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NATIONAL ASSOCIATION OF PLAN ADVISORS

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- Unanticipated Consequences
- With Change Comes Opportunity
- The 5 Keys to a Strong TPA Relationship

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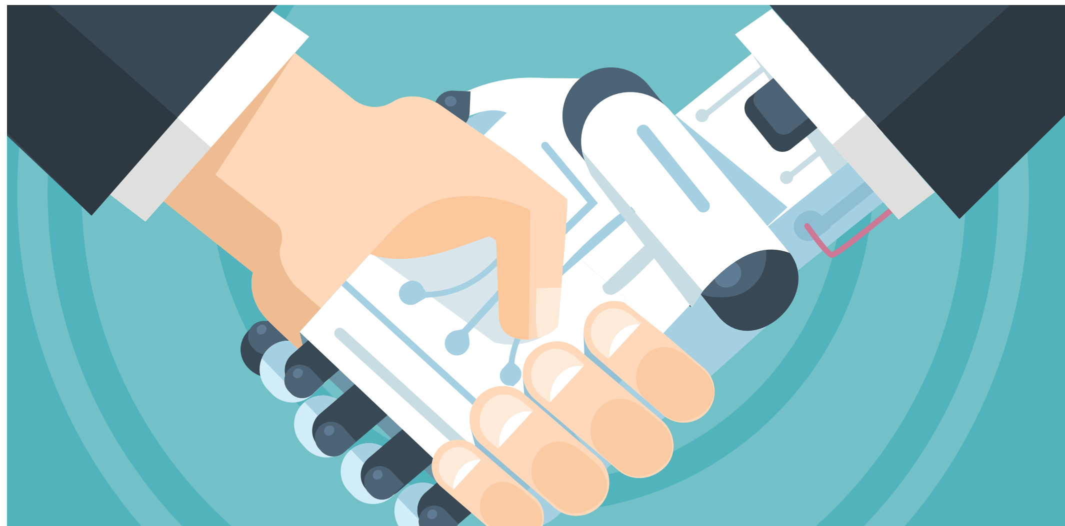

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Money's Worth

Time to put your money where your 'mouth' is.

In just a few weeks, we'll be gathered at the NAPA 401(k) Summit in Las Vegas. This will be my third Summit since joining the organization, though I have been to, and spoken at, a good number of them over the years.

This year, as in years past, the steering committee, agenda team and NAPA leadership have been hard at work for months, developing the program, fleshing out the agenda, lining up speakers, and this year assigning session "owners" to make sure that you get maximum bang for your buck in terms of information and session quality. We've taken your feedback on topics and format, expanded the peer-to-peer networking, and added a brand new component called "super" sessions. We've got some amazing keynote speakers, enhanced our plan sponsor panel, and, for the first time ever, added a new networking opportunity called "Summit After Dark" which will include some incredible entertainment in world-class environs. Sure, you've been to Vegas — you may even have been to Vegas for the 401(k) Summit. But I promise you this one will be different, "better" in terms of focus, depth of information, and interaction, and certainly bigger. While we try to remind folks that it is the only retirement plan advisor conference developed by advisors for retirement plan advisors — the proof of that is, quite literally, in the program that has been developed for you.

What's (Really) Different

Beyond all those important reasons, there are two other major considerations for you in attending this year's NAPA 401(k) Summit. First is the issue of tax

"You will want — and need — to know what is afoot, and there is no better place for you to do that than the NAPA 401(k) Summit."

reform. This is something that we have been writing about on www.napa-net.org for months now, but with the 2016 election having given control of Congress and the White House to a single party, the odds for significant change — change on the order of the Tax Reform Act of 1986 — is significantly higher than we might have reasonably expected. As you will read in "Unanticipated Consequences" on the pages that follow, those consequences could be enormous on workplace retirement savings in the months to come. You will want — and need — to know what is afoot, and there is no better place for you to do that than the NAPA 401(k) Summit, particularly with the insights you'll get from our "From the Hill to the Summit" keynote.

The other consideration is related, but it is not something we generally push While the number of quality events has certainly declined over the years, I know you still have several to choose between. For some, that choice is based on location, for others timing, and for still others cost. For some, of course, it can be all or more than one of the above — all are valid considerations.

But among all the things that really set the NAPA 401(k) Summit apart — one thing stands out, this year more than most. Quite simply, it is that — and *unlike every other advisor conference out there* — your NAPA 401(k) Summit registration helps support the activities of NAPA — *your* advocacy, information and education organization.

Your registration fee isn't going to fund the bottom line of some corporate media organization. It isn't going to line the pockets of some private equity firm.

No, in addition to the insights, information, networking that you will get — and may well get at some other events — your attendance at the NAPA 401(k) Summit is a unique investment in your future, and the future of your profession. It is, quite simply, a unique way to put your money where your mouth is.

And there's no time like the present.

See you in Vegas! Register today (if you haven't already) at www.napasummit.org.

NEVIN E. ADAMS, JD » Editor-in-Chief
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2016 — What a Year!

Highlights from the past year include the Fly-In, the DOL's fiduciary regulation, state regulatory initiatives, Senate legislation and more.

BY SAM BRANDWEIN

This year has been quite a dramatic year for retirement plan advisors. And 2017 promises more of the same.

All of that and more was on display at our recent Fly-in Forum. Delegates to the fourth annual gathering — NAPA members all — got some unique and timely insights, including:

- An insider's perspective on what tax reform might mean for retirement plans.
- "Retirement on the Rocks" — a panel with Professor Teresa Ghilarducci and Blackstone President Hamilton (Tony) James that reminded attendees that not everyone views America's defined contribution system the same way that our industry does.
- Direct from the Hill — legislative and political perspectives direct from Rep. Richie Neal (D-Mass.) and Rep. Mick Mulvaney (R-S.C.).
- Timely and insightful election year perspective from John Dickerson, CBS News Political Director and anchor of CBS News' "Face the Nation."

Not to mention the perspectives of Joe Canary, Director for Office of Regulations and Interpretations, EBSA/DOL — which were all the more timely in view of the anticipation of the implementation of the new fiduciary regulations, which are scheduled to take effect in two phases starting in April 2017. Plan sponsors will be relying on us more than ever and will likely have an increasing openness to plan design/investment menu changes.

This year has also seen a number of state governments jump into the retirement plan arena, a trend that is likely to continue into 2017, fueled both by clarifying regulations from the Labor Department for such programs, and the entry of states like California to a list that already includes Illinois, Maryland, Connecticut and Oregon. This topic was front-and-center at the 2014 NAPA 401(k) Summit, and, as predicted, the trends outlined there appear to be taking hold, with more than half the states now considering similar approaches.

> "Our industry will have to keep a close eye out for any ripple effects that tax reform could cause for America's retirement plan system."

Those trends could be accelerated — or slowed — by the outcome of the unprecedented 2016 election. While much of the attention has been focused on the presidential aspirants, the impact "down ballot," and in state contests across the nation could bring significant change, including renewed legislative enthusiasm for tax reform. Of course, our industry will have to keep a close eye out for any ripple effects that tax reform could cause for America's retirement plan system.

Another potentially significant development occurred in September when the Senate Finance Committee unanimously approved the Retirement Enhancement and Savings Act ("RESA") that would permit unrelated employers to pool resources by participating in a new type of multiple-employer plan (MEP), which will be referred to as a "pooled employer plan." If RESA is ultimately enacted into law, it will join the new fiduciary regulations as a real game-changer for advisors.

Throughout, NAPA's advocacy has been an important voice — in legislative drafts, in state capitols as the new coverage initiatives are crafted, in the shaping of the new fiduciary regulation and the Labor Department's FAQs that we hope will lend clarity in key areas.

In the midst of all that change, 2016 has also been quite a year for NAPA, especially on the conference front. This year's NAPA Summit in Nashville drew rave reviews and record-breaking attendance. This past June, we unveiled a new conference specifically for women advisors who share a commitment to the retirement plan market. And, of course, the NAPA DC Fly-in Forum noted above!

Not that we're resting on our laurels. NAPA has very big plans for 2017, including rolling out a new platform for Summit. In addition to compelling content, and some new format additions, we think our "Summit After Dark" events will be amazing — great fun, and unprecedented networking opportunities. Be on the lookout for updates in the weeks to come. I look forward to seeing you there March 19-21, 2017!

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

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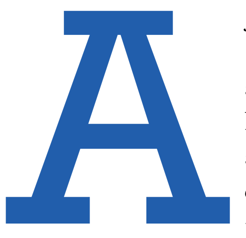
The City That Never Sleeps Should Take a Nap

Whilst the DOL giveth to government, it taketh from the private sector.

BY BRIAN H. GRAFF



A Joker is taking over Gotham City. Known as the New York City Nest Egg Plan, it is an ambitious attempt to close the retirement plan coverage gap for residents of the largest city in the United States. But instead of focusing squarely on the coverage issue — which remains a legitimate concern for policymakers — New York City Comptroller Scott Stringer wants the city government to get involved in the 401(k) business.

The city sponsored plan — called the Empire City 401(k) — is being billed as a "cost-effective" 401(k) product that "takes advantage of recent changes in federal law allowing multiple employers who are unaffiliated to join a single, publicly-sponsored 401(k) plan." (For more details on the program, see Nevin Adams' "Regulatory Review" column on page 56.)

In fact, there have been no changes in federal law. The only change is the Department of Labor perversely interpreting ERISA in a nakedly political way to facilitate a government takeover of the retirement plan business.

What do I mean specifically? In November 2015, the DOL issued an ERISA interpretative guidance bulletin — in an extrajudicial manner that does not require public notice or comment — in order to facilitate ERISA-covered state savings programs. Within this guidance the DOL expressly blessed the ability of a state to sponsor a multiple employer plan for any unrelated in-state employer.

What was the legal rationale? "In the Department's view, a state has a unique representational interest in the health and welfare of its citizens that connects it to the in-state employers that choose to participate in the state MEP." Apparently, New York City and its lawyers have concluded that the DOL will extend this rationale to cities. And why not? New York City has been the first governmental entity to take up the DOL's offer to compete with private sector retirement plan providers on DOL's uneven playing field.

> "New York City Comptroller Scott Stringer wants the city government to get involved in the 401(k) business."

To be fair, the New York City Nest Egg Plan does have some positive policy components that the American Retirement Association has long supported. For instance, the proposal requires every employer in the city — including even sole proprietors and freelance workers — to provide access to a payroll deduction savings arrangement to its employees. We think that this requirement is critical to moving the needle on coverage since the data shows that moderate income earners are 15 times more likely to save for retirement when they have access to a plan through work.

And if there is such a requirement on private employers, we think it is also reasonable that there be a publicly sponsored payroll deduction IRA program that businesses can use as a default option. The NYC Nest Egg Plan does create such an option, called the NYC Roth IRA. But then, the NYC Nest Egg Plan goes too far. The proposal creates a new retirement plan product exchange — the "NYC 401(k) Marketplace" — which would empower a new bureaucratic board to regulate retirement plan products of all stripes at the city level. And, of course, the Empire City 401(k) would be the crown jewel of the marketplace.

What is most scary about the Empire City 401(k) is that it will have a critical advantage in the marketplace since it will be the only multiple employer plan available to unrelated employers on the marketplace. In other words, whilst the DOL giveth to government, it taketh from the private sector. As many are probably aware, the DOL just a few short years ago interpreted the same ERISA statute as disallowing private providers from offering a multiple employer plan to unrelated employers.

If you are scratching your head — so are we. We must fight back against the DOL stacking the deck against our industry while at the same time inviting unfair competition from government at every level.

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

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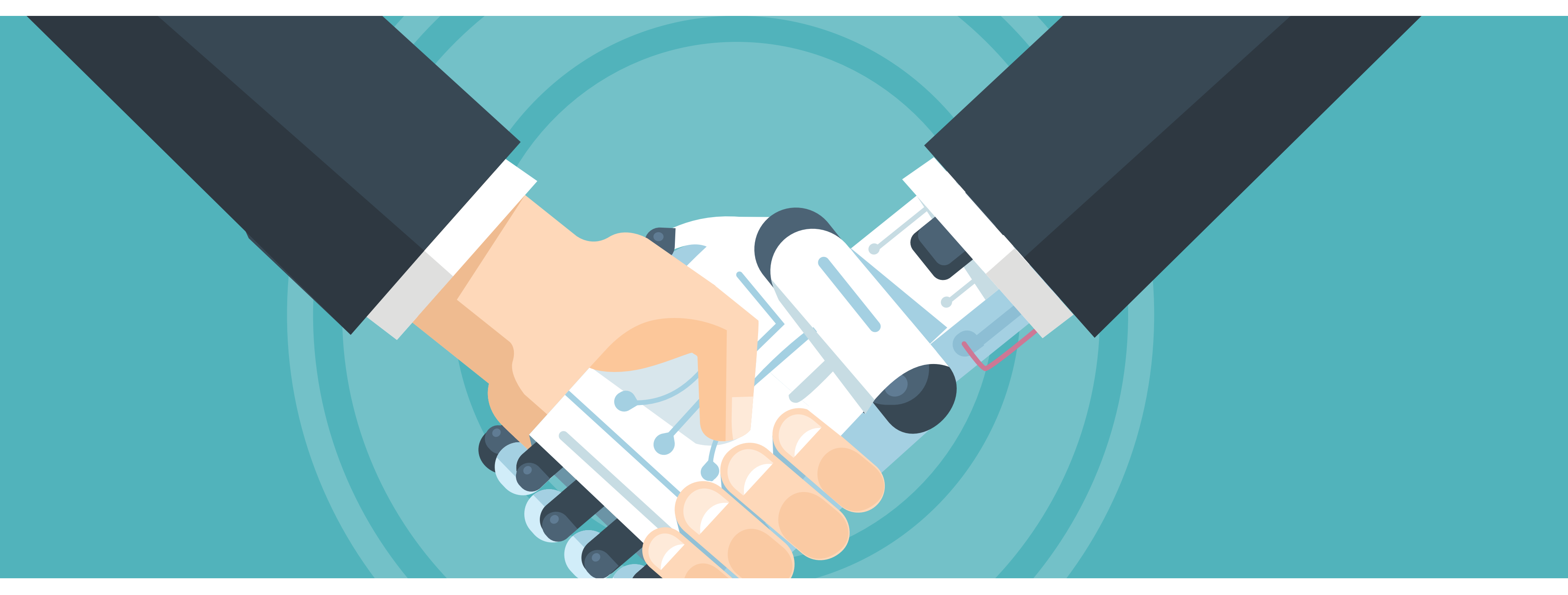
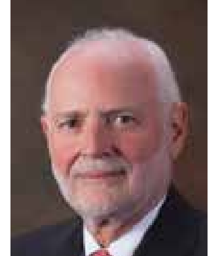




BY JERRY BRAMLETT

The Emergence of the DC Robo-Advisor

Many advisors are embracing the new robo-investing technology as a way to leverage themselves and enhance their practices.

There has been a good deal of public discussion regarding how traditional manufacturing jobs have been decimated due to outsourcing to foreign countries. The truth is that robotics (powerful computers running sophisticated algorithms) have played an equally large role in the deindustrialization of the U.S. economy.

The next industry set to be transformed by robotics or robotic process automation is the financial services industry. The prospect for widespread job losses is just as threatening for these white collar workers as it has been for traditional blue collar jobs. Here's one perspective:

> *Because of the degree to which the [financial] industry is built on processing information — the stuff of digitization — the research suggested that it has more jobs at high risk of automation than any skilled industry, about 54 percent. ("The Robots Are Coming for Wall Street,"* New York Times, *Feb. 25, 2016)*

One of the major areas of financial services to be impacted by robotics is that of financial advice. Commonly referred to as "robo-advice," it basically involves replacing face-to-investment advice with web-based investment guidance and execution. The emergence of robo-advice is creating its share of job anxiety. For example:

> *UBS is to launch a "robo-advice" service in the UK next month as part of a $1bn investment drive to attract younger clients to its flagging wealth management business…It also heaps further pain on financial advisers, who risk losing out on the business to robots. ("UBS to Launch UK Robo-Advice Service,"* Financial Times, *Oct. 10, 2016)*

While some advisors are concerned that their role will become obsolete given the emergence of robotics in the investment advice arena, many are embracing the new robo-investing technologies as a means to leverage themselves and enhance their advisory practices.

In a recent report, MyPrivateBanking creates a distinction between "pure" robo-advisors and "hybrid" robo-advisors. The former represents a fully automated investment program without the direct involvement of a human advisor while the latter involves an advisor utilizing a robo-advice platform to manage their clients' investment portfolios. The report projects that by the year 2025, the hybrid robo-advisors will manage 10% of all investable assets. By comparison, the report projects that pure robo-advisors will only manage 1.6% of global wealth. ("Hybrid Robos: How Combining Human and Automated Wealth Advice Delivers Superior Results and Gains Market Share," MyPrivate-Banking, 2016)

It would appear that rather than robotics being a job killer in the wealth management field, for many it creates an opportunity to focus on those aspects of financial advice that are best performed by humans while offloading much of the tedium of wealth management onto a robo-advice platform.

The DC Robo-Advisor

While research into the hybrid model has been focused on the wealth management advisor, the DC specialist is also being impacted by the emergence of robo-advice and is, perhaps, in an even better position to leverage robo-advice platforms.

Although digital advice has been around for more than 20 years (Financial Engines was founded in 1996), it has not been the core approach to asset allocation in DC plans. This is changing, though, with the largest robo start-up, Betterment, entering the market with a full-service DC offering. There are also the traditional DC investment advisors like Russell Investments, which recently introduced "Adaptive Retirement Accounts," a DC-focused robo-advice platform. There are many other DC providers that have DC robo-advice offerings in the works, including multiple firms that distribute their offerings exclusively through advisors.

As a result of the recent successes of a number of new DC robo-advice offerings, many plan advisors are beginning to think through how they can best adapt their practices to this new model of investing. What many advisors are realizing is that, just as in the case with advisors focused on wealth management, the advent of the robo-advice model creates an opportunity to expand (not diminish) their role.

Adopting a DC Robo-Advice Platform

For the DC robo-advisor, many aspects of their role remains the same:

- Educate plan sponsors on their role and responsibilities as plan fiduciaries
- Construct a procedural framework for managing plan assets
- Recommend a fund lineup, including asset allocation portfolios
- Help create (and often execute) an employee communication strategy
- Provide ongoing feedback in the form of periodical reviews

In additional to these traditional tasks, with a DC robo-advice offering, there is the need to:

- Recommend a robo-advice provider
- Approve the investment methodology (algorithms)
- Develop and recommend a default (QDIA) strategy

Recommending a Robo-Advice Provider

Not much is required of a record keeping platform in order for it to offer one fund versus another. A robo-advice platform, on the other hand, must be fully integrated with the record keeping platform. At this early stage of the robo-advice market trend, most of the new start-up robo-advice firms are not integrated with even one record keeping platform. Even the traditional DC advice providers that have been around for years (*e.g.,* Financial Engines, Morningstar) are not integrated with all record keeping firms.

In addition to working through the record keeper integration issue, advisors need to perform due diligence on the robo-advice provider and assess areas such as:

- The long-term viability of the provider in the DC investor space
- The overall quality, effectiveness and look and feel of the user interfaces
- The cost of the robo-advice and the pricing structured (*e.g.*, tiered)

Algorithms That Power the Advice Platform

At the heart of robo-advice platforms are "algos" (algorithms) that create portfolios based on an individual's investment risk tolerance profile and savings goals. In the past, it was the digital advice provider who supplied the algos that determine, based in data inputs, how individuals are invested. This is changing, with robo-advice providers focused on the DC space (Envestnet NextCapital) allowing for individual asset managers to utilize their own proprietary investment methodology to drive the individual investment allocations. It is expected that many of the robo-advice providers that are targeting hybrid robo-advisors will follow suit and offer what is, in essence, an "open architecture" robo-advice platform.

It is the responsibility of the plan advisor to review and recommend an investment methodology. At this point in time, there are not many good ways to benchmark robos. The alternative to benchmarking is to study the depth and breadth of the investment management team overseeing the programming of the robo-advice platform, as well as to consider the suitability of the investment methodology for DC investing.

Qualified Default Investment Alternative (QDIA)

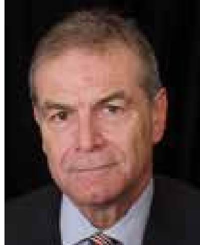
Generally speaking, robo-advice solutions meet the QDIA requirements. However, thought needs to be given to the criteria used to determine default allocations. Most robos have what is basically a glidepath imbedded in the asset allocation overlay. In addition to using age as a default guide, other data can be included (*e.g.*, gender, contribution level, account balance, salary), further customizing the default parameters. There needs to be some consideration as to how to best design the default structure especially considering the fact that many (if not most) DC investors will not engage the robo platform beyond the default stage.

Conclusion

Setting up and managing a robo-DC plan brings with it increased challenges over and above managing a fund lineup. Since many of the robo-advice firms are still in the start-up mode, the integration with record keepers is lacking for most platforms and there is a dearth of benchmarks from which to measure the success of one provider over another.

In spite of these challenges, like the wealth manager who is a hybrid robo-advisor, the DC advisor is in the position to leverage technology as opposed to being replaced by it. Through the utilization of a robo-advice platform, an advisor can essentially magnify its ability to implement fiduciary-level investment advice across the entire employer group, regardless of the size. Is that not the Holy Grail of DC investing?

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



WARREN CORMIER

A New Use for Risk Assessments: Building Trust

A research tool aimed at creating a more accurate assessment of participants' risk tolerance actually increases their trust in their advisor.

For years, the retirement industry has been trying to assess peoples' investment risk tolerance using a variety of methods. However, these methods often have proven to be ineffective at assessing risk, and have instead both heightened investor anxiety and negatively impacted the usefulness of an advisor's planning session. This is due in part to how these questionnaires are developed — they are heavily reliant on techniques based on mathematics, complicated data tables and investment jargon.

In research data, anxiety about retirement planning and savings behavior has emerged consistently as a key barrier to engagement. Specifically, we know from our research with DC participants that one's self confidence and knowledge about financial topics contributes to one's engagement and better decision-making behavior. The other significant factor that impacts engagement is trust — trust in oneself as well as the people and institutions participants are reliant on for investing and managing those investments.

When we combine these two factors (confidence and trust) that drive engagement, they become a powerful index that we call "financial courage." Financial courage is directly linked to improved financial decision-making, including higher savings rates.

A big part of what we do at the National Association of Retirement Plan Participants (NARPP) is creating communications experiences that are based in behavioral finance and human-centered design. This is a unique, interdisciplinary approach that has proven extremely effective in building participant self-confidence and trust in the communicator. Using these same disciplines as a foundation, we set about designing a new way to measure risk tolerance. The goal was to create a questionnaire that would more accurately assess a person's risk comfort zone through a more human-centered approach; that is, an approach that eliminates jargon, complicated math and other barriers to positive cognitive and behavioral change.

> "Anxiety about retirement planning and savings behavior has emerged consistently as a key barrier to engagement."

We were confident that we could build a better model for approximating one's risk tolerance, but we were surprised to discover that a more accurate assessment of a participant's risk tolerance actually increases their trust in their advisor. The result is not only a new behaviorally effective risk assessment tool, but — just as important — a new tool for increasing trust in the advisor or administrator of the tool.

The following is a case study of our field test using this new risk assessment tool.

Case Study: Redesigning Risk Assessment

- Questionnaire design: Warren Cormier, CBO, NARPP
- Project partners: Utah Retirement Systems (URS), Dimensional Fund Advisors
- Format: Online questionnaire (5 min.)
- Goal: Measure accuracy of assessment and impact
- Testing time: One year
- Number of participants: 3,500+
- Summary: By replacing typical risk assessment questions, which require a working understanding of financial jargon, personal investing acumen and math, with behaviorally based questions we've created a more personalized and accurate assessment of investing attitudes, courage and preferences. This has resulted in higher levels of trust with the advisor and deeper engagement with financial decision-making.

The questionnaire asks participants to consider how they would react to nine different hypothetical market scenarios. Imbedded in the scenarios are important behavioral concepts (such as prospect theory, hyperbolic discounting, loss aversion, endowment effect, etc.) that impact financial decisions affecting the participant's retirement income resources, such as a pension, Social Security and defined contribution plans.

The online assessment was conducted prior to a retirement planning session with a URS retirement planning advisor. At the beginning of the in-person planning session, participants were told that the assessment indicates the type of investor they are, relative to their risk comfort level. Based on their risk profile, the advisor would make recommendations for their pension, Social Security, a model portfolio and/or a target date fund that has been mapped to their specific risk tolerance level.

In nearly all of more than 3,500 cases, participants have agreed with the assessment of their risk comfort level. And in those very few cases where participants

did not feel the assessment was correct, all adjusted their self-assessment by one risk category up or down, but never more.

The fact that a very high percentage agree with the assessment is only part of the story. In addition to helping people identify their comfort zone and optimizing their risk/return algorithm, the questionnaire had a significant impact on the interactions between the advisor and the participant, according to the plan's administrator.

Our testing partner explained that participants' level of trust in the advisor increased significantly as a result of the assessment's accuracy. This is due to the participant's feelings that the advisor truly understands the participant, perhaps better than the participant understands him/herself.

Research on the antecedents of trust and engagement indicate that creating a sense of empathy is critical to building trust and confidence in an advisor's competence, motives and the value of their advice. This consequently makes the participant much more receptive to recommendations.

> "Creating a sense of empathy is critical to building trust and confidence in an advisor's competence, motives and the value of their advice."

The perceived accuracy of the assessment also serves to relax the participant, enhancing engagement with the advisor, allowing them to truly focus on the goal of session and not on the credibility or possible motives behind the advice they are getting. Participants "open up" and are willing to have a discussion that is far less guarded, revealing details to the advisor that are helpful in crafting their recommendations. The perceived accuracy also serves to create a sense of customization of the advice to their particular situation. As we know, nothing engages people more than a story that places them and their needs at the center of the plot.

Does the risk-assessment questionnaire accurately identify the participant's comfort zone under any circumstances? Our pilot-testing partner believes it accurately describes the participant's comfort zone in a high percentage of the circumstances they will face as retirement investors. Undoubtedly, the participants agree. But the more important effect was to enhance the quality and usefulness of the planning interaction.

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

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Trends Setting

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

BY NEVIN E. ADAMS, JD

01 Fixed, Up

Survey finds shift to fixed-fee recordkeeper arrangements

A recent survey finds that more than 80% of plans have re-contracted their record keeping fees since 2013 — and that more than half now have a fixed-fee record keeping arrangement.

According to the 11th Annual NEPC Defined Contribution Plan and Fee Survey, the asset-weighted average expense ratio for DC plans is currently 0.42%, versus the 2006 level of 0.57% when NEPC first conducted its study.

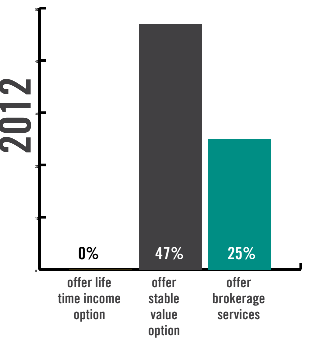
In terms of plan design, the survey shows that the median number of plan investment options for participants is 22, the same as last year. Among those investment options, target date funds are still the cornerstone of defined contribution offerings, with these turnkey solutions available in 94% of plans. Furthermore, 88% of plans use TDFs as their qualified default investment alternatives.

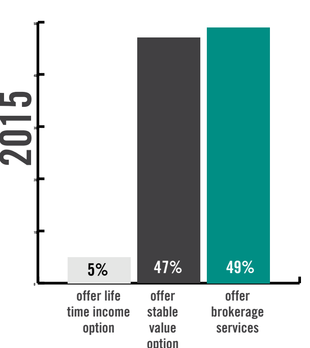
The survey found that about a third (34%) of plans include passive TDFs, and about 43% of plans have the makings of a passive tier to complement active options. The median number of passive core offerings is three; 10% of plans added an index fund in 2015 as a new or replacement offering.

Other survey findings include:

- Lifetime income offerings are now offered by 5% of plans; none offered them in 2012.
- The percentage of plans offering stable value funds remains unchanged at 47%, the same level as 2012. NEPC notes that the prevalence of the option didn't decline significantly following the credit crisis, nor has it increased as a result of low interest rates and money market reform.
- In 2006, just one in four plans offered brokerage services, and this year almost half (49%) of plans have this feature, with 54% offering full brokerage and 46% offering only mutual funds. However, only 1% of employees use this feature.
- Company stock remains a fixture in retirement plans, offered in 28% of plans.
- Approximately 60% of public companies offer these securities.
- The survey also found that asset-weighted average expense ratio for health care DC plans is 0.50% (versus 0.42% in corporate DC plans), down from 0.64% in 2013.

The 11th Annual NEPC Defined Contribution Plan and Fee Survey had 117 respondents from DC plans with $127 billion in aggregate assets, representing 1.4 million plan participants. The average plan size of the respondents was $1.1 billion and each plan had more than 12,000 participants.





02 Future Tense?

Turmoil ahead for advisory firms, survey says

A new report says that an increase in expected advisor retirements, the growing consumer preference for robo-advisor models and the more favorable fee structure of independent advisory shops are setting the stage for a major disruption in the market for financial advisory services.

According to the J.D. Power 2016 U.S. Financial Advisor Satisfaction Study, while financial advisors will still be a critical part of the future of the business, key industry trends — such as the availability of low-cost robo-advice, the rise of so called "validators" who want to make more of their own financial decisions even while supported by an advisor, and the new fiduciary rule — "set the stage for fewer and different kinds of advisors and an increasingly exclusive focus on the high net worth segment where FAs can add the most value."

Retirement Ready?

The report notes that nearly one-third (31%) of advisors are poised to retire in the next 10 years. Between 2014 and 2016, the number of advisors indicating they plan to retire in the next 1-2 years has risen from 2% to 3%.

The number of employee advisors indicating they will likely go independent in the next 1-2 years doubled from 6% in 2014 to 12% in 2016. Another 12% of advisors say they are likely to join or start an independent registered investment advisor (RIA) practice in the next 1-2 years, up from 7%.

The report also says that at the current expected rate of attrition due to retirement and firm switching, a firm with 10,000 financial advisors may have more than half a billion dollars (approximately $585 million) in annual revenue at risk during the next 1-2 years, "highlighting the critical need to retain top producers and to effectively manage succession planning to transition assets to newer advisors."

Retention Trends

The J.D. Power Study measures satisfaction among both employee advisors (those who are employed by an investment services firm) and independent advisors (those who are affiliated with a broker-dealer but operate independently) based on seven key factors (in alphabetical order): client support, compensation, firm leadership, operational support, problem resolution, professional development support, and technology support.

Overall satisfaction averages 722 on a 1,000-point scale among employee advisors, up 21 points from 2015, while the satisfaction level was lower (755) among independents, down 18 points from last year.

Among employee advisors who are highly satisfied (overall satisfaction scores of 900 and above), only 1% say they "definitely will" or "probably will" leave their firm in the next 1-2 years, compared with 46% of dissatisfied employee advisors (scores of 600 and below) who say the same. The same trend holds true for independent advisors (2% and 45%, respectively).

03 Healthy Appetites?

Report finds that wellness boost boosts retirement savings

An analysis of retirement plan contribution rates found that employees that improve their financial wellness score from 4 to 6 could potentially improve their retirement plan balance by more than 27%.

According to Financial Finesse's 2016 ROI Special Report, employees who suffer from overwhelming financial stress or struggle to maintain financial stability tend to incur both immediate and future financial costs for their employers in the form of absenteeism, garnishments, payroll taxes and delayed retirement. However, as employee financial health improves, these costs diminish.

On the other hand, the report says that higher rates of flexible spending and health savings account contributions also occur among participants with higher wellness scores.

The report was drawn from a case study of a Fortune 100 company's workplace financial wellness program from 2009 to 2014. As part of the study, Financial Finesse separated participants into one of five levels of financial health based on their financial wellness score: suffering, struggling, stabilizing, sustaining and secure.

While those in the "suffering" category amounted to just 13% of respondents, according to the report, their financial stresses and difficulties can disproportionately affect overall workplace health and efficiency. For example, they averaged 17 hours of absenteeism a year; 10.7% had wage garnishments; and 49% reported having taken a retirement plan loan or hardship distribution.

They were also the least likely to contribute to their retirement plan (80%), had the lowest average retirement plan deferral rate (5.04% — not enough to capture the full 6% company match), and contribute the least, on average, to flexible spending and health savings accounts. As for their demographic characteristics, those in the "suffering" category were generally:

- younger (66% are under age 45);
- from lower-income households (57% make less than $60,000 per year); and
- with minor children (62%).

The report's authors explain that employers can help facilitate a shift in the overall workforce financial wellness score from 4 to 5 by offering financial education in three areas: personal financial basics, retirement planning and investment planning.

The most common steps taken by employees that improved their financial wellness score from 4 to 5 were:

- Establishing an emergency fund (+50%)
- Calculating the need for and/or purchasing life insurance (+39%)
- Paying off credit card balances in full (+38%)

Other notable improvements include a 56% increase in the percentage that understand the tax implications of investment and retirement accounts, and a 55% increase in the percentage that feel confident in their investment allocation.

04

Loan Arrangers?

Are student loan repayment programs ready to take hold?

Concerns about student debt — and its impact on the finances and retirement savings of workers, particularly younger workers — had spurred interest in student loan repayment programs. But are plan sponsors really interested in adding that benefit – and are workers seeking it?

In response to questions from its members on the topic, the Plan Sponsor Council of America (PSCA) conducted a brief snapshot survey of its members from April 12 to April 28. A total of 149 responses were collected. Respondents represented organizations of diverse sizes and industries. Of those responding, one-fourth have fewer than 50 eligible participants and one-fourth have 5,000 or more.

A strong majority of respondents (70.1%) reported providing a tuition reimbursement program for active employees, but very few (1.4%) reported offering a student loan repayment program to new hires. The latter are programs in which the employer provides some type of contribution to repay student loan debt, or at a minimum facilitates some type of repayment program is a relatively new concept, and one that has been garnering some headlines of late.

Interest in employer-sponsored student loan repayment programs appears to be growing, according to the PSCA snapshot — in particular among larger organizations, where one in five companies with 1,000 to 4,999 employees, and 22.6% of those with 5,000 or more workers, expressed interest. Interest was greatest among technology or telecommunications companies (20%).

That said, most have no plans to introduce such a program: 59.7% overall said they were not considering adding a student loan repayment program, in contrast to the 11.5% who said they were considering the addition. However, nearly 29% said they were not sure.

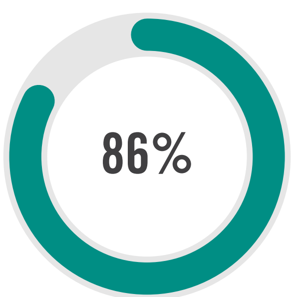
Nearly one-fourth of large companies address student loan debt with employees in some way, with 15.8% of all plans doing so, though industries with a higher portion of employees with a college degree, such as technology and services, report addressing student loan debt more so than other industries such as retail and manufacturing.

Although PSCA lacks prior data to determine the trend in companies reporting questions about student loan debt benefits from new/prospective hires, the implications of the responses from the inaugural survey is that either relatively few new/prospective hires inquire about student loan debt repayment programs in the interviewing process (6.9%) — though PSCA acknowledges that the respondents to the survey may not be adequately involved in the hiring process to comment (36.1% were unsure).

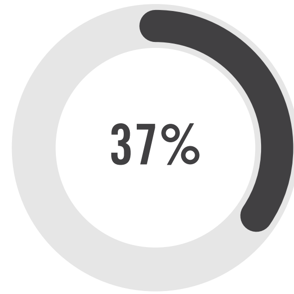
Interestingly, the number of respondents indicating that existing employees are seeking student loan debt relief is noticeably higher than those who had inquiries from new/prospective hires (6.9% of new/prospective hires v. 10.8% of existing employees).

CONVENTION 'NULL'

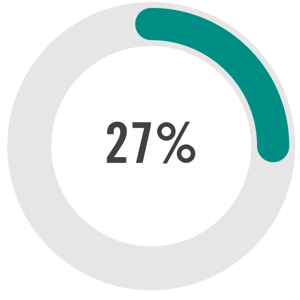
Financial advisors cite the following challenges



Say that meeting strict regulatory and disclosure requirements are some of the biggest challenges to the growth of their business



Will disengage with smaller clients due to new regulations



Planning a dramatic change within three years by selling their book of business, merging with another firm, leaving the financial industry altogether, or retiring

Source: Natixis' 2016 financial advisor research - 300 advisors

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An individual's income replacement ratio will vary from the study's estimated rate based on a number of unique individual factors. Study results are for educational purposes only and are not intended to project an individual's actual ratio. TIAA-CREF Retirement Income Index data as of 12/31/2015, based on 639,567 actively contributing participants from 446 TIAA-CREF record-kept plans. Projections, and other information generated through the Retirement Income Index and the Ibbotson tool regarding the likelihood of various investment outcomes, are hypothetical, do not reflect actual investment results, and are not a guarantee of future results. Results may vary with each use and over time. Past performance does not guarantee future results. TIAA-CREF Individual & Institutional Services, LLC, Teachers Personal Investors Services, Inc., and Nuveen Securities, LLC, members FINRA and SIPC, distribute securities products. For institutional investor use only. ©2016 Teachers Insurance and Annuity Association of America–College Retirement Equities Fund (TIAA-CREF), 730 Third Avenue, New York, NY 10017. C29666

Selling the Second Most Important Benefit

BY LISA GREENWALD

Here's how to help plan sponsors increase the perceived value of their plans.

Here's a surprise: Employees view health insurance as far and away their most important employee benefit when deciding whether to stay at their current job or make a change. More than half of employees surveyed in the most recent Health & Workplace Benefits Survey, conducted by the Employee Benefits Research Institute and Greenwald & Associates, name health insurance as their top benefit consideration. Retirement plans rank a distant second, with just one in seven calling it most important.

This year the predominance of the health insurance benefit creates a significant problem for employers hoping that their benefit plans will help them attract and retain employees: The news about health insurance is likely to be bad, even very bad. Costs are going up and workers are being asked to contribute more. Furthermore, in many cases, deductibles are also going up and the richness of the plan is going down. Many workers are upset and many employers do not feel they can do anything about it.

I believe it is important for advisors to help their clients address this challenge by showing them ways to maximize the perceived value of the other employee benefits the employers offer, especially the retirement plan. In this climate, it is desirable to find ways of increasing perceived value without increasing costs, and for many companies this double win is achievable. I have a few suggestions for how many advisors can help plan sponsors increase the perceived value of retirement plans without spending more money.

As stated, retirement plans are the second most valued benefit. This is true across generations and even among Gen Yers (a.k.a. Millennials, ages 21 to 35). Gen Y employees — those young invincibles — actually place slightly less importance on health coverage compared to Gen Xers, but all rank retirement plans second, despite the fact that majorities, including three out of four Gen Yers, say saving for retirement is important to them. The importance of the retirement plan makes it the best place to start when it comes to creating a sense of greater value.

Research conducted with plan sponsors and plan advisors reveals that annual or even more frequent retirement plan review meetings are highly valued when they occur. Indeed, Greenwald & Associates research has found that effective meetings are a key driver of satisfaction with a retirement plan. But the opportunity for these meetings to create value has not been optimized by many employers. Although these meeting cost little or nothing beyond the minor amount of time away from work for participating employees, they are not held often enough. The focus of these meetings is frequently too narrow. Taking into account employee viewpoints, it seems that these meetings need to cover more than just investment performance.

Only 4 in 10 employees feel very comfortable with the idea that their employer picks their retirement plan provider. It would be useful for employers to let their workers know more about the due diligence they use in selecting the plan provider and the investment options in the plan. I have to assume that very few employees know whether or not their employer is working with a plan advisor to help them select a provider, which may make them feel more comfortable. Similarly, 77% of employees believe having a choice of investments is highly important, but how many do you suppose know the process a plan advisor and plan sponsor undergo to select funds and monitor performance? Plan advisors should work with sponsors to effectively communicate key elements of the process to employees to make them feel better and more confident about how their retirement savings are being handled. Plan advisors are not always as visible or accessible to employees as they should be, and often times, that seems to be because the plan sponsor limits interaction.

Our research finds that many plan sponsors want their plan advisors to take on a greater role with employee education, and that larger plans in particular want their advisor to help with other employee benefits in addition to retirement. Advisors can indeed play an important role in helping their clients drive more employee good will through the retirement plan.

Financial wellness is a hot topic in 2016 and it seems this will continue. Advisors should help their clients put in place an effective financial wellness program. It would be useful for plan advisors to discern what aspects of financial wellness are working especially well and to communicate that information to their clients. This is also a good time to review life insurance and disability programs and seek ways to decrease costs and/or find more compelling product designs.

Health insurance is likely to be a hard story for many employers. It will be useful for employers to offset this with good stories, such as affirmative steps to increase the financial wellness of their workforce. A financially secure work force is less stressed and more productive. A workforce that feels the employer is looking out for them is more likely to feel loyal to the employer. This is a time when the most important employee benefit is under pressure. It is time for the advisor to use other benefits to relieve this pressure.

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

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FEATURE

Unanticipated Consequences

Polls, pundits and politicians alike didn't see this coming.

BY NEVIN E. ADAMS, JD

In an upset the likes of which the nation hasn't experienced since 1948 (when Dewey *didn't* defeat Truman), not only did businessman, entrepreneur, reality talk show star and serial tweeter Donald J. Trump manage to capture the White House, but despite losing seats in both houses of Congress, the GOP maintained its majority hold on the House of Representatives and managed to hold onto a slim majority in the Senate, and thus keep control of Congress.

Along with that most unanticipated series of outcomes, the calculus of change on legislative and regulatory fronts for the retirement industry was also turned upside down. Overnight the odds of legislation coming out of the so-called "lame duck" session evaporated, while the prospects for change, and perhaps even outright appeal of the fiduciary regulation, went from something on the order of a meteor striking Washington, DC to — well, a real possibility.

The Fiduciary Regulation

Predicting the future is a treacherous business — particularly in print journalism, where the time gap between the composition of these words and your reading them is weeks. That said, as we head to press, President-elect Trump has yet to specifically weigh in on the fiduciary regulation, though he has consistently spoken of his intention to reduce the reach of government regulations, and it seems reasonable to think that he'd see the fiduciary regulation in that light. Indeed, campaign advisors such as Anthony Scaramucci, managing partner of Skybridge Capital, have been openly critical of the regulation, and claimed that it would be repealed.

Nor would it be all that hard for the Trump administration to do so, with an interim step of issuing an executive order indicating no enforcement of the rule while going through the administrative procedure process of actually repealing it.

That said, bear in mind that, while the DOL fiduciary rule is on a list of recent regulations to review, it is currently not on the list of regulations designated for immediate action by the Trump administration. The current thinking, at least now, is that unless President-elect Trump addresses the issue himself, which is not seen as likely given the other matters demanding attention, the Trump administration will want to wait for the Secretary of Labor nominee to make a determination.

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

Which brings us to Andy Puzder, who President-elect Trump has tapped as his nominee for Secretary of Labor. Puzder, chief executive of CKE Restaurants Holdings Inc., the parent company of the Carl's Jr. and Hardee's burger chains, has been a vocal critic of government regulation, notably the Affordable Care Act and the recent Labor Department overtime rules. He has not (yet) expressed an opinion on the fiduciary regulation, and while it seems reasonable to expect that he wouldn't favor such an extension, as a matter of political expediency he might keep his powder dry on that issue, rather than interject another controversial position into what is likely to be a contentious confirmation process. But then, that's what "common wisdom" would dictate.

Tax Reform

Another big issue – especially with the GOP maintaining majorities in both houses of Congress — could be tax reform.

"Our No. 1 priority is tax reform. This will be the largest tax change since Reagan," said Steven Mnuchin, the former banker who served as Trump's campaign finance chairman, in an interview on CNBC within a week of his being named as Trump's nominee for Secretary of the Treasury.

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

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

While those paying attention to such things realize that most of those tax preferences are temporary — that is, taxes will be paid on those pre-tax contributions and the earnings thereon when they are withdrawn at some point in the future — the government beancounters look at revenues and expenditures only within the prism of a 10-year budgetary window, and since the gap between the deferral of taxes on those contributions and the withdrawal of those funds upon retirement is generally more than that decade, the amount of taxes postponed looks, from a budgetary standpoint, to be taxes permanently foregone. And, on that basis, even though those so-called retirement "preferences" are completely different from other tax deductions (such as the mortgage deduction), from a budgetary scoring standpoint, it's not only a big, juicy target — it's one of the largest on the table of considerations.

Not that we have to look back 30 years to see how tax reform might manifest itself. We saw what that might mean as recently as 2014 when then-Chairman of the House Ways and Means Committee Rep. Dave Camp (R-Mich.) put forth a proposal that would pay for tax reform (or at least some of it) by freezing the COLA limits that apply to defined contribution plans for a decade and limiting the annual ceilings on elective deferrals so that only half could be made on pre-tax basis (weirdly, this would have applied only to employers with more than 100 workers). The first part of the proposal

was deemed to raise $63.4 billion in revenue over 10 years, the latter an additional $144 billion, by basically forcing workers who would otherwise have taken advantage of pre-tax savings to pay taxes on those contributions upfront. And let's not forget that those burdens would have fallen particularly harshly on those who decide to offer these plans in the first place and to match employee contributions.

House Ways and Means Chairman Kevin Brady (R-Texas) is already championing moving aggressively on tax reform within the first 100 days of the Trump administration. Noting that Trump's tax proposal in many ways mirrors the "Better Way" tax reform blueprint released earlier this year by House Republicans, Brady has said that House Republicans are "ready with the agenda we've laid out, especially fixing this broken tax code, replacing Obamacare with real patient health care, and lifting taxes off businesses so they can grow again." And he has also previously invoked the spirit of the Tax Reform Act of 1986 as a model.

While the current blueprint pledges to "continue the current tax incentives for savings," it directs the House Ways and Means Committee to "consolidate and reform the multiple different retirement savings provisions in the current tax code to provide effective and efficient incentives for savings and investment." So while the current retirement savings vehicles — like the 401(k) — will not be removed from the tax code under the House Republican plan, those vehicles

FIDUCIARY ROLE: What's next for the fiduciary rule?

Of all the paths to amending, delaying, or even killing the Labor Department's fiduciary rule, it seems fair to say that the election of a Republican president and GOP-majority Congress seemed among the least likely. A week after the polls closed we asked NAPA Net readers what they think will happen.

First off, let's be honest. Anybody who tells you they know what will happen – certainly within a week of the election – is – well, let's just say they're more likely to be speaking from theory (or hope… or fear) than fact.

That said, a slim plurality (32%) of the responses said they were expecting the Trump administration to delay and amend the regulation, while nearly as many (29%) thought they would delay it – permanently.

"Nothing right away – they have bigger fish to fry," was the opinion of 17%, with about 15% splitting between "replace it with one of their own" and "nothing." The rest split between "kill it" and "delay it for awhile."

Wanted – Dead or Alive?

Interestingly enough, there was almost as much diversity in terms of what readers said they *wanted* the Trump administration to do. Again, a slim plurality (31%) went with "delay and amend," but just 25% opted for "delay it – permanently." Replace it with one of their own was the opinion of nearly one-in-five, while one-in-eight thought the Trump administration would do "nothing." The rest were pretty evenly split between "nothing right away," "kill it," and "delay it for awhile."

And then there is the matter of what reader firms will do while all this shakes out. Here the responses were much more consistent; nearly three-quarters (73%) said that their firm would "stay the course preparing for the fiduciary regulation until we know otherwise." As one reader explained, "ultimately, even if the election results in a delay or elimination of the fiduciary rule, many firms in the industry already have sufficient sunken costs that they will continue down the path they are on. New rule or not, the industry is already changed by it."

The second-most cited response – and it was distant second – were the 15% who expected their firms to "stay the course – but slow the pace of implementation until we know otherwise." Another 5% went with "stop and wait until we know the direction," with the rest split between "no earthly idea" and "work with our legislators to get rid of the rule."

Reader Comments

Yes, there were reader comments. Here's a sampling:

I wouldn't mind seeing a slowdown in regulatory burden on business. Doing so might even help economic growth, who knows?

The rule needs to be simplified. It's far too complex.

Initially I had hoped there may be room to push the pause button, delay it, and amend it to be easier to implement. But after a few days have passed and many opinions have been shared, I'm coming to the realization that the rule is effective and ready to go forward. It would be very hard to stop it. And any delay would probably just delay implementation, not amend anything.

Eliminate the damn thing altogether!

One of the more important ways a business operates effectively is to understand the rules. In some form fiduciary reform started in GWB's administration. We now have rules and effective

could be combined into one "cookie cutter" approach. That might, or might not, mean significant changes for the 401(k), but 403(b)s, and potentially even 457(b) programs, could be subjected to changes that would render them more like their 401(k) brethren.

Additionally, the blueprint also directs the Ways and Means Committee to "explore the creation of more general savings vehicles" like so-called Universal Savings Accounts outside the employer based savings system in which account holders could withdraw both contributions and earnings at any time, and for any reason, without tax penalties. Legislation has been introduced in Congress that would create this new savings vehicle, which would seriously diminish the relevance of individual retirement accounts (IRAs) and possibly even workplace based savings arrangements.

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

Just after his election in 2008, President Barack Obama famously said, "Elections have consequences."

They do indeed.

dates. Though not perfect they do correct some practices which needed adjustment and give us some clarity. We'll figure it out and everything will be fine.

It's nothing more than liberals trying to Obamacare the financial services industry.

Congress will repeal this rule. The DOL/EBSA overstepped its authority here.

The AARP has been the biggest proponent of the Fiduciary Rule and they are a pretty big lobbying group – lots of retired people with plenty of time to write letters. Also, should our industry give the message that we are against doing what is in the best interest of clients?

There were a lot of costly requirements of this new rule and many firms gearing up to supply assistance (and thus standing to make a lot of money). It will be curious to observe how many new DOL Rule backers suddenly become very vocal proponents for it to continue forward as is.

Sometimes our blessings come wrapped differently than we expected; we were looking for stripes, but got polka dots instead! We need a fiduciary standard, but one that makes sense, and that can be complied with. This surprise blessing may be the pathway to a more workable solution for all; principles, not heavy-handed regulation... let us pray!

The election demonstrates that the public is not interested in supporting a government that produces a pound of regulations to produce an ounce of protection.

Got a question you'd like to run by your peers? Curious as to the industry's "take" on something new or controversial? Email me at nevin.adams@usaretirement.org.

— *Nevin E. Adams, JD*

IMPACT 'ED': What's had the biggest industry impact in 2016?

With only a couple of weeks left in 2016, in mid-December, we asked NAPA Net readers to pick the trend/event that has had the biggest impact on our industry.

Perhaps not surprisingly, the fiduciary rule topped the list – and by quite a margin – as the event that had the biggest impact in 2016.

Second-most cited was last year's most disruptive industry event – a regulatory obsession with fees.

"Excessive fee litigation" was third-most cited (we'll leave it to you to decide if it "excessive fee" litigation or "excessive" fee litigation, while fourth-most cited was the man who (and whose firm) brought the topic of excessive fee litigation to the forefront of fiduciary concerns, Jerome Schlichter.

Coming in at number five was Employee Benefits Security Administration (EBSA) head Phyllis Borzi, who was obviously the force behind the fiduciary rule that topped this year's list.

And while arguably the top five contain both positive and negative aspects, the sixth item on this year's list was in a whole other category – a focus on financial wellness.

As for some of the things that weren't deemed to have as much impact this year (though they have in years past), they included:

- fee disclosure;
- industry consolidation;
- MyRAs;
- 403(b) university lawsuits; and
- The Trump election – but, as Cubs fans once said, "just wait till next year!"

— *Nevin E. Adams, JD*

COVER STORY

Clearing the Hurdles

Top women advisors talk about how to deal with retirement readiness challenges.

BY JUDY WARD

etirement readiness is much easier said than done. Advisors trying to help plan sponsors and their participants toward a future of employees retiring on time, with enough saved, face some obstacles. Six top women advisors talked about how they deal with the challenges of making retirement readiness a reality.

Terry Anderson still meets sponsors, mostly small-business owners, who do not feel like they need to focus on retirement readiness. "Some employers think that since their 401(k) plan is participant directed, they can just make it available to employees, and it is not really their responsibility beyond that," says Anderson, executive vice president at Plan Sponsor Consultants in Brookeville, Maryland. "So we are providing them with benchmarking showing them where their employees are on retirement readiness, versus other companies similar to them."

To help a sponsor shift mindsets toward retirement readiness, Stephanie Gallegos suggests that an advisor focus on a small group of key data. "It is changing the conversation, from just looking at relatively static metrics of participation rates and investment allocations, to looking at things like participants' average account balances and how much in monthly retirement income they are on track to get," says the Boston-based Gallegos, most recently director of account management and service at Axial Benefits Group. "For plan sponsors, you cannot overcomplicate it. When I see these in-depth reports done on retirement readiness, sometimes that just overwhelms the sponsor."

Once the retirement readiness light bulb goes on for a plan sponsor, it becomes all about helping that sponsor set goals accordingly, Gallegos says. "To set the goals, it is just some level setting of asking a sponsor, 'Why do you offer a retirement plan in the first place?' And then, 'Let's refocus, based on that,'" she says. "So you dedicate one meeting a year to goal-setting, and then you can spend the rest of the year tying all the issues you discuss back to those goals."

Ramping Up Plain-Vanilla Auto Features

Many sponsors doing auto enrollment likely have not thought through whether they need to go beyond the Pension Protection Act auto-enroll framework to help employees save enough to retire.

Plans need a higher initial deferral rate than 3% for participants to save enough, but some employers worry about participant backlash if they raise the initial deferral, Gallegos says. She suggests showing these sponsors industry data on participant acceptance. "Most studies show that the employee opt-out rate does not get higher until you get up to a 6% or higher initial deferral," she says.

And Kristen Deevy has worked with clients that do auto enrollment at 3%, but not auto escalation. "We explain that if they just put employees in the plan at 3% and leave them there, participants are not going to get to retirement," says Deevy, managing director at Strategic Retirement Partners in Littleton, Colorado.

"Employers with a lot of lower-paid employees often say, 'I know that my employees should be saving 10% to 12% a year, but they cannot afford it.' So we will encourage the employer to implement a 'happy median' of auto escalating up to 5% or 6%." After that succeeds, she can revisit the issue with the sponsor.

Sponsors also can help put more employees on track for a secure retirement by doing a re-enrollment, but most plans have not taken that step. "It is like some employers used to feel about automatic enrollment: They say, 'Can I do that?'" Gallegos says. She recommends that an advisor talk about how a sponsor actually better fulfills its fiduciary duties by doing an investment re-enrollment. "Show them that now they will have better documentation of fulfilling their fiduciary obligation, and that they will know that after a re-enrollment, participants are now in appropriate elections," she says.

Bank of America Merrill Lynch encourages employers to go a step beyond investment re-enrollment and both enroll their eligible, non-participating employees as well as re-enroll participants deferring less than their plan's initial deferral rate, says Pat Wenzel, Houston-based retirement benefits consultant. Asked how to help employers see the wisdom of that, she says: "First, you need to do an analysis of the cost of re-enrollment to the employer. The number-one reason companies decide not to do re-enrollment is the cost," she says. "But you also need to look at, what will be the cost to the employer if these employees will not have enough money saved to retire on time? You have to look at it from both sides, and you have to balance the two."

Investing in Financial Wellness

Employees not deferring enough often feel that they cannot afford it, Deevy says. But some employers question the value of spending company money on a financial wellness program. "That is where we can show them studies around how financial stress impacts an employee's productivity," she says. She also talks about the long-term cost of delayed retirement to employers. "When we talk to a CFO, we say, 'If you are not going to talk about financial wellness, and employees are not going to save as much as they could, are your employees going to have to delay retirement, maybe until 70 or 75?'" she says. "Most CFOs understand that having an employee population with an average age of 50-60, versus 30-40, can have a pretty significant bottom-line impact." She has utilized MassMutual Financial Group's "Reveal Viability Program" tool to project a specific employer's cost of delayed retirement.

Wenzel also finds it helpful to talk to employers about the cost of not doing a financial-wellness program. "The big question is, what happens if and when you have a bunch of retirement-age employees who cannot retire?" she says. "In our research, we see that for every employee over 65 who remains, it costs the employer an average of $11,000 more per year, in terms of higher wages and health care costs, and lower productivity."

More so than the financial cost, Michelle Coble says her employer clients wrestle with setting aside working hours to help employees tackle their financial stressors. "We probably struggle more with the time issue than the expense issue," says Coble, president of Odyssey Financial Group, LLC in Oklahoma City. "In employers' minds, time is money. So a lot of times, it is an issue of taking time outside of the 9-to-5 schedule." For example, at one heating-and-cooling company client, she has done meetings at 6:00 or 7:00 in the morning, before staff members go out on service calls.

To help participants who do not think they can save for retirement, advisors need to go back to basics. "It is Financial Literacy

101," Deevy says. "A lot of employees are frustrated that they cannot contribute to their retirement account because they have so much debt. So we spend a lot of time talking in employee meetings about things like debt consolidation and how to put a budget together."

Many Americans never have learned about fundamentals like how to do a monthly budget and manage their cash flow, says Valerie Leonard, principal at Grinkmeyer Leonard Financial in Birmingham, Alabama. "Especially for people living paycheck to paycheck," she says, "it is important that they first learn to live within their means." Then they can learn to save.

Beyond the basics of paying living expenses, of course, different companies' employees can have different financial priorities. To create a financial wellness program that speaks to the needs of a client's employees, Plan Sponsor Consultants likes to do an employee survey during the planning phase. The survey takes only 2½ to 3 minutes to complete, Anderson says. It lists 12 financial priorities, such as paying off debt and saving for a home, and asks employees to list their three biggest priorities.

"That springboards into talking in employee meetings about specific topics based on what those employees picked as their priorities," Anderson says. "Then, at the end of a year of a financial wellness program, we do an employee assessment of where they are now with those financial priorities."

Pre-retirees often do not know where to start in getting ready for retirement, Coble says, and advisors can play a crucial role by doing targeted education for age 55+ participants. "A lot of times, we do a 'progressive' education series for them," she says. "It takes them through a stepping-stone path of the preparation they need to do. We put their biggest fears into questions and answers that we discuss, so that then they are able to plan."

Many pre-retirees have more questions about Social Security than anything else, Coble says. She has utilized tools such as Nationwide's "Social Security 360 Analyzer" to prepare an individualized report for participants on their timing options. "Then we can sit down with a participant and discuss scenarios for when he or she starts taking Social Security: 'How much in monthly benefits will you get if you take Social Security early, at age 62? What if you need to take it at 65 or 67? And what if you wait until you turn 70?'" Similarly, she says, pre-retirees also need help understanding their upcoming transition from private insurance to Medicare, and what they will have to pay.

Some employers initially may see no need to set aside time for pre-retiree education, but Coble has found an effective way to make her point. "Sadly, sometimes there are business owners who say, 'Hey, what they do in retirement is their business,'" she says. "So if we are in a meeting with an HR director and the company's owner, often we will ask the HR director, 'Tell me, how many employees come to you and ask you for advice about things like Social Security and Medicare?' Usually, the HR director says 'A lot.' And then the owner will say, 'Really? I had no idea.'"

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

IN A LEAGUE OF THEIR OWN
NAPA'S TOP WOMEN ADVISORS
RISING STAR
2016

NAME	FIRM	BROKER-DEALER/RIA
ERICA BLOMGREN	CAPTRUST	CAPTRUST
KRISTEN CARDEY	SageView Advisory Group	Cetera
ROBIN COGGINS	The Point Financial Group	LPL Financial
GAYLE DILLA	UBS	UBS
JILL GREINER	Wells Fargo Advisors	Wells Fargo Advisors
VANESSA LARAREO	SageView Advisory Group	Cetera
LAUREN LOEHNING	Baystate Fiduciary Advisors	RIA
JESSICA MARGETSON	UBS	UBS
RUTH RIVERA	Bukaty Financial Services Companies	Resource Investment Advisors
ABIGAIL RUSSELL	CAPTRUST	CAPTRUST

IN A LEAGUE OF THEIR OWN
NAPA'S TOP WOMEN ADVISORS
CAPTAIN
2016

NAME	FIRM	BROKER-DEALER/RIA
JESSICA BALLIN	401k Plan Professionals	LPL
PAM BASSE	NFP	Kestra
LAURA BATTLE	Pensionmark Financial Group	Pensionmark Financial Group
KATHLEEN BRANCONIER	Penniall Retirement Advisors	Penniall & Associates
LINDA BRIGHT	Precept Advisory Group	RIA - Precept Advisory Group
MARY CABALLERO	Impact Benefits & Retirement	LPL
JEANINE CALANDRI	Praxis Consulting	Kestra Investment Services, LLC
DOROTHY CAMPBELL	ProVise Management Group	ProVise Management Group
KELLY CARLSON	Advizrs, Inc.	Cambridge Investment Research
LAURA WARNOCK CARRERA	Carrera Retirement Company	LPL/Financial Advocates
KELLY CAVES	Morgan Stanley	Morgan Stanley
SHAWNA CHRISTIANSEN	Retirement Benefits Group	LPL/IFP
JANEL CROSS	Align Financial Services Group	Commonwealth Financial Network
BARBARA DELANEY	StoneStreet Advisor Group	LPL Financial / Global Retirement Partners
KELLY FAMIGLIETTA	Charles Stephen & Company	Kestra Advisor Services
FRANCESCA FEDERICO	Twelve Points Retirement Advisors	Twelve Points Wealth
JANET GANONG	The Kieckhefer Group	LPL Financial
ADDIE GEORGE	Plan Sponsor Consultants	LPL Financial
LISA GIBSON	Morgan Stanley	Morgan Stanley
ERIN HALL	Wells Fargo Advisors	Wells Fargo Advisors
AMY HANOPHY	CoBiz Retirement Advisory Services	Kestra
JAMIE HAYES	FiduciaryFirst	FiduciaryFirst
PAULA HENDRICKSON	First Western Trust	First Western Trust
CYNTHIA HODGES	Achieve Retirement	LPL Financial / Global Retirement Partners
STACEY HYDE	Independent Wealth Management, LLC	Commonwealth Financial Network

IN A LEAGUE OF THEIR OWN
NAPA'S TOP WOMEN ADVISORS
CAPTAIN
2016

NAME	FIRM	BROKER-DEALER/RIA
JENNIFER INGHAM	Ingham Retirement Group	Ingham Russell Investment Advisors, Inc.
EVA KALIVAS	EPIC Retirement ServicesConsulting	Global Retirement Partners
KRISTINA KECK	Woodruff Sawyer & Co. a Global Retirement Partners Member	LPL Financial / Global Retirement Partners
TERI KELLEY	Morgan Stanley	Morgan Stanley
KATHLEEN KELLY	Compass Financial Partners	LPL Financial
ELLEN LANDER	Renaissance Benefit Advisors Group, LLC	LPL Financial / Global Retirement Partners
BERNADETTE LANSER	UBS Financial Services	UBS
MICHELE LANTZ	Pensionmark Financial Group, LLC	CapFinancial Securities, LLC
CINDY LAUB	Merrill Lynch	Merrill Lynch
SHANNON MAIN	Penniall Retirement Advisors	Penniall & Associates
SHANNON MALONEY	Strategic Retirement Partners	Kestra
DEBBIE MATUSTIK	Pensionmark Financial Group	Pensionmark Financial Group
DAWN MCPHERSON	Mariner Retirement Advisors	Mariner Retirement Advisors
JANINE MOORE	Peak Financial Group, LLC	LPL Financial
SAMANTHA PARKER HOPKINS	UBS Financial Services	UBS
HEIDI SIDLEY	StoneStreet Equity, LLC	IFP/LPL
KACI SKIDGEL	Summit	Cetera Advisor Networks
KERI SPANIER	SLW Retirement Plan Advisors	LPL Financial
LORI STEVENSON	Compass Financial Partners	LPL Financial
SUSAN STILES	Stiles Financial Services, Inc.	Cambridge Investment Research / Stiles Financial Services, Inc.
MARCY SUPOVITZ	Boulay Donnelly & Supovitz Consulting Group, Inc.	Commonwealth
PAM VANONE	Chapman and Chapman	Kestra Financial
MEGAN WARZINSKI	HB Retirement	LPL Financial
PATRICIA WENZEL	Merrill Lynch	Bank of America Merrill Lynch
TINA WISIALOWSKI	Graystone Consulting, Morgan Stanley	Morgan Stanley

IN A LEAGUE OF THEIR OWN
NAPA'S TOP WOMEN ADVISORS ALL-STAR 2016

NAME	FIRM	BROKER-DEALER/RIA
THERESE ANDERSON	Plan Sponsor Consultants	LPL Financial
BERYL BALL	CAPTRUST	CAPTRUST
PATRICIA BILLS	CAPTRUST	CAPTRUST
NATASHA BONELLI	Merrill Lynch	Merrill Lynch
JULIE BRAUN	Morgan Stanley	Morgan Stanley
PAMELA BROOKS	Oswald Financial, Inc.	LPL/GRP
KERRIE CASEY	SageView Advisory Group	Cetera
MICHELE CASEY	Morgan Stanley	Morgan Stanley
AMANDA CHAN	Kainos Partners, Inc., a Pensionmark retirement firm	Pensionmark Financial Group, LLC
SUSAN CLAUSEN	CAPTRUST	CAPTRUST
SANDRA CUNNINGHAM	UBS Financial Services, Inc	UBS Financial Services, Inc.
HEATHER DARCY	CAPTRUST	CAPTRUST
KRISTEN DEEVY	Strategic Retirement Partners	Kestra
JILL DONNELLY	Boulay Donnelly & Supovitz Consulting Group, Inc.	Commonwealth Financial Network
DEVYN DUEX	CAPTRUST	CAPTRUST
JEAN DUFFY	CAPTRUST	CAPTRUST
JESSICA FITZGERALD	Morgan Stanley	Morgan Stanley
RENEE FOURCADE	UBS Financial Services	UBS Financial Services
LISA GARCIA	FiduciaryFirst	LPL Financial
EMILY HING	NFP	Kestra/NFP Retirement
SHELLY HOWARD-HORWITZ	Vigilant Financial Partners	Kestra
JENNY YUN HUNTER	Merrill Lynch	Merrill Lynch
LENORA JENKINS	SLW Retirement Plan Advisors	Resources Investment Advisors
HEATHER JOHNSON	SageView Advisory Group	Cetera Advisors Network
KRYSTLE KAUFMAN	Resources Investment Advisors	Resources Investment Advisors/LPL

IN A LEAGUE OF THEIR OWN
NAPA'S TOP WOMEN ADVISORS ALL-STAR 2016

NAME	FIRM	BROKER-DEALER/RIA
AMBER KENDRICK	C.I.G. Retirement Plan Consulting	Commonwealth Financial Network
ESZTER KOCH	SRP Strategic Retirement Partners	Kestra Financial
NICHOLE LABOTT	SageView Advisory Group	Cetera
ALICIA MALCOLM	UBS Financial Services	UBS Financial Services
LILY ANN MATIAS	NFP	Kestra/NFP Retirement
REBECCA MCCORMICK	Graystone Consulting	Morgan Stanley
NEELAB NAIBKHYL	NEXT Retirement Solutions of Raymond James	Raymond James Financial Services
KARIE O'CONNOR	HPL&S, a subsidiary of First American Bank	LPL Financial
MARY PATCH	The Williams Group	Kestra
KIMBERLY PRUITT	NFP	Kestra/NFP Retirement
ANGIE ROSSON	Mariner Retirement Advisors	Mariner Retirement
JENNIFER SAN FILLIPPO	La Bri Group Retirement Services	First Allied
SHELLY SCHAEFER	SageView Advisory Group	Cetera Advisor Networks/SageView Advisory Group
MANDIE SCOTT	intellicents investment solutions	ABG Investment Services
REBECCA SEARLES	SageView Advisory Group	Cetera Advisor Networks
PEGGY SLAUGHTER	Saling Simms Associates	Raymond James
ELISSA FORD SLAVIN	Merrill Lynch	Merrill Lynch
HOLLY SMITH	SLW Retirement Plan Advisors	Resources Investment Advisors
MOLLY SPOWAL	J.W. Terrill Retirement Services	LPL Financial
LENEEN STRICKFADEN	Bukaty Companies Financial Services	LPL Financial
JACINTA THOMPSON	VisionPoint Advisory Group	LPL Financial
MARY TOMANEK	Graystone Consulting	Morgan Stanley
TRICIA UTTECH	Graystone Consulting	Morgan Stanley Smith Barney
JENNA WITHERBEE	401(k) Plan Professionals	LPL Financial
RACHEL ZACHARY	SageView Advisory Group	Cetera/SageView

FEATURE

With Change Comes Opportunity

Four women industry leaders talk about how plan advisors can position themselves.

BY JUDY WARD

As plan advisors face fundamental changes in their business, four women senior executives in the retirement industry talked about the business opportunities for advisors.

Thriving in the New Fiduciary Era

Plan sponsors likely will feel confused about the ramifications of the Department of Labor's fiduciary rule, says Amy Glynn, managing partner of GRP Advisor Alliance in Boston. "I am dismayed at the lack of conformity in the rules: It would be a lot easier if the rules were black and white," she says. "My personal opinion is that the only way to distinguish yourself as a plan advisor now is to dump the commission-based model altogether. Otherwise, you are still in the 'mud bath.'"

Serving as a fiduciary has been a big part of some advisors' business models for years. How can a veteran fiduciary advisor distinguish herself or himself, when every plan advisor now will be a 3(21) fiduciary? "For the advisor who already has been a fiduciary for the past number of years, that is still an advantage," says Lisa Kottler, Austin, TX-based senior vice president, retirement at NFP Corp. "That advisor can say to a sponsor, 'Look, I have been doing this for many years, before it was required. So I have great experience as a fiduciary, and the processes and procedures.' Whereas, many advisors who are only now being thrown into the fiduciary mix are going to struggle for some time."

"Discretion is probably going to become the new standard. At the end of the day, that is probably a good thing."

— Melissa Cowan, executive director, Morgan Stanley

Melissa Cowan, New York-based executive director at Morgan Stanley, anticipates opportunities emerging for plan advisors willing to go beyond serving as a 3(21) fiduciary. "What we will see is more advisors offering discretionary services, acting as a 3(38) fiduciary," she says. "Two years ago, few advisory firms were doing it. Now we see more firms offering it."

"Discretion is probably going to become the new standard," Cowan continues. "At the end of the day, that is probably a good thing. ERISA says that if you as a sponsor do not have the investment expertise, you should hire someone who does." Some firms are rolling out 3(38) service offerings aimed specifically at the small-business market, she says. "We will see more small businesses putting in plans going forward," she predicts, "because these new solutions can mitigate their risk and make it easier for them to offer a plan."

"There is a big bloodbath going on out there. And it is over this question: Who owns the participant relationship?"

— Amy Glynn, managing partner, GRP Advisor Alliance

Converging Health Care and Retirement Expertise

Today's employers face complex decisions about their retirement and health care benefits, and about balancing their spending on the two. So Cowan sees a growing opportunity for plan advisors. "I am not sure whether we will see advisors for 401(k) plans also sell health insurance," she says. "It is more about working with employers on, 'How do you want to spend your benefits budget? How can I as an advisor help you to use those dollars more efficiently?'"

NFP has had experts on both the retirement and health care sides of benefits for a dozen years, Kottler says. She sees the two as distinct areas of expertise, each with complex laws and regs that one advisor cannot master. "But the thing is to partner with another firm that consults on health care, or merge your firm with a health care-focused firm," she says.

Plan advisory firms have got to get proficient about issues impacting employer health-care coverage, as that coverage becomes an ever-bigger employer focus, Glynn believes. "A lot of independent advisory firms have affiliated health and welfare shops. It provides a way for a health and welfare practice and a retirement practice to advance in a coordinated way that they may not have before," she says. "In many cases, the same decision makers at clients are making decisions about health care, retirement, and wellness programs. If we can talk to them about all three in a holistic way, we add a lot of value."

Offering Quality Financial Wellness Profitably

To avoid fee compression, Glynn says, plan advisors need to expand their business model. "Everybody keeps saying, 'Fee compression, fee compression.' We are not seeing our advisors' fees reduced," she says. "These advisors are building financial wellness into their model. They are becoming more-holistic plan advisors, and not just a 'stock jock' focused on investments." More often than not, she says, there are larger budgets associated with health care plans that advisors have been able to capture to support financial wellness plans.

How the industry reaches out to participants needs a big change, Kottler says. "The black eye on our industry is that we have not sufficiently prepared the majority of Americans for retirement," she says. "We always had good intentions, but our education was a complete misfire, because we did not speak to people in plain English. Now, it needs to be about financial literacy, even more than financial wellness: Most people do not understand how to manage their finances in a way that is going to help them move forward."

It will not be enough for advisors to help participants with their retirement account, Cowan says. "They are going to have to help participants through a lot of different decisions in life," she says. To do that in an efficient and impactful way, she anticipates more-sophisticated use of data analytics.

"Based on a data analysis of a participant's demographics, there are tools that can help participants decide what their savings priorities should be, allow-

ing advisors to focus more on their clients' long-term goals," Cowan continues. "And advisory firms that do comprehensive financial planning will have more opportunity to do that."

Asked how advisors can provide quality financial wellness while also doing it profitably, Kathleen Roche talks about the importance of focusing on certain clients for the program. "Advisors need the right employer with the right mindset to see its employees prosper, and who really understands the relationship between a financially healthy employee and a productive employee," says Roche, vice president, retirement consulting at Commonwealth Financial Network in Waltham, MA. "And then it is a matter of coming up with a process within your own practice, in terms of a dedicated resource who is going to deliver that program, or leveraging a third-party provider to take that off the advisor's plate."

Proactive advisory firms will develop advisor specialists focused on working with participants on financial wellness, Glynn thinks. "These will be advisors who are really 'feet on the street,' rolling up their sleeves and engaging all kinds of employees in education."

"Now, advisory firms need to position themselves as, 'We also can help you as a retiree in drawing down your funds.'"

— Kathleen Roche, vice president, retirement consulting, Commonwealth Financial Network

That idea does not appeal to some plan advisors, Glynn realizes. "There are advisors who say they only want to work with high-net-worth individuals," she says. "I say, 'Good luck with that. Someone who comes in with a model to help everyone is going to win the business from a sponsor over you, all day long.' And for plan advisors, a good financial-wellness program can act as a 'moat' around their practice, providing a desired degree of insulation from regulators."

Positioning Your Practice For Decumulation

As retirement looms for huge numbers of Baby Boomers, Glynn already sees the industry battle for their assets happening. "There is a big bloodbath going on out there. And it is over this question: Who owns the participant relationship?" she says. "Is it the advisor? Is it the recordkeeper? Is it the asset manager?" She has heard of recordkeepers with on-staff advisors "sending letters to participants saying, 'We would like to be your fiduciary advisor,' and they are not going to the current plan advisor before doing that," she says.

"If we want to stay with people who are going from the accumulation phase to the decumulation phase, we also need better ways to help them."

— Lisa Kottler, senior vice president, retirement, NFP Corp.

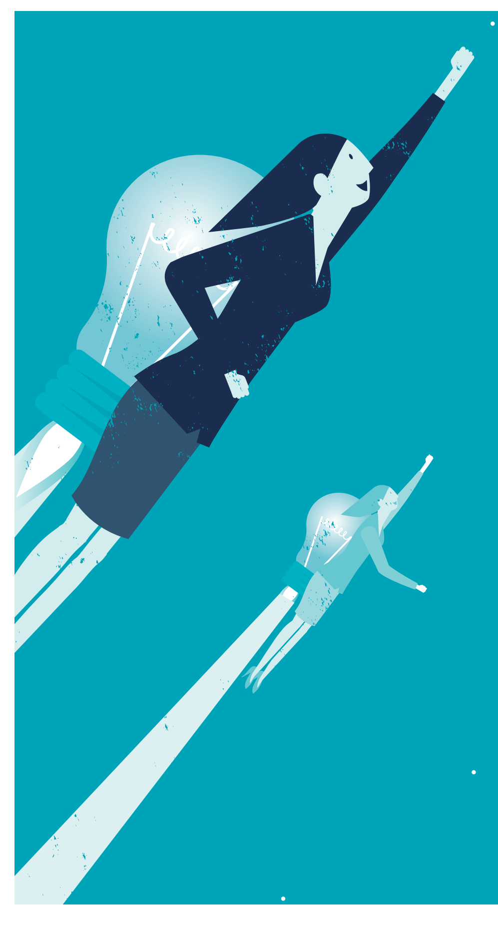
Kottler also sees the battle happening, and suggests that advisory firms get positioned now. "It is often said that if you want to have that relationship in the distribution phase, you need to begin the relationship 10 to 15 years before someone retires," she says. "And if we want to stay with people who are going from the accumulation phase to the decumulation phase, we also need better ways to help them."

"In many ways, what we do in the industry is look back in time, focusing on things like historical participant data. We must start to look forward, from an innovation perspective," Kottler continues. "If we look at how other industries are using 'big data' and other technology, we realize that we are to some degree stuck in the past. In the future, being able to 'slice and dice' individual participant data in ways that propel participants forward will be important."

Proactive advisory firms already are trying to get in front of the retiree boom, Glynn says. "One of the things we are seeing in the retirement-plan space is that a lot of plan advisors who never worked with individual participants before — because they did not want to, or they were afraid from a fiduciary perspective — are starting," she says. "Nothing will ever replace the one-on-one participant meeting. The advisor who is embracing that kind of targeted education will always have the edge."

Roche anticipates more advisory firms developing a distribution-phase specialty within their practice. "So the advisory firm can say, "What defines us is not just giving accumulation advice, but also distribution advice,'" she says. "Everything in the 401(k) industry is about accumulation. Now, advisory firms need to position themselves as, 'We also can help you as a retiree in drawing down your funds.' If there is someone within an advisory practice who has a distribution specialty, and that advisor becomes an extension of what the firm does on the plan side, that is a very valuable way for an advisory firm to reinvent itself – and to become a much more valuable resource to employers."

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



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The 5 Keys to a Strong TPA Relationship

How to find, and keep, good third-party administrator partners.

BY JUDY WARD

Advisor Michael Quinlivan started in the retirement business almost 40 years ago, working for a small TPA firm. "I am very keenly aware of how important a TPA's work is. So now, I work very closely with our clients and a TPA," says Quinlivan, president of Greensboro, NC-based Pension Planning Solutions, Inc. "And I try to be very sensitive to what a thankless task being a TPA is. If they do 1,000 transactions correctly, someone complains when they make a mistake with transaction number 1,001."

Divvying up the plan work and sponsor contact does not cause conflict in his company's relationship with TPAs, says Quinlivan, whose advisory firm does both 3(21) and 3(38) investment-fiduciary work. "We hash all that out at the beginning," he says, adding that the TPA generally focuses on compliance work and administrative issues. "I try to draw a line to let them make those decisions," he says. "A lot of times, a sponsor will call me with questions about those areas. But I will not try to do the TPA's work: I will say, 'Let me call the TPA, and have the TPA call you.'"

Advisors looking for strong TPA partnerships should focus on five key issues.

Mesh Well on Expertise Areas and Compensation Philosophies

"You have to be careful not to step on their toes," says advisor Paul Batt, president of PKB Retirement Services in Mesa, AZ. "I am not going to pretend to do a TPA's job. You have to make sure that the advisor and the TPA both understand their roles."

The advisor-TPA relationship works a lot better when each respects the other's expertise, says Tara Hessert, president of Dynamic Pension Services, Inc., a TPA based in Dayton, Ohio. "I say to advisors, 'Let us do the plan design. Let us do the compliance. Advisors, please stay to the investment side and the participant-education side," she says. "Too many times, the TPA is pushed backward. The thought is, 'You are just the TPA.' I have been told that time after time."

Some advisors get a lot more involved in plan design than others, and an advisor works better with a TPA that has complementary

> "Some advisors get a lot more involved in plan design than others, and an advisor works better with a TPA that has complementary strengths."

strengths. "Not all advisors are equal in terms of their desire to get 'into the weeds,' on design changes," says Paul Neveu, president of Syracuse, NY-based BPAS Plan Administration & Recordkeeping Services. "Our business model is built assuming that it is our job to do all the work on plan design. But some advisors are extremely savvy on plan design, and in those cases, we collaborate."

Advisors often bring in Edberg & Perry to crunch the numbers for a sponsor on design issues such as choosing which match formula most effectively spends the employer's match dollars. "Advisors do plan design, but they do it at a different level than a TPA. We are down in the weeds, and they are taking the 30,000-foot view," says Susan Perry, president of the Phoenix-based TPA. "As a sponsor, you need both viewpoints. A plan-design choice may look great at 30,000 feet, but down here in the weeds, it is not going to work."

And just as advisors should seek out TPAs whose expertise meshes well with their practice, they should look for TPAs with a compatible compensation philosophy. "A big hot-button issue is revenue sharing," says Deborah Aboudara, president of The Retirement Team, Inc., a High Point, NC-based TPA. "You want to feel comfortable that there is no conflict of interest for the TPA. Many recordkeepers have a revenue-sharing program, and the TPA may be able to 'opt out' of the program, depending on the recordkeeper chosen and size of plan assets. Some TPA firms keep some of those revenue-sharing dollars: They do not use the revenue sharing to offset their fees. It is important that an advisor understand that."

Know What You Don't Know, and the TPA Does

Experience has taught Batt when he needs a TPA's knowledge to help a sponsor client. "On plan design, there are times when I feel fairly comfortable and confident dealing with the sponsor myself," he says. "But I am no TPA, and there are other times when I bring in the TPA and make sure that we are on track with the design." For instance, he always involves a TPA when a sponsor considers adding a profit-sharing element to its retirement plan, to get the TPA's expertise on different options for formulas.

Some advisors hesitate to lean on a TPA's expertise, however. "I have seen every type of advisor, some of them good, and some of them not so good," says Hessert, who has been in the retirement business nearly 30 years. Asked about the biggest problem that comes up in working with plan advisors, she says, "Universally, the issue tends to be that everyone thinks that the advisor is the be-all, know-all, and that everything the advisor says is golden. I have found that to not be the case."

Aboudara senses an unacknowledged fear that some advisors have about less-familiar plan designs, such as defined benefit plans and cash balance plans. "Because of their lack of technical understanding, they are uncomfortable with that design, even if they come across a client that would be a good fit to have one of those plans alongside its 401(k)," she says. "In those cases, I hope that the advisor would come to us as a resource and say, 'I do not understand this design.' It is OK that the advisor does not understand it: We can coach the advisor on how to talk to the client about that plan design. Our role is to help the advisor look good with the sponsor, so we will say, 'Let's talk about the highlights of this design, so that you are comfortable with it.'"

Agree on Who Deals with the Sponsor and When

Some TPAs such as St. Louis-based Ekon Benefits, which also serves as a recordkeeper, do not focus on working directly with executives at a sponsor client. "Generally, we do not deal with the deci-

sion-makers at the sponsor at all," President Keith Kowalczyk says. "The advisor has all of that contact. Our day-to-day contact is with the HR or payroll department. It works for us because the advisor trusts us to not make mistakes."

Some TPAs like to have regular, direct contact with the executives who run a sponsor's plan. "There are TPAs that are never in front of the client, and do all their reporting through an advisor. But an advisor that works with us has to be OK with allowing us to be visible in the client relationship," Hessert says. "I want to get to know the sponsor and its plan and its demographics, so that I can give the sponsor good information. I want the sponsor to say, 'She helped me make a more-informed decision by giving me the information that I could use to make that decision."

> "Think about the advisor-TPA partnership more as a relationship than as a transaction."

However, some advisors hesitate to let a TPA have direct contact with a sponsor. "The frustrating thing is when I am not allowed to talk to the client," Aboudara says. "That can be challenging, because sometimes the advisor is a control freak. If everything is bottlenecked in the advisor's office, the sponsor is not well served."

It works best for an advisor and TPA to agree upfront on who will work directly with a sponsor when, Perry says. "Usually, we will explain it to sponsors as, if they have questions about anything that has to do with investments or with money, they should contact the advisor," she says. "If a sponsor's question relates to operational details of the plan, the contact is us."

Look for a Compatible Working Style

Think about the advisor-TPA partnership more as a relationship than as a transaction, Perry recommends. "It is like any other relationship: Find somebody who you want to work with, somebody who fits your personality and style," she says. "If you are one of those advisors who wants to function in your own world and not keep in touch with the TPA, you probably are not a good fit for me. But you may be a good fit for a TPA down the road who also likes to work that way."

Look for a TPA with similar communication instincts, Aboudara suggests. "Some firms do nothing but communicate via email. Some people can tolerate that, and others cannot," she says. "On the other hand, I have been known to actually visit an advisor in his or her office, and I have had advisors here, visiting me. We should all do that."

Patience also plays a big part in advisors working well with a TPA, Kowalczyk says. "Sometimes in their discussions with our staff, advisors are over-bearing," he says. "Some advisors are Type A personalities, and the people I have on my administrative staff are analytical types of people: They are more detail-oriented, and more project-oriented. Advisors that are Type A can have a mindset of, 'I am first in line, I want it today.' My staff has other things to do, and they have to do them in the order of the requests."

Keep Each Other in the Loop

"As an advisor, you have got to be pretty open with TPAs. And look for a TPA firm that is willing to communicate and keep you in the loop," Batt says. He wants to know about developments in his plan clients' work with a TPA, such as doing a plan amendment, getting nondiscrimination testing results, or issues arising with loans or distributions.

Aboudara does not think of her TPA role as a quarterback, but as a facilitator in getting things done for a plan. "We try to keep advisors in the loop, and give them all the information they can stomach," she says. Some advisors want to keep close tabs on a plan's operational details, while others prefer to focus on big-picture work with a sponsor and participants.

And advisors should proactively update a TPA about developments in their work with a plan client, Perry says. "If the advisor goes to a quarterly review meeting and the client says, 'Oh, by the way, we would like to make this plan-design change,' and the advisor relies on the client to later call us about that, that might not happen. If the advisor emails me to tell me about that conversation, I can then look into it.'"

> "Just as advisors should seek out TPAs whose expertise meshes well with their practice, they should look for TPAs with a compatible compensation philosophy."

Both advisors and TPAs also should contact the other when they hear about potential problems, Perry says. "If an advisor finds out that the client feels like it is taking too long to process distributions, for example, I want to know about it," she says. "At the same time, the TPA should not talk to the client and hear about an issue impacting the advisor, and not communicate with the advisor about it. The street has two directions."

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

WELLNESS WORKS

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Next Generation Thinking

Financial wellness has gone from buzzword to essential business element for DC plan sponsors and the advisors who work with them. The reasons are clear: financially healthy employees are less stressed, more productive and better able to save for retirement. And advisors who can strategically deliver wellness today will be in a strong position to continue guiding their clients tomorrow. We can help—with actionable insights and practical tactics. **troweprice.com/wellnessworks** | **#TRPFinWell**

Investment Management and Retirement Plans

T. Rowe Price Investment Services, Inc.

BY DONALD B. TRONE

By 2020, Elite Plan Advisors Will Be Valued for Their…

The concepts of moral and ethical decision-making are as old as written and spoken language.

A recent World Economic Forum report, *The Future of Jobs and Skills,* included a list of the top 10 skills that will be valued most by 2020:

1. Complex problem solving
2. Critical thinking
3. Creativity
4. People management
5. Coordinating with others
6. Emotional intelligence
7. Judgement and decision-making
8. Service orientation
9. Negotiation
10. Cognitive flexibility

> "Neuro-governanceSM is the study of how physiology, cognitive psychological functioning and brain functioning influence the quality of a fiduciary's decision-making process."

This list can be summarized in two words: Behavioral Governance℠. What will matter most by 2020 — no matter the industry sector or domain — will be a person's ability to execute, infuse and amplify a prudent decision-making process.

In my last column, "To Prepare for the DOL Fiduciary Rules, You Need to Think BIG," I introduced the concept of Behavioral Governance℠. Behavioral Governance is directed toward key decision-makers who have legal, financial, professional or moral liability for their governance process. This would include advisors, consultants, directors, trustees, officers, committee members and senior staff.

What does all this have to do with elite plan advisors? *Everything.*

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

Continued advancements in the area of robo-advice and modeled portfolios, as well as the outsourcing of 3(38) services, will have the effect of diminishing the importance of a plan advisor's technical expertise in constructing investment portfolios. So too, the DOL, armed with its new conflict-of-interest rules, is going to have the industry pole-vaulting over mouse turds.

The rules will *maximize* the number of advisors subject to fiduciary regulations; but, in so doing, *minimize* the actual value of a fiduciary standard.

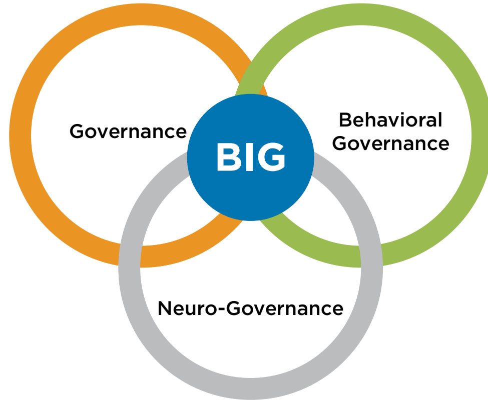
Building upon the concepts introduced in that previous column, we're going to add the concept of Neuro-governance℠, or Neuro-Fiduciary℠, to our framework.

Neuro-governance℠ is the study of how physiology, cognitive psychological functioning and brain functioning influence the quality of a fiduciary's decision-making process. (This definition of Neuro-governance℠ was developed by Prof. Sean Hannah and Dr. John Sumanth of the Wake Forest University School of Business, both of whom are associated with 3ethos.)

Stress, sleep, exercise, and even what one eats all have significant physiological and neurophysiological impacts on decision-making. Furthermore, a general understanding of neuroscience, such as executive control functioning, left and right hemispheric brain functioning, and the emotional centers of the brain and associated self-regulatory techniques, can improve an understanding of the factors that influence decision-making.

Elite plan advisors should be able to demonstrate a continuum among their Governance (prudent fiduciary process), Behavioral governance (specific behaviors that amplify and help to predict the quality of a prudent process) and Neuro-Governance. When there is a continuum, we use the term, "Behavioral & Inspirational Governance℠" (BIG). (See Fig. 1.)

Fig. 1 The BIG Continuum



BIG provides the framework for answering such questions as:

- Does a fiduciary's strong sense of authenticity and/or accountability (stewardship behaviors) influence a successful client engagement?
- How do levels of courage and commitment (leadership behaviors) influence fear, risk-taking and risk-aversion, which may alter the behavior of a fiduciary?
- How do the stewardship behaviors of

attentiveness and adaptability influence the speed with which fiduciaries perceive changes in the marketplace and effectively react to them?

- How can an advisor's leadership and stewardship behaviors influence the decision-making process of an investment committee?

In turn, BIG helps anchor the evolutionary chain that we have been developing over the years to illustrate that the concepts of moral and ethical decision-making — of placing the best interests of others first — are as old as written and spoken language (see Fig. 2).

The DOL has created an industry crisis, and right now everyone is focused on overcoming the complexity of the new rules. However, our industry is resilient, and we'll ride out this goat rodeo. When we do, we're going to begin looking for a new professional standard of care, because fiduciary will merely define a *de minimis* standard.

By 2020, what will matter most will be the plan advisor's ability to think BIG.

» Donald B. Trone, GFS® is one of the founders of 3ethos.

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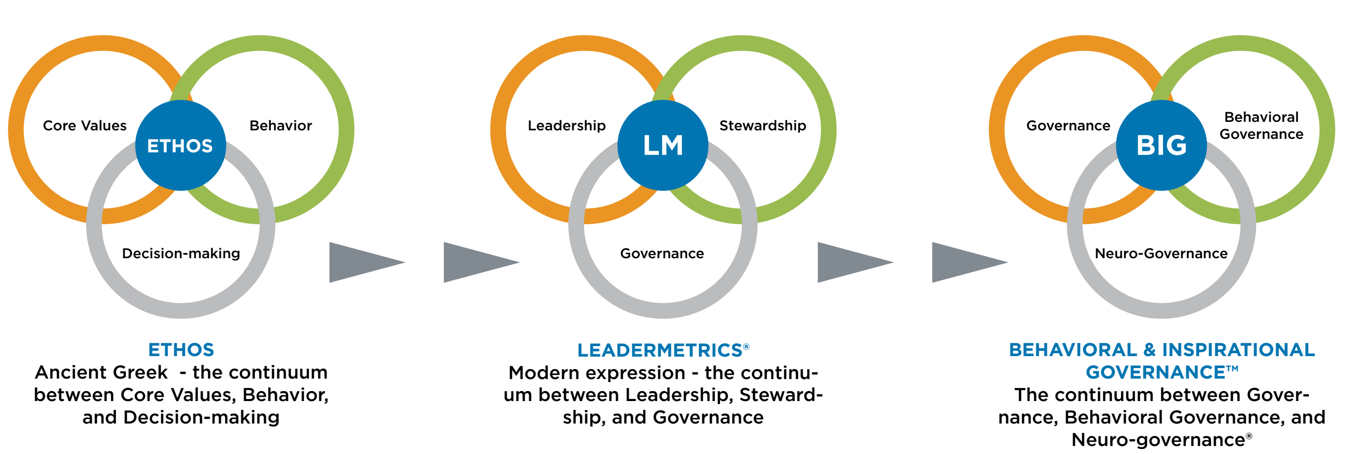
Fig. 2 Moral and Ethical Decision-Making Chain



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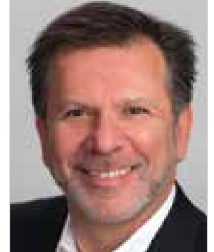

As a Result of the DOL Rule…

BY FRED BARSTEIN

A look at the logic of conventional wisdom — and the reality.

There's no doubt that the pending DOL conflict-of-interest rule will have a profound effect on DC plan advisors' businesses, especially specialists' businesses. But sometimes logic does not always translate into reality. So let's look at some commonly heard statements about how the rule could affect plan advisors and the market — and maybe debunk some conventional wisdom.

"There will be more small market opportunities"

The logic:

- Orphan plans — Emerging plan advisors may not want to or be able to serve as a fiduciary, leaving a void.
- Less competition as the trend towards specialists accelerates.
- Plan sponsors will be more careful about the advisors they select.
- Options like MEPs will grow.

The reality:

- The act of recommending an advisor on an orphan plan will be considered a fiduciary act, restricting referrals overall.
- Smaller plan sponsors are complacent and advisors not willing to give up the business will not bow out gracefully or immediately.
- It will not be easy for specialists to find orphan plans.
- Specialists will have a hard time creating a profitable, low-touch model for smaller plans, especially if they have to share fees with a referring advisor.
- Specialists do not have capacity to add many more plans.

"There will be greater use of robo-advisors"

The logic:

- Robo-advisors have fewer conflicts than human advisors, and pricing is lower and more transparent.
- Smaller plans not able to find an advisor willing to act as a fiduciary will use a 3(21) or 3(38) robo-advisor. Likewise, participants in plans with smaller accounts will use a robo solution.
- Robos will incorporate more humans into their business model, like Financial Engines buying the Mutual Fund Store.

The reality:

- Investors still want to speak to people about their financial planning.
- Robo-advice is limited — people need more.
- Advisors will incorporate robo-advice into their business, as will traditional money managers like Vanguard, Schwab, Fidelity, Merrill Lynch and BlackRock.
- The economics of a pure robo business do not work because acquisition costs are too high, with limited cross-selling opportunities.

"Commissions, revenue sharing and traditional BDs will all go away"

The logic:

- Smaller BDs will not be able to afford the cost of complying with the DOL rule.
- As commissions fade, so will the need for advisors to hold a FINRA license.
- Revenue sharing, like commissions, poses inherent conflicts that are subject to abuse.

The reality:

- Commissions and therefore a FINRA license still make sense for some products, especially for individual investors.
- BDs that morph from providing products and compliance to helping advisors provide advice as well as supporting them through better practice management.
- Smaller plans will not move all at once to eliminate revenue sharing, and money managers are moving slowly toward offering all zero-revenue-share products.

"The rule is actually good for my business"

The logic:

- Most specialists are either hybrid or pure RIAs, so the move to level fee based comp is not hard.
- Many specialists don't handle IRA rollovers, which many say is the most troublesome part of the DOL rule.
- There will be less competition.
- Plan sponsors will pay more attention to the advisor they select and to their DC plan overall.

The reality:

- Everyone will be a fiduciary or work with an outsourced one, which will become the floor, not the ceiling — which used to distinguish some advisors.
- There will be more paperwork and administrative work, as well as greater scrutiny by the DOL.
- Provider support will be harder to get.
- More lawsuits and competition from low-cost robo-advisors.
- Fees will continue to decline.

So what's your reality look like?

» Fred Barstein is the founder of The Retirement Advisor University (TRAU, The Plan Sponsor University (TPSU) and 401kTV.

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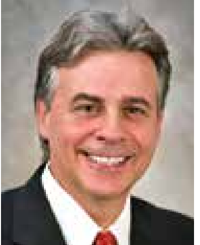


In the Interest of Best Interest

BY STEFF C. CHALK

Which has a greater impact on the buyer: product packaging, or experience and a track record?

Serving in a fiduciary capacity, or at least talking about it, has become mainstream in the wake of the Department of Labor's fiduciary rule. However, talk is cheap. There is an inherent complexity associated with serving in the best interest of others when hired to do so. Placing another's interest before your own is a learned behavior and not a result of getting paid to do so.

The plan sponsor perspective on the new DOL rule is only a concept. Plan sponsors have no reality or experience; therefore they possess no perspective. That is easy to accept when retirement plan advisors also have no perspective since they have only discussed the topic at this point. Again, that is easy to understand since very few broker/dealers, RIA compliance units or service providers have a set strategy for their future business model around retirement plans or individual retirement accounts (IRAs) — and even fewer have communicated anything of their future strategy to the outside world. The public statement-du-jour remains, "We are going to wait and see what others are doing, then we will decide." That is certainly one strategy — shared by plan advisors, advisor organizations and product manufacturers. But at this point there seems to be very little sand remaining in the top of the hourglass.

Where We Are Today

It is much simpler to be deemed a fiduciary as the industry moves from a three-part fiduciary test to a five-part test. The net being cast is much wider when using the new five-part test.

Financial advisors' businesses and lives are about to be impacted by regulators, employers, affiliations, partners and service providers. (When changing that many components of any industry, the predictability of the outcome is a mystery.)

> "Does a level-comp plumber place the best available pipes in my home — or do they use "index" pipes, because they are inexpensive, and using them consumes the least amount of time and effort? Is index-piping the best-fit solution for every homeowner?

Is Having More Fiduciaries an Answer?

Looking at other industries may help us understand our own. If plumbers were to be held to a level-comp standard tomorrow — what changes? Can we envision a level-comp plumbing industry?

Is it appropriate to apply a best interest standard at one's favorite fast-food restaurant? After ordering the hamburger, everyone is well versed in the follow-up line of questioning: Would you like a large order of fries with that? Would you prefer the Biggee-size cola? That comes with a dessert — do you want the shake or the pie?

When asking the above questions, there may be visual cues why those questions could lead a customer to make poor choices. If operating in a best interest environment, should the clerk be permitted to make up-selling suggestions to a customer, when the suggestions are obviously not good choices for the customer?

Looking at the automobile industry, we see a product- and service-oriented industry that more closely mimics the investment advisor industry. Should car salespeople be held to an unbiased best interest standard? Should "dealer prep" be a permitted charge in a fiduciary environment? It seems to be just an added expense. Since all cars are undercoated at the factory, does the charge for "additional undercoating" seem like a good fiduciary decision, or does it sound more like a charge that may not be in the buyer's best interest?

From a Sales Environment to Packaged Purchasing

The DOL rule does permit an advisor to say "Hire me" without automatically making that advisor a fiduciary. But that is just about the limit of what an advisor can freely state without concern.

Today's advisors, who have been trained to identify client needs, encouraged to identify client objectives, educated on how to meet or exceed client expectations and schooled in portfolio construction, are free to engage a prospect with the stimulating phrase, "Hire me."

We may be entering into a prolonged period where product packaging has a greater impact on the buyer than an advisor's track record and years of experience.

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

Engage!

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

Acquainting people with financial wellness can go where the formal retirement plan has never been. Helping people learn the benefits of money control echoes the same habits for all habit-breaking behaviors — smoking, gambling, eating and Pokeman.

— *Peter Inoue*

IRAs, even auto-IRAs as they are being constructed, is not a Baby Boomer solution, nor will it be a solution for any "retirement crisis" for future generations, because the crisis is not one of access, but one of will or prioritization.

— *Jack Towarnicky*

I believe ERISA was specifically federally mandated with fed oversight and regulation to eliminate problems associated with state-run insurance programs. What is happening now smacks at the heart of what the authors of ERISA intended.

— *Robb Smith*

I'm thinking that banks who leverage their banking/lending relationships with an employer in order to secure the employer's 401k plan will be next on the quid-pro-quo hit list. There is just a lot of low-hanging fruit out there for plaintiff attorneys.

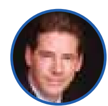
— *Terry Power*

The real question is not what neurons are firing or chemically charging in the brain, or what path the thought travels when navigating regions of the brain, but what occurs within the mind to stimulate a highly predictable behavior when given too many choices.

— *Steff Chalk*

Industry Voices

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



John Carl

"The IRS has commented that promoters in the industry are aggressively marketing "Rollovers as Business Start-Ups" (ROBS) as a means for prospective business owners to access accumulated tax-deferred retirement funds, without paying applicable distribution taxes, in order to cover new business start-up costs. While the IRS does not consider all ROBS to be abusive tax avoidance transactions, it has found that some forms of ROBS violate existing tax laws and, therefore, are prohibited."

Fred Barstein

"A promising trend for advisors looking to add value for clients rather than just pick off-the-shelf TDFs is to use third-party asset allocation models from respected vendors, deploying the underlying assets in the plans. It's a model that American Airlines used recently when they reengineered their investment menus, and it's almost impossible to benchmark."

Nevin E. Adams, JD

"In the lawsuits that have been filed in recent months, it's no longer enough to offer institutional class shares — one must now consider the (potentially) even less expensive alternatives of separately managed accounts and collective trusts. Actively managed fund options are routinely disparaged, while the only reasonable fee structure for recordkeeping fees is declared to be a per-participant charge."

Sheldon Smith and Chris Rylands

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

What Advisors Are Reading

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

1. Participants Sue Another Financial Services Provider
2. Excessive Fee Suit Targets 'One of the Most Expensive Plans in America'
3. Provider Sued for Using own Fund as Default in 401(k) Plan
4. Plan Fiduciaries Sued for Failing to Remove Fund
5. DOL Makes Some BIC Fixes
6. Democrats' Platform Stakes Out Retirement Priorities
7. GOP Policy Pokes at Retirement Provisions
8. DOL Fires Back at Litigation Claims
9. Is Providing an IPS a Fiduciary Act?
10. Turmoil Ahead for Advisory Firms, Survey Says

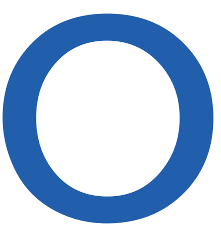
What's New?

As part of our efforts to expand our resources for plan advisors, we added two "home base" pages, on the DOL's final fiduciary rule and state-run auto-IRA programs. You'll find them in NAPA Net's "Industry Intel" tab.

Is the Revised Form 5500 the Next Big Thing?

Proactively engaging with the Form 5500 changes will be a boon for some advisers.

BY DAVID N. LEVINE



Over the past decade, the Department of Labor has implemented new fee and expense disclosure on Schedule C of Form 5500, increased service provider fee disclosure under ERISA section 408(b)(2), participant level fee disclosure under ERISA section 404(a), and new conflict requirements under the final investment advice fiduciary rule. For now and through at least 2017, the final investment advice fiduciary rule is the center of many advisers' attention. However, there is more to come in subsequent years.

On July 11, 2016, the Department of Labor issued proposed forms and regulations that would significantly overhaul the Form 5500 again. These changes would apply to 2019 and later plan years. So is this change to a government form "the next big thing"? Very likely, yes.

While the current Form 5500 was at the start of the Department of Labor's current push for increased transparency and openness, the new Form 5500 would take this "big data" gathering to a whole new level with its very detailed focus on specific categories of plan operations, plan expenses, plan investment options and reportable prohibited transactions. When the new Form 5500 goes into effect:

- The Department of Labor will have a broad-based data set that can be used to target and develop its investigations. This data set, when coupled with other ERISA disclosures and the new investment advice fiduciary rules, will strengthen the DOL's ability to identify and assert violations of ERISA against plan fiduciaries and services providers.
- Since the new Form 5500 will, like the current version, be publicly available and available for data mining, anyone will be able to use this same data for other purposes – from bringing lawsuits to competing in RFPs.

> "As more plaintiffs' lawyers have entered the benefits litigation field, they are competing with each other more."

Because of these changes, there will be numerous impacts, including the following.

First, as the Department of Labor continues with its national enforcement projects that focus on advisers, such as the Plan Investment Conflicts project, this new data set will put advisers and their services under a greater microscope than ever. As such, soon after advisers think they have put their houses in order for the final fiduciary regulation, they will have a whole new set of compliance items to double check and evaluate in order to prepared for a Department of Labor investigation.

Second, right behind the Department of Labor will be the plaintiffs' bar. Plaintiffs' attorneys already have advisers on their radar. This new tool will provide them insight beyond what is now available before lawsuits begin, thus leading to further and more detailed litigation — and litigation risk.

Third, the commoditization of certain adviser services will continue. With the data generated by the new Form 5500, individuals competing to retain existing business or new business will have a higher degree of transparency on costs.

Even though these consequences can sound like doom and gloom, the Form 5500 is not a reason for an adviser to despair. With many advisers already on the path to enhanced compliance efforts, the new Form 5500 will be another step in that process. Could it lead to more enforcement, litigation, and price competition? Yes. But these items will also give advisers another chance — to differentiate, to show how they add value, and to show how they are focused on compliance. Change can be difficult, no matter the business, but proactively engaging with the Form 5500 changes will most certainly be a boon for some. Now is the time to start thinking about what it means to you.

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

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Class (Action) Dismissed

A district court judge in California dismisses an excessive fee lawsuit against Chevron, rejecting several claims that have become staples of such litigation.

BY NEVIN E. ADAMS, JD

'PROOF' STATEMENT

Court rejects excess fee litigation claims

Chevron has won dismissal of an excessive fee class action in a decision that rebukes several of the claims that have surfaced in recent litigation by the law firm of Schlichter, Bogard & Denton.

Judge Phyllis J. Hamilton of the U.S. District Court for the Northern District of California rejected a number of the claims made by the plaintiffs against the $19 billion Chevron plan in *White v. Chevron Corp.*, 2016 BL 281396, N.D. Cal., No. 4:16-cv-00793-PJH, 8/29/16, including:

- the use of otherwise identical funds with higher fees;
- the use of mutual funds versus alternatives such as collective funds or separate accounts; and
- the use of revenue-sharing and asset-based fees to pay recordkeeping fees.

Significantly, for plan fiduciaries who have made plan changes ahead of litigation, only to find those acts held out as proof of their fiduciary shortcomings, Judge Hamilton found those actions to be evidence of the Chevron fiduciaries' ongoing review and a sign of compliance with their fiduciary responsibility.

More Than Price

Laying out both the arguments for and against each cause of action, Judge Hamilton noted that ERISA plan fiduciaries "have latitude to value investment features other than price" (and in fact are required to do so), and that the mere allegation of high fees (because less expensive funds were available) was insufficient to state a cause of action, in the absence of proof of a flawed investment selection process.

"Plaintiffs' contention that the Plan fiduciaries should have offered cheaper share classes of the funds actually included in the Plan's investment lineup is based on the assumption that the mere inclusion of a fund with an expense ratio that is higher than that of the lowest share class violates the duty of prudence," she wrote. "This claim, standing alone, is insufficient to state a claim that fiduciaries imprudently failed to consider lower cost options."

Apples-to-Oranges Comparison

Judge Hamilton also rebuffed the notion that it was imprudent to opt for mutual funds when less expensive structures (like collective funds and separate accounts) might have been available to a plan as large as Chevron's because, she said, the "unique regulatory and transparency features" renders any such consideration an "apples-to-oranges comparison."

Finally, Hamilton rejected the lawsuit's challenge to the record keeping fees paid to Vanguard under a revenue sharing arrangement, finding no support for a "per se rule" against revenue sharing.

Similarly, on the question of offering a stable value fund (versus a money market offering), Judge Hamilton noted that, "Offering a money market fund as one of an array of mainstream investment options along the risk/reward spectrum more than satisfied the Plan fiduciaries' duty of prudence," and was consistent with the terms of the plan's IPS. "The inclusion of a money market option is consistent with the IPS guidance, and plaintiffs' attempt to infer an imprudent process from its offering is therefore implausible," she wrote.

As for the timing of the removal of the ARTVX Fund, Judge Hamilton noted that "poor performance, standing alone, is not sufficient to create a reasonable inference that plan administrators failed to conduct an adequate investigation — either when the investment was selected or as its underperformance emerged — as ERISA requires a plaintiff to plead some other objective indicia of imprudence." Hamilton reaffirmed that a fiduciary's actions are judged "based upon information available to the fiduciary at the time of each investment decision and not from the vantage point of hindsight.

"Plaintiffs cite no authority in support of the proposition that causing an ERISA Plan to incur unreasonable expenses is a breach of the duty of loyalty, distinct from a breach of the duty of prudence," Judge Hamilton wrote, going on

to note that "the complaint simply alleges that defendants violated the 'duties of loyalty and prudence' by offering a money market fund instead of a stable value fund, by offering higher-cost funds rather than less expensive funds, and by retaining the ARTVX Fund notwithstanding its underperformance."

Duty to Monitor

As for the allegations that the plan fiduciaries breached their duty to monitor, Hamilton noted that the plaintiffs "concede that they have alleged insufficient facts, but argue that they should be permitted to conduct discovery in order to acquire such facts. This is insufficient to state a plausible claim. While an ERISA plaintiff may lack direct evidence of the fiduciaries' process, the plaintiff must at a minimum plead facts that give rise to a 'reasonable inference' that the defendant committed the alleged violation" — and stated that the plaintiffs failed to do so.

That said, Judge Hamilton's order dismissing the case was "without prejudice," which means that the plaintiffs could have another shot at this if they choose.

HARM FULL?

Court drops two stock drop cases

A federal court has once again tossed a case involving a precipitous drop in a 401(k) employer stock because the plaintiffs failed to prove that disclosure would have cleared the "more harm than good" standard. But they'll get another chance.

One of the cases *(Jander et al. vs. International Business Machines Corp. et al.)* was brought by participants in IBM's 401(k) plan. Those plaintiffs alleged that the IBM defendants (IBM itself, along with the Retirement Plans Committee of IBM; Richard Carroll, IBM's Chief Accounting Officer; Martin Schroeter, IBM's CFO; and Richard Weber, IBM's general counsel) failed to prudently and loyally manage the plan's assets, and failed to adequately monitor the plan's fiduciaries. Specifically, they argued that once the defendants learned that IBM's stock price was artificially inflated, they should have either disclosed the truth about Microelectronics' value or issued new investment guidelines temporarily freezing further investments in IBM stock by the plan.

***Dudenhoeffer* Dictates**

Judge William H. Pauley III of the U.S. District Court for the Southern District of New York held that the plaintiffs failed to establish that the defendants were de facto fiduciaries, then went to apply the standards for such cases established in *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. ___, 134 S.Ct. 2459 (2014). In that case the Supreme Court ultimately held that while the fiduciaries of an ESOP have the same duty of prudence and loyalty as the fiduciaries of other retirement plans, and that, absent "special circumstances affecting the reliability of the market price," allegations that a fiduciary should have recognized the overvaluation of the stock based on publicly available information are "implausible" and that allegations based on non-public information are similarly "problematic."

In that same case, the nation's high court also directed lower courts to "consider whether the complaint has plausibly alleged that a prudent fiduciary in the defendant's position could not have concluded that stopping purchases — which the market might take as a sign that insider fiduciaries viewed the employer's stock as a bad investment — or publicly disclosing negative information would do more harm than good to the fund by causing a drop in the stock price and a concomitant drop in the value of the stock already held by the fund."

In the IBM case, Judge Pauley noted that *Dudenhoeffer* "recognized the possibility that prudent fiduciaries could "conclude that stopping purchases — which the market might take as a sign that insider fiduciaries viewed the employer's stock as a bad investment — or publicly disclosing negative information would do more harm than good to the fund by causing a drop in the stock price and a concomitant drop in the value of the stock already held by the fund."

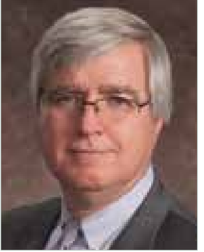
More Harm Than Good

Citing precedents in other recent stock drop cases, Judge Pauley said that to be successful, a complaint must contain "facts and allegations" which "'plausibly allege' that a prudent fiduciary in the same position 'could not have concluded' that the alternative action 'would do more harm than good,'" and found that the plaintiffs in the IBM case failed to do so. More precisely, he wrote:

"Simply put, *Dudenhoeffer* sets a highly demanding pleading standard. Because the Amended Complaint offers only a rote recitation of proposed remedies without the necessary "facts and allegations supporting [Plaintiffs'] proposition," it fails to meet that threshold."

However, noting that the plaintiffs sought permission to file a Second Amended Complaint that "would allow plaintiffs to undertake the necessary due diligence to provide facts of this greater specificity, including those data regarding the Fund's Class Period purchases … and possibly retaining an expert to perform a quantitative analysis to show more precisely how Plan participants are harmed in the short and long term by purchasing Fund shares at artificially high prices," Judge Pauley acquiesced to that request, giving them 30 days to do so.

In the second case *(Int'l Assoc. of Heat & Frost Insulators & Asbestos Workers Local #6 Pension Fund v. Int'l Bus. Machs. Corp.*, S.D.N.Y., No. 1:15-cv-02492-WHP, 9/7/16), plaintiffs representing a pension fund and other investors in IBM stock argued that IBM officials had violated Securities and Exchange Commission rules by failing to adequately disclose information about the transaction noted above. The case was dismissed because Judge Pauley said that the plaintiffs failed to prove IBM's intent to keep information hidden. "It is far more plausible the defendants were not deceitful but mistaken," he wrote.



BY NEVIN E. ADAMS

Rescuing Retirement From the 'Rescuers'

How in the world can a combined 3% savings rate (employer *and* employee) possibly "rescue" retirement?

Delegates to this year's NAPA DC Fly-In Forum were treated to a discussion about a proposal touted as "rescuing retirement." But the math (still) doesn't seem to work. And it's likely to kill the 401(k) (or at least its tax benefits). Here's how.

> "Workers wouldn't be able to access the money prior to retirement – no more loans or hardship withdrawals."

The proposal itself isn't new — it's the Guaranteed Retirement Account (GRA) concept initially introduced by the New School's Professor Teresa Ghilarducci, now somewhat modified, and embraced by Hamilton E. (Tony) James, President and COO of money management Blackstone. This newest version was rolled out earlier this year. Writ large there seem to be two significant differences in this newest version (packaged in a nice 119-page softbound book, *Rescuing Retirement):*

- James' involvement, which lends some investment cred to the assumptions of the proposal; and
- a reduction in the mandatory contributions from employer and employee (the original proposal called for 5%, the new one only 3%).

The Ghilarducci/James team firmly believes that the current tax preferences inordinately benefit higher-paid workers, and therefore they have no trouble taking those away from all workers (they'll let employers keep their current preferences for sponsoring the plan) in order to "pay" for the $600 non-refundable tax credit that is supposed to make the mandatory 1.5% employee contribution "free" for lower-income workers.

Under the GRA proposal, workers wouldn't be able to access the money prior to retirement — no more loans or hardship withdrawals. They assume, and perhaps rightly so, that emergency savings shouldn't be taking place in your retirement account. Additionally, when you do retire, you will have to access the money in an annuity form — no more lump sums, and no bequests. You annuitize the payment at retirement (it can be a joint and survivor), but once you pass, any residual amount stays in the pool.

Ghilarducci and James actually seem to think they are doing employers a favor by giving them a way "out" of the bother (and expense) of providing workplace retirement plans. (James went so far as to refer to some conversations he's had with some Fortune 500 CEOs, and apparently they'd love nothing more than to be done with these plans.) Oh sure, for those who have not previously offered a plan, their new 1.5% mandatory contribution will represent an additional cost — but for everyone else, that 1.5% is likely a drop in the bucket compared to what they are spending now — and they won't have to deal with the administrative responsibilities or fiduciary liability of a qualified plan.

But aside from my very real sense that killing the tax preferences for 401(k) savers would also serve to "kill" the 401(k), policymakers can't help but be drawn to the notion of a proposal that purports to "rescue" retirement without costing the taxpayers. Well, without "costing" the taxpayers more, anyway (remembering, of course, that these are *deferrals* — a postponement of taxation, not a permanent deduction).

But does the proposal actually do what it claims?

First off, it does nothing for Boomers. As James aptly noted at the Fly-In, "It's too late for them." So whose retirement is being rescued? Well, younger workers — Millennials particularly, but more specifically, lower income workers — who in some cases are also part-time, part-year. Those workers are less likely to have access to a plan at work, and — likely because of their lower incomes — are certainly less likely to take full advantage of it.

Still, if today's savings rates are deemed insufficient to help today's retirement savers achieve their goals, how in the world can a combined 3% savings rate (employer *and* employee) possibly "rescue" retirement?

Well, despite their book's auspicious title, from our discussion last week (and there were a couple of hundred witnesses), the only people who are being "rescued" are those who aren't saving anything at all now (they'd be forced to save under this proposal) who also happen to be making $46,000 a year or less. That's the group that Ghilarducci and James say will, under this proposal, achieve a 70% replacement rate (assuming Social Security, and no reductions there) in retirement. Everybody else? Well, you can keep saving for retirement, but Ghilarducci and James don't see any reason to "underwrite" that responsible behavior by allowing you to defer paying taxes on compensation you haven't yet received.

But even if you're only focused on shoring up the prospects of lower-income workers, could a 3% contribution be enough? Even with the 7% return[1] that Ghilarducci and James assume for their GRAs, I just couldn't

1. They view this return as conservative next to the 8.5% returns assumed by public pension plans, and think 401(k) investors only get 3-4%.

see it adding up.

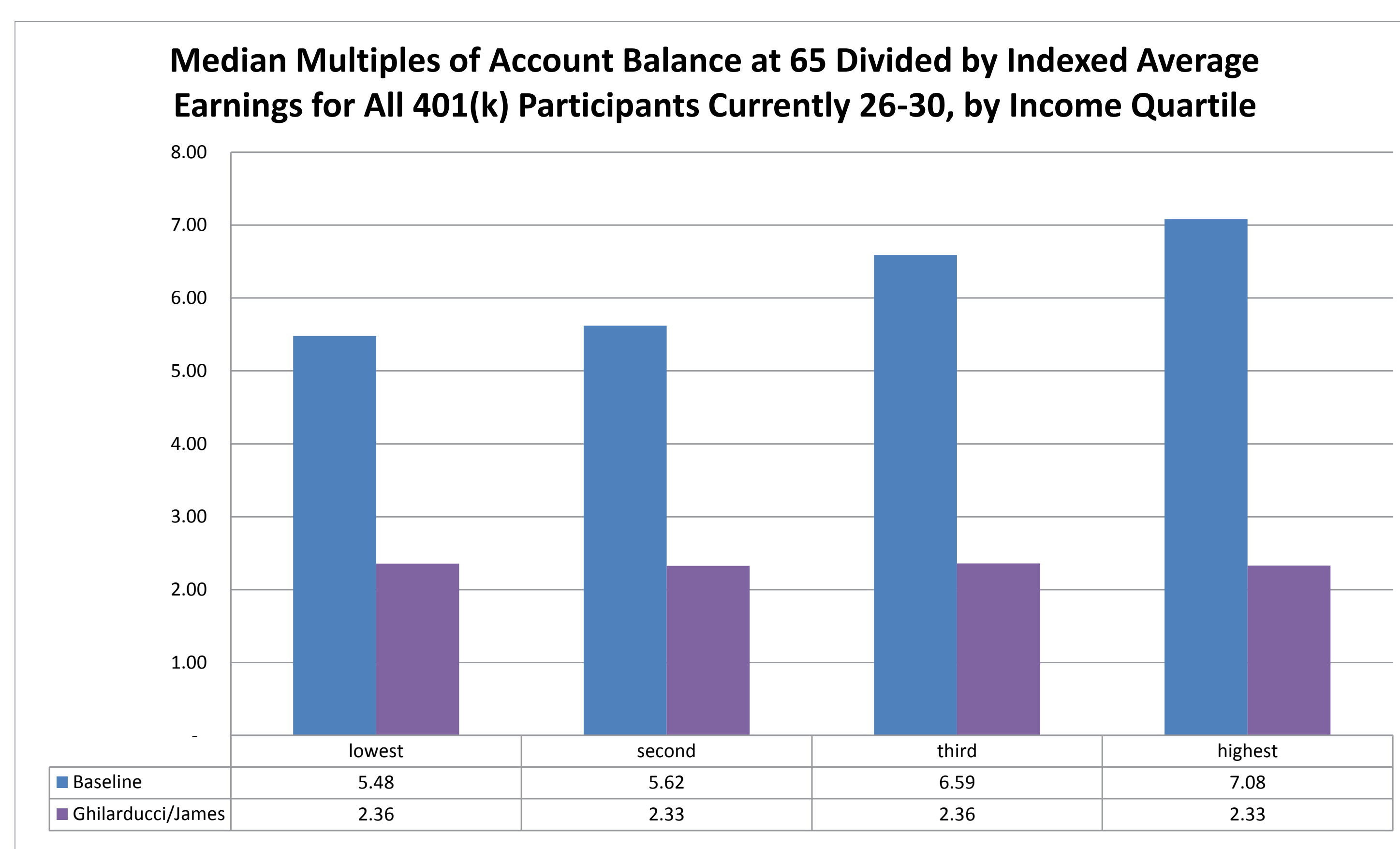
So I asked Employee Benefit Research Institute (EBRI) Research Director Jack VanDerhei to run the GRA program assumptions — for younger workers only (ages 26-30) — and asked him to compare that to what those same workers might get if they simply continued in their 401(k)s.

The EBRI analysis took actual balances, contribution rates and investment choices across multiple recordkeepers from more than 600,000 401(k) participants, looking at those currently ages 26-30, *including* those with zero contributions, with 1,000 alternative simulated outcomes for stochastic rate of returns based on Ibbotson time series (with fees between 43 and 54 bps), including the impact of job change (an assumption was made that 401(k) participants would continue to work for employers who sponsored 401(k) plans), cashouts, hardship distributions, loan defaults, and with contributions based on observed participant data as a function of age and income and asset allocation based on observed participant data as a function of age. For the Ghillarducci/James GRA, EBRI assumed *no* cashouts, hardship distributions or loan defaults (they aren't allowed), assumed a deterministic 7% nominal return with no fees, and took their assumptions about the 3% mandatory contributions. And then compared the two outcomes at age 65.

> "Those truly trying to rescue retirement should probably do so with a life preserver, not an anchor."

The result? Well, as you can see in the chart, the median for all income quartiles fares worse under the GRA proposal than under their current 401(k) path. That's not to say that every 401(k) path will provide sufficient income in retirement, of course – but it does affirm the common sense logic that if current rates of saving aren't sufficient, 3% – even mandatory, and even with no leakage – won't match the performance of the 401(k).

We know that today not everyone has access to a 401(k), and we're all working to change that. But those truly trying to rescue retirement should probably do so with a life preserver, not an anchor.



	lowest	second	third	highest
Baseline	5.48	5.62	6.59	7.08
Ghilarducci/James	2.36	2.33	2.36	2.33

Source: EBRI Retirement Security Projection Model® Version 2467d
Differential Assumptions: Cashouts based on industry data for baseline; assumes no cashouts for GJ. Baseline stochastic ror based on Ibbotson time series with fees between 43 and 54 bps; deterministic 7% nominal with no fees for GJ. Baseline contributions based on observed participant data as a function of age and income; 3% of wage for GJ.

Reform 'Reactions'

What could tax reform do to retirement savings? Hint: it's not good.

BY NEVIN E. ADAMS, JD

Tax reform is on Washington's lips again — but means different things to different people. Back in July we asked NAPA Net readers what they thought would happen if Congress took away the pre-tax advantage of 401(k) savings.

This is no idle question. To many in Congress that *deferral* (not a deduction!) of taxes is nothing more than a big pot of money to spend on other things (including, for some, the reduction in the federal deficit). And there have been academic studies that purport to show that those preferences — the ability to defer paying taxes on 401(k) contributions until they are withdrawn from the plan — don't matter in determining participation rates. Though other researchers have questioned whether those studies are actually representative of what American workers might do if those preferences actually disappeared — and what that might mean to retirement security.

But what do NAPA Net readers think?

The vast majority of respondents thought the elimination of the pre-tax contribution in 401(k)s would have a negative — and in many cases — a very negative impact. The most common response — 46% — was that many would quit saving (altogether), and another 5% thought that most would quit saving, while about 1 out of 10 thought that some would.

But then, another 22% thought that many would save less, and another 3% thought that some would save less. As one reader explained, "Many would save less. They would invest enough to get the match and tell themselves they would invest any incremental savings in their brokerage or savings accounts, but not actually do so. It would also send a message to the public that would be perceived as, "The government is not concerned about my retirement preparedness, and if they aren't concerned, why should I be?" Another said, "They would start saving at an older age and many would not do it in a 401(k)."

The rest either thought it wouldn't matter much, or wouldn't matter much in the long run. One reader noted, "Short term, not much change. I believe the problem would be getting new people to begin saving in plans and when they change jobs starting up again." Another echoed the short-term message: "It would be disruptive to the business initially. But if we promoted the Roth advantage, and the need for retirement savings, those that save would still be likely to save up to the match; may see a slight reduction in savings because of the loss of the tax benefit." Another opined, "If Roth and its tax-free distributions are left alone then it won't matter much. If just after-tax is available, then logical participants will still save to max match. However, under current rules things do get a bit weird in that after-tax funds can be withdrawn w/o penalty so would there be 'put it in, take it out' unless those rules are also changed."

But, as one reader noted (and several others commented), "Who is to say the tax advantages of the Roth 401(k) would remain untouched as well? Without the tax advantage 'carrot' offered by 401(k) and Roth 401(k), workers become less likely to save."

Limits Less?

What if Congress were to cap — or reduce — the current contribution limits? Nearly 60% said that highly compensated workers (most likely to be impacted by those limits) would save less, while another 16% thought participants generally would save less (more than one response was permitted). About 10% thought there would (mostly) be no real impact.

That said, the most striking finding was that just over half (53%) said they thought that plan sponsors would be less likely to set up and maintain these plans if the limits were capped. "Smaller plans where only the owner is reaching the limit are most likely to be impacted," noted one reader.

"The total value flows into plans would be reduced," said one reader, "impacting economies of scale, resulting in a combination of higher fees, greater consolidation, less choice, larger funds, and less investment differentiation."

"Savings would continue but the ability of workers to save adequately for retirement would be diminished. The older working force (45-50+) tend to hit their savings stride and try to make up lost ground in their later working years by maxing out their deferrals. Reducing or capping is detrimental," noted another.

Or, as one reader explained, "The level

of the cap would determine the level of the reaction. Cap it at $6k and you can guess what happens next."

WWPSD?

Building on that outcome, we asked readers what plan sponsors would likely do if the pre-tax advantage of 401(k) savings were eliminated. Just over half (57%) said that many would be less inclined to maintain and set up these plans, while 22% said some would be less inclined. The rest didn't think there would be much impact, or that it would be limited to certain size plans.

As one reader noted, "Small plans would be less inclined and in many cases would terminate plans since the owner would have much less personal benefit/incentive relative to the hassle of maintaining it." Another echoed, "Employer reaction would be in large part determined by the actions of other employers." Still another noted, "Small employers would not set up the plans. Larger employer would still have them unless employees rated the benefit as not useful and preferred other benefits." Joining that chorus was the reader who said, "Smaller plans (which were designed to favor ownership) would likely be the most impacted."

Do Lawmakers 'Get it'?

The real question, of course — certainly the one that might matter most in the months to come — is whether or not lawmakers understand all of this. And among respondents, the clear answer is — they don't. In fact, two-thirds said that plainly. Perhaps more damning is the sense of 22% that lawmakers understand, but don't care about that result (or, as one reader said, "some who are enlightened do"), or the 7% who said they understand, but don't actually believe those outcomes will occur. As one reader noted, "I am not sure people in our business understand the impact and many a Congressperson has voted on bills he/she did not understand." Another explained, "They don't understand the small employer and impact it would have on qualified plans."

The remaining one-in-eight said while lawmakers understand the potential for these impacts, they have other priorities. "It is just another example of Washington double talk," noted one reader. "Out of one side of their mouth, legislators are trying to encourage people to save (because they fear the impact that poor, older citizens will have on entitlement programs) and out of the other side of their mouth, they are salivating over the immediate tax revenue that they can glean from taking away a pre-tax benefit or by taxing the very people who 'do the right thing' and save for their retirement."

Or, as another put it, "I think most lack the foresight and knowledge to predict how plan sponsors would react."

Other Reader Comments

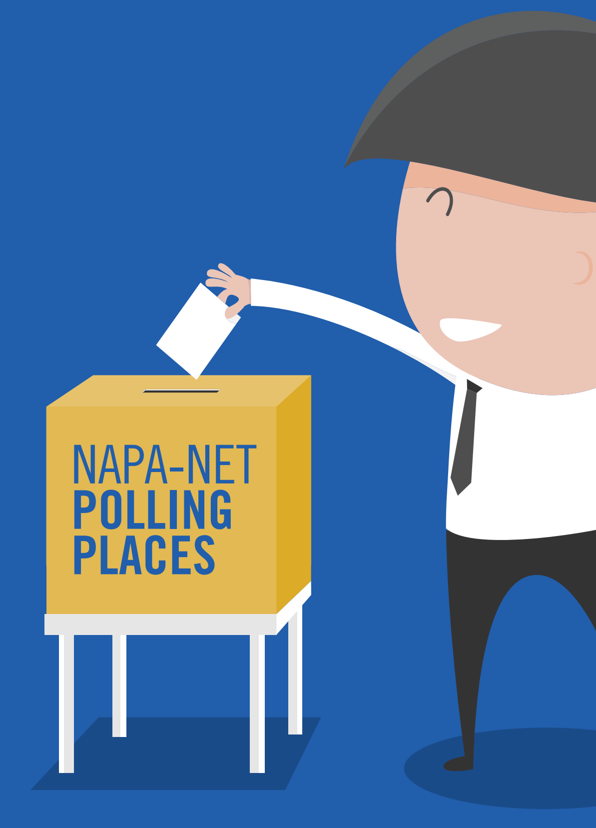
We had lots of comments to this week's reader poll — here's a sampling:

"Take away the employer contribution deduction also, if they want to really get rid of the tax advantages of qualified plan."

"Tax reform sounds good, but all the special interests (banking/real estate to keep the homeowners deduction; business incentive write-offs, etc.) will come out of the woodwork."

"There is a need to either reestablish DB plans or mandate forced savings in order to head off a future of broke retirees. Forced savings (for example requiring all Americans to save at least 10% of earnings) would have been unthinkable not long ago, but now that we have forced health insurance, it's in the realm of possibilities. Forced savings could reduce the consumption component of GDP but increase the investment component. Increased flows to investment would either inflate investment values as we've seen in the last several years, or could increase investments in the form of new ventures."

"Many of the employees that the industry is trying to reach are low wage earners. What helps them is the minimal impact to their take-home pay because of the reduction in federal income taxes. If they are forced to choose between paying bills or saving, the choice is obvious. Higher income participants are impacted also. A personal example: in order to continue to save the max and take care of an aging parent, the tax savings is a huge determination on the amount of savings. Should that be taken away, the savings amount would have to drop in order to continue to care for the parent. Since the government is also looking at property tax exemptions, should the discontinuance of either or both, would reduce the savings amount to zero. It's a three-legged stool; take away one leg and the whole thing



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

falls. (The parent is living with the caregiver. Taking away these tax exemptions could possibly cause the parent to need assistance from Medicaid. So the government has to increase payouts. Nonsense.)"

"With all the advantages of 401k we still struggle to get participation rates up. Why punish those who are actually doing a good job saving by taking away a benefit?"

"Until government can stop their uncontrolled spending, they will continue to look for ways to bridge their income and spending gap to the detriment of the public at large. We know American workers do not begin saving soon enough or set their deferral rates high enough to save adequately for retirement. But within our own shop we are moving the needle through education and one-on-one guidance. If government takes away the positive message of tax advantage savings, we all lose. If private citizens are not given the ability and incentive to manage their own retirement savings program, we must protect their future through public programs… and we all know how well the government has handled that one (can you say Social Security insolvency?)."

"The fight needs to be 'sold' using truth versus acting like a lobbyist. The economic impact is the key and not the current tax deduction. What happens if an entire generation of workers become largely dependent on Social Security and Medicare (only)? Will workers continue working past their 'expiration dates'? How does that stymie younger workers' career paths? President Carter raised the issue of having a national retirement policy almost 40 years ago yet we still operate via the patchwork method. (P.S. He was also right about having an energy policy, but I digress!)"

"We've known about this looming issue for decades and very few legislators have been willing to have an honest conversation with the American people. Most workers 'get it.' The rate of Social Security and Medicare contributions has not been indexed and given the increasing numbers who receive the benefit, it probably needs to be. Entitlement plan contributions and program design need to be updated. Also, many workers do not fully realize the value of a 'pre-tax' benefit or in general, how it works. The tax code is so complicated to them and they really only want to know how much money they will get back each spring when they file their taxes. Then, when it comes time to retire, they are shocked that the IRS is going to subject them to a mandatory withholding (and that their pre-tax distributions are subject to taxation). The next thing you know they think it is a plan sponsor rule (taxes) that they are being subjected to. It's too bad that employees couldn't opt in for a higher Social Security savings rate during their working years, that goes into an individual account that they cannot take a withdrawal from (loan or distribution), so that they have some retirement income stream for life. Sounds like the Bush era proposal perhaps."

"We've known about this looming issue for decades and very few legislators have been willing to have an honest conversation with the American people. Most workers 'get it.'"

"This concept of putting the retirement issue into a box and making savers pay for non-savers is about the dumbest thing this industry has ever allowed to happen. Unfunded retirement is a problem for the country — employers, consumer brands, etc…. not just the savers. We need to make the conversation bigger and Washington needs to support that effort."

"Tax reform is a large topic and target depending upon your political persuasion. To focus on retirement plan taxation without also addressing other tax preference, including a complete overhaul of the tax code, is dangerous, foolish and likely to go nowhere. At best it will create massive unintended consequences, like the ACA. The result: even more bureaucracy than today. Leave the current system in place until a new system can be created; enact the 'new' system all at once."

"They need to put together a policy on what they want the average American to have at retirement and come up with a pathway to get them there. It is not going to happen with IRAs. And they should not tweak them every time they review the budget."

"Consideration should be given to two classes of employees… those who are W-2 vs. self-employed. Small businesses are getting crushed by taxes, healthcare and the new wage labor laws."

"DC is clueless about these issues. I met with a young Senate staffer and the guy had *no* clue how retirement plans worked or why so few folks contributed."

"As with most items considered for reform, they are trying to reconcile the need for easy revenue vs. the need for a retirement program that works for millions… of voters!"

"Trying to get the highly paid people to pay more taxes now is just going to result in 'the little guy' not having any benefit at all. It's tax deferred, people! They're going to pay taxes eventually, so just be patient."

"I believe that people are either savers or spenders. Regardless of compensation or tax incentives, savers will always figure out a way to stash away a nut or two for tomorrow. Spenders will always spend more than they make, live for today, and complain that they will never be able to retire. If I just had a crystal ball, I'd be able to tell who's doing it right!"

"Heaven help us all. The only thing I can think of is these lyrics from the Beatles: 'Should five percent appear too small, be thankful I don't take it all. 'Cause I'm the taxman, yeah… I'm the taxman. If you drive a car, I'll tax the street. If you try to sit, I'll tax your seat. If you get too cold, I'll tax the heat. If you take a walk, I'll tax your feet.'"

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

Got a question you'd like to run by your fellow readers? Want to get a real-world perspective on an issue? Email me (anonymously) at nevin.adams@usaretirement.org.

THERE'S A NEW SHERIFF IN TOWN –
NAVIGATING THE NEW FRONTIER

403(b) MASTERS SUMMIT

NTSA
National Tax-Deferred Savings Association
Part of the American Retirement Association

Regulatory Review

The Department of Labor does the 'wave,' the IRS issues 2017 benefit limits, and New York City enters the 401(k) business.

Limits, Less?

2017 contribution, benefit limits largely status quo

For those who don't like much change, next year's contribution and benefit limits will be good news.

In Notice 2016-62 the Internal Revenue Service has announced cost of living adjustments affecting dollar limitations for pension plans and other retirement-related items for tax year 2017. While there were some changes — notably the income ranges for determining eligibility to make deductible contributions to traditional IRAs, contribute to Roth IRAs, and claim the saver's credit all increased for 2017 — many of the key contribution and benefit limits were unchanged.

What Changed

Effective Jan. 1, 2017, the limitation on the annual benefit under a defined benefit plan under Section 415(b)(1)(A) is increased from $210,000 to $215,000.

The limitation for defined contribution plans under Section 415(c)(1)(A) is increased in 2017 from $53,000 to $54,000.

The annual compensation limit under Sections 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from $265,000 to $270,000.

The dollar limitation under Section 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan will increase from $170,000 to $175,000.

The dollar amount under Section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from $1,070,000 to $1,080,000, while the dollar amount used to determine the lengthening of the 5-year distribution period is increased from $210,000 to $215,000.

The annual compensation limitation under Section 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost of living adjustments to the compensation limitation under the plan under Section 401(a)(17) to be taken into account, is increased from $395,000 to $400,000.

The income limit for the saver's credit (also known as the retirement savings contributions credit) for low- and moderate-income workers is $62,000 for married couples filing jointly, up from $61,500; $46,500 for heads of household, up from $46,125; and $31,000 for singles and married individuals filing separately, up from $30,750.

What Didn't Change

The contribution limit for employees who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan remains unchanged at $18,000.

The catch-up contribution limit for employees aged 50 and over who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan remains unchanged at $6,000.

The limit on annual contributions to an IRA remains unchanged at $5,500, and the additional catch-up contribution limit for individuals aged 50 (which is not subject to an annual cost-of-living adjustment) is also unchanged at $1,000.

The limitation used in the definition of highly compensated employee under Section 414(q)(1)(B) remains unchanged at $120,000.

The compensation amount under Section 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at $600.

The limitation under Section 408(p)(2)(E) regarding SIMPLE retirement accounts remains unchanged at $12,500.

The dollar limitation on premiums paid with respect to a qualifying longevity annuity contract under Section 1.401(a)(9)-6, A-17(b)(2)(i) of the Income Tax Regulations remains unchanged at $125,000.

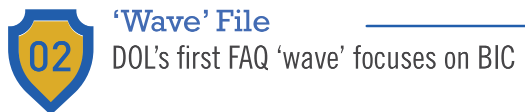
The dollar limitation under Section 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over remains unchanged at $6,000. The dollar limitation under Section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over remains unchanged at $3,000.

The limitation under Section 664(g)(7) concerning the qualified gratuitous transfer of qualified employer securities to an employee stock ownership plan remains unchanged at $45,000.

The compensation amount under Section 1.61 21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation remains unchanged at $105,000. The compensation amount under Section 1.61 21(f)(5)(iii) remains unchanged at $215,000.

Throughout the year you can check out the applicable limits on NAPA Net, or in the NAPA App.

— Nevin E. Adams, JD



The first of what are expected to be three "waves" of frequently asked questions (FAQs) on the Labor Department's fiduciary regulation was issued on October 27.

The 24-page document covers a lot of ground in the form of 34 questions, and while much of it seems to confirm what had been understood (or assumed), the first wave of FAQs certainly provides some comfort — and in some cases clarifies key issues.

> "The first wave of FAQs certainly provides some comfort — and in some cases clarifies key issues."

Those who had hoped for some extension in the effective dates will be disappointed. The Labor Department said that, "in light of the importance of the Rule's consumer protections and the significance of the continuing monetary harm to retirement investors without the Rule's changes," it felt that the year since publication of the final rule in the Federal Register was "appropriate and provides adequate time for plans and financial service providers to adjust to the change from non-fiduciary to fiduciary status" (the FAQs did offer an additional transition period for certain transactions that generally require a written authorization executed in advance by an independent fiduciary).

Among the key points:

- The Labor Department is restricting the use of compensation grids — they must be gradual, not steep, and cannot be retroactive (Q9).
- Recruitment "awards" are still permitted, if not tied to the movement of assets — but no back-end awards going forward (Q12).
- Rollover documentation is required, regardless of whether the full BIC or level fee exemption is used. An FAQ addresses reliance on the level fee provisions of the BIC Exemption for investment advice to roll over from an existing plan to an IRA if the adviser does not have reliable information about the existing plan's expenses and features (Q14).
- So-called "hybrid" firms can utilize the streamlined level fee exemption for their advisory business (Q15).
- The level fee exemption is available for rollover transactions, even if the adviser has subsequent discretionary authority over IRA assets (Q16).
- The level fee exemption is available for a conversion of a commission-based account to fee-based account (Q17).
- Any third-party payments will preclude use of the level fee exemption — meaning that a so-called "Frost offset" will not eligible for the level fee exemption (Q18).
- The level-fee exemption is not available with respect to proprietary investments (Q19).
- A rollover to a fixed annuity is covered by the 84-24 PTE, and does not require a BIC (Q32).

The FAQs also:

- Confirmed that the BIC Exemption is broadly available for recommendations on all categories of assets in the retail advice market, as well as advice on rolling assets into an IRA or hiring an adviser (Q3).
- Clarified that, in the absence of an investment recommendation, the rule does not treat individuals or firms as investment advice fiduciaries merely because they execute transactions at the customer's direction (Q4).
- Noted that the ongoing receipt of compensation based on a fixed percentage of the value of the assets under management, where such values are determined by readily available independent sources or independent valuations, does not, in and of itself, violate the prohibited transaction rules or require compliance with an exemption, though "certain abusive practices" involving fee-based accounts can violate the prohibition on self-dealing (Q5).
- Clarified that the BIC Exemption is available for advisers who act as discretionary fiduciaries to retirement plans and then provide investment advice to a participant to roll over assets to an IRA for which the adviser will provide advice, and for recommendations to roll over assets to an IRA to be managed on a going-forward basis by a discretionary investment manager (Q6 & Q7).
- Confirmed that the full BIC Exemption does not cover advice provided solely through an interactive website in which computer software-based models or applications provide recommendations without any personal interaction or advice from an individual adviser (*i.e.*, robo-advice) based on the DOL's view that "the marketplace for robo-advice is still evolving in ways that appear to avoid conflicts of interest that would violate the prohibited transactions provisions and that minimize cost," although the DOL said that the BIC does provide relief for robo-advice providers that are "level fee fiduciaries." (Q10)
- Explained that the BIC Exemption is available for investment advice to roll over a plan account to an IRA, even if the adviser will subsequently serve as a discretionary investment manager with respect to the IRA — as long as the adviser does not have or exercise any discretionary authority or discretionary control with respect to the decision to roll over assets of the plan to an IRA (Q15).

The FAQs also dealt with bank networking arrangements, fixed rate and fixed indexed annuity transactions, the role of independent marketing organizations (IMOs), and disclosures under the BIC.

— *Nevin E. Adams, JD*

States' 'Rights'

DOL publishes final rule on state-run retirement programs

In late August, the Labor Department's final rule outlining the circumstances in which state retirement savings programs would not be treated as creating ERISA-covered pension plans was published. While the final rule largely mirrors the proposed rule, it does contain some clarifications in response to submitted comments.

States' Roles

As expected, most of the new safe harbor's conditions focus on the state's role in the program. The final rule clarifies that the state-run program must be established by state law, implemented and administered by the state (though the state may choose to contract with service providers to administer the program). The state must be responsible for investing the employee savings, for selecting investment alternatives from which employees may choose, and for the security of payroll deductions and employee savings.

Employer Role

Employers may not contribute to these programs, and their participation in the program must be required by state law, not voluntary. Additionally, employer activity must be limited to ministerial activities such as:

- collecting payroll deductions;
- remitting them to the program;
- providing official state program notices to employees (this is a may, not a must);
- maintaining records of payroll deductions and remittance of payments;
- providing information to the state necessary for the operation of the program; and
- distributing state program information to employees.

The program must be voluntary for employees even if it requires automatic enrollment. Consequently, employees must be given adequate advance notice and have the right to opt out. In addition, employees must be notified of their rights under the program and how to enforce their rights.

> "The program must be voluntary for employees even if it requires automatic enrollment."

Municipality Extension?

Additionally, the Labor Department announced a proposed regulation that would expand the final rule discussed above to cover qualified city and county programs. To be qualified, the city or county must have the authority to require employer participation in a payroll deduction savings program. In addition, the city or county must have a population at least equal to that of the least populous state, and may not be in a state that has a state-wide retirement savings program for private-sector employees.

The proposal solicits comments on, among other things:

- whether the final rule should be expanded in this manner;
- what limitations should be imposed on the size or types of political subdivisions that would qualify; and
- whether the final rule's conditions should differ in any way if applied to political subdivisions.

Clarifications

The final rule clarifies that it does not by its terms prohibit states from taking additional or different action or from experimenting with other programs or arrangements. Additionally, it removed restrictions that would have prohibited states from imposing any restrictions, direct or indirect, on employee withdrawals, citing commenters concerns that:

- It would interfere with the states' ability to guard against "leakage" (and, since "the states deal directly with the effects of geriatric poverty, they have a substantial interest in controlling leakage, and the proposal's prohibition against withdrawal restrictions could undermine that interest," according to the DOL).
- It would interfere with the states' ability to design programs with diversified investment strategies, including investment options where immediate liquidity is not possible, but where participants may see better performance with lower costs.
- It could interfere with the states' ability to offer lifetime income options, such as annuities.

The final regulation also removed restrictions on reimbursement to employers of costs, limiting that to a reasonable approximation of the employer/typical employer's costs.

Unlevel Playing Field

Back in January, the American Retirement Association submitted a comment letter to the Department of Labor with respect to those proposed regulations. In the comment letter, the ARA made the following recommendations:

- That the non-ERISA safe harbor under the proposed rule be expanded to apply to comparable payroll deduction programs established and administered by private sector providers.
- That the non-ERISA safe harbor under the proposed rule be available to any payroll deduction IRA program without regard to whether it is mandated by a state law (or offered under a state established IRA Program).

Unfortunately, those concerns were not addressed in the final regulation – creating an unlevel playing field for the private sector compared with the latitude provided the state-run alternatives by this final regulation.

Check out NAPA's new state auto-IRA plan resource center at http://www.napa-net.org/industry-lists/state-auto-ira-plans/.

— Nevin E. Adams, JD

Apple's 'Sauce'

Big Apple unveils MEP, retirement program for private sector workers

In mid-October New York City Comptroller Scott M. Stringer unveiled a new city-run retirement plan for private sector workers – including a city-sponsored multiple employer plan (MEP).

The underlying rationale for the program? Nearly 60% of private sector workers in New York City lack access to retirement plans through work. According to the program announcement, the new proposal leverages recent changes in federal law that allow state and local governments to "help employers provide retirement savings plans without adding any burden to taxpayers." The announcement followed the Labor Department's proposed modification to its final rule that would extend the authority to design and operate payroll deduction IRA programs with automatic enrollment to "qualified political subdivisions" (see State's 'Rights').

The city would be under no obligation, nor would it commit to fund any losses experienced by investors in the normal course of operations —and employers who already provide a retirement plan, won't have to do anything different. But for those who don't…

The "NYC Nest Egg" program would work as follows:

Employers that do not offer a retirement plan but would like to, would be able to shop for plans through a curated marketplace overseen by an independent board. This new, voluntary NYC 401(k) Marketplace would offer access to a set of screened, employer-sponsored, easier-to-use "prototype" 401(k) plans that would include a new publicly sponsored Empire City 401(k) Multiple Employer Plan (MEP), and potentially SEP-IRA and SIMPLE-IRA plans.

Employers that want to offer a 401(k) plan but that (according to the program announcement) "are concerned about ERISA fiduciary responsibilities and paperwork associated with individually sponsoring a plan" would be able to select a voluntary publicly sponsored turnkey product in the new NYC 401(k) Marketplace, the Empire City 401(k) MEP. The sponsor and the participating employers would be insured against any residual liability, and since many employers could participate in a larger collective, a MEP is likely to facilitate more attractive terms for participating employers.

Employers that do not select a plan on their own or through the NYC 401(k) Marketplace would default into the new NYC Roth IRA. Employers would be obliged to automatically enroll eligible employees into a basic publicly enabled payroll deduction IRA, although employees would be free to opt out at any time.

Plan Operation

A publicly enabled independent governance board, consisting of subject matter experts with what was described as having "no actual or perceived conflicts of interest relating to their board duties" would oversee the NYC Nest Egg. This oversight would include sponsoring the Empire City 401(k) MEP and conducting periodic competitive bidding to prudently select and monitor private providers who would assume fiduciary responsibility, perform administrative functions and manage investments. Insurance would cover any residual fiduciary liability for the board and for employers. The board would also execute periodic competitive bidding to select a private provider for the NYC Roth IRA and play a role in the Marketplace's administration. Additionally, the board would make available financial planning tools, including online calculators.

All marketplace plans and the NYC Roth IRA would harness the power of automatic enrollment, which has been shown to meaningfully improve participation in existing plans and make savings easier, with opt outs for employees. Plan features would include:

- A myRA would be available as an investment option (this would be the initial default investment for the NYC Roth IRA).
- Default contribution rates would be based on earnings and age. The program outline notes that differentiating savings rates by an estimate of annual earnings and age allows savers to better match their contributions to their needs than the current 401(k) system, which typically relies on a single, standard default savings rate.
- Contribution escalation would be dynamic and driven by market factors and specified participant financial data. Savers would be free to raise, lower, or stop their default contribution rate at any time, and the NYC Nest Egg plan would include a special calculator to help savers further customize the rate.

Two policy options are presented for providing guaranteed lifetime income after retirement: In the first approach, up to 50% of savings would be defaulted into a competitively bid guaranteed income stream provider at retirement with the ability to opt out. The second would employ a suite of behavioral tools to encourage the highest possible voluntary opt in rate by age 70 (assisted by statements that express current savings as an estimated stream of monthly payments at retirement).

All NYC Nest Egg investment options (with the exception of the myRA) would invest exclusively in passively managed lifecycle funds, consisting of several basic low-cost index funds modeled on the federal Thrift Savings Plan (TSP).

The program outline says that administrative and investment fees for all NYC Nest Egg offerings would have to be "modest, competitive, and within parameters established by the independent governance board and could not disproportionately impact any group of savers, especially during the start-up phase."

To promote the goal of increasing retirement savings, the NYC Nest Egg plan would seek to limit loans and/or hardship withdrawals.

And, while the plan is crafted with New York City private sector workers in mind, the program rollout says that it could also serve as a blueprint for a statewide effort "if that were preferred or legally required."

— Nevin E. Adams, JD

NAPA's Upcoming Industry Lists

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

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

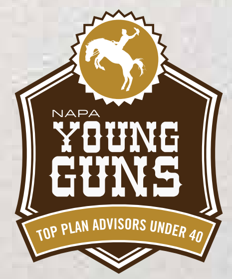
One of the things that sets these lists apart from other published lists is that they are based on a nominating/voting/selection process that taps the knowledge of NAPA's 10,000+ members. Look for more information about the upcoming editions of all three lists on the NAPA Net portal and in the *NAPA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

WINTER 2016

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

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

The 2016 list of Top Women Advisors will be published in the Winter 2016 issue of NAPA Net, the Magazine.



SUMMER 2017

Where is the next generation of plan advisors coming from?

To answer that question, NAPA set out to find the top young advisors — the profession's "Young Guns." The result of was our list of the "Top 50 Plan Advisors Under 40," first published in 2014.

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

The 2017 "Young Guns" list will be published in the Spring 2017 issue of NAPA Net, the Magazine, which will be distributed at the NAPA 401(k) Summit, the nation's retirement plan advisor convention.

SPRING 2017

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

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

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

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

The 2017 list of DC Top Industry Wholesalers will be published in the Summer 2017 issue of NAPA Net, the Magazine.

Questions about the process, timing, or eligibility for the lists should be directed to Nevin Adams at **nevin.adams@usaretirement.org.**

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as of December 14, 2016

Shouldn't *your* firm be on this list and enjoy the benefits of NAPA Firm Partnership?
To learn more contact Jake Linney at 703-516-9300 x116 · jlinney@usaretirement.org

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