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## NAPA TOP WOMEN ADVISORS 2017

- | "Class" Acts – NAPA's Top Women Advisors
- | Cyber (In) Security – Are Your Clients Vulnerable?
- | "Different" Strokes – NAPA Launches NextGen Initiative

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# Over ‘Stated?’

States and state regulators are stepping in to fill gaps in coverage, consumer protection.

Our business is a complex business — with what often feel like an infinite array of rules and regulations. However, with regard to workplace retirement plans, there has always (or at least since 1974) been the clarity of a single set of federal standards — the Employee Retirement Income Security Act (ERISA).

Things have been more complicated of late.

The emergence of state-run retirement plans for private sector workers was, by some accounts, little more than an attempt to fill a critical coverage gap that neither the federal government (with its auto-IRA proposals), nor the private sector (with 401k years of opportunity) had been able (or willing) to fill. Nearly all of those programs have hit a variety of bumps along the way — and that’s not even taking into account the potential problems for employers with multi-state workforces.

The expanded fiduciary rule has proven to be another source of potential conflict, with state regulatory bodies stepping in to fill what they have seen as a potential gap between the law’s original reach and their sense of the Trump administration’s lack of commitment to the timing, if not the eventual implementation, of that rule. It’s a trend that was first manifested by Nevada in a bill signed into law last year by Gov. Brian Sandoval that not only revised the Nevada Securities Act to mandate that any “broker-dealer, sales representative, investment adviser or representative of an investment adviser shall not violate the fiduciary duty toward a client,” but modified the definition of “financial planner” to remove what had been an exclusion from that category for broker-dealers and their representatives and investment advisers and

their representatives. There remain legitimate concerns that the law in its current form may well be preempted by ERISA to the extent it relates to services provided by a “financial planner” to an employee benefit plan governed by ERISA, the fiduciaries of an ERISA plan and/or the plan’s participants and beneficiaries. In fact, the American Retirement Association has weighed in to that effect. However, if the state moves forward, it will require a court to resolve the matter.

More recently, the Massachusetts Securities Division has filed charges against Scottrade for knowingly violating its internal policies regarding implementation of the DOL fiduciary rule — charging the firm with “dishonest and unethical activity and failure to supervise” for conducting sales contests that violated the Labor Department’s impartial conduct standards. Those standards were, of course, developed and put into place on the assumption that the federal fiduciary regulation would be firmly established and fully effective on the timetable outlined by the prior administration — and apparently not reconsidered with an eye toward the stance of the current administration on the regulation.

That said, there is no doubt what motivated the Bay State; in filing the complaint, Commonwealth Secretary William Galvin, the state’s top securities regulator, acknowledged that, “Despite the efforts in Washington to kill the fiduciary rule, the impartial conduct provision remains in place. If the Department of Labor will not enforce its own laws and rules, then the states must do what they can to protect retirees from firms who believe they can play with peoples’ life savings by conducting sophomoric contests.”

Moreover, the thinking among many in the legal community is that further delays — or what might be viewed as a

softening of the standards in the original regulation — could engender more actions by the states. Indeed, concerned that the Labor Department’s fiduciary rule could be pared back, Maryland is considering extending fiduciary duty under state law to all financial professionals who provide investment advice, arguing that fiduciary protections at the federal level are currently being reevaluated and are likely to be pared back under the Trump administration.

States and state regulators are well within their rights to be concerned about the welfare of their citizens, of course. However, there are strong legal and policy arguments for exempting investment advisory services to ERISA-covered retirement plans and their participants and beneficiaries from the regulations. That was the intent of Congress in enacting ERISA in the first place — to provide a uniform set of national rules and causes of action.

Reasonable minds can, of course, disagree on the appropriate degree of protection and disclosure. That said, it would be hard to overstate the dangers: the increased costs of complying with a separate and potentially duplicative set of rules, as well as covering the additional litigation risks — additional costs that may well be borne, not only by you, but by the retirement plans and participants you support.

There are few things as destructive to productive, proactive solutions as uncertainty. Here’s hoping it’s short-lived.

NEVIN E. ADAMS, JD » Editor-in-Chief  
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BY PAUL D'AIUTOLO

# Pay it Forward

It is amazing to look back and see what has transpired in the last year.

**G**reetings, NAPA members and Firm Partners!

As this is my last official column as NAPA President, I want to express my sincere gratitude and thanks to many.

First of all, many thanks to all of the volunteers who make the National Association of Plan Advisors special! We have conferences like the NAPA 401(k) SUMMIT, the NAPA DC Fly-In Forum and NAPA Connect. We have the GAC and PAC committees. We have our educational curricula and efforts. There is so much that happens behind the scenes at NAPA and that is driven by volunteers, the many people who take time away from their families and their professions who contribute to the betterment of our association. Each of you has my sincere thanks and gratitude.

To the ARA staff, many thanks for all of your help! All of you play an important role and we couldn't do what we do without your efforts.

Of course, many thanks to Brian Graff for his incredible efforts, and to past Presidents Marcy Supovitz, Steve Dimitriou, Joe DeNoyior and Sam Brandwein for establishing the path of excellence all NAPA Presidents should follow.

Lastly, I want to thank our Firm Partners. We are all on the same team when it comes to creating a better retirement for our plan sponsors and plan participants, and without your support, much of what we do wouldn't be possible.

Over the past year, my number one objective was to leave NAPA in a better place than when I stepped into the role of President — a sort of “pay it forward”

approach. It is amazing to look back and see what has transpired: We withstood tax reform, coming out stronger and more visible, actually having more attention to 401(k)s in the media than ever before! We have navigated the fiduciary rule. We have turned the SUMMIT into an extraordinary experience, adding hundreds more attendees and expanding the conference to include NAPA After Dark. We have expanded the NAPA DC Fly-In Forum to welcome junior partners and young professionals who, when paired with our established advisors, present a true image of who we are to our congressional leaders. We have expanded NAPA Connect, our women-only conference, to partner with our women business leaders from ASPPA, to truly create something valuable, unique, empowering and special. We have brought the Profit Sharing Council of America (PSCA) under ARA's umbrella, adding a plan sponsor dynamic that we have been missing. We have expanded and grown our lists of Top Advisor Teams, Young Guns, Top Women and Wingmen. We have called on our volunteer leaders, our Leadership Council, conference chairs, conference planning committees and our GAC committee to keep pushing ahead to continue to make us a better organization.

Our incoming President, Jeff Acheson, has taken on the initiative of expanding our educational opportunities to include non-qualified plans, and one of our leaders, Alex Assaley, has volunteered to spearhead developing NAPA's next generation. We have grown our firm partners and expanded our membership. We are bigger. We are better. We are stronger.

Wow. Can I say another — WOW!  
With SUMMIT around the corner, I

hope to see everyone there! We are planning another extraordinary event, with must attend sessions, more advisors than any other industry event gathering in one place and again, offering nighttime networking events that are unforgettable. Not too far off is the NAPA DC Fly-In Forum and NAPA Connect. If you haven't attended those, think about it. They are amazing events. If you haven't taken the Certified Plan Fiduciary Advisor (CPFA) designation, think about it. It truly connects you with the best of NAPA and shows your clients your knowledge and your commitment to them.

In closing, I want to say how humbling it has been for me to represent NAPA as your President. We do amazing work for amazing working Americans. Our efforts in plan design, participant education and investment stewardship have led to millions of Americans being closer to being able to realize their dreams. The pursuit of doing more and better work keeps many of us up at night, but I know those of you here at NAPA give it your all each and every day to make the American retirement system the best it can be. Thank you for allowing me to serve you. It has been an incredible honor and experience, and I sincerely hope that with all of our efforts, NAPA is not just in a better place today, but that we will continue to “pay it forward” forever. **N**

» Paul D'Aiutolo is the founding principal and lead consultant of the D'Aiutolo Institutional Consulting Team in Rochester, NY. He serves as NAPA's President for 2017-2018.



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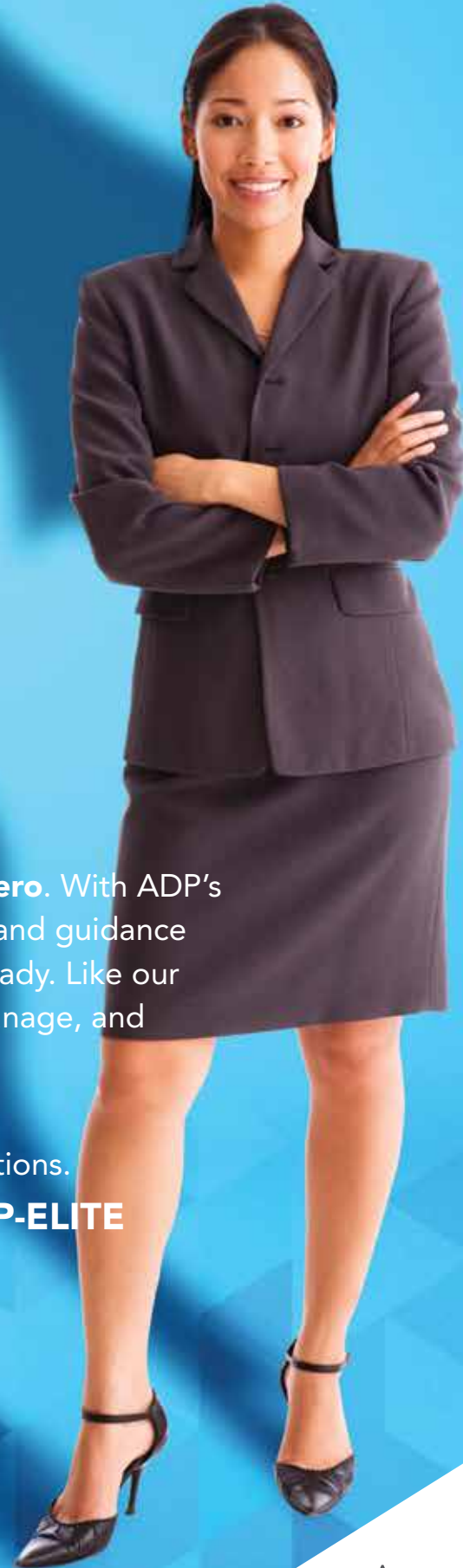
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BY BRIAN H. GRAFF

# Paper ‘Trails’

If it’s good enough for Social Security, why not 401(k)s?

**T**he 21st Century is nearly two decades old — so why are we still relying on 17th Century technology for critical participant communications? A generation ago, plan sponsors only had to worry about the annual delivery of a Summary Plan Description. Much has changed since then, but not the mandated delivery of an expanding array of paper participant disclosures of various sizes, frequencies and complexity — all of which overwhelm the mailboxes of participants (assuming the “snail mail” addresses on file are up to date).

In an era where nearly everyone carries the Internet with them on their smartphone and can (and increasingly do) tap into their retirement accounts online and via special apps, the notion that a delivery separate in time and space is more effective is laughable. What could be more timely and convenient than notifying a participant of a looming blackout period, or a notice about rollover options, on the same device that allows them to immediately take action, or to schedule an opportunity to review their options?

It’s not as though traditional mail is convenient. In addition to the costs of preparation and printing, there is the cost in postage and the delays inherent in relying on the “swift completion of their appointed rounds” by couriers who must contend with snow, rain, heat and “gloom of night.” This, of course, assumes that the address on file is current, that the materials are produced in a language and font size that the recipient can read, and that he or she actually takes the time to open and peruse the materials.

The sad reality is that with traditional mailings, we have no earthly idea what happens with these thousands of pages of

“For disclosures to be effective, they need to be available in a medium that is convenient for the recipient to access the information, act on it when applicable and, where desired, file it.”

disclosures, forced to rely on a “if you print it, they will read it” assumption that defies common sense.

Congress has taken note: Late last year, bipartisan legislation that would allow for electronic delivery of pension and retirement plan information was introduced in the U.S. House of Representatives by Rep. Jared Polis (D-CO) and Rep. Phil Roe (R-TN), along with 26 cosponsors. The “Receiving Electronic Statements to Improve Retiree Earnings (RETIRE) Act” (H.R. 4610) would permit retirement plan sponsors to automatically enroll participants in electronic delivery for plan communications, while providing an opt-out option for employees who still prefer to receive paper documents.

Don’t think that the federal government hasn’t figured this out, at least when Uncle Sam is footing the bill. The Social Security Administration delivers its beneficiary statements electronically, and the federal

Thrift Savings Plan uses paperless delivery by default for its quarterly statements unless an individual requests mail delivery. That’s the same approach that the Office of Personnel Management — the federal government’s HR department — takes for the delivery of health benefits brochures.

Some might remind us that today individuals can request this information electronically in some cases. However, the default is hardcopy — and as we know from a generation of plan enrollment experience, participants, even those who are aware of the option, aren’t typically inclined to act, even on their own behalf. Instead, the paper just keeps on coming.

For disclosures to be effective, they need to be available in a medium that is convenient for the recipient to access the information, act on it when applicable and, where desired, file it. Electronic delivery offers all of that. And it costs millions less, is far less damaging to the environment, and even provides the ability to know that the information has been delivered and accessed. With concerns about identity theft looming large, it’s also a far more secure medium of transmitting sensitive personal information than leaving it in an unsecured mailbox or on someone’s front stoop.

It is ironic that in an industry so focused on reducing plan costs and making an efficient use of technology to enhance and improve the participant experience, plans are forced to spend millions — perhaps billions — of dollars every year to produce, print and distribute these massive amounts of paper.

It’s time we quit papering over the problem. 📄

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



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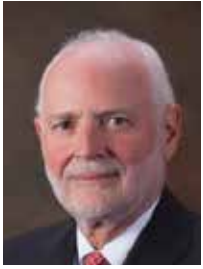
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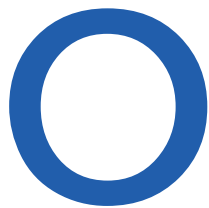
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BY JERRY BRAMLETT

# TDFs: What to Do About Low Adoption Rates

The way forward is to implement choice architecture frameworks that better guide average DC investors as they find their way.



One of the simplest investment options for the average DC investor, and one that can be very effective in achieving long-term retirement goals, is the good old target-date fund. Unfortunately, as two decades of research has shown, investors who truly understand TDFs and their intended purpose are in the distinct minority.

A target-date fund is, by design, a highly diversified investment that has been optimized to minimize risk and optimize returns based on an individual's investment time horizon (*i.e.*, retirement date). It serves as a single, all-in investment solution.

Yet the majority of DC investors who are offered TDFs only “partially invest” in them. According to a recent study:

*Part of the appeal of target date funds is that they are designed to be an all-in investment. However, fewer individuals use TDFs as their sole investment than use TDFs in conjunction with other funds — 49.7% compared to 50.3%. (“Target Date Funds: Who is Using Them and How are They Being Used?”, Alight, 2017)*

A finding of this same study points to the reason for this poor adoption rate: “When employees were asked about the features of TDFs, only 9% correctly understood that a TDF is designed so that investors need to invest in one fund instead of several funds.” Stated differently, 91% of DC investors believe that a TDF is just another investment fund like any other single asset class fund. This statistic alone could explain the reason why the majority of TDF investors are not fully invested in a single TDF.

Another study (“Not so Simple: Why

“Providing the means for achieving a clearer understanding of TDFs will result in more professionally designed portfolios.”

Target-Date Funds are Widely Misused by Retirement Investors,” Financial Engines, 2016) reached similar conclusions, reporting that “the majority (58%) of retirement investors are not invested in TDFs. Of those who use TDFs, only one in four are full-TDF users.” Furthermore, in this same study, the number one reason (62%) given by partial TDF investors for not fully investing in a single TDF was that “they were seeking to diversify their investments.”

## Communication Challenges

What these numbers illustrate is that, as in the '80s and '90s, plan sponsors (and their advisors) have mostly relied on “education” to achieve results. Before the advent of TDFs, the goal was to create sample asset allocation models for different risk profiles and hope that DC investors “got the message” and created (and managed over time) their own asset allocation models.

While it took a number of studies to prove that educating DC investors to perform asset allocation simply did not work, many plan sponsors and their advisors believed that

TDFs would solve this education challenge. Simple, right? All the participants need to know is the date they want to retire and then choose the TDF that corresponds most closely with that date. Given the poor adoption rates of full TDF users, obviously this “simple” message is not getting through.

Could it be that communicating TDFs as a single-solution fund is actually part the problem? As cited above in the Financial Engines study, more than half of the partial target-date investors were seeking to diversify their investments. Respondents in this study made comments such as, “You never know what could happen and I don't want all my money in there [the TDF]” and “I do not like having all my eggs in one basket.”

Another of the study's findings helps to explain why TDFs are widely misused: More than half of all partial TDF users (51%) and all retirement investors (60%) do not believe that TDFs can give them a better return than they can get on their own! This is an interesting conclusion, especially given that this same study demonstrated that partial TDF users had a 2.11% lower return than full TDF users did.

## Increasing TDF Adoption Rates

Of course, many of the current studies and observations focus on shifting away from TDFs and moving on to managed account solutions or robo-advice. There are definitely merits to these arguments. Nevertheless, the fact remains that more than 90% of DC plans (at least across the top 100 plans, according to the 2017 Alight study) utilize TDFs as their core asset allocation option for participants. Furthermore, a study by Vanguard (“TDF adoption in 2016”) projects that by 2021, 65% of all Vanguard participants will be invested in TDFs, compared to 46% in 2016. That is a projected

growth of almost 50% over a five-year period. This same study indicates that 80% of Vanguard plans have designated a qualified default investment alternative (QDIA) and of these plans with a QDIA, 96% have designated TDFs as their default option.

And yet the message — that best practices advocate for the use of a single TDF — continues to be lost on the average DC investor.

**Better Choice Architecture: The Path to Success**

Framing investment choices differently can make a difference in the investments chosen. An important study rooted in behavioral finance describes choice architecture in this way:

*We show that the design of retirement saving vehicles has a large effect on saving rates and investment elections, and that some of the minor details involved in the architecture of retirement plans could have dramatic effects on savings behavior. We conclude our paper by discussing how lessons learned from the design of objects could be applied to help people make better decisions, which we refer to as “choice architecture.”* (“Choice Architecture and Retirement Saving Plans,” Shlomo Benartzi, Ehud Peleg and Richard Thaler, 2007)

The worst possible choice architecture as it relates to the uptake of TDFs is to place these all-in-one funds alongside single asset class funds in the same menu. When TDFs are simply listed as a part of a fund lineup (which, unfortunately, is the case more often than not) the presumption is that participants will study the investment literature and understand the difference.

However, the cold, hard fact is that most participants do not read their plan’s investment materials. Instead, they take a look at the fund lineup and simply guess, based on how they feel about funds, or whether the choices are conservative, aggressive or diversified. Of course, many of these investors are lost, without knowing they are lost.

The best choice architecture is one that makes a clear distinction between a TDF, which is a well-diversified goal orientated fund, and a single asset class fund, whose purpose is to serve as one building block of an asset allocation strategy.

**Door A**

**Check Box  That Most Closely Matches Your Retirement Date**

- In-Retirement Income Portfolio
- Retirement at 2020 Portfolio
- Retirement at 2025 Portfolio
- Retirement at 2030 Portfolio
- Retirement at 2035 Portfolio
- Retirement at 2040 Portfolio
- Retirement at 2045 Portfolio
- Retirement at 2050 Portfolio
- Retirement at 2055 Portfolio
- Build Your Own Retirement Portfolio  
(Opens Door B)

**Door B**

**Build Your Own Retirement Portfolio**

- \_\_\_% Large-Cap Value Stock Fund
- \_\_\_% Large-Cap Growth Stock Fund
- \_\_\_% Small-Cap Value Stock Fund
- \_\_\_% Small-Cap Growth Stock Fund
- \_\_\_% International Large-Cap Stock Fund
- \_\_\_% International Small-Cap Stock Fund
- \_\_\_% Emerging Markets Stock Fund
- \_\_\_% Core Bond Fund
- \_\_\_% Stable Value
- \_\_\_% Total must equal 100%

One way to accomplish this is to increase the visibility of the TDF options and to suppress the visibility of the single asset class funds. The TDFs are listed first in Door A, while Door B is activated only if a “self-build” option is selected (see examples).


Just as in the case of self-directed brokerage accounts (which have a very low uptake in most plans where they are offered), building one’s portfolio from single asset class funds ought to take some effort to implement. Regarding plan participants who really want to “roll their own,” we can assume they are savvy enough to find their way through the second door. Just as it is prudent to restrict access to self-directed brokerage accounts where participants can hurt themselves unless they are uniquely qualified, the same can be

The fact that most TDF investors are partial investors does not bode well for helping these DC investors achieve their optimal investment outcomes.”

said regarding DC investors who (as the studies have shown) simply guess at their allocation, bereft of any analytical tools (e.g., Monte Carlo simulations, regression analysis, risk tolerance assessments, etc.).

**Conclusion**

Target-date funds will be the primary all-in-one asset allocation vehicle offered through DC plans for some years to come. The fact that most TDF investors are partial investors does not bode well for helping these DC investors achieve their optimal investment outcomes. The way forward is to implement choice architecture frameworks that better guide the average DC investor as they find their way through what is effectively a bunch of noise (multiple single asset class funds).

Providing the means for achieving a clearer understanding of TDFs will result in more professionally designed portfolios, which are tailored to what is arguably the most important risk factor in portfolio construction: one’s investment time horizon. And, as all plan advisors know, designing portfolios with as much clarity as possible helps to avoid unpleasant surprises in retirement. 

» Jerry Bramlett is the Managing Partner of Redstar Advisors and Managing Director of Sage Advisory Services.

# Trends Setting

New waves of litigation — and the still relatively new fiduciary regulation — appear to be influencing trends in advisor hires and fee reviews, while automatic plan designs continue to find favor, and expand.

01



## Fiduciary Focus

### Has the fiduciary rule fueled advisor hires?

**M**ore than two-thirds of plan sponsors now retain an independent investment advisor to assist with fiduciary responsibility — but they aren't necessarily clear on the scope of that focus.

According to the Plan Sponsor Council of America's 60th Annual Survey of Profit Sharing and 401(k) Plans, 69.5% of 590

respondents say they retain an independent advisor to assist with fiduciary responsibility separate from their recordkeeper. While one in five say they use a 3(38) advisor, and 36% use a 3(21) advisor, more than 4 in 10 (43.9%) aren't sure. And while that uncertainty may simply be a matter of not remember ERISA sections, it holds up pretty consistently across the board. Even among the largest plans (more than 5,000 participants), 37% weren't sure of the advisor type.

Larger plans were more likely to employ an advisor's services; 76.4% of the largest plans did, compared with 59.2% of plans with less than 50 participants. However, it was most common in plans

with 200-999 participants, where 76.7% of respondents did so.

#### Advice 'Slice'?

While advisors are increasingly prevalent, investment advice is less so — offered by just 34.8% of respondent companies:

- 20.2% - by a third-party web-based provider
- 30.8% - by a registered investment advisor
- 28.8% - by a certified financial planner

Of companies providing investment advice, the most common delivery methods are:

- 68.5% - one-on-one counseling
- 45.7% - internet providers
- 48.7% - telephone hotlines

One-fourth of participants used advice when it was offered.

#### Auto 'Increases'

Sixty percent of plans have an automatic enrollment feature. Once again, the feature is most common in large plans — 70% of plans with 5,000 or more participants report having automatic enrollment, in contrast to the third of plans with fewer

than 50 participants.

While the most common default deferral remains 3% of pay (36.4% of plans), more than half of those with automatic enrollment now have a default deferral rate higher than 3% of pay. Three-fourths of automatic enrollment plans automatically increase default deferral rates over time; a third increase the default deferral percentage over time for all participants, 12.0% do so for all under-contributing participants only, and one-third escalate it only if the participant elects it. The most common default investment option is a target-date fund, used by 63.7% of plans.

More than a quarter (28.4%) of respondents say they provide a suggested savings rate to participants — and while 6% was the most commonly suggested rate among those plans, 17.5% said they suggested more than 10%.

The availability of Roth contributions has doubled over the past decade. In 2007, just 30.3% offered a Roth option to their participants; in this year's survey nearly two-thirds (63.1%) did.

#### Fee Sense

According to the survey, the majority of plan expenses are paid for by the company

rather than the plan, with the exception of plan recordkeeping and investment management fees (though those are arguably the larger expenses). Forty-three percent of plans are charged a basis points fee for recordkeeping and administration fee and a third (34.4%) of plans pay a flat rate per participant. More than half of companies conduct a formal review of fees annually, and 30.3% review them more frequently.

#### Target 'Practices'

Nearly three-quarters (73%) of plans offer a target-date fund, and more than one in five (22.2%) of plan dollars is allocated there — up from a mere 6.4% a decade ago. Most (86.4%) of firms using target-date funds use a packaged product. Not surprisingly, larger firms (those with 5,000 or more participants) were more likely to customize those offerings. Seventy percent of plans use a Qualified Default Investment Alternative (QDIA), and that QDIA is a target-date fund at 77.5% of those plans.

Most (59.6%) of those with target-date funds rely on active management. Just

40.4% use passively managed options.

About 4 in 10 plans responding offer a professionally managed alternative to participants, though more than half of plans with more than 5,000 participants do.

Just 1 in 10 plans offer an in-plan annuity option to participants.

Most (87.6%) have an investment policy statement (IPS), with quarterly investment monitoring the apparent “norm” (61.4%), distantly followed by those who did so annually (19.6%).

#### Education 'Precedents'

The most common reasons for providing plan education are to:

- 71.4% - increase participation
- 65.8% - increase appreciation for the plan
- 62.7% - increase deferrals

To achieve their education goals, the most common approaches used by plan sponsors include:

- 64.1% - e-mail
- 55.3% - seminars/workshops
- 46.4% - enrollment kits

- 42.7% - internet/intranet
- 30.9% - fund performance sheets

Most (58.8%) companies allow employees to begin contributing to the plan immediately upon hire, and 47% of companies that provide a matching company contribution provide immediate eligibility to receive the match. About a third (31.9%) of plans with non-matching contributions provide immediate eligibility to receive them.

The vast majority of plans (88.9%) permit participants to borrow against their plan assets, consistent with the last several years. Just over half (55.1%) of responding plans permit participants to have one loan outstanding at a time, while 36.3% permit two loans. One-fourth of participants have at least one loan outstanding, with an average loan amount of \$8,042.

More information about the Plan Sponsor Council of America's 60th Annual Survey of Profit Sharing and 401(k) Plans is available at [www.pasca.org](http://www.pasca.org).

— *Nevin E. Adams, JD*

02



#### Fee 'Fie'?

#### Survey finds fees a fiduciary focus

A new survey finds that plan sponsors, by a wide margin, cited reviewing plan fees as the most important step they took in improving their fiduciary position in 2017, and 60% of survey respondents said they are somewhat or very likely to conduct a fee survey in 2018.

While this ranked significantly higher than any other activity undertaken, it was also top-ranked in last year's survey, and in 2014, slipping to No. 2 in 2015. Updating or reviewing the investment policy statement came in second, while conducting formal fiduciary training, changing the investment menu, and conducting a plan audit rounded out the top five.

The survey — Callan has been conducting these since 2007 — incorporates responses from 152 DC plan sponsors, including both Callan clients and other organizations. The results skew toward larger plans; more than 60% of the respondents have more than \$1 billion in plan assets (twice as many as a year ago), and more

than 90% have in excess of \$100 million in assets. There was also a significant increase in the number of 457 plans in the survey (from 7.9% in 2016 to 21.7% in the current survey), which augurs caution in drawing conclusions about trends — a point that Callan points out in its analysis.

Plan sponsors reported a decrease in the use of revenue sharing to pay fees, with the most common fee payment approach reported as explicit per participant fees (54.7%). Only 8.0% of plans with revenue sharing report that all of the funds in the plan provide revenue sharing, with the most common is to have between 10% and 25% of funds paying revenue sharing. Still, one in six plan sponsors say they are not sure what percentage of the funds in the plan offer revenue sharing.

#### Monitoring Methods

When asked whether their recordkeeper will provide guidance/education or advice on various participant transactions, most

(generally in the 70% range) noted that transactions would be educational in nature, according to the report. However, more than a third (35.6%) said their recordkeeper would provide advice on investments, and more than a quarter said they would provide advice on distributions/rollovers.

According to the report, a large proportion of respondents indicated that they do not know what they require (29.4%) of their recordkeeper to monitor any advice given, nor is there a clear majority practice to monitor these services. Callan notes that at the time this survey was conducted, the most prevalent monitoring requirements were:

- reviewing the advice software (46.1%);
- receiving reports on advice interactions (40.2%); and
- reviewing samples of written communications (40.2%).

However, going forward, Callan notes

that monitoring practices are even murkier: 42.7% do not know what they will require in 2018, and another 12.2% expect to have no monitoring in place.

More than half of the plan sponsors have a written fee payment policy in place, either as part of their investment policy statement (24.7%) or as a separate document (30.1%), the highest rate recorded in Callan's survey history (though perhaps impacted by the massive increase in mega and 457 plans).

More than 8 in 10 plan sponsors say they engage an investment consultant, though a large proportion were not sure whether their consultant had discretion over the plan (a 3(38) advisor) or not (a 3(21) advisor). Of those that did know, the majority reported using the latter.

### Success Stress

In measuring the success of the plan, participation rate/plan usage was once again rated the highest, and by a fair margin, followed by investment performance. Contributions/savings rate (No. 2 last year), cost effectiveness and retirement income adequacy tied for third place. However, Callan notes that retirement readiness is plan sponsors' primary area of focus over the next 12 months (albeit narrowly beating out "participant communication," though the latter seemed to be a particular focus for government plans).

Cybersecurity rose from a near the back of the pack concern in last year's survey to a middle rating in 2017.

### Target 'Ranges'

Not surprisingly, in 2017, 85.2% of

plans use a target-date fund as their default for non-participant directed monies, generally in line with prior years. However, the use of managed accounts doubled — from 2.5% in 2016 to 5.2% in this year's survey.

Callan notes that, continuing a long-observed trend, the plans offering their recordkeeper's target date option continued to drop — from more than 50% in 2012 to 23% in 2017 (note: the shift in respondent plan sizes might be a factor). There is more uncertainty over what approaches will be used going forward, as evidenced by the 6.3% that do not know which target-date fund approach they will use in 2018.

Moreover, Callan notes that the prevalence of custom solutions has "leveled off," and in recent years has hovered in the low 20% range. Those offering those options cited a better cost structure as well as access to best-in-class underlying funds as the top motivations.

The majority of plan sponsors (55.2%) took some sort of action with regard to their TDFs in 2017. Of those taking action, evaluating glide path suitability maintained its place as the most prevalent course of action (51.7%). Changing the share class of the TDF (22.4%) and moving to a collective trust (8.6%) rounded out the top three.

Consistent with previous years, the top three reasons for selecting or retaining TDFs in 2017 were portfolio construction, fees and performance. Name recognition, whether they were proprietary to the recordkeeper and the use of tactical asset allocation remained the lowest ranked factors.

### Auto Trends

The survey also found that the use of

auto features continued to be widespread. Nearly three quarters of non-government plans used auto enrollment; four out of five plans with auto enrollment also offered automatic contribution escalation; and plan sponsors reported the highest average auto enroll default contribution rate in the survey's history (4.6%). Key reasons for not implementing automatic enrollment for non-government plans include:

- not being perceived as necessary; and
- not being a priority.

Not being permitted to offer automatic enrollment (e.g., because of state wage garnishment laws) was the dominant reason for government plans (61.9%).

After rising sharply from 2015 to 2016, the prevalence of automatic contribution escalation among non-government plans has remained at about 7 in 10 for the past two years, according to Callan. However, the number of plans with automatic contribution escalation that use an opt-out approach increased compared to previous years (70.8% this year versus 59.5% in 2016). However, Callan notes that only 5% of non-government plans without automatic contribution escalation are very likely to adopt this feature in 2018. The top reason for not offering? It's not a high priority. Government plans cited fiduciary concerns as the top reason for not offering this feature.

— *Nevin E. Adams, JD*

03



### Tool 'Talk'

#### Survey finds introduction of online tools pumps up demand for advice

Demand for advice on asset allocations and income planning increased four-fold among study participants after online advice tools were introduced, according to a new research paper.

Using participant-level data from 23 institutions served by TIAA between 2009 and 2014, the study — "New Evidence on the Demand for Advice within Retirement

Plans" — examines how demand varies based on participant demographics, as well as how it is affected by default investment options and the means by which advice is offered.

Authors Jonathan Reuter of Boston College and NBER (and a TIAA Institute Fellow) and David Richardson of the TIAA Institute found that advice seeking by

participants jumped from 2.4% during the period 2009-2011 to 10.25% from 2012-2014, following the launch of online advice tools in late 2011.

The authors suggest that that "simplest interpretation" is that online tools significantly lower the relative price of advice because many participants find it more convenient to use online tools than to



schedule in-person meetings with advisors. They further observe that there may also be “psychological factors,” such as greater anonymity, that lead to an overall increase in demand.

Not surprisingly, demand for advice is significantly higher among contributors with web access. The report notes that participants with web access to their account are approximately twice as likely to seek advice as those without it. The authors suggest that, because they continue to see an economically significant association between web access and advice seeking throughout their research, one potential low cost “intervention” is to provide web access to all participants by default.

Meanwhile, participants who invest

through multiple retirement plans demonstrated higher levels of advice seeking than participants who invest through a single plan. But participants who invest solely through target-date funds are “significantly less likely” to seek any form of advice, even when they are approaching retirement age, according to the study. While TDFs provide an auto-diversified long-term investment option, reliance on TDFs appears to reduce retirement plan engagement, which may result in the participant receiving less advice, the authors noted.

The study further revealed only limited evidence that investment advice increases around investment menu changes. Participants were more likely to seek advice on asset allocation and retirement income levels when the investment menu in the institu-

tion’s primary plan is larger. However, while plans with larger investment menus had higher average levels of demand for advice on asset allocation between 2012 and 2014, demand did not rise or fall within institutions as the number of investment options changed, the report explained.

Other findings include that advice seeking increases around changes in marital status, while older participants and those with larger account balances are more likely than others to seek out advice, particularly among those eligible for wealth management services.

— *Ted Godbout*

## 04



## Retirement Readiness Rx?

## Advisor relationship improves retirement readiness

New survey results show that half of American households are at risk of not being able to cover essential expenses in retirement, but the numbers improve considerably for households that use an advisor.

Fidelity Investments’ 2018 Retirement Savings Assessment shows that 22% of households are in the “yellow zone” for retirement preparedness, meaning they are not on target and modest adjustments to their planned lifestyle will be likely. But a larger 28% of households are in the “red zone,” meaning they will likely need to make significant adjustments to their planned lifestyle.

And as might be predicted, households that have an advisor relationship also have a higher retirement score — with the data showing a retirement preparedness score of 86, which is in the good range, compared to 78, which is in the fair range.

Even when controlling for income, those who use an advisor still have a higher retirement score than those who don’t. The biggest beneficiaries of an advisor relationship appear to be those in the lower income group, who see a 17% boost in preparedness, according to the report.

For example, for households earning less than \$60,000, those who use an advisor

have a retirement score of 83, compared to only 71 for those who do not use an advisor. Even higher up the income scale, the data shows a significant difference, as those making \$100,000 or more who use an advisor have a retirement score of 89, compared to 85 for those who do not.


Despite the positive findings from using an advisor, the report shows that only 22% of households have a relationship with a paid professional advisor. And not surprisingly, this percentage increases with age and income level, according to the findings, as just 12% of people in their 20s use an advisor versus 35% in their 60s.

Fidelity suggests that while an absolute causal relationship is not possible to prove, it may be that households that use an advisor are better planners. For instance, the report observes that households that use advisors are also more likely to be taking into account the cost of health care in retirement and saving for it — with the findings showing a difference of 66% versus 47%.

As for the 50% of households that are on track to cover at least their essential expenses in retirement, the report shows that 32% of them are in the dark green zone and on target to cover more than 95% of total estimated expenses

(up from 31% in 2016). The remaining 18% are in the green zone and on target to cover essential expenses, but not discretionary expenses like travel and entertainment; this number is down from 19% in 2016.

Fidelity concludes that the “cautionary news” is the state of America’s retirement readiness is in fair condition, but the “good news” is that it’s fixable and they have seen great improvements since the study was first conducted in 2005.

The findings in this study are based on data such as workplace and individual savings accounts, Social Security benefits, pension benefits, inheritances, home equity and business ownership. Data was collected through a national online survey of 3,182 working households earning at least \$20,000 annually with respondents age 25 to 74, from Sept. 14 through Oct. 3, 2017.  — *Ted Godbout*



WARREN CORMIER

# Helping Plan Sponsors Deal with the Missing Participant Problem

A recent study shines a spotlight on the magnitude of the problem.

**I**nnovations in automation have helped mitigate many of the factors that are slowing participants' journey to retirement readiness. Automatic enrollment has helped with non-participation; automatic deferral increase has raised contribution rates; target date funds have given participants an easy solution to diversification over time. And the industry is moving toward a fintech solution to reducing leakage in the form of cash-outs.

The latest problem to be addressed is the missing account phenomenon. In a sense, it is a predictor of cash-out leakage, as many accounts associated with unresponsive owners are either moved to safe harbor IRAs (and subsequently depleted to \$0 by fees), or escheated to the state.

Specifically, when participants terminate employment, either through turnover or retirement, many often leave their DC accounts with their former employers. In these cases, they are still participants, though not actively contributing to their accounts. Nonetheless, it is the plan sponsor's fiduciary responsibility to communicate with them as much and as often as active employees. With automation and electronic delivery of information, that would not seem to be a particularly onerous task. However, if the employer has lost track of the participant's location, it now has a missing participant. It may not be the *fault* of the sponsor, but it remains the *responsibility* of the sponsor to find the participant.

## Measuring the Scope of the Problem

Just how big is the missing participant problem? In a study recently completed

“Half (50%) of Millennials in the survey learned of a retirement account with a previous employer they didn't realize they had.”

by Retirement Clearinghouse (RCH), the magnitude of the problem was measured. Specifically, RCH interviewed 2,500 consumers who had ever worked full- or part-time. This group was pared down to 1,000 who had participated in at least one DC plan in the past. Respondents were asked about their past employers' knowledge of their current address and if they were receiving information about their past DC accounts.

What did RCH learn?

First of all, the data reaffirmed that the U.S. workforce is highly mobile. More than a third (37%) of currently active participants had changed their addresses since starting their current jobs. That is likely to continue or become more pronounced. Other key findings include:

- One in nine (11%) of all terminated account records had a stale address (“missing”), meaning that the past employer holding the account (and responsible for communica-

tion) does not have a current U.S. postal address.

- This problem does not cut evenly across employment status, income, generation and balance:
  - *Employment view:* 5.2% of accounts held by a retiree had a stale address, and 22.0% of currently unemployed participants' account addresses were stale (twice as high as the 11% overall).
  - *Income view:* Low-income households are twice as likely to be missing compared to higher-income households: 18.7% of terminated participant accounts associated with participants with household income below \$50,000 did not have a current address on file, compared with 9.1% of accounts of participants with household income above \$50,000.
  - *Age view:* Millennials are more likely to be missing: 15.6% of Millennial accounts left with a prior employer plan had a stale address, compared with 8.5% for Gen X stranded accounts and 5.9% of Baby Boomer stranded accounts. Millennial relocations more likely to result in a missing participant record (24%) compared with their Gen X (15%) and Baby Boomer (15%) counterparts.
  - *Balance view:* Almost a third

of stranded accounts, 31%, are less than \$10,000. Of the stranded accounts left behind that are less than \$10,000, 63% belong to Millennials — 41% of Millennials' stranded accounts are less than \$10,000.

- One out of every five (20%) job changer relocations results in a missing participant record.
- The average number of accounts still with a previous employer (stranded accounts) was 1.42 accounts per participant. Retired and unemployed participants had 1.24 and 1.25 accounts per participant, respectively.
- The probability of locating a missing participant with an *active* participant address record is 67%.
- Active participant address records are reliable at least 93% of the time.
- Only 9% of participants in survey would *not* verify their address if asked by a former employer.

Interestingly, there may even be a problem with awareness of past accounts. One-third (33%) of participants surveyed said they learned of at least one past retirement account with a previous employer they didn't realize they had. Half (50%) of Millennials in the survey learned of a retirement account with a previous employer they didn't realize they had. Even if the survey results were off by half, that is still astounding.

### The Search for a Solution

What can be done to solve the missing participant problem? It is obvious that by virtue of the sheer number of participants involved that a fintech approach is necessary. When asked how they would prefer to search for missing accounts, a significant majority of participants — 60% — would prefer an automated process to update addresses (39%) or consolidate their previous employer retirement accounts in their active plan (21%). One-quarter (23%) would utilize a lost-and-found database to find stranded accounts. The remaining 18% said they would rather rely on themselves to update their past employers on their

“One out of every five (20%) job changer relocations results in a missing participant record.”

whereabouts.

To dig deeper, I interviewed Spencer Williams, CEO of Retirement Clearinghouse, about his view of a viable solution.

*WJC: Spencer, why is this becoming a bigger and more important problem to solve?*

*SW:* The twin issues of missing participants and small accounts have been amplified by today's highly mobile workforce, and the fact that participants frequently forget to update their contact details with past employers and plan recordkeepers. These trends have been the norm for some time, but the problem of missing participants has taken on a new sense of urgency in light of widespread reports that the Department of Labor is focusing heavily on missing participants when auditing plan sponsors and recordkeepers.

*WJC: Does it matter where the lapse occurs in terms of whom is responsible if a plan sponsor is not in compliance?*

*SW:* Where the breakdown in communication occurs is actually irrelevant. Even if the terminated employee fails to update the plan sponsor of their current address, failure to comply falls on the plan sponsor.

*WJC: How would you approach the problem?*

*SW:* There is a solution emerging that will help plan sponsors locate missing participants, and its potential is found in the systems of the recordkeepers that sponsors already use to administer their plans. According to new research, current, reliable

addresses for up to two-thirds (67%) of terminated/inactive accounts can be found by matching active participant account records against terminated/inactive records across recordkeeping systems; we call the solution “Auto Locate.”

The technology at the heart of Auto Locate creates links between recordkeeping systems, which establishes a “virtual database” of all participant records — an untapped resource for locating the bulk of missing participants. The underlying technology is also fully automated, highly secure, and in service today.

### Public Sector Activity

A good indicator of how the importance of this problem is growing is the response from the public sector. In addition to the private-sector RCH solution, there have been two government reactions:

- The PBGC is expanding its Missing Participants Program to terminated 401(k) and other plans in an effort to connect more people to their retirement savings.
- On Capitol Hill, Sen. Elizabeth Warren (D-MA) and Sen. Steve Daines (R-MT) co-sponsored in the 114th Congress the “Retirement Savings Lost and Found Act of 2016,” which would create a national lost-and-found for retirement accounts. It would use data that employers are already required to report to the Treasury Department to create a national, online, lost-and-found for Americans' retirement accounts.

Clearly this is a problem that needs to be addressed by either the private of public sector, or both in collaboration. Not only are there billions of retirement savings dollars at stake, there is a compliance issue on which plan sponsors are going to need advisors' guidance. 🗣️

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



BY DONALD B. TRONE

# How to Build and Maintain a Robo-Fiduciary<sup>SM</sup>

You can provide more efficient investment services by combining technology with your servicing model.

**T**his year marks the 10th anniversary of the launch of the first robo-advisors. However, the concept of using technology to deliver a prudently diversified portfolio based on an investor’s risk/return profile dates back more than 25 years. In the mid-1990s, Charles Schwab was developing a kiosk-based platform to deliver cost-effective investment solutions that met a fiduciary standard of care.

When we were building fiduciary products and services in the 1990s, we stayed true to a simple principle: the offering had to meet ERISA’s requirements of a procedurally prudent process. That is, we had to demonstrate three things — that the proposed investment solution:

1. was in the best interests of the investor;
2. reflected fiduciary best practices; and
3. included generally accepted investment management principles.

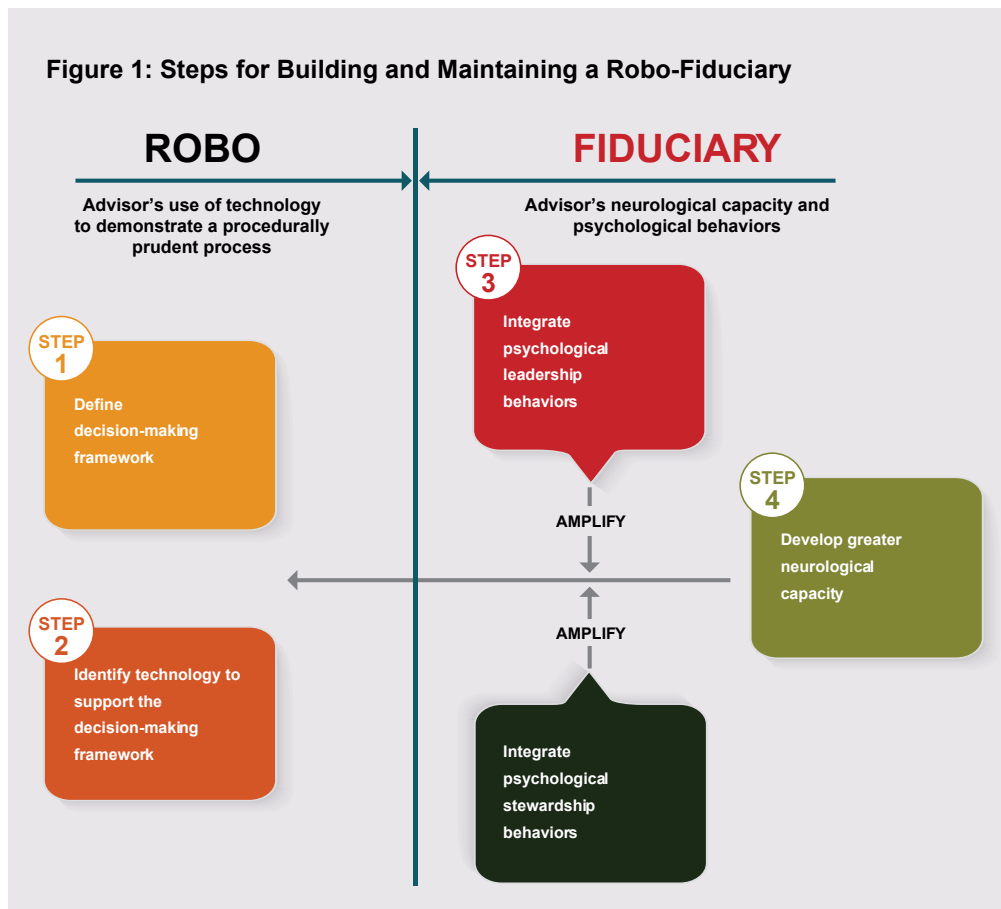
Today, several robo-advisors have touted their ability to function as a ’40 Act fiduciary, which is to say that they can demonstrate that they’re acting in the best interests of an investor. However, we’re not aware of any robos that have attempted to make the bolder claim that they can satisfy an ERISA procedural prudence standard.

The next logical step in the evolution of robo-advice is the robo-fiduciary. Given the rising influence of robo-advice and the massive confusion over what constitutes an ERISA fiduciary standard, we think it’s critical to publish instructions on how to build and maintain a robo-fiduciary.

Likewise, information on how to construct a robo-fiduciary will provide retirement advisors a valuable blueprint

ROBO ADVISOR	ROBO-FIDUCIARY
Tech-centric; advisor has supporting role	Advisor-centric; technology has supporting role
Best interest standard — ’40 Act standard	Precedural prudence standard — ERISA standard
Can't demonstrate passion, nor inspire and engage	Can demonstrate passion and the ability to inspire and engage
No neurological capacity	Can develop neurological capacity

Figure 1: Steps for Building and Maintaining a Robo-Fiduciary



**Figure 2: Uniform Decision-making Framework**



for building their own. Advisors will benefit from knowing how technology should be combined with their servicing model to provide more cost-effective and efficient investment services.

To begin, we would define robo-fiduciary as an advisor-centric service where the client experience is amplified by the use of integrated technology. The emphasis is on the critical role of the advisor and the supporting role of technology. With a robo-advisor, often the emphasis is reversed.

We have identified four distinct steps in building a Robo-Fiduciary — see Figure 1.

**Step 1:** Define a uniform decision-making framework (see Figure 2) that the financial advisor can apply to any client engagement. The framework shown can be used to substantiate fiduciary best practices, FINRA rules, financial planning standards and generally accepted investment management practices.

It's scalable — the same framework can be used to define an investment process for retail and institutional clients. Additionally, it's uniform. It can be used to define a fiduciary standard for personal trusts and savings, and for managing the assets of retirement plans, foundations and endowments.

**Step 2:** Identify technology that will be needed to support each dimension of the financial advisor's decision-making framework.

**Step 3:** Integrate the financial advisor's leadership and stewardship behaviors (see Figure 4). What differentiates a robo-fiduciary from a robo-advisor should be the former's capacity to inspire and engage clients, and to exhibit the passion and discipline to protect the client's long-term interests.

Our research has shown that there are specific psychological behaviors — leadership and stewardship behaviors — that are known to amplify and improve the advisor's decision-making process.

**Figure 3: Technology to Support a Decision-making Framework**



**Step 4:** Develop the advisor’s neurological capacity (see Figure 5) for self-determination, situational awareness, self-complexity and moral and ethical decision-making. Another critical point of differentiation between a robo-fiduciary and a robo-advisor is neurological capacity. The latter has none — although someday that may change as artificial intelligence develops further.

The neurological capacity of a fiduciary — or neuro-fiduciary? — is a new body of research, so we’re going to take a deeper dive on the subject.

The preeminent academic team that conducted and published ground-breaking research in prestigious journals on Neuro-Leadership<sup>i</sup> demonstrated that there are certain people whose brains, through development, are better wired to lead. This same academic team is now going to begin to study neuro-fiduciary. The hypothesis that will be tested is whether exemplary financial advisors show a greater neurological capacity for the following four abilities.

#### 1. Self-complexity

This is the ability to:

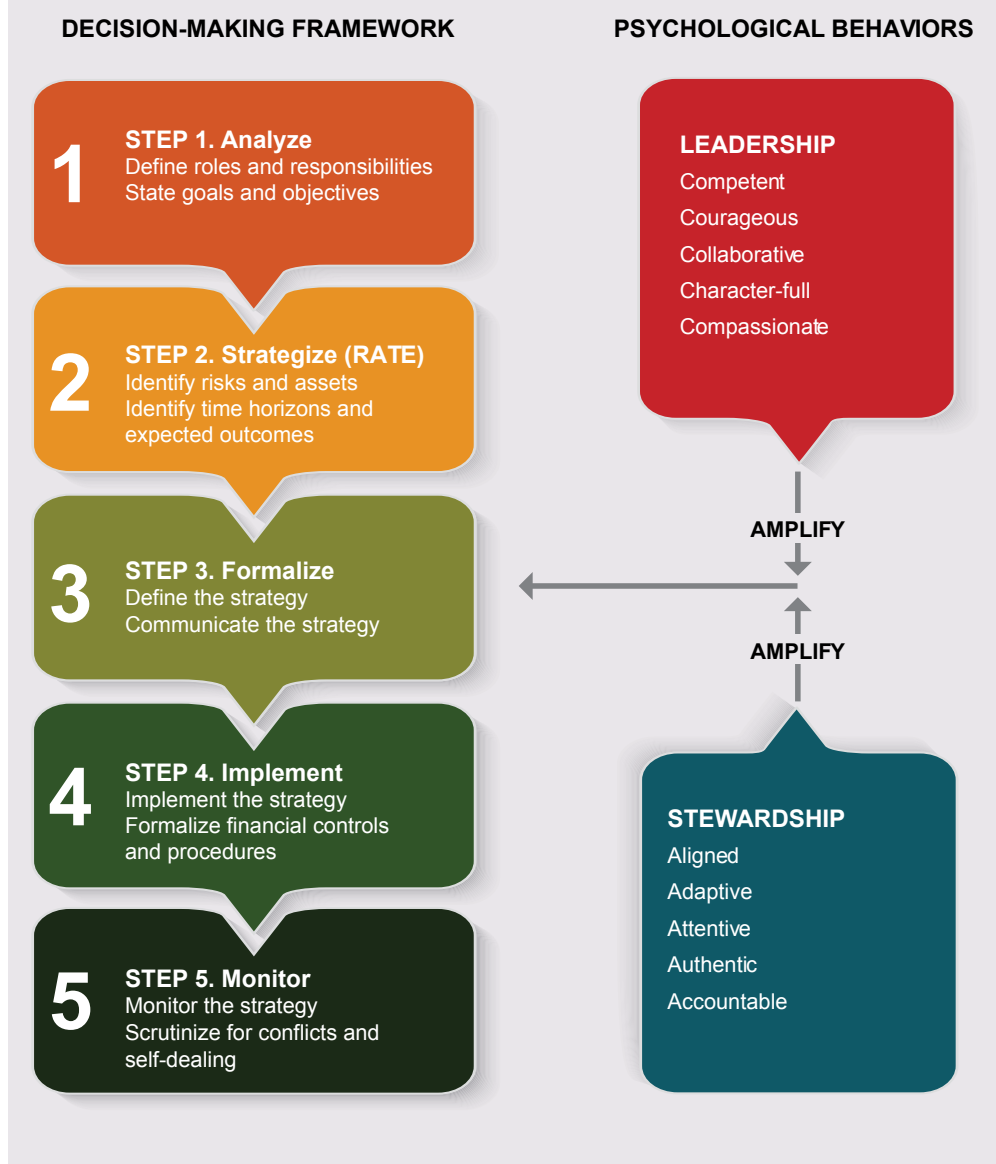
- Understand oneself within changing roles requirements
- Adjust and adapt thoughts and behaviors to enact more appropriate responses to ill-defined, changing and evolving situations
- Adjust goals and objectives as information changes
- Lead in a VUCA (Volatile, Uncertain, Complex, and Ambiguous) world
- Adapt to disrupt

#### 2. Moral and Ethical Decision-making

This is the ability to:

- Be a person of integrity
- Inspire others to do the right thing ethically
- Look after the welfare of others without being monitored
- Demonstrate that one’s core values are reflected in their behaviors
- Exhibit self-control

**Figure 4: Psychological Behaviors That Amplify a Decision-making Process**



#### 3. Situational Awareness

This is the ability to:

- Perceive changes in one’s environment
- Interpret changes to determine whether and how they may impact goals and objectives
- Make predictions as to how changes may impact future events
- Understand the competing demands of multiple stakeholders
- Pick up social cues to know how one’s behavior impacts others

#### 4. Self-determination

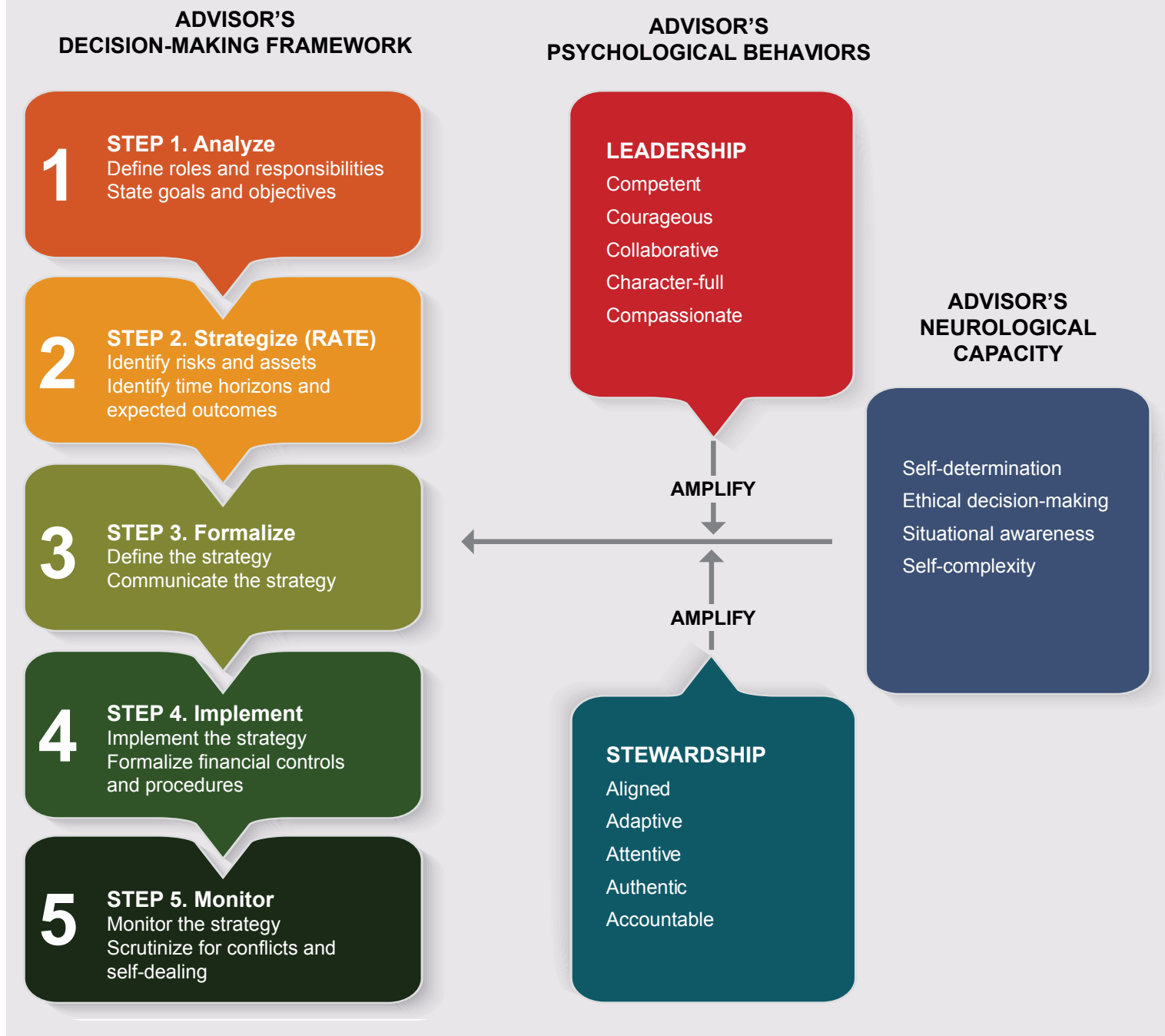
This is the ability to:


- Deliver performance that is driven by one’s sense of purpose
- View one’s work as a vocation or calling
- Support and align one’s sense of purpose with habits and incentives
- Celebrate and learn from failure — a key for innovation.

A focus on building and maintaining robo-fiduciaries will help to accelerate the development of highly exemplary retirement advisors. We’ll bring into view the

<sup>i</sup>The academic team included Dr. Sean Hannah (who also is a 3ethos co-founder), Dr. Pierre Balthazard, Dr. David Waldman, Dr. Peter Jennings, and Dr. Robert Thatcher. Their research was published in the *Journal of Applied Psychology* and can be viewed at <http://www.apa.org/pubs/journals/releases/apl-98-3-393.pdf>.

Figure 5: Neurological Capacity



dimensions of a uniform decision-making framework and the psychological behaviors and neurological capacities that help to improve investment outcomes. We'll no longer have to guess whether an advisor is more valuable than a machine — we'll know. 

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» Don Trone is the founding CEO of 3ethos, which conducts original research, standards development and training for professionals who have legal, financial, professional or moral liability for their decision-making process. The other 3ethos co-founders include Rear Admiral Steve Branham (USCG, Retired); Sean Hannah, Ph.D., Wake Forest University School of Business; John Sumanth, Ph.D., Wake Forest University School of Business; and Mary Lou Wattman.

# QUIZ



BY REBECCA HOURIHAN

## What's Your Marketing IQ?

Take this quick pop quiz — and ace your 2018 marketing.

To help you prepare for the year ahead, we've created a marketing quiz: six questions to test your marketing IQ. As always, the goal of your marketing efforts is to help you “own your yard” and become known as a “go-to” retirement plan expert! Once you complete the quiz, we'll share pro tips designed to help you ace your 2018 retirement plan marketing.

### Question 1: How would you describe your website?

A. It is beautiful. It is professional and represents our firm well. We wouldn't change a thing. (15 points)

B. Yes, we have a website. It is good. The homepage describes who we are and what we do. We think it gets the job done. (10 points)

C. We have a website. However, being honest, it could probably use a touch-up. (5 points)

Points: \_\_\_\_\_

### Question 2: How active is your marketing?

Give yourself 5 points if a prospect could find information about you or your firm from any of the sources below:

- Blog articles
- Newsletters
- Emails
- Videos
- Social media
- Events
- Webinars
- Direct mailers
- Press releases
- Retargeting

Points: \_\_\_\_\_

### Question 3: Do you have a LinkedIn profile?

A. Yes, and we are active on social media. (15 points)

B. Yes, but we rarely post on social media. (5 points)

C. No, should I? (Yes, you should.)

Points: \_\_\_\_\_

### Question 4: How many contacts do you have in your CRM?

A. 500+ (15 points)

B. 499 - 100 (10 points)

C. 99 - 1 (5 points)

Points: \_\_\_\_\_

### Question 5: Approximately how many emails do your clients, prospects, and centers of influence receive from your company per year?

A. 12+ (15 points)

B. 6+ (10 points)

C. 2+ (5 point)



Points: \_\_\_\_\_

**Question 6: On a scale of 1 to 10, how confident do you feel with your retirement plan marketing?**

Points: \_\_\_\_\_

Great work! You took the first step toward elevating your retirement plan marketing so that you can identify soft spots and then strengthen your marketing message to gain more plan clients.

Total Points: \_\_\_\_\_

**Points**

*80-100: Genius*

- Great work, and keep it up! Check out the pro tips in the next section to enhance your already stellar marketing!

*40-79: Savvy*

- Good work! With a few tweaks here and there, you'll be a marketing genius in no time.

*0-39: Novice*

- Marketing is challenging. But you already took the first step — this pop quiz. So, great work there! To help you get started, check out the pro tips to help you work toward marketing success.

**Marketing Ideas**

You're on your way to marketing success. Below are some helpful tips to help you increase your marketing authority within your community. Use these ideas to improve your retirement plan expert authority and, of course, to gain more retirement plan clients.

*Question 1: Website*

Plan sponsors are smart, and they're addicted to Google. More than 86% of modern consumers are going to research before they make a purchase. The same holds true for plan sponsors. Oftentimes, your website is the first place they visit to learn more. Let's make a great impression.

**Pro Tip:** Ask five trusted professionals for feedback on your website. Then work to update, revise and/or adjust your site to wow visitors.

*Question 2: Authority and Influence*

Think of all the ways your plan sponsor prospects can find you — such as on the

Internet, through a newsletter, on a webinar, via social media, and on and on. Take a moment to review the list, and compare it to the items in Question 2. We challenge you to identify and implement one new way that prospects could potentially meet you. Be bold. The takeaway is that the more places a plan sponsor can find you, meet you and get to know you, the more “at bats” your firm will receive.

**Pro Tip:** Every 6 months, conduct an audit of your brand by Googling your name, your company's name and all team members. With each new marketing campaign, take note of how your authority and influence increases.

*Question 3: LinkedIn Profile*

When you receive a referral to a plan sponsor prospect, what is the first thing you do? Most advisors would say, “I Google them.” Right? We all do that. Therefore, when a prospect is Googling you, you want your results to be strong; and LinkedIn is one of the most powerful professional search engines in the world. LinkedIn provides a trusted platform for your prospects to easily find you, research your background, confirm credibility, view your common connections, and digitally open a social dialogue.

**Pro Tip:** What is your name? Is that the name listed on LinkedIn? Some people have “formal” and “normal” names. You want your social media name to be your “normal” name. It is the name a client or center of influence would use when describing you. The reason is that the prospect is going to look you up based on your “normal” name. So, if your name is Michael, but everyone knows you as Mike, then update your profile to read “Mike” instead of Michael. At the end of the day, computers are just connecting numbers and letters, so the easier it is for algorithms to connect, the easier it is for the digital world to find you.

*Question 4: CRM Contacts*

The more contacts in your CRM, the more opportunities you will have to promote your retirement plan expertise. We recommend a list of 500+ contacts.

**Pro Tip:** Need help? Here a few ways to get started:

- Contact an internal wholesaler and ask them to run a plan search

report. Identify any known contacts.

- Update your website with a call to action, such as “Subscribe to our newsletter,” to build your email database.
- Download your LinkedIn contacts and upload them into your CRM.

*Question 5: Annual Touchpoints*

Don't be out of sight, out of mind. The more times you are in front of your clients, prospects and centers of influence, the more they will know you. Strive for regular and consistent touches with your contact list.

**Pro Tip:** Segment your contacts into three lists: Clients, Prospects and Centers of Influence. Create a marketing calendar for each segment. Include value-add content and calls to action to increase open rates, clicks and replies. Some examples include emailing your monthly blog, webinar invitations, video hyperlinks and award announcements.

*Question 6: Confidence*

Wherever you are — that's okay. Marketing takes time. It's the little things over time that create consistency. And consistency creates trust. Then, that trust creates a long-lasting brand. With every marketing touchpoint and campaign, you are building your professional retirement plan advisor authority.

**Pro Tip:** Keep it up! With each new plan and your skilled guidance, know that you are helping hardworking people achieve their American retirement dream.

Whether you are a marketing genius or novice, remember that marketing doesn't always work in a straight line. But keep at it, and over time you will become known as your community's “go-to” retirement plan expert.

Thanks for reading and Happy Marketing! 🎉

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



BY SPENCER X SMITH

# Stop Using This 4 Letter 'F' Word in Your Sales Meetings

Drop the term “fees” from the language you use with your customers — and have better and more meaningful conversations.

**H**ow do you feel when it comes to each of these three terms: cost, price and fees? Can they be used interchangeably, or should you concentrate on using — or not using — one of them when communicating with your customers? After doing 3,000 in-person sales 401(k) meetings from June 2008 to January 2015, a certain term stood out as the one not to use. In this column you’ll discover which one that is.

The term “cost” is something we all readily comprehend. We grew up knowing that if a pack of baseball cards costs a dollar, that’s how much we needed to save. Nowadays, if we ask, “What does this laptop computer cost?” or “What do a dozen roses cost?”, we can easily find the answer by reading a sign, searching the Web or asking a clerk.

What about the term “price”? Same thing as cost, right? As kids, if we knew the price to play Pac-Man was a quarter, that’s all we’d need to play the game. Who didn’t ask their parents, “Can I please have a quarter?” Today, when we ask, “What’s the price of that television?” or “What is the price for a six-pack of Coke?”, that answer is readily apparent too, via sign, cashier or Google.

Did you know that cost-related and price-related questions are some of the most often searched on Google? Let’s pretend your dog has been leaving presents on neighbors’ lawns, so you decide to bite the bullet and finally install a fence. Can you see yourself sitting down at your computer and typing something like, “What does a wood fence cost?” or “What is the price of a chain link fence?” into Google? Of course.

So we know that “cost” or “price” are both okay to use.

## What about the term ‘fees’?

Here’s where the 3,000 sales meetings I mentioned come into play. I worked in the investment industry during this time as a 401(k) wholesaler. What is the industry fraught with? Fees. Management fees. Investment advisory fees. 12b-1 fees. Revenue sharing fees. Add all of them together, and you can start to figure out what something actually costs.


Any time the term “fees” was used in a sales-related presentation, I could see people get a little uncomfortable in their seats. Why? Fees usually occur in bunches. Think about it — do airlines have just one possible fee? Nope. There’s a checked bag fee, carry-on bag fee, overweight bag fee, ticket change fee, extra legroom fee, and on and on. What do bunches of fees require? Math. Customers don’t like math. Why are there a dozen different tip calculator apps? Because people don’t want to do math... just enjoy their meal.

Customers can easily understand what something costs (or the price of something), but people really, really don’t like fees. Here are a few quotes from those 3,000 meetings:

- “The cable television industry ruined the term ‘fees’ for me. All I want to know is the cost for their service. How can I compare options with all the hidden fees? Now that they’re providing my Internet and phone service too, there are a dozen different fees that really add up.”

- “Once I heard you say ‘fees’ I thought, ‘Uh-oh, we better have our accountants sit in on these meetings so they can actually figure out the costs.’”
- “When people talk about ‘fees,’ I think to myself, ‘Okay, that means there’s going to be a big asterisk at the end of the contract that says, ‘Fees Subject to Change.’ I just want to know the price.”

Choose either the term “cost” or “price” and only use that one. Then eliminate entirely the use of the word “fees.” Just get rid of it. Customers will appreciate it, and there won’t be the negative implications from the quotes I cited above. Oh, and stop using the term “surcharge” as well. That one might be the worst of all.

After banning the term “fees” in my sales presentations, I found that a dramatic shift had occurred. Instead of discussing fees for 20 minutes, we quoted a cost or price in one minute. We spent the precious meeting time actually discussing the important factors involved in their decision... not doing math. Eliminate the term “fees” from the language you use with your customers, and be prepared to have better and more meaningful conversations. 

» Spencer X Smith is the founder of [spencerXsmith.com](http://spencerXsmith.com), an instructor at the University of Wisconsin, and an Adjunct Faculty member at Rutgers University. He’s a former 401(k) wholesaler, and now teaches financial services professionals how to use social media for business development. He may be reached at [spencerXsmith.com](http://spencerXsmith.com).



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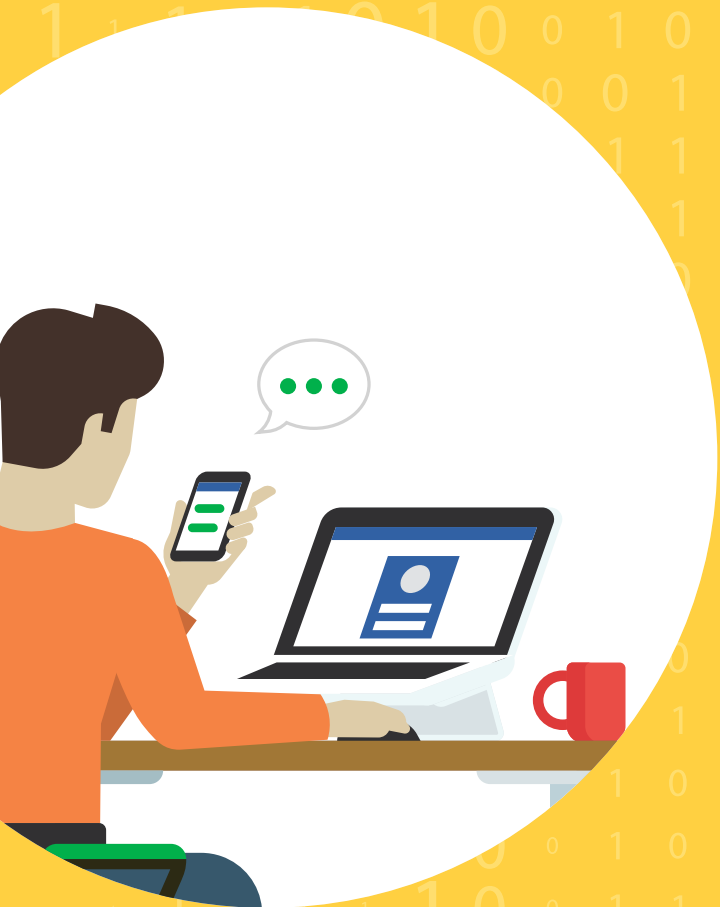
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FEATURE

# Cyber (In)Security

{ What you need to know — and do — about cybersecurity threats }

BY JUDY WARD





**F**or cyber-criminals, retirement plans make appealing targets. What makes retirement and other employee benefit plans particularly susceptible to cyberattacks?

“Number one, benefit plans are an information-rich source of data,” says Neal Schelberg, New York-based partner at law firm Proskauer Rose LLP. “They’re holding personally identifiable information

on lots of people: It is ‘gateway’ data that, once hackers have it, they’re off to the races” with identity theft and other crimes, he says.

“Benefit plans also often transmit information electronically to third parties: recordkeepers, TPAs, actuaries and other providers,” Schelberg continues, noting that the ongoing flow of data offers numerous hacking opportunities. And one side of the data transmission (the plan sponsor) generally has weaker cybersecurity protections than the other side (the provider). “The level of cybersecurity sophistication that a plan sponsor has, as compared to a Fidelity, is probably far less,” he says. “Many plan sponsors are in the process of converting from paper to digital data, so it is not like they have a long history of protecting digital data. They are kind of feeling their way, so they’re somewhat beginners.”

Those factors could put retirement plans at real peril, if employers don’t take the right precautions. “There’s too much exposure, when it comes to cybersecurity risks, to not pay attention to it,” says Trey Maust, chief executive officer of “Sheltered Harbor,” a Reston, Virginia-based financial services industry initiative to ensure consumers have access to critical account assets if a major incident happens. “As a sponsor, it is important to allocate some time to this, to ensure the protection of your participants’ accounts and your company’s reputation.”

Advisors should make this a priority in working with sponsors, recommends attorney Michelle Capezza, a New York-based member of the firm at Epstein Becker & Green, P.C. “From a plan advisor perspective, whatever your touchpoints are with the plan sponsor, I think this should be item number one on the agenda, until you are satisfied there are adequate data privacy and security protections in place for the plan and participants,” she says.

#### **The Risks for Sponsors and Advisors**

**Data is an asset of the plan, just like any other asset of the plan, and sponsors have a fiduciary duty to protect their plan’s assets.”**

— Neal Schelberg,  
Proskauer Rose LLP

What could happen in a retirement plan cyber-crime? Think about how many plans now handle loan and distribution processing electronically, says advisor David Hilton, principal at El Segundo, California-based Kaye Capital Management. Picture hackers gaining access to a participant’s account, changing the participant’s mailing address to their own, and then posing as that person to request a loan or distribution. “The check will go to the ‘new address’ within days,” he says. “But it usually takes 15 to 30 days, from a payroll perspective, for a participant to find out that it has happened.” By the time the participant learns of the request, the check likely has been cashed. Hilton says he has been told confidentially by recordkeepers that this type of scam already has been executed successfully.

And cyber-criminals have become a lot more sophisticated in their “phishing” attacks on recordkeepers. “Now, they’re less likely to send an email to every employee at a recordkeeper saying, ‘Hey, there’s this Nigerian prince who needs your help,’” says Ben Taylor, San Francisco-based senior VP and DC consultant at Callan LLC. “They are more likely to go on LinkedIn, and other social media sites, to try to learn which individuals at the provider are likely to have access to ‘crown jewel’ (participant) information. Then they create similar email accounts to those employees, contact other employees at the provider pretending to be those people, and try to get access to that data.” If they get the data, they can use it for a crime like identity theft.

The U.S. Department of Labor has not yet taken a stance that sponsors have an affirmative fiduciary responsibility on cybersecurity, Taylor says. “Reading the tea leaves,” he adds, “it is not a question of *if* that is going to happen, but *when*.”

Likewise, while retirement plan participant lawsuits over cybersecurity aren’t prevalent yet, it seems possible that they could occur, Capezza says.

“A lawsuit like that could be very costly for a sponsor,” she says. “Think about participants’ account balances: What if all of those got wiped out by a hacker?”

Whether cybersecurity falls under an ERISA fiduciary duty remains a legal question, Schelberg says. “Some say that it’s a settlor function,” he says. “I would argue that there is a fiduciary duty. Data is an asset of the plan, just like any other asset of the plan, and sponsors have a fiduciary duty to protect their plan’s assets. Because of that, the ‘prudent man’ standard would hold that plan sponsors need to take steps to make sure that the data is protected. Particularly because of the financial repercussions of a breach, the failure to take preventative measures raises fiduciary concerns.”

Beyond the ERISA issues, Schelberg says, participants also might bring lawsuits under state privacy laws that could apply to data in retirement plans. “Every state has some level of data-privacy requirements,” he explains. “Some are more stringent than others, but they exist.”

And plan advisors also could be vulnerable in participants’ cybersecurity lawsuits, Schelberg says. “Whether a case is brought under ERISA or under state privacy laws, there could be some significant risks out there, and some significant potential liabilities,” he says. “Keep in mind that typically when these things happen, it’s not one or two people who are impacted; it could be hundreds, thousands, or more. So when you start calculating the total of the potential damages awarded, you may be talking about significant sums of money.”

### Looking Inward

Sponsors and their advisors can help protect a plan and its participants by looking at these issues within the employer’s organization:

#### *Loan, Hardship Withdrawal and Distribution Requests*

Sponsors should review all the processes and procedures they have for these requests, Hilton recommends. What stopgaps does the employer have to ensure participants’ protection, and does it need more? “For anything involving a distribution request, you should make sure there are security protocols in place,” he says.

There’s too much exposure, when it comes to cybersecurity risks, to not pay attention to it.”

— Rrey Maust,  
*Sheltered Harbor*

For example, Hilton says providers can implement a simple solution to the address-change scam. “If a mailing address is changed on an account, you can add a 30-day-lock window to your system. During that time, no loan or distribution can be made without a written consent that is signed on paper by the employee and hand-delivered to his or her HR manager, requesting the loan or distribution,” he says. “Thirty days provides enough time for HR to verify the request with the participant. Something has to happen: There has to be a ‘red flag’ that takes it out of the purely electronic realm, if address changes are made.”

And plans shouldn’t allow any ACH (electronic) transfers from a participant’s account, Hilton recommends. A policy that requires distributions to be paid by check only provides more protection by preventing an overly quick electronic process, he says.

#### *Participant Data Protections*

Plan sponsors need education about how their plan data gets stored, accessed and transmitted, Schelberg says. “For example, how does the sponsor maintain participant data? Does the sponsor keep it in-house, or store it with a third party?” he asks.

Employers should get a clear understanding of who within their organization has access to participants’ personally identifiable information, and restrict it further if that makes sense, Taylor says. “Almost any recordkeeper or TPA can create on its system various ‘tiers’ of access to personally identifiable information of a plan’s participants,” he says. “It’s important for employers to know not just who has access to the information for their plan, but who has the access to change it or alter it, and who has the access giving them the ability to move

assets around.”

And employers should train their HR staff members who have access to participant data on how to handle it, and how not to handle it, says Wendy Carter, Washington, D.C.-based vice president and DC practice director at The Segal Group. “There is the potential for major things coming from small human errors,” she says. An HR staffer who momentarily walks away from his or her desk with a computer screen full of participant data may unintentionally open the door to cyber-crime by someone else who walks by and sees it.

#### *Self-protection Education*

It helps to provide participant education such as how to identify phishing emails, Carter says. “Your employees are, to some degree, your weakest cybersecurity link,” she says. “Unfortunately, humans are always going to be human.”

Participants need to know what they should and shouldn’t do to safeguard their account, such as not using a public computer to access their account data, Capezza says. “People will actually go to a public library and use the computers there to pull up their 401(k) account information,” she says. “Participants need to understand how important it is for them to protect their own information.” And every three to six months, participants should change their 401(k) account password, making sure not to use the same password they utilize elsewhere online, Hilton says. “It’s not rocket science,” he says. “There are easy steps people can take to make it more difficult for their account to be hacked.”

There’s an element of “social engineering” to heading off cyber crimes, Maust agrees. “Participants need to understand things like they shouldn’t click on links in emails from unknown sources or suspicious sources,” he says. “There are very basic practices like that, which are — surprisingly — the most common ways for criminals to gain access to the system, and gain access to sensitive data.”

#### *Cybersecurity Insurance*

Schelberg recommends that all plan sponsors consider this insurance, and learn how coverage differs among policies. For example, some policies provide only

# GAUGING RECORDKEEPER CONTROLS

How can advisors break down the complexity of evaluating a recordkeeper's cybersecurity into a manageable process? "I'd suggest that advisors start with these categories, because it takes cybersecurity and organizes it into the main things that everybody looks at," The SPARK Institute's Timothy Rouse says. "Then use these categories to say to a recordkeeper, 'What are you doing in each of those areas?'"

SPARK has identified these 16 key areas for cybersecurity controls:

1. **Risk Assessment:** The provider understands (such as by completing technology risk assessments) the cybersecurity risk to its organizational operations, organizational assets and individuals.
2. **Security Policy:** The provider has an information security policy.
3. **Organizational Security:** The provider has defined information-security roles and responsibilities and aligned them with both internal staff and external partners.
4. **Asset Management:** The data, personnel, devices, systems and facilities used in running the provider's business are identified and managed consistent with their relative importance to business objectives and the organization's risk strategy.
5. **HR Security:** The provider has taken steps (such as doing background checks) to ensure that its staff and external partners are suitable for their roles, that they receive cybersecurity awareness education, and they get the necessary training to perform their information security-related duties and responsibilities consistent with related policies, procedures and agreements.
6. **Physical and Environmental Security:** Physical access to assets (like data centers) is managed and protected.
7. **Communications and Operations Management:** A provider's networks and systems utilize appropriate data-security tools (such as firewalls and antivirus software) to ensure the security and resilience of systems and assets.
8. **Access Control:** Access to assets and associated facilities is limited (by a control such as unique, complex passwords for all employees) to authorized users, processes or devices, and to authorized activities and transactions.
9. **Information Systems Acquisition Development:** The provider implements a technology system-development lifecycle, and develops and implements a vulnerability-management plan that includes performing vulnerability scans.
10. **Incident and Event Communications Management:** The provider develops and maintains communication processes and procedures (and regularly tests them) to ensure timely response to detected cybersecurity events.
11. **Business Resiliency:** The provider has incident response plans and recovery plans in place, and manages them.
12. **Compliance:** The provider has policies and procedures to ensure that it follows all cybersecurity legal requirements, including privacy and civil liberties obligations.
13. **Mobile:** The provider has a formal policy and takes appropriate security measures to protect against the risks of using mobile devices (like cell phones).
14. **Encryption:** Data-at-rest and data-in-transit are both protected.
15. **Supplier Risk:** The provider takes steps to ensure the protection of any of its assets that suppliers can access, such as by subjecting suppliers to periodic security reviews.
16. **Cloud Security:** The provider ensures the protection of data it stores or processes in cloud environments, such as by subjecting cloud providers to periodic security reviews.

first-party coverage (if a breach happens at the plan sponsor level), while others also provide third-party coverage (for a breach at a third party like a recordkeeper). “Many policies just cover first-party cyberattacks,” he says. “But if you get third-party insurance, if the system of your recordkeeper or TPA gets hacked, the insurer will cover you as a sponsor.”

As part of getting coverage, the insurer may come onsite and do a mini-review of the employer’s cybersecurity controls to assess the risk, Carter says. So by that point, an employer needs to have already implemented some protections, like training employees who have access to personally identifiable participant data. “To get the policy,” she says, “an employer needs to demonstrate that it is taking appropriate precautions.”

### Ongoing Governance

Putting together a benefit plan cybersecurity policy and procedures takes multiple kinds of expertise: not just benefits, but IT, risk management, and legal, and often from both within and outside an employer. Then cybersecurity requires ongoing monitoring and changes as threats shift. “It is definitely not a ‘one and done,’” Capezza says. “It’s something you need to monitor and update.”

Employers also should go through an internal cybersecurity risk audit at least annually, Carter recommends. “Cybersecurity is a constantly evolving target,” she says. “The ‘bad actors’ are continually looking for ways to impersonate people and get access to their account information and make withdrawals. They are continually trying to penetrate the recordkeeping systems.”

### Evaluating Recordkeepers

For sponsors, their big question for providers boils down to, “How do I know that once I give the data to you, it’s safe?” says Timothy Rouse, executive director of The SPARK Institute, Inc., a Simsbury, Conn.-based trade association for retirement plan providers. “The answer for sponsors is, ‘I evaluate you and make sure you’re safe.’”

Sponsors can best protect their participants’ data by evaluating their providers to ensure they engage in a constant diligence process, says Callan’s Ben Taylor, who

also serves as vice chair of SPARK’s Data Security Oversight Board. “Make sure that cybersecurity protection is a core competency for that provider. That’s not driven so much by technology as by governance. To protect participants’ data, providers have to take a series of steps all the time.”

To evaluate recordkeepers’ cybersecurity governance, sponsors and their advisors can get much of the information they need from looking at a third-party audit, says Segal’s Wendy Carter, who serves with Taylor as the other vice chair of SPARK’s Data Security Oversight Board. “There’s no way that all employers can go onsite and do an annual evaluation of their recordkeeper’s cybersecurity,” she says. “So the next step is a trained professional (retained by the recordkeeper) going onsite and doing the due diligence on their behalf, and sharing it with the plan sponsor.”

The Data Security Oversight Board has developed standards to help recordkeepers communicate to sponsors and advisors/consultants about their cybersecurity controls. SPARK identified the 1,500 cybersecurity questions most commonly asked on RFPs and determined that they fall into 16 main categories (see “Gauging Recordkeeper Controls” sidebar). The idea is that sponsors and advisors can look at an annual third-party audit that shows, for each of those 16 areas, whether a recordkeeper’s controls for that area passed the auditor’s testing.

In addition to evaluating their recordkeeper’s controls, plan sponsors need to understand what their service agreement with the recordkeeper stipulates about cybersecurity issues, Capezza says. “They may have been with their service provider for some time, and may not have ever looked at what their service agreement says about cybersecurity,” she adds.

Capezza recommends looking at what the service agreement spells out about a recordkeeper’s procedures, controls and audits. “For example, what does it say about what happens if there is a breach?” she says. “How will the recordkeeper notify the sponsor? Will the recordkeeper notify participants? Who is responsible for the cost of those participant notifications? And does the service agreement say anything about who is responsible legally

for that breach?” The service agreement should clearly state any limitation of liability, indemnification and insurance protections for the sponsor related to a breach, she says.

A plan sponsor’s obligation does not end after an initial cybersecurity evaluation of its recordkeeper’s controls and the service agreement, Schelberg says. “As a sponsor, you have a continuing obligation to monitor your provider,” he says. “As cyber-risks evolve, has the recordkeeper updated its processes and the technology available to improve its data security?”

The financial services industry continues to work on ways to protect Americans’ accounts and data. The Sheltered Harbor initiative, for example, aims to give financial providers a way to rapidly recover from a destructive cyberattack and make customers’ accounts and data available to them again. Each participating financial institution securely stores critical individual-customer data in an offline data vault, and pairs with another financial institution or third party (a “restoration partner”) for restoration capability.

“The idea is that in the event of an attack, this ensures that customers’ critical account information is preserved, and that the critical account data cannot be compromised,” Maust says. The Sheltered Harbor project currently encompasses U.S. bank deposit accounts and retail brokerage accounts, but doesn’t yet include qualified retirement plan accounts. That will happen at some as-yet-undetermined point, he says.

“Then let’s say a significant, destructive cyberattack against a financial institution occurs, and the financial institution cannot access the production systems that it utilizes to retrieve and act on sensitive customer data,” Maust says. “That critical customer information has been stored at a secure data vault, so the financial institution could then bring that critical data back online through a restoration partner within 24 to 48 hours, and customers could act on it again.” **N**

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



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# NAPA TOP WOMEN ADVISORS 2017



BY NEVIN E. ADAMS, JD



e launched the NAPA Top Women Advisors list in 2015 to acknowledge the contributions of what we saw as a growing number of women who were making

significant contributions to the retirement industry, as well as bringing excellence to the profession. In this, our third edition of the list, it was striking to see how many have made that list multiple years — and how many are new to these lists.

The competition is tough — this year there were nearly 600 nominations submitted by NAPA Firm Partners — a record. Those nominees were asked to respond to a series of questions, both quantitative and qualitative, about their experience and practice. Those questionnaires were then reviewed on an anonymized basis by a panel of industry expert judges who, over the course of several weeks, selected the women honored in three separate categories:

- Captains: All-stars who happen to be principals, owners or team captains of their organizations.
- All-Stars: Top producers who have their own practice.
- Rising Stars: Top producers who have less than five years of experience with retirement plans as a financial advisor (some have been working with plans longer, but not as a financial advisor).

Alongside the series of questions that focus on quantifiable attributes — things like assets under advisement, plans and participants served, and years of experience in the business — we also ask qualitative questions that help the judges better understand the approach each takes to their practice, their customers and their craft.

Among those open-ended questions this year was the following; “My recommendation to women interested in entering into and/or expanding their retirement plan book of business would be...”

#### **‘Go for It’**

Those recommendations, as you might expect, speak to a wide array of experience

and expectations. However, you could sum up at least half of the advice received from this year’s Top Women Advisors in just three words: “go for it.”

Beyond that, among those who made this year’s list of NAPA Top Women Advisors, admonitions to “listen,” to “be yourself” and to “find a mentor” were common, as were recommendations to do the right thing, to be willing to work hard, and to develop a deep expertise in this business.

“You can’t just dabble in this line of work, you have to specialize in it,” one Captain explained. “Retirement plans are a complex ‘sell,’” explained another. “The more well-versed you are in ERISA, tax law, plan design, fiduciary issues, investments, employee communications, compliance and psychology, the better you’ll be able to handle all the complexities that come at you in this business.”

“Learn six very important words when you aren’t 100 percent sure of the response to a question: Let me get back to you!” advised one All-Star. “And then make sure you research the question and get back with the correct answer. Both you and your client will learn something.”

“Work for a firm that aligns with what your needs are, and find a strong mentor,” noted another All-Star. “Reach out to other women in the industry, even if they are with competitors, as they have gone through many of the same struggles and are typically willing to share their stories. Lift each other up along the way. Be strong, be confident, be persistent, and never ever give up.”

“Confidence can only go so far,” cautioned one Captain, explaining that, “it will need to be backed by knowledge and innovation. Know more about the intricacies of the compliance and administrative aspects that will set you apart from any other investment advisor. You will be more valued and appreciated by your clients for the ‘other things’ you have to offer, in addition to your investment savvy.”

#### **‘Different’ Perspective**

Beyond that, there was a pervasive sense that while for some at least, gender may have been an impediment to getting into this business, for the women on this

# INSIDE THE ACCOLADE

The NAPA Top Women Advisors list was created in 2015 to acknowledge the contributions of a growing number of women who are making significant contributions to the retirement industry, as well as bringing excellence to the profession.

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

The lists were drawn from nearly 600 nominations submitted by NAPA Firm Partners.

Please Note: There will be a special VIP recognition for the NAPA 2017 Top Women Advisors at the NAPA 401(k) SUMMIT, April 15-17 in Nashville, TN.

year's list, it represents a competitive advantage. "Women offer a unique approach and understanding, and many times the plan sponsor client you are working with is another woman," explained another Captain. It was a theme that turned up repeatedly among responses:

"Providing a female perspective to a variety of situations within the team, organization, and industry is one of the meaningful ways you will contribute as a woman," said one Captain, who went on to challenge others to "...demonstrate this by elevating women around you, sharing your unique perspective, demonstrating work/life balance, representing women in a professional manner, offering your experiences as a mentor, and assisting with career path guidance for other women."

"Don't try to be like one of the guys, be yourself and let your feminine qualities define who you are. I firmly believe that women are hired because we are naturally nurturing and educational. Many of our plan sponsor clients are HR directors or managers who appreciate collaboration and a consultative approach."

"I think there is a unique advantage to being a woman in this business. There is not a high percentage of female advisors."

"This is a great field for women. We are the minority and I feel it provides us an advantage. We do have to work harder to prove ourselves, but once you do, you have clients for life."

"I have found that generally speaking, women tend to be more empathetic and that allows us to be uniquely suited to helping people understand the importance of saving

for retirement. It is very rewarding to know your work actually helps people."

"We have a different perspective and viewpoint than many of our male counterparts. Plan sponsors appreciate having a woman's perspective and opinion."

"We bring unique value in this field. It is a field that is built on trust, compassion, empathy, teaching, listening, and making real change in people's lives. Women are uniquely qualified in all of those attributes."

"This may feel like a man's world, but I feel the consultative approach needed to be a really incredible retirement plan adviser is actually best accomplished by a woman."

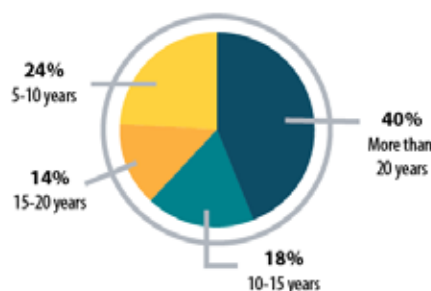
"As women, we are natural listeners. I have won finals presentations by responding when asked, 'What makes you different?' (well, clearly I am a woman, but I don't want to come out and say it) and I respond with: 'I listen.' The power of the pause and ability to listen and identify the needs of your clients is paramount. Hey, it comes natural for us, so why not GO FOR IT?"

"As women we tend to connect with retirement plan committees on more than just the investments but also the reason why the organization is offering the benefit to their employees. I think it is easier for us to get to the heart and soul of the benefit than it is for men. We tend to connect at a different level, which is helpful when you are working with those in HR, and we can speak intelligently about investments which connects well with the C suite."

"This is the best client-focused job in the

## TENURE, TRACKED

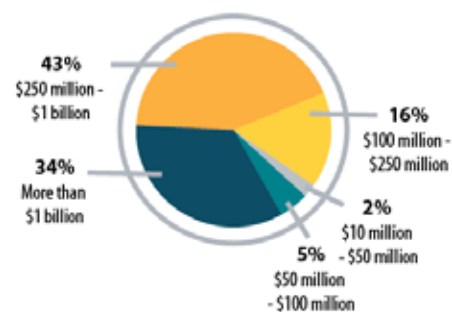
Tenure as a retirement plan advisor for NAPA Top Women Advisors - Captains & All-Stars



Note: Rising Stars have been working as a retirement plan advisor for 5 years or less, though several had been working with retirement plans longer

## RESPONSE ABILITIES

Defined contribution (DC)/defined benefit book of business for which you are personally responsible



world, and a woman is perfect for this! Most of my clients are women.”

**People Passion**

Ultimately, of course, there was a compelling sense of the passion for the business of helping others prepare for retirement, and helping those who put the plans in place to do so. “Advising clients is a people business, not a gender business,” explained one. “If you are passionate, that will resonate with prospects and clients.”

“This role is challenging — the landscape is always changing, sometimes making our job even more challenging, but in the end, if you want to have the ability to touch a large amount of people by making positive impacts in their lives, then this is the career path to follow,” counseled another.

“If it was easy, everyone would do it,” one Captain noted, going on to note, “It is not easy, and like a home improvement project, it will take longer than you ever imagined, and budgets will be pushed. However, once it is done, you will look back with tremendous satisfaction and pride at a job well done, and a

true sense of accomplishment.”

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

“GO FOR IT. Be confident, be yourself and remain steadfast in your conviction to do the right thing for your clients and staff. And by the way, have fun while you are doing it.”

“The number of women who have joined our industry over the years has grown,” acknowledged a Captain. “I think having women recognized so that other women can see them as leaders, mentors and/or friends strengthens the development of everyone and provides a strong network of people who can help clients succeed with their retirement needs.”


“I am extremely grateful to have happened into this industry. I’ve never regretted that decision I made so many years ago to try something new, something I knew very

little about at the time. I love that, 35 years into my career, I still learn something new nearly every day.”




“I feel extremely fortunate to work in this industry, and for my firm. I feel like I get to help people every single day, whether they know it or not. Although it is a very tough business, I love getting up and doing my job.”

“I have seen a lot of changes in the industry over the years, but what hasn’t changed is my passion for helping people retire with dignity. I am passionate about what I do and receiving such a nomination/award validates the work that I have done over the years for my clients.”

“I know we are making a difference in the lives of people, and that is the legacy that I want to leave.”

Words that retirement advisors everywhere, and regardless of gender, can embrace. 

2017  
**RISING STARS**

ADVISOR	FIRM NAME
Erica Blomgren	CAPTRUST 
Cristina Hansen	Pensionmark
Jennifer Hocking	UBS Financial Services
Isabell Lee	Merrill Lynch
Lauren K. Loehning	Baystate Fiduciary Advisors 
Connor Morganti	Johnson Morganti
Marcia Quiroz	Merrill Lynch
Ruth Rivera	Bukaty Group Financial Companies 
Christel Smit	Morgan Stanley
Leneen Strickfaden	Bukaty Companies Financial Services



2017  
**ALL-STARS**

ADVISOR	FIRM NAME		
Pam Appell	Plexus Financial Services		
Beryl Ball	CAPTRUST		
Deanna Bamford	CAPTRUST		
Patricia Bills	CAPTRUST Financial Advisors		
Kyla Bolger	SageView Advisory Group		
Natasha Bonelli	Merrill Lynch		
Delphine Boyle	SLW Retirement Plan Advisors		
Julie Braun	Morgan Stanley		
Pamela Brooks	Oswald Financial, Inc.		
Patricia Cage	CBIZ, Inc.		
Kerrie Casey	SageView Advisory Group		
Michele Casey	Morgan Stanley		
Karen Casillas	CAPTRUST		
Tina Chambers	SageView Advisory Group		
Ann Cheu	SageView Advisory Group		
Susan Clausen	CAPTRUST Financial Advisors		
Sandra Cunningham	UBS Financial Services Inc		
Heather Darcy	CAPTRUST		
Kristen Deevy	Strategic Retirement Partners		
Jean Duffy	CAPTRUST Financial Advisors		
Carmela Elco	Blue Prairie Group		
Maressa Etzig	SageView Advisory Group		
Elaine Featherstone	SHA Retirement Group		
Jennifer San Fillippo	Lakeside Wealth Management		
Jessica Fitzgerald	Morgan Stanley		



2016 TWA



2015 TWA



SageView Advisory Group is proud to announce that nine women were included in the 2017 National Association of Plan Advisors (NAPA) Top Women Advisors list. The SageView associates selected for this award are listed below. Congratulations to all the nominees and winners!

**Captains: Nichole Labott (Richmond, VA), Brenda Tarjan (Irvine, CA). All-Stars: Kyla Bolger (Irvine, CA), Kerrie Casey (Boston, MA), Tina Chambers (Orinda, CA), Ann Cheu (Woodside, CA), Maressa Etzig (West Palm Beach, FL), Shelly Schaefer (Milwaukee, WI), Larissa Whittle (Knoxville, TN).**
























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

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2017  
**ALL-STARS**

ADVISOR	FIRM NAME	
L. Rita Fiumara	UBS Financial Services	
Susann Haas	NFP Retirement	
Nikki Hamblin	GRP Financial	
Emily Hing	NFP	
Amber Kendrick	Procyon Partners, LLC	 
Jamie Kertis	Grinkmeyer Leonard Financial	
Marlynn Ma	Merrill Lynch	
Kelly S. Majdan	Strategic Retirement Partners	
Alicia Malcolm	UBS Financial Services	
Lily Matias	NFP	
Karie O'Connor	HPL&S Financial Services/First American Bank	 
Lisa Petronio	Strategic Retirement Partners	
Kimberly Pruitt	NFP	 
Angie Rosson	Mariner Retirement Advisors	
Shelly Schaefer	SageView Advisory Group	 
Mandie Scott	intellicents	
Jill Shea	NFP	
Courtenay Shipley	Retirement Planology, Inc.	
Holly Smith	SLW Retirement Plan Advisors	
Molly Spowal	J.W. Terrill Retirement Services	 
Marcy Supovitz	Boulay Donnelly & Supovitz Consulting Group, Inc.	 
Virginia Taylor	Taylor Financial Solution	
Larissa Whittle	SageView Advisory Group	
Jenna Witherbee	401(k) Plan Professionals	
Limei Yu	UBS Financial Services	



2016 TWA



2015 TWA



# REACH. WORK. CONQUER. ACHIEVE.

These are the LPL Retirement Partners advisors and associates whose success ranks them among the 2017 NAPA Top Women Advisors. Congratulations to each one!

## Captains

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**Kristi K. Baker**  
CSI Advisory Services

**Jessica Ballin**  
401(k) Plan Professionals

**Mary Caballero**  
Impact Benefits & Retirement

**Shawna Christiansen**  
Retirement Benefits Group

**Dianne Clark**  
Global Retirement Partners LLC

**Barbara Delaney**  
StoneStreet Advisor Group LLC

**Janet Ganong**  
The Kieckhefer Group

**Mary Addie George**  
Plan Sponsor Consultants

**Jamie Hayes**  
Fiduciary First

**Cynthia Hodges**  
Achieve Retirement

**Kristina Keck**  
Woodruff-Sawyer & Company

**Kathleen Kelly**  
Compass Financial Partners

**Ellen Lander\***  
Renaissance Benefit Advisors Group LLC

**Janine Moore**  
Peak Financial Group LLC

**Arlene Palabe**  
Palabe Wealth Management

**Heidi Sidley**  
StoneStreet Equity LLC

**Stephanie Stano**  
Western Wealth Benefits

**Lori Stevenson**  
Compass Financial Partners

## All-Stars

---

**Pamela Brooks**  
Oswald Financial Inc.

**Nikki Hamblin**  
GRP Financial

**Karie M. O'Connor**  
HPL&S Financial Services/  
First American Bank

**Molly Spowal**  
J.W. Terrill Retirement Services

**Virginia Taylor**  
Taylor Financial Solution

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

## Rising Stars

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**Lauren Loehning\***  
Baystate Fiduciary Advisors

\* Not affiliated with LPL Financial

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

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

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

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

Referenced companies are separate entities and not affiliated with LPL Financial. To the extent investment advice is provided by a separately registered investment advisor, please note that LPL Financial makes no representation with respect to such entity.

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RP-435-0218 Tracking #1-694511



2017  
**CAPTAINS**

ADVISOR	FIRM NAME		
Kristi K. Baker	CSI Advisory Services		
Jessica Ballin	401k Plan Professionals		
Pam Basse	NFP		
Kathleen Branconier	Fiduciary Retirement Advisory Group		
Mary Caballero	Impact Benefits & Retirement		
Kelly Carlson	Advizrs, Inc.		
Amanda Chan	Kainos Partners, Inc.		
Shawna Christiansen	Retirement Benefits Group		
Dianne Clark	Global Retirement Partners, LLC		
Brea Dantin	ProCourse Fiduciary Advisors, LLC		
Barbara Delaney	StoneStreet Advisor Group LLC		
Dori Drayton	Plante Moran Financial Advisors		
Devyn Duex	CAPTRUST		
Jessica Espinoza	NFP- The Meltzer Group		
Janet Ganong	The Kieckhefer Group		
Lisa Garcia	FiduciaryFirst		
Mary Addie George	Plan Sponsor Consultants		
Jamie Greenleaf	Cafaro Greenleaf		
Deana Harmon	ProCourse Fiduciary Advisors, LLC		
Jamie Hayes	FiduciaryFirst		
Cynthia Hodges	Achieve Retirement		
Allison Kaylor-Flink	NFP		
Kristina Keck	Woodruff Sawyer & Co./Global Retirement Partners		
Kathleen Kelly	Compass Financial Partners		
Nichole R. Labott	SageView Advisory Group		



2016 TWA



2015 TWA

2017  
**CAPTAINS**

ADVISOR	FIRM NAME	
Ellen Lander	Renaissance Benefit Advisors Group, LLC	 
Shannon Main	Fiduciary Retirement Advisory Group, LLC	 
Debbie Matustik	Pensionmark Austin	
Dawn McPherson	Mariner Retirement Advisors	 
Janine Moore	Peak Financial Group, LLC	
Cindy Orr	CBIZ Retirement Services	
Arlene Palabe	Palabe Wealth Management	
Jennifer Pearson	Clearview Advisory	
Ann-Marie Sepuka	Raymond James Financial Services	
Susan Shoemaker	Plante Moran Financial Advisors	
Heidi Sidley	StoneStreet Equity, LLC	
Kaci Skidgel	Summit Financial Group, Inc.	
Peggy Slaughter	Saling Simms Associates	 
Keri Spanier	SLW Retirement Plan Advisors	
Stephanie Stano	Western Wealth Benefits	
Lori Stevenson	LPL Financial	
Jania Stout	Fiduciary Plan Advisors	
Virginia K. Sutton	Johnson & Dugan/GRP	
Cindy Tacker	Retirement Plan Analytics	
Brenda Tarjan	SageView Advisory Group	
Mary L. Tomanek	Graystone Consulting	 
Vanessa Watkins	NFP	
Patricia Wenzel	Merrill Lynch, Pierce, Fenner & Smith	
Allison Winge	Plexus Financial Services	
Tina Wisialowski	Graystone Consulting	 



2016 TWA



2015 TWA

## MEET THE WOMEN IN PENSIONS NETWORK BOARD

CHRISTINA STAUFFER

MEMBERSHIP

Day Job: Head, DCIO Business Development, Thornburg

JILLIAN WHITE

SPONSORSHIP

Day Job: VP, Corporate Retirement Services, J.P. Morgan

KATHLEEN ROCHE

PAST PRESIDENT

Day Job: VP, Channel Management Strategy, Ascensus

MARY LOU WATTMAN

SECRETARY

Day Job: President &amp; Executive Coach, 1920West

DANIELLA MOISEYEV

SPECIAL PROJECTS

Day Job: VP, Retirement Segment Marketing Leader, T. Rowe Price

MELISSA COWAN

VICE PRESIDENT

Day Job: Executive Director, Corporate Retirement Services, Morgan Stanley

PAT ADVANEY

STRATEGIC MARKETING  
Day Job: Principal, Advaney Associates

LAUREN HILL

EVENTS

Day Job: AVP, National Account Manager, John Hancock

DENISE DIANA

PRESIDENT

Day Job: SVP, Head of Client Management, Envestnet Retirement Services

ANDREA MASUCCI

MENTORSHIP

Day Job: Director, Retirement Plan Services, Hamilton Capital

Missing: Jennifer Norr (Treasurer), Vice President of Marketing and Strategy, CUNA Mutual Retirement Solutions.

# Well Connected

The Women in Pensions Network expands along with women's role in the retirement industry.

In what has long been a male-dominated profession, a growing number of women are today making significant contributions to this field, and one need look no further than the impressive list of NAPA Top Women Advisors in this issue — and to our list of “Young Guns” (Top Retirement Advisors Under 40) as well. In June, NAPA and sister association the American Society of Pension Professionals & Actuaries (ASPPA) will host the first-ever Women in Retirement Conference (<http://womeninretirement.org/>), building on the success of NAPA Connect and ASPPA's Women Business Leaders Forum.

There is another group that has grown along with NAPA — and the NAPA 401(k) SUMMIT: the Women in Pensions Network. Here's what they're all about...

# W

hen Heidi Horowitz-Meyers, senior vice president, American Funds, was faced with a job vacancy on her staff, she found

potential candidates through her connection with the Women in Pensions Network (WiPN) “just by mentioning it at a WiPN event,” she says. “Anytime we can expand our network of smart, savvy women who are in our line of business... it is time well spent.”

The Women in Pensions Network formed in 2009 as a small, loose-knit group of women interested in offering professional support to its members. Nine years later, the group, overseen by an 11-member volunteer board of directors (see photo), thrives as more and more women have stepped into leadership roles in the pension industry. WiPN, now a registered non-profit, serves more than 1,800 women, with 12 regional chapters. Members come from all segments of the industry including recordkeepers, financial advisors, TPAs, DCIO firms, broker-dealers, RIAs, ERISA attorneys and retirement consultants.

WiPN provides an environment where women connect with and learn from one another, both in person and virtually. (The group’s tagline: Making Connections Count.) Connections happen at the regional meetings, via webinars and at meetings held in conjunction with major industry conferences, including the NAPA 401(k) SUMMIT.

Denise Diana, president of WiPN, says, “WiPN provides a venue for all women to be part of the conversation, regardless of where they are in their careers. Senior women value the community that we’ve built because it can sometimes feel lonely at the top. And for the next generation, WiPN provides a place where they know they have a voice.”

Diana acknowledges that part of WiPN’s growth can be attributed to what’s happening in society at large regarding women in the workforce. “Traditional efforts around gender equality just haven’t made the strides that everyone has been talking about for so long.” Statistics bear her out. According to the World Economic Forum, there has been no progress on the gender pay gap over the past decade, and 2017 figures show that the gap was even widening,<sup>1</sup> despite evidence showing how

workforce diversity can lead to better organizational performance.

### Importance of Regional Chapters

The 12 regional chapters are where much of the work and many of the connections happen.

Lauren Hill, WiPN board member and events chair, says, “We recognize that many women in the industry work in roles that don’t necessarily allow them to attend major conferences. But we’re here to support all women — in all departments and at all levels. The regional chapters have provided greater access to more women who can connect with others in their local area.”

Regional chapter events focus on professional development and networking. Recent meetings have addressed topics such as “Leading Without Losing Your Feminism,” “Building on Your Strengths,” and “Invest in Yourself” and often include a charitable component for organizations such as Dress for Success and the Breast Cancer Research Foundation.

Daniella Moiseyev, vice president and retirement segment marketing leader at T. Rowe Price and now on WiPN’s board of directors in charge of special projects, was relatively new to the retirement industry when she first heard about WiPN. A business partner invited Daniella to join her at a WiPN brunch before the NAPA 401(K) SUMMIT back in 2010. Daniella says, “Going to my first NAPA 401(k) SUMMIT was pretty intimidating, but once I attended the WiPN event and met so many accomplished women, I felt much more at ease at the conference itself. Having that connection makes such a difference.”

Daniella has also seen first-hand how the WiPN connection has helped women find new career opportunities. “I’ve personally recommended WiPN members that I have gotten to know for positions that I’ve heard about; and I’ve had WiPN members reach out to me about open positions at T. Rowe Price. I’m happy to have a conversation and help make sure their resume gets seen.”

### Mentorship Opportunities

One of the most popular programs with members is WiPNConnect through which members can request a mentor or volunteer to be one. Phyllis Klein, senior director, consulting

resources at CAPTRUST, said her relationship with mentee Hali Ganbold-Precourt, director of market strategy at Voya Financial, helped her understand the hurdles younger women face and challenged her to consider what she herself could be doing differently. In Klein, Ganbold-Precourt found a local sounding board with a depth of knowledge and experience, which helped her settle into a new role as a remote employee.

For many firms, WiPN represents an extension of their internal diversity efforts. Karen Scheffler, senior vice president and senior ERISA legal counsel at AllianceBernstein, says, “Making meaningful steps toward a stronger workforce inclusive of women and building toward equality of value and compensations is more important now than ever. WiPN allows companies like ours to band together and make a bigger impact.”

### Looking Ahead

WiPN is currently developing a five-year strategy, including a plan for membership growth. WiPN President Diana challenged the Board and the Regional Co-Chairs with a goal of 600 new members by the end of 2018.

2018 plans include offering additional professional development opportunities and a new webinar series for memberships, enhancing partnerships with organizations to extend relationships within the industry, and launching charitable projects that promote WiPN’s mission.

“Many of us still struggle to find peers, mentors and advocates who can help us achieve our professional goals,” says Diana. “WiPN is out to change that in a big way. We’re here to effect meaningful and substantial change within the industry. I feel like we’re at a tipping point.”

— Pat Advaney

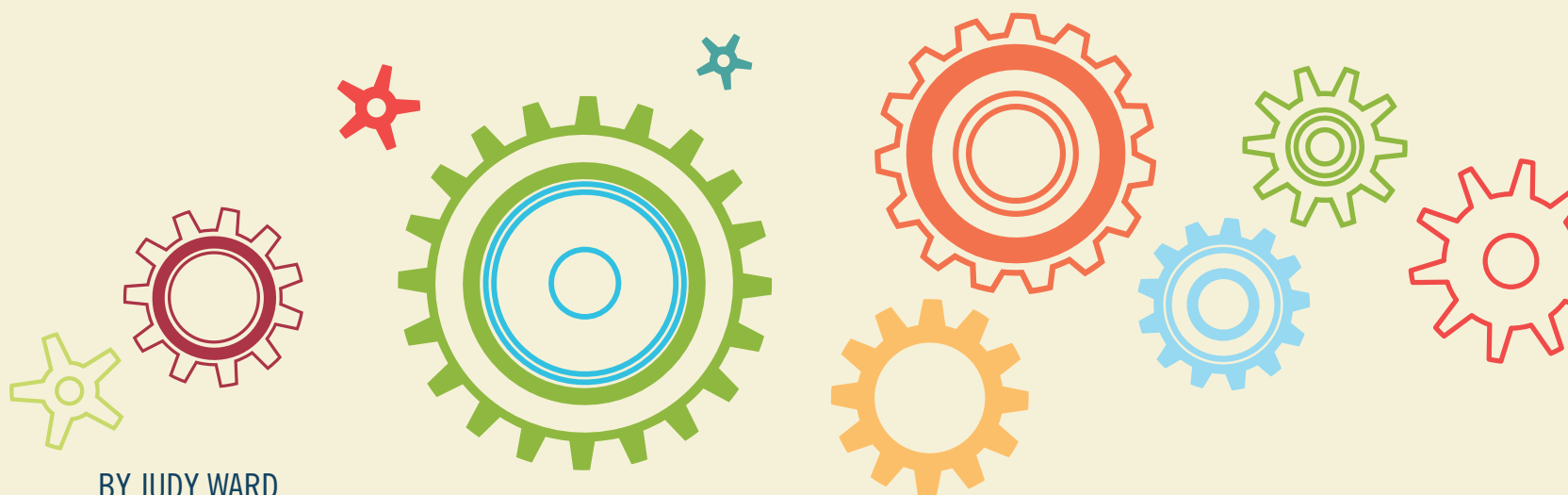
### Get Involved

Women in the industry are encouraged to join through the [womenpensionsnetwork.org](http://womenpensionsnetwork.org) website. Women who are employees of sponsoring organizations receive a significant membership discount.

<sup>1</sup>World Economic Forum, 2017 Global Gender Gap Report, at <https://www.weforum.org/agenda/2017/11/pay-equality-men-women-gender-gap-report-2017/>.

# ‘Different’ Strokes

Six ideas for attracting and retaining a more diverse team of plan advisors



BY JUDY WARD





A

dvisors may ask, “What’s the benefit of trying to find advisors who are more diverse from an age, gender, or ethnicity perspective?” says Alexander Assaley, managing principal

of Bethesda, Maryland-based AFS 401(k) Retirement Services and chair of NAPA’s new NextGen initiative. “It’s the right thing to do, and it’s also good for building a sustainable business and a deeper connection with your clients. When your team members are able to connect well with your clients, it’s generally because of similar backgrounds and experiences. So by building a diverse team, you’re creating a team that can better connect with all your clients.”

Today an outsized 87% of personal financial advisors are white, according to 2017 Bureau of Labor Statistics data. Thirty-two percent of advisors are women. Just 8.3% are Hispanic/Latino, 6.6% are Asian, and 4.8% are black/African American. “With the NextGen initiative, our goal is to help create an environment to have better diversity that represents the demographics of working Americans,” Assaley says. The initiative’s team seeks to raise advisors’ awareness about the need to attract and retain a diverse advisor team, and to help uncover best practices to do that.

“Practitioners have been complaining for a while about the difficulty in attracting the next generation of plan advisors, specifically women, minorities, and Millennials,” Assaley says. “We want to get the conversation going about how to change that.”

For advisors interested in building a more diverse team, Assaley and three other members of NAPA’s NextGen initiative talked about the following things to consider.

#### **Understand Evolving Career Motivations**

Attracting a more diverse group of people to become plan advisors means understanding what does — and doesn’t — motivate them in their careers. An advisor career pitch focused on a way to potentially earn a lot of money can

By building a diverse team, you’re creating a team that can better connect with all your clients.”

— Alexander Assaley,  
AFS 401(k) Retirement Services

actually turn off many now. “The stigma is that a financial advisor is someone who is very much a numbers person, and focused just on stocks and bonds and Wall Street,” Assaley says. “But the work that a high-quality, retirement plan specialist advisor delivers is more along the lines of a teacher or coach. If we can help people to think about it in terms of the work that we actually do, I think that will go a long way to attracting more people into the industry.”

When AFS 401(k) Retirement Services recruits, staff members share stories about the impact of the advisory firm’s work. “In the past 10 years, we’ve sat down one on one with more than 10,000 people, with no agenda to sell them anything. Our focus is on providing them with advice and guidance, so that they can make better decisions on their finances, today and in the future,” Assaley says. “These are not usually wealthy people. These are everyday, working Americans.”

For Douglas Bermudez, seeing his work’s impact on plan participants has motivated him as he has built his advisory career. “Yes, we make a good living after years of hard work,” says Bermudez, Rolling Hills Estates, California-based senior vice president and investment officer at the Bermudez/Hall Retirement Group of Wells Fargo Advisors. “But at the end of the day, we really do make a difference in people’s lives. For a person to have a ‘paycheck for life,’ that’s what lures me.”

### Proactively Go Beyond Traditional Recruiting

Janine Moore got recruited out of Ohio State University when she attended a career fair and talked with Nationwide Insurance about its management-training program for young, minority graduates. Moore — now managing partner/principal at Peak Financial Group, LLC in Houston — joined Nationwide and quickly got promoted several times.

Take the initiative to seek out diverse hires, Moore recommends. She suggests starting by creating an internship program fed by state universities, which typically have more diversity than private universities, and historically black universities. Most business schools point students toward career tracks like accounting, and few focus on financial advisor careers, she says. “So reach out to the business school diversity directors at universities, and let them know about the industry and what you are looking for,” she says. “They can feed you qualified graduates.”

And think about college grads already working elsewhere in financial services. “Reach out to insurance companies to find agents/advisors who have passed their tests, but can’t produce the required sales quotas,” Moore suggests. “Many times, they can succeed as a junior plan advisor, because it is a different type of sale. I think there is a large pool of folks who could be groomed from the administrative side for sales positions, similar to what I did.”

### Create a Culture that Demonstrates Diversity

When Moore and her fellow advisory team members decided to move from an insurer to become an independent advisory firm, numerous broker/dealers courted the team. They ultimately went with LPL Financial, and Moore says that as a black female, diversity played an important part for her.

“What sealed the deal for me was the site visit at LPL, where I saw people of all types doing important jobs,” Moore remembers. “And when I reviewed LPL’s marketing and sales material, I found images of people like me.” Organizational cultures send messages both large and small, she says. “Deep down, everyone wants to be included, to feel like they are part of the story,” she adds. “I am not saying that every piece of material needs to have a rainbow of people, just that there should be some thought to inclusion.”

Carey McKenzie has been at T. Rowe Price for 28 years, and when he began his career he sought out an employer with a collaborative culture, where he could learn and develop. “To have true collaboration, you have to create an environment where people feel comfortable bringing their ‘whole self’ to work, and voicing dissenting options,” says McKenzie, now Baltimore-based head of the retirement advisory relations group for T. Rowe Price’s U.S. Intermediaries business. Asked about bringing his whole self, he says

I think we all benefit when mainstream groups are intentional about being more inclusive.”

— Janine Moore,  
Peak Financial Group, LLC

an industry colleague once told him that “he didn’t think of me as being a black salesperson,” and the comment disappointed him. He takes pride both in his Jamaican roots and the fact that, since his immigrating with his family to the United States in 1977, he has become skilled at adapting to different cultures. “I’ve been able to leverage those experiences as I go into a sales environment that is very fluid, where I’m dealing with very different people who have very different opinions,” he says.

McKenzie also seeks out colleagues’ contrarian opinions in his work within T. Rowe Price. “When I’m putting together a team now, I don’t look for people who mirror my experiences and thoughts, but instead complement them,” he says. “I look





for people who are not just diverse in their backgrounds and their thinking, but feel comfortable expressing their thoughts.”

#### Facilitate Mentoring

When McKenzie started his career, he didn't have experience in either sales or the retirement plan business. “There is a lot of talent out there, and you don't always have to recruit them ready-made for the job,” he says. “I look at myself: I learned because I was able to attach myself to mentors, and it wasn't always formalized mentoring programs. Because I was given real access within the organization, I was able to navigate the organization, and learn about sales.” He sought out associates from across T. Rowe Price to provide him a broader perspective on the firm and the business.

Now, McKenzie mentors T. Rowe Price newcomers. “The key is that I have to make myself approachable, and I'm very honest with the folks I mentor,” he says. “I ask them very challenging questions, but I also create an environment where they can give me honest responses.” For instance, he has asked mentees why they don't network more, and they often respond that they feel too shy. “One of the things I talk about is if you're a minority, sometimes you have to invite yourself to the party,” he says. One example: He didn't golf growing up, but he later learned when he found that it's a great networking opportunity. Now, fellow retirement professionals hesitant to meet with him for 20 minutes in their offices often will gladly accept his golfing invitation, and spend five or six hours with him on a course. “So you sometimes have to get out of your comfort zone, if you want to achieve your goal,” he says.

#### Utilize the Experience and Expertise that Come with Diversity

Bermudez immigrated to the United States in 1980 with his family from Nicaragua, and says his bilingual language skills and understanding of Latino culture have hugely helped him throughout his advisory career. “It has won me business, and it has kept me business,” he says. “It has helped me be able to make a big impact on participation and participant

When I'm putting together a team now, I don't look for people who mirror my experiences and thoughts, but instead complement them.”

— Carey McKenzie,  
T. Rowe Price

outcomes, especially here in Southern California, where there are a lot of Latino people. When you are able to speak in their language about money — which is very personal and emotional — it makes them get more comfortable with you.”

Bermudez tells stories about his parents' retirement dreams when he speaks to participants who've also immigrated. “I tell them, ‘You may not want to be here in the States working for 40 years: Maybe you'll want to go back to where you're from. If you do, why not retire with American dollars?’” That leads him to how his father saved in a 401(k) after immigrating. “I talk about how, as a result, my parents have been able to retire, and go back and forth between the United States and Nicaragua,” he adds.

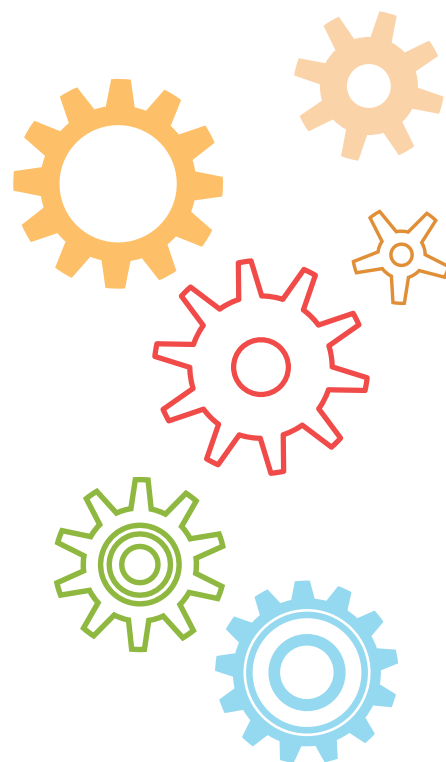
As a mentor in Wells Fargo's next-generation advisor program, Bermudez now helps junior advisors start to utilize their own expertise. Joining his practice has allowed 27-year-old Giorgina Francisco Remigio to learn from the experience of Bermudez and his partner Erin Hall, but she also has her own skill set to offer. She's knowledgeable about social media, and spearheaded putting together the practice's web page. She also has a gift for talking with young participants about the importance of starting to save now for retirement. “That's a tremendous thing, to be able to share that with her peers,” Bermudez says.

#### Offer Focused and Broader Networking

Don't offer diverse hires only networking opportunities with peers who have similar demographics. “I've definitely enjoyed social connection at networking events designed specifically for diverse advisors, but I think we all benefit when mainstream groups are intentional about being more inclusive.” Moore says. “By breaking down barriers in these settings, we can learn much from each other.”

McKenzie also likes a mix of networking opportunities. “Ten years ago, I decided to get more serious about networking, because I realized that in this industry, you're selling your reputation more than anything else,” he says. “I've been very involved in diversity initiatives within T. Rowe Price, and that allows me to create networks within my community. But when I'm looking to create my network, I'm not just looking for people who look and sound like me, because I have that already. I'm looking for people who are going to be additive.”

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





BY STEFF C. CHALK

# Advisors' Expertise Morphs as Life Expectancy Grows

Today there is a new line of thinking when viewing life after traditional retirement.

# A

s if the distracting Department of Labor fiduciary-buzz over the last 10 years were not enough, the advisor community now faces the reality that retirement plan participants are also living longer in retirement. One of an advisor's seldom-addressed concerns is that a client depletes their retirement nest egg when following the investment allocation and spending model established by the advisor.

## Challenges When Prepping the Committee

Asset allocation models are stronger than ever. Liability-driven investing is now becoming a frequent topic of conversation during Investment Committee meetings. Retirement committee members used to struggle with the question, "When are our company's plan participants financially ready to retire?" That question was historically predicated on a life expectancy of 72 to 75 years.

Today, a new question is looming — one that is not so easily answered: "Can our employees afford to retire at age 65 and live comfortably for 25 or 30 more years?" That much more difficult question is being asked by a growing number of Retirement Committee members and plan sponsors today.

According to the World Health Organization, life expectancy increased by five years between 2000 and 2015, which was the fastest increase since the 1960s.

In the United States, approximately 10,000 people turn 65 each day, and one in five Americans will be 65 or older by 2030, writes Paul Irving, Chairman of the Center for the Future of Aging at the Milken Insti-

"Astute committee members are realizing that 'normal retirement age' is no longer normal for everyone."

tute and Distinguished Scholar in Residence at the University of Southern California Davis School of Gerontology.

Retirement Committees want to do the right thing, but astute committee members are realizing that "normal retirement age" is no longer normal for everyone.


## Advisor Value May Include a New Deliverable

It is difficult for advisors to differentiate the investment function when so many are using TDFs or indexing. Retirement plan advisors keeping a strategic eye on the future needs of their clients may want to consider the insight of Dr. Joe Coughlin, PhD, Director of MIT's AgeLab. Dr. Coughlin highlights a strategy where an advisor can make a meaningful contribution to a retiree or a plan participant — after the client has separated from service.

Historically, retirement was analogous to kicking back, doing very little work, if any, and spending one's days in a rocking chair or on a beach. Today, however, there is a new line of thinking when viewing life after traditional retirement.

Dr. Coughlin opens advisors' eyes to the needs and desires of today's retirees and the roles that plan advisors can play. Today's retirement greatly differs from the image of retirement that was prevalent from the 1950s through the 1990s. Since the retirement phase has become a much longer period than it traditionally had been, advisors should consider developing expertise in alternative areas that would be valuable to an aging client base.

Today's retirees are healthy, active, connected and mobile. This translates to a new set of needs that are dramatically different from those of only 10 years ago. This, combined with longer life expectancy, means that many of today's retirees will be doing whatever they choose to do for a much longer period than prior generations. Instead of retirement consisting of inactivity and a sedentary lifestyle, retirees are planning the next chapter, the next 8,000 days. Advisors should promote mobility, encourage a healthy lifestyle, become knowledgeable about local extended care facilities, and be cognizant of social gatherings and community contact opportunities.

As retirees stay active and mobile and figure out what they want to accomplish in their "next" 8,000 days, they will undoubtedly bring their advisors with them — into their own newly found freedom. 

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



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BY DAVID N. LEVINE

# Enforcement and Litigation Update

Three lessons learned from experience in counseling advisors — and when regulatory enforcement or litigation occurs.

**I**n 2016, I wrote a column about the rise of litigation and enforcement against plan advisors. At the time, there were only a few lawsuits involving advisors. Now, unfortunately, this concern has come to pass. What should an advisor and his or her advisor organization do now?

As our firm has counseled more and more advisors on both regulatory enforcement against them and in litigation where they are named as a party, three lessons have emerged — both in pre-enforcement/pre-litigation counseling and when enforcement or litigation occurs.

## 1. Insurance Is Essential

Too often, we see advisors who believe that their insurance provides coverage for regulatory investigations and litigation expenses. Unfortunately, this is not always the case. Many insurance policies do not cover expenses incurred for lawyers prior to a regulator actually asserting that a violation of an applicable law (whether ERISA, the Advisers Act or some other law) has occurred, and, to the extent that there is coverage, it is often subject to a greatly reduced dollar limit. Furthermore, in litigation, advisors, whether named as defendants or subject to discovery requests as part of litigation involving their clients, may not always have coverage for costs incurred prior to being named as a defendant.

Layered on top of these concerns is the fact that the defense of advisors requires a unique skill set, knowledge of the advisor space, and a knowledge of ERISA or securities law that, put together, is not widely held. Many insurance policies limit choice of counsel to “panel firms” that may or may not include advisor-focused ERISA

“For larger advisor organizations, ‘foot faults’ made by non-home office advisors are a significant risk.”

or securities law litigation and defense practices.

## 2. Update Your Service Agreement

Periodic updating of service agreement language and processes to reflect changes in services and responsibilities assumed by an advisor, to proactively address agency enforcement priorities (such as default investment issues for the SEC or fiduciary rule issues for the Department of Labor), and to update indemnity, arbitration, and statute of limitations language can be essential. Taking these steps regularly, much like many recordkeepers now do with their core recordkeeping agreements, can better position facts and obligations in advance of enforcement and litigation, thus potentially reducing stress on a client relationship when the client and advisor are both on the radar of a regulator or a plaintiff.

Too often, cookie-cutter agreements that are used off the shelf do not align with an advisor’s actual practices and can set the stage for increased liability and exposure. Detail and precision count. In fact, in the long term, attention to detail and precision can lead to lower costs.

## 3. Training Cuts Mistakes

For larger advisor organizations, “foot faults” made by non-home office advisors are a significant risk. We often spend time with our advisor clients discussing their processes and service agreements, and adding provisions on ERISA and similar compliance items to their compliance manuals. However, what sometimes comes to light when you’re in an enforcement or litigation situation is that all the paper in the world won’t help if it isn’t followed. A multi-office organization is well served to train and update its teams on its processes and risk management activities. In fact, this training can often be utilized in client-facing situations as a positive engagement tool.

## Conclusion

Regardless of which political party is in power, enforcement and litigation involving advisors will continue and probably grow. What might be considered a best practice today is likely to change in the next six months. As regulatory enforcement and litigation continues to swirl around advisors, taking proactive steps on an ongoing basis can protect advisors and their clients and minimize burdens and costs. **N**

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



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BY NEVIN E. ADAMS

# Debt ‘Limits’: Causation, Correlation or Coincidence?

WSJ coverage of a new academic study on the impact of automatic enrollment on debt makes some odd connections.

**Y**ou have to wonder what the *Wall Street Journal* has against automatic enrollment.

The latest instance of finding the cloud in this silver lining arose in a recent *Journal* article by Anne Tergesen, “Downside of Automatic 401(k) Savings: More Debt.” The article, based on the findings of a recent academic study, says that automatic enrollment has “pushed” millions of people who weren’t previously saving for retirement into those plans — but quickly cautions that “many of these workers appear to be offsetting those savings over the long term by taking on more auto and mortgage debt than they otherwise would have.”

This “crowding out” concern — that automatic enrollment would stretch already strained financial resources, particularly among lower-income workers — has long been a sticking point for those advocating caution regarding automatic enrollment.

## The Study

So did the study — drawn based on what the researchers termed a “natural experiment” created by the decision of the U.S. Army to automatically enroll civilian workers into their retirement savings plan at a point in time — validate this concern? Well, the researchers found “no significant change” in debt levels of those automatically enrolled four years after hire — excluding auto loans and first mortgages. In those categories, the researchers noted that automatic enrollment increased auto loan balances by 2% of income, and first mortgage balances by 7.4% of income. However, the researchers didn’t seem overly concerned about these increases, noting that they involved the acquisition of assets (and in the case of a home mortgage, an asset that might actually play a factor in retirement security) — though they did conclude that the advent of automatic enrollment seemed

to be leading workers to take on more debt to offset the “loss” in income to automatic enrollment savings.

On the other hand, the researchers note that it seems likely that much of the increase in first mortgage debt is caused by automatically enrolled employees being able to obtain larger mortgages due to their extra TSP balances loosening down payment constraints. And as regards their preparation for retirement, automatic enrollment clearly helps. The researchers noted that at 43-48 months of tenure, automatic enrollment increases cumulative employer plus employee contributions since hire by 5.8% of first year annualized salary.

## Where’s the ‘Beef’?

So, what’s the beef about automatic enrollment? Well, despite the headline (and the subhead, “New research finds employees auto-enrolled in retirement plans borrow more than they otherwise would have, offsetting savings”), the article struggled to find anyone (including three of the authors of the research) who would say anything bad about automatic enrollment. But then, back in 2013, this same Anne Tergesen wrote about the “Mixed Bag for Auto-enrollment,” claiming that “employees who are automatically enrolled in their workplace savings plans save less than those who sign up on their own initiative.”

That article, in turn, built on — and cited — a 2011 article Tergesen jaw-droppingly titled “401(k) Law Suppresses Saving for Retirement.” In the case of the latter, Tergesen glommed on to one of 16 possible scenarios, and focused on the notion that some workers would simply rely on the mechanics of automatic enrollment’s 3% default, rather than picking the higher rate that they might if they filled out an enrollment form (encouraged by things like education meetings and incentivized by things like a company match).

Remember that nothing about an automatic enrollment option requires workers to rely on automatic enrollment. In fact, under automatic enrollment, total savings actually went up, notably for lower income workers.

## Auto Impact

The nonpartisan Employee Benefit Research Institute (EBRI) has estimated that moving to automatic enrollment improves projected retirement outcomes by anywhere from 17.5% to more than 33%, depending on age and income. EBRI has previously projected that approximately 60% of those eligible for automatic enrollment would immediately be better off in those plans than in one relying on voluntary employment, and that over time (as automatic escalation provisions took effect for some of the workers) that would increase to 85%.

And while it wasn’t mentioned in the most recent *Journal* article, the study at hand acknowledged that automatic enrollment was “extremely successful at increasing contributions to the TSP at the left tail of the distribution while leaving the middle and the right of the distribution unchanged.” Said another way, automatic enrollment did a great job of increasing contributions among lower income workers.

All in all, while automatically enrolled workers in the study on average had more debt in two very specific categories, it’s far from clear that this was a consequence of automatic enrollment — and it’s by no means certain that in the long term it’s a bad thing.

Indeed, it’s not clear that the dots connected here are causality or simply an interesting correlation.

What is clear is that automatic enrollment has been enormously successful at helping workers — particularly lower income workers — prepare for a more financially secure retirement. 🍷



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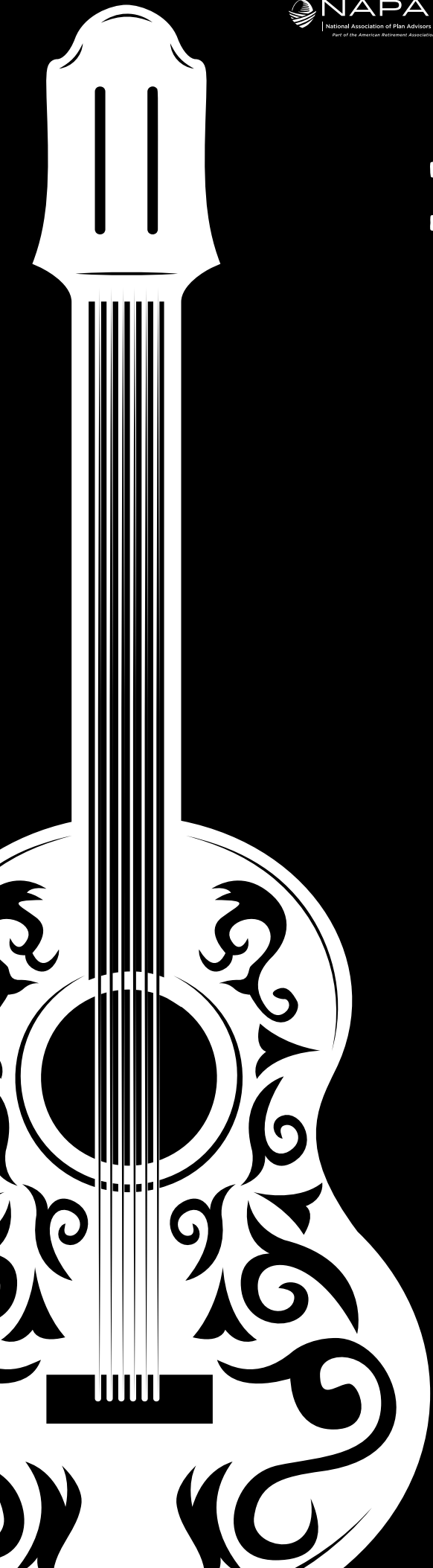
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The new ‘front’ in excessive fee litigation — university 403(b) plans — continued to move forward — drawing at least one advisory firm into the mix. Meanwhile, a plot that picked the pockets of 401(k) plan participants was brought to light...

BY NEVIN E. ADAMS, JD



## ‘CONFLICTS’ AVERSE?

### Class action status granted in university excessive fee suit

Arguments that plan design changes could result in “class conflicts” weren’t enough to brush aside the plaintiffs’ petition for class action status in an excessive fee case.

The suit — filed on behalf of plaintiffs against New York University in August 2016 by the law firm of Schlichter, Bogard & Denton — had sought, and was in February 2018 granted, class action status by federal Judge Katherine B. Forrest. It’s the first of its kind in the recent series of litigation challenging the retirement plans of prominent universities.

As has been the case in a long and growing list of university 403(b) plan lawsuits, here the plaintiffs alleged that employees paid excessive recordkeeping fees in addition to selecting and imprudently retaining funds which the plaintiffs claim have historically underperformed for years. Moreover, the complaints challenge the use of multiple recordkeepers, rather than a single recordkeeper — a practice that they claim “... caused plan participants to pay duplicative, excessive, and unreasonable fees for plan recordkeeping services.”

A little more than a year ago, the NYU fiduciaries were able to persuade the court to reject some allegations, notably that there were too many investment options in the plan. But claims regarding excessive

recordkeeping fees and failure to prudently monitor plan investment options by continuing to offer funds with high fees and poor performance remained. Then in November came a new filing, expanded to include the university’s hospital system, school of medicine, the retirement plan committee and 21 named individuals. And then in January, a new, amended complaint was filed in the U.S. District Court for the Southern District of New York, with new grounds that include naming as a defendant Cammack LaRhette, which, according to the plaintiffs, has served as the plans’ investment advisor since 2009.

While the excessive fee suits have tended to treat the defendant fiduciaries as a block, this one took pains to outline actions and comments attributed to Margaret Meagher, longtime Co-Chair of the Retirement Plan Committee, who the suit says “conceded that the Retirement Plan Committee, and all of its members, accepted Cammack’s use of this admittedly flawed benchmark for years (continuing through the present) and never once questioned why Cammack used this inappropriate benchmark. Indeed, she admitted that not a single Committee member ever questioned the use of these Morningstar averages, took issue with their use, or even brought it up at a Committee meeting.”

The suit also noted that “prudent fiduciaries conduct an RFP every three years in order to ensure their plans’ recordkeeping fees are reasonable,” but that “the NYU Defendants waited approximately seven years, or not until late 2016, to conduct another RFP after the one conducted in 2009,” and that that one “...was executed only after the filing of a related lawsuit in this District against NYU by these same Plaintiffs challenging the fiduciaries’ management of the Plans.” And then there were the allegations that that 2009 RFP “was deeply flawed and irreparably tainted because of the conflicted conduct involving the Retirement Plan Committee’s Co-Chair, Margaret Meagher, and certain representatives of TIAA.”

Under consideration here from the initial suit were claims related to an alleged breach of defendant’s duty of prudence relating to:

- procedural deficiencies with regard to recordkeeping, administrative fees and revenue-sharing, and
- the defendant’s decision-making process as to certain plan options.

#### Class ‘Actions’

In evaluating and ultimately accepting the plaintiffs’ petition as a class, District Judge Katherine B. Forrest noted (*Sacerdote v. N.Y. Univ.*, 2018 BL 48095, S.D.N.Y., No.



1:16-cv-06284-KBF, order granting class certification 2/13/18) that the defendants put forth three arguments in support of their assertion that the named plaintiffs are not adequate representatives. First, NYU argued that the plaintiffs' proposal of a per-participant recordkeeping fee rather than the asset-based/revenue-sharing system utilized would result in "class conflicts," specifically that members of the class with lower salaries than the named plaintiffs might not benefit from this type of payment structure, since "\$30 (or some other flat fee) might be more than they would pay in a revenue-sharing arrangement." However, Judge Forrest said that the proposed structure didn't have to result in every participant paying the same fee. "Instead, the fiduciary could implement a 'proportional asset-based charge,' for which each participant pays the same percentage of his or her account balance," she wrote, concluding that the proposal "...as one of several ways to bring the Plans into compliance with ERISA does not, in and of itself, create a conflict between the named plaintiffs and other class members..." More than that, she concluded that "...in any case, this speculation on the part of NYU does not defeat adequacy, as it does not present a 'fundamental' conflict."

The defendants also argued that removing the allegedly imprudent CREF Stock and TIAA Real Estate Accounts from the plans would create class conflicts because some participants would be hurt by the funds' removal. Judge Forrest wrote that NYU argued that: (1) those funds are important for diversification, as they offer some features that other funds do not; and (2) the CREF Stock and TIAA Real Estate Accounts had strong returns at different points in time, and the variance in performance was beneficial for some participants. "That may well be the case," she wrote, "but those arguments go to the merits of the funds' inclusion in the Plans and whether or not they were prudent inclusions. If, in fact, plaintiffs are correct that the inclusion of these funds was a breach of the duty of prudence, then no plan participant would have a legal interest in continuing to invest in a plan that was adjudged imprudent."

Finally, she that wrote NYU's claims that the named plaintiffs are inadequate repre-

sentatives because they are unaware of the facts underlying the dispute. Judge Forrest said that NYU relied on deposition testimony to demonstrate that a number of the named plaintiffs do not know what their investments are or how they have performed, what revenue sharing is and whether NYU attempted to negotiate fees — relying instead on counsel for information.

#### **Adequacy Arguments**

She then turned to an examination of the requirements for adequacy of representation, specifically a determination as to whether: (1) plaintiff's interests are antagonistic to the interest of other members of the class; and (2) plaintiff's attorneys "are qualified, experienced and able to conduct the litigation." Moreover, she noted that the U.S. Supreme Court has "expressly disapproved of attacks on the adequacy of a class representative based on the representative's ignorance," going on to state that plaintiffs are entitled to rely on their counsel for advice, and that "as long as the class representatives 'fairly and adequately protect the interests of the class,' adequacy is satisfied."

Judge Forrest concluded by noting that the defendant had not alleged that class counsel are unqualified or are subject to a conflict of interest, nor had they claimed that the named plaintiffs' interests are antagonistic to those of other class members. "They rely merely on an allegation that the named plaintiffs are uninformed," she wrote, going on to state "This is not enough to defeat class certification."

"Plaintiffs here are similarly reliant on their attorneys for advice, but they have shown the necessary comprehension of their role and willingness to pursue litigation vigorously. This is all that Rule 23(a) requires," Forrest wrote.

#### **Standing Told**

With regard to the issue of standing, while NYU had argued that the plaintiffs had not established standing for the individuals in the proposed class "because not every member of the class invested in those funds." However, Forrest noted that "the class does not have to be limited to only those who invested in these options," and that an injury to the plans was sufficient.

Finally, on the issue of a statute of limitations, NYU had argued that if any plaintiff

had actual knowledge of the facts giving rise to the alleged breach three years before the complaint was filed that claim would be barred — a claim that Judge Forrest said rests on the proposition that because quarterly performance summaries disclosed the fees and expenses associated with the investment alternatives, some class members may have had actual knowledge of the underlying facts.

"However, this claim is speculative," she wrote, going on to explain that "no evidence is put forth of even one instance of a class member having knowledge three years prior to August 9, 2013," and that "mere receipt of the quarterly performance summaries does not demonstrate actual knowledge." She went on to distinguish "plan-wide communications required by ERISA" from "individualized conversations or notifications."

Judge Forrest explained that a common question to the class is whether the facts in those documents are sufficient to establish actual knowledge of the breach. "It will not be an individualized inquiry," she wrote. "As such, this defense is not sufficient to defeat the motion for class certification."

The list of these lawsuits now includes plans at Cornell University, Northwestern University, Columbia University and the University of Southern California, as well as Yale. Meanwhile, some of the earlier suits are just getting to hearings on motions to dismiss, specifically Emory University and Duke University — both of which are currently proceeding to trial — and the University of Pennsylvania, which recently prevailed in a similar case. Another — involving Princeton University's 403(b) plans — is on hold awaiting an appeal in the University of Pennsylvania litigation.



## 'CALL' SIGNS?

### Fraud scheme targeting 401(k) accounts uncovered

A scheme targeting individual 401(k) accounts, potentially at multiple recordkeepers, has resulted in a lawsuit by the U.S. Attorney's office in Colorado to recover as much as \$2 million in losses.

The lawsuit, U.S. v. \$81,963.74 in U.S. Currency (D. Colo., No. 1:17-cv-02894-PAB), filed Dec. 4, 2017, in federal court in Colorado, seeks to seize up to \$342,335 in assets from five individuals who deposited funds from the alleged scheme in multiple banks, including JP Morgan Chase Bank, Bank of America, PNC Bank and Wells Fargo.

According to the suit, the FBI's Denver Division was contacted by in November 2016 by Great-West Financial's VP of Internal Audit regarding allegations of fraudulent transfers from clients' 401(k) accounts from JP Morgan. At that time, Great-West Financial had 20 participants affected and a loss of at least \$1 million with a potential loss in excess of \$2 million, according to the suit.

Basically, according to Great-West, plan participants established an account online. Thereafter, the Great-West call center assists

as needed when contacted by a plan participant, utilizing a four-part authentication process using biographical identifiers for the plan participant. The plan participant is provided a distribution form via either email or mail. Once a plan participant has access to an account, information could be changed or updated and disbursements requested. According to the suit, Great-West observed that unauthorized individual(s) had been fraudulently using this process to obtain access to funds held in retirement accounts for which Great-West was the recordkeeper, causing funds to be transferred from those retirement accounts to other bank accounts without the knowledge or consent of the actual participant.

While it has yet to be determined why specific accounts were targeted, requests for withdrawals were received and the requestor was able to provide the plan participants' biographical data, i.e., name, Social Security numbers, date of birth and employment data. Since the requests were authenticated with the plan participants' identifiers, the perpetrator

was able to make changes to the accounts and facilitate the withdrawals.

According to BloombergBNA, Stephen Gawlik, Great-West's Director of Public Relations, said that the information used to access the accounts didn't come from a breach of the recordkeeper's systems. Additionally, Gawlik noted that the 401(k) account holders affected by the scheme didn't incur any financial loss in the end, as they were made whole by Great-West.

The FBI says that some of the initial recipients of the funds fraudulently transferred from Great-West also received funds from other institutions or sources identified as fraudulent.

These additional entities advised of being recently targeted by similar financial fraud schemes as the one affecting Great-West included Voya Financial and Nationwide, according to the lawsuit.



## QUAKER 'STATE'

### University of Pennsylvania prevails in 403(b) excessive fee suit

An excessive fee suit that had challenged the number of funds on the menu, the use of multiple recordkeepers, and the embrace of asset-based, rather than per-participant fees (among other things) has been dismissed.

The suit, brought by participants in the \$3.8 billion University of Pennsylvania Matching Plan against the University of Pennsylvania and its Vice President of Human Resources a little more than a year ago for breach of their fiduciary obligations under ERISA, alleges three main things, specifically that:

the defendants breached their fiduciary duty by "locking in" plan investment options into two investment companies;

the administrative services and fees were unreasonably high due to the defendants' failure to seek competitive bids to decrease

administrative costs; and

the fiduciaries charged unnecessary fees while the portfolio underperformed.

In her ruling (*Sweda v. Univ. of Penn.*, E.D. Pa., No. 2:16-cv-04329-GEKP, 9/21/17), Judge Gene E.K. Pratter started by outlining the historic differences in structure and approach in 403(b) plans and 401(k)s, noting that those "...salient differences resulted in different management and fiduciary requirements, since the duties by a fiduciary to an annuity contract differs dramatically from the duties of a fiduciary managing mutual funds," but that "today, the fiduciary requirements by § 403(b) plan administrators are nearly identical to those requirements for § 401(k) administrators, especially with respect to their duties to plan beneficiaries."

#### 'Locking' Levers

After outlining the way that plan administration is structured, Judge Pratter examined the challenge that plan fiduciaries breached their fiduciary duties by the restrictive nature of the contract with the plan providers, TIAA CREF (now TIAA) and Vanguard. The "only fact that the plaintiffs have pled is that the defendants 'locked in' the Plan to TIAA CREF," Judge Pratter wrote, but noted that this, "standing alone, is insufficient to create a plausible inference that this was a breach of fiduciary duty," since "locking in rates and plans is a common practice used across the business and personal world." Indeed, Judge Pratter noted that "often times, locking in a plan for a stated period is better for all sides because customers save money with the discount offered by the company, and com-

panies save money by eliminating the costs associated with customer acquisition while having an arguably reliable income stream to rely on.”

Judge Pratter then turned to the plaintiffs’ claim that the defendants “allowed TIAA-CREF and Vanguard to charge unreasonable administrative fees,” by both allowing them to operate as their own recordkeepers, and by charging a flat per-person fee rather than an “asset-based” fee.

Here again, Judge Pratter cited the logic of bundling as a rational decision — but rather than applying it to the decision to hire two recordkeepers (rather than one), she wrote that “it is rational to comply with Vanguard’s requirement that they serve as recordkeeper if that is required to gain access to the desired Vanguard portfolio.” Even if that were not true, she wrote, “the argument also fails as a factual matter because there is a reasonable range of investment options with a variety of risk profiles and fee rates.” And even if there were cheaper options available, he noted that “ERISA mandates that fiduciaries consider options besides cost.”

#### **Cheap, ‘Shot’**

As for the asset-based versus per-participant charges, Judge Pratter described this as “a pure question of where the burden of recordkeeping costs should be placed — a question open to the discretion of a reasonable plan administrator.” She went on to note that “plan administrators are fiduciaries to every plan member, whether she invests \$10 or \$10 million,” and that it was “...not up to courts to second-guess how fiduciaries allocate that cost, only that the fiduciary discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries as a whole.” Ultimately, she noted that “plaintiffs need something more than a claim that there may be (or even are) cheaper options available.”

Judge Pratter then proceeded to narrow what she described as “a litany of costly measures that they (the plaintiffs) claim amount to a breach of fiduciary duty, including unnecessary fees, duplicative investments, retention of higher cost funds, retention of underperforming funds, and poor performance relative to the market” to three: (1) unnecessary fees, (2) participant confusion, and (3) poor market performance.

Once again, Pratter looked at the full range of investments in the plan, and said that the “majority of these ‘excessive fee’ arguments fail to state a claim because the mix and range of fee options included fees as low as 0.04%, which neither side claims is excessive.” She acknowledged that the strongest argument advanced was that the plan contained “retail class” shares, rather than institutional — but once again looked at the whole menu, noting that nearly half of the shares (37 of 78) are “already these lower-fee funds,” and that “plaintiffs’ argument also ignores that these institutional class shares would only be available if significantly more money were funneled into each of them.”

Instead, Pratter cautioned that “switching from retail to institutional shares is not a matter of checking a different box,” noting that sometimes institutional shares are unavailable as an option because investment levels are too low in that fund, and that sometimes while retail funds allow daily transfers, where participants can withdraw money without fees, “[i]nstitutional trusts and pools do not offer that choice.” She noted that “...plaintiffs here have not pled that these reductions in expenses could be achieved without changing the variety of benefits to participants,” that they have “...only pled that the failure to replace these shares was a breach of fiduciary duty, which is insufficient...”

Regarding claims of a breach of fiduciary duty, Judge Pratter turned to the decision in *Renfro v. Unisys Corp.* where the court concluded that in light of the available options (73 investments with fees ranging from 0.10% to 1.21%), the plaintiffs had “provided nothing more than conclusory assertions” of fiduciary breach and affirmed dismissal. “This standard stops plan participants from second-guessing a plan fiduciary’s investment decisions just because they lose money, while allowing plan participants latitude to bring suit for improper management,” Pratter wrote. “They must show systemic mismanagement such that individuals are presented with a Hobson’s choice between a poorly-performing § 401(k) portfolio or no § 401(k) at all,” she said. Not that she saw that as precluding a suit by either “alleging insufficient choice, that all (or the vast majority of) options breach the fiduciary duty, an insufficient variety

among the range of options, or a kickback scheme where the fiduciaries directly benefit at the expense of plan participants.”

#### **‘Dizzying’ Denied**

As to the “dizzying array” of investment options having contributed to some kind of decision paralysis, Judge Pratter was similarly unsympathetic. “The plaintiffs have not alleged any participant who was confused by the different options, an omission that on its own causes the amended complaint to fail to state a factual basis for the claim,” Pratter wrote. She also cited the plan’s segregation of options into four categories based on the participants’ investment acumen as a helpful step. “Offering 78 different choices is not an unreasonably high number, especially with the tiered descriptive guidance given to participants,” she said, concluding that “providing 78 different investment options satisfies the ‘reasonable mix and range of investment options’ required by *Renfro* without being unduly overwhelming.” Those “duplicative” fund offerings? Pratter said they were “necessary based on the structure of the Plan.” Indeed, she said that if there were no overlap, “there could be greater cause for criticism or frustration.”

As for the notion that “select funds were outperformed by the rest of the market,” Pratter said that the “Plan administrator deserves discretion to the extent its ex ante investment choices were reasonable given what it knew at the time,” and that “chagrin does not inexorably become a cause of action.”

Finally, the theory that the contractual arrangement with TIAA-CREF and Vanguard constituted a prohibited transaction, “This cannot be correct,” Pratter said. “The transactions at issue here were not done ‘to benefit other parties at the expense of the plans’ participants and beneficiaries’ but were simply operating expenses necessary to operate the plan on behalf of the plan.” Pratter said that there must be a “subjective intent to benefit a party in interest,” describing the plaintiffs’ arguments here as constituting an attempt to “shoehorn their fiduciary duty claims into the prohibited transaction provision.”

And granted the university’s motion to dismiss. 🍷

# Fiduciary ‘Fixes’?

Advisors adjust to provider changes, charges in the wake of the fiduciary regulation.

BY NEVIN E. ADAMS, JD

**A**s 2017 wound to a close, we’d heard from a number of advisors who had had experiences with provider changes and charges that could create something of a fiduciary quandary. And, according to our reader poll in mid-December, they weren’t the only ones.

More than 4 in 10 (43%) said they had been confronted with some kind of restrictions that hindered or threatened to hinder their acts as a plan advisor and/or plan fiduciary; restrictions in either pricing or timing or something else, though only with some providers. Another 14% said they had encountered such restrictions, and 21% said they had, but not very often, and a like number said they hadn’t.

Asked if the issues involved charging to replace or remove funds from a 401(k), and here the experience was split right down the middle: 45% said they had been presented with that issue, 42% hadn’t, and the rest — weren’t sure.

As for responses to those restrictions (more than one response allowed):

- 56% – Won some, lost some.
- 35% – Worked around it/them.
- 28% – Changed providers as soon as practical.
- 17% – Fought the charges/practices — but lost.

## Restrict ‘Shuns’?

As for some of the other restrictions cited, here’s a sampling:

“Provider did not understand 404a5

requirement and wanted to initiate the fund change in less than 30 days. They did not have a fund change notice detailing their procedure so I had to mock up one from another provider. Their 404a5 would not remove the funds being removed until after the effective date so I had to mock up the notice. I’ve also had them want to charge \$100 per fund and it was a small 10 person plan.”

“Only wanting to do extra things if the client/prospect agrees to recordkeeper change. Additional sales support if we sold so much, etc.”

“The pricing challenges presented if the plan sponsor wants to remove proprietary TDF series.”

“Plan sponsor wanted to add a 2nd set of TDF to their lineup (a passive TDF option). However, the plan pricing is so low that “only adding,” or removal/exchange of certain funds, results in a “pricing considerations/review” for the plan sponsor (a price increase). The plan sponsor elected to make no additions to their lineup in the TDF area.”

“Required proprietary investments in the plan. A required % of the funds in the plan must be proprietary.”

“Delays in the receipt or accounting for revenue sharing that is supposed to be returned to participants. When an EE terms and takes a distribution, sometimes revenue share dollars show up later for them. If provider bills quarterly based on accounts with a balance, potential exists that a term part gets a fee because revenue sharing showed up.”

“Limitations on platforms for certain reasons due to provider bias (money manage-

ment conflicts of interest).”

One reader pushed back a bit on the notion: “I would say you are a terrible advisor and/or “consultant” if you don’t understand the very basic concepts of running a business. Changing investments in a plan isn’t some magical exercise where you approve a fund change and “poof,” overnight the project is done. The fact that certain people complain about the fact recordkeepers charge to do this does not understand the business and shame on you. You’re part of the problem of this never-ending cycle of fee pressure because you expect everything for “free.” This is part of the problem for your own commoditization. Making fund changes involves preparing and mailing required notices to what may be thousands of participants in any given plan (not to mention a real cost in project management to make such changes). There is no hindrance to doing this except your own expectations that everything must be free. While some providers may include this in their contract, not all providers do and this should be reflected in their contracts (and you must take these differences into account when evaluating fee structures since there are many that will provide more transparent pricing structures).”

## Observation ‘Posts’

Readers had some other interesting observations as well:

“I think the additional fees are going to proliferate just as in the airline industry — fund changes are necessary so minimal additional fees while annoying are not going

away. We have already seen it with loan fees charged both by TPAs and recordkeepers. I am certain there will be other fees.”

“We have had to weigh the cost benefit for the participants between removing mediocre funds vs. changing vendors to better accommodate the investment lineup. It’s much worse in the small plan market.”

“Pricing that changes with number of proprietary investments gives the advisor another challenge to determine exactly what everyone is being paid. We don’t eliminate a vendor if their pricing works this way but we do ask them additional disclosure.”

### Service ‘Stations’

In a separate NAPA Net Reader Poll conducted just ahead of the New Year, we also asked readers what change(s), if any, they saw in response to the fiduciary regulation. Change does seem to be afoot: 43% of respondents to the November 2017 NAPA Net reader poll said they have noticed providers repositioning their service commitments, though they say that some, but not most, have been doing so. The rest were in a “not really” camp in terms of seeing those shifts.

As for the impact on their due diligence processes, well, that was all over the board. Roughly one in five said that it had had an impact, but an equal number said it hadn’t. And just as many said “not really,” while roughly 29% said that it had an impact “in some cases, not all.” The rest were in the “in some cases, not many” category.

### What kind of impact?

“Recordkeepers giving investment advice are now a competitor,” noted one respondent. “Some vendors are changing what they will do for education and one-on-ones — or not do!” explained another. “Many providers are pulling back on investment reporting but that does not impact us as we have our own due diligence process for that.”

“Certain asset allocation models have become ineligible for a QDIA unless a fiduciary contract is put in place,” commented another. “Certain providers want to be a fiduciary for investment advice to participants but require new docs and attestations.”

Some providers are “using the DOL rule as an excuse for contract changes,” noted another, who said they had also seen providers change how funds are characterized with

Morningstar and how underlying funds are evaluated in variable annuities. Another noted that “Some recordkeepers have been eliminated if they can’t provide information on level comp and/or don’t have fiduciary screening tools.” Still another said they were “determining the differences in provider offerings relative to the DOL rule.”

All that change — and potential change — notwithstanding, a clear plurality of the respondents were planning to hang in with their current set of providers, with 43% saying they wouldn’t/hadn’t terminated any providers as a result, another 7% saying it was unlikely, and twice that number indicating “probably not.”

On the other hand, just over 7% said they would; another 7% classified it as “probably” and 21% put it as “possibly.”

### Problem “Chides”

As for the most problematic changes, readers cited:

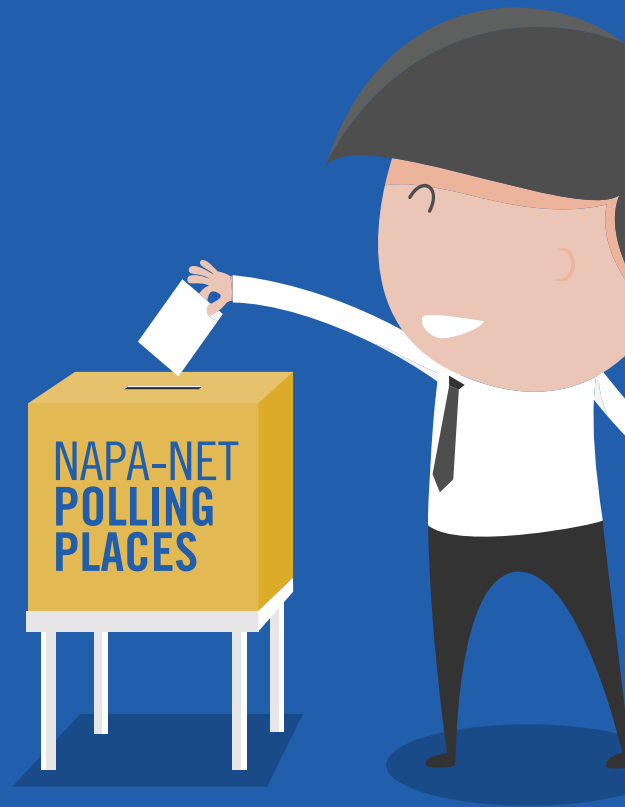
- product limitations (56%);
- liability restrictions (53%);
- compensation structures (11%); and
- provider (in)flexibility (7%).

“To date, the majority of changes have impacted certain IRA products at certain financial institutions and advisors,” observed one respondent. “These are problematic in that the client or employee now realizes what type of arrangement they unknowingly had by selecting a certain institution or advisor. Now, many that I know wish to change their financial advisor if possible.”

“No fiduciary screening tool,” said another, who noted that their home office needs carrier information on whether each plan has level trail compensation for all investments offered in the plan.

“For my firm we’ve always been fee based, and compensation has not been an issue. But the issue I see is in regard to recordkeepers providing investment advice,” noted one reader. “With these changes the vendors are not doing a very good job of communicating with advisors about these changes,” commented another. “When once a vendor provided a service they now do not, but don’t explain why.”

Thanks to everyone who participated in these — and every week’s — NAPA Net Reader Poll! 🗳️



Thanks to everyone who participated in our NAPA Net reader poll! Got a question you'd like to run by the NAPA Net readership? Email me at [nevin.adams@usareirement.org](mailto:nevin.adams@usareirement.org)



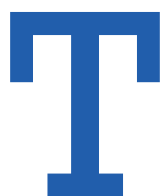
# Regulatory Review

Think tax reform “missed” retirement? Not quite. And that budget bill that (re)opened the federal government? Well, it included some retirement provisions as well. And let’s not forget the IRS announcement on a change in the fee structure for plan corrections that turned out to be a big surprise for small plans...



## Rider ‘Wrung’?

Retirement provisions included in federal budget deal



he two-year budget agreement that Congress passed earlier this year included several tax policy changes affecting retirement plans.

In general, the amended version of the Bipartisan Budget Act of 2018 (H.R. 1892) increases discretionary budget caps for both defense and non-defense spending for fiscal years 2018 and 2019, lifts the statutory debt limit to March 2019, and funds the federal government through March 23, 2018.

As part of the agreement, the legislation also includes a number of policy “riders,” including disaster relief, tax provisions and other policy changes. Many of the retirement provisions included in this legislation were previously included in last year’s Tax Cuts and Jobs Act, but were dropped prior to final passage.

The provisions in H.R. 1892 that affect the retirement industry include:

**Remove six-month prohibition on contributions to retirement plans after a hardship withdrawal.** The legislation directs the IRS to change its administrative guidance to allow employees taking hardship distributions from a retirement plan to continue contributing to the plan. The revised regulations will apply to plan years beginning after Dec. 31, 2018.

**Allow QNECs, QMACs and prof-**

**it-sharing contributions to be included in a hardship withdrawal.** The legislation modifies the rules relating to hardship withdrawals from cash or deferred arrangements to permit employers to extend hardship distributions to amounts not previously permitted. It also would remove the requirement to take a loan before taking a hardship withdrawal. The provision applies to plan years beginning after Dec. 31, 2018.

**Provide IRS authority to release a levy on property held in retirement plans.** The legislation allows an individual to recontribute to an IRA or employer-sponsored plan an amount withdrawn (and any interest thereon) pursuant to a levy and later returned to the individual by the IRS. Contributions are allowed without regard to the normally applicable limits on IRA contributions and rollovers. The provision is effective for tax years beginning after Dec. 31, 2017.

**Special disaster-related rules for use of retirement funds for individuals impacted by the California wildfires.** In general, the legislation provides relief from the 10% early withdrawal penalty for qualified distributions up to \$100,000 made on or after Oct. 8, 2017, and before Jan. 1, 2019. Distributions must be made by an individual whose principal place of residence was in a wildfire disaster area and who sustained an economic loss due

to the wildfires.

Distributions can be included in income ratably over a three-year period beginning with the year of distribution, unless the individual elects not to have ratable inclusion apply. Alternatively, amounts that are recontributed within the three-year period would be treated as a rollover and not includible in income. The legislation also:

- permits individuals to recontribute funds to retirement plans if the funds were distributed for a home purchase in a wildfire disaster area that was cancelled on account of the wildfires; and
- increases the limit and extends the repayment deadline for loans from retirement plans.

The legislation also includes tax provisions relating to employment-retention tax credits for employers affected by the wildfires, temporary suspension of limitations for charitable contributions and special rules for qualified disaster-related personal casualty losses.

Last year, Congress approved disaster relief legislation, including retirement tax relief, for the victims of Hurricanes Harvey, Irma and Maria, necessitating a need to extend the assistance to the California wildfire victims. The IRS also had previously provided limited relief to victims of Hurricanes Harvey, Irma and Maria

and the California wildfires, permitting easier access to funds held in workplace retirement plans and IRAs and easing some deadlines and requirements relevant to retirement plans for certain victims of the wildfires.

**Create a Joint Select Committee on Solvency of Multiemployer Pension Plans.** A bipartisan committee composed of members from both parties and both houses of Congress will be formed in an attempt to address multiemployer pension plan solvency issues. The legislation details the process that will be used to consider and develop any recommendations. The committee will include 12 members — six from each chamber and an equal number

of Democrats and Republicans. If at least four members from each party agree on a compromise, the committee's recommendation will be guaranteed an expedited vote on both the House and Senate floors with no amendments that will occur no later than the last day of the 115th Congress.

**Create new Form 1040SR for individuals over age 65.** The IRS is required to publish a simplified income tax return form that can be used by taxpayers 65 or older. The legislation explains that the form will be similar to Form 1040EZ, but its use shall not be restricted because of the amount of taxable income or because the income for the tax year

includes Social Security benefits, distributions from qualified retirement plans, annuities or other such deferred payment arrangements, interest and dividends, or capital gains and losses. The legislation states that the form shall be made available for tax years beginning after the date of enactment.

— *Ted Godbout*



## Cyber Spec

Project seeks to expand cyberattack support for retirement plan data

What are firms in the retirement industry doing to help protect against cyberattacks and the threat of financial and participant account information being held hostage?

There is a financial industry-led project — dubbed “Sheltered Harbor” — that is seeking to expand a cyberattack backup program to 401(k) accounts and pension funds.

The program, which currently provides backup support for savings and checking account data and is beginning to incorporate retail brokerage accounts, aims to guard against cyberattacks and the potential for unauthorized access and loss of critical information. A summary guide notes that it is a voluntary initiative created by the financial services industry to provide financial institutions and their customers with an extra layer of protection in the event of a cyberattack.

The program was created by the Financial Services Information Sharing and Analysis Center and comprises nearly 50 of the nation's largest financial firms, including banks, credit unions, brokerages, processors and financial trade associations.

According to Bloomberg, the initiative relies on a “buddy system,” in which companies pair up with the promise that

if one is attacked, the other will provide the affected company “with a backup set of account information if hackers succeed in erasing or locking up files.” The article explains that even though many firms already have a backup system in place, such a system is not much help without a functioning network.

In essence, the program acts as a firewall by isolating the backup information away from a firm's own network. Consumer data is stored and kept private by each institution, and is encrypted and protected from changes. In addition, the model assumes no central repository for protected accounts.

“If one company's computer system is devastated, the backup account data can be activated on the partner's network, giving affected customers access to their accounts within 24 hours or so,” Bloomberg says.

The article notes that the idea surfaced in 2014 following the hacking of Sony Corporation's U.S. film division. The hackers deleted numerous sources of data and leaked private emails and information about upcoming movies. Financial industry executives apparently realized that a similar attack on even a small firm could damage confidence in the financial system, setting off an alarming chain of events throughout the industry.

While there currently is no comprehensive cybersecurity protocol for retirement plan administration at the federal level, the danger of cyberattacks seems to be garnering more and more attention in the retirement industry. A 2016 report by the DOL's ERISA Advisory Council emphasizes that it is not a question of whether or not a company will be cyberattacked, but rather when, and what to do about it going forward. The report notes that common cyber risks to benefit plan participants include identity theft, privacy breaches and theft of assets, and that the cost of a breach can be substantial. The Council suggested that plan sponsors and fiduciaries consider a framework upon which to base their cybersecurity risk management strategy and identified several key components of a cybersecurity strategy.

— *Ted Godbout*



### Show Me 'State'

#### Bill to create Missouri Secure Choice Savings Program introduced

Missouri is the latest state whose legislature has before it a measure that would establish a state-run program for employees whose employers do not offer a retirement plan. State Rep. Kip Kendrick, D-Columbia, who also serves as Minority Whip in the Missouri House of Representatives, introduced the Missouri Secure Choice Savings Program Act (H.B. 1672) on Jan. 4.

#### Eligibility

The bill would allow employers with 25 or more workers that do not already offer employees a retirement plan to automatically enroll workers aged 18 and older in a state-run payroll-deduction Roth IRA. It would apply to for-profit and non-profit employers and would be open to employers with fewer than 25 workers who wish to participate on a voluntary basis.

#### Employers' Role

Participating employers would not be fiduciaries under the program, and would not be responsible for the program's administration or investments.

Employers would not be allowed to match contributions.

Employers' role would be limited to:

- offering the program to new workers;
- providing an annual enrollment period for ongoing employees;
- automatically enrolling workers who do not opt out; and
- depositing worker payroll deductions into the program's trust fund.

#### Employees

As provided in the bill, the Missouri Secure Choice Savings Program would:

- allow employees to select how much to contribute up to the current maximum annual contribution limits for Roth IRAs;
- allow employees to pick their investment options from a menu of choices established by the board running the program;
- automatically enroll employees who fail to select an investment option;
- employees who are automatically enrolled would make contributions

at 3% of pay; and

- employee contributions would be invested in a life-cycle fund that automatically becomes more conservatively invested as they age.

#### The Board

The bill would establish a five-member board to oversee the program. It calls for the board to seek the opinion of the IRS regarding whether the Roth IRA established under the bill qualifies for tax-favored status and whether the program is subject to ERISA. It also provides that the board may not implement the program if the IRS determines that the proposed IRA does not qualify for tax-favored treatment, or if the program is considered an ERISA employee benefit plan.

— *John Iekel*



### Asset 'Test'?

#### ARA pushes back on IRS' new asset-based approach to VCP user fees

The American Retirement Association has taken issue with the new VCP fee structure and approach taken by the IRS, charging that it is "unfair to small employers, and will have an adverse impact on plan participants."

The comment letter, addressed to David J. Kautter, Acting Commissioner of the IRS, also notes that the approach is in "direct conflict with Congress' directive The American Retirement Association has taken issue with the new VCP fee structure and approach taken by the IRS, charging that it is "unfair to small employers, and will have an adverse impact on plan participants."

The comment letter, addressed to David J. Kautter, Acting Commissioner of the IRS, also notes that the approach is in "direct conflict with Congress' directive to the Treasury

Department to '[take] into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures,'" and is a "complete departure" from the previous VCP user fee approach that was based on participant counts with lower fees for smaller plans.

The change was announced Jan. 2 in Revenue Procedure 2018-4 "with no advance warning, no discussion, and no grace period to allow plan sponsors the opportunity to make their VCP submissions prior to the new fees taking effect," the ARA letter points out.

While acknowledging that the IRS must balance numerous competing compliance and enforcement concerns, and that in some instances, resource limitations may not allow for the luxury of extended research, analysis and debate, the letter explains that

ensuring the operational compliance of their retirement plans is particularly burdensome for small employers due to the complexities of today's myriad statutory and regulatory requirements for plan administration.

The ARA points out that the true beneficiaries of the new VCP user fees are large plan sponsors with plans that cover more than 100, more than 1,000, and more than 10,000 participants. While ARA agrees that the VCP change is likely to encourage large plans (the common term for plans over 100 participants) to utilize VCP, this new fee schedule triples, quadruples or even sextuples the VCP fee for small plans. "This unfair impact on small plans runs contrary to both the PPA mandate and general public policy," the letter notes.

Even worse, the ARA letter points



out, the new VCP user fee schedule eliminates entirely the special reduced VCP user fees that were previously available to all plan sponsors that wished to voluntarily correct such common compliance failures as missed required minimum distributions, participant loan failures and certain late amendment or non-amender failures. “These special reduced fees were beneficial to all sponsors,” the letter explains, but especially for small employers that do not have the financial resources of larger employers. “Further, the reduced fees for required minimum distribution and loan failures provided an

incentive to employers to make corrections that were more favorable from a tax perspective) to participants than merely self-correcting the defect.”

The ARA recommends that the IRS immediately amend Rev. Proc. 2018-4 to:

- provide that the applicable general VCP user fee is the lesser of the general VCP user fee in effect on Jan. 2, 2018, or the general VCP user fee in effect immediately prior to Jan. 2, 2018, pursuant to Revenue Procedure 2017-4; and
- reinstate the special reduced VCP

user fees in effect immediately prior to Jan. 2, 2018, pursuant to Revenue Procedure 2017-4.

“While plan assets are necessarily involved in these qualification failures, either directly or indirectly, the more meaningful relationship to the cost of processing the submission is the number of participants and beneficiaries affected by such failures,” the ARA notes.

— *Nevin E. Adams, JD*



### ‘Disaster’ Relief?

401(k) hardships could be clipped by changes to personal casualty loss deduction

In the wake of any new tax law, there are always issues that cause problems when the new provisions are put actually into practice. One such issue with the recently enacted Tax Cuts and Jobs Act: hardship withdrawals from a 401(k) plan to address a personal casualty loss of a principal residence may no longer be allowed unless the loss is attributable to a federally declared disaster area.

The issue stems from changes that temporarily modify the deduction for personal casualty and theft losses under Code Section 165(h). Under the provision (found in section 11044 of the conference report), a taxpayer may now claim a personal casualty loss only if such loss was attributable to a disaster declared by the president under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. These changes are applicable for tax years 2018 through 2025.

Under prior law, a taxpayer generally could

claim a deduction for property losses not compensated by insurance or otherwise that were attributable to losses arising from fire, storm, shipwreck or other casualty. The losses generally were deductible only to the extent that the aggregate net casualty and theft losses exceeded 10% of adjusted gross income.

Treasury regulations (Treas. Reg. §1.401(k)-1(d)(3)(iii)) list six “safe harbor” reasons (such as medical, education and funeral expenses and to prevent foreclosure) to permit plans to allow hardship distributions if the distribution is made to address an “immediate and heavy financial need of the employee.” For a typical 401(k) plan that allows hardship withdrawals, one of the six reasons specifically cites Section 165:

Expenses for the repair of damage to the employee’s principal residence that would qualify for the casualty deduction under section 165 (determined without regard to whether the loss exceeds 10% of adjusted

gross income).

While the provision temporarily eliminates personal casualty losses unless they are the direct result of a declared disaster area, it’s not clear whether the drafters intended for the provision to affect 401(k) hardship withdrawals. It could be the result of an unintended consequence.

Nevertheless, based on the language in the statute and existing regulations, it would appear that qualified hardship withdrawals to repair a severely damaged principal residence are effectively eliminated unless in a federally declared disaster area, pending any future guidance.

— *Ted Godbout*



### Concession ‘Stand’

ARA GAC wins big concessions on 2017 Form 5500

In a big win for the lobbying efforts of the American Retirement Association’s Government Affairs Committee (GAC), the IRS has dropped a series of compliance questions from the 2017 Form 5500.

The announcement came along with the release of advance informational copies of the 2017 Form 5500 from the U.S. Department of

Labor’s Employee Benefits Security Administration, the IRS and the Pension Benefit Guaranty Corporation (PBGC). The “Changes to Note” section of the 2017 instructions note that the IRS-only questions that filers were (eventually) not required to complete on the 2016 Form 5500 have been removed from the Form 5500, Form 5500-SF and Schedules,

including preparer information, trust information, Schedules H and I, lines 4o, and Schedule R, Part VII, regarding the IRS Compliance questions (Part IX of the 2016 Form 5500-SF).

*Option ‘Null’?*

On Dec. 1, 2016, the American

Retirement Association Government Affairs Committee filed a comment letter in response to a request for comments on the proposal to “modernize and improve Form 5500,” explaining that the ARA was concerned that the Proposal significantly underestimates the cost and burden to comply with the reporting requirements and that there is insufficient time to make the technology and procedural updates required for the proposed 2019 plan year effective date.

The IRS took a similar action concerning the 2015 plan year, announcing on Dec. 3, 2015 that those questions — first proposed late in 2014 — would be optional for the 2015 plan year. ASPPA GAC filed an IRS comment letter on them in February 2015.

#### *‘Signature’ Accomplishment*

In another significant win, concerns raised by the ARA GAC on the requirement to obtain manual signatures (a.k.a. “wet” signatures) were addressed with the announcement that the instructions

for authorized service provider signatures have been updated to reflect the ability for service providers to sign electronic filings on the plan sponsor and Direct Filing Entity (DFE) lines, where applicable, in addition to signing on behalf of plan administrators.

Four other changes were announced:

- Instructions have been updated to reflect an increase in the maximum civil penalty amount assessable under the Employee Retirement Income Security Act section 502(c)(2) required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Department regulations published on Jan. 18, 2017, increased the maximum penalty to \$2,097 a day for a plan administrator who fails or refuses to file a complete or accurate Form 5500 report).
- Line 4 of the Form 5500 and Form 5500-SF have been changed to provide a field for filers to indicate the name of the plan has changed.
- The instructions for line 6c have

been updated to add mortality codes for several variants of the RP-2014 mortality table and to add a description of the mortality projection technique and scale to the Schedule MB, line 6 – Statement of Actuarial Assumptions/Methods.

- Form 5500-SF-Line 6c. Line 6c has been modified to add a new question for defined benefit plans that answer “Yes” to the existing question about whether the plan is covered under the PBGC insurance program. The new question asks PBGC-covered plans to enter the confirmation number — generated in the MPAA system — for the PBGC premium filing for the plan year to which the 5500-SF applies. For example, the confirmation number for the 2017 premium filing is reported on the 2017 Form 5500-SF. — *Nevin E. Adams, JD*



## Standard ‘Bearing’?

### SEC closer to an ERISA fiduciary standard?

A recent analysis suggests that the SEC’s take on a fiduciary standard may be inching closer to that of the DOL.

In “SEC Enforcement Slowly Tilting Fiduciary Needle toward ERISA,” an article appearing on the Corporate Compliance Insights website, Duane Thompson argues that “the SEC’s examination and enforcement arms appear to be moving closer to ERISA’s fiduciary standard mandating reasonable compensation for investment advice” by focusing on compensation received for rollover advice and on fees that result from the use of mutual fund share classes in retail and retirement accounts.

Thompson outlines the differences between the two agencies, noting that the SEC generally relies on disclosure of conflicts in mitigating fiduciary breaches, while the DOL looks to “more proactive measures.”

Thompson considers it “challenging” to harmonize the SEC’s and DOL’s approaches, but contends that the SEC’s

inspection and enforcement arms “are slowly forging ahead by imperceptibly moving the regulatory needle in favor of the DOL’s higher standard for advice givers.” And he says that the SEC and DOL “are intent on trying to make it easier for firms and their advisors to comply with their respective fiduciary standards.”

The challenges to be met in arriving at a more common approach, Thompson says, are that the SEC must:

- consider how to fine-tune its rules for stockbrokers and investment advisers that offer retail investment advice;
- attempt to harmonize any new fiduciary rule for brokers and advisors with the DOL’s requirements for ERISA fiduciaries; and
- work with state insurance regulators to try to mesh its rulemaking with state insurance rules.

There are other challenges, Thompson

argues, including that ERISA does not make the same requirements of the SEC that it does of the DOL regarding prohibition of excessive fees. In addition, he says, the SEC may face opposition from the brokerage industry if it imposes a fiduciary standard under the Advisers Act.

Despite the challenges to harmonization, says Thompson, “the SEC staff seems to be moving forward on its own, perhaps prompted by class-action trends under ERISA in which participants have scored notable court victories in excessive fee cases.” That, he says, is resulting in the SEC “beginning to articulate a more robust fiduciary standard that is lining up more closely with ERISA’s higher standard of accountability for fiduciaries.”

— *Ted Godbout*

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