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THE OFFICIAL MAGAZINE OF THE NATIONAL ASSOCIATION OF PLAN ADVISORS

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(IF I KNEW THEN) WHAT I KNOW NOW

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COLUMNS

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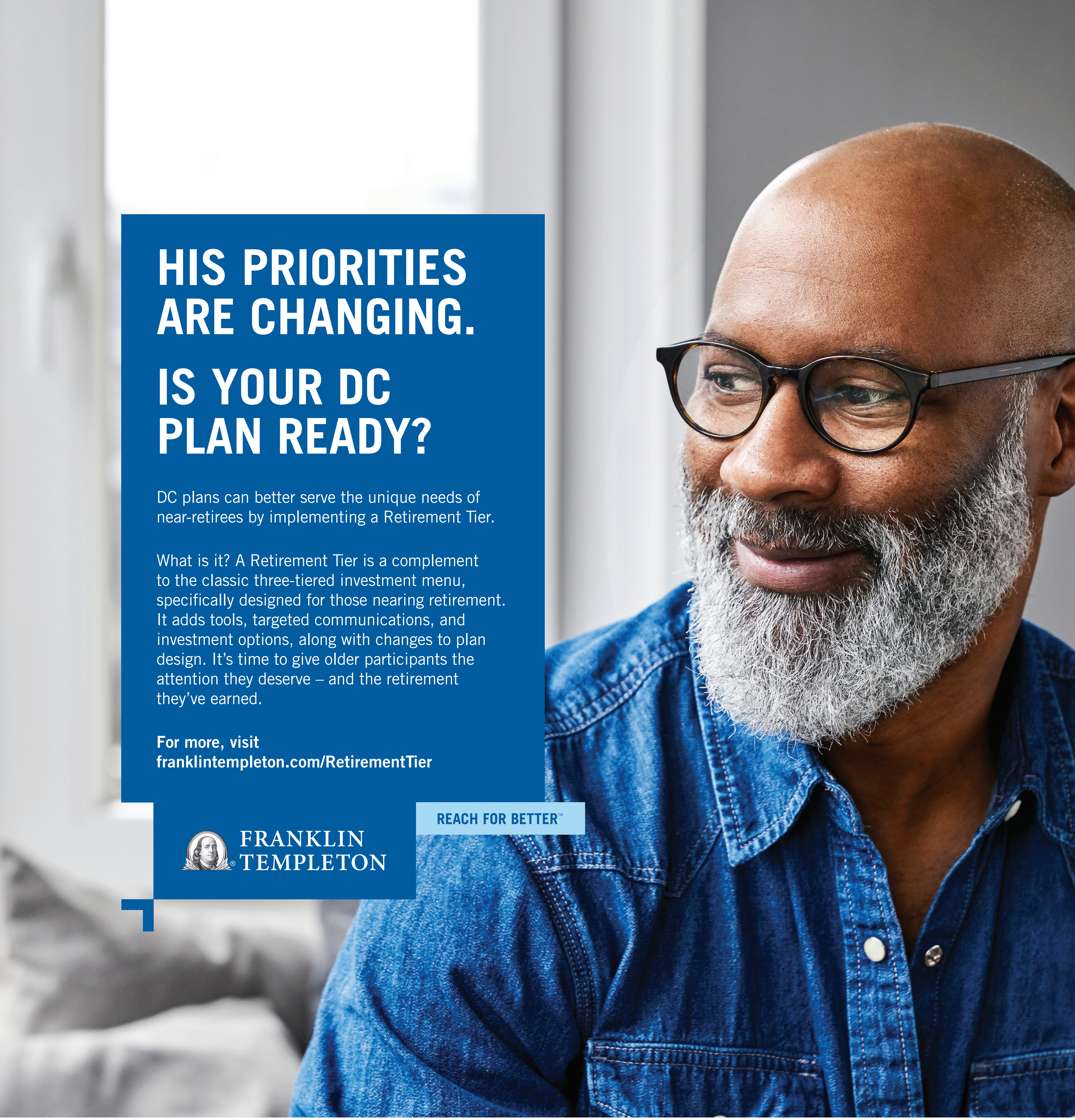
HIS PRIORITIES ARE CHANGING.
IS YOUR DC PLAN READY?
DC plans can better serve the unique needs of near-retirees by implementing a Retirement Tier.
What is it? A Retirement Tier is a complement to the classic three-tiered investment menu, specifically designed for those nearing retirement. It adds tools, targeted communications, and investment options, along with changes to plan design. It's time to give older participants the attention they deserve – and the retirement they've earned.
For more, visit franklintempleton.com/RetirementTier
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An Adult Conversation

The longer we put off addressing Social Security's financial shortfall, the more difficult and more expensive the task will be.

Years ago, a car of mine had an oil leak. Oh, it wasn't particularly large, the kind of thing that leaves a nasty small pool underneath your car overnight. The kind that, every so often you had to pour in another quart of oil. It was easy enough to fix, but it would have required leaving my car with the mechanic at an inconvenient time, and would have cost money that I wanted to spend on other things. And then I discovered a product that claimed I could pour into my oil tank, and it would remedy, at least temporarily, and/or slow the leak. And so it did.

There have been many different solutions put forth over the years to remedy the nation's retirement ills, but regardless of your perception of the coming crisis (including those who believe such notions are overblown), there is a constant in every estimation of our retirement future: Social Security. Indeed, we rely on the inevitability of those benefits with a certainty generally accorded only to death and taxes (both of which play a significant role in Social Security eligibility and claiming, as it turns out).

And yet, for all its centrality in planning, Social Security faces its own funding crisis, or is projected to, according to a report from the trustees of the program, "The 2019 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds." That the program will run short of funds is no secret, with the only variable being at what exact point in the future benefits will have to be reduced (it changes modestly from year to year, depending on a couple of variables).

Not only is the funding crisis well known, the trustees' report acknowledges and outlines a "broad continuum of policy options that would close or reduce Social Security's long-term financing shortfall," along with cost estimates.

Years back, when the future crisis was no less real, but somewhat less large, I had the opportunity to hear former Federal Reserve Chairman Alan Greenspan speak on the subject of "fixing" Social Security.

> "Social Security has long been considered a 'third rail' of American politics."

Greenspan, who had led a commission in the early 1980s charged with solving a more immediate crisis of the program, outlined the three core elements of any serious attempt to resolve the funding shortfall: increase funding (generally either by raising the withholding rates or the compensation level to which they are applied, or both), reduce benefits (by raising the claiming age), or what's euphemistically referred to as "means testing," which effectively reduces the benefits to higher-income recipients.

So, the answer to the problem is, as the actuaries remind us, "just math," and we needn't choose one solution or the other – rather, some combination – as it was in 1983 – is the approach that seems the most likely outcome.

Except, of course, the answer isn't "just" math, it's money. And fixing it – like fixing that oil leak in my car – while not hard to figure out – will cost money that those who would make that call would "rather" spend on other things. It's also fraught – as it was in the 1980s – with political hot buttons. Social Security has long been considered a "third rail" of American politics, and politicians have been burned for merely suggesting the need for change, much less putting forth specific proposals.

That said, if there's any aspect of this that is as widely known as the fact that there is a looming financial shortfall, it's that the longer we put off taking steps to do so, the more difficult – the more expensive – it will be.

Today as we stand at the brink of the biggest retirement reform legislation in a decade – as we consider a growing number of state retirement savings mandates, and contemplate a federal expansion – we also know that as valuable, even essential, as those steps might be in broadening and deepening the success of the private retirement system – they won't be "enough" if we don't shore up the baseline foundation upon which the nation's retirement security is currently predicated.

It's time, in short, for an adult conversation about – and some adult action to deal with – Social Security.

NEVIN E. ADAMS, JD » Editor-in-Chief
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Time to Be Loud and Proud

NAPA can only be strong if we benefit from everyone's involvement and voice.

BY JANIA STOUT

When I sat down to write this, my first column as NAPA President, I quickly realized that I will never be able to write a President's message like our Past President, Jeff Acheson. Jeff is a master of wordsmithing and, as those who attended this year's 401(k) Summit know, he is famous for his "Jeffisms." I will do my best, though, and might even phone my friend for some help from time to time!

Speaking of Summit, how amazing was this year's conference?! I continue to be impressed by the content and the expertise of the speakers. We had record-breaking attendance, with more than 1,100 advisors, and the venue was fantastic! I brought a few of my team members to Summit this year and they were amazed at the amount of comradery that goes on.

Next year is going to be great too, as we head to Orlando – and get a chance to take over Universal Studios for an evening. It will be a conference you won't want to miss!

As the title of this column suggests, it is time to start sharing our story.

I am a huge fan of putting a spotlight on people and events when they demonstrate how our industry changes lives in a positive way. I do not believe we do enough of this, and I want to be the catalyst to help this happen. People believe what they see in the press and on social media. So let's show them the amazing work we do every day to help change lives.

I am hoping we will see a more formal initiative about this in the upcoming year. If you have a great story to share, please share and tag me on it too! I will help get the news out there. I have heard so many stories of how a plan advisor worked tirelessly to help a client with either plan design or education for employees, and how their efforts led to someone being in a better financial situation. These are the stories we need the public to hear. We should work together as an industry to continue to help others understand what we do.

Since this is my first President's message, I would like to share with you some of my goals and initiatives for my term. Many of these have been put into motion in the past, but we will work to intensify our focus in certain areas. It will probably not come as a surprise to those who know me that the following three topics are high on my list.

Greater Inclusion and Diversity

As we grow in membership, I feel it is important that we focus on having the representation of as many types of plan advisors as possible. Whether you work for a large broker-dealer or RIA or a small one- to five-person firm, we want to hear your voice. We also want to continue to support minorities in our industry. NAPA can only be strong if we have everyone's involvement and voice. I have seen dozens of advisors reach out to me asking to get involved, and my goal is to help create more opportunity for them to do so. To borrow a "Jeffism," we are greater in whole than in part.

Women's Initiatives

After Jeff passed the gavel to me at Summit, I asked the women in the room to stand up. I literally nearly cried happy tears! It was truly inspiring to see what looked like at least 30% of the room stand up. This is something our industry and association should be proud of.

I am proud to be the second female President, and our new President Elect, Pat Wenzel, is a woman as well. We have our own conference – the Women in Retirement Conference (WiRC), now in its fourth year. I am excited to be speaking at the WiRC event this June in Chicago, when we will be announcing a women's mentorship effort. Thank you to all the male advisors who have supported their female colleagues by mentoring, hiring or working side by side with them over the years.

Financial Literacy

At Summit I spoke about the "If not me, then who?" mission that I borrowed from the Travis Manion foundation. Financial wellness and literacy is a topic most plan advisors are passionate about, and I feel it is time we take our passion and provide more programs and tools that members can tap into.

We have some of the greatest advisors in the industry who are already blazing the path in this area. So we created a task force to collaborate about what NAPA can do to lift the country up with better financial literacy programs. We feel we are the right industry to do this, and I am excited to give you updates on this effort in the future.

Conclusion

Lastly, I want to share with you how grateful I am to be a part of NAPA and to be your President. It will be the highlight of my career to know that thousands of advisors trust me in this leadership role. I step into it wholeheartedly.

NAPA is such a powerful association that can truly affect regulation and legislation. I have seen it first-hand, meeting with the Department of Labor and testifying before Congress. We truly can make a difference!

I hope that reading this makes you want to learn more about what you can do to help. If so, please reach out to me. I believe in collaboration and I am confident that together we can "raise the tide" to help working Americans have a dignified and rewarding retirement.

» Jania Stout is the co-founder and managing director of Fiduciary Plan Advisors at HighTower in Owings Mills, MD. She serves as NAPA's 2019-2020 President.

BY BRIAN H. GRAFF

A Story to Tell

We make a difference in people's lives every day. Let's start telling *those* stories.

As the HBO epic series Game of Thrones recently wound to the close of its eight-season run, Tyrion Lannister, who had experienced plenty of the best and worst that world had to offer, looking back on that history and the mistakes he and others had made, posed a question with regard to choosing a way forward. "What unites people?" he asked. "Armies? Gold? Flags?"

And then he answered his own question with a single compelling observation: "Stories. There's nothing in the world more powerful than a good story. Nothing can stop it. No enemy can defeat it."

While it's nearly 18 months away, we are well into the 2020 election cycle, with an array of candidates on the Democratic side already numerically sufficient to field both teams in a baseball game. Earlier this year several of those presidential aspirants lined up behind a bill titled the "Wall Street Tax Act," which would actually take a big slice out of middle-class American workers' savings, imposing a tax on every purchase or sale of a stock, bond or derivative (including those held by mutual funds and collective investment trusts in retirement plans). A tax that the Investment Company Institute estimated would have the effect of increasing equity fund expense ratios by 31%.

Some of those same presidential aspirants subsequently introduced the "Inclusive Prosperity Act," yet another financial transactions tax that would also take a cut from retirement plan contribution investments (and is estimated to bring in three times the projected revenue attributed to the Wall Street Tax Act). It seems that Washington needs to be reminded not only that the 401(k) is where America saves – it's where it invests as well.

Those storm clouds notwithstanding, as we head to press, there are signs of hope on the horizon. Sens. Portman and Cardin have recently reintroduced bipartisan legislation they first unveiled in the last Congress. Their Retirement Security & Savings Act includes a broad set of reforms and contains more than 50 provisions designed to strengthen Americans' retirement security, including a new automatic safe harbor, increased catch-up contribution limits for older workers, help with student loan debt, an expanded Saver's Credit, and a number of enhancements designed to encourage small business plan start-ups.

As we head to press, the House of Representatives has just passed the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 – the most significant piece of retirement plan legislation in more than a decade – by an incredible 417-3 margin. The Senate is anxiously awaiting its turn to weigh in, with the Retirement Enhancement and Savings Act (RESA).

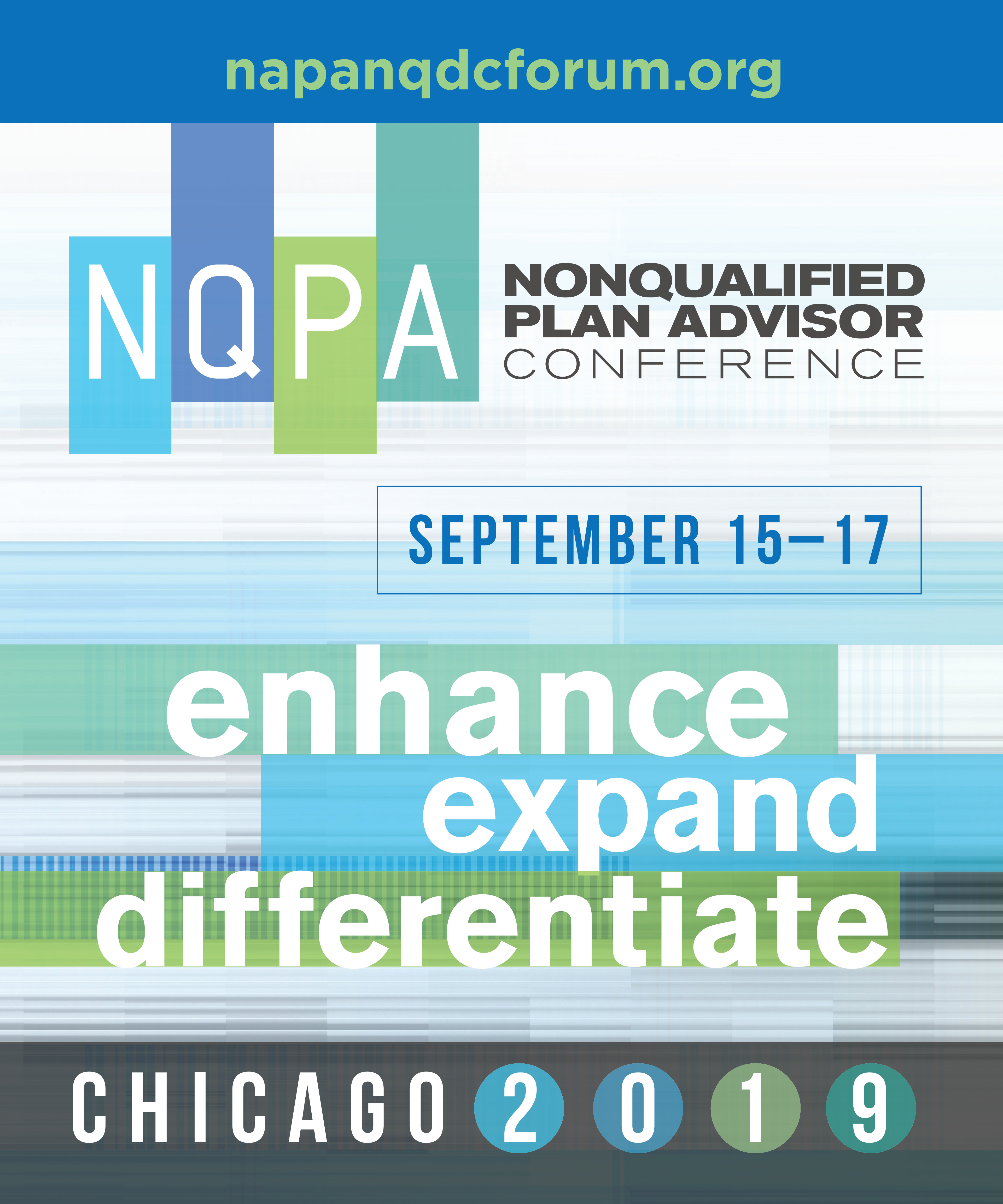
The American Retirement Association and its members have championed the key provisions in both bills previously, a notable increase in the incentives for a small business owner to adopt a new plan, and some additional enticements to embrace automatic enrollment designs. We were very engaged in helping ensure that the proposed expansion of "open" multiple employer plans (MEPs) included protections for participants and plan sponsors, in line with current IRS and Labor Department guidelines. Just ahead of this last vote, members were given the opportunity to correspond with your representatives in Congress, and hundreds did. Your efforts – and your voice(s) – matter.

On the regulatory front, in a major victory for the advocacy efforts of the American Retirement Association, in April the IRS expanded its Employee Plans Compliance Resolution System (EPCRS) self-correction program (SCP). The ability to use the expanded SCP will be particularly beneficial to the sponsors of smaller plans who will, as a result, now be able to correct a broader array of mistakes without having to actually file with the IRS and pay a user fee. While not all the ARA recommendations were adopted, Rev. Proc. 2019-19 is a great start – and a testament to the hard work of the Government Affairs Committee over an extended period and the willingness of the staff at the IRS to take your perspectives into account.

Let's not forget, however, that it has been a hard-fought battle over a number of years – and several Congresses – to get this far. Each new election cycle brings new faces to Capitol Hill, and while there is always the opportunity for a fresh perspective, in many respects your government affairs team has to start over in providing background, explaining the often unanticipated consequences, and emphasizing the crucial difference that retirement plan access makes in helping American workers prepare for a financially secure retirement. In recent weeks, in fact, the Government Affairs staff has conducted a series of information sessions for Capitol Hill staff. Not only have they been very well received (and attended), we fully expect these sessions to pay dividends for our advocacy efforts in the future.

We have a great story to tell: We help people save. We make a difference in real people's lives every single day. It's time we started sharing *those* stories.

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

Health Savings Accounts have been with us for a long time (more than a decade), but even as they become more ubiquitous in the workplace, issues remain – and in this issue's "Trend Setting" we share results of a new survey, research that quantifies the impact of investment menu shifts, some intriguing findings from an industry survey, and – some future trends to keep an eye on…

MENU 'DRIVEN'?

Morningstar: DC Investment Menu Moves Matter

It's said that change is good – and, according to new research, that also applies to 401(k) investment menus.

A new report from Morningstar Research finds "evidence that fund replacements provide significantly higher risk-adjusted returns than the funds that were replaced," going on to state that the results "…provide evidence that monitoring plan menus to identify underperforming funds and replace them with more attractive funds provides value to plan participants."

Ironically, the report – unabashedly titled "Change is a Great Thing" – begins by stating "there is little evidence to suggest that monitoring defined-contribution menus adds value, despite the time, effort, and resources spent by plan sponsors on such activities."

But these researchers found what they termed "significant evidence" that replacement funds outperformed the replaced fund over both future one-year and three-year periods. This the researchers noted as the "most surprising" finding, more specifically "unexpected in the context of past research, which has generally noted that replacement funds do no better (or worse) than the funds being replaced." Moreover, they conclude that the outperformance remains even after controlling for various fund attributes and risk factors (expense ratios, momentum, style exposures, and other metrics commonly used by plan sponsors to evaluate funds such as the star rating and quantitative rating).

The analysis was performed on a "unique longitudinal data set of plan menus from January 2010 to November 2018" that included 3,478 fund replacements across 678 DC plans on three different recordkeeping platforms. They employed a "matching criterion to determine when a fund is replaced within the same investment factor style based on its Morningstar Category over time."

The paper acknowledges that prior studies of plan sponsor replacement decisions suggest that replacements may be motivated by historical performance data relative to a benchmark that does not predict future performance, and cited studies that suggest that (a) institutional investment managers hired to replace terminated underperforming managers perform much better before they are hired, but this outperformance disappears after they are selected, and that (b) plan sponsors often favor investments that have recently outperformed, and subsequently underperform – resulting in a loss of value for participants.

That said, in the database they considered, the researchers found that, on average, the replacement funds had better historical performance and lower expense ratios, along with more-favorable comprehensive metrics such as the Morningstar Rating for funds and the Morningstar Quantitative Rating for funds, than the funds they replaced.

However, the largest performance difference in the replacement and replaced funds turns out to be the five-year historical returns, which the researchers conclude suggests that this historical reference period is "the one that carries the most weight among plan sponsors."

There were differences in asset class: equity funds tended to have the highest relative outperformance, followed by allocation and bond funds. The researchers note that for each broad style group the relative performance of the replacement fund to the replaced

fund improves over longer out-of-sample periods. For example, for all funds, they note that the median performance difference is 22 basis points after one year, 26 basis points after two years, and 52 basis points after three years.

The researchers write that their analysis "demonstrates that the historical performance of replacement funds is significantly higher than that of replaced funds," and that, they write "…suggests historical performance is an important component of the replacement decision." And that, they write, suggests that it's worth exploring the relation between historical performance and future performance for these replaced funds.

But, if the report is unequivocal in concluding the success of replacement funds, the big question remains unanswered – why? "While we can analyze certain factors related to the outperformance, such as the type of fund (equity or bond), lower expense ratios, higher recent historical performance, and various Pillar ratings, the primary drivers of the outperformance remain elusive," they acknowledge. And while "we can make generalized statements (e.g., replaced funds tend to have lower performance), there are clearly exceptions to the rule," lacking information on the relative importance of the fund being replaced (proxied by plan assets), how long the fund has been in the plan, and so on, they hope that "future research will explore this relation more, using a more-complete data set."

NOTE: *As the researchers acknowledge, there are certain unique aspects to this database in that it relies on historical fund menus provided by three recordkeepers who use Morningstar's managed accounts services. The managed accounts provider, Morningstar Investment Management LLC, is an investment manager and the fiduciary responsible for determining the appropriate portfolio for participants who use the service. However, the researchers note that for these plans Morningstar Investment Management is not responsible for the creation or selection of the menu of investments, rather that the creation and selection (and monitoring) of the investment menu is the responsibility of the plan sponsor (although they may work with an investment advisor who helps select the plan menu in a "co-fiduciary" capacity). That said, the extent to which each plan sponsor uses an investment advisor, and the scope of the potential relationship, was not available.*

— Nevin E. Adams, JD

EDUCATION 'PRECEDENCE'

Education Dominates HSA Concerns of Plan Sponsors

Attendees at the Plan Sponsor Council of America's National Conference in May got a sneak peek at the findings of the PSCA's Inaugural Health Savings Account Survey.

The general session panel – Kenneth Forsythe, Head of Product Strategy at Empower; and Glen Kvadus, VP at Optum Financial Services (the sponsors of the survey), along with PSCA Executive Director Jack Towarnicky, offered a preview of results from the survey.

According to that preview, employee education was far and away the predominant concern of plan sponsors. Nearly two-thirds (61%) ranked it as a primary concern, and another 17% cited it as a secondary issue. Nothing else came close. "Difficulty of administration" was a distant second, and it was noted by a mere 16% as a primary concern, and 19% as a secondary one. Compliance, cited as a secondary concern by 30%, but a primary one by just 8%, also stood out.

'Snap' Judgments?

In 2016, a "snapshot" survey by PSCA revealed that:

- more than 75% of plan sponsor respondents viewed HSAs as part of their retirement benefits strategy;
- approximately 60% believed HSAs should replace Flexible Spending Accounts;
- approximately 60% of eligibles participated in an HSA-capable health option; and
- the average HSA account balance at that time was $3,161.

Trend Lines

According to Devenir's 2018 Year-End Report, there were more than 25 million HSA accounts, nearly double the 13.77 million at year-end 2014. Similarly, at year-end 2018, an estimated $43.5 million had been contributed to those accounts, with another $10.2 million in investments – and, according to Towarnicky, the report projects that these accounts will grow by 40% over the next two years, reaching $75 billion by the end of 2020.

Participant contributions were an average of $2,595, and a median of $2,476, according to the roughly 200 survey respondents. Asked how many participants were contributing the maximum to these accounts, just 18% said that 20% or more were – and nearly a quarter (23%) of survey respondents admitted they didn't know.

Moreover, speaking to the decentralized nature of these accounts once funded, the majority (63.1%) of plan sponsor respondents said they didn't know how many participants claimed all HSA assets. The next most common response: the 28.5% who said less than 25% of participants had.

That said, 81.7% of plan sponsor respondents say they contributed to the HSAs in 2018; most (69.3%) a set dollar amount/tier; and another 22% a set dollar amount per employee. Just 2.7% matched the employee contributions, and 6% indicated an "other" method of contribution.

Nearly all the plan sponsor respondents (85.7%) offered investment options in their HSAs, although – doubtless because those choices were driven by the HSA provider – fewer than 3% reported using the same options as their 401(k). With regard to a minimum investment balance threshold:

- 43% - more than $1,000
- 33.1% - $1,000
- 9.3% - less than $1,000

Just under 15% (14.6%) said they had no minimum.

— Nevin E. Adams, JD

REFERENCE "POINTS"

Mixed results in annual 401(k) participant benchmarking report

After several years of record-breaking plan and participant outcomes, 2018's market turbulence appears to have contributed to an increase in troubling participant behavior.

T. Rowe Price's "Reference Point" reveals that 401(k) pretax deferral rates continued to rise in 2018, increasing to 8.6% on average, reaching the all-time high for a second year in a row. In addition, employer matches increased, with plans that offer a 4% match surpassing those that offer a 3% match for the first time – potentially in response to tax reform's reduction of the corporate tax rate.

Despite these positive findings, however, the report reveals some mixed results, including a finding that the overall participation rate declined slightly, dropping by nearly 2% from 2017 to 2018. More troubling, the percentage of participants contributing 0% increased to nearly 36%, up from 34% in 2017, according to the data.

In addition, average account balances decreased by almost 8%, in part because of year-end market declines. Participants also moved money from stocks to more conservative investments late in the year, presumably due to market activity.

> 2018's market turbulence appears to have contributed to an increase in troubling participant behavior.

Auto Features Rule

On the other hand, strategic plan design continued to produce strong plan and participant outcomes despite the varied findings. For example, participation was more than 40 percentage points higher in plans with auto-enrollment compared with plans without it (85.6% participation for plans that auto-enroll compared with 43.7% for plans that don't). Plans which do not auto-enroll saw participation drop at more than twice the rate of those that do.

Moreover, nearly 37% of auto-enrollment plans have a default deferral rate of 6% or higher compared with nearly 33% at a 3% default. In addition, usage of auto-escalation was nearly five times higher in plans that employ an opt-out (67%) versus an opt-in option (12%).

Building on the popularity of automatic features, the report shows that plan adoption and participant usage of target-date products reached an all-time high. Plan adoption of target-date products reached 95%, while participant usage increased across all age groups but was highest among younger workers. Additionally, the percentage of participants with their entire account balance in a target-date product has grown by 20% since 2014.

Circling back to the overall drop in participation from 2017 to 2018, the report notes that it was most pronounced in the under-30 population and fell faster among participants in plans that don't auto-enroll than in plans that do, suggesting that automatic features "can mitigate macro forces" that may be decreasing participation rates. "Younger employees could benefit from stronger auto-solution, but a higher default deferral can also come at a cost of lower participation. The decision for many plan sponsors is whether that cost is acceptable," the report notes.

At the same time, however, the availability of "set it and forget it" target-date products might be leading to fewer participants seeking investment guidance, the report observes. Respondents to T. Rowe Price's 2017 and 2018 participant surveys reported that while most participants turn first to their 401(k) provider for financial advice, only 21% want investment help.

Loans and Leakage

Continuing with the mixed results, the use of 401(k) loans reached a nine-year low of 22.5% in 2018 and continued a steady six-year decline of nearly 10%. The report also found that the percentage of participants who took a hardship withdrawal fell for the ninth consecutive year, declining from 1.9% in 2010 to 1.3% in 2018. Yet, despite these findings, both loan balances and the average amount of hardship withdrawals increased.

The study also found an uptick in cash-outs. According to the data, the percentage of participants who took a cash-out distribution increased to 26% in 2018 after holding steady at 19% in 2016 and 2017. Cash-outs were particularly high for those ages 30-39, who carry a relatively sizable $37,000 average account balance. Participants ages 50-59 and 65-69 also took cash-outs in greater numbers, while cash-outs for those age 70+ increased by a full 10% from 2017 to 2018, the report further notes.

Roth Contributions

The number of participants making Roth contributions increased by nearly 10% compared with 2017, but overall usage remains low at 7.6%. Not surprisingly, Millennials are using Roth the most, at nearly 10%, with younger workers age 20-29 following at 8.8%. In 2018, nearly 75% of plans offered the Roth option.

The study's findings are based on data from the large-market, full-service recordkeeping universe of T. Rowe Price Retirement Plan Services' DC plans (both 401(k) and 457 plans), consisting of 657 plans with more than 1.8 million participants, from Jan. 1, 2007, through Dec. 31, 2018.

— Ted Godbout

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IMPACT 'ED'

What future trends could affect independent advisors the most?

A new study finds that longer client lifespans, information privacy/data integrity and changing workplace dynamics could impact advisors' businesses the most over the next decade.

But not all impact is created equal, according to Schwab Advisor Services' Independent Pulse study, which seeks to understand the dynamics shaping the independent advice industry with the goal of better understanding opportunities and challenges facing RIAs.

The study asked advisors to look beyond the immediate forces influencing the advice and wealth management space, and to consider six larger trends currently being navigated at the individual and societal level, including:

- increased human longevity;
- changing workplace dynamics (automation, changing job skills);
- medical advancements;
- information privacy and data integrity;
- artificial intelligence (AI); and
- climate change.

According to the findings, longer client lifespans and changing workplace dynamics are expected to have a mostly positive impact on firms, while information privacy/data integrity is expected to be mostly negative. And where advisors saw a positive impact for their business, they likewise saw positive implications for clients and, similarly, saw inverse results with respect to negative expectations for firms and clients.

Forty-four percent of respondents said they believe longer client lifespans will significantly affect their businesses, with 62% believing the impact of longer client lifespans will be mostly positive. Portfolio management and asset allocation were cited by 74% of respondents as the top areas of their firm that will be affected by longer lifespans, followed by 67% who cited advice and 47% who cited firm growth.

Nearly 60% of advisor respondents believe information privacy and data integrity will significantly affect their businesses over the next decade. When asked why, 29% cite hackers as a threat, followed by 24% who cite this trend as the biggest risk factor for their business. Not surprisingly, the top areas of the firm that advisors believe will be affected included operations (88%), advice (30%) and firm growth (23%).

As to changing workplace dynamics, 43% of advisors believe it will significantly affect their businesses, with 63% believing the impact will be mostly positive. Cited as the top areas of the firm that will be affected included operations (75%), talent (55%) and firm growth (53%).

The study was conducted from Dec. 11-21, 2018, for Charles Schwab by Logica Research, among 778 independent investment advisors who custody assets with Schwab.

— Ted Godbout

EXECUTIVE THOUGHT LEADERSHIP

INTERVIEW WITH MASSMUTUAL'S PAUL LAPIANA

BEYOND RETIREMENT

PAUL LAPIANA
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MassMutual

Retirement has long been a critical component of workplace benefits, perhaps second only to healthcare. And yet, for workers and plan sponsors alike, the focus is increasingly broader – both to maximize the value of these valuable programs, and to ensure effective utilization of them.

To keep pace, advisors are broadening their scope as well, and in the process playing a vital role in establishing a holistic approach to benefits. NAPA-Net recently spoke with Paul LaPiana, Head of Product at MassMutual, to gain insights on current trends and their impact on advisors.

NN: Based on your experience, how can advisors expand their practice?

LaPiana: Advisors today are facing many significant challenges – fee compression, industry consolidation, and fierce competition. There are opportunities to take the focus beyond fees, funds, and fiduciary services to include a more holistic approach to help grow their practice by providing additional value-added services in addition to their retirement plan business. It's an approach that can allow them to not only diversify their revenue streams, but also to help strengthen and deepen their relationship with the plan sponsor, and at the same time help insulate that relationship from being undermined by an advisor who only brings a retirement plan focus to t he table.

NN: What kind of opportunities?

LaPiana: Advisors who are interested in cultivating a stronger relationship with the C-Suite may do so by expanding their focus to include executive benefits, executive compensation, and insurance products. These individuals need alternatives that allow them to go beyond the restrictions of qualified plan limits – and those offerings are essential for employers who are looking to recruit, retain, and reward these key individuals.

NN: What about outside the C-Suite?

LaPiana: The opportunities go well beyond the C-Suite. For years employers have offered an assortment of voluntary benefit offerings for their workforce. However, despite the time and money expended developing and communicating these programs, they tend to be underutilized. Today these offerings are expanding to include health savings accounts, life insurance and student loan refinancing programs. The need for these modern financial products is an enormous opportunity for advisors to begin talking about integrated benefit solutions for their suitable clients.

These conversations can add value to their existing client relationships and at the same time create ancillary business opportunities.

NN: There seems to be widespread confusion among workers as to what they need to do, and how much of it they need to do.

LaPiana: Without question – but this financial literacy gap is an opportunity for advisors to help workers not only take care of their own financial futures but those of their families as well. Armed with the right tools, knowledge and expertise, an advisor cannot just help them know what to do, but must transform information into the wisdom to take action. One of the most significant opportunities for advisors to expand their practice is offering financial education to their clients' plan participants. There is a growing awareness of the need for financial education and helping to improve financial wellness in the workplace. Not only can this help advisors connect the value they add to multiple solutions for their clients, it can also generate leads and open doors to potential wealth management opportunities.

NN: This sounds like a lot for advisors to get their arms around.

LaPiana: It can be, and there are only so many hours in the day. But you don't have to be the expert in applying expertise to provide a solution. You build a team around you – a group of subject matter experts who have in-depth knowledge of critical subjects. The advisor can be most effective as a quarterback of solutions – you know who has the expertise to deal with a specific situation, and you bring them in.

NN: How do you go about developing that network?

LaPiana: It's imperative to align yourself with reliable, knowledgeable partners who have both the technical expertise and the technological prowess to have a positive impact. At MassMutual, we've developed a team of experts in offering HSA benefits, student loan debt repayment programs, and of course, long-term care and retirement income solutions, as well as non-qualified plans. We're a leader in COLI and BOLI financing of those benefits, and we serve as record keeper to both large and emerging market DC plans, as well as those in the emerging markets.

Advisors can leverage our marketing resources to help tell their story. We offer dozens of seminars and workshops on different financial wellness topics for advisors to conduct at the worksite, either by themselves or with help from one of our education specialists. The reality is that opportunities abound for advisors who adopt a more holistic view of workplace solutions for their clients – and at MassMutual, we're helping advisors do this every day.

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Failing to Plan is Planning to Fail

These five simple ideas can help you win more finalist meetings.

BY REBECCA HOURIHAN

It's the big day: finalist day! You've prepped, you're prepared, and now you're ready. But is there anything else you could do to increase your chances of winning? I'm not talking about game day superstitions like your lucky tie or trusty pen. While these may give you little boosts of confidence and self-assurance, preparation and good marketing are surefire ways to stand out from other finalists.

Everyone has experienced at least one cringeworthy presentation in their life. Whether you were frantically skipping through slides or watching a presenter stumble through their words, it is an equally painful experience for all parties. These five tips will help you avoid game day fumbles and help you win more finalists meetings.

Tip #1: Host a Prep Call

A prep call could be the difference between chaotic disaster and organized success.

A week before the presentation, invite all the presenters to a screenshare for a practice presentation. Build your agenda

and discuss which sections each team member will present. Walk through the presentation deck, giving each presenter the opportunity to practice their section. Also, if you need more bench strength, invite your recordkeeping relationships, TPA partners, and/or DCIO wholesalers to join the finalist presentation.

Tip #2: Assess the Design
When you're walking through each section, make a point to step back and assess the visual representation of your slides. How do they look? Do they match your company's branding? Do they properly communicate the level of professionalism your company reflects? If they look amazing, then it's showtime. If they need a little adjusting, then it's time to ask/task those slides for a design update. Your services are worth thousands of dollars per year – *and your slides should reinforce the value of your expertise.*

Tip #3: Pre-Game Huddle
The last thing you want to do is throw off all of your preparation. So, what is your game day plan? During your prep call, hash out your day. Whether you decide to carpool together or drive separately and meet 30 minutes beforehand in the parking lot or at a nearby coffee shop to work out any last-minute kinks, set a plan and stick to it. And be sure to share this plan with all participating partners, such as your recordkeeper relationships, TPA partners and DCIO wholesalers.

Tip #4: Add Some Flexibility
The agenda your team built during the prep call will serve as your game plan, but it's important to allow for flexibility. One tip we've found very helpful is to build the following questions into the agenda's opening remarks:

- "Before we dive into today's agenda, is there anything you would like to add or remove?" [Pause; wait for response.]
- "Is there anything on the agenda you would like us to address first?" [Pause; wait for response.]

The overwhelming majority of times, the committee will allow you to proceed as planned. However, these opening questions allow the committee an opportunity to voice topics they consider top of mind and critical. Give the committee this opportunity and you'll see them become more relaxed and receptive immediately.

Tip #5: Technology Check
What about technology? That's always a gamble – especially when you're relying on someone else's digital infrastructure.

Whether you are using a traditional projection system, casting on an Apple TV or handing out individual iPads, it is important that you are comfortable with the technology and prepared to troubleshoot any problems with it. If you're bringing your own devices, test them out a few days in advance to confirm that they are charged and the presentation looks good on them.

Do Great
When you take the time to prep with your team, you lay out a great game plan. Then by practicing together and walking through each section, it helps build the confidence of each speaker. Thinking ahead and preempting tech glitches will create a smooth presentation experience for everyone. By doing these things, it demonstrates to the retirement plan committee that you didn't just show up – you came prepared to win.

Thanks for reading, and Happy Marketing!

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

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Why I Was Arrested at Age 4

And the surprising business lesson it can teach you.

BY SPENCER X SMITH

One day in 1980, I was dropped off by a police officer at my parents' house for a reason that may never have happened in all of history, except for that day.

As a 4-year-old kid growing up in Milwaukee, I learned that there was one way I could easily make money: collecting aluminum cans. I noticed that drivers would throw cans from their cars at a fence near our house as they were speeding down the Interstate.

Being an enterprising child and not wanting to miss this opportunity, I walked the two blocks to the Interstate, climbed the fence and started collecting cans. I didn't have a bag or anything to carry them, because what 4-year-old would think that far ahead?

A kind police officer, fearing for my safety, pulled over, asked where I lived and escorted me home. When my dad answered the door, he saw me standing there holding the cans in my arms.

For those of you over 40 like me, you know how hard it used to be to find both an opportunity (i.e., the cans) and a customer willing to buy your product (the recycling center).

Having experienced the creation and growth of the Internet, I now look at social media and think, "Wow, this is where my audience is all the time – I just need to do the work required to serve them." Oh, and not get hit by a car.

The Internet – and specifically social media – has eliminated many constraints that used to limit businesses. Let's look at three of these constraints: proximity to opportunity, hours of business operations, and distribution of content.

Proximity to Opportunity

No longer do we need to walk, drive or fly to the metaphorical Interstate to collect our cans. Whether you provide goods or services, your customers and prospects can be located anywhere with Internet access. Even trades like plumbing, electrical, roofing, etc., can source sales leads via online marketing and referring/selling those leads to partners in other locations.

Hours of Business Operations

Your customers and prospects no longer need to see you in person or talk to you on the phone to proceed through your sales process. Today's customer is more educated than ever before, and you can engender trust through your use of digital marketing and social media. How? Simply answer commonly asked questions on your website and your social media channels. Produce written, video and/or audio content intended to help them make a better buying decision, and watch as you gather more leads through your thought leadership.

Distribution of Content

Your ability to produce content can be magnified through the strategic use of a media outlet you already own: your social media accounts. Despite the decrease in organic (read: free) reach across social media channels, opportunities still abound for those willing to invest the time. Instead of simply broadcasting commercials, use your social media accounts to engage in conversation with your followers. Answer their questions, and if they're not asking you any yet, use your posts as an opportunity to prompt conversations.

Know Thyself

The power of the Internet and social media is almost impossible to estimate. Despite working in this industry every single day, I'm constantly surprised by the disruption created in the most unexpected ways in the most unlikely industries. You might not identify yourself as an online company, but that's what you are. How are you using the technologies most of us simply take for granted to grow your business?

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

RENEE SCHAAF

RETIREMENT READY

There is perhaps no partner component more integral to a smooth plan operation – and to an advisor's peace of mind – than that of the plan recordkeeper. And yet, arguably there is no partner component more pressed by the challenges of absorbing increasing costs alongside an ongoing need to upgrade and update their operations in a complex and ever-changing regulatory environment.

While consolidation has long been the order of the day among recordkeepers, the April 2019 announcement that Principal would acquire the Institutional Retirement & Trust business of Wells Fargo looked to be a game changer in the space. NAPA-Net recently connected with Renee Schaaf, President – Retirement and Income Solutions at Principal for insights on the expansion, and what the future holds.

NN: How has Principal stayed committed to a business that so many others have exited?

Schaaf: Our mission says it all; we are committed to helping individuals have enough, save enough, and protect enough for their future. We have to be in this business in order to fulfill that mission. Retirement is at the core of who we are. Many firms have left this business over the years because they simply lack the scale to succeed profitably – and scale is more important today than ever. Arguably there are a number of providers today that continue to operate at "sub-scale" levels, and therefore it seems likely that industry consolidation will continue.

NN: Your recent acquisition of the Wells Fargo Institutional business was the first big acquisition in some time – how did their client base match up with your current market focus, and what might that mean to those plan sponsors, as well as your current book of business?

Schaaf: We're constantly focused on our mission and looking for ways to efficiently and effectively fulfill that purpose, both via strategic investments that sustain organic growth, and, where prudent, through merger and acquisition. With regard to the latter, we're interested in opportunities that have a commonality of focus – those that are a strategic fit, a good financial fit, and very importantly, a good cultural fit.

The Wells Fargo acquisition fit those criteria on several levels. First, their business profile was extremely complementary with Principal's: a total retirement solution, including not only defined contribution, but defined benefit, non-qualified deferred compensation and ESOP administration. The Wells Fargo team enjoys a great reputation in the consulting community, and the team brings with them a significant expansion of trust/custody business. The addition also contributed significant scale and rounds out our current service footprint. However, while Principal has long been a dominant player in the small plan market, 20% of our post-acquisition assets under administration will consist of plans with more than $1 billion – and Principal's legacy business represents 40% of those plans.

NN: What kind of investments in technology – participant-focused, as well as plan sponsor – has Principal made to stay competitive?

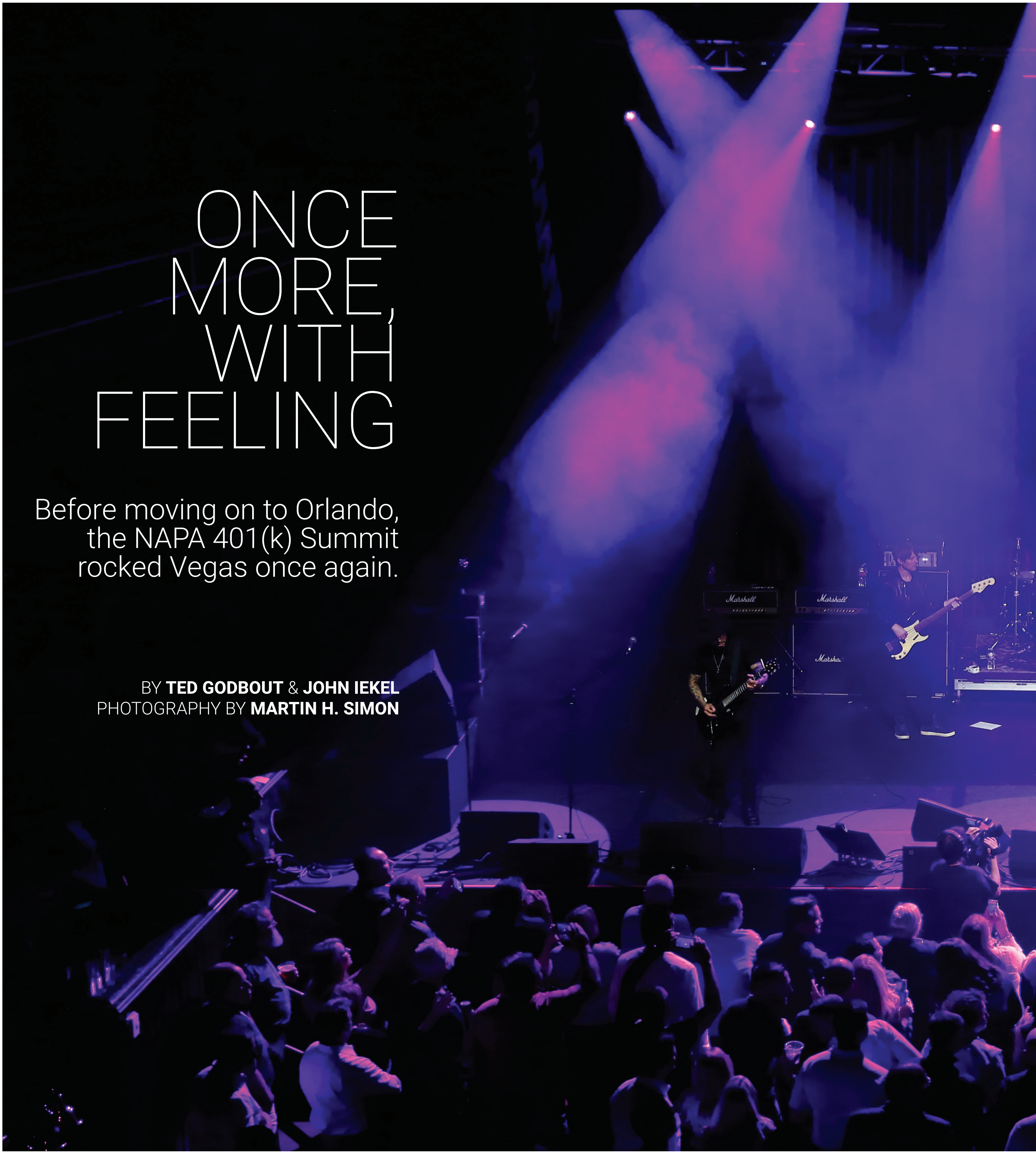
Schaaf: As part of our broad focus on financial wellness, we've launched an extensive online participant onboarding process that helps them become retirement ready. Those engaged with this program, on average, defer 28% more than those using other enrollment methods, and are significantly more likely to auto-escalate their contributions. Our Spanish communications are translated culturally, not just English into Spanish. We've even connected with Alexa, offering a weekly briefing with tips on how to save.

For plan sponsors, we've developed an "Educate & Enroll" program that allows them to pull up a list of their workers for targeted communications – for example, a "how to enroll" message for those who haven't yet taken that step. This makes it much easier for plan sponsors to communicate consistently and effectively on key issues. We were also the first to introduce plan sponsor chat to answer plan administrative questions, and we are piloting an online plan onboarding process that helps plan sponsors know what information is needed to set up services, and then helps them track their progress in setting up their plan. This has been very well received by smaller plan sponsors, who often find this process daunting.

NN: What do you think advisors don't know about Principal or its people that they should?

Schaaf: Our hallmark is strong core values, based on integrity. In fact, we've been named one of the World's Most Ethical Firms by the Ethisphere Institute for nine years. While we've long had a very large and diverse client base, I suspect some advisors aren't aware of the breadth, though we think the Wells Fargo acquisition will help highlight that commitment.

What we bring to the table is a total retirement solution, and not just defined contribution recordkeeping. We've brought to market a complete solution for defined benefit plan sponsors that might be concerned about transferring that risk down the road. We provide a guarantee, in writing, that we will accept that transfer if they bring their DB plan to us for administration. We're also a global retirement provider – supporting retirement plans in ten emerging markets throughout the world. That includes a unique perspective on alternatives for the so-called "gig" economy, which is a relative new issue in the U.S., but one that countries like India have confronted for some time now. Ultimately, we are able to see, and develop solutions for, a wide variety of retirement situations. That provides us – and our advisor partners – an opportunity to learn, develop, and ultimately share best practices from around the globe.



ONCE MORE, WITH FEELING

Before moving on to Orlando, the NAPA 401(k) Summit rocked Vegas once again.

BY **TED GODBOUT** & **JOHN IEKEL**
PHOTOGRAPHY BY **MARTIN H. SIMON**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THE 2019 NAPA 401(K) SUMMIT, HELD APRIL 7-9 IN LAS VEGAS, GOT RAVE REVIEWS FROM ATTENDEES, SPEAKERS AND EXHIBITORS ALIKE. ON THE FOLLOWING PAGES, YOU CAN GET A TASTE OF THE FIVE GENERAL SESSIONS AND 34 WORKSHOP SESSIONS (INCLUDING PEER-TO-PEER ROUNDTABLE SESSIONS) AT THE 18TH ANNUAL 401(K) SUMMIT, AS WELL AS THE POPULAR SUMMIT AFTER DARK EVENTS.

GRAFF, RUTLEDGE OUTLINE FUTURE LEGISLATIVE, REGULATORY ACTION

At the Summit's opening general session, Preston Rutledge, head of the DOL's Employee Benefit Security Administration, and NAPA Executive Director Brian Graff reported respectively on what EBSA and NAPA are anticipating in the coming year.

A key EBSA priority is addressing the problem of coverage, Rutledge said, telling attendees, "We need to give plan sponsors more choices." Rutledge also said that EBSA seeks to clarify and expand the circumstances under which employees may participate in a multiple employer plan (MEP) and make disclosures more understandable and useful.

But MEPS can only be more readily available if Congress acts, Graff noted. And, he said, "Believe it or not, we're making some progress." He cited bipartisan, bicameral legislation before Congress that would expand access to retirement plans and options.

The PEW Charitable Trust found recently that 37% of employers that don't offer a plan don't do so because of the attendant costs – including the expense of making disclosures, Rutledge told attendees. EBSA is looking at how to make it less difficult and less expensive to make them, he said. The DOL is "taking a hard look at electronic disclosures," Rutledge noted, adding that "we want your ideas on how to make electronic disclosures more effective and useful."

Rutledge and Graff both addressed developments concerning fiduciary rules in the wake of the DOL fiduciary rule's demise. While Rutledge did not comment on the DOL fiduciary rule, he called the Securities and Exchange Commission's proposed rule "a very welcome development," adding that the DOL's goal "is to align our rule with the SEC's rule." And Graff noted that states are now taking action, calling it "unacceptable" that compliance with both state and federal rules could be required. "This is something that we're following very closely," he said.

Also on the DOL's radar: lifetime income. Rutledge reported that the DOL is considering to what extent it can or should amend the Section

NAPA Executive Director Brian Graff (L) at the popular Washington Update general session. This year's Washington Update featured EBSA head Preston Rutledge (R).

Moderator Nevin Adams (L) and panelists Jason Chepenik, George Fraser, Cara Duke, Barb Delany and Brendan McCarthy (L-R) shared a laugh during their session on corporate social responsibility.

404(c) rules on lifetime income. "We still have a lifetime income on the agenda," he said.

Addressing the problem of missing participants is another DOL priority. Rutledge told attendees that the DOL is holding meetings with stakeholders and wants to understand the best practices employers and the department have developed over the years.

Rutledge also hailed the efforts of NAPA and its members. "We recognize the important work that you do" on behalf of retirement plans and participants, he told attendees.

MISSION, CRITICAL – A PURPOSE FOR YOUR PRACTICE

The second day's General Session involved a panel discussion on a relatively new, or at least newly branded topic: corporate social responsibility. The all-star panel – George Fraser, managing director of Retirement Benefits Group; Jason Chepenik of Chepenik Financial; Kara Duke from Resources Investment Advisors; Barb Delaney of StoneStreet Advisor Group; and Nuveen's Brendan McCarthy – outlined how pursuit of CRS has enhanced their focus, expanded customer and prospect relationships, while also inspiring and engaging their teams.

"We can do our jobs well, but do good at the same time," explained Fraser. "We have the ability to change lives, and at the same time the ability to change the perception of our profession."

McCarthy explained that business schools are teaching CSR as a philosophy and approach."It's just us old people who don't know what it is," he noted. Chepenik clarified that, "People have been doing it, but just didn't have a name for it."

"It" is, of course CSR, and these days it's about making an investment in the community in which you live and do business. Or as Chepenik explained, it's going beyond financial wellness to "community wellness" – "we have a responsibility to be involved in our community," he noted. And that involvement runs the gamut from the financial literacy initiatives that Delaney has fostered in local schools to Chepenik's 401(k) Races, and more – as was illustrated in the short video that kicked off the session.

"We're doing it for fun," Chepenik explained, "but it makes a difference. More importantly, he explained, it provides an opportunity to talk with clients and prospects about what you're doing in the community and serves as a powerful tool in attracting like-minded clients.

Duke acknowledged that CSR practices are often "imbedded" in advisor actions, but "we don't talk about it, don't share it. For a Millennial one of the most important things is how to improve the environment and the community," she explained. It's about being able to

> LEVERAGING DATA AND TECHNOLOGY SHOULD BE PART OF EVERY BUSINESS DECISION, FROM RUNNING YOUR BUSINESS TO SERVING YOUR CLIENTS, TO HOW YOU DEVELOP YOUR BUSINESS MODEL.

attract, retain, and even find the right people to grow your practice. "It's a great way to attract great clients and great people," Fraser explained.

Duke – a Millennial herself – cited a study which indicated that, on average, Millennials would be willing to give up $7,600 in salary every year to work at a job that provided a better environment for them. "What is your company doing in terms of CSR to recruit these tech-savvy, confident, self expressive, upbeat, open-minded individuals?" she asked. "Millennials will take a pay cut to work in a company that offers this component."

Chepenik noted that they have added his firm's CSR practices to their plan reviews, and made it part of their presentation "deck." Fraser challenged the group to include it in "every prospect meeting" – "It's good for business." In response to a question from panel moderator Nevin Adams, Chief Content Officer at the American Retirement Association, the group recommended that it be added to standard RFP responses as well.

However, the panel cautioned that it was important to be "authentic." "It's a mistake when you fake it," Chepenik commented. Duke said it was important to keep your "why" you're in this business from your CSR purpose.

But what people really get "wrong" about CSR, commented Duke, is "not talking about it enough." She encouraged the group to take advantage of social media to share what you're doing. "Don't be humble," she counseled, noting that you might influence or encourage others to undertake similar actions. "It motivates more good work," Fraser said.

"It is not hokey, it is real," said Chepenik. "Make it a primary component of your business – celebrate it. Let it be contagious." Fraser concurred – "It's good for your brand and your business."

BENARTZI: DIGITAL DESIGN DRIVES DOLLARS

In today's digital age, retirement professionals have access to powerful new tools to facilitate and drive

From left: Don't let the digital revolution go to waste, advises behavioral economist Shlomo Benartzi. Expect a choppy and frustrating year, but no recession, says Nuveen's Bob Doll.

The Summit's peer-to-peer roundtables get more popular every year.

retirement readiness. Behavioral economist Shlomo Benartzi, Senior Academic Advisor for the Voya Behavioral Finance Institute for Innovation, discussed research concerning how digital design can affect – and enhance – participants' retirement savings habits and ultimately their financial security during retirement.

Voya has done extensive experimentation to see if – and how – digital design can help increase plan participation, engagement and effectiveness, Benartzi told attendees. In one study, Benartzi said, Voya sought to study the extent to which variation in the design of an online 401(k) enrollment interface would affect savings. To do so, they varied the use of colors and language used to describe each option, as well as the presence of additional information about plan details. They looked at the choices of employees across several hundred plans with an auto-enrollment feature regarding personalizing their plan elections, accepting auto-enrollment defaults and declining enrollment.

The results? They found an increase in personalization of plans, a decrease in reliance on auto-enrollment and a drop in the number of employees opting out. Among those who personalized their accounts, savings increased to an average of 8% of salary; among those who did not, the average savings stood at 3%.

The bottom line, said Benartzi, was that for 10% of the population studied, Voya was able to more than double their projected retirement income through a small change in the digital design.

Voya also studied the effects of displaying different default contribution levels, and the savings that would result from them, on landing pages – seeking to measure whether people are influenced by such information.

Voya found a "statistically insignificant" change in the rates at which people dropped out of the plan and saved through the plan, at different default contribution levels. The result they found – which they had not anticipated – was that displaying the information in that way increased participants' personalization of their accounts and their engagement levels.

"We want to avoid gut-reaction thinking that leads on to the wrong answer," said Benartzi. "We want people to really think about retirement." He added that another way to accomplish that is to "make the right choice the only choice."

Benartzi suggested some actionable steps that can be taken to effectively employ digital design in order to build plan participation and retirement savings:

- Draft and present a digital policy statement
- Incorporate digital design knowledge on the plan committee
- Test, test and retest
- Employ evidence-based innovation

- Follow the science
- Make the right thing easy for participants to choose
- Be mindful of 21st Century risks such as cybersecurity and identity theft

"There are lots of opportunities it there. Let's not let the digital revolution go to waste," Benartzi exhorted attendees.

'WORLD'S GREATEST HACKER' DEMONSTRATES IT VULNERABILITIES

So you think your data is safe? It probably isn't, as keynote speaker Kevin Mitnick, "the world's most famous hacker" and bestselling author, demonstrated. Mitnick, once on the FBI's Most Wanted list, is now a trusted security consultant to Fortune 500 companies and governments.

Human Element

One of the biggest warnings Mitnick offered is to beware of the human element of information security – via "social engineering." This form of hacking relies on "influence, deception and manipulation" to convince another person to comply with a request in order to compromise their computer network, he explains.

Among these type of breaches are pretext phone calling and phishing schemes to help gain access to information. What's more, he notes, when hackers use social engineering schemes, there are no audit trails and they are generally 100% effective. "There are no Windows updates for stupidity," Mitnick remarked.

Mitnick provided several examples of how he was able to obtain vital data, passwords and other critical information from the directors of HR, Security and IT departments simply by posing as a new or remote employee. He built rapport with those executives, who willingly turned over information without knowing they were being scammed.

Information Reconnaissance

Other key forms of hacking involve information reconnaissance by leveraging information on the Internet and social media networks

Be mindful of each customer's unique journey, advised keynoter Joey Coleman.

Stout Welcomed as 2019-2020 President

Jania Stout, NAPA's incoming President, with 2018-2019 President Jeff Acheson.

NAPA welcomed Jania Stout as its 2019-2020 President at the opening session of the 2019 NAPA 401(k) Summit in Las Vegas on April 7.

Stout is Practice Leader and co-founder (in 2014) of Fiduciary Plan Advisors at Hightower, in Owings Mills, MD. Previously she founded the Fiduciary Consulting Group at PSA, growing the practice from $300 million to nearly $3 billion from 2009 to 2014. She began her career at ADP's Retirement Solutions Division, and has also served as a senior account executive at Fidelity Investments.

She has served on the NAPA Leadership Council since 2014. Stout's team was honored with NAPA's 401(k) Advisor Leadership Award in 2013, and she has been named to NAPA's Top Women Advisors list in multiple years. She is also a board member of the Girl Scouts of Central Maryland and serves as the commissioner of the LTRC Lacrosse league in Maryland.

Other changes on the NAPA Leadership Council for 2019-2020 include:

- Last year's Vice President, Pat Wenzel, Managing Director–Wealth Management, Merrill Lynch, in Houston, is this year's President-Elect.
- Alex Assaley, Principal, AFS 401(k) Retirement Services in Bethesda, MD, replaces Wenzel as Vice President.
- Kevin Mahoney of Raymond James replaces Assaley as an at-large member.
- Brendan McCarthy of Nuveen joins the LC as a Firm Partner representative, replacing Yaqub Ahmed of Franklin Templeton.

Hacker Kevin Mitnick: "There are no Windows updates for stupidity."

to scrape for information that is used to launch broad-scale attacks on an organization's computer system. In fact, Mitnick was able to obtain user names, contact information and even hacked passwords for various individuals on the "dark web."

Beware Malware via Hardware

New forms of hacking involve the use of hardware, such as modified cables and USB sticks, to inject into a system malware that takes control. He demonstrated firsthand how this happens. By launching a malware attack, he showed attendees how he was able to take control of a computer and turn on its microphone and webcam for spying.

And it doesn't stop with computer systems. Mitnick also showed how easy it is to clone access cards to gain entry to buildings and organizations. To demonstrate, he borrowed the building access card of an attendee, and hacked and duplicated the access card's passcode using a scanner in about 30 seconds – just by getting within three feet of it. When this happens, he noted, he has full access to wherever that card would take him.

Mitnick even demonstrated how two-factor authentication doesn't even help in certain circumstances, showing the audience how he is able to circumvent such systems to gain access. He did note that a "YubiKey" authentication device can help prevent hackers from gaining access.

The Long Con

Another form of hacking to be mindful of, Mitnick warned, is the "long con." This involves a multiple-step attack in which the hacker builds a relationship with a person over the course of several communications and then launches the attack after gaining their trust.

As an example, he cited a situation where the hacker targets an unsuspecting person for a bogus speaking engagement. After exchanging several emails with the person about the bogus engagement, the hacker launches the attack through a Trojan virus that the victim thinks is an email link with logistics about the speaking engagement.

Testing that Mitnick has performed with various organizations indicated that about 30% of the workforce will fall for these types of attacks, he says. The level of those who fall victim drops after cybersecurity training, he notes, but some individuals still fall for it.

A Call to Action

After demonstrating the vulnerabilities that exist, Mitnick issued a call to action urging attendees to go back to their firms and implement an effective security plan. Among other things, Mitnick recommended building a "human firewall" that prevents people from supplying private information unsuspectingly. He also recommends keeping the processes simple, with easy-to-understand security protocols that target the types of common mistakes that often lead to a security incident.

"The bottom line is you want to take the decisionmaking away from your users," Mitnick says. "You need to think about the processes, the people and the technology, because the bad actors are going to look for the weakest link in your security chain. And in my experience, it has always been the people who are the weakest links," he concluded.

Attendees were treated to two nights' worth of Summit After Dark events.

USE THE POWER OF TECH AGGREGATION TO EXPAND YOUR BUSINESS

For plan advisors looking to take their business to the next level, the power of technology aggregation can have tremendous benefits, advised panelists featured in a workshop session.

Lisa Buffington of Marsh & McLennan moderated a discussion featuring Petros Koumantaros, Financial Consultant with intellicents; Washington Financial Group's CEO Joe DeNoyior; and Jamie Worrell, a Managing Director with Strategic Retirement Partners, each of whom explained how their ability to leverage technology, resources and human capital management through aggregation has led to diversified revenue streams and better client service.

Against the backdrop of technological advances changing the way Americans communicate, combined with various disruptive forces in the marketplace, such as an increasing focus on governance issues by consumers to the rise of Millennials, plan advisory firms are undergoing a paradigm shift and some may "miss the boat" if they don't change the way they communicate, according to the panelists.

When asked about his reasons for considering aggregation models, DeNoyior explained that his firm started with a desire to make a larger

AGAINST THE BACKDROP OF TECHNOLOGICAL ADVANCES CHANGING THE WAY AMERICANS COMMUNICATE, COMBINED WITH VARIOUS DISRUPTIVE FORCES IN THE MARKETPLACE, PLAN ADVISORY FIRMS ARE UNDERGOING A PARADIGM SHIFT AND SOME MAY 'MISS THE BOAT' IF THEY DON'T CHANGE THE WAY THEY COMMUNICATE, ACCORDING TO THE PANELISTS.

impact on the employees they serve. To do that, they had to leverage the power of technology for its efficiency and scaling, concluding that it's important for deliverables.

"If we focus on what business we're actually in, we're trying to drive results for employees and get them to where they need to be to retire. It's beyond education – it's an experience," DeNoyier said. But to do that, he noted, it's critical to have scale. For example, you can't have one-on-one meetings with all the participants in a plan if you only have three people in your office.

In considering the employer as the consumer, Koumantaros explained that as purchasers, employers have become much more sophisticated over the past 20 years. They now demand more, know more and ask more thought-provoking questions. "As an advisor, this creates some challenges in terms of our business models, because ultimately we have to address a much more sophisticated economic buyer," he noted.

"This is where technology as a tool can certainly aid in providing some kind of unique personalized experience demonstrating those capabilities at the point of sale that show what uniquely makes your model as an advisor different from another advisor's model," Koumantaros emphasized.

As for the benefits that come out of aggregation partnership models, at the end of the day it comes down to advisors wanting to get back to the business of advising clients and building their book of business. To that end, Worrell explained that scaling allows advisors to deliver on a broader level via aggregation, allowing them to keep doing what they're best at. "The idea of scaling through an aggregator is that you get a team of people who can do different things really well that allow you to act on your unique ability for the most amount of time," he explained.

Technology Solutions

What will be the big technology solutions over the next three to five years? Koumantaros pointed to financial wellness offered not only as employee benefit, but as custom personal financial planning services. With employees getting most of their financial services in workplace, why should plan advisors leave that conversation untapped, he asked, focusing just on their 401(k) instead of having a broader discussion? "Why not expand the conversation to look for opportunities around a more holistic planning approach? We think this is a tremendous opportunity in the future," he observed.

DeNoyior pointed to providing firms with much better data analytics as an emerging trend. He explained that you always hear firms talk about data, but they don't know what they are going to do with it. As such, DeNoyior believes there will be a movement over the next couple of years to provide better business analytics to advisory firms to help them make better decisions. "From an aggregator level, this will help you make decisions nationally on what's going to help the most number of firms, but also locally on how it's going to help you grow your business," he said.

As key takeaways, the panelists offered the following suggestions:

- Leveraging data and technology should be part of every business decision, from running your business to serving your clients, to how you develop your business model.
- Determine the value you want to provide your clients and confirm you have the technology to deliver that value.
- Outline a business plan with a 3- to 5-year outlook and determine the technology and resources needed.
- Consider if aggregation or partnership affiliation is required to support your 3- to 5-year business plan.

NEXT APRIL IN ORLANDO

If you missed the 2019 Summit, don't make the mistake of missing out on next year's event – "the nation's retirement advisor convention" will be at the Loews Universal at the Universal Orlando Resort in sunny Orlando, FL, April 26-28, 2020. You know what they say: What happens in Orlando…

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(IF I KNEW THEN) WHAT I KNOW NOW

Nine lessons learned from nine of
this year's Top Young Retirement Advisors

By Judy Ward

"Young Gun" Dean Salyer has a concise answer when he's asked what has changed about being a plan advisor since he started: All of it.

"I'm excited to still be part of the Young Guns club. But within the 15 years I've been in the business, the entire industry has really changed," says Salyer, president and CEO of WD Pensionmark in San Antonio, Texas. "There's so much focus now on the three 'F's: fees, funds, and fiduciary. And now we have a fourth 'F': financial wellness. These things were not talked about much 15 years ago."

Salyer and eight other 2019 Top Young Retirement Advisors (a.k.a. "Young Guns") talked about what they've learned thus far in their plan advisory careers, and what they wish they'd known when they started.

Stuart Scholten

Listen First

STUART SCHOLTEN realizes that early in his career, he didn't spend enough time listening when he met with sponsors. "I know now that it's not just, 'Okay, here's how I can solve your problems for you.' The sponsors may have bigger issues on their mind, and I could have learned about that if I'd been listening to them talk, instead of giving my 'expert' opinion," says Scholten, a senior investment advisor at NFP in Aliso Viejo, CA.

"The listening component is huge," Scholten continues. "Rather than just trying to jump in and tell sponsors how I can solve their problems, it's so important to take time to understand a client's emotions and what that sponsor is trying to do. That saves a lot of headache down the road."

Justin Londergan works mostly at the plan level, because he enjoys engaging with plan committees. "I've learned that one of the big ways to engage is to focus on them," says Londergan, a senior vice president at Boston-based Mayflower Advisors, LLC. "A lot of advisors get very focused on themselves and their firm when they're talking to sponsors. They talk about, 'We do this, we do that.' News flash: Nobody cares. As advisors, we need to think about the specific issues a sponsor's plan has, and how we can help resolve those problems."

The right way to handle a plan's issues depends on that particular plan and sponsor, Steven Gibson understands now. "When I started, I was working on the assumption that there is one best practice for everything," says Gibson, senior consultant at Plante Moran Financial Advisors in Ann Arbor, Michigan. "But I've realized that every single plan is unique, and what's best practice on paper doesn't always make the most sense in reality."

20 Have a Focus That is Broad as Well as Deep

LONDERGAN HAS been a plan advisor for six years, and the skill set needed has broadened a lot in that time. "Sponsors seem to be expecting more and more out of their advisory relationship," he says. "It seems like there is much more expectation for advisors to be very involved in all aspects of the plan, and plan governance. We're all investment advisors fundamentally, but we're also spending a lot of time on things like vendor management, plan design issues, and operational issues and plan errors."

Scholten also has seen a widening of the advisor's role beyond investments. "Plans have moved to more-efficient fund menus, and are getting away from lineups that have overlaps," he says. "As advisors, it kind of gets us away from specializing in only the investment piece. Once the investment menu has been consolidated, the advisor can focus on other issues, such as helping sponsors make courageous decisions on plan-design features."

Beyond investments, Megan Carroll finds that she needs expertise in areas like compliance issues, regulatory and legislative changes, how to communicate effectively with employees, and how HSAs (health savings accounts) integrate with 401(k) savings. "To be effective in today's retirement landscape, you have to really be a specialist in all aspects of retirement plans, and you have to understand the factors that impact the participant's capability to save for retirement," says Carroll, vice president at Schaumburg, Illinois-based Assurance Financial Services, Ltd. (AFS). For newer advisors, she says, a lot of that learning comes from spending time with experienced colleagues. "They can mentor and guide you through how to figure this stuff out," she suggests. "Don't be afraid of getting yourself into the weeds and exploring these new areas."

"DON'T LIMIT YOURSELF. I DON'T THINK YOU CAN BETTER YOURSELF IF YOU DON'T LOOK FOR OPPORTUNITIES TO GROW."

– Megan Carroll, Assurance Financial Services, Ltd.

Megan Carroll

Bradley Sieniawski

"WE REALIZE NOW THAT THE INDUSTRY CANNOT AFFORD ANOTHER CRISIS WHERE PARTICIPANTS LOSE MOST OF THEIR RETIREMENT SAVINGS. THAT REALIZATION NOT ONLY CHANGES MY TIME DAY TO DAY, IT CHANGES OUR ENTIRE PRACTICE."

– Bradley Sieniawski, CBIZ Retirement Plan Services

Lee Forehand

30 Be Aware of Bottom Line Concerns

FEE PRESSURES have affected advisory work. "I think the biggest challenge for plan advisors is the ability to provide the level of service needed to properly manage a retirement plan in the decreasing fee environment that we're currently in," says Lee Forehand, a financial advisor at Morgan Stanley Wealth Management in Dothan, AL. "I think it's really on us as advisors to educate plan sponsors on the importance of working with an advisor who truly specializes in working with corporate plans, and to be sure they are aware of all the services we are providing for the plan and participants. Once they see the difference, they usually understand that the quality of the service should outweigh the costs."

The industry seems to be "racing to the bottom" on fees, says Jeffrey Petrone, a managing director at SageView Advisory Group in West Palm Beach, FL. The ongoing fee compression sometimes makes sponsors skeptical about whether they can justify higher expenses for services like one-on-one participant meetings. "Advisors need to demonstrate to sponsors the value of what we are doing," he says. That means showing them data on results of work like a financial wellness program, and SageView tracks data such as a decrease in participants taking loans or advances against their pay. "When those type of things start to come down, you know that you're making headway," he adds. "The more you can use data on results to tell that story to the plan sponsor, the more you're justifying the investment for the sponsor."

The 403(b) plan market also sees lots of fee pressures now, Bradley Sieniawski says, and that means getting creative about the service model. "In the not-for-profit space, because they are budget constrained, our services are constrained: We can't provide the same level of services at the same cost," says Sieniawski, vice president and national not-for-profit market lead at CBIZ Retirement Plan Services (RPS) in Cleveland. "It actually is getting us out of our comfort zone as advisors, and we have to mold our business and services so that we can provide a similarly high-quality service, while helping the committee meet its fiduciary obligations as a plan sponsor. It is challenging to find that balance, but it's very gratifying."

4 Focus on Participant Outcomes

WHEN PETRONE first started as an advisor, he looked to rates of participation and average deferrals as key barometers of plan success. Now he focuses more on outcomes-based engagement statistics.

"I've learned over the years that no matter how much the conversation with the sponsor focuses on the program design at the plan level, ultimately engaging the employees saving in these plans to prepare for their own retirement is essential," Petrone says. "We need to be outcomes-based consultants: We need to look at whether the plan is meeting the needs of an organization's participants." So, for example, he's hired a team member who's focused solely on participant engagement and outcomes. "Twenty years ago," he says, "we would not have made that hire."

Sieniawski came into the business in 2008, on the cusp of the major market downturn. "We realize now that the industry cannot afford another crisis where participants lose most of their retirement savings," he says. "That realization not only changes my time day to day, it changes our entire practice. My personal time is spent more holistically advising an organization, and as a practice, we want to make sure our participant solutions are custom-tailored to help their participants reach a healthy retirement."

Plan advisors need to embody the mindset that they're solely in the business of helping people to a healthy and sustainable retirement, Sieniawski continues. "You are supplementing that goal with helping people make prudent investment choices, making sure the plan committee has prudent governance processes, and making sure the plan costs are transparent and reasonable," he says. "If you have a participant focus to everything that you do, success, accolades, and new client relationships come naturally as a byproduct."

Jeffrey Petrone

"AUTO DESIGN FEATURES ARE A MUST WHEREVER POSSIBLE, BUT MARRYING THOSE FEATURES WITH INDIVIDUAL CONVERSATIONS IS THE KEY TO GETTING TO THE NEXT LEVEL."

– Jeffrey Petrone, SageView Advisory Group

5 Help Participants Look at the Big(ger) Picture

WHEN SALYER did education meetings early in his career, he and his colleagues focused on encouraging employees to start saving for their retirement. "Fifteen years ago, we had to tell people that they needed to save money in a retirement plan," he remembers. "People would talk about pension plans, and I'd tell them, 'Remember, that was your parents and your aunts and uncles who had those plans. You have a different kind of plan.'"

WD Pensionmark doesn't need to have those kind of conversations now, Salyer says. "Our participants have been educated on the importance of saving. Now the discussion goes into financial wellness," he says. "It's not, 'Are you saving?' It's, 'Are you saving enough? And have you looked at your goals for retirement?' We are having a more holistic financial conversation."

Financial wellness has become a much bigger part of a plan advisor's work during Carroll's career. "You need to realize that retirement planning is one financial decision people are making of many," she says. "They're also dealing with things like creating a budget, student loan debt, emergency savings, and saving in an HSA. Education is where you can really add value, in helping them with all the financial issues that are stressing them out."

When his career started, Scholten's discussions with participants centered more on help they needed with their 401(k) investments. Since then, he's broadened his education focus. "Now it's 'How is your overall financial picture?'" he says. ""You can have all the auto design features, and it still doesn't necessarily mean that someone is retiring with a healthy financial picture." He's realized that he needs to be much more versed on personal finance issues, and he's been studying for the Certified Financial Planner (CFP) designation.


Dean Salyer

Justin Londergan

"THE SPONSORS MAY HAVE BIGGER ISSUES ON THEIR MIND, AND I COULD HAVE LEARNED ABOUT THAT IF I'D BEEN LISTENING TO THEM TALK, INSTEAD OF GIVING MY 'EXPERT' OPINION."

– Dean Salyer, WD Pensionmark

6 Bring Forward the Best Solutions

WITH SO many participant tools available now, Petrone says, sponsors need help selecting the right ones from the abundance of choice. "One of the biggest challenges is navigating the myriad of solutions that exist in today's marketplace, and finding the best combination of tools – without overwhelming everyone," he says. "There are now different companies offering solutions for things like student loan repayment and emergency savings accounts, and I am constantly evaluating providers for their ability to tick as many of these boxes as possible. Nobody does everything the best. Finding a provider that ticks as many of those boxes as possible, as best as possible, is kind of an art form."

Sponsors also need an advisor's help to come up with a plan for incentivizing participants to access the available tools, Gibson says. "A lot of the financial wellness programs tend to be online-based, and there are some incredible tools available, but the adoption rate is incredibly low," he says. "So we help look at, how is the plan sponsor going to drive engagement over time, not just upfront? And how is the sponsor going to measure the program's results?" He's found that it helps to tie some type of reward or gratification to participants taking a positive step. Even a small gift card can motivate lots of people to try a tool, he says.

Participants also need someone's help to walk through how to utilize the tools. "The human element is still so important, even through the participant technology has been so critical to giving us better tools," Scholten says. "You can't just design a better platform and expect people to engage with it. There are so many bells and whistles on the recordkeepers' participant Web sites, but a lot of participants still tell me, 'I don't even know how to log onto my account.'"

7 Leverage Both Behavioral Finance and Face-to-Face Coaching

PETRONE SEES lots of value for an employer in budgeting for its plan advisor to do one-on-one meetings with employees. "If employers are willing to invest in their employees, then we can get to the heart of what is driving (financial) success," he says. "Auto design features are a must wherever possible, but marrying those features with individual conversations is the key to getting to the next level. To optimally improve their situation, you've got to sit down and find out what challenges that person is dealing with. Otherwise, you're just giving them a one-size-fits-all solution."

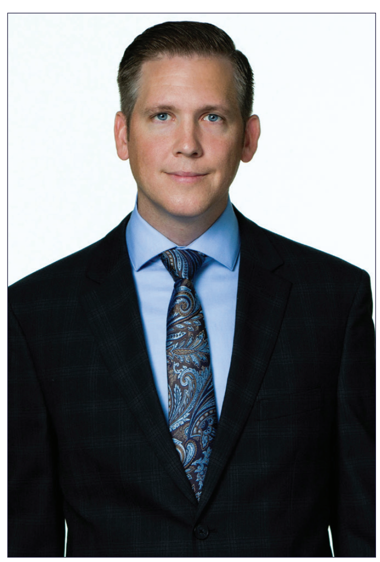
Behavioral finance has become a big passion for Gibson as his career develops. "The reality is that even if people know the right answer, due to their cognitive and emotional biases, they might not make good decisions," he says. "You can give people all the information they need to make a decision, but if they are not going to use the information in a rational way, they're not going to make good decisions."

So, for example, he keeps in mind the "anchoring" concept that may cause participants to get preoccupied with their current account balance. "People focus on the highest dollar amount that they've ever had in the plan, and as soon as the market goes down, they feel like they're losing money – as opposed to looking at their retirement account as a long-term investment," Gibson says. "I encourage participants to stay the course with their allocation, and focus more on how much they put into their account."

And without coaching, Gibson worries, today's auto-enrolled participants – who don't have to actively make decisions to save for their retirement– may become tomorrow's unengaged near-retirees. "When they get into retirement, their knowledge level could be even lower than if they had to engage in the plan," he says. "How can we give them the base knowledge they will need to make good decisions about things like Medicare and long-term care? There are a lot of retirement-phase issues where most people don't have even a basic understanding."

"WHEN I STARTED, I WAS WORKING ON THE ASSUMPTION THAT THERE IS ONE BEST PRACTICE FOR EVERYTHING. BUT I'VE REALIZED THAT EVERY SINGLE PLAN IS UNIQUE, AND WHAT'S BEST PRACTICE ON PAPER DOESN'T ALWAYS MAKE THE MOST SENSE IN REALITY."

– Steven Gibson, Plante Moran Financial Advisors



Steven Gibson

8 Create Your own Opportunities

SIENIAWSKI STARTED out on the investment-consulting side, learning about investment products and platforms. But as 403(b) plans evolved, his firm sensed potential for plan advisors in that market, where CBIZ RPS had only a small number of clients. As changes in the industry ensued, he took the initiative to approach CBIZ RPS's leadership about trying to do more work in that market. "I told our President, 'I think there's an opportunity here, because the services we provide on the 401(k) side can apply directly to the 403(b) side,'" he recalls.

CBIZ RPS now works with more than 400 not-for-profit clients. "What I like about the not-for-profit mindset is that it's not always about the bottom line," Sieniawski says. "They are people-focused. So if I can help the plan committee solve a problem that helps their employees, they value me as the advisor and consultant on their retirement plan program."

Londergan worked at a nonprofit before becoming a plan advisor, and he has moved toward working with nonprofit plans. "You've got to find your niche, an area that you really, really understand," he says. A lot of the nonprofit client relationships Londergan has built actually started with him cold-calling sponsors.

"You have to thread the needle between being annoying and being persistent," Londergan says of cold-calling sponsors. "If you get a 'No' initially, you can't take it personally. Keep pursuing it. I've got plenty of cases where sponsors have initially told me 'No thanks,' but I kept calling them to touch base. And four years later, we're working together."

Sarah Majeski

Be Patient and Adaptable

THE ABILITY to keep adapting to this changing marketplace and gradually becoming more knowledgeable plays a big part in building a successful plan advisory career, says Sarah Majeski, a business development specialist at Oswald Financial, Inc. in Cleveland. She started her career at 18, working on the recordkeeping side at Charles Schwab & Co., Inc., and handling tasks like processing loan paperwork. "I've been in the retirement plan industry my whole adult life, and I worked my way up," she says. If she could go back and give her novice self advice now, she says, "It's to be patient with myself, as I was laying the foundation for my career's future. There is so much to learn, and I have slowly increased the scope of my knowledge over time."

When Majeski began her career, she put a lot of emphasis on learning the technical aspects of working with retirement plans. "I don't think I realized then how far the soft skills – the relationship side of it – takes you," she says now.

Looking back on her career's beginning years, Carroll realizes first and foremost that a novice plan advisor can't possibly know everything. "It is hard sometimes to have that humility of, 'I have a lot to learn,'" she says. "Don't be afraid to ask questions and soak up the knowledge that those around you with more experience can teach you."

But Carroll also knows now that confidence plays a big part in developing a successful plan advisory career. "Don't limit yourself," she says. "I don't think you can better yourself if you don't look for opportunities to grow." She began by working with a TPA. "After a while I thought, 'This is good, but I feel like I am seeing only one corner of this business,' so I moved to the advisory side. And ultimately I got into sales, because I wanted to develop some of the skills I have that I was not leveraging. My advice is, do not be afraid to pull the trigger when you sense a good opportunity."

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

Uncommon Grounds

By Nevin E. Adams, JD

In this issue of *NAPA Net the Magazine* we are pleased to share the 2019 list of Top Young Retirement Plan Advisors – our sixth such acknowledgement of our industry's "Young Guns."

They are widely seen as the future leaders of the retirement plan advisor industry – and certainly as you track the progress of those who have made this list over the years (many of whom have now "aged out" beyond the age 40 cutoff), it's clear that they have more than lived up to those anticipations.

Established in 2014, this list is drawn from applications received from nominees designated by NAPA Broker-Dealer/RIA Firm Partners. Those applications, which include a combination of quantitative and qualitative data, are then vetted by a blue-ribbon panel of senior advisor industry experts based on specific criteria, including a broker-check review.

As for experience – just over half (54) had 10-15 years, but a third were (just) in the 5-10 year category. Nearly half of this year's group primarily work as lead advisor on plans with between $10 million and $50 million in assets, but several primarily work on plans with >$1 billion in assets. Their paths to this industry, and their paths in this industry, vary widely. But what they all had in common was a focus on retirement plans, a commitment to helping plan sponsors fulfill their responsibilities, and a desire to help American workers achieve a financially successful retirement.

Our thanks to all who participated in the nomination and voting process, the hundreds of nominees, and our panel of judges, who gave selflessly of their time and energy to make this year's process another resounding success.

Most importantly, our heartiest congratulations to this year's Top Retirement Plan Advisors – and all you have done, and will continue to do, for the many plans, plan sponsors, and plan participants you support.

Edward Ahn
FIRM: Merrill Lynch
BROKER-DEALER / RIA: *Merrill Lynch*

Alexander G. Assaley
FIRM: AFS 401(k) Retirement Services, LLC
BROKER-DEALER / RIA: *Commonwealth Financial Network*

Ken Barnes
FIRM: SageView Advisory Group
BROKER-DEALER / RIA: *SageView Advisory Group*

Andrew Bayliss
FIRM: Marsh & McLennan Agency
BROKER-DEALER / RIA: *MMA Securities*

Mark Beaton
FIRM: Bukaty Companies Financial Services
BROKER-DEALER / RIA: *Resources Investment Advisors*

Tony Black
FIRM: SevenHills Cleveland Benefit Partners
BROKER-DEALER / RIA: *Pensionmark Financial Group*

Natasha Bonelli
FIRM: Merrill Lynch
BROKER-DEALER / RIA: *Merrill Lynch*

Jon Bratincevic
FIRM: Morgan Stanley
BROKER-DEALER / RIA: *Morgan Stanley*

Julie Braun
FIRM: Morgan Stanley
BROKER-DEALER / RIA: *Morgan Stanley*

Eric Brunton
FIRM: Merrill Lynch
BROKER-DEALER / RIA: *Merrill Lynch*

David Cacciabeve
FIRM: CAPTRUST Financial Advisors
BROKER-DEALER / RIA: *CAPTRUST*

Ryan Campagna
FIRM: Sentinel Pension Advisors
BROKER-DEALER / RIA: *Sentinel Pension Advisors*

Megan Carroll
FIRM: Assurance Financial Services
BROKER-DEALER / RIA: *Kestra*

Dominic Casanueva
FIRM: Merrill Lynch
BROKER-DEALER / RIA: *Merrill Lynch*

Brian Catanella
FIRM: UBS Financial Services
BROKER-DEALER / RIA: *UBS Financial Services*

John Clark
FIRM: Heffernan Retirement Services
BROKER-DEALER / RIA: *LPL/GRP*

Corey Coleman
FIRM: Hub International
BROKER-DEALER / RIA: *Cambridge Investment Research Advisors*

Jake Connors
FIRM: Compass Financial Partners, LLC
BROKER-DEALER / RIA: *LPL Financial*

Shaun Cox
FIRM: Oswald Financial, Inc.
BROKER-DEALER / RIA: *Global Retirement Partners*

Ronnie Cox
FIRM: Pensionmark Financial Group
BROKER-DEALER / RIA: *Pensionmark Financial Group*

Brady Dall
FIRM: 401k Advisors Intermountain
BROKER-DEALER / RIA: *Resources Investment Advisors*

Taylor Dance
FIRM: GBS Retire
BROKER-DEALER / RIA: *Resource Investment Advisors*

Joe DeBello
FIRM: Chepenik Financial
BROKER-DEALER / RIA: *Resources Investment Advisors*

Sean Deviney
FIRM: Provenance Wealth Advisors, LLC
BROKER-DEALER / RIA: *Raymond James Financial Services*

Justin Domber
FIRM: Plante Moran Financial Advisors
BROKER-DEALER / RIA: *Plante Moran Financial Advisors*

Damian Dufour
FIRM: Reilly Financial Advisors, LLC
BROKER-DEALER / RIA: *Reilly Financial Advisors, LLC*

Rich Eagar
FIRM: Qualified Plan Advisors
BROKER-DEALER / RIA: *NA*

Shaun Eskamani
FIRM: CAPTRUST Financial Advisors
BROKER-DEALER / RIA: *CAPTRUST*

Michael Fine
FIRM: Monarch Plan Advisors
BROKER-DEALER / RIA: *Monarch Plan Advisors*

Derek Fiorenza
FIRM: Summit Group Retirement Planners, Inc
BROKER-DEALER / RIA: *LPL*

Jessica Fitzgerald
FIRM: Morgan Stanley
BROKER-DEALER / RIA: *Morgan Stanley*

Patrick Flint
FIRM: CAPTRUST Financial Advisors
BROKER-DEALER / RIA: *CAPTRUST*

Kellen Foley
FIRM: NFP
BROKER-DEALER / RIA: *Kestra Investment Services, LLC / NFP Retirement, Inc.*

Lee Forehand
FIRM: Morgan Stanley
BROKER-DEALER / RIA: *Morgan Stanley*

Lisa Garcia
FIRM: FiduciaryFirst
BROKER-DEALER / RIA: *FiduciaryFirst*

Nathaniel Gavitt
FIRM: Everest Consultants LLC
BROKER-DEALER / RIA: *Everest Consultants LLC*

Steven Gibson
FIRM: Plante Moran Financial Advisors
BROKER-DEALER / RIA: *Plante Moran Financial Advisors*

Richard Ginel
FIRM: SageView Advisory Group
BROKER-DEALER / RIA: *SageView Advisory Group*

Matt Giovinazzo
FIRM: NFP
BROKER-DEALER / RIA: *Kestra Investment Services, LLC / NFP Retirement, Inc.*

Spencer Goldstein
FIRM: StoneStreet Equity, LLC
BROKER-DEALER / RIA: *Resources Investment Advisors*

Wesley Golie
FIRM: First Interstate Wealth Management
BROKER-DEALER / RIA: *LPL Financial*

Erin Hall
FIRM: Bermudez / Hall Retirement Group of Wells Fargo Advisors
BROKER-DEALER / RIA: *Wells Fargo Advisors*

Thomas Hardy
FIRM: Mariner Retirement Advisors
BROKER-DEALER / RIA: *MSEC, LLC/Mariner Retirement Advisors*

Jamie Hayes
FIRM: FiduciaryFirst
BROKER-DEALER / RIA: *FiduciaryFirst*

Brandon Helms
FIRM: Retirement Plan Analytics
BROKER-DEALER / RIA: *GRP*

Evan Holmes
FIRM: CAPTRUST Financial Advisors
BROKER-DEALER / RIA: *CAPTRUST Financial Advisors*

Emily Hing Hopkins
FIRM: NFP
BROKER-DEALER / RIA: *NFP Retirement, Inc.*

NAPA's TOP PLAN ADVISORS UNDER 40 YG 2019

Zach Hull
FIRM: Compass Financial Partners, LLC
BROKER-DEALER / RIA: *LPL Financial/Compass Financial Partners*

Rich Hynes
FIRM: Merrill Lynch
BROKER-DEALER / RIA: *Merrill Lynch*

Scott Jones
FIRM: E&M Consulting
BROKER-DEALER / RIA: *Raymond James Financial Services Advisors, Inc.*

Mike Kasecamp
FIRM: CBIZ Retirement Plan Services / CBIZ Investment Advisory Services
BROKER-DEALER / RIA: *CBIZ Financial Solutions Inc. / CBIZ Investment Advisory Services, LLC.*

Jim Keenehan
FIRM: AFS 401(k) Retirement Services
BROKER-DEALER / RIA: *Commonwealth*

Jack Keller
FIRM: CBIZ Retirement Plan Services / CBIZ Investment Advisory Services
BROKER-DEALER / RIA: *CBIZ Financial Solutions Inc. / CBIZ Investment Advisory Services, LLC..*

Jamie Kertis
FIRM: Grinkmeyer Leonard Financial
BROKER-DEALER / RIA: *Commonwealth Financial Network*

Amy Kinsman
FIRM: Cafaro Greenleaf
BROKER-DEALER / RIA: *Greenleaf Advisors*

Cameron Kleinheksel
FIRM: Plante Moran Financial Advisors
BROKER-DEALER / RIA: *Plante Moran Financial Advisors*

Vincent Ko
FIRM: Precept Advisory Group
BROKER-DEALER / RIA: *Precept Advisory Group*

Josh Kopec
FIRM: Connor & Gallagher OneSource
BROKER-DEALER / RIA: *Global Retirement Partners*

Douglas Kublin
FIRM: Marsh & McLennan Agency
BROKER-DEALER / RIA: *MMA Securities*

Vanessa Larareo
FIRM: SageView Advisory Group
BROKER-DEALER / RIA: *SageView Advisory Group*

Brian Lizzi
FIRM: TriBridge Partners, LLC
BROKER-DEALER / RIA: *MMLIS*

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FIRM: Mayflower Advisors, LLC
BROKER-DEALER / RIA: *Wells Fargo Advisors Financial Network, LLC (WFAFN)*

Sarah Majeski
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BROKER-DEALER / RIA: *LPL Financial/GRP*

Joseph T. Matis
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BROKER-DEALER / RIA: *Morgan Stanley*

James Miley
FIRM: Hays Financial Group
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FIRM: Fidelis Fiduciary Management
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Brennan Moore
FIRM: NFP
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BROKER-DEALER / RIA: *Resources Investment Advisors*

Doug O'Rear
FIRM: OnTrack 401(k)
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2019

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BROKER-DEALER / RIA: *Schwab*

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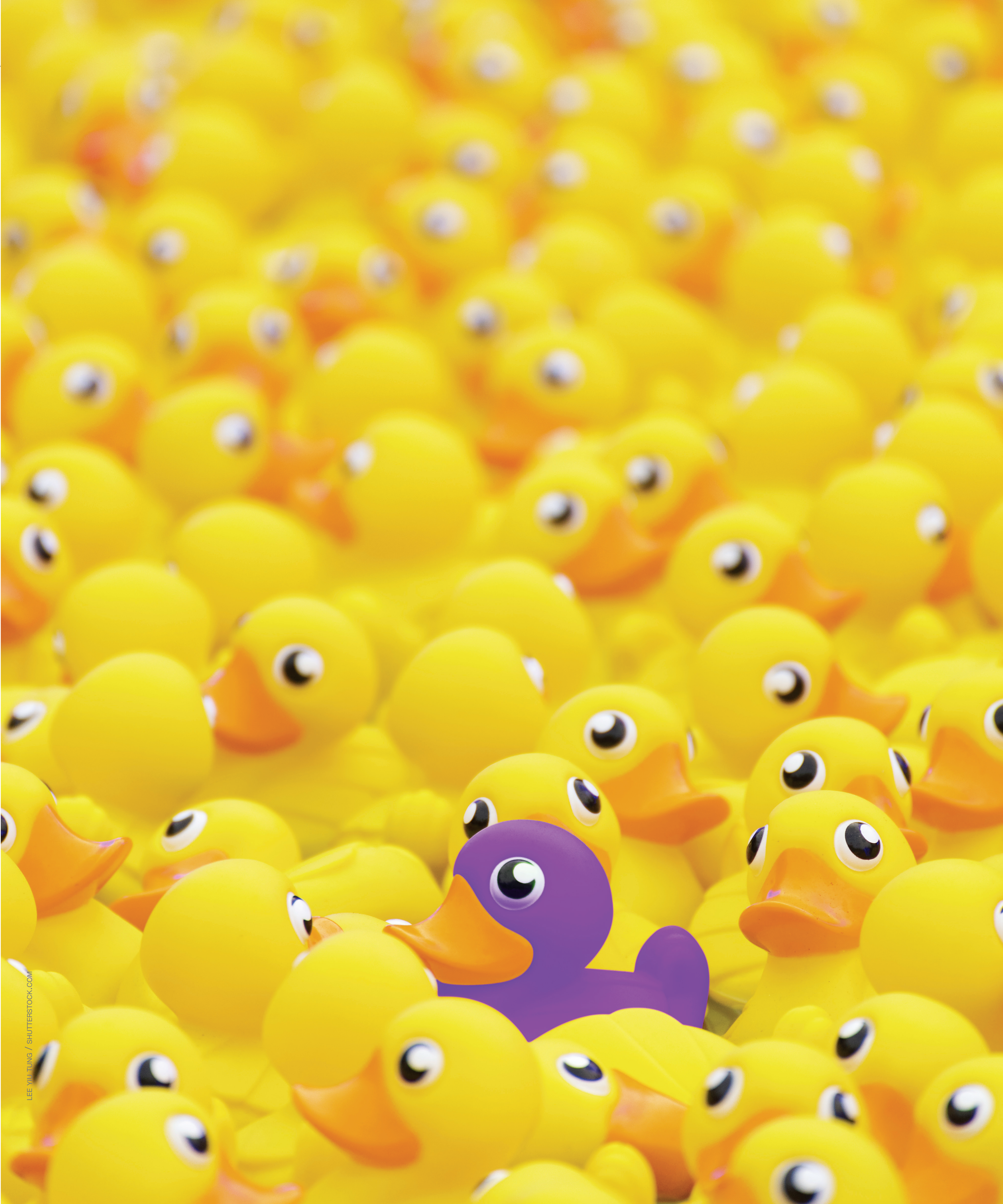
DECLARATION OF INDEPENDENCE

How independent plan advisory firms can succeed in an era of consolidation.

By Judy Ward


LEE YIU TUNG / SHUTTERSTOCK.COM

AN old business adage holds true in the plan advisory space, advisor Mark Ivcevich thinks. “No one ever gets fired for hiring the mega-firms,” says Ivcevich, president of Takoma Park, Maryland-based QP Consulting LLC. “When they hire a mega-firm, sponsors don’t have to stick their neck out.”

And yet, in this era of advisory practice consolidation, QP Consulting continues to succeed as an independent practice. Partly that’s a result of building a niche that mega-firms don’t often pursue, Ivcevich says: single-site employers with a small participant base but a large average balance. And QP Consulting drives its revenue by maintaining long-term client relationships, not via acquisitions. “We are focused on a slower growth process, with fewer new plans every year than the bigger firms take on, because we are providing a truly customized process to a client,” he says.

Five independent advisors interviewed for this story talked about how their practices continue thriving as they compete against large, consolidated advisory players.

Thinking about going – or staying – independent? Here are five key considerations.

SMALLER CAN BE BETTER

In the institutional world, large advisory firms often do a lot of “client-list waving” during the sales process, says Richard Todd, managing principal and CEO of Innovest

Portfolio Solutions in Denver. "They are able to show that they have more clients. And if it is niche-type client, they are more likely to be able to show that they already work with that type of client," he says. But Innovest stresses how it focuses on comparatively fewer, deeper client relationships. "Every client here has a partner consultant, and we are more than a hired hand: The buck really stops with us," he says.

"A lot of the time, these larger organizations are sales-focused organizations. We have 52 people here, and the work they do is very consulting-focused," Todd continues. "Our sales model also is different. In some cases, these firms have a model where the advisor is also a salesperson, and we believe that doesn't always work for the client. We have a separate sales and marketing staff. So for our consultants, their compensation is not driven by what they sell."

Baystate Fiduciary Advisors' Gregg Andonian conveys to potential plan sponsor clients that Baystate's smaller size means it has a sharper operational focus and lower fees. "One hundred percent of our revenue comes from ERISA plans. We have one 'show': fiduciary oversight and governance," says Andonian, managing partner/relationship manager at the Boston-based firm. "And because we don't carry the overhead of the larger groups, we don't have the overhead to pass on to our clients. We don't have a brick-and-mortar office downtown, because clients do not come to us – we go to them. We don't have excess

Mark Ivcevich, president of QP Consulting LLC

"IN A BIGGER FIRM, THERE IS MORE OF A TREND TO ALMOST COMMODITIZING THEIR ADVICE. WE WORK WITH CLIENTS WITH ALL DIFFERENT NEEDS, AND OUR SOLUTIONS CAN BE DIFFERENT FROM ONE TO THE NEXT."

– RICHARD TODD, INNOVEST PORTFOLIO SOLUTIONS

staff, because we don't have multiple profit centers. Why should clients have to pay for overhead they're not even using?"

THE PRACTICAL ADVANTAGES OF INDEPENDENCE

Portland, Oregon-based Multnomah Group Inc. often competes against large national firms, such as when it's up for a $1 billion-plus 401(k) plan. In those cases, it explains how the firm's independence helps plans and their participants. "We talk about our boutique nature, that retirement work is our exclusive line of business," Managing Principal Erik Daley says. "We're not conflicted in how we operate: We are not using our revenues from one part of our business to fund another part of our business. And we are not trying to sell IRA rollovers or managed accounts to participants, or develop high-net-worth wealth management relationships."

"The way we deal with that is to preach our boutique-oriented, white-glove service," says Steven Dimitriou, managing partner of Boston-based Mayflower Advisors, LLC.

Mayflower Advisors preaches the benefits of its independence and how that leads to customized client work, Dimitriou says. "Yes, these larger firms are independent – but we're truly independent," he says. "The client is not getting reports that are regurgitated from a home office: We are doing it firsthand, customizing the report to what the client is looking for."

Ivcevich has talked with sponsors about his belief that the big national advisory firms tend to rely on groupthink for their investment recommendations. To illustrate his point, he likes to talk about what happened in 2014 when Bill Gross departed PIMCO and stopped overseeing its Total Return Fund. Many sponsors wanted a substitute fund in the aftermath, and the 401(k) world saw a lot of money flow to the same few funds, he says. "In those situations, the home office blesses the managers who are available to use, and that cycles down through the thousands of plans a big advisory firm has," he thinks. Talking to sponsors, he contrasts that with QP Consulting's individualized approach to helping a sponsor pick its investment menu.

"We do completely custom work," Todd says of Innovest. "In a bigger firm, there is more of a trend to almost commoditizing their advice. We work with clients with all different needs, and our solutions can be different from one to the next."

THE 'STAYING' POWER OF STABILITY

Multnomah Group talks with sponsors about its organizational model and how it helps clients. "We have an experienced team, and one that doesn't change much," Daley says. "For the largest firms, their growth is driven not insignificantly by adding additional practices from around the country. We've never engaged in large-scale acquisitions, and that creates a much more stable consulting environment. We are not moving new consultants (from acquisitions) from one client to another, or one geographic area or another."

The advisory firm has a business philosophy that differs from some others in the marketplace, Daley says, because it doesn't do many "rollups" that integrate acquired advisory practices into its firm. "Our approach is rather than expend tremendous resources on a rollup, let's spend that time and money developing our organization internally," he says. "We want to grow in a way that's sustainable, because in our work, we have to have a sustainable, repeatable set of processes." Acquired advisory practices can have their own entrenched approaches to work processes and client communications that differ from an advisory firm's preferred approaches, he explains.

Multnomah Group talks with sponsors about how its organizational model focuses on stability and developing long-term client relationships. "We have dozens of client examples where we have built processes that have improved their plan over seven, eight, nine, ten years," Daley says. "And throughout that time, they've been working with the same consultant, the same business analyst, and the same investment analyst. We are not focused on being acquired or doing acquisitions, so we can focus on delivering results to our clients. The continuity of the relationship is what creates the opportunity for that improvement."

DECIDE ON YOUR FOCUS

Some independent advisory firms decide to put a lot of time and resources into working directly with participants, while

Richard Todd, managing principal and CEO of Innovest Portfolio Solutions

From left: Erik Daley, managing principal of Multnomah Group Inc.; Steven Dimitriou, managing partner of Mayflower Advisors, LLC; Gregg Andonian, managing partner/relationship manager of Baystate Fiduciary Advisors

others choose to concentrate on plan-level work. Baystate Fiduciary Advisors doesn't do financial wellness education for participants itself, for example. "We leverage recordkeepers to do that, as well as third-party providers like Financial Fitness for Life and Financial Finesse," Andonian explains. In its quarterback role, he adds, "We'll bring in a third-party provider for the wellness program, then meet with the provider and the client to see what the program's results are, and if those results meet the goals of the engagement."

Multnomah Group doesn't focus on doing onsite participant meetings, Daley says, adding that this choice also eliminates a potential conflict of interest. "The economics of bringing someone from our staff to do one-on-ones in an office building for a whole day is not a leverage-able resource. And that expense has to be paid somehow, whether it's by cross-selling or something else," he says. "Our job as the consultant is to help develop the education strategy, measure the results of the program, and review the plans going forward."

But for Mayflower Advisors, its enthusiasm for working directly with participants has been key in signing new clients – and keeping them. "One big aspect of what we preach to committees is that we offer one-on-ones with participants. That has helped us win a lot of business," Dimitriou says. "Some of our competitors say, 'We're only doing work at the plan level.'"

"Our work with participants is a detriment to our short-term profitability, but it helps a lot to ensure that the client stays in our book of business for the long term," Dimitriou continues. "If participants are happy and tell their HR department that we helped them, it is very hard for the sponsor to throw us out as the advisor."

A SALEABLE, SCALABLE MODEL

Andonian's scalable business model has helped him a lot to achieve long-term success as an independent. For example, Baystate Fiduciary Advisors uses the same template for all the analytics it gives sponsor clients. The vast majority of its plan clients utilize the same TPA. By design, all of Baystate's clients are located within a one-and-a-half hour drive from its office. And the advisory firm does its client meetings on the same repetitive schedule and time slots.

"Once you develop a process that works, you need to make it scalable and repetitive," Andonian says. "And you have got to be willing to not take clients that don't fit that model." Baystate doesn't try to do everything itself, he says, but instead takes on more of a quarterback role that includes bringing in a plan's recordkeeper or other third-party providers when needed. "Rather than us getting into the weeds on everything, we connect the parties and make sure everyone understands their role," he says. "That's more efficient."

Independent advisors need to have the confidence and drive to invest in their business when it makes sense, Dimitriou says. "One of the biggest mistakes I see is that advisors are hesitant to spend money on hiring another person," he says. "You need to realize that sometimes you should take a small step back in your compensation to be able to take a big step forward. Yes, if you hire someone, that might be a $100,000 hit to your income in the short term – but that person can help you generate $300,000 in new revenue. If you look at the advisory firms that have been successful, it is not because they focused on their short-term compensation."

Having a scalable business model also means utilizing good resources from vendors and wholesalers when they're available, Dimitriou says. "Do you need benchmarking reports? Do you need whitepapers? There are actually a lot of resources that you have access to, and you might not realize it," he says. "Get to know what your business partners offer and leverage it, especially if you can brand it to your firm."

For QP Consulting, it also has opted to outsource some non-core tasks. "We look at our core competencies, and we focus on doing those internally," Ivcevich says. "We do some outsourcing in the marketing space, and for part of the compliance process. That's how we've made ourselves leaner, and as a result, we're considerably less expensive than the larger firms." N

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

CPSP

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NEW PLAN SPONSOR EDUCATION PROGRAM AND CREDENTIAL

New PSCA program fills the gap in plan sponsor education.

By Nevin E. Adams, JD

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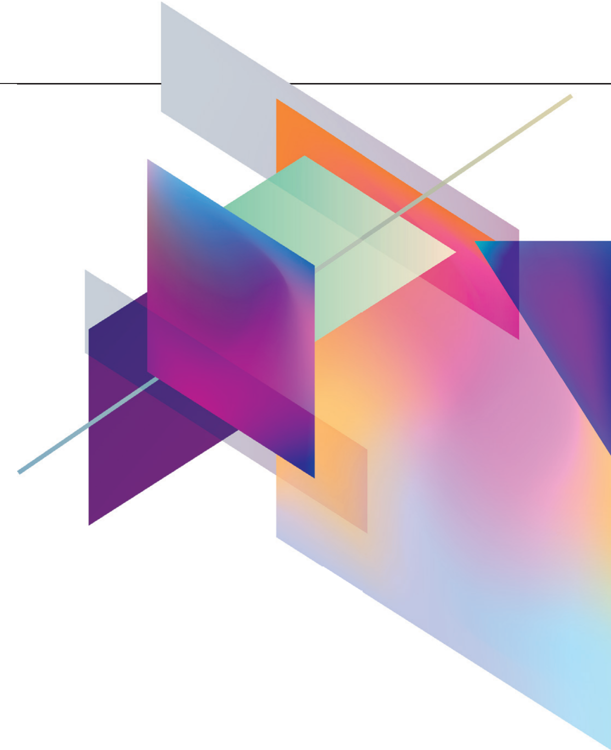


WHY should retirement plan advisors care about a new credential for plan sponsors?

I've had the opportunity to meet with thousands of plan sponsors throughout the years, and as different as they and the workers and organizations they served were, they all had one thing in common – they found themselves with the duties of a plan sponsor with little or no training to equip them.

Indeed, there's more than a bit of irony that individuals who find themselves in a job with personal liability for their actions (and the actions of their co-fiduciaries) alongside an expectation of prudence that courts have described as the "highest known to man" have had little in the way of practical, retirement plan focused training. This creates a unique set of challenges for retirement plan advisors, many of whom find themselves in the unenviable position of having to cover the basics of ERISA and fiduciary responsibility before they can move on to the important issues of plan design and retirement outcomes.

In no small part, that's why the Plan Sponsor Council of America (PSCA), working with staff at the American Retirement Association, undertook the project of building an exciting new credential for plan sponsors: the Certified Plan Sponsor Professional (CPSP™). Developed by plan sponsors, along with some of the nation's leading retirement industry experts, and leveraging the latest in online education technology, the CPSP program provides plan sponsor professionals with the knowledge they need to be successful – and, of significance to retirement plan advisors, the CPSP helps plan sponsors gain mastery-level understanding of their fiduciary duty and responsibility in retirement plan management.

As announced at the 2019 NAPA 401(k) Summit, advisors who have attained either the NAPA CPFA or QPFC credentials can now extend to up to 10 of their plan sponsor clients or prospects access to the education program, and the ability to earn the Certified Plan Sponsor Professional (CPSP™) credential.

THE CREDENTIAL

The structuring of the credential began with the assembly of a group of plan sponsors more than a year ago to identify the key areas of expertise expected of an individual with approximately two years of experience in a plan sponsor role. That long list of items was condensed into nine key areas of focus that remain the organizational focus of the credential:

- Considerations for Retirement Plan Design
- The Most Popular Defined Contribution Plan: The 401(k)
- Beyond the 401(k) (Other Types of Employer-Sponsored Retirement Plans)
- Plan Fiduciary Obligations and Risk Management
- Investment Concepts
- Behavioral Finance and Employee Engagement
- Vendor Management and Selection
- Plan Operations
- Plan Audits and Compliance

Those nine areas were further weighted by our panel of subject matter experts (SMEs), based on their perceived criticality to the position.

Having developed the exam format, we began the process of populating a databank of multiple-choice questions that would validate the requisite level of professional expertise to earn the CPSP credential. To do so, we brought together a group of plan sponsor subject matter experts. We have continued to expand and validate that bank of exam questions, and expect

Continued on page 57

The CPSP Education Program: Module-by-Module

Course 1: Choosing Your Plan

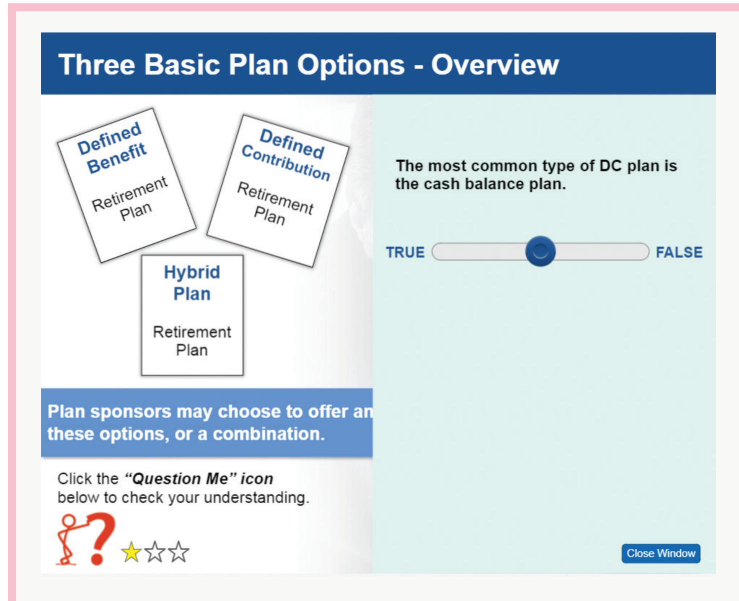
In the first module, Considerations for Plan Design, we focus on the retirement plan design process, and the options and choices you have as a plan sponsor in establishing a plan – and that you can, and should, consider in evaluating the plan you have in place. We touch on issues such as payroll and compensation practices, which can have a direct impact on plan design, and we outline how your objectives for the plan can be translated into a clear plan design strategy. We outline the three basic plan types – defined benefit, defined contribution, and hybrid – and then step through the process of the various design considerations: eligibility, enrollment, vesting, contribution formulas, and compensation definitions through the prism of *The Most Common DC Plan – The 401(k) Plan*. The third module in this course moves Beyond the 401(k) to explore how those factors might be influenced by other plan type choices.

Course 2: Building Your Plan

Having considered the plan design, we move into the practices of actually building the plan. The baseline for that, as you might expect, is *Plan Fiduciary Obligations & Risk Management*. This module outlines: the roles and responsibilities of a plan fiduciary, the different types of fiduciaries, prohibited transactions, and the consequences of a breach of fiduciary duty, and outlines a series of strategies to mitigate risk. We also cover the four key principles of a fiduciary's obligation: the prudent expert rule, the exclusive benefit rule, the plan document rule, and the rule of diversification.

The *Investment Concepts* module runs the gamut from the use of an investment policy statement, defining asset classes, outlining the concepts behind establishing a diversified portfolio, and the various types of "packages" — mutual funds, collective investment trusts, exchange-traded funds, etc. — in which those asset classes are typically found in retirement plan menus.

With the third module in this course, *Behavioral Finance and Employee Engagement*, the goal is to teach you tools and techniques that influence participant behavior with the objective of maximizing the effectiveness of the retirement plan benefit. This module covers the various behavioral biases that can negatively impact retirement savings decisions, and provides some strategies to overcome them. We also explore the expanding focus on participant "outcomes" and the emergence and implications of financial wellness on plan designs.



Course 3: Running Your Plan

Running a plan is a big, time-consuming job, and plan sponsors generally enlist the support of qualified experts to help them do so. The *Vendor Selection and Management* module focuses on the various options available, the standard of care in selecting and reviewing that selection over time, various types of service arrangements, and the benchmarking alternatives available in different circumstances.

The *Plan Operations* module is designed to help you provide oversight, identify issues, and recommend improvements to plan operations to ensure that the plan operates efficiently, effectively, and in compliance with documents, regulations, and policies that govern the retirement plan. That includes dealing with specific issues relating to enrollment, contribution allocations and crediting, vesting, discrimination testing and distributions, including loans and required minimum distributions.

The course concludes by covering the audit process in the final module, *Plan Audits and Compliance*. This module explores various means to resolve potential problems that might arise during an audit, how to maintain plan documents, compliance testing, and notices and disclosures, as well as highlighting common plan failures – and how to avoid them.

Let's get started! Visit https://pscalearn.org.

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Senior Vice President / ERISA
Ascensus

Continued from page 55

to do so on an ongoing basis, subject to psychometric review.

To be eligible for the CPSP, a candidate must have at least 2 years of experience in a plan sponsor-related role, pass the CPSP credential exam, and ascribe to the PSCA Professional Code of Ethics.

ONLINE EDUCATION

While there is no prerequisite coursework to take to obtain the CPSP credential, in view of the variety of the plan sponsor scope and traditional lack of applicable training, we determined that it would be helpful to develop an education course that could serve to refresh concepts, or fill in informational gaps, for those interested in pursuing the CPSP credential.

With the support of key education partners Ascensus, Franklin Templeton, PIMCO and Wilmington Trust – and with our outline in place – we engaged teams of industry experts to flesh out those concepts into scripts and further refined and edited those scripts into three courses (Choosing Your Plan, Building Your Plan, and Running Your Plan) comprised of nine separate modules based on the key areas of consideration that had been identified.

Working hand-in-hand with the team of instructional designers at the American Retirement Association, an advisory council comprised of plan sponsors, representatives from our education partners (see sidebar) and ARA subject matter experts, we leveraged the latest in online education technology and adult learning methods to develop the online courses.

The course has a flexible design, allowing plan sponsors to jump over sections in which they already feel proficient, but they can also pause, rewind and revisit any section(s) desired. There are knowledge checks throughout the course to help validate concepts, as well as assessments at the end of each course.

The CPSP program provides plan sponsor professionals with the knowledge they need to be successful and gain a deeper understanding of their fiduciary duty and responsibility in retirement plan management.

So, why should retirement plan advisors care about a new credential for plan sponsors? Better informed clients (and prospects) are generally better clients. And providing access to the CPSP program adds value – to their work as plan sponsors, their support of their workforce, and to your ongoing relationship with them as well.

More information on the CPSP program is available at pscalearn.org.

Should TDFs Be the Last Investment?

Many plan sponsors have awakened to the challenges that an inopportune sequencing of returns can create for a portfolio and a retiree.

BY STEFF CHALK


RAWPIXEL.COM / SHUTTERSTOCK.COM

Overseeing another's best interest is no simple task, whether as a parent, a caregiver or even a plan fiduciary. Although there are many significant differences among these disparate roles, there are also similarities. In each of them there are differing attitudes when describing to what extent a responsible party should be involved in making decisions for others.

Individuals who serve as fiduciaries of corporate retirement plans are held to the highest standard of care. With that in mind, the question is: How much should fiduciaries do for plan participants?

A Modern-day Success Story

While target date funds first arrived on the scene in 1994, their acceptance, widespread usage and exponential asset growth did not begin until the Pension Protection Act was enacted in 2006. Since then there have been steadily increasing flows into default investments, and those assets have most often been directed or defaulted into TDFs. According to Georgetown University's Center for Retirement Initiatives, by 2017, 93% of retirement plans used TDFs as their QDIA, up from just 64% in 2009.

This greater acceptance among plan participants has helped fuel the asset growth in 401(k) plans from $48 billion in 2005 to $240 billion in 2010, and $730 billion in 2018, according to the Investment Company Institute.

A Look Toward the Future

TDFs have come a long way. But is that all there is? What is the next logical step for plan participants who have ridden the wave of growth and appreciation during their working years? We seem to be at a fork in the road – requiring a decision by the plan sponsor: What action by plan fiduciaries seems most prudent for retirees?

Life expectancy is now a factor for older workers and those who are thinking about retiring. The World Bank tells us that during the 50 years from 1960 to 2010, life expectancy rose just over 12%, from age 70.0 to age 78.54. The term "longevity" has crept into the lexicon of the American worker, and it sounds great – but it concerns employers and retiring employees. Unfortunately, longevity plays havoc with the results of an investment strategy based upon TDFs.

UCLA professor Dr. Hal Hershfield has studied for many years the roles of the "present-self" and contrasting it with the role of the "future-self." The research tells us that the present-self regularly makes decisions that will ultimately be bad for the future-self. (Think losing excess weight, choosing to not exercise, or not saving enough for retirement.)

Investing Beyond TDFs

Plan sponsors have a genuine interest in helping retired plan participants. However, plan sponsors also realize that a traditional date-driven TDF investment strategy will probably fall short of meeting the needs of a retiree who should anticipate a much longer time spent in retirement.

Plan sponsors are starting to notice. Many have awakened to the challenges that an inopportune sequencing of returns can create for a portfolio and a retiree. They are asking for access to more income-oriented investment portfolios.

A segment of the workforce has made good decisions when it comes to saving, but they are requesting the next generation of investments. Is it now time for a full sleeve of income portfolios to replace TDFs?

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

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Privacy: The Next Retirement Plan Frontier

Here are three questions that advisors should ask now to help develop a framework for navigating the interaction of privacy and retirement.

BY DAVID N. LEVINE

The loss of Americans' privacy through the growing use of their data continues to be a major topic in the media. This focus is now turning to the retirement industry.

Plan and participant data plays a key role in our retirement system – from the basic operation of retirement plans, to designing wellness solutions, implementing distributions and beyond. Almost all aspects of plan operation and participant interaction rely on data.

Notably, plaintiffs' lawyers have begun to focus on privacy issues as well. To begin to prepare for a world where data could be a key compliance consideration, there are three basic questions that advisors can begin to ask now to begin to develop a

> Advisors play an essential role in understanding their clients' privacy interests and concerns and helping them negotiate agreements with service providers.

framework for navigating the interaction of privacy and retirement.

The Legal Framework

The first question is: Which legal rules govern the use of retirement plan and participant data?

Often, the answer can depend on the exact data and exact usage, but key rules to keep in mind include the following.

- *ERISA.* ERISA sets out rules relating to the use of "plan assets." A key question is whether data is a plan asset. In two recent cases, we now have conflicting signals. In one case involving Northwestern University, the court dismissed claims implicating plan data as a plan asset. In another case, involving Vanderbilt University, the settlement included an agreement to limit the use of plan data by the plan recordkeeper on a go-forward basis. (Note that settlements do not constitute binding law.)
- *The GLBA.* The Gramm-Leach-Bliley Act imposes certain limits on the use of data used in certain financial transactions. Historically, the law has not been thought to apply to retirement plan-related activities. However, given the rise of state initiatives as noted below, the GLBA or other legislation may play a role in the future.
- *State Laws.* Privacy-related legislation continues to be introduced in numerous state legislatures. The most prominent state effort is the California Consumer Privacy Act (CCPA). The extent to which the CCPA will affect retirement plans or related services is yet to be determined, as various amendments may be adopted before the law goes into effect.
- *International Laws.* Global privacy laws, such as the European Union General Data Protection Regulation and Brazil's privacy law, hold the potential to affect the operation of U.S. retirement plans, especially given the emergence of a global workforce that may, at times, participate in U.S. retirement plans.
- *HIPAA.* While it's not directly applicable to retirement, the Health Insurance Portability and Accountability Act, along with related guidance, contains some of the most detailed framework governing privacy in the United States. As such, it has the potential to affect broad-based wellness programs, which increasingly are being tied to both health and retirement.

The Players

The second question is: Who is focusing on retirement plans and data privacy?

Yes, privacy is front and center in the media. In the retirement industry, however, the brightest spotlight has not been the media. Instead, grassroots privacy concerns from participants and plaintiff's lawyers have caught the attention of industry organizations like NAPA.

Plan sponsors and plan fiduciaries are increasingly asking questions about and negotiating limitations on the use of plan data by vendors, including advisors, education providers, recordkeepers and other providers of retirement plan services. This chorus continues to grow in size, with participants, plaintiffs, industry groups, plan sponsors, fiduciaries and service providers already focused on the issue, and regulators and legislators signaling that they too are interested. With this increased focus, there is greater potential that new rules will develop as a result of industry self-regulation, legislation, government regulation or judicial decisions.

Taking Action

The third and final key question is: Given the current legal framework and increased attention, what should an advisor be doing now?

Advisors wear many hats in this process. In supporting their clients, advisors play an essential role in understanding their privacy interests and concerns and helping them negotiate agreements with service providers. And advisors themselves may also be using plan data and need to consider their clients' positions on the use of their plan and participant data, whether as part of a plan, in wealth management, or in some other function. Thus, advisors should stay up to date on the various data privacy laws – because to the extent that they hold this data, they may face their own responsibilities in holding and utilizing it.

In summary, advisors are likely to be well served by paying proactive attention to privacy matters now so that they are well positioned to support their clients and their own business activities in the future.

The author thanks his colleague, Kevin Walsh, for his input on this column.

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ESG Impasse?

A recent report claims that participants and plan sponsors are keen on ESG – but apparently not enough to do much about it.

BY NEVIN E. ADAMS, JD

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A recent report by Cerulli Associates cites a 2018 survey of 1,000 active 401(k) plan participants among whom "more than half" (56%) agreed with the statement, "I prefer to invest in companies that are environmentally and socially responsible."

As for DC plan adoption, according to the Plan Sponsor Council of America, just 4% of plans offer an ESG option, and those programs only have 0.03% of assets in ESG options, with an average asset allocation of just 0.1%.

So, what's behind this apparent disconnect? Well, the Cerulli report cites a 2018 survey of 800 401(k) plan sponsors in which about half (46%) described ESG factors as a "very important" consideration when selecting 401(k) plan investments. But if it's very important, it nonetheless comes in well down the list of actual selection criteria – dead last, in fact, among a list of 16 criteria from which plan sponsors were asked to pick the three most important.

In fairness, the items that topped that list were, to my eyes, legitimate criteria for consideration. Long-term performance topped the list, followed by cost and investment style. Tied for fourth? Advisor/consultant recommendation.

Could advisors be to blame? A previous Cerulli report on the subject suggests that a significant factor in the slow uptick in adoption of ESG are, in fact, advisors – and that among the factors holding them back are a perception that these strategies do not fit into client investment policy statements (26%), negative impact on investment performance (24%) and cost (19%).

Labor 'Deportment'

It hasn't helped that we've gotten tepid and arguably contradictory signals of these options from the Labor Department. In 2015, concerned that its prior guidance had discouraged plan sponsors from embracing "economically targeted investments," the Labor Department issued a new interpretive bulletin, and while reiterating its consistent stance that the focus of plan fiduciaries on the plan's financial returns and risk to beneficiaries must be "paramount" and that under ERISA, "…fiduciaries may not accept lower expected returns or take on greater risks in order to secure collateral benefits," stated that "Fiduciaries need not treat commercially reasonable investments as inherently suspect or in need of special scrutiny merely because they take into consideration environmental, social, or other such factors."

Now, while that arguably wasn't a bright green light, it was hard not to see that an attempt to lower a barrier to ESG consideration the DOL created in 2008.

That said, about a year ago the Labor Department cautioned that "fiduciaries must not too readily treat ESG factors as economically relevant to the particular investment choices at issue when making a decision," and that "it does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors."

Even a casual reading had to see that as a pullback from the favorable view with which Labor seemed to view ESG just three years previously.

In fact, it noted that, in the context of a QDIA, a "decision to favor the fiduciary's own policy preferences in selecting an ESG-themed investment option for a 401(k)-type plan without regard to possibly different or competing views of plan participants and beneficiaries would raise questions about the fiduciary's compliance with ERISA's duty of loyalty."

The issue with ESG wouldn't seem to be a disagreement with its general objectives, but perhaps uncertainty as to exactly which ESG issues are the focus of a particular offering (and how that might change in the future), concern about the expense of an offering whose tenets demand active management, and confusion about exactly how, as an ERISA fiduciary, they are supposed to weigh those factors.

None of those issues would seem to be insurmountable to this category of investment – if it turns out that people really are willing to put their retirement money where their minds are.

Case(s) in Point

The flurry of litigation involving university 403(b) plans and a new generation of the so-called excessive fee litigation continues to wind its way through the courts, though settlements just ahead of trial appear to be the order of the day. But now advisors are finding themselves in the cross-hairs as well – and those that got to trial brought with them some interesting observations from the bench, both in concurring – and dissenting – opinions…

QUAKER 'STATE'

Plaintiffs get reprieve in excessive fee case

The plaintiffs in an excessive fee case have managed to keep their case alive on appeal – in a case that also has an intriguing dissenting opinion.

The suit was not only one of the first of the university 403(b) excessive fee suits to be filed, the district court decision, in favor of the fiduciary defendants for the University of Pennsylvania Matching Plan, had been cited in a number of these cases, including those that had been settled.

While at least 20 universities have been sued over the fees and investment options in their retirement plans since 2016, settlements have been struck with Brown University, Vanderbilt University and the University of Chicago.

On the other hand, St. Louis-based Washington University, New York University, and Northwestern University have prevailed in making their cases in court, following the University of Pennsylvania decision.

Case History

Specifically, the suit alleged that:

- the defendants breached their fiduciary duty by "locking in" plan investment options into two investment companies;
- the administrative services and fees were unreasonably high due to the defendants' failure to seek competitive bids to decrease administrative costs; and
- the fiduciaries charged unnecessary fees while the portfolio underperformed.

The Appeal

On appeal, U.S. Court of Appeals for the 3rd Circuit revived the employees' proposed class action, partially reversing (by a 2-1 vote), the 2017 dismissal of the suit. They did so by considering whether the plaintiff in this case (Sweda) "…stated a claim that should survive termination at the earliest stage in litigation," noting that when a court dismisses a complaint without trial (as the district court did in this case), "it deprives a plaintiff of the benefit of the court's adjudication of the merits of its claim before the court considers any evidence," going on to explain that they considered this appeal construing the complaint "in the light most favorable to the plaintiff."

Now, this is the same standard that the district court judge applied in their consideration of the case. But in this case two of the three appellate judges came to a different conclusion. While the district court judge ruled that the complaint "did not state a plausible claim," observing (as the appellate court decision noted) that "at various points in its memorandum that "[a]s in *Twombly*, the actions are at least 'just as much in line with a wide swath of rational and competitive business strategy' in the market as they are with a fiduciary breach." However, the appellate judges were more inclined to see the pleas through the prism of another excessive fee decision, *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 597 (8th Cir. 2009). In that case on appeal (eventually settled), the 8th Circuit not only said that the lower court "ignored reasonable inferences supported by the facts alleged," it went on to criticize that court for not only drawing inferences in favor of the party (Wal-Mart) that had made the motion to dismiss, but for criticizing the plaintiff for "failing to plead facts tending to contradict those inferences." Here the judges noted, "to

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the extent that the District Court required Sweda to rule out lawful explanations for Penn's conduct, it erred."

'More Than Good Intentions'

Turning its attention to the allegations of a breach of fiduciary duty, the court outlined the expectations ERISA imposes, noting, "a fiduciary's process must bear the marks of loyalty, skill, and diligence expected of an expert in the field. It is not enough to avoid misconduct, kickback schemes, and bad-faith dealings. The law expects more than good intentions," going on to include the famous (to ERISA lawyers, anyway) citation, "[A] pure heart and an empty head are not enough."

Citing its prior decision (*Renfro*) that, in turn, cited *Braden*, the court here acknowledged that "a fiduciary breach claim must be examined against the backdrop of the mix and range of available investment options." That did not mean, however, the court cautioned "that a meaningful mix and range of investment options insulates plan fiduciaries from liability for breach of fiduciary duty." Indeed, they noted that "such a standard would allow a fiduciary to avoid liability by stocking a plan with hundreds of options, even if the majority were overpriced or underperforming." Moreover, they noted that establishing such a "bright line" would undermine the obligation of a fiduciary to act prudently under the "circumstances then prevailing," concluding that "practices change over time, and bright line rules would hinder courts' evaluation of fiduciaries."

In sum, the court here determined that the plaintiff's claims had been dismissed prematurely, that she had made the plausible case that the district court failed to acknowledge, and that the arguments that the Penn fiduciaries had put forth – that they had, in fact, employed a prudent process – was "misplaced at this early stage." The judges wrote "Although Penn may be able to demonstrate that its process was prudent, we are not permitted to accept Penn's account of the facts or draw inferences in Penn's favor at this stage of litigation."

Count 'Down'

Not that the decision to allow the claims to move to trial was a total victory for the plaintiff here, dismissing five of the seven counts in their appeal. Specifically, one of the plaintiff's claims was barred by ERISA's six-year statute of limitations, and the appellate court also held that she failed to plausibly state a claim for relief in three counts of the suit (that a prohibited transaction occurred when Penn allowed TIAA-CREF to require inclusion of CREF Stock and Money Market accounts among the Plan's investment options), and also held that she did not "plausibly allege that revenue sharing involved a transfer of Plan property or assets under § 1106(a)(1)(A) or (D)," nor did she "plausibly allege that Penn had subjective intent to benefit a TIAA-CREF or Vanguard by a use or transfer of Plan assets," nor did she allege facts showing "that Penn intended to benefit TIAA-CREF or Vanguard." The judges also said that she did not "plausibly allege" that "Penn caused the Plan to engage in prohibited transactions when it caused the Plan to pay investment fees to TIAA-CREF and Vanguard."

Dissenting Opinion

What's also interesting is the dissenting opinion in the case from Judge Jane Richards Roth. She noted that between 2009 and 2014, the plan's assets increased in value by $1.6 billion, a 73% return on investment, and that "despite this increase, plaintiffs have filed a putative class action, claiming that the plan's fiduciaries have imprudently managed it and seeking tens of millions of dollars of damages." She also noted that, "having convinced this Court to reverse in part the District Court's dismissal of the action, the plaintiffs will continue to pursue their remaining claims, which will be litigated extensively, at large cost to the university." This, she wrote, puts the university "…in an unenviable position, in which it has every incentive to settle quickly to avoid (1) expensive discovery and further motion practice, (2) potential individual liability for named fiduciaries, and (3) the prospect of damages calculations, after lengthy litigation, with interest-inflated liability totals."

She also cautioned that "this pressure to settle increases with the size of the plan, regardless of the merits of the case. Alleged mismanagement of a $400,000 plan will expose fiduciaries to less liability than mismanagement of a $4 billion plan. Thus, notwithstanding the strength of the claims, a plaintiff's attorney, seeking a large fee, will target a plan that holds abundant assets."

She noted that this "strategy has substantial consequences for fiduciaries of these plans, particularly at universities," and that "while the fiduciaries for large corporations may have experience in dealing with potential liabilities, fiduciaries at universities are often staff members who volunteer to serve in these roles."

She also explained that "while benefits to the plan may result from the settlement, they are substantially diluted by the fees' calculation, even before considering the litigation costs that the universities shoulder through the motion to dismiss stage. Indeed, while there is no comprehensive listing of 'jumbo plans' maintained in this country, this pattern of bringing class actions against large funds seems to have sustained itself and could continue as long as more plans can be identified."

Her dissent cautioned that the end result "would not only discourage the offering of these plans, but it would also discourage "individuals from serving as fiduciaries," and that therefore "courts must take great care to allow only plausible, rather than possible, claims to withstand a motion to dismiss."

> "While at least 20 universities have been sued over the fees and investment options in their retirement plans since 2016, settlements have been struck with Brown University, Vanderbilt University and the University of Chicago."

What This Means

While the decision is surely a victory for plaintiffs, most of the claims were rejected by the appellate court on the same grounds as has the district court, and the remand basically "only" means that the same court that felt that plausible arguments weren't made in the pleadings to go to trial will now get to hear those same arguments, albeit a significantly trimmed list of arguments in a somewhat different context. Will that change the result?

More significantly, the dissent raises the specter of the impact that this kind of litigation might have on plan formation and the involvement of individuals as plan fiduciaries. On the latter point, she would seem to be on shaky ground; ERISA's protections aren't conditional based on the expertise of the fiduciary. Rather, the law implicitly acknowledges that possibility by instructing non-expert fiduciaries to engage the services and expertise of those who are able to fill those gaps. And the realization that not fulfilling those obligations fully could result in litigation with personal consequences is something that ERISA fiduciaries would do well to keep in mind.

— Nevin E. Adams, JD

TOO LITTLE, TOO LATE?

Advisor dodges class action claim in fiduciary breach suit

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A federal court has weighed in on a new lawsuit alleging mismanagement of a 401(k) plan – and the role of the plan advisor regarding target-date fund recommendations.

In another case where the plaintiffs are represented by Schlichter Bogard & Denton LLP, Judge William J. Martinez in the U.S. District Court for the District of Colorado (*Ramos v. Banner Health, D. Colo.*, No. 1:15-cv-02556-WJM-NRN, 4/23/19) recently ruled on a motion for summary judgment (basically a judgment without an actual trial) in a suit brought by plaintiff Lorraine Ramos and six others against "Banner Health and certain current and former employees," as well as advisor Jeffrey Slocum & Associates, Inc., alleging that defendants breached their fiduciary duties under ERISA.

The plaintiffs here had earlier moved for class certification, which was granted as to the Banner plan fiduciaries – but denied with regard to the plan's investment advisor, Slocum.

Case Background

Until August 2014, the Banner 401(k) Plan offered three "levels" of funds to participants: (1) "Level 1: Ready-mixed Investment Options" or target-date funds that allowed a participant to invest in a single fund based on a desired retirement date; (2) "Level 2: Core Investment Options" described as "8 core investment options to help you create and manage a diversified portfolio"; and (3) "Level 3: Expanded Investment Options" – basically a mutual fund window, intended as "[a]dditional investment opportunities for more sophisticated investors." The 33,000 participant plan offered more than 400 investment options through at least 2014 (not an issue in this case, but in its suit against the Banner plan defendants, plaintiffs claimed that defined contribution plans "usually provide only 14 investment options, excluding target date funds" – a configuration that the plaintiffs said was an "excessive number of options" that "confused Plan participants, who in turn make more conservative, less informed choices."

To assist the RPAC in carrying out its investment responsibilities, Banner hired Slocum to serve as an independent investment consultant, and Slocum served as an independent investment consultant until Oct. 24, 2016, when it was purchased by Pavilion Financial Corporation. Slocum was hired under agreements that state that the investment-related responsibilities of the RPAC and plan service providers, including Slocum, would be defined in the plan's "Statement of Investment Objectives and Policies," and also outlined other contractual obligations of Slocum, including "reviewing investment performance of current investment options in (among other things) the Plan, helping to evaluate and select additional or replacement investment managers, providing written investment performance evaluations on a quarterly basis, and giving asset allocation and asset liability advice."

The plaintiffs in this case claimed that both the plan committee and the advisor (Slocum) breached their fiduciary duty by continuing to offer the Fidelity Freedom Funds, and a particular Level 2 fund, the Fidelity Balanced Fund. Specifically, the plaintiff's expert contended that "the performance gap [between the Freedom Funds and other alternatives] was so glaring by the end of second quarter 2011 that a prudent fiduciary could no longer ignore the need to replace the Fidelity Freedom Funds," and that the failure to timely remove the Freedom Funds resulted in $40.7 million in losses to the plan.

Summary 'Judgments'

In considering the motion for summary judgment, Judge Martinez noted that the court must review the evidence and reasonable inferences "in the light most favorable to the nonmoving party," and "must resolve factual ambiguities against the moving party." Moreover, that to "… survive summary judgment, a nonmoving party must set forth specific facts showing that there is a genuine issue for trial as to those dispositive matters for which he carries the burden of proof."

Noting that plaintiffs "contend that Slocum was a fiduciary and breached its duty of loyalty" by (1) providing imprudent investment advice, and (2) failing to monitor and advise Banner defendants of excessive recordkeeping and administrative fees, Judge Martinez stated that those plaintiffs

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therefore bore "the burden of proving that (1) Slocum was a fiduciary with respect to the challenged conduct; (2) Slocum breached its fiduciary duties; and (3) those breaches caused Plaintiffs to incur losses."

Fact Findings

With regard to the Balanced Fund, in that the plaintiffs admit that "the Plan did not suffer losses as a result of the imprudent retention of the Balanced Fund" and "… therefore cannot show a breach of fiduciary duty resulting in a loss…" Judge Martinez said there was no need to discuss the facts related to that option.

With regard to the target-date funds, as it turns out, Judge Martinez noted that Slocum had recommended removing (both the Fidelity Balanced Fund and) the Fidelity Freedom Funds as early as 2011, and recommended reviewing alternatives as early as 2009. However, in November 2013, Slocum "did not recommend an immediate change," but in August 2014 Slocum recommended that the RPAC "consider other target date fund options to ensure that the Freedom Funds remain the most appropriate option for Banner," and later that year recommended that the RPAC hear presentations from each target-date fund provider and gather additional meeting, eventually (in February 2015) setting up meetings with Fidelity, J.P. Morgan, and Vanguard, which resulted in a recommendation from Slocum, and decision by the RPAC to replace the Freedom Funds with the J.P. Morgan target-date funds.

Judge Martinez noted that Slocum's Plan Reviews in 2008, 2010, 2012, 2013, 2014, 2015, and 2016 each calculated the total recordkeeping compensation received by Fidelity and identified the sources of that compensation, as well as the fees charged by each of the Level 1 and 2 Funds relative to benchmarks or industry averages, and that it "also compared recordkeeping fees on a per-dollar-invested or per-participant basis, provided comparisons to per-dollar or per-participant fees charged to other Slocum clients, and included input on different practices for the RPAC to consider in evaluating the structure and level of recordkeeping fees paid by the Plan."

Brokerage Window 'Break'?

The IPSs explained that the "primary objective of the self-directed brokerage accounts was to allow participants access to investments not currently available through the core investment options in the Plan," and explicitly disclaimed any fiduciary liability for decisions made by participants within these options to the extent permitted by law.

While Slocum had no responsibility for the self-directed brokerage window (Level 3), his quarterly reports and plan review did include a high-level assessment of the total plan assets invested in that option, as well as the types of asset classes most commonly used. That said, in the 2012 Plan Review, Slocum first "recommend[ed] that Banner consider removing the mutual fund window," referring to recent Department of Labor statements "specific to self-directed brokerage accounts have indicated that plan sponsors may have an increased fiduciary obligation to monitor investments not included in the core line-up," and that, with the addition of certain other options, "the continued use of the mutual fund window [is] relatively unnecessary." This recommendation was reiterated in August 2013 – and RPAC elected to remove the Level 3 Funds in August 2013, effective August 2014.

With regard to the first point, Martinez stated bluntly that "no fact finder could conclude that Slocum was a fiduciary with respect to the Level 3 Funds because the term 'Investment Fund' in the IPSs did not include the Level 3 Funds, and the weight of the evidence overwhelmingly supports a conclusion that Slocum had no duties with respect to the Level 3 Funds under the Contracts," granting Slocum's motion for summary judgment on that point.

Target 'Practices'?

However, he went on to note that the plaintiffs "…have, however, raised sufficient evidence to show a genuine dispute of material fact as to whether the timing and nature of Slocum's recommendations to replace the Freedom Funds breached Slocum's fiduciary duty." Specifically, he noted that while "Slocum presents evidence that it carefully monitored the Freedom Funds beginning in 2009, started recommending that the RPAC consider alternatives in 2013, and finally worked with the RPAC to replace the Freedom Funds in February 2015," he cited the presentation of expert testimony by the plaintiffs that "a reasonably prudent investment advisor would have recommended replacement significantly earlier (starting in 2011)," and to "…

evidence that Slocum seemed to mildly suggest, rather than emphatically advocate, that the RPAC consider alternatives, resulting in the RPAC improperly retaining the Freedom Funds for longer than it should have, and ultimately causing losses to the Plan." That alongside "differing views of what a prudent process would be for responding to and evaluating the Freedom Funds as of 2011" was, Judge Martinez wrote, "sufficient to create a genuine dispute of material fact that must be resolved at trial."

He went on to note that, "at the very least, Slocum may be liable for losses between when it should have recommended removal and when it actually did so," which he characterized as "a genuine dispute over the amount of losses, if any, caused by Plaintiffs' alleged breach, which must be resolved by the trier of fact," denying the motion for summary judgment as it relates to the Freedom Funds.

Role 'Call'

Regarding Slocum's role as a fiduciary with regard to the recordkeeping fees, Judge Martinez drew a distinction between the "critical role" that the plaintiffs alleged the firm played in assessing the reasonableness of those fees and actually being a fiduciary on that basis – determining that "on this record, no reasonable finder of fact could conclude that Slocum was a fiduciary with respect to the recordkeeping fees of the Plan."

Ultimately, Slocum won on most of the motions for summary judgment; winning support from Judge Martinez on the issues raised with regard to the balanced fund, his alleged role as a fiduciary with regard to recordkeeping fees, the issue of actions taken prior to Nov. 9, 2010 (ERISA's six-year statute of limitations), and perhaps the biggest of all – rejection of their bid for class action status on the claims against Slocum.

However, summary judgment was rejected on the claim that Slocum's advice on changing target-date funds came too late (and/or too little).

What This Means

Perhaps the most significant implication of this case is Judge Martinez' failure to grant the plaintiffs class action status – because they failed to show they'd taken adequate steps to act in a representative capacity or to protect the interests of the plan's 33,000 other investors. That significantly reduces the potential monetary recovery.

However, advisors may well want to take note of the comments regarding the degree to which the suit took issue with what was viewed as a "mere suggestion," rather than a forceful recommendation. The decision to let the issue proceed to trial isn't dispositive, of course – but it's worth keeping an eye on.

— Nevin E. Adams, JD

SETTLE 'METTLE'

Investment advisor settles excessive fee suit

"In the interest of efficiency and to avoid wasting the resources of the Court and the parties," just five days before their trial date, the parties in an excessive fee suit have come to terms.

This time it's the investment advisor to the plan AON Hewitt Investment Consulting, Inc. – and their actions as part of an excessive fee suit that also involved Safeway and its recordkeeper (now Empower, by way of Great-West, by way of J.P. Morgan Retirement Plan Services). The Safeway fiduciaries had just settled two related class actions regarding its 401(k) plan; the instant case, and another class action (*Lorenz v. Safeway Inc.*) that had raised general concerns regarding the plan's investments and fee structure.

In mid-April, AON Hewitt's motion to dismiss the plaintiff's claims had been largely (though not completely) dismissed by Judge Jon S. Tigar of the U.S. District Court for the Northern District of California. Judge Tigar had found that there were triable issues of fact with regard to:

- Whether "Aon's persistent and relatively consistent 'advice' was to retain the existing investments in the Plan" and Aon "recommended that the other Defendants do little or nothing to improve the investments offered by the Plan and the expenses paid by the Plan and its participants," even when those investments were significantly underperforming.
- Whether Aon met its duty of prudence to monitor the performance of the Interest Income Fund and determine whether to recommend its replacement as a plan asset, with similar questions related to the SSgA S&P 500 Index Fund, the Wells Fargo Advantage Strategic Large Cap Growth Fund, the RS Partners Fund, and the Chesapeake Core Growth Fund.

Now Plaintiff Maria Karla Terraza and defendant AON Hewitt Investment Consulting Inc. informed the court (*Terraza v. Safeway Inc.*, N.D. Cal., No. 16-cv-03994, 5/2/19) that "they have accepted a mediator's proposal and reached an agreement in principle for a proposed class-wide settlement," and that they intend to seek the court's approval of same.

In this filing, the parties requested that the court "vacate the May 7, 2019 trial date and set a Case Management Conference (CMC) for July 31, 2019 at 2:00 p.m. – the same date that the Court set for the CMC to address the proposed settlement between Plaintiff and the Safeway Defendants."

The cases were all slated to go to trial on May 7 in the Northern District of California. The amount of the settlements weren't disclosed.

— Nevin E. Adams, JD

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CLASS ACTION REJECTED

10th Circuit tosses massive ERISA fiduciary suit

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

A federal appeals court has affirmed summary judgment in a class action suit involving 270,000 plan participants across more than 13,000 plans.

The suit was filed in 2015 by plaintiff John Teets, a participant in the Farmers' Rice Cooperative 401(k) Savings Plan, which had contracted with Great-West for recordkeeping, administrative and investment services. The suit, which had been granted class action status on behalf of all plans and participants invested in the particular fund, alleged that Great-West (the defendant) acted as an ERISA fiduciary with respect to the fund because it exercised authority or control over the management of disposition of plan assets, specifically the Great-West Key Guaranteed Portfolio Fund, a fund that (as the court notes), "as the Fund's full name suggests, is operated by Defendant."

Suit 'Case'

Teets alleged that :

- Great-West breached its general duty of loyalty under § 404 by (1) setting the Credited Rate for its own benefit rather than for the plans' and participants' benefit, setting the Credited Rate artificially low and retaining the difference as profit, and charging excessive fees.
- Great-West, again acting in its fiduciary capacity, engaged in a prohibited transaction under § 406(b) by "deal[ing] with the assets of the plan in [its] own interest or for [its] own account."
- An alternative claim alleged that Great-West was a non-fiduciary party in interest to a non-exempt prohibited transaction under § 406(a) in using plan assets for its own benefit.

District Decision

In December 2017, the district court granted summary judgment for Great-West, concluding that Great-West was not acting as a fiduciary of the plan or its participants, and that Great-West's contractual power to choose the Credited Rate did not render it a fiduciary under ERISA because participants could "veto" the chosen rate by withdrawing their money from the KGPF.

As to Great-West's ability to set its own compensation, the lower court held that Great-West did not have control over its compensation and thus was not a fiduciary because "the ultimate amount it earned depended on participants' electing to keep their money in the KGPF each quarter."

As for the third, alternative argument, the district court also granted summary judgment, "concluding that Great-West was not liable as a non-fiduciary party in interest because Mr. Teets had failed to establish a genuine dispute as to whether Great-West had "actual or constructive knowledge of the circumstances that rendered the transaction unlawful."

Ultimately, since Great-West was found not to be an ERISA fiduciary, all of the claims were rejected by the court, which granted summary judgment to the defendants.

Appellate 'Court'

In considering the appeal, the three-judge panel in the U.S. Court of Appeals for the 10th Circuit (*Teets v. Great-West Life*, case number 18-1019) focused on (1) whether Great-West is a functional fiduciary because it "exercises ... authority or control" over plan assets when its sets the Credited Rate or its compensation; and (2) whether, if Great-West is not a fiduciary, it is liable as a non-fiduciary party in interest for its participation in a transaction prohibited under ERISA.

The appellate court cited a two-step analysis to determine whether a service provider is a functional fiduciary when a plaintiff alleges it has acted to violate a fiduciary duty, notably that: "an ERISA plaintiff must show the service provider (1) did not merely follow a specific contractual term set in an arm's-length negotiation; and (2) took a unilateral action respecting plan management or assets without the plan or its participants having an opportunity to reject its decision."

Reject 'Shun'?

Here the court noted that "when plans and participants have a 'meaningful opportunity' to reject a service provider's unilateral decision, courts have held the service provider is not a fiduciary," and that here – while Great-West certainly exercised control in establishing the crediting rate, the "plan and/or its participants can 'vote with their feet' if they dislike the new rate," even though there was a contractual provision that allowed Great-West to impose a waiting period of up to one year – because Great-West had never actually imposed that restriction, and thus the argument was found to be "speculative."

The court noted that the plaintiff had "provided no evidence that even the potential of Great-West's imposing a waiting period has affected any plan's choice to continue with or withdraw from the KGPF contract," even though it noted that more than 3,000 plans have terminated the KGPF as a plan offering during the class period. "Mr. Teets has not provided a single example showing the potential waiting period has deterred any of the 13,000 plans represented by participants in the class from withdrawing from the KGPF," the court noted. "Without any evidence that Great-West has exercised its right or that the right has deterred any plan from exiting the KGPF, summary judgment in favor of Great-West on this issue was appropriate." As for the ban on competing funds on the menu, the court noted that "Mr. Teets has not even alleged that the competing fund provision has affected his own choice about participation in the KGPF."

As for setting its own compensation, the appellate court agreed with the determination of the lower court that "… even though it could use the Credited Rate to 'influence its possible margins,' the ultimate amount it earns depends on whether participants elect to keep their money in the KGPF each quarter." The court noted that while plaintiff Teets focused "on Great-West's (1) contractual right to impose a 12-month waiting period on withdrawing plans and (2) prohibition on plans' offering comparable investment options to participants, "we conclude that Mr. Teets has not adduced sufficient evidence to create an issue of material fact as to whether either of the foregoing has prevented plans or participants from rejecting a change in the Credited Rate." Additionally, the appellate court noted that "because Great-West does not have unilateral authority or control over the Credited Rate, it also lacks such control over its compensation," also affirming the district court's summary judgment ruling that Great-West was not a functional fiduciary.

Concurring Comments

The ruling also included some interesting observations in a concurring opinion by Judge Bacharach. While he joined "virtually all of the majority's thoughtful and persuasive opinion," he respectfully disagreed only with the analysis regarding the "policy that allegedly prohibits plan sponsors from offering other low-risk funds alongside Great-West's own Key Guaranteed Portfolio Fund ('KGPF')." Though agreeing that Great-West was entitled to summary judgment on those claims, "I do not believe that Mr. Teets bore the burden to present the evidence discussed in the majority opinion," he wrote.

Disagreeing with the obligation of the plaintiff to show evidence that he or other participants had felt restricted or that they might have invested in comparable funds, but for the non-compete policy, he aligned himself with an argument put forward by Great-West, which he described as "Great-West's marketplace theory of nonliability." Essentially, Great-West had argued that while it could set the terms of the product, "it [could not] compel the plan to accept the investment option on those terms over alternatives available in the marketplace."

Judge Bacharach embraced that argument, noting that, "As alleged by Mr. Teets, the policy serves only to prevent plan sponsors from offering the KGPF if competing funds are also offered; the alleged policy does not affect the availability of Great-West's general investment platform if the plan sponsor had chosen to offer competing funds in lieu of the KGPF."

Judge Bacharach goes on to note that, "Mr. Teets responds that Great-West acts as a fiduciary because he cannot personally choose between the KGPF and other competing low-risk funds. But this response blames Great-West for the decision-making of Mr. Teets's plan sponsor."

"Mr. Teets assumes that plan sponsors would act as he wishes," Bacharach continues; "but plan sponsors are not parties, and Mr. Teets points to no evidence that Great-West influences plan sponsors' selection of investments. Mr. Teets has thus failed to set forth specific facts contesting Great-West's argument for summary judgment based on a marketplace theory of nonliability."

Why This Matters

While the role played by Great-West in this case is relatively unique, in considering the claims here, the 10th Circuit (and the district court) spent a considerable amount of their analysis reviewing the circumstances that created fiduciary status (or in this case, failed to do so). Plan fiduciaries are well advised to be aware of these standards, as courts have been known to draw conclusions (and lines of responsibility) that have been known to change, and don't always mesh with each other, much less the line(s) that you may draw.

— Nevin E. Adams, JD

Polling Places

NAPA Net readers weigh in on requests for proposal – what should they include; how often should they be issued; and "What's the dumbest question you've ever seen on an RFP?"

'INDECENT' PROPOSALS?

Less is more with RFPs

RFPs, or requests for proposal, have long been valued tools in advisor arsenals. There are, however, varying opinions as to what they should include, and even how often they should be issued – and you need look no further than this week's reader poll to see just how varied.

Nearly two-thirds of this week's respondents (63%) said they generally recommend a formal RFP be prepared every 3 to 5 years. That said, 18% were in the "at least once every 7 years" category. The rest split between every 3 years, every other year, and an "other" category.

"Unless service from the vendor is inconsistent and frustrating for the employer," clarified one reader. "We only recommend recordkeeper RFP if the client is paying excessive fees for services provide or if they have ongoing service issues that we cannot resolve," explained another. "Every 3-4 years. More often if the plan has over $20M in annual flows," said another.

"In my opinion an RFP should be conducted if a plan fiduciary report shows divergence from industry averages or when the service providers don't meet customer service expectations. When compared with today's third-party benchmarking services, I believe RFPs are an expensive and time consuming exercise unless there are indications that the plan falls outside of acceptable pricing or service parameters." Perhaps echoing that sentiment, another reader noted, "We actually do more RFIs than formal RFPs."

'Recommend' Actions

As for how often their plan sponsor clients actually did an RFP, about half (46%) said they did every 3-5 years, a quarter said about every 7 years, and 15% noted that they "used other methods to evaluate/benchmark. Every other year was cited by about 3%, but the rest split between "rarely" and "not often enough."

Those frequencies were pretty consistent with two years ago. Just over 4 in 10 (44%) said they were doing RFPs about the same frequency as two years ago, though a quarter said they were doing them more often, and nearly as many (23%) said they were doing fewer RFPs, but other evaluation methods more. The rest? Less frequent RFPs.

If the frequency was consistent, about a third (36%) said they were mostly shorter, though once again a quarter (26%) said they were about the same length, and just 1 in 10 noted that RFPs were "mostly longer." The rest – just over a quarter (26%) – said that it really depended on the individual situation.

Why?

Speaking of which, we also asked NAPA-Net readers why their plan sponsor clients did RFPs. A clear plurality (44%) acknowledged it was for "a whole variety of reasons, though just about as many (36%) acknowledged that it was because they (the survey respondent) recommended it. One in 20 (5%) said it was "because they think they have to," and about 3% said it was because they were concerned about litigation.

"The most common reason they move forward with an RFP is because their current plan providers are not meeting value expectations for what they are charging for their services. This could be on the TPA side, custodial side, or the advisor side; each plan is different," noted one reader.

"Some clients believe they need to conduct an RFP or more commonly we recommend recordkeeper RFP due to service or fee issues," explained one. "Because something changes with the service," said another. "I advise my clients to perform this every 3-4 years to meet their 'Periodic Service Provider Review' per the DOL. My clients want to meet their fiduciary responsibilities and stay off the DOL and other regulators' radars," noted another reader. "Usually the RFP is conducted after I have completed a plan benchmarking analysis using a third-party tool," explained another reader.

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> By being the client's eyes and ears on the street, I am in a position to help them know what is out there, and how their provider stacks up on a continual basis."

Dumb Questions?

We asked for the stupidest question they had seen on an RFP – and while everyone wasn't able to draw one to mind, here's a sampling:

"Describe what your firm does."

"Don't get me started. The most annoying is when you get the same question asked three to five times in the same RFP, because it's a compilation of different RFPs, and nobody edited it correctly. Or when a vendor provides the same lengthy and slightly off-base response to a series of our RFP questions intended to solicit deeper insight into vendor capabilities. We then need to use our judgment to extract what we hoped to learn."

"If we go with you, what are your investment returns?"

"Too many to choose from. Bottom line, sponsors don't know what they're talking about or asking. Generally pull a generic RFP off the web or from a fellow business owner and don't know what they are asking or why they are asking it. It's a façade."

"Any direct question about a particular service offering. If the plan sponsor asks for a particular service, they respondent is going to say yes even if they do not perform the service. Ask vague questions. This is the advisor's opportunity to share ALL they can do for plan sponsors and their employees. They will share the service you're looking for if they offer it!"

"Requests for references for plans we have lost."

Reader Comments

As usual, we got a number of comments from readers. Here's a sample:

"I think that RFPs for major providers is just plain stupid. Top 10 RKs I find to have most of the same services."

"As an investment advisor prospecting for new clients, we are frustrated since new leads we generated often turn into an RFP which includes low cost brokers."

"More clients should simply use the RFI as a benchmarking project if there are no service issues."

"My role is to serve the client, and part of that is keeping a keen eye on all top-tier providers, how they price, what new services are offered, and keeping clients informed of this. If there is a new idea or service that the client needs/wants, we go to the current provider first and simply ask… most requests are granted with minimal fuss. The client is brought current, without having to take on the task of changing providers. By being the client's eyes and ears on the street, I am in a position to help them know what is out there, and how their provider stacks up on a continual basis. Most of my clients have been with me 15-20 years, and at most, we have averaged one full change per client, so I am not in the RFP every 3-5 year camp; constant benchmarking is the best answer."

"I think many plan sponsors (especially small to mid-market) still lack the basic understanding of who the vendors are that serve their plan and what each does. We always recommend the plan sponsor hire a competent advisor or consultant first, and then work with that professional to screen and select the other appropriate vendors."

"RFPs from outsiders that have no interest in bringing you their business are time consuming and a complete waste – get a provider that will show you benchmarks and don't waste other people's time! I don't think our firm gathers data and generates RFPs anymore unless we're in the running for the business."

"The record-keeper RFP 'game' is one of the biggest problems created for plan sponsors. Advisors frequently do them to add perceived value while rarely recommended that their own services go to RFP. Sponsors should certainly benchmark fees and services periodically, but the myth fostered by the industry that they need to run full RFPs and, even move record-keepers, every 3-5 years is a disservice. Sponsors feel unnecessary angst and go through unnecessary conversion."

"Terrible experience with asking recordkeepers for help with RFPs. They lose more business than gain it. If they were so great they'd be an advisor."

"If a plan sponsor is very satisfied with their plan providers, they do not necessarily need to go through the time and expense associated with an RFP every 3 to 5 years. It is recommended that they instead benchmark their plan over the same time period. RFIs are another option for these plan sponsors. Plan sponsors should do RFPs over that time frame if they are not satisfied with their plan providers or unsure of how their plan stacks up."

"We do more benchmarking requests than full/formal RFPs. I think full RFPs really see action in the $250M and up marketplace. In the $100M and below, it's used more to benchmark fees and potentially look to reduce current pricing or increase services offered. With the consolidation of recordkeepers, you wonder how this will change over the next few years."

"Plan sponsors should hire an independent, 3rd party to perform their RFP. Someone who is not tied to an advisor firm, broker dealer, TPA, attorney, RK, etc. ensuring they will receive true unbiased, conflict free information. A 3rd party also can organize the information in an apples to apples comparison format and not 'spreadsheet' the proposals. This will give the advisor a fair chance as well."

"I believe that going through an RFP process on a regular schedule is an outdated method of monitoring service providers. I believe the third-party benchmarking services that we have access to now give us a way to monitor performance, fees, and service levels to an extent that we can use the RFP process mainly as indicated by our ongoing monitoring."

"Less is more; focus on the issues."

"I think a lot of the information requested and provided is unnecessary. The software options provide a level of information that no committee could truly evaluate. It's just too much data. The RFP's should generally be streamlined.".

Thanks to everyone who participated in this – and every – week's NAPA-Net Reader Poll!!

— Nevin E. Adams, JD

Regulatory Review

After a year of waiting, worrying, complaining that its best-interest proposal didn't go far enough, and then worrying that it might, the Securities and Exchange Commission finally rolled out a final version of its investment advice package in early June. Meanwhile the SEC also took on the issue of security for cloud-based applications, and HSA limits for 2020 were unveiled.

'SPLIT' DECISION

SEC approves long-awaited investment advice package

On June 5, the Securities and Exchange Commission voted 3-1 along party lines to put in place new standards for broker-dealers and investment advisers – including some new considerations regarding retirement plan rollover recommendations.

By June 30, 2020, registered broker-dealers must begin complying with Regulation Best Interest and broker-dealers and investment advisers registered with the SEC will be required to prepare, deliver to retail investors, and file a relationship summary.

The lone "no" vote (on all four issues before the SEC) came from the (currently) sole Democratic Commissioner Robert Jackson, Jr., who complained that the package did not raise the standard for investment advice. "I hoped to join my colleagues in announcing that the Nation's investor protection agency has left no doubt that, in America, investors come first. Sadly, I cannot say that," Jackson stated. The Commissioner went on to explain that he believes the rules retain a "muddled standard" that exposes millions to the costs of conflicted advice and contended that SEC's position "concludes that investment advisers are not true fiduciaries."

But Chairman Jay Clayton in his opening statement said that he believes "these rules and interpretations address the obligations of broker-dealers and investment advisers when they provide investment advice and services to our Main Street investors."

Clayton further emphasized that the recommendations reflect a "careful study of the DOL Fiduciary Rule, incorporating certain aspects of the rule that will enhance the broker-dealer standard of conduct in line with reasonable investor expectations, while avoiding other aspects of the rule that appear to have been primary drivers of the rule's unintended consequences, such as the introduction of a best interest contract exemption and private right of action, and the uncertainty of whether, and if so to what extent, a commission-based fee model was compatible with the DOL Fiduciary Rule."

As such, the Chairman noted that the package has four main components:

- the development of a new "best interest" standard of conduct for broker-dealers (the Regulation BI);
- a new requirement to issue a relationship summary to investors – the so-called Form CRS Relationship Summary;
- a reaffirmation of the fiduciary duty of conduct for investment advisers; and
- a confirmation of the "solely incidental" broker-dealer exclusion from the definition of investment advisor under the Advisers Act of 1940.

New Broker-Dealer Best Interest Standard

A little more than a year after proposing new fiduciary and best interest rules, the rule sure to draw the most attention – and the most criticism – is the new standard of conduct for broker-dealers.

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The final rule makes it clear that this new standard of conduct applies to account recommendations, including a recommendation to roll over assets from a workplace retirement plan account to an IRA, and/or recommendations to take a retirement plan distribution. It also applies to implicit "recommendations to hold" that result from agreed-upon account monitoring. The new rule sets aside the April 2018 proposed rule's reference to a securities transaction in favor of a more general reference to retirement plans. And, when recommending a rollover for a participant in a retirement plan, the final Reg BI specifically requires a comparison of the IRA to the participant's plan account.

To meet the new standard, broker-dealers must meet four obligations: disclosure, care, conflict of interest and compliance.

- **Disclosure Obligation.** Material facts about the relationship and recommendations must be disclosed to retail investors. Before or at the time of the recommendation, a broker-dealer must disclose, in writing, material facts about the scope and terms of its relationship with the customer. This includes disclosure that the firm or representative is acting in a broker-dealer capacity; the material fees and costs the customer will incur; and the type and scope of the services to be provided, including any material limitations on the recommendations that could be made to the retail customer.
- **Care Obligation.** Broker-dealers must exercise reasonable diligence, care and skill when making a recommendation to a retail investor. Here, the broker-dealer must understand potential risks, rewards and costs associated with the recommendation, and must then consider those risks, rewards, and costs in light of the customer's investment profile and have a reasonable basis to believe the recommendation is in the customer's best interest and does not place the broker-dealer's interest ahead of the retail customer's interest.
- **Conflict of Interest Obligation.** Written policies and procedures must be established, maintained, and enforced that at a minimum discloses

> "A little more than a year after proposing new fiduciary and best interest rules, the rule sure to draw the most attention – and the most criticism – is the new standard of conduct for broker-dealers."

or eliminates conflicts of interest like sales quotas, bonuses and non-cash compensation based on the sale of specific securities. Clayton noted that, similar to the proposal, this provision establishes an "overarching obligation" to establish written policies and procedures that, among other things, are reasonably designed to mitigate or eliminate certain identified conflicts of interest.

- **Compliance Obligation.** Broker-dealers must establish, maintain and enforce, policies and procedures reasonably designed to achieve compliance with this standard as a whole.

Form CRS Relationship Summary

IAs and B-Ds will now be required to deliver a relationship summary to retail investors at the beginning of their relationship. This will include summary information about services, fees and costs, conflicts of interest, legal standard of conduct, and whether the firm and its financial professionals have disciplinary history.

The summary will also have a standardized question-and-answer format to promote comparison by retail investors and it will permit the use of layered disclosure so that investors can more easily access additional information from the firm about these topics.

Investment Adviser Interpretation

Here, the final interpretation reaffirms – and in some cases clarifies – certain aspects of the federal fiduciary duty that an investment adviser owes to its clients.

Solely Incidental Interpretation

The interpretation confirms and clarifies the Commission's interpretation of the "solely incidental" prong of the broker-dealer exclusion of the Advisers Act. Specifically, the final interpretation states that a broker-dealer's advice as to the value and characteristics of securities or as to the advisability of transacting in securities falls within the "solely incidental" prong of this exclusion if the advice is provided in connection with and is reasonably related to the broker-dealer's primary business of effecting securities transactions.

What's Next?

Regulation Best Interest and Form CRS will become effective 60 days after they are published in the *Federal Register*, but there will be a transition period until June 30, 2020, to give firms time to comply. The Commission's interpretations under the Advisers Act will become effective upon publication in the *Federal Register*.

Commissioner Hester Peirce acknowledged that the compliance period is "an ambitious one," and said that she would be open to requests for more time to comply – at least from those firms showing diligent compliance.

To assist firms with planning for compliance, the Commission is establishing a Standards of Conduct Implementation Committee, comprised of representatives from various divisions within the SEC. The Commission will also embark on a broad consumer education campaign to bring attention to the new rules.

— Ted Godbout & Andrew Remo

LIMIT 'LESS'

IRS Announces 2020 HSA Limits

In late May, the Internal Revenue Service announced updated deduction limits for high-deductible health plans.

For calendar year 2020, the annual limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high-deductible health plan is $3,550, up $50 from the 2019 limits. Additionally, for calendar year 2020, IRS Revenue Procedure 2019-25 notes that the annual limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high-deductible health plan is $7,100, increased from $7,000 in 2019.

In 2018, the annual limit on deductible contributions was $3,450 for individuals with self-only coverage (a $50 increase from 2017) and $6,900 for family coverage (a $150 increase from 2017).

For calendar year 2020, the Revenue Procedure also explained that a high-deductible health plan is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,400 for self-only coverage or $2,800 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $6,900 for self-only coverage or $13,800 for family coverage.

Those limits are up slightly from the 2019 limits of $1,350 for self-only coverage or $2,700 for family coverage, with annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) that don't exceed $6,750 for self-only coverage or $13,500 for family coverage.

— NAPPA Net Staff

CLOUD-Y DAZE?

BDs and advisers urged to review cloud-based security procedures

Not all broker-dealers and investment advisers are addressing the various security risks in relation to their network storage solutions adequately, which could result in unauthorized access to information stored on the device, according to an SEC Risk Alert.

During recent examinations, staff from the SEC's Office of Compliance Inspections and Examinations (OCIE) identified security risks associated with the storage of electronic customer records and information by BDs and IAs in various network storage solutions – including those leveraging cloud-based storage. "Although the majority of these network storage solutions offered encryption, password protection, and other security features designed to prevent unauthorized access, examiners observed that firms did not always use the available security features," the OCIE states in its alert. As a result, "weak or misconfigured security settings" could result in unauthorized access to information stored on the device, the OCIE warns.

The following concerns were identified by staff during examinations that may raise compliance issues under the Safeguards Rule of Regulations S-P concerning the protection of customer records and information, as well as the Identify Theft Red Flags Rule of Regulation S-ID.

Misconfigured network storage solutions. In some cases, firms did not adequately configure the security settings on their network storage solution to protect against unauthorized access. Moreover, the OCIE notes that some firms did not have policies and procedures addressing the security configuration of their network storage solution. "Often, misconfigured settings resulted from a lack of effective oversight when the storage solution was initially implemented," the alert states.

Inadequate oversight of vendor-provided network storage solutions. Some firms were also found to have not ensured – through policies, procedures, contractual provisions or otherwise – that the security settings on vendor-provided network storage solutions were configured in accordance with the firm's standards.

Insufficient data classification policies and procedures. Here, the OCIE warns that firms' policies and procedures in some cases did not identify the different types of data stored electronically by the firm and the appropriate controls for each type of data.

Best Practices Profiled

The Risk Alert further explains that during examinations OCIE staff has observed several features of effective configuration management programs, data classification procedures and vendor management programs, including:

- policies and procedures designed to support the initial installation, ongoing maintenance and regular review of the network storage solution;
- guidelines for security controls and baseline security configuration standards to ensure that each network solution is configured properly; and
- vendor management policies and procedures that include, among other things, regular implementation of software patches and hardware updates followed by reviews to ensure that those patches and updates did not unintentionally change, weaken or otherwise modify the security configuration.

All in all, registered BDs and IAs are encouraged to review their practices, policies and procedures with respect to the storage of electronic customer information and to consider whether any improvements are necessary, the alert emphasizes. The OCIE also encourages firms to actively oversee any vendors they may be using for network storage to determine whether the service provided by the vendor is sufficient to enable the firm to meet its regulatory responsibilities.

The OCIE had previously announced that its 2019 exam priorities will include cybersecurity issues with an emphasis on proper configuration of network storage devices, information security governance and procedures related to retail trading information security.

— Ted Godbout

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