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THE GOLDEN AGE OF 401(k)?

RECENT INNOVATION AND LEGISLATION HAVE
MANY WONDERING IF THIS IS (FINALLY) IT

plus

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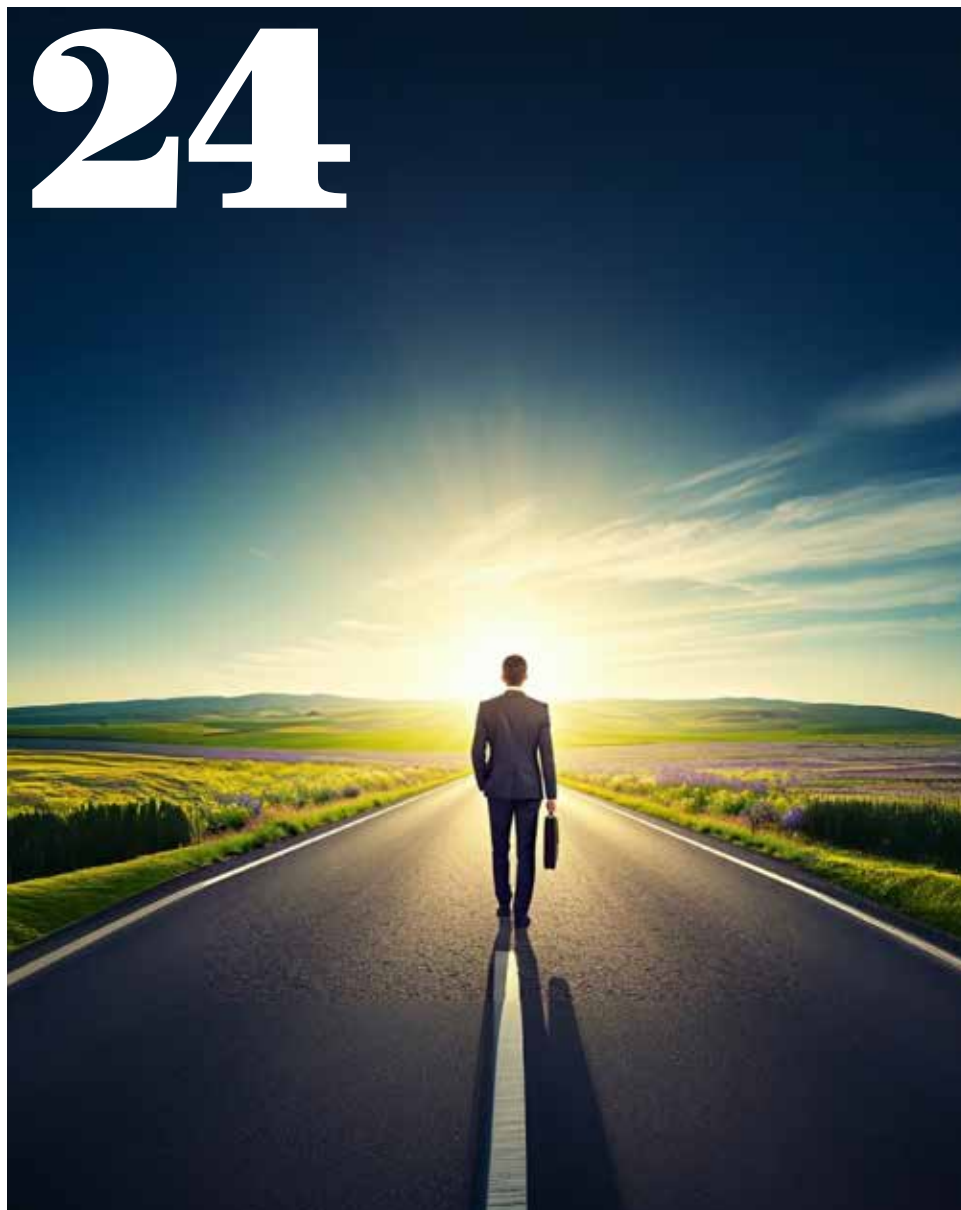
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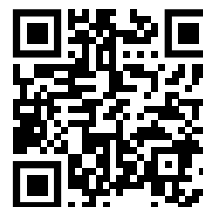
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*Former Chief Content Officer
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Former Chief Content Officer of the American Retirement Association, Nevin now claims to be “retired.” One of the industry’s most prolific writers, during his more than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



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Bonnie Treichel, the Founder of Endeavor Retirement and Endeavor Law, is an ERISA attorney that works with advisors, plan sponsors and others in the retirement plan ecosystem. She is a regular contributor to NAPA’s publications and enjoys working with advisors as a subject matter expert to NAPA and ARA training programs such as the ESG(k) program, 401(k) Rollover Specialist (k)RS™ program, and others to come.



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Who Wants to be a 401(k) Millionaire?

Good news on the retirement savings front has us wondering if a Trumpian-sounding 'Golden Age of 401(k)' is upon us.

It's a cliché title for a cliché topic. Many of my colleagues are rightly skeptical of the quarterly "401(k) millionaire" reports that generate headlines for the nation's largest recordkeepers. They highlight a small (yet successful) subset of the saving population but present a potentially inaccurate retirement plan picture for the country as a whole.

Yet, when combined with other recent news on the retirement savings front, it has us wondering if we've finally broken through and a Trumpian-sounding Golden Age of 401(k) is upon us—or will be soon.

We're feeling optimistic, which is the reason for our cover story.

The consumer press is replete with 401(k) horror stories that typically highlight devastating scams, defined contribution shortcomings, or the impact of [insert natural disaster here] on your lifetime savings.

So, it was a relief to see a recent piece in *The Wall Street Journal* that described the 70% of private sector employers with access to a plan, along with increasing participation rates and decreasing fees.

More small businesses are offering plans due to a "competitive job market, new tax credits, and laws in several states that require many employers to give workers a way to save."

Referencing SECURE 2.0, author Anne Tergesen added, "More Americans are getting swept automatically into 401(k) plans under new federal



requirements. Many plans created since the end of 2022 must automatically enroll workers by depositing 3% to 10% of their pay into an account and increasing their savings rate by 1 percentage point a year until reaching 10% to 15%."

Which brings us to Fidelity Investments. Noting a strong market and an "ongoing commitment to saving," Fidelity's fourth quarter 2024 retirement analysis found that the number of 401(k)-created millionaires has reached "another high."

There was a 27% increase in 401(k)-created millionaires last year, rising to 537,000 from 422,000.

Fidelity credited "starting early and contributing consistently over many years." The average 401(k) millionaire's age is 59 years old, and they apparently have been with the same plan for an average of 26 years.

"Even those who have not been in a plan for that long saw sizeable gains," our own Ted Godbout wrote of the analysis. "For Gen X 15-year savers, they saw an 18% increase from a year ago (\$508,000 vs. \$589,400), while the average balance for Gen Z individuals who have been saving in their 401(k) for five years grew to \$52,900—an increase of 66% over the past year."

And don't forget about the success of plan design. A preview of Vanguard's latest *How America Saves* found:

- 16% of participants increased their payroll deferral percentage during 2024,

and an additional 29% had their deferral percentage increased from an annual automatic escalation.

- More than 6 in 10 Vanguard plans permitting employee-elective deferrals had adopted automatic enrollment.
- 61% of plans with automatic enrollment defaulted their employees into the plan at a rate of 4% or higher—a trend that has increased yearly.
- Moreover, nearly 7 out of 10 plans with automatic enrollment had an annual escalation feature that increased their deferral percentage.

"Previous Vanguard research found that participants enrolled in a plan with automatic enrollment and automatic annual increases, on average, save 20% to 30% more after three years than participants in an automatic enrollment plan that doesn't use automatic annual increases," Godbout wrote of the report.

The design, legislative, and (hopefully) market pieces are in place, pointing to serious traction in coverage and savings in the near future. It's exciting to think about, and something for which you should all feel proud. **NTM**

John Sullivan
Editor-in-Chief

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The gamble: Ex-employees' accounts left behind in retirement plans

Automatic enrollment has dramatically increased U.S. employees' participation in retirement plans. But at a time when most American workers switch employers within four years of starting a new job, auto enrollment has also led to an increase in small-balance accounts left behind.

Therefore, an automatic rollover IRA program makes sense now more than ever. But implementing an effective automatic rollover program requires selecting the right program and the right IRA provider.

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The Professional Retirement Plan Advisor is THE Trusted Advisor

We now see that the direct and indirect pairing of professional RPAs with quality wealth advisors can create a stronger client relationship, but ...

By Keith J. Gredys

At the upcoming NAPA 401(k) Summit in Las Vegas, we will hear from experts, associates, and friends about all things dealing with retirement plans. Among those who speak will also be professionals involved in lifetime income, decumulation strategies, and estate planning.

In my career, our role as professional retirement plan advisors (RPA) has evolved and expanded to include more and more services. As a profession, we have embraced this evolution.

The professional RPA (not to be confused with the occasional RPA) is in the minority compared to the total number of investment advisors, which includes "wealth" advisors.

However, the professional RPA is actually better positioned to be THE Trusted Advisor. Our role in the accumulation stage and the ability to engage with decision-makers, business owners, key employees, and participants puts us in the driver's seat for providing guidance and direction.

My personal experience spans many years, from managing trust organizations and owning a TPA, an actuarial firm, an investment advisory, and a consulting firm. I have been fortunate to have great mentors and long-term clients, which has been financially beneficial and personally rewarding. For example, seeing the evolution of client relationships over many years as THE Trusted Advisor provides valuable insights that can be utilized with other clients.

One example is an engineering firm that started with a basic 401(k) plan. It evolved into adding an ESOP and using the Section 1042 exchange for the company founder. Now, fast forward, and we are training the fourth generation of management as the plan design continues to work and allow for successful succession plans. We have been the constant throughout the many years of changing management.

Another example started with a referral from a CPA to provide a better plan design for a growing community bank. The bank had a SIMPLE plan. We initially established a cross-tested 401(k) plan. They acquired another bank, but before the transaction was finalized, they asked us to review the other bank's benefit programs. We discovered a non-qualified deferred compensation plan that was triggered in case of a sale.

If nothing was done to remove it from the sales agreement, it would have cost our client an extra \$1 million. The bank continued to prosper, so we added a cash balance plan to allow the owners and key management to have much higher employer contributions as part of a longer-term strategy. The next stage was to terminate the cash balance plan as it had served its purpose and establish an ESOP to buy out the bank's founders and family members, many of whom are in key bank roles. That is where we are now.



Keith J. Gredys JD, CPA, AIF®, BCF is Chairman & CEO of The Kidder Company. This is his inaugural column as NAPA's 2024/2025 president.

The successful evolution over the years in these situations, and many others like it, positioned our Kidder organization as THE Trusted Advisor.

Being THE Trusted Advisor allows us to be a starting point for major decisions and the ability to generate ancillary business such as rollover IRAs, non-qualified plan programs, wealth management, and estate planning. If we were not a professional RPA, we would not have the chance to consistently prove ourselves as THE Trusted Advisor. Getting in front of the key players early on is a significant advantage over the "wealth" advisor.

We now see that direct and indirect pairing professional RPAs with quality wealth advisors can create a stronger client relationship. However, my experience indicates that success and growth start with the professional RPA.

That is why the NAPA 401(k) Summit and the various education opportunities, credentials, and designations offered by NAPA are very important in initiating and creating long-term client relationships by differentiating who we are and what we do in helping Americans achieve financial health.

See you all in Las Vegas! **NNM**



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Retirement Plan Lawsuits Should Benefit Retirement Savers, Not the Plaintiffs' Bar

Classifying settlement proceeds as ERISA plan assets will reduce the financial incentive for plaintiffs' attorneys to bring frivolous class action lawsuits.

By Brian H. Graff

Our members are undoubtedly aware that the plaintiffs' bar, in recent years, has flooded federal courts with class action lawsuits against large retirement plan managers hoping to get significant payouts. The numbers are striking:

- About **one-third** of large retirement plans have been sued since 2016;
- **Over 50%** of plans with more than \$1 billion in assets have faced legal claims; and
- In 2023 alone, 42 settlements were reached, totaling **\$353 million**.

These "cookie-cutter" lawsuits claim that retirement plan fees are too high, investment performance is too low, and the standards for judging these plans are often arbitrary or shifting. While some claims may be legitimate, very few are ever fully litigated. Plaintiffs' attorneys know that many of their targets will choose to settle rather than face expensive court battles.

These "cookie-cutter" lawsuits claim that retirement plan fees are too high, investment performance is too low, and the standards for judging these plans are often arbitrary or shifting. While some claims may be legitimate, very few are ever fully litigated. Plaintiffs' attorneys know that many of their targets will choose to settle rather than face expensive court battles.

The Problem

Said more plainly, the current system incentivizes frivolous litigation, something the Trump Administration has signaled it intends to reform and that the American Retirement Association believes will happen.

When a case is settled, a judge must determine how to distribute the proceeds among the plaintiffs' lawyers and the retirement plan participants the lawyers purport to represent.

While some courts use a method based on actual hours worked to determine the lawyers' legal fees (i.e., the lodestar method calculates attorney fees by multiplying the hours worked by a "reasonable" hourly rate), most calculate fees as a percentage of the settlement. The latter incentivizes the plaintiffs' lawyers to push for quick settlements rather than do what is in the best interest of their clients.

As a result, retirement savers get minimal payout compared to their lawyers. On average, actual retirement plan participants receive \$198 per settlement, while the plaintiffs' attorneys rack in most of the proceeds—\$2.25 million per case.

Thankfully, the federal law governing retirement savings can be deployed to even the keel.

The Solution

Settlement proceeds should be classified as plan assets. The Employee Retirement



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

Income Security Act (ERISA) is designed with "an eye single" to protect workers' retirement savings. Congress should use the foundational principles of ERISA to reduce the financial incentives for unnecessary lawsuits while ensuring legitimate concerns are still addressed.

Congress should itself (or direct the Secretary of Labor to) do the following:

1. Classify settlement proceeds as ERISA "plan assets" under ERISA §502;
2. Require these funds to be handled according to strict fiduciary rules; and
3. Limit lawyers' fees to reasonable compensation based on actual work performed (i.e., lodestar method).

Between 2006 and 2017, approximately 428 lawsuits were filed that pertain to 401(k)s, but the number increased exponentially in recent years. Since then, lawsuit filings have increased exponentially, with 200 class action lawsuits filed against 401(k) plans between 2019 and mid-2022 alone. Class action suits have also been brought involving pension plans, and 403(b) plans and lawsuits are regularly threatened and settled before a formal filing.

It means the problem is getting worse, reform is needed, and something we at the ARA support for the benefit of plan participants. As always, we'll keep you posted as events transpire. **NTM**



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Trends ‘Setting’

Does vesting really work? Where does the public stand on its view of Social Security? And what are plan sponsors’ top areas of focus over the next 12 months? We answer these questions and more in this issues’ Trends ‘Setting,’ with a bit of good news thrown in, to boot.

A Vexing Vest

Do 401(k) vesting schedules help with worker retention?

In what may come as a surprise, recent research from Vanguard finds that vesting schedules, which are often used to incentivize greater employee retention, may actually do little to promote retention.

IRS rules require defined contribution plans to immediately vest employer contributions or use a cliff or graded vesting schedule. A cliff vest is a schedule in which employer contributions are vested all at once at a point within three years of a participant’s eligibility. A graded vest is a schedule in which the participant is vested gradually over six years. A plan may also use cliff and graded schedules that are more generous than the minimums.

Vesting and Retention

Vanguard data from 2024 showed that 49% of plans use an immediate vesting schedule, with the rest using either graded or cliff vesting with varying service requirements. The most popular alternatives were a five-year graded schedule with 16% of plans, and a three-year cliff with 9% of plans.

To assess employers’ direct cost savings from forfeitures, the firm analyzed 4.7 million separations across 1,500 Vanguard-administered plans between 2010 and 2022 and found that the cost savings were generally modest.

“Employers who use vesting schedules are often motivated by a desire to retain workers and recoup costs from short-tenured employees,” according to

Vanguard, but “Our research finds that vesting does not provide a systematic retention benefit and recoups a modest 2.5% of employer contributions for the average plan.”

“Forfeitures occur in 30% of job separations, are most common among lower-income participants, and represent 40%, on average, of the affected participants’ final account balances,” the report adds.

Though losing unvested contributions when leaving an employer can damage a worker’s retirement security, “we find that

vesting requirements do not affect workers’ decisions to leave their jobs.”

One potential explanation for the lack of retention effects is that many 401(k) participants may be unaware of vesting requirements. In a recent survey of current participants in Vanguard administered plans, the firm found that only a third (33%) of respondents could correctly state whether their plan has a vesting schedule, the report noted.

To test this, Vanguard examined if workers were more likely to leave their jobs one



month after their vesting date compared to one month before. If vesting works as a retention tool, there ought to be a gap such that workers are less likely to leave immediately before their vest date. Vanguard found that this was not the case.

Vanguard noted that the three-year vesting schedules “are the longest type of cliff schedule permitted under federal law. Therefore, the 0%-to-100% jump in employer contribution ownership at the three-year mark represents the largest one-time ownership grant and the strongest retention incentive across all 401(k) vesting schedules.”

The authors went further and tested workers with different vesting schedules within the same plan and found the same results: vesting schedules did not have a significant effect on retention.

Aaron Goodman, the lead author of the report, and Fiona Greig, the global head of investor research and policy in Vanguard’s Investment Strategy Group, say that “Some plan sponsors who use vesting for retention purposes may find our results informative. And even if vesting doesn’t promote retention, it does help contain costs to a limited extent.”

Benefits of Immediate Vesting

Vanguard argued that an immediate vest can bring benefits to participant and sponsor alike.

From the participant side, an immediate vest can shore up their retirement security, since employer contributions often make up a key component of their total balance.

And from the sponsor side, an immediate vest reduces the administrative cost of tracking employee tenure and implementing a schedule. What’s more, it “could reduce compliance costs by making it easier to obtain safe harbor from annual nondiscrimination testing,” the report further suggested.

— Paul Mulholland



Feeling Secure

Despite challenges, the belief in Social Security is strong.

Social Security is back in the news lately. But really, it never left—after all, the program, its solvency, and its future are perpetual concerns. Industry experts in recent panel discussions offered their perspectives on the program and proposals to bolster its ability to make good on its purpose.

First, the good news.

In a recent National Institute on Retirement Security (NIRS)

webinar “Social Security’s First 90 Years: A History of Bipartisan and Intergenerational Support,” panelists indicated that belief in the program runs deep.

Panelists, who included Tyler Bond, NIRS Research Director and report co-author; Jacob Moore, former NIRS Research Intern and report co-author; and Kathleen Romig, Center on Budget and Policy Priorities Director of Social Security and Disability Policy, discussed a report by the NIRS that drew on 15 different surveys with responses from more than 154,000 respondents during the

period 1978-2023.

They reported that “available polling data suggests that strong majorities hold favorable views of Social Security.” Panelists added that those majorities also believe that Social Security is an important government program – in fact, “perhaps the most important government program.”

But there are some cracks in the veneer.

The belief in the Social Security system the NIRS found may be robust, but that doesn’t translate to an across-the-board expectation that it will generate the intended benefits. The NIRS found that confidence in the system increases with age, and that older generations are more confident in Social Security than their younger counterparts.

AARP research shows similar results, the NIRS panelists added. They cited research by AARP which found that those aged 50-64 were more confident in Social Security than those aged 30-49, and those who were 65 and older were still more confident.

But this is not just a snapshot of current sentiment, the NIRS also reports; rather, it appears to be related to attitudes shifting with age. They say that confidence in Social Security increases as people age; for instance, they report, Baby Boomers expressed less confidence in the program when they were younger, but more as they aged. And the fact that the AARP’s findings concerning confidence were consistent in surveys it conducted in 1995 and 2015 backs NIRS’ contention.

Why is confidence in the system lower than belief in it? Gopi Shah Goda, Director of the Retirement Security Project and the Alice M. Rivlin Chair in Economic Policy and Senior Fellow at the Brookings Institution, during another discussion regarding what’s next for entitlement programs, offers some suggestions regarding why. In that discussion, which was

part of the Brookings Institution’s Feb. 13 webinar “The Outlook for Retirement Security in the New Congress,” Goda outlined four challenges the system faces:

- financial shortfalls;
- rigidity inherent in the program, which creates uncertainty about who is responsible concerning shortfalls;
- significant financial risks the elderly face that Social Security does not account for; and
- despite survivor benefits, there still is poverty among survivors.

Other panelists in the Feb. 13 webinar included Shai Akabas, Executive Director for the Economic Policy Program at the Bipartisan Policy Center; Romina Boccia, Director of Budget and Entitlement Policy at the Cato Institute; and moderator Howard Gleckman, a Senior Fellow at the Urban-Brookings Tax Policy Center.

What to Do

“The challenges before us are substantial,” observed Ben Harris, Vice President and Director of Economic Studies at the Brookings Institution, concerning the Social Security system during the Feb. 13 discussion. Recent retirement plan reforms “show promise,” he continued, but challenges remain.

The solution is not to get rid of the system, said Boccia; rather, she argued, reforming the existing system “makes more sense.” Akabas expressed a similar view, arguing that “the political system allows for modification, not a broad overhaul.”

But how? Panelists in both webinars offered some suggestions.

Boost funding. Social Security is funded by ongoing contributions, NIRS panelists noted in the Feb. 12 webinar. Further, they said, the NIRS has found that sentiment is strong that more needs to be spent on

the Social Security system. They reported that NIRS research found that “solid majorities of Americans” believe more money should be spent on Social Security. And that view holds across income, educational attainment, and political affiliation.

Boccia argued in the webinar the next day, however, that any solution to address problems concerning the funding of the Social Security system “should not look for some ‘free lunch’ to help make the system solvent” and should be funded through dedicated tax flows. She endorsed supporting the system through tax revenue and argued that the Social Security tax should be applied “evenly across the board.”

Indexation. It was a mistake not indexing benefits as longevity increases, said Boccia. “It is one of the simplest changes we can make,” she remarked.

Boost private-sector retirement plan coverage. Boccia said that she supports expanding private saving vehicles. And, she said, automatic plan features “can work really well” in doing that.

Review by a commission. Panelists in the Brookings webinar endorsed the notion of establishing a commission to examine how to bolster the Social Security system.

The Bigger Picture

The bigger question about Social Security, said Boccia, is whether we want Social Security to be an income replacement program or an anti-poverty backstop.

Social Security is not an investment, said NIRS panelists; rather, it is a social insurance program and is “an important component of retirement income for nearly all Americans.” Harris at the Brookings’ event the next day expressed a similar view. Reasonable people may disagree about specific steps, he said, but “we all share the same goal” about building retirement security.

— John Ikel



When Work-based Plans Work

401(k)-created millionaires reach another high.

Still a long way to go with coverage and enrollment, but new of late is encouraging. Buoyed by a strong market and an ongoing commitment to saving, Fidelity Investments' fourth quarter, 2024 retirement analysis found that the number of 401(k)-created millionaires has reached another high.

According to the Q4 2024 analysis, there was a 27% increase in the number of 401(k)-created millionaires in 2024, rising to 537,000 from 422,000. Similarly, IRA-created millionaires increased by 8% to more than 344,000, up from nearly 319,000.

These individuals were able to reach this level of retirement savings by starting early and contributing consistently over many years, Fidelity noted. In fact, the average age of these 401(k) millionaires is 59 years old, and they apparently have been with the same plan for an average of 26 years.

Even those who have not been in a plan for that long saw sizeable gains. For Gen X 15-year savers, they saw an 18% increase from a year ago (\$508,000 vs. \$589,400), while the average balance for Gen Z individuals who have been saving in their 401(k) for five years grew to \$52,900 – an increase of 66% over the past year.

The firm's analysis also revealed that, while the average 401(k) balance dipped slightly in Q4, the average of \$131,700 is the second highest on record and an 11% increase from the start of 2024, surpassed only by the Q3 2024 balance of \$132,300.

Broken down by generation, Boomers had an average

balance of \$249,300, Gen X had \$192,300, Millennials had \$67,300 and Gen Z, many of whom are likely new to the workplace, had \$13,500.

"This year, retirement savers experienced several quarters in a row of upward growth, with account balances making significant gains over the course of 2024," said Sharon Brovelli, president of Workplace Investing at Fidelity Investments. "We are pleased to see so many individuals begin 2025 with a strong financial foundation and the savings behaviors in place that will help them better navigate what may come in the year ahead."

Total 401(k) Savings Rates

Fidelity also found that total average 401(k) savings rates remained steady last quarter at 14.1%, which is up slightly from a year ago (13.9%). Driven by employee and employer 401(k) contributions at 9.4% and 4.7%, respectively, Fidelity notes that this savings rate continues to be very close to its suggested savings rate of 15%.

The firm's data also shows that nearly 40% of retirement savers increased their contribution rate in 2024 – with an average increase of 2.9%. Additionally, nearly 90% of savers overall received a contribution from their employer.

Consequently, annual 401(k) contribution from U.S. workers reached a record \$8,800 by the end of 2024, while the average annual U.S. employer 401(k) contribution reached \$4,770, which is also a record high.

Plan Design

Employers also continued to explore plan design features that can help improve savings efforts. For instance, nearly 4 in 10 plans default auto-enrolled employees at a 5% contribution rate or higher, and the percentage of plans offering a Roth option has increased over 20 percentage

points since the end of 2019. Plans that offer workplace managed accounts also reached nearly 44%, up from 40% in 2022.

Additionally, according to a recent Fidelity survey, nearly 3 out of 10 Fidelity clients indicated they are likely to adopt seven or more optional provisions under the SECURE 2.0 Act – however, more than 60% of clients expect to take more than six months to implement provisions.

The provisions with the most interest included the increased catch-up contribution limit, self-certification for hardship distributions, withdrawals for federally declared disasters and eligible distributions for domestic abuse victims.

Workforce Trends

Fidelity's analysis also spotlighted a shift in how Americans are defining retirement. According to separate research by the firm, 63% of employers report a workforce with at least 30% of employees over the age of 50.

Moreover, 41% of retirees say they are working, have worked, or are currently seeking work. A third (33%) of retirees say they work for mental stimulation.

"Retaining older workers can be a vital part of talent strategies focused on preserving institutional knowledge and ensuring continuity," Fidelity noted in its "Rethinking Retirement" analysis. "However, as the number of older employees increases, many employers might be caught off guard by a surge in retirements, instead of proactively and strategically planning for these transitions."

Fidelity Investments' Q4 2024 401(k) data is based on 26,700 corporate defined contribution plans and 24.5 million participants as of Dec. 31, 2024. These figures include the advisor-sold market but exclude the tax-exempt market.

– Ted Godbout

401(k) Focus

What are plan sponsors top areas of focus over the next 12 months?

Recent research finds that plan sponsors continue to evaluate their investment lineups, with many considering changes such as reducing or removing options, replacing managers or adding options to their core menu.

According to MFS's 2024 DC Plan Sponsor Survey, most plan sponsors say that their top areas of focus over the coming 12 months are reviewing the SECURE 2.0 Act and adopting appropriate provisions (82%), followed by evaluating the investment lineup holistically (57%), and focusing on operational issues (43%).

When asked about access to advisory services, roughly 7 in 10 (69%) plan sponsors reported that they currently offer advisory services, with 61% indicating that all participants are given access to an advisor and 38% reporting that access is provided through a managed account offering. Meanwhile, 5% indicated that they don't offer access, but are planning to in 12-18 months, while 10% said they are considering offering; the remaining 15% said they don't offer and are not considering.

And while most plan sponsors reported that they have evaluated retirement income solutions, the findings revealed what may be considered a lack of enthusiasm. Only 17% of respondents said they were "very" or "extremely" likely to implement a retirement income solution in the next 12 to 18 months. As to the top reasons why sponsors do not intend to implement a retirement income solution, the survey finds they are happy with their current plan design, or there is low participant demand.

"While it's clear that plan sponsors are grappling with concerns about retirement readiness, it's encouraging to see that plan sponsors are



reviewing their investment lineup and making advice more readily available," stated Jeri Savage, Retirement Lead Strategist at MFS. "Plan sponsors who focus on these areas tend to be more confident, our survey found."

Among other key findings from MFS's second annual plan sponsor survey:

Only 18% of plan sponsors are "very" or "extremely" confident that their participants will be able to retire when they want, citing contribution rates as the biggest reason for concern. This is down from 23% in last year's survey.

While 37% of plan sponsors say participant savings rates are a concern, far more cite the changing regulatory and legislative landscape (71%) and litigation risks (49%) as issues that "keep them up at night."

Most plans (53%) continue to

offer stable value funds as their capital preservation option, citing their ability to be used in both the accumulation and decumulation stages.

The survey also identified several steps that plan sponsors can take to boost their confidence. MFS notes, for example, that since participation and deferral rates are major drivers of confidence scores, employers can look to plan design opportunities, such as utilizing auto features, engagement tactics and policies that can help to boost plan usage.

Plan sponsors that make advice broadly available to their participants also tend to be more confident, so considering adding this type of access in 2025 might also make sense, the firm noted.

"The good news is, there are plenty of steps that plan sponsors can take to encourage

better engagement and boost retirement confidence," added Savage. "Plan sponsors understand, though, that any strategy to improve the retirement readiness of participants has to be personalized, customized, and suitable to their plans."

The survey was conducted by DCIA's Retirement Research Center among 166 plan sponsors in the U.S. on behalf of MFS from September to October 2024 (MFS was not identified as the sponsor of the study). Survey respondents included large (overseeing \$1 billion or more), mid-size (\$100 million to \$999 million), and small (less than \$100 million) plans. To qualify, plan sponsors had to offer a 401(k), 403(b), 457 or other DC plan, DB plan or other non-qualified deferred compensation plan.

— Ted Godbout

Your Critical Role in Guiding Employees Through Market Uncertainty

It's time to implement a financial education campaign (if you haven't already).

By Rebecca Hourihan AIF, PPC

Money—it's one of the last great taboos. While society has become more open about topics like mental health, relationships, and burnout, financial discussions remain off-limits in many families.

Yet, when employees don't talk about money, they don't learn about it. And when they don't learn about it, they don't know how to save, invest, or prepare for their financial future. That's where you, the retirement plan expert, come in.

Plan sponsors want their employees to have financial education. They understand that an informed workforce is a more confident and productive one. But let's be real—many employers just don't have the expertise, time, or tools to deliver financial education effectively. That's why they need you. As an advisor, you have the knowledge, credibility, and voice to help employees make informed financial decisions. Now is the time to step up and provide them with the education they need.

Why now?

The stock market is unpredictable—it's been on a rollercoaster ride, and employees feel it. A few years ago, during the great recession, people jokingly called their 401(k)s "201(k)s." While it may have been a jest, it underscored a serious concern: fear. Employees were scared. Many stopped contributing. Some cashed out. Others lost faith in the system altogether.

Fast-forward to today, and while the market continues its ebbs and flows, history still favors long-term, consistent investing. But here's the thing—employees don't instinctively know that. It's up to us to remind them. For workers who still have 10, 20, or 30 years before retirement, staying the course is essential. We need to help them understand concepts like dollar-cost averaging, market cycles, and the power of long-term investing. When participants are nervous, it's a call to action: educate them.

The impact of misinformation

Recently, I've noticed an interesting shift. In everyday conversations about the stock market, people often respond with, "I don't day trade," as if investing means playing the market. The reality is, there's a lot of bad information out there, and unfortunately, it prevents people from making smart financial decisions. This is where you come in. As a trusted advisor, you have the opportunity—and responsibility—to cut through the noise and provide accurate, meaningful guidance. Employees don't need to be day traders to be successful investors; they just need to understand how to make consistent, informed choices for their future.

A sample financial education campaign

Financial education doesn't have to be complex. It just needs

to be intentional. Here's a simple, structured education campaign you can implement to reach employees where they are and provide them with the knowledge they need.

Step 1: Pick a month

Select a month—let's say September—and dedicate it to financial education. Plan a series of touchpoints to reinforce key investing principles.

Step 2: Send three education flyers

Each flyer should focus on a relevant topic:

1. Market peaks and valleys: why market fluctuations are normal and how to stay calm.
2. Best practices for investing: the importance of diversification and asset allocation.
3. Retirement planning fundamentals: how much to save (10-15%), Roth vs. Pre-tax contributions, and how compounding works.

Step 3: Set up a landing page

Create a dedicated webpage that houses all the educational content in one place. It should include:

- Pre-recorded videos explaining key financial topics in easy-to-understand terms.
- Downloadable resources like infographics and FAQs.



- A scheduling link so employees can set up private, one-on-one conversations with you.

Step 4: Promote the campaign

A great campaign is only effective if people know about it! Promote it through multiple channels:

• Email: send at least three emails to employees and plan sponsors, highlighting the campaign and its benefits.

- LinkedIn & Facebook: post about the campaign on social media and engage with followers.
- Company intranet & newsletters: ask plan sponsors to include it in their internal communications.
- Breakroom flyers: if possible, provide printer-friendly materials that can be posted in communal areas.

Step 5: Host a live Q&A session

Offer a live webinar or office hours where employees can ask their most pressing financial

questions. This provides real-time engagement and allows you to address concerns directly, reinforcing your role as a trusted financial resource.

The five benefits to your business

Beyond helping employees, launching a financial education campaign does five important things for your advisory business:

1. Calms employee fears
 - Employees feel more confident in their financial decisions through greater understanding.
2. Strengthens client relationships
 - Plan sponsors clients want employee education—and you're delivering it.
3. Creates cross-sell opportunities
 - If your firm offers wealth management services, these one-on-one sessions can lead to broader financial planning conversations.
4. Builds talking points for prospects & centers of influence

- This gives you something valuable to share with prospects and referral partners, positioning you as a thought leader.

5. Establishes you as the go-to financial expert

- When financial education is needed, plan sponsors and participants will think of you first.

Use education to keep retirement savers calm

Our industry is built to help employees confidently reach retirement. Market fluctuations, economic uncertainty, and financial stress can make employees second-guess their retirement planning. But through proactive education, we can keep them on track.

If you haven't already, now is the time to implement a financial education campaign. Engage your plan sponsor clients, connect with employees, and position yourself as their trusted financial resource.

Thanks for reading & Happy Marketing! NNTM



The AI Adoption Inflection Point - Are Retirement Plan Advisors Ready?

It's time to build your AI framework, explore your options, and embrace the future before it becomes an unavoidable necessity.

By Spencer X Smith

If you're struggling to build an AI framework at your organization, keep it simple and think back to what we all experienced during COVID in 2020.

Back then, because in-person meetings weren't viable, we all were forced to start using Zoom or Teams to do many of our meetings. With many companies that already had an existing Microsoft relationship, Teams was an easy solution. Not only was it already included in your Microsoft subscription,

but because your organization already had a Microsoft relationship, the compliance portion of it was already set.

Much like your data lives in a Microsoft cloud somewhere, these Teams conversations were facilitated through Microsoft's cloud.

For those that went the Zoom route, it was a little bit different. Zoom, most likely, was an altogether new relationship. It required getting your guidelines in place, your errors and omissions policy to cover Zoom

meetings, and most importantly, the trust that you put in Zoom to know that their cloud servers that are running the meetings are trustworthy.

Jumping forward to AI, if you're considering implementing AI at work in your Microsoft organization, it gives the same data assurances on their CoPilot AI tools as they do on everything else that you do with them already.

For others, like ChatGPT, Perplexity, Claude, etc., this is very much a Zoom-like situation,

in the sense we need to build a new relationship with a company.

Either way works great, but I hope this helps you get past the impediments that you may be facing right now.

And here's the bigger picture: while AI adoption may not be forced upon us in the same way as remote work, this moment is just as pivotal. In 2020, organizations had no choice but to move to virtual meetings. The companies that adapted quickly kept their teams connected, their businesses running, and in many cases, gained a competitive edge over those that hesitated.

Now, AI represents a similar inflection point. The difference? This time, you do have a choice—but only for so long. Just as businesses that resisted virtual collaboration eventually had to catch up (or suffered for their reluctance), organizations that delay AI implementation risk falling behind. Not in some distant future. Now.

AI isn't a distant innovation on the horizon; it's already embedded in everyday workflows. Whether it's automating tedious tasks, analyzing vast amounts of data in seconds, or improving customer interactions, AI is here, and it's rapidly changing expectations. Customers, clients, and even employees will come to expect AI-powered efficiencies the same way they expect seamless video calls today.

So, the real question isn't if your organization should integrate AI—it's when. And by the time it feels truly urgent, your competitors may have already lapped you.

The lesson from 2020? Early adoption wasn't just about survival; it was about transformation. AI presents that same opportunity right now. You can either lean in, explore, and build your AI framework today—or wait until circumstances force

your hand. By then, catching up may be far more difficult.

The Competitive Advantage of Early AI Adoption

Organizations that embraced Zoom and Teams early on in 2020 didn't just survive the remote work transition—they thrived. They found new ways to collaborate, innovate, and create efficiencies that persisted long after lockdowns ended.

The same will be true for AI. Companies that embed AI into their processes now will not only streamline operations but also gain significant competitive advantages. AI-powered insights, automation, and enhanced customer experiences will soon be the standard, not the exception.

Take customer service, for example. AI chatbots and virtual assistants are already transforming how companies interact with clients. Businesses leveraging AI-driven customer support systems are reducing response times, improving satisfaction rates, and freeing up human agents for more complex queries. The companies that hesitate? They risk frustrating customers with outdated, inefficient service models.

AI also plays a crucial role in internal efficiencies. From automating data entry to summarizing key business trends, AI can take on tasks that once consumed hours of valuable employee time. Imagine reducing the manual effort required in legal document review, financial forecasting, or even HR recruitment. The productivity gains are staggering—but only if companies are willing to take the leap.

Overcoming AI Hesitation: What's Holding You Back?

Despite the clear advantages, many organizations remain hesitant to integrate AI. The

concerns usually fall into a few key categories:

1. **Data Security and Compliance:** Just like the initial fears around Zoom and remote work security, AI implementation raises valid concerns about data privacy. However, reputable AI providers—especially those within existing tech ecosystems like Microsoft—offer the same security assurances that organizations already trust.
2. **Employee Resistance:** Some employees may fear that AI will replace their jobs. The reality? AI isn't about replacing humans—it's about augmenting their capabilities. Organizations that invest in training and upskilling their workforce to work alongside AI will see the greatest returns.
3. **Lack of Clear Use Cases:** Many leaders hesitate because they don't know where to start. The solution? Begin with small, high-impact AI implementations—like automating repetitive tasks or using AI for data analysis. Once employees see the benefits, broader adoption will follow naturally.

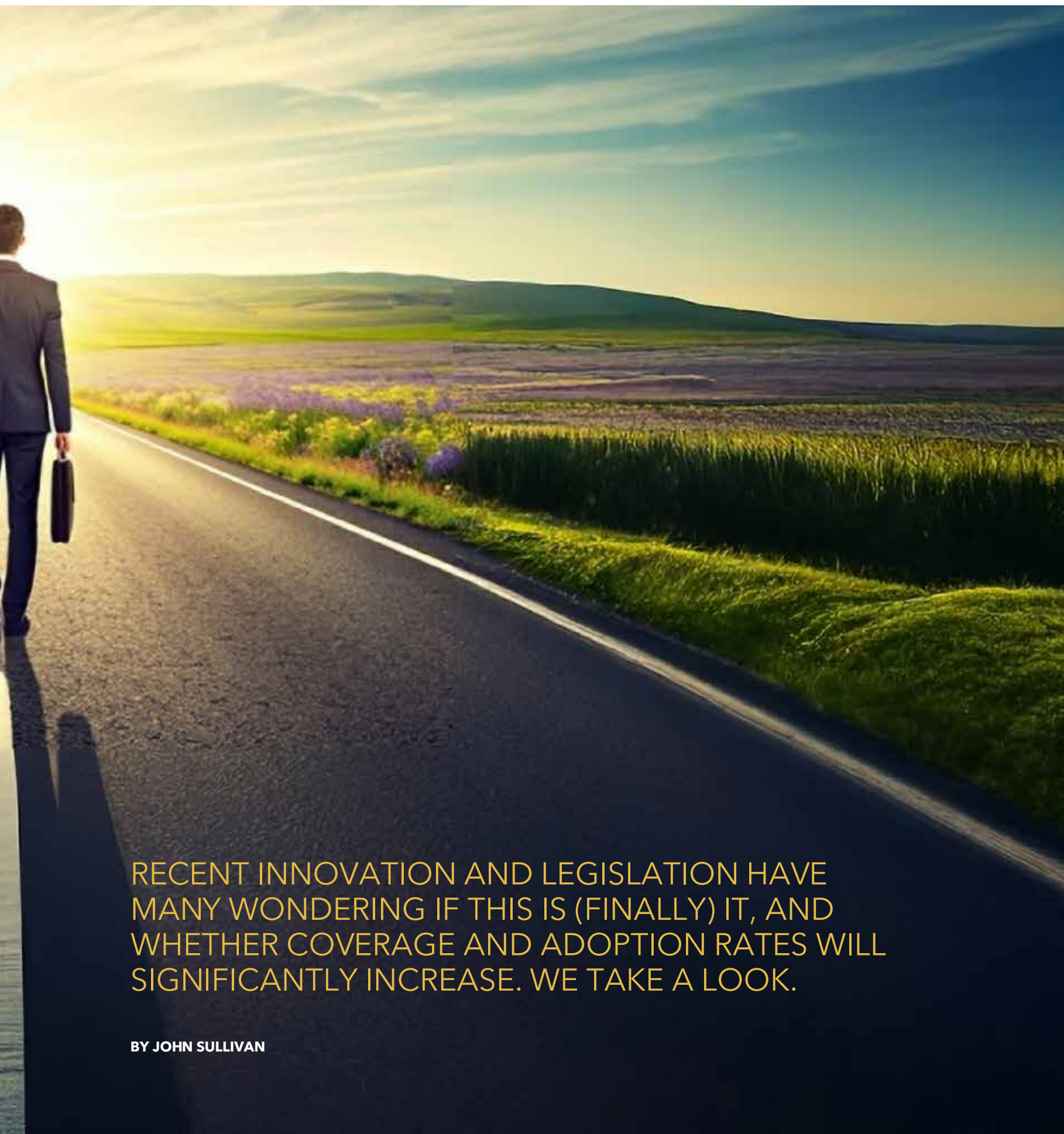
The Future Is AI-Powered: Where Will Your Organization Stand?

The AI revolution is happening now, and organizations that act early will reap the benefits. Much like Zoom and Teams in 2020, AI will become an integral part of how businesses operate. The only question is: Will you be leading the charge or struggling to catch up?

The choice is yours—but waiting isn't a strategy. It's time to build your AI framework, explore your options, and embrace the future before it becomes an unavoidable necessity. **NNTM**

A man in a dark suit is walking away from the camera on a paved road that stretches into the distance. The road is flanked by green grass and wildflowers. In the background, there are rolling hills and a bright sunset or sunrise sky with a golden glow. The overall mood is contemplative and hopeful.

COULD THIS BE THE GOLDEN AGE OF 401(k)?



RECENT INNOVATION AND LEGISLATION HAVE MANY WONDERING IF THIS IS (FINALLY) IT, AND WHETHER COVERAGE AND ADOPTION RATES WILL SIGNIFICANTLY INCREASE. WE TAKE A LOOK.

BY JOHN SULLIVAN

“It’s a Valentine’s miracle! A positive news article about the 401(k) system,” American Retirement Association CEO Brian Graff enthusiastically—if somewhat sarcastically—wrote on LinkedIn in February.

The occasion for the post was a piece by *The Wall Street Journal*’s Anne Tergesen, titled “The 401(k) Has Reached a Tipping Point in Its Takeover of American Retirement,” in which she noted that half of private-sector workers are now saving in 401(k)s.

Advisors are acutely aware the consumer press rarely compliments defined contribution plans, preferring clickbaity articles designed to scare savers or nostalgic narratives about how once prevalent defined benefit pensions provided retirement paradise for all, something plan professionals know is blatantly false.

It’s something Graff and other private retirement system advocates—like the American Enterprise Institute’s Andrew Biggs and the Investment Company Institute’s Peter Brady—exhaustively counter.

So Tergesen’s description of increasing coverage rates, state auto-IRAs, more small plan participation, lower costs, and employer matches was a refreshing change from recent sensationalism, and quite clearly made the case that 401(k)s—and the private system as a whole—work.

It isn’t to say it’s perfect and improvements aren’t necessary, but innovation (auto-enrollment, escalation, portability) and legislation (SECURE 1.0 and 2.0) are helping immensely in the fight to ensure a secure retirement for all working Americans, and the reason for the tipping point Tergesen described.

“In all seriousness, this is great news that real progress is being made...but we all know there is still more work to be done,” Graff added in his post.

Combined with SECURE 2.0’s mandatory auto-enrollment provision, which goes into effect this year, the upcoming Saver’s Match, and growing success at the state level, many within the industry wonder if this is (finally) what’s needed to significantly increase retirement plan coverage and adoption rates.

We engaged with several high-profile advisors and industry leaders for their take, those in the trenches daily and closest to plan sponsors and participants. Most were cautiously optimistic about where we are and where we are going, and proud of just how far we’ve come. The pieces have all fallen into place, it’s now time to execute. Here’s what they had to say.



JEANNE SUTTON
Strategic Retirement Partners

Jeanne Sutton, Strategic Retirement Partners

One cannot overstate the significant improvements seen by the industry in the last few years. Access has expanded with state-run programs, and businesses and individuals are more incentivized than ever to participate.

Costs are trending downward, and specialty consultants are providing the forward-thinking advice plan sponsors need to simplify administration and reduce fiduciary liability. Custom investment strategies and easy-to-use planning tools are encouraging better participant outcomes.

Additionally, interesting add-on features like emergency savings and student loan match demonstrate the industry’s willingness to evolve to modern financial needs. You could reasonably argue it is the golden age.

But that’s not enough for this #401klady. I want platinum, and I think it’s totally attainable.

What do we need? Automatic enrollment and escalation for everyone. After all, half of Americans have no retirement savings at all.

SECURE 2.0 has taken steps to address that with new plans and better incentives for small businesses, but it’s estimated that 30% of existing plans don’t have automatic enrollment.

We also need better, cost-efficient options for gig workers. The sky’s the limit with AI and the ability to truly customize investment solutions for each individual’s situation. Not to mention, I’m a big believer in guaranteed retirement income for those who want it. We’ve just started scratching the surface with this one!

The greatest risk of our industry (finally) seeing some positive feedback is the satisfaction of a job well done. For many of us, this “job” is nowhere near done.



RENEE SCHERZER
OneDigital (and NAPA's
Immediate Past President)

Renee Scherzer, OneDigital (and NAPA's Immediate Past President)

The recent strides in 401(k) accessibility, cost efficiency, and employer participation—combined with the impact of SECURE 2.0's auto-enrollment and the upcoming Saver's Match in 2027—mark a pivotal moment for retirement savings.

With increasing adoption and enhanced benefits, it's fair to say we very well may be entering a golden era for the 401(k).

However, administrative complexities, compliance burdens and education needs for both plan sponsors and eligible employees could pose challenges for some employers and plans, particularly smaller businesses, or those with certain employee demographics or lean internal support teams.

Along with selecting the right platform partners, our role as fiduciary advisors is essential to ensuring smooth implementation, compliance support, and sustained participation—all of which are critical to the long-term success of these initiatives.

Stephen Popper, SageView Advisory Group

Concerning the conversation around whether this is the Golden Age of 401(k), it is an important one—especially considering the evolution of our industry over the last two decades.

What was once largely a transactional business, driven by product sales and opaque fee structures, has undergone a significant shift toward strategic, transparent, and value-driven advisory services.

As fiduciary advisors, we've worked hard to align our compensation models with the best interests of plan sponsors and participants. The move toward fixed fees plus basis points and project-based pricing is a direct response to the increasing expectations of fiduciaries who take their role seriously.

Rather than commissions or revenue-sharing arrangements that once dominated the industry, today's advisors must demonstrate clear, measurable value on an annual basis.

With greater scrutiny from plan sponsors, regulators, and participants, advisors are no longer just facilitators of fund menus. We are now strategic partners, helping organizations navigate:

- Fee benchmarking and cost transparency to ensure every dollar spent is justified.
- Investment due diligence and governance to keep plan fiduciaries compliant and accountable.
- Plan design enhancements, such as optimizing auto-enrollment, employer match structures, and participant engagement strategies.
- Recordkeeper oversight and vendor negotiations to drive better service levels and lower costs.
- Compensation definitions to M&A and beyond as we serve as the first line of defense as ERISA consultants before getting a final blessing from counsel.
- Employee stresses and strains by offering financial coaching to make them feel better about their financial lives.

And fortunately for us, Brian Graff, the ARA, and NAPA have been key to making this happen. We see it with the CARES Act, SECURE and now SECURE 2.0, which accelerated this shift, requiring plan sponsors to take a more active role in plan governance and participant outcomes. The industry's ability to step up—by providing data-driven insights, fiduciary risk mitigation, and improved participant outcomes—is exactly what makes this moment so impactful.

While increasing 401(k) coverage rates and participation are major wins, thanks to the promotion of state sponsored options, the true test of a Golden Age isn't just adoption but sustainability. The best advisors aren't just selling solutions; they are constantly proving their worth through better plan outcomes, cost efficiencies, and risk reduction.

- The shift from sales-driven to value-driven advisory services has placed a well-earned responsibility on today's retirement consultants to justify our value every year—not just at contract renewal.
- Operating with full independence and ensuring conflicts of interest don't compromise fiduciary oversight.
- Help plan sponsors fulfill their fiduciary obligations, and not just meet minimum compliance requirements.

If this is indeed the Golden Age of 401(k), it's because the industry has worked hard to get here—evolving from a product-driven model to a fiduciary-first, strategic advisory approach.

Those who embrace this responsibility will shape the future of retirement security for millions of Americans.



STEPHEN POPPER
SageView Advisory Group



ALICIA MALCOLM
UBS Financial Services

Alicia Malcolm, UBS Financial Services

For those of us working with retirement plans for many years, and for those plan sponsors that have had employer sponsored retirement plans for many years, there has never been any question as to whether retirement plans are a great mechanism for working Americans to save.

When you then take into account auto tools (automatic enrollment, re-enrollment, automatic increase, etc.) and the employer match, retirement plans become an excellent way for people to build wealth.

But retirement plans can be expensive, especially in the smaller plan market. They typically receive less service, there are administrative obligations, and quite frankly, they likely felt more like a liability than a benefit.

With some of the recent legislation changes that have taken place, such as offering a tax credit to plan sponsors to start retirement plans, the mandatory rules to offer a retirement plan with automatic enrollment through SECURE Act 2.0, or state retirement plans, we are finally beginning to see coverage gaps narrow.

I am not sure we are at a point to break out the champagne and say, "we did it!" but I do think a high-five or pat on the back is warranted. There is still a lot of work left to do, but I think for the first time in a long time, we are starting to move the needle, particularly with those employers that never offered plans.

For many years, while we saw participation rates, average deferral rates, and income replacement ratios improve within plans, we weren't seeing the coverage improve. We are finally starting to see that coverage gap improve, and positive press (FINALLY!) is warranted. While there is still work left to do, we should appreciate the milestones along the way.



BARBARA DELANEY
Retirement Plan Advisor

Barbara Delaney, Retirement Plan Advisor

After 30 years the 401(k) industry is now considered mature. It is now the primary vehicle for saving for retirement for the vast majority of Americans. Unfortunately, there are still almost 40% of plan sponsors that do not offer some kind of retirement Plan.

I will add that the press and media do overlook the fact that we do have a built-in program through Social Security.

The Golden Age of 401(k) is truly upon us and we have clear evidence of true success. With automatic features such as enrollment and annual increases, most plans have over 90% enrollment rates with over 7% contribution rates and climbing. The younger generations have really embraced this. We see their enthusiasm as they watch their accounts grow. Fees have lowered dramatically, almost to the point we are in a race to zero (but that's a different story).

The question is—in this new era of tax credits for the start-ups and the increase in pooled employer plans (PEP) and multiple employer plans (MEP)—if we'll we start to see an increase in adoption.

When asking the average person if they want to save, the answer is a resounding yes. It has been proven that payroll deduction works, but we now face the challenge in adoption. I firmly believe we will get there; the question is how fast it will take.

As we settle into a new administration, I believe it will take three to five years. Perhaps if we look at more simplified rules—such as no testing and simplified filing and limited plan features—it would help. Ultimately, I think The Golden Age is upon us, and I have never been more excited about the future.



JANINE MOORE
HUB Retirement and
Wealth Management

Janine Moore, HUB Retirement and Wealth Management

I sincerely love all the SECURE 1.0 and 2.0 changes that have been made to enhance retirement plans and reduce the barrier to entry.

Right now, the American public is facing a wave of uncertainty as we deal with inflation, geopolitical risks, and potential unemployment spikes.

I think it is too soon to tell if adoption rates will increase, but I remain hopeful, especially as we are seeing a huge interest from smaller employers in starting up new plans.

Brent Sheppard, Cadence Financial Management

Since SECURE 2.0 passed, we have worked with several businesses that started new 401(k) plans. Almost all the companies have elected to begin auto features before 2025 so that they don't have to make an abrupt change after starting their new plans.

A significant amount of interest has been in the response to state plans. These businesses didn't have a 401(k) plan on their agenda until the state programs began (particularly for us in New Jersey) but are now exploring their options.

Regarding our state's plan, RetireReadyNJ, we will see how things play out for the remainder of the year.

However, it's been interesting to watch the employer's response. As someone embedded in the industry, and an advocate for all of the benefits of 401(k) plans, I think employers would just opt for a 401(k) plan quickly.

Many have taken their time to explore their options.

Regardless of the decision an employer makes to either offer their own 401(k) or stay with their state option, the awareness is higher than ever, which must be a result of the mix of state plans and SECURE 2.0 incentives.

It's wonderful to watch adoption grow. Companies that started plans with auto features over the last few years are all above 80% participation.



SCOTT COLANGELO
Prime Capital Financial

Scott Colangelo, Prime Capital Financial

I do believe the golden age of 401(k) plans are upon us. While we spend significant time criticizing our government, I do think it is fair to say the regulatory changes concerning retirement plans have been on point from the Pension Protection Act to the 408(b)(2) disclosure rules, Qualified Default Investment Alternative (QDIA) enhancements, to continued enhancements in plan design.

All of these led to lower fees for participants, better participation rates, higher deferral rates, and reasonable "do-it-for-me" strategies to help solve for significant underperformance.

Now with the new auto enrollment provision coming into effect thanks to SECURE 2.0, and the addition of the Savers match, plan metrics are set to only improve even more. SECURE 2.0 also has allowed plan sponsors and consultants to close the loop (with auto-enrollment getting participants in, auto-escalate getting them to save enough, and QDIA to allow for better returns) in providing the fourth and much needed guarantee income products to provide a pension-like solution for participants to be able to plan better.

All-in-all, it feels good to look back to see the impressive impact previous changes had, and to look forward with excitement to seeing our industry metrics only improve that much more.

Add in the ability to use guaranteed income to remove considerable uncertainty and stress for participants, and I'd say our industry is in the best shape it's ever been in. Now let's go tackle the holistic financial wellness topic. [NNTM](#)



BRENT SHEPPARD
Cadence Financial Management





CRYPTO CONFUSED!

When Will It Appear as a 401(k) Option?

CRYPTOCURRENCY FACES A COMPLEX ROAD AHEAD TO GAIN 401(K) PLAN ADOPTION. WHERE IS IT NOW? WHERE IS IT HEADED, AND WILL A NEW ADMINISTRATION HAVE AN IMPACT ON ITS USE?

BY JUDY WARD

CAPTRUST doesn't currently have any defined contribution plan clients utilizing a cryptocurrency-focused option on their core investment menu. That's not surprising, since the prevailing 2022 U.S. Department of Labor (DOL) guidance expresses serious concerns about doing that.

But the regulatory picture is evolving.

In January 2024, the U.S. Securities and Exchange Commission (SEC) [approved](#) 11 spot Bitcoin ETFs (exchange traded funds), from providers including BlackRock, Fidelity, and Invesco. And the second Trump administration seems likely to issue DOL guidance that sets a different tone about the use of cryptocurrency in 401(k) plans.

"The way we've been thinking about the progression of cryptocurrency is that, pre- crypto ETFs, we looked at cryptocurrency's quality as an investment and said, 'These are not a fiduciary-quality asset.' At that point, there was kind of an easy answer for that,'" said Mike Vogelzang, Boston-based managing director and chief investment officer at CAPTRUST. "But it is really now morphing, and we are beginning to dig in and ask: Where

does this fit? Now we are starting to look at, among the range of broad global asset choices, what do we need to be ready to do?"

CAPTRUST has noticed endowments and foundations cautiously beginning to make an allocation into cryptocurrency-focused investments, generally less than 1% of the portfolio so far. Among institutional investors, that's where Vogelzang expects to start seeing some momentum build.



"So, from a fiduciary advisor perspective, we are starting to say, there is at least an argument to be made for an allocation to cryptocurrency, and a tiny fraction of a percent might not be 'un-fiduciary,'" he said.

If endowments and foundations start getting good results, he thinks, some defined benefit plan fiduciaries will begin getting onboard with a small cryptocurrency allocation.

"From there, it's only a hop, skip, and jump into the defined contribution plan world," Vogelzang added. "That is the sort of general buzz that is going around. But it is definitely the bleeding edge for now."

THE MARKETPLACE OUTLOOK

Investment in crypto assets and their derivatives has been minimal, relative to the overall market for 401(k) plans, according to a report (GAO-25-106161) published in November 2024 by the GAO (U.S. Government Accountability Office). The penetration has been essentially nonexistent in defined contribution plans so far, agreed Matt Apkarian, associate director, product development at Boston-based Cerulli Associates.

Asked why, he said there's still major debate and concern over how ERISA's rules—particularly the prudent person rule—would apply to the fiduciary decision to include a cryptocurrency investment on a participant-directed plan's menu.

Of course, crypto's made more progress on the retail side. About 13% of retail investors said they invest in cryptocurrency, according to a Cerulli survey, and 15% of financial advisors said they are discussing the possibility with some clients. But fewer than 3% of advisors said they actually have recommended cryptocurrency investments to clients.

Notably, 18% of endowments and foundations surveyed told Cerulli that they currently incorporate cryptocurrency-focused investments. Mostly this investment is via very small allocations—1% of the portfolio or less—made by the endowments and foundations, Apkarian said. These investment funds have a very long time horizon and can more patiently

withstand considerable volatility.

Where endowments and foundations have invested more directly in cryptocurrency, it's generally been in the SEC-approved Bitcoin ETFs, Apkarian said. But often, endowments and foundations have not made a direct allocation to cryptocurrency.

Instead, they're investing in the stock of public companies with strong ties to cryptocurrency as a core part of their business model, such as a cryptocurrency exchange platform like Coinbase or a digital asset mining company like Hut 8.

The intensity of the push to put digital assets into the defined contribution plan environment will be directly related to the price of Bitcoin in the next several years, Vogelzang anticipates. At the time of this writing, it was valued at slightly more than \$100,000.

"You will see additional pressure from participants put on sponsors to add crypto if Bitcoin goes to \$200,000 in the next few years," Vogelzang said. "And if endowments and foundations allocate ½% or 1% of their portfolio to digital assets and have success with it, the feedback loop becomes almost impossible to ignore. For plan sponsors, that's where the pressure will come."

But for defined contribution plan sponsors and their advisors, cryptocurrency investments have some major challenges. For one thing, there's no underlying product, service, or natural resource for a fiduciary advisor to analyze, Vogelzang agreed.

"When the cryptocurrency 'true believers' are pressed to the wall on that point, they'll talk about the blockchain technology used with cryptocurrency," Vogelzang added. "But that's a separate issue. With cryptocurrency, the value is based only on what the market says the value is."

For now, the closest thing to a traditional 401(k)-style investment is the SEC-approved Bitcoin ETFs. It's likely that in the next several years, mutual funds focused on the cryptocurrency sector will get introduced, said Peter Ruffel, manager, defined contribution at CAPTRUST in Raleigh, North Carolina.

So, the logistics of investment-product availability aren't likely to be

the biggest hurdle for plan fiduciaries, he thinks. Instead, he pointed to plan governance as a bigger issue: Most plan fiduciaries would have a serious concern about putting an investment in their plan that currently lacks a robust analytical framework to gauge its suitability.

OneDigital Financial Services does not have any defined contribution plan sponsors offering a cryptocurrency-focused investment on their core menu, and does not anticipate allowing that anytime in the near future, said Michael Esselman, Sandy, Utah-based interim chief investment officer. He and his colleagues spend a lot of time analyzing investments and following a due-diligence process.

The retirement plan industry has not yet developed a way of doing a robust due-diligence process for cryptocurrency investments, and that concerns him and his colleagues. A few years ago, some in the industry likely considered trying to develop such a process.

But once the DOL issued its 2022 guidance expressing serious concerns about the incorporation of cryptocurrency, he said, any thought of putting the considerable time and resources necessary into developing a fiduciary-worthy analytical framework for it went out the window.

When he thinks about plan sponsors and fiduciary risk, and about what's best for participants, Esselman goes back to the beliefs of Benjamin Graham, who was known as the father of value investing and who authored the seminal investing book *The Intelligent Investor*.

Graham stressed that individual investors should act with a long-term perspective, not as a short-term speculator, and should make rational decisions based on investment analytics.

"Putting money into cryptocurrency is about speculation: Let's call it what it is," Esselman said.

OneDigital believes that defined contribution plan money should go into investments focused on what he calls "natural assets," meaning that these assets naturally generate income for investors: Stocks pay dividends, bonds pay interest, and assets like real estate generate ongoing income.

"If you look at crypto, the only way you can win currently, today, is if somebody is willing to buy it from you for a higher price than you paid. When you buy cryptocurrency, you are investing in the belief that other people believe that cryptocurrency has value."

It's not that speculation isn't useful in some investment scenarios, Esselman added. But he does not believe that it should currently play a role inside a defined contribution plan, when many participants are relying on their account for their retirement nest egg.

For plan sponsors interested in incorporating cryptocurrency on the menu, Ruffel also sees significant challenges with participant education. Like many, he's read articles about retail investors who've taken out multiple loans or lines of credit to buy digital assets.

He worries that some defined contribution plan participants would have that same mindset, and invest their account balance into cryptocurrency investments (if the sponsor hasn't set investment limits), downplaying the extreme volatility these investments can have.

"That amount of volatility could be the difference between someone retiring comfortably and on time, versus having to work for several more years," Ruffel said.

Added Vogelzang, "There will be people who lose the life savings they have in their 401(k) if this is allowed to happen in an unchecked way."

In the years ahead, attorney Andrew Oringer anticipates a sort of push-and-pull between fiduciaries' understandable caution and participants' growing cryptocurrency enthusiasm. In this participant-directed world of 401(k)s, a lot of young people are not as scared of cryptocurrency as older people, said Oringer, New York-based partner and general counsel at The Wagner Law Group. Many younger people feel excited about cryptocurrency and have tracked its rise.

"For certain people, the idea of investing in cryptocurrency is fun. And the issue is that ERISA is not really consistent with that: ERISA doesn't really want you to have fun with your retirement plan investments," Oringer



said. "But there are going to be participants in their twenties saying, 'Let me in, let me in.' It's hard for me to believe that every plan fiduciary's response will be, 'No, let's wait two or three decades.'"

And in the future, he added, at least a few of those younger participants who wanted into cryptocurrency likely will end up being plan fiduciaries helping make investment-menu decisions.

THE REGULATORY OUTLOOK

Cryptocurrency investments aren't yet regulated as much as mutual funds, which likely gives a lot of plan fiduciaries pause. In attorney Bonnie Treichel's experience, plan fiduciaries generally seek to avoid litigation. Plan fiduciaries usually don't want to be the first to try something new, and they don't like less-regulated investment options, said Treichel, Kansas City-based founder and chief solutions officer at plan governance consultancy Endeavor Retirement.

She recalled the recent path of collective investment trusts (CITs), which built momentum over time before becoming a mainstream defined contribution plan menu offering. For

years, many plan fiduciaries didn't like CITs because they didn't have the same regulatory structure as mutual funds and were deemed to be less regulated, with less disclosure, she said. That's how many plan fiduciaries may feel about cryptocurrency now, she added.

As President Trump and his administration make their initial moves, there's widespread speculation that the SEC could shift its approach to cryptocurrency. SEC Chair Gary Gensler, who clashed with the crypto industry, resigned as Trump took office in January.

During the second Trump administration, Esselman expects to see clarity around these fundamental questions: Should cryptocurrency be regulated? And if so, by who? He's not anticipating regulations or guidance from a federal agency that openly encourage retirement plan fiduciaries to utilize crypto investments.

"I think that what the new administration is going to do is bring clarity to either the regulation or the non-regulation of the crypto space," Esselman said. "There will be some clarity around regulation for the retail investor market, but that does not mean

“The current guidance seems like there is a ‘target’ on the back of crypto in retirement plans, and I anticipate the Trump administration’s DOL will want to take that target off its back, so plan fiduciaries feel more comfortable with the inclusion of crypto.”

that it will make sense in the defined contribution plan world. Down the road, maybe one day it will make sense. But we do not see that happening anytime in the next two or three years. Putting cryptocurrency investments into defined contribution plans is still many years away, if it will be done at all.”

The GAO’s November 2024 report reiterated the agency’s recommendation from a June 2023 report (GAO-23-105346) that Congress should consider legislation to fill federal regulatory gaps over crypto assets. Legislation has been introduced, but no bill had become law at press time.

Enacting federal legislation to establish a regulatory framework for cryptocurrency, perhaps in hopes of spurring additional growth in crypto investing, seems like a much tougher hurdle to clear than issuing additional regulatory guidance. Despite the Trump administration’s pro-crypto agenda, many others have voiced concerns about issues such as cybersecurity risks for cryptocurrency investors, Treichel said.

The DOL likely will come out with additional statements and guidance as a follow-up to its 2022 Compliance Assistance Release (2022-01), Treichel said. The 2022 guidance advised plan fiduciaries to use “extreme care” before they consider adding a cryptocurrency option to a 401(k) plan’s menu, and she thinks that type of language probably will be toned down in new guidance.

“The current guidance seems like there is a ‘target’ on the back of crypto in retirement plans, and I anticipate the Trump administration’s DOL will want to take that target off its back, so plan fiduciaries feel more comfortable with the inclusion of crypto,” Treichel said.

The 2022 guidance had a chilling effect on plan fiduciaries’ willingness to seriously consider the use of cryptocurrency investments in defined contribution plans, Oringer recalled.

That guidance had a tone that effectively communicated, “Be careful, this is dangerous,” he said. At that point, the defined contribution plan marketplace generally took the DOL’s guidance to heart and opted not “to poke the bear” over adding cryptocurrency to a plan menu, he added.

“I would not be surprised if we get a tonal shift in cryptocurrency guidance from the Trump administration,” Oringer continued.

The 2022 guidance highlighted that the history of cryptocurrencies was at an early stage. With several years of crypto investing experience since then, he said, the Trump administration may see investing in cryptocurrency as a more tried-and-true strategy.

“I would not be surprised if there were some measures of encouragement for putting cryptocurrency into 401(k) plans,” he added.

However, Oringer does not expect the DOL to issue a safe harbor for adding cryptocurrency investment options to a plan menu. ERISA doesn’t really work that way, to encourage the use of specific types of investments, he said.

ERISA essentially leaves it to the discretion of a plan’s fiduciaries to make those decisions, using their best judgment about what makes sense for that plan’s participants. The QDIA (qualified default investment alternative) guidance issued in 2007 is an exception to that rule of thumb rather than a norm, he added.

“That’s really an outlier,” Oringer said of the QDIA guidance. “Generally the DOL, with the way ERISA is written, doesn’t do investment-specific guidance. And even if it were to do that, the last place that I would expect them to do that is with something as aggressive as cryptocurrency.”

In the nearer term, Cerulli’s Apkarian sees a stronger case for cryptocurrency-focused investments being used as a piece of a mutual fund allocation within a plan’s investment lineup, rather than incorporating a stand-alone cryptocurrency-focused ETF or mutual fund option.

There are already some mutual funds allocating 1% to 2% of their portfolio to cryptocurrency-focused investments, but professional investment managers are making all the portfolio decisions.

It’s going to be more challenging for plan fiduciaries to justify the prudence of including a cryptocurrency-focused investment as a stand-alone core menu option for participants to choose, he said.

“Super long term, I do see cryptocurrency creeping in as a legitimate investment alternative, both as a stand-alone investment option and as part of a diversified mutual fund’s portfolio,” Oringer concluded. “I still think that this is a long-term push. My best guess is that we’ll see some softening on guidance over the next several years, and people trying to find legislative and regulatory ways to work cryptocurrency into plans. The endgame is that it starts to become just another investment to enhance returns.” **NTM**

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



SUNNY

WITH A (GREAT) CHANCE OF RETIREMENT SAVINGS

DESPITE A REPUTATION FOR FINANCIAL DOOM AND GLOOM, OR AT LEAST YOUTHFUL CYNICISM, THE LONG-RANGE SAVINGS FORECAST FOR GEN Z IS SURPRISINGLY OPTIMISTIC.

BY JOHN IEKEL

It's common, and probably always has been, for more established generations to express doom and gloom about those who follow them. But recent evidence suggests that rather than foreboding, the appropriate sentiment from rising generations is optimism—at least regarding saving and preparing for retirement.

Younger members of the workforce, particularly Gen Z (generally defined as those born between 1996 and 2010), grapple with a variety of financial challenges.

Like all generations, they face inflation and market fluctuation. But they do so as they adjust to covering the expenses that come with adulthood while embarking on life after they finish their education while earning less than people in the workforce for longer. If we add in a dash of student loan debt for good measure, it's a recipe for tight budgeting and little interest in somehow saving for retirement.

But Gen Z is indeed interested, despite the long odds.

More than interested, they are actively saving for their long-term future. And that's not according to one outlier report—it's the conclusion of multiple analysts.

Among them are the participants in a Dec. 2, 2024, webinar held by Broadridge. The panelists included Albert Maxiner, National Accounts Sales Director for Retirement Plans, and Jackie Walker, Senior Director of Enterprise Research, both at The Standard. They indicated that Gen Z may not have time to amass much for retirement yet, but its members appear to recognize the importance of saving. They pointed to a study by The Standard that found saving was Gen Z workers' *No. 1 financial goal*.

Holding Power

More good news: It's a trend with holding power. Fidelity's analysis of more than 30 million IRA, 401(k), and 403(b) retirement accounts in the third quarter of 2021 reported that the number of Gen Z investors in its retirement platform nearly doubled over the 2020 level – and hit 1.4 million.

Further, it said that not only did the majority of retirement savers take a long-term approach to retirement saving by maintaining contribution levels and not significantly changing their asset allocations, but it was also especially true among the members of Gen Z.

Kelly Lannan, Vice President, Young Investors at Fidelity Investments, said in a press release that while Gen Z might get "an undeserved rap" that they focus on the present, they found that "retirement is the number one long-term goal" that members of Gen Z are trying to reach.

Copping an Attitude

A good one, that is! Members of Gen Z expressed several positive attitudes that bode well for their retirement savings. Among them are:

Belief in employer-provided plans. Panelists in the Dec. 2 webinar indicated that Gen Z workers appreciate the value of retirement plans as a means of saving. They reported that two-thirds % of Gen Z workers—67%—said participating in employer-provided retirement plans is very important to them.

Acceptance of auto features. Robert Kaplan, Director of Technical Education at the American Retirement Association, said that members of that Gen Z have indicated a general acceptance of automated plan features such as auto-enrollment and auto-escalation and "very little pushback" about them.

Employer match. Kaplan said he also has found that members of Gen Z have been listening to their parents regarding "maximizing the match," suggesting that more members have grasped its importance.

Saving levels. Broadridge panelists reported that less than one-third of the Gen Z workers surveyed consider

themselves in good – or excellent – financial shape.

"Their biggest worry is that they are not saving enough for their financial future," said Walker, adding that almost half hold that view.

Social Insecurity?

Phil Battin, president and CEO of Ambassador Wealth Management, argued that younger generations may be more attuned to saving by means other than Social Security, at least in part because they appear to have doubts about that system.

And they're not alone in subscribing to the myth that Social Security, which turns 90 years old this year, will not be there for younger workers.

American Retirement Association (ARA) Director of Regulatory Affairs Kelsey Mayo said the most prevalent myth concerning Social Security "is that young or middle-aged workers won't receive any Social Security benefits because it is underfunded."

Kaplan put it succinctly. He said the most common myth concerning Social Security is "Social Security is going broke."

"Younger folks are unsure if they will receive [Social Security] benefits at all or how old they will be when they are allowed to start receiving benefits," Battin added.

He noted that many of them subscribe to the notion that Social Security "won't be there at all" by the time they are old enough to receive benefits from the system.

Battin called their attitude "understandable" since "the age at which benefits can begin keeps climbing higher, and there are proposals for a 'means test' which could eliminate

benefits for those that have been good savers outside of Social Security, as well as other proposals to reduce benefits.”

But that doesn’t mean that Battin shared younger generations’ pessimism. He said younger generations “overstate the risk” that the Social Security system will not benefit them in their retirement.

“The benefit will most likely survive in some form or another, as it is a political third rail.”

Still, he did not consider the younger generation’s mindset about Social Security and its long-term prospects to be bad. In fact, he suggested that it could be a boon for them, since it may motivate them to take matters into their own hands—and that can include participation in private-sector retirement accounts. He remarked, “It’s probably better that younger workers plan on it not being there for them at retirement because the risk is that they will over-save, which is a good thing.”

Action Steps

Broadridge panelists suggested that employers have work to do to encourage and support Gen Z in preparing financially for retirement, and some expert analyses expressed a similar sentiment and offered suggestions regarding how they can go about that.

The Broadridge study identified a factor that is a bit of a surprise. It reported that human resources personnel and managers underestimate the interest of Gen Z employees in saving. They added that HR personnel and managers also underestimate how valuable retirement benefits are to them—and that applies even to managers who belong to that generation.

Missy Plohr-Memming, senior vice president of MetLife’s Group Benefits National Accounts Sales, stressed in a recent article in *Employee Benefits News* the importance of using clear, accessible guidance with members of Gen Z that will speak to them. That included providing engaging content that explains acronyms and relevant terms.

Social media can also be a potent way to reach Gen Z; Plohr-Memming considered it the most important way to communicate with them. Betterment at Work provided some specifics that back her contention. Their 2024 Retirement Readiness Report said almost half of the respondents in their study who belong to Gen Z have participated in social media challenges related to retirement saving. Further, a strong majority of participants in such challenges—74%—said those challenges help them with their retirement savings goals.

“Gen Z is “becoming an increasingly important generation to understand.”

And understanding them could also be a boon to an employer. Bankrate found that members of Gen Z were more likely than members of any generation to leave an employer and take a job with another that offers better financial benefits. In fact, 70% said that.

Gen Z is “becoming an increasingly important generation to understand,” said Walker.

Time Is on My Side

Yes, it is.

In its Retirement Outlook 2025, MFS noted that owing to their youth and newness in the workforce, while members of Gen Z probably are saving less than their older counterparts, because they are young, they have a longer amount of time to save. And not only can they save for a longer amount of time, but there will also be plenty of compounding to add to those savings.

Bankrate made a similar observation, noting that the youngest members of Gen Z have almost half a century to save for retirement. That, they say, makes optimism about their prospects reasonable.

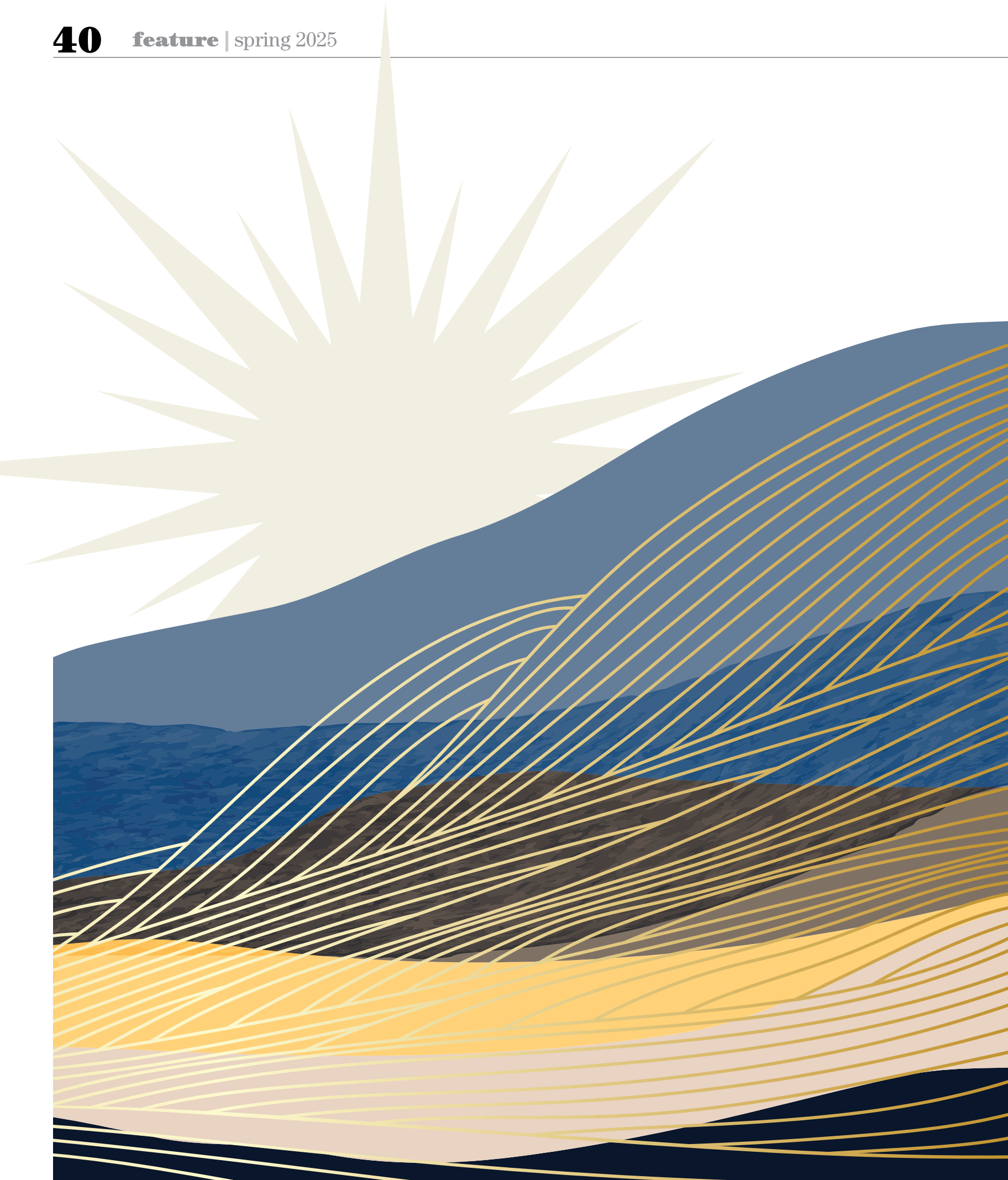
Most important, Gen Z itself is optimistic.

In 2023, Bankrate found that Gen Z members were the least likely of any generation in the workforce to say they were behind in retirement saving.

In their August 2023 survey of 2,527 U.S. adults, just 42% of Gen Z workers expressed that concern—meaning that a majority believe they are on track. This is in marked contrast to their oldest counterparts, who reported they were behind.

And one year later, Betterment at Work found similar sentiments. In their 2024 research, almost 60% of the members of Gen Z expressed confidence in their ability to save enough for a secure retirement. **NTM**





TOP TIER



NAPA'S TOP PLAN ADVISORS UNDER 40

Are they getting younger or are we getting older. Obviously, the latter (unfortunately), but for an industry having trouble attracting and retaining new entrants, the list of Top Retirement Plan Advisors Under 40 (Aces) is a who's-who of the best our industry has to offer.

It's one of the oldest and most popular of NAPA's standard-setting accolades, and many professionals who previously appeared have gone on to become the industry leaders it was designed to identify—the up-and-comers making a difference—including with the National Association of Plan Advisors.

The list, established in 2014, is drawn from nominations (more than 600 this year, a record amount!) provided by NAPA Broker-Dealer/RIA Firm Partners, subsequently vetted by a blue-ribbon panel of senior advisor industry experts based on a combination of quantitative and qualitative data submitted by the nominees, as well as a broker-check review.

It's a combination of returning names and fresh faces, experienced and (relatively) new. They're making a difference for their clients, in their businesses, and in their communities, setting the bar higher for the industry as a whole and ensuring it will continue to secure a dignified and comfortable retirement for ALL hardworking Americans.

We're pleased, once again,
to share the Top Retirement
Plan Advisors Under 40—
NAPA'S 'Aces.'

By John Sullivan

We thank all who participated in the nomination and voting process, the hundreds of nominees, and our panel of judges, who always selflessly give their time and energy to make the process another resounding success.

Most importantly, a BIG congratulations to this year's Top Retirement Plan Advisors—and for all you have done, and will continue to do, for the many plans, plan sponsors, and plan participants you support.

You can also find all the Top Retirement Plan Advisors Under 40 lists at <https://www.napa-net.org/industry-content/accolades-home/NAPA-Top-Retirement-Plan-Advisors-Under-40/2025-napa-aces/>.



**NAPA'S TOP
PLAN ADVISORS
UNDER 40**

**JARED
ANDERSON**
CAPTRUST

**TJ
ARCURI**
SageView Advisory

**MATTHEW
AREY**
Lebel & Harriman, LLP

**JUSTIN
BAKER**
Merrill Lynch

**SAMUEL
BALKE**
BHS Financial Services

**KEN
BARNES**
SageView Advisory Group

**TIM
BARTOLETT**
Graystone Consulting

**SEAN
BAYNE**
OneDigital

**JOSHUA
BERMAN**
Morgan Stanley

**JON
BRATINCEVIC**
Morgan Stanley

**JASON
BURRISS**
Morgan Stanley

**FORREST
BUTLER**
FSRP

**MATT
CELLINI**
Greenspring Advisors, LLC

**GREGG
CORSO**
Merrill Lynch Wealth Management

**REILEY
CROSBY**
Greenspring Advisors

**ROBERT
CULBERSON**
OneDigital Investment Advisors

**MICHAEL
CURRY**
Morgan Stanley

**ALEX
DALL**
Merrill Lynch

**BRADY
DALL**
OneDigital

**JAKE
DALY**
Newfront Retirement Services

**TAYLOR
DANCE**
GBS Retire

**JOE
DEBELLO**
CAPTRUST

**TYLER
DECK**
Oswald Financial

**ANDREW
DIPAOLA**
UBS

**BENJAMIN
DUCKETT**
Morgan Stanley, Graystone

**MARI
ERB**
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Marsh McLennan Agency

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FUGATE**
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JONES**
Scissortail Executive Advisors

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Mid-Atlantic, Inc.

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A New Administration and its Impact on Advisors

Prepare for an evolving and shifting landscape, so that no matter what direction retirement guidance heads, you can adapt on the fly.

By David N. Levine

On January 20, 2025, Donald Trump returned to the White House and became first president in a century to serve non-consecutive terms. Most new presidential administrations enter office with very general positions on retirement and, as their personnel join the government, they begin to develop retirement-related regulatory agendas.

With the second Trump administration, the transition landscape may be different as the Employee Benefit Security Administration at the Department of Labor was very active during the first Trump Administration and may pick-up, in some way, from where President Trump left off in 2020.

Much like Punxsutawney Phil and his shadow each *Groundhog Day*, no one (except Phil Connors for *Groundhog Day* fans) knows for sure what will happen.

Here are some guesses:

Regulatory Freeze

With virtually every new Presidential administration, right at the inauguration, a freeze is put on the finalization and issuance of all regulatory guidance. The Trump administration did this on January 20, 2025. For example, EBSA issued “adequate consideration” guidance under ERISA right before the inauguration and that guidance is now on hold.

IRS Rulemaking Changes

Many advisors and their clients are waiting for additional SECURE 2.0 guidance to be issued, and significant proposed guidance was issued right before the inauguration.

The Trump administration has reimposed procedural rules that require IRS guidance to go through the central governmental guidance process (prior to the first Trump Administration, the IRS was not required to go through central clearance) that could lead to further time for regulations to be reviewed.

Further, with the President’s executive order requiring 10 regulations to be withdrawn for every new regulation issued, this requirement may further impact IRS guidance with the takeaway is the reasonable and good faith efforts to comply with SECURE 2.0 provisions where no final guidance has been issued.

Leadership

IRS leadership in the retirement area is generally not political in nature. EBSA’s two top positions are political and require confirmation.

However, with the significant changes in process to the government workforce, it is not clear yet how those creating and issuing retirement industry guidance will be affected.

Potential Guidance

With SECURE 2.0, the IRS has an extensive pipeline of guidance to complete although it is not clear what will happen to its proposed regulations, especially considering recent litigation, on the use of forfeitures in 401(k) plans.

However, there be several items revisited by DOL given the fact that the Biden administration made a change to some key pieces of Trump administration EBSA guidance, including the following:

- *Environmental, Social, and Governance and Proxy Voting.* The first Trump administration put out extensive and detailed regulations on ESG and proxy voting that were reworked by the Biden administration. There is a significant chance that clarifications or larger changes to revert or revise the Biden administration approach will be on the agenda.
- *Digital Assets.* The Biden Administration put out its Compliance Assistance Release raising questions about digital assets in 401(k) plans. Given the Trump administration executive order on digital assets, this release may be revisited or revoked.
- *Fiduciary Rule.* Much like in the first Trump administration



when the Obama administration fiduciary rule was facing litigation challenges and the Trump administration declined to continue pursuing the rule, the second Trump administration now inherits a Biden administration fiduciary rule that is facing significant litigation headwinds as well. There is a significant probability that the Biden administration fiduciary rule will not continue on as is.

Common Interest Agreements

In 2024, colleagues at my firm

who engage in litigation became aware that the Department of Labor, through common interest agreements, was sharing information with plaintiffs' law firms.

This revelation resulted in significant news coverage and scrutiny from Congress. The use of common interest agreements may well be reviewed again in the second Trump administration.

Enforcement Activity

No matter the administration and its party affiliation, enforcement continues from one Presidential administration

to the next. Although the focus of enforcement can change and evolve, IRS audits of plans and DOL investigations of plans and service providers are likely to continue.

What will actually be done by the DOL and IRS in the new Trump administration is far from written in stone, at least at this time.

However, as advisors evaluate their own business models and their client needs, they may well be advised to prepare for an evolving and shifting landscape, so that no matter what direction retirement guidance heads, they are ready to adapt on the fly. **NNM**

Supremes Consider ERISA Proof, One Judge Says Fiduciaries Blinded by ESG Focus, Another Backs ESG Rule

Here's what you really need to know about emerging trends in litigation.

By Nevin E. Adams, JD and Bonnie Treichel

The year is new, but the litigation landscape is already littered with allegations both old and new, as the nation's highest court takes on another ERISA case – and the federal courts weigh in on regulations involving environmental, social, and governance (ESG) and the fiduciary rule.

- The United States Supreme Court heard oral arguments in an ERISA burden of proof case, but the outcome of the case won't be known for a few more months.
- More forfeiture reallocation suits were filed, but fiduciaries prevailed in one notable case distinguishing the role of the settlor and the fiduciary.
- The Department of Labor (DOL) requests and is awarded a delay in the fiduciary rule court challenge.
- What is anticipated to be the next big wave of litigation in healthcare fiduciary litigation was dismissed – for now.

Let's dive in.

Supremes Hear ERISA Burden of Proof Case

In late January, the United States Supreme Court heard oral arguments on a case many think could dramatically impact the pace of ERISA litigation.

The case—*Cunningham v. Cornell University*—was one of the first of the genre of 403(b)

university excessive fee suits filed in 2016. Filed on behalf of 28,000 current and former plan participants (represented by the persistent law firm of Schlichter Bogard (and at the time, Denton) LLP in Cornell's 403(b) plan, the suit had alleged that Cornell and its appointed fiduciaries violated their duties of prudence and loyalty under ERISA.

At this point, the case is no longer about fees. In short, the case is about how much a plaintiff has to allege in order to move a suit about a breach of fiduciary duty to trial. In other words, which party has to prove that a loss to the plan/participant resulted from bad action(s) by the plan fiduciary?

At present, we have only heard oral arguments, and the United States Supreme Court will likely issue its opinion over the summer.

While one should be cautious in their assessments of outcome based on oral arguments alone (though any number of journalists and legal scholars have already weighed in with their assessment), the sense is that the justices have more faith in the current system of review and its ability to weed out insubstantial arguments than one might glean from the sheer volume of suits in recent months.

On that basis (alone), one might well conclude that they would be inclined to see the dismissal of the suit by the Second Circuit as being premature. If so, that might well set aside the "plausible" threshold adopted by a number of the federal

court districts—and that would likely encourage more litigation.

On the other hand, the justices who seemed inclined to expect more were quiet, so who knows how they will rule.

DOL Presses Pause on Fiduciary Rule Suits

In mid-February, the DOL filed a motion to pause two federal court cases challenging the so-called "fiduciary rule" (also known as the Retirement Security Rule) due to the change in administrations. Recall that these cases were opposing the fiduciary rule that was to be effective in September 2024 but which was stayed as a result of this litigation.

"Due to the recent change in administration on January 20, 2025, DOL is now under new leadership," the Unopposed Motion to Hold Consolidated Appeals in Abeyance reads. "New agency officials are still in the process of onboarding and familiarizing themselves with all of the issues presented by pending litigation."

A federal judge granted the DOL 60 days to review the issues.

'Blinded' By ESG?

ERISA litigation often equates the fiduciary duties of prudence and loyalty—but a federal judge has drawn a distinction in a controversial case involving ESG. The suit was filed back in June 2023 by participant-plaintiff (and pilot) Bryan P. Spence in the U.S. District



Court for the Northern District of Texas against Defendants American Airlines, Inc., American Airlines Employee Benefits Committee, Fidelity Investments Institutional, and Financial Engines Advisors, LLC (whereby Fidelity and Financial Engines were later dropped from the lawsuit).

The arguments at the outset were simple; that plan fiduciaries “breached their fiduciary duties in violation of ERISA by investing millions of dollars of American Airlines employees’ retirement savings with investment managers and investment funds that pursue leftist political agendas through [ESG] strategies, proxy voting, and shareholder activism—activities which fail to satisfy these fiduciaries’ statutory duties to maximize financial benefits in the sole interest of the Plan participants.”

That original suit had gone back and forth with various motions to dismiss, and amendments to the original cause of action. Then in mid-2024, in an extraordinary “pivot” (in a case chock full of

these types of abrupt shifts), the suit alleged that “Defendants violated their fiduciary duty by knowingly including funds ‘that are managed by investment managers that pursue non-financial and nonpecuniary ESG policy goals through proxy voting and shareholder activism’ on their investment portal.”

Following a four-day bench trial, Judge O’Connor determined what appeared to be an unusual divergence. The court found that the defendants breached their duty of loyalty by acting “solely in the retirement plan’s best financial interests by allowing their corporate interests, as well as BlackRock’s ESG interests, to influence the management of the plan,” yet the defendants did not breach their fiduciary duty.

The court expressed some skepticism about the origins of that industry practice which were described as “incestuous” a number of times in the opinion.

It cited significant financial interests of American Airlines with BlackRock, who held significant

amounts of corporate debt and ownership of the airline, and concluded that the plaintiff “... provided evidence demonstrating that Defendants acted disloyally because of BlackRock’s outsized influence,” noting American Airline’s “copious” consumption of fossil fuels left it “potentially susceptible to a proxy fight of its own by failing to comply with BlackRock’s climate-related demands.”

That all said, Judge O’Connor’s ruling asked the parties to provide some additional information—information that he would presumably require in order to assess what damages, if any, might be appropriate for the injuries alleged.

Which, as we head to press, have not yet been revealed.

Another Federal Judge (Still) Backs DOL’s ESG Rule

Asked to reconsider a previous ruling backing the so-called ESG rule in the aftermath of a United States Supreme Court decision, a federal judge has, after a thorough

analysis, affirmed his previous conclusion.

He did so in response to a suit brought by a coalition of some 26 so-called “red state” Attorneys General. The coalition brought the suit in January 2023, alleging that the 2022 rule “undermines key protections for retirement savings of 152 million workers—approximately two-thirds of the U.S. adult population and totaling \$12 trillion in assets—in the name of promoting environmental, social, and governance (‘ESG’) factors in investing, including the Biden Administration’s stated desire to address climate change.”

A point of contention in the ESG rule had been its incorporation of a so-called tie-breaker rule—to which Judge Kacsmaryk then drew an analogy between that decision, and that of a driver who—obligated to choose the fastest route to a destination, opts for the most scenic of two routes that get him to that destination at the same time. “The fact it is also scenic does not mean he employed another purpose at all.”

In essence, Judge Kacsmaryk has now determined that the rule “is not contrary to ERISA under a post-Chevron analysis.” He noted that “under the rule, a fiduciary faced with choosing between investment options—that all equally serve the beneficiaries’ financial interests—does not advance the interests of nonbeneficiaries nor act for a purpose other than their financial benefit when he chooses based on collateral factors.

Plaintiffs’ interpretation of ERISA would demand arbitrary randomness to choose between such investment options. It embodies the wooden textualism that courts should endeavor to avoid.”

Filing Flurry of Fiduciary Forfeiture Suits Continues

During the past few quarters, several national employers were targeted by suits alleging a fiduciary breach in their decision to use plan forfeitures to offset employer

contributions, rather than plan expenses.

While these suits have generally acknowledged that the tax law permits that choice, the argument has been that doing so is not in the “best interests” of participants, as ERISA requires. The latest employers targeted are JP Morgan, Amazon, and Charter Communications. All allege that the plan fiduciaries had discretion in how the forfeitures were to be deployed.

However, the suit involving Charter Communications (filed on behalf of the plaintiff by the law firm of Schlichter Bogard, LLC) presents a different argument.

The suit alleges that “rather than using the Plan’s forfeiture assets to pay all plan administrative expenses, as expressly required by the terms of the Plan, the defendants used Plan assets to benefit themselves by reducing Charter’s employer matching contributions using the Plan’s forfeiture assets.”

In fact, according to the suit, “Only if the Plan forfeiture assets ‘exceed Plan administrative expenses,’ the remaining assets could then be used to offset Charter’s (and Charter’s affiliates) required employer matching contributions”—and then “to the extent that forfeitures exceed Plan administrative expenses, forfeitures shall be used to reduce the Employer Contributions.”

At least that’s what the suit alleges.

“Implausible” Claims Fall Short in Forfeiture Suit

On the other hand, a decision was rendered in one of these suits.

It involved HP and was refiled last summer after being dismissed the month before. However, United States District Judge Beth Labson Freeman was basically sympathetic to the plaintiff’s arguments—at least at THAT stage in the proceedings—noting that the decision on how to reallocate forfeited balances was an administrative/fiduciary decision, rather than, as HP had argued, a settlor one (or rather,

those decisions that are business decisions and don’t carry with them the same responsibilities and associated liabilities as fiduciary responsibilities).

That said, in granting that motion to dismiss, she commented that the plaintiff “advances a novel legal theory under which it is a breach of fiduciary duty to allocate forfeited amounts to reduce employer contributions rather than to pay administrative costs”—and, finding “no binding authority that addresses this theory”—she concluded that the “Plaintiff’s theory of liability has broad reach, and it is the theory’s breadth that makes it implausible.”

And so, when ruling on the amended suit in early February, Judge Freeman found nothing to dissuade her from the determination that the claims were implausible in view of the “long history of using forfeitures to reduce employer contributions,” as well as proposed regulations from the Treasury Department.

She noted that the participants had received all the benefits promised them by the terms of the plan document, which itself stated that “...the company retains discretion over whether to pay Plan expenses out of the Plan trust.”

Indeed, this latter point – that the plan document allowed the company to decide the deployment of forfeitures – effectively meant that the decision on forfeitures was a settlor, rather than a fiduciary decision.

Healthcare Fiduciary Suit Dropped – For Now

What was seen as the first in a potential groundswell of participant fiduciary breach suits involving healthcare plans has ended with a whimper—for the moment.

Nearly a year ago, Johnson & Johnson was sued by an employee who claimed that “over the past several years, Defendants breached their fiduciary duties and mismanaged Johnson and Johnson’s prescription-drug benefits program, costing their ERISA plans and their employees

millions of dollars in the form of higher payments for prescription drugs, higher premiums, higher deductibles, higher coinsurance, higher copays, and lower wages or limited wage growth.

However, the decision here was only a decision on a motion to dismiss the suit, not a full adjudication—and Judge Quraishi's footnote would seem to be a potential door-opener for similar claims by a different plaintiff.

An “Impersonal” Managed Account?

A federal judge has dismissed—for the second time—a suit that argued the default managed account option was no better than a target-date fund (TDF). In the suit, participant-plaintiff Debra Hanigan claims that the plan fiduciaries of the \$5.1 billion Bechtel Trust and Thrift Plan “breached their fiduciary duty of prudence to Plaintiff and other Plan participants, causing tens of millions of dollars of harm to Plaintiff and Class Member’s retirement accounts.”

More precisely, the suit alleged that participants were being defaulted into a managed account qualified default investment alternative (QDIA) that involved no real personalization—and thus was little more than an expensive TDF.

However, Judge Trenga cited evidence in the record that confirmed that the managed account asset allocation “considers factors that a TDF does not, including risk tolerance; account balance; outside assets and pension wealth; gender; salary; savings rule; pension compensation; and social security income.”

He went on to explain that “the MA PMP is an actively managed fund, ‘us[ing] financial models and research to create and monitor an investment strategy’ for each Plan participant through the direction of an investment professional.” And having made that determination, he found the points of comparison—TDFs—lacking.

“In short,” he continued, “it appears from the information properly considered with respect

to respective plans, that the PMP plan engages in a level of asset allocation and management not present in a TDF; and Hanigan has not made any factual allegations that demonstrate that the asset allocation and investment management between a TDF and MA PMP is sufficiently similar to plausibly allege that a TDF is a meaningful benchmark to support her first claim.”

Prudent Process Prevails Again

Another suit filed back in 2020 claimed that the Allstate defendants “did not effectively use” the leverage of a large plan “to identify and select prudent target date options for Plan participants.”

Rather, the suit claims that “despite a market flush with better-performing alternatives, Defendants selected the Northern Trust Focus Funds to be the Plan’s target date asset class investment option,” funds that the plaintiff claims “significantly underperformed their benchmark indices and comparable target date funds since Northern Trust launched them in 2010.”

In granting a motion for summary judgement (judgement without a full trial), Judge Georgia N. Alexakis of the U.S. District Court for the Northern District of Illinois found that the plan fiduciaries had, in fact, engaged in a thorough and prudent process behind the fund selection, including a specific desire by the committee (in the wake of the 2008-09 financial crisis) to choose target date funds that were more conservative.

This apparently resulted in asset allocations/glidepaths that were different than other alternatives during the period in question. The relative underperformance of that selection during the period in question was acknowledged, but having been presented with no factual basis to support claims of imprudence beyond that—the judge here saw no reason to let the case proceed to trial.

Action Items for Plan Sponsors

Even if you are the fiduciary of a plan that might not be the

perceived subject of a significant class-action lawsuit, these back-to-the-basics best practices apply to plans of all sizes. For plan sponsors, consider the following:

1. If the plan has a managed account option, particularly as the plan’s QDIA option, know what personalization factors are in play and consider the impact those make compared to available TDF alternatives, particularly in view of the cost of those alternatives. Leverage reporting from the managed account provider, if applicable and other available data to document your review and analysis.
2. If forfeitures are used to offset employer contributions, make sure that specific language is in the plan document. Consider changing language that provides discretion in applying forfeitures to language that simply directs how they will be used. Also, consider which decisions are fiduciary versus settlor in nature and document accordingly.
3. Note that the ESG rule remains the law of the land—and that while challenges to that law remain, plan fiduciaries are expected to consider only the financial interests of participants and beneficiaries in their decisions regarding the plan or its investments. ESG factors may be considered but should be able to be substantiated (via documentation) to demonstrate how they help to increase return or reduce risk in a portfolio.
4. As always, make sure you have a prudent process in place to review the plan investment menu by having an investment committee that is qualified and engaged, supported by experts, guided by an investment policy statement. **NTM**



Regulatory Radar

Everyone ALWAYS wants to know what regulators have planned and retirement plan advisors are no exception. A judge recently granted the Labor Department's request to pause fiduciary rule litigation. Blue states clap back at red state ESG attacks. And more states move on auto-IRA plans for their citizens. Which ones, and where do they currently stand?

Fiduciary Rule Freeze

Judge grants DOL's motion to pause fiduciary rule litigation.

To give new Department of Labor (DOL) officials time to determine their next steps, a federal circuit court judge in February granted the DOL its motion to pause two federal court cases challenging the so-called fiduciary rule, but the department won't have too much time to act.

"It is ordered that Appellants' unopposed motion to stay further proceedings in this court to allow

new Department of Labor officials sufficient time to become familiar with the issues in these cases and determine how they wish to proceed is GRANTED for 60 days," wrote Fifth Circuit U.S. Court of Appeals Judge Catharina Haynes in a one-sentence order.

The DOL had requested the pause "Due to the recent change in administration on January 20, 2025, DOL is now under new leadership," the Unopposed Motion to Hold Consolidated Appeals in Abeyance reads. "New agency officials are still in the process of onboarding and

familiarizing themselves with all of the issues presented by pending litigation."

The Suits

The rule was finalized in April 2024 and set to go into effect last September 23, but its implementation was put on hold in late July as the result of a lawsuit filed by the insurance industry-backed Federation of Americans for Consumer Choice (FACC), as well as James Holloway, James Johnson, TX Titan Group, ProVision Brokerage, and V. Eric Couch.

A second suit was also filed in a Texas federal court (*Am. Council of Life Insurers v. DOL, N.D. Tex., No. 24-00482, 5/24/24*), but by different plaintiffs, albeit arguing similar issues against the Labor Department's Retirement Security Rule—led by the American Council of Life Insurers (ACLI).

The suits sought to vacate the 2024 fiduciary rule and amendment to PTE-84-24 under the Administrative Procedures Act (APA) on the grounds that they are "contrary to law and arbitrary and capricious." They also sought "preliminary and permanent injunctive relief to prevent the DOL from attempting to enforce these unlawful rules and regulations."

The Trump administration recently announced that it has officially nominated Daniel Aronowitz to become the next Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). Aronowitz is the President of Euclid Fiduciary (now Encore Fiduciary), a fiduciary liability insurance underwriting company for employee benefit plans.

He is also a frequent critic of fiduciary breach litigation by the plaintiffs' bar and has characterized the DOL's retirement security rule as "classic regulatory overreach."

Aronowitz made those comments in a post defending the U.S. Supreme Court's decision in *Loper Bright*, saying the decision was "correctly decided" and that ending the *Chevron* deference was long overdue.

"It restores the proper role of the judiciary to interpret the law and puts a needed brake on regulatory overreach by the administrative state," the EBSA nominee wrote shortly after the high court's decision was issued.

Aronowitz's nomination to be Assistant Secretary is also subject to Senate confirmation.

- Ted Godbout



ESG Execution

State treasurers are at odds over the use of ESG considerations.

State-level finance officials from 17 Democrat led states, mostly Treasurers, recently sent an open letter to the acting heads of the Securities and Exchange Commission (SEC), Mark Uyeda; and the Department of Labor (DOL), Vince Micone. The letter argued that using environmental, social and governance (ESG) considerations in retirement investing does not violate fiduciary duties under ERISA.

The Democrat Letter

The letter said that "fiduciaries managing pension funds, 401(k)s, and other retirement accounts must take a multi-decade approach to investment risk. This means evaluating all factors that could materially impact long-term financial performance, including risks related to governance failures, workforce management, regulatory changes, and climate impacts."

These factors are often captured by ESG strategies and

can minimize the risk of long-term portfolios, and are therefore, a legitimate financial strategy and not a social agenda masquerading as such, the letter argues.

Urging regulators not to discourage ESG, the officials wrote, "Restricting fiduciaries from considering legitimate financial risks would put American workers and retirees at a significant disadvantage. Global investors are not operating under these same restrictions, meaning U.S. retirement funds could become less competitive and more vulnerable to market disruptions. If policymakers impose artificial limits on what risks fiduciaries can consider."

The Republican Letter

The letter was responsive to a letter written by 22 Republican state-level finance officials, which was also addressed to Uyeda and Micone.

The officials contended that "Retirement security should not be jeopardized in order to facilitate corporate virtue signaling and activist-driven initiatives," and ESG

strategies effectively do this, they argue.

"We, therefore, request SEC and DOL take decisive action to uphold fiduciary duty laws and protect retirement plans from activist corrosion," the letter said.

Specifically, the officials recommended the SEC and DOL issue guidance that states that fiduciaries cannot pursue ESG or DEI related objectives, "such as reducing greenhouse gas emissions or establishing board quotas."

ESG investing violates ERISA, the letter argued, and the officials "urge the Securities and Exchange Commission ('SEC') and Department of Labor ('DOL') to take immediate action to protect retirement plans for millions of Americans."

What Does the EBSA Nominee Think of ESG?

President Donald Trump recently nominated Daniel Aronowitz to lead the Employee Benefits Security Administration. Aronowitz is president of Euclid Fiduciary, a fiduciary liability insurance company. He is also the author of the Fid Guru Blog and has written about ESG issues.

From various blog posts, it appears that Aronowitz believes that ESG investing is a marginal issue in the ERISA space and probably shouldn't be a high priority for EBSA.

For example, writing about the American Airlines ESG case from January, Aronowitz said that "most 401k plans do not offer ESG investments in the core lineup, or at best offer a single ESG or social choice index fund alternative. The problem is not plan sponsors, who largely avoid ESG."

However, he went on to say that "The problem is from investment managers who have spent years trying to curry favor with climate and other 'woke' activists."

In the same post, Aronowitz added, "In any event, the concern over ESG investments in modern 401k plans is overblown. It is a political lightning rod with little actual bearing on the retirement security of 401k plan participants."

On the merits of ESG, Aronowitz said, "We are not about to defend ESG investment strategies, and are on record when we train fiduciary committees that they have a fiduciary obligation not to change the world with fiduciary retirement assets. We think ESG investing is wrong. We nevertheless understand that there are different gradations or definitions of 'ESG,' and most ESG-investing advocates claim that they are acting in the best long-term financial interests of the company."

—Paul Mulholland

State of the State (Plans)

State legislatures continue their auto-IRA push.

State-level activity to expand retirement plan coverage marches on, as four state legislatures are considering bills to create state programs for private-sector employees whose employers do not offer a plan.

Indiana

The Hoosier State would establish a state-run auto-IRA program, the Hoosier Crossroads Retirement Program, if SB 513 is adopted. As in other states, employers that do not offer plans would register with the program; it also would allow employers that are exempt from participating – that is, those that offer a retirement plan – to still register with the Hoosier Crossroads Retirement Program if they want to do so.

Employees of employers covered by the program would be automatically enrolled, but they would also have the right to opt out of the program. It would set the default contribution level at 5% of an employee's compensation, but employees would be able to adjust contribution rates and make additional contributions to their accounts independent of their salary. The program also would be open to individuals, self-employed people, and independent contractors.

SB 513 would establish Hoosier Crossroads Retirement Board to design, establish, and operate the program. It would have nine voting members, including the state treasurer, state comptroller and seven members appointed by the governor representing various interests.

Sen. Vaneta Becker (R-Vanderburgh) introduced the bill; it is now before the Senate Appropriations Committee.

North Carolina

Private-sector employers in the Tar Heel State that do not offer their employees a retirement plan would be required to enroll in North Carolina Work and





Save if House Bill 79, a measure now before the state House of Representatives, is enacted.

The preamble to the bill lays out the rationale behind the measure. It says that the General Assembly

... finds that too many North Carolina citizens have no or inadequate savings for retirement, and an estimated 1.7 million North Carolina working families, including employees, independent contractors, and the self-employed, have no access to an employer-sponsored retirement plan or program or any other easy

way to save at work.

The program would provide those employees with the coverage their employers do not. It would do so through a payroll deduction Roth IRA with a target date fund investment. The default contribution rate would be 5% of salary or wages. It is possible that there could be annual increases in contribution rates of 1%, to a maximum of 8%. Benefits would be portable; the measure would allow participating employees to make tax-free rollovers or transfers from accounts established through the program to other retirement

accounts or to tax-qualified plans that accept such rollovers or transfers, as long as the employee initiates the rollover.

To Roth or not to Roth? That decision would be up to participating employees. House Bill 79 would allow participating employees to choose to have their payroll deductions put into a traditional IRA instead of a Roth.

House Bill 79 also would establish the North Carolina Small Business Retirement Savings Board to develop and oversee the program, and conduct market, legal, and feasibility analyses.

“The Legislature finds that too many Mississippi citizens have no or inadequate savings for retirement, and many Mississippi working families, including employees, independent contractors, and the self-employed, have no access to an employer-sponsored retirement plan or program or any other easy way to save at work.”

Rep. Jarrod Lowery (R-Lumberton) introduced the bill on Feb. 10. It is now before the House Appropriations Committee.

Alabama

Currently, there are Alabamians employed in the private sector that are not offered or provided a retirement plan through their employer. This bill would create a state-facilitated retirement savings program to allow certain employed Alabamians to make contributions into a retirement plan.

Thus says the synopsis of SB 173, the bill that would create the Alabama Retirement Savings Program for private-sector employees in the Heart of Dixie whose employers do not offer a retirement plan.

The preamble to the bill continues,

Employees who are unable to effectively build their retirement savings risk living on low incomes in their elderly years and are more likely to become dependent on state services. The Legislature further finds that a state facilitated retirement savings program would remove barriers to entry into the retirement market for businesses by educating eligible employers on plan availability and promoting, without mandated participation, qualified, low-cost, and low-burden retirement savings vehicles and without

posing any significant financial burden upon taxpayers.

The Alabama Retirement Savings Program would feature an automatic enrollment payroll deduction IRA and would be administered by the Secretary of the Department of Workforce. SB 173 also would create the Alabama Retirement Savings Administrative Fund, into which participants' payroll deduction contributions would be placed. The State Treasury Secretary would administer the fund.

SB 173 would apply to independently owned, for-profit enterprises with 500 or fewer employees at the time of enrollment; however, it also provides that self-employed individuals and sole proprietors could participate in the program as well.

Sen. Robert Stewart (D-Selma) introduced SB 173 on Feb. 13. It is now before the Senate Finance and Taxation Committee.

Mississippi

The Magnolia State is further along than its immediate neighbor to the east. On the day Sen. Stewart introduced his bill in Alabama, Mississippi's Senate unanimously passed a bill that would create a program to provide coverage in that state for their private-sector employees whose employers do not.

Sen. J. Walter Michel (R-Hinds) introduced the bill on Jan. 20. It was sent to the state House of Representatives on Feb. 17; it is now before two of that chamber's committees: Banking and Financial Services, and Accountability, Efficiency, and Transparency.

Hind's bill says that:

The Legislature finds that too many Mississippi citizens have no or inadequate savings for retirement, and many Mississippi working families, including employees, independent contractors, and the self-employed, have no access to an employer-sponsored retirement plan or program or any other easy way to save at work.

The program this legislation would create, Mississippi Work and Save, would differ from most of its sister programs in that participation would be voluntary for employees of participating employers.

Employees who participate would contribute to a Roth IRA through payroll deductions; those Roth IRAs would have a target date fund investment.

The bill calls on the State Treasurer to design, develop, and implement the program. To accomplish that, it says, the Treasurer may conduct market, legal, and feasibility analyses. It further allows the Treasurer to make and enter into contracts, agreements, memoranda of understanding, arrangements, partnerships, or other arrangements to collaborate, cooperate, coordinate, contract, or combine resources, investments, or administrative functions with other governmental entities – including states or their agencies or instrumentalities that maintain or are establishing retirement savings programs compatible with the program. That includes collective, common, or pooled investments with other funds of other states' programs with which the assets of the program and trust may be collectively invested.

— John Iekel



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