THE OFFICIAL MAGAZINE OF THE NATIONAL ASSOCIATION OF PLAN ADVISORS

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WINTER 2023

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DIVERSE SUCCESS

HOW ADVISORS OF COLOR ARE CLOSING THE RACIAL SAVINGS GAP

plus

2023 NAPA Top Women Advisors

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Former Chief Content Officer of the American Retirement Association, Nevin now claims to be "retired." One of the industry's most prolific writers, during his more than four decades in the retirement industry, he's served as the Employee Benefits Research Institute's (EBRI) Director of Education and External Relations, spent a dozen years as Global Editor-in-Chief of PLANSPONSOR/PLANADVISER, and after two decades working with retirement plans, entered journalism as the originator, creator, writer and publisher of PLANSPONSOR.com's NewsDash.

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The Next Evolution of the 'Auto' Revolution

It's here, and not a moment too soon.

By now, you probably know the Portability Services Network (PSN) is up and live with a "digital auto portability solution" that it says is designed to help millions of "under-served and under-saved" stay invested and not succumb to the leakage plague that destroys hope of future savings.

Workers are most vulnerable when changing jobs, preferring to take the money and run with instant gratification to which we're all increasingly accustomed. The auto-revolution (enrollment, deferral, escalation) combated our most self-destructive biases, and there's no reason to think portability won't either.

Cashing out is a reason for the wealth disparity among classes, and especially among races, which we address in this issue's cover story. It's not hyperbolic to say that automating the portability process would lead to generational change in savings and investment rates, especially among those who need it most.

"I said, 'How do we change this behavior, both on the corporate side and the employee side," billionaire entrepreneur Bob Johnson, Chairman of the PSN and founder of Black Entertainment Network (BET), told American Retirement Association (ARA) CEO Brian Graff in a recent episode of the D.C. Pension Geeks podcast. If you haven't listened to it, do so now. It's a great discussion with a business and industry legend available on Napa-Net.org.

"The issue of working together for the benefit of savings was not quite first and foremost. Some of it was because of inertia, some of it because it's complicated, and a lot of people believe that if someone needs money, give it to them, without saying whether or not you should think about it first," he continued.

Johnson set out on a mission to change this "systemic behavior" among relevant parties in the system, leading (eventually) to PSN—no small feat, taking upwards of a decade to get the operational and regulatory requirements in place.

Johnson claims PSN will serve more than 60% of all workers who want to maintain their 401(k) accounts in the retirement system throughout their working lives, mainly by partnering with major recordkeepers with millions of participants.

Calling itself a utility, much like a power or gas company, infrastructure or proverbial "pipes" were needed, further solidifying the metaphor, only in this case, it's digital technology from sister company Retirement Clearinghouse. It's a nationwide digital hub connecting workplace retirement plan recordkeepers and the plan sponsors they serve that elect the auto portability service.

The ARA's Ted Godbout took a deeper dive into how it works.

For PSN member recordkeepers and the plans that have elected the auto portability solution, PSN acts as a clearinghouse for automatically locating a participant's active 401(k), 401(a), 403(b), or 457 account in their current employer's plan and transferring the same participant's account (under $7,000 as of Dec. 31, 2023) from their prior employer's plan into their active account.

Again, the automation of this process will help reduce the leakage of assets from the U.S. retirement system stemming from premature cash-outs and preserve trillions of dollars in savings, which is particularly beneficial for communities of color, women, and low-income workers, the announcement notes.

As Godbout noted, the effort was also recently given a boost following the enactment of the SECURE 2.0 Act, which included several provisions that seek to help preserve retirement savings, including the codification of a safe harbor exemption permitting a retirement plan service provider (i.e., RCH) to provide employer plans with auto portability services.

PSN's Board members encourage other recordkeepers to join, contending that the growth of the network will only help to strengthen its ability to minimize cash-out leakage and improve retirement outcomes. Recordkeepers that own or participate in PSN will not receive any compensation for facilitating auto portability transactions from participants, the announcement further advises.

More information is available at psn1.com.

John Sullivan
Editor-in-Chief

FOLLOW THE DISCUSSION...

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3 Tips to Maximize Your Retirement Plan Industry Impact

We're not only an industry who joins together to make a difference for all working Americans, but we're a community that joins together for one another.

By Renee Scherzer

It's hard to believe that we are nearing the end of 2023, and what a memorable year it has been. Closing the chapter only to look to the possibilities of the next always fills my mind approaching a New Year. I will leave this past year and carry with me into the next an overwhelming feeling of gratitude. Gratitude for being given the opportunity to serve at the NAPA President, gratitude for the knowledge I've gained because of so many of you, and most importantly gratitude for the unique culture and community our industry provides.

Many of us witnessed first-hand just how much our community came together when friends were faced with unexpected loss and tragedy.

In this final article of 2023, I'd like to share some of my personal highlights and encourage you to take some tips from my self-proclaimed NAPA Playbook. I guarantee that these tips will bring you more fulfillment as you journey into a New Year.

Tip No. 1: Time is one of your most precious resources, use it wisely and don't miss the NAPA 401(k) Summit, April 7-9 in Nashville, TN.

And don't just stop there but be sure to schedule yourself or sponsor someone on your team to attend and network with the industry's best and brightest!

- ARA Women in Retirement Conference
  January 10-12, 2024
  Charleston, SC
- NAPA D.C. Fly-In Forum
  July 30-31, 2024
  Washington, D.C.
- NAPA Nonqualified Plan Advisor Conference
  September 2024
  TBD
- NAPA/NTSA ERISA 403(b) Advisor Conference
  October 2024
  TBD

Personally, I don't have a favorite among the conferences, and there is something to gain from each one whether it's an expanded network or new tools in my toolbox. However, NAPA Summit 2023 will always hold a special place in my heart as will the ARA Women in Retirement that I got to share with dear industry friends.

Tip No. 2: Continue to improve your skills and knowledge. To quote Nelson Mandela, "Education is the most powerful weapon which you can use to change the world."

Professional development is an essential component of staying current with industry trends and regulations, enhancing our credibility and reputation, and improving the trust our clients and teams have in us.

I encourage you to visit napa-net.org/education-training and learn more about the opportunities for advancement for you and your team. From the content that the American Retirement Association team has put together, you will find a range of programs that will meet the needs of each team member where they have a need or interest to grow. And be sure your firm is taking full advantage of all NAPA education programs, many of which are free to NAPA members. Utilizing these resources will help elevate everyone's expertise, bringing more value to your clients.

Renee Scherzer is a Senior Vice President of OneDigital's Retirement + Wealth division specializing in retirement plan consulting. This is her inaugural column as NAPA's 2023/2024 president.

Tip No. 3: Protect our industry through engagement and advocacy. What better way to make your voice heard than through support of the ARA PAC?

Join me today by supporting the work of the ARA Government Affairs team by making a financial contribution to the ARA PAC at araadvocacy.org/support/political-action-committee and be sure to not miss the 2024 NAPA Fly-In on July 30-31, 2024.

We all can and need to participate in protecting this industry we are fortunate to be a part of, and the ARA provides us with the tools and opportunities to jump right in and make a measurable impact. With the ARA being a non-profit organization, it is up to us to ensure there is proper funding so the work and support to our industry can continue so don't leave 2023 without making a financial contribution.

In closing, I want to wish all of you a memorable holiday season and an impactful year ahead. And, if I have not had the pleasure to meet you, I hope to do so in 2024. NNTM

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Why ARA Supports DOL's Proposal to Modernize the Regulatory Definition of Investment Advice

It will ensure that advice given to plan sponsors with respect to plan investments under any and all circumstances is required to comply with the fiduciary standards of ERISA.

By Brian H. Graff

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The mission of the American Retirement Association—since it was founded in 1966–is to expand and strengthen the employer-based retirement plan system so that working Americans have the opportunity to achieve a comfortable retirement.

Consistent with this mission, the organization embraced the enactment of ERISA in 1974 because it included a principles-based fiduciary standard designed to protect the interests of both plan sponsors and participants.

A central component to this protection is that a service provider offering investment advice for a fee to a plan with respect to plan assets must do so consistent with ERISA's fiduciary standard. The definition of what constitutes "investment advice" under ERISA is thus extremely important.

The regulatory definition of investment advice was first

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

promulgated in 1975. Under the regulation, a service provider is considered to be giving investment advice if the service provider: (1) renders advice to a plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property; (2) on a regular basis; (3) pursuant to a mutual understanding; (4) that such advice will be a primary basis for investment decisions;

> **“Consistent with its mission, ARA for over 20 years has raised concerns that the existing regulatory definition of investment device is ill-suited for advice given to plan sponsors with respect to participant-directed 401(k) retirement plans.”**

and that (5) the advice will be individualized to the plan.

This is commonly known as the “five-part test.” Needless to say, the retirement plan landscape has changed dramatically since 1975, including the advent of the participant-directed 401(k) plan which has grown to become the predominant employer-based retirement plan.

Expanding access to employer-based retirement plans is another central part of ARA’s mission. It is well established that workplace retirement plan coverage is the critical gateway to enable working Americans to reach their retirement savings goals.

In furtherance of this mission, ARA has spearheaded and supported numerous initiatives to expand retirement plan coverage, including several tax incentives included in SECURE 2.0 to make it easier for small businesses to establish retirement plans for their employees and state-based mandates—now in fourteen states—that require employers above a certain size to adopt a workplace retirement savings program. Over the next five to seven years, it is estimated that hundreds of thousands of new small business retirement savings plans will be created.

Consistent with its mission, ARA for over 20 years has raised concerns that the existing regulatory definition of investment device is ill-suited for advice given to plan sponsors with respect to participant-directed 401(k) retirement plans.

Specifically, we strongly believe the “regular-basis” prong of the “five-part test” should not apply with respect to investment advice given to a plan sponsor regarding investment options offered in a participant-directed retirement plan. Under ERISA, an employer as a plan sponsor is acting in a fiduciary capacity when selecting an investment advisor and/or provider of plan investment options.

Since a plan sponsor is making decisions on behalf of all participants and beneficiaries, it is absolutely essential that such a fiduciary plan sponsor be able to rely on the fact that their investment advisor will be subject to ERISA’s fiduciary standards regardless of whether such advice is given just once or on a “regular basis.”

The need for this change was made more important when the SEC’s Regulation Best Interest was finalized. Although that regulation enhanced individual investor protections it does not apply to institutional advice, including advice to a plan sponsor with respect to plan investments, regardless of the size of the employer or the plan.

Thus, a small business owner, likely to be an unsophisticated investor, could be left without any regulatory protections for the owner and plan participants when “sold” a plan and the “regular basis” prong of the current five-part test has not been met.

Policymakers at both the federal and state levels have enacted numerous provisions intended to expand retirement plan coverage, particularly among smaller businesses. Whether in response to a state requirement or looking to take advantage of the tax incentives in SECURE2.0, small business owners establishing a retirement plan for employees for the first time should never be left without any regulatory protections when getting advice with respect to plan investment options.

To be clear this should not mean that proprietary investments or commissions or similar-based compensation models should be restricted when retirement plans are offered to small businesses or any other plan sponsor for that matter.

Rather, such investments and fee or compensation structures should be addressed as provided under current statutory or class exemptions that apply today when the advice is part of an ongoing relationship and is already subject to ERISA’s fiduciary standards. ARA as a matter of policy is and always will be business model neutral with respect to the retirement plan marketplace.

As stated earlier, ARA’s mission is to expand and strengthen the employer-based retirement plan system. We support DOL’s proposed retirement security regulation updating the definition of investment advice under ERISA because, as we work toward expanding retirement plan coverage, it will ensure that advice given to plan sponsors with respect to plan investments under any and all circumstances is required to comply with the fiduciary standards of ERISA. NNTM

Be Prepared—(New) Business Opportunities Ahead

The Diversity Committee asked you, the members, for a wish list for programming to support inclusivity in the industry.

By Erika Goodwin

With everything you must manage daily, how do you prioritize tasks? Is it a list of needs vs wants? This has been one of the questions the ARA Diversity Committee has tackled during their work together. As project manager for the committee, I've watched as they have deliberated and defined what their work should be focused on that was directly related to the future success of the private retirement industry, helping to close the retirement savings gap in underrepresented groups and ensuring that they are helping to build resources to help members be prepared for (NEW) business opportunities ahead. The answer is inclusivity.

With that, the Diversity Committee asked you, the members (who know each of their sister organizations and the industry best), for a wish list for programming to support inclusivity and the growth of diversity in the industry. Why, you ask? To help members to be ahead of the curve and be prepared for the future and work with the U.S. small businesses who have not yet become plan sponsors—many of whom are members of the US Hispanic Chamber and Black Chambers of Commerce.

"Among the 250 survey responses, members have ranked finding/ hiring racially diverse associates/candidates interested in the position/industry as a top challenge."

Schools in Session

Among the 250 survey responses, members have ranked finding/ hiring racially diverse associates/ candidates interested in the position/industry as a top challenge. We heard you and, this fall, participated in an event that opened our eyes to a new approach (and opportunity) for you – relationships with HBCU (Historically Black College and University) professors. Through our partnership with the Financial Alliance for Racial Equity (FARE), ARA was invited to participate in a financial services career fair for HBCU students and learned A LOT! Here are a few highlights:

1. When establishing a relationship with a university, be authentic. Look at each opportunity as the beginning of a relationship but be sure to have a plan (for hiring opportunities) and a long-term goal in mind.
2. Start with the professor and (not the board of trustees). Professors have direct relationships with students and can also (if you bring offerings that fit within their curriculum) grant you access to their classrooms.
3. Remember, your interns will be your best (or worst) advertisement. They can either spread the good news about your internship/ company and opportunity and ensure a steady flow of top, diverse talent or the opposite.

Now, imagine:

- your firm is prepared for an opportunity to hire an HBCU student as a summer intern and knows how to/ who to approach/ what that internship needs to include to be competitive. Capacity can often be a challenge. With this, they are selective about which internships or partnerships they pursue.
- meeting an actuarial (marketing, business, finance, or accounting) student who is ready to take their first step into the industry and offering a sponsor/ scholarship code for IRP (Introduction to Retirement Plans) and RPF (Retirement Plan Fundamentals). Or maybe connecting that student with a study group hosted by ASEA members- this happened!
- there was a curriculum of content and a career path mapped out to get them started as new hires with infinite growth possibilities.

Tiffany Hanks (Director of Education) and I spoke with top-performing students and talked to the students about different opportunities working in the retirement industry. Many of them were pursuing degrees outside of finance, and once we spoke, we realized there was a place for them to work in our industry. They were interested in internships and hailed from all parts of the United States. We quickly realized that ASPPA&U would not only be an asset to existing industry professionals but also future professionals. The ASPPA&U is ASPPA education with pathways to guide employees through their careers. It is designed to help new employees learn and grow with your company. We walked away with a better understanding of how to help our members with this challenge of finding and recruiting top, diverse talent and how to ensure you are ready when opportunity meets talent. I look forward to sharing more as we continue our journey to ensure our members are prepared for (new) business opportunities (and future employees) ahead.

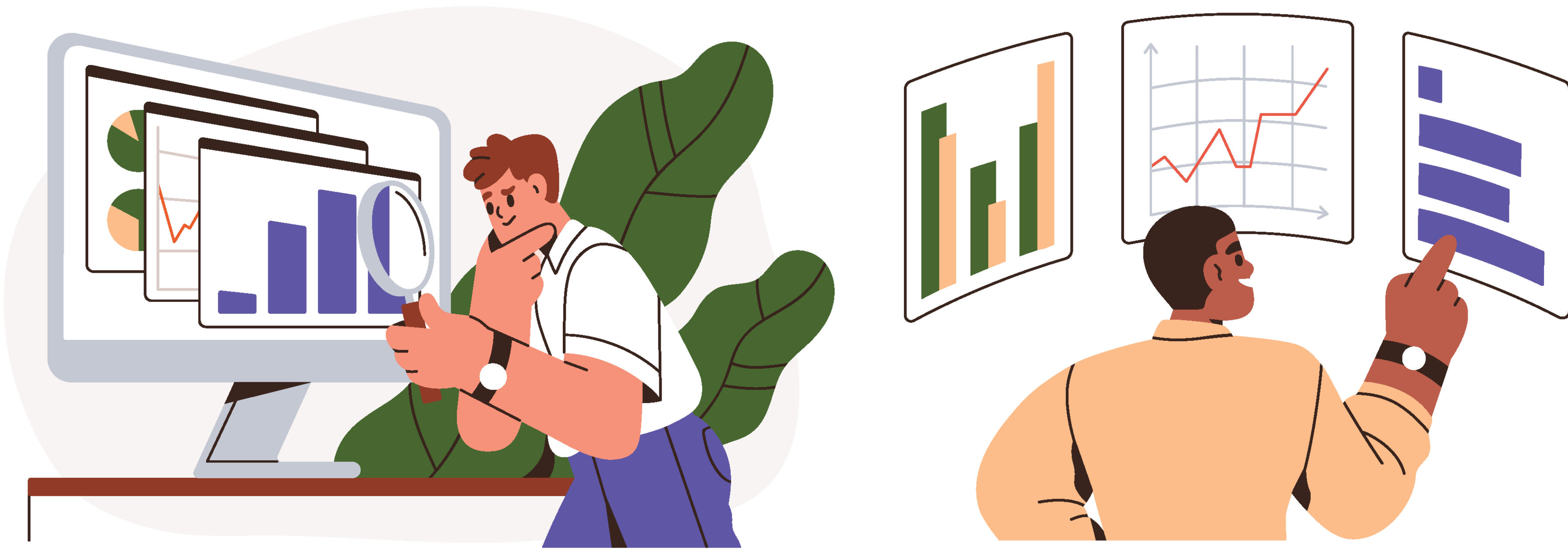
Survey Says

There is more to come ahead! Sharing networking opportunities was the top response of services that would increase the value of membership to members of underrepresented groups in their organizations and practices, followed by practice management and mentoring opportunities. Showcasing existing members of diverse backgrounds so that new members [and those] interested [in membership] can both see and know they are not alone.

In January 2024, we look forward to launching the ARA Diversity Mentoring program and virtual coffees as two new opportunities to be connected for those who would like to be supported and increase their diversity IQ. We look forward to hearing from you. All are welcome!

About the ARA Diversity Committee

The ARA Diversity Committee's mission is to increase ARA professionals' diversity and promote inclusivity in the retirement industry. By diversifying the industry, they believe that the members can better serve a broader clientele of plan sponsors and employees to improve the overall financial well-being of historically underserved groups in the United States. NNTM



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Trends 'Setting'

Nearly six in 10 investors who identify as Democrats say market performance will have a bigger impact on their retirement plans and portfolios than the 2024 election results, compared to only 47% of investors who identify as Republicans. Also, HSAs showed continued improvement, even though persistent issues with transparency and fees remain.

Deep Impact

Will the 2024 elections have a bigger portfolio impact than market performance?

That apparently is the sentiment for nearly half of investors who participated in the Nationwide Retirement Institute's 9th annual Advisor Authority survey.

In fact, regardless of political affiliation, 45% of investors believe the results of the 2024 U.S. federal (presidential and congressional) elections will have a bigger impact on their retirement plans and portfolios than market performance, according to the findings.

In addition to general pessimism regarding the election's impact on retirement prospects, investors fear the impact of new policy and opposing party rule on the U.S. economy. Nearly a third (32%) of investors believe the economy will plunge into a recession within 12 months if the political party with which they least align gains more power in the 2024 federal elections.

And in a sign of the country's increasing polarization, roughly the same percentage (31%) believe the party they least align with gaining more power in office will negatively impact their future finances, and 31% believe their taxes will increase within 12 months.

"As we get closer to the 2024 election, we're going to see more messaging and campaign ads that portray worst case scenarios, creating anxiety in investors that can lead to short-sighted, emotional decisions," said Eric Henderson, President of Nationwide Annuity. "It's important for investors to not get caught up in the 'what ifs,' and instead focus on what they can control."

Opposing Views

Not surprisingly, some issues are viewed differently across party lines. In this case, nearly six in 10 (57%) investors who identify as Democrats say market performance will have a bigger impact on their retirement plans and portfolios than the 2024 election results, compared to only 47% of investors who identify as Republicans.

However, Republicans tend to brace for election results more than their Democrat counterparts, according to

the findings. More than two-thirds (68%) of Republican investors believe the outcome of a presidential election will have an immediate and lasting impact on the performance of the stock market, compared to 57% of Democratic investors. Independent investors, meanwhile, are the least concerned with election results; fewer than half (40%) feel the results of next year's election will have a bigger impact on their retirement plans and portfolios than market volatility—the lowest of the three primary political demographic groups.

"While it's natural to feel the party you support will deliver the best economic outcome, history tells us that these instincts can be blown out of proportion," said Mark Hackett, Chief of Investment Research for Nationwide. In fact, election results in either party's favor have historically had little impact on future investment returns, Hackett explains, adding that it's best to stay focused on the fundamental drivers of investment performance and leading economic indicators.

Older Investors More Fearful

The general fear of a recession is magnified for those closest to retirement ahead of next year's election, as any wrong decision could have a lasting impact on how they live through retirement. Pre-retiree investors (defined as non-retired investors aged 55-65) are more concerned about an impending economic recession (50%) than investors overall (41%). Pre-retirees and those already in retirement are more concerned about inflation than investors overall (66%, 66% vs. 61%, respectively).

As a result, pre-retirees are planning to be more conservative with their assets than other investors. In this case, Nationwide found that a third (33%) of pre-retiree investors are managing their investments more conservatively in anticipation of next year's election, compared to just 31% of all non-retired investors.

Overall, investors who are not retired see inflation (47%), an increased cost of living (42%), and a potential recession (31%) as the greatest long-term challenges to their retirement portfolios. To compensate, they are changing their spending and investing habits.

To save more for retirement in the current environment, a third (33%) of investors are avoiding unnecessary expenses over the next 12 months. A quarter (25%) of non-retired investors also say they will need to work longer to save money for retirement in case Social Security runs out of money.

And while recession fears remain elevated, they are down slightly from last year; four in five (80%) investors are now concerned about a U.S. recession in the next 12 months, compared to 85% in 2022. Meanwhile, 40% of all investors and 32% of pre-retirees describe their financial outlook for the next 12 months as "optimistic."

Advisor Views

While not immune to some partisan bias, the survey found that advisors still maintain a more balanced view of the election than their clients. Despite election jitters, most advisors (56%) believe staying the course—i.e., not changing their clients' investment strategies—is the best course of action in an election year.

With this approach in mind, advisors are recommending and implementing their strategies accordingly, Nationwide notes. To that end, nearly all (96%) currently have a strategy in place to help their clients protect their assets against market risk, an increase from 92% in the last 12 months.

Annuities (80% vs. 78%), diversification and noncorrelated assets (72% vs. 57%), and liquid alternatives such as mutual funds or ETFs (54% vs. 31%) all saw at least a slight increase as solutions used by advisors to help their clients protect their assets against market risk in the last year, the findings show.

— Ted Godbout

A 'Healthy' Climb

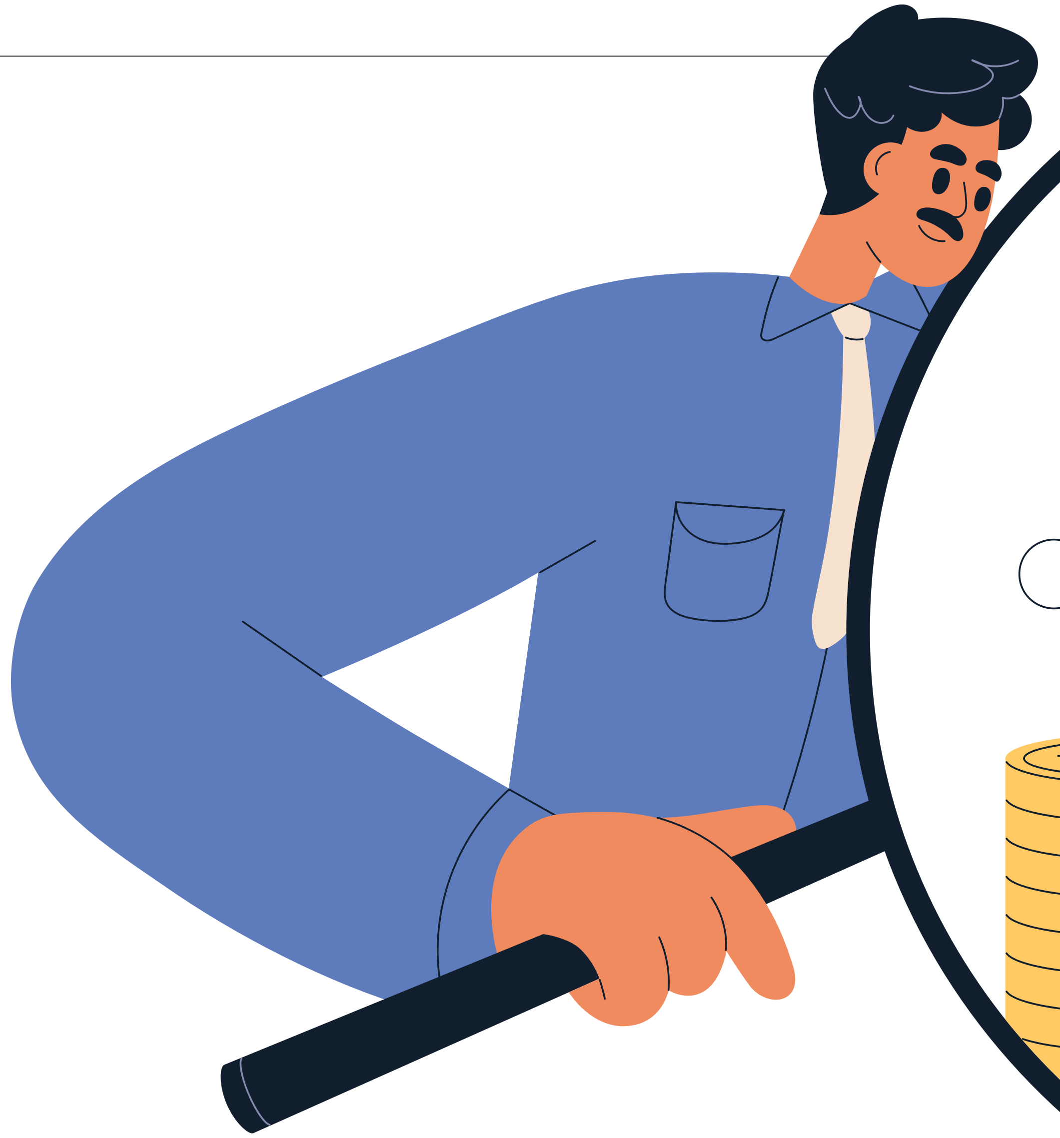
HSA assets continue to show solid growth as the space matures.

Morningstar's 7th annual landscape study on health savings accounts (HSAs) available to individuals shows continued industry improvement, even though persistent issues with transparency and fees remain.

The study evaluated 10 of the top HSA providers on two different uses: (1) as investment accounts to save for future medical expenses, and (2) as spending accounts to cover current medical costs.[1]

Overall, the study found that HSA features have improved in the past year with several plans cutting fees and offering higher quality investment menus. However, the industry is still developing and falls short on several issues, including transparency, ease of use and costs.

Not surprisingly, the increasing adoption of high-deductible health plans (HDHPs) and the growth of HSA assets have gone together, as one must have an HDHP to contribute to an HSA. Through mid-year 2023, total assets in HSAs reached roughly $116 billion—a 21-fold



increase since 2006. Meanwhile, the percentage of workers who are covered by employer-sponsored medical insurance and have chosen an HDHP grew from roughly 7% in 2006 to 32% by the end of 2022. HSA assets over the same period rose from close to $5 billion to more than $100 billion.

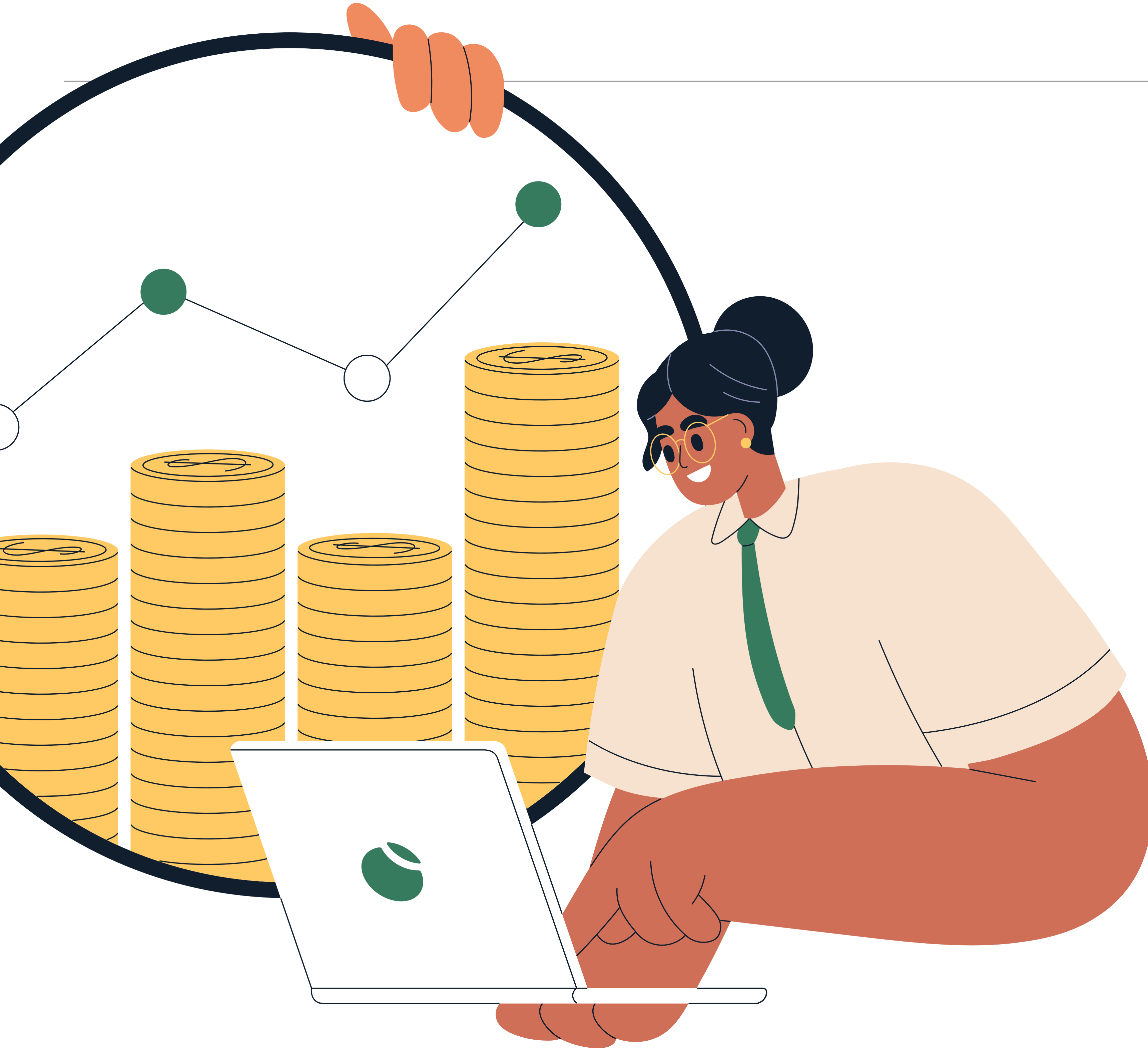
"Despite market volatility over the past year, investors in HSAs showed resiliency and continued to put money into their accounts. Assets have climbed since our study last year as HSA offerings continue to improve—a reflection of the industry maturing," said Greg Carlson, lead author of the study and senior manager research analyst. "Even so, there are several ways for HSA providers to progress," he adds.

Room for Improvement

According to the study, the process of investigating account details, signing up for one, and funding it remains complicated. In addition, some of the top providers still charge maintenance and/or investment fees and require a minimum account balance before participants can invest.

What's more, while interest rates have risen substantially over the past year, most HSA providers continue to pay modest rates, signifying an area of improvement for the industry, Morningstar notes. For average spending account balances, only Fidelity pays an interest rate that significantly exceeds the average national FDIC-insured savings account rate of 0.46%.

One positive is that providers' investment menus continue to improve. Among the 10 providers in the study, nearly all (96%) of the mutual funds and ETFs offered earn a Morningstar Medalist Rating of Bronze or better, up from 88% a year ago. This year, Fidelity remained as



the only provider to earn a high overall assessment for both its investing account and spending account.

And while HSAs offer so-called triple tax benefits, many participants, unfortunately, don't or aren't able to take advantage of the investing feature of HSAs. According to Morningstar surveys, a median 18% of participants are using their HSA as an investment account, while an average of 71% of the clients of the surveyed providers use their accounts for spending.

This may be due to the minimum account balances that most providers require before participants can invest, according to the study. Fidelity, Lively, and Saturna each earn a high assessment for not requiring an investment threshold. Associated Bank, HealthEquity, and Optum earn an above average for their $500 minimums, while Bank of America, First American Bank, HSA Bank, and UMB each require a $1,000 balance and thus earn an average ranking, the study notes.

And with annual healthcare spending in the United States averaging more than $12,900 per person as of the end of 2021, many participants likely cannot invest because of their current need to spend HSA funds on healthcare goods and services, the study further observes.

Meanwhile, HealthEquity ($22.3 billion in assets) surpassed Optum ($20.6 billion) as the largest HSA provider in 2021 and continues to lead. Fidelity has gained ground on both in the past 12 months with $19.8 billion in total assets. NNTM

— *Ted Godbout*

GoodStudio / Shutterstock.com

PGIM

by
DAVID BLANCHETT
& JEREMY STEMPIEN

IMPROVING RETIREMENT OUTCOMES WITH MORE EFFICIENT PORTFOLIOS AND PERSONALIZATION

Plan sponsors can meaningfully improve retirement outcomes for DC participants and should focus on expanding the number of asset class offerings in DC plans and offering personalized guidance tools today.

Many DC plans (still) focus on accumulation rather than retirement. Improving DC plans has the potential to generate better retirement outcomes for participants.

First, more extensive asset classes can improve many core menus and portfolios. Our research suggests doing so potentially improves expected risk-adjusted returns by more than 100 bps, which could generate five or more years of additional income for retirees. This also suggests that plan sponsors should proactively reevaluate their investment offerings to ensure they include the essential building blocks for more efficient portfolios.

Second, we demonstrate how optimal portfolio risk levels and initial withdrawal rates can vary notably across participants, especially retirees. This implies DC plan sponsors should consider making a suite of options available so that each participant can personalize their retirement journey based on their unique situation and preferences, to the extent they wish to engage.

In summary, many DC plans are not “retirement ready” today. It’s up to each plan sponsor to ensure it’s doing what it can to help its employees and participants retire successfully, given the significant potential impact doing so can have on the outcome.

EXTENDING ASSET CLASS COVERAGE TO BUILD MORE EFFICIENT PORTFOLIOS

To help deliver better outcomes for retirees, we believe the toolset of asset classes should be expanded within DC plans.

When focusing on the core menu, it’s important to note how it’s evolved considerably over time. As DC plans increasingly rely on features like automatic enrollment and default investments, particularly target-date funds, fewer participants are building portfolios using the core menu funds.

Considering the overall plan sponsor interest and general availability of asset classes, we can place them into three broad groups, which are included in the exhibit below.

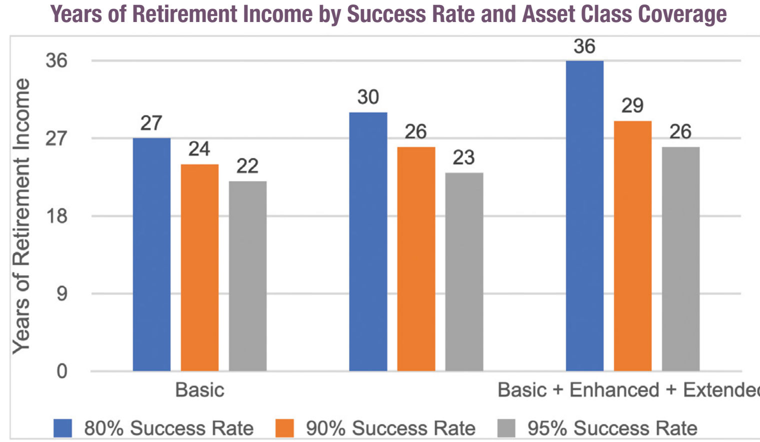
Asset Classes by Coverage Level

Basic	Enhanced	Extended
US Large Cap	Emerging Markets Equity	Private Real Estate Equity
US Small Cap	REITs	Private Real Estate Debt
Non-US Equity	Commodities	Long Duration Bonds
Core Fixed Income	High Yield Bond	Infrastructure Equity
Cash	TIPS	Defensive Equity

We find that increasing the investment opportunity set beyond just the Basic asset classes can notably improve portfolio efficiency, especially for retirees, given the unique benefits of including inflation-sensitive assets in a retirement portfolio. For example, our research suggests that including the Enhanced opportunity set (in addition to Basic) and then the Enhanced plus Extended has the potential to increase returns by 0.54% and 1.28%, respectively.

Improving portfolio returns can result in more income in retirement. To demonstrate this, we ran a series of Monte Carlo projections. The following exhibit summarizes the results and includes the number of years of income that could be generated from the various sets of efficient portfolios building the respective opportunity sets targeting different success rates while targeting a 5% initial withdrawal rate, where the initial amount is subsequently increased by inflation.

Years of Retirement Income by Success Rate and Asset Class Coverage



For illustrative purposes only. Past performance is not a guarantee or reliable indicator of future results.

Building the more complex portfolios has the potential to generate five or more years of additional retirement income compared to the more Basic portfolios.

USING PERSONALIZATION TO ADDRESS THE DC RETIREMENT INCOME CHALLENGE

While multi-asset strategies such as managed payout funds may provide retirees with a generally efficient portfolio and withdrawal rate, it’s important to note that every employee and participant is different and that these differences could result in notably different advice or guidance

DAVID BLANCHETT

JEREMY STEMPIEN

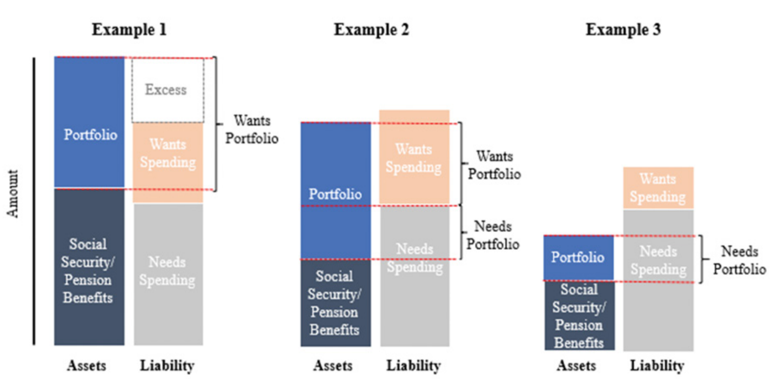
should the participant wish to engage. We explore this for two general decisions: optimal portfolio risk levels and spending rates.

First, when it comes to the optimal portfolio, we think it is essential that the portfolio's risk consider the entire structure of the participant's assets and liabilities. We define assets not only as savings amounts (e.g., the 401(k) balance) but other sources that can be used to fund the retirement income goal, such as Social Security retirement benefits and/or a defined benefit (DB) plan (i.e., pension benefits).

Regarding liability, breaking out the retirement goal based on spending flexibility is important since the disutility of not achieving the overall goal will vary depending on the shortfall. For example, if we generalize the retirement income goal into two components: "needs" spending and "wants" spending, a shortfall in the "needs" category is going to be significantly more painful than a shortfall in the "wants" spending.

Once we have a better idea of the participant's respective assets and liabilities, it is possible to determine better what the optimal portfolio should be, a concept we explored in previous research by Blanchett and Stempien (2022), titled "Spending Elasticity and Optimal Portfolio Risk Levels."[1] We illustrate this point in the exhibit below for three hypothetical participants.

Creating Portfolios to Target Specific Spending Goals



Source: Blanchett (2023). For illustrative purposes only.

The efficient retirement portfolios for the hypothetical participants varies significantly based on the structure of their respective assets and liabilities. Some participants will likely need most or all of their DC balance allocated to fund more essential spending, while others can focus on funding more discretionary spending.

In addition to differences in optimal portfolio levels, we've also looked at differences in optimal initial withdrawal rates at retirement. We find that while 5% may be a generally appropriate initial withdrawal rate for participants at retirement, in reality, withdrawal rates will easily vary between at least 4% and 7%, based on each participant's situation and preferences.

While 7% may seem like an unusually high initial withdrawal rate, our approach to determining optimal retirement strategies focuses on more holistic outcomes that are more robust than other standard metrics like the probability of success.

Our approach captures not only the magnitude of failure if there is a shortfall but also the dissatisfaction based on the type of shortfall (i.e. if it occurs for essential or more flexible spending). This perspective can lead to notably higher initial withdrawal rates, especially for retirees with a higher portion of their retirement assets in guaranteed income and more flexibility around their retirement goal.

CONCLUSION

DC plans were historically designed for wealth accumulation, not wealth decumulation. As DC plans have emerged as the preeminent way Americans save for retirement, with roughly $10 trillion in assets,[2] many plan sponsors are asking what role they can potentially play in helping participants use savings to fund consumption in retirement.

Plan sponsors can meaningfully improve retirement outcomes for DC participants and should focus on expanding the number of asset class offerings in DC plans and offering personalized guidance tools today.

David Blanchett, PhD, CFA, CFP® is Managing Director, Head of Retirement Research with PGIM DC Solutions.

Jeremy Stempien is Principal, Portfolio Manager and Strategist with PGIM DC Solutions.

FOOTNOTES

[1] *Blanchett, David and Jeremy Stempien. 2022. "Spending Elasticity and Optimal Portfolio Risk Levels." Available on SSSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4175484*

[2] *ICI Quarterly Retirement Market Data posted June 14, 2023. https://www.ici.org/statistical-report/ret_23_q2*

Navigating Digital Business Development Strategies

Content distribution has evolved significantly. It's no longer a linear, one-way street but rather a loop.

By Rebecca Hourihan AIF, PPC

Understanding the digital landscape and how to leverage it for business development has become a critical skill for 401(k) advisors. This article will delve deeper into the content creation process, exploring the ideation, research, composition, design, and distribution stages in more detail. It will also examine who should create content, why it's essential, and the benefits of consistent business development strategies.

Diving Deeper into Content Creation

In its simplest form, content creation is the process of generating ideas and ends with distributing them to your plan audience. Let's take a closer look at each stage:

1. **Ideation:** The first step is developing a topic relevant to your plan sponsor and/or participant audience. In the 401(k) space, there are plenty of trending news and macro topics, such as fiduciary plan governance, the SECURE Acts, financial wellness, investment oversight, and administration and organization.
2. **Research:** Once you've selected a topic, you must decide what aspect you want to explore. This could include fee benchmarking, different levels of fiduciary responsibility, conducting investment oversight, or updates on laws, legislation, and regulations. Research helps you present a well-informed point of view to your audience.
3. **Composition:** After settling on a topic and conducting research, it's time to put pen to paper (or fingers to keyboard). This stage involves writing the actual content. Whether creating a checklist, outlining a podcast, or scripting a video, you must determine the words you'll use and share.
4. **Design:** In today's world, we are bombarded with around 10,000 advertisements daily. With so much content vying for our attention, making yours stand out is critical. Good design can make people stop, pause, and take notice of your content. Gone are the days when a Word document with a blue border sufficed as 'design'. *Today, good design is not just a nice-to-have – it's a necessity.*
5. **Distribution:** The final stage in content creation is arguably the most critical - distribution. It's not enough to create top-notch content; it also needs to reach your audience.

Previously, distribution was perceived as a one-sided push into the marketplace. Whether it was a cold call, a TV commercial, or a printed postcard, the idea was to push your message out to potential customers.

Today, however, the concept of distribution has evolved significantly. It's no longer a linear, one-way street but rather a loop. The advent of digital media and technology has made distribution more interactive and dynamic.

Consider a LinkedIn post, for instance. Once you post an update or share an article, it triggers a series of actions. If your content resonates with your network, they might like, comment, or share your post, thereby increasing its visibility. This interaction can lead to more people viewing your content, potentially leading to inbound messages and new connections.

Similarly, let's consider an email campaign. A well-crafted email can prompt recipients to open it, forward it to others, or visit your website for more information. These actions can lead to inbound messages on your website, further engagement, and, potentially, new business leads.

Or take a blog article. A well-written, SEO-optimized blog post can rank high on Google search results, making it visible to a larger audience. Even months after publication, it can attract readers who may turn into leads, boosting your website's SEO and findability.

The distribution stage is not just about pushing your content into the marketplace; it's about creating a loop that brings engagement and leads back to you. You can maximize your content's reach and impact by understanding and leveraging algorithms.

The content creation process is a multi-dimensional journey that requires careful attention within each stage to ensure effective engagement and deliver business results.

Who Should Create the Content?

Managing your time is crucial as a business leader, particularly

as a 401(k) advisor. Creating high-quality, engaging content consistently can be time-consuming, and your expertise may be better employed in managing your clients' retirement plans. The question then arises: should you be the one creating the content, or should you delegate it to a team? You may consider joining a membership that provides abundant retirement plan marketing content or even outsourcing the task entirely to a professional firm well-versed in the 401(k) marketplace. Regardless of the path you choose, maintaining consistency is key.

This is where the value of subscription content services becomes evident. By subscribing to these services, you can concurrently maintain focus on running your business and ensure your clients receive relevant and timely content. These subscription content services offer a steady stream of professionally written articles, newsletters, social media posts, and more, helping you establish your credibility as an expert in your field and fostering trust with your clients.

Harnessing the Power of Algorithms

This brings us to the crucial role of algorithms in content distribution. Whether it's LinkedIn's algorithm that determines the visibility of your posts, email marketing algorithms that filter which emails land in the 'Priority' inbox, or Google's search algorithm that ranks web pages, understanding and leveraging these algorithms can significantly enhance your content's reach.

- **LinkedIn:** To optimize your LinkedIn presence, it's essential to understand how its algorithm works. LinkedIn prioritizes content that generates conversations. Creating content that encourages likes, comments, and shares can increase your visibility on the platform.
- **Email Marketing:** Email service providers use algorithms to filter out spam and prioritize important emails. To ensure your emails reach your audience's priority inbox, focus on personalization, avoid spammy language, and maintain a clean email list.
- **SEO:** Google's search algorithm considers more than 200 factors when ranking web pages. By optimizing your content for relevant keywords, improving your website's loading speed, and earning quality backlinks, you can increase your chances of appearing on the first page of Google's search results.

Why Is This Important?

A consistent business development strategy can yield three significant benefits:

1. **Client Retention:** Regular communication leads to happier clients and higher client retention rates. Your clients want to hear from you and stay updated on the latest news and trends.
2. **Awareness:** As you communicate more consistently with your clients and centers of influence, you become the go-to retirement plan expert. This increased awareness can lead to more referrals and business opportunities.
3. **Prospect Doubt**: Prospects may start questioning their current advisor's services when they see the value you provide through consistent communications. This doubt can lead to more business development opportunities for you.

Maximizing Digital Business Growth

The art of content creation and distribution is a dynamic and interactive process. It's no longer merely about pushing your message out into the marketplace but rather about creating a loop of engagement that brings leads back to you.

Whether you create content yourself or delegate it to others, remember the ultimate goal is to create a comprehensive influence around you and your business. You can position yourself as a trusted retirement plan advisor and grow your business by providing valuable, high-quality content.

Thanks for reading & Happy Marketing! NNTM

AI Meets Social Media: Navigate the Future of Hyper-Personalized Content and Ethical Brand-Building

Here's your call to action: How will you adapt to these revolutionary changes?

By Spencer X Smith

Wondering what's around the corner in the ever-evolving landscape of social media now that artificial intelligence has hit the mainstream? This is way more than robo-advisors or model-building algorithms.

The future of content and how it's consumed is evolving at a breakneck pace in real time. You and I need to make decisions now on how we're going to play in the sandbox with new AIs launching daily.

The Renaissance of Content Creation

We're in the middle of a renaissance in content creation, and AI is the Leonardo da Vinci painting of this new world. Imagine a future where your social media feeds are filled with personalized content generated by algorithms so advanced they're practically psychic.

Goodbye, Generic Posts

Are you tired of those generic motivational quotes popping up on your Instagram (seriously, how many sunsets do we need)? With AI, the potential for hyper-personalized content is colossal.

Algorithms could analyze your interaction history, emotional triggers, and even the tone of

PopTika / Shutterstock.com

your conversations to create content that hits home.

The result?

Content that feels like it was made just for you because it was.

The Automation Game

Bots, bots, everywhere! But not just any bots—creative bots that can write poetry, compose music, or even generate memes. AI could take over the routine aspects of content creation, freeing humans to focus on the nuanced, the complex, and the downright bizarre.

The catch? Ethics.

The Ethical Minefield

As AI improves at mimicking human creativity, we start tiptoeing into some murky ethical waters. What happens when a bot creates a work of art so compelling that it goes viral? Who owns the intellectual property? And let's not even get started on deepfakes. These devious outputs can distort reality and spread misinformation faster than you can say "photoshopped."

But wait—there's more!

The Filter Bubble Effect

AI's personalization features can get too cozy, creating an echo chamber that limits our exposure to different viewpoints. Instead of broadening our horizons, we risk reinforcing our preexisting beliefs and biases.

Echo chamber, anyone?

The Virality Factor

Ever see a post that warmed the cockles of your heart, only to watch it soar to viral stardom (c'mon, who didn't love that dancing grandma)? Social media can make uplifting stories, educational content, and humanitarian efforts go viral. And not just humans can do this; AI algorithms play a massive role.

A digital high-five for social media!

Fact-Check Champions

When it comes to real-world issues, like public health or climate change, social media platforms are increasingly using AI to fact-check information. Imagine advanced algorithms that can sift through millions of posts, flagging false or misleading claims before they hit your feed.

Saving the world, one fact at a time!

And Then There's the Dark Side ...

Ah, but what about the infamous rabbit hole of conspiracy theories, fake news, and keyboard warriors? Yep, the same algorithms that amplify good content can also boost falsehoods. Add in those deepfakes, and things get even murkier. Remember, algorithms favor engagement, not truth.

Uh-oh.

False Echo Chambers

Here's the kicker: The more you interact with false information, the more it appears in your feed, courtesy of those ever-so-helpful algorithms. It's like being trapped in a never-ending loop of falsehoods.

So, how do we break the cycle?

The Responsibility Question

Both platform creators and users share the burden here. AI can and should be trained to discern the quality of content better, but we also have a personal responsibility to question and verify what we consume and share.

After all, we're not just passive spectators but active participants in shaping the digital landscape.

What Will Authenticity Look Like?

But you're probably thinking, "What about building a brand in this brave new world?" How can I differentiate myself and my offerings from others in the retirement plan space?

Spoiler alert: It's going to look a lot different.

The Era of Hyper-Personalization

Remember when brand loyalty was built on snazzy logos and catchy jingles? Ah, good times. But hold onto your smartphones because we're entering an era of hyper-personalized brand experiences.

AI will analyze your behaviors, preferences, and "mood" based on your social media activity. Picture getting a comforting ad from your favorite chocolate brand right after you post about having a rough day.

"Coincidence? I think not!" says your inner Sherlock.

The Authenticity Paradox

Ah, the million-dollar question: Can AI-generated content ever be considered "authentic?" Brands strive to be relatable, but can a machine-generated tweet ever capture the essence of human experience?

AI as a Brand Ambassador

It's not just about creating content; AI could serve as an ever-awake, ever-aware brand ambassador. Imagine an advanced chatbot that can handle client complaints, process their deep, personalized questions, and even upsell—without breaking character.

But let's pump the brakes for a second. How do we maintain transparency when the line between human and bot becomes fuzzier by the minute?

Privacy, Please

Speaking of fuzzy lines, how much personal data are we willing to trade for a custom-tailored brand experience? There's a fine line between personalized and invasive; crossing it could mean a PR nightmare for brands.

Privacy. A word that could make or break the future of AI in brand-building.

The Moral Quandary

Remember, with great data comes great responsibility. Brands will need to navigate the ethical minefield of AI carefully. It's not just about what they can do; it's about what they should do.

The big takeaway? The advent of AI in social media is akin to opening Pandora's box. It's thrilling and terrifying, filled with opportunities and risks.

So, here's your call to action, my retirement plan-professional friend: How will you adapt to these revolutionary changes? How will you leverage AI's potential while staying ethical and authentic?

The AI future we've been promised for years is finally here. How will you adapt? NNTM

WISE RHINO GROUP

PETER CAMPAGNA

13 EMOTIONS YOU WILL EXPERIENCE SELLING YOUR ADVISOR BUSINESS

*M&A expert **Peter Campagna** runs through his list of common emotional challenges advisors face when they decide to sell their business and the best way to minimize the stress of going through a sales process.*

"Fully 80% of M&A is managing emotion," Peter Campagna, Managing Partner at M&A advisory firm Wise Rhino Group, says. "The financial stuff is somewhat easy, but they're selling their life's work. They're serial entrepreneurs who will become W-2 employees, and it's a big mental shift."

In the following discussion, Campagna takes a fascinating look at what (and how) an advisor often feels when getting top dollar for their advisory business yet saying goodbye to what they've built. Bittersweet doesn't begin to describe it.

"It's an eight-to-12-month process, and it's intense, like a rollercoaster," Campagna added. "The ride almost always ends up in a great place, but it doesn't always feel good when you're on it."

He explains three phases of the sale process and the emotions associated with each before describing the post-close phase and the added emotions it entails.

The three phases in the process are:

1) Preparation
2) Marketing
3)Due Diligence

PREPARATION PHASE

Overall, it means gathering a lot of information and organizing the clients' financial statements. It's when the team at Wise Rhino "gets to know" the clients and their business. They ask a significant number of questions to arrive at a valuation so the seller knows what to expect from the process.

1. **Guilt:** It's guilt right out of the gate; guilt for even considering selling, and guilt that it isn't an internal sale to a family member or key employee (which involves added personal risk and often a deep discount). Preventing business disruptions is paramount, which means the consideration of a sale is initially hidden from the team, and meetings are secretive and behind closed doors. Ultimately, there's little comfort in keeping it quiet.

2. **Uneasiness:** No one is necessarily "excited" to sell, and losing some control over the practice naturally produces an uneasy feeling for the owner(s). One client told Campagna they hadn't received a W-2 in their 35-year career. They've rarely worked for another person, but he reminded them that potential buyers aren't going to pay millions of dollars for a business "only to mess with it. They just want to remove the drag so they can grow faster."

3. **Concerned:** What will happen to the team? Campagna compared it how Richard Gere's character did business in Pretty Woman; sellers instinctively fear it will be bought only to be dismantled in some way that puts the employees out of a job. While it might affect a few employees (accounting, marketing, IT), firms are "starved for talent," and they often repurpose those employees into new roles, sometimes in roles that help the firm grow faster to "crush the advisor's earnout opportunity." So, in reality, Campagna emphasized, all the staff the seller wanted to keep usually stays post-sale.

MARKETING PHASE

It's "getting engaged to be married," or the part where Wise Rhino introduces their clients to potential buyers. The list is then narrowed to three or four.

After a deep analysis and examination of each, the phase ends by deciding on the new partner, negotiating a deal, and signing a letter of intent.

4. **Surprised/Excited/Flattered:** A lot of excellent firms are very interested in the advisor's business. Campagna admitted to stretching by combining three into one, but sellers will feel them all in this phase. It never turns out how they think, but it still turns out great. Some obscure firms no one knows about end up working out, while some "slam dunks" do not. Many dates are set, and suitors are typically on their best behavior. Clients see how they would fit in, and often, what they thought they wanted begins to change as they realize all the wonderful and unique opportunities dynamic buying firms bring, which is exciting.

5. **Skeptical:** Are these offers real, advisors frequently wonder? They simply don't believe the numbers and the deal negotiated on their behalf are real. They think there's a catch or that it will change once the due diligence process begins. Campagna reassures

"IT'S AN EIGHT-TO-12-MONTH PROCESS, AND IT'S INTENSE, LIKE A ROLLERCOASTER."

them that, yes, the check will be that big.

6. **Uncertain:** Do they really want to do this? It's human nature; no matter how big the check and the opportunity, sellers will question if they want it. The loss of control in becoming a W-2 employee has them asking if they can still wear shorts to the office on Fridays or if they will ever be able to take a vacation again, and will they have to report to someone, and will that someone be a jerk? The reality kicks in, and no amount of zeros on a check stops people from feeling that change is hard and scary, even if it's the right move.

DUE DILIGENCE PHASE

The due diligence phase is the most painful phase and where the proverbial deep dive happens. The letter of intent has been signed, and now the "not fun work" begins, according to Campagna.

7. **Overwhelmed:** They receive a flood of data requests, to the point that Campagna joking requests they first get colonoscopies to be more prepared for the process. It will take a decent amount of time and work to gather it. They might start to bring other team members into the process. Work performed in the first two phases will help, as will Wise Rhino's familiarity with the buying firms. Yet, there are required items that only the advisors can access. It's a heavy lift, but it's well worth it.

8. **Nervous:** Will the advisor's client follow them once the sale goes through? It's something Campagna hears from every seller. The reality is almost all the seller's clients sign the consent notices and make the move. However, they usually have two questions: Is it a good move for the advisor, and do they still get work with the advisor?

9. **Adaptation:** Their future compensation will be far different. While adaptation is not technically an emotion, many business owners do really (really) well. Firm net can provide very high annual incomes. It's hard for them to accept that's no longer the case, at least initially. Two things help: the massive check they received for the sale and the ability to grow their income back again. They forget they just put over a decade of foregone current income into their bank accounts. They also forget they now have stock that will hopefully triple over the next five years.

10. **Fatigue:** Everyone hits the wall at some point. Clients have a mini-breakdown, and they want to call it off sometimes three or four times. It's a long process, and they just cannot respond to another inquiry from the buyer. Campagna patiently listens and reminds them why they started the process, the needs it addressed, and that they have ultimate control and don't have to do the deal. At that point, they regain composure and get back on track.

11. **Torn:** Sharing the proceeds with the team that got them to where they are. Should the sale check be shared with key people or everyone on the team? If so, how much? Will it be appreciated and have a positive effect on future performance? What about the earnout? Should that be shared as well? They are all difficult yet critical questions, and Campagna helps them find the right balance.

LIFE AFTER THE CLOSE

It's over, and their family is probably set financially for life. It's a done deal, and they have a new life with a new partner. So, what happens now?

12. **Relief/Elation:** Believe it or not, the close is anticlimactic. The long, arduous process that's recently consumed their lives is over. Yet, years of their hard work have officially been monetized. Campagna is always honored when he occasionally receives a thank you note for changing their lives. The buyer got a great new firm, and the sellers monetized their life's work; everyone wins.

13. **Surprised:** Life isn't that different the next day. It's the same office, team, and, in many ways, the same challenges. The difference is they are part of something bigger, and, yes, some things will change eventually, but they were probably needed and positive.

It's a difficult process overall, and multiple clients means Campagna is dealing with multiple emotions simultaneously. He emphasized that he is always empathetic to the emotional aspect of the sale process, and the day he isn't is the day he will retire.

"It's often the most important financial event that's ever happened in their lives," Campagna concluded. "I never forget that, and I never take it for granted."

DIVERSE SUCCESS:

HOW ADVISORS OF COLOR ARE CLOSING THE RACIAL SAVINGS GAP

THESE TOP PROFESSIONALS ARE MAKING AN IMPACT IN THEIR COMMUNITIES AND BEYOND, HELPING AN INCREASINGLY DIVERSE WORKFORCE ACHIEVE RETIREMENT SECURITY. HERE'S HOW THEY'RE DOING IT, AND HOW YOU CAN TOO.

BY JOHN SULLIVAN

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THE STATISTICS SURROUNDING THE GROWING RACIAL RETIREMENT SAVING AND COVERAGE GAP ARE STARK, AND SERIOUS. A GOVERNMENT ACCOUNTABILITY OFFICE (GAO) REPORT RELEASED LAST SUMMER FOUND THAT WHITE HOUSEHOLDS HAVE ROUGHLY DOUBLE THE MEDIAN RETIREMENT ACCOUNT BALANCES AS HOUSEHOLDS OF ALL OTHER RACES.

Recent research from T. Rowe Price was more explicit, finding that "among private sector workers between 21 and 64 years old, only 40.5% of Black workers and 31.9% of Hispanic workers participate in a retirement plan, compared with 57.7% for white peers."

It added that when work-based retirement plans are available, Black workers participate at a rate of 81.6%, with Hispanics at 82.2%, and White workers at 90.4%, reinforcing that coverage, or lack thereof, is an issue.

Closing the gap is an essential step toward achieving successful retirement outcomes for all Americans. While increasing the number of businesses offering a plan—especially those small- and medium-sized—is critically important, it should (and must) coincide with a long overdue increase in the number of advisors of color.

Encouraging more advisor representation through Diversity, Equity, Inclusion, and Belonging (DEIB) initiatives and outreach would lead to more tailored, culturally sensitive advice that would help communities of color build and secure their financial futures.

Indeed, it's already happening with diverse NAPA members taking the lead and making an impact within the communities they serve. So, how are they doing it and what specific steps are they taking?

Several high-profile advisors weigh in.

CULTURALLY **CONSISTENT**

Retirement means different things to different communities, Doug Bermudez, Managing Director with Strategic Retirement Partners in the greater Los Angeles Area, explained.

"Not only that, but it's also important to understand how different communities view money, financial services, and the system overall," Bermudez, who immigrated to the United States from Nicaragua as a child, said.

Building trust is a major issue, he emphasized.

"There are two socioeconomic classes in many parts of Latin America—the haves and the have-nots. Most of the have-nots don't trust banks, which they view as for the rich, and they certainly don't have retirement plans. That cultural bias comes with them to this country, and many don't trust the financial services industry. They prefer to keep the money in the corner dresser drawer because they know it's there, it's real, and it's cash."

It's an EQ versus IQ solution, he continued, and he's genuinely curious about their views on retirement saving and what they've heard about 401(k)s in particular. Getting people to express their feelings about money is essential because it's emotional first and foremost.

"I want to understand where they're coming from to address those concerns and tell them the truth about how it really works," Bermudez added. "No, your employer is not making up the rules, these plans are overseen by the government, and everybody must comply with the rules to protect you and, just as importantly, your beneficiaries."

It's not that getting them to participate and save is necessarily difficult, it just requires determination and consistency.

"I'm there on the campus, telling them my story as someone who speaks the language and comes from a similar background. I'll often joke with them and tell them they don't have to participate now, but when I'm back in three months, they must sign up. It's because I'm back

> ONE OF THE THINGS THAT I'M COMMITTED TO IS DUPLICATING MYSELF. I'M ALWAYS LOOKING FOR PEOPLE THAT I CAN POUR INTO AND MENTOR.”
>
> – **JANINE MOORE,** HUB RETIREMENT AND WEALTH MANAGEMENT

in three months and remember their names and what we discussed that they end up participating.”

It's that consistent familiarity of showing that he cares; that he wants them to care about themselves, and that it's important for them to care about their future.

“When I'm in a lunchroom, I'm offered the food that they are going to eat, okay?” he touchingly concluded. “They're willing to share their meal with me, and in the Latino community, food is family.”

INTENTIONALLY INCLUSIVE

Any person of goodwill would agree that the industry, advisory firms, and plan committee boardrooms should be as inclusive as possible, Christopher Cervantes said.

“Yet, most boardrooms don't look like their constituents, who are the participants, and neither do most advisor teams, who have not placed a priority on inclusivity and absolutely are not reflective of the workforces they serve,” Cervantes, Founder and Managing Partner of Plano, Texas-based Valorous Advisors, argued. “Larger companies are a bit more intentional, but most small to mid-sized companies are not. So, there's a lot of work to be done and I think we will be a better industry because of it.”

He repeatedly mentioned the need to “be intentional” within his own firm to better represent the plan sponsors and participants with whom he works.

“We always, of course, hire on merit, first and foremost, but we look for opportunities,” he explained. “We challenge ourselves and ask, ‘Who are the best people that would be great to have in the industry, even if it may be new to them?’ We always think of it with the client in mind and the diverse workforce that we have in America. If the objective is inclusivity, all for one, one for all, and we lock arms together regardless of our background, then let's do that in a very intentional way.”

Yet, when discovering an opportunity to help a plan sponsor who may have historically struggled to install a successful plan or to improve upon a plan in place, Cervantes, like Bermudez, emphasized the need for a tailored approach due to a lack of trust.

“The approach has to be different because maybe historically, from their workforces, they're unbanked, so they're distrusting what this whole investing thing is,” he said. “Is the money being confiscated out of my paycheck, where is it going, is it really mine and can I trust that all this is right? There are so many different issues that historically diverse groups and clients are faced with, but we view it as a challenge and are successful at working with groups of all sizes and backgrounds.”

‘DUPLICATING MYSELF’

It's impossible not to love Janine Moore's answer to how she's making a difference in communities of color.

“I've been in the industry for well over 30 years, so I've had quite a few opportunities to give back,” Moore, Senior Vice President and Retirement Practice Leader with HUB Retirement and Wealth Management, said. “One of the things that I'm committed to is duplicating myself. I'm always looking for people that I can pour into and mentor. I've been mentoring women for well over two decades. I usually take on somebody maybe 10 or 20 years younger than me because I enjoy teaching them and giving them a path to follow. And I usually focus on women and women of color, especially because I know there's a dearth of that in our industry.”

Adding that it's incredibly important to extend a hand up to people new to the industry, she then mentioned several initiatives and organizations (and sent examples of many more) with whom she's involved both within and outside the industry.

“I'm active in several different organizations around alleviating hunger, and our team's favorite is KidsMeals, located in inner city Houston. Each year, we go in with our industry partners and clients and pack lunches for preschoolers. We try to beat the number of lunches we've created each year. Last year, we packed about 2,600 lunches, and that feeds the Greater Houston area one day's worth of food. It's an indication of how needed it is.”

She's also stayed engaged and affiliated with her college sorority, Alpha Kappa Alpha Sorority, Incorporated, recently presenting financial seminars and webinars to two chapters using laypersons' terms on financial empowerment and how to get started with the basics.

Moore concluded with one last example—an anecdote of a time when she helped close the coverage gap, and one of which she's particularly proud.

“I work with a lot of nonprofits and governmental entities,” she said. “One of them is called The Bridge Over Troubled Waters. The Bridge is a domestic violence shelter where people can become whole through training and education services. I originally did that plan pretty much for free because I recognized the women are making very minimal amounts of money, and they deserve to have somebody helping them with their financial needs.”

When initially taking on the plan, she found only 10 of the higher-paid

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THAT'S WHY I FIND JOY IN THIS WORK BECAUSE I KNOW I'M HELPING SOMEONE WHO MIGHT FEEL THE BENEFITS AREN'T FOR THEM.

– **AMIRA MARTIN,** ONEDIGITAL

staff participating. It's now at roughly 85% participation, which, considering some employees make $12 an hour, she argued is pretty good.

"But the goal is to get in there once a year and give them a financial wellness seminar to teach them about budgeting and savings, and then sit down with them one-on-one to talk about what's going on in their lives. It's frightening to see what they've been exposed to. Most of the women there have been abused, and that's why they've decided to work at this organization. It's one of my pet projects. I love it, and I hope to always be with them."

SOMETHING'S MISSING

Moore's colleague at HUB, Senior Vice President Lee Bethel, emphasized that he's an advisor to all first and an advisor of color second. He makes an impact in the community in several ways, often presenting seminars at local churches and charitable organizations, most recently at an "ask a professional" day that included attorneys, credit counselors, and a variety of different people who provided needed information.

"Financial Information of that type, in all communities, but specifically in the black community, there's just not a lot given," Bethel said. "We don't get a lot in our schools. We don't have a lot of knowledge there. For example, if I'm doing a 401(k)-enrollment meeting, I have to start with the basics and explain what a stock is. They'll say, 'Somebody told me I could lose all my money if I invested in my 401(k).' Okay, so then I know we've got some work to do."

His answer, unsurprisingly, is greater professional outreach to recruit and retain advisors of color, something he's done for decades through industry advocacy organizations.

Three to which he belongs stand out:

The Conference of African American Financial Professionals (CAAFP), whose lead sponsor is the American College of Financial Services, serves to advocate and advance the charge for increased representation of Black and African-American professionals in the financial services industry.

The National African-American Insurance Association (NAAIA) is dedicated to empowering African-American insurance professionals.

The Association of African American Financial Advisors (AAAA) was created to address the needs and concerns of licensed Black/African American Financial Professionals in wealth management.

"Quad-A, as it's called, was founded by Lecount Davis, the first black CFP," Bethel explained. "I went to all three of their conferences again this year. The average attendance at each was around 900, so that's a scope of about 2,700 to 3,000 advisors that came together at those separate meetings to talk about the things that I just described."

Of course, there's a glaring omission, a chicken-and-egg situation that Bethel is quick to acknowledge.

"There's one dedicated to retirement plan advisors of color, absolutely. Part of the challenge is that there are not many of us, so there's just not the revenue to support it would have to grow out of some other organization."

UNIQUE PERSPECTIVE

Speaking of Quad-A, it's an organization Amira Martin previously partnered with on this very topic: how to garner more interest in the retirement services industry to attract minority, African American, and Latina/Latino advisors.

"When I have the opportunity to talk with people of different minority races, and they see someone who looks like me that's able to speak to them about their retirement plans, about finances, about benefits, there's a connection there," Martin, a Retirement Plan Consultant with OneDigital, said. "They see themselves in me and often see myself in them. That's why I find joy in this work because I know I'm helping someone who might feel the benefits aren't for them. Can they participate? Do they make enough money to save for my retirement? Can someone help them connect the dots? They're all questions they have."

She recalled a meeting at a dentist's office early in her career, in which her superiors were in suits and the dental staff in scrubs. The former used a good deal of financial jargon, and aside from Martin, didn't notice that they didn't connect with the participants.

Something that gives her a unique perspective is from her time working on the plan sponsor side of the relationship, managing a hospital's 403(b) plan. She took the opportunity to understand everything from a human resources perspective, as well as what they struggled with. She gained valuable insight into the HR experience and, specifically, how they engage with the board about retirement plan decisions.

"But my ability to be able to connect to individuals who are working class is why I got back into the advisor side of the business," she added. "The best situation I'd ever been in was at a manufacturing plant. An African-American gentleman came up and thanked me. He must have been about 56 and getting ready to retire. He said he wished he had met me 20 years ago. That changed me. It truly did. I never forgot that man. And sometimes I still see his face whenever I'm presenting to participants." NNTM

You're Hired!

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What are the keys to a winning finals presentation? Six advisors reveal best practices and secrets to success. By Judy Ward

Before becoming an advisor, Matthew Eickman served as legal counsel for plan committees.

"So, I had the luxury of being in the room after all the finalist presentations had ended," Eickman, an attorney who is now national retirement practice leader at Overland Park, Kansas-based Qualified Plan Advisors, said.

"It never failed that once the presentations ended, the committee members looked around the room and said, 'Well, they all seem pretty much the same to me,'" he said.

Advisors really need to think through that other advisor finalists likely focus on the same handful of plan and participant service areas and figure out a way to differentiate themselves.

"Then it becomes more of an art and less of a science," he added.

Amid intense competition, it's natural for advisors to wonder: What's the secret to a winning finalist presentation?

"People always want to know, 'What works?'" Matt Leeper, Wayne, Pennsylvania-based senior vice president and retirement plan counselor at Capital Group, said. "I believe a plan's business is won or lost before you get in the room. You've got to prepare and then do dry runs before the meeting. The days of preparing for a finalist presentation on your way to the meeting are done: The stakes are too high for fiduciaries not to pick an expert. You need to make that connection quickly, and you've got strong competition."

Six experts talked with *NAPA Net* and shared these tips for a winning finalist presentation:

• Focus on them, not you:

"The number-one thing is definitely to make the presentation about the potential client, not about you," Dan Peluse, Chicago-based executive director of the Retirement Benefits Advisors division at Wintrust Wealth Management, said. "While presenting, you are providing a service for that plan committee. You are making it about the client's need and how you can fulfill it. We spent too much time in the past talking about, 'Here is our service approach, and here are samples of our reporting.'"

The presentation's content should be based on the input an advisory firm gets from the employer while doing its research before the presentation, Leeper suggested.

"Focus in the meeting on what's most important to them. You'll find that if you're just talking about your firm, it won't resonate as much with them as it will if you focus on them," he said. "The differentiators for advisors now are more about how you understand the issues that employer has."

Leeper says advisors should clearly articulate their value to that employer and committee during the presentation.

"You need to be able to give people a visualization of how their experience, governance, and confidence (as plan sponsors) will improve by hiring you," he added.

• Get committee members' input before the meeting:

While prepping as a finalist, Peluse and his team typically set up a brief call to better understand the plan sponsor's goals and objectives. "We are trying to find out: Where are that plan's pain points? What is the motivation for doing the advisor search?" he said. "It's really helpful to find issues that we'd want to spend the majority of time in the presentation on, so that we can plan for explaining how we can differentiate ourselves on those issues."

Peluse also wants to know a plan's issues in advance so that his team can identify which team members should attend the meeting because they have expertise that aligns with that plan's main focus areas. For example, if an employer wants a major focus on employee education, he can bring a Wintrust education specialist who has done a lot of participant-level work with similar clients.

Qualified Plan Advisors tries to get feedback beforehand from each decision-maker from the employer who'll be at the meeting to understand each person's biggest priority for that plan. "If you've got a committee of five people and you've worked heavily with three of them before the finalist presentation but haven't gotten any input from person four or person five about the plan," Eickman said, "the failure to do that can cost you votes when they make a decision."

• Understand the employer's bigger picture:

Beyond the retirement plan, Leeper also suggests doing pre-meeting research on that employer's goals, its culture, and its key executives.

"If you're only going to have 30 minutes or 60 minutes or even 90 minutes for your presentation, you've got to get them to understand that you understand who they are," he said. "Winning teams stand out because they've done their homework to connect with the buyer."

Research is most valuable when it's coming directly from a plan sponsor's perspective, Eickman thought.

"What you really need to be successful as a finalist is to understand how the decision makers at that employer see the culture and issues of their organization. If an advisory firm can demonstrate a real appreciation for an organization's current environment–its challenges and growth trajectory–that will allow the advisor to become a true consultant to that organization, not just a vendor," he said. "If you take that approach in the meeting, I think that many sponsors will say, 'Wouldn't it be nice if we could have four meetings a year with this advisor, not just to hear how the S&P is doing, but to talk about how the advisor can help our people and can help our business be stronger?'"

• Have a discussion, don't give a speech:

The D'Aiutolo Malcolm Investment Consulting Group at UBS Financial Services Inc. in Buffalo, New York, strives to have more of a conversation than deliver a speech, Senior Vice President Alicia Malcolm said.

"When I first started in this business 12 years ago, I didn't know much about 401(k) plans yet. But I was really good at asking committee members questions and getting them involved in a conversation," she said.

"The key in these meetings is getting the committee members to open up and talk. We do that by asking them questions and by not making assumptions about what they are looking for."

Instead, she'll seek the committee members' input on a topic.

It's ideal if the team making the finalist presentation does only 30% to 40% of the talking during the meeting, said Gary Tankersley, Denver-based head of sales and distribution at John Hancock Retirement.

"We do a lot of sales training here, and one gentleman liked to say, 'People are fascinated listening to themselves talk.' So if you're doing all the talking, you've got a problem," he explained. "I think that if your audience is talking 60% to 70% of the time during the meeting, that's a winning presentation. When you're presenting, you want to ask them questions and be genuinely interested in their answers. You want to be interesting, but you also want to be more *interested* than *interesting*."

• Offer a "test drive" during the meeting: "You need to give people a 'test drive' of what it would be like to work with you," Leeper said. "So it helps to have three good stories you can tell about similar clients you've worked with to address similar issues."

Peluse has seen how much discussing case studies about Wintrust's work with similar clients resonates with committee members in these meetings.

"At the end of the day, what differentiates ourselves is our experience with clients of similar size, location, and employee, and how we've helped drive successful outcomes for them," he said. "Having experience working with plans that are challenged, in ways that are similar to what these folks are challenged with, has really been a differentiator for us."

For example, if a potential client wants more focus on controlling costs and has a plan recordkeeper that Wintrust works with a lot, the advisory firm can talk about its experience renegotiating the recordkeeping contract of similar plan clients, resulting in a lower fee and/or additional services.

While preparing for a finalist meeting, Innovest Portfolio Solutions' team will look closely at the plan's investment menu and fees, searching for opportunities to suggest potential improvements.

"Then in the meeting, we can position ourselves to solve whatever problems they have," said Wendy Dominguez, principal, co-founder, and president at the Denver-based advisory firm. "We'll try almost to give them a little free consulting in the meeting so they can see that, number one, we care, and number two, we've invested some time in this opportunity."

• Get specific about your services: "We're staying away from the 40-slide PowerPoint presentations," Peluse said. "It's six to eight slides that show, 'Here's where your plan's gaps or challenges are, and here is how we're going to help you with those issues.' Oftentimes, we used to not want to share too much information in finalist meetings about what we could do for that plan because they could just take that idea and do it themselves. But now we know what we need to show them as much as we can about what a day in the life of a Wintrust client is like, or we risk losing that opportunity altogether."

Eickman suggested giving committee members a concrete sense of how an advisory firm's service model can help that plan with its issues. For example, maybe an employer prospect previously told Qualified Plan Advisors that it continues to face major challenges with competition to hire and retain employees.

"So in the presentation, we might say, 'You've explained to us that you're really struggling to compete for employees. So, number one, here is how we can help you ensure that your plan design is built in a way that means you can brag about your plan to people you're trying to recruit or retain. Number two, here is how we can help you with communications to demonstrate that to employees. And number three, here is how we will meet individually with your employees to help them.'"

• Don't come in with guns blazing: "You want to understand what they have now for their plan, but what a lot of advisors look past in their preparation is also really understanding the historical narrative of how they got to where they are now," Tankersley said. "One of my favorite advisors likes to say, 'Remember, this plan is somebody's baby, and nobody wants to hear their baby called ugly.' A lot of advisors come into these meetings focused on talking about improvements needed for that plan. But if someone who was involved in making the committee's previous decisions is still on the committee, maybe you want to be more careful in how you talk about it. You want to validate the decisions they made historically, but talk about how things have evolved and changed since then, so you give that person

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> "The key in these meetings is getting the committee members to open up and talk. We do that by asking them questions and by not making assumptions about what they are looking for." — Alicia Malcolm, The D'Aiutolo Malcolm Investment Consulting Group

cover. If you put someone in a defensive spot, that's going to work against you."

It's always a fine line to suggest plan improvements in a way that doesn't risk seeming critical about the committee's previous decisions, Malcolm said.

"We never want to make the plan sponsor feel like they have a bad plan. So we always highlight what they're doing really well," she said. "We then tell them, 'Here are the observations we've made about your plan, based on the data we have.'"

That will include suggestions for potential changes, such as starting automatic enrollment if the plan doesn't utilize it.

"We tell them, 'If we're engaged, we'd want to have a dialogue with you about these issues in our first year.' We do not 'take apart' the plan: We do provide observations, but we're careful not to do that in a judgmental way."

• Practice, practice, practice:

Even experienced advisors benefit from practicing their finalist presentation, Leeper suggested.

"The dry runs allow you to air out how [its] resonating?" he said. "You've got to make people *feel* it: to visualize, from your preparation and your presentation, what it would be like for you to be that plan's advisor. And that's the hard part of it because it is kind of a 'sea of sameness.'"

Dominguez and her Innovest Portfolio Solutions colleagues have a methodical approach to preparing for each finalist presentation. Typically, the team that will present meets three times before the finalist presentation, for about an hour each time, she said. By this point, the team usually will have gotten some input from the potential client about the main reasons it wants a new plan advisor.

At the first meeting, the team decides on a strategy for explaining how Innovest can address the potential client's focus areas.

At the second meeting, they'll devise a plan for the presentation's content, including the PowerPoint slides they need.

At the third meeting, they'll review the presentation and which team member will give each part. Asked about the value of having a methodical approach to being a finalist, she said, "Ultimately, it helps show them what it's going to be like to be a client of ours."

Practicing also allows an advisory team to determine how to respond to challenging questions.

"You want to plan for, 'OK, what's the worst question that I'm going to get?'" Tankersley said. "If you connected with people at the prospect before the meeting, you also have a sense of what they care about, so you can think about the other kind of questions you're likely to get." He recommended to practice responding to questions in a way that isn't defensive. And think through how to answer likely questions without using industry jargon that some committee members may not understand.

• Be proactive about following up:

Malcolm follows up quickly after the meeting.

"I always get individual letters out within the next day to committee members to thank them for their time. That way, everyone who was there has my contact information if they need anything else to make a decision,'" she said. "A lot of times, it may be several weeks before the committee makes a decision. So we 'drip' on them. If they say the decision will be made in four to six weeks, probably every other week we will check in with them to see if they need anything else from us. And we will have different people on our team check in with them, so they can see that it's not just one person who'd be working with them."

Wintrust's approach to following up depends on the plan sponsor's timeline, Peluse said. "If we know that we have a long time before the decision is made, we will set up a reminder to follow up with the committee every two weeks," he said. "We don't want to bombard them, but we will send them things like our plan sponsor communication that goes out monthly or our participant newsletter. We'll send them an email and say, 'Here's something we sent to clients this week, and we thought you would find it interesting.' We want to start to ingrain in them what the experience of being a client of ours is like." NNTM

Judy Ward is a freelance writer specializing in retirement plan-related subjects.

The Balancing Act

Seven Top Women Advisors talk about balancing their personal and professional lives.

By Judy Ward

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"I've been doing a lot of thinking about it and building a successful career as an advisor is kind of a double-edged sword," said Debbie Matustik, managing director of Pensionmark's Austin, Texas, team. "The more successful you are, the more business you get, and the more time it takes to manage it."

"The biggest challenge I have in finding a work/life balance is that I'm extremely driven to provide high-touch services to my clients, but at the same time, I wasn't willing to sacrifice time with my family," said Matustik, the mother of 18-year-old twins who recently started college. "Things like having dinner with my family are really important to me. There's just never enough time in the day, and that's the same theme that I hear from everyone: Everybody is overwhelmed with requests for their time."

A study of its members released in April 2023 by WIPN found lots of people in the retirement industry feeling "a great deal of pressure" to focus on their responsibilities at home: 45% of fathers and 67% of mothers agreed with that sentiment, reported in WIPN's paper, "How The 'Do-It-All' Culture Is Affecting Women In The Retirement Industry."

Seven of the honorees on NAPA's 2022 Top Women Advisors "Captains" list talked to *NAPA Net* about their efforts to maintain a work/life balance.

A Constant Pull

Over her more than two-decade career, Dori Drayton has seen a lot of ebbs and flows in how she's challenged to have a work/life balance. The issue came to the forefront early in her career, when her husband was diagnosed with leukemia and passed away four weeks after their daughter was born.

"I was a young professional but also a single mom, so I learned very early that I had to be very efficient with my time," said Drayton, now a Grand Rapids, Michigan-based principal at CAPTRUST. "I think that the challenge of having a work/life balance is not gender-specific, though," she added. "It was a gender-specific issue maybe 30 years ago, but nowadays, it doesn't depend on gender. Everyone wants balance in their life."

> “I was a young professional but also a single mom, so I learned very early that I had to be very efficient with my time.”
> – Dori Drayton, CAPTRUST

Many advisors likely will relate to Kathleen Kelly’s response when she was asked what’s been challenging about maintaining a work/life balance as she built her career.

“Obviously, balance is difficult when there are only 24 hours in the day,” said Kelly, managing partner at Greensboro, North Carolina-based Compass Financial Partners, a Marsh & McLennan Agency LLC company. “But as you go through your career, you live and learn. For me, the challenge truly is that I enjoy doing so much: That includes not just my career but also spending time with my family and other things like volunteering. And I want to commit to everything at a high level. It is the old story: There’s so much to do and so little time to do it.”

Michelle Cannan also has felt the challenge of wanting to devote a lot of time to both her professional and personal lives.

“There’s a constant pull in both directions,” said Cannan, who leads the retirement plan consulting team at Beltz Ianni & Associates in Rochester, New York. For example, she switched firms five years ago, partly because she wanted to travel less for work to be home with her family more. When talking to Beltz Ianni before joining, she said, “I was really open and honest about that. You just have to make sure that you express your priorities and what you are looking for.”

“My advice is to think about what ‘success’ looks like for you, both at work and home,” Cannan added. “It is really easy to make one or the other your priority. But if you write down your goals, in defining success in both those areas, it then really helps to look back at those goals when things come up.”

Planning + Delegating = Manageable

Communicating clearly with clients about realistic timing for what will get done and when has become an essential part of how Cindy Orr keeps her workload manageable.

“What I’ve been able to do is look at our client service agreements and make sure that we’re setting expectations about when we’re going to do things,” said Orr, Kansas City-based lead managing consultant at CBIZ Retirement Plan Services. “We’re trying to schedule work we’ll do for a client for the entire year, as much as possible.”

For example, Orr and her team put together an annual calendar for each client that spells out what topics will get covered at each committee meeting, such as CBIZ leading a review of plan benchmarking.

“By knowing in advance what’s going to be on the agenda for each meeting, I’m able to work on preparing for a meeting earlier in the quarter,” Orr said. “It seems a little more predictable.”

Being very disciplined in how she spends her time has been key to Matustik achieving a work/life balance.

“When I’m at work, I prioritize my work activities, and I’m really—sometimes painfully—laser-focused on work during that time,” Matustik said. “I’m not the person to spend time at work scrolling through social media.”

In trying to manage her time proactively, Matustik plans ahead as much as possible, and for her, that means “staging” recurring work such as quarterly reporting for clients. She and her team break each recurring project into a series of tasks, then plan a methodical schedule of who will do which task and when. That way, the team works gradually on projects such as quarterly reporting, rather than having a huge rush every quarter.

“I really think it’s a matter of organization and discipline,” Matustik said of managing her work time effectively.

Even early in their career, Nicole Corning suggested that plan advisors spend time incorporating efficient processes into their work. And Corning, a Scottsdale, Arizona-based managing partner at the Buckman & Corning Financial Strategies Group of Wells Fargo Financial Network, also recommended learning another key skill: “Delegate, delegate, delegate,” as she said.

“A lot of the work we do as advisors is like herding cats: It’s the minutiae, the follow-ups after meetings. But the details are critical,” Corning said. “The sooner you can figure out who on your team you can delegate some of the work to, the better off you’ll be. Your time as a plan advisor is much better spent on high-level plan functions and helping clients with the big picture.”

With so many things an advisor could work on, Kelly said, it’s very important to recognize what they do well and what they do poorly.

“The reality is that early on in your career, you have to do everything: You are a jack-of-all-trades,” Kelly said. “But then you learn to look to surround yourself with teammates and colleagues who complement you.”

For Kelly, she thrives most as a big-picture person, working directly with clients.

“The impact and influence that we can have to guide our clients’ decision-making for the best outcomes for participants is incredible,” Kelly said. “So

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I love meeting with clients, being in front of a committee, and collaborating about ways to be impactful. That is really fun for me." It's less fun for her, for example, to deal with the nitty-gritty of scheduling her packed calendar. So she now has team members "who love to navigate the pieces of that puzzle," as she said.

"At first, I had a hard time letting go and delegating work," Kelly continued. "But over time, I came to recognize the value, not only for me but for the professional development of my team. We've always operated a team that does not micromanage. The key to our success is trust and growth and empowering the people around me. We give our team guidance, but we also give them leeway to take things and run with them."

As someone who grew up playing team sports, the idea of teammates handling part of the work isn't a stretch for Heidi Sidley.

"And when I delegate something, I don't come to the table with preconceived ideas and notions about how it should be done," said Sidley, the Armonk, New York-based principal and managing director at StoneStreet Equity, a OneDigital company. "I explain what we need to accomplish, and then I have an open mind as they explain how they would try to accomplish it. And I always tell people, 'No question is stupid: If you don't understand something, ask me about it because you need to understand it.' I tell my team, 'We are all in this together, so we need to be rowing in the same direction.'"

In becoming a comfortable delegator, Drayton realized that she needs to understand how the person she's delegating work to learns best, and she and her colleagues talk openly about it.

"Some people need very specific directions, and others only need general direction," Drayton said. "If you give very specific directions to someone who is very experienced, that person may feel micro-managed. If that person is not very experienced and you only give a little direction, that person can feel overwhelmed."

The Inner Dialogue

While honest dialogue with clients and teammates plays a critical part in achieving a work/life balance, the Top Women Advisors also talked about how their evolving internal dialogue plays a big role.

"I have learned that I have to let go of my perfectionist tendencies. I wanted to give 200% with everything that I do, and I realized that it is not possible to give 200% of myself to everything," Drayton said. "You have to allow yourself that

> “I think it’s important for you to schedule your personal life just as much as you schedule your professional life.” – Cindy Orr, CBIZ Retirement Plan Services

grace. I learned that lesson years ago from a mentor who sat me down and said, ‘You’re going to burn yourself out if you try to do everything. You give 100% of yourself at the office, and you also want to do it all at home.’”

As her career developed, Corning became less hard on herself over time. She learned to feel OK if she temporarily needed extra help from her parents to pick up her kids after school during a hectic work time.

“I just let me be me,” Corning said. “I do drive myself really hard, but I learned that sometimes I needed to be easy on myself—to give myself permission to not be perfect at everything.”

“Now, I do a pretty good job of managing a lot of chaos and craziness. Having kids will 100% humble you in the best way,” said Corning, the mother of two boys. “Having kids forced me to accept that I couldn’t do everything perfectly all the time.”

“Looking back, I wish I could have given myself the advice, ‘Just take a break. Stop freaking out. Go for a walk. If you need to take time away from the task that you’re doing to spend time with your family, do that,’” Corning concluded. “As they say, the days are long, but the years are short.”

Drayton learned to make time in her schedule for things like going on her kids’ field trips and volunteering at their school.

“I had to figure out, in my personal life, ‘What are the things that mean the most to me?’” Drayton said. “And then I prioritized those things. I also realized that it’s OK if I didn’t get the laundry done that night: I could do it the next day.”

Matustik blocks time for family activities and time with friends on her calendar, just as she blocks time for work and keeps those commitments.

“As an advisor, you want to have a fulfilling career of helping people, and I love what I do. But on the other hand, when you’re lying on your deathbed, are you going to be sorry that you missed that one client meeting, or are you going to be sorry that you missed your daughter’s dance recital?” Matustik said. “What’s important is making time for all aspects of your being. You need to keep your priorities straight and remember that ‘work you’ is only one part of you.”

For Cannan, she’s learned to allow herself flexibility.

“I am hesitant to actually draw firm boundaries about my work/life balance because I feel like you need to have full flexibility in both your work life and your home life,” Cannan said. “I’m the kind of person who will check my email a couple of times a day, even when I’m on vacation: It helps me feel connected to our team and our clients.

“But last spring, my son was on the tennis team at his school, so I sometimes left the office during the day to attend his matches,” Cannan continued. “The tradeoff I made is that I was willing to put in work hours at home, in the evening or on the weekend, to make up for that. In reality, there is going to be spillover on both sides: Your work life will spill over into your home life, and your home life will spill over into your work life.”

As her career progressed, Orr learned to make time for cherished activities like a vacation cruise to the Caribbean.

“I think it’s important for you to schedule your personal life just as much as you schedule your professional life,” Orr said. “For example, I schedule monthly family get-togethers.” She and her husband have eight grown children between them, and they host a monthly dinner for his children or hers and their kids. She also hosts a monthly potluck with her parents, siblings, and their children.

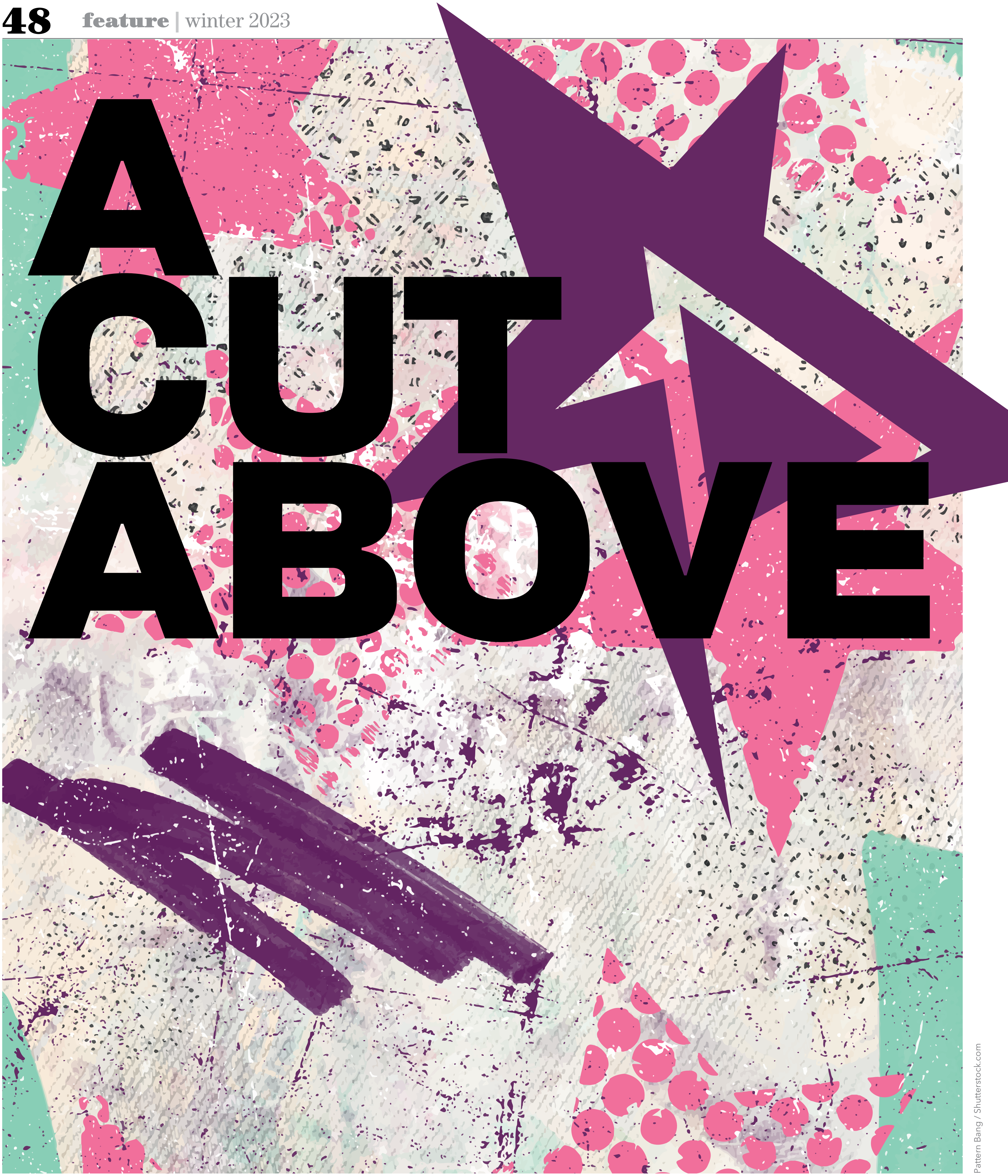
“For me, finding balance was about being more thoughtful in what I choose to spend my time on,” she added. “I put more focus on being healthier in body, mind, and spirit. I finally put my mind to it.”

People define what a work/life balance looks like differently, as Sidley said.

“I think it’s really important to define what ‘balance’ means to you and then carve out that protected time you need to have that balance,” Sidley said. “For me, it’s exercise and spending time in nature. I can incorporate that even if I have to have calls with clients or my team: I can do calls while I’m outside, getting my walk in,” she said. “I also don’t have a traditional desk in my office: I have a pedal desk and a standing desk, weights, and a yoga mat. So I can pedal at my desk while I’m on a Zoom call.” She even created a group of other area professionals to take walks as they talk about business.

“I structure my time to accommodate what makes Heidi happy and what makes me the best version of me,” Sidley added. “You have to hold onto the things that define who you are, and that bring you joy and ‘reset’ you—and don’t be afraid of breaking down some stereotypical notions of how things are ‘supposed’ to be.” NNTM

Judy Ward is a freelance writer specializing in retirement plan-related subjects.



A CUT ABOVE

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INTRODUCING NAPA'S TOP WOMEN ADVISORS OF 2023

BY JOHN SULLIVAN

We'd be hard-pressed to think of better ambassadors for financial services and the advisory space specifically than the advisors named to the Top Women Advisor accolade each year. They're the best of the best and continue to push the industry forward and set the bar higher for advisors as a whole.

More women are joining the ranks, and headway has been made against the "male, pale and stale" stereotype with which financial professionals have been saddled, yet job search website Zippia notes that just 27.7% of all finance advisors are women, compared with 72.3% for men. There's still a long way to go in achieving proportional representation in all facets (management included) of the field.

As former American Retirement Association Chief Content Officer—and my friend and mentor—Nevin Adams recounted, the accolade was met with initial resistance, with many women advisors rightly fearful that a separate category would diminish their achievement and give the impression they can't compete directly with me. It was (and is) a valid concern, yet as the years progressed, a new generation of women advisors emerged and routinely remarked on the list's inspiring nature. It's one reason the "Rising Stars" category is so popular.

This year, as in years past, the nominees—more than 500 of them—were asked to respond to a series of questions, both quantitative and qualitative, about their experience and practice, as well as their accomplishments, their contributions to the industry, the state of workplace retirement plans, and how they give back.

A panel of judges reviewed and scored the questionnaires over several weeks and selected the women we honor today in three separate categories:

- **CAPTAINS:** All-stars who happen to be principals, owners, or team captains of their organizations (click here to view the list).
- **ALL-STARS:** Top producers who have their own practice (click here to view the list).
- **RISING STARS:** Top producers who have less than five years of experience with retirement plans as a financial advisor (some have been working with retirement plans longer, but not as a financial advisor) (click here to view the list).

We created the NAPA Top Women Advisors accolade in 2015 to acknowledge the contributions of a growing number of women who are making significant contributions to the retirement industry and bringing excellence to the profession. It's by far the most deliberative of the industry accolades we showcase, beginning in May with the nomination process, through September with the voting process, to the announcement of the winners in October.

We thank the judges' panel for generously volunteering their time and expertise, the NAPA Firm Partners who nominated these outstanding individuals, and our appreciation for the hundreds who were nominated and submitted applications.

Our heartiest congratulations to those recognized on this year's list for the excellence they bring to our industry and the difference they have made and continue to make for the retirement security of millions of Americans! NNTM

CAPTAINS

KARIN ALVARADO
Osaic - New Aspects

CINDY AUTRY
OneDigital

JESSICA BALLIN
401k Plan Professionals

PAM BASSE
NFP

JENNIFER BRETON
Lebel & Harriman Retirement Advisors

KELLY CARLSON
Advizrs, Inc.

SARA CARVALHO
Marsh McLennan Agency

MICHELLE COBLE
Osaic - Odyssey Financial Group LLC

NICOLE CORNING
Pathlight Advisors

BREA DANTIN
ProCourse Fiduciary Advisors, LLC

KELLI DAVIS
CSi Advisory Services,
a division of HUB International

LISA DRAKE (GARCIA)
SageView Advisory Group

DORI DRAYTON
CAPTRUST

DEVYN DUEX
CAPTRUST

JEAN DUFFY
CAPTRUST

JESSICA ESPINOZA
NFP

KELLY FAMIGLIETTA
Osaic - Charles Stephen & Company

JAMIE GREENLEAF
OneDigital

PAULA HENDRICKSON
NFP

SHELLY HORWITZ
Pensionmark

EVA KALIVAS
EPIC Retirement Services Consulting, a Division of HUB International Northeast Limited

KATHLEEN KELLY
Compass Financial Partners, a Marsh & McLennan Agency LLC Company

JULIE KIM
SageView Advisory Group

NICHOLE LABOTT
SageView Advisory Group

ELLEN LANDER
Renaissance Benefit Advisors Group, LLC

STACY LEAGUE
Strategic Retirement Partners

RAMONA LOCKE
Merrill Lynch

SHANNON MAIN
Pensionmark

ALICIA MALCOLM
UBS Financial Services Inc.

SHANNON MALONEY
Strategic Retirement Partners

DEBBIE MATUSTIK
Pensionmark Austin

SARAH MONTOYA
Morgan Stanley - Graystone Consulting

JANINE MOORE
HUB Retirement and Wealth Management — Houston

KIMBERLY PRUITT
Raymond James

ANGIE ROSSON
Mariner Wealth Advisors

RENEE SCHERZER
OneDigital

SARAH SCHWARTZ
Newfront

COURTENAY SHIPLEY
Retirement Planology, Inc.

SUSAN SHOEMAKER
CAPTRUST

HEIDI SIDLEY
StoneStreet/OneDigital

KACI SKIDGEL
Summit Financial Group, Inc.

BARBARA SOURJOHN
Sourjohn-Kim Retirement Solutions

STEPHANIE STANO
Western Wealth Benefits

JANIA STOUT
OneDigital

VIRGINIA SUTTON
Johnson & Dugan

BRENDA TARJAN
SageView Advisory Group

TRICIA UTTECH
Graystone Consulting

VANESSA WATKINS
NFP

PATRICIA WENZEL
Merrill Lynch

EMILY WRIGHTSON
CAPTRUST

ALL-STARS

PAMELA APPELL
Plexus Financial Services, LLC

BERYL BALL
CAPTRUST

DEANNA BAMFORD
CAPTRUST

NATASHA BONELLI
Merrill Lynch

JULIE BRAUN
Morgan Stanley

PAMELA BROOKS
Oswald Financial, Inc.

LISA BUFFINGTON
Marsh McLennan Agency

MEGAN CARROLL
Marsh and McLennan Agency — Midwest Region

KAREN CASILLAS
CAPTRUST

SARAH COLOTTO
Oswald Financial, Inc.

KRISTEN DEEVY
Pensionmark

BARBARA DELANEY
SSRBA, a HUB International Company

VALERIE CLARK DIGENNARO
Pensionmark Financial Group

ELAINE FEATHERSTONE
OneDigital

L. RITA FIUMARA
UBS Financial Services

ERICA BLOMGREN FORRESTER
CAPTRUST

JENNIFER GAGE
CBIZ Investment Advisory Services

ADDIE GEORGE
Plan Sponsor Consultants, a division of HUB International

CARLA-ANN E. GOEDTKE
Osaic — Investors Choice Financial Services Inc.

MOIRA HAGY
MMA Midwest

SUSAN HAJEK
SageView Advisory Group, LLC

ERIN HALL
Strategic Retirement Partners

AMY HANOPHY
NFP

SALLY JOHNSON
Creative Planning

ALLISON KAYLOR-FLINK
NFP

KRISTEN KOLUCH
Raymond James

LAUREN LOEHING
Retirement Impact

MELISSA MARIN
OneDigital

AMIRA MARTIN
OneDigital

MAUREEN MENDOZA
UBS Financial Serivces, Inc.

ALEX MOEN
Marsh McLennan Agency

TERESA A. O'CONNER
Osaic - Atlus Consulting Group

KATHLEEEN (KARIE) O'CONNOR
Merrill Lynch

KATHY PETERSON
Aldrich Wealth LP

ALLIE RIVERA
OneDigital

ABIGAIL RUSSELL
CAPTRUST

KATHY SEIMET
Gallagher

AMBLER SELWAY
FRS Advisors

ANN-MARIE SEPUKA
Strategic Retirement Partners

JILL BARRY SHEA
NFP

COURTNEY SINDELAR
OneDigital

LENEEN STRICKFADEN
OneDigital

COURTNEY STROOPE
Creative Planning, LLC

JACKIE STUTZMAN
Abbey Street

JEANNE SUTTON
Strategic Retirement Partners

CHRISTINA TUNISON
LPL Financial

SUZANNE WEEDEN
Spectrum Investment Advisors

TINA WISIALOWSKI
Morgan Stanley

JENNA WITHERBEE
401(k) Plan Professionals

KAREN YASUKAWA
Raymond James

RISING STARS

MELISSA BLACK
CBIZ Investment Advisory Services LLC

KASI BOYLES
SageView Advisory Group

GINA BUCHHOLZ
401(k) Plan Professionals

KIM COCHRANE
HUB International

MARGARITA CROSS
SageView Advisory Group

MORGAN DAVIS
NFP

CATHERINEELLIS
CAPTRUST

DBIE JOHNSON
BCG 401(k) Advisors

VICTORIA MERCADO
Assurance, a Marsh and McLennan Agency LLC company

TAMARA MULLALLY
OneDigital

LISA QUINN
SageView Advisory Group

AMADNA SAVINI
Marsh McLennan Agency

DEANNA SPIVEY
SageView Advisory Group

SARA STRASSER
Strategic Retirement Partners

LAURA THAI
Marsh McLennan Agency

AMY TODD
OneDigital

STACY WALTERS
SageView Advisory Group

AUBREY WEEDMAN
SageView Advisory Group

EMILY ZIMMERMAN
Spectrum Investment Advisors

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5 Things to Consider About the Fiduciary Rule Redux

There is a long road from a fiduciary proposal to a rule in force.

By David N. Levine

When you read this column, the proposed "new" fiduciary rule will be read, digested, analyzed, and the subject of countless articles, webinars, and more. So, where do you go now as an advisor? For advisors or the advisory organizations I work with, we often use the following framework:

First, the rule is proposed as of now—and not in force—so there is time to step back and evaluate what this proposal means to you and your organization.

Second, focus on a core set of questions:

- What is the scope of your advisory practice?
- Is it retirement plans only?
- Is it plan fiduciary-focused, participant-focused, or both?
- What services and offerings do you and your organization provide?
- Do you or your organization also offer wealth management and IRA services?
- Do you advise on plan and IRA rollovers?
- Are you providing 3(38) services, wellness, managed account, or PEP-related services?

Answering these questions can help frame what is—and is not—relevant under the proposal to you and your organization.

Third, once you identify your actual services, it can be easier to determine what the proposal means to you.

Looking at each line of business/service (including areas that you may not have considered "fiduciary" in nature before the proposal), digging into how each item is offered, sold, referred, and paid for allows you to get to the core issues of:

1. Are you a fiduciary under the proposal?
2. Would you have a potential conflict under the proposal that you need to address?
3. If there is a potential conflict, what is your strategy for compliance with applicable ERISA or IRA-prohibited transaction rules?

Fourth, if you have reached the issue of compliance and prohibited transactions, are you looking at a statutory exemption that remains available?

Alternatively, if you have had a compliance strategy under a prior DOL "class" exemption (such as Prohibited Transaction Exemptions 77-4 (for affiliated mutual funds) or 84-24 (for insurance transactions), will that exemption still be available or has it, as many commonly used prohibited transaction exemptions would under the proposal, been changed or restricted such that you may need to look for another exemption.

Commonly, based on the DOL's proposal, the DOL may be suggesting you look to its updated version of Prohibited Transaction Exemption 2020-02, which would now cover additional services such as "robo-advice" and pooled employer plans. Other compliance solutions may also be available, but further examination may be necessary.

Fifth, consider when to prepare for the next steps. As was the case with the 2016 fiduciary rule and the 2020 fiduciary guidance, there is a high probability that there will be litigation over the proposal, so even though evaluating early is important, consider when to make any changes in prohibited transaction compliance and/or business strategy you and your organization conclude are necessary is a distinct and separate discussion. Also, the proposed rule would be effective sixty days after the final rule—which means compliance deadlines could come quickly.

As advisors have seen and will continue to see, there is a long road from a fiduciary proposal to a rule in force. However, proactively evaluating short- and long-term business and client needs now while also recognizing a lot can change from here to there can often be a positive step that truly acts, as the proposal says, in the "best interest" of all involved in this process. NNTM

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Grading America's Retirement System on a 'Curve'

A recent analysis of world pension systems gave America a passing grade, but not a good one.

By Nevin E. Adams, JD

The Mercer CFA Institute Global Pension Index[1]—gave the United States a C+ (though a B in adequacy!) ranking our retirement "system" well down (22nd) in the list of 47 retirement income systems around the world.

This particular index is comprised of three sub-indices: adequacy, sustainability and integrity, which the authors say are used to measure each of the retirement systems against some 50 "indicators."[2] Of course, people are entitled to establish whatever criteria they think is reasonable in such matters, but those who would accept their grading at face value would be well-advised to consider both the assumptions and weighting applied to derive those outcomes. To the sponsors' credit, the 144-page document provides lots of opportunity to do just that.

Perhaps the biggest challenge of a system like ours matched up against some of these other systems is the sheer diversity not only of our population, but the system itself. The coverage gap[3] we're focused on closing presents a considerable disadvantage compared to systems that employ nationwide mandates. And, let's face it, the funding issues of Social Security loom ever larger, and undermine the "sustainability" measure of this index, if not the "integrity."

If one were to take the recommendations of these authors to heart, in order to boost our grade, we'd need to make people contribute more, make them wait longer to get their benefits, pay them (particularly lower-income workers) more benefits, increase vesting so that they earn more benefits faster, and limit their ability to tap into those retirement benefits before retirement—both by leakage, but also in requiring that some part of those benefits be taken as an income stream.

Said another way, provide more government benefits and make people put in more (and don't let them take it out) so that they will have more later. This, by the way, has been a consistent recommendation (though perhaps worded more eloquently) of this index.

One thing that is NEVER mentioned, or even acknowledged in this report is the cost of these measures, the taxes imposed to produce them. Or the willingness of the population to undertake them to the exclusion of other considerations. They aren't, ironically enough, "means" tested.

That's not their responsibility, of course. Arguably presenting these retirement system alternatives around the world provides policymakers and the populace alike with a broader perspective—ideas and approaches to consider, albeit those concocted in a pristine laboratory environment where costs and personal choice are of no matter—only the largesse of benefits.

But for those of us living in the real world, and those still working on implementing the tools in the SECURE Acts—I'd give this assessment a grade of "incomplete."

The report also examined the potential for artificial intelligence (AI) to improve pension and social security systems and provide people with a better quality of life in retirement.

But it's not without risks, including "modeling challenges and ethical concerns as well as the need for optimal data privacy and cybersecurity."

In developing these systems, the report claims that AI models must have strong governance and clear accountability to reduce biases and unjustified responses. Safeguards are critical for pension plans to retain their members' long-term trust.

"The ongoing expansion of AI within the operations and decisions of investment managers could lead to more efficient and better-informed decision-making processes, which could potentially lead to higher real investment returns to pension plan members," Dr. David Knox, Senior Partner at Mercer and lead author of the study added. "AI also has the potential to improve member engagement and help individuals make long-term decisions about their financial decisions. Both advances should improve retirement outcomes." NNTM

FOOTNOTES

[1] In case you're wondering, Netherlands, Iceland, Denmark & Israel topped the list (again), all receiving an "A" grade, at least based on the criteria and weighting adopted by the index. The index has been published for a number of years now, and while Mercer's role has been consistent, different parties (now the CFA Institute) have partnered in its production over the years.

[2] The report explains that each system's overall index value is calculated by taking 40% of the adequacy sub-index, 35% of the sustainability sub-index and 25% of the integrity sub-index—weightings that they say, "have remained constant since the first edition of the Index in 2009."

[3] Indeed, it would be naïve to gloss over the gaps in retirement security that a largely voluntary system exposes. Not that anything (beyond inertia and human nature) prevents every American worker from opening their own retirement account. But we know, and the data supports, that even modest income ($30,000-$50,000/year) workers are 12-15 times more likely to do so when they have the opportunity to do so via a workplace plan. In fact, there's plenty of impetus in the provisions of the SECURE and SECURE 2.0 Acts to encourage the formation of those plans.

Lawsuit 'Wins,' Losses, and A New Litigation Target

Here's what you need to know for emerging trends in the most recent quarter of ERISA litigation.

By Nevin E. Adams, JD & Bonnie Triechel

Employee Retirement Income Security Act ("ERISA") litigation continues at a rapid pace and with massive settlement numbers. Most recently, General Electric agreed to pay a settlement of $61 Million (which is pending federal judge approval). Important lessons come from these cases but may feel irrelevant to smaller plans. However, trends and best practices in the mega plan market carry to the plans of all sizes. Here's what you need to know for emerging trends in the most recent quarter of ERISA litigation.

1. The Labor Department ("DOL") gets federal court backing for its regulation regarding considerations of ESG (environmental, social, and governance) factors. A regulation that says those factors MAY be considered if (and only if) they impact the financial interests of participants.
2. Though traditionally not accepted by courts as a sufficient basis (in the absence of some other evidence of a conflict of interest or malfeasance), investment performance is now accepted as a legitimate indicator of fiduciary breach. It has recently been accepted as sufficient to go to trial in several cases.
3. The level of "proof" needed to move past a motion to dismiss fiduciary breath lawsuits remains fluid, not only in different federal district courts, but even within the same district.
4. A couple of cases have recently been filed (by a single law firm) challenging the use of forfeitures to offset employer contributions—even though the plan document (and ERISA) clearly allows for that.

So, let's dive in.

DOL Gets a Big ESG Win

"Having considered the motions, pleadings, and relevant law," a federal court judge in Texas has backed the DOL in a suit brought by twenty-six "red state" Attorneys General challenging the so-called ESG rule. Though called the ESG rule, this regulation became effective in January 2023 and outlined the obligations for all fiduciaries making investment decisions under ERISA.

The suit claimed that "the 2022 Rule oversteps the DOL's statutory authority under [ERISA and] is contrary to law"—and alleged that "the 2022 Rule is also arbitrary and capricious." The court—in this case, a judge appointed by President Trump and one with a track record of rejecting regulations by the Biden Administration—actually disagreed.

Most of the arguments made in that suit—filed mere days before the regulation took effect in January 2023—seemed grounded in positions taken in the Biden Administration's *proposed* rule, arguably more pro-ESG than what found its way into the final text that became effective in January. In United States District Judge Matthew J. Kacsmaryk's words, there was arguably "little meaningful daylight" between the final rule left by the Trump Administration (in fairness, their proposed rule was a lot more anti-ESG than the final) and that of the final Biden Administration rule (which, in fairness, was less pro-ESG than their proposal). While there remains another suit pending (in Wisconsin) with similar allegations—one brought by a couple of plan participants against the regulation—the Department of Justice has already taken steps to ensure the judge in that case is aware of the Texas court ruling.

Another ESG case pending is one brought by an American Airlines pilot claiming that the ESG options in his 401(k) are putting his retirement at risk and also that the plan's inclusion of ESG-friendly investment managers (even for funds that aren't ESG-focused) on that menu is also a threat.

Since the initial filing, American Airlines has responded that those options are all in a self-directed brokerage account rather than on the main menu and further that the participant wasn't even invested in an ESG fund. Following that response, the pilot has said he was exposed via his investment in target-date funds on the menu, notably significant percentages of those funds managed by BlackRock—even though those are not ESG-focused options. This may well require a trial just to find out what the actual circumstances are in this case.

Some 'Wins' for BlackRock LifePath TDF Plaintiffs

We've noted previously that about a dozen suits against national employers whose plans invested in the BlackRock LifePath target date funds. The basic argument made by the plaintiffs in these cases (all represented by the law firm of Miller Shah) was that the plan fiduciaries "chased low fees" and, in doing so, ignored the

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(allegedly) poor performance of the BlackRock LifePath TDFs.

While those funds arguably performed well compared to the selected benchmarks, the plaintiffs said they should have been compared with the performance of a half-dozen leading target-date fund families—though those funds all employed a "through" retirement date glide path, unlike the BlackRock funds that have opted for a "to" retirement date glide path. Thus far, five of those cases have been considered by federal courts—and all have been rejected as not presenting a case that warrants trial.

However, and on what are essentially the same arguments, we now have one federal judge (in a case involving the Genworth 401(k) plan) who has ruled that the issues raised regarding appropriate benchmarks and evidence from the plan fiduciaries that they had a prudent process in place need to be dealt with at trial, rather than the preliminary review of a motion to dismiss the suit. This judge not only acknowledged decisions in another Virginia federal court district that came to a different conclusion—but ruled that the arguments made in the case he was considering were different and required a different result.

In yet another federal district court, while the defendants won their motion to dismiss the suit, that judge seemed willing to accept the plaintiffs' arguments about inferior returns as a basis to go to trial—but determined that the performance difference presented wasn't significant enough to make their case; however, he allowed the plaintiffs to reposition their arguments.

Neither of these cases is yet a "win" at trial, of course—but these two cases illustrate the reality that different jurisdictions (and different judges) are able to make different determinations as to the standards applied in considering this type of litigation.

Plan sponsors can never prevent litigation, but a sound process will help create a good defense and end litigation sooner (and with greater success).

Arbitration' Claws?'

A federal appellate court has held that a plan's adoption of an arbitration agreement (which means staying out of court and handling disputes in arbitration instead) was sufficient to require a class action suit on behalf of the plan (by a participant) to adhere to those terms. The lawsuit was filed in mid-May 2020 in the U.S. District Court of the District of New Jersey against the fiduciaries of the $4.4 billion ADP TotalSource Retirement Savings Plan (including third-party investment consultant NFP Retirement Inc.) on behalf of participants in the multiple employer plan ("MEP") by the law firm of Schlichter Bogard & Denton.

The court ruled that since the injuries alleged were to the plan—and since the plan agreed to the arbitration—the arbitration clause took precedence.

It may seem odd that an agreement that the participants weren't a party to should limit their actions, but it cut both ways, with individual arbitration agreements being found insufficient to block claims on behalf of the plan(s). This ruling does not, of course, preclude a future action—it simply requires that those claims be aired and a resolution attempted via the arbitration process. For plan sponsors, it is important to consider the use of arbitration clauses in plan documents and other agreements with plan participants.

Forfeiture 'Foray'

For the second time in a month, a law firm has brought suit challenging the use of forfeitures in a 401(k) plan. The lawyers are from Hayes Pawlenko LLP, a South Pasadena, California-based duo (who met in law school, according to their website) positioning themselves as an employment litigation firm "representing employees in disputes with their employers."

The most recent suit (Rodriguez v. Intuit Inc., N.D. Cal., No. 5:23-cv-05053, complaint 10/2/23) has been filed against Intuit, less than two weeks after filing an identical action against Thermo Fisher Scientific Inc. 401(k) Retirement Plan. This suit, filed in the Northern District of California, acknowledges that "the Plan provides that forfeited nonvested accounts may be used to pay Plan administrative expenses or reduce future Company matching contributions."

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The suit then goes on to acknowledge that "although the Plan expressly authorizes the use of forfeited funds to pay Plan expenses, throughout the class period Defendants chose to utilize the forfeited funds in the Plan for the Company's own benefit, to the detriment of the Plan and its participants, by reallocating nearly all of these Plan assets to reduce future Company matching contributions to the Plan."

The suit continues, "While Defendants' reallocation of the forfeitures in the Plan's trust fund to reduce its future matching contributions benefitted the Company by reducing its own contribution expenses, it harmed the Plan, along with its participants and beneficiaries, by reducing future Company matching contributions that would otherwise have increased Plan assets and by causing participants to incur deductions from their individual accounts each year to cover administrative expenses that would otherwise have been covered in whole or in part by utilizing forfeited funds."

The two suits use identical language to make their case in two different federal court jurisdictions. It seems likely that others will follow, though it's by no means certain that they'll gain traction or get past the motion to dismiss.

'Meaningful' Benchmarks

Several federal district courts have embraced the need for those bringing excessive fee suits to make their case against a "meaningful benchmark"—a standard that plaintiffs have had a hard time overcoming thus far.

In late September, participants in the Barrick Gold 401(k) plan—filed suit against Barrick Gold of North America, Inc., Barrick Gold's Board of Directors, and the Barrick U.S. Subsidiaries Benefits Committee for breach of fiduciary duty and failure to monitor fiduciaries. A three-judge panel in the Tenth Circuit noted that "there is no doubt a claim for breach of ERISA's duty of prudence can be based on allegations that the fees associated with the defined-contribution plan are too high compared to available, cheaper options." But they went on to explain that "to raise an inference of imprudence through price disparity, a plaintiff has the burden to allege a 'meaningful benchmark.'"

As for what constituted a "meaningful" benchmark, the court said that the answer to this question will depend on context because (citing the Supreme Court's *Hughes v. Northwestern University* decision) "the content of the duty of prudence" is necessarily "context specific." With regard to comparing investment management fees, the judges wrote that a "meaningful comparison will be supported by facts alleging, for example, the alternative investment options have similar investment strategies, similar investment objectives, or similar risk profiles to the plan's funds." As for recordkeeping fees, the court said such a "comparison will be meaningful if the complaint alleges that the recordkeeping services rendered by the chosen comparators are similar to the services offered by the plaintiff's plan."

The judges noted that "a court cannot reasonably draw an inference of imprudence simply from the allegation that a cost disparity exists; rather, the complaint must state facts to show the funds or services being compared are, indeed, comparable. The allegations must permit an apples-to-apples comparison."

The court aligned itself with other jurisdictions (the Third, Sixth, Seventh, and Eighth circuits) in embracing a pleading standard requiring a higher threshold for determining plausibility for moving past a motion to dismiss. Along the way to that decision, they also permitted the defense to include evidence that supported their claims (such as the impact of revenue-sharing), which other courts have not allowed until trial.

The court acknowledged that the reasonability of fees cannot be ascertained without some associated indication of services provided for those fees. For plan sponsors, this is a critical takeaway that fee evaluation is lacking without including the associated services. Further, the court employed the emerging standard of a "meaningful benchmark" alongside some objective standards against which those can be evaluated.

Action Items for Plan Sponsors

Even if you are the fiduciary of a plan that might not be the perceived subject of a mega class-action lawsuit, these back-to-the-basics best practices apply to plans of all sizes. For plan sponsors, consider the following:

1. Establish an investment committee that is qualified and engaged, supported by experts, and create an investment policy statement (the latter has been a noted factor in several litigation decisions).
2. As a growing number of courts are looking for a "meaningful" benchmark, make sure that you understand (and document) not only the fees but the service(s) provided for those fees in recurring benchmarking exercises (think annually or semi-annually).
3. Be thoughtful about the information the committee makes publicly available, including agendas, minutes, and reports. Decisions can (and should) be summarized – the discussion itself need not be (and arguably shouldn't).
4. Make sure you have an ERISA fiduciary liability policy in place. Generally speaking, your standard E&O policies do not cover this type of litigation, and ERISA fiduciary liability is personal. To be clear, this is different from the fidelity bond the plan is required to have.
5. If forfeitures are used to offset employer contributions, ensure that language expressly permitting the use of forfeitures is in the plan document. NNTM

Plan Advisors: Helping Plan Sponsors in Fiduciary Litigation While Protecting Yourself

Litigation against a plan sponsor inevitably draws in the plan's investment advisor and can cause significant costs and disruption. Here's what to do.

By Glenn Merten, Emily Kile-Maxwell & Fred Reish

Employee Retirement Income Security Act ("ERISA") litigation continues at a rapid pace and with massive settlement numbers. Most recently, General Electric agreed to pay a settlement of $61 Million (which is pending federal judge approval). Important lessons come from The suit claimed that "the 2022 Rule oversteps the DOL's statutory authority under [ERISA and] is contrary to law"—and alleged that "the 2022 Rule is also arbitrary and capricious." The court—in this case, a judge appointed by President Trump and one with a track record of rejecting regulations by the Biden Administration—actually disagreed.

Instances of retirement plan litigation have skyrocketed in recent years and show no signs of stopping.

Defending against fiduciary breach and related claims is

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time-consuming and expensive not only for the plan sponsor defendants but also for the plan's service providers. Chief among these providers is a plan's investment advisor, which likely will play a central role in the defending against the plaintiff's claims.

This article explores what 3(21), or nondiscretionary, investment advisors can expect when their plan sponsor clients are sued, as well as what they can do to protect themselves and their clients and limit the cost and disruption of fiduciary litigation.

Litigation Stages After a Plan Sponsor is Sued

Retirement plan investment advisors should anticipate being involved in all stages of litigation after a plan sponsor client is sued. This involvement ranges from being a source of information to the plan sponsor to providing deposition and potential trial testimony. At the first indication of a lawsuit, it would be sound risk mitigation for an advisor to seek representation from legal counsel who is experienced in ERISA fiduciary breach litigation.

Providing information to plan sponsor. Upon being sued, one of the first calls a plan sponsor typically makes is to its investment advisor. The plan sponsor may ask its advisor to elaborate on decisions about which it provided guidance and to fill in any gaps of information or documentation that the plan sponsor or its counsel finds. It is not uncommon for plan sponsors and their committees to be unable to locate important records from prior years. In some cases, they may need records from 6 or more years ago.

Responding to document subpoenas. Plan advisors can expect to receive extensive subpoenas for documents from plaintiffs.

While advisors may feel confident that they have not breached their fiduciary responsibilities, they should realize they are now in the legal arena. The cautious and prudent approach is to seek the advice of counsel without delay, as there are strict deadlines and rules for responding to subpoenas, and failure to comply with them could result in a waiver of the advisor's right to object to the subpoena. In addition, there may be information or documents that create issues for the plan sponsor client or the advisor, and it is best to fully understand the potential implications of the documents before providing them to the plaintiff in the lawsuit.

Sometimes, the relevance of the information requested will be

obvious. These subpoenas often seek information that the advisor already provided to the plan, but they also often request internal advisor communications, emails, instant messages, analyses, and other documents that are not provided to the plan. The subpoena may seek documents regarding the fiduciary process in which the advisor participated, the outcome of that process, and analyses of both the investments selected and rejected by the plan.

Other times, these subpoenas will seem like "fishing expeditions," seeking documents irrelevant to the claims asserted but which plaintiffs hope will allow them to discover new claims against plan sponsors. In addition, they may seek information regarding the advisor's other clients, hoping to discover potential claims against them.

Upon receiving a subpoena, especially one overbroad, counsel for the plan advisor should try to negotiate for a reasonable scope of production that discloses only documents relevant to the current dispute. Sometimes, advisors and their counsel may need to go to court to modify the subpoena's scope or quash it altogether.

Depositions of investment advisors. Subpoenas for depositions of investment advisors frequently follow on the heels of document subpoenas. Plaintiffs may require depositions of officers or employees at the investment advisor who work with the plan sponsor. In the alternative, or in addition to those individual depositions, plaintiffs may seek to depose the advisory firm as an entity. In those entity depositions, sometimes known as Rule 30(b)(6) depositions, an individual is designated to testify about a list of topics provided by the plaintiff, and his or her responses are binding on the investment advisor. Depositions, particularly 30(b)(6) depositions, can be intrusive and time-consuming but are critical in defending fiduciary breach litigation.

In either case—individual or entity depositions—advisors should work with their litigation counsel to prepare.

While some admonitions are standard to all litigation—listen to the questions carefully, don't answer more than the question asked—there are some unique legal and factual aspects to ERISA fiduciary lawsuits. The advisor should consider the benefits of going through a mock deposition to prepare, with a knowledgeable ERISA litigator asking the questions in the way that a plaintiff's attorney would.

Representing the plan in a deposition. The plaintiff will most likely require a Rule 30(b)(6) deposition of the plan as an entity. Occasionally, due to turnover, acquisitions, or other unforeseen circumstances, there will not be an employee of the plan sponsor suitable to testify on behalf of the plan. In these circumstances, the plan may ask the investment advisor to provide someone who can testify as a *representative of the plan*. This representative's testimony will be binding on the plan, not the investment advisor, even though the investment advisor employs him or her.

Providing supporting affidavits. Counsel for the defendant plan sponsor may request that the investment advisor provide one or more affidavits during the case. An affidavit is a form of written testimony that may be used in place of or to supplement previous deposition testimony. For example, a plan sponsor may request an affidavit from its advisor in connection with summary judgment – in essence, a decision from the judge that one side or the other wins without the need for a trial.

Trial testimony. Finally, if the case is not dismissed or otherwise resolved before trial, representatives of investment

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advisors may be asked to testify at trial. Plan sponsors are becoming increasingly emboldened to defend fiduciary breach cases through trial and to not knuckle under unreasonable settlement demands. Investment advisors may be asked to testify about the advice they provided, the plan's procedures and decisions, their interactions with fiduciary committee members, and other topics related to the claims (for example, the particular share class selected for the investments or the monitoring of the fees of the recordkeeper including revenue sharing payments).

How to Prepare

Unfortunately, fiduciary breach litigation is now a factor in the retirement plan world…and may be hard to avoid.

No matter how diligently an investment advisor performs its duties, it is possible, or even likely, that one of its plan sponsor clients will be sued. But while it might be inevitable, there are steps an advisor can take to protect itself and its clients, to minimize the cost and disruption of fiduciary litigation, and to put plan sponsors in a position to achieve a successful outcome.

Be mindful of the possibility of litigation. The first duty of an investment advisor is to provide accurate, complete advice such that a plan fiduciary can fulfill its obligation to make reasoned, informed decisions regarding the plan's investment lineup. Within that context, a plan sponsor should consider how that advice and the ensuing discussions are presented and how that package will look in the event of litigation. Assume every document, memorandum, minutes of meetings, call recording, or email will be provided to a plaintiff's lawyer and act accordingly. Voice mails, instant messages, and emails may seem informal at the time and lead to casual statements or conversations, but they can be introduced as evidence at trial. All notes and communications should be treated as formal parts of the fiduciary process.

Maintain complete and comprehensive files. This probably goes without saying, but it is imperative that the investment advisor keep meticulous records of their advice, communications with the fiduciary committee, and the advisor's own deliberative process. An investment advisor that does not properly document its advice to and the decisions made by the plan fiduciaries may inadvertently be suggesting that there was a substandard fiduciary process. And, as discussed earlier, investment advisors will likely be asked to provide copies of reports and compliance evidence that the plan sponsor cannot find in its files.

Exercise care when responding to RFPs. Requests for proposals are critical to plan sponsors, who are under a fiduciary duty to secure appropriate services and investment options at the most reasonable costs for the plan. RFPs may ask prospective investment advisors for opinions or suggestions regarding the plan's current investment lineup. Prospective advisors, in turn, are eager to demonstrate their expertise and may suggest alternatives to the current lineup that they believe are better performing, more cost-effective, or both.

The plaintiff's lawyers hunt for these RFP responses. At a minimum, they point to potential areas for the plaintiff to investigate for potential claims. And sometimes, they can be used as evidence that a plan sponsor included underperforming and/or overly costly investment options in the plan – just look, their new advisor, who is not affiliated in any way with the plaintiff's counsel, said so!

Although such an RFP response does not implicate the current advisor, plan sponsor clients may not be pleased if their current advisor's analysis leads to increased exposure. Exercise care and diplomacy when responding to RFPs, particularly when commenting on prior decisions.

Implement appropriate document retention policies. A proper document retention policy does not mean "keep everything," but "keep everything you need to." Over-inclusive retention policies, particularly concerning email, can be counterproductive. Stray emails, particularly internal communications that have no real relevance to the advice provided to a plan, can be taken out of context and put the plan sponsor or advisor in a bad light. Emails and other documents directly relevant to a plan advisor's process and analysis should be maintained in a client file, but otherwise, consider whether they should be kept or discarded. In addition, consider implementing an automatic retention policy whereby emails not specifically saved are discarded after a defined period of time (for example, one year).

As an added benefit, a reasonable document retention policy can significantly reduce costs in the event a case is filed. One of the biggest cost drivers in modern litigation is electronic discovery, and reviewing years of email can quickly become ruinously expensive. Sensible auto-delete policies can dramatically reduce these costs. Counsel can assist plan advisors in drafting document retention and auto-delete policies that comply with the law but minimize the volume of potential e-discovery.

Conclusion

Litigation against a plan sponsor inevitably draws in the plan's investment advisor and can cause significant costs and disruption. But for a prepared investment advisor who knows what to expect and has considered the possibility of litigation, the process, though annoying, does not have to be painful. Indeed, though never welcome, plan advisors can use litigation to reiterate to their clients that they keep thorough records, properly document all advice and communications, and always act with their clients' interests foremost in their thoughts. NNTM

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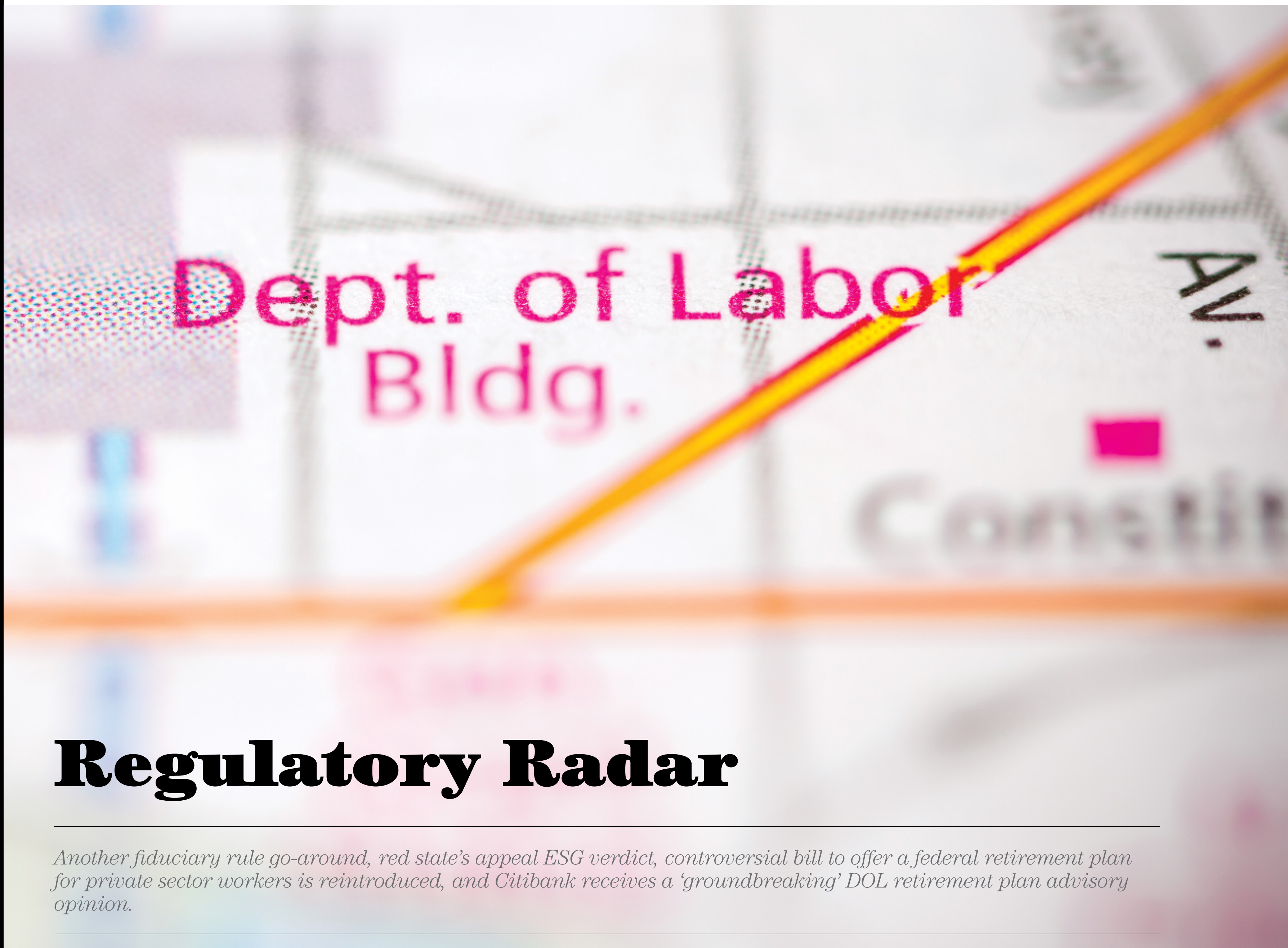

Regulatory Radar

Another fiduciary rule go-around, red state's appeal ESG verdict, controversial bill to offer a federal retirement plan for private sector workers is reintroduced, and Citibank receives a 'groundbreaking' DOL retirement plan advisory opinion.

Here It Comes Again

Biden Administration officially unveils a retirement security rule proposal.

In late October, the Department of Labor (DOL) released a proposed rule defining who is an investment advice fiduciary for purposes of the Employee Retirement Income Security Act (ERISA).

The proposed rule, announced during a White House ceremony attended by President Biden on Tuesday afternoon, notably includes a requirement that 401(k) plan-level protection extend to small business owners and participants, something for which the American Retirement Association strongly advocated.

"The ARA supports DOL's proposed retirement security regulation because it will close a regulatory gap that could leave small business owners establishing a retirement plan for their employees without any investor protections," ARA CEO Brian Graff said. "The proposed rule will ensure that advice with respect to investments in small business retirement plans will always be subject to ERISA's fiduciary standards."

The SEC's Regulation Best Interest (Reg BI) currently does not extend to recommendations to plan sponsors. While larger plan sponsors generally have access to the expertise and support of professional retirement plan advisors, an advisor who sells a small employer a 401(k) and has no further action (on-time interaction) with the plan or its participants is not, until this point, required to provide investment advice protection under ERISA's five-part test.

With the provisions of the SECURE 2.0 Act of 2022 expected to significantly expand the number of new plans, particularly those offered by small businesses, this "gap" could have left millions

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of employers and their workers at risk. The gap in regulatory coverage would close under the proposed rule.

Arguing for improvements over the existing regulation, the DOL again specifically referred to smaller 401(k) plans and participants, noting that the 1975 rule defining a fiduciary doesn't meet today's retirement investors' needs or expectations.

"Under the nearly 50-year-old rule, a financial services provider is an investment advice fiduciary only if, among other things, the advice is provided on a 'regular basis' and there is a 'a mutual agreement, arrangement, or understanding' that the advice will serve as 'a primary basis for investment decisions,'" it said.

Yet one-time advice, such as a single interaction involving a retirement plan sale, is often among the most important advice a retirement investor will ever receive, something the proposed rule acknowledges.

The nearly 500-page proposed rule has a 60-day public comment period.

— John Sullivan

Anyone Surprised? (Anyone?)

Red State AGs appeal the ESG ruling.

A group of 26 "red state" attorneys general has filed a notice of their appeal of a federal court's judgement rejecting their challenge to the Labor Department's ESG rule.

The notice of appeal (Utah v. Walsh, N.D. Tex., No. 2:23-cv-00016, notice of intent to appeal, 10/26/23)—filed Thursday in the U.S. District Court for the Northern District of Texas—comes roughly a month after Judge Matthew J. Kacsmaryk surprised many by ruling against the coalition of attorneys general, concluding that the Labor Department didn't exceed its regulatory limits or violate federal benefits law in establishing the regulation.

The coalition[1] that brought the suit in January 2023, alleged that the 2022 Rule "undermines key protections for retirement savings of 152 million workers—approximately two-thirds of the U.S. adult population and totaling $12 trillion in assets—in the name of promoting environmental, social, and governance ('ESG') factors in investing, including the Biden Administration's stated desire to address climate change."

The rule—Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights—took effect Jan. 30, 2023. The suit claimed that "the 2022 Rule oversteps the Department's statutory authority under the Employment Retirement Income Security Act of 1974 ('ERISA'), 29 U.S.C. § 1001 et seq., and is contrary to law"—and comments that "the 2022 Rule is also arbitrary and capricious."

Arguments that Judge Kacsmaryk rejected. In doing so, he explained that "the 2022 Rule changes little in substance from the 2020 Rule and other rulemakings. Where the 2020 Rule explained that collateral factors may be considered when a fiduciary is 'unable to distinguish' between two investment options based on financial factors alone, the 2022 Rule allows the same when the two options 'equally serve the financial interests of the plan.'" He continued, "And while Plaintiffs aver that the 2022 changes loosen restrictions on fiduciaries, there is little meaningful daylight between 'equally serve' and 'unable to distinguish.'" The Rule also explains that fiduciaries remain free "to determine that an ESG-focused investment is not in fact prudent."

"Additionally, the Rule's statement that risk return factors 'may include' ESG factors differs from the 'may often require' language of the proposed rule," he observed. "As DOL clarified, the proposed language 'was not intended to create an effective or de facto regulatory mandate' or 'an overarching regulatory bias in favor of ESG strategies.' To the contrary, the Rule 'makes unambiguous that it is not establishing a mandate that ESG factors are relevant under every circumstance, nor is it creating an incentive for a fiduciary to put a thumb on the scale in favor of ESG factors.'"

Stay tuned.

—Nevin Adams

FOOTNOTES

[1] The states participating in the suit were Utah, Texas, Virginia, Louisiana, Alabama, Alaska, Arkansas, Florida, Georgia, Indiana, Idaho, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, South Carolina, Tennessee, West Virginia, and Wyoming.

> "The ARA is dedicated to expanding the employer-based retirement system and continues to support initiatives like those in SECURE 2.0 that are intended to expand coverage for communities of color and low-income workers."
>
> — Brian Graff, American Retirement Association CEO

Any Not Surprised? (Anyone?)

A controversial bill to establish federal retirement plan for private sector workers was reintroduced.

Sponsors of a bicameral, bipartisan bill reintroduced the legislation late Thursday to give uncovered private-sector American workers access to a federally sponsored retirement plan.

If passed, S. 3102, the Retirement Savings for Americans Act (RSAA), would "help low- and middle-income Americans build wealth and save for retirement," according to Senator John Hickenlooper (D-Colo.), one of the bill's sponsors.

RSAA would require the federal government to pay matching contributions for low- and middle-income workers, but only for those that participate in the plan.

While there are no substantive changes between the original and reintroduced bills, the 5% federal match (1% non-elective and 4% safe harbor) remains a major concern for opponents of the bill, including the American Retirement Association (ARA).

They argue that the match would strongly encourage employers to terminate their 401(k) and similar-style defined contribution plans in favor of the federal plan, eventually leading to a "crowding out" of the country's private, employer-based retirement saving system.

"The ARA is dedicated to expanding the employer-based retirement system and continues to support initiatives like those in SECURE 2.0 that are intended to expand coverage for communities of color and low-income workers," ARA CEO Brian Graff said. "We oppose the legislation because we believe the provisions in SECURE 2.0 should be given a chance to make an impact and because we believe this proposal creates a federally funded retirement plan to the detriment of the private system by offering a matching contribution only to those in the program, which is not the direction to go with our country's retirement system."

ARA Retirement Education Counsel Robert Richter agreed, noting the federal match would be greater than what's available to participants in private plans.

"This would give the federal plan an unfair advantage over private plans," he added, noting participants would also essentially be "on their own since 401(k) advisors would not be involved."

Sponsored by Hickenlooper and Thom Tillis (R-N.C.), as well as Representatives Terri Sewell (D-Ala. 7th) and Lloyd Smucker (R-Penn. 11th), the bill is championed by the Economic Innovation Group (EIG), an organization founded by Napster and Facebook billionaire Sean Parker and Steve Glickman, former Senior Economic Advisor at the National Security Council under President Obama. Rocket Mortgage majority owner Dan Gilbert is a member of the organization's Founders Circle, an advisory board with no governance responsibilities.

ARA's Graff believes the bill's reintroduction is part of a years-long ideological battle to control the nation's retirement saving system.

Key provisions of the bill include:

Eligibility and Auto Enrollment: Full- and part-time workers who lack access to an employer-sponsored retirement plan would be eligible for an account and automatically enrolled at 3% of their income. They could choose to increase or decrease their withholding or opt-out entirely at any time. Independent workers (including gig workers) would also be eligible.

Federal Contribution: Low- and moderate-income workers would be eligible for a 1% automatic contribution (as long as they remain employed) and up to a 4% matching contribution via a refundable federal tax credit. This would begin to phase out at median income.

Portability: Accounts would remain attached to workers throughout their lifetimes, and workers would be able to stop and start contributions at will.

Private Assets: The accounts would be the worker's property, and the assets could be passed down to future generations to help them build wealth and financial security.

Investment Options: Much like the current Thrift Savings Plan, participants would be given a menu of simple, low-fee investment options to choose from, including lifecycle funds tied to a worker's estimated retirement date or index funds made of stocks and bonds.

— John Sullivan

'Diverse' Discretion

Citibank receives 'groundbreaking' DOL retirement plan advisory opinion.

Citibank received a "groundbreaking Advisory Opinion" from the Department of Labor (DOL) regarding its Diverse Asset Manager Program and the ERISA plans it sponsors.

More specifically, the law firm Thompson Hine said it secured Advisory Opinion 2023-01A on Citibank's behalf. The DOL issued the opinion on September 29, 2023. It confirms that Citibank's conduct in connection with its Diverse Asset Manager Program and the ERISA plans it sponsors is settlor in nature and not subject to ERISA's fiduciary duties.

Under the voluntary program, which is part of Citibank's larger Action for Racial Equity (ARE) designed to address the "racial wealth gap" affecting the business environment in which Citibank operates, Citibank commits to pay all or part of the fees of diverse asset managers for the ERISA plans it sponsors.

"It's substantive and not something I recall seeing guidance about previously—framed this way," American Retirement Association Chief Legal Officer Allison Wielobob said. "It's dense and concerns the potential fiduciary implications of a Citigroup program in which Citigroup pays all or some portion of the investment management fees for certain managers retained by Citi-sponsored employee benefit plans. However, the Department relies on a bundle of prior opinions in reaching its conclusions. In other words, there's plenty of foundation."

The opinion provides what Thompson Hine calls a road map for how a plan sponsor may voluntarily establish a program under which it pays expenses for diverse investment managers without its conduct being considered fiduciary.

"The practical effect of the Opinion is to provide more concrete guidance to plan sponsors regarding the extent to which they can exercise discretion in plan design in a settlor capacity," it said. "To this end, the Opinion prescribes certain safeguards to assure that Citibank's actions with respect to the program are considered settlor and that a plan fiduciary's consideration of the program in its investment management decisions is consistent with ERISA and not subject to a conflict of interest."

Thompson Hine added that the logic of the opinion is based on the core principle long recognized by DOL that plan sponsors retain discretion, in a settlor capacity, to design the plans they sponsor based on their own interests (subject to ERISA's substantive requirements), including whether and to what extent plan expenses are paid by the plan sponsor rather than from plan assets and that such determinations are not constrained by or otherwise subject to ERISA fiduciary rules.

"The beauty of this opinion is that it effectively says that for those plan sponsors that wish to make use of this type of program, ERISA won't stand in the way, and for those who don't want to make use of this program, it is entirely voluntary with no mandates or requirements," Thompson Hine partner Dominic DeMatties said in a statement.

The opinion letter is "groundbreaking" in that it is the first time DOL has opined on how much latitude a plan sponsor has in matters of plan design that include decisions regarding which plan-related fees it will (or will not) pay, and it provides explicit guidance regarding how to structure a program based on the plan sponsor's corporate interests in a manner that avoids application of ERISA's fiduciary rules to that program. NNTM

— John Sullivan

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**As of October 25, 2023*