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WINTER 2022





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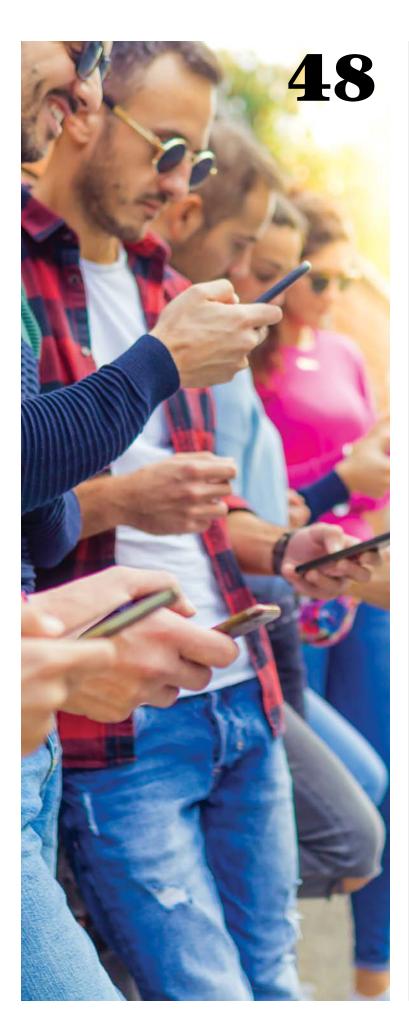
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A Swan Song

I look forward with great anticipation to the next phase of my career... as we all continue working for America's retirement

s you have (hopefully) heard by now, I am planning for a new phase of life, one still affectionately referred to as "retirement."

Not retirement in the traditional sense, though come March 1, I do hope to work fewer hours, forego trips to the office, and spend more time doing the things I want, rather than the things I must. Much has been made of how difficult it is for younger workers to grasp the reality of retirement, but the reality is that retirement "myopia" is not limited to younger workers-and I am not 100% certain what it will be like. When you're in the news/ trends business, there's never really a day "off"-and as I've mentioned to some, as I've never really been very good at taking vacations, I'm not at all sure that I am really "ready" for retirement. And yet, I know that I am.

I've done the math, so the finances are fine. COVID gave me and my wife plenty of time together, so I'm not worried that I'll drive her nuts by being here all the time-quite the contrary. We've got family to visit, a short but growing bucket list of places we want to see-and a book I want to write. I'll still have the opportunity to write for NAPA (at least until the plaintiffs' bar moves on to other things and/ or we actually manage to close the coverage gap!), to be involved in the NAPA 401(k) Summit, and to continue my podcast series with Fred Reish. Indeed, for those of you on the "outside," it may not look like I have retired at all.

That said, a big part of being able to "retire" (at least in good conscience) is to know that you're



leaving things in good hands, and I am blessed to be able to do so. Not just to hand the "keys" (so to speak) to John Sullivan, who is already a known force for good in this industry, but the capable hands that have long comprised the editorial team here—Ted Godbout and John lekel (not to mention John Ortman, who has taken his own retirement this year, but who was responsible for much of the groundwork we still build on)—as well as Tony Descipio, who

a reality for as many people as I could—and while my ministrations over the past couple of decades may have been indirect, I draw great pride and pleasure from hearing from so many of you the positive impact that my work—our work—here has had.

I'm thankful for the opportunity I have been given here, and to have the opportunity to not just explain but to shape retirement policy with your support, and those on the incredible team here at the

For those of you on the "outside," it may not look like I have retired at all."

manages our ad placements; our newest member, Brandon Avent, who preps and publishes our newsletters every day; and perhaps most importantly here, Ethan Duran, who, despite the ridiculously short timeframes I give him, manages to help our important content look so very good.

Swan songs tend to be thought of as sad things—after all, it's the music playing as background for a dying swan that gives us that reference point. But the reality is that "retirement" in all its many forms is what we're all about. To provide the opportunity for working Americans to be able to step aside from the labor of a lifetime and to be able to relax and "smell the roses." It has long been my aspiration to help make that

American Retirement Association. I treasure what I have learned and continue to learn, as well as the people it has been my great joy to work with and learn from over the years.

More importantly, I look forward with great anticipation to this next phase of my career... as we all continue working for America's retirement.

Lui

Nevin E. Adams, JD

Editor-in-Chief







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Thanks, Nevin!

Congratulations to Nevin Adams as he begins his journey into retirement—or at least his version of it.

By Corby Dall

is often in the eye of the beholder. So it's hard to define financial independence. It might be golfing every day; it might be fishing and camping; it might even be sitting on the porch. I believe it's the ability to live according to what is comfortable to me, with ultimate flexibility of my calendar. The freedom and peace of mind that comes with that "success" are hard to argue with.

Replacing one's income while creating flexibility is not an easy task, nor is it achieved by accident. Methodical, disciplined savings and planning is the only way I know, apart from the lottery.

Our friend and guide Nevin Adams has reached that lofty goal and is planning his journey into retirement, or at least his version of it. We should all be happy, if not necessarily relieved, that he has the ability and freedom to pull this off. After all, he is our chief spokesperson and the voice of reason. If he can't do it, how can we expect to help others achieve that success?

Now, I'm solidly on the side of keeping Nevin hard at work for at least another 20 years. But I understand his desire to begin to reap the rewards of a well-fought battle. From what I have gathered, he will slowly transition away from full-time toil and into a more flexible and comfortable, but ongoing, role, continuing to contribute to NAPA and all things media and conference support.

That brings me back to my own definition of financial independence—living according to what is comfortable to me with ultimate flexibility of my calendar. Congratulations on achieving that, Nevin! We are all proud



Corby Dall is an SVP of OneDigital's Retirement & Wealth division specializing in retirement plan consulting, He is NAPA's 2022-2023 President. of you and so grateful of your contributions to this industry. And we look forward to your reports on the next leg of your journey!

Speaking of success, we are really excited that we were successful in bringing John Sullivan into the NAPA family to succeed Nevin. John is a tremendous success in his own right, and brings a great array of talent and passion for this industry, not to mention a little younger outlook. (Sorry, Nevin-remember that I am your age, after all!)

I'm confident that the future is in good hands and thankful that we will have John and Nevin for the next little while to help shine a light on what is happening and what we should be doing to help American workers achieve their own version of a successful retirement. NATIM



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Closing the Retirement Savings Opportunity Gap

Here comes SECURE 2.0, featuring new Saver's Match and Starter K programs.

By Brian H. Graff

the coverage gap—the gap between full-time working Americans who have access to a plan at work and those who lack that access. And we've also talked about the impact that has on savings—that even modest income workers are 12-15 times more likely to save for retirement if they have that access than if they don't.

This "opportunity gap" is particularly pronounced in the black and Hispanic communities. Fortunately, data also shows that when moderate income workers are enrolled automatically in a workplace retirement plan, there is no racial disparity in retirement savings participation—with roughly 80% of black, Hispanic, and white Americans all participating in these programs.¹

We've spent most of the past two years working with those on the Hill to pass legislation. It's been tagged "SECURE 2.0" since many of its provisions build on the SECURE Act passed in late 2019. Indeed, as we head to press, Congress is poised to pass this legislation. While there will be much to build on and work with, there are two key provisions I want to draw your attention to: the Saver's Match program and the Starter K program.

The Saver's Match program will increase retirement savings adequacy through a targeted tax incentive to moderate-income earners who save for retirement. The Starter K program will close the retirement plan coverage gap, so more American workers gain access to a workplace-based retirement savings plan. The aggregate impact of these two policies is nothing short of profound. Moreover, these

proposed changes would have a significant impact on moderate income workers, particularly workers of color. In fact, estimates indicate that black and Hispanic workers would see a 22% increase in access to workplace retirement plans with the help of these provisions.²

Over 108 million Americans will now be eligible for the Saver's Match–a new government matching contribution that is directly deposited into a retirement account-boosting the savings of moderate-income earners.3 This includes millions of new gig workers as well as government workers like public school teachers, many of whom are not currently eligible for matching contributions. The expanded and enhanced Saver's Match would both encourage saving and help moderate income earners build wealth by providing an immediate, meaningful return on personal retirement contributions. The Saver's Match would replace the existing Saver's Credit and its limitations. It would be deposited directly into a retirement account, and as a refundable tax creditunlike the current Saver's Creditwould be deposited automatically into a retirement account regardless of federal income tax status. The legislation also expands the income levels eligible for the match and boosts the match level.

As for the Starter K, it's projected to provide over 19 million new workers with access to a workplace retirement account through a brand new, super-simple, safe harbor 401(k) plan—and the legislation under consideration also includes enhanced retirement plan startup tax credits for employers.⁴



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

The Starter K plan allows employees to save up to \$6,000 per year (with a \$1,000 catch-up contribution for older workers) in a tax-preferred retirement accountthe same contribution limits as an IRA-but without the complexity. administrative burden or expense of a traditional 401(k) plan. The Starter K doesn't require employer contributions or complicated nondiscrimination or top-heavy testing. It only requires that workers be automatically enrolled in the plan at a minimum of 3% of pay, and provides the ability for workers to opt out of this program if they wish. This new streamlined Starter K plan with automatic enrollment becomes the perfect option for a small or start-up business that is not yet able to contribute to a retirement plan, but wants to give its valued workers an opportunity to save for their retirement.

Of course, the Starter K plan does more than just make it easier for small business owners to provide a meaningful benefit to their workers. Coupled with automatic enrollment, it provides a significant step toward closing not only the nation's retirement opportunity coverage gap, but racial wealth gaps as well.

These are exciting times—and the culmination of months of hard work and engagement by your Government Affairs team with Hill staff in crafting and refining the legislation that will create a tremendous and potentially unprecedented opportunity to create opportunity for American workers.

That said, there will be much to do in the weeks and months ahead as we work together to make these opportunities a reality for American workers. NNTM

FOOTNOTES

^{1&}quot;401(k) Plans in Living Color, A Study of 401(k) Savings Disparities Across Racial and Ethnic Groups," The Ariel/Aon Hewitt Study, 2012.

³ Estimates prepared by Judy Xanthopoulos, PhD, of Quantria Strategies, based on 2019 IRS, SOI W-2 Data

⁴ Ibid



Interview with CHRIS LITTLEFIELD



SCALE MODEL

ecordkeeping is a tough business. Done properly, it requires large and consistent investments in technology and people, and though it's often described as a "commodity" business, it's also one that requires companies do what's right 100% of the time. Little wonder there have been regular waves of consolidation, with those less able (or willing) to make those commitments, either by default or by acquisition.

In that environment, the Principal Financial Group® has thrived. Its 2019 acquisition of the Wells Fargo Institutional Retirement and Trust (IRT) business doubled its participant and asset base while greatly broadening its target market beyond the small- and mediumsized employer segment that has long been its hallmark.

Chris Littlefield was named president of Retirement and Income Solutions (RIS) at Principal® on April 1, having joined the firm as executive vice president and general counsel in 2020. He previously led two life insurance and annuity companies—Fidelity & Guaranty Life Insurance Holdings and Aviva USA Corporation—and now heads the retirement business at Principal, which as of late 2022 serves the needs of more than 40,000 employers and 11 million individual customers.

NAPA Net recently had the opportunity to check in with Chris for an update.

NNTM: Chris, you joined Principal at a precipitous time—about a year into the Wells Fargo IRT acquisition, which roughly doubled the firm's retirement business—and right at the outset of the COVID-19 pandemic. Now you're heading up Retirement and Income Solutions at Principal. How's it going?

Littlefield: It's going great. We've completed the integration of the Wells Fargo IRT business onto our platform, and that's gone very well, particularly in view of the challenges of remote communications and collaboration because of COVID. In fact, we retained more than 90% of those plans. We now have large, talented employee bases in both Des Moines, lowa, and North Carolina, and we've been focused on merging and mixing the cultures of the two

organizations. In the process, we have grown in both size and target market scope. Today, we are the third largest recordkeeper in the nation based on participants, and sixth largest based on assets. But Principal has long been committed to this business—the business of serving American retirement plans and retirement savers.

NNTM: Seems like every decade or so the industry goes through another consolidation—and we're in the middle of another of those right now. Your retirement business roughly doubled with the Wells Fargo IRT acquisition, which also expanded your market footprint. That had to be even more complicated due to the impact of COVID—what did you take away from that experience?

Littlefield: Consolidation is tough work, and the culture element can be even harder, particularly with a remote working environment as you say. The "soft" stuff is the hard stuff. A lot of planning went into this, and a lot of thought about how to migrate plans without disrupting service or creating additional work for plan sponsors or financial professionals. We took our time to do it right-more time than we initially anticipated. Throughout, our main focus was on serving participants and plan sponsors because we knew their satisfaction would make the lives of financial professionals easier. The integration of the businesses, along with strategic investment and initiatives, expanded and enhanced the retirement offerings we provide.

NNTM: You've also brought on new leadership—Teresa Hassara, who has an impressive track record of her own.

Littlefield: Teresa is terrific—and hiring her is yet another signal that Principal is in this business for the long haul. She's had leadership experience with several major providers across multiple market segments, and she's a great cultural fit. We've been blessed to have a great team of long-term, seasoned professionals here at Principal. But

NNTM: What is the strategic vision Principal has for the future, and the concept of financial inclusion?

Littlefield: Our focus is to help ensure everyone has an opportunity to save and has access to the advice they may need to do so successfully-most especially those who are often underserved. Teaming with the Centre for Economics and Business Research this year to create the very first Global Financial Inclusion Index gave us a new way to live out this purpose. The Index measured the degree to which people have access to useful and affordable financial products and services in 42 markets globally. Singapore was found to be the most financially inclusive market just ahead of the U.S. A key takeaway this first year is that we have both challenges and opportunities to increase financial security around the world. Employers are critical to creating more financial inclusion within our communities. making it necessary that we support and incent them to offer comprehensive benefits packages that enable better access to savings, financial education, and financial well-being programs. Financial professionals also are key to improving financial inclusion as there are so many Americans who need advice on how to save for retirement and retirement security is disproportionately more challenging for women and people of color.

NNTM: Finally, let's pull out your crystal ball for a minute—what do the next 12 months look like for the industry and Principal?

Littlefield: The industry pressures and economic uncertainties that surround us today will likely only increase over the near

today will likely only increase over the near term. The combined challenges of increased cost and wage pressures and the impact of retaining strong talent will make it even harder for recordkeepers. So, right now, we're looking to build on the gains achieved through the Wells Fargo IRT acquisition—with our primary focus now on disciplined, organic growth. We will look to build strategic relationships with financial professionals to advance our priorities and serve more Americans' retirement needs, particularly related to tailored solutions and holistic advice during this period of elevated economic and market volatility.

it's wonderful to have someone come in with a

new perspective, especially as we continue to

grow and blend our teams.



Trends 'Setting'

There's plenty of plan design movement(s) worth keeping an eye on, as this issue's coverage attests. We've got health savings accounts (finally?) beginning to look more like savings designs, growing interest (but slipping availability?) among financial wellness offerings, and some shifts in benefit focus for the two youngest workplace demographics. For starters.

Designing Signs

Are HSAs evolving?

Health savings accounts (HSAs) may still be used more as spending accounts than savings accounts, but the Plan Sponsor Council of America's (PSCA) 2022 Health Savings Account Survey, sponsored by HSA Bank, finds signs that retirement plans are starting to influence HSA program designs.

Most noticeably, half of large employers—and more than a third of respondents overall—indicate that they do—or will—position the HSA as part of a retirement savings strategy to employees, according to the PSCA survey, which reported on the 2021 planyear experience of more than 450 employers.

One key design strategy already employed by more than

4 in 10 respondents is the use of automatic enrollment–up from 35.3% in 2020 and 32.2% in 2019. As it has with 401(k)s, automatically opening HSAs and enrolling employees dramatically increases the savings rate. This includes more than half of small organizations that automatically open an HSA for employees when they enroll in the HDHP.

Moreover, nearly 6 in 10 (57.2%) allow rollovers from HSAs for newly hired workers, and nearly two-thirds (61.9%) educate and encourage rollovers from other HSAs—moves that support the growth of these savings accounts.

These programs are the only account that offers a "triple tax" advantage for healthcare expenditures—offering the same pre-tax savings advantage and tax deferral on investment growth as

401(k)s, but also allowing for the tax-free withdrawal of those funds for eligible healthcare expenses.

Those supportive structures notwithstanding, education remains a significant challenge for the employers that sponsor and look to encourage participation in these programs. Yet, most employers only provide education about HSAs during open enrollment (61%) or when onboarding employees.

Differences from 401(k) Plans

One notable area where the design of most HSA programs differs from 401(k) programs is investable account assets—as HSAs are still largely treated by participants as short-term spending accounts for healthcare. Just 20% of account holders invest their assets in something other than money market funds—where

a \$1,000 minimum cash balance remains a threshold for directed investment by more than 80% of responding organizations.

"Incorporating HSA education as part of a broader financial wellness program throughout the year with multiple touch points, perhaps alongside your retirement plan education, would go a long way towards reframing HSAs," said Ann Brisk, director of strategic partnerships at HSA Bank. "It is encouraging to see data documenting the expansion of these valuable resources across a wide variety of employer sizes and worker populations. As we enter another open enrollment season, employers should find this benchmarking data a valuable resource."

The survey can be accessed at https://www.psca.org/research/ HSA/2022report.

- NAPA Net Staff

'Well' Power?

Are advisors missing the mark on financial wellness opportunities?

With financial incentives as motivation, DC plan advisors are more effectively aligning their plan design recommendations to address market demand, but findings from a new report suggest that disconnects between the needs of plan sponsors and plan participants still exist.

According to data from Cogent Syndicated's Retirement Plan Advisor Trends report, these divergences can be turned into new opportunities for plan providers that are willing to bridge these gaps, particularly in the areas of financial wellness programs and health savings accounts (HSAs).

Financial Wellness

Despite strong demand from plan participants and signs of financial wellness programs' effectiveness, the overall availability of these programs is down from 38% in 2021 to 31% in 2022, the report indicates

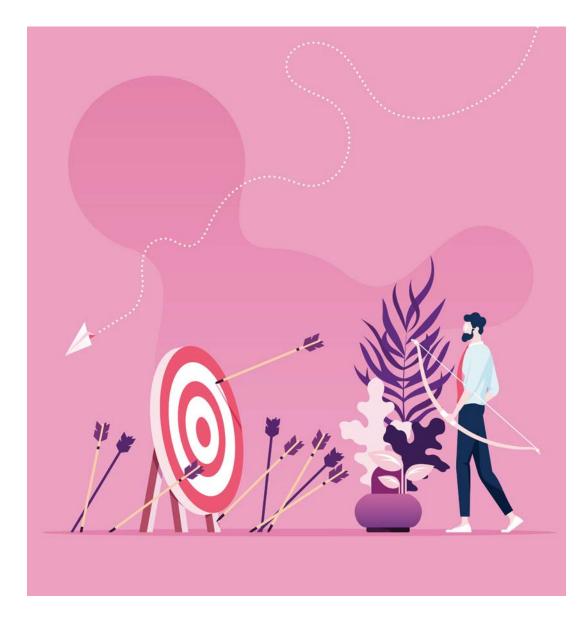
This decline stems largely from fewer emerging DC advisors those managing less than \$10 million in DC AUM—offering financial wellness programs at 22%, down from 36% last year, according to the firm's data. Adoption remains strong in other cohorts, however. More than half (51%) of DC specialists—managing \$50 million or more in DC AUM—are currently offering these programs.

"This is a huge pitfall that must be addressed, especially as our latest DC plan participant findings prove financial wellness programs are instrumental in creating more confidence and retirement readiness," writes Sonia Davis, Senior Product Director at Cogent Syndicated.

In fact, more than a third of users (35%) are "extremely confident" in their ability to achieve their respective retirement savings goals—double the rate among nonusers (17%), the firm notes. What's more, confidence levels are most pronounced among Millennials (42% of users vs. 15% of non-users) and Gen Xers (30% of users vs. 15% of non-users).

Davis further suggests that DC advisors have ample opportunity to align their individual financial wellness program offerings to address specific participant demands. To that point, she observes that the second- and fifth-most desired financial wellness offerings among participants-advice on Social Security and Medicare decisions, and help projecting future healthcare expenses in retirement, respectively-rank only sixth and tenth among current DC advisor offerings. "This reveals a sustained unmet need," says Davis.

Moreover, HSA guidance, mobile app capabilities with



⁶⁶While fewer than 1 in 10 DC advisors recommends HSAs to their plan sponsor clients—at 9%, up from 4% in 2020 and 2021—nearly half (48%) of plan sponsors offer HSAs. That number climbs to more than two-thirds among small-mid and large-mega plans offering HSAs, according to Cogent's latest plan sponsor findings.⁹⁹

financial planning tools, and credit score guidance–features that also rank among the top 10 most desired offerings among participants–do not even register among the top 10 current DC advisor offerings, the report notes.

As such, providers can play a key role in educating plan advisors on what's most vital to include in order to create more confident retirees in the future, she further emphasizes. To be sure, the No. 1 top financial wellness feature among both plan advisors and participants is retirement income planning/support.

HSA Opportunity

Meanwhile, HSAs are another big disconnect the firm is tracking. The proportion of plan advisors recommending HSAs continues to trail overall plan sponsor adoption, although this is most likely due to most DC advisors serving smaller plans, Davis notes.

While fewer than 1 in 10 DC advisors recommends HSAs to their plan sponsor clients—at 9%, up from 4% in 2020 and 2021—nearly half (48%) of plan sponsors offer HSAs. That number climbs to more than two-thirds among small-mid and large-mega plans offering HSAs, according to Cogent's latest plan sponsor findings.

Additional Observations

As to elements of DC plan design that plan advisors are getting right, this year the firm is seeing greater industry alignment with student loan 401(k) matching and emergency savings accounts (ESAs).

Student loan 401(k) match recommendations among plan

advisors are holding steady year-over-year. According to the firm's data, a third of DC advisors are likely to advocate student loan 401(k) matching (32%), with enthusiasm peaking among \$25 million-plus producers and independent advisors. At the same time, however, plan sponsors are less likely to embrace this benefit given greater adoption of tuition reimbursement programs, with fewer than 3 in 10 plan sponsors being likely to offer a student loan 401(k) match.

Regarding ESAs, only a small percentage of DC advisors is endorsing them. Davis notes that ESA recommendations are highest among DC specialists (at just 5%), while future intent is relatively weak at 20% overall. "This largely mirrors our latest insights from plan sponsors, in which just 15% of employers are offering ESAs, down from 21% in 2021," writes Davis.

That said, while plan advisors and plan sponsors appear to be on the same page, this sentiment could be shortsighted, as participants are still voicing concerns over having limited money and worry about dipping into their retirement savings for emergencies, the Cogent executive observes.

"Whether it's a disconnect between financial wellness offerings, HSAs or continuing to meet needs for student loan 401(k) matching and ESAs, it's clear there remains opportunity for providers to better advocate for participant best interests and ensure assets remain in-plan," Davis further emphasizes.

— Ted Godbout

Net 'Net'

Young workers cast wide net for retirement savings opportunities

While the 401(k) remains the top retirement savings vehicle for today's workers overall, Gen Z and Millennial workers are more likely to seek out a wider range of resources, from investment options and vehicles to financial wellness tools and advice.

According to Schwab Retirement Plan Services' annual survey of 401(k) plan participants, unlike older generations, other types of investments are likely to play a greater role in Gen Z and Millennial workers' long-term wealth plans, including investing in cryptocurrency, real estate, annuities and small businesses.

More than 4 in 10 Gen Z and Millennial workers wish they could invest in annuities and cryptocurrency in their 401(k). More than a third wish they could select ESG investments, and nearly as many say they're interested in fractional shares. In addition, more than 7 in 10 younger workers say it's important that their 401(k) investments reflect their personal values.

Similarly, about half of Gen Z (52%) and Millennial (48%) workers are also using their HSAs to save for future health care costs in retirement, and more than half are investing their HSAs in mutual funds and other types of investments.

These findings come as many Gen Z (38%) and Millennial (27%) workers changed employers in the past year and have had the



opportunity to take a fresh look at how they are saving and investing.

"Younger workers today are beginning their financial journey from a different place than older generations did when they began," said Catherine Golladay, Head of Schwab Workplace Financial Services. "The 401(k), while still their primary retirement savings tool, is no longer viewed as their only path to retirement. They see an opportunity to reach their financial goals through diverse assets that are making them excited about investing and engaged in their financial futures."

In fact, only 37% of Gen Z workers say their first investing experience was through a 401(k)—lower than that of Millennials (54%), Gen X (61%) and Boomers (61%). Instead, many Gen Z workers first got involved in investing through mobile trading (22%), cryptocurrency (11%), traditional brokerage accounts (10%) and health savings accounts (9%).

Wellness and Advice

Younger generations are also more open to financial wellness tools, including online tools to help save for retirement, build an emergency savings fund, and manage debt.

They are also receptive to help from a financial professional to develop a plan and stay on track. In fact, Gen Z (83%) and Millennials (82%) see more need for personalized advice for their 401(k) than Gen X (79%) and Boomers (67%). Schwab also found that younger workers prefer human over computer-generated advice but are very likely to utilize both, while Boomers are less likely to follow both human and computer-generated advice.

Not surprisingly, Gen Z (24%) and Millennials (20%) are also more likely to use social media for financial advice than Gen X (14%) and Boomers (2%). In addition, more than a third seek advice from family and friends (40% and 35% for Gen Z and Millennials versus

24% and 16% for Gen X and Boomers, respectively).

Similarly, nearly half of Gen Z and Millennials want help calculating how much money they need to save for retirement. Other areas of interest include receiving 401(k) investment advice, determining retirement age and managing expenses.

"Even with an uncertain economic outlook, young workers have a lot of reasons to be optimistic and that's reflected in their attitudes towards saving and investing," says Brian Bender, Head of Schwab Retirement Plan Services. "Of course, time is on their side, but Gen Z and Millennial employees also have access to a combination of investment choices, virtual education, tools, and human advice that previous generations did not have at their age. The best news is that younger workers are open to leveraging all these resources to help them achieve financial security."

Retirement Expectations

As for how much they think they will need to retire, Gen Z respondents think they'll need to save \$1.4 million, while Millennials estimate \$1.8 million. All generations think their savings will last about the same amount of time. Gen Z and Boomers estimate having enough for 25 years, while Millennials and Gen X say 22 years. However, more than a quarter of Gen Z workers don't know how much they will need in monthly income to live comfortably in retirement. Gen Z and Millennials were also interested in retiring at a younger age than their older counterparts.

Schwab's survey was conducted by Logica Research between April 4-19, 2022, among 1,000 U.S. 401(k) plan participants, who were actively employed by companies with at least 25 employees and were 21-70 years old. In order to analyze Gen Z results against other generations, an additional 100 plan participants aged 21 to 25 completed the survey. NNTM

— Ted Godbout



Your DIY Business Plan

These four simple steps can make your practice more effective and profitable.

By Rebecca Hourihan

re you looking for ways to make your retirement plan business more effective and profitable? If so, you're in luck-following are some prompts that can transform your business. So find a comfortable place, get a beverage, put your phone away and pick up a pen. We're going on a journey to map out your best business ideas and goals and then create a plan to achieve your vision. These simple steps will help make your business more effective and more profitable in no time.

Goal Casting

Casting a vision for your business is an important first step in achieving success. By taking the time to imagine what you want your 401(k) practice to look like in the future, you can begin to create a plan to make it happen.

First things first: What does your business look like in 3 years? Sit back and close your eyes. Take 5 minutes to envision all of it. Then write it down (yes, this is an important part) to get your goals out of your head and on paper.

Can you see it? Do you feel it? Are you willing to work to attain it?

Goal to Strategy

Your future business needs a game plan. Whether it's growth, awareness, fame, profitability, client retention, servicing, team building, culture, mission and/or sustainability, each hallmark achievement requires specific attention. The good news is that you have already done the hard work: naming your aspirations. Now it's time to align your goals with a strategy:

- If your goal is **growth**, then create more **awareness**.
- If your goal is profitability, then look at client retention, servicing and sustainability.
- If your goal is team building, then focus on culture and mission.

Growth is fueled by awareness

To grow your business over the next 3 years, you will need the right decision-makers to know who you are, what you do and the value you deliver. So, who are they?

it's growth, awareness, fame, profitability, client retention, servicing, team building, culture, mission and/or sustainability, each hallmark achievement requires specific attention.

- My ideal clients are
- My referrals partners are important to my ideal clients because

Next, to create more business development activities, you need to educate and inform your relationships about who you are, what you do and the value you can deliver. To accomplish this, it is best to communicate with your ideal plan sponsor audience through social media, email campaigns and face-to-face (or zoom-to-zoom).

- Today, I have _____ LinkedIn connections. In 3 years, I will have _____ connections.
- Today, I email my contact list
 ___ times per month.
 In 3 years, I will communicate
 ___ times per month.
- Today, I speak with ____ people per week. In 3 years, I will meet with ___ per week.

Profitability focuses on retention, servicing and sustainability

A healthy balance sheet will give you peace of mind. To increase profitability, start by evaluating these yes/no questions:

Yes No Our client
retention rate is above 95%.
Yes No We have a
written service calendar that is
shared with our clients.
Yes No We know cost
per client because we track
hours per plan. (If no, January
is a great time to start.)

By knowing profitability per plan, you can reduce the burden of running your business because you can make informed business decisions based on facts, which may include knowing when to raise your fees, adding more services and/or hiring a new team member.

Team building requires culture and mission

Close your eyes again. Take a deep breath. To make your vision a reality, you need a team— a group of outstanding people who will get the work done. Who are they? What unique skills will they bring to the enterprise? Take a few minutes and describe your culture and mission, and then identify your team's strengths.

	Three words that describe our culture are,
	and
•	Our mission is to
•	My team is capable of

Take your thinking a step further and consider what it will take to realize your aspirations:

- To realize my vision appropriately, I will need ____ team members.
- My budget for their compensation, training and benefits is ______.
- To empower the team to achieve our mission, they will need access to these tools and resources:

All-star teams add energy to the business; they keep it organized and hyper-efficient. As you think through your business plan, remember that if you want to go fast, go alone. If you want to far, go together.

Strategy to Implementation

With your plan in hand, the next step is to put it into motion. Start by writing out some quick wins. Think about what tasks you can easily check off.

• Today, I will _____.

Then look at the larger projects that will take more time, talent and resources. What are the todos? Write them down and then estimate how long it will take to complete them. For example, refreshing your website. Generally speaking, that is a 3-month collaborative project. Put the wheels in motion by contacting your website team, scheduling recurring meetings and setting a deadline.

- In Q1, my goal is to
- Before June 30, I will complete _____.

Keep working forward in quarterly timeframes. You have 12 quarters (3 years) to space out your tasks, bring in partners, hire and complete the vision. If you're a growing firm, this is where a COO and/or a project manager can wave their taskmaster wand and keep everything on schedule.

Reflect and Execute

You just created a customized business plan that is ready to execute. But are you sure this is what you want? Yes?

Good. Now take some time to smooth out any hesitations. Where do you see challenges? Where do you see opportunities? Write them down. What partnerships will you need to establish? The more you can put to paper and have clarity, the easier it will be to implement your vision.

Recognizing your goals is the first step toward victory. Your words will help you approach your business development targets strategically and support achieving your vision.

Thanks for reading and happy marketing! NNTM



Evaluating the DeFi Option

Are the rewards of Decentralized Finance worth the risks?

By Spencer X Smith

ecentralized Finance (DeFi) has grown by a factor of 10 in the last 25 months. This \$54 billion industry offers eyewatering rates of return—but are the rewards worth the risks? What does Decentralized Finance actually mean?

DeFi is a series of permissionless systems. Unlike other financial tools (e.g., banks, brokerages, credit cards, etc.) which require you to create an account, DeFi allows anyone with a digital wallet to interact with the platforms.

Why the massive growth? And what's the appeal to users of DeFi? Two main factors come to mind:

 Until very recently, over the past decade, certificate of deposits (CDs) have yielded less than 2%, even for 5-year durations. Investors are yield-starved, and this has necessitated taking on more risk. DeFi offers rates of return that far exceed other options.

2. Instead of selling their assets, those holding crypto can earn yields. Effectively, this transforms a "dead" asset into one producing a series of cash flows.

What Kinds of Returns Are Possible in DeFi?

This answer, like all other investments involving risk, varies widely. Let's look at one of the largest platforms: MakerDAO.

DAI is the native stablecoin (pegged to the U.S. dollar) for the Maker protocol. It's collateralized by other cryptocurrencies and



66DeFi loans are overcollateralized. These loans are backed by the crypto assets someone already owns. Instead of selling their crypto, many choose to take loans against the asset. 99

held within smart contracts rather than in institutions. Holding DAI can earn a 7-day net APY of 3.51%.

As noted above, anyone holding the DAI cryptocurrency in their digital wallet can utilize the platform. No KYC (Know Your Customer) or AML (Anti-Money Laundering) account-opening procedures are used.

Where Do the Returns in DeFi Come From?

MakerDAO, like any other DeFi platform, offers loans to the users. There's a major difference between these loans and more common loans (e.g., vehicle, mortgage, business lines of credit, etc.), however.

Many loans originate because people or companies don't have the capital necessary to buy a car or house, or to finance the growth of their businesses. These undercollateralized loans are underwritten using credit histories, personal guarantees or other assets.

DeFi loans are overcollateralized. These loans are backed by the crypto assets someone already owns. Instead of selling their crypto, many choose to take loans against the asset.

For example, a person or organization holding 175 ETH (the cryptocurrency from the Ethereum blockchain, the second-largest crypto by market cap) can pledge their crypto and get 150,000 DAI to use how they'd like.

The minimum collateral ratio is the threshold a borrower must maintain. For the sake of this example, if it drops below 170%, the borrower is liquidated. The ETH they pledged is taken by the platform.

How do these interactions between user and protocol work? DeFi consists of a series of smart contracts. These contracts execute automatically based on the provisions contained in them.

In the case of the aforementioned liquidation, the borrower knows exactly what will trigger the event. If the underlying asset (ETH, in this case) falls in value, the borrower can top-up their loan with more Ether.

How DeFi platforms make money, then, is very simple:

- 1. Gather deposits from those who want to earn yield on their investments.
- 2. Provide loans to those who wish to pledge their assets.

What Are the Risks of DeFi?

Three major risks to DeFi are prevalent:

1. Crypto assets are extremely volatile. Liquidations can happen extremely quickly

- if a borrower isn't keeping tabs on the price of their pledged crypto.
- 2. Smart contracts are computer code, and thus only as secure as the programming that is used. DeFi protocols have lost \$4.75 billion in total due to scams, hacks and exploits. Depositors are vulnerable to smart contract programming oversights, and can lose their entire balance.
- 3. The current regulatory environment is very muddy. Recently, the CFTC declared both Bitcoin and Ethereum commodities. That runs counter to SEC comments stating that Ethereum is a security. Before DeFi is adopted by the masses, clear regulations need to be codified.

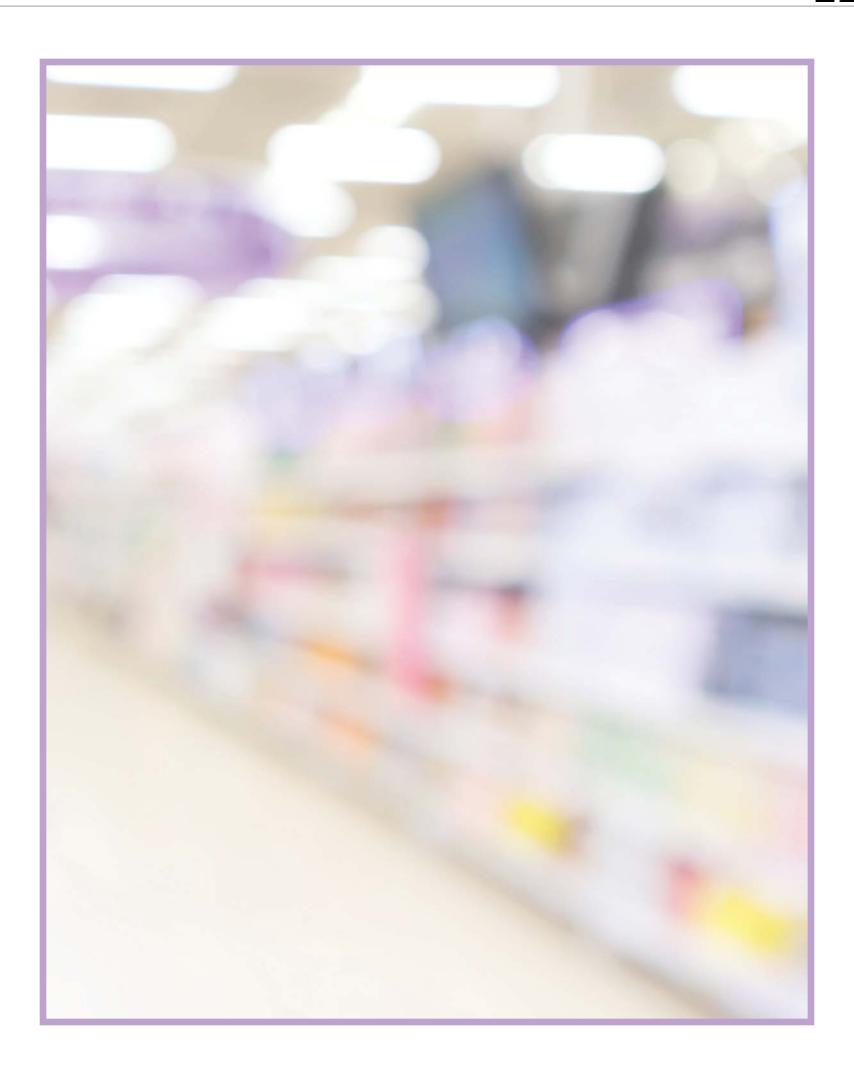
We've only scratched the surface of what's possible in DeFi with this brief article. From a yield standpoint, MakerDAO is considered one of the more stable protocols while other nascent platforms offer rates of returns in the mid to high double-digit APYs.

If you're willing to accept the risks involved with DeFi options, you can be rewarded handsomely by using the protocols.

If you'd like to research DeFi further, you'll learn more about staking, liquidity pools, slippage, Automated Market Makers (AMMs) or myriad other topics.

I hope this brief overview of depositing/borrowing on DeFi platforms gives you a brief glimpse into a market that will probably increase tenfold again—to \$500 billion—in the near future. NATM





There's more talk these days about potentially utilizing either custom target date funds or managed accounts as the qualified default investment alternative (QDIA) for a plan.



"I think it mostly comes from consultants," says Jamie Greenleaf, Red Bank, New Jersey-based senior vice president at OneDigital Retirement + Wealth. "I don't think any employers wake up one morning and say, 'Hey, we need to make a change from off-the-shelf target date funds to customized portfolios.' It comes largely from advisors talking with their clients about how to potentially produce better participant outcomes." (Some advisory firms also now offer custom target date fund investment management or advisor managed accounts themselves, she adds.)

Jamie Greenleaf
OneDigital Retirement
+ Wealth

"If you go to a client's quarterly investment review and have nothing new to talk about, that can get very boring," Greenleaf continues. "I try to bring anything and everything to our clients that is being talked about in our industry. It is really important that we try to keep our clients ahead of the curve, as opposed to them just hearing the 'noise."

In Walter Grant's experience, many plan sponsors aren't aware of the availability of customized portfolios as a potential QDIA. "It's really the advisor's job to bring it to their attention," says Grant, Memphis-based president of Aegis Retirement Group, a unit of HUB International. "First and foremost, our role is to look at what's suitable for a client, to discuss all the options. We walk them through it: What is an off-theshelf target date fund? What is a custom target date fund? What is a managed account? And we walk them through the pros and cons of each option. It's all about the plan sponsor choosing the most suitable option-and documenting it-that will help get their participants in a good place with their retirement savings.

"We talk a lot in the industry about 'sophisticated' plan sponsors, but most plan sponsors are only as sophisticated as we teach them to be," Grant continues. "It's the 'sophisticated' advisor who needs to educate them, and that's when these kind of topics come up."

Key factors to consider whether evaluating custom target date funds



versus managed accounts—or opting to stay with off-the-shelf target date funds—as a plan's default investment.

CUSTOMIZATION AT THE PLAN VERSUS PARTICIPANT LEVEL

Most participant bases aren't so different that they need customized allocations for the default investment, Multnomah Group has found. "Certainly, our experience is that the overwhelming majority of participants and plan sponsors are best served by utilizing off-the-shelf target date funds as the default investment," says Erik Daley, managing principal of the Portland, Oregon-based advisory firm. "There is such a variety of glide paths and investment approaches available in off-the-shelf funds that it is hard to come up with a situation where a sponsor can't find a solution that meets the objectives and needs of that participant base."

While off-the-shelf target date funds aren't customized to a specific participant base, custom target date funds typically have portfolios customized at the plan level, and managed accounts can have portfolios customized at the participant level. "We go through a suitability process with all of our defined contribution plan clients, to determine for each plan the design of a glide path that would be most appropriate at the plan level, and then we determine if that employer's population is homogeneous enough for that (one glide path) to make sense," says Todd Stewart, managing director of investment research and chair of the national investment committee at SageView Advisory Group in Knoxville, Tennessee. "If not, managed accounts should be part of the sponsor's considerations."

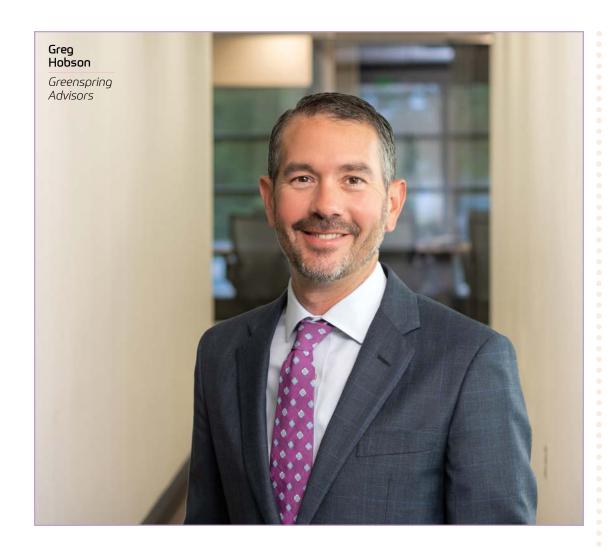
"We tend to see plan sponsors say they're interested in managed accounts as the default investment because they're convinced that their participant population is highly disparate in factors such as their current income, their retirement-income needs, and their outside assets," Stewart continues. In his experience, the biggest reason some sponsors gravitate to custom target date funds is the opportunity to utilize a plan's low-cost core investment menu for the portfolios.

Aegis Retirement Group has more sponsors utilizing managed accounts than custom target date funds as the default. "They want the personalized advice at the

opportunity
that we see
for managed
accounts is with
older workers—
who, I think,
have been
neglected by the
industry from
a retirement
education
perspective."

— Erik Daley Multnomah Group





individual level that managed accounts provide for participants," Grant says. Managed accounts can be customized based on individual factors-such as a participant's outside assets, savings rate, and risk tolerance-and he says that's an attractive option to some employers that have a lot of employees 50 and older. "As those people get closer to retirement, the sponsor feels that they need the customization, because each of their situations looks different," he adds.

RECORDKEEPER REALITIES

It's important to think about what a plan client's recordkeeper actually allows on its platform, for custom target date funds or managed accounts. "You have to take into consideration whether the client is willing to move the plan's recordkeeper relationship," says Greg Hobson, partner and practice lead at Greenspring Advisors in Towson, Maryland. "Depending on the recordkeeper's platform, that is going to change the availability of custom funds and managed accounts."

A recordkeeper's platform may only include proprietary custom target date funds and/or managed accounts—a problematic lack of choice for a sponsor deciding on a default investment. "If the plan sponsor wants to stay with its recordkeeper, the sponsor may be really limited in the options to consider," Hobson says. "So you have to start thinking outside the box if you really want to go this route, and the plan may need to make a change and work with a recordkeeper that has more of an open-architecture platform."

Even if managed accounts conceptually make sense for a plan, they may not make sense when considering the fees and what's available on the plan recordkeeper's platform, Stewart says. "Managed accounts still are not offered in the open-architecture fashion that mutual funds are. Typically, a recordkeeper is going to only offer one managed account solution," he says. "So that puts a significant burden on the plan sponsor and the consultant to understand the methodology being used to assign participants into portfolios, based on their unique circumstances."

FEE (OMPARISONS

The majority of Greenspring Advisors' plan clients utilize off-the-shelf target date funds as the default investment, Hobson says. "We think that for most participants and most plan sponsors, it's the most effective way to get participants a low-cost, diversified investment option," he says. "If a sponsor wants some customization, we're more on board with a custom target date solution. I struggle a bit with managed accounts as a QDIA, and the layer of fees they add. What is the benefit?"

When plans incorporate managed accounts as an option rather than QDIA, the participants opting in may be those who tend to be more engaged with their retirement accounts, and who also typically save more, Hobson says. So he's skeptical when evidence is cited that being in a managed account leads participants to save more. "I'm always assessing, is it the chicken or the egg that came first?" he says. "The question is always for a committee, is it people who are engaged who would be saving more anyway? Or is it that the managed account solution is (successfully) encouraging them to save more? Adding 30 or 50 basis points to the fee for a QDIA is a tough argument to make, in this age of fee litigation."

The fees associated with managed accounts broadly have been declining over the past few years, Stewart says. "But of the QDIA options, managed accounts are still the most expensive. They generally have fees that range from about 10 to 50 basis points, on top of the underlying fund expenses," he says. "Custom target date funds typically have a 3(38) fiduciary glide path manager fee that sits on top of the investment expenses. The all-in fee for custom target date funds can be greater or less than the fee for off-the-shelf target date funds: It depends on the 3(38) manager's fee, and what the fees are for the mix of underlying investments."

PARTICIPANT SERVICES

The main potential justification for the extra fee managed accounts carry, compared to off-the-shelf target date funds, would be the additional participant services available, sources say. "The way that I would encourage plan sponsors to think about it is that the asset allocation piece of managed accounts is 'table stakes,'" Daley says. A small group of managed account engines are being used by

"We tend to see plan sponsors say they're interested in managed accounts as the default investment because they're convinced that their participant population is highly disparate in factors such as their current income, their retirementincome needs, and their outside assets."

> — Todd Stewart SageView



recordkeepers and advisory firms doing advisor managed accounts, he says. There's a lot of "rationality" in the investment allocations made by those managed account engines, he says, so the investment allocation for the same person might not differ much from provider to provider.

"The area where plan sponsors should spend lots of time is evaluating managed account providers' engagement tools and resources to help participants achieve better outcomes," Daley says. "How do a managed account provider's resources help participants prepare to transition to a retirement-income mindset? How do the resources help them figure out what their goals are for their retirement, and how to map a gradual transition to full retirement?"

"The opportunity that we see for managed accounts is with older workers—who, I think, have been neglected by the industry from a retirement education perspective," Daley continues. Younger workers primarily just need to decide whether to save for retirement, and how much. "There are much more difficult decisions that older workers face," he says. "When do I retire? How do I convert my savings to income? How do I protect myself against the areas where I am still exposed to risk (such as longevity risk)?' Managed account services can play a role in helping them answer those questions."

It's also important to consider whether a managed account provider's participant services duplicate the type of guidance already offered to participants by the plan advisory team, such as help with pre-retirement planning, Greenspring Advisors' Hobson says. "We have a team of CFPs (Certified Financial Planners) on staff who are accessible to participants, to help with that," he says. "They know that they can come to Greenspring to get fiduciary-level advice."

PARTICIPANT ENGAGEMENT LEVELS

Managed accounts are difficult to use as a default investment mainly because of the participant engagement issue, Hobson feels. Engaged participants can provide more data to better customize their investment portfolio, and more likely will utilize managed accounts' additional services, such as individualized help with a withdrawal rate and Social Security optimization. "If people want to get all the benefits they can get out of their managed account and are engaged with it, that can be worth the extra fee," he says. "But if participants aren't engaged and are paying an extra fee just to get into a managed account, I don't know if that's necessarily in the best interest of participants," he says. His feelings could change in time if managed account fees continue declining and end up closer to target date fund fees, he says.

To figure out if participants likely will engage enough with managed accounts to make the fee reasonable, it's important to consider the data on not just whether a plan's participants initially engage with their retirement savings account, but also how regularly they engage over time, Daley says. "Target date funds, including custom target date funds, are designed to serve participants who are not engaged," he says. "Managed accounts, I would argue, are only appropriate for participants who are engaged now, and who will remain engaged in the future. If a participant goes into their managed account one time to enter some data and then never goes back again, then the reality is that the investment allocation is going to be no more customized to that participant than an off-the-shelf target date fund. There has to be an ongoing willingness of participants to go beyond tasks such as checking their balance and initiating a loan."

ADDED COMPLEXITY FOR PARTICIPANTS

With automatic enrollment, auto escalation, and a default investment, much of the complexity of saving for retirement has been eliminated for the average, unengaged saver, Greenleaf says. "Target date funds have taken a very complex issue (investing for retirement savings) and made it simple," she says. Moving from off-the-shelf target date funds could make the process of saving for retirement less clear to the many participants who have little knowledge of investments, she thinks.

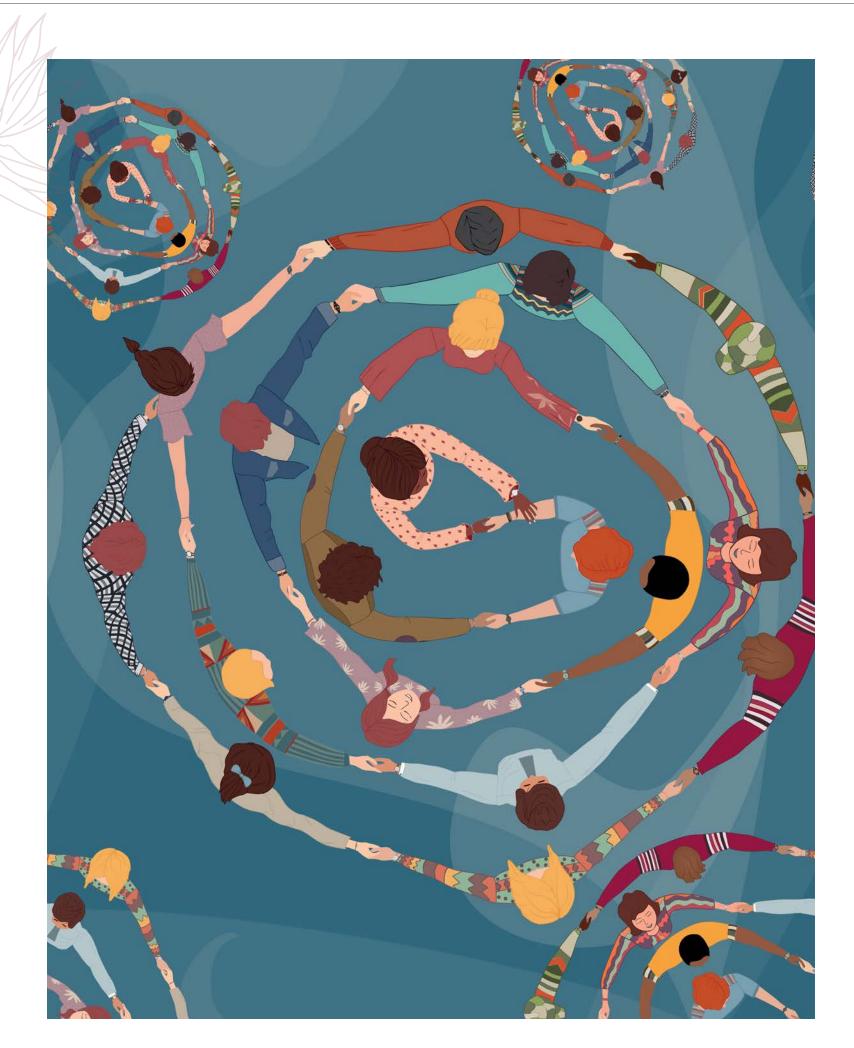
"Sometimes we are quick to make things more complicated than they need to be," Greenleaf continues. "When we get into managed accounts and customized target date fund glide paths, we're complicating this process. When things get too complex, people become like a deer in the headlights, and that backfires on us. We need to remember that simplicity is so important in solving for people's needs in saving for their retirement." NNTM



TEANING

TEN TOP
WOMEN
ADVISORS
TALK
ABOUT
KEYS TO
BUILDING—
AND KEEPING—
AN ADVISORY
TEAM
TOGETHER.

BY JUDY WARD



didn't grow up wanting to be a 401(k) advisor, and when I joined this company, I didn't

have any retirement plan experience," says Kelly Famiglietta, a partner at Albuquerque, New Mexico-based Charles Stephen. She

started in 1997, and 25 years later she's still there.

So Famiglietta knows firsthand what motivates an advisor to stay with a team. It's two things, in a nutshell: the right development opportunities and supportive colleagues. "In a lot of ways, I was in the right place at the right time," she says. "There was opportunity that became available to me, even unexpected opportunity. And I just kind of made opportunities."

pension assistant processing loans and

After joining Charles Stephen as a distributions, she decided she wanted to



CHARLES STEPHEN

expectations is something I'd encourage advisory business leaders to be acutely aware of," Breton continues. "When we bring in younger employees, the length of time they are willing to wait

for a promotion or ownership stake is

"The acceleration of career path

train to be a TPA, and the firm's leaders supported her in taking classes and getting the designation. She continued developing her expertise in retirement plan operations, and after 13 years there, the company's leadership supported her move to begin leading the retirement plan division.

"We are a wealth management firm, and when I started, retirement plans were not a main thrust at the company," Famiglietta says. "I was given the opportunity to take the retirement plan part of the company and run it, and be in charge of its growth. It was a huge thing to me that Steve (Ciepiela, the company's co-founder) had faith in me to do that."

Famiglietta and nine other 2022 Top Women Advisors-all on the Captains list of advisors who are principals, owners, or team captains of their organizationtalked about how development opportunities and supportive colleagues can keep a team together.

DEVELOPMENT **OPPORTUNITIES**

Career pathing is now integral to people beginning their advisory career, says Jennifer Breton, retirement advisor and CEO at Lebel & Harriman Retirement Advisors in Falmouth, Maine. "When we hire from younger generations, they want to know how they can move forward in our organization, and how quickly it can happen," she says. "As employers, we must acknowledge retaining Millennial employees requires that we sit with them on day one of their job, and regularly, to understand what type of work that person feels drawn to, and whether that newcomer aspires to someday be a director or partner at the firm."

about half what mine was-and I had high expectations. We hold a quarterly conversation with each employee to keep a good pulse on their world, solicit feedback, and help them progress toward their goals."

Wendy Eldridge helped get Cleveland-based Marcum Wealth going, motivated by a clear desire to have an ownership stake and lead a retirement practice. After so much consolidation among advisory firms, that's becoming less viable as a path for newer advisors, says Eldridge, a managing director and partner at Marcum Wealth. "I feel like that is the struggle today with the younger advisors: They want to know, 'How can I get myself in a position like you?' Advisors who want to have that now need to look for those advisory shops that are growing, and that offer a potential ownership stake. They also need to understand what the metrics are at those firms to get there, that there is a clear path for them to become an owner."

"It's so important for us as advisory practice owners and leaders to be able to start making it possible for young employees to feel like they can have an ownership stake, that they can have a 'vote,'" Eldridge adds. "I think the consolidation has somewhat put up a 'stop sign' for the younger generation, that they can't do it. We need to do a better job of showing them that they can."



JENNIFER BRETON



"IT'S SO IMPORTANT FOR US AS ADVISORY PRACTICE OWNERS AND LEADERS TO BE ABLE TO START MAKING IT POSSIBLE FOR YOUNG EMPLOYEES TO FEEL LIKE THEY CAN HAVE AN OWNERSHIP STAKE, THAT THEY CAN HAVE A 'VOTE.'"

– WENDY ELDRIDGE, MARCUM WEALTH

Having a visible career path is key to keeping a team's members, says Jania Stout, Baltimore-based senior vice president at OneDigital Retirement + Wealth. "What keeps people staying somewhere is that maybe they start out working on plans in the smaller end of the market, and they know that if they keep increasing their knowledge, they will get to work with bigger clients," she says. "It's so important to people to have a career path they can see. Otherwise, advisors get bored, and they want to go somewhere where they won't be bored."

For example, one member of Stout's team served as a college intern in her practice, then went to work there after graduating. He started out doing participant education, working with

JANIA STOUT

ONEDIGITAL RETIREMENT + WEALTH

plans with less than \$5 million in assets. Then he graduated to working on education with plans that had up to \$10 million in assets. Now he's decided to focus on plan-level work with sponsors, and is doing that with plans that have up to \$20 million in assets.

When Stout's practice brings recent graduates onto the team, they typically start out working on participant education. "We think that doing participant education is the best way to learn about the business, because you'll get every question under the sun," she says. "It's a great training ground: People usually spend about two years doing it, and they learn about a plan's recordkeeper, the plan's provisions, and the plan design. Then, they can start working with plan sponsors." During those first couple of years, they also study for, and receive, whatever designations they need.

Kelly Carlson knew early in her career that she wanted to be a business owner, and that she'd need a wide variety of skills to do it successfully. What kept her at employers, or led her to switch, was the opportunity to learn more about different areas of the retirement business. "I think it comes down to the opportunities I had, in terms of what I was hoping to accomplish in my career," says Carlson, managing director at Advizrs in Deland, Florida. "When I moved, it was always about learning new things about the industry."

Carlson worked for a TPA after graduating, then moved to a relationship manager role for a recordkeeper, then switched to a recordkeeping sales job. And in 2011 she started her boutique advisory practice, Advizrs, from scratch.

"I had never worked at an advisory practice, prior to starting my own," she says. But from her work in recordkeeping relationship management, she'd learned a lot about best practices for plan advisory work.

It's vital to let newer members of a team try a variety of aspects of advisory work, says Kerrie Casey, Boston-based retirement plan consultant at SageView Advisory Group. "Younger people on the team are thinking about the next steps in their career, and exposing them to different pieces of the advisory business is important, so they can figure out what their career path will look like," she says. That could mean everything from client presentations to investment research. "If you're locked into doing the same thing day in and day out, that can be difficult to get up and do another time," she adds. "It's important to keep asking how can we do things differently in our client work, and having that variety is also really important to keep everybody on a team fresh."

At Waukesha, Wisconsin-based Retirement Plan Solutions (RPS), Carol Strehlow is part of a very experienced team: The partner and managing director has been there 12 years, and yet she's the team's newest member. Her core role is on the operational side. "I've always been someone who gets into processes and procedures. I really like focusing on the internal workings of how things get done," she says. "I'm a big fan of building efficiencies: I spend a lot of time talking with our team about, are we just doing something because we've always done it that way?"

Each RPS team member has a defined role, but can work on other



projects beyond that one area, too. "Everyone has core responsibilities, and they are the go-to person for that task," Strehlow says. "But everyone here is also cross-trained in other tasks of client work. People should be able to continually evolve, so that they are not just siloed and have to stay in one area of work. I think that people can become really bored if they're not challenged in their work."

To Kaci Skidgel, president of Dallasbased Summit Financial Group, Inc., it's also important to set aside time for team members to learn new skills. The firm recently launched the Summit Leadership Academy to help develop staff members as leaders. The Academy kicked off when 10 team members from across the company got together with an outside consultant for a retreat.

Skidgel wants the Academy to help each person work on improving their communication and leadership skills within their team. "To do that, they have to understand people's personalities and motivations—and their own—and what drives them," she says. "You can't give out what you don't have." So the retreat started with every team member sharing a personal "lifemap" with the group, talking for 10 minutes each about the key highs and lows of their professional and personal lives. That conversation helped people learn more about each other, and became the jumping-off

point for talking in more depth about leadership development.

The Academy aims to develop midcareer leaders within Summit, whether they play a formal leadership role or not. It's more about the ability to build consensus and harmony on a team. "We want people to know that they can lead people today, no matter what their title is," Skidgel says. "I'm trying to build a culture where people are open with each other and willing to share, and they have empathy for their fellow team members. When that happens, it develops into more than a working relationship—it's also a friendship—and that's when it starts to feel like a family."

SUPPORTIVE COLLEAGUES

Six months after she started Advizrs, Carlson hired her friend Shannon McIntosh, with whom she'd worked in her first job out of college at a TPA. More than a decade later, McIntosh has developed her advisory skills to the point that she is a director at Advizrs and handles many of the day-to-day client management tasks. And four years ago, she collaborated with Sam Kneuper to build a Texas location for Advizrs. Kneuper was her former boss. "I think it's the connections I made early on in my career that have allowed me the chance to create the opportunities I've had," she says.

For Heidi Sidley, her decisions to stick with teams during her career ultimately have boiled down to the people she worked with, and for, she says. "It's been important to me that we share common goals, values, and beliefs," says Sidley, principal and managing director at StoneStreet Equity in Armonk, New York. "I like to work with people who push my buttons in the right way, who are collaborative and open. The cultural fit is probably the most important thing."

Asked for her advice on how an advisor talking to a potential new advisory firm employer can gauge that, Sidley says, "I think it goes back to being

curious, and asking questions about how people perform in their jobs—how they interact with clients, and what they would do in specific situations—so you can see if your values align with theirs. People don't do their best work when they're working with people who have a different value system. So it's about asking the right questions about the culture, and asking for specifics on how collaboration happens in that organization. And ask about the times when collaboration has failed there, and why, to see if they're always trying to learn from situations."

Rather than just doing exit interviews for people departing, Stout points out that OneDigital regularly does "stay" interviews with people who remain on their team. "I will ask my team members things like, 'What are three things that are bogging you down in your job?' Instead of it getting to the point that people feel stressed out, I'm proactive about going to them and asking how they feel about their job." For example, some people on her team felt bogged



CAROL STREHLOW
RETIREMENT PLAN SOLUTIONS



HEIDI SIDLEY

down by how much time they spent crafting employee communications for specific clients. So for 2023, her OneDigital team will bring on a new colleague whose full-time job is to handle that.

"I've found it's extremely imperative that I constantly communicate with all the employees on our team, not just about their work life, but about all of the facets of their life," Eldridge says. "It's really about understanding, what excites each of them? What motivates each of them? For everyone on our team, it's

different. We need to really listen and be open, so that employees feel safe about having a personal conversation with us, to tell us things like they're feeling stressed out and need a break. We have to make it clear that we care not just about their work, but we also care about them as a person."

And while the work is important, these Top Women Advisors say that part of what's kept them loyal to a team has been a fun working environment. Remote work has made that more challenging. "I think it was easier to have a fun atmosphere when everybody was in the office on a consistent basis. There was more opportunity to go to lunch and get to know people, or get a group together at the last minute to do something like get a drink after work," Beer says. "It is harder now, and as leaders we have to make sure that we make an effort to schedule things that are fun." Her Gallagher team established a social committee, and the team does a blend of some virtual events and some in-person events such as going out to dinner.

Famiglietta likes a mix of planned fun and spontaneous fun. "As a team, we do things like take a day to go to the annual state fair together. But it's not always planned: We sometimes do an impromptu happy hour, or bring in breakfast for everyone, or we may play a funny 'Saturday Night Live' clip in the middle of a staff meeting," she says. "It's important to laugh and joke, and remember that you don't always have to be so serious. This is a serious business, but we can have fun, too."

The StoneStreet Equity team has done outings like going on a hike and volunteering together. Sidley still recalls fondly outings she did with colleagues earlier in her career. "I can remember going on company trips together for a weekend retreat, and we were learning at the same time as we were getting to know each other," she says.

Looking for Mentor/ Mentoring Opportunities?

The ARA Thrive Mentoring Program facilitates mentoring relationships for women retirement professionals interested in developing new competences, expanding their network, and navigating career transitions.

Each mentee outlines their area of interest and is subsequently paired with a member that is proficient and experienced in that area. This program is progressive because it allows pairings, based on mentee goals, within and across ARA sister organizations: the American Society of Enrolled Actuaries (ASEA), the American Society of Pension Professionals and Actuaries (ASPPA), the National Association of Plan Advisors (NAPA), the National Tax-deferred Savings Association (NTSA), and the Plan Sponsor Council of America (PSCA). Those pairings can occur across disciplines as well.

Whether you're looking for a mentor or willing to be one—or both!—this is your opportunity to enhance your connection to the industry. You can find out more—and get involved—at womeninretirement.org/thrive-program.





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- KERRIE CASEY, SAGEVIEW

"I know that the places I've been that I enjoyed the most, and where I did my best work, have been places where we do some things that aren't always workfocused."

When Molly Beer is asked what's kept her on teams, the first thing she mentions is feeling supported, and she means that on both a professional and personal level. "From a work perspective, it's knowing that you have a network of individuals who you can ask questions, and be vulnerable with," says Beer, area executive vice president at Gallagher in Chicago. "I'm a big fan of both formal and informal mentors: I am part of formal mentorships, and part of several informal mentoring relationships."

KACI SKIDGEL SUMMIT FINANCIAL GROUP, INC

What are the keys to a good mentoring relationship? "I think recognizing that the mentor and the mentee should both get something out of the relationship that helps them both personally and professionally. I learn a lot from my mentees, and I hope that they learn from me," Beer says. "I also think that vulnerability-feeling like you can be vulnerable with someone-is really important. You want to get to a place where both people can feel comfortable saying, 'I don't think I'm hitting the mark here. How can I get better?' That could be in your work or your personal life: I think it's nice to have professional relationships where both people feel safe enough to talk about things going on in their personal life."

Having mentors has been crucial to Breton's career arc from advisory newcomer to advisory firm leadership, she says. "My mentors were very patient with my incessant questions, and they were willing to share their knowledge with me," she says. "You can get your securities license relatively easily, but that doesn't mean you have the proper emotional lens to advise people about their money." A TPA mentor taught her a lot about utilizing plan design to improve participant outcomes, and to consider implications of your recommendations through the eyes of a plan sponsor, for example.

Mentoring was, and remains, important to Casey. "Earlier in my career I had a couple of mentors I could always go to, to bounce ideas off of, and to get feedback," she says. Now she's a mentor herself, and has some thoughts on how to mentor colleagues. "A good mentor, I think, stays involved: You want to be

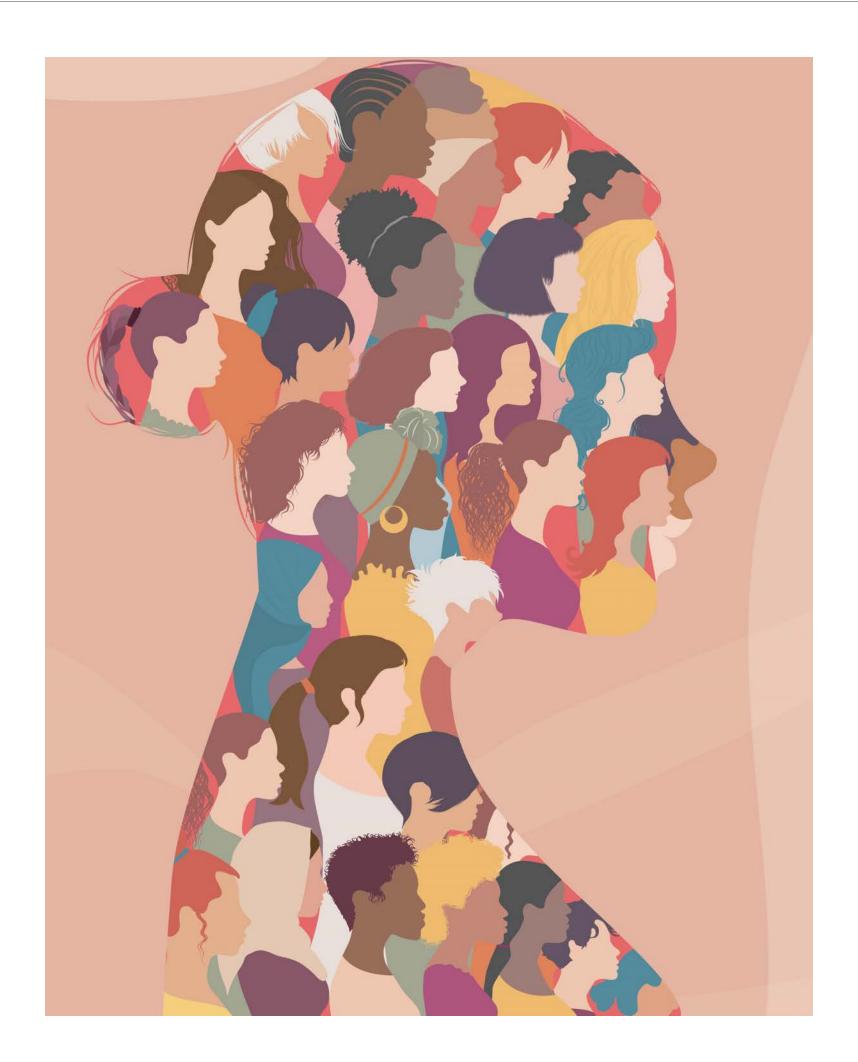


MOLLY BEER

accessible, but not be micromanaging your mentee," she says. "You also want to build a relationship where your mentee feels comfortable coming to you, to ask questions and to ask for your advice. The mentors I had were giving me the tools to do something on my own, so that over time, the number of questions I had for them was less and less."

"There's an old saying, you can give someone a fish and feed them for a day, or you can teach that person to fish and feed them for a lifetime," Casey adds. "Mentoring is like teaching someone how to fish." NNTM

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



MEET NAPA'S TOP WOMEN ADVISORS OF 2022.

BY NEVIN E. ADAMS, JD

f the many things I have had the opportunity to do during my career, I have to say that introducing this recognition is perhaps the thing of which I'm most proud. Don't get me wrong-when we launched the NAPA Top Women Advisors accolade in 2015, I wasn't 100% sure it was going to work. There was some resistance by top advisors (who happened to be women) that this specific focus in some way diminished their accomplishments. One even commented (through a shared contact) that "I bet a man came up with this."

But in the eight years now that we've acknowledged these outstanding advisors, something amazing has happened. Not only have those top advisors (who happened to be women) continued to stand out here, we've also seen a whole new generation of advisors come to the fore-many who, over the years, have told me how inspiring this listing was. Women who in their particular team or office happened to be the only one of their gender-but through this acknowledgement were able to see and connect with others. Some of whom have now gone on to band together and form their own teams.

Every year I am privileged to hear from so many of the individuals on this list who have done—and continue to do—great things. It's something we are indeed pleased and proud to shine a bright light on. I am always particularly enthused to acknowledge in the "Rising Stars" category individuals who have been working with retirement plans for years, sometimes decades, but who have only recently shifted that skill and expertise to the role of an advisor. I can't wait to see how many turn out for the NAPA 401(k) Summit!

This year, as in years past, nominees—more than 500 of them—were asked to respond to a series of questions, both quantitative and qualitative, about their experience and practice, as well as their accomplishments, their contributions to the industry, the state of workplace retirement plans, and in what way(s) they "give back." Those questionnaires were then reviewed and scored by a panel of judges who, over the course of several weeks, selected the women we honor in three separate categories:

- Captains: All-stars who happen to be principals, owners or team captains of their organizations
- All-Stars: Top producers who have their own practice

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

Another special aspect of this award has been my opportunity to work with different panels of judges over the years. They have brought a unique and much-valued perspective to these assessments, and their contributions and improvements to both our application and review process have been invaluable in developing this recognition. I'd also like to commend the NAPA Firm Partners who not only nominated, but nurtured the contributions of these outstanding individuals, as well as our appreciation for the hundreds who were nominated and submitted applications.

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



CAPTAINS

THERESE ANDERSON

Anderson Financial

CINDYAUTRY

OneDigital

JESSICA BALLIN

401k Plan Professionals

MOLLY **BEER**

Gallagher

JENNIFER BRETON

Lebel & Harriman Retirement Advisors

LINDA BRIGHT

Precept Advisory Group

DEANA CALVELLI

Lockton Retirement Services, an offering of Creative Planning

MICHELLE CANNAN

Beltz lanni & Associates

KELLY CARLSON

Advizrs, Inc.

KERRIE CASEY

SageView Advisory Group

NICOLE CORNING

Buckman and Corning Financial Strategies Group

SANDRA **CUNNINGHAM**

UBS Financial Services Inc.

BREA DANTIN

ProCourse Fiduciary Advisors, LLC

BARBARA **DELANEY**

SSRBA, a HUB International Company

DORI **DRAYTON**

CAPTRUST

DEVYN **DUEX**

CAPTRUST

JEAN **DUFFY**

CAPTRUST

WENDY **ELDRIDGE**

Marcum Wealth

KELLY **FAMIGLIETTA**

Charles Stephen

FRANCESCA **FEDERICO**

Twelve Points Retirement Advisors

JANET **GANONG**

LPL Financial

JAMIE **GREENLEAF**

OneDigital

KYLEE HALL

SSRBA, a division of HUB International

JAMIE **HAYES**

NFP Retirement

SHELLY **HORWITZ**

Pensionmark

EVA KALIVAS

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

KRISTINA **KECK**

Woodruff Sawyer

KATHLEEN **KELLY**

Compass Financial Partners, a Marsh McLennan Agency LLC Company

ELLEN **LANDER**

Renaissance Benefit Advisors Group, LLC

SHANNON MAIN

Pensionmark

ALICIA **MALCOLM**

UBS Financial Services, Inc.

SHANNON **MALONEY**

Strategic Retirement Partners

DEBBIE MATUSTIK

Pensionmark Austin

JANINE **MOORE**

HUB Retirement and Wealth Management

— Houston

CINDY **ORR**

The Retirement & Investment Solutions Practice of CBIZ, Inc.

TINA **SCHACKMAN**

Benefit Financial Services Group

RENEE **SCHERZER**

401K Resources

JILL SHEA

NFP

SUSAN **SHOEMAKER**

CAPTRUST

HEIDI SIDLEY

StoneStreet Equity, LLC

KACI **SKIDGEL**

Summit Financial Group, Inc

JANIA **STOUT**

Fiduciary Plan Advisors @OneDigital

CAROL STREHLOW

Retirement Plan Solutions

MARCY **SUPOVITZ**

Boulay Donnelly & Supovitz Financial Services

VIRGINIA K. SUTTON

Johnson & Dugan

JACINTA THOMPSON

VisionPoint Advisory Group

PATRICIA WENZEL

Merrill Lynch

ALLISON WINGE

Plexus Financial Services, LLC

HEATHER WONDERLY

Aldrich Wealth

EMILY WRIGHTSON

CAPTRUST

ALL-STARS

TARIA **AGBELUSI**CAPTRUST

PAMELA **APPELL**

Plexus Financial Services, LLC

VITA AMADEO

Willis Tower Watson

BERYL BALL

CAPTRUST

DEANNA BAMFORD

CAPTRUST

ANNETTE BECKER

Gallagher

ERICA BLOMGREN

CAPTRUST

JULIE **BRAUN**

Morgan Stanley

PAM **BROOKS**

Oswald Financial, Inc.

MEGAN CARROLL

Assurance, a Marsh McLennan Agency LLC Company

KAREN CASILLAS

CAPTRUST

HEATHER **DARCY**

CAPTRUST

KRISTEN **DEEVY**

Pensionmark

MARESSA ETZIG-MARIN

SageView Advisory Group

ELAINE FEATHERSTONE

OneDigital

JESSICA FITZGERALD

Morgan Stanley

JENNIFER GAGE

The Retirement & Investment Solutions Practice of CBIZ, Inc.

LISA GARCIA

SageView Advisory Group

SUSANN **HAAS**

NFP

MOIRA **HAGY**

Assurance, a Marsh McLennan Agency LLC Company

HEATHER **HAINES**

IMA Wealth

SUSAN **HAJEK**

SageView Advisory Group

AMY **HANOPHY**

NFP

STEPHANIE HUNT

OneDigital

JENNY YUN **HUNTER**

Merrill Lynch

ALLISON KAYLOR-FLINK

NFP

MICHELE **LANTZ**

Pensionmark

LAUREN K. LOEHNING

Retirement Impact

LILY MATIAS

NFP

REBECCA MCCORMICK

Graystone Consulting

SHARON **NUDO**

Gallagher

SARAH SCRUGGS REDDELL

Financial Designs

RACHEL RIEDER

Valley Forge Investment Consultants, Inc.

ALLIE RIVERA

OneDigital

ABIGAIL RUSSELL

CAPTRUST

KARLYNN **SCHRAMM**

Gallagher

SARAH **SCHWARTZ**

Newfront Retirement Services

MARY **SCOTT**

First Interstate Wealth Management

AMBLER **SELWAY**

FRS Advisors

ANN-MARIE **SEPUKA**

Strategic Retirement Partners

COURTENAY SHIPLEY

Retirement Planology, Inc

COURTNEY SINDELAR

OneDigital

MOLLY **SPOWAL**

MMA Retirement Services

Upper Midwest Region

COURTNEY STROOPE

Creative Planning, LLC

JEANNE **SUTTON**

Strategic Retirement Partners

LISA **VILARDI**

AssuredPartners

SUZANNE WEEDEN

Spectrum Investment Advisors

JULIE WENZLICK

Gallagher

LARISSA WHITTLE

SageView Advisory Group

TINA **WISIALOWSKI**

Morgan StanleyAnderson Financial

RISING STARS

KRISTEN BUCHANAN

Cincinnati Investment Advisors

GINA BUCHHOLZ

401k Plan Professionals

LISA BUFFINGTON

MMA Retirement Services

- New England Region

KIM COCHRANE

HUB International

MARGARITA CROSS

SageView Advisory Group

MORGAN **DAVIS**

NFP Retirement

KATIE **ELDRED**

CAPTRUST

SHERRI FRYATT

HUB International

WHITNEY **JONES**

Premier Wealth Management

NICOLE **KELLY**

Valley Forge Financial Group

valley i orge i mancial Group

TAMI **LEDGER**

Mariner Wealth Advisors

KELLY **MCKAY**

McKay Retirement Consultants

VICTORIA **MERCADO**

Assurance, a Marsh McLennan Agency LLC Company SARAH **MILITANO**

Paradigm Consulting, Inc.

LINDE MURPHY

M.E. Allison & Co., Inc.

LAUREN **NEENO**

NFP

KATHLEEN **PERSAK**

SEIA

APRYL POPE

Retirement Plan Partners, LLP

ALYSSA POTTER

MCF Advisors, LLC

MIKI **SAKATA**

Three Bell Capital

KATHERINE SANCHEZ

Acumen Wealth Advisors

DEANNA **SPIVEY**SageView Advisory Group

SARA **STRASSER**Strategic Retirement Partners

VERONICA **TAYLOR**

Pensionmark Financial Group

LAURA **THAI**

MMA Retirement Services

— Upper Midwest Region

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STACY **WALTERS**SageView Advisory Group

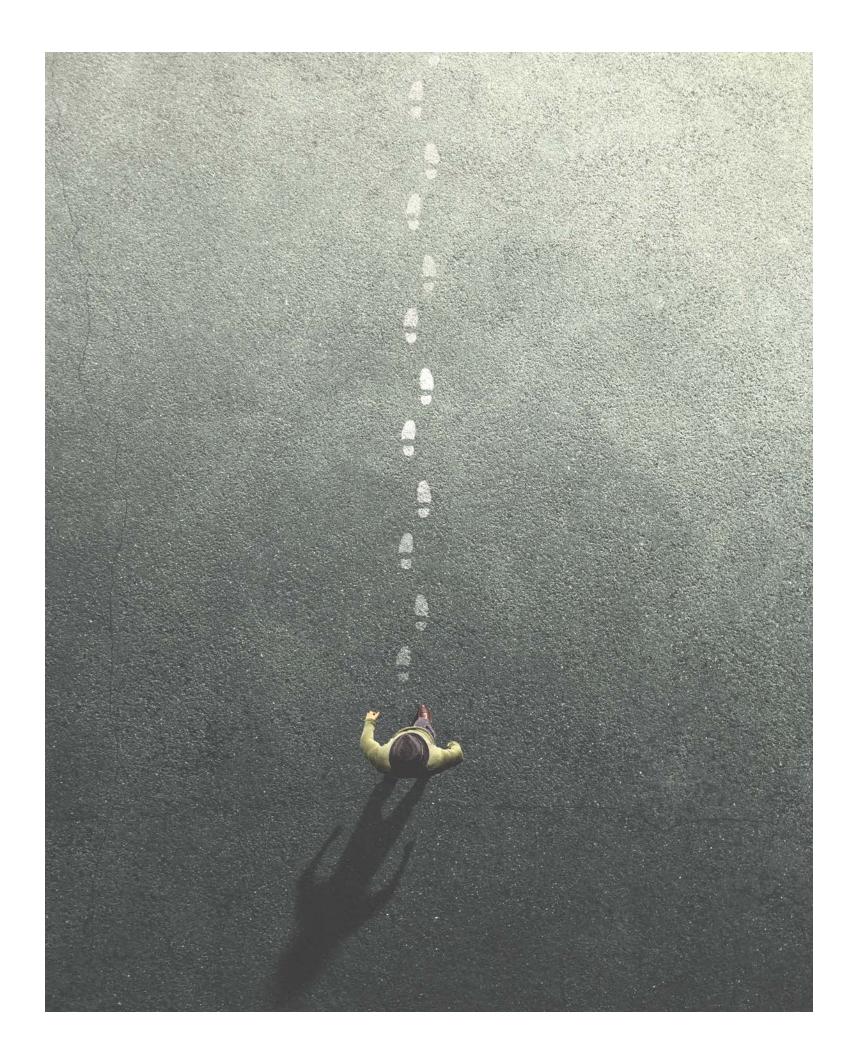
CRYSTAL WILD

Loring Advisory Group

SO YOU
HAVE LOST
A PLAN
PARTICIPANT
-IN LIGHT OF
INCREASED
DOLENFORCEMENT
BUT LITTLE
DEFINITIVE
GUIDANCE,
WHAT MUST
THE PRUDENT
PLAN
ADMINISTRATOR
DO?

BY MICHAEL KIRSCHMAN JEFF ATWELL KIMBERLY SHAW ELLIOTT & THOMAS E. CLARK JR.





THE DEPARTMENT OF LABOR (DOL) FAILED TO PROVIDE STRICT REQUIREMENTS IN JANUARY 2021 WITH ITS RELEASE OF A THREE-PART PACKAGE THAT INCLUDED "MISSING PARTICIPANTS—BEST PRACTICES FOR PENSION PLANS," FIELD ASSISTANCE BULLETIN NO. 2021-01, AND COMPLIANCE ASSISTANCE RELEASE NO. 2021-01. DESPITE THIS, HOW PLANS ATTEMPT TO LOCATE MISSING PARTICIPANTS REMAINS A FOCUS OF INCREASED DOL INVESTIGATIONS. AS WE APPROACH THE SECOND ANNIVERSARY OF LEARNING THE DOL'S VIEWS, CHALLENGES REMAIN FOR HOW TO BEST KEEP TRACK OF INDIVIDUALS ENTITLED TO BENEFITS. PLAN ADMINISTRATORS SHOULD WORK FAST TO RESOLVE THE DIFFICULTIES OF IMPLEMENTATION THAT HAVE COME TO LIGHT, EVEN IN THE ABSENCE OF STRINGENTLY DEFINED CRITERIA.

WHY IT MATTERS TO YOU

At the core of all fiduciary duties is the obligation to act for the exclusive purpose of providing benefits to participants and their beneficiaries while defraying all but reasonable expenses of administering the plan. That primary function is defeated when any person entitled to a benefit cannot be found. Similarly, relying upon procedures to maintain census information that are unreliable or prohibitively expensive cannot be prudent. It is no surprise that the DOL has a priority on finding any accountable party who fails to do so. Typically, this is the plan administratorwhich is typically either your client or a firm engaged by your client (and whose actions for which they may well be liable).

The DOL reported that just last year that it helped 16,024 terminated vested participants in defined benefit plans collect \$1.548 billion in benefits owed to them. While not all of these participants were "missing," given the DOL's focus, it is clearly very concerned when terminated vested participants cannot be found to receive their benefits.

Compliance Assistance Release No. 2021-01 announced EBSA's launch of the Regional Offices conducting Terminated Vested Participants Project

(TVPP) audits, designed to facilitate voluntary compliance efforts by plan fiduciaries. Every examination now includes a request for "Participant census records, noting the employment status of each participant and their contact information, [to]help us to understand whether a plan has demographic and contact information sufficient to determine when benefits are due and to communicate with TVPs in a timely fashion" as well as the plan's procedures for communicating with TVPs, spouses and their beneficiaries and information about whether the plan takes sufficient steps to address missing participant situations when they occur.

WHAT'S EXPECTED

The DOL's best practices guidelines outline critical areas of concern while allowing the plan to determine its own implementation process. The plan must:

- 1. Maintain accurate census data for plan participants.
- 2. Implement effective communication strategies.
- 3. Conduct missing participant searches.
- 4. Document procedures and actions proving proper participant communication.

Outlining these expectations clarifies the plan administrator's responsibilities but executing these obligations requires a detailed system and active management of the processes.

THE CHALLENGE(S)

The concept and principles behind keeping track of participants is straightforward enough—but effectively implementing the procedures to accomplish that objective can be daunting when those individuals do not update their contact information. Among those challenges is defining who is a missing employee.

Historically, if a communication was sent and return mail was received back as undeliverable, a participant was considered "lost" and a location process would begin. There are no clear rules, however, for participants who have moved, and for whom, after a period of time, the U.S. Postal Service no longer forwards mail. Also unaddressed is the common practice where companies do not terminate email addresses for employees who leave, but instead forward the original employee's emails to a new employee. If the original employee utilized this work email address as their primary

THE CONCEPT AND PRINCIPLES BEHIND KEEPING TRACK OF PARTICIPANTS IS STRAIGHTFORWARD ENOUGH—BUT EFFECTIVELY IMPLEMENTING THE PROCEDURES TO ACCOMPLISH THAT OBJECTIVE CAN BE DAUNTING WHEN THOSE INDIVIDUALS DO NOT UPDATE THEIR CONTACT INFORMATION.

form of retirement plan electronic communication, a bounce-back message that the notice was not delivered to the participant will not occur.

Similar issues arise from individuals who maintain a number of external email accounts that, while active, aren't monitored. Indeed, the expanded reliance on text messaging suggests that more people are abandoning email as their primary form of electronic communication in favor of text messaging or social media platforms. Most plans find that even with multiple outreaches, only a tiny percentage of participants review what they are sent. The participation rate is even lower for terminated employees with a balance in the retirement plan.

ACTION STEPS

In order to overcome these challenges, and to comply with each DOL principle with a process that is both executable and documentable, a sound policy should address the following key areas.

1. Protocols to Distribute Notices, Disclosures and Plan Communications
Define how required notices and plan communications will be disseminated to all plan participants, both active and terminated. The policy should detail a multi-tier approach utilizing electronic and physical mail, complying with the DOL safe harbor regulations, and specifying when and how often each delivery method is used. If a plan elects to utilize the electronic delivery safe harbors provided by the DOL, it should maintain documentation proving the regulatory safe harbor requirements

2. Verify Contact Information

To maintain the most up-to-date information, there should be processes for regularly confirming the accuracy

were met.

of the current contact information. It has been found that because most employees receive their paychecks via direct deposit, they do not feel a need to update their contact information when they change addresses because their check still makes it to the bank account. Active outreach by the benefits team reminds retirement plan participants that current contact information is required to ensure timely plan communication.

3. Utilize Many Channels of Communication

Different plan participants have different communication preferences. The plan should not only communicate via the standard methods of the U.S. Postal Service mail and email, but should also utilize updated methods, like SMS/ Text messaging or phone calls. The primary vehicle for communication has moved from computers to phone or handheld devices, so the more touch points of communication the plan offers, the higher the chance of reaching the participant.

4. Verify Distribution and Delivery
To prove execution of the plan's
communication policy, the plan should
both confirm the notice was timely
circulated and that the intended
person, the plan participant, received
the information. The plan administrator

is not relieved of their responsibility by simply sending to the last known address if the address is no longer accurate for the participant.

5. Define 'Missing Participant' and Steps to Locate

First, the plan should clarify when a participant is defined as "missing." By using a system to verify the completion of delivery, the plan should be able to specify how many communication attempts are reasonable before identifying the participant as "lost." The designation of "missing participant" must be clearly defined for consistent execution by the responsible parties. Then, after identifying a participant as "missing," a procedure detailing the steps and resources the plan will utilize to locate these participants should then be executed. Using the DOL's outlined escalation steps for finding lost participants is the best place to start.

6. Documentation

Efforts to reach participants are only as good as the proof you can show of your work. Each attempt to contact should be logged with proof of work. This documentation is your "get out of jail free" card in the case of investigation or litigation. It proves you have fulfilled your obligations regarding reasonable communication attempts.

Unique Issues for MEPs and PEPs

Multiple Employer Plans (MEPs) and a new concept, Pooled Employer Plans (PEPs), allow employers to join a single plan. These structures add even more complexity to tracking terminated and missing participants because the plan administrator of the MEP or PEP is not in contact with the participants covered by the plan.

Plan sponsors who are considering joining a MEP or PEP should request documentation on how the plan administrator communicates with terminated participants.



7. Educating Participants

The most successful plans educate participants about the value of the information sent to them regarding their retirement accounts. Encouraging participants to open, read and question all information distributed by the plan generates genuine plan engagement and helps to keep participant contact information current by verifying that the correspondence was received. This process requires active outreach from the plan and those responsible for plan education, regularly providing participants with contact information regarding who to contact with questions, and overall creating a safe place for participants to obtain information.

In addition, information should be in plain language and a format the employee will understand, and not be written with industry jargon. They should include an introduction that explains the purpose of the information and how it may affect the participant. Remember that notices and disclosures may need to be in multiple languages.

With education and easy to understand communication, plans can spur a cultural change among participants, resulting in greater confidence in their retirement plan and more partnership to keep their contact information current.

8. Controlling Costs

New providers are entering the marketplace that specialize in developing and maintaining the proper procedures while deploying expert staff and technology that can implement the processes. These unified services might provide better results and be more cost-effective than what employers engaged in other businesses might produce on their own. Just as is true for any activity that is appropriate for the administration of the plan, reasonable expenses incurred in the effort to locate a missing participant may be charged against all plan assets or allocated to that individual participant's account under the plan.

CONCLUSION

In January 2021, the DOL provided an overview but not a procedure. Those responsible for fulfilling those fiduciary responsibilities must read and understand the DOL's best practices and convert them into an executable policy addressing the DOL's outlined expectations. A system should be in place that regularly verifies the participant census information, confirms both the distribution and receipt of all plan communication, provides participants with access to plan experts who can help them understand notices and disclosures and how it affects their assets, and generates documented proof of execution. Processes developed to meet these goals will significantly reduce the number of missing participants within the retirement plan and meet best practice compliance responsibilities. NNTM



Plan Sponsors Taking Greater Interest in Participant Outcomes

How do plan sponsors approach retaining retirees' assets in the plan?

By Steff Chalk

n any given month, retirement plan advisors and other industry professionals see more research than they can consume. When we encounter researchbased articles that we don't understand, or articles that tell a specific story, we normally spend more time on the ones that tell a specific story. Not that one fully understands everything we read or consume-but content that we do not comprehend, but that is generated by a credible and trusted source, gives us a reason to pause and reflect.

One such image, a graph titled "Plan Sponsor View on Retaining Retiree Assets" (see below) caught my attention recently, for several reasons. It tells a story that is

counterintuitive to what I feel is logical and practical in today's environment.

The "story" told in the image is the trend of some plan sponsors retaining more participant assets over the past six-plus years—both intentionally and passively—compared to other plan sponsors that prefer to move retiree assets out of the plan. If you take a moment to study the graph, you will likely find:

- a 65% reduction of plan sponsors seeking to move retirees out of the plan;
- a 50% reduction of plan sponsors who are indifferent;
- a staggering increase among plan sponsors preferring to retain plan assets.

Why Retain Retirement Assets in the Plan?

First of all, there are many reasons to *not* retain participants' assets following separation of service. Those reasons should always be considered before deciding to retain the plan assets of past plan participants. They include:

- Given the prevalence of ERISA litigation, with plan sponsors in plaintiffs' crosshairs and retirement plan committee members who can be found personally liable for fiduciary breaches, what is the nexus for the trends represented in the graph?
- Accumulation of a retirement asset through prudent oversight of a 401(k) or

- 403(b) plan is a straightforward objective. The goal is growth. Presumably, accumulation occurs at a rate commensurate with a participant's comfort level with downside risk.
- When executed properly, decumulation of a retirement asset involves a complex set of options including—but not limited to—an understanding of securities, insurance, actuarial tables, tax law, risk tolerance, general health, and strong communication skills.
- Since many plan-driven insurance products purchased by the plan are based upon plan assets (i.e., fiduciary insurance, ERISA bonds, etc.) it might seem prudent to keep plan assets as low as possible. It seems also reasonable that a \$15 million plan would carry lower premiums—and less overall fiduciary risk—than a \$2 million plan.

Back to the "why." There are just a handful of reasons for retaining past participant balances within a plan. They include:

- Since the plan sponsor has assisted all participants in amassing a solid retirement plan asset during their working years, it stands to reason that the plan sponsor may want to be a party to their journey through the retirement years. (At this point the company may have a paternalistic attitude towards each participant within the plan.)
- Observing a close relationship with retirees may be a motivating factor for existing employees, as both the employer and its retirees regard their relationship as extending well beyond the retirees' working years.
- Fostering a lifelong relationship with former employees may be a stabilizing force in retaining

- the existing workforce.
- On average, fees may be less if the plan assets or plan participants are greater due to volume discounts.

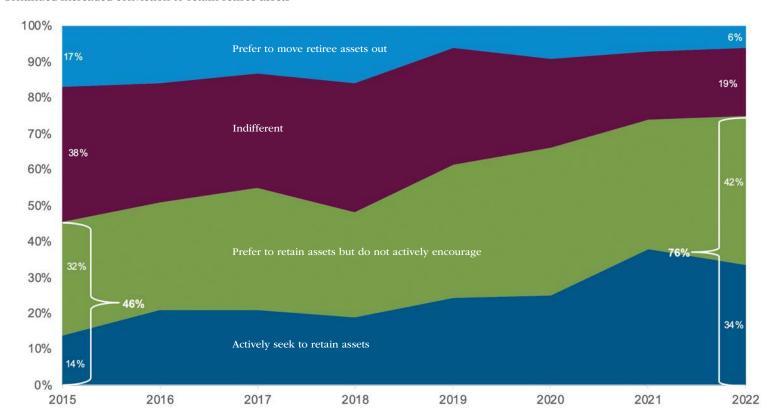
Misconceptions Around Misperceptions

- "My employer does not care about the fees in our plan."
- "Fees in retirement plans are higher than I pay as an individual investor."
- "Employer-sponsored plans have 'extra' or 'hidden' fees that negatively affect plan participants."

Who would have thought there was so much to view and talk about in that one chart? I remain amazed by the overall trend to retain plan assets within a tax-qualified defined contribution plan. NNTM

Plan Sponsor View on Retaining Retiree Assets in Plan

Continued increaded conviction to retain retiree assets



Who's Got the Data?

Here are four considerations for advisors as the use of plan data in financial wellness solutions evolves.

David N. Levine

t nearly every conference I attend, there's a common theme: optimizing participant outcomes through broad-based wellness solutions. These solutions can involve education or guidance—both inside the plan and outside the plan—and can be as detailed as individual wealth management advice. And there's a fundamental question that is always top of mind: how to get the data to implement these solutions.

At this point, three courts—in the *Northwestern, Shell,* and *TIAA* cases—have reached the conclusion that under ERISA, data is not a plan asset. However, this evolving consensus is only part of the data puzzle.

An advisor looking at this evolving world of services might consider a number of issues:

- Employer Perspective. There is a wide range of employer views on the use of employment-related data. Some employers are focused on limiting the use of data by outside service providers, whether advisors, recordkeepers or other third parties-and whether plan-related or otherwise. Others encourage their service providers to identify creative ways to deliver financial wellness solutions through the broad use of employment-related data. Regardless of what a particular employer's perspective may be, across the client spectrum there is a growing focus by employers on the use of data.
- Advisor-Plan Contracts.
 Given the broader range of services on the market today, some advisors are

now including contractual language addressing their use and security features for using employment-related data. Whether offering additional services inside or outside a plan, an advisor may benefit from reviewing their contracts to see if additional language on data usage might be beneficial. Furthermore, given the SEC's focus on data security at the advisor level, such a review could also serve as a springboard for evaluating data security procedures.

- Advisor-Employee Contracts. As the role of advisor has expanded, whether inside a plan or outside, today there are more and more direct-to-employee engagements where an advisor might have a direct relationship with an employee. Addressing data usage in these contracts might be beneficial as well.
- Other Vendor Contracts. Importantly, data does not always reside with an employee, plan sponsor or advisor. It can also reside at third parties that may be related to plan services, such as a recordkeeper or TPA, or at completely unrelated parties, such as outside wellness vendors. Since an advisor may often serve as a "quarterback" for these services, understanding who has the data, who has access to it, how third parties with access to it receive it, how is used and how it is secured can be an important responsibility for an advisor.
- State Law. While advisors tend to focus on ERISA and SEC compliance items, the laws governing data

privacy and security now go beyond these core areas of the law. For example, starting in January 2023, certain carve-outs from the California Consumer Privacy Act for employment-related data are scheduled to expire, which may trigger additional compliance items for some services provided to plan sponsors and their employees.

• Who Controls the Data. In the end, the core issue may come down to who controls access to the data. As such, as an advisor is evaluating its service offerings to clients, it

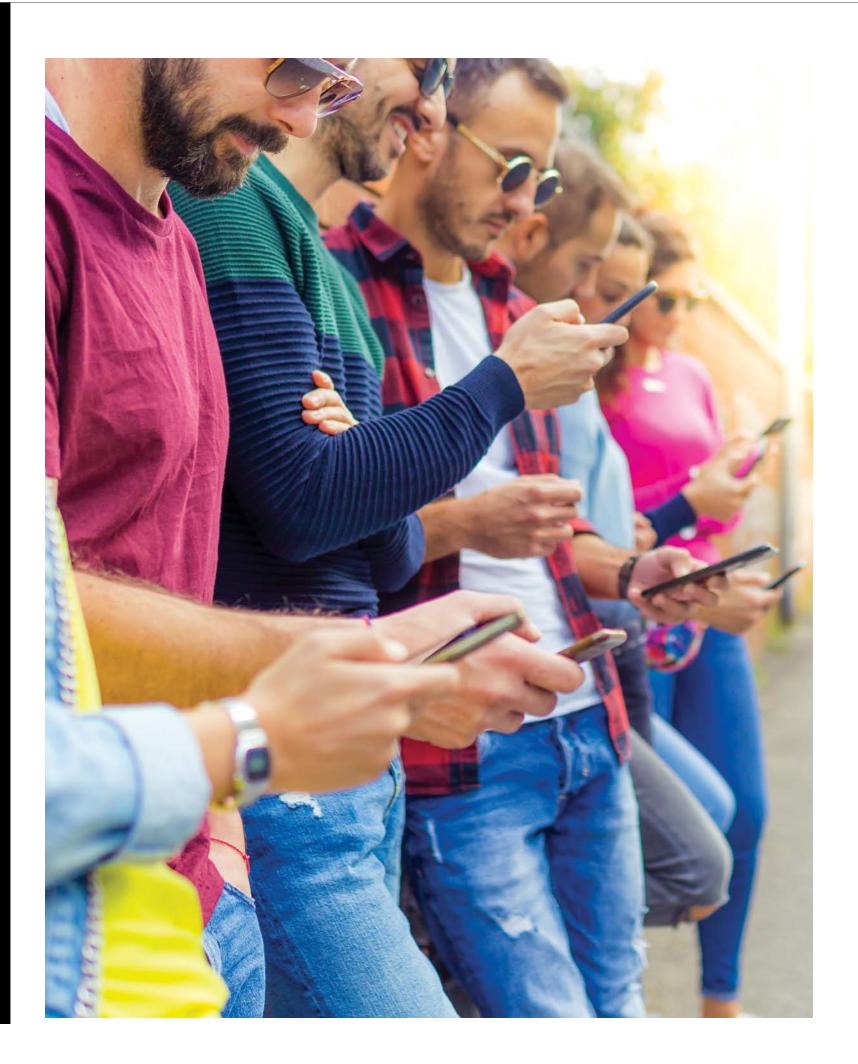
66 While advisors tend to focus on ERISA and SEC compliance items, the laws governing data privacy and security now go beyond these core areas of the law.⁹⁹

> may be beneficial to first ask who has the data, whether are they allowed to share it, and how the advisor can get access to it to support more clients.

The data landscape continues to evolve rapidly. As noted above, the courts have made strong pronouncements about the role of data under ERISA that provide a useful roadmap for advisors and plan sponsors. However, as the ERISA standard and other legal standards evolve, such as under the California Consumer Privacy Act, advisors would be well served by continuing to focus on data usage and privacy, as plaintiffs' counsel and state and federal regulators and legislators continue to do so. NNTM



PopTika / Shutterstock.com



'Wasted' Daze?

Is retirement saving 'wasted' on the young?

By Nevin E. Adams, JD

In a paper provocatively titled, "The Life-Cycle Model Implies that Most Young People Should Not Save for Retirement," four academics take 48 pages to make that case.

Like most research, the conclusion is a premise based on assumptions. Here the most basic is that this thing called a "lifecycle model" is worth considering in the first place. Now, granted, it's the "Nobel Prize-winning theory" noted above-so mere mortals might be inclined to give it some breathing room. But the underlying premise behind it is that individuals prefer to smooth out their consumption over their lifetimes, or-as the authors of the paper put it-assuming that "rational individuals allocate resources over their lifetimes with the aim of avoiding sharp changes in their standard of living." Now, I don't know about you, but my aspirations-and I consider them rational-have always been a bit higher than that.

As it turns out, the authors do anticipate some growth in income over time-indeed, that's a contributing factor in their logic about putting off saving for retirement. Buttressing this are three basic arguments: first, that since high-income workers tend to experience "wage growth" over their careers (and thus, for them "maintaining as steady a standard of living as possible therefore requires spending all income while young and only starting to save for retirement during middle age"-that's right, it requires spending). Second, that

low-income workers "receive high Social Security replacement rates, making optimal saving rates very low"-which apparently means that if you're at a low income level now, you'd (only?) be looking to maintain that level into retirement (and certainly, if you're spending). The final point has to do with what was then an artificially low interest rate environment that they claim "make a front-loaded lifetime spending profile optimal"basically, at least at that point in time, they argue, you might as well spend the money because there's no economic advantage in saving. But what about market gains, you say? Hang on, we'll come back to that in a minute.

Now, if you find yourself scratching your head at all that gobbledygook, it seems to boil down to this: You'll get more "value" out of spending all of a smaller income now than you will suffer by depriving yourself so that you can spend later when you'll have more money to spend. Or something like that. But to put some numbers behind those assumptions, you have to do a little financial alchemycreate some sort of "value" for consumption-beyond a mere price tag. How much does that cup of Starbucks that we're always telling people to forego actually mean to them in terms of what academics call "utility"? Indeed, that's another required assumption here-and it's key in terms of assessing the perceived trade-offs.

What's also odd here is that they actually talk about the "welfare costs" of automatic enrollment-essentially treating an individual who has been defaulted into saving as the equivalent of being scammed by a Nigerian prince.

For those of you wondering what happened to the "magic" of compounding those savings, the authors have a direct, but quizzical response: "...there is no power of compound interest when real interest rates are zero. While individuals could invest in risky assets with higher expected returns (which we do not model), those higher returns are merely compensation for taking on the additional risk." So, basically, in this magical theoretical world... it's a "wash."

Oh–and leakage? Well, in this imaginary world, having that savings returned to you for spending is a *good* thing (doubtless the taxes and penalties are considered a well-deserved "punishment" for the mistake of saving).

That said, the authors do offer some caveats-they admit that they're focused on saving for retirement, and that there may, indeed be reasons for saving earlier for non-retirement purposes. But they also admit that their model "does not account for uncertainty about future wages, employment, or health." They acknowledge that,"if the wage profile is uncertain, or if there is a risk of future unemployment, individuals may wish to begin saving for retirement earlier in life in case future earnings do not turn out as expected."

Ya think? NNTM



Case(s) in Point

Following what has been described as a "tsunami" of ERISA litigation the past couple of years, suits are beginning to come to trial (though more to "settlement," it seems). Those that come to trial have generally fared pretty well for plan fiduciaries (arguably those are going to be the ones seen as most likely to prevail on the merits), and those in this month's issue outline a new sentiment in certain court districts that the "plausible" claim required to get past a motion to dismiss in an excessive fee case must be more than a mere allegation of breach accompanied by a table of ostensibly similar plans. Read on...

'Plausible' Denial?

403(b) plan fiduciaries fend off excessive fee claims

Yet another excessive fee suit has been dismissed for failing to make a "plausible" case.

The plaintiff in this case is Kaila Gonzalez, a participant in the Northwell Health 403(b) Plan, who filed suit against Northwell Health, Inc., the Northwell Health 403(b) Plan Committee, and 10 other unidentified Plan fiduciaries. She alleged that the defendants here allowed the Plan to be charged

excessive recordkeeping fees and imprudently retained certain investment options in the Plan's investment menu in violation of the Employee Retirement Income Security Act of 1974. The plaintiff here is represented by Miller Shah, LLP, who has been most visible of late in its multiple suits filed against plans that held the BlackRock Lifepath funds.

That's not the case here this \$5.6 billion plan offers its participants 25 investment options: target funds, index funds and mutual funds. According to the court, the six mutual funds offered by the Plan are actively managed, while the four index funds offered by the Plan are passively managed. The suit claims that since the fourth quarter of 2014, plaintiff has invested through the Plan in the 50% Diamond Hill/50% Dodge & Cox Large Value Option and the 50% Champlain/50% Diamond Hill Small Cap Option. Moreover, that since the third quarter of 2016, plaintiff has also invested through the Plan in the Lazard Emerging Markets Fund and the

50% Causeway/50% BNY Mellon International Option.

Four Breaches

By alleging that defendants breached their fiduciary duties by retaining each of the four Challenged Funds in the Plan's investment menu, Judge Rachel P. Kovner of the U.S. District Court for the Eastern District of New York noted that the plaintiff effectively alleges four breaches of fiduciary duty that caused her injury. That is, she alleges that defendants made four decisions that violated their fiduciary duties: the retention of the Large Value Option, the retention of the Small Cap Option, the retention of the Lazard Emerging Markets Fund, and the retention of the Causeway/BNY Mellon Optionand alleged that each of these retention decisions caused her injury.

In evaluating the motion to dismiss the suit, Judge Kovner found (*Gonzalez v. Northwell Health, Inc.*, 2022 BL 351179, E.D.N.Y., No. 1:20-cv-03256, 9/30/22) that the plaintiff here had adequately made a case with regard to: (a) standing to bring suit for imprudently retaining the funds in question, (b) her having suffered an injury/loss, and (c) for there being a link (causation) between those actions and her injury.

That said, Judge Kovner determined that the plaintiff had failed to state a fiduciary breach claim. More specifically, she noted that the plaintiff "has failed to set out circumstantial factual allegations from which a court may reasonably infer that the decision to retain each Challenged Fund was the product of a flawed decision-making process." Pointing to allegations that "in specified quarters, the Challenged Funds' '[p]erformance, adjusted for investment expense' trailed their respective benchmark index or indices on three- and five-year rolling, trailing average bases," she commented. Judge Kovner added that, "These allegations of underperformance compared to benchmark indices over a relatively short period of time do not support a plausible

inference that defendants acted imprudently in retaining these four funds. While a plaintiff may allege a breach of fiduciary duty based on a fund's underperformance relative to a benchmark index, the comparative underperformance must generally be 'consistent' and 'substantial' to support an inference of imprudence."

'Indicia of Imprudence'

If you're wondering what timeframe she considered substantial, she cited several cases that ultimately held that "allegations of consistent, ten-year underperformance may support a duty of prudence claim," if the underperformance is "substantial." And she did not seem to feel that a "relatively short" 5-year history was sufficiently long enough, referring to 10-year data as a "traditional hallmark of viable claims based on underperformance relative to an index." Even so, she commented that the underperformance cited for the shorter time periods was "relatively modest"-and after spending some time detailing the gap presented in the suit, she writes: "this is not the type of substantial underperformance over a lengthy period that gives rise to a plausible inference that a prudent fiduciary would have removed these funds from the plan's menu of options."

Judge Kovner went on to note that "plaintiff's circumstantial case is not aided by the fact that the only funds she identifies as better alternative options for the Challenged Funds are index funds"-commenting that "plaintiff has not identified meaningful comparators that outperformed the Challenged Funds." She echoed comments from other cases that, "While these passively managed funds typically charge lower fees, 'they have different aims, different risks, and different potential rewards that cater to different investors' than actively managed funds." Ultimately, she concluded that, "plaintiff has pleaded relatively modest underperformance by actively managed funds, compared only to index funds, over a relatively short period of time. And she has not

put forward any 'other indicia of imprudence,' such as evidence of self-dealing or conflicts of interest, that might bolster an otherwise weak circumstantial case. Her allegations fail to nudge her claim of imprudence from the merely possible to the plausible. Plaintiff has therefore failed to state an imprudent-retention claim."

Recordkeeping 'Charges'

Judge Kovner also ruled that the plaintiff failed to "plausibly allege" a breach of fiduciary duty by "allowing recordkeeping fees." Noting that, "at the motion to dismiss stage, the key question is whether plaintiff's 'circumstantial factual allegations' are sufficient to 'allow the court to reasonably infer the process' of managing the Plan's fees 'was flawed.'" Judge Kovner said there were essentially "five factual allegations as to recordkeeping fees: that (i) until January 1, 2020, the Plan charged a \$60 annual fee for these services to participants; (ii) after January 1, 2020, that fee was reduced to \$52; (iii) the Plan is very large; (iv) very small plans averaged \$35 in direct fees for recordkeeping services per participant; and (v) '[o]ther courts have acknowledged that a plan with \$3.4 billion in assets and 41,863 active participants should be paying \$30 per participant and that the market rate of total administrative fees for jumbo plans, i.e., those within the top 1%, should be \$35 per participant."

Perhaps most significantly, she then noted that the allegation that Transamerica's (the recordkeeper) fees were excessive "rests principally on a comparison of the recordkeeping fees billed to Plan participants to the \$35 average per participant fee reported in the 401k Averages Book for 'smaller' plans." But-and she noted that the plaintiff acknowledged this in oral argument—"ERISA plans commonly pay recordkeeping fees through direct fees, indirect mechanisms like revenue sharing, or a direct/indirect payment combination"-while (again acknowledged by the plaintiff) the 401k Averages Book \$35 figure reflects only the average direct fees paid by the smaller-plan participants. And so, once again,

having put forth what was deemed to be an inadequate comparator, Judge Kovner was disinclined to accept the benchmark.

Beyond that, she wrote that, "even if plaintiff's claim were not deficient on those grounds, it would fall short because plaintiff fails to plead that defendants allowed higher recordkeeping fees than the average small plan for a comparable 'basket of services." She noted that there was no allegation that there were "entities that could provide the Plan with services comparable to Transamerica's at lower rates, let alone name any of those providers or describe their service-based pricing models," nor did it make any attempt to compare service/service levels, "or allege facts suggesting that those services are worth less than \$52 to \$60. Without more, plaintiff's allegations amount to the ipse dixit that it is categorically imprudent for a large plan to charge higher fees than a small plan."

'Legal Conclusion'

As for the assertions regarding \$30/participant or \$35/participant being reasonable for "jumbo" plans, she commented that "this allegation appears to be a 'a legal conclusion' about what a prudent fiduciary of a particular sized plan should be able to negotiate 'couched as a factual allegation.'" Nor did the suit name any plans that paid that rate, specifically for the same level of service(s). "If plaintiff's minimal allegations were sufficient to state a claim, then other plaintiffs could state a breach of fiduciary duty claim against every plan with more than 100 participants and \$5 million dollars in assets that charged more than \$35 per participant in direct fees. But [citing the recent Supreme Court decision in Hughes v. Northwestern] the motion-to-dismiss inquiry on a fiduciary-breach claim is context-specific, not categorical, and plaintiff has failed to allege the necessary context for her excessive-fee claim."

And-having dismissed those claims, Judge Kovner also dismissed the claims regarding the monitoring of the committee's actions, co-fiduciary breach and knowing participation claims.

That said, and while granting the fiduciary defendants' motion to dismiss, she allowed the plaintiff to "file a motion seeking leave to file a second amended complaint within thirty days. Any such motion should include the proposed second amended complaint as an exhibit and explain why leave to amend should be granted. If plaintiff does not seek leave to amend within thirty days, judgment shall be entered and the case closed."

What This Means

The conclusions here are not inconsistent with the recent trend in granting motions to dismiss, citing a lack of plausibility in the assertions made to overcome the motion-here basically stating that the comparison points are invalid, the benchmark sources inadequate-and a new one here to my reading, that the timeframes of investment performance comparison weren't long enough. That said, the door has been left open for a resubmission of the allegations-and it's not the first case to do so-so we'll just have to wait and see.

--- Nevin E. Adams, JD

'Friendly' Fire?

ARA joins amicus brief rebuffing BlackRock TDF suit

as federal courts turn their attention(s) to a series of suits challenging plans with a series of BlackRock target-date funds on their hands, the American Retirement Association has joined the fray in a "friend of the court" brief.

The amicus¹ brief (*Tullgren v. Booz Allen Hamilton Inc.*, E.D. Va., No. 1:22-cv-00856, amicus brief 10/17/22) was submitted on behalf of the American Benefits Council, the ERISA Industry Committee, and the American Retirement Association in support of the Booz Allen defendants in one of about a dozen such suits² filed in federal courts around the country by Miller Shah LLP.

The plaintiffs in these suits basically alleged that the plan fiduciaries "chased low fees" to the exclusion of any consideration for performance. More specifically, that "Defendants... could have chosen from a wide range of prudent alternative target date families offered by competing TDF providers, which are readily available in the marketplace, but elected to retain the BlackRock TDFs instead, an imprudent



⁶⁶Because a range of reasonable considerations and choices exist, courts do not find fiduciary breaches simply because one fund choice underperformed a set of cherry-picked hypothetical alternatives on a single metric for a fixed period of time. ⁵⁹

decision that has deprived Plan participants of significant growth in their retirement assets." And that, in so doing, "Defendants failed to act in the sole interest of Plan participants and breached their fiduciary duties by imprudently selecting, retaining, and failing to appropriately monitor the clearly inferior BlackRock TDFs."

The Booz Allen fiduciary defendants filed their motion to dismiss the suit in mid-October.

'Cherry-Picked So-Called Comparators'

The amicus filing notes that "the Plaintiff here claims imprudence exclusively based on the fiduciaries' selection of a BlackRock fund suite that allegedly underperformed—solely on short-term returns—a set of four cherry-picked so-called comparators with little in common with the challenged BlackRock funds beyond the 'target date fund' label."

It goes on to cite the plaintiff's "myopic fixation on a single variable among many that fiduciaries must consider in determining plan investment offerings," explaining that doing so "creates a particularly menacing prototype for fiduciary strike suits, seeking a declaration that a fund suite is per se imprudent notwithstanding its fees, risk profile, or rating among market analysts—all of which

the Complaint and its sources acknowledge are exemplary for the BlackRock fund suite here among other factors."

The brief also points out that asserting "that it is imprudent to offer a fund that earned smaller returns for specified past periods than the top performers in the same broad fund category... will subject every plan that does not select the #1 fund in each asset category to costly litigation, a catastrophic outcome for both the court system and the private retirement system."

'Out of Sync'

Beyond that, the brief noted that this "theory is also badly out of sync with the law on fiduciary duties," going on to comment that, "it is beyond dispute that if a fiduciary made annual decisions based solely on past performance, the fiduciary would breach his or her duty of prudence by ignoring the vast majority of other factors that must be considered, including risk tolerance, diversification, quality of management, and the nature of the covered workforce. Indeed, if the Complaint (or any of its roughly one dozen identical copies filed simultaneously against other plan fiduciaries) survives a motion to dismiss, plan fiduciaries across the United States will be rendered vulnerable to suit for including any fund options that prioritize low management fees, risk mitigation, or any other

factor a prudent fiduciary may consider over past returns. Such an approach would also lead to disastrous fiscal results, with plan fiduciaries consistently buying high and selling low, all in the futile pursuit of past performance."

The brief cautions that the end result of permitting these type allegations to proceed to trial means that "plaintiffs' counsel will simply use their surviving claims³ as a bargaining chip, leveraging the threat of costly discovery to secure settlements that generate a big payday for plaintiffs' firms but negligible benefits for plan participants. Faced with mounting litigation and insurance costs and conflicting judicial guidance as to what types of imprudence allegations are sufficient to survive a motion to dismiss, smaller sponsors may simply decline to provide defined contribution plans at all. For those that do, plan fiduciaries choosing investment options will be left to navigate between many competing interests with the threat of exorbitant litigation costs ever looming."

Indeed, it concludes that "nothing in the ERISA prudence case law compels this outcome. Quite the opposite, in fact. In grappling with the surge of ERISA fiduciary breach cases over the past fifteen years, courts have recognized that they should not substitute their judgments for those of fiduciaries charged with

FOOTNOTES

¹ Amicus Curiae is literally translated from Latin—"friend of the court." Plural is "amici curiae." It generally refers to a person or group who is not a party to an action, but has a strong interest in the matter, and who—in filing the brief is attempting to inform/influence the court's decision. Such briefs are called "amicus briefs."

² To date, that includes suits filed against Genworth Financial Inc., Microsoft, Cisco Systems Inc., Booz Allen Hamilton Inc., Stanley Black & Decker Inc., Advance 401(k) Plan, Wintrust Financial Corp., Marsh & McLennan Cos and CUNA.

³ The brief explains that "notwithstanding the discretion built into ERISA's prudence requirement, plan sponsors and fiduciaries have been subject to a steadily growing tide of litigation alleging breaches in their duty of prudence over the past decade In recent years, this tide has grown into a tsunami, with over 180 such federal suits being filed since 2020. More than half of United States district courts now have at least one such case pending, and the suits have expanded from pursuing large employer plans with over \$1 billion in plan assets to targeting plans sponsored by smaller companies and non-profits, such as health systems and educational institutions. This proliferation of cases is fueled in large part by plaintiffs' firm's use of cookie-cutter complaints—i.e., copy-and-pasted complaints making identical allegations (in the same language and sometimes even featuring the same typos) against different plans—usually filed contemporaneously across many different districts. The present case provides a ready example, as it is one of eleven identical cases filed by the same plaintiffs' firm in seven different district courts across the United States within days of one another."

making complex discretionary decisions. Plan fiduciaries face an array of such decisions in structuring the menu of investment options available to plan participants, who may vary in widely their investment needs and objectives. Because a range of reasonable considerations and choices exist, courts do not find fiduciary breaches simply because one fund choice underperformed a set of cherry-picked hypothetical alternatives on a single metric for a fixed period of time. And this is doubly so where, as here, the BlackRock fund suite and the alleged comparators featured wholly different investment strategies that would, by design, be expected to perform differently under different market conditions."

Essentially, the brief points out that the plaintiffs in this case are asking the court "to allow a suit to move forward based on a legal theory that would open the floodgates to lawsuits against every plan in the country and force the plans' fiduciaries to act in a way that is clearly contrary to law."

We'll see if the court takes note.

- Nevin E. Adams, JD

Compare 'Shuns'

Appellate court cuts down excessive fee suit

Another excessive fee suit filed on behalf of participantplaintiffs by Capozzi Adler PC has been dismissed by a federal appellate court.

This time the defendants are the fiduciaries of Berkshire Hathaway-owned lowa power utility MidAmerican Energy Co.-in a case before the U.S. Court of Appeals for the Eighth Circuit (Matousek v. MidAmerican Energy Co., 2022 BL 364661, 8th Cir., No. 21-2749, 10/12/22). The decision by that court-Judge David R. Stras and joined by Judges Bobby E. Shepherd and Ralph R. Erickson-was summed up quickly by that court as follows: "Like many companies, MidAmerican offers a retirement plan to its employees. Some thought it saddled them with unreasonably high costs and low-quality investments. In their

complaint, however, they failed to identify better alternatives, so we affirm the district court's decision to dismiss."

The Original Suit and Dismissal

The ruling noted that MidAmerican's 401(k) plan-like 401(k) plans generally-depends on the choices that participants make: when and how much to contribute, what investments to select, and when to start withdrawing money-not to mention (citing the Hughes v. Northwestern University case) "how well the plan managers carry out their fiduciary duties, including their diligence in keeping costs low and their skill in selecting 'which investments' belong 'in the plan's menu of options." However, "according to Daniel Matousek and the other plaintiffs, MidAmerican's plan did neither well."

More specifically, the plaintiffs alleged that: (1) the plan's investment committee let recordkeeping expenses spiral out of control, and (2) the investment committee allegedly failed to "monitor all plan investments and remove [the] imprudent ones." More to the point, the court noted the plaintiffs' arguments that "some consistently underperformed. Others cost too much. Either way, keeping these investments showed that the investment committee (and the directors who appointed them) must have been 'asleep at the wheel."

The district court granted the MidAmerican fiduciaries' motion to dismiss, and, "Without mentioning the recordkeeping allegations, it concluded that Matousek and the other plaintiffs had failed to plead meaningful benchmarks for 'assessing the performance of the challenged funds," according to the appellate court analysis.

Standard of Review

In considering the case on appeal, the U.S. Court of Appeals for the Eighth Circuit started by restating the standard of review—"accepting as true the allegations . . . in the complaint and drawing all reasonable inferences in favor of the nonmoving party." Citing

previous case law, they noted that a complaint can only survive a motion to dismiss if it contains "sufficient factual matter' to state a facially plausible claim for relief."

The court then proceeded to note that "the allegation here is that the plan's fiduciaries have violated their duty of prudence, which is about how they must act. If they failed to use the same "care, skill, prudence, and diligence under the circumstances" as "a prudent man," then they have breached their duty," and finally "the process is what ultimately matters, not the results.

"A plaintiff typically clears the pleading bar by alleging enough facts to 'infer... that the process was flawed," the court noted, going on to state that, "the key to nudging an inference of imprudence from possible to plausible is providing 'a sound basis for comparison—a meaningful benchmark'—not just alleging that 'costs are too high, or returns are too low."

Plan Operations and Costs

Having set the stage, the court then noted that in order to manage the "day-today operations" of the plan, MidAmerican hired Merrill Lynch, which served as the plan's recordkeeper. In return, Merrill Lynch received \$1.9 million to \$3.1 million in fees per year, which translates to between \$326 and \$526 per plan participant. "The claim here is that these amounts were too high. In the absence of 'significant allegations of wrongdoing," the court said the way to plausibly plead a claim of this type is to identify similar plans offering the same services for less.

Now, the plaintiffs here alleged that no more than \$100 per participant is reasonable for a plan with approximately \$1 billion in total assets and 5,000 participants. But the court noted (citing the recent *OshKosh* case), "even if the fees here look high, we cannot infer imprudence unless similarly sized plans spend less on the same services." But first the court noted they had to determine what those services are. "Two documents fill in the details. One is a participant-disclosure form, which describes

the services offered by the plan and the costs accompanying them. The other is an 'Annual Return/ Report of Employee Benefit Plan'otherwise known as a Form 5500which discloses the aggregate payments made to the plan's recordkeeper." Turning to the participant-disclosure forms, the court noted that the cost of Merrill Lynch's "suite of administrative services" ranges between \$32 and \$48 per participant for providing "a suite of administrative services typically provided . . . by [a] plan's recordkeeper."

Plaintiffs' Math

So what about those larger numbers in the complaint? "A portion are indirect 'revenuesharing payments,' which account for no more than \$37 per participant per year," the court noted. "The remainder appears to come from what Merrill Lynch received from its other, non-recordkeeping services: investment advice for those with self-directed brokerage accounts; commissions for individual trades; and trading, loan-origination, returned-payment, and checkservice fees. Each is 'charged against the account of [individual] participant[s]' . . . rather than on a [p]lan-wide basis."

The court noted that the Form 5500s, "which describe Merrill Lynch's 'total compensation' for 'services rendered to the plan,' seem to bear this out." The court noted that, "according to the form's 'service codes,' Merrill Lynch's compensation includes investment-management fees, redemption fees, shareholder-servicing fees, and securities-brokerage commissions. In plain English, the per-participant fees cover more than just standard recordkeeping services."

Having laid that groundwork, the court stated that for a

benchmark to be "sound" and "meaningful" here, it must do the same. "After all, we have been clear that the key to stating a plausible excessive-fees claim is to make a like-for-like comparison." But "[r]ather than point to the fees paid by other specific, comparably sized plans, the plaintiffs rely on industry-wide averages. But the averages are not all-inclusive: they measure the cost of the typical 'suite of administrative services,' not anything more. And using this information creates a mismatch between Merrill Lynch's total compensation, which includes everything it does for MidAmerican's plan, and the industry-wide averages that reflect only basic recordkeeping services."

Source 'Spots'

The court dismissed the plaintiffs' sources for reasonability, commenting that while the NEPC



report "says that no similarly sized retirement plan paid more than \$100 per participant for recordkeeping, trust, and custodial services. MidAmerican's plan compares favorably, with the fees for these basic recordkeeping services totaling between \$32 and \$48 per plan participant." That said, the court noted that NEPC's report says nothing about the fees for the other services that Merrill Lynch provided, which means it cannot provide a "sound basis for comparison" for anything else.

As for the other sourcethe 401K Averages Book-the court described it as "similarly unhelpful," noting that the fee ranges it presents doesn't include fees arising out of participantinitiated transactions like "loans" and "distributions." Moreover that the revenue-sharing category consists of fees "received by other service providers to the plan," including "recordkeepers, advisors[,] and platform providers," concluding that "it is almost impossible to tell if these figures provide a meaningful benchmark" because they also "leave out the total fees charged for individualized services like 'loans' and 'distributions,' just like the NEPC Report, making them a less-than-helpful benchmark for the larger, total-compensation numbers in the complaint. For another, they analyze smaller plans: those with less than half the number of participants and under a quarter of the total assets."

"The point is that neither of these sources tells us much about whether MidAmerican pays too much to Merrill Lynch overall. And without a meaningful benchmark, the plaintiffs have not created a plausible inference that the decision-making process itself was flawed," the court concluded.

Familiar Ground(s)

"The plaintiffs tread on familiar ground with their investment-by-investment duty-of-prudence claims," the court continued. "As the Supreme Court recently explained, fiduciaries like MidAmerican's investment committee 'normally ha[ve] a continuing duty of some kind to monitor investments and

remove imprudent ones," and the complaint "alleges that the committee should have removed five investments from MidAmerican's lineup, each of which was a poor performer, cost too much, or both." However, "beyond these bare allegations, there still must be a 'sound basis for comparison-a meaningful benchmark." The court explained that in one case, a combination of a "market index and other shares of the same fund" did the trick, but there is no one-size-fits-all approach. Moreover, "nudging the complaint past the plausibility threshold depends on the 'totality of the specific allegations."

Describing the plaintiffs' approach here as "multifaceted," the court noted that while the complaint starts by comparing the performance of three of the five funds to their "peer groups," it then "evaluates the expense ratios of all but one fund to the mean and median expense ratios in their groups. And finally, it analyzes the expenses and performance of two of the funds against alternative investments. None clears the pleading bar." The court goes on to note that, "On its own, the raw performance data provided by the plaintiffs falls short of providing a 'meaningful benchmark." The main reason for that? "[T]he composition of the peer groups remains a mystery. The complaint says that Oakmark Equity and Income Investor is in the 'Non-target date Balanced' category and that Dodge & Cox International Stock is in the 'International Equity' category. But there is no explanation of what types of funds are in each group, much less the criteria used to sort them. And for Aristotle Small Cap Equity I, the complaint does not even identify a peer group.

"With so little information, we have no way of knowing whether the peer-group funds provide a 'sound basis for comparison'"—citing details as missing, including "whether they hold similar securities, have similar investment strategies, and reflect a similar risk profile. If they are indeed different, then the peer-group data is unlikely to be 'sound' or 'meaningful' on its

own." Ultimately, the court notes that with the data presented, "there is no way to compare the large universe of funds—about which we know little—to the risk profiles, return objectives, and management approaches of the funds in MidAmerican's lineup. The bottom line is that the aggregate data fails "to connect the dots in a way that creates an inference of imprudence."

As for the other funds cited, the court found that there appeared to be differences in the underlying strategies to which the funds were compared.

"One loose end remains," the court noted—"the district court dismissed the complaint with prejudice without giving the plaintiffs a chance to amend it. We conclude that there was no abuse of discretion" in doing so. The court concluded that while the plaintiff had a right to amend, they never requested that option, and "a failure to do either is reason enough to reject their argument now."

And affirmed the judgement of the lower court in dismissing the suit.

What This Means

The Eighth Circuit has become something of a home-field advantage for fiduciary defendants of late, with the establishment of what appears to be a higher threshold for plaintiffs to get past a motion to dismiss. More specifically, this district-and a couple of others that have made reference to decisions from this district-have stated what to those in this industry is obvious: the determination of reasonable fees requires an awareness/assessment of the services rendered for that fee. This case also highlighted the limitations of two commonly cited (by plaintiffs, anyway) benchmark sources, among other benchmarking references.

All in all, it's a good message for plan fiduciaries—until you remember that this case has now gotten to court—twice. And it's not the only one. NNTM

- Nevin E. Adams, JD





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PEP Said

Readers offer a plethora of PEP perspectives

By Nevin E. Adams, JD

ooled Employer Plansor "PEPs" as they're more commonly referred to, were greeted with much excitement when they became a reality in the SECURE Act-but are they living up to that hype? In September, NAPA-Net readers weighed in.

Created by the SECURE Act in 2019 and first approved for use in 2021, a PEP is a type of 401(k) plan that allows unrelated businesses to participate in one plan managed by a pooled plan provider (PPP). In fact, a recent survey found that more than half of smaller employers surveyed by the Secure Retirement Institute (SRI) that are considering a DC plan are interested in learning more about PEPs—regardless of

whether they have a retirement plan currently in place. SRI found that employers with 10-99 employees are significantly more interested in learning more about PEPs, especially the largest (small) employers (those with 50-99 employees).

And yet—despite the launch of a number of new PEPs, employer interest to date doesn't quite seem to have lived up to expectations. Besides that, the 2022 NAPA 401(k) Summit Insider rated PEPs as fourth-most overhyped trend (granted, there was a big gap between that and No. 1).

That said, and as is often the case, those in favor of Pooled Employer Plans seemed not only quite keen, but enthusiastic

about the current state—and their prospects. But there was a fair amount of skepticism—and downright negativity on the need for, and benefits from, the offering. You'll see what I mean...

Employer Interest

First, we asked readers for their sense of the current interest in Pooled Employer Plans (PEPs) by employers (generally speaking):

38% - Curious, but no more.

27% - Not even aware of the option.

18% - Interested, but not ready to commit.

12% - Already committed.

5% - Chomping at the bit!

Reader comments were every bit as diverse:

Only had one plan inquire about it. They have 1200 employees and very specific plan features so not a good candidate.

These plans will be an egregious violation of fiduciary duty as there is no onus or responsibility for the types of service providers that "team up."

We're finding that once clients understand the value of the 3(16) service along with the savings on the annual audit they are fired up about joining the PEP.

We've pitched it to those we think would be good candidates. They've heard of it, we explain it, but they are concerned that there are times they will want to change something in plan design and then be told they can't do it.

PEPs sound great until clients realize that it's a lot of sizzle and not much steak. In many cases they are paying a whole bunch of extra fees for stuff they don't really need.

Where is the "know about it but don't want it" option? "Understand it and understand it's not all that it's cracked up to be" option?

It's between not aware and not ready to commit. Many don't know and when they do some want more information, some discount it immediately'

I think PEPs are sold, not bought. I think advisors are far more interested in PEPs than employers because advisors see it as a way to do less work. "I can do one committee meeting instead of 50? Sign me up!" I think awareness depends on whether the existing advisor has a PEP and how hard they are pushing it. I think most advisors that have one view it as a tool they need to have in the toolbox just in case the need arises or a competitor has one. I'd add a 6th option. Aware, but not interested.

Advisor Interest in Promoting

Next we asked about readers' current interest in Pooled Employer Plans (PEPs) for the employers they support (generally speaking)?

- 37% Curious, but no more.
- 23% Interested, but not ready to commit.
- 21% Already committed.
- 12% Chomping at the bit!
- **7%** Not even aware of the option.

PEP won't fit my plan business. I don't have plans for very small employee populations.

I am not hearing anyone talk about them other than advisors.

Only when it makes sense.

Past interested, but I'd say, "Interested but our clients are ready to commit."

Priorities for our plan sponsors have been on increasing education—costs are lean and service runs smoothly, so a change in recordkeeper or complete plan design overhaul has not been on the to-do list for our sponsors YTD.

Tough to get enough employers together to start your

Where's the option for Thanks, No Thanks?

This could be a good option for plans subject to audits that are still relatively small depending on how the audit requirements and cost are determined.

66 What is evident is that employers are looking for cost savings, but have concerns about limitations and levels of service that typically come with MEPs/PEPs.*9

There are very few options where we can maintain a relationship with the participants.

I don't see the mass appeal.

We have one established, but take up rate is low.

Waiting to have more details fleshed out on the operations side.

Not sold on it being better.

What's Holding PEPs Back?

To the extent adoptions haven't (yet) matched expectations—well, we asked readers what was holding back adoption:

- 39% Inertia.
- **36%** Don't want to give up control.
- 35% Too new.
- **31%** I'm not recommending them.
- **22%** Advantages underappreciated.
- **17%** Preference for Group of Plans alternative.
- 10% Not a darn thing—all systems go with my clients!

Not a lot of providers and we have no providers approved at our firm.

As a specialist, a big part of what we do is act as the investment fiduciary... so choosing a PEP takes that away and devalues our services a little.

Many of the PEP providers have limited plan document options, which aren't ideal for many of my clients. The ability to customize a plan to a specific sponsor matters!

PEPs are sold and not bought. The only reason these would take off is if service providers (advisors and record keepers) make a strong push to sell them. Most are only offering them as a defensive measure and not as a primary strategy.

The advantages come with additional payroll audits and filing requirements possibly opening up opportunities to be audited as the PPP or RK. There also may some concern around use of proprietary services to bolster revenue to meet thin operating margins (as RK or RIA). In some respects, GoPs have less worry in this regard. Closed MEPs always performed better than open MEPs due to the nexus/bond between adopters. See if this holds true w PEPs.

One thing not listed is the mis-marketing, and there is a lot of that going on. Employers don't fully understand and when they hear the "adopt and you have no responsibilities" pitch, they know something is off. It's they are not fully embracing the sales pitch and that these are new, so they figure there is something that they don't know yet and they are being cautious, which is good.

The "in the box" approach needed for PEPs does not work for many of our clients and for those that it might work for, the fee difference from what they're currently paying is negligible.

TPAs who don't know how to run them and advisors who see them a threat, not a solution.

Expectations?

We then asked readers about their expectations for the current PEP adoption rate:

- 39% Accelerate-in time.
- 17% Keep the current pace.
- **16%** Slow.
- 13% Not sure.
- 9% Accelerate soon.
- **6%** Accelerate rapidly soon.

Thanks to everyone who participated in our NAPA-Net Reader Radar poll! NNTM

Regulatory Radar

As 2022 winds to a close, advisors are (still) waiting for a new ESG regulation from the Labor Department—while receiving cautionary signals from the Securities and Exchange Commission (SEC) on performance reporting and advertising...



Any Day Now...

Could we have a new ESG regulation by year-end?

As we head to press, we don't yet have a new Labor Department regulation on Environmental Social & Governance (ESG) investing in defined contribution plans—but it could be any day now.

The regulation, submitted for review on Oct. 6 to the White House's Office of Management and Budget as "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights" in a "final rule stage" is accompanied by an abstract that reads, "This rulemaking implements Executive Order 13990 of January 20, 2021, titled Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and Executive Order 14030 of May 20, 2021, titled Climate-Related Financial Risks." It is described as "economically significant."

A Little History

A little over a year ago, the Labor Department submitted to OMB a

proposal for review, and then in October, it released a proposed rule that took a completely different tack than that issued by the Labor Department in the waning days of the Trump administration (which the Biden administration announced right out of the gates that it would not enforce). Rather than cautioning against the use of such factors in considering investments (or proxy decisions), that version called for allowing workplace retirement plan managers to consider environmental, social, and corporate governance factors when making decisions about plan investments, with a decided emphasis on the environmental aspects. At the time the Labor Department said it was concerned "uncertainty with respect to the current regulation may deter fiduciaries from taking steps that other marketplace investors would take in enhancing investment value and performance, or improving investment portfolio resilience against the potential financial risks and impacts often associated with climate change and other ESG factors."

The ARA submitted comments on that version in December.

In the meantime, DOL had requested information on whether the department should take action to protect retirement savings from risks associated with climate changes, on which the ARA also weighed in, contending that the DOL should not call out climate-related risks for special attention.

Nomination Nexus?

The issue had arisen in considering the nomination of Lisa Gomez as Assistant Secretary of Labor, with some Republican senators expressing concern about her stance on ESG. However, that nomination was recently confirmed (albeit on a narrow party-line vote).

As for what set all this in motion, on Nov. 13, 2020, the DOL under the Trump administration published a final rule on Financial Factors in Selecting Plan Investments, which adopted amendments to the "Investment Duties" regulation under Title I of ERISA. The changes stepped away from using the terms environmental,

The regulatory agenda shows a December 2022 target date for release of a final rule—and with the delivery to OMB—what once seemed uncertain—now seems likely.

social and governance factors, but instead generally require plan fiduciaries to select investments and investment courses of action based solely on consideration of "pecuniary factors."

Then, on Dec. 16, 2020, the DOL published a final rule on Fiduciary Duties Regarding Proxy Voting and Shareholder Rights, which also adopted amendments to the Investment Duties regulation to address obligations of plan fiduciaries under ERISA when voting proxies and exercising other shareholder rights in connection with plan investments in shares of stock.

The regulatory agenda shows a December 2022 target date for release of a final rule—and with the delivery to OMB—what once seemed uncertain—now seems likely.

Stay tuned.

— Nevin E. Adams, JD

'Out' Sourced?

SEC takes aim at outsourcing by investment advisers

The Securities and Exchange Commission on Oct. 26 proposed new rules to prohibit registered investment advisers from outsourcing certain services without conducting due diligence and monitoring of the service providers.

The proposal was approved for release Oct. 26 in a divided 3-2 vote, with Republican Commissioners Hester Peirce and Mark Uyeda voting against the proposal.

As for the reasoning, the SEC explains that as demand for the asset management industry

has grown and clients' needs have become more complex. many advisers have engaged third-party service providers to perform certain functions or services. These functions, the SEC notes, can include providing investment guidelines, portfolio management, models related to investment advice, indexes, or trading services or software. Outsourcing can benefit advisers and their clients, but clients could be significantly harmed when an adviser outsources a function or service without appropriate adviser oversight, the SEC contends.

"Registered investment advisers-more than 15,000 of them in total-play a critical role in our economy, advising more than 60 million accounts with combined assets under management of over \$100 trillion," SEC Chair Gary Gensler said in a statement. "Though investment advisers have used third-party service providers for decades, their increasing use has led staff to make several recommendations to ensure advisers that use them continue to meet their obligations to the investing public."

In contrast, Republican
Commissioner Peirce stated,
"Investment advisers are
fiduciaries to their clients, so
why are we giving them step-bystep instructions on how to do
their jobs? If we think Congress
got it wrong—that investment
advisers cannot, absent regulatory
handholding, serve their clients
faithfully—then we should
tell Congress." Peirce further
emphasized that she believes

the approach the Commission is taking is neither statutorily grounded nor protective of investors. "I could have supported Commission guidance highlighting the importance of an adviser's ongoing obligations to its clients when it has engaged a service provider. I cannot support repackaging existing fiduciary obligations into a new set of prescriptions for investment advisers," she argued.

Key Provisions

With that as a backdrop, an SEC fact sheet outlines the key changes in the 230-page proposal, including:

- creation of new rule 206(4)11 under the Investment
 Advisers Act requiring
 advisers to conduct due
 diligence before outsourcing
 and to periodically
 monitor service providers'
 performance and reassess
 whether to retain them;
- related requirements for advisers to make and/or keep books and records related to the due diligence and monitoring requirements;
- amendments to Form ADV to collect census-type information about advisers' use of service providers; and
- a requirement for advisers to conduct due diligence and monitoring for thirdparty recordkeepers, along with a requirement to obtain reasonable assurances that the third-party will meet certain standards.

The SEC further explains that the rule would apply to advisers



that outsource certain "covered functions," which include those services or functions that are necessary for providing advisory services in compliance with the Federal securities laws and that if not performed—or performed negligently—would result in "material negative impact to clients."

As referenced above, covered functions could include providing investment guidelines, portfolio management, models related to investment advice, custom indexes, and investment risk, or trading services or software, among others. Covered functions also may include advisers' use of software as a service or artificial intelligence as a service, both of which are playing a growing role in the investor advisory space.

Consequently, before retaining a service provider, an adviser would be required to conduct

due diligence to determine that outsourcing the covered function to that service provider would be appropriate by considering:

- the nature and scope of the covered function;
- potential risks resulting from the service provider performing the covered function, including how to mitigate and manage such risks;
- the service provider's competence, capacity and resources necessary to perform the covered function;
- the service provider's material subcontracting arrangements related to the covered function;
- coordination with the service provider for Federal securities law compliance; and

• the orderly termination of the performance of the covered function.

Oversight of Third-Party Recordkeepers

Regarding the enhanced oversight of third-party recordkeepers, the proposal would require advisers to obtain "reasonable assurances" that the third party will meet four standards, which address the third party's ability to:

- adopt and implement internal processes and/or systems for making and/ or keeping records that meet the requirements of the recordkeeping rule applicable to the books and records being maintained on behalf of the adviser;
- make and/or keep records that meet all the requirements of

- the recordkeeping rule applicable to the adviser;
- provide access to electronic records; and
- ensure the continued availability of records if the third party's relationship with the adviser or its operations cease.

A public comment period will remain open for 60 days starting Oct. 26 or 30 days after the date of publication in the *Federal Register*, whichever period is longer.

— Ted Godbout

Performance 'Measurement'

SEC cautions advisers about overstating performance in ads

A recent Risk Alert by the Securities and Exchange Commission's Division of Examinations specifies the initial exam initiatives and areas of review that it will conduct as part of the new Marketing Rule.

Among the provisions of the new rule (Advisers Act Rule 206(4)-1) adopted in December 2020 is a substantiation requirement whereby the SEC notes that the staff will review whether investment advisers have a reasonable basis for believing they will be able to substantiate material statements of fact in advertisements.

In the rule's adopting release, the Commission explained that advisers should be able to demonstrate this "reasonable belief" in a number of ways, including by making a record contemporaneous with the advertisement demonstrating the basis for their belief or by implementing policies and procedures to address how this requirement is met. "However, if an adviser is unable to substantiate the material claims of fact made in an advertisement when the Commission demands it, we will presume that the adviser did not have a reasonable basis for its belief," the SEC states.

Policies and Procedures

With a Nov. 4, 2022, compliance date, the SEC notes that

investment advisers can no longer choose to comply with the previous advertising and cash solicitation rules. In addition, the staff is withdrawing certain staff statements relating to those rules. "Any advertisements disseminated on or after the Compliance Date by advisers registered or required to be registered with the Commission are subject to the Marketing Rule," the Commission advises.

As such, advisers should consider whether they need to update or revise their written policies and procedures to ensure they are in compliance. "In sharing initial examination review areas for the Marketing Rule, the Division encourages advisers to reflect upon their own practices, policies, and procedures and to implement any appropriate modifications to their training, supervisory, oversight, and compliance programs," the Alert states.

Meanwhile, as part of its adopting release, the SEC had stated its belief that for the compliance policies and procedures to be effective, they should include "objective and testable means." Examples include—but are not limited to—conducting an internal pre-review and approval of advertisements, reviewing a sample of advertisements based on risk, or pre-approving templates, the SEC notes.

Performance Advertising Requirements

Also under review will be whether advisers are complying with the performance advertising requirements, including the prohibitions on including the following in an advertisement:

- gross performance, unless the advertisement also presents net performance;
- any performance results, unless they are provided for specific time periods;
- to the extent an advertisement includes the performance of portfolios other than the portfolio being advertised, performance results from fewer than all portfolios with substantially similar investment objectives

- and strategies as the portfolio being offered in the advertisement, with limited exceptions;
- performance results of a subset of investments extracted from a portfolio, unless the advertisement provides, or offers to provide promptly, the performance results of the total portfolio;
- hypothetical performance, unless the adviser implements policies and procedures to ensure that the performance is relevant to the financial situation and investment objectives of the intended audience and the adviser provides certain additional information; and
- predecessor performance, unless the personnel responsible for achieving the prior performance manage accounts at the advertising adviser and the accounts that were managed by those personnel at the predecessor adviser are sufficiently similar to the accounts that they manage at the advertising adviser.

The advertising adviser must also include all relevant disclosures clearly and prominently in the advertisement, the SEC notes.

Books and Records

As for the amendments to the Books and Records Rule, the staff will review whether investment advisers are making and keeping certain records, such as records of all advertisements they disseminate, including certain internal working papers, performance-related information, and documentation for oral advertisements, testimonials and endorsements.

In addition, the Commission amended Form ADV to require advisers to provide additional information regarding their marketing practices. The Alert reminds advisers of their obligations to accurately complete these questions in their next annual Form ADV amendment. NATM

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Management, LLC

Gordon Asset Management, LLC Green Retirement, Inc.

Greenspring Advisors GSM Marketing, LLC

GROUPIRA Guardian Wealth Partners

Hahn Financial Group Inc.

Harbor Capital Advisors, Inc

Hartford Funds Hauser Retirement Solutions, LLC

HealthyCapital HighTower Advisors

Howard Capital Management, Inc

HSA Bank HUB International

Human Interest

Huntington National Bank

Hurlow Wealth Management Group, Inc.

iCaptial, LLC

iGrad dba Enrich Impax Asset Management

Income America

Independent Financial Partners

Insight Financial Partners, LLC

Institutional Investment Consulting

intellicents Invesco InvestSuite

IPX Retirement

iraLogix, Inc. ISS Market Intelligence

J.P. Morgan Asset Management Janus Henderson Investors

Jemma Investment Advisors John Hancock Investments

John Hancock Retirement Plan Services

Judy Diamond Associates (ALM) July Business Services

Karp Capital Management

KerberRose Retirement Plan Services Kestra Financial

KWP Consulting Latus Group, Ltd.

Lazard Asset Management LeafHouse Financial Advisors Leatherback Investments

Legacy Retirement Solutions, LLC Legacy 401k Partners, LLC

LifeCents

Lebel & Harriman, LLC

LifeYield, LLC

Lincoln Financial Group Lord Abbett

LPL Financial

LSV Asset Management

M Financial Group

Macquarie Investment Management

Marcum Wealth

Marietta Wealth Management

Mariner Retirement Advisors

Marsh & McLennan

Marsh, Berry & Company, LLC Matrix Financial Solutions

Mayflower Advisors, LLC MCF Advisors

Mentoro Group, LLC

Mesirow Financial

Metz & Associates, PLLC MFS Investment

Management Company Millennium Trust Company, LLC

Milliman

MissionSquare Retirement

MML Investors Services Momenta Benefits Morgan Stanley

Morningstar, Inc.
MPI (Markov Processes International)

Multnomah Group, Inc.
Murray Securus Wealth Management

Mutual of America Financial Group Mutual of Omaha Retirement Services

My Corporate Ally, LLC National Association

of Real Estate Investment Trusts Nashional Financial

Nationwide Financial Natixis Investment Managers

Neuberger Berman Newcleus

Newfont Retirement Services New York Life Investment

Management IIC NestEggs Retirement Plan Services, Inc.

Newport Group NextCapital

NFP

Nicklas Financial Companies North American KTRADE Alliance

Northwest Retirement Plan Consultants Northwestern Mutual Note Advisors, LLC

Nottingham Advisors Inc. NPPG Fiduciary Services, LLC
Oakbourne Advisors

October Three

OneAmerica

OneDigital OurSphere PAi Paychex, Inc.

Paylocity PCS Retirement

Penchecks, Inc. Pension Assurance LLP Pensionmark Financial Group

Pension Resource Institute, LLC Pentegra Retirement Services PGIM Investments

PIMCO PlanGen, LLC Plan Notice

Plexus Financial Services, LLC Precept Advisory Group

PriceKubecka Princeton Financial Consultants Principal Financial Group
ProCourse Fiduciary Advisors, LLC

Procyon Partners, LLC Quintes Administrative

and Insurance Services, Inc

ProNvest

Raymond James RBC Wealth Management RBF Capital Management

Reedmark Advisors, LLC Renasant Bank

Responsible Asset Management

Retire Ready Solutions

Retirement Clearinghouse, LLC

Retirement Fund Management Retirement Learning Center

Retirement Plan Advisors Ltd.

Retirement Planology

RiXtrema, Inc.

Robert W. Baird

Rockefeller Capital Management Rogers Wealth Group, Inc.

Roush Investment Group RPS Retirement Plan Advisors

RPSS SageView Advisory Group

Saling Simms Associates

Sallus Retirement

Schlosser, Fleming, & Associates LTD Schneider Downs Wealth Management Advisors, L.P.

Schroders

Securian Retirement Shepherd Financial, LLC

Slavic401k

Smart USA SmartPath, Inc.

Smith Bruer Advisors Soltis Investment Advisors

Spectrum Investment Advisors State Street Global Advisors

Statherós Financial Solutions

Stiles Financial Services, Inc. Stokes Family Office

Stolzer Rothschild Levy LLC Strategic Retirement Partners

Sway Research, LLC T. Rowe Price

TAO Investments Hawaii Taylor Wealth Solutions

The Blackstone Group The Entrust Group

The Finway Group
The Hebets Company The Pangburn Group
The Retirement Advantage, Inc.

The Standard

The Waterford Group The Wealth Pool

Three Bell Capital LLC TIAA Touchstone Retirement Group

Transamerica TRAU

Trinity Advisors Trinity Point Wealth Trutina Financial

Twelve Points Retirement Advisors Two West Capital Advisors, LLC

Ubiquity Retirement + Savings

UBS Financial Services UMB Financial Corporation Vanguard

Venture Visionary Partners Vestwell

Victory Capital
Virtus Investment Partners Vision401k

Vita Planning Group Vontobel Asset Management, Inc. VOYA Financial

vWise, Inc.

Wells Fargo Advisors WhaleRock Point Partners Wilmington Trust Company

Wilshire Associates Wintrust Wealth Management

Wipfli Financial Advisors, LLC

Wise Rhino Group

*As of Nov. 8, 2022





DATE	CONFERENCE	LOCATION
January 11-13	Women in Retirement Conference	Phoenix, AZ
April 2-4	NAPA 401(k) Summit	San Diego, CA
April 2	Women in Retirement Brunch at NAPA 401(k) Summit	San Diego, CA
July	D.C. Fly-In Forum	Washington, D.C.
September	Nonqualified Plan Advisor Conference	ТВА
October	ERISA 403(b) Advisor Conference	ТВА
Monthly*	Women in Retirement Third Thursdays	Online Event

^{*} Monthly (except January, April, October, and December)





The principal value of target date strategies is not guaranteed at any time, including at or after the target date, which is the approximate date when investors plan to retire (assumed to be age 65). T. Rowe Price Investment Services, Inc.