while redirecting resources to education and advice services. DOL could be more useful in an information role, providing a knowledge center and allowing providers to post more website information, rather than generating (some) unread notices and disclosures.

*— Robert Schwab*

If participants were provided adequate communication about SDBAs, including the complexity of additional fees and expenses involved with their utilization, it would be hard to argue the point that such disclosures were too difficult to understand, save for the most sophisticated investors in the group. I would think their argument about SDBAs would be better served if it was directed at inappropriate allocation of record keeping fees IF those invested in an SDBA were not sharing in those expenses.

*— Robb Smith*

These lawsuits (a form of punishment) have already had an effect on bad behavior. We have seen a significant uptick in our open architecture flat fee 401(k) plan offering.

*— Jeff Field*

Every financial advisor should be a fiduciary to their clients. Suitability is no standard at all, especially when it comes to investing the money of clients who might really suffer if the products are wrong. This rule is a good rule. It should be enforced.

*— Guy Bee*

## What Advisors Are Reading

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

1. Did President Trump's Executive Order Push Back the Fiduciary Rule?
2. More Disruptive Than the Fiduciary Rule?
3. Another Provider Charged with 'Self' Dealing in its 401(k) Plan
4. Recordkeeping Fees Trigger Latest Excessive Fee Suit
5. Ways & Means Looking at Retirement 'Reforms'?
6. Proprietary Fund Suit Proceeds
7. Warren Asks Financial Services Firms Where They Stand on Fiduciary Rule
8. 2nd Set of COI FAQs Tackles Technical Issues
9. Labor Secretary Confirmation Delayed?
10. Bob Doll Says 2017 Will Be a Year of Transition

# The NAPA App


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

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

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

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

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

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

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


01
Download the app at either the Apple store or Google Play — search for "NAPA Net" and then open the app

02
From the main menu, you can access the current issue of the magazine, as well as key areas of the NAPA Net site.

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

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

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

IRS Limits

401(k) SUMMIT

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

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

# Tax Reform and the Role of the Advisor

What to look for as Congress takes up tax reform again.

BY DAVID N. LEVINE

In 2017, the Trump administration and the Republican-controlled Congress are expected to move forward a significant number of legislative priorities. High on this list of priorities is tax reform. Regardless of your political leanings, tax reform is very likely to have a significant impact on your IRA and retirement plan practices.

The first question many people ask is: So what is going to happen? A lot can move around when tax reform is on the table. The following are some likely key areas of focus:

- **Retirement as a Revenue Raiser.** Starting with the significant retirement tax changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001, after-tax Roth contributions have been frequently used ways of generating additional tax revenue. Because of the way the federal budget works, when Congress determines whether legislation increases or decreases the deficit, it only looks 10 years into the future. Increased Roth contributions are not usually expected to increase the deficit in the next 10 years, thus generating extra budget revenue. Prior tax proposals, including one notable proposal from Rep. Dave Camp, former Chairman of the House Ways and Means Committee, would have required that a portion of employee contributions be made on an after-tax Roth basis. Similar proposals are likely to emerge in 2017, and could dramatically impact how advisors help their clients.
- **Simplification.** Key leaders in the House of Representatives, including Speaker Paul Ryan and Ways and Means Committee Chairman Kevin Brady, are advocates of tax "simplification." Simplification can take many forms — including a movement to Roth — but can also involve elimination of features and structures common in many types of existing retirement savings vehicles. Advisors would play a key role in working with their clients to help them through these changes.
- **Other Features.** Recent bipartisan legislative activities have focused on "open" multiple employer plans (called "pooled employer plans" in more recent legislation) and the increased availability of lifetime income features in retirement programs. These features are likely to remain in play and on the radar as part of tax reform. Advisors will have both new business opportunities and challenges depending on how this process moves forward.
- **Timing of the Process.** How long tax reform will take is a great unknown. The legislative process requires time and, at times, can drag out. Congress has a special budget legislative process available, called reconciliation, that requires only 51 votes for legislation in the Senate (as opposed to a filibuster-proof 60 votes), which is key given the 52-48 Republican majority in the Senate. However, there are still many ways legislation can be delayed — by members of both political parties — so the exact timeline for tax reform legislation is hard to predict.

> "When changes occur, advisors will be on the front line with their clients, and will need to be ready to lead them through those changes."

The flip side question is: What is less likely to happen? With Republican control of Congress and the White House, much can happen quickly. However, the reconciliation process has its limits. Due to a procedural rule called the Byrd Rule, Democrats possess significant ability to push back on provisions that may have budgetary implications beyond the 10-year budget window or that are policy provisions (such as the fiduciary rule) that do not affect federal government budget revenue.

Tax reform can have a dramatic impact on IRAs and retirement plans. When changes occur, advisors will be on the front line with their clients, and will need to be ready to lead them through those changes. In the meantime, advisors should remain involved and vigilant to help ensure that the retirement system remains a vital and important part of tax policy as the tax reform process moves forward.

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

NAPA
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# 2017 ENGAGE

## NAPA D.C. FLY-IN FORUM

**WASHINGTON COURT**
JULY 18-19, 2017

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# Repeat Performances?

There was a feeling of déjà vu in the latest rounds of litigation, as the Labor Department went 3-0 against challengers to the fiduciary regulation, yet another recordkeeper's advice arrangement found itself a litigation target, and a suit involving the choice of stable value fund came up short — again.

BY NEVIN E. ADAMS, JD

## 'RELY' ABILITY?

**Advice arrangement draws another participant lawsuit.**

Financial Engines — or more precisely, the firm's financial arrangement with a recordkeeper — has once more found itself named in litigation.

The lawsuit, filed Jan. 27 in the U.S. District Court for the Northern District of Illinois (*Scott v. Aon Hewitt Financial Advisors LLC,* N.D. Ill., No. 1:17-cv-00679), claims that at defendant Hewitt Associates' urging, plaintiff Cheryl Scott, a retiree and participant in the Caterpillar Plan — "and thousands like her in the Caterpillar Plan and other similarly-situated retirement plans for which Hewitt provided recordkeeping services" purchased retirement investment advisory services for an additional fee. "Each quarter, Ms. Scott and other Plan participants paid a considerable service fee from their retirement accounts for this advice," according to the suit.

In fact, plaintiff Scott paid Financial Engines, and, after 2013, AFA, a "hefty fee" based on the size of her retirement account, according to the suit. That said, the suit claims that "…at no time during the period when Financial Engines was providing investment advice directly to Caterpillar Plan participants did Hewitt directly notify Ms. Scott or other similarly-situated Plan participants that Hewitt was taking a 20-25% kickback on the amounts paid to Financial Engines for 'managed services.'" However, the suit notes that in the annual report of the plan filed with the Labor Department it was revealed that Hewitt was receiving 25% of the advice fee paid, and 20-25% of the managed account fee paid to Financial Engines.

### Structure Change

But then, the suit claims that Hewitt, out of concern that what it called "this kickback information," was at risk of being discovered through the required public disclosures that were increasingly becoming available in online repositories, Hewitt and Financial Engines in 2014 "changed the structure of their arrangement to hide from public scrutiny the kickback fees that Hewitt was receiving from Financial Engines," reconfiguring things such that Hewitt's newly incorporated sister company, AFA, purportedly became the entity that would provide the advisory services, though "…for all intents and purposes — Financial Engines continued to do all the actual work related to the investment advisory services that Ms. Scott and similarly-situated participants in the Plans were receiving." In support of this claim, the suit references AFA's Form ADV which said, "We (AFA) rely exclusively on the proprietary software systems and methodology developed and maintained by Financial Engines Advisors LLC…to create target allocations for participants."

"By having the Plans' sponsors 'hire' AFA in lieu of Financial Engines, and then having AFA enter into a sub-advisory agreement with Financial Engines … the Hewitt Defendants were no longer required to report the fees they received from Financial Engines. Instead, AFA simply skimmed 20-25% off that fee for the Hewitt Defendants and paid the balance to Financial Engines as a sub-advisory fee," according to the suit.

And while Caterpillar as plan sponsor picked Hewitt as recordkeeper, "…if a Plan sponsor wanted to take part in the participant-level investment advice and managed account programs from the suite of available services, it had no choice but to accept Financial Engines as the provider — together with the (undisclosed) unlawful fee-sharing arrangement complained of herein."

### Fiduciary Claim

Recordkeepers, of course, are generally deemed to be agents of the plan sponsor/fiduciary, and not an independent fiduciary in their own right. However, the suit claims that since Hewitt picked Financial Engines, negotiated all of the terms and conditions of the agreement with Financial Engines, and because the selection of a plan service provider is a fiduciary function, "the Hewitt Defendants are fiduciaries to the Plans with respect to the investment advice services and the agreement with Financial Engines."

The suit goes on to argue that there "is no rational justification for an asset-based fee for the minimal fixed level of service the

Hewitt Defendants provide in connection with Financial Engines' investment advice program" (which the suit says is "little more than simply making the program available"), and that even though those services do not increase when that participant's account has grown through additional contributions or investment gains, the fee AFA receives does, in proportion to the increase in the value of the account, even though, according to the suit, "…the interface of Financial Engines' advice program with Hewitt's recordkeeping system does nothing more than implement investment instructions on behalf of participants." Said more simply, the plaintiffs allege that "an asset-based fee for a fixed level of service is unreasonable."

This is not the first time the arrangement between Financial Engines and a recordkeeper has been challenged — similar arrangements have been noted in several recent lawsuits, including ones involving Aon Hewitt, Xerox HR Solutions and Voya. Additionally, at least one ERISA litigation firm has gone public with its interest in filing litigation against similar arrangements with Financial Engines.

## PERFECT RECORD?

**The Labor Department is now 3-0 in defending the fiduciary regulation in court.**

If there had been a sense that the U.S. District Court for the Northern District of Texas would prove to be a more plaintiff-friendly venue, Judge Barbara M.G. Lynn turned out to be no more sympathetic to the plaintiffs' case than had the previous two adjudications, both of which also upheld the Labor Department's fiduciary regulation.

### Hold 'Off'?

Judge Lynn's decision, *U.S. Chamber of Commerce v. Hugler* (N.D. Tex., No. 3:16-cv-1476-M, 2/8/17) came Feb. 8, the same day that the Department of Justice had asked the court to hold off making its decision, citing President Trump's Feb. 3 administrative memorandum directing the Labor Department to reevaluate the likely impact of the rule, noting that "it would not serve judicial economy to issue a ruling at this point." Judge Lynn's decision had been expected sometime this week.

The plaintiffs in this case (actually three cases combined due to the commonality of the issues raised) asserted that a recent DOL proposed exemption designed to ease compliance for some fixed-indexed annuities providers demonstrated that the advice rule would "upend" the distribution system and proved it was an example of "regulatory overreach."

Judge Lynn began her analysis by explaining that courts analyze an agency's interpretation of a statute using the two-step approach set forth in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (467 U.S. 837 (1984)). The first step is to determine "whether the intent of Congress is clear," and if "Congress has directly spoken to the precise question at issue." If so, that's the end of it, and the court "must give effect to the unambiguously expressed intent of Congress." If not, there's a second step, where the court "must defer to the agency's interpretation of ambiguous statutory language if it is based on a permissible construction of the statute."

### Texas 'Toast'?

Judge Lynn outlined — and quickly dispensed with — the following arguments made by the plaintiffs.

***Argument 1: The Fiduciary Rule exceeds the DOL's statutory authority under ERISA.***

Judge Lynn quickly noted that not only does the "plain language of ERISA" not foreclose the DOL's interpretation, it does not expressly define "investment advice," and expressly authorizes the DOL to "prescribe such regulations as [it] finds necessary or appropriate to carry out the provisions of [ERISA]," as well as to "define [the] accounting, technical and trade terms used in [ERISA]." She also noted that there is no "serious dispute that someone who provides a recommendation as to the advisability of acquiring, holding, disposing of, or exchanging, securities or other investment property is providing investment advice."

She then proceeded to dismiss six other reasons plaintiffs had put forth, noting that "the Fiduciary Rule plainly does not make one a fiduciary for selling a product without a recommendation," that nothing in ERISA suggests the term "investment advice" was intended only to apply to advice provided on a regular basis, that the plain language of the first and third prongs do not indicate that an ongoing relationship is required, that Dodd-Frank does not foreclose the DOL's interpretation, and that Congress had not ratified the five-part test.

Turning to the analysis under Chevron Step 2, Judge Lynn brushed aside four arguments that the plaintiffs said rendered the final rules unreasonable, including her conclusion that the DOL reasonably removed the regular basis requirement, the DOL may regulate issues of deep economic and political significance, that the DOL's rules reflect congressional intent ("as a result of as the rulemaking process, the DOL rejected a disclosure-only regime, finding that disclosure was ineffective to mitigate the problems ERISA sought to remedy"), and that the DOL justified its new interpretation. "For the reasons stated above, the Fiduciary Rule is a reasonable interpretation under ERISA and is entitled to *Chevron* deference," she wrote.

***Argument 2: The Best Interest Contract Exemption (BICE) exceeds the DOL's exemptive authority, because it requires fiduciaries who advise Title II plans, such as IRAs, to be bound by duties of loyalty and prudence, although that is not expressly provided for in the statute.***

The exemptions are not unambiguously foreclosed by ERISA or the Code (Congress, however, expressly granted the DOL broad authority to adopt "conditional or unconditional exemption[s]" from prohibited transactions under Title II…), Lynn noted, going on to hold that the DOL may require compliance with Title II duties, the BICE is not unduly burdensome, nor is it a mandate.

Judge Lynn next noted that the BICE does not exceed the DOL's authority under *Chevron* Step 2, that the DOL is

entitled to deference unless it is arbitrary and capricious. She said that plaintiffs argue that it was, but she ruled that Congress has delegated exemptive authority to the DOL, and that the conditions and consequences of BICE are reasonable.

***Argument 3: The written contract requirements in BICE and PTE 84-24 impermissibly create a private right of action.***

Lynn ruled that the DOL's exemptions "…neither create a new sanction under federal law nor a private right of action." She noted that while PTE 84-24 and BICE require that certain terms be included in written contracts to qualify for the exemption, and while that be a lawsuit for non-compliance with the contract, "…the exemptions do not create a federal cause of action under Title II."

***Argument 4: The rulemaking process violates the Administrative Procedures Act (APA) for several reasons, including that the notice and comment period was inadequate, the DOL was arbitrary and capricious when it moved exemptive relief provisions for FIAs from PTE 84-24 to BICE, the DOL failed to account for existing annuity regulations, BICE is unworkable, and the DOL's cost-benefit analysis was arbitrary and capricious.***

Judge Lynn held that the notice and comment period was adequate (when the DOL requested comment on its proposed approach, it used language that satisfies the APA because it notified the public and the industry about the possibility the DOL would remove FIAs from PTE 84-24 and make them instead subject to BICE. In the NPRM, the DOL expressly asked whether FIA transactions should continue under PTE 84-24. Requiring sellers of FIAs to rely on BICE, as opposed to PTE 84-24, was thus a logical outgrowth of the DOL's proposal), that the DOL reasonably moved FIAs from PTE 84-24 to BICE (in particular, the DOL justified its decision in three steps: (1) by explaining the complexity and risk of FIAs; (2) distinguishing between fixed rate annuities and FIAs; and (3) demonstrating how FIAs and variable annuities are similar), that the DOL accounted for existing annuity regulation ("the DOL comprehensively assessed existing securities regulation for variable annuities, state insurance regulation of all annuities, academic research, government and industry statistics on the IRA marketplace, and consulted with numerous government and industry officials… The DOL found the protections prior to the current rulemaking insufficient to protect investors"), and that the BICE is not unworkable. Here Lynn basically took apart the arguments put forward by the plaintiffs by concluding:

- the DOL anticipated the most common distribution model would remain workable, predicting firms "will gravitate toward structures and practices that efficiently avoid or manage conflicts to deliver impartial advice consistent with fiduciary conduct standards";
- the DOL provided guidance on reasonable compensation;
- the DOL considered litigation liability;
- the DOL's guidance on proprietary products is clear;
- the plaintiffs misconstrue the supervisory responsibilities imposed by the rules; and
- the DOL's cost/benefit analysis was reasonable ("…analyzed under the same standard of deference to the agency as their 'workability' argument").

***Argument 5: The BICE does not meet statutory requirements for granting exemptions from the prohibited transaction rules.***

Judge Lynn said that the DOL "argues that this requirement refers to whether or not the exemption is feasible for the agency to apply, not for the regulated industry to satisfy. No party cites a case supporting its position, but the Court finds the DOL to be correct for three reasons," which are: (1) assessing whether BICE is feasible for the industry would always require a cost benefit or economic impact analysis; (2) canons of statutory construction support the DOL's position; and (3) ERISA's legislative history supports the DOL's position.

***Argument 6: ACLI argues the new rules violate the First Amendment, as applied to the truthful commercial speech of their members.***

One of the more novel plaintiff arguments was their assertion that in constraining the communications with customers regarding their sales communications, the First Amendment itself was violated. Judge Lynn didn't waste much time on this argument, concluding that waiver applies and the rules do not violate the First Amendment. "Plaintiffs advance three arguments against waiver," Judge Lynn noted: that typical waiver principles do not apply (because they assert a pre-enforcement First Amendment claim under the Declaratory Judgment Act); that it is impossible to waive a constitutional objection to an agency rule; and that the substance of the First Amendment was in fact raised in several comments. However, Judge Lynn found these arguments "unpersuasive." Moreover, Judge Lynn noted that, "Even if Plaintiffs' First Amendment challenge were not waived, the DOL's rules do not violate the First Amendment," explaining that "the rules regulate professional conduct, not commercial speech, and therefore any incidental effect on speech does not violate the First Amendment."

***Argument 7: The contractual provisions required by BICE violate the Federal Arbitration Act.***

"Plaintiffs' argument is without merit," Judge Lynn wrote, noting that "the exemptions' contract requirements do not render arbitration agreements between a financial institution and investor invalid, revocable, or unenforceable." Rather, she noted, "Institutions and advisers may invoke and enforce arbitration agreements, including terms that waive or qualify the right to bring a class action or any representative action; such contracts remain enforceable, but do not meet the conditions for relief from the prohibited transaction provisions of ERISA and the Code." Consequently, she concluded that the exemptions, "…do not violate the FAA's primary purpose, which is to "ensure that private arbitration agreements are enforced according to their terms."

With that, Judge Lynn noted that "for the reasons stated above, Plaintiffs' Motions for Summary Judgment are DENIED, and Defendants' Motion for Summary Judgment is GRANTED."

**What's Next?**

It remains to be seen whether plaintiffs in this, or the other two cases, will pursue an appeal, particularly since the Trump administration has sent a clear signal that it has designs on at least making some adjustments to the rule as it stands, and may well pursue a delay in the application date as the Labor Department undertakes a new review of the impact of the regulation.

## SECOND 'STORY'

**Stable value suit strikes out a second time.**

A plan fiduciary prevailed for a second time against claims that its stable value fund was imprudently structured and monitored.

In the case, brought by participants in CVS' plan (*Barchock v. CVS Health Corp., D.R.I.,* No. 1:16-cv-00061-ML-PAS, report and recommendation 1/31/17), the plan participant-plaintiffs allege that fund manager Galliard failed to exercise appropriate prudence with respect to the investment allocation in the Stable Value Fund, one of the investment options in the CVS plan, and that CVS failed in its duty to monitor Galliard's investment management.

The plaintiffs' first pleading (in the words of Judge Sullivan) offered "…nothing from which to conclude that the Stable Value Fund's short-term fixed income holdings were unreasonable in view of all the considerations a prudent fiduciary might have found relevant, much less that the Fund's fiduciaries failed to use appropriate methods to investigate and make those investment allocation decisions."

The plaintiffs objected, made a motion to amend their complaint, and were allowed to do so.

### Second 'Helping'

"With this fleet of facts, navigating with far more precision than before," according to Judge Sullivan, the plaintiffs allege inference of a breach of the duty of prudent management that they say arises from an examination of three aspects of the CVS Stable Value Fund's asset allocation. They make those arguments with a complaint "…now loaded to the scuppers with factual allegations in support of each," according to Judge Sullivan. While she noted that the new pleading is more effective at tamping down the inference of prudence (as opposed to imprudence) that the initial pleading reflected.

In this version the plaintiff argues that there was excessive liquidity in the fund's asset allocation and that the too-brief duration of the investments caused by an excessive percentage invested in short-term TIFs resulted in suppressed returns. This excessive allocation to cash equivalents defeated the essential characteristic of a stable value fund, which is supposed to be an investment that generally outperforms money market funds while delivering lower volatility.

Plaintiffs allege that during the years 2010 through 2013, between 27% and 55% of the CVS Stable Value Fund's assets were invested in what they said amounts to a highly-liquid, short-term, cash-equivalent money market fund, similar to a "token-interest checking account." That part of the fund during the period in question had "negligible returns, from a high of 0.28% in 2010 to a low of 0.17% in 2013," during a period when the portion of the stable value fund invested there ranged from 55% of that fund in 2010, down to 44% in 2011, back up to 48% in 2012, and down to 27% in 2013. The balance of the CVS Stable Value Fund was invested in intermediate-term investments that typically returned 5% or more.

But, Judge Sullivan noted, "Rather, and somewhat illogically, it focuses on the performance of the "other assets of the CVS Stable Value Fund," and concludes that, if the whole had been invested in the same intermediate-term assets as the portion dedicated to longer-term insurance contracts, the Fund's performance would have exceeded the actual performance in 2010 by 2.4%, in 2011 by 1.4%, in 2012 by 1% and in 2013 by 0.4%." What did Sullivan make of this? "This approach makes no sense," she wrote.

### More Ballast?

However, in the current review, Judge Sullivan noted that, "While this Complaint contains far more ballast than its predecessor, I find that the new material adds little more than substantial factual support for the allegation found to be legally insufficient in the first go-round — that hindsight reveals that the Fund's allocation did not maximize returns." And, while she acknowledged that the new claims — that the fund's asset allocation, the duration of the fund's investments and the fund's performance deviated from industry averages — "… rest firmly on a substantial factual foundation," she found that they were "insufficient to permit an inference of imprudence."

And because the allegations against Galliard were insufficient, allegations that CVS allegedly breached its duty to select and monitor Galliard must also fail, Sullivan concluded.

"At bottom, Plaintiff's amended pleading is laden with facts that plausibly buttress their core claim that, with the prescience of a crystal ball's forecast of the future, the CVS Stable Value Fund managers could have delivered better returns for the investors." However, Sullivan noted, "That does not state a claim."

As for the second count of the complaint, that CVS failed to exercise its duty as a fiduciary to select and monitor its investment manager, Galliard, Judge Sullivan noted that "because a monitoring fiduciary does "not fail in the discharge of its duty to select and monitor" if the investment manager "did not commit a breach," that "with no plausible allegation that Galliard committed a breach of its duty as investment manager, Count II also fails to state a claim."

And, when all was said and done, Judge Sullivan concluded: "…Plaintiffs have failed again to sustain their threshold burden of putting forward plausible allegations sufficient to raise an inference that Defendants breached any duty owed to Plaintiffs."

# Lament Able

The media-bashing of the 401(k) got off to an early start in 2017.

BY NEVIN E. ADAMS

The New Year's confetti was still on the streets when the *Wall Street Journal* published a story provocatively titled "The Champions of the 401(k) Lament the Revolution They Started."

It's fair to say, I think, that their regrets weren't as much about the 401(k) itself, but their sense that the existence of the 401(k) — which transformed the notion of retirement savings in so-called savings and thrift plans by allowing regular workers to defer paying taxes on money they set aside for retirement — led to the demise of the traditional defined benefit plan.

Well, maybe.

Trust me, I "get" the affection for the promise of a DB plan. Who wouldn't like a plan that is funded (and paid for) by your employer, invested by your employer, and at retirement, produces regular, predictable distributions without you having to do anything except making sure they know where to send the check(s)?

That, of course, assumes that you had one. Even in their heyday, DB plans not only weren't available to everyone, they weren't even available to most workers in the private sector. The *Journal* article acknowledges that just 38% of all private-sector workers had a traditional pension in 1979 (13% do today). Where were the headlines in 1979 about fewer than 4 in 10 workers being covered by a pension plan?

And that was just being "covered." While coverage like that in the article tends to equate coverage with receiving benefits, that's just not the way it was. To get that full benefit from that DB plan back in their heyday, you'd likely have had to work there at least 10 years, if not 15. And while we seem to think that 40 years ago Americans worked for a single employer their whole career, that wasn't the case in the private sector, even in the DB's heyday (and certainly today).

> "Where were the headlines in 1979 about fewer than 4 in 10 workers being covered by a pension plan?"

### Tenure, Tracked

The data show that for the very most part we have long been a nation of relatively short-tenured workers. How short? Well, the median job tenure in the United States — how long workers stay at one job — has hovered around five years for the past three decades. Indeed, according to the nonpartisan Employee Benefit Research Institute (EBRI), in recent years it has ticked up, to about 5.5 years, but that's because women are staying in their jobs longer; job tenure for men has actually been dropping.

What that means is that even workers who were "covered" by a pension plan in the private sector weren't working with that employer long enough to get much — or any — of that promised pension benefit.

That doesn't mean that those who were, and those who continue to be, covered by DB plans shouldn't be grateful. But it's time to stop lamenting the demise of DB plans — and it's well past time to stop blaming the 401(k) as the culprit. Let's be honest: It was changes in accounting rules, fueled by the occasional market turmoil, and exacerbated by artificially constrained interest rates over a prolonged period, done no good by the stricter (though well-intentioned) funding requirements in the ironically named Pension Protection Act of 2006. Not to mention, though some may dispute this, a workforce that, writ large, never seemed to fully understand or appreciate the value of these programs (perhaps because so many of them left before vesting).

As for those who want to blame the 401(k) for the nation's retirement readiness — well, as has been said before, that's a bit like blaming the well for the drought.

There is little question that the reality of the 401(k) struggles to live up to the myth of the DB plan. No doubt that the voluntary design (even with auto-encouragements), sporadic availability among smaller employers, and the inherent complexity of individual savings and investment decisions provide challenges.

Regardless, and despite a plethora of media coverage and academic hand-wringing that suggests they are wasting their time, the American public has, through thick and thin, largely hung in there — when they are given the opportunity to do so.

The good news is that far many more American workers have that opportunity today than ever before. But not everyone.

And that really is lamentable.

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*Part of the American Retirement Association*

# NAPA CONNECT

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# CHICAGO

**June 25-27 | theWit, Chicago, IL**

# Credit Worthy?

## What's wrong with the Saver's Credit?

BY NEVIN E. ADAMS, JD

Reports indicate that only about one in eight of those currently eligible for the Saver's Credit take advantage. What do NAPA Net readers think?

Well communication may be part of the problem, but not among the respondents to our mid-January poll. Nearly two-thirds (63%) of respondents say they mention/promote the Saver's Credit in their plan communications, and more than a quarter (26%) say they do sometimes. The rest? Well, they don't, but not always because they wouldn't like to. "It is totally overlooked most times," explained one. "We don't see census data to encourage it many times."

### Communication Stations

Those communications are less common by the plan sponsors that respondents work with. Only about a third (31%) do so regularly, with nearly as many (29%) doing so "sometimes." However, 1 out of 10 say it depends, and nearly a third (29%) do not.

Those trends are largely mirrored in what respondents see their recordkeeper partners doing. A clear plurality (48%) sometimes communicate regarding the Saver's Credit, while more than a quarter (26%) do with regularity, and 27% don't see any activity on that front. "I never see it mentioned, very unfortunate," noted one reader.

As mentioned above, even though there is a lot of support for the concept of the Saver's Credit, the take-up rate on the feature has consistently underperformed expectations. Asked to weigh in on the factors that are holding adoption back, this week's respondents identified (more than one answer permitted):

- 84% – Ignorance of the option
- 63% – They don't file a 1040 (they might instead file 1040-EZ)
- 35% – Their tax preparers aren't aware/don't ask
- 15% – Can't afford to save (even if the Saver's Credit pays for it)
- 5% – Embarrassed to file for the credit

As one reader explained, "Low income people cannot defer and do not take advantage of the credit. They live paycheck to paycheck and want the cash now instead of deferring and getting a credit, which is less than they defer, in the following year. They also most likely do not understand how taxes and tax credits work."

Another said, "When people want their tax refund immediately and get their returns prepared with only the most recent pay stub that may not even have year-to-date deductions, who cares about the credit?"

### Holding (Off) Patterns

Asked to winnow it down to a primary reason, though, this week's respondents highlighted:

- 58% – Ignorance of the option
- 27% – Can't afford to save
- 15% – Don't file a 1040

We asked readers about their suggestions for expanding utilization of the saver's credit, and they said:

- 47% – Allow individuals to take the credit that file Form 1040-EZ
- 28% – Expand/increase the limits so more could take advantage
- 18% – Beef up plan communications
- 7% – Undertake a program to educate tax preparers as to how the credit works

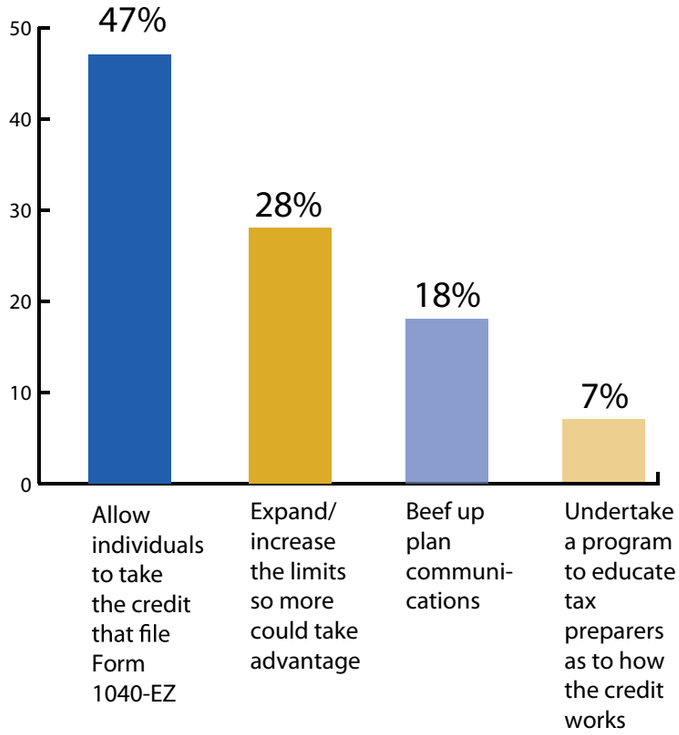
One reader added, "Not allow a tax filing without a W-2." Or, as one reader noted, "Mostly beef up communications, but also allow the credit on the EZ. Yeah, yeah, I know the more stuff you add the less 'EZ' it gets, but still."

### Reader Comments

We got a number of reader comments — here's a sampling:

"I am wondering if the fact that it is a credit only on taxes owed might be why it is not that widely used. It just might not apply. Expanding the income limits and possibly allowing the credit to be funneled to an IRA or to their DC plan, especially if it cannot be applied against taxes owed (since there might not be any owed) could be a viable solution. I would not like to see it refunded to the employee, but rather used to help beef up their retirement savings."

"In some states that have higher average incomes, there are less people who can qualify for the Saver's Credit. Usually the hardest problem I have is getting the people who are eligible for the credit to start savings in the first place. As far as why those who do qualify but don't take it, the only thing I can think of is ignorance that it exists or tax prep software that overlooks it."




Source: NAPA-Net Reader Poll

"With most taxpayers using web-based tax software or a tax preparation service that will automatically include the credit if it applies, I don't believe that lack of knowledge of the credit is the greatest factor. Frankly, I wasn't aware the credit could not be claimed on 1040-EZ but that seems the most obvious reason for lack of uptake. I include a brief discussion of the credit in every participant meeting. Even if the participant in my meeting cannot claim the credit (due to income limit), it may apply to his/her child or sibling."

"I am not even sure of the limits I am embarrassed to say!"

"We feel like education is key; we include the Saver's Credit info along with the IRS form in our first communication/ education package each year, and we mention it in all meetings. We have been promoting this since inception, and once the participant knows about it, most do take advantage. We post flyers on message boards in break rooms and plan sponsor servers where employees have access, and we have encouraged our participants to share the info with other family members, church members, friends, etc. to spread the word."

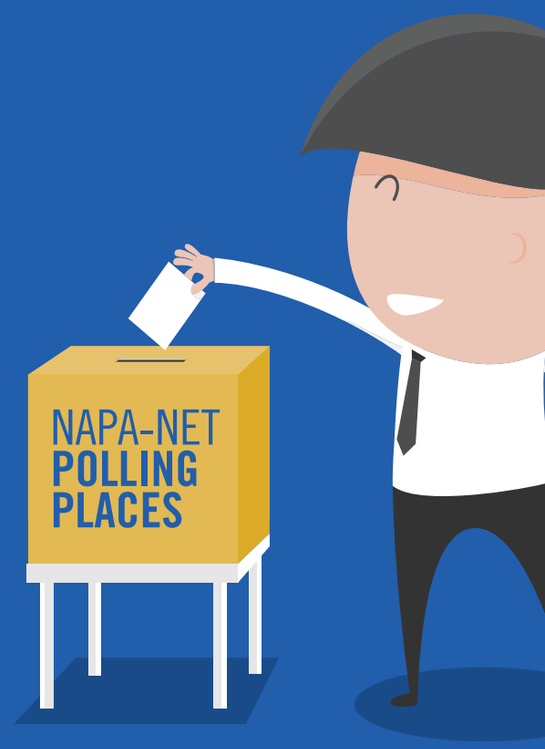
"Recommend expanding the coverage. Go all the way up to 100k for a married couple and 50k for single in AGI. Also, increase the credit to 50% across the board up to $2,000 credit. Maybe even do 100% credit up to $2,000 on 40k for married and 20k for single in AGI."

"I have a new client whose employees would easily qualify for the tax credit. I would love to know how I could recommend them adding it to their tax returns."

"I mention the Saver's Credit every time I do participant education. However, that doesn't mean anyone remembers it when it comes time to prepare their tax returns. I believe it's the lack of awareness that's the primary reason for the low take-up rate. This year, I think I'll address it directly with clients over the next couple of months. Perhaps they can reach out to their employees. We could also put a link up on our website."

"I used to bring the tax credit up for years yet I never received feedback that it was being used. Do tax programs like TurboTax take it into consideration? I doubt those who would benefit from the tax credit have someone do their taxes professionally. Making sure they are available via these programs would be great."

Thanks to everyone who participated in this — and every week's — NAPA Net reader poll!




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

# Regulatory Review

As the presidential administrations change, the Labor Department publishes two sets of fiduciary FAQs, seeks to clarify (one might say "encourage") the use of ESG investments and offers some hope for a more productive use of safe harbor contributions…

BY NEVIN E. ADAMS, JD

## FAQ 'Check'

Just ahead of a switch in administrations, the Labor Department publishes two sets of frequently asked questions regarding the fiduciary regulation

The Labor Department released a much-anticipated second set of fiduciary regulation FAQs on Friday the 13th of January.

These frequently asked questions, or FAQs, anticipated since the previous fall, focus particularly on specific technical questions raised by financial service providers. Okay, technically they are the third set of FAQs, but unlike the ones focused on consumer protections issued the same day (see "Consumer 'Projections'" below), these are focused on investment advice concerning ERISA-covered plans, IRAs and other plans covered by Code Section 4975(e)(1).

The Labor Department had last issued FAQs on the fiduciary regulation in October, in a series of 34 questions largely focused on the particulars of the Best Interest Contract Exemption, or BICE.

> "The FAQs forcus particularly on specific questions raised by financial service providers."

### What's Inside?

The most recent document covers 35 questions over the course of 17 pages, covering things such as:

- investment recommendations covered under the rule;
- investment education (more specifically the line between non-fiduciary investment education and fiduciary recommendations);
- what constitute "general communications" (including presentations at industry conferences, so-called "free meal" seminars, communications about rollovers, and the benefits of contributing more and maximizing the employer match);
- TPA recommendations of recordkeepers (the TPA recommendation of a recordkeeper is not investment advice if they don't recommend funds on the platform);
- the liability of an adviser (or financial institution) for investment decisions made against the adviser's recommendation; and
- the availability of the platform provider provision — including the notion that a group annuity contract could constitute a "platform or similar mechanism" within the meaning of the fiduciary rule (as an example noting that a life insurance company could rely on the platform provider provision in offering a range of investment alternatives to a 401(k) plan sponsor as part of a group annuity product that included recordkeeping services).

### Interactive Tools

They also clarify that if a DC plan service provider's interactive investment tool asks plan participants to input data (such as age, expected retirement date, current retirement savings, annual retirement contributions, current tax rate, estimated retirement tax rate, etc.) and then generates estimated future retirement income needs of the participant, could be treated as investment education and not fiduciary investment advice.

The FAQs clarify that the independent fiduciary exception does not require that the $50 million be attributable to only one plan or involve only plan assets (specifically citing a situation involving the chief financial officer of a company that is a plan fiduciary with management or control of a company plan that has $42 million in total assets and who also is responsible for management of $10 million in cash and securities held in the company's treasury department).

Do the FAQs answer all the outstanding questions about the new regulations? Surely not — but we're (particularly recordkeepers) somewhat closer to knowing what we need to know.

## 02 Consumer 'Projections'

The DOL publishes FAQs on the fiduciary rule, but…

On the same day it published the FAQs outlined above, the Labor Department also published a new set of FAQs on the fiduciary regulation — but, these were focused on consumer protections provided by the regulation — think of it as the DOL's explanation of the regulation to retirement investors — and how it might affect their interaction with advisors.

The FAQs deal with basic issues like why the rule was adopted, which financial advisors are fiduciaries under the regulation — and yes, "Will the rule better protect my retirement savings?" The $17 billion cost of so-called "conflicted advice" is restated, as is an estimation as to how much a "typical" worker loses to conflicted investment advice (the example assumes the individual pays 1% more in fees than "would have been ideal" — after that, it's "just" math).

The 16-page document contains 30 questions and answers, as well as an appendix, "Questions 401(k) and IRA Investors Should Ask Their Financial Adviser." These questions include:

- Will you acknowledge in writing that you are a fiduciary when you make investment recommendations to me?
- Are you and your firm complying with the Department of Labor's conflict of interest rule and exemptions on fiduciary investment advice? If you use one of the exemptions, explain the conflict of interest you have that requires you to comply with the exemption.
- Do you have a credential or designation from an accredited program that requires training and that holds its members to strict ethical standards? Does the organization let investors file complaints about people that they have issued adviser designations?
- What fees and expenses will I be charged? Will you give me a list of those fees and expenses, and explain what each fee and expense pays for? Do I pay all of these fees and expenses directly to you or are any fees or charges taken out of my investments?
- Do you or your firm get paid from any other sources in connection with my business with you? Do you or your firm pay anyone else because I opened an account with you or because I make investments that you recommend?
- Do you make more money if I buy some investments instead of others? Explain why.
- Are there any limitations on the investment products you will recommend? If so, what are they? For example, do you sell only your firm's products ("proprietary products") or do you sell products from other companies?
- What is your experience with giving advice on retirement accounts? What customer references or customer satisfaction surveys are available for my review?

## 03 'Harbor' Zeal?

Proposed reg would free up forfeitures to fund safe harbor contributions

A proposed regulation from the IRS looks to be (very) good news for plan sponsors, allowing plan forfeitures to be used to fund safe harbor contributions.

The proposed regulation would amend the definitions of qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs) in 401(k)s and plans that provide for matching contributions or employee contributions under Code Section 401(m). Specifically, it changes that definition by stating that employer contributions would qualify as QMACs or QNECs if they satisfy applicable nonforfeitability and distribution requirements at the time they are allocated to participants' accounts, even though they didn't meet those requirements when originally contributed to the plan.

The regulation would apply as of taxable years beginning on or after the date the regulations are published in final form, although taxpayers may rely on the proposed regulation before that date. If the final regulation is more restrictive than the proposed regulation, those provisions of the final regulation will not be applied retroactively.

The IRS will accept comments and requests for a public hearing on the proposed regulation through April 18.

## 04 Vote Notes

Labor Department restates fiduciary voting, ESG considerations

Apparently concerned that its previous guidance on the matter of social investing hadn't been sufficient to overcome fiduciary resistance, the Labor Department has issued new guidance on the matter.

The guidance was broader than that, of course — the DOL's "Interpretive Bulletin Relating to the Exercise of Shareholder Rights and Written Statements of Investment Policy, including Proxy Voting Policies or Guidelines" was intended to clarify the agency's "longstanding position is that the fiduciary act of managing plan assets which are shares of corporate stock includes decisions on the voting of proxies and other exercises of shareholder rights."

### Missed Understandings?

In this latest Interpretative Bulletin, the Labor Department said that it was concerned that in the eight years since

its publication, the changes made to the initial Interpretative Bulleting on the subject (IB 94-2) by IB 2008-2 "have been misunderstood and may have worked to discourage ERISA plan fiduciaries who are responsible for the management of shares of corporate stock from voting." In particular, the DOL said it was "concerned that IB 2008-2 has been read by some stakeholders to articulate a general rule that broadly prohibits ERISA plans from exercising shareholder rights, including voting of proxies, unless the plan has performed a cost-benefit analysis and concluded in the case of each particular proxy vote or exercise of shareholder rights that the action is more likely than not to result in a quantifiable increase in the economic value of the plan's investment."

Additionally, on the same day in 2008, the DOL issued Interpretive Bulletin 2008-1 (IB 2008-1) to update Interpretive Bulletin 94-1 (IB 94-1), which addressed issues regarding fiduciary consideration of investments and investment strategies that take into account environmental, social and governance (ESG) factors. And in the newest IB, the Labor Department acknowledged an additional concern that "despite the guidance on ESG issues the Department recently provided in IB 2015-1, statements in IB 2008-2 may cause confusion as to whether or how a plan fiduciary may consider ESG issues in connection with proxy voting or undertaking other shareholder engagement activities."

### Out of Step?

More specifically, in the newest IB, the Labor Department said that it was concerned that the changes to IB 94-2 in IB 2008-2 are "out of step with important domestic and international trends in investment management and have the potential to dissuade ERISA fiduciaries from exercising shareholder rights, including the voting of proxies, in areas that are increasingly being recognized as important to long-term shareholder value." In response, the Labor Department decided to withdraw IB 2008-2 and replace it with Interpretive Bulletin 2016-1 which it said reinstates the language of IB 94-2 with minor updates.

In the IB, the Labor Department notes that fiduciaries may engage in other shareholder activities "intended to monitor or influence corporate management where the responsible fiduciary concludes that there is a reasonable expectation that such monitoring or communication with management, by the plan alone or together with other shareholders, is likely to enhance the value of the plan's investment in the corporation, after taking into account the costs involved." The bulletin observed that active monitoring and communication may be carried out through a variety of methods including by means of correspondence and meetings with corporate management as well as by exercising the legal rights of a shareholder.

### Enhancing Value

While the DOL noted that ERISA does not permit fiduciaries to subordinate the economic interests of participants and beneficiaries to unrelated objectives in voting proxies or in exercising other shareholder rights, it pointed out that a reasonable expectation of enhancing the value of the plan's investment through shareholder activities may exist in various circumstances, for example, where plan investments in corporate stock are held as long-term investments or where a plan may not be able to easily dispose of those investments.

Matters falling within the categories of "active monitoring and communication activities" would include things like governance structures and practices, particularly those involving board composition, executive compensation, transparency and accountability in corporate decision-making, responsiveness to shareholders, the corporation's policy regarding mergers and acquisitions, the extent of debt financing and capitalization, the nature of long-term business plans including plans on climate change preparedness and sustainability, governance and compliance policies and practices for avoiding criminal liability and ensuring employees comply with applicable laws and regulations, the corporation's workforce practices (*e.g.*, investment in training to develop its work force, diversity, equal employment opportunity), policies and practices to address environmental or social factors that have an impact on shareholder value, and other financial and non-financial measures of corporate performance.

### Documentation

The IB notes that compliance with the duty to monitor necessitates proper documentation of the activities that are subject to monitoring, and that in turn means that the investment manager or other fiduciary responsible for voting would be required to maintain accurate records as to proxy voting, and that those voting records must enable the named fiduciary to review not only the investment manager's voting procedure with respect to plan-owned stock, but also to review the actions taken in individual proxy voting situations.

For plans that have an investment policy, the IB notes that a "statement of proxy voting policy would be an important part of any comprehensive statement of investment policy," specifically a written statement that "provides the fiduciaries who are responsible for plan investments with guidelines or general instructions concerning various types or categories of investment management decisions, which may include proxy voting decisions as well as policies concerning economically targeted investments or incorporating environmental, social or governance (ESG) factors in investment policy statements or integrating ESG-related tools, metrics and analyses to evaluate an investment's risk or return or choose among equivalent investments."

p.s. Those at the NAPA 401(k) SUMMIT should be sure to check out Workshop 10, "Environmental 'Impasse'? — What You Don't Know About ESG... and Should."

## 05 'Focus' Group

SEC to sharpen focus on robos, share class selection, ETFs

Robo-advisors, retirement investments and share class selection are on the Securities and Exchange Commission's focus list for 2017.

For its annual report of exam priorities, the SEC noted that its 2017 priorities were organized around three thematic areas:

- examining matters of importance to retail investors;
- focusing on risks specific to elderly and retiring investors; and
- assessing market-wide risks.

### Robo Risks

With regard to the robo-advisor focus (more specifically electronic investment advice), the SEC says its examinations will likely focus on registrants' compliance programs, marketing, formulation of investment recommendations, data protection, and disclosures relating to conflicts of interest. The SEC said it would also review firms' compliance practices for overseeing algorithms that generate recommendations.

Share class selection, which has been a litigation focus in a number of recent cases, was also on the focus list. The SEC said it will "continue reviewing conflicts of interest and other factors that may affect registrants' recommendations to invest, or remain invested, in particular share classes of mutual funds."

Regarding wrap fee programs, the SEC said it would likely review whether investment advisers are acting in a manner consistent with their fiduciary duty and whether they are meeting their contractual obligations to clients. Areas of interest may include wrap account suitability, effectiveness of disclosures, conflicts of interest, and brokerage practices, including best execution and trading away, according to the SEC.

### Retirement Accounts

The SEC said it would continue its multi-year "ReTIRE" initiative, focusing on investment advisers and broker-dealers along with the services they offer to investors with retirement accounts. In 2017, the SEC said those examinations would likely focus on, among other things, registrants' recommendations and sales of variable insurance products as well as the sales and management of target-date funds.

The SEC also indicated it would examine investment advisers to public pension plans to assess how they are managing conflicts of interest and fulfilling their fiduciary duty. "We will also review other risks specific to these advisers, including pay-to-play and undisclosed gifts and entertainment practices," they said.

## 06 "High" Five

The 5 most common SEC compliance violations

A "Risk Alert" from the Securities and Exchange Commission highlights the five most frequent compliance topics identified in deficiency letters sent to SEC-registered investment advisers.

The alert from the SEC's Office of Compliance Inspections and Examinations outlines five compliance topics most frequently identified in deficiency letters.

### Compliance Rule

The SEC's Compliance Rule makes it unlawful for an adviser to provide investment advice to clients unless the adviser does certain things (briefly summarized as implement written policies, review those policies annually, and designate a chief compliance officer to administer those policies). Under that category, the SEC cites the following as typical examples of deficiencies: compliance manuals are not reasonably tailored to the adviser's business practices; annual reviews are not performed or did not address the adequacy of the adviser's policies and procedures; adviser does not follow compliance policies and procedures; and the compliance manuals are not current.

### Regulatory Filings

Under this category, the SEC cites as "typical examples" of shortcomings the following: inaccurate disclosures (notably inaccurately reporting custody information, regulatory assets under management, disciplinary history, and types of clients and conflicts); untimely amendments to Form ADVs; incorrect and untimely Form PF filings; and incorrect and untimely Form D filings.

### Custody Rule

"Typical examples" of deficiencies or weaknesses with respect to the Custody Rule cited by the SEC include: advisers did not recognize that they may have custody due to online access to client accounts (an adviser's online access to client accounts may meet the definition of custody when such access provides the adviser with the ability to withdraw funds and securities from the client accounts); advisers with custody obtained surprise examinations that do not meet the requirements of the Custody Rule; and advisers did not recognize that they may have custody as a result of certain authority over client accounts.

### Code of Ethics Rule

Access persons not identified, codes of ethics missing required information (such as not specifying review of the holdings and transactions reports, or the specific submission timeframes), untimely submission of transactions and holdings, and no description of code of ethics in Form ADVs (including not indicating that their codes of ethics are available upon request) are cited as "typical" examples of violations in this category.

### Books and Records Rule

The Books and Records Rule requires advisers to make and keep certain books and records relating to their investment advisory business, including typical accounting and other business records. Typical examples of violations cited by the SEC include: did not maintain all required records (such as trade records, advisory agreements and general ledgers); books and records are inaccurate or not updated (such as inaccurate fee schedules and client records or stale client lists); and inconsistent recordkeeping.

# NAPA's Upcoming Industry Lists

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

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

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

NAPA YOUNG GUNS — TOP PLAN ADVISORS UNDER 40

IN A LEAGUE OF THEIR OWN — NAPA'S TOP WOMEN ADVISORS 2017

NAPA W 2017 — DC TOP INDUSTRY WHOLESALERS

### SUMMER 2017

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 Plan Advisors Under 40," first published in 2014.

You can find our lists from 2014, 2015 and 2016 online at www.napa-net.org, under the "Industry Lists" tab.

The 2017 "Young Guns" list will be published in the Summer 2017 issue of *NAPA Net the Magazine.*

### WINTER 2017

In what has long been a male-dominated profession, a growing number of women are today making significant contributions to this field. In 2015, the editorial team here committed to an acknowledgment of those contributions with the launch of the newest NAPA Net list, NAPA's Top Women Advisors.

You can find the lists of Top Women Advisor All-Stars, Captains, and Rising Stars online at www.napa-net.org, under the "Industry Lists" tab.

The 2017 list of Top Women Advisors will be published in the Winter 2017 issue of *NAPA Net the Magazine.*

### SPRING 2018

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

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

That's why NAPA set out to identify the top wholesalers who serve the DC market — the truly elite Wingmen. Our first annual Top DC Wholesalers list, published in March 2014, quickly became an industry staple.

You can find the lists of Top DC Wholesalers online at www.napa-net.org, under the "Industry Lists" tab.

The 2018 list of DC Top Industry Wholesalers will be published in the Spring 2018 issue of *NAPA Net the Magazine.*

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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More than 200 firms have stepped up with their check books, business intelligence, and "can do" attitude to support NAPA, the only organization that educates and advocates specifically for plan advisors like you. NAPA is grateful for its Firm Partners. We hope you appreciate them too.

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Spectrum Investment Advisors
Stiles Financial Services
Strategic Insight
Strategic Wealth Management
Streamline Partners
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T. Rowe Price
TAG Resources, LLC
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**as of February 16, 2017*

**Shouldn't *your* firm be on this list and enjoy the benefits of NAPA Firm Partnership?**

To learn more contact Jake Linney at 703-516-9300 x116 · jlinney@usaretirement.org

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