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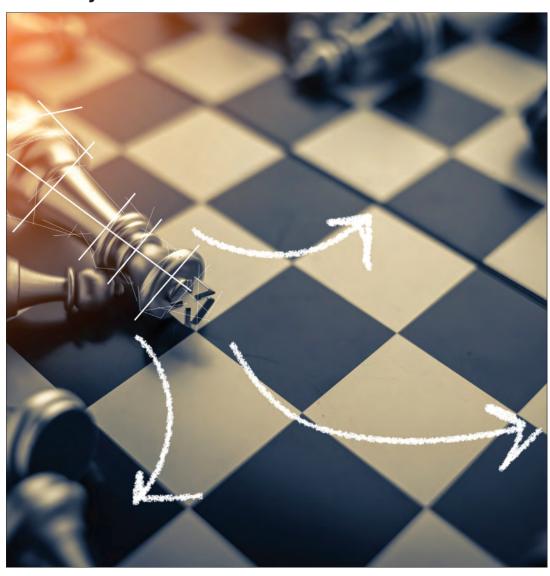
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Getting the 'Band' Back Together

The NAPA 401(k) Summit was 20 years old this year—and what a birthday party we had!

ve been involved with the planning of the NAPA 401(k) Summit for the past seven years-and in attendance at least eight other times, most as a speaker, including the very first one. When I was invited to speak at the original 401(k) Sales Summit in 2001 (there was no NAPA then), I had little idea that I'd be so involved with its planning and execution two decades hence. At the time I was barely aware of ASPPA, and the birth of the National Association of Plan Advisors was still a decade in the future.



General active as our agenda has been these past several months, the months ahead look to be even more consequential, in ways we can't even yet imagine!

But even at that inaugural event it was clear that there was something special going on. Here were a few hundred retirement plan advisors all coming together to sharpen their skills, to hone their knowledge, to build and nurture their networks. It was so much... more... than I had been accustomed to in other advisor events of the time; not just its

scale, but the depth and quality of those in attendance. Indeed, I am pleased and proud to still count some of my dearest friends today as among the attendees at that event—and to have encountered several again at "the Summit" in Las Vegas last month.

By most accounts, the event just past was... special.1 Granted, COVID concerns and corporate travel bans dampened attendance-and yet we still wound up with more in attendance than my first year at NAPA (2015)—and with an advisor/ non-advisor ratio that is the envy of the industry. But what made this Summit so special—what makes them all special-are the folks who show up-not just to speak and then disappear-but it's a place where even the most seasoned industry professional has the opportunity to glean knowledge, to pick up practical tips, to gain insights not only on the road ahead, but on the meaning-and potential practice impact of events in the recent past.

As you read this, preparations are already underway for the 2022 version—back at our "normal" time (April), but at a "new" locale (Tampa, Florida). Yes, an event that generally has a year's worth of planning time will have just two-thirds of that time this time around. Over the next several weeks we'll be canvassing the NAPA-Net audience on topics, vetting those past our Steering Committee, and then lining up the best, most informed speakers the industry has to offer to bring

their insights and expertise to that unique forum.

Such things are a moving target, or course—and never more so than the months ahead, with regulatory updates pending on ESG and the fiduciary rule, not to mention PEPs and lifetime income disclosures—oh, and how about the legislation Brian Graff mentioned at Summit—the one that could create another 62 million savers and generate an additional \$7 trillion in retirement savings over the next 10 years?

Yes, indeed-busy and active as our agenda has been these past several months, the months ahead look to be even more consequential, in ways we can't even yet imagine!

So, yes—it's unusual to be thinking about *next* year's NAPA 401(k) Summit so soon after the last one—but then, we've got a lot to do—and not much time to do it. Here's hoping we'll see you all there in 2022—Tampa, Florida—April 3-5.

Where we'll be getting the "band" back together... again!



Nevin E. Adams, JD *Editor-in-Chief*

FOLLOW THE DISCUSSION...



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FOOTNOTES

It's worth remembering that among all the (other) things that set the NAPA 401(k) Summit apart—is that unlike every other advisor conference out there, your NAPA 401(k) Summit registration helps support the activities of NAPA—your advocacy, information and education organization—not the bottom line of some corporate media organization or some private equity firm. Yes, it's an investment in yourself and your practice. But in addition to that—and to the insights, and information that you might be able to scrape together from some other events, your attendance at the NAPA 401(k) Summit is a unique investment in your future—and the future of your profession.

WELCOME NEW & RECENTLY CREDENTIALED MEMBERS!

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Pushing the Envelope

The commitment, innovation and services that NAPA and its members deliver today are incredible—and truly beneficial to investors and savers.

By Alexander G. Assaley III

uring the last several months, NAPA and its members (now 10,000+ advisors and practitioners) have been hard at work on several important initiatives.

Fly-in Forum

In July, we held the NAPA D.C. Fly-in Forum as a fully virtual event for the second consecutive (and hopefully last) year. A hallmark of our association, this year's installment included a special feature: NAPA Executive Director and ARA CEO Brian Graff testifying before the Senate Finance Committee on a full slate of retirement ideas and provisions. Chaired by Sen. Ron Wyden (D-OR), the hearing focused on topics such as expanding coverage through new plan adoption, employer matching contributions for student loan payments (i.e., formalizing the Abbot Laboratories ruling), and enhanced tax credits to employers and employees that would amount to additional "plan matching." Wyden hopes to collaborate with members of the Senate Finance Committee to produce bipartisan legislation that could be enacted into law in the future, perhaps 2022.

Brian's testimony highlighted the strength of the 401(k) system as the primary retirement vehicle for America's workers, and perhaps under its brightest spotlight yet, reiterated the importance of having a 401(k) plan in the workplace. Additionally, advisors met with their elected representatives and staff to discuss important considerations to further enhance retirement policy for companies and their employees, including

emergency savings provisions in the 401(k) and e-delivery of required notices.

ESG(k) Certificate

In mid-July, we were also excited to announce the launch of NAPA's ESG(k) Certificate Program. Investors and 401(k) savers around the country continue to express interest in Environmental, Social and Governance investments and, during the last year or so, there have been some significant (and perhaps confusing) regulatory and legislative changes. Many retirement committees and plan sponsors are wrestling with balancing the growing interest their employees have in ESG investing against the potential risks and liability of adding it to a 401(k) plan.

NAPA is thrilled to offer this training and curriculum program for advisors to gain knowledge, clarity and understanding on how to deliver prudent assessment and review of these options and their fit in the retirement plan marketplace. The program, created by the NAPA education team with support and input from industry partners, peers and thought leaders, is another example of our continual efforts to improve and move the private retirement industry forward together.

What Lies Ahead?

There is no shortage of change, disruption or innovation happening in the business world and in the retirement plan ecosystem in general. Industry consolidation continues its record pace for all-vendor/recordkeepers, investment managers, advisory firms and



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2021-2022
President.

third-party administrators. Additionally, we are already seeing regulatory bodies take up governance initiatives such as the fiduciary rule (again!), plan correction procedures and cybersecurity, to name just a few. Furthermore, in all industries, the COVID-19 pandemic continues to alter how business and commerce operate. As of this writing, I am imagine most of us are navigating "return to work" policies within our own teams and firms, as well as our clients. There's no question that the fast transition to an all-virtual world in early 2020 has provide some unique opportunities for us to scale the delivery of our services, but for those who have been limited in their ability for in-person interaction (which certainly varies by geography), we recognize that both Zoom fatigue and the lack of in-person rapport-building and collaboration can be major challenges.

Nonetheless, I continue to be inspired by the forward-thinking nature of our industry and how many advisors and practitioners push the envelope to develop our services to companies, organizations and-most importantly-their employees. As a huge proponent (perhaps a "fanatic") of financial advice in the workplace and financial wellness, I believe the commitment, innovation and services that our industry has developed and delivers today are incredible-and truly beneficial to investors and savers in comparison to where we were just five years ago. This quarter's magazine is chock-full of ideas, insight and strategies to propel each of us forward-both individually and together. NNTM



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Closing the Racial Savings Gap

Providing an opportunity to save through a workplace retirement plan coupled with auto-enrollment is the key to closing the racial savings gap.

By Brian H. Graff

very American deserves the opportunity to achieve a comfortable retirement. But for many Americans today that opportunity remains out of reach because their employer doesn't offer a retirement savings plan.

The gateway to a comfortable retirement is having a 401(k)-style plan at work. Moderate income workers are 12 times more likely to save if they have access to some type of retirement plan. With nearly \$10 trillion in assets, these plans provide long term economic growth and build financial security for the middle class. Nearly two-thirds of participants in 401(k)s earn less than \$100,000. One-third make less than \$50,000.

retirement plan, compared with 40% of white Americans. As a result, 56% of black families and two-thirds of Hispanic families have zero retirement savings, compared with about a third of white families.

Providing an opportunity to save through a workplace retirement plan coupled with auto-enrollment is the key to closing this racial savings gap. Data show that when even moderate-income workers are auto-enrolled in a workplace plan, there is no disparity in retirement savings participation, with black, Hispanic and white Americans all at about 80%.

On Sept. 9, the House Ways and Means Committee, led by Chairman Richard Neal (D-MA), approved legislation that would



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

Far too many working Americans still lack access to a retirement plan at work—a retirement plan coverage gap that is particularly pronounced in the black and Hispanic communities.*

The workplace retirement plan has been a success–for those who have access. Unfortunately, far too many working Americans still lack access to a retirement plan at work–a retirement plan coverage "gap" that is particularly pronounced in the black and Hispanic communities. More than half (52%) of black Americans and more than two-thirds (68%) of Hispanic Americans lack the opportunity to save in a workplace

significantly close this gap, giving millions more working Americans the opportunity for a comfortable retirement. The Automatic Retirement Plan Act would require that businesses with five or more employees provide a retirement savings option to their workers. There would be no cost to employers to do so, since the legislation does not require any employer contributions, like matches, and

goes further by providing smaller businesses a 100% tax credit for any administrative costs they might incur

The Ways and Means
Committee also created a "Savers
Match," which would provide an
additional incentive to save and
boost the retirement security of
moderate-income workers. The
Savers Match provides a 50%
government matching contribution
of up to \$500 a year contributed
directly into a worker's 401(k) plan
account—and it would be available
in full to families earning up to
\$50,000 a year, with a reduced
amount for families making up
to \$70,000.

What impact would this have? Estimates show that enactment of the combination of the Automatic Retirement Plan Act and the Savers Match would result in 62 million new retirement savers and nearly \$7 trillion in new savings over the next 10 years. Nearly all–98%–of these new savers earn less than \$100,000 a year, including nearly 18 million new savers in the black and Hispanic communities.

For working Americans, retirement savings is important because it provides a cushion against unexpected financial shocks. Retirement savings is also accumulated wealth which leads to generational wealth. Ultimately, retirement savings is an essential element in closing the nation's racial wealth gap. These two vital retirement savings proposals together will give tens of millions of Americans the opportunity for a comfortable retirement. By enacting both of these proposals, Congress can turn the 401(k) success story into a story of diversity as well. NNTM



Trends 'Setting'

While COVID has had a dramatic impact on how many live and work, the challenges of retirement savings—and the need for financial wellness solutions—have never been more evident. In this issue's Trends Setting we highlight some new strategies, the leverage "fear" can provide, and the broad-based impact that financial wellness can have on racial savings inequities. Oh, and with many still working from home (or working with those who are), you won't want to miss reading about the impact that COVID has had on culture, productivity and work-life focus.

Culture 'Club'?

Report outlines COVID's impact on RIAs

A recent report suggests that COVID has had a negative impact on RIAs—with a negative impact on cultures and employee engagement—and a resulting negative impact on retention. There were, however, some positive signs.

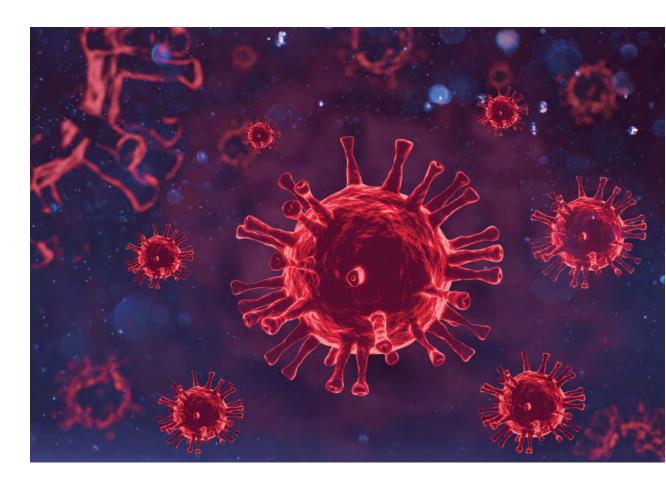
Indeed, DeVoe & Company's 2021 RIA Talent Management Study (its second annual such report) points out that not only will the new and evolving "remotework" paradigm shift create "workplace dissonance" within RIAs for the next several quarters or even years, COVID also led to RIA firm leadership increasing communications with their staff, and during COVID, employees delivered overall productivity gains.

In fact, the DeVoe survey found that 60% of the RIA firms surveyed felt that productivity levels at their firms were not affected by the pandemic—and a quarter cited improving productivity.

That said, for 37% of DeVoe survey respondents, COVID negatively impacted the culture at their firms.

While the impact came on suddenly, repairing any damage to culture will be a longer-term task, the authors note, stating that firm culture is clearly among the most critical influences on engagement.

It's also shifted the spotlight toward succession planning, and DeVoe & Company says it has recently experienced a significant uptick in succession planning engagements. Overall,



the implications of COVID created a growing shift for advisors to look inward, and to focus on their people and HR-related issues. Ultimately, greater attention to optimizing human capital will lead to stronger firms and a healthier industry, according to the report.

Succession 'Plane'

COVID has likely inspired RIA firm owners, like their staff, to also rethink ambitions. The pandemic brought perspective to their own mortality and heightened awareness of the need to get "affairs in order" in the event of the inevitable, the authors

note. They go on to suggest that going forward this will serve to further brighten the spotlight on the importance of succession planning and hopefully inspire owners to take action.

The survey showed that some—though not many—advisors took accelerated action. Seven percent indicated that they accelerated the development of a succession plan. That said, the authors note that the urgent priorities caused by the pandemic also crowded out the initiative; about 8% of surveyed advisors stated that they have delayed their succession planning due to COVID. Just half of DeVoe

survey respondents indicated their firms had implemented a succession plan. For another 35%, there was no formal written plan at all. The share without a plan is unchanged from the last DeVoe survey conducted in late 2019.

It's worth noting that those firms without a plan are not just from small, and typically younger, firms. According to Devoe, they are spread across all firm sizes. For example, they included 16% of responses from firms with over \$3 billion in AUM.

Generation 'Gaps'

Not that the pandemic hasn't highlighted other issues; a solid majority of advisors (61%) report a low degree of confidence that their next gen is capable of a seamless transition. Indeed, readiness has weakened relative to 2019, when 56% of advisors lacked full confidence. "The percentage that lack confidence in next gen and the downward sloping trend should raise an alarm bell across the industry," the authors note. "The decline in next gen readiness is likely driven by founders taking a harder look at their successors in light of the pandemic and concluding that there is more work to be done."

On the other hand, over half of the firms with succession plans (51%) felt their next generation was ready for a seamless transition, compared to just 16% for those responses representing firms without plans. For those firms that have a formal written succession plan in place, the clear commonality was good people practices, according to the report, which goes on to explain that, by wide margins, these succession-prepared firms were more apt to have the following practices in place:

- Structured approach toward timing hires
- Clear methodical structure for advisor incentive compensation
- Regular conduct of team member performance reviews
- Clearly articulated career paths
- Intentions to expand remote work opportunities long term

 Increased level of leadership communications due to the pandemic

Compensation Plans

The most common pitfall for sub-optimal compensation plans according to the report is linking compensation to a percentage of revenue. "The structure incents 'hoarding' of clients, is insensitive to client attrition, and is an ineffective way to drive new client growth," according to the report. The authors state that a well-structured plan will not only ensure that the right long-term behaviors and results are being rewarded, but that the targets and goals driving incentives are rooted in the company's purpose, vision and values. That said, they also remind the reader that "redesigning an incentive compensation plan is much more than a week-long project..."

The report notes that in some instances—especially in terms of adoption of new technologies, pandemic-induced productivity improvements may be lasting, including things such as enhanced video-conferencing capabilities, which made meetings more efficient and reduced travel demands. On the other hand, the report opines that as society opens, and workers again commute to the office, they are less likely to devote as much time to work.

All in all, the report notes that RIA leadership teams should not take the shift back to "normalcy" lightly. "Understanding the evolving needs of staff is an important tactic to better anticipate and mitigate attrition. The lives of many workers were profoundly affected by an abrupt shift to remote work. Returning to the office may prompt an openarms welcome from employees—or be the reason that they leave the firm."

The survey was conducted between February and May among 123 representatives of RIA firms. Respondents were senior executives, principals or owners of firms with \$100 million or more in assets under management.

--- Nevin E. Adams, JD

'Fear' Factors

How the use of fear may improve 401(k) participant engagement

while providing communications on retirement readiness can significantly improve participant engagement, the use of fear as a behavioral tool may be a better way to rouse unengaged participants.

That was the conclusion from a recent study by the Defined Contribution Institutional Investment Association's (DCIIA), led by Warren Cormier of the organization's Retirement Research Center, which sought to better understand the impact of different types of messaging on engagement among DC plan participants.

Based on a survey of over 1,000 individuals, nearly three-quarters of whom were DC participants, the study focused on demographic characteristics pertaining to participant engagement, as well as on participants' increase or decrease in intended engagement, contingent on their prior behavior.

In the corresponding report, "Engaging Participants: Communication Strategies for Defined Contribution Plan Sponsors," DCIIA notes that both encouraging and fear-type messaging works to increase intended engagement in the plan and to prompt action from participants, but cautionary messages were more effective than encouraging ones.

Fear vs. Encouragement

To test the relative impacts of fear versus encouragement messaging, DCIIA divided its sample into two identical sample groups regarding demographics. One group was exposed to a cautionary, or fear, message style and the other was exposed to an encouragement message style. The study notes that each respondent was exposed to only one of the two messaging styles to avoid contamination of the sample.

The distinguishing factor of the study was a series of seven

questions posed to respondents about how they engaged with plan sponsors or recordkeepers about their retirement savings. A first set of questions sought to gauge current engagement activity of respondents, followed by an intervention, which offered either an encouraging message citing an individual's progress toward funding retirement, or a cautionary message warning of a retirement savings shortfall.

The cautionary message focused the respondent's attention on a retirement income goal shortfall of 29%, noting that the person "will have to make a few changes in order to get to 100%." The encouragement message began with "Great news! We project you're on track to reach 71% of your retirement income goal," while further noting that, "Although you are not at 100% just yet, a few changes can help you reach this goal."

Respondents were then asked another set of questions dealing with the same set of factors in the first set, this time indicating engagement intent. Those who had not already indicated engagement on any of the seven factors were given an opportunity to "upgrade" their engagement intentions, the study explains.

The Findings

According to DCIIA's findings, either message significantly improved the likelihood of engagement, suggesting that providing any type of retirement income statistic to participants, regardless of how it is messaged, is likely to improve engagement. But between fear and encouragement, fear led to greater post-engagement, an effect that DCIIA notes was "surprisingly robust" across questions and persisted even when controlling for participant demographics.

Nearly 24% of the fearmessage respondents indicated they would think about the percentage of pay they contribute to their retirement account "much more often" versus less than 10% of the encouragement-message respondents. Similarly, nearly 22% of fear-message respondents indicated they would think about their progress toward retirement "much more often," compared with about 14% of the encouragement respondents.

Additional findings show that nearly a quarter (24.1%) of fear-message respondents would look "much more often" at their investment options to determine if a change would make sense, compared with only 16.2% of encouragement respondents. As such, the study recommends that plans should consider developing thorough knowledge of their participant bases when developing a communication strategy, as well as relying on resources from their recordkeeper to evaluate their communication strategies.

One caveat is that the survey covered only intent to take action, so it is not clear what actions participants would actually take, the study observes. Moreover, the analysis considered only the one scenario and does not



provide context on participants who are significantly overfunded or underfunded. DCIIA notes that it anticipates a future research project that will explore this issue further.

— Ted Godbout

Log 'Rhythms'

Here's how to spur more DC participant logins

ast year, the Department of Labor established an e-delivery rule allowing plan sponsors to communicate retirement plan information electronically. But is there more that can be done to get participants to login more often?

A recent Cogent Syndicated study from Escalent provides some answers. According to the study, most industry experts are quick to recognize that the benefits of DC plan participant digital include:

- higher rates of client satisfaction;
- expanded cross-sell opportunities;
- greater overall financial wellness;
- reduced call-center volume; and
- fewer email inquiries.

But successfully engaging participants on online recordkeeping platforms continues to be a challenge that providers' marketing teams have grappled with since the inception of platforms, the study notes. So Escalent asked respondents to its DC Participant Planscape study to specify what inspired them to log in (or not) and what could make provider websites "more enticing."

Over the past year, more than 8 in 10 participants (81%) reported logging in to their plan provider websites, but the majority of these visits were solely transactional, prompted by a desire to check account balances (56%) and review investment options (33%), notes Sonia Davis, senior product director at Escalent. "While older cohorts are taking the initiative to log in for informational purposes, Millennials are compelled by a multitude of factors spanning mobile app notifications, social

Gultimately, the goal isn't just getting participants to log in, but keeping their attention and inspiring them to come back for more education and updated information.

media links and texts," writes Davis.

In contrast, participants who have steered clear of their plan provider websites deem their account statements to be sufficient (38%) or find it quicker to speak with a person (21%). Others turn to their financial advisor for questions or admit to forgetting their log-in passwords, the study notes.

On a cautionary note, however, more than one-tenth of Millennials have found the online information uninteresting or irrelevant or had trouble finding answers to their questions—areas plan providers can address more readily, Davis notes.

Regardless of recent login activity, the firm asked all DC participants to rank the top five features that would encourage them to log in to their plan provider's website more frequently. According to the findings, email/text alerts linking to new information and online dashboards with real-time account information top the list across all generations. Online tools and calculators, retirement income/expense worksheets and simplified descriptions of plan investments round out the top five ways providers can generate more website visits.

Here are the top 10 responses based on respondents who ranked the following factors No. 1 in order of importance:

- An email or text that alerts me to new information (10%)
- An online dashboard with realtime account information (9%)
- Online tools and calculators (6%)

- Retirement income/expense worksheets (6%)
- Simplified descriptions of plan investment options (6%)
- Easier log-in (6%)
- Market updates and commentary (5%)
- Enhanced data security (5%)
- Easy-to-use trading platform (5%)
- Short educational videos (2%)

The survey also breaks down those responses by generation. For example, Millennials and Gen Xers were found to be amenable to a variety of influencers, including easy-to-use traditional platforms, short educational videos, better mobile capabilities and personalized education, such as real-life stories and inspirational savings tips.

Ultimately, the goal isn't just getting participants to log in, but keeping their attention and inspiring them to come back for more education and updated information, says Davis. "Developing the tools that will engage participants with provider websites is a win-win, as it boosts cross-sell opportunities and decreases call and email service volumes for providers while also helping participants better prepare for retirement and secure their financial futures," she emphasizes.

The findings were based on a survey of 4,600 DC plan participants actively contributing to a DC plan and/or having at least \$5,000 in a former employer's DC plan.

— Ted Godbout

'Close' Quarters

Closing racial and ethnic savings gaps with financial wellness

mployers have an opportunity to promote diversity, equity and inclusion in defined contribution plans and help address broader social inequality, according to a recent white paper from T. Rowe Price.

The firm released a series of papers that dive deeper into findings from its sixth annual Retirement Savings and Spending survey, which focused on the financial attitudes and behaviors of 401(k) savers and retirees.

In "Financial Wellness Through the Lens of Race and Ethnicity," Joshua Dietch, Vice President of Retirement Thought Leadership at T. Rowe Price, observes that 401(k) plans have benefited millions of people, but the benefits have not been shared equally, as social inequality found in the broader labor market carries through into retirement savings and overall financial wellness.

Dietch contends that DC plans are one of the few places where access to advice, guidance and education in support of lifetime financial goals is supported equally. This, he notes, provides plan sponsors with an opportunity to directly address plan participation and savings gaps through the availability of financial wellness tools and services, and better plan design.

"The DC plan sits at a unique crossroads. It may be the sole place where workers of all races and ethnicities have access to financial education and tools without regard to their income or wealth. In other words, if you have access to a plan, it is a democratizing force for good. Still, that is not good enough," writes Dietch.

The Differences

Among those who have access to 401(k)s, 81% of the heads of white households participate in a DC plan, compared with 70% of black and 63% of Hispanic heads of households, the paper notes, citing data from EBRI. Moreover, T. Rowe Price's research found that

66 The first step for employers may be as simple as seeking input from underrepresented minority employees about what would be helpful to improve financial wellness. 99

black and Hispanic 401(k) savings rates were lower compared to their white counterparts. The median deferral rates were 5% and 8% for black and Hispanic participants, respectively, compared to 9% for white participants.

Meanwhile, 55% of survey respondents believe—despite inadequate levels of saving—they are saving enough to enjoy a comfortable retirement. The remaining 45% are either aware they are not saving enough or are unsure if their retirement plan contributions are sufficient, the paper notes.

Additionally, black and Hispanic respondents were more likely to cite having student loan, medical and other types of debt, further impairing their ability to save for retirement. The data also suggest that challenges to saving for retirement may vary between different races and ethnicities and this has implications for employers, financial professionals, and retirement recordkeepers, the paper observes. For example, when asked, 20% of white, 26% of black, and 30% of Hispanic respondents reported having difficulty in paying required monthly bills.

"Unfortunately, our research suggests that the combination of inadequate savings and greater amounts of debt will result in many not being able to retire on their own financial terms and may require a reduced standard of living in retirement. Still, these are challenges that employers, financial professionals, and recordkeepers are well positioned to address," says Dietch.

The Solutions

The first step for employers may be as simple as seeking input from underrepresented minority employees about what would be helpful to improve financial wellness. According to the paper, solutions start with correctly diagnosing the challenges and finding the right mix of strategies that employers and financial professionals, in partnership with a recordkeeper, can do to help these retirement savers become financially healthy. This includes helping them become more adept at managing day-to-day expenses, saving for both shortand long-term financial goalssuch as emergency and retirement savings-and managing debt, the paper observes.

Additionally, employers could also incorporate plan designs that prioritize participation, such as automatic enrollment, auto increase, or using incentives, such as matching employer contributions to increase contribution rates.

Other examples of actions that plan sponsors can take include:

- implementing targeted, personalized communications to engage nonparticipants and participants to take actions based on factors known about them;
- offering automated services (e.g., emergency savings, consumer debt management, student loan repayment assistance, financing and transactional processing);
- promoting the tax benefits of saving in 401(k)s and the availability of additional incentives, such as the Savers Credit; and
- offering education and tools that build financial capability and offer measurement so that participants can see the effect of progress. NNTM

— Ted Godbout



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Why Do Advisors Need Digital Marketing?

You're either part of today's digital transformation or you're observing from a rapidly growing distance. Let's find your niche opening and get you into the game.

By Rebecca Hourihan

o you remember jumping rope as a kid? Two other kids would be twirling the rope and they would say, "Jump in!" And if you were like most kids, a wave of excitement and panic would beat through your chestand then you'd take a leap of faith into the fun.

But what if you paused? You tensed up. You didn't jump. Then what happened? With each rope twirl, it got faster and more difficult to jump into it. Harder to time the opening. And you'd wait... and wait... and wait...

Well, that's a lot like digital marketing. For many years, a lot of advisors have looked on from the sidelines. They observed. And just like with jump rope, the pace of the rope (the digital world) has sped up. It's going so fast now that it might even feel impossible to jump in. So, we wait... and wait... and wait...

Find Your Opening

As knowledge is shared prolifically, you are either part of the digital transformation or you're observing from a rapidly growing distance. So, let's find your niche opening and get you into the game.



Thankfully, our industry has a constant stream of news updates, regulatory changes, litigation stories, holistic initiatives and an endless treasure trove of appreciated plan sponsor and employee topics. For example, right now there is growing interest in ESG funds, financial wellness programs, Cycle 3 restatements, income for life options and fiduciary education. These topics should be on the minds of plan sponsors.

Find a topic that resonates with you and go with it. This is your opening.

Plan Your Leap

When determining how you're going to get into the game, consider content marketing. Content marketing is a type of marketing that involves creating and sharing materials to stimulate interest in a product or service.

When a top concern of plan sponsors is needing help with the increasingly complicated process of managing their retirement plans, content marketing is a way to simplify complicated subjects such as investment management, retirement outcomes, plan design education, decumulation

Right now there is growing interest in ESG funds, financial wellness programs, Cycle 3 restatements, income for life options and fiduciary education. These topics should be on the minds of plan sponsors.

strategies and fiduciary liability, to name a few. 1 By using words, images and graphics, you can translate complex topics into easy-to-understand stories, visuals and concepts.

The term "content marketing" can be overwhelming. But across the different types of content marketing, the goal is the same: to educate and inform your audience about a specific topic. We see a lot of advisors getting hung up on the different styles of content marketing and not knowing which foot to put in first.

To make it easy, here is a list of different types of content marketing:

- Articles
- Checklists
- Case studies
- Emails
- Guides
- Infographics
- Newsletters
- Podcasts
- Social media
- Videos
- Word searches
- White papers
- Webinars

As you look at this list, think about how you like to receive and consume information, then select your top three preferred methods. Chances are your target audience prefers to receive information the same way as you do.

Good work! You now have the framework to begin a digital content marketing strategy.

Commit to Jumping

Next, it's time to focus on demystifying the complicated process of managing a retirement plan. Think about your target audience and their pain points. What specific topics do your small, medium, large and mega retirement plan clients ask about?

These are the topics that should be included in your blog and on your resources page, podcast, social media profile and/or YouTube channel. When you answer these questions for your target audience, your content marketing demonstrates how your firm will simplify plan management.

Now that you are armed with several types of content and hot topic ideas, it's time to jump in. You can either create your own content that speaks to your audience or find curated content that tells the story; both are great options. If you feel torn between creating original content or distributing curated materials, you're not alone. We have found that a mix of the two is often an excellent solution.

Original content creation can be extremely rewarding, but on the flip side, it can be overwhelming, especially if researching, writing, editing, designing and compliance management are not your strong suit.

Good curated content works as a proverbial easy button, making the regular delivery of retirement plan topics simple. And remember, you can always add your own flair. Your expert commentary on complex subjects is golden.

Think of it like this: Plan sponsors are not following retirement plan topics intently. Rather, they are running their businesses. So, when you share information that affects them, they see you as the source of retirement plan knowledge. You are the constant in their inbox and newsfeed delivering value.

No matter where your content comes from, to become known as a trusted retirement plan advisor, you need to deliver it. The first step is to select the way you want to share your content. Many advisors prefer email campaigns and social media posts. These two digital communication tools are inexpensive and highly effective, and allow for wide audience distribution.

As you implement your digital marketing strategy, commit to sending, posting and sharing the retirement plan topics that will educate, inform and delight your target audience.

1, 2, 3, Jump!

When your clients feel confident about your retirement plan acumen, they stay loyal as clients. When you empower your Centers of Influence with interesting trends and topics, you stay top-of-mind. When prospects research you and find high-quality digital results, they feel compelled to meet with you.

By sending, sharing and posting quality digital content, you keep your entire target audience in the know and present yourself online as the experienced retirement plan advisor you are.

As the internet and digital marketing continue to gain more and more speed, isn't it time to stop waiting and jump in?

Thanks for reading and Happy Marketing! NNTM



The 3 Styles of Social Media KPIs

Read this before your next strategic planning meeting.

By Spencer X Smith

ey Performance Indicators (KPIs) are a core component of measuring your business objectives. They're often viewed as critical mileposts of success as specific KPI targets are both set and achieved. Before you establish which KPIs you're going to track in your social media activities, however, it's important

to know the three styles of them—the KPI "buckets," if you will. They are:

- Zero-Sum Games
- Collectibles
- High-Water Marks

Zero-Sum Games

There can only be one winner for this metric. "If you ain't first, you're last," Ricky Bobby would remind us. This means that one person's gain is the equivalent to another's loss. It's common in sports (one winner, one loser) and in business as a whole. An example of this style of KPI is Search Engine Optimization (SEO) ranking. If you're not showing up first for your ideal keyword or key phrase, someone else is. And if you want to take over first place, you need

to displace them by taking a competitive approach. Find the leader in your space, identify what is setting them apart, and incorporate those tactics into your strategies. Setting the zero-sum expectations at this point gives you the opportunity to truly see your progress and reach that No. 1 spot.

What happens if you accomplish this goal? You'll be proud and a party will ensue. But then you'll have a bullseye on your back. Once you're ranked first for something, everyone will be coming after you.

When tracking zero-sum game-style metrics, it's important to begin with the end in mind and ask yourself this question: "If we take over first place, then what? And what if we lose first place at some point? What will we do then? Will we feel bad if we lose that ranking? Or will we feel inspired to take back the title of first place?"

We need to be proud about what we have accomplished. If we no longer have the trophy, what do we do?

Collectibles

This style of KPI is one that's set up to grow continuously. Unlike Zero-Sum Games, however, this KPI can be set up for you to win again and again. How? Let's use the example of social media followers.

If you're active (i.e., producing content and engaging in conversations) on social media, your follower count will start to grow steadily. While it's natural for some of your followers to unfollow you for myriad reasons, your net followers will be positive month after month. What does a steadily growing chart result in? Feelings of power.

An upward trending chart every month is a great way to give yourself credit for your work. Since the follower count graph will increase each month you take a snapshot, that feeling of power will also result in confidence—an affirmation of a job well done.

If your follower growth is stalling on a platform, what's an easy fix? Just add another. If you're only on LinkedIn and Facebook now, add Twitter. Or

While having a powerful presence on an immense number of channels may be enticing, it's not always practical.

Instagram, Pinterest, Clubhouse, YouTube, or any number of other channels.

These social media channels differ from each other and cannot be lumped into a single category. Twitter has different audiences and functions than TikTok, TikTok than LinkedIn, and so on. When deciding to add a social channel, the decision needs to be predicated on your clients and your competition. Evaluate whether your clients are active on the channel and/or your competitors have a strong foothold before choosing where to place your efforts.

While having a powerful presence on an immense number of channels may be enticing, it's not always practical. An excellent place to start would be to identify channels you don't wish to join and place those on your "not-doing list" with as much confidence as the ones you are targeting. When attempting to improve indicators like follower count, it comes down to recognizing where to direct your attention.

Collectibles help us feel good about having a following for the content we create, so make sure you're concentrating both time and effort on this feel-good style of KPI.

High-Water Marks

This style of KPI is the trickiest of the three. Why? These measures, by definition, can only grow so far before naturally retreating. Like an ocean wave or the water level of a lake, they can't grow indefinitely.

An example here is website visitors. Let's say you start a campaign to improve traffic to your site. The first month into a campaign, and maybe for several months following, you'll see the

number of visitors rise and rise. At this point, however, it's important to begin tempering expectations. Eventually, you'll have one month in which that visitor count drops. Then what should you do? What if your main determinant of success is website visitors?

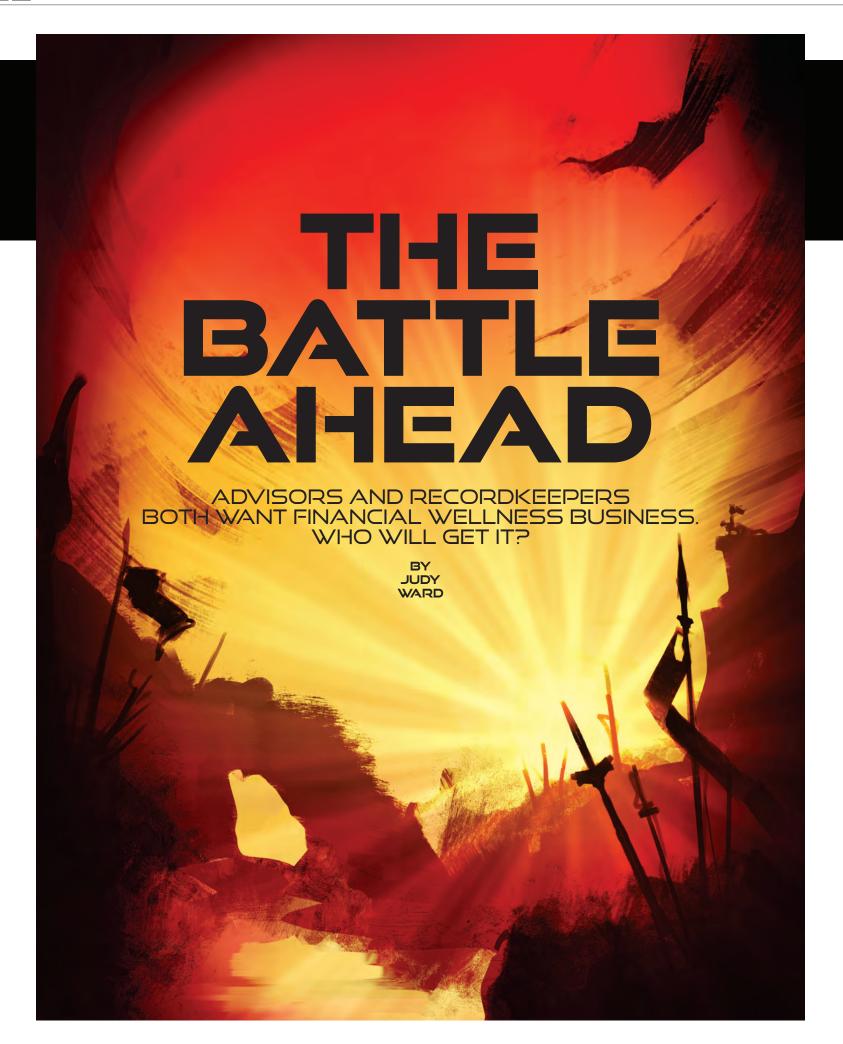
Each high-water mark KPI is constrained by design, and it's important to consider this when building this style of metric. Instead of just designing high-water mark KPIs that are aggregates, consider subsets.

For example, in addition to website visitors as a whole, consider tracking stats for specific pages or posts. Maybe you start a campaign initiative for a specific line of business or area of practice. Make sure you show the before and after snapshots of the campaigns, and also set expectations for that number to both rise (during the campaign) and fall (at the conclusion of the campaign).

Instead of setting yourself up for an eventual down month by using an aggregate number like website visitors, campaigns that focus on a given high-water mark will give you the feeling of progress. Like the Collectibles style of KPI, feelings of progress instill confidence in your initiatives. That power will spill into future campaigns and encourage trust within your team.

When building your next set of Key Performance Indicators, first consider these three buckets—Zero-Sum Games, Collectibles and High-Water Marks. First decide which style of KPI you'd like to track, then understand how it will eventually make you feel, and only then pick the proper metric.

This three-style framework will help you make better business decisions. NNTM



THERE'S A LOT OF TALK THESE DAYS ABOUT HOW PLAN ADVISORS—AND RECORDKEEPERS—ARE AIMING TO TAKE THE LEAD IN HELPING AMERICAN WORKERS WITH FINANCIAL WELLNESS AND PLANNING

"It is the topic du jour," says Thomas E. Clark Jr., chief operating officer and partner at Boston-based The Wagner Law Group. "Part of it is that there is this incredible clamoring from participants for help. And part of it is fee compression: With fees getting tighter, advisors are saying, 'What additional services can we provide, to keep the fee level?' And from a recordkeeping platform perspective, for them it's 'innovate or die,' right? They want to be the one-stop shop for a participant's financial life. They want to own the participant experience."

HOW TWO ADVISORY FIRMS APPROACH IT

During the pandemic, employers have become a lot more aware of the financial stressors their employees face, says Brad Arends, co-founder and CEO of Albert Lea, Minnesota-based intellicents inc. "Employers are now enamored with financial planning as an employee benefit, and I'm telling you, it's not hard to get appointments with employers to talk about this," he says. "They know that they need it to offer to their employees, but they don't know how to get it. It's a door-opener for an advisor—but you have to then be able to actually deliver on the service."

The worksite financial wellness service at intellicents has expanded over time, Arends says. "It really started out as a value-add to our retirement advisory practice for our 401(k) clients," he says. "Today, it has evolved into a stand-alone product."

Focusing their services only on the "3 Fs" (funds, fees, and fiduciary) did not do enough to impact participant outcomes, the intellicents team realized. "We were able to move the dial, but there was a limit on how far we could go," Arends recalls. "We saw that there were still a lot of participants who, from a financial wellness standpoint, were a mess. We





"I WOULD CHALLENGE THE IDEA THAT ADVISORS AND RECORDKEEPERS ARE COMPETING"

-TOM FARIAS, EMPOWER RETIREMENT

sat back and said, 'If we want to get retirement readiness up to 75% to 80% of plan participants, we need to start teaching them how to be more financially fit overall."

Intellicents developed the methodology to do a "foundational" financial plan for a participant without his or her input, based on basic data such as someone's age, income, and 401(k) balance. It also began hiring CFPs (Certified Financial Planners), who focus on working one-on-one with participants who want to go further after receiving their foundational plan, and do a comprehensive, individualized financial plan.

The intellicents approach relies initially on technology, but mostly on boots on the ground. "What we've found engages participants is to provide them with a foundational financial plan, and give them the opportunity to work with a financial planner to do a comprehensive financial plan," Arends says. "Our model at intellicents is to put financial planners in an area where we have a high population of 401(k) client participants. We've found a way to service these participants, do it at scale, and make money."

Woodruff Sawyer went live with its *My Money Matters* financial coaching service in March 2020, just as the pandemic accelerated and both employers and employees felt the impact. The coaching service is focused on partnerships with vetted providers that are aligned with participants' financial needs. For instance, the website includes a "Financial Marketplace" where users can access a core financial wellness benefit from Financial Finesse, as well as related solutions including student debt repayment programs, emergency savings programs, legal benefits, and credit monitoring services.

"We've created an easier conduit for employees to access these vendors," says Kristina Keck, San Francisco-based vice president, retirement plans at Woodruff Sawyer. "We're the facilitators, guiding employees where they need to go. We go beyond the website by staying engaged and present with our clients." In addition to *My Money Matters* webinars, Woodruff Sawyer maintains a financial coaching phone hotline for questions.



KRISTINA KECK
WOODRUFF SAWYEF



THOMAS E. CLARK JR.
THE WAGNER LAW GROUP

"I expect that there will be some onsite component to our program, when we can ensure good attendance and measure outcomes," Keck says. "When we did only onsite meetings, we could not reach everyone to impact behavior. With our online coaching program, we can partner with companies like Financial Finesse to provide virtual, AI (artificial intelligence)-powered tools that help drive behavior changes for our clients' employees in new, scalable ways," she says.

"We know from experience that to run a successful practice, we need to engage consistently with employees. With our coaching program, partners, tools, and educational programs, we now have a consistent way to engage and communicate with employees. It's the only way we can help them reach their goals," Keck says.

OWNING THE PARTICIPANT EXPERIENCE

Where do recordkeepers fit into the financial wellness picture? "There are certain recordkeepers that are happy to go it alone and own the participant relationship. Certain platforms have always had a heavily bundled services approach," Clark says. "There are others that recognize that boots on the ground are really going to make a difference in the outcomes, and that certain participants will need someone to talk to in person, to be successful." They're happy to partner with advisors, he says.

Tom Farias, assistant vice president and head of strategic partnerships at Greenwood Village, Colorado-based Empower Retirement, doesn't see a conflict. "I would challenge the idea that advisors and recordkeepers are competing," he says. "We believe in the importance of letting the plan's advisor

seek out the best solution for the plan sponsor." While Empower offers an increasing platform of financial wellness tools for participants and an online participant experience centered on driving financial wellness, he says, "we believe it's the advisor who is central to the interface with the plan sponsor."

However, Arends sees a looming financial wellness battle. "We are in competition with recordkeepers doing this kind of work," he says. "That's an emerging conflict for advisors and recordkeepers, and a lot of advisors don't understand that there are a significant number of recordkeepers already providing these services. Recordkeepers want to do this to try to control who owns the participant experience? We're trying to do the same thing."

Not all recordkeepers welcome advisor partnerships on financial wellness, Arends says. "I think there's going to have to be some sort of détente between advisors and recordkeepers," he says. "Empower is great about partnering with advisors, but others are going out there and saying, 'If you have thousands and thousands of employees, it is tough for an advisory firm to put

together something for that group.' But firms like ours will grow into that capability. If we got a new, 35,000-life client, we probably would hire three to five CFPs who would only work with that one client."

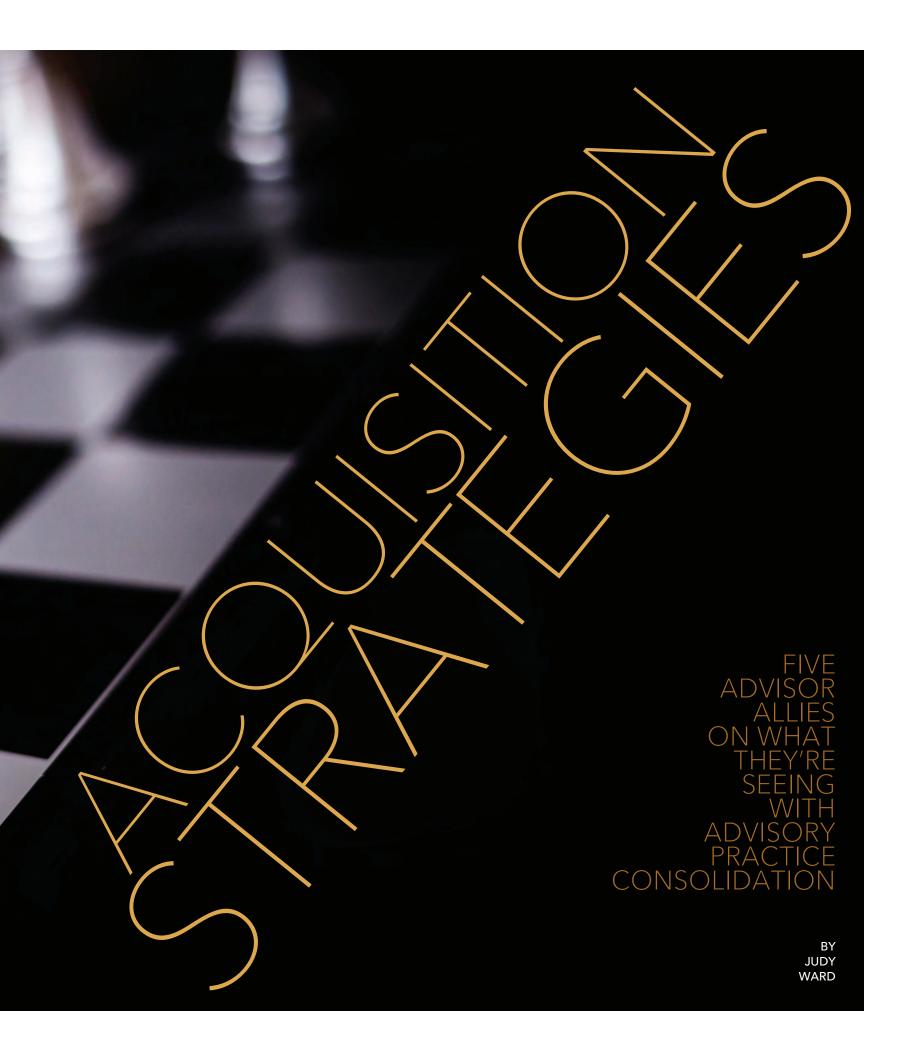
Keck anticipates that advisors will emerge as the primary financial wellness provider. "Recordkeepers are in a state of change, and technology comes and goes. If the plan sponsor has a problem and makes a recordkeeper change, the tools and participant resources that belonged to the recordkeeper go away, too," she says. "This is an important issue because of the consolidation in the recordkeeping industry. I believe that as advisors, we are more committed and personalized. We can create a better ongoing participant experience that is far different from impersonal email communications from a recordkeeper that employees may not know."

Advisory practices that want to offer financial wellness and planning services should look into the recordkeeper partnership opportunities, Clark suggests. "Advisors need to do their homework as to who they should partner with, and who they shouldn't," he says. "The only way to achieve scale on financial wellness work is to invest millions of dollars in the technology, and the average advisory firm doesn't have the capital to build out their own technology to do this work."

Woodruff Sawyer has deep relationships with a select number of recordkeepers, Keck says. She feels comfortable being upfront with them, in a matter-of-fact way, about her firm taking the lead on financial wellness with clients. Before one recent joint meeting with a new sponsor client, she recalls, "I was able to directly ask my recordkeeper contact not to talk about their financial wellness program in the meeting. We have a trusted relationship where they know that Woodruff Sawyer takes the lead on our clients' financial programs," she says. So far, she says that the recordkeepers she works with have not had a problem taking a back seat on financial wellness.

Advisors also should understand how each recordkeeper sees its role in financial wellness and planning, Clark recommends. "Advisors need to be sitting down with every major recordkeeper they work with, and even the ones they don't," he says. "They need to talk with their wholesalers, and put in the time and effort to get the 'lay of the land.' It's essential at this point to understand where the recordkeepers are going on this." NNTM







ONE TOPIC GETS DISCUSSED AT EVERY MEETING KEITH NEAL HAS WITH HIS PLAN ADVISOR CONTACTS THESE DAYS: ADVISORY PRACTICE ACQUISITIONS "THIS

topic is coming up in literally every meeting I have with advisors," says Neal, Boston-based director at MFS Investment Management. "There's a push everywhere about scale, and sizing up to get it."

Neal gets asked about it, whether he's talking with an independent advisory firm or a large national company. "Everybody is saying to me, 'Hey, if you know anyone looking to sell, I want to buy," he says. "They're asking me, 'Who can we buy? Who should we talk to?' There are a lot

of people with big checkbooks who want to do deals."

In his work as a wholesaler, Neal has seen a lot of consolidation. "We used to have a top 300 list of advisors to contact, then it became a top 150 list, then a top 100 list, then a top 50 list," he says. "My territory is shrinking, but at MFS, they want us to go deeper with the large firms, and provide them with as much support as we can. I'm doing anything and everything I can for the top 50 advisory practices in my territory."





2021 NAPA ADVISOR ALLIES

Transamerica congratulates our regional vice presidents for being recognized as Top 100 DC wholesalers by the National Association of Plan Advisors.

This year's Advisor Allies in the Recordkeeping category include:

- Chris Castro
- Chris Schutz (top 10)
- Luke Szafranski (top 10)







MORE
ACQUIRERS
MAY DECIDE
TO 'DROP
DOWN' TO
ACQUIRING
ADVISORY
PRACTICES
THAT WORK
IN THE SMALL
PLAN AND
MID-SIZE PLAN

– MARK CONROY FRANKLIN TEMPLETON



WHAT'S DRIVING IT

The acquisition trend makes sense for both buyers and sellers, says Mark Conroy, a Charlotte, North Carolina-based vice president at Franklin Templeton. For one thing, he says, both sides get a strong new source of client referrals. The acquirers "have seen the growth of the retirement industry, and they see the projected growth moving forward. And the acquirer is getting a true professional retirement advisory team," he says. "For the advisors, what they say the most when they talk to me is that they love that they can now get down to doing almost entirely the parts of their job that they love the most: going in and winning plans' business, building their value proposition, and helping people get to retirement."

The once-independent advisors who join a bigger company no longer have to spend a lot of time running a business. "Now they have somebody wearing the compliance hat they used to wear, and the operations hat they used to wear," says Doug Allen, a Covington, Louisianabased regional vice president at Nationwide Financial. "So they can get back to the unique ability that made them successful in the first place."

These deals also fulfill a big need for today's plan advisors, Allen says: scale.

"If you look at the advisor 'balance sheet,' they've had a revenue decline as part of fee compression. And at the same time, their cost of doing business, especially from a time perspective, has dramatically increased," he says. "Advisors are being asked to do more, and they are getting less. That's financially and emotionally exhausting for some people."

The need for scale has driven a lot of the deals, agrees Matt Kasa, San Clemente, California-based managing director, DCIO-Southwest at Nuveen. "Now these advisors have the ability to leverage a larger organization and provide lower-cost services, to remain competitive with the market," he says. The prices currently being paid for advisory practices also make a deal more compelling. "With the multiples

being offered by acquirers right now, it is very hard for folks to not have that conversation," he says.

Joining a larger organization also gives advisors more ability to attract and hold onto larger clients. "As their clients get bigger, more advisors see the advantages of being part of a bigger organization, and getting resources that they didn't have before," Neal says. For example, coming onboard a large, national firm may give an advisor access to its very low fee CITs (collective investment trusts) for plan clients, and access to specialized, inhouse investment expertise in different asset classes. "I think there are advantages to joining a larger firm, for sure," he says. "There are a lot of people who feel like they can service clients better if they have more resources, the pricing advantages big firms have, and they can get scale."

3 WAYS WHOLESALERS CAN HELP

The shifts in focus may result in a different emphasis for traditional wholesaler support—but the Advisor Allies say they still work closely with advisors on multiple areas, including business development, fresh insights and industry intel.



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ADVISOR ALLIES

Named to NAPA's 2021 Top DC Wholesalers List



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Glenn Godin



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Business Development

Allen looks at himself as a business-development consultant, not a product salesperson. "I help advisors understand where they are now, and how to connect the dots to where they want to be," he says. For an advisor just starting to build a retirement plan specialty, that can mean Allen helps with prospecting and branding support. For an advisor with an established book of business in retirement plans, and who wants to be in more of a full-service relationship with clients, that can mean "helping them learn about how Social Security and health care blend in with the 401(k), and how to help participants get to a better place, holistically," he says.

Advisors continue to need help with business development, Conroy agrees. "They still want to focus on how they can differentiate themselves, define their value proposition, and grow their business. A lot of that doesn't get captured by the home office (of an acquirer)," he says. For example, for top advisors whose company doesn't have a financial wellness portal and who don't want to use recordkeepers' wellness portals, Franklin Templeton can help them give clients access to its partner Enrich's workplace financial wellness portal. "As a wholesaler, you find ways to complement what they currently have," he says.

Lincoln Financial Group subscribes to several third-party prospecting services, and Donny Sheinwald can help an advisor figure out a game plan for expanding his or her business. An advisor might ask him for a list of all employers with 401(k) plans and within five miles of the advisor's office, or all plans in the advisor's metro area within a specific asset range. "My work has become more laser-focused: I generally focus on advisors who are interested in growing their practice," says Sheinwald, Marlboro, New Jersey-based regional 401(k) sales director at Lincoln. "I want to be their partner and help them grow. I can help provide an advisor with a prospect list, and then work with that advisor to create a script for

the advisor to call the prospective clients."

Fresh Insights

Even if they've joined a bigger firm, Neal says, advisors still want to hear about emerging and important issues in the retirement plan business. "ESG (environmental, social, and governance) investing is definitely a big issue coming up a lot, particularly with large 403(b) plans, hospitals, nonprofits, and tech companies," he says. "Making sure that they have a thoughtful process around ESG analysis is important for advisors, and we have our own in-house team that focuses on ESG investing."

The insights shared go beyond retirement plan work. "We recently brought in an HR director from MFS to talk to advisors about diversity and inclusion, which we've been working on for years," Neal says. That session covered topics such as questions to ask as an advisory practice begins to think in-depth about these issues.



"If you haven't worked on this before with a practice, it's really beneficial to hear that," he says.

Advisors also like learning about outside-the-box ideas on how to deepen their relationships with sponsors and participants, Kasa says. For example, Nuveen partners with PSCA on its Certified Plan Sponsor Professional (CPSP) program, and can help advisors connect their sponsor clients with the program. "In essence, it's another arrow in their quiver, to help get accreditation for a plan sponsor," he says.

Industry Intel

Neal and his MFS wholesaler colleagues talk to all the major players in the plan advisory business. "Because we connect with so many different firms, we know what's going on in the industry," he says. So he can talk with advisors about trends such as advisors taking on the 3(38) fiduciary investment manager role.

"As a wholesaler we're seeing a lot of trends, from the perspective

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of what employers are looking for, and what participants are looking for," Sheinwald says. "Advisors want to know, where are the trends headed? Our goal is to be a part of the advisory team, to be the eyes and ears of the industry for them."

THE OUTLOOK FOR INDEPENDENTS

Sheinwald believes there will be a lot more acquisitions. "I think it's a good thing, and it's a trend that's not going anywhere anytime soon," he says. "For advisors, when they can get scale and get more back-office support and tech support, that allows them to grow more. So I believe that it's still going to go at the same pace. If you look at the number of firms that have done deals, it's only a small percentage. There's plenty more of that to come."

Franklin Templeton's Conroy thinks the acquisition outlook depends in part on how recent acquisitions of large practices pan out. "In the near term, I think that it will be at a slower pace than it has been in the past six months, when the deals have been pretty rampant," he says. "Moving forward, I think it may depend on how successful these recent acquisitions have been. If they're successful, more acquirers may decide to 'drop down' to acquiring advisory practices that work in the small plan and midsize plan market."

But all of the Advisor Allies interviewed for this story see a future for plan advisors who don't want to join the consolidation wave. Kasa still works with smaller, independent advisory firms doing well. "These are folks who maintain a very personalized approach. People still want that face-to-face interaction, as we saw in the past year," he says. "The advisors who are maintaining that personalization, and who are able to customize their services to a sponsor's needs, those folks are going to continue to be successful."

There will always be a space for the independent plan advisor, Allen believes. "At the heart of it, the financial services industry is a deeply emotionally charged



practice, in the delivery of services to clients. You'll always have clients who want that accessibility and personalized solutions. They want someone who, if there's a problem, is willing to meet them at a coffee shop on a Sunday afternoon," he says. "That style of service naturally dovetails with a small, boutique financial advisory practice. The larger the firm, the harder it can be to maintain a unique culture, and to maintain those personal relationships."

Conroy also sees good growth prospects for independent advisors as the role of the advisor broadens. "Most of the better advisory teams feel like the retirement industry is in the beginning stages of expanding what workplace financial programs are. It's not just about the 401(k)," he says. Advisors increasingly are expanding into areas like individual financial planning and advice, and consulting on savings opportunities beyond a qualified retirement plan. "And independent firms, being smaller and not tied to a home office, are more able to pivot. For independent advisors, there is not as much of a 'quardrail' from the home office." NNTM



THIS YEAR'S ADVISOR ALLIES

BY NEVIN E. ADAMS, JD

IN THIS ISSUE WE ARE PLEASED TO SHOWCASE THE EIGHTH ANNUAL LIST OF NAPA TOP 100 DEFINED CONTRIBUTION (DC) WHOLESALERS, AS SELECTED BY THE NATION'S LEADING RETIREMENT PLAN ADVISORS.

We have long referred to the Top DC Wholesalers as "Wingmen" because if they are doing their job, they have your back. But while that's certainly an apt description for the traditional role, the most successful wholesalers do more-they are true partners, often working sideby-side with advisors-and so, with this year's "class," we have decided to acknowledge that expanded role with a new name-Advisor Allies.

Once again finalists for this year's list of Top 100 DC Wholesalers were selected based on those votes cast by several thousand advisors from a list of more than 700 wholesalers nominated by NAPA Firm Partner recordkeepers and DCIOs.

The wholesalers who make this list cover a lot of ground-literally. Or did, pre-pandemic. They still cover large "swathes" of territoryin terms of geography, number of advisors, or both. Indeed, the top 100 was spread all over the nation, with the size of their respective territories as varied as the firms and wholesalers themselves.

Theirs is a business oriented more towards advisor count and location than assets, but still well over half are supporting advisors whose business exceeds \$1 billion in assets under management.

Among this year's crop of Advisor Allies, nearly all had been working with retirement plans for at least a decade, and nearly two-thirds for more than 15 years. Not all of that experience was as a wholesaler, however. Roughly a quarter had been in that role for 10-15 years, and nearly half for more than 15 years. That said, just under one in five had been in that role for 5 to 10 years-and two less than 5 years.

One of the more tenured Allies commented, "Having been in this industry for over 25 years, making sure that I adjust to changing times. I'm working with much younger generations and they do things differently. The ability to adapt is a necessity."

With all the consolidation (and compression) hitting this field, a remarkable one in eight had been with the same firm for more than 15 years, though the plurality was the 4 in 10 who had been with their same firm (just) 5 to 10 years.

Travel remains both the best and the "bane" of a wholesaler's life-and while the availability of vaccines and less restrictive travel policies have allowed many to begin returning to the road, the "new normal" still seems far from... normal. Having worked from home for most of 2020, many are now chomping at the bit, eager to reengage and reconnect with their advisor partners-and trying to sort out the balance that











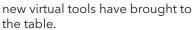












The most commonly cited challenges included time management, aggressive sales targets, time away from home/family-and something advisors will surely appreciate: "Walking that fine line of being professionally persistent vs. being 'too much.'" As one of the top 100 noted, "You want to be the wholesaler that advisors/ consultants want to talk to when you reach out, not the one that they ignore and avoid!"

Our congratulations to those who made this year's list of Top DC Wholesalers—and our thanks to all the men and women in those roles who are helping us all make a difference-every day.

THE PROCESS

One of the things that sets this list apart is that it is based on a nominating/voting/selection process that taps the experience and perspective of NAPA's plan advisor members. Here's how the three-part process works:

- **1. Nominations:** The process starts with NAPA's DCIO and recordkeeper Firm Partners submitting their wholesalers for nomination. Wholesalers who work directly in the field with plan advisors are eligible for nomination; internal relationship managers are not eligible.
- 2. Voting: NAPA members and other advisors vote for their favorites using our online voting tool. Only votes from advisors submitted from a corporate/ business email account are tallied. Duplicates are discarded.
- 3. Selection: The final vote tallies are reviewed by the NAPA Top DC Wholesalers Blue Ribbon Committee, which selects the top wholesalers, including the Top 10, in both Recordkeeping and DCIO categories.

Legend



DCIO Wholesaler





Congratulations **David Foley**

for earning the NAPA 2021 Advisor **Allies recognition**



Securian Financial Regional Vice President Northern Illinois, Eastern Wisconsin david.foley@securian.com 312-805-2703



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Amundi US

BOBBY ALLEN

DCIO

American Century Investments

DOUG **ALLEN**

Nationwide

DERRICK AMEY

DCIO

John Hancock Investment Management

HEATHER BAILEY

DCIO

State Street Global Advisors

STACI **BAKER**

DCIO

J.P. Morgan Asset Management

DENNIS BEAUDET

John Hancock Retirement

DAVID BEDRICK

DCIO

PGIM Investments

RHEA **BERGLUND**

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Invesco

MARC **BERMAN**

Cuna Mutual Group

CHRIS BILELLO

DCIO

Amundi US

KEITH **BLACKMON**

DCIO

T. Rowe Price



JUSTIN **BONAVITACOLA**

Lincoln Financial Group

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RK

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Fidelity Investments

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DCIO

J.P. Morgan Asset Management

ANDREW BROSCO

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Nationwide

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MassMutual Investments

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Columbia Threadneedle Investments

KEVIN CROTSLEY

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TIM **CURRAN**

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DCIO RK

Lincoln Financial Group

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Securian Financial

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DCIO

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DAN **FRATALIA**

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Thank you for naming these Fidelity associates among your **2021 Advisor Allies Top DC Wholesalers**.



- Katelyn Boone, Vice President
- Jim Dowling, Senior Vice President
- Travis Gavinski, Vice President
- Ami Hindia, Senior Vice President
- Ben Leger, Senior Vice President
- Mike Manosh, Senior Vice President
- Andrew Spahr, Vice President

You honored them for their knowledge and insight.

You see them as an extension of your practice.

We know them as our coworkers and friends, and we couldn't be prouder of them.



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DCIO

Blackrock

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RK

Fidelity

NANCY GERSTNER (TASSIELLO)

DCIO

Franklin Templeton

MICHELE GIANGRANDE

DCIO

T. Rowe Price

JERRY GIOVINAZZO

Rk

John Hancock Retirement

GLENN GODIN

DCIO

American Century Investments

MATTHEW **GRANDONICO**

RK

Prudential

LIAM **GRUBB**

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MATT KASA DCIO

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TROY KING

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Principal

KYLE **KUNDE**

DCIO

Nuveen JOHN

KUTZ DCIO

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BILL **LAPLANTE**

DCIO

Virtus Investment Partners

TIFFANY **LAUER**

RK

Cuna Mutual Group

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DCIO

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AYLMER **MAGILL**

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MARK **NEEDHAM** RK

John Hancock Retirement

Congratulations to our Advisor Allies

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Justin Bonavitacola



Tim Curran



Matt Fessler



Bryson Hopkins



Stewart Rauchman



Donny Sheinwald



Tony Summers

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ERIN **WIKANDER**

DCIO Blackrock

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Federated Hermes





John Hancock Retirement



We're honored to be recognized by the people we serve.

Congratulations to the 2021 NAPA Top 100 DC Wholesalers!



Troy King



Kevin McDonough



John Pallotta

Nominations from the list are provided by NAPA DCIO and RK Firm Partners. Nominees are required to submit responses to an application comprised of a series of quantitative and qualitative questions about their experience, size and composition of their practice, awards and recognitions, and industry contributions. Finalists were ranked according to votes received by retirement plan advisors and other industry professionals. The list is created and conducted by the National Association of Plan Advisors, an affiliate organization of the American Retirement Association, a non-profit association. No fee is charged to participate.

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Could managed accounts replace target date funds as QDIA in many plans? By Judy Ward

ensionmark Financial Group started developing its Portfolio Advisory Services two years ago, and CEO Troy Hammond sees the advisor managed accounts as part of the natural evolution of the Santa Barbara, California-based firm. "If you think about the DNA of our firm, we've always focused on participant outcomes. Over the past 30 years, that has evolved into us having a full-fledged financial wellness platform, and that includes our participant advice service and now our managed accounts," he says. "In the sequence, it starts with

participant education, then it goes to engagement, then participant advice, then managed accounts, then on-site financial coaching."

Participants' investment portfolios got better in the wake of auto-enrollment and default investments, but lacked personalization, Hammond says. "As we started offering participant advice and talking to them, the options were to help them build an investment portfolio or direct them toward their plan's target date funds—which is fine, but the target date fund's allocations aren't going to be personalized for them. Target date

funds have done amazing things for our industry, but they're a one-size-fits-all, cookie-cutter option. We realized that we needed to be able to offer people a 'next level' of investments: a managed account personalized to them."

Shifting Role

As the role of the plan advisor shifts, more advisory firms have started offering a managed accounts service, echoes Dan Bruns, Chicago-based head of managed solutions at Morningstar, Inc., which has partnered with Pensionmark on the advisory firm's service. "Plan



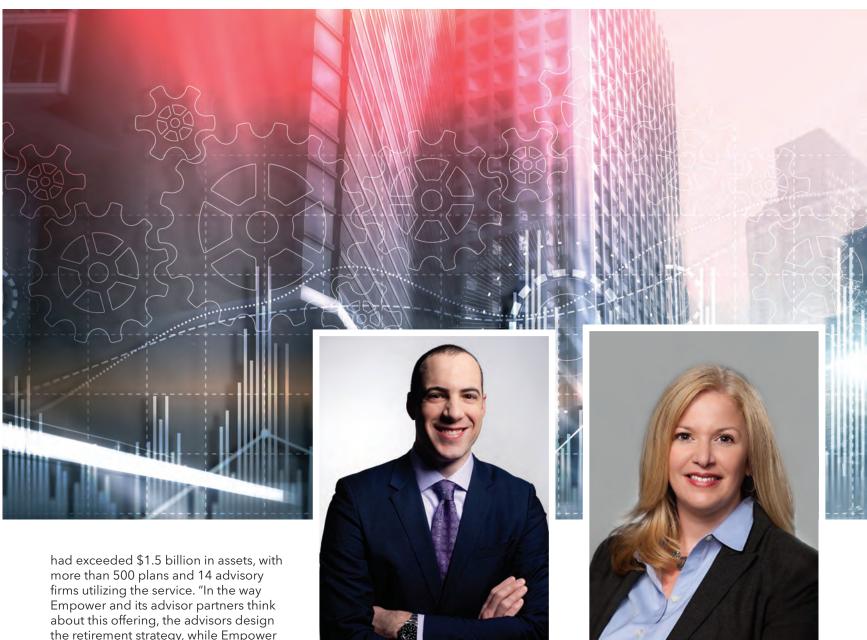
sponsors are now asking for more out of their advisor: They want to know, what can they do to help enable participant success?" he says. "What better way is there to help a participant reach success than to go to them and say, 'I built a personal financial strategy for you. Here is how you should invest your money, based on your unique situation. Here's how much you need to save for your retirement. Here's when you can expect to retire, and here's when you can take Social Security to maximize the value for you.' An advisor managed accounts program allows you to do all of that, and do it at scale."

Advisory firms currently offering managed accounts typically are doing

it with a partner, Bruns says. "I've yet to hear of a firm that's been successful in building its own managed accounts service," he says. Building a service requires large investments in areas such as connectivity with recordkeepers, data security protections, and the methodology used to make the investment recommendations. "We're talking about an investment of tens of millions of dollars," he says. "Advisory firms are generally deciding to outsource the piece of it—the technology and recordkeeping connectivity—that is not true to their core mission."

In July, Empower Retirement announced that the advisor managed accounts offering it launched in 2019

Troy HammondPensionmark Financial Group



Dan BrunsMorningstar, Inc.

more than 500 plans and 14 advisory firms utilizing the service. "In the way Empower and its advisor partners think about this offering, the advisors design the retirement strategy, while Empower provides the customer experience," explains Tina Wilson, senior vice president and chief product officer at Greenwood Village, Colorado-based Empower. "The strength of advisors' portfolio construction and plan design expertise is joined with Empower's advisory services technology platform and client experience."

In 2020, Albert Lea, Minnesota-based intellicents inc. formed a partnership with Morningstar and launched a white-labeled version of its managed account product, called bioni(k) managed accounts. The advisory firm decided to work with a partner rather than build out the service on its own, in part because Morningstar already has established connectivity with several recordkeepers and has plans to add more, intellicents Co-Founder and President of Retirement Services Grant Arends says. "That way,

there's a single sign-on for participants, and when the investment advice is rendered, the transactions needed are automatically initiated with the recordkeeper," he says. "The advisor deliverables are integrated with the recordkeeper's system."

Acting as an investment fiduciary, Arends says, intellicents not only designs the fund menu within a client's plan, but utilizes the Morningstar system to build six portfolios (ranging from conservative to aggressive) using those investments, and then manages the portfolios on an ongoing basis. "It's Morningstar's system that powers the investment

advice, recommending a participant's allocations to each of the six portfolios," Arends explains.

Tina Wilson

Empower

"The beauty of this system is that there are 12 different variables taken into account in that recommendation, and nine of those data points can be accessed through the payroll and recordkeeping systems, without any engagement from a participant whatsoever," Arends says. Those data points used by Morningstar's system include someone's salary, gender, age, contributions, employer match, and projected Social Security benefits. The other three key variables—a participant's

"The biggest mistake advisors make is talking about managed accounts as just a customized investment strategy. It is so much more than that."

-Grant Arends, intellicents



outside assets, risk tolerance, and spending need in retirement–require a participant's input, and intellicents has one-on-one conversations with participants to try to get information on those variables. "So it's a solution for both the unengaged and engaged participant," he says.

Can Managed Accounts Supplant TDFs?

Bruns sees this time as a sort of pregame warmup, particularly for advisor managed accounts. "I don't think that managed accounts are going to necessarily overtake target date funds as a QDIA," he says. "But the value of the service is going up, yet the fees have gone down as more participants are using them."

When Bruns started working on managed accounts a decade ago, limited connectivity existed between recordkeepers and managed account providers like Morningstar, making it hard to share participant data that allows for customizing portfolios. "Back then, unless participants with a managed account engaged, they were essentially getting a more-expensive target date fund," he says. "Since then, Morningstar and recordkeepers have invested a heck of a lot of money in connectivity, so we can share participant data. We now get between 7 and 15 data points for every participant, even if they don't engage, and that data is being updated on a regular basis." He still sees a lot of value in participants engaging, because otherwise Morningstar can't get data on key factors like spousal income that allows for even better customization. "But now, we can get personalization even without the participant engaging," he says.

In an ideal world, Arends would like to see managed accounts replace target date funds as the default investment for automatically enrolled participants. "But I think it's going to be based on the philosophy of the employer," he says. "For employers that really take a holistic approach to retirement and the financial health of their employees, it definitely has the opportunity to replace target date funds. Those employers that just want to 'check the box' of offering a plan and that are only looking at fees-versus outcomes-it's a harder 'sell.' For those plan sponsors who are focused on outcomes, there's a lot more potential."

When sponsors incorporate its bioni(k) managed accounts, intellicents has seen some patterns on participant utilization. "If a sponsor reenrolls participants into our managed accounts as the new QDIA, there's usually between a 75% and 95% 'stick rate' in the managed accounts," Arends says. "If a plan goes opt-in, with managed accounts as another investment option in the plan, we're looking at probably between 10% and 40% of participants choosing it. Where a plan is in that range is based on our ability to get in front of participants and explain what the managed accounts service is, and why it is worth considering."

'Dynamic' Difference

Most of the plans utilizing Pensionmark's Portfolio Advisory Services have adopted the "dynamic QDIA" concept, automatically transitioning participants (unless they opt out) from a target date fund to a managed account at a pre-determined point, such as when they reach age 50. "I think the No. 1 plan sponsor responsibility is the appropriateness of the investments for

participants," Hammond says. "So it's just logical that a dynamic QDIA makes sense. We have the data to show that people who are above age 45 or 50 benefit more from being in a managed account than they do from being in a target date fund. If you're talking about a 20-year-old, they might be better off in a target date fund. Over age 50, there are more ancillary factors that impact the right portfolio for a participant."

Hammond sees two main things making managed accounts a more viable default investment now: technological improvements and fee declines. "I used to be a naysayer on managed accounts, because they were so expensive. The fee used to be 2% or 2½%, when they were first rolled out for use in plans," he says. "But over time, the technology has gotten so much better, and that has brought down the fees. And we're doing the portfolios with CITs (collective investment trusts), so they are hardly more expensive than target date funds."

Fees remain the biggest concern plan sponsors have about managed accounts, Arends says, and intellicents addresses that by talking about the full spectrum of its managed accounts service. "The biggest mistake advisors make is talking about managed accounts as just a customized investment strategy," he says. "It is so much more than that: It is a financial planning solution for a participant's retirement. And there are a lot of case studies to show the value this brings to both engaged and unengaged participants. It comes down to a value proposition, and as an advisor, you have to demonstrate through data the potential value that this service brings. We really position it as a complete retirement planning mechanism." NNTM

Talking Points

Here's how to amp up your prospecting efforts with DOL and IRS data.

By Steff Chalk

t's not often that retirement plan advisors are presented a roadmap of opportunity that itemizes exactly what seems to be troubling plan sponsors. When charged with the daunting task of getting every plan participant to the retirement finish line, plan sponsors face both macro-level obstacles and a series of localized repetitive duties. These topics are targeted talking points when starting the conversation of moving a plan to a new advisor.

First, cybersecurity concerns have become a high priority for plan sponsors. ERISA established standards and requirements intending to protect plan participants and beneficiaries in employer-sponsored retirement plans. On April 14, 2021, the Department of Labor finally issued guidance for plan sponsors, plan fiduciaries, record keepers and plan participants on best practices for maintaining cybersecurity. The checklists included in that guidance are readymade talking points for all prospects.

Second, 401(k) lawsuits continue to increase in the wake of the record number of planbased lawsuits filed during 2020. Popular claims include excessive fees, poor investment returns and insufficient investment choices. As this trend continues in 2021, it is important to understand the basis of these lawsuits.

• Loans from retirement plan assets can be a harbinger of bad outcomes. Plan sponsors can establish a plan that permits multiple outstanding loans concurrently. Since



plans are permitted to allow a participant to borrow up to 50% of their retirement account, a participant can subtract half of their retirement savings prior to reaching the normal retirement age.

- Depositing salary deferrals on a timely basis is a requirement for plan sponsors. This task must be accomplished expeditiously. The DOL is laser-focused on plan sponsors that make late deposits of salary deferrals, including incorporating a specific question about any late deposits on the Form 5500.
- Accurately tracking employee eligibility is a requirement for every retirement plan. Regardless of the plan's eligibility formula, plan sponsors must make employees aware of their plan eligibility once they become eligible. It's important for plan sponsors to make sure that plan operations are carried out in accordance with the terms of the plan document. Failing to identify and include eligible employees is costly. Unfortunately, corrective contributions must go to all affected employees—regardless of whether they intended to make salary deferral contributions or not.
- The definition of compensation can be a big problem. The conundrum occurs when a 401(k) plan sponsor uses a definition of compensation for purposes of salary deferrals and employer contributions that differs from the one specified in the plan document. Mistakes do happen, of course; however, the longer a mistake lingers the more expensive it is likely to become!
- Maintaining all plan documents for the retirement plan is important. Plan sponsors are often informed that they must keep plan records for at least 7 years. However, a best practice is to maintain plan records for the life of the plan and beyond. The major problem with failing to produce a fully dated and executed amendment/restatement is that the IRS treats the plan sponsor as if the amendment/restatement had never been executed.
- Satisfy ERISA §404(c) requirements for increased protection. Many plan sponsors feel that they are shielded from liability, assuming that they cannot be held liable for losses incurred by participants who direct their own 401(k) investments. This may or may not actually be the case.

The best news for plan advisors is that in its 401(k) Plan Fix-It Guide (https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide), the IRS publishes a summary of past mistakes with corresponding fixes—including the top 12 mistakes that retirement plan sponsors make. These topics make great talking points for starting a conversation with a prospect about moving their plan to a new advisor. NNTM



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The Rainy Day Value Proposition

How can a plan advisor best help a client through the annual fiduciary insurance renewal process?

By David N. Levine

wenty years ago, it was common for fiduciary insurance to be a relatively simple, bundled portion of a company's overall Errors and Omissions (E&O) coverage. Occasionally, it would be necessary to bring a claim under a fiduciary insurance policy.

However, the world has changed. Today, given the volume of litigation and DOL enforcement involving 401(k) plans that make the news almost daily, fiduciary insurance is often a "must do" item for plan sponsors and their plan fiduciaries. The cost to insurance carriers of providing coverage under these policies is also rising.

This situation leads advisors and their clients to greater concerns about cost, process items to comply with and policy coverage considerations to consider and address as part of a plan sponsor's annual renewal process. So where to begin?

First, there is the application for insurance. Each year, when renewing coverage, a plan sponsor and its plan fiduciaries will likely need to submit an updated information package/ application to a carrier. Applications can vary slightly from insurance carrier to insurance carrier, but they generally ask about fees levels, funds utilized, and whether plaintiffs lawyers have contacted the plan sponsor or plan fiduciaries. Since these applications are part of the underlying policy, accuracy is keyand that is where an advisor can help ensure data and information is correct. A collaborative effort between key stakeholders-which

may include internal personnel, the plan advisor, insurance brokers and legal counsel—can help make this process efficient.

Second, while there have long been limits on certain features of fiduciary insurance coverage, such as for voluntary compliance filings, the current renewal cycle is bringing to light more focus on deductibles (how much an insured party has to pay before insurance begins to pay for costs) and additional limits on specific portions of coverage. For example, some policies have added sublimits for 401(k) fee litigation and have restrictions and rules for defending cases which include limits on the choice of counsel. Careful attention to these issues by a plan sponsor and its plan fiduciaries, advisors and attorneys can be a proactive way to ensure that if coverage is needed because of a regulatory

investigation or lawsuit, it matches the need when it arises.

Separately, aside from being at the ready to help with these two items, there's an additional proactive step an advisor can take to be a strong partner to its plan sponsor and plan fiduciary clients in helping them through the insurance application and renewal process. It is for the advisor to have all potentially necessary information at the ready for the renewal process-either as a package or from its regular periodic meetings. Having a summary of the fee structure, the funds chosen and the availability of other share classes of chosen funds can help make the process far less burdensome for the advisor's client-and thus further support their relationship.

Lastly, on a related note, it is always helpful for advisors to have their own insurance for fiduciary or similar claims. This coverage is often provided through E&O insurance programs, including through programs like those maintained by the American Retirement Association and NAPA.

Obtaining and renewing insurance has become increasingly complex, but through preparation and coordination, an advisor can help his or her clients navigate the insurance process more easily—and be sure that their insurance is ready if that rainy day comes. NNTM





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Out of Sight?

Would GAO alternatives help—or hinder—participant understanding about fees?

By Nevin E. Adams, JD

ecently the Government Accountability Office released a report on how (little) participants understand fees-but will their solutions help-or hurt-that condition?

Despite the fact that even their survey suggested that more than half of surveyed participants felt that they understood fees, the headlines—and the impetus behind the inquiry—was clearly that participants don't understand the fees they pay. And, let's face it, we have only their word for it that they do (or don't).

Part of the issue with this—and most—participant surveys is that we have no way to validate their sense of things against reality. It's the same failing that applies to measures of retirement confidence—they may be confident, but should they be? Ditto here—participants may think they have a good grasp on fees, but the survey basically takes them at their word—and even then, roughly 4 in 10 are willing to admit they don't get it.

A potentially larger concern is how many (41%) don't think they pay any fees for their 401(k), as well as the 23% who didn't know. One can rationalize some amount of confusion as to the how muchbut it seems to me that there should be some appreciation for the reality that there is no such thing as a "free" lunch.

But the underlying assumption is that many aren't, and even if it is a minority perspective, that we should/could do something to close that gap. Indeed those in Congress¹ who initiated the GAO's review referred to its findings as a "wake up call."

The Recommendations

The GAO made five specific recommendations for the Labor Department to consider-four of which I would consider to be completely unlikely to move the needle. They suggested a "consistent term for assetbased investment fees (e.g., gross expense ratio)," a notice regarding the impact of fees, fee benchmarks and ticker information. Yes, ticker information. While this is conjecture, I'm guessing these recommendations are a product of the thorough survey questions they employed to ascertain participant fee knowledge, which seemed to consist primarily of a quiz on reading a mutual fund prospectus.

This may, indeed, be helpful in determining the fees one pays in a retirement account, but I suspect those willing to undertake that effort have already mastered those skills-and those that haven't likely won't be helped by the recommended additions. In fact, it may well prove to be off-putting. Not that it was all about the complexities of mutual fund disclosures-one item that (only) 46% felt was clear-and that more than half (51%) got wrong-was what appeared a fairly straightforward disclosure about participant fees on loan administration from a large 401(k) plan's annual disclosure.

Apparently I wasn't the only one to view these suggestions with skepticism. In response, the Labor Department cautioned that additional information, in and of itself, was "not certain to make a measurable difference."

That said, the one recommendation that might have

an impact was that "quarterly fee disclosures for participant-directed individual retirement accounts provide participants the actual cost of asset-based investment fees paid." However, the Labor Department-demonstrating a sound awareness of the issues in so doing-commented (on the recommendations overall) that it would "pose significant technical and feasibility challenges"challenges that it cautioned may limit the efficacy of participant fee disclosures, not to mention pulling its attention away from other regulatory initiatives.

Honestly, there's no sure way to know how any of these recommendations might "work," or how much impact they might have, although they seem likely to engender more costs, and likely more cost than benefit. Personally, I think that most plan participants will, as they always have, choose investments based on net returns, not fees specifically. And I think they're perfectly capable of assessing that return as one net of fees—or should be.

It's worth recalling that we've long been cautioned that serving the best interests of participants and beneficiaries requires more than just evaluating fees, though it's certainly an important element. Ultimately most participants may lack the time or inclination to figure out the costs of their 401(k)—some may lack the ability, and yes—some may even lack the information—or have difficulty discerning its impact.

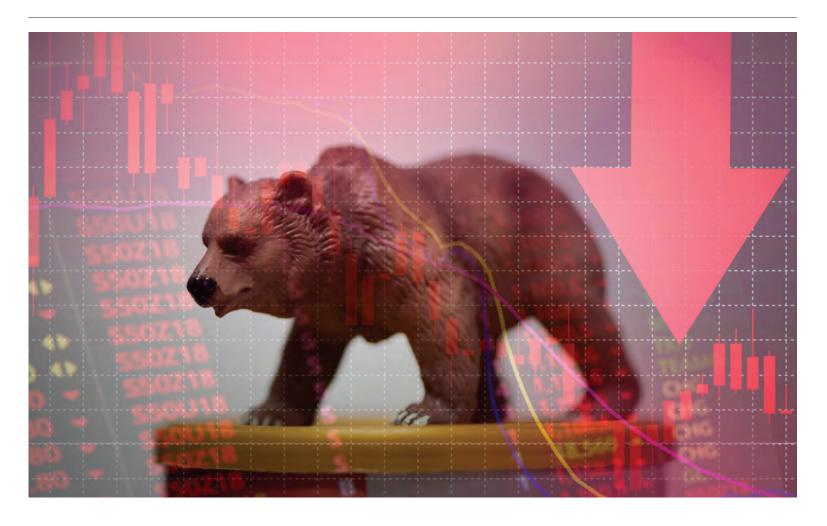
That's why the involved, ongoing oversight of ERISA plan fiduciaries and their advisors is so important—because whatever participants know, or choose to know about, the fees they pay, plan fiduciaries have a duty to know what these fees are—and to ensure that they, and the services rendered for them, are reasonable and in the best interests of those participants.

Because from a plan participant's view they may be out of "sight"—but when it comes to plan fiduciaries, they should never be out of mind.

Case(s) in Point

While COVID has disrupted many aspects of our lives, the pace of litigation has, if anything, accelerated. In this issue, we find yet another of the so-called "stock drop" suits that managed to get to the pleading stage, but no farther as the "more harm than good" standard remains a bridge too far for plaintiffs.

We've also got a (partial) win for Schlichter Bogard & Denton on a long-running 403(b) university excessive fee suit—oh, and a participant who brought suit—because a gold fund he was invested in was removed from the plan menu. Let's dig in!



'Short' Comings

Another stock drop suit comes up short

Plaintiffs in a stock drop suit were (once again) unable to clear the "more harm than good" threshold with "fuzzy" allegations to make their case.

In the most recent case, plaintiffs John Osborne, Brian Coleman, Eve Coleman, Helen Millhouse and Matthew D. Brown filed suit against the fiduciaries of various defined contribution plans of the Kraft Heinz Food Company on behalf of themselves and other participants who invested their retirement savings in Kraft Heinz stock through the Plan (and its employee stock ownership plan component) during the period of May 4, 2017, through Feb. 21, 2019.

The Case

As is often the case in these so-called "stock drop" suits, it is alleged here (Osborne et al. v. Employee Benefits Administration Board of Kraft Heinz et al., case number 1:20-cv-02256) that the fiduciary defendants "knew or should have known" that Kraft Heinz was recording inaccurate amounts of goodwill and intangible assets and that, as a result, the Company's stock price was artificially inflated. Judge Robert M. Dow Jr. of the U.S. District Court for the Northern District of Illinois, who was ruling on the motion to dismiss these claims, explained that the plaintiffs faulted the defendants "for not

"fuzzy" on exactly what Plaintiffs believe Defendants should have disclosed and when."

disclosing, or trying to cause the Company to disclose, information that would have corrected the allegedly misleading statements that drove up the Company's stock price."

More specifically, the plaintiffs have alleged that, as corporate insiders, the defendants "knew or should have known negative information regarding the value of Kraft Heinz's goodwill and intangibles that ultimately led to the February 2019 impairment," and that, having that knowledge, they "should have caused or tried to cause the Company to disclose that negative information earlier in order to correct the stock's artificially inflated price, and that failing to do so was a breach of their ERISA duties of prudence and loyalty."

Dudenhoeffer Demand

In his ruling, Judge Dow commented that the plaintiffs here "... (somewhat baldly) assert that the disclosure of the true value of Kraft Heinz's goodwill and intangibles was inevitable and that both the hit to the Company's stock price and length of its recovery would have been less damaging had the disclosure come earlier." That said-and his "somewhat baldly" characterization previews his conclusion-he noted that despite the allegation that defendants could not reasonably believe that earlier disclosure would do more harm than good to the Plan or its participants, "the amended complaint's allegations fail to meet the Dudenhoeffer standard, specifically the requirement that a plaintiff plead that a prudent fiduciary could not conclude that public disclosure would do more harm than good to the Plan."

Commenting that "Though Seventh Circuit has yet to reach the issue," Judge Dow went on to note that "the overwhelming majority of circuit courts to consider an imprudence claim based on inside information post-Dudenhoeffer rejected the argument that public disclosure of negative information is a plausible alternative."

Judge Dow also commented that the amended complaint is "fuzzy" on exactly what Plaintiffs believe Defendants should have disclosed and when. "While Plaintiffs need not be overly specific, the vagueness of their position-at some point during the Class Period, Defendants should have disclosed something, which would have corrected either some or all of the alleged misstatements-makes it difficult for the Court to determine whether there was an alternative action that the defendant could have taken that a prudent fiduciary would not have viewed as more likely to harm the fund than to help it."

Spooked the Market?

Judge Dow went on to explain that "...even granting that Kraft Heinz stock is traded in an efficient market, it is possible that public disclosure would have entailed releasing incomplete or inaccurate information which could have spooked the market and resulted in an outsized drop in the value of [the Company's] stock." He noted that, "That would have harmed the Plan, Plan participants holding the stock through that period, and Plan participants planning to sell their stock during that period."

Judge Dow also commented that the amended complaint's "allegations of harm rely heavily on general economic principles that, when fraud goes on longer, the inflation [of the price of the asset] will be overstated for a much larger group of purchasers" and that "reputational damage from a longer period of inflated stock prices increases the longer the stock price is artificially inflated." In Judge Dow's assessment, those "generic assertions do not satisfy the applicable pleading standard."

Commenting that "maybe earlier disclosure would have 'corrected' the stock price and mitigated harm to the Plan, or maybe not," but he noted that "the crucial point is that the amended complaint does not adequately allege that some earlier disclosure was so clearly beneficial that a prudent fiduciary could not conclude it would be more likely to harm the Plan than to help it."

Inevitable Result?

He noted that the plaintiffs rely "heavily" on Jander v. Retirement Plans Committee of IBM, which Judge Dow observed allowed a complaint for breach of prudential duty based on failure to disclose to proceed. "But Jander offers little support here," he wrote. Judge Dow explained that "In addition to running against the great weight of authority on this issue, the Jander decision largely hangs on facts not adequately pled in the amended complaint now before the Court." In that case, he said that the Second Circuit took the disclosure in Jander to be "inevitable" because the company "was likely to sell the business and would be unable to hide its overvaluation from the public at that point"-but noted that the case at hand "contains no such allegations, and no facts

⁶⁶The plan structure was pretty typical—participants make investment choices in the defined contribution plan from among funds that the Investment Advisory Committee selects and monitors. ⁹⁹

to support its bare assertion that the impairment of Kraft Heinz's goodwill and intangibles was inevitable"—and dismissed the first count, but left it open for the plaintiffs to amend.

The second count-that Defendants Bernardo Hees, Paulo Basilio, and David Knopf had fiduciary responsibility for appointing, monitoring and removing members of the Employee Benefits Administration Board (EBAB) breached their fiduciary duty by failing to monitor the EBAB and other individual defendants-well, having failed to make their case that a fiduciary breach occurred-there wasn't a case to be made that those fiduciaries hadn't been monitored-and that was dismissed (albeit without prejudice as well)-giving the plaintiffs until Sept. 13 to file a second amended complaint.

What This Means

We've noted before that back in 2014, the Supreme Court seemed truly concerned that the "presumption of prudence" standard basically established a standard that was effectively unassailable by plaintiffs-and in fact, until that point the vast majority of these cases (including BP and Delta Air Lines, Lehman and GM) failed to get past the summary judgment phase. Indeed, the plaintiff in the IBM case cited above had argued that no duty-of-prudence claim against an ESOP fiduciary has passed the motion-to-dismiss stage since the 2010 decision in Harris v. Amgen. They had also noted that "imposing such a heavy burden at the motionto-dismiss stage runs contrary to the Supreme Court's stated desire in *Fifth Third* to lower the barrier set by the presumption of prudence."

However, the "more harm than good" standard that emerged with Fifth Third, while a new "standard," hasn't had much impact on the ultimate result, though more cases did get past the summary judgment stage (we'll set aside the question of whether that has created "more harm than good").

Not in this case of course—at least not yet.

— Nevin E. Adams, JD

All That Glitters

Plan's drop of gold fund triggers participant suit

Plan fiduciaries have successfully fended off a suit brought by a participant upset that the plan committee removed a fund in which he was invested.

Charged in the suit (Kokoshka v. Investment Advisory Comm. of Columbia Univ., S.D.N.Y., No. 1:19-cv-10670, 8/19/21) were the Investment Advisory Committee of Columbia University, and the participant-plaintiff bringing the legal action-and representing himself in the case-was one Jerry Martin Kokoshka, Ph.D. The plan structure was pretty typical-participants make investment choices in the defined contribution plan from among funds that the Investment Advisory Committee selects and monitors. He argued that the Committee breached its fiduciary duty when it decided to remove a specific fund in which he had been invested from the menu of available investments.

The Plan

While this won't likely surprise any readers, the court here (in the person of Judge John P. Cronan of the U.S. District Court for the Southern District of New York) noted that, "the Committee was not required to keep offering a fund it decided to place on the list of available investing options," and that '... the Retirement Plan allowed the Committee 'to add an Investment Fund or ... to eliminate an Investment Fund by transferring amounts held thereunder to a successor Investment Fund' as long as "reasonable notice' was given to participants." Judge Cronan goes on to explain that, "if a participant's contributions were in an Investment Fund that was removed from the list of available investment options, the Retirement Plan required that the participant transfer his or her contributions to another available investment option," and that if they failed to do so the Committee had the authority "... to establish procedures to redirect those investments to a different fund on behalf of the participant."

The court goes on to note that "one such procedure was to transfer those contributions to an Investment Fund ... intended to be a 'qualified default investment alternative' as described in ERISA Section 404(c)(5)," and that upon a decision to close a fund, participants were to be given written notice of the forthcoming change "at least 30 days and no more than 60 days prior to the effective date of the fund's removal." Moreover, the court explained that, "during the relevant time, two Funding Agents offered the Investment Funds available to plan participants: The Teachers Insurance and Annuity Association-College Retirement Equities Fund ("TIAA") and The Vanguard Group Inc. ("Vanguard"). Retirement Plan-options that offered participants 134 different funds to choose from."

Gold, Fingered

Now, for his part, participantplaintiff Kokoshka said that in early 2017 he became concerned with "the high leverage in equity markets," and wished to "invest his retirement savings in gold to preserve [the] purchasing power of his savings and to avoid risk associated with market crash." He contacted the Committee, and the Committee recommended the "Vanguard Precious Metals and Mining Fund" (which later became the GCC Fund), at which point the participant-plaintiff claims that he directed the Committee to move his savings to this fund and to "keep it in Plaintiff's portfolio until retirement or until Plaintiff instructs [the Committee] to sell."

Oh, and he also alleges that, in March 2019, the effective date of the GCC Fund's removal from the Retirement Plan, he noticed a loss in his investments due to the Committee's divestiture of his position in the GCC Fund.

The Process

The court noted that the Committee "regularly reviewed" the menu of investment options available under the Retirement Plan "to assess whether the options offered (i) competitive long-term[] performance relative to market indicators, (ii) a diversified range of investment options, and (iii) competitive fee structure," and that they further hired Aon Hewitt Investment Consulting to issue "Quarterly Investment Reviews" in advance of every Committee meeting.

As noted above, participantplaintiff Kokoshka had an issue with the removal of one particular fund from the Retirement Plan's portfolio of investments—the Vanguard Global Capital Cycles Fund (a.k.a. the "GCC Fund"). The Committee discussed that the GCC Fund had been "added to the Vanguard 'Watch List' due to its historical underperformance and a material change in investment philosophy and process."

Then, "After a thorough discussion," the Committee decided to remove the GCC Fund from the list of funds available to participants, consistent with the policies set forth in the Retirement Plan, the Committee issued a written notice of this removal to participants that explained what was going to happen, and advising that if a participant failed to transfer his or her assets from the GCC Fund to another available fund by March 28, 2019, the balance would be directed to the "Vanguard Institutional Target Retirement Fund." By now you can guess that participant-plaintiff Kokoshka, despite this notice, did not transfer his balances, and that meant that his investment balance was automatically moved to the identified "qualified default investment alternative" (the Vanguard Institutional Target Retirement Fund).

The Claims

Plaintiff alleges that the Committee was negligent in "fail[ing] to realize ahead of time the significant loss that [the Committee's] action would inflict on Plaintiff's retirement savings," and that therefore the Committee breached its fiduciary duty by acting in its own interest rather than for his benefit. For those wondering how the fund switch accomplished that, he claimed that the Committee was focused on "maximiz[ing] growth of the retirement accounts and improv[ing] [its] track record as fund manager," while Plaintiff "was interested in preserving [the] purchasing value of his savings"). And then, since the removed GCC Fund was not a "growing fund," the plaintiff further asserted that his "retirement savings became the casualty of [the Committee's] desire to improve [its] own track record at the expense of Plaintiff's retirement savings in [a] clear breach of fiduciary duty."



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Oh–and as for damages, the participant-plaintiff (who you will recall represented himself at trial) was seeking \$23,803¹ in damages, and also "requests that going forward" the Committee "take [] into consideration [the] impact of [its] actions on individual accounts of Columbia officers."

The Standard(s)

Judge Cronan began his analysis noting that Rule 56 of the Federal Rules of Civil Procedure instructs that a court must "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law"—and that the party making the motion (the movant) bore the initial burden of showing that no genuine factual dispute exists.

Now, for some reason the defendants here hung an argument on 404(c), arguing that it provided a safe harbor for the participant's independent exercise of investment control over his assets-arguing that when he got the notice of the change, refused to move his investments and allowed them to be mapped to the Vanguard Institutional Target Retirement Fund-he exercised control. Judge Cronan wasn't buying that argument, however. Not only because it didn't seem to fit the scenario, but because "the Amended Complaint does not allege that the damages incurred by Plaintiff resulted from the transfer of funds from the GCC Fund to the default account...," but "from the Committee's decision to remove the GCC Fund from the menu of available investment options."

That said, Judge Cronan noted that the plaintiff here "has not alleged facts, or provided evidence, showing that this duty of care was breached." Though he alleged that there was no mention in any of the Committee minutes of the impact that decision might "have on any individual saving account including Plaintiff's saving account," he offered no proof regarding that assertion.

Duty 'Bound'

"More importantly," Judge Cronan wrote, "the Committee has proffered evidence showing that it fulfilled its duty of care when it chose to remove and divest the GCC Fund. In assessing whether to retain the GCC Fund, the Committee discussed the fact that the fund had been added to a 'Watch List' because of its historical underperformance and changed investment philosophy. A Quarterly Investment Review, issued by a consulting firm retained by the Committee, reported that the GCC Fund had underperformed for three quarters of 2018 as well as the prior five years. The Committee also submitted the Declaration of Dan Driscoll, the Vice President and Chief Human Resources Officer at Columbia University, that describes how the Committee arrived at its decision to remove the GCC Fund only after thorough consideration." He then noted that after making that decision, "...the Committee followed all relevant procedures set forth in the Retirement Plan," notified the participants, and gave them time to respond/react. "These undisputed facts show that the Committee acted prudently in evaluating the GCC Fund's performance and deciding that it was not a suitable investment option for the Retirement Plan."

Even if the Committee's actions served to "maximize the growth of the Retirement Plan's investment portfolio," Judge Cronan explained, "So long as a fiduciary makes decisions 'with an eye single to the interests of the participants and beneficiaries,' it will satisfy its duty of loyalty even if its decisions 'incidentally benefit[]' itself, as well.

"Nothing in ERISA or the Retirement Plan required the Committee to make available any fund that a particular participant desired to invest in," Judge Cronan wrote. "To the contrary, the Retirement Plan specifically reserved to the Committee the ability to choose which

investment options are available to participants." Perhaps more to the point, he noted that, "...requiring a fiduciary to include any fund desired by a participant would of course be unworkable and contrary to the duties that ERISA imposes on plan administrators," going on to explain that the only way the Committee could fulfill its obligations under ERISA "... was by prudently maintaining a list of available investment options suitable for the Retirement Plan as a whole." He explained that it would be "...impractical-and extremely costly-for it to offer any fund that a participant wishes to invest in," and that "...while a certain fund may be suitable for one participant, it could be a wholly inadequate investment option for another."

And were that not sufficient, Judge Cronan explained that, "Plaintiff's urging that a duty of loyalty required the Committee to offer him the GCC Fund stands in tension with the Committee's separate duty of care, particularly given the considerable evidence of the GCC Fund's underperformance."

With that, Judge Cronan granted summary judgment in favor of the Columbia University defendants.

What This Means

For those of us familiar with the retirement plan space, the arguments presented by the plaintiff² may seem almost silly—though it's worth remembering that judges aren't always well-versed in the "norms" and particulars of retirement plan administration.

What is worth noting however, is that here the plan committee had what appeared to be a well-run and well-documented process for both the selection and monitoring of plan investments, one that they applied, and that they followed the process and procedures outlined in the plan document. And that made the difference.

- Nevin E. Adams, JD

Footnotes

¹ The court opined that this appeared to be the difference between the price of acquiring the fund in 2017 and the proceeds he received when the GCC Fund was divested in March 2019.

² 2. Setting aside the infamous truism about the man who has himself for a lawyer...

Partial Win for Schlichter Firm in NYU Suit

Schlichter wrests split decision on NYU excessive fee appeal

The plaintiffs in a 403(b) excessive fee suit have persuaded a federal appellate court that (some of) their claims warrant a further consideration.

One of the first of the 403(b) university excessive fee suits, the plaintiffs brought this suit against NYU in its capacity as the fiduciary of plaintiffs' retirement plans (New York University and the NYU School of Medicine), alleging a number of breaches of NYU's fiduciary duties under ERISA. Following a bench trial in the U.S. District Court for the Southern District of New York, which rejected their claims, the plaintiffs-represented by the law firm of Schlichter, Bogard & Denton-appealed.

Specifically, they challenged "(1) the dismissal of their claim that NYU breached its duty of prudence by offering particular share classes of mutual funds in the retirement plans, (2) the denial of leave to amend their complaint to name additional defendants, (3) the striking of their demand for a jury trial, (4) the use of written declarations rather than live examination for direct testimony in the bench trial, (5) some of the district court's findings in NYU's favor after the bench trial, and (6) the denial of their motion for a new trial, which argued that the judge presiding over the trial (Forrest, J.) should have been disqualified."

The Outcome(s)

What they got was a split 2-1 decision (*Sacerdote v. N.Y. Univ.*, 2d Cir., No. 18-2707, 8/16/21) in favor of the plaintiffs on two of the issues, agreeing with the district court on the remainder, and a direction to the lower court to rethink its previous conclusions based on the assessment of the appellate court in an opinion written by Senior Judge John M. Walker Jr., joined by Judge John O. Newman (who joined the panel after the death of Senior Judge Ralph K. Winter in December



2020), with Judge Steven J. Menashi in dissent, supporting the NYU defendants on all issues raised.

That said, perhaps the biggest news from the decision (other than the reviving of the case itself) was the Second Circuit's alignment on an issue now before the U.S. Supreme Court-which party bears the burden of proof that alleged fiduciary breaches were responsible for plan losses. "Although plaintiffs bear the burden of proving a loss, the burden under ERISA shifts to the defendants to disprove any portion of potential damages by showing that the loss was not caused by the breach of fiduciary duty," the court said here-in the process aligning its sense of the law with the First, Fourth, Fifth, and Eighth circuits, a position the majority claimed was "aligned with the Supreme Court's instruction to "look to the law of trusts" for guidance in ERISA cases," citing the Tibble case, as well as LaRue v. DeWolff, Boberg & Assocs., Inc.).

"In sum," the majority concluded, "we hold that plaintiffs adequately pled a breach of the fiduciary duty of prudence in Count V's share-class claim, and we cannot find the district court's dismissal of this claim harmless on the present record. We therefore vacate its dismissal and reinstate the claim for further proceedings.

We also find that the district court erred in denying plaintiffs' motion to amend to name individual Committee members as defendants. We therefore vacate denial of leave to amend and vacate denial of the ensuing Rule 52(b) and 59(e) motions for post-trial findings concerning two of those individuals," sending the case back to the district court for "further proceedings consistent with this opinion."

What This Means

While the result is surely better for plaintiffs than an out-and-out dismissal, a determination that there are triable issues is far from a determination that the allegations made are valid. Consequently, it's by no means certain that the district court's further consideration of the particulars raised here will produce a different result. On the other hand—and this time there will be a different judge, of course—it might.

That said, and despite the final decision of the district court, it's worth recalling—and reminding plan committees—of the harsh criticism of a couple of the committee members by that court—members who the appellate court has approved adding to their complaint—and the essence of that criticism. NNTM

--- Nevin E. Adams, JD

Practice 'Says'

Are your retirement plans ready for a cybersecurity audit?

By Nevin E. Adams, JD



ack in April, the DOL's Employee Benefit Security Administration unveiled a set of "best practices" on cybersecurity practices-and, perhaps more intriguingly-on cybersecurity considerations in hiring providers. Shortly thereafter word emerged that questions about cybersecurity practices and protocols had found their way into DOL auditsall of which seemed to provide some impetus for fitting it into the agenda for quarterly client meetings.

While the Labor Department's publication wasn't exactly guidance, it clearly is an issue of increasing importance to plan sponsors—and the DOL. So, right after the guidance was published we asked NAPA-Net readers if it was on their minds—and committee agendas.

Topic 'Cull'?

A full three-quarters (74%) of the respondents said it would be a topic for their plan committee meetings because it's on their agenda, and another 3% say it's on their plan sponsor clients' agenda. Another 18% noted that while it's not yet on the agenda, it will be later this year. The rest weren't sure.

"We have had issues and it has been part of our reviews at least annually for the past three years," commented one. "Need to know how to implement it, then it can become a reasonable...' how to'... I am assuming mostly on recordkeeper level... but FA supported by discussing it," noted another.

"We are hosted a webinar next week on trends and the ERISA atty wants to discuss this topic since it was just addressed by the DOL so I think it will be a topic for us in 2021 with each Committee," noted one reader, and another commented, "Pretty much the #1 item for discussion."

Committee Focus

We also asked readers what the focus of those committee discussions on cybersecurity would be (more than one response was permitted):

- **76%** General update on cybersecurity issues
- **55%** Discussion about the recent EBSA publication(s)
- **52%** Review of current cybersecurity policies/procedures
- **48%** Recommendation(s) about provider cybersecurity reviews

- **33%** Recent litigation regarding cybersecurity incidents
- **24%** Recommendation(s) about updates/changes to cybersecurity policies
- 12% Discussion/decision regarding change in providers due to cybersecurity concerns

Best Practices—Plans

Now, the Labor Department guidance contained a list of best practices—and we asked readers which, generally speaking, of those cybersecurity measures did the plans they worked with have in place, and they noted (more than one response allowed, of course):

- 61% Use multi-factor authentication to make plan changes
- **58%** Cybersecurity awareness campaigns
- 55% Email alerts/ communications about cybersecurity issues
- **48%** Insist on using provider with an established cybersecurity policy
- 16% Have a written cybersecurity policy

Best Practices— Recordkeepers

The Labor Department also provided a list of cybersecurity practices for recordkeepers—and so we asked readers the status of those, generally speaking, in the recordkeepers with which they worked.

Have a formal, well documented cybersecurity program

69% - Have in place

9% - Not yet, but plan to

3% - Don't have

19% - Don't know

Conduct prudent annual risk assessments

59% - Have in place

12% - Don't yet, but plan to

4% - Don't have

25% - Don't know

Have a reliable annual third party audit of security controls

59% - Have in place

16% - Not yet, but plan to

3% - Don't have

22% - Don't know

Clearly define and assign information security roles and responsibilities

51% - Have in place

10% - Not yet, but plan to

16% - Don't have

23% - Don't know

Have strong access control procedures

71% - Have in place

10% - Not yet, but plan to

6% - Don't have

13% - Don't know

Ensure that any assets or data stored in a cloud or managed by a third party service provider are subject to appropriate security reviews and independent security assessments

60% - Have in place

7% - Not yet, but plan to

3% - Don't have

30% - Don't know

Conduct periodic cybersecurity awareness training

61% - Have in place

13% - Not yet, but plan to

6% - Don't have

19% - Don't know

Implement and manage a secure system development life cycle (SDLC) program

28% - Have in place

0% - Not yet, but plan to

45% - Don't have

0% - Don't know

Have an effective business resiliency program addressing business continuity, disaster recovery, and incident response

60% - Have in place

13% - Not yet, but plan to

0% - Don't have

27% - Don't know

Encrypt sensitive data, stored and in transit

70% - Have in place

10% - Not yet, but plan to

0% - Don't have **20%** - Don't know

.....

Implement strong technical controls in accordance with best security practices

60% - Have in place

17% - Not yet, but plan to 0% - Don't have

23% - Don't know

Appropriately respond to any past cybersecurity incidents

63% - Have in place

3% - Not yet, but plan to

0% - Don't have

34% - Don't know

Reader Comments

And yes, as you would expect on a topic this sensitive and timely, there were reader comments. Here's a sampling:

There is a wide area of gray area of what a best practice is as this has sadly evolved.

What record keeper is going to tell you the truth? I cannot believe that some of them let themselves get sued instead of just making the participant whole.

I know what XYZ has available (which is all of the above), but I don't know what the other recordkeepers have in place... I need to find out!

I don't think most clients know what the status quo is.

Our firm conducts Provider Level Cybersecurity RFIs each year and we maintain Cybersecurity Profiles for all of the providers that service our clients. We update those profiles annually, and ensure sharing them with our clients as an agenda item during Fiduciary Committee Meeting. Profiles and Meeting Minutes documenting the review are provided to clients for their Fiduciary Files.

Waiting for that first big data breach!

Before I put it on the agenda, I'll have to first learn more about what each provider has in place because as soon as I mention the DOL guidance my plan sponsors will ask me about their recordkeeper's controls. Guess I'll be making a spreadsheet...

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

Regulatory Review

Since our last issue, President Biden announced his choice to lead the Employee Benefit Security Administration (EBSA), EBSA dropped off ESG and proxy voting responses at the Office of Management and Budget—a precursor to the release of what is widely expected to be updates on the rules issued by the Trump Administration, and the IRS made what by its own admission were "significant changes and revisions" to the EPCRS correction program.

Since then, however, American Retirement Association CEO and NAPA Executive Director Brian Graff presented compelling testimony before the Senate Finance Committee on "game changing" legislation, NAPA's DC Fly-In Forum brought the usual assortment of key insights—and some breaking news—for delegates, and that's just the start...

A Big Deal

Graff unveils "game-changing" savings projections in Senate hearing

In testimony before the Senate Finance Committee on July 28, Brian Graff, CEO of the American Retirement Association and Executive Director of NAPA, cited projections that enactment of new legislation could create 51 million new individuals saving for retirement and add an additional \$6.2 trillion in retirement savings over a 10-year period.

Graff also noted that the combination of two retirement savings proposals—the Automatic IRA Act and the Encouraging Americans to Save Act—also would greatly benefit the black and Hispanic communities, creating 5.8 million new black retirement savers and 8.4 million new Hispanic savers who earn less than \$100,000 per year.

Ultimately, of course, the emphasis was on expanding coverage and access to workplace retirement programs, with participation boosted by automatic enrollment provisions (both key provisions of the Automatic IRA Act), and the additional incentive and economic benefit of the expanded Saver's Match included in the Encouraging Americans to Save Act.

During his testimony, Graff emphasized that workplace plans are the foundation for a secure retirement, noting that more than 70% of workers earning \$30,000 to \$50,000 will save in a plan when given the opportunity at work, but



fewer than 7% save on their own through an IRA. "In other words, moderate income workers are 12 times more likely to save for their retirement if they have access to some type of payroll deduction retirement savings program through their work," he stated.

Yet despite these positive results, he contended that far too many Americans still lack access to a retirement plan at work, and thus lack an equitable opportunity to achieve a comfortable retirement. To that end, he applauded the work of state and local programs to close the retirement plan coverage gap, but suggested that federal policy would better ensure that the coverage gap can be addressed consistently throughout the country. In this regard, he offered support for the Automatic IRA Act, introduced by Sen. Sheldon Whitehouse (D-RI) and Rep.

Richard Neal (D-MA), chairman of the House Ways and Means Committee.

"We believe the approach in both pieces of legislation could significantly close the current retirement plan coverage gap while imposing practically no burden on employers. This approach leverages existing private sector solutions in the marketplace instead of causing a massive disruption by replacing the entire existing retirement plan system with a government run program," Graff stated.

New Saver's Match

Graff also offered support for the Encouraging Americans to Save Act (EASA), which was reintroduced recently by Sen. Wyden. The bill shares a key provision with the Retirement Security and Savings Act (introduced by Sens. Ben Cardin (D-MD) and Rob Portman (R-OH)) to expand and enhance the existing Saver's Credit. With the increased income thresholds under this legislation, Graff noted, a total of more than 120 million American workers would be eligible for the Saver's Match. This would include millions of new gig workers, as well as government workers like public school teachers, many of whom are not eligible for matching contributions.

Moving the Needle

Wyden appeared to be particularly interested in estimates by the Employee Benefit Research Institute (EBRI) provided by Graff showing that enactment of the ⁶⁶During his testimony, Graff emphasized that workplace plans are the foundation for a secure retirement, noting that more than 70% of workers earning \$30,000 to \$50,000 will save in a plan when given the opportunity at work, but fewer than 7% save on their own through an IRA.

combination of the Automatic IRA Act and the EASA would add an additional \$6.2 trillion in retirement savings over a 10-year period. A separate projection by Judy A. Xanthopoulos, PhD indicated that the combination could create 51 million new individuals saving for retirement.

Graff noted that nearly all (98%) of these 51 million new savers earn less than \$100,000 per year. Moreover, these two retirement savings proposals would greatly benefit the black and Hispanic communities, creating 5.8 million new black retirement savers and 8.4 million new Hispanic savers who earn less than \$100,000 per year.

When asked by Cardin about what policy tools would do the most to help low-wage workers generate retirement savings, Graff reiterated the EBRI data showing that expanding access and auto-enrolling them as much as possible would "move the needle" in terms of getting millions of more people into the system and boost savings at a macro level.

Responding to a question from Sen. John Barrasso (R-WY) about how to encourage more participation in employersponsored retirement plans, Graff suggested that the data is clear. Getting all employers to auto-enroll workers, as well as expanding the small-business start-up credit to cover 100% of the cost of starting a plan and providing additional safe harbors to make plan rules even simpler for small businesses, would go a long way towards increasing participation and closing the coverage gap, he explained. "There's something to be said for

being able to tell a small business that this is effectively free, that it's not going to cost you—the marketing value of that is very meaningful," Graff observed.

Additional Support

In addition to calling for the Senate Finance Committee to approve the Automatic IRA Act and EASA, Graff outlined other legislative items the ARA supports, including:

- Wyden's Retirement Parity for Student Loans Act (S. 1443) to allow plan sponsors to make an employer contribution to the retirement plan account that matches a percentage of an employee's student loan payments;
- the Enhancing Emergency and Retirement Savings Act (S. 1870), sponsored Sens.
 James Lankford (R-OK) and Michael Bennet (D-CO) to allow workers to access money in their retirement plan in case of a personal financial emergency;
- small-employer retirement plan tax credit enhancements included in the SECURE Act 2.0 legislation to increase the existing small-employer retirement plan start-up credit; and
- the Improving Access to Retirement Savings Act (S. 1703), sponsored by Lankford and Sens. Charles Grassley (R-IA) and Maggie Hassan (D-NH), to allow 403(b) plans to join PEPs and to allow employers that wish to join an existing MEP to receive the small-employer plan startup credit.

— Ted Godbout

Insights 'Full'

NAPA DC Fly-In Forum provides insights—and some breaking news

dvisor delegates to the 2021 NAPA DC Virtual Fly-In Forum walked away with plenty of insights and perspectives—and some breaking news—from Capitol Hill.

Cautioning those looking to "game the system," Tim Hauser, Deputy Assistant Secretary for National Office Operations at the Department of Labor's Employee Benefits Security Administration, affirmed July 27 that suggesting investments that could occur after a rollover is tantamount to recommending the rollover, and if it meets the rest of the five-part test will constitute fiduciary advice regardless of how it's phrased.

Hauser also commented that the rejection of the Deseret letter was the Labor Department's attempt to "level the playing field" between advisors outside the plan and plan advisors with regard to rollovers, that a determination of "regular" basis as part of the five-part test isn't a function of frequency, but rather a reasonable expectation of an ongoing relationship, and that a revisit of the fiduciary rule is on the agenda, but it would follow a notice and comment period. He also commented that while the Labor Department wants everyone to be attentive to cybersecurity protocols as a fiduciary responsibility, there's a higher expectation for those "running the systems."

In a separate session, the near-record number of delegates heard from Acting Assistant

Secretary for the DOL's Employee Benefits Security Administration Ali Khawar who outlined the key areas the department is working on, including both cryptocurrency and cybersecurity issues. On the former, while he noted the Department was in the early stages of conversation, he noted that reports about the use of cryptocurrency in 401(k) plan lineups were troubling and that he anticipates future guidance. Khawar also spoke about the department's recent "best practices" guidance in relation to cybersecurity that was divided between participants, plan sponsors and service providers. Noting that these are critically important issues, Khawar explained that the guidance directed at plan sponsors was intended to help them think through the issues they need to pay attention to when selecting and monitoring a service provider with respect to cybersecurity.

Khawar indicated the agency was working toward a goal of issuing rules in September covering both proxy voting and ESG issues, and in mid-August the Employee Benefit Security Administration did, in fact, drop off documents at the Office of Management and Budget (OMB) in response to two Executive Orders from President Biden.

— Ted Godbout

'Engagement' Ring

SEC eyeing new rules on digital engagement practices

The Securities and Exchange Commission has issued a request for information (RFI) on the use of digital engagement practices (DEPs) by broker-dealers and investment advisers with an eye toward future rulemaking.

According to an Aug. 27 announcement, the Commission issued the RFI in part to develop a better understanding of the market practices associated with firms' use of DEPs and their corresponding analytical and technological tools. Notably, the Commission also is hoping to learn what conflicts of interest may arise from optimization practices and whether those optimization practices affect the determination of whether DEPs are making a



recommendation or providing investment advice.

The SEC notes that broker-dealers and investment advisers employ a variety of DEPs when interacting with retail investors through digital platforms (e.g., websites, portals, and applications). The associated tools include behavioral prompts, differential marketing, gamification features and other design elements.

While many of these features encourage users to engage more with a digital platform, investment advisers also use these tools to learn more about their clients, and to develop and provide investment advice based on that information, including through online platforms or as part of more traditional investment advisory services, the announcement explains.

In issuing the RFI, the Commission says that it will be assessing:

- existing oversight of this technology;
- how investment advisers and clients have been affected by the technology;
- potential risks to investment advisers, clients and the markets more generally related to this technology; and
- whether regulatory action may be needed to enhance investor protection while preserving the ability of investors to benefit from investment advisers' use of such technology.

"While new technologies can bring us greater access and product choice, they also raise questions as to whether we as investors are appropriately protected when we trade and get financial advice," SEC Chairman Gary Gensler said in a statement. "In many cases, these features may encourage investors to trade more often, invest in different products, or change their investment strategy."

Gensler contends that predictive analytics and other DEPs often are designed with an optimization function to increase revenues, data collection or customer time spent on the platform, which he notes may lead to conflicts between the platform and investors. "I'm interested in the varied questions included in the Request for Comment, and I'm particularly focused on how we protect investors engaging with technologies that use DEPs," Gensler stated.

The SEC's request also notes that it is intended to provide a forum for market participants, including investors, and other interested parties to share their perspectives on the use of DEPs and the related tools and methods. This includes potential benefits that DEPs provide to retail investors, as well as potential investor protection concerns.

The public comment period will remain open for 30 days following publication of the RFI in the Federal Register. NNIM

THOUGHT-PROVOKING CONTENT

As the economy heats up – and health care concerns linger, the past quarter's content marketing posts focused on the impact of the markets, lifetime income options, participant concerns (and optimism), the value of a health savings account, and the importance of language in conveying complex – and simple – subjects.

We encourage you to check these out at the links below.



AMERICAN CENTURY

What's the "plus" in American Century's new One Choice® Blend+ Portfolios?

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With the passage of the SECURE Act, plan sponsors are seeking income solutions. Income America offers a unique model.

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Participants are more optimistic about saving, risk and the future, according to American Century's ninth annual DC savers survey.

https://bit.ly/NNTMFL21AC3



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https://ad.doubleclick.net/ddm/ clk/502047390;305678434;f



FRANKLIN TEMPLETON

Where is the US economy headed? Find out what to watch for with our current market views and Recession Risk Dashboard.

https://bit.ly/NNTMFL21FRK

Franklin Templeton's "Voice of the American Worker" survey reveals how the concept of retirement is changing today.

https://bit.ly/NNTMFL21FRK2



INVESCO

New study reveals three insights to improve participant communications.

https://bit.ly/NNTMFL21IN

New research reveals even younger participants are focused on retirement income, not just savings.

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Kestra Financial Kornerstone, Inc. Latus Group, Ltd.

Lazard Asset Management

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MPI (Markov Processes International)

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Penn Investment Advisors Pensionmark Financial Group Pension Resource Institute, LLC

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Power of C4 Precept Advisory Group

PriceKuhecka Princeton Financial Consultants

Principal Financial Group

Procyon Partners, LLC

Principled Advisors ProCourse Fiduciary Advisors, LLC

ProNvest Prudential

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and Insurance Services, Inc Raymond James

RBC Wealth Management RBF Capital Management RCM&D

Resources Investment Advisors -

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Responsible Asset Management Retire Ready Solutions

Retirement Clearinghouse, LLC

Retirement Fund Management

Retirement Learning Center Retirement Plan Advisors Ltd.

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RPS Retirement Plan Advisors RPSS

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