

# NAPAnet

THE OFFICIAL MAGAZINE OF THE  
NATIONAL ASSOCIATION OF PLAN ADVISORS

## the magazine

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## MAKING THEIR MARK

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This year's crop of "young guns" may be young,  
but they're already having an impact.

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YOUNG  
GUNS

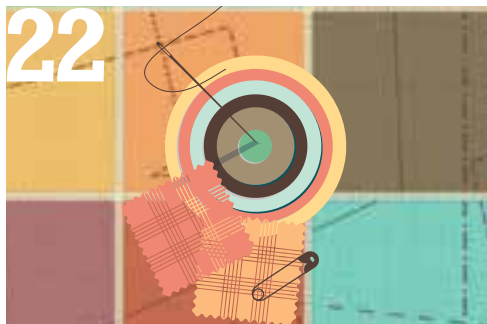
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# What if?

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# Strength in Numbers

An important reminder about plan sponsors' pressing concerns.

**M**any times over the past several years, friends, colleagues and family members have reached out to me, vainly trying to understand what's going on in our nation's capital. These days, those roles have been reversed, as I reach out to those friends, colleagues and family members in primary voting states vainly trying to understand what's going on "out there." It's not that the frustrations, deep political divides — and yes, anger — aren't to be found inside the Beltway. But I can't remember a time when so many voters were willing to show up for a primary to voice those concerns in a tangible way (it remains to be seen if that will hold up all the way to the conventions).

I recently had the opportunity to sit in on a training session for a group of plan sponsors. In the course of the day, I was reminded of a few key attributes:

- Many, perhaps most, plan sponsors had responsibility for the 401(k) dumped on them.
- Many, perhaps most, plan sponsors have received very little training or education on how to deal with the 401(k) that was dumped on them.
- Many, perhaps most, plan sponsors also had a provider (and in some cases, an advisor) dumped on them with the plan.
- Many, perhaps most, plan sponsors have no idea how much they are paying for the 401(k) that was dumped on them.
- Many, perhaps most, plan sponsors are worried about all of the above.

Those concerns notwithstanding, I was struck then, as I am every time I speak with plan sponsors, by just how mundane their truly pressing daily concerns are, certainly

“Many, perhaps most, plan sponsors had responsibility for the 401(k) dumped on them.”

compared with the issues that dominate our coverage here. They're worried about correcting a misapplied salary deferral, nervous about the possibility of a contribution return to the CEO (again), uncertain about the outcome of a plan audit. Don't get me wrong; they care about boosting participation and deferrals, emphasizing retirement outcomes and the possibility that they are being gouged by unscrupulous providers — but those concerns are secondary to the alligators at their feet.

All that said, it was inspiring to watch their eyes light up at the prospect of being able to have a positive impact on their workers' financial well-being by auto-deferring at higher levels than the traditional 3%, or re-enrolling existing hires to (finally) get them in the plan, and into diversified investment vehicles, of using approaches like a "stretch" match to encourage more personal responsibility while being attentive to organizational budgets.

These are things they could have read about, of course — and they were put on the table in the session by a series of retirement industry experts and advisors. However, it's

## WHAT'S COMING UP

### NAPA 401(k) SUMMIT

Nashville, Tennessee, April 17-19  
[napasummit.org](http://napasummit.org)

### NAPA Connect

Boston, Massachusetts, June 26-28  
[napaconnectexperience.org](http://napaconnectexperience.org)

### NAPA DC Fly-in Forum

Washington, DC, September 20-21  
[napadcflyin.org](http://napadcflyin.org)

doubtful that they would have embraced it as realistic options but for the affirmation they got from the other plan sponsors in the room — others who had auto-enrolled at 6% and had nobody opt out (despite threats to do just that), who had re-enrolled entire employee populations with no apparent backlash, who had stared down a recordkeeping provider that was resistant to change — and found another that was more willing to work with them to effect positive change.

There's more than strength in numbers. There's inspiration. And courage. And with any luck at all, change.

Thanks again, as always, for your support of NAPA. 🇺🇸

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BY JOSEPH F. DENOYIOR

# Reflections and Resolutions

A look back at an eventful and productive year.

**W**e've had a very busy year to say the least, and the Labor Department's proposed fiduciary regulations ruled the roost. Our membership, American Retirement Association staff, Government Affairs Committees and Firm Partners did an outstanding job, responding with comment letters, constructive feedback at DOL hearings and sharing our perspectives with various members on the Hill. Truly Many Voices, One Vision.

In the midst of this, the Certified Plan Fiduciary Advisor (CPFA) credential was rolled out this past summer, and an increasing number of our members are taking advantage of this new program. Not only is it the premier designation for retirement plan advisors, demonstrating your commitment to the plan business, it may also be a great training opportunity for your team. We are excited to announce that a CPFA Boot Camp and exam has been added to the NAPA 401(k) SUMMIT this year. It is a great opportunity to earn your CPFA — a half-day Boot Camp on Tuesday, April 19 from 1:00-5:00 p.m. and the proctored exam on Wednesday, April 20 from 8:30-11:30 a.m. If you have not had the opportunity to review the program, please carve out a few minutes to do so — you'll be glad you did.

Coverage concerns have inspired a growing number of states to consider state-run retirement plan solutions, and last fall the Labor Department lent a helping hand to those efforts, but chose to do so by giving those programs a competitive advantage compared

Coverage concerns have inspired a growing number of states to consider state-run retirement plan solutions."

with private sector programs, specifically allowing those programs to offer "open" multiple employer plans, or MEPs. We've been hard at work sharing both our concerns and some constructive ideas for solutions that are more likely to help build a better retirement for America's workers. American Retirement Association submitted a comment letter in mid-January, which can be found on NAPA Net.

In the middle of all this activity, it's worth noting that both last year's NAPA 401(k) SUMMIT and the NAPA DC Fly-In Forum had record-breaking attendance. And our membership continues to grow — vitally important as we add to our "Many Voices, One Vision." We're now more than 10,000 strong!

As I approach the end of my term as NAPA President, I would like to express my gratitude for the opportunity to serve this great and growing organization. While I am continually amazed by the quality of work and enthusiasm of all of the staff at American Retirement Association, I have to point out a few individuals: Troy Cornett for keeping us on track, Erin Stewart for making our meetings and conferences the best in the


industry, Lisa Allen for our continued growth in membership, Alisa Wolking for her energy moving the PAC forward, the entire GAC team for keeping us plugged in with what's going on, Nevin Adams for his insight, and former NAPA President Steve Dimitriou for his guidance.

It has been an exceptional experience working alongside Brian Graff, and I am thankful every day, as we all are, for his leadership, his dedication to our industry and his continued ability to make a positive impact.

I would also like to thank our Leadership Council and committee members. Watching these groups pull together and accomplish so much over the past year has been a true pleasure and inspiration.

Finally, I am honored to pass the gavel to our new President, Sam Brandwein. The leadership and passion he has displayed over the past year as President-Elect is truly moving. We are in great hands with Sam.

Let me close with a call to action for you, my fellow NAPA members: Earn your CPFA. Come to the NAPA 401(k) SUMMIT — our 15<sup>th</sup> annual! If you are currently involved in bringing our message forward, stay engaged. If you are active on the Hill, stay active. If you are not yet involved with NAPA, and would like to be, please reach out — we need you.

And continue to do the great and vital work you do each day — helping America save for retirement. 

» Joseph F. DeNoyior, AIF, C(k)P, CRPS, is NAPA's President for 2015–2016 and a founding member of NAPA's Leadership Council. He is the Managing Partner at Washington Financial Group and a member of Global Retirement Partners.



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BY BRIAN H. GRAFF

# Cross-Tested Plans in the Crosshairs (Again)

A new proposal from the Treasury Department is a step in the wrong direction — and needs to be rejected.

**S**mall business retirement plans are again under attack. Buried in a Treasury Department proposal to make it easier for large corporations to close their defined benefit plans to new entrants is a provision that will make it harder for small businesses to form new retirement plans or maintain their current ones.

The proposal imposes a new “reasonable classification” requirement on highly compensated employee rate groups that will make it significantly harder for plans that allocate these rate groups on an individual or specific basis to pass the general nondiscrimination test used for cross-tested defined contribution plans under Section 401(a)(4) of the Internal Revenue Code.

There are major problems with this new requirement. First, determining “reasonable classification” is inherently a subjective process based on the facts and circumstances of each business in question. This subjective test removes the objective purely numerical nondiscrimination testing regime that has been in place for more than two decades. The result is to increase the uncertainty and complexity of an already complicated process.

Second, the new requirement unfairly burdens small businesses because they will likely have very small rate groups. So Treasury is in essence forcing small businesses to test on a ratio percentage basis rather than an average benefits basis, which would impose new costs on the small businesses that have these plans and scare away small businesses that are considering adopting these plans.

These cross-tested plans are some of the most popular defined contribution plan designs being used today in the small plan market. Needlessly damaging this effective

The Treasury proposal flies in the face of the Obama administration’s effort to increase retirement plan coverage in the private sector workforce.”

plan design ultimately hurts the rank-and-file employees who have access to these plans. Remember, rank-and-file workers enjoy meaningful benefits under the current nondiscrimination rules — which have been in place for more than 10 years — since cross-tested plans need to satisfy the minimum allocation gateway rules.

The gateway allocation rules require that non-highly compensated employees get an annual contribution of 5% of pay in a defined contribution plan (or one-third of the allocation rate of highly compensated employees).

Additionally, if a company has a defined benefit plan in combination with a defined contribution plan, this minimum rate increases on a sliding scale up to 7.5% of pay (also depending on the allocation rate of highly compensated employees). Therefore, rank-and-file workers get more employer cash under these widely used arrangements

— which are now seriously at risk — than they do under the common safe harbor plan designs that are not subject to nondiscrimination testing.

The Treasury proposal flies in the face of the Obama administration’s effort to increase retirement plan coverage in the private sector workforce. It’s jarring that this proposal was unveiled the very same week that the Obama administration publicly came out in support of another proposal to open up private multiple employer plans to any unrelated employer, ostensibly to encourage small businesses to adopt retirement plans and increase retirement plan coverage in the private workforce.

As the Obama administration notes, millions of private sector workers do not have access to a retirement savings plans provided through the workplace. And moderate-income workers without access to a workplace based retirement savings plan rarely save for retirement. Small businesses employ many of these workers.

We need to do everything we can to increase access to retirement plans at work, especially among small businesses. The Treasury proposal is a classic case of the left hand of the federal government not knowing what the right hand is doing. This proposal is a step in the wrong direction — and needs to be rejected. **N**

» Brian H. Graff, Esq., APM, is the Executive Director of NAPA.



## Industry Voices

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



**Fred Barstein**

"If your days are scripted and you only do things that you're good at or comfortable with, it's a sure sign that it's time to make a change. Because if you change the way you look at things, the things you look at change."



**Nevin E. Adams, JD**

"Anything worth doing is worth doing right. And doing a workplace retirement plan "right" generally starts with having concrete goals and objectives: a specific rate of participation, a quantified level of individuals taking full advantage of the employer match, a definite number with appropriate asset allocations in place, perhaps even an established focus on individual retirement readiness."



**Sheri Fitts**

"The Internet changed everything. Today the Internet is the Grand Poobah that rules business-to-consumer and business-to-business selling. Whether you are new to financial services or a veteran, you must either embrace its power or risk failure."

**Marc Caras, Pershing**

"Those who resist embracing a truly integrated technology platform may be missing out on an opportunity to not only generate operational efficiencies, but also transform their practices. Advisors should think deeply about which processes are core to the services they provide to their retirement clients, and which are either too costly or too onerous to manage in house."

## Engage!

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

"I am pretty cynical about these financial wellness initiatives. I know financial wellness is a favorite of HR Dept. and HR Consultants, but do employees trust their employers on this subject? Will they engage?"  
— *Tom O'Brien*

"Since fee disclosure came about, I reminded clients that its purpose was not to create a full out race to the bottom, but to instead offer plan sponsors the ability (and duty) to be sure the fees they pay (for any product/service) were commensurate with the services they received. Looks like that approach may soon be a thing of the past."  
— *Joe Ehmann*

"The value for plan sponsors of custom target-date portfolios can be summed up in one word: "control." In a world where target-date assets are largely controlled by an oligopoly of single manager proprietary funds, true open architecture is a compelling investment and fiduciary proposition. Mega plans figured this out starting a decade ago."  
— *Dick Davies*

"Employees deserve to have their corporate retirement plans run under ERISA protection. Having states running these types of programs — given their own poor results in retirement plan oversight — is a disaster waiting to happen."  
— *Terrance Power*

## What's New?

**In December we updated our lists of DCIOs, DC broker dealers and DC national record keepers. Check them out in the Industry Intel tab on NAPA Net.**



## WHAT ADVISORS ARE READING

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

1. SEC Draws a Bead on 401(k) Specialists
2. Schlichter Firm Launches Another Excessive Fee Suit
3. Oracle Slapped with Excessive Fee Suit
4. Plan Sponsor Excessive Fee Suit Dropped
5. IRS Offers Price Incentive to Come Clean
6. Do Proprietary Funds Create a Fiduciary Dilemma?
7. How Much Difference Does an Advisor Make?
8. Obama Administration Wants to Open Door to Open MEPs
9. DOL's Fiduciary Proposal Now at OMB
10. New Jersey Pivots on State-Run Retirement Plans



BY JERRY BRAMLETT

## The Emergence of Robo-Advice in DC Plans

Is robo-advice primarily a retail phenomenon, or is it time to start developing a robo-advice strategy?

**R**obo-advisors, also known as digital advice providers, represent a group of online financial advisory firms that utilize computer algorithms to create individual investment programs. The focus of most (but not all) of these robo-advisors is on lowering the cost of investing through the elimination of the (more costly) human financial advisor and through the use of low-cost passive investments.

In terms of market share, robo-advice is currently very much in its infancy, with approximately \$10 billion in assets at the end of 2015 spread out over 13 key players, according to Aite Group. A report by MyPrivateBanking Research estimates that robo-advice assets will reach \$255 billion by 2020. This is a drop in the bucket of the estimated \$33 trillion in investable assets of the 122 million U.S. households (Cerulli 2014).

Eventually, as the technology matures and market acceptance expands, it will reach a critical mass and start to grow quite rapidly.”

The question for plan advisors is how these digital advice trends affect DC investing. Is this movement primarily a retail phenomenon — not something coming to DC plans anytime soon? Or is now the time to start developing a robo-advice strategy?

### The Future of Robo-Advice in DC Plans

Nearly two decades of history have confirmed that only a very small percentage of DC investors who have access to online investment advice actually use the service. Consequently, it is clear that robo-advice in the DC space, just as in the retail space, can be expected to grow rather slowly over the next few years. Ultimately, however, the growth curve may take on the shape of a hockey stick, with several years of low to moderate adoption. Eventually, as the technology matures and market acceptance expands, it will reach a critical mass and start to grow quite rapidly. What we know is that this growth will be fueled by some strong trends:

- As robo-advice gathers steam in the retail space, there will be a natural spillover effect in the DC market.
- Since DC accounts tend to be much



smaller than retail accounts, it is more costly to provide face-to-face investment advice, which would seem to be a perfect fit for a low-cost robo-advice interface.

- All web-based servicing (e.g., benefits enrollment) will continue to accelerate over time as interfaces become easier to use, faster, more personalized and increasingly ubiquitous.
- Robo-advisory firms are beginning to enter the DC space (e.g., “Betterment for Business”) and more can be expected to follow, creating a competitive challenge for traditional providers.

If we look far into the future, it is not hard to imagine a time when core fund lineups, target-date funds, managed accounts, traditional investment advice, enrollment portals and investment education will all be replaced with a single digital advice interface. In a single web interface scenario, the bulk of investment complexity and what many consider the “tyranny of choice” will mostly disappear.

### Common Misunderstandings

#### *It is Best to Have a “Wait and See” Attitude*

The biggest mistake plan providers (plan advisors, asset managers and record keepers) can make is to think that they do not need a robo-advice strategy because it is simply too far into the future to worry about. Although we can project with a great deal of certainty that it is only a matter of time before robo-advice becomes a major service component of DC plans, no one can predict the speed at which this will happen.

DC firms have three means to implement a robo-advice strategy: build, buy or rent. If the decision is to build, it was important to have started yesterday. The potential to buy or rent is limited to a relatively small number of startups available to fill that role. Consequently, it is best to choose partners while there are still firms left that have the bandwidth to take on new partners.

Partners aside, just working through the integration of a digital advice strategy with the core business is a huge undertaking.

#### *Robo-Advice Eliminates the Need for Human Advice*

There are two levels of advice in DC plans: the plan sponsor level and the individual DC participant level.

“Different firms operating under different brands on one platform will increasingly become the trend as certain robo-advisor platforms emerge as utilities serving multiple asset managers.”

At least one robo-advisor feels that their DC offering will be sold to plan sponsors mostly through the web, with some level of over-the-phone sales support. This means of selling has had very limited success in the past and it is not expected to gain much traction for some years to come. There is simply no pressing reason for a plan sponsor to forgo a direct interaction with a skilled professional who is physically present to help them work through the complexity of establishing and maintaining a DC investment offering. The cost tradeoff is just not worth it.

At the DC participant level, it is an entirely different story. The primary characteristic of DC investors that makes them ripe for robo-advice is that, on average, DC accounts have much lower account balances than the typical wealth management accounts. Although many DC providers like to tout their “individual enrollment” capabilities, this always comes with a hefty price, which either the plan sponsor pays or it gets imbedded into the plan’s investment vehicles. Given that plan sponsors increasingly rely on defaulting participants into target-date funds and managed accounts, fewer and fewer DC participants are having any type of face-to-face interaction with an individual investment advisor.

Robo-advice is a natural fit for individual DC investors. However, there will remain the challenge of getting DC participants to use a robo-advisor. One way to ensure usage is to only allow enrollment through a digital interface. This would probably reduce participation in most plans significantly; consequently, no

plan advisor would (or should) make such a recommendation — that is, perhaps, until the web interface becomes more ubiquitous and easier to use than it is today.


#### *Robo-Advice Disintermediates Asset Managers*

This common misunderstanding is rooted in the fact that many of today’s robo-advice offerings exclusively utilize passive vehicles, which are often delivered via an ETF lineup. This is mostly because the startup robo-advisors are primarily focused on technology and low-cost investing, and are not traditional asset managers.

As traditional asset managers begin to distribute their offerings via a digital interface, expect to see proprietary investment approaches to asset management (i.e., active). There is at least one robo-advisor (NextCapital) which acts more as an industry platform, designed to serve a variety of asset managers and their specific investment strategies. Different firms operating under different brands on one platform will increasingly become the trend as certain robo-advisor platforms emerge as utilities serving multiple asset managers.

### Conclusion

The trend lines are all there to support the conclusion that the robo-advice model will ultimately have a big impact on DC investing. Consider this quote from a 2015 *Wall Street Journal* article, “The Uberization of Money”: “Over the next decade, the familiar 20th-century modes of banking and investing will give way to something very different. We are on the verge of the Uberization of finance, which will bring multiple new opportunities but also a range of new risks.”

For plan advisors and industry providers, it would be wise to get out ahead of these trends and not be caught flat-footed when the “Uberization” of the DC industry begins to accelerate. 

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



WARREN CORMIER

## The Velocity of Ignorance

Is financial literacy blocking behavioral change?

A key issue to consider when looking at participant behavior and what drives change is, obviously, what do we have to do and how much of it is needed. Education has typically been employed as a device to change behavior.

However, most people in the DC industry agree that it doesn't work very well. There are a lot of reasons it is ineffective from a design point of view, but perhaps education itself is the problem.

In 1999, David Dunning and Justin Kruger of Cornell University discovered some-

As the light of knowledge grows greater, the circumference of darkness around it grows exponentially."

thing fascinating. They observed a phenomenon in which relatively unskilled individuals suffer from illusory superiority, whereby they mistakenly assess their own cognitive ability to be much higher than it really is. This phenomenon is called the Dunning-Kruger Effect.

Over the past several years, the research team at Boston Research Technologies (BRT) and the National Association of Retirement Plan Participants (NARPP) has been conducting large-scale joint research projects to better understand the barriers and factors that negatively affect savings behavior. We have observed the Dunning-Kruger Effect



alive and well in our own data on financial decision-making.

That is, people who scored higher on financial literacy tests tended to rate themselves lower on a scale of financial competence. And conversely, people who score lower in financial literacy tests rated themselves higher on financial competency.

Dunning and Kruger cited similar observations by philosophers and scientists, including:

- Confucius (“Real knowledge is to know the extent of one’s ignorance”);
- Bertrand Russell (“One of the painful things about our time is that those who feel certainty are stupid, and those with any imagination and understanding are filled with doubt and indecision”); and
- Charles Darwin, whom they quoted in their original paper (“Ignorance more frequently begets confidence than does knowledge”).

Even Shakespeare got into the act, writing in *As You Like It*, “The Foole doth thinke he is wise, but the wiseman knowes himselfe to be a Foole.”

At first this seemed little more than curiosity. Then through further in-depth multivariate analysis, we discovered that as financial literacy rose, people were less likely to make financial decisions and take actions.

We call this the *financial literacy paradox*.

Dunning and Kruger found out why educating low-literacy participants is so difficult. Their research showed that, for a given skill, less competent people will:

- fail to recognize their own lack of skill;
- fail to recognize the extent of their inadequacy;
- fail to recognize genuine skill in others; and
- recognize and acknowledge their own lack of skill only *after* they are exposed to training for that skill.

Looking deeper into this phenomenon, we found academic research indicating that these more literate people were frozen in indecision. This reveals another layer of the onion. Their research raised a related concept: that highly skilled individuals may underestimate their relative competence and may erroneously assume that tasks which are easy for them are also easy for others. This would help to explain why DC education is filled with jargon and incomplete explanations of financial

“People who scored higher on financial literacy tests tended to rate themselves lower on a scale of financial competence.”

concepts. Professor Chip Heath of Stanford University referred to this as the “curse of knowledge” — educators don’t know what it’s like not to know what they know.

A corollary to this is the concept of the velocity of ignorance and the velocity of knowledge. Which is greater? The answer from such luminary thinkers as Albert Einstein is that the velocity of ignorance is 10 times greater than the velocity of knowledge. His argument is straightforward: for every new fact we learn, we realize that there are at least 10 facts we don’t know. That is, as the light of knowledge grows greater, the circumference of darkness around it grows exponentially.

Could it be that financial literacy itself was blocking behavioral change?

To gain insight into this question I went to a widely recognized innovator in the area of creating behavioral change in DC participants: Laurie Rowley, cofounder and president of the National Association of Retirement Plan Participants. Her work in this area has been disrupting the thinking about education and communications design.

*Is literacy stopping behavior change and if so, what do we do about it?*

ROWLEY: I think we have to move past the traditional notions of financial literacy and move to a place where we provide more tactical, instructional and intuitive informational experiences that are accessible to everyone. One’s level of financial literacy does not predict their ability to make decisions. However, we know that if we can address the cognitive and emotional barriers facing people when they are confronted with potentially huge financial decisions, we can improve the outcome.

A good example of this is the personal computer world. A personal computer is an


extremely sophisticated piece of equipment, yet we don’t need to be computer literate to use our tablets, iPhones or even watches. We just need to know how to use them in a way that best meets our needs. Apple has done a very good job of making the complicated simple. Adoption of technology products is ubiquitous in part because they have made it easy for us to master these complicated tools. We are doing the same thing for retirement savings information — don’t try to make someone a financial expert, just give them the user manual; tell them what they need to know to use or operate their plan.

*How much education is enough? Is it universal or does it vary by person?*

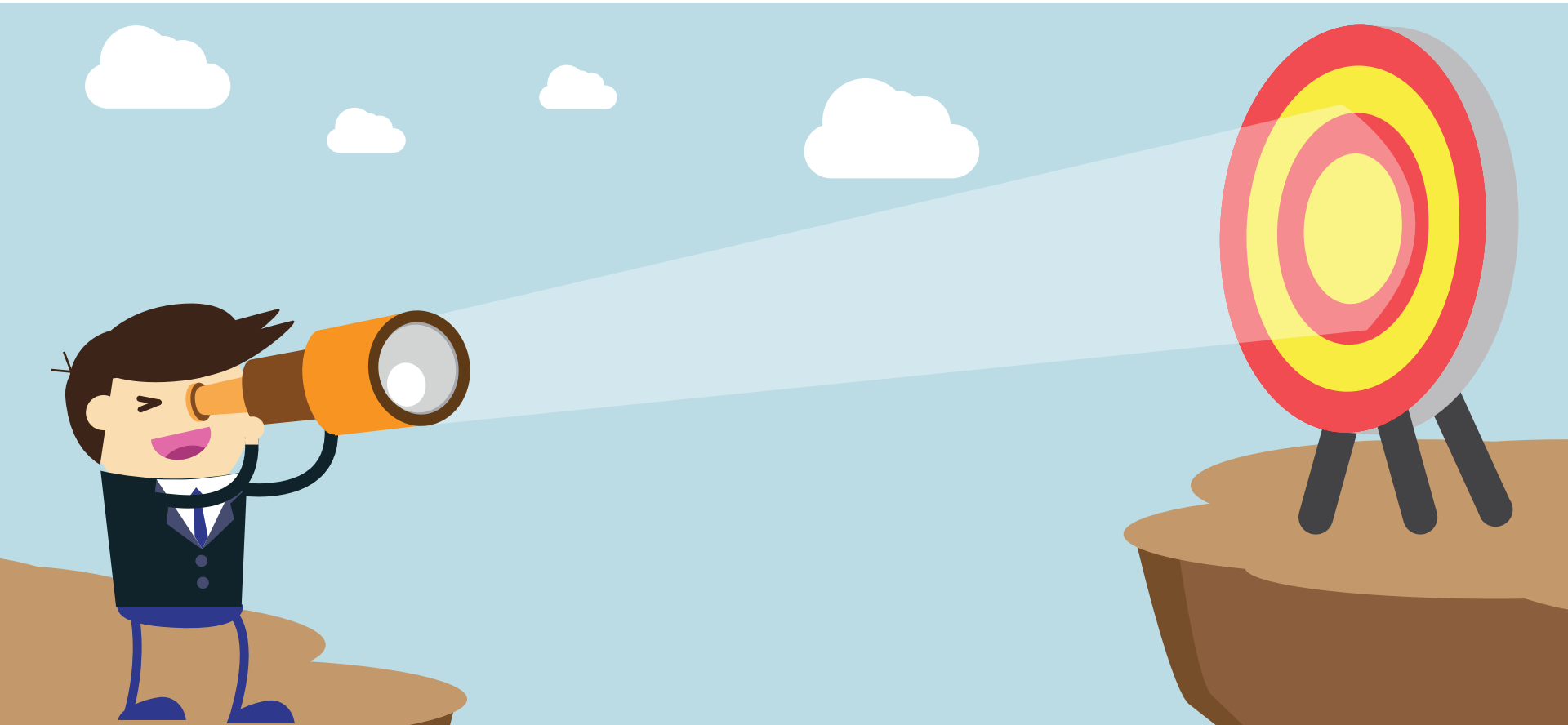
ROWLEY: It is never enough. We should reinforce messages and help build a journey for the individual that acknowledges their needs. What is universal is that everyone has a savings journey, they just need a guide to help them figure out where they are going and how to get there.

*What role does trust play?*

ROWLEY: I like to say that trust is the dark matter of the DC industry, an unseen force that impacts every stakeholder. For participants, their level of trust in their recordkeeper can be directly linked to their engagement with that recordkeeper and their retirement savings decisions. Trust is also linked to education; the two go hand in hand. Education can either build or erode trust. The problem is that trust in financial institutions remains at historic lows at around 12%. From the plan sponsor perspective, trustworthiness is the most important factor when selecting a recordkeeper. If we are going to make a real impact on engagement and financial decision-making, we have got to start working on creating experiences that build trust.

As we in the DC industry work to change participant behavior, let’s not throw education out as a key lever; let’s first consider new, disruptive forms of education that may be the solution. 

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



BY JANIA STOUT

## Imagine: Plan Design Through the Lens of Financial Wellness

Dusting off the after-tax savings option might be just what we need to help participants save.

**W**

hen you look back over the last three decades, we have come a long way. We now have daily valuation, robust participant websites, automatic enrollment, auto escalation and stretch match; today we are in the era of financial wellness.

My previous columns focused on why financial wellness should matter to plan sponsors and plan advisors and how to design and implement a financial wellness strategy. But is there more we can do? The answer is a big old “YES”!

If all we did was focus on the educational component of financial wellness, we would be missing the mark. We have a huge opportunity to rethink the design of the corporate sponsored retirement plan in a way that will work in par-

allel with many companies’ financial wellness goals. If we don’t rethink these designs, it is like putting new wheels on a car but not redesigning the engine.

We know from what we have learned about behavioral finance (thank you, Shlomo Benartzi!) that working America does not want to think about retirement. Working America is all about the *now*, not the *later*. Most households are living in debt, and many are burdened with saving for college or paying off high tuition bills.

If we really take to heart what we have learned about the average participant and what behavioral finance has taught us, why



don't we completely shift the design and structure of the defined contribution plan? Our team got together last year and started a white board discussion about how to redesign a plan. We collaborated to design a program that would be both disruptive (encouraging out-of-the-box thinking) and provide a means to achieve financial wellness.

At first it was hard. Many of us have been in the industry for 20+ years and felt like everything had already been explored. As the discussion got heated, our juices started to flow and it became obvious there is more we can still do with plan design that could enhance the strategy of a financial wellness program.

Following is a summary of how a plan can be redesigned to become more than just a retirement savings plan. Note that nothing presented here requires a change in the law or even a change in regulations. It may require a change in attitude — but changes in attitude do not involve congressional action.

#### Reinventing After-tax Contributions

One of the critical components to be able to control debt is to establish an emergency fund. Why not create this savings options inside the DC plan?

One benefit of a DC plan is the automatic savings feature. Participants need as much help with inertia in addressing current financial challenges as they do saving for retirement. Adding an option to save in an after-tax

way will help them build an emergency fund. Roths won't work because of the limitations on accessing this money prior to retirement or termination. But an after-tax source can be distributed at any time.

The more participants embrace the plan, the more they will be aware of and educate themselves about healthy financial habits. If we can solve a problem that helps them for today, they might spend more time thinking and planning for tomorrow.

There are potential issues with adding an after-tax source, so this idea needs to be carefully evaluated before it is adopted. For one thing, after-tax money is categorized as an employer contribution, so it could affect the ACP testing of the plan.

For those who are really passionate about financial wellness (like myself), why not automatically enroll everyone into the plan and put the first \$1,000 or \$3,000 into an after-tax emergency fund; once the default amount is reached, it switches to pre-tax. Even better would be to build the record keeping systems so that they know when the emergency fund has been depleted, at which point the deferrals would shift back into after-tax mode to replenish the emergency fund.

If we could get that working, the number of loans in a plan would drop dramatically and our participants would understand the power of having an emergency fund. Perhaps credit card debt would stop creeping up and those payments that were being sent off to pay off high-interest balances would be freed up and instead directed toward participants' retirement savings goals.

Participant websites should provide the ability to list financial goals and create an after-tax account for saving toward those goals. The after-tax source would not have dollar limits. A participant could have multiple goals, *e.g.*, emergency fund, home purchase down payment and retirement savings. This shifts the feel of the traditional DC plan. It makes it more relevant and more attractive to many who are searching for a way to take care of their financial picture both now and for retirement.

#### Change the Name!

Let's stop looking at the 401(k) or 403(b) plans as just a retirement savings plan. If we know that participants don't have a desire to think about something they won't use for decades, then adding changes that address current

“It may require a change in attitude — but changes in attitude do not involve congressional action.”

needs will be the first step in getting their attention. But we also need to change the name and not just call it a retirement plan or a 401(k) plan. For example, we changed the name of our plan to the “Life & Retirement Plan.”

Many of us remember the day when we would see after-tax contributions in a plan and scratch our head about why a plan would ever have that feature. In some cases there are creative things you can do with the after-tax source (*i.e.*, convert it to a Roth), but in general it has been a provision that was retired from most plans decades ago. Dusting off the after-tax savings option might be just what we need to help participants save. Save for retirement or save for a life goal — either way a Life & Retirement Plan should help participants with holistic savings in order to achieve financial wellness. **N**

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

If all we did was focus on the educational component of financial wellness, we would be missing the mark.”

# Trends Setting

Shedding light on the latest in industry and demographic trends.

BY NEVIN E. ADAMS, JD

01



'Where' Withal:

The where's and why's of retirement plan access

Location, location, location. It's something of a truism about the three things that most affect property values. Apparently it also applies to retirement plan access.

Using a pooled version of the 2010-14 Minnesota Population Center's Integrated Public Use Microdata Series (IPUMS) Current Population Survey (CPS), Annual Social and Economic (ASEC) Supplement, researchers at Pew Trusts found that access and participation rates vary widely across the states and regions. Consider that 61% of workers in Wisconsin participate in an employer-based pension or retirement savings plan, compared with 38% in Florida. Indeed, the Pew Trusts researchers found that access and participation are higher in the Midwest, New England and parts of the Pacific Northwest, and lower in the South and West.

## Employer Differences

However, access and participation vary based on employer size and industry type. In fact, some of the largest differences in retirement plan access and participation

were found by employer size. For example, only 22% of workers at firms with fewer than 10 employees report having access to a workplace savings plan or pension, compared with 74% at firms with 500 or more. Certain industries, such as leisure and hospitality or construction, have much lower levels of access and participation than others. These factors contribute to state and regional differences.

Nationwide, 29% reported working at firms with fewer than 50 employees, though the percentages in individual states ranged from 39% in Montana to 23% in Minnesota. Consider too how regional differences come into play as well because certain industries, such as leisure and hospitality, are more concentrated in certain areas of the country. Nationwide, about 8% of workers had jobs in this industry, but they comprise 27% of the analysis group in Nevada (though only 5% in Iowa). Consider also that regional differences also can provide insight into where workers are more likely to have access to retirement savings options: In Connecticut, 15% of workers had jobs in financial services, a field more likely to offer plans, while that sector accounts for only 5% of jobs in Wyoming.

## Policy Implications

These differentials in employer size could have policy considerations. For example, and as the Pew report acknowledges, states are exploring initiatives to boost both access to retirement savings plans in the workplace and participation, and many new retirement savings initiatives set a minimum number of employees for an employer to be included in a mandatory program, typically exempting entrepreneurs and very small enterprises. In Illinois, for instance, the plan applies only to businesses with at least 25 employees — a threshold (as well as others like it) could mean that a retirement savings program will miss many workers, particularly in states where higher percentages of employees work in small firms, such as Montana and Wyoming.

The Pew report also notes recent research by the nonpartisan Employee Benefit Research Institute (EBRI) that indicates that in an automatic IRA contribution framework, a 3% contribution rate — as in the Illinois Secure Choice plans and in legislative proposals in several states — would have only a modest effect on long-term savings adequacy.



### Other Factors

Other factors also appeared to play a role. Only 32% of workers with wage and salary incomes of less than \$25,000 have access to a retirement plan at the workplace, though the rate rises to 75% for workers with incomes above \$100,000. Moreover, just one in five of those in the lower-income group participate in a plan, compared with 72% of more affluent workers.

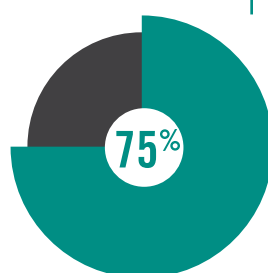
Younger workers and workers with less formal education (who may also have lower incomes) are less likely to have access to a workplace retirement plan, and younger workers also are less likely to participate even if they have the option. While approximately 20% of workers nationwide are under 30 (and here, and throughout the report, “workers” are defined as full-time, age 18-64), younger workers were more prevalent outside the East Coast.

The report notes that some of the largest differences are by race and ethnicity. Among Hispanic workers, access to a plan is around

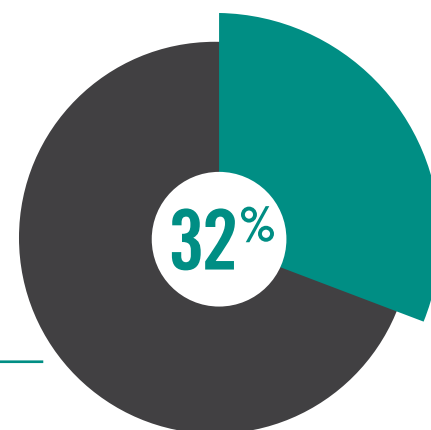
25 percentage points below that for white non-Hispanic workers. Black and Asian workers also report lower rates of access than white workers. The researchers note that this variation is likely due to underlying economic differences (such as age, job type, and income), but that other factors, such as a lack of comfort with financial institutions, may also play a role.

ONLY 1 in 5 PARTICIPATE IN A PLAN

ABOUT 3 in 4 PARTICIPATE IN A PLAN



OF WORKERS WITH WAGE AND SALARY OF >\$100,000 HAVE ACCESS TO A RETIREMENT PLAN



OF WORKERS WITH WAGE AND SALARY OF ≤\$25,000 HAVE ACCESS TO A RETIREMENT PLAN

02



### Leak Peak?

Does plan leakage have a generation gap?

A new report suggests that while early distributions from retirement plans are a cross-generational issue, it may be a bigger behavioral problem than is widely appreciated.

The white paper, published by the Defined Contribution Institutional Investment Association (DCIIA), notes that while less than a fourth of Baby Boomers cashed out retirement savings at least once when changing jobs, a third of Millennials and GenXers have already done so. Not surprisingly, about 75% of the cashouts involved accounts with assets of less than \$20,000. The paper's author suggests that such small amounts might be considered not worth the effort required to roll over these assets to the new employer's DC plan.

That said, approximately half of survey respondents reported leaving their retirement assets in their former employer's plan, a finding consistent across generational groups. Only about 20% of all generations expressed a well-thought-out reason for leaving their money in the previous employer plan, such as

preferring the prior plan's investment menu or customer service. Asked about their intentions for their current retirement plan, 20% of Millennials reported a plan to cash them out before retirement, while only 7% of the Baby Boomer respondents reported such a plan.

As for what is leading to cashouts, the survey — based on 5,000 participant responses, and conducted by Boston Research Technologies on behalf of Retirement Clearinghouse — found that barriers such as not knowing how to roll over assets, not having time to do so, or not prioritizing the issue, were each mentioned by about 20% of all generations as reasons for not moving retirement assets to their new employer's plan.

A potentially more worrisome trend was found in Millennials increasingly using those cashouts for non-emergency spending. Forty-two percent of Millennials reported spending retirement plan cashouts on non-emergency items such as weddings and cars, while less than 25% of GenXer respondents used the

cash out for such non-emergency purposes.

Moreover, Millennials differ from older generations in their feelings toward cashouts. Of those Millennials who cashed out, only 36% reported regretting the decision, while almost half of the older generations — who are closer to the date when the financial impact of such decisions are visible — reported that regret.

These cashouts occurred even among higher income individuals, where a third of those earning more than \$150,000 annually said they had cashed out at least one account during their career. However, cash outs occur more frequently among those at lower income levels: More than 4 out of 10 workers who had less than \$25,000 in household retirement savings cashed out at least once in their working lifetime, compared with only 23% of workers with more than \$150,000 in retirement savings.

03



## Myth Statements

## 5 retirement myths about millennials

New research challenges generational assumptions about employees who participate in defined contribution plans.

The research, from State Street Global Advisors (SSGA), the asset management arm of State Street Corp., surveyed plan employees aged 22-50 — a group that SSGA calls “Generation DC” and which, SSGA maintains, is the first cohort to rely predominantly on a DC plan as their primary source of retirement funding.

The SSGA research identified five myths about Millennials.

**Myth 1: Millennials would rather interact with apps than humans**

Though Millennials (aged 22-32) are most likely to say they want apps to help them prepare for retirement, they also want an annual human interaction — even more than older employees do. Nearly 6 out of 10 (59%) of those aged 22-25 say they “want an in-person meeting once a year and technology isn’t really going to help.” Just 38% of Gen Xers aged 45-50 shared that sentiment.

**Myth 2: Millennials don’t care about planning for retirement — it’s too far away**

SSGA says that 88% of Millennials agree it’s important to start saving for retirement early, a sentiment shared by Gen Xers (86%). Both Millennials and Gen Xers (aged 33-50) agree that saving for retirement is a priority (83%).

**Myth 3: Most people are “over” the financial crisis**

More than half of Millennials (54%) admitted that their parents’ experience with the financial crisis that began in 2008 has affected their confidence as investors.

**Myth 4: Employers hold the reins when it comes to informing and influencing employees**

Friends and family come first when it comes to influence. In fact, the SSGA research notes that two-thirds (68%) of Millennials said that friends and family are the ones who told them to start saving. Additionally, more than 90% indicated that their spouse/partner’s annual salary played an important role in their financial wellbeing.

**Myth 5: We need to educate people more about retirement and investing**

SSGA used a standard battery of questions to test literacy and the results indicate that as people hit their 40’s their literacy about basic financial and investing improves. For example, when asked if buying a single company stock provided a safer return than a stock mutual fund, 46% of Millennials correctly answered that the individual stock was more risky, while 57% of Gen Xers answered correctly — a number that that increased to 77% for the age 45+ group.

The survey was fielded in partnership with Boston Research Technologies, an independent marketing research firm. Data were collected in October 2015 using a panel of 1,500 U.S. workers, aged 22-50, who were employed on at least a part-time basis and were offered a DC plan by their employer.

04



## Tipping ‘Points’

## Are financial wellness programs ready to take off?

A new report suggests that we may be on the verge of a tipping point in financial wellness focus, but the prism of that focus seems nearly as varied as the plan sponsors contemplating the shift.

According to AonHewitt’s “2016 Hot Topics in Retirement and Financial Well-Being,” the vast majority (89%) of 254 plan sponsor respondents indicate they are very (56%) or moderately (33%) likely to create or focus on financial well-being of employees that expands beyond retirement decisions.


Not only is that 56% up from 46% a year ago, it was just 30% as recently as 2014. Additionally, the report notes that over half (55%) of those employers already offer workers help in at least one category of financial well-being, and nearly 4 out of 10 (38%) have at least three categories covered. Moreover, by the end of the year, the report notes that those percentages are expected to grow to 77% and 52%, respectively.

In 2015, nearly half (49%) of surveyed employers said that financial wellness had more importance in their organization over the past 24 months, roughly equal to the 50% who said it had the same importance. In 2016, those numbers had moved to 58% citing “more importance” and 40% saying “same importance.”

While the report cites “wide accord” on the desire to expand those initiatives, unity of focus remains elusive. The survey asked plan sponsors about their program offerings on seven different fronts, and while nearly each category saw increased implementation from a year ago, no one area was offered by a majority of responding employers. Those areas of focus were:

- basics of financial markets (43%, up from 41% a year ago);
- budgeting (34%, up from 26%);
- debt management (33%, up from 25%);
- financial planning (33%, up from 29%);

- health care planning (31%, down from 32%);
- saving for life stages (28%, up from 22%); and
- prioritizing savings (27%; was not asked in 2015).

Motivations for offering these programs were different as well. The most common reason cited was “it’s the right thing to do,” acknowledged by 85%, while “increasing employee engagement” drew nearly as much support (80%). Improving retirement statistics was a motivating factor for 58% of respondents, while “decrease employee time spent addressing financial issues” was noted by 44%. Only about a quarter (26%) said their motivation was to decrease medical costs, and just a third indicated that workers were asking for these programs. 





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BY LISA GREENWALD SCHNEIDER

# Is Your Pitch Perfect?

Study reveals what plan sponsors want to hear in your value proposition.

**T**here's good news and there's bad news for plan advisors coming out of research my firm recently conducted for MassMutual regarding what plan sponsors want and need from a plan advisor.

The good news is that more than 9 out of 10 plan sponsors who are working with a plan advisor are satisfied and believe their advisor is valuable. At the top of the list, they praise their advisor's customer service, both service to the employer and to employees. Majorities are satisfied with their advisors help with investment selection. And while most are happy with the fiduciary education and periodic plan reviews they receive, there's reason to believe this needs even more attention.

But here's the bad news. Once an advisor gets in front of a prospective client, likely through referral, it seems they struggle with what to say and how to sell themselves. Bottom line: the advisors we spoke to as part of this research could not clearly articulate their value proposition. Want to know what to say? Or see how you measure up? Try this:

*"My goal is to provide the best possible retirement education and financial advice to your employees. I also ensure that you, the employer, get the best possible service and that we'll be able to lower your plan costs and fees."*

That was the winning combination of plan advisor traits the research revealed — employee education, good customer service and lowering costs. Out of six possible value propositions, this was the one plan sponsors selected as most appealing overall. It was, by far, the most attractive value proposition to sponsors who are not currently working with a plan advisor, who tended to be attracted to anything in the survey that mentioned lowering costs whether administrative fees,

**“Once an advisor gets in front of a prospective client, likely through referral, it seems they struggle with what to say and how to sell themselves.”**

investment fees or even attracting more assets to the plan in effort to lower costs. One plan sponsor currently without an advisor said the ideal advisor would “address both goals — educating employees and saving me money.”

You'll notice what's not mentioned here: fiduciary support and investment selection and monitoring. But, as you probably already know, there is no one-size-fits-all approach when talking to plan sponsors. While this was the overall most attractive pitch, it needs to be tweaked when talking to a plan sponsor who already has an advisor — one who may be looking to make a switch or one who has past experience. Plan sponsors who have an advisor are more drawn to a value proposition that emphasizes employee education, good customer service and serving as a fiduciary. Fiduciary support trumps lowering costs for those already working with a plan advisor.

The desire for a fiduciary advisor is a bit of a chicken-and-egg matter. Plan sponsors who already have an advisor express much greater concern about their fiduciary obligations, but this may be because you, the advisor, told them how important it was and they are satisfied with the fiduciary education provided. Six in 10 plan sponsors with an advisor said they were concerned about

meeting their fiduciary obligations, compared with half of those without a plan advisor who indicated little to no concern.

With or without an advisor, plan sponsors have serious knowledge gaps when it comes to their fiduciary obligations. Half either didn't think they or their company was a fiduciary to plan, or had no idea. A quarter of those working with a plan advisor didn't know whether their advisor was a fiduciary or not. “They don't have a clue what it means to be a fiduciary now,” said one plan advisor, “never mind what it will mean when all these new laws come in.” The research shows that fiduciary support is hardly top of mind for plan sponsors without an advisor and thus isn't likely to be effective as part of a core value proposition that prompts them to hire one. It's something sponsors only come to value with experience.

I'd bet good money that many of you read that winning value proposition above and thought to yourself, “But I'm an investment advisor!” This part is for you.

Plan sponsors who are already working with an advisor are attracted to the more tangible or traditional benefits of working with a plan advisor. But these services are not that important (initially) to those who have no advisor relationship, meaning your prospects. In addition to a greater interest in fiduciary support, sponsors who already work with an advisor say they do so because of the advice they get on plan design and for advice on plan investments. For those working with an advisor, the second most attractive value proposition emphasized plan design, fiduciary support, and help with other employee benefits.

This value proposition resonates with a sizable share of sponsors who already have an advisor:

*“I provide advice on the best plan design and features for your organization. I*





*serve as a fiduciary to the plan and make sure you are compliant. In addition, I can provide advice on other benefits that may be appropriate for your organization to offer.”*

Focusing on plan design and investment selection is also going to resonate better with clients in leadership, operations or finance roles, and notably less with plan decision-makers who sit in HR or benefits departments. They are much more involved in employee education and communication.

Analyzing plan sponsors’ ratings of six different value propositions, though, it’s impossible to imagine an effective pitch that doesn’t include employee education. The advisors we spoke with agreed. They note a growing trend. Sponsors increasingly want education for their employees. Those without an advisor mostly say annual education will suffice, while the mass of employers who work with an advisor want education for employees provided twice a year, if not more often, and this is more than they are currently receiving. Yet, plan advisors told us sponsors may be their own worst enemy on this front, as employers are often reluctant to make time for frequent group and one-on-one meetings. (Hey sponsors! Are you listening?) Plan sponsors who work with an advisor are more likely to encourage employees to participate in their retirement plans and promote employees’ financial well being. The result: Sponsors working with an advisor are more inclined to think that their employees are saving enough and will be ready for retirement.

who are not working with an advisor are more interested in personalized advice for employees to determine whether they are on track and programs for employees who are approaching retirement. The latter may be a key differentiator for plan advisors and for plan providers, as I’ve seen strong employee and employer interest in this across studies.

In addition to education, plan sponsors who work with an advisor also hope for more frequent plan reviews. Sponsors who work with an advisor already review their plan more often than those without; with 4 in 10 saying they do this annually and one-third doing it semi-annually. Yet, nearly 6 in 10 would prefer to review their plan with their advisor twice a year or more often. Plan advisors told us that they tend to focus most on investment performance during plan reviews, and sponsors agreed that performance and fees were key considerations at review time. They also suggested they would like to discuss satisfaction with the plan provider, the effectiveness of the plan provider’s education, and participation rates.

Proactive, regular plan reviews are part of how sponsors define good customer service from a plan advisor. Good service may seem like table stakes, but it was clearly of utmost importance to the sponsors we surveyed, and, like employee education, it’s hard to imagine an effective value proposition that doesn’t emphasize this. A few advisors I spoke with described this as being an advocate for their clients, but “advocate” did not resonate with plan sponsors nearly as much as “good service” did. Good service had a very simple definition to


Sponsors and advisors agree that most of the education provided can be quite simple — explaining the retirement plan benefits and the options that are available, and educating employees about the importance of contributing. One plan advisor said, “That’s kind of our job, to make sure that they participate.” Importantly, though, sponsors

## ABOUT THE STUDY

The MassMutual Winning Combination Study was conducted in Fall 2015 by Greenwald & Associates. It included interviews with plan advisors and sponsors, an online survey of 565 plan sponsors with plan assets up to \$75 million, and focus groups with plan advisors.

plan sponsors: be responsive. Plan sponsors want an advisor who listens and responds to their needs, immediately. They want a plan advisor who is highly responsive, by phone or email, and comes to the table right away with solutions.

Based on this research, it seems many plan advisors need to work on their elevator pitch or value proposition. The winning combination includes employee education, good customer service, and either lowering plan costs or fiduciary support, depending on whom you’re talking to. Sponsors who have little or no experience working with a plan advisor are more cost-conscious. If a sponsor has worked with an advisor before or is currently working with one, they need a slightly different message that focuses more on fiduciary support.

The pitch that gets you in the door may not keep you there. Still, plan advisors need a value proposition that resonates with plan sponsors. It’s not all about investment selection and monitoring. This is a service business too, and there’s a growing demand for employee education and advice from plan advisors, not just plan providers. 

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



FEATURE

# Custom “Fit”?

Is the time ripe  
for a move to  
custom target-  
date funds?

BY JUDY WARD



**A**s target date fund assets swell, a growing number of large plans have moved to custom TDFs. Sponsors shouldn't assume they ought to follow, however. "One thing we've seen out there is this assumption that custom target funds are just better than off-the-shelf target date funds," says Scott Cameron, chief investment officer and a principal at advisory firm Multnomah Group, Inc. in Portland, Ore. "There is a mindset that it makes sense to take the expertise on the defined benefit side and apply it to target date funds."

The U.S. Department of Labor's February 2013 tips for fiduciaries on target date funds suggested that sponsors consider using custom TDFs, and Multnomah Group helps sponsor clients periodically evaluate a potential move to custom funds. But it tends to be pretty cautious as to whether custom makes sense, Cameron says, due to the fees and heightened sponsor responsibility involved.

And a lawsuit filed against Intel Corp. in October 2015 (see "Cases in Point," page 50) raises questions about sponsors' decisions on custom funds. *Sulyma vs. Intel Corporation Investment Policy Committee et al* alleges that the Intel 401(k) plan's DB-like custom target date funds have large allocations to risky, high-cost investments that diverge from industry standards for TDF portfolios. However that case gets resolved, "This says, 'You are not immune from doing your due diligence on these products, just because they are custom funds,'" Cameron says. "You still have to make sure that they make sense for your participants."

Advisor Steven Glasgow also helps sponsors consider custom TDFs periodically, but he remains skeptical. "Is the headache and risk worth it for sponsors? I'm still not convinced that there is so much value to be added through the customization of these products," says Glasgow, senior vice president at Avondale Partners, LLC in Nashville, Tenn. "The DOL memo says sponsors ought to consider custom funds. My take is that it is a conversation worth having, but I am not sure that it is a clarion call that everybody should be going that way."

#### Key Areas to Consider

Many large 401(k) plans already have moved to custom target date funds. As a 3(38)

“My take is that it is a conversation worth having, but I am not sure that it is a clarion call that everybody should be going that way.”

— Stephen Glasgow,  
Avondale Partners, LLC

fiduciary, AllianceBernstein L.P. (AB) manages \$34 billion of custom TDF assets, mostly for plans with \$1 billion or more in total assets, says Dick Davies, senior managing director at AB in New York. "Clearly, in the mega-plan space, it is well-accepted," he says. "We could even debate if it's relatively mature." AB's custom TDF clients have anywhere from \$10 billion in target date assets to less than \$100 million.

There's sometimes a misconception that sponsors who have switched to custom TDFs made the change because of very unique participant demographics, Davies says. "Our experience is that custom is much more about open architecture," he says.

"The sponsors who do it believe in some level of active management, and they also have preferences on investment managers in different asset classes. They want their target date funds to be open architecture, just as their core menu has become open architecture." They also want to mix use of active and passive management in ways that institutional investors often do, but off-the-shelf TDFs typically don't, he adds.

All of AB's custom clients use TDFs as their plan's default investment, and 50% to 70% of plan assets may be in those funds. "If that's the case, do you really believe that a single-manager solution is going to be both a good fiduciary decision and a good investment decision?" Davies asks. As target date assets

increase and 401(k) plan sponsors get more comfortable with custom-fund elements such as collective trusts, he says, "I think we will see greater acceptance of institutional solutions in general."

Advisory firm Portfolio Evaluations, Inc. (PEI) has incorporated a periodic custom funds discussion with sponsors into its TDF evaluation process, says Ashley diMayorca, senior consultant at PEI in Warren, N.J. "In every case, the plan sponsor has decided in the end not to go down that path," she says. "It's interesting, there is so much noise out there on custom target date funds. There is a lot of talk about custom, but really not a lot of movement."

Advisor Jason Chepenik has spoken more about custom TDFs recently with potential sponsor clients whose plans already have succeeded in helping raise participants' savings rates. "Now they are asking, 'What is the next thing we can do to add color and depth to the plan?'" says Chepenik, managing partner at Chepenik Financial in Winter Park, Fla. "It takes time. But I do see it moving that way."

Sources suggest weighing the pros and cons in these key areas:

#### Assets Needed and Actual Customization Level

Plans have barriers to entry in moving to custom TDFs, says advisor Dan Peluse, director of retirement plan services at Chicago-based Wintrust Wealth Management. With a minimum of \$20 million to \$25 million in assets — total plan assets or TDF assets specifically, depending on the investment manager — a sponsor has some ability to choose the underlying funds used, he says. "The investment manager will say, 'Here is our glide path, and you can utilize your core funds to make up that allocation,'" he explains. "Then the sponsor will get a more off-the-shelf asset allocation, not a customized glide path for its employees. It is not until a plan gets to \$50 million and north in assets that it can get a glide path that is more customized."

Some advisory firms currently promoting their ability to serve as 3(38) fiduciaries and design custom target date funds do not put a lot of substance behind that, Glasgow believes. "People need to get nitpicky about this terminology," he says. "We have some



“I think we will see greater acceptance of institutional solutions in general.”

— Dick Davies, AB

competitors who are now, all of a sudden, in the asset-management space. They say they can create ‘custom’ target date funds, but the glide path might be uniform across all clients. I don’t view that as true customization. A true custom target date fund is when the client makes the decision first and foremost with respect to the glide path, then asset allocations get made in line with that.”

#### *Fee Implications*

Custom TDFs make the most sense fee-wise for large employers that have a defined benefit plan with investments they also can leverage in the 401(k)’s custom funds, lowering investment fees for both plans, PEI finds. Otherwise, says diMayorca, citing several additional costs beyond investments, “It is around four to 10 basis points for the glide path design, and 25 to 50 basis points for custody, including striking the daily net asset value. And one thing some people don’t consider is the cost of custom participant communications for custom funds.”

Advisor Robert Lawton says he cannot see how implementing custom target date funds doesn’t result in higher advisory fees. “Number one, you have to do a demographic study that shows participants’ projected retirements are different from what other, off-the-shelf TDF series are assuming. You have to come up with data to justify using custom funds,” says Lawton, founder and president of Milwaukee-based Lawton Retirement Plan Consultants, LLC. “And then putting together a custom benchmark, back-testing it, and maintaining it costs money. Each reporting period, there will need to be a custom set of reports based on that synthetic benchmark.”

As for investment fees, Peluse sees sponsors making more of a move to passive off-the-shelf TDFs, which often carry fees comparable to or lower than custom funds.

“It is hard to find a justification, from a cost perspective, to go custom versus use index funds,” he says. “And it’s unknown: For the cost of custom funds, are you creating enough benefit for participants?”

#### *Participant Demographics*

Sponsors interested in custom funds need to consider the demographic justification carefully. “It’s deeper than just looking at, ‘What industry are you in, and how much money are employees making?’”

Chepenik says.

As PEI first started doing custom TDF analysis for clients, it asked four large custom TDF providers about which participant variables influence glide path design most. “They said the biggest impacts come from retirement age and what participants do with their assets: Do they leave the money in the plan or roll it into an IRA?” diMayorca says. “Company stock is another big factor. How many participants have company stock in their account, and how much do they have invested in company stock?”

Custom funds often make more sense for employers that have an additional retirement plan such as an active pension plan, Peluse says. Beyond that, he adds, “Very rarely do you find a demographic that is skewed outside the norm to the point that it makes sense to customize a glide path.”

Asked whether the wide range of off-the-shelf TDFs available give sponsors enough to pick from for almost any plan’s demographics, Glasgow says, “Oh yes, absolutely. There is plenty there to address the demographics question.”

#### *Fiduciary Risk*

Concern about the potential for future participant lawsuits has played a part in Glasgow’s sponsor clients deciding not to go the custom route. “The general consensus is that once a sponsor assumes responsibility for a glide path it created, the sponsor may find itself in a position in the future to defend the glide path that it created,” he says. “If you’re the author of the glide path and it doesn’t work out, it puts you at greater risk.”

Much of the previous interest in custom TDFs stemmed from sponsors wanting to move away from proprietary underlying funds within off-the-shelf TDFs, Glasgow says. Some sponsors saw a fiduciary risk in

“When we look at going to custom funds, it is rarely cost effective.”

— Ashley diMayorca, PEI

utilizing underlying proprietary funds that did not meet a plan’s stated screening criteria. In sticking with off-the-shelf TDFs that have a standardized glide path and use proprietary underlying investments versus moving to custom TDFs that have a customized glide path and use best-of-breed investments in various asset classes, he says, “A sponsor is kind of making a compromise there. The question is, which compromise represents more risk? Our perspective has been, there’s a lot to choose from off the shelf. For the time being, I’m okay with allowing the proprietary asset-management component to be the thing that we give up.”

Partly because most plans still don’t use custom target date funds, and partly due to the long investing timeframe, the industry has yet to really see if using custom TDFs truly brings participants value in long-term outperformance, Peluse says. “Off-the-shelf target date funds are so popular. There is safety in numbers for sponsors,” diMayorca says. “And they are working: They seem to be doing an adequate to very good job. So why make a move? Plan sponsors, once they go through an exhaustive process to select a QDIA (qualified default investment alternative), rarely change it.”

#### **Intel Lawsuit Issues**

Amid all those considerations, the lawsuit over Intel’s custom target date funds looms.

No one knows how the Intel lawsuit will get resolved. But the suit points to several issues to consider about custom target date funds, says Isaac Presley, director of investments at Portland, Ore.-based Cordant Wealth Partners, which focuses on wealth management for Intel employees and Intel retirees with at least \$500,000 in assets.

“Very rarely do you find a demographic that is skewed outside the norm to the point that it makes sense to customize a glide path.”

— Dan Peluse, Wintrust Wealth Management

Cordant’s work with clients includes making recommendations on how they should invest in Intel’s 401(k) plan.

Presley, without commenting on the lawsuit’s merit, discussed three key allegations the suit makes:

### 1. Unusual Allocations

How much can a sponsor DB-size 401(k) investments? Intel’s target date funds — with their substantial allocations to hedge funds and private equity — don’t resemble the balanced fund-type allocation typically seen in target date funds. Presley attributes that to the Intel funds’ use of an investment strategy based on the “Yale Model,” developed by Yale University’s endowment fund and now used by many pension plans, endowments and foundations.

The Yale Model puts a lot of emphasis on use of alternative and illiquid assets to get diversification, Presley says, and that leads to lower-than-typical allocations to blue-chip stocks and investment-grade bonds. “So they moved into hedge funds and private equity and other illiquid investments,” he says. “Not a lot of defined contribution plans traditionally use those investments. By definition, it makes the allocation look a lot different.”

### 2. Risky Investments

The lawsuit says the plan’s investment committee knew, or should have known, that the allocations exposed participants to the risk of substantial losses. Modern Portfolio Theory looks at risk on a portfolio-wide basis, Presley says, pointing out that hedge funds can lower portfolios’ overall risk during equity bear markets. “You could have two investments

that, judging by the standard deviation, could be high risk. But when you put them together, they could lower the risk for the portfolio overall,” he says. “You have to look at risk at the portfolio level, at how much you are paying for that risk, and the most important thing is to look at the investor’s objectives.” The lawsuit ultimately speaks less to the different allocation strategy itself than that allocation’s underperformance during a time period when U.S. equities performed well, he says. “Had the funds outperformed, I doubt the lawsuit would have been filed,” he adds.

### 3. High Fees

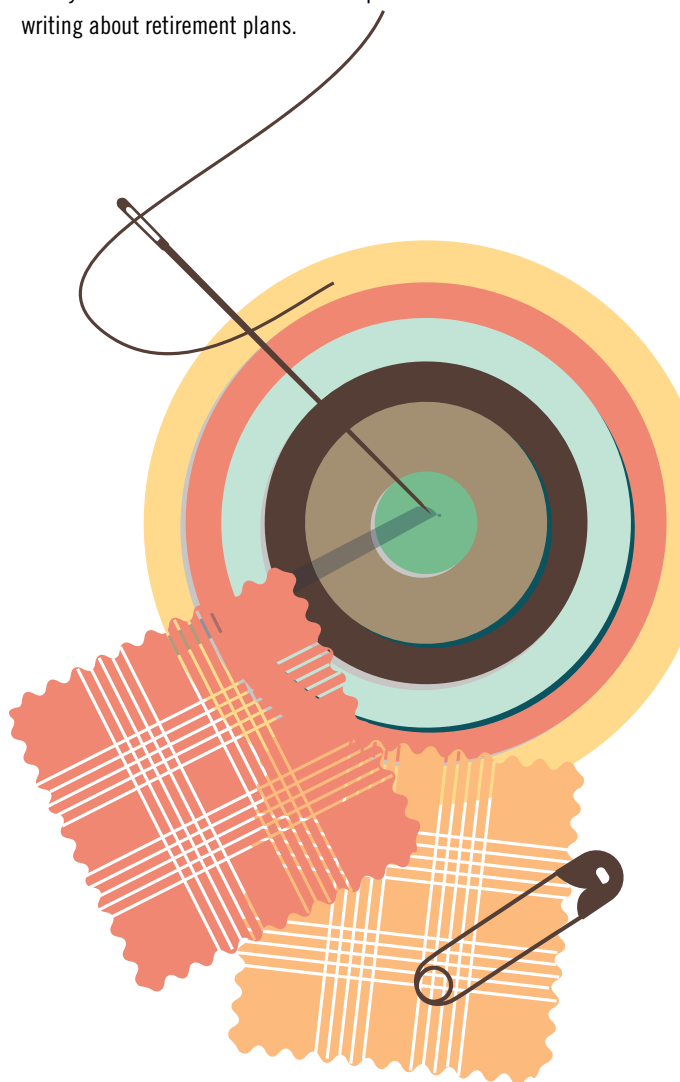
The Intel custom target date funds average 130 basis points in fees, Presley says. “That’s one of the primary reasons we suggest to our clients that they don’t use these funds,” he says. Intel’s 401(k) plan has a good lineup of core funds, he says, and participants “have the ability to build a very low cost, diversified portfolio for much less than that.”

Asked about the fees, Presley says, “Part of it is that they are using hedge funds and private equity, which tend to be higher cost. The other part of it is that even for the equity allocations, they’re using actively managed funds, which tend to have higher expenses than index funds.” Of course, sponsors don’t have to pick the cheapest funds, but the ones with the best overall value for that plan’s participants.

However it turns out, Lawton says the Intel lawsuit raises important issues about using custom funds. “My gosh, the people at Intel must be pretty sharp: They have the resources to hire the best people in the industry,” he says. “And yet, here is this lawsuit that says they are using the wrong underlying investments

in their custom funds, that they are very expensive and performed poorly. This is a test case to show whether it can happen to any company out there. If it can happen at Intel, with all their sharp people, could it happen anywhere?” **N**

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





# MAKING THEIR MARK

This year's crop of "young guns" may be young,  
but they're already having an impact.

BY NEVIN E. ADAMS, JD





NAPA  
**YOUNG  
GUNNS**

TOP PLAN ADVISORS UNDER 40

2016





RISA may now be four decades old, and the 401(k) entering its second generation, but most young advisors still aren't focused on that as a career focus.

"Attracting people to our specific industry is a challenge," acknowledges Bill Chetney, CEO, GRP Advisor Alliance. "It is hard to articulate what we do to an outsider. This is a tough and competitive business with often seemingly thankless roles, regulatory backlash and service provider confusion."

"We find that recruiting young advisors can be challenging," notes Brian Traverso, of the ROUSH Investment Group in Fresno, Calif. "I don't feel they understand the true nature of the business and are attracted to how their perception of the business can accommodate their personal/social life. Often times they have preconceived notions that work life consists of fine dinners, golfing, entertaining, etc. and not the true effort behind it."

"The challenge I have found in recruiting new advisors is that if I find someone already in the industry, they want to focus on wealth management because that is what they have been doing already," observes Eric Blofsky, Co-Founder / Plan Consultant at (k)ornerstone 401k Services, and a 2015 "Young Gun." Moreover, he explains that, "If I hire someone new to the industry, I have to take away from my prospecting/service time to train them in all aspects of the business."

Even once they are engaged with this business, challenges remain. "Young advisors face the challenge of balancing the daily workload that comes with servicing their plans while also trying to concentrate on consulting and prospecting, both of which demand additional attention due to the longer sales cycle and regulatory environment of retirement plans," explains David Reich, EVP, Head of Retirement Partners & Distribution Strategy at LPL Financial.

Indeed, while retirement plans may not have caught the attention of all, those who have been drawn to the profession are a

prized commodity. "Younger advisors who are already licensed, have a small book of business, and are poised for growth are in very high demand across the country," notes Randy Long, Managing Principal at SageView Advisory Group.

### 'Drawing' Runes

But the question remains: how best to find, much less attract and retain that next generation of industry leadership?

"There are so many avenues into our arena with an increasing demand for diversity and no road map — we are all managing on the fly," observes Chetney, who taps into "industry family, friends, alumni, vigorous networking and internships" to find outstanding candidates. He also invokes that sense of mission so critical to Millennials who are looking to make a difference: "a clear focus and that is making a positive impact on millions of Americans' savings outcomes."

And there's no overlooking the elephant in the room: compensation. "There is a fine line between production- or incentive-based compensation and their salary needs, particularly with margins getting compressed more and more," notes Steven Dimitriou, Managing Partner at Mayflower Advisors, LLC. "In the past, I would say that educating young advisors and getting them experience was a challenge, but we find that to no longer be the case. There are ample education opportunities available and enough business activity that their exposure to nuances of the industry occurs readily."

A sense of community is also key. Long cites SageView's "great work atmosphere and nurturing community," complete with quarterly volunteer opportunities throughout the year to support local communities and semi-annual internal events to allow young advisors to network internally and learn best practices from more tenured advisors.

Reich notes that younger advisors continue to look for guidance and training as they grow their practice. "They want to be affiliated with a company that will advocate for them, that will be forward-thinking and who has programs that provide solutions for the issues that they face in their practices."

However, those commitments can be tough to sustain in today's environment.

*Continued on Page 34 »*



**T**he first thing to know about this year's crop of "Young Guns" is that they may be young, but they're not inexperienced; 19 of this year's Top 50 have between 10 and 15 years of experience with workplace retirement plans, and eight have more than 15 years. The remaining 23 still have 5-10 years of experience working with workplace retirement plans. That goes a long way toward explaining how half work with somewhere between \$250 million and a billion in plan assets, and 24 with plans that add up to more than \$1 billion in assets. And why, even at this relatively early stage in their careers, they have garnered some remarkably astute observations on life, the retirement business and life inside the retirement business. Here's what some of this year's class said was the most important thing they've learned in their careers.



Always be honest. Always do what is right for the client. Your listen-to-talking ratio should be 75-25, and never allocated more towards talking. If you say you are going to do something — do it! Set appropriate expectations for both parties at the beginning of any relationship — business, personal or otherwise. — *Alexander Assaley*

Be a listener not a talker. It doesn't matter if you are working with the CEO, CFO or the person out on the factory floor, listen to their needs and then approach them with a solution. Be confident, creative and dynamic in your message when speaking to participants. This builds trust which leads to participants taking action. — *Jessica Ballin*

You're going to have good days and bad, but you have to focus on the most important thing: your integrity. What takes years to build can take minutes to destroy. — *Justin Bogart*

Be patient. That includes being patient with plan sponsors, with participants and with potential clients. — *Goran Bojavski*

Work hard and treat everyone the way you want to be treated and everything else will fall in place. If you show that you can work hard and treat people well, more people will want to work with you. — *Julie Braun*

While it is fun to gain a new plan client, it is most rewarding and profitable to optimize the design and education strategy of an existing client with excellent growth potential. — *Clay Brinson*

The standard way of doing something is not always the best. You should forget about winning and losing, but adhere to the process that leads to winning. — *Eric Brunton*

The most important thing in this business is forming and caring for great relationships. Clients are at first surprised by how much we care, how loyal we are and how we go the extra mile and then they grow to love us for it. — *Brian Catanella*

Quality service is paramount to sustainable and long term success and growth. — *Shawn Christiansen*

If you believe in what you're doing, you'll find success. I'm motivated by the idea that my work helps make other people's lives better. We've got a unique opportunity, and therefore a unique responsibility, to help people pursue a dignified retirement, and that excites me every day. — *Jake Connors*





Advisor	Firm	Firm Partner
Alexander Assaley ★★	AFS 401(k) Retirement Services	Commonwealth Financial Network
Jessica Ballin	401(k) Plan Professionals	Independent Financial Partners & LPL Financial
Justin Bogart	SageView Advisory Group	SageView Advisory Group & Cetera Financial Group
Goran Bojovski ★	Bank of America Merrill Lynch	Bank of America Merrill Lynch
Julie Braun ★★	Morgan Stanley	Morgan Stanley
Clay Brinson	Northwestern Mutual	
Eric Brunton	Bank of America Merrill Lynch	Bank of America Merrill Lynch
Brian Catanella ★	UBS Institutional Consulting Group	UBS Financial Services
Shawna Christiansen	Retirement Benefits Group	Independent Financial Partners & LPL Financial
Jake Connors	Compass Financial Partners	Compass Financial Partners & LPL Financial
Brady Dall ★★	401(k) Advisors Intermountain	Independent Financial Partners & LPL Financial
Jesse Daniels	Mercer DC Advisors	
Joshua Dautovic	Graystone Consulting	Morgan Stanley
Kelli Davis	Compensation Systems	MassMutual Retirement Services
Mark Delp ★	Wells Fargo Advisors	Wells Fargo Advisors
Christopher Foster	The FDG Group	UBS Financial Services
Ryan Gardner	Fiduciary Investment Advisors, LLC	
David Griffin ★	Atlanta Retirement Partners	LPL Financial
Austin Gwilliam ★★	Global Retirement Partners	Global Retirement Partners & LPL Financial
Erin Hall	Wells Fargo Advisors	Wells Fargo Advisors
Seth Hoffman	A.P. Lubrano & Company, Inc.	AXA Equitable Financial Services
Zach Hull	Compass Financial Partners	Compass Financial Partners & LPL Financial
Trey Jamison ★	Chase Dominion Advisors	LPL Financial
Jason Jeskey	Global Retirement Partners	Global Retirement Partners & LPL Financial
Chris Karam	Sheridan Road Financial	Independent Financial Partners & LPL Financial

The ★ denotes previous year's Young Guns winners.

Advisor	Firm	Firm Partner
Joe Kendall	Mayflower Advisors	Wells Fargo Advisors
Shawn Kersjes ★	PearlStreet Investment Management	
Shale Latter	CapTrust Advisors, LLC	Wells Fargo Advisors
James Lukezic	Oppenheimer & Co.	
Joseph Matis ★	Morgan Stanley	Morgan Stanley
Tom Mayer ★	Shepherd Financial, LLC	
Emily Minnich ★	UBS Financial Services	UBS Financial Services
Eric Mitchell	Retirement Plan Advisors	Cambridge Investment Research, Inc.
David Montgomery	Fidelis Fiduciary Management	Independent Financial Partners & LPL Financial
David Morehead	Retirement Benefits Group	Independent Financial Partners & LPL Financial
Christopher Nickoloff	Sheridan Road Financial, LLC	Independent Financial Partners & LPL Financial
Dan Peluse ★	Wintrust Wealth Management	
Jeff Prince	ProCourse Fiduciary Advisors, LLC	
Nicholas Ravello	Wells Fargo Advisors	Wells Fargo Advisors
Joey Rose	The Noble Group	Raymond James
Nathan Sharp	InTrust Fiduciary Group	InTrust Fiduciary Group
Walker Shiflet ★	Bank of America Merrill Lynch	Bank of America Merrill Lynch
Ben Smith	Paradigm Group Retirement Services	LPL Financial
Jonathan St. Clair ★	SageView Advisory Group	SageView Advisory Group & Cetera Financial Group
Craig Stanley ★	Summit Group of Virginia LLP	
Brent Teague	Oswald Financial	Global Retirement Partners & LPL Financial
Timothy VerSchure ★ ★	Lakeside Wealth Management	
Doug Webster ★	SageView Advisory Group	SageView Advisory Group & Cetera Financial Group
Travis Whitten	CAPTRUST Financial Advisors	CAPTRUST Financial Advisors
Brian Wiese	Morgan Stanley	Morgan Stanley



The ★ denotes previous year's Young Guns winners.





Never become content with the current state of things. When business is good and your clients love you and you are growing it is easy to get into a routine and forget to challenge yourself. You must continue to look at where the puck is going and prepare for the next shot. — *Brady Dall*

“Why be average?” This question was posed to me nearly 10 years ago and it continues to shape me personally and professionally. — *Jesse Daniels*

Reputation is all that you have. Never compromise. — *Joshua S. Dautovic*

401(k)s and defined contribution plans have become the primary source of retirement savings for the majority of workers. For many, I am their only resource to ask questions about their retirement. Remembering to be understanding and respectful of their circumstances is the most important lesson I've learned in my career. — *Kelli Davis*

Make it relatable and personal. Participants are much more likely to improve their behaviors when they understand not only what you want them to do but also how this will help them. — *Mark Delp*

Stand for something; be it retirement readiness, or the effectiveness of Plan Design in facilitating outcomes (Auto-Enrollment, Auto-Escalation, Re-Enrollment, etc), or advocating for no employer stock in a plan given the risks, etc. Lay out the pros and cons of the position clearly and concisely so the Plan Sponsor can make an informed decision. — *Christopher Foster*

Do what's right for the client and the rest will take care of itself. — *Ryan Gardner*

Clearly articulate what you are going to do for a client. And then execute it. — *David Griffin*

Always do the right thing, no matter the consequences. — *Austin Gwilliam*

When all you have is a hammer, every problem looks like a nail. A good advisor continues to learn and improve the quality and number of tools in their tool box because every client and situation is different and needs to be treated with thoughtfulness, creativity and care. — *Erin Hall*

There is a difference between working hard and working smart. I treat all clients and business relationships with respect and will do everything possible to protect my client's interests. — *Seth Hoffman*

In the end, doing what is best for plan participants will benefit everyone. A more secure retirement for participants improves outcomes for the plan sponsor, the plan service providers, social welfare programs, and most importantly the participants and their families. — *Trey Jamison*

I've learned that developing a true connection with each of my clients is of utmost importance. In order to develop such a connection, it is important to be genuine and true to your word. — *Jason Jeskey*

If you describe potentially complex and intimidating investment and retirement concepts in an understandable way your customer will trust you. Once you have that trust, your customer is then your client for the long haul. — *Chris Karam*

Have the highest standards of business ethics... Check and then double check everything. Never assume anything ever. — *Joe Kendall*

Work for a life not a living. — *Shawn Kerjes*

Maybe I'm old fashioned, but I believe that giving a high level of client service, keeping up with regulations in the industry, and always doing what is right is the best way to be successful in this business. — *Shale W. Latter*

Patience is a virtue in Fiduciary Consultancy and carries with it perhaps the longest sales process in the financial services industry — a travail that must be appreciated as a marathon and not a race. — *James Lukezic*

Be able to speak with all types of employees; from articulating your value and how you will improve the company's plan with the executives of the company to helping workers differentiate a stock from a bond. Most people know they want to retire but don't know what to do to achieve that goal. You can have all the greatest investment options at the lowest cost, but if the employees don't utilize it properly, they will not be successful. — *Joseph T. Matis*

Trust, trust, and trust. Our industry is built on trust; without it, we have nothing. — *Tom Mayer*

Listen. It is so important to pay attention to the details. Whether it be listening to plan sponsors or participants, they appreciate my thoughtful follow up and attention to detail. — *Emily G. Minnich*

My parents raised me under the golden rule, “So in everything, do to others what you would have them do to you” (Matthew 7:12) which I apply to both my personal and professional life. I've learned to put clients and their needs first. To quote my late grandfather, “Be the job, big or small, do it right or not at all. Once the job has begun, do not quit until it's done.” — *Eric Mitchell*





Strong character and integrity are paramount. I do things to the best of my ability and act with integrity and good character simply because I feel that's the right thing to do. — *David M. Montgomery*

The right thing is not always the easy thing to do, but is the most important thing to do. — *David Morehead*

Stay patient! From the lengthy sales cycle, to onboarding a potential client, to waiting for the results of an implemented service model to improve participants' situations, patience is always the key. — *Christopher Nickoloff*

You can never be all things to all people, so focusing your efforts on clients who truly understand your value will produce long lasting and successful relationships. Always put your clients' needs first and the rest will take care of itself. — *Dan Peluse*

Do the right thing. Sometimes clients might want to act in an unethical way and severing ties, even though it means a loss of business is the right thing. — *Jeff Prince*

If you are an expert with integrity, you will never have to sell a thing. — *Joey Rose*

Transparency and honesty are crucial to effective client relationships. — *Nathan Sharp*

Taking care of your clients at the corporate/institutional level is critically important, but ultimately what we do is all about empowering participants to effectively save for retirement. — *Ben Smith*

Always do what you promised. Be honest and ethical above all else. — *Jonathan St. Clair*

If it doesn't feel right, it's not right. Trust your instinct at all times. Don't do something just because "that is the way it has always been done." Instead, ask yourself, "Why is it done this way?" The answer may surprise you and lead you in a completely new, exciting and enriched direction we can all benefit from. It's really easy to help a company offer a retirement plan, but it takes a lot of hard work, time and counsel to help a company create a truly successful retirement plan for their employees. Go the extra mile for them. — *Craig Stanley*

It is not only important to build relationships with your clients to allow you to better serve them, but with other service providers as well. Investment, recordkeeping, and TPA providers relationships are valued. These relationships across all service providers support our goals of a better retirement for participants and a better plan for employers. — *Brent Teague*

Do the right thing and the right things will happen. Treat your clients, or staff and your peers with respect and you will earn their respect in turn.  
— *Timothy VerSchure*

Both plan sponsors and participants want to work with advisors that are knowledgeable. Know when to be firm and resolute in your recommendations, but only after taking the time to listen and understand the challenges the organization or participant is looking to accomplish. — *Doug Webster*

Be passionate about what you do. We are in an industry that can change lives. I know that financial stresses are a huge factor in today's society, and I get up every day knowing I can help a Plan Sponsor and ultimately their valued employees retire on their own terms. — *Travis Whitten*



“There used to be lots of excellent training programs that have fallen wayside due to budget cuts and shareholder pressures,” notes Chetney. “We really have to take training and mentoring into our own hands. The prolonged regulatory reform is confusing plan sponsors, participants and practitioners. It is more important now than ever to work together.”

### Starting Points

So how did this year’s crop of Young Guns find their way into the business of retirement plans?

Well, for many of them, that recruitment started very close to home — at home, in fact. David Griffin of Atlanta Retirement Partners says his father taught him how a qualified plan works when he was just 15 and running his own lawn business. “I learned from him the power of compounding and how anyone with proper planning can accumulate a large retirement account,” Griffin recalls. Erin Hall, of Wells Fargo Advisors, LLC, cites a number of influences, but notes that her most important mentor continues to be her father. “At each stage in my life and career he has offered new guidance to help me be the best I can be,” she explains, noting that “now as I work as a financial advisor, a role that I can see myself doing for the rest of my career, my dad helps to give me the perspective of someone who is retired. He shares what he thinks about now, what his concerns are as he spends all of the money he and my mom have worked hard to accumulate over their working years.”

Morgan Stanley’s Joseph Matis cites his business mentor and father, Joseph M. Matis. “He began working with retirement plans in the early 1980s and explained to me a long time ago why working with retirement plans is so rewarding. He said, ‘This is how you can work with the most people who truly need help in planning for retirement.’ That has stuck with me and is the reason I enjoy working with retirement plans,” Matis says. For Retirement Plan Advisors’ Eric Mitchell, it was “Mark Mitchell... he’s consistently the most productive and profitable advisor in our company, it doesn’t hurt that he’s my father. He’s taught me how to treat people, what works and what doesn’t.”

David Montgomery also cites the example of his father, Mike Montgomery of Montgomery Retirement Plan Advisors. “I’ve

always had a very good relationship with him and knew he was a man of exceptional character and integrity and was good at what he does, but I never truly grasped that until I began working with him in 2011.”

Brady Dall notes that his father Corby not only “raised me in this business,” but that “he has always treated me as an equal allowing me to provide direction and leadership in the business. I feel very blessed to help Americans retire on their terms all while spending time and learning from my dad. I hope to continue the family legacy as the business grows.”

For some it wasn’t so much a passing of the torch, as the experiences and influences at home growing up. Alex Assaley, who has also made the list of top young advisors three years running and is co-chair of this year’s NAPA 401(k) SUMMIT, saw firsthand the challenges of financial planning when his father, a financial advisor, passed away unexpectedly when Alex was just 17. “As a junior in high school, I had to grow up very quickly — working after school and on weekends to have income for my needs and help out for the family,” he explains. “Though my father passed too soon, he instilled in me a lot about the importance of working hard, being honest, developing lifelong friendships and partnerships around trust, integrity, and humor, and being involved in the community. These experience drove me to help others make complex financial and retirement topics easier to understand and manage.”

David Morehead of Retirement Benefits Group says that his passion for working on retirement plans stems directly from his upbringing. “My father worked construction while my mother was a deli manager at a local grocery store,” he explains. “They have gone through their careers as a generation in need of guidance and expertise where little to no services have been historically available. I take pride in working with folks like my parents who need someone, either at the committee level or individual level, to give them a boost when it comes to planning for their retirement. When those individuals get to the point where they are able to confidently retire I get a very strong sense of gratification that I played a role in helping them pursue this goal.”

That said, the vast number of acknowledgements from this year’s Top 50 went to a long list of advisors and mentors along their careers. Sometimes that mentoring was “official,” but more often than not it was simply

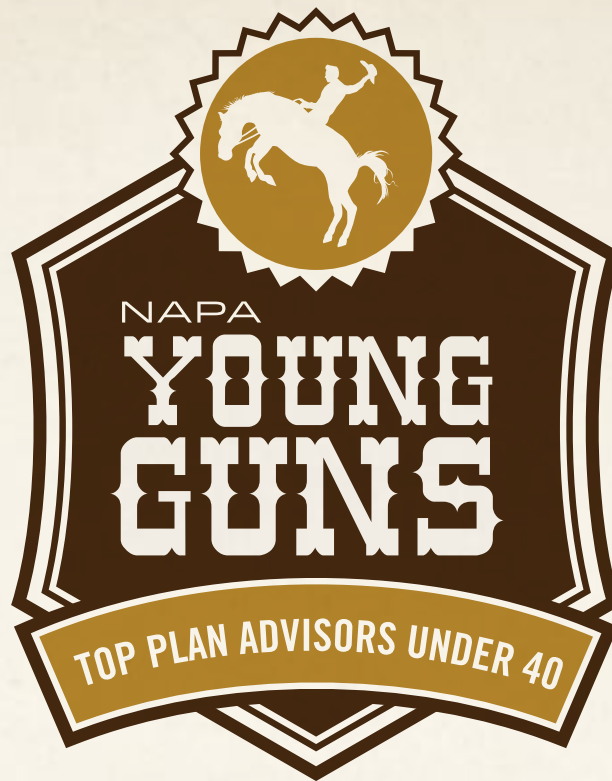
“  
**Younger advisors who are already licensed, have a small book of business, and are poised for growth are in very high demand across the country.”**

— Randy Long,  
SageView Advisory Group

caring and committed individuals willing to make the time and expend the energy to help these individuals succeed. For example, Jessica Ballin of 401(k) Plan Professionals started in the business right out of college, working with Chris Lee, a financial advisor who had been in the business for 20 years. Morgan Stanley’s Julie Braun notes that advisor Chris Dubie “took a chance” 8 years ago by hiring a 25-year-old to help him with his business.

Summit Group of Virginia’s Craig Stanley says that when he got started, he would attend the 401(k) SUMMIT — where this year, and likely not coincidentally, he is serving on the steering committee. While there he says he would “find the best advisor in the room, and corner them to ask as many questions as I could. I took their advice plus everything I learned in the sessions to build the retirement plan practice we have today, which didn’t exist before I joined the firm. My success in retirement plans, and ultimately the success of our clients’ plans, is completely attributed to those top-tier advisors that gave a few minutes of their time.”

You know who you are. And I’m betting that the individuals on this year’s Top Guns list have thanked you along the way. As do we all. 🐉



“The NAPA Young Guns demonstrate they have what it takes as leaders, as advisors, and as the future of the retirement industry. We at LPL Financial congratulate the 2016 winners.”

– David Reich EVP, Head of LPL Retirement Partners



**15** of the **top 50** are LPL advisors. A special congratulations to:

Jessica Ballin

Austin Gwilliam

David Montgomery

Shawna Christiansen

Zachary Hull

David Morehead

Jake Connors

Trey Jamison

Christopher Nickoloff

Brady Dall

Jason Jeskey

Ben Smith

David Griffin

Chris Karam

Brent Teague

Nominated and voted on by industry peers and selected by a NAPA member committee based on business profile and future industry leadership potential.

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FEATURE

# An 'Open' Door



The Obama  
Administration  
Signals an Open  
Mind About  
Open MEPs

BY JUDY WARD

here's strength in numbers.

"Right now, small businesses with less than 100 employees are probably paying 1½ points in fees on average," says Jamie Kalamarides, senior vice president of institutional investment solutions at Prudential Retirement in Hartford, Conn. "If they got together with 1,000 other small businesses, they could be paying less than 50 basis points."

Open MEPs (multiple employer plans) can help accomplish that, and they previously saw a lot of growth. But then came U.S. Department of Labor (DOL) Advisory Opinion 2012-04A, which basically ended the momentum for open MEPs. "It is not that the DOL doesn't *like* them — they have said that you can't have them," says Bob Toth, a Fort Wayne, Ind.-based employee benefits attorney who had filed for the advisory opinion on behalf of a MEP provider. "The advisory opinion said that you can't have unrelated employers in a MEP unless there is a commonality among the employers, and the employers are exercising direct or indirect control over the MEP."

But some in the industry wonder if the Labor Department's late 2015 guidance on state-run retirement plans, which gave the okay for states to use the MEP approach, indicates that its opposition to private sector open MEPs could change. "I can only hope that the Department will loosen its rules, because it is willing to take these steps with the states," Toth says.

And then came President Obama's 2017 Budget, which, among other things, indicated support for Congress to develop a legislative solution that would open up multiple-employer defined contribution plans to any unrelated employer provided that the service provider promoting and administering the plan, the participating employers and the plan itself meet certain conditions — and make no mistake, the administration has a number of conditions in mind.

#### The DOL Outlook

Open MEPs still can speak to the concerns that many small employers have about sponsoring a retirement plan, says Bill Harmon, Denver-based senior vice president at Empower Retirement. "Small businesses are afraid of the liability associated with making decisions, the cost of the plan, and the complexity of it," he says. "But when you get into these packaged approaches, they get an investment lineup, they get buying power, and a lot of the decisions already have been made, in terms of plan design and especially investments."

In a November 2015 interpretive bulletin, the Labor Department discussed a state-sponsored MEP as one of several viable options for a state-run retirement plan. States can organize an individual marketplace for IRAs aimed at citizens who don't have access to an employer-based plan, the DOL has said. Otherwise, the Labor Department mentioned several allowable ways for a state to do an ERISA plan-based approach: develop and administer a prototype plan; organize an online marketplace to connect employers with private-sector plan providers; or put together a MEP.

Some states already have issued RFPs (requests for proposal) to providers to bid on helping with administration of these new retirement offerings."

Some states already have issued RFPs (requests for proposal) to providers to bid on helping with administration of these new retirement offerings, Harmon says. "Most of what we've seen so far is the IRA approach," he says. But he thinks the DOL's openness to using MEPs for state-run plans will bring the MEPs issue to the forefront again, and get people talking about it.

In light of its opposition to private sector open MEPs, Toth found the DOL's reasoning in permitting state MEPs curious. "Think about this. Some states already have passed laws that allow MEPs. So now the DOL was stuck: We've got all these state laws that don't mesh with what the DOL has said," he says, referring in particular to the DOL's requirement that the employers have a commonality. "What the DOL said is that if a state sponsors a MEP, the state's special responsibility creates that 'commonality' because of the state's inherent interest in providing for the interests of its citizens." So the Labor Department now "has taken the MEP concept developed by the marketplace and banned the marketplace from doing it, but the DOL will allow states to do it," he says.

Sources say it's unlikely the Labor Department will reverse its 2012 advisory opinion, however. "I'm not sure that I see them going back and revisiting this," says David Certner, legislative counsel and director of legislative policy for government affairs at AARP in Washington. "For one thing, I don't think they have the time. They



are still working on bigger rules they need to get out,” he says, citing new fiduciary rules. “It is probably more likely at this point that you’d see legislation than have some regulatory change,” he adds.

A DOL reversal of the open MEPs advisory opinion seems relatively unrealistic, says Adam Pozek, a partner at St. Paul, Minn.-based DWC ERISA Consultants, LLC. “The DOL would have to take it upon itself to basically go back on an opinion that it issued only recently, in 2012,” he says.

“And that advisory opinion was pretty consistent with 30 years of previous advisory opinions,” Pozek continues, referring particularly to prior opinions on ERISA-based health and welfare plans. “What the DOL was really saying is that a lot of the reasoning it had used on health and welfare plans applies to retirement plans as well. If you dissect 30 years of advisory opinions and look at the underlying reasoning, and then you step back and say, ‘These are all ERISA plans,’ it is not surprising that they issued the advisory opinion on open MEPs. Based on the DOL’s reasoning, unless there is a law change from Congress, there is no reason for the DOL to take a different position.”

### The Legislative Option

Which brings us back to the president’s budget, and its implied opening for Congress to act. For open MEPs to regain momentum, sources say Congress most needs to address these three issues:

#### *Permit Open MEPs of Unrelated Employers*

The 2012 advisory opinion focused on the one thing needed for MEPs to really thrive, says Kalamarides, who testified at an October 2015 Senate subcommittee hearing on retirement plan options for small businesses. “The DOL said you can’t have a MEP of unaffiliated employers without a commonality of interest,” he says. Pragmatically speaking, he explains, that means the employers must share a common employee base — which seriously limits the ability to form open MEPs. “That is the essence of what an open MEP is,” he says of pooling unrelated small employers. Open MEPs can’t work unless Congress essentially reverses the DOL’s stand on that issue.

Under current regulations, the businesses in an open MEP have joint liability if one business does something wrong.”

#### *Clarify the Fiduciary Duties*

Providers of MEPs and closely related “aggregation program” approaches have dealt with fiduciary responsibility in varying ways, Pozek says. “Some still put a lot of burden on plan sponsors. If Congress were to act, they should address: Who is responsible to make sure that everything is done in a compliant fashion?” he says. “It’s a complex-enough area that it is not always easy for a small employer to recognize what type of fiduciary support it is getting. That piece is very critical to flesh out in whatever ends up as the next generation.”

AARP thinks the potential legislation should require MEP providers to serve as fiduciaries, says Certner, who testified at the October hearing. “Most MEP providers don’t want to take on fiduciary responsibility. In most cases, fiduciary responsibility is then left on the employer,” he says. “But the whole idea is to take fiduciary responsibility off employers. So it has to be made clear: Who is the fiduciary for what?”

Lance Schoening, director-retirement services at Des Moines, Iowa-based Principal Financial Group, also testified at the October hearing. He has a suggestion on how to define employers’ fiduciary duties for open MEPs. “We would like to see the fiduciary responsibilities of adopting employers be limited to having a prudent process to select a MEP provider, submitting contributions in a timely fashion, as well as some ongoing monitoring,” he says. “That would give the adopting employers some ease of mind in terms of their ultimate responsibility.”

#### *Change the “One Bad Apple” Rule*

Under current regulations, the businesses in an open MEP have joint liability if one business does something wrong such as not submit contributions on time, Kalamarides says. “They need to remove the ‘one bad apple’ rule,” he says. “If one small-business owner in a MEP does something wrong, we don’t want it to contaminate all the small businesses in the MEP.” The other employers in a MEP should not pay a penalty for the misdeeds of one employer in the MEP, Schoening believes. “Today, if there’s a risk of a fiduciary penalty because of an unrelated employer that is part of the plan, that is a problem for employers,” he says.

This issue has a lot of bipartisan interest on Capitol Hill, Certner says, adding that MEPs provisions more likely would get attached to a larger bill than pass as stand-alone legislation. There was some talk last year about doing that, but it didn’t happen, and this election year provides less opportunity for progress. “It is a little trickier this year, because there is a lot less legislation moving overall,” he says. “But this is the kind of issue, with the right vehicle, that could end up moving.” If not this year, it could realistically happen in 2017, he says.

Indeed, the MEP concept has already enjoyed bipartisan support on Capitol Hill, and there have been a number of bills introduced that include it, notably Senate Finance Committee Chairman Sen. Orrin Hatch’s SAFE Retirement Act, the Small Businesses Add Value for Employees (SAVE) Act of 2014 (H.R. 5875) sponsored by Reps. Ron Kind (D-Wis.) and Dave Reichert (R-Wash.), and last year Sens. Susan Collins (R-Maine) and Bill Nelson (D-Fla.) introduced the Retirement Security Act of 2015 (S. 266), as did Reps. Vern Buchanan (R-Fla.) and Ron Kind (D-Wisc.) in the House of Representatives (H.R. 577).

“I think we will get something. The question is, when are we going to get it?” Pozek says. “We’re in an election year now, so the odds that it will happen this year seem unlikely. But after we get through the election, there is bipartisan support to expand coverage in retirement programs, and open MEPs are one way to accomplish that. I would be surprised if in the next 24 months something doesn’t get passed.”

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

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BY DONALD B. TRONE

## Trust Rules

These 10 rules will always define a higher professional standard of care than any regulations that can be promulgated by regulators.

W

e all want to be trusted and regarded as a person with integrity. In turn, we want to feel emotionally engaged and inspired by the companies we work for. We want to work for, and with, firms and organizations that can be trusted.

The title of this column is a double-entendre. We all know about the importance of trust. There's even a portion of our brain that is hard-wired to pick up and process stimuli associated with trust. For a person to say that they trust you is a response that is second only to emotions associated with love. In fact, many times trust and love are indistinguishable.

And yet we're forever looking for ways to get around *trust rules* — those non-negotiable, unbreakable imperatives for building trust that have been handed down for thousands of years. Our nature is to look for ways to get around the rules.

The DOL believes that it has to promulgate a new fiduciary standard because it doesn't believe we can be trusted."

Bayer, the pharmaceutical company, is running a series of commercials in which a person is handed a note stating that the individual is about to have a heart attack. They're very effective because you can't help but stop and think about what you would do if you received just such a note. (Of course, you would take your Bayer "baby aspirin" — but what else would you do?)

We can draw a similar analogy to trust. Rarely are we forewarned of an approaching ethical dilemma. How we respond will depend upon whether we are following trust rules. So too, our ability to confront an ethical crisis depends upon the frequency with which we apply trust rules to assess our own conduct and actions. The military has a saying: *In a time of stress, you will fall to the level to which you have trained.*

## 10 Trust Rules

We know trust is a critical factor if you want to succeed in any industry. Even among thieves, there is a concept of trust and honor (restating a classic idiom and proverb).

Now is an especially good time to talk about trust. For the past year, the integrity of the retirement industry has been slurred. The DOL believes that it has to promulgate a new fiduciary standard because it doesn't believe we can be trusted.

We need to demonstrate otherwise.

What follows are 10 trust rules. These truths are universal and can be applied to anyone in any situation. We're going to count backwards, saving the most critical trust rules for last.

To be *the* trusted advisor, you must make your life and work meaningful so that you can be of service to others."

### Rule #10: Be Patient

It takes time to build trust; there are no shortcuts to becoming a trusted advisor. Never forget that if trust is broken, you may run out of time before you're ever given a second chance.

### Rule #9: Be Reliable

Clarify client expectations, goals and objections, and deliver on promises. Be transparent and consistent with your decision-making process.

### Rule #8: Be Competent

Demonstrate that you have acquired a body of specialized knowledge that can be attained only through additional education, training and experience. And that you can apply that knowledge to a particular scenario, and do the requisite work. (Note that one of the problems with the DOL's repromulgated fiduciary standard is that it fails to account for the additional training, experience and education that is required before a person can effectively serve as a fiduciary.)

### Rule #7: Be Seen

Step forward when you witness an inappropriate activity. There's a highly infectious eye disease that is spreading throughout the industry called "blind eye." Worse yet, not everyone considers "blind eye" debilitating. There are some groups that even consider the disease proof that you might make a great "team player."

### Rule #6: Be Accountable

Money can't buy trust. You can't pay someone to trust you or to trust your brand. No amount of money thrown at hiring or firing people, painting over a tarnished logo or public relations can overcome a breach of trust.

### Rule #5: Be Courageous

We work in an industry in which many have allowed legal opinions and compliance requirements to become the surrogate for courageous and ethical decision-making. We need checklists to make sure that we have not

omitted a critical step or practice. But we must guard against a "checklist mentality" where we forgo objective judgment because we're able to put a checkmark in a box.

### Rule #4: Be Purposeful

People can sense when you are coming from a genuine place and responding to a higher calling. Even in the animal kingdom, the leader is the one that is most trusted to be equitable in meeting the varied demands of the herd or pack.

### Rule #3: Be Conscientious

Trust is values-based, and nothing erodes trust faster than evidence of character flaws. It's why your reputation is so important, and why you need to be deliberate in whom you work for, associate with and support. Conventional wisdom used to be that "charisma" was the most desired trait in a salesperson. Not anymore; today it's character. Warren Buffet has a famous saying: *"In looking for people to hire, you look for three qualities: integrity, intelligence and energy. And if they don't have the first, the other two will kill you."*

### Rule #2: Be Selfless

It takes discipline and passion to serve the long-term interests of others. This is the essence of stewardship.

### Rule #1: Be the Point of Inspiration for Moral, Ethical and Prudent Decision-making

To be *the* trusted advisor, you must make your life and work meaningful so that you can be of service to others. This is the essence of leadership.

Ten rules to live by. Ten rules that will always define a higher professional standard of care than any regulations that can be promulgated by regulators. **N**

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





BY FRED BARSTEIN

# Plan Advisors in the Catbird Seat

How can retirement plan advisors leverage their advantage over pure benefit advisors and financial planners?

**T**he catbird seat” is an American English idiomatic phrase used to describe an enviable position, often in terms of having the upper hand or greater advantage in all types of dealings among parties. Although a company may employ a number of advisors managing money and benefits, today the retirement plan advisor is in the proverbial catbird’s seat with an advantage over pure benefit advisors and financial planners. How can they leverage it?

As more companies use high-deductible plans, shifting the costs and funding liability to participants, there’s been a noticeable shift from a focus on health care plans to a convergence of benefits. This is very much like what happened with the move from DB to DC plans.

Though many benefit advisors still enjoy healthy fees, the Affordable Care Act (ACA) is dramatically changing the market. Retirement plan advisors seem more able to work with health care plans than benefits advisors are able to understand and work with ERISA plans. The convergence of benefits means that companies and their employees will have a set amount of money to deploy on benefits — and both need help from a single advisor to best manage that budget.

Other than managing cash reserves, technically wealth managers and financial planners do not work with companies. But many focus on highly compensated executives, especially the owners of privately held companies, who are likely to cash out at some point with a large pool of assets to manage. But unless these wealth managers or financial planners also manage a company’s retirement plan, their regular access to highly compensated employees is limited.


“These younger Core advisors are building their wealth management business on the backs of their retirement plan business, a complete reversal from older Elite advisors.”

The majority of the current group of Elite plan advisors (those with more than \$250-\$500 million in DC assets) built their DC practices on the backs of their wealth management businesses. A few came from the insurance world, putting them in a better position to understand benefits and holistic financial planning. Some Elites eschew rollovers and wealth management, citing the conflicts that the pending DOL fiduciary rule is trying to eliminate. But the vast majority of Core plan advisors (those with \$25-\$250 million) see the DC business as a way to grow wealth management.

These Core advisors are younger. They never knew what a DB-centric world looked like. They don’t believe that Social Security will be around when they retire, leaving DC plans and IRAs as the major source of funding for retirement. The Great Recession made all but the very wealthy more focused on retirement, not wealth management. With easy access to the mass affluent (those with investible assets of \$250,000-\$2.5 million) and even some high net worth investors through

the company’s retirement plan, these younger Core advisors are building their wealth management businesses on the backs of their retirement plan businesses, a complete reversal from older Elite advisors. They get premium access to many people who will never meet another financial advisor, along with a strong endorsement from their employer.

Today, with the convergence of benefits spurred by the ACA, which is emasculating many benefits brokers, corporate retirement advisors seem to be in the proverbial catbird’s seat. Even advisors who have a “Pyramid Practice” — working on retirement, benefits and wealth management — see retirement as the driver of growth. Retirement plans never seemed attractive to benefits brokers, in part because they are overwhelmed by the complexity of ERISA plans and investing, but mostly because the commissions are relatively miniscule.

But to execute on a “Pyramid Practice,” advisors have to either form or join a team. It’s literally impossible for one advisor to really understand all three areas and, even if they do, who has the time to work on all three? Business owners and managers do not want to be in the benefits or retirement plan business; that’s why the idea of hiring one advisor for everything is attractive. Retirement plan advisors who have a robust wealth management and financial planning practice, deal with IRA rollovers, use technology to manage smaller accounts, and can help companies and employees with the convergence of benefits will be in great demand, will command premium pricing, and will affect what’s really important — outcomes, not inputs. 

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



SAGEVIEW ADVISORY GROUP IS PROUD TO ANNOUNCE THAT JUSTIN BOGART, JONATHAN ST. CLAIR AND DOUGLAS WEBSTER HAVE BEEN SELECTED FOR THE NATIONAL ASSOCIATION OF PLAN ADVISORS (NAPA) 2016 "YOUNG GUNS" AWARD. CONGRATULATIONS TO ALL OF THE 2016 NOMINEES AND WINNERS!

As retirement plan advisors, we believe our role is to be an objective and unbiased partner, using our unique services to provide a sound retirement plan and oversight process. We'll open up the black box for you, show you how it works, and uncover issues you didn't know were there. We use clear thinking, innovative processes and our national resources to give you insights and perspectives you won't get from other firms. There may be no certainty in this business, but we can promise clarity on investing, compliance, participant behavior, and all the other issues that make plan sponsorship a difficult road to navigate. We'll help you see where you're going.



**Justin Bogart, QPFC, CIMA®**  
Retirement Plan Consultant  
West Palm Beach, FL



**Jonathan St. Clair, J.D.**  
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BY STEFF C. CHALK

# Plan Sponsor Creativity Making a Difference

Plan sponsor creativity starts at individual companies — but there is no reason to keep it a secret!

**T**here is ample evidence that retirement plan advisors add value to the private pension system. An advisor's non-investment value-adds come in a variety of ways.

First, a fundamental advisor-driven contribution stems from the simple fact that a large number of plans would not exist today if it were not for the foresight and persistence of a knowledgeable retirement plan advisor. As NAPA members are aware, most employers do not buy retirement plans — plans at the smaller end of the market need to be *sold*.

Second, plan advisors add value for plan sponsors in the form of fiduciary direction, plan committee services and participant guidance (which includes participant education, participant advice and every shred of communication that transpires in that murky netherworld between education and advice).

Recent research points to the fact that non-investment advisor services far exceed any incremental alpha that an advisor can consistently contribute to a retirement portfolio. And plans with retirement advisors are documented as having greater diversification, higher participation rates and less leakage.

## *Creative Steps That Plan Sponsors Are Making*

Plan sponsors' deposits into a tax-qualified retirement plan are restricted by the tax code. The industry accepts that restriction through the illumination of attorneys, accountants and record keepers. Financial restrictions do not, however, apply to non-cash creativity. Over the course of the numerous fiduciary training programs held by The Plan Sponsor Institute during 2015, it became evident that plan sponsor creativity is prevalent. Here are three examples.

## *Technology*

More than one plan sponsor shared staggering results of increased participation and deferral rates from the production and distribution of 3-minute company videos highlighting the benefits of the 401(k) plan, the investment choices available to plan participants and the concept of saving for one's own retirement.

In each instance, the team member on the screen was under 30 years old. Each company distributed the videos differently — one posted them on YouTube; another sent links to all employees. These companies each received a substantial payback on the time and effort — each campaign was described as highly successful and inexpensive.

## *Exclusionary Strategy*


This strategy will not be appropriate for most companies, but it is difficult to argue with the results: 100% participation. The day began as a typical retirement advisor education day and the advisor did his thing. At the conclusion of the advisor's remarks, the president of the firm took the floor and said the following: "This company is offering you free money. We are making an offer to you to accept the free money. If you do not accept our offer of free money, then I think you are stupid. I do not work with stupid people." A bold delivery that may not work for most, but highly successful as a campaign, moving the participation needle from below 70% to 100%.

## *Visual/Vocal*

An HR director described an unorthodox strategy and the corresponding steps used with plan participants and eligible employees who were not taking full advantage of the entire 401(k) company match. At each indi-

**An advisor's non-investment value-adds come in a variety of ways."**

vidual participant meeting the HR director urged participation increases. They would first discuss the 401(k) plan, the importance of saving for retirement and the matching company contribution. The discussion would then progress to "the exact amount of money the participant was refusing to accept and losing each pay period." That number would then be converted to a monthly number (with the participant multiplying the match times the number of pay periods per month) and this monthly amount was discussed. Next the same process was used to convert the monthly amount to an annual amount — again with the participant performing the math.

The final step was to have the participant sign a form stating they fully understood that they were being offered a benefit equal to "X" dollars per year being deposited into their retirement account — and that they were choosing to refuse that benefit. This process was successful in taking "full-match" participation to more than 95% in 3 years. 

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

# Thank you for your leadership, creativity, and commitment to client needs.

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BY DAVID N. LEVINE

# Legal Implications of 2016 Trends in the Advisor Community

From a legal perspective, what is likely to be coming down the pike?

**S**oon the DOL's final conflict-of-interest regulations should be public and the advisor world will know what it all means to them and their clients. But as of this writing, what the final regulations will say is unknown. So, for this quarter, I'll focus on four business trends and their potential legal compliance impacts on advisors:

- mergers and acquisition activities in the advisor space;
- wellness;
- fee disclosure and the next stages of unbundling; and
- money management and the advisor.

Each of these topics could easily be the subject of its own column, so I'll just hit the high points.

## Mergers and Acquisitions in the Advisor Space

Mergers and acquisitions activity has been increasing. Why? Because of cost pressures, regulatory changes like the conflict-of-interest regulation, and regulatory pressures.

From a legal perspective, what is likely to be coming down the pike? Additional enforcement activity, whether involving the SEC, FINRA and/or DOL, is clearly on the radar. Although each month brings different news of new topics, from QDIAs, to fee disclosure, to conflicts of interest, the key is that advisors need strong compliance policies.

SEC compliance policies have long been a staple of compliance activities; and ERISA compliance procedures are continuing their parallel rise and are high on many advisors' internal compliance radars for 2016.

Unbundling will continue and possibly expand under the conflict-of-interest rule, and is already affecting advisor services themselves."

## Wellness

Financial and health wellness programs, or a combination of the two, are great ideas. As our society has moved toward a world in which an individual's health and retirement planning are viewed as the responsibilities of that person rather than something that is part of a paternalistic, employer-guaranteed benefit, education about how to be fiscally and physically sound is more important than ever.

From a legal perspective, the key items for an advisor to focus on are:

- who is paying for the wellness program;
- how it is being paid for;
- how the advisor is being paid; and
- whether the program is consistent with the legal requirements for the funding source (such as 401(k) plan assets) paying for the program.

## Fee Disclosure and the Next Stages of Unbundling

Unbundling has often been driven by the value-added proposition of the advisor community itself. Unbundling will continue and

possibly expand under the conflict-of-interest rule, and is already affecting advisor services themselves.

From a legal perspective, as advisors diversify their service offerings — from wealth management to individual investment advice — the development of prohibited transaction exemption strategies to avoid potential regulatory compliance exposure will be necessary as advisors move forward.

## Money Management and the Advisor

As part of the unbundling trend, more and more advisors are managing money or playing a role in investment structures. There are many approaches being adopted, but a key legal takeaway is to remember that moving beyond a classic ERISA section 3(21) fiduciary role — whether in a managed account, a collective investment trust or in a multiple employer plan or other collective vehicle — results in potential ERISA conflicts and liability if the activity is not closely vetted.

## Conclusion

These are just a few of the business trends in the advisor community that can easily be missed as the advisor world turns its attention to the final conflict-of-interest rule. However, being mindful that there are many moving parts of the advisor universe is and will continue to be important — even when the conflict-of-interest rule becomes the shiny new penny we're all focusing on. **N**

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

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# How Low Must You Go?

Looks like 2016 will be another big year for 401(k) litigation, with another series of lawsuits alleging excessive fees, risky custom target-date structures and company stock held past prudence...

BY NEVIN E. ADAMS, JD



## CHEAP 'SHOT'

### Is there a new standard for “unreasonable?”

As time ran out on 2015, another of the so-called “excessive fee” lawsuits raised eyebrows throughout the retirement industry.

As has been the case in most of these, the entity being sued was a large 401(k) plan — this time perhaps one of the largest, the Anthem 401(k) plan, which has more than \$5 billion in plan assets. The class action was brought at the instigation of three participants of that plan, and by the St. Louis-based law firm of Schlichter, Bogard & Denton. And, once again, the issue raised was that the plan’s fiduciaries had fallen short of their fiduciary duties under ERISA by allowing “unreasonable expenses to be charged for administration of the Plan, and selected and retained high-cost and poor-performing investments compared to available alternatives.”

Now, unlike some of these suits, it wasn’t alleged that the fiduciaries didn’t review or monitor the plan’s investment options, nor were they alleged to have chosen funds with inappropriate revenue-sharing structures. This wasn’t a situation where the fiduciaries ignored the counsel of an advisor who told them they were paying too much for record keeping fees, or an instance where the plan fiduciaries

had taken no action following their review of that fund menu (they had moved toward less expensive options in 2013), or a challenge about the use of more expensive active management options when passive, index choices would allegedly have done the trick.

No, here what seems to have made the fund charges unreasonable was simply that that they were not the cheapest option available. Now, the plan’s investment menu was dominated by Vanguard funds, often held up in these class actions by plaintiffs’ counsel as an example of less expensive alternatives to funds on the defendant plan menus. Indeed, even for the two non-Vanguard funds on the menu, the highest expense ratio cited in the suit was 0.50%, and most were much lower. Even the plans’ target-date funds were at 0.16% to 0.18%.

That said, the plaintiff’s filing notes that if the Anthem plan had invested “in the much lower-cost versions of the Plan’s mutual fund options from December 29, 2009 through July 22, 2013 (the date when the plan effected the move to the lower cost options),” participants “would not have lost over \$18 million of their retirement savings through unnecessary expenses.”

But what seems more ominous about this particular filing is that while the plan’s move to a lower-cost institutional class of mutual fund shares in 2013 was acknowledged, it apparently wasn’t enough. “While certain of the Plan’s options after 2013 offered institutional share classes for the mutual funds, they did not, and still do not, capture the lower expenses available given the size of the Plan’s investment in each fund.”

That’s right, comparisons with both collective funds and separate accounts were presented: “Each mutual fund in the Plan charged fees far in excess of the rates Anthem could have obtained for the Plan by using these comparable products,” the plaintiffs alleged. And, taken to its logical conclusion, the plaintiffs seem to be arguing not just for the cheapest mutual fund option available, but the cheapest investment option available.

Now, it’s by no means certain that the court(s) will concur with this argument. However, should the Anthem plaintiffs’ arguments hold sway, it seems that fiduciaries — certainly those with big plans (and deep pockets) — can now anticipate being prepared to justify the choices they make, as well as the costs of those choices — relative to all alternatives.



### Alternatives-laden custom target-date fund structure draws suit

Plan fiduciaries have been sued for allegedly breaching their ERISA fiduciary duties in shifting allocations in a plan's custom target-date portfolios to what it characterizes as "risky and high-cost" investments.

The lawsuit, filed last October in U.S. District Court in Northern California, contends that starting in 2011, Intel's investment committee boosted the allocation for hedge funds in the firm's target-date portfolios from \$50 million to \$680 million, while at the same time the allocation for hedge funds in the diversified global fund rose from \$582 million to \$1.665 billion, and to private equity investments from \$83 million to \$810 million, between 2009 and 2014.

The suit, filed by former Intel employee Christopher Sulyma — who, according to *Pensions & Investments*, is fully vested in Intel's \$8.19 billion 401(k) plan and partially vested in its \$6.66 billion profit-sharing plan, also claims that participants were not made fully aware of the risks, fees and expenses associated with the hedge fund and private equity investments, or to the underperformance of the company's target-date and global diversified funds compared to their peers.

The suit claims that, as a result, "The Plans and their participants suffered hundreds of millions of dollars in losses during the six years preceding the filing of this Complaint as compared to what they would have earned if invested in asset allocation models consistent

with prevailing standards for investment experts and prudent fiduciaries."

According to the report, Intel's \$3.63 billion target-date portfolio series is the largest element in the company's 401(k) plan as of the end of the first quarter, while its \$5.82 billion global diversified fund is the biggest in the profit-sharing plan. According to *Pensions & Investments*, total limited partnership investments (which includes hedge funds and private equity, among other alternative investments) across both was \$3.93 billion.

Sulyma worked for Intel from June 2010 to September 2012. His lawsuit was filed as a class action. The case is *Sulyma vs. Intel Corporation Investment Policy Committee et al*, 5:15-cv-04977.



### Stripped of a prudence presumption, plan fiduciaries still prevail

A stock drop lawsuit has been dismissed for the second time, finding no need for a presumption of prudence to justify keeping employer stock in the plan.

This time it was JPMorgan Chase & Co. fending off claims by a group of its plan participants who had challenged its decision to leave employer stock in their plan, subjecting their retirement accounts to losses following a series of risky investments made by Bruno Iksil (a.k.a. "the London Whale"), whose big derivatives bets resulted in a \$6.2 billion trading loss for the company in 2012.

Plaintiffs in the case had revived their claim following the U.S. Supreme Court's ruling in *Fifth Third Bancorp v. Dudenhoeffer*, which set aside the so-called "presumption of prudence" for employer stock holdings in these types of plans. (The JPMorgan plan's holdings had originated as part of an employer stock ownership plan, or ESOP.)

Plaintiffs fared no better this time around, with Judge George B. Daniels of the U.S. District Court for the Southern District of New

York dismissing the suit for the second time on January 8, finding that the workers failed to state a valid claim for ERISA violations.

#### *Viable Alternative Required?*

According to the ruling, plaintiffs failed to allege any viable action the JPMorgan could have taken. The judge noted that halting investments in JPMorgan stock would have required public disclosures, and the company could have reasonably concluded that those disclosures would have harmed its stock price — and the workers' retirement savings — even more than keeping the stock in the plan.

In granting JPMorgan's motion to dismiss, Judge Daniels first found that the workers failed to demonstrate that two of the defendants — JPMorgan Chase Bank NA and the parent company — qualified as ERISA fiduciaries for purposes of the lawsuit. Daniels concluded that JPMorgan Chase Bank's status as the plan's sponsor didn't render it an ERISA fiduciary for purposes of this lawsuit, because actions taken as a plan sponsor don't trigger fiduciary liability under ERISA. Their role as the plan trustee was similarly insufficient, Daniels

said, because it operated as a directed trustee that lacked discretion to halt investments in company stock.

Daniels set out what seems to be a new standard for such actions: that *Dudenhoeffer* requires plan participants who challenge a plan's decision to continue investing in declining company stock to point to an alternative course of action that plan fiduciaries could have taken that wouldn't have been more likely to harm the plan.

This was the latest in a series of rulings by various courts in the wake of the *Dudenhoeffer* decision that have upheld the decision to retain employer stock in the plan for a variety of reasons without regard to the "presumption of prudence" that had triggered their dismissal prior to the Supreme Court's ruling, including BP, Delta Air Lines, Lehman and GM.





## TRY, TRY AGAIN

### SCOTUS scuttles a lower court ERISA decisions

Neither snow nor sleet nor dark of night could keep the U.S. Supreme Court from remanding an ERISA case back to the appellate courts in late January.

It was the second time the nation's highest court had considered the case of *Amgen Inc., et al. v. Steve Harris, et al.* The first time it vacated the determination of the Ninth Circuit, and remanded in light of the Supreme Court's decision in *Fifth Third Bancorp v. Dudenhoeffer*, which outlined the standards for stating a claim for breach of the duty of prudence against fiduciaries who manage employee stock ownership plans (ESOPs), including the rejection of the so-called "presumption of prudence" that had led to the outright dismissal of a number of these so-called "stock drop" claims.

On remand, the Ninth Circuit reiterated its conclusion that the complaint states such a claim. However, the Supreme Court didn't see it that way, reversing and remanding that decision.

The plaintiffs had alleged that Amgen violated ERISA by not withdrawing the company stock option in the plan when its executives knew or should have known that the stock's price was inflated. Amgen's stock price plunged by a third after safety concerns about its anemia drugs Epogen and Aranes became public, although the plaintiffs alleged that the company had the results of damning clinical trials since the late 1990s and early 2000s.

While the district court initially rejected the claims in light of the "presumption of prudence," a three-judge panel of the Ninth Circuit reversed after finding that the presumption does not shield Amgen because the company's pension plans did not require or encourage employees to invest in company stock. However, with its determination in the *Fifth Third* case in mind, the Supreme Court later vacated the *Amgen* holding and ordered the Ninth Circuit to take another look.

The Ninth Circuit did so in 2014, but found no reason to affirm dismissal of the investors' case, finding that the fiduciaries violated securities laws by not disclosing

the information, and thus found it "quite plausible" that stopping further investments in the stock would not harm the participants. Unfortunately, at least from the perspective of the Supreme Court's most recent assessment, the Ninth Circuit did not go on to consider whether a prudent fiduciary "could not have concluded" that the alternative action would do more harm than good.

#### Supreme Remand

However, on Jan. 25, in a four-page unsigned opinion, the Supreme Court summarily reversed for Amgen again, saying, "the Ninth Circuit failed to properly evaluate the complaint" and maintaining that the Court "...has not found sufficient facts and allegations to state a claim for breach of the duty of prudence." That said, the Court noted that "...the stockholders are the masters of their complaint," leaving it to "the District Court in the first instance whether the stockholders may amend it in order to adequately plead a claim for breach of the duty of prudence guided by the standards provided in *Fifth Third*."



## REASON ABLE?



### Oracle slapped with excessive fee lawsuit

The New Year got off to a quick start for fee litigation, with one filed alleging excess record keeping fees, imprudent investment selections and at least a hint of undue influence in the selection of the provider.

The suit, filed in the District of Colorado by the law firm of Schlichter Bogard &

Denton, alleged that Oracle allowed the plan record keeper Fidelity to be paid between \$68 to \$140 per participant rather than what the plaintiffs said would be a reasonable per head fee of \$25 for a plan the size of Oracle's. According to the complaint, the plan's participant count increased from 38,000 in 2009 to about 60,000 today, and over that same time period, the plan's assets increased from \$3.6 billion to more than \$11 billion.

The complaint goes on to note that while Fidelity had been the plan's record keeper since 1993, "defendants have not informed participants that they have not put the Plan's services out for competitive bidding in the last 26 years," though that allegation does not necessarily establish that perception as fact.

The complaint also alleged that the plan provided "at least 3 imprudent investment options," which it says "consistently underper-

formed their designated benchmarks, consistently underperformed the majority of other funds of the same investment style, charged excessive fees, and paid revenue sharing to Fidelity far beyond a reasonable rate for the services provided."

As a result, the complaint claims that "Defendants caused tens of millions of dollars in losses to the Plan at the expense of participants" by providing and retaining "more expensive funds with inferior historical performance that paid revenue sharing and generated investment management fee revenues for Fidelity."

As for that undue influence, the complaint noted that Fidelity is the sixth largest institutional holder of Oracle stock, owning more than \$2 billion in shares, and "Thus, Fidelity has the influence of a large stockholder in light of its stock ownership."

# NAPA's 2016 Industry Lists



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

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

One of the things that sets these lists apart from other published lists is that they are based on a nominating/voting/selection process that taps the knowledge of NAPA’s 10,000+ members. Look for more information about the 2016 editions of all three lists on the NAPA Net portal and in the *NAPA Net Daily*.



### SPRING

NAPA's annual list of the top plan advisors under 40 — the profession's “Young Guns” — in this issue! Congratulations to all of the winners, and a special thanks to all of those who voted!

### SUMMER

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

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

### FALL

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

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



# Regulatory Review

The New Year got off to a quick start on the regulatory front — then again, maybe not so quick...



## Not So Fast

SEC sets a date for fiduciary rule

**T**he good news is that the Securities and Exchange Commission has established a date for notice of proposed rulemaking (NPRM) for the Personalized Investment Advice Standard of Conduct.

The bad news? That date, according to the SEC Office of Management and Budget's fall agenda, is October 2016.

SEC Chairwoman Mary Jo White told attendees at the Securities Industry and Financial Markets Association (SIFMA) annual conference last fall that the agency is "full-out" working on the proposal. She acknowledged that the SEC has been working toward such a rule for a long time and added the caveat that, "it's not a short, quick uncomplicated rulemaking."

As noted in testimony before a subcommittee of the House Financial Services Committee, the SEC had, in 2013, asked for more time to obtain further data to determine whether or not to follow through on the potential rulemaking. Members of that House subcommittee had expressed frustration with the timing of the SEC's action relative to the Labor Department's newest proposal. And just last month the U.S. House of Representatives passed legislation that would block the Department of Labor from finalizing its fiduciary proposal until the Securities and Exchange Commission weighs in.

Of course, waiting until October 2016 — if it happens then (and it is by no means at this point certain that it will) — should give the SEC time to see what happens with the Labor Department's proposed fiduciary standard rule.



## Repeat Performance

Obama's final budget: what's in it for retirement plans?

The Obama administration's final budget wasn't a complete retread of its prior retirement plan proposals, but there wasn't much good news for employer-sponsored retirement plans.

Small business owners and small business retirement plans were once again targeted by a proposal that would limit the value of the retirement tax deferral at 28%, thereby levying a "double tax" on any individual in the 33%, 35% or 39.6% tax brackets who wishes to contribute to a retirement account. A second misguided proposal would limit the total aggregate amount of money an individual can save in tax-favored retirement accounts based upon a complicated annuity conversion calculation which, along with being an administrative nightmare, callously punishes savers that made good decisions over their working career to secure their retirement.

Finally, the budget includes for the second year in a row a laughably unworkable proposal requiring employers to report their contributions to defined contribution plans on the Form W-2. This proposal totally ignores the fact that employers may not know their contribution amounts until shortly before the due date of their tax return, which is months after the due date of the Form W-2.

### Multi-employer Plans and MEPs

On a brighter note, the Obama administration finally recognized the damage that recent repeated increases in Pension Benefit Guaranty Corporation (PBGC) premiums is doing to single-employer defined benefit pension plans. The current budget states the administration's view that "additional increases in single-employer premiums are unwise at this time." However, the Obama administration asked that the PBGC be given discretion

to raise \$15 billion in additional premium revenue from multi-employer plans. This would be done through a new multi-employer variable-rate premium based on a plan's level of underfunding as well as an exit premium assessed on employers that withdraw from a multi-employer plan. The Obama administration estimates that these policy changes would make the PBGC multi-employer program solvent through 2036. (Funds are currently projected to run out in 2024.)

Another new proposal in the Obama budget opens up multiple-employer DC plans (MEPs, not to be confused with the multi-employer plans cited above) to any unrelated employer provided that the service provider promoting and administering the plan, the participating employers and the plan itself meet certain conditions — and make no mistake, there are conditions. The proposal would also clarify the applicable rules to facilitate pooled plans of self-employed individuals.

### Auto IRAs

The budget includes President Obama's perennial auto-IRA proposal which would require employers in business for two years that have more than 10 employees to offer an automatic payroll deduction IRA program to its employees. The proposal includes a small employer tax credit to help defray the costs of implementing an auto-IRA program and also triples the amount of the traditional small employer pension plan start-up credit for employers that may want to adopt a qualified retirement plan, SEP or SIMPLE plan. Another proposal expands coverage by requiring 401(k) plans to allow long-term part-time workers (defined as working at least 500 hours for three consecutive years) to make salary reduction contributions into the plan.



Other proposals affecting retirement plans in the budget include:

- Allowing long-term unemployed individuals to take penalty-free distributions from an IRA or qualified retirement plan.
- Permitting a plan to allow participant to take a distribution of a lifetime income investment through a direct rollover to an IRA or other retirement plan if the annuity investment is no longer authorized to be held under the plan.

- Exempting individuals from taking a required minimum distribution if the aggregate value of retirement savings do not exceed \$100,000.
- Requiring holders of designated Roth accounts and Roth IRAs to take minimum distributions after age 70½.
- Allowing all inherited plan and IRA balances to be rolled over within 60 days.
- Requiring non-spouse beneficiaries of deceased IRA owners and retirement plan

participants to take inherited distributions within five years.

- Limiting Roth conversions to pre-tax dollars.
- It's a budget already declared "dead on arrival" by the GOP-led Congress, of course — but it will give those of us in the retirement space something to talk about, for a little while longer at least. — *Andrew Remo*



### Preferential 'Treatment'

CBO puts a figure on revenue impact of retirement distributions

The point has often been made that retirement plan tax "preferences" are a deferral of taxes, not a deduction — and now the Congressional Budget Office (CBO) has estimated that impact on the nation's Gross Domestic Product (GDP).

The CBO's "The Budget and Economic Outlook: 2016 to 2026" acknowledges that "taxable distributions from tax-deferred retirement accounts will tend to grow more rapidly than GDP" and notes that, under current law, Boomers' withdrawals from tax-deferred retirement accounts will be enough to boost tax receipts as a share of the economy by 0.2 percentage points over the next decade.

While that will certainly help government revenues, it's likely small comfort to those worried about the likely financial impact of all those retiring Boomers on the financial status of Social Security and Medicare.

In proposing the alternative, Christie said, "I believe that the approach taken by the Legislature — mandating participation under a threat of fines for not participating — is unnecessarily burdensome on small businesses in New Jersey," going on to cite concerns that the state would have been required to bear the initial cost of the program (though reimbursable once funds became available), and that "the bill creates yet another government bureaucracy to oversee and implement the program, while there are plenty of private sector entities with particular expertise that can perform this function instead."

So, rather than a mandated small employer (25 workers or more) payroll deduction IRA design with employee opt-out, the Garden State will create a small business retirement marketplace to close the gap in private-sector retirement savings modeled after one established in Washington state last year. A marketplace was one of three options outlined in an Interpretative Bulletin the Labor Department issued in November at the direction of President Obama.

The bill, renamed via the conditional veto, is now entitled the New Jersey Small Business Retirement Marketplace Act. It calls for the establishment of a retirement plan marketplace targeted at firms that employ fewer than 100 qualified employees (ERISA eligibility) at the time of enrollment, where a majority of which employees are employed in New Jersey.

#### Marketplace Criteria

Under the proposal made by Christie and approved by the state legislature, the State Treasurer or the Treasurer's designee is directed to "design and implement" a plan for the operation of the marketplace, and thereafter

will "facilitate the connections between eligible employers and approved plans included in the marketplace."

The firms participating in the marketplace are required to offer a minimum of two product options, including a target-date or similar fund and a balanced fund. The marketplace will offer three options: a SIMPLE IRA, a payroll deduction IRA and a MyRA.

Participating employers will not be assessed an administrative fee or surcharge, and the program is directed not to charge enrollees more than 100 basis points in total annual fees.

Among other things, the bill directs the State Treasurer's office to:

- establish a protocol for reviewing and approving the qualifications of all participating financial services firms;
- design and operate a website that includes information on how eligible employers can voluntarily participate in the marketplace;
- develop marketing materials about the program; and
- identify and promote tax credits and benefits for employers/workers related to participating in the program.

The bill Christie vetoed — which had been sponsored by the Democratic leaders in both houses of the state legislature — would have created a Secure Choice Savings Program. Under that program, businesses with at least 25 employees who don't currently have an employer-provided plan would have been required to automatically enroll workers, who could have opted out. — *Nevin E. Adams, JD*



### Jersey Sure?

New Jersey pivots on state-run retirement plan design

The Garden State will have a new state-run retirement plan for private sector workers — though not the one that might have been expected.

The state Assembly voted after 1:00 a.m. Tuesday, Jan. 12 to cooperate with Gov. Chris Christie's (R) conditional veto of a bill creating a state-run retirement plan for private-sector workers, 12 hours after the governor handed down his executive veto.

# How Do NAPA Net Readers Do With Their Own Retirement Account(s)?

They say that an attorney who represents himself has a fool for a client — but what about those who work with retirement plans?

BY NEVIN E. ADAMS, JD

The vast majority of respondents (87%) to our late January NAPA Net reader poll had one or two workplace savings accounts, while most (58%) had one or two IRAs. There were more complicated situations: Nearly 1 out of 10 had three or four workplace savings accounts, while 17% had three to five IRAs (a quarter had no IRAs).

As for how those accounts are managed, the *current* workplace retirement savings account for most (59%) were invested in individual funds directed by the respondent. Approximately one in five were invested in target-date funds, one in eight had chosen a managed account, and the rest (about 8%) were in a self-directed brokerage account (SDBA) that they managed. That was the preferred approach for the vast majority — only 17% said that the choice was imposed on them by the plan design. In that group was a reader who explained, “I wish my workplace plan was as good as my clients’ plans!”

A target-date fund investor noted, “I reviewed the other options to build my own

portfolio, but missing asset classes used in my managed money program, so best way to have a diversified portfolio is through the target funds.”

A respondent who wasn’t quite so “self” directed noted, “I am not really the one that directs them, though. My uncle (not a financial advisor but a retired postal supervisor) has access to both of my IRAs and both of my plans at work, and he looks at my investments each quarter and makes recommendations for changing my investment choices. He even gives me a consolidated statement of all of my accounts. It’s fun for him and takes the burden off me.”

Speaking of changing those choices, just over a third (35%) had rebalanced their account within the last year; 22% had done so in the last quarter; and roughly 9% admitted that it “had been awhile.” Among those was a reader who was retiring in two years and had attended to the allocations accordingly: “Don’t believe in watering the weeds,” the reader said.

As for the rest, their investment vehicle of choice meant that rebalancing had been done automatically.

## Goals Tended?

Of course, it’s one thing to save and invest, and something else altogether to do so with a plan/goal in mind. Still 29% had done a retirement needs projection for their personal situation within the last quarter, and another quarter had done so in the past month. Almost as many said they had done so within the last year, while one in five acknowledged that it “had been awhile.”

Speaking of saving, 35% of respondents said they were maxing out their contributions, while 5% said they were trying to do so, bounded in by the nondiscrimination testing rules. The rest — and we’re talking 60% of total respondents — either noted that they weren’t contributing the maximum, or weren’t doing so... yet.

## Ignore 'Rants'?

We also asked readers to share the one piece of retirement savings advice they give participants/plan sponsors that they most commonly ignore in their own account(s). Here's a sampling:

"Increase your 401(k) deferral during down markets."

"Don't trade, instead diversify. Most of you don't spend the time I do following markets."

"Do not focus or obsess on the balance as it fluctuates, focus on the process and your goal; I confess I peek too often, but at least I know how my participants feel and the emotions that they experience."

"I always tell clients to save as much as they can, diversify investments and don't pay attention to the media."

"I use self-directed and do have many individual securities. I would generally not suggest this option for a plan sponsor."

"Consolidate your accounts for simplicity."

"Save as much as you can (I just got lucky)."

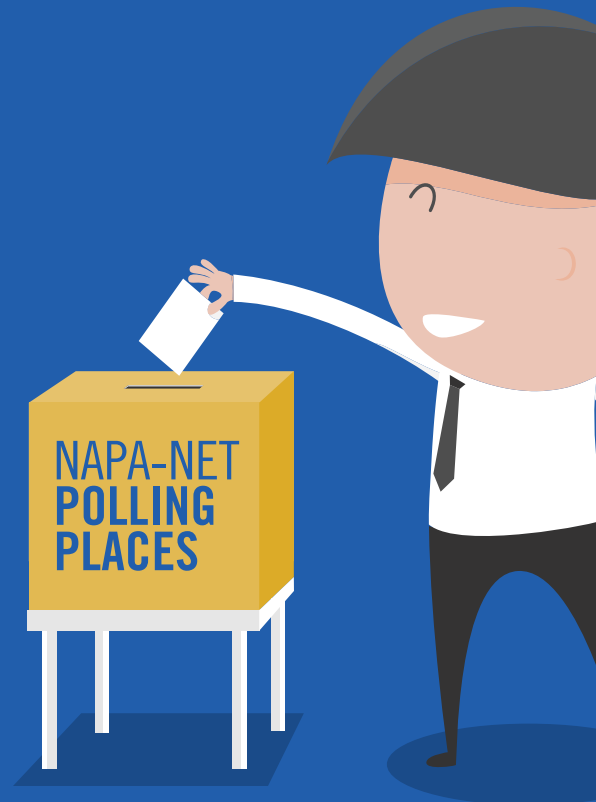
"I don't rebalance correctly, or often enough."

"You can't beat the market in the long run... index funds are the way to go."

"Keep everything where you can find it — that doesn't always happen for me personally. But at least I totally understand when they tell me they lost it! :)"

"Max out your account. Save at least 15% of your pay."

"Don't take out loans."  
"Read everything you receive, in case you have to do something."  
"Diversify your tax structures (I need to start making some Roth deferrals!)."



Thanks to everyone who participated in our weekly reader poll! Join the discussion — we have a new reader poll every week in the *NAPA Net Daily*!

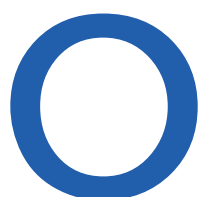




BY NEVIN E. ADAMS

# Things That Make Me Go, 'Huh?'

When it comes to industry surveys and trends, mistakes, missteps and misunderstandings abound.



urs is a business where surveys and trends often shape not only perceptions, but policy — though sometimes the conclusions drawn, and even the premise itself — make me go, “huh?”

Here are three:

## Citing a Drop in Deferral Rates as a Failure of Automatic Enrollment

Every so often a personal finance writer will stumble across an industry survey that shows that the average deferral rate in 401(k) plans has declined, a problem they attribute to automatic enrollment adoption. We all know what is going on here: Individuals who take the time to fill out a form and enroll in the plan manually tend to defer at a higher rate than do those who are automatically enrolled, the latter typically at a modest 3% rate. On the other hand, automatic enrollment has a dramatic impact on raising the participation rate. The rest is just math — more people, saving at lower rates = a lower average deferral rate.

Now, those individuals automatically enrolled at a 3% rate may draw down the average deferral rate of a plan, or the industry, but it's almost certainly true that most people who are now saving 3% without automatic enrollment would likely have been saving nothing at all.

## Comparisons of DB Versus DC Investment Returns

If ever there was an apples-and-oranges undertaking, it's the comparison of defined benefit and defined contribution plan returns. The former is, of course, the return of a portfolio representing a single overriding investment philosophy designed to achieve a specific aggregate objective, and one overseen by a plan fiduciary (or plan fiduciary

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committee). The latter is little more than an aggregation of individually managed (or more frequently unmanaged) portfolios.

And yet, every so often someone wants to offer a comparison of the returns between the two as some kind of evaluation as to which is “better.”

In many of these comparisons, defined benefit portfolios have fared “better,” and the underlying explanation (implicit or explicit) for that differential has tended to be diversification (or “better” diversification), and in more recent years, lower fees have been credited. What we're apparently supposed to draw from that is that DB plans are better-managed in terms of asset allocation by professionals, better able to negotiate lower fees than their DC counterparts, and generally provide a better return on investment. In other words, DB plans are “better.”

Now, I'm not saying that all, or even most, of those individually directed DC plan allocations are as well designed or maintained as those put in place by a DB investment committee, and however well negotiated it is, it's hard to imagine that a DC plan with all its inherent complexities could (or should) get as good a deal on price as a DB offering. In fact, unless your defined benefit plan has a single participant, those programs have completely different objectives and timeframes.

You might as well be comparing a sports car to a Hummer; which is “better” depends on the distance, the terrain, the length of time you have to complete the journey, how much fuel you have — and how many people you have to transport.

## Using Average 401(k) Balances as a Proxy for Retirement Security

If there is one number I wish our industry would quit publishing, it's the average 401(k) balance. Here you have participants who may (or may not) have a DB program, who are of all ages, who receive widely different levels of pay, who work for employers that provide varying levels of match, and who live (and may retire) in completely different parts of the country. Frequently it is based only on the accumulations that have occurred during their tenure at an individual employer, and often only the balance that is found on the single recordkeeping system that is publishing the result. But in preparing this number, those widely varied circumstances are all slopped together to create — mush.

Worse than mush, actually. Because it is an average of so many varied circumstances, the result is almost never “enough” to provide anything remotely resembling an adequate source of retirement income, a point that is reiterated somewhat incessantly (and generally without the caveats about what it is an average of) in the press.

I'll allow that some of the permutations of this calculation — such as when we see that average broken down by age demographic — can be instructive as to longer-term trends, but an average 401(k) balance is akin to an average reviewer rating on Amazon.com.

As with everything else on my “huh?” list, it's mathematically accurate — and nearly completely useless. 📺



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