The Next 20 Years of 401(k)
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THE NEXT 20 YEARS OF 401(k)

The world is changing, and not just the 401(k) world. We begin with a look at global trends affecting the pension system and conclude with selected predictions and strategy responses.

PETE SWISHER, CPC, QPA, TGPC
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Do the winds of change have you concerned about your business?

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THOSE MOMENTS
BY MARY L. PATCH, QKA, QPFC

Making a job change inevitably triggers reflection. Sometimes the most vivid (and often amusing) memories tend to be those of enlightenment. Whether trying or embarrassing, the result of persistence or luck, the significance of these memories becomes clear only years later. We all have our own special collection of these moments, where challenge, opportunity, and fate collide. These moments teach us critical lessons in moving forward in our careers, and are carried with us through every step in this industry.

One day, after I'd been working for an insurance company in Iowa for about six months, I received a call from a client who had some issues with her plan's post-tax account. So I studied up on ERISA and tried to learn as much about my clients as I could. When a favorite client of mine who was reviewing her reports called me to ask why an employee who had passed away three years ago was still showing up on her reports, I felt like I had the ERISA rules licked. I confidently explained to her the five-year break in service rule and why all individuals who had left their employment, for whatever reason, would need to be retained due to ERISA's rehire rules. Again, silence. Again, the question, "Mary, do you really think I'm going to dig him up to rehire him?" I said nothing, but logged into the recordkeeping system and keyed in that day's date as the date he broke service. "He won't appear on your next report," I said. "I promise."

PUNKED
Fast-forward a couple years to a point in my career where I really (no, seriously, this time I really felt like it) knew ERISA inside and out. I was working for a large bank in Milwaukee, Wisconsin when one day a call came in from a plan participant. "I'm not sure what's going on with my account, but it shows that I have more than $1 million as a balance?" Knowing the client as I did and that the entire plan had only a little over a $1 million in assets, this truly puzzled me. After doing a little C.S.I. work, I noticed he had negative shares in his account. I contacted the recordkeeper and asked how that could be. I learned that a dividend had been posted to the participant's account and later reversed. Then something clicked. "Didn't you rebalance the plan after you posted the dividend?" I asked the recordkeeper. "If you did, the dividend was rebalanced to the new fund and was no longer in that investment when you reversed it." They were amazed.

My next stop was with a large recordkeeping firm in Milwaukee. It was there that I learned an amazing amount of information about ERISA that I never knew existed. I learned how to review and understand the terms of the plan document, how to review a compliance-testing package, and how to answer auditors' questions on each line item of the Form 5500. I had immediate access to some of the most talented ERISA consultants and attorneys in the business. At once I discovered that I had a passion for this industry; it was no longer just a job that paid the bills.

FIDUCIARY
Again, thinking I knew everything there was to know about ERISA rules, I joined the group at Steele Capital Management. Lessons learned there will accompany me to my next challenge. I'll always be grateful to them for taking a chance on my resume and giving me such an amazing opportunity to take all of my knowledge about ERISA and bring it to the next level.

So now, as I embark on a new journey with Trademark Capital, I take with me these truths: Life is about how we grow and what we learn along the way. We never cease being works in progress. We are always learning from each other, preparing for the next challenge. We rely on each other for support in braving the next step to the next level. We are all part of a team, trying to make a difference.

Mary L. Patch, QKA, QPFC, is director of retirement plan services with Trademark Capital in New Port Richey, Fla. She is also chair of the Plan Consultant Committee.
With you when your retirement decisions affect everyone

There's a lot of pressure on you every day — your employees are all relying on you to help them achieve a financially secure retirement, which is even more challenging in today's economic environment. And that's why, as a fiduciary, it's important for you to have a top-tier provider to help safeguard your retirement plan. At Wells Fargo, our broad range of experts provide the fiduciary support services you need to give you the peace of mind that comes from knowing you are taking steps to minimize your risk and fulfill your fiduciary obligations. To learn more, call a Wells Fargo Institutional Retirement representative at 800-690-9721.

Together we’ll go far
ASPPA is more than 8,000 members and growing! Our increased membership is a testament to the quality of our organization. It’s also a result of the expansion of our membership into new categories of professionals who are part of our industry. This expansion has made us more diverse, not only with respect to our professional backgrounds, but also with respect to our views on how to improve ASPPA and the private retirement system.

One of the negative consequences of having a diverse membership is an increase in the number of tough decisions ASPPA must make. Tough decisions are the ones that a substantial number of members disagree with. Many of you will assume the tough decisions relate to retirement plan policy, and those issues do receive most of the spotlight. But there are many other issues that affect the operation of ASPPA and the delivery of services to you. These can range from Code of Conduct modifications to surcharges for not staying at an onsite conference hotel to granting reciprocity for a professional designation granted by another industry-related entity.

So how does ASPPA make these tough decisions? Some believe decisions are made behind closed doors with heavy influence by a small group of people or firms. This is simply not the case. As with any decision-making process, whether it be in business or your personal life, there is prioritization and delegation of authority. This helps ensure decisions are made at an appropriate level within the organization. You don’t want the top executive deciding how many staples to order for the office. Similarly, you don’t want the office clerk designing products.

In ASPPA, decisions must be made in a manner that is consistent with our stated goals: (1) to educate all retirement plan professionals and; (2) to preserve and enhance the employer-based retirement system. In addition, we’re a professional society, not a trade association. In other words, we’re an organization of individuals and we don’t take positions solely to support a business practice or structure.

The major decisions within ASPPA are handled using a partnership approach. There is a partnership between volunteer members and the ASPPA staff. This is why our major committees have a minimum of two co-chairs: one staff member and one volunteer member. This structure also applies to our governance. In addition to the Board of Directors and Executive Committee, for example, we have a Management Council (MC). The MC consists of the president, the president-elect, and the executive director/CEO (Brian Graff). Thus, there is member representation and participation at the highest decision-making levels of authority within ASPPA.

As you expect, the level of decision-making autonomy varies depending on the purpose of the group. In our Government Affairs Committee (GAC), for example, subcommittees make recommendations on certain policy or substantive legal positions that must then be approved by the overall co-chairs of GAC. Most issues are routine and it’s easy to identify the appropriate level of decision-making authority. Likewise, it’s fairly evident when there are issues that are particularly divisive or questionable and need to be elevated to a higher decision-making authority.

This is not a failsafe process but it’s imperative that ASPPA continue to be able to take positions on controversial issues. We can’t allow our diversity to paralyze us solely because of fear we might upset some of our members or businesses.

Robert M. Richter, Esq., APM, is vice president of SunGard Relius in Jacksonville, Fla. He is also the current president of ASPPA.
Do you know which organization provides education to millions of Americans?
LYNN JENKINS, CHAMPION OF SAVINGS

Rep. Lynn Jenkins (R-Kan.) has represented the 2nd District (which includes the state capital Topeka) since her election to the U.S. House of Representatives in 2008. She is a Certified Public Accountant by profession and brings nearly 20 years of experience helping individuals and small businesses manage their finances to the House of Representatives. She also served in the Kansas House and Kansas Senate and as the 37th Kansas State Treasurer. Plan Consultant editor Steve Sullivan recently sat down with Congresswoman Jenkins to elicit her views on tax reform and the importance of developing relationships with elected representatives.

PC: As a member of the House Ways and Means Committee, you’ll be in the middle of tax-reform efforts. Your education and experience as a CPA would seem to make you particularly well-suited for this job. How much do you think your practical business experience has helped you in your role on the committee?

LJ: So often the skill sets necessary to be a successful tax practitioner or CPA aren’t necessarily the skill sets necessary to get elected. But in this particular case, after having been elected and appointed to the Ways and Means Committee, I think it’s very beneficial to have someone who’s been on the receiving end of tax policy, seen it through the lens of small businesses and individual employees and employers. I think it provides a unique perspective. I think I’m the only CPA on the committee and I think it’s beneficial to the committee and the nation to have somebody with that view.

PC: You’ve been supportive of the private retirement system. Did your experience before you came to Congress contribute to your support of savings incentives?

LJ: Absolutely. In my time as a state lawmaker with the House and the Senate, and then during my years in the Treasurer’s office in Kansas, one of the things I championed was savings. We’ve had a negative savings rate for so long in this nation. We had a tough time getting people to start to save but it’s on the decline again. As we ask the government to do less and less for people, I think it’s important to encourage people to do more for themselves. Savings is an important ingredient of that.

PC: You’ve said we need fundamental tax reform that simplifies the tax code. How do you think fundamental tax reform will affect the current retirement savings tax incentives?

LJ: Our tax code is broken. We’ve got a very complicated, costly, confusing tax code. Many people are fond of saying that it’s almost 10 times the size of the Bible with no good news. We need to turn it on its ear and I think the goal is to do so by broadening the base and getting rid of the underbrush. But in doing that, we have to be careful not to do more harm to the economy than we do good. Once
again, as we ask individuals to do more themselves and the government to do less, there are certain things we need to be cognizant of: how it would affect savings, the housing market, charitable contributions. I believe there are going to be several exceptions to the rule of eliminating all the preferences in the tax code. The code should be structured to make savings easier, not more difficult. If we're going to ask individuals and charitable organizations to do more themselves, we can't cut funding and take away tax preferences all at the same time.

PC: The Ways and Means Committee has been holding hearings on tax reform, and Chairman Camp has already put out a discussion draft for international tax reform. Do you expect we'll see a discussion draft for individual tax reform? If so, could we see it later this year?

LJ: Well, my crystal ball isn't too clear these days. We do have the international piece out there in discussion and I believe the chairman was wise to approach it that way. We have good feedback from businesses on how they would like to see it structured and tweaked and adjusted in order to move forward. So I would anticipate

the next step would be domestic corporation and individual reforms. This is a little tougher deal. There's less agreement on a bipartisan basis on those cases, but I think you can expect to see the chairman and the committee to march forward in that regard. I'm not certain if we'll see discussion draft by the end of this year but I think that's the intent of the chair.

PC: You've met with some ASPPA members about the importance of retirement savings. Have these meetings with retirement plan professionals been helpful to you? How important is it that other ASPPA members talk to their member of Congress about the importance of tax incentives for retirement savings?

LJ: I think it's imperative. This is a relationship business. It's important for anyone who has an issue that relates to government to stand up and get involved, to take it upon themselves to get to know their elected representatives and help educate, be part of the solution. I encourage all ASPPA members to continue to do that. It's really invaluable. We in Congress don't know everything, so we have to rely on people who do understand this stuff. It's just an education process, so I hope members will take that seriously. It's best to make that contact and develop the relationship before you even need anything, so you're seen as someone elected officials can call on when you're faced with an issue that affects your industry.

PC: Aside from the meetings when ASPPA members come to Capitol Hill to meet with you personally, what other ways can be effective in communicating with members of Congress?

LJ: Well, for me it goes back to building relationships. We're here in Washington conducting business three or four days a week. Most of us go home on the weekends and we have weeks at home when we work in our districts. I think it's beneficial for ASPPA members to invite their member of Congress out, and maybe the staff person who handles that particular issue, to find out what their questions are, show them the inner workings of whatever it is you do. That's quality time in building the relationship, staying up close and personal, being able to connect the face with the name. So when something comes up in a conference committee that's related to savings or 401(k)s, I've got someone in the Rolodex I can pick up the phone and call and get a straight answer.
The Next 20 years of 401(k)

We’ll need to save more than we are now to pay for retirement and retiree health care. And we’ll need an army of sensibly regulated fiduciaries selling and servicing retirement plans to make it happen.

by Pete Swisher
When considering what the next 20 years might hold for the pension system, it helps to begin by reminding ourselves of how much the world can change in 20 years. The following thoughts and trends are all interesting for their own sakes but also affect the retirement plan, either directly or indirectly, and form the basis for the conclusions that follow.

**GLOBAL TRENDS**

When considering what the next 20 years might hold for the pension system, it helps to begin by reminding ourselves of how much the world can change in 20 years. The following thoughts and trends are all interesting for their own sakes but also affect the retirement plan, either directly or indirectly, and form the basis for the conclusions that follow.

**THE 250-YEAR POPULATION EXPLOSION IS WINDING DOWN**

Huge improvements in health care and food production, among other factors, have driven an increase in longevity from 30 years (before 1900) to 67 today, and a global population explosion beginning in about 1800. But birthrates are dropping; no industrialized nation today has a birthrate in excess of the replacement rate, and even in the developing world birthrates have plummeted in recent decades. The United Nations predicts that global population will peak around 2050 at 9.2 billion, give or take a billion, and maintain that level for the next two centuries after a slight, temporary dip.

**IMMIGRANTS MAY BE IN HIGH DEMAND**

The U.S. population is expected to grow between now and 2050 solely through immigration. Birthrates are at or slightly below the replacement rate of 2.1 live births per female, but the United States remains the global destination of choice for emigrants. Birthrates below replacement rates means downward pressure on GDP, with profound implications for countries like Japan (which had a birthrate of 1.37 in 2008 and is not traditionally immigrant-friendly) and many European countries with birthrates dropping toward 1.2 in coming decades (e.g., Greece, Italy, Portugal, Spain). Shrinking populations mean shrinking economies, so some countries may actually compete for immigrants (workers) in the future.

**RATIONAL OPTIMISM ABOUT GEOPOLITICS AND THE STATE OF THE WORLD**

As a wet-behind-the-ears USMC lieutenant, much of my training involved how to fight the Soviet Union. Yet in my second year as a Marine, the Berlin Wall came down, Iron Curtain dictators were deposed, and Bernstein conducted Beethoven’s 9th as the “Ode to Freedom” on Christmas Day, 1989, in East Berlin—71 years after Lenin and Stalin listened to the same symphony at the Bolshoi to commemorate the first anniversary of the October Revolution. The 9th was chosen in both 1918 and 1989 because of Ode to Joy’s theme of freedom. I watched the performance on TV at the time and felt my world change. Buy the DVD—you will cry.

One year later I was in the first Gulf War, coverage of which highlighted for Americans the fact that the Muslim countries of the Middle East were ruled largely by dictators. Yet in 2011, the Arab Spring or “Arab Awakening” saw several of those dictators deposed. Pressure continues to mount for governments throughout the region to grant basic freedoms as the Awakening continues in 2012. Again, I can feel our world changing. Sic semper tyrannis.

Read *The Rational Optimist* by Matt Ridley, *The End of Poverty* by Jeffrey Sachs, *The Skeptical Environmentalist* by Bjorn Lomborg,
and The Next Hundred Years by George Friedman. Even Friedman’s Machiavellian discussion of future wars (higher tech, fewer casualties—compared to “Total War” as in the fire-bombings of Tokyo and Dresden) should lead one to conclude things are getting better on Earth, not worse. A key point for pension consultants is that capitalism, in its various forms, appears to be prevailing as the default mechanism of the global economy, notwithstanding recent criticism in the wake of the financial crisis.

100 YEARS AGO THE U.S. WAS AN EMERGING MARKET
But we have emerged, and now it’s someone else’s turn. The next 50 to 100 years will witness the development of the developing world. We will grow slowly, they will grow quickly. China and India between them have more than one-third of Earth’s population and roughly eight times as many people as the United States. The United States has 5 percent of global population but more than 25 percent of global GDP, and these ratios won’t hold. This doesn’t mean the United States will decline, it just means others will grow faster and we’ll matter less economically.

WHO WILL BUY THE BOOMERS’ STUFF?
Boomers bought big houses, but now that their kids are moving out, who will buy their McMansions? And as boomers retire, who will buy their stocks, since they’ll move to more conservative investments as they age? This is a global pension issue. In any economy, a funded pension system (i.e., one that has funds set aside, regardless of whether the assets are controlled publicly or privately) needs buyers when it sells stocks or other assets. More old people and fewer young people mean less demand for stocks and more for bonds. The logical implication is downward pressure on P/E ratios.

THE RICH ARE IN DEBT TO THE POOR
The “rich world” countries are deeply in debt, as we are all painfully aware. Our creditors are largely developing countries like China. This makes sense for historical and economic reasons, but it’s a bit embarrassing when the guy with the Mercedes pays for it by borrowing up to his eyeballs from the guy who rides a Schwinn.

“HARD” DEBTS ARE ONLY PART OF THE PICTURE
There are “hard” debts that must be repaid because default and crisis are the only alternative; the national debt and unfunded pension obligations fall in this category. There are also “soft” debts—unfunded obligations we’ve promised via laws such as Social Security and Medicare—but we can reduce the payments by changing the laws, such as by slowing the growth of future benefits. Globally, the combination of existing hard and soft obligations isn’t realistically payable,
and therefore won’t be paid. That which cannot be, will not be.

Unfortunately, the developed world is finding that public benefits, once promised, are nearly impossible to rescind or even reduce. The famous de Toqueville quote comes to mind: “A democratic government is the only one in which those who vote for a tax can escape the obligation to pay it.” Not true, of course: we only think we can escape paying for it.

**OUR POLITICIANS ARE, IN FACT, AWARE OF ALL THIS**

Scoff if you like, but I say they’re actually well informed in Washington. They just hide it well. They all know $2 + 2 = 4$, but Republicans feel they must insist the answer is 3 for negotiating purposes and Democrats swear it’s 5. The result is national unity: We’re united in hating our politicians.

But this is unfair. I’ve met Members of Congress, their staffers, and representatives of government agencies, albeit in a very minor capacity. I’ve found them to be smart, incredibly hardworking, and very well informed. They take time to understand the issues and possible solutions. They just can’t get any real solutions passed into law and feel constrained to pass fake ones so as to appear to be doing something. For our purposes, however, the point to bear in mind is not what can or cannot (or should or should not) get done but simply the direction of the pressure: downward. For the foreseeable future the environment will be one of strong downward pressure on public spending, and this has significant implications for the future of the 401(k).

**THE PERPETUAL CLAMOR FOR MORE GUARANTEES AND GOVERNMENT BENEFITS**

While the pressure is for less spending and therefore slower growth in government-guaranteed social insurance, a significant minority is and always has been in favor of adding new benefits. A number of organizations favor increasing Social Security benefits dramatically, for example, and in 2008 the pension industry reported extensively on the Congressional testimony of Professor Theresa Ghilarducci, author of *When I’m 64*, and her plan to replace the current 401(k) system with a flat tax credit and a government-guaranteed, CD-like investment. The pressure for more benefits is currently outweighed by the pressure for lower spending, but the support for lower entitlement spending is far from unanimous.

**COVERAGE: THE ELEPHANT IN THE LIVING ROOM**

“Coverage” refers to the percentage of U.S. workers who have access to a retirement plan at work. According to the *EBRI Databook on Employee Benefits* (available at [www.ebri.org](http://www.ebri.org)) that was 49.3 percent in 2009. As a society, we need coverage to be at least 80 percent, and preferably 95 percent. (Even Social Security covers only 95 percent of the population according to the Social Security Administration.) Increased self-sufficiency in retirement means less strain on public social insurance programs, so better coverage and participation—leading to more long-term savings—is recognized globally as being one of the primary solutions to the global pension crisis.

In the United States we’re getting increasingly serious about improving coverage. The Bush administration proposed changes (which were rejected) that were aimed at improving coverage. The Obama administration has done the same with a proposed system of auto-enrolled, payroll-deducted IRAs for small businesses with no retirement plan. The Australians adopted a similar system years ago as their primary national retirement plan, the British are adopting a similar program in 2012, and in the United States there appears to be support for President Obama’s plan; both ASPPA and the Society for Human Resource Management support it.

Several states have jumped into the coverage game with proposed legislation that would create state-run, pooled 401(k)s for small business. This is deemed necessary because there aren’t enough options for small business, which is a curious notion. As ASPPA Executive Director/CEO Brian Graff says, “…as if no
ASPPA CONFERENCES CALENDAR
May-December 2012

NATIONAL SHOWS

Western Benefits Conference
May 3-4
Las Vegas, NV

May 17-18
Atlanta, GA

Mid-Atlantic Benefits Conference
May 21-22
Philadelphia, PA

ACOPA Advanced Actuarial Conference
June 4-5
Boston, MA

ERPA Conference
June 7-8
Washington, DC

Women Business Leaders Forum
June 11-14
Charlotte, NC

Great Lakes Benefits Conference
June 21-22
Chicago, IL

Northeast Area Benefits Conference
July 9, Boston, MA
July 10, New York, NY

ASPPA Annual Conference
October 28-31
National Harbor, MD

REGIONAL SHOWS

NTSAA Compliance Conference
May 3-4
Las Vegas, NV

Benefits Conference of the South
May 17-18
Atlanta, GA

ACOPA Actuarial Symposium
August 10-11
Chicago, IL

The ASPPA Cincinnati Pension Conference
November 5-6
Covington, KY

American Society of Pension Professionals & Actuaries
www.asppa.org
one can get anyone to sell them a retirement plan...” Massachusetts, Connecticut, and California have all seen proposed legislation in this area.

The bottom line is that our society needs to improve coverage, both because it will reduce long-term strain on public spending and because it feels like the right thing to do. And if private industry cannot or will not handle the job, government may step in.

If you don’t like this idea, help solve the problem. Improving coverage via private sector solutions is one of the smartest and most important steps the private pension industry can take in the coming decades.

As a starting point, consider that there are roughly 5.8 million businesses in the U.S. with at least one employee but only about 600,000 have 20 or more employees. The chart above summarizes the coverage dilemma.

Total employment is 136 million. If coverage is 50 percent, that means we need to cover another 68 million people, and to do so we need 5 million small businesses and 21 million self-employed individuals to start retirement plans—unrealistic expectations at present. If we target a lesser goal, such as 70 percent coverage, we can get there if all businesses with 20+ employees are required to have plans.

Here’s the math: If we improve coverage from 50 percent to 70 percent and participation from 80 percent to 90 percent, instead of 40 percent total participation we get 63 percent. The impact on national retirement security and the implied long-term reduction in the strain on public safety nets could be profound. These

<table>
<thead>
<tr>
<th>No. of Firms</th>
<th>% of Firms</th>
<th>Total Employment</th>
<th>%</th>
<th>Avg. No. of Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Self-Employed (No Employees)</strong></td>
<td>21,090,761</td>
<td>n/a</td>
<td>21,090,761</td>
<td>16%</td>
</tr>
<tr>
<td><strong>1-4 Employees</strong></td>
<td>3,558,708</td>
<td>62%</td>
<td>5,966,190</td>
<td>4%</td>
</tr>
<tr>
<td><strong>5-19 Employees</strong></td>
<td>1,612,090</td>
<td>28%</td>
<td>14,772,119</td>
<td>11%</td>
</tr>
<tr>
<td><strong>20+ Employees</strong></td>
<td>596,508</td>
<td>10%</td>
<td>93,771,317</td>
<td>69%</td>
</tr>
<tr>
<td><strong>Total (Firms with Employees)</strong></td>
<td>5,767,306</td>
<td>100%</td>
<td>114,509,626</td>
<td>84%</td>
</tr>
<tr>
<td><strong>Total (Including Self-Employed)</strong></td>
<td>26,858,067</td>
<td>135,600,387</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

statistics are the source for the Obama administration’s proposal to require auto-enrolled, payroll-deduct IRAs for all businesses with more than 10 employees. A slightly higher threshold of 20+ employees would represent just 10 percent of all firms but nearly 70 percent of all employment.

If we bump the requirement to all firms with just 5+ employees, we get to 80 percent coverage, but roughly 1.5 million additional small businesses would be affected by the requirement. But in an ideal world we would figure out how to do precisely that, and do so profitably. This is a difficult task, but then again it’s a huge potential market—almost as large, in fact, as the existing private pension market.

**RELATIVE IMPACT OF TRANSPARENCY REFORMS ON RETIREMENT INCOME SECURITY: SMALL**

Don’t take this the wrong way: I believe strongly in the path of reform the Department of Labor has embarked upon, with modest caveats, but the net impact of all the reforms (408b-2, 404a-5, new Form 5500 disclosures, and pending regulations on the definition of “fiduciary,” among others) is small compared to the impact on retirement security if we could improve coverage to 70 percent-80 percent and participation to 85 percent-90 percent. Coverage and participation are the elephants in the living room; transparency, by comparison, is a mouse.

**THE BIAS AGAINST MANDATES**

Notwithstanding the statistical and fiscal desirability of increasing coverage to 80 percent and participation to 90 percent, the current climate in Washington and the United States as a whole doesn’t favor governmental mandates. But the math is still the math; to improve retirement security and take long-term strain off public resources we need retirement plans to be more widespread, and the size of the potential market is enormous.

**THE NEXT 20 YEARS OF 401(k): PREDICTIONS AND STRATEGY**

The single most important thing the private pension industry can do in the next 20 years is improve coverage and participation. New plans are tiny and the initial margins small, but the situation is parallel to the birth of the 401(k). Created by legislation in the late 70s, the original 401(k)s of the 80s and early 90s were startups. There were zero plans, so the industry had to go out and sell them.

The salient point is that we did it. We sold the plans, and there are now hundreds of thousands of them with trillions of dollars of assets. IRAs hold $5 trillion, most of it rollovers from those same plans. We went from zero to trillions in just 30 years.

If the private sector can engage its sales force to carry the 401(k) and its cousins [payroll deducted IRAs, 403(b)s, etc.] to 1.5 million new businesses, the industry will have 40 million new clients, and the bad idea of having state or federal government running retirement plans will go where it belongs.

It seems likely to me that the United States will choose to tackle the coverage problem because the fiscal benefits of doing so are profound in the long term, and we need some relief. The downward pressure on public spending and therefore public social insurance benefits means that the private pension system is and will remain the pre-eminent means for providing retirement security beyond mere subsistence.

**THE SPECIALIST-GENERALIST BARBELL**

It has become an article of faith in recent years that the era of the generalist broker selling 401(k)s is at an end. I disagree. The country needs between 40 million and 68 million new retirement plan participants who aren’t signing themselves up. Someone needs to sign them up. We did it once and we can do it again. But we need the generalists to make it happen.

Our startup 401(k)s are all grown up now. They have real money in them. And since the proper handling of other people’s money calls for professional fiduciary behavior, a class of professional fiduciaries is arising to dominate the mid-size and large-plan marketplace. This trend will continue. Consolidation of retirement plan business in the hands of fewer, better advisors is the future for larger plans.

Remember, however, that more than half of all plans filing 5500s have less than $1 million in assets, and most specialists prefer not to serve such small plans. Add another 1.5 million tiny plans and payroll-deduct IRAs, and you have a huge marketplace that cannot and will not be served by specialists. We therefore have, and will continue to have, a lopsided barbell: a handful of specialists handling the mid-size and larger plans, an army of generalists for the rest. The number of participants served by the two sides of the barbell might eventually be equal.

**CONTRARY VIEW: WE ARE ALREADY AT SATURATION**

Perhaps our society and our industry won’t bother to solve the coverage problem. Perhaps 718,000 plans are enough, and every company who can reasonably be expected to start a retirement plan has already done so. As David Wray of The Profit-Sharing/401(k) Council of America said in 2010 of a new British law requiring the British equivalent of payroll deducted IRAs for small business: “Whether or not every pub owner in Britain is going to set one of these things up remains to be seen.” If the market has fully matured, the business strategy for the next 20 years is clear: Make sure you’re one of the specialists.

**ADVISORS AND VENDORS AS SOCIETAL FIDUCIARIES**

The private pension system is
New proposed regulations from DOL are expected soon.

DISCLOSURE AND CONSENT AS THE MODEL FOR COMPLETING THE REGULATORY PORTFOLIO
Since Americans are comfortable with a “client first” standard of care and a “disclosure and consent” model for handling conflicts of interest, this will become the route we follow for completing the regulatory portfolio. This is the common law fiduciary approach: Clients must come first, but ERISA’s “exclusive purpose” standard doesn’t apply, so advisors may consider their own self-interest so long as they put client interests first.

Advisors who have conflicts of interest due to variable compensation must, under common law fiduciary rules, disclose the conflict, and the client must consent to the arrangement. Americans have no problem with this “disclosure and consent” approach under ordinary circumstances, so expect DOL and government generally to find compromises that fulfill the promise of ERISA’s protections for plan participants but allow fiduciary advisors a clear regulatory path for doing business similar to the standards currently in place for registered investment advisors. Expect also that there will be “seller’s exemptions” that allow product sellers to operate as non-fiduciaries, or to qualify for certain exemptions.

THE ECONOMY AND PLANET WILL SURVIVE
The current secular bear market will eventually end. International markets will become more and more important to U.S. investors. U.S. businesses and service offerings, including retirement plans, will become increasingly multicultural. The massive first-world debt burden is a serious headwind for the economy. Global aging is a headwind for stock prices, creating downward pressure on price/earnings ratios. But every age has its challenges; these are simply ours. Mankind has steadily improved its lot over the millennia, and this progress will continue in the 21st century, with developing economies in particular seeing dramatic improvements similar to those in the United States during the 20th century.

This is not simple optimism. If the planet is not going to explode, we all need to save a bunch of money to pay for retirement and retiree health care. And we need an army of sensibly regulated societal fiduciaries selling and servicing retirement plans to make it happen.
I AM ASPPA!

DENISE O. MATTHEWS-SERRA
CPC, QPA

PROFESSION:
Compliance Analyst

HOBBIES:
Reading with my WOW (Women of Wisdom) Book Club members

LAST BOOK READ:
The Known World, by Edward P. Jones

GREATEST ACCOMPLISHMENT:
Volunteering in my community and my children’s school to not only make a difference for them, but for all the children, regardless of their background.

WHY I DO WHAT I DO:
Plain and simple, it’s fun, exciting, and challenging.

FAVORITE QUOTE:
“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

WWW.ASPPA.ORG
Schedule SSA of Form 5500 has long been used by benefit plan administrators to report participants who are entitled to future benefits. However, this schedule has been replaced by the recently released Form 8955-SSA in order to remove participant Social Security numbers from the Form 5500 filing package.

The 8955-SSA is much the same as the old Schedule SSA, but an esoteric rule regarding participant statements is mentioned more prominently in the new filing instructions and has been causing some confusion among consultants and plan administrators.

HISTORY
The Form 5500 reporting requirement was created by the Employee Retirement Income Security Act (ERISA) as a way for the IRS, DOL, and other agencies to monitor benefit plan activity. Schedule SSA allowed the Social Security Administration...
to remind participants of potential pension benefits they may be entitled to. These Social Security Administration statements are notoriously unreliable because plan administrators have always been more diligent at listing participants on the Schedule SSA than removing them as single-sum benefits were paid or transferred to another plan.

Since 1978, Section 6057(e) of the Internal Revenue Code has required that plan sponsors send a statement by the SSA filing date to participants listed on the Schedule SSA. The statement must provide to the participant the information that is communicated on the SSA. Historically, practitioners and employers have taken the position that this statement requirement was satisfied by sending deferred vested letters to participants who terminate employment with a vested benefit. Some employers may have also considered benefit statements to active participants as sufficient.

In 2009, Schedule SSA was detached from Form 5500 because it contained participant Social Security numbers. To protect plan participants’ confidential information, a new stand-alone form was created.

**INTRODUCING THE NEW FORM 8955-SSA**

Rolled out in 2011, Form 8955-SSA was required for the 2009 and 2010 plan years by the later of January 17, 2012, or the due date that applies to the plan’s 2010 Form 5500 filing. It’s currently required to be filed on paper because, to date, there is no SSA-approved software for electronic filing. It contains much of the same information as the Schedule SSA, but also has an enigmatic line item 8, which asks:

“Did the plan administrator provide an individual statement to each participant required to receive a statement? □ Yes □ No”

The instructions do little to clarify this item. They read (as if Yes/No weren’t clear enough), “Check the appropriate box as to whether the plan administrator provided the individual statement to each participant required to receive one. See Penalties.”

**Penalties?** Sounds ominous. The old Schedule SSA was never this gloomy. The Penalties instructions shed a bit more light, saying, “Each plan administrator must… furnish to each affected participant an individual statement setting forth the information required to be contained in the form.” The new instructions also mention a penalty to the plan administrator of $50 for each participant who is not furnished a statement by the Form 8955-SSA filing deadline.

Some have speculated that the increased visibility of the statement requirement means that the IRS plans to vigorously enforce it, using the collected penalties to defray the costs associated with e-filing.

Because the IRS provided no guidance, many plan administrators scrambled to send out special mailings to the participants reported on their Form 8955-SSA by the January 17 deadline in an attempt to avoid penalties. Others maintained the traditional view that other mailings, such as deferred vested letters, would satisfy the requirement. There was also uncertainty about whether the statement must notify participants that information was sent to the IRS, instead of simply providing the information that was sent to the IRS. Additional details such as the employee identification number and plan number are included on the 8955-SSA, but are typically not included on deferred vested letters.

In addition, 6057(e) requires that the participant statement include information on any benefits that are forfeitable if the participant dies before a certain date, and this information is often not included on deferred vested letters.

In December 2011, ASPPA filed a letter with the IRS requesting clarification on the issue.
Thus, for purposes of completing Form 8955-SSA, the plan administrator’s notice to the plan participant does not need to include the participant’s social security number, the codes on page 2 of the Form 8955-SSA used to identify previously reported participants, or any information regarding any benefits which are forfeitable if the participant dies before a certain date.

WHAT SHOULD WE DO?
If you’ve already sent a special mailing to participants, don’t worry. You’re covered.

Defined benefit plan sponsors should discuss this change with their consultants and legal counsel to decide whether to change current procedures. This is an ideal time to review the information you’re providing to terminated vested participants. You may wish to add language to your deferred vested letters based on the bulleted list above.

Defined contribution plan statements would also seem to satisfy the new guidance as long as they’re provided before the Form 8955-SSA due date, and include the listed items.

SUMMARY
Since the 2009 and 2010 filings are due on the later of January 17, 2012 or the due date for the 2010 Form 5500, plan administrators should review the language in their deferred vested letters and benefit statements and decide whether it complies with Form 8955-SSA’s statement requirement for future years.

Whether you intend to rely on your prior process or add language to your deferred vested letters, plan sponsors should work with their consultants and legal counsel to understand the new rules and avoid costly penalties.

David W. Benbow, QPA, QKA, is client service manager for Milliman in Minneapolis, Minn.

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*Chatham Partners’ 2010 Client Satisfaction Analysis Survey, December 2010. Chatham Partners, LLC is an independent, third party research firm. Questions were asked of 732 Transamerica Retirement Services’ clients. Quantitative questions were rated on a 7-point scale with “6” and “7” representing the highest levels of satisfaction. A “Best in Class” rating was received when over 85 percent of the respondents selected a “6” or “7” for a specific area. Transamerica received a total of 85 “Best in Class” ratings in Chatham’s 2010 analysis. Transamerica or Transamerica Retirement Services refers to Transamerica Retirement Services Corporation, which is headquartered in Los Angeles, CA. TRSC 6186-1211
I AM ASPPA!

BRIAN FURGALA
ESQ., CPC, QPA

PROFESSION:
Attorney

BUSINESS:
GrayRobinson, P.A., Orlando, Florida

HOBBIES:
Running, Triathlons

LAST BOOK READ:
The ERISA Outline Book by Sal Tripodi

GREATEST ACCOMPLISHMENT:
Marrying my wife and raising our two boys

WHY I DO WHAT I DO:
For the opportunity to work through complex issues and to exceed clients’ expectations. The best part of my job is the variety of challenges and solutions addressed each day.

FAVORITE QUOTE:
“Life is a journey, not a destination.”
Ralph Waldo Emerson

MEMBER SINCE:
1999

WWW.ASPPA.ORG
Participants should be able to use debit cards when accessing automated loan programs.

A participant’s ability to borrow from retirement savings has been a part of 401(k) plans since the enactment of Section 401(k) of the Internal Revenue Code in 1978. And it’s well established that participants are likely to defer a higher percentage of their salaries if a loan program is in place. This is because participants feel comfortable deferring a portion of their salaries when funds are available for borrowing if needed.

If a participant chooses to borrow from his or her account balance, the principal amount of the loan plus interest will be repaid to the plan.

Unlike traditional paper loans, automated loan processing systems are simply a more efficient way to facilitate plan loan transactions. These systems use modern financial mechanisms, such as debit cards, to allow the participant to withdraw loan funds as-needed, yet do
so within the boundaries of all applicable regulations and plan rules. It doesn’t make sense to restrict these automated loan systems simply because they take advantage of modern technology.

**TRADITIONAL PLAN LOAN PROGRAMS**

The process for applying for a traditional 401(k) loan is relatively easy for a plan participant. A participant can apply for a traditional loan on a plan provider’s website with just a few mouse clicks. Unlike loans taken from an automated system, once the traditional loan is approved, the entire amount of the loan is withdrawn from a participant’s plan account in a lump sum. The entirety of a traditional loan balance, therefore, is no longer invested by the participant in the plan’s investments.

Data suggests that participants in traditional plan loan programs tend to borrow 25 percent more funds than are actually needed for the costs that led them to borrow in the first place. This is an understandable trend, especially if a plan only allows a participant to take out a single loan. When forced to estimate the total amount of funds needed, participants tend to create a “cushion” so that the funds borrowed safely cover all the necessary costs.

Traditional loans are repaid only through payroll deduction, and these loans typically become due upon termination of employment. A participant who is unable to repay the outstanding loan balance will incur a taxable distribution when he or she loses or leaves employment, meaning the participant will be charged income tax and an additional 10 percent penalty on the loan balance, and the participant’s retirement savings will then be reduced by the loan balance.

**AUTOMATED PLAN LOAN PROGRAMS**

The automated 401(k) loan program differs from a traditional loan program by giving participants flexibility to establish a loan account in the plan without actually withdrawing funds until the time of purchase. The participant’s loan account can remain in an investment option in the plan, continuing to earn investment returns and interest until the participant makes a loan withdrawal.

The participant may withdraw (purchase or expend) as little or as much as needed at any time, up to the approved amount of the loan account. The amount of unused funds in the participant’s account continues to remain invested, earning tax-deferred dividends and interest.

This is a significant departure from the lump-sum withdrawal required under traditional loan programs. Automated systems allow participants to borrow the exact amount of funds needed, eliminating the leakage caused by overestimation in the traditional loan environment.

Unlike traditional loan programs, automated loan programs don’t depend on payroll deduction as the only method of repayment. These programs can allow participants to continue paying their loan balance long after termination of employment, without any deemed distribution tax implications and penalties. Thus, the participant can avoid paying taxes and penalties if he or she loses employment or takes on a new position.

In addition, automated programs allow for accelerated payment of loans, enabling the participant to repay the loan faster. With traditional loans, a predetermined minimum amount is withdrawn from the participant’s paycheck. There is no ability for the participant to make additional principal payments each month or to make one-time payments. The only options are for the participant to pay the loan back over the term of the loan or pay off the entire balance of the loan. Automated programs have flexible repayment options. A participant can make payments of his or her loan at any time in any amount.

**THE SEAL ACT**

Recently, Senators Kohl (D-WI) and Enzi (R-WY) introduced pension legislation called the Savings Enhancement by Alleviating Leakage in 401(k) Savings Act of 2011 (SEAL Act). The SEAL Act contains several provisions designed to reduce leakage from retirement plans. Particularly, the Act would extend the rollover period for plan loans, allowing employees to contribute the amount outstanding on their loans to an IRA by the time they file their taxes for that year.

As discussed above, most plan loan provisions require a traditional plan loan borrower to repay the entire loan balance upon termination of employment. This provision recognizes the difficulty of repaying a plan loan when income suddenly ceases and it lessens that burden on the participant.

Another provision in the SEAL Act would allow 401(k) participants to continue to make elective contributions during the six months following a hardship withdrawal. Currently, after an employee receives a hardship withdrawal from a 401(k) plan, she or he is prohibited from making elective contributions to the retirement account for at least six months. The loss of both employee contributions and the employer’s matching contributions during this period can exacerbate the long-term negative effects on retirement savings. The SEAL Act allows participants to continue to make contributions during the six months following a hardship withdrawal.

Despite the several beneficial provisions of the SEAL Act, by banning the use of “credit cards and other similar arrangements” as a mechanism to allow participants to access borrowed funds, the Act is counterproductive to the interests of participants. In the news release accompanying the SEAL Act, Senator Enzi contends that 401(k) loan debit cards “actively encourage participants to tap into their savings before retirement.” We discuss this more fully below.
RESTRICTING PLAN LOAN AUTOMATION MECHANISMS WILL INCREASE LEAKAGE, NOT LESSEN IT

While automated loan systems have been criticized as encouraging participants to take larger loans, data suggests that the average loan balance for a participant in an automated loan program is approximately 30 percent less than a participant’s average balance in a traditional loan program.

Automated systems allow the participant to leave more assets in the plan to continue earning investment returns. When a participant is placed in the difficult financial situation of having to borrow from retirement savings, it makes sense for the law to allow that participant to use a debit card to borrow the exact amount of funds needed. The SEAL Act’s ban of debit card programs would foreclose the use of this helpful technology.

Participants who terminate employment and can’t afford to pay off their outstanding balances on their traditional-form loans when due, which usually is within 60 to 90 days after termination, are subject to a taxable distribution. Automated loan programs don’t impose these onerous repayment requirements. As a result, participants who have taken an automated loan are less likely to have their retirement savings reduced by a taxable distribution when their employment terminates. Therefore, automated programs, which allow participants to continue paying down loans after they leave employment or lose their jobs, alleviate this type of leakage from retirement plans. This feature is especially important given today’s increasingly mobile workforce.

Restricting plan loan automation mechanisms raises any concerns that the program complies with ERISA’s participant loan requirements as well as the statutory prohibited transaction exemption for participant loans. In fact, the DOL issued advisory opinion 95-17A in 1995 addressing a 401(k) debit card loan program and didn’t raise any concerns that the program violated ERISA.

In the 401(k) defined contribution plan arena, the plan loan option is a well-established and prevalent feature. Debit cards are a sensible and advantageous method in which to effect automated participant loans. While certain provisions of the SEAL Act make sense and while the overall objective of the legislation is noble, the proposed ban on debit cards misses the mark.

The ban on the use of this kind of technology is being proposed for no other apparent reason than that it works effectively. Loans are an important incentive to greater participant participation in 401(k) plans. Congress should not restrict the use of today’s technology and punish participants for undertaking an otherwise permissible activity that enables participants to access funds in the exact amount needed, which keeps more assets in their retirement plans.
What if you could allow terminating employees to continue paying their DC plan loan without a taxable event?

With MyPlanLoan, now you can.

Introducing MyPlanLoan – the only loan continuation solution designed to help terminated employees continue to repay their loans after separation from service. Through convenient ACH debit from a designated checking or savings account, participants can repay loans under the original terms, thus minimizing the risk of default. For terminated participants, MyPlanLoan can provide liquidity to help bridge the gap between jobs, thus reducing leakage from taxable distributions.

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Designed by a recordkeeper and used across hundreds of plans, this patented process eliminates the headaches of loan administration, and often improves plan participation and loan payback time. It’s a solution that benefits everyone.

To learn more about MyPlanLoan, please contact Gwenn Paness, MyPlanLoan Sales Director, at 646-285-4937 or gpaness@bpas.com
ARE YOU A SELF-PROCLAIMED OR A RECOGNIZED EXPERT?

BY DAVID J. WITZ

Advisors assist most fiduciaries with the responsibility to manage trillions of dollars of other people’s money in the increasingly complex private pension system. As ERISA has evolved, so has the role of the advisor and the need for fiduciaries to retain advisors with subject-matter expertise.

The following discussion of expertise is based on the author’s experience as an expert witness in ERISA litigation and the development of an advisor expertise evaluation system. Not all advisors can be experts at a level that can survive the scrutiny expert witnesses must endure, but an understanding of expertise in the legal and academic sense of the term holds lessons for all advisors no matter how advanced their current practice. This discussion will focus on the criteria an attorney uses to evaluate experts, why this criterion is appropriate for the plan sponsor to consider, and what an advisor can do to mitigate litigation risk. This is part 1 of a two-part series.
According to The Cambridge Handbook of Expertise and Expert Performance, regarded by many as the comprehensive source on the subject of expertise since its publication in the early 1980s, the study of subject-matter expertise can be dated back to early Greek civilization. It has continued to progress at an accelerating rate over the centuries. Besides the Handbook there are two other primary standards relied upon to determine the qualifications of an expert used in court proceedings. They are: Rule 702 of the Federal Rules of Evidence, and the U.S. Supreme Court’s decision in Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993) and its progeny of later cases.

The Federal Rules of Evidence regulate and govern the admission of expert testimony that a judge or jury may use to understand the evidence and reach a verdict. The U.S. Supreme Court clarified these standards in the Daubert decision by directing judges to act as ‘gatekeepers’ to limit admissible evidence or expert testimony to that which is both relevant and reliable. Both the Federal Rules of Evidence and Daubert are undeniably affected by the work of academia in regards to evaluating the domain of expertise.

“Expertise, by definition, refers to the manifestation of skills and understanding resulting from the accumulation of a large body of knowledge,” says the Cambridge Handbook. “Therefore it is harder to become an expert than to be one… Becoming an expert in almost anything requires literally years of work.”

Based on these existing standards, if an attorney asked you to identify the top 10 advisors for an expert witness engagement, whom would you name and what are your reasons? Would your list be the same if the person asking the question represented a magazine that published an annual list of top advisors?

If the names on each list are different, why? Finally, which list would your name be on, would you be on both lists and, if so, why? These are important questions that reveal how you define expertise, whether you perceive yourself as an expert, and how your definition and perception of expertise may differ from the standards currently relied upon in court proceedings.

Historically, the primary criterion used to measure advisor expertise in the market has been directly tied to success in accumulating assets under management. This is certainly an appropriate criterion to consider when evaluating sales experience but is it possible that all it reveals is a superior salesperson rather than a subject-matter expert? Sales experience and success are important to any organization interested in growing, but sales experience/success is not necessarily a reliable indicator of ERISA expertise, especially for an attorney seeking a subject-matter expert.

The attorney’s decision to retain an advisor will depend on many factors but in my experience the decision falls into four broad categories: experience, education, perspective, and the ability to communicate clearly, concisely, and effectively under pressure. Each category is analyzed in more detail.

**EXPERIENCE**
Experience is a critical criterion in establishing expertise. By most academic measurements, it takes 10 years of experience to establish subject-matter expertise. In other words, just because an advisor has been in the industry for 30 years doesn’t mean the advisor is an expert in anything. In fact, it just may be a reflection of an advisor’s ability to survive. Mediocre advisors typically have few retirement plan clients, offer little support or service, invest little time or capital in developing expertise, and fail to seek out education and training from other experts.

The pervasiveness of mediocre advisors should come as no surprise when you consider how low the barriers to enter the retirement industry are for an advisor. For example, in my home state of North Carolina, the experience and educational requirements to become licensed as a hair stylist are more extensive and more difficult than those required to become an investment advisor. In short, a clean criminal record, the ability to pass a test, and the financial wherewithal to pay a $375 state fee are the only criteria necessary to become an investment advisor in North Carolina. This low barrier to entry permits dilettantes to enter the industry and secure engagements as retirement plan advisors based on a personal relationship despite little or no actual experience or expertise.

Plan sponsors are best advised to adopt legal counsel’s lead to retain advisors who have developed expertise over long periods of time by engaging in extensive practice and accumulating extensive experience in a subject matter. To determine the advisor’s qualifications, it’s logical, appropriate, and prudent that a plan sponsor would query an advisor no differently than an attorney before an engagement to determine when the advisor secured the first retirement plan client, the number of retirement plan clients the advisor services, the percentage of gross revenue an advisor derives from retirement business, and the common services the advisor provides to all plans. Answers to these questions and others provide the plan sponsor or attorney with the ability to assess the depth and breadth of an advisor’s experience. With information in hand, a plan sponsor or attorney seeking an expert can avoid engaging an advisor who lacks the necessary experience to fulfill the requirements of the engagement or deliver the services promised.

**EDUCATION**
Only a few universities offer classes on ERISA, so it’s difficult to find an expert who has undergraduate or graduate-level academic experience. However, the industry does provide
numerous opportunities for advisors to build a substantial knowledge base through conferences and self-study designations or certifications. Books like ASPPA’s 401(k) Fiduciary Governance: An Advisor’s Guide by Pete Swisher should be on every advisor’s bookshelf and read and re-read, a form of practice, until it becomes part of the advisor’s DNA.

This recommendation should not be taken lightly. An advisor may justify a service, procedure, practice, or policy by referencing a resource like a book that’s highly regarded in our industry. If a book is referenced in court, expect the attorney to ask if it was purchased to determine if it was a recent purchase used to justify an action or something that’s part of your educational diet. Also, be careful not to take a designation too seriously; opposing attorneys will attack the credibility of a designation based on the lack of qualifications, low cost, and ease of securing the designation. Remember, currently the average cost to secure a law degree from a top-20 law school is $136,707 (www.goodfinancialcents.com/average-cost-law-school-tuition-is-it-worth-becoming-lawyer/), a substantial amount more in cost and time than any currently available ERISA-oriented designation. Be that as it may, a designation, regardless of cost or ease of acquisition, is still a worthy endeavor and an example of commitment to achieve a higher level of knowledge and expertise in the retirement industry.

If you don’t have a designation, get one that will properly represent your area of expertise from a reputable organization. In addition, a steady diet of one or two conferences each year is an important indication of an advisor’s ongoing pursuit of education and knowledge from other experts. The best conferences are those that have a technical agenda and that attract other technical experts. Studies indicate that experts seek out other experts to fine tune their skills. Annual continuing education requirements for a broker-dealer should not be relied upon as an example of educational pursuits.

PERSPECTIVE

An expert’s perspective on an issue is directly correlated to the expert’s experience and practical application of case law, the statutes, regulations, and other administrative actions and publications issued by the Department of Labor (DOL). Advisors who have successfully applied creative solutions to complex issues are especially sought after. ERISA experts must deal with the law on a daily basis by interpreting requirements and applying them in practice to client situations. However, the law is the domain of those licensed to practice law and the judicial system to interpret. So, it’s not uncommon for an ERISA expert to be accused of practicing law and attempting to school the court on the interpretation of the law.

At the same time, an ERISA expert is obligated to work within the parameters of the law when advising a plan sponsor. It’s an unavoidable dilemma and must be carefully navigated with a clear understanding that advisors are not attorneys and that an advisor’s recommendations should be prefaced with the suggestion to seek the opinion of outside competent ERISA counsel. That said, an expert’s perspective is highly coveted, especially when it’s based on a rich history of experience.

ABILITY TO COMMUNICATE

Communicating knowledge in a clear and concise manner is extremely important to a plan sponsor or an attorney. An advisor’s capability to communicate knowledge consistently and without hesitation in high-pressure situations, such as depositions or when testifying in court, is a reflection of confidence, knowledge, skill, and experience. It’s particularly important for an advisor to expect the unexpected and give a thoughtful pause before answering any question while testifying in a deposition or a court. The unexpected can take on many forms of questions and strategies designed to derail an expert’s testimony. For example,

1. Your skeletons will be exposed in the most humiliating way, so take a full-disclosure approach with legal counsel. This means you inform counsel of both previous and pending criminal and financial problems. Background checks are becoming more common to avoid embarrassing confrontations.

2. You may be asked the same questions in the morning and in the afternoon in an attempt to catch you in a contradiction that could be used to challenge your expertise and the validity of your testimony. To avoid any mistakes be pithy, not loquacious.

3. The “good cop, bad cop” routine may be employed to lure you into a sense of self-confidence, only to be followed by a series of personal attacks on your reputation, integrity, and professionalism. Don’t take anything personally.

4. The intimidating double-team approach is designed to harass, frustrate, and derail your mojo. This approach pits you against two technically savvy attorneys with access to technology to identify errors in your answers by comparison to the law. Just remember that you’re testifying to your experience with applying the technical rules to practical client situations.

5. The scavenger hunt is a tactic designed to intimidate, frustrate, and disrupt your thought process. It starts with a visually bad copy of a law given as an exhibit, followed by a request to answer a question by referencing the exhibit. If the exhibit isn’t in a format the expert is familiar with it can heighten stress. But remember, the clock is your friend so take your time to find your answer.

6. You may be deposed by an attorney who participated in
drafting the law you opined on. Though intimidating, remember to focus on your experience in applying the law to practical client situations.

Regardless of the circumstances, pressure, intimidation, credentials, and experience of opposing counsel, you must have good recall, deliver consistent answers in a concise manner, and take no offense to anything said. Memory is important but “I don’t recall” is a better answer than guessing. Your deposition is not an interpretation test so ask opposing counsel questions to clarify your understanding before replying.

**DANGERS OF BEING AN EXPERT WITNESS**

You’d think professionals in the retirement industry develop a thick skin but that’s not always the case. Competition permeates the industry in every domain and in a competitive industry, where a zero-sum game is the status quo, losses are tracked and remembered no differently than wins. As a result, advisors accepting the role of an expert witness may encounter a grudge held by the opposing party, especially if that opposing party is a collaborating partner on other business with the advisor. As a result, many advisors who are qualified experts decline to act as an expert witness to avoid a conflict or damage to an existing business relationship.

**EXPERT FOR THE PLAINTIFF OR DEFENSE**

In my experience, experts for the defense receive a higher hourly rate than experts for the plaintiff. That said, and this is a personal opinion, I don’t see any benefit to representing one side or the other because the decision to accept an expert-witness engagement is based on the claims you feel you can support. Also, I haven’t found that once you represent one side you cannot represent the other. If that were the case, attorneys wouldn’t jump ship from plaintiff to defense and vice versa. However, representing the other side with a position that opposes one you’ve previously taken is a challenging credibility buster that must be carefully navigated. Don’t be surprised if counsel would look for another expert to retain if you were on the opposite side of a past issue.

**WHAT ADVISORS CAN DO TO ELEVATE THEIR POSITION AS EXPERTS**

Plan sponsors that lack specific ERISA knowledge need to retain the services of an advisor who has the needed expertise in order to meet their fiduciary obligations. At the same time, advisors need to communicate their expertise without embellishment to secure new engagements and mitigate personal litigation risk. For various reasons, some expert advisors are well-suited for expert witness engagements but not all.

Regardless of an advisor’s interest in expert witness engagements, an advisor needs to take the appropriate steps to achieve and maintain expert status in a given domain. This then begs the question, what are the determining factors and what should an advisor do to establish and maintain a claim of expertise?

The next article will address what specific actions advisors can and should take to secure their claim of expertise.

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*David J. Witz, AIF® is managing director of FRA Plan Tools in Charlotte, N.C.*
CONDUCTING BUSINESS UNDER CIRCULAR 230

BY SHELDON H. SMITH, ESQ., APM

Rules governing practice before the IRS are prescribed by Treasury Department Circular No. 230 and the IRS’s Statement of Procedural Rules. Circular 230 is a regulation at 31 CFR, Subtitle A, Part. 10 last published on May 31, 2011 to be effective on August 2, 2011.

“Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents, filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.”

31 CFR § 10.2(a)(4).
PERSONS QUALIFIED TO PRACTICE BEFORE THE IRS

Circular 230 identifies the following persons as qualified to practice before the IRS:

- An attorney who is a member in good standing of the bar of the highest court of any state, U.S. possession, or the District of Columbia. 31 CFR §§ 10.3(a).

- A person qualified to practice as a certified public accountant (CPA) in any state, possession, or the District of Columbia. 31 CFR §§ 10.3(b).

- A person not automatically admitted as an attorney or CPA can qualify to practice before the IRS as an “enrolled agent,” “enrolled retirement plan agent,” “enrolled actuary,” or “registered tax return preparer.” 31 CFR §§ 10.3(c), 10.3(d), 10.3(e) and 10.3(f).

An enrolled actuary is an individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries. 31 CFR § 10.3(d) (1). ASPPA members who are actuaries must follow the Code of Professional Conduct for Actuaries.

An enrolled retirement plan agent (ERPA) is someone who demonstrates special competence in tax matters by written examination in qualified retirement plans. 31 CFR § 10.4(a) and (b). TPAs who are not ERPAs or who are not otherwise practitioners do not fall under the supervision of OPR and Circular 230 unless they participate in the preparation of a return as described below.

Practice before the IRS is regulated by the Office of Professional Responsibility (OPR). 31 CFR § 10.1. Early on, the IRS distinguished the preparation of returns from the role of an “advocate,” who is “one who acts in behalf of the taxpayer in urging particular determinations with respect to issues or controversies.” Rev. Proc. 68-29, 1968-2 CB 913.

The 2007 edition of Circular 230 provided that preparation of returns is not, by itself, practice before the IRS and was not regulated by Circular 230. The 2011 restated Circular 230, however, provides that “Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer’s tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in [Circular 230], as well as subject to the sanctions for violation of the regulations in [Circular 230].”

In other words, many individuals who are not lawyers, accountants, ERPAs, actuaries, or enrolled agents who are participating in the preparation of returns (including the Form 5500) fall under the jurisdiction of the OPR for some purposes. In every instance, Circular 230 is directly or indirectly imposing ethical conduct on practitioners.

STANDARDS OF PROFESSIONAL CONDUCT

Circular 230 imposes many duties on “practitioners,” i.e., persons qualified to practice before the IRS, that bear on proper ethical conduct, including the following:

Response to IRS requests for records or information.
A practitioner must submit records or information promptly upon proper request by the IRS unless the representative “believes in good faith and on reasonable grounds” that the information is privileged. 31 CFR § 10.20(a)(1). Privilege, and the determination of its application, is typically a determination to be made by an attorney. The law of privilege is complex. Generally, communications between a client and counsel are privileged communications. In certain circumstances having to do with tax advice, a privilege also applies with respect to communications between a client and other Circular 230 practitioners. Internal Revenue Code § 7525.

A privilege, when extant, belongs to the client, not to the practitioner, and only the client can waive it. Therefore, it’s very important that the practitioner not inadvertently, or through lack of understanding of the law of privilege, do so. A practitioner who causes a waiver without the client’s consent may well find himself or herself to be a defendant in a civil action. An ethical (and wise) practitioner who is not an attorney will consult with one when issues of privilege exist.

If the IRS requests records or information not within the possession or control of a practitioner or his or her client, the practitioner must “promptly notify” the requesting officer or employee and provide any information that he or she has “regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information.”

A practitioner must make “reasonable inquiry” of a client about the possession or control of the records or information but is not required to “make inquiry of any other person or independently verify any information provided by the… client regarding the identity of such persons.” 31 CFR § 10.20(a) (2). A practitioner may not “interfere, or attempt to interfere, with any proper and lawful effort” of the IRS to “obtain” any record or information unless the practitioner, “in good faith and on reasonable grounds,” believes that the record or information is privileged. 31 CFR § 10.20(c).

Return preparation and client errors.
A practitioner is required to exercise due diligence in preparing returns and other papers relating to IRS matters and in determining the “correctness” of his or her oral or written representations to the Treasury and clients with respect to IRS matters. 31 CFR § 10.22(a). A practitioner may
rely on the work of another where the practitioner uses reasonable care in engaging, supervising, and training that person. 31 CFR § 10.22(b). It is unethical, in a pure sense, to hire employees who do not possess the requisite skills and then fail to supervise and train them properly. The moral duty to both the new employee and the clients would be violated.

Upon learning that a client has not complied with the tax laws or has made an error in or omission from a return, document, or affidavit that the client has submitted or executed, a practitioner must promptly advise the client of the noncompliance, error, or omission and of the legal consequences of the noncompliance, error, or omission. 31 CFR § 10.21. This duty, however, does not include an obligation to advise the client to amend a previously filed return or other document to correct an inadvertent error. The moral obligation that one has to the tax system goes only so far, but the line is not clear. Never forget that the federal income tax system is an adversarial one. Finding the line and knowing when it can be crossed can impose moral uncertainty with respect to the system, your colleagues, and, of course, your client.

Client records.
At a client's request, a practitioner must "promptly return" records of the client that the client needs to comply with his or her federal tax obligations. 31 CFR § 10.28(a). This responsibility is "generally" not obviated by the "existence of a conflict of interest." Generally, a practitioner may not represent a client before the IRS if "the representation involves a conflict of interest." 31 CFR § 10.29(a). Such a conflict exists if representation of one client "will be directly adverse to another client" or if there is "a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner."

A representation involving a conflict of interest is allowed, however, if the practitioner "reasonably believes" that he or she "will be able to provide competent and diligent representation to each affected client," the representation is not "prohibited by law," and "[e]ach affected client gives informed consent, confirmed in writing." 31 CFR § 10.29(b).

Fees.
A practitioner may not "charge an unconscionable fee" for representing a client in a matter before the IRS. 31 CFR § 10.27(a). "Unconscionable" is not defined in Circular 230 and is subject to interpretation. With the advent of Department of Labor regulations on fee disclosure, standards may arise that would set certain baselines for reasonable fees. It may, therefore, be more readily determined if a fee is "unconscionable." The rules on fees focus heavily on contingent fees, not typically used in the benefits arena and, therefore, not addressed here.

Most complaints received by ASPPA from third parties that involve an ASPPA member deal with fee issues. Occasionally, but rarely, these border on inappropriate charges, but many involve failure by the member to communicate fees well and properly. Good ethical conduct would impose on the member a duty to communicate with a client about fees well and properly. That would be consistent with a moral obligation.

Advertising and solicitation.
A practitioner may not, "with respect to any" IRS "matter," use "any form of public communication or private solicitation" containing a "statement or claim" that is "false, fraudulent, … coercive[,] misleading or deceptive" and may not "participate in the use of" that type of communication or solicitation. 31 CFR § 10.30(a)(1).

A practitioner may not, directly or indirectly, make an "uninvited… solicitation of employment" in a matter "related to" the IRS if the solicitation "violates federal or state law or other applicable rule." 31 CFR § 10.30(a)(2). Moreover, a "lawful solicitation" by or on behalf of a practitioner must "clearly identify the solicitation as such and, if applicable, identify the source of the information.
used in choosing the recipient.”

“...A practitioner may not persist in attempting to contact a prospective client [who] has made it known to the practitioner that he or she does not desire to be solicited.” 31 CFR § 10.30(c). 31 CFR § 10.24(a)

A practitioner may “publish... a written schedule of fees” and “disseminate... fee information,” such as fixed fees for particular routine services, hourly rates, a range of fees for certain services, and the fee for an initial consultation. 31 CFR § 10.30(b)(1)(i). Fee information may be communicated by, for example, professional lists, telephone directories, newspapers, magazines, mailings, emails, faxes, hand-delivered flyers, radio, or television, as long as the method chosen does not cause a communication to be untruthful, deceptive, or “otherwise in violation of” Circular 230. 31 CFR § 10.30(c).

If “costs” may be incurred in a matter, fee information about the matter must indicate whether clients are responsible for the costs. 31 CFR § 10.30(b)(1)(ii). A practitioner disseminating fee information may not charge more than the stated rate or rates for at least 30 calendar days after the information is last published. 31 CFR § 10.30(b)(2). A practitioner who makes a solicitation or disseminates fee information by radio or television must retain “a recording of the actual transmission.” 31 CFR § 10.30(c).

Other Circular 230 obligations that bear on ethical responsibilities.

A practitioner must not “unreasonably delay the prompt disposition of any matter before the IRS.” 31 CFR § 10.23.

A practitioner may not, in any matter “constituting practice before the IRS,” “knowingly” accept assistance from, or provide assistance to, a person who has been disbarred or is under suspension from practice before the IRS. 31 CFR § 10.24(a).

A practitioner may not “take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public” with respect to a matter “administered by” the IRS if he or she is “employed as counsel, attorney, or agent” in the matter or “may be in any way interested.” 31 CFR § 10.26.

“...A practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to a client by the government in respect of a federal tax liability.” 31 CFR § 10.31.

Best practices.
The provisions of Circular 230 on best practices are “solely aspirational,” but “tax professionals are expected to observe these practices to preserve public confidence in the tax system.” TD 9165, 69 Fed. Reg. 75,839, 75,840 (Dec. 20, 2004). From a moral obligation, i.e., ethical one, best practices should logically be more than aspirational. Under Circular 230, it’s simply that violation of them would not directly lead to discipline. However, many of the more precise mandates of Circular 230 are subsumed by these best practices regardless.

“Best practices” include the following:

- “Communicating clearly with the client regarding the terms of the engagement.” 31 CFR § 10.33(a)(1).

- “Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.” 31 CFR § 10.33(a)(2).

- “Advising the client regarding the import of the conclusions reached…” 31 CFR § 10.33(a)(3).

- “Acting fairly and with integrity in practice before the Internal Revenue Service.” 31 CFR § 10.33(a)(4).

DISCIPLINARY PROCEEDINGS REGARDING PRACTITIONERS

The OPR may censure a practitioner or suspend or disbar him or her from practice before the IRS. 31 CFR § 10.50. Discipline will result if the practitioner is “shown to be incompetent [or] disreputable,” is convicted of a federal tax law violation or any criminal offense involving dishonesty or breach of trust or any federal or state law for which the conduct demonstrates that the practitioner is unfit to practice before the IRS. Providing false or misleading information to the IRS, improperly soliciting employment, willfully failing to file a federal tax return, or willfully evading tax or assisting someone else to do so will result in discipline.

Further, misappropriating client funds relevant to taxes, bribing or attempting to bribe an IRS official, state disbarment and acting contemptuously toward an IRS officer will all lead to discipline. 31 CFR § 10.51.

The sanction of “censure” may be either a private or a public reprimand. 31 CFR § 10.50(a). The Treasury may also “impose a monetary penalty” on an offending practitioner or the practitioner’s firm. 31 CFR § 10.50(c). The OPR, on learning of conduct justifying censure, suspension, or disbarment, may privately reprimand a practitioner without any formal proceeding. 31 CFR § 10.60(a).

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Peter Drucker, one of the most influential management consultants and writers of the past several decades, wrote: “Efficiency is doing things right; effectiveness is doing the right things.”

That’s certainly true when it comes to marketing. A great deal of work happens in the name of marketing, but only that which is aligned with strategic business goals has the potential to produce truly meaningful results. Otherwise, it’s easy to throw money at social media, advertising, public relations, industry events, corporate websites, and communication programs, but does it actually produce a return on investment (ROI)? If purposes are unclear or actions uncoordinated, marketing activities can easily miss the mark. Does it matter how many people attend your webinar if there is no engine to effectively continue the engagement afterwards? Is the effort to design a new website useful if the content doesn’t convey the quality of your relationships?

Retirement service providers face a number of challenges in communicating their value proposition in a largely commoditized, mature market niche.
Planning and executing a sustained, integrated marketing program of activities that supports partner and customer relationships as well as new sales is certainly among them. New technologies and platforms bring new opportunities which, in turn, bring new questions, choices, and issues to understand and address. The intent of this article is to share thoughts on how a more strategic approach to marketing may help you take advantage of more effective approaches to help your business grow.

A simple goal of marketing is to help drive new sales. Implicit in this desired outcome is to increase top-line revenue. To this end, many companies focus on lead generation activities through events, email marketing, partner programs, and the like. Many describe this as goal number one. Given the potential for customer attrition due to ordinary turnover or economic distress, it may be appropriate to rethink this as possibly goal number two. After all, if new revenue comes in the front door while existing revenue leaks out the back, the net result of efforts to promote new sales can be expensive and unproductive.

A strategic approach incorporates elements of a marketing plan that enhances dialogue with current customers as well as communicates value to new ones.

If you subscribe to the axiom that business equals relationships, then it stands to reason that your marketing efforts should underscore the benefits of a relationship with your company. Ironically, many retirement service providers fail to adequately express this in their branding or communications, whether on their websites, social media platforms, collateral, or events. Instead, they all too often present a great deal of information on commodity services and other deliverables that look much like those of competitors. It’s not that these details don’t matter, they do. However, they don’t necessarily help others understand why they should do business with you. Do you make clear how you help drive better outcomes? Do you help prospects understand what they should do and why they should do it with you? If your marketing program and content convey answers to these questions, you’re on the right track. If not, you may have work to do.

As you consider your web presence, collateral, advertising, public relations, and communications programs, how would you answer the following questions? (You might think of this as something of a self-assessment.)

**ARE YOU MAKING CLEAR THE BENEFITS OF A RELATIONSHIP WITH YOUR COMPANY?**

It’s one thing to help prospects understand why they should undertake a new retirement savings plan. It’s another to convince them why they should select your company as a partner in the process. In other words, “Why do it?” and “Why do it with us?” Explain what you bring to your relationships and how you help create good outcomes through your investment in and commitment to plan consulting, design, monitoring, reporting, education, technology, participant experience, and more.

**ARE YOU COMMUNICATING YOUR DIFFERENTIATORS? (WHAT SETS YOU APART?)**

Does this sound familiar? “We’ve been in business more than 20 years providing fast, timely, and accurate service.” Many hundreds of third-party administrators claim this. For the most part these statements are true, but they don’t necessarily help you stand apart from others in the eyes of a prospect. If you excel at plan design and consulting, consider a series of case studies or whitepapers that educate your audience about how you’ve helped others who faced similar situations and had similar concerns. The peer-to-peer testimonial value of these pieces can be substantial if authored well. The key is to generate content of distinguished quality and make it easy for others to access and share it.

**ARE YOU ENCOURAGING MORE INTERESTING COMMUNICATION BETWEEN YOU AND YOUR CUSTOMERS?**

How much do your customers really know about your organization and how you work to help them meet their goals? How much do you know about them in return? The reality is that much of the work you do is “behind the curtain.” Customers receive data requests and reports and forms to sign and invoices to pay, but they generally know little about the professional effort it takes to support them. The more they know and appreciate you as an organization of people dedicated to their needs, the more likely they may be to reflect positively on their relationship with you.

The corollary to this is that they may be less likely to view your service as merely a commodity to be easily interchanged with that of another firm. The goal of a communications program should be more than to send regulatory and administrative updates. It should enhance dialogue. Customized newsletters, polls, surveys, and live webinars can help reinforce the quality of your relationship and support the work of referring partners, too.

**ARE YOU LEARNING MORE ABOUT YOUR AUDIENCE (PRIORITIES, NEEDS, PREFERENCES, CONCERNS)?**

How much do you know about your customers’ needs and priorities? We tend to invest time and energy in the front end of relationships as we get to know the owners and leaders of companies, but what do we know about them years downstream? Unless you spend time with every customer on a regular basis (outside of the administrative correspondence...
If you subscribe to the axiom that business equals relationships, then it stands to reason that your marketing efforts should underscore the benefits of a relationship with your service providers.

loop), it can be hard to stay up-to-date, especially as management teams turn over at customer sites. The team that once hired you may no longer even be in place. Needs may have evolved as well. It can be risky to continue to do the cyclical work per your service agreement and assume that good performance against this is equivalent to a good relationship.

The opportunity here is to exploit the potential of social networking platforms, polls, surveys, webinars, and other events continuously in order to learn more about your customers’ needs. Even if you think you have your finger on the pulse of their needs, it may be valuable to reach out, ask for feedback, and validate your assumptions.

**ARE YOU ENHANCING YOUR COMPANY’S INDUSTRY STATURE?**

The vast majority of retirement service providers self-identify as technical experts, but few manage to create significant brand value or recognition as industry leaders. Performing solid, professional work may earn you the respect of local peers, but industry presence and presumed stature are reflected also as you publicly share expertise. You can express your voice in many ways that demonstrate leadership. These include authoring whitepapers, articles, or blogs on industry topics and hosting or leading educational events. Sourcing, writing, and publishing thought-leadership-quality content is a real challenge to organizations large and small. That said, the opportunity to differentiate can be terrific if you do it well.

The answers to these questions, while qualitative and sometimes anecdotal, may be more tangible and perhaps more meaningful than arguing how best to crunch the numbers that underlie the quantitative metrics of typical marketing ROI. To a great extent, they reflect how well your marketing efforts align with the strategic interests of your business. It’s not that you would be well advised to ignore ROI. Quite the contrary; metrics matter, provided you’re measuring the right things.

A strategic approach to marketing asks where activities may have the most impact, especially when considering the realities of limited time and budgets. Each of the suggestions presented here involves some expertise in authoring, publishing, and distributing content as well as in hosting or managing platforms that help maintain the dialogue you seek. If the questions posed here challenge your readiness, you may benefit by discussing these opportunities with your leadership team.

If you’re comfortable with your answers here, the next logical step may be to begin prioritizing the best use of your resources to establish a more integrated program to produce sustained outcomes over time. Whatever your current assessment, perhaps the most important step is to commit to taking action. The good news is there have never been better or more cost-effective tools to support what you may need to do next. Now is a great time to get started.

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DON’T BE BORING IN THE BOARDROOM: MAKE EFFECTIVE SALES PRESENTATIONS

BY GARY DEMOSS

Addressing clients around a conference room table requires its own set of rules and preparation.

There are three basic types of communication situations that retirement planning professionals encounter in the course of their business. The one-on-one interview is a conversation with a client across the desk. The stage presentation is a one-way monologue to an audience of 20 or more.

A boardroom presentation is neither of these. It’s more intimate than a stage but it usually involves more than one or two people. It often happens in a conference room around a big table. It’s a combination of monologue and dialogue and the
presenters themselves may constitute a team rather than a single speaker.

And it can easily turn into a disaster if you’re not prepared for it.

There are four cornerstones for making an effective boardroom presentation:

- Make a smooth opening.
- Make the most compelling points possible in a compelling way.
- Make sure you have a strong finish.
- Pay attention to delivery skills—eyes, voice, and body movement.

Much of what I talk about here is based on research by Maslansky Luntz and Partners that measures the emotional response of words and approaches. We used their methodology in testing plan sponsors to get their responses to how people react in a boardroom setting.

**A SMOOTH OPENING**
The first two or three minutes of any presentation are crucial. That’s when the clients will judge whether they like you and whether they’ll enjoy your presentation. After the basic introductions of the people present, there are three principles for making a smooth opening.

First, demonstrate for the client that you’re prepared by reviewing what you’re there to talk about. Make sure you’re all on the same page.

Second, lead with the benefits of your agenda topics. Don’t just say you’re here to talk about service, participant education, and investment choices. That’s a surefire way to watch their foreheads plop into the soup. Instead of focusing on you, focus on them.

“We’re here today to help you create a comfortable retirement for your employees. First we’ll talk about how we can make your employees retirement-ready through the various investment options we have in our plan.”

Research shows that leading with the benefit makes for the most effective agenda point. If you can’t articulate the benefit, don’t make it an agenda point.

Third, give your audience a chance to change the agenda. Ask if there’s something else they want you to cover. It invites their input and offers them the opportunity to participate.

**MAKING COMPELLING POINTS**
We call it storyboarding because it allows you to visualize in one area all the different things you want to say in your presentation and organize them in a well-connected manner.

Start with a flip chart, Post-it Notes, and an acronym: ICL.

- Identify all the things you can say about your topic, write each idea on a separate Post-it Note, and slap them all up on the flip chart. You may have 20 or 30 things you want to say to the client.
- Cluster your Post-it Notes into three common themes.
- Label those three themes.

Why only three? No reason, but it seems to work. It’s the power of three: three little pigs; three wishes; three blind mice. You get the idea. It’s simple and it’s focused.

If you have to talk about your company (and you should), don’t give them the usual laundry list: how big the office is, how many employees, how long it’s been around. They don’t care about that. They care about what it means to them. So explain it in the context of how the features of your company affect the client.

And if the topic of technology comes up, remember that they’re not looking for “new and improved,” they’re looking for “works as advertised.” They’re not interested in being a guinea pig for a beta test; they’re interested in getting the job done.

**A STRONG FINISH AND DELIVERY**
Summarize your points with a list of benefits and differentiators—what sets you apart from the rest of the field. And we always recommend a consultative close that says, “Based on what you’ve heard here today, what do you think the next steps should be?” This is the close that tested best in our studies.

Delivery of the message is as important as the message itself. Make sure you:

- Have focused visits with the clients and make eye contact.
- Vary your vocal inflection so you’re not speaking in a monotone.
- Move with a purpose and avoid repetitive, distracting gestures.
- If you’re working with a team, make sure the team members are ready for your handoff. Establish ahead of time who will be handling which topic and specific objections. Also establish the rules of the game up front—how and when you’d like them to pose questions, etc.

Clients will watch how you and your team present.

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The holidays have come and gone and, with them, the season for professional thank you gifts. It’s the time of year when many consultants both give and receive tokens of appreciation for professional business opportunities. Those gifts are often relatively modest—fruit baskets or candy—and unlikely to have a significant impact on the recipient’s business decisions in the year to come. When a gift rises to the level of a Rolex or front row seats to a sold-out Broadway show, however, they may have more lasting influence.

Gifts and goodies aren’t the only compensation that plan consultants may give or receive. The retirement plan community is large and diverse, made up of accountants, attorneys, investment advisors, TPAs, and others. Inevitably, plan consultants form professional friendships with peers in related professions, and

Clients expect their advisors to be objective, and to offer their best advice in the clients’ interest.
compensated only by that client. That the ASPPA member is being
apparent to everyone involved
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outside observers and improperly

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Conduct
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their best advice in the clients' interest.

They don't want advisors whose
opinions and advice are influenced
by undisclosed payments from third
Failing to disclose outside
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credibility and, if publicized, can
harm the reputation of retirement plan
professionals overall.

For ASPPA members, Section Four
of the ASPPA Code of Professional
Conduct offers specific guidance on
when and how to disclose gifts and
other sources of compensation:

An ASPPA member shall make
full and timely disclosure to
a principal of all sources of
compensation or other material
consideration that the member or
the member's firm may receive in
relation to an assignment for such
principal. A member who is not
financially and organizationally
independent concerning any
matter related to the performance
of professional services shall
disclose to the principal any
pertinent relationship which is
not apparent.

In many situations—for example,
where an ASPPA member is producing
a work product or recommendation
exclusively for a single client—it will
be apparent to everyone involved
that the ASPPA member is being
compensated only by that client.

In such a situation, no additional
disclosure is needed because there
are no other sources of compensation
associated with the assignment.

In other situations, however,
an ASPPA member might be
compensated by several principals
for the same work product. For
example, an ASPPA member who is
an investment advisor might have a
company newsletter to which clients
could subscribe for a fee. In that
situation, the ASPPA member is wise
to make clear to all of his clients
that the newsletter is not produced
exclusively for them, but is available
for purchase by all of the ASPPA
member's clients. Similarly, an ASPPA
member who has designed proprietary
software to facilitate annual testing
can offer it to all of her clients for a
fee but should not pretend that
the software was individually developed
for each client. (If the ASPPA member
customizes the software for each plan,
however, she can certainly say so.)

GIFTS AND GRATUITIES
As we've seen, not all of the
compensation that an ASPPA member
might receive in relation to an
assignment is necessarily in cash. In a
field where relationships are often the
key to professional success, gifts and
invitations to events are frequently
given. So, for example, that same
ASPPA member who is an investment
advisor might receive invitations to
“educational meetings” at resort hotels
from fund managers, or gifts from
fund managers with the expectation,
explicit or implicit, that the ASPPA
member would make favorable
recommendations to his clients.

If the ASPPA member accepts
the gift, he'll need to decide whether
the gift or invitation was sufficiently
material to warrant disclosure to his
clients. Before making that decision,
the ASPPA member would be smart
to consider relevant factors such
as the size of the gift, its intended
purpose, whether he believes the gift
could compromise his ability to offer
independent advice, and whether an
objective observer would be likely to
agree with his belief. An invitation
to a casual lunch probably would not
qualify as “material consideration,”
but a week-long golf trip to Scotland
probably would.

When it comes to determining
whether a gift or other consideration
is “material,” a plan consultant is wise
to keep in mind that appearances
matter. In today's environment, even
modest gifts can seem material to a
client and call the plan consultant's
independence into question. ASPPA
members are usually wise to avoid
situations that appear as though a
gift is being offered under the table.

An invitation to an “all expenses
paid seminar” set in an expensive
Hawaiian resort with only morning
classes followed by golf, spa, and
other amenities probably seems to
be more of a gift than an educational
opportunity. The very fact that the
sponsor tried to disguise the trip by
calling it a “seminar” might suggest
that the sponsor intended to deceive
outside observers and improperly
influence the ASPPA member. If an
ASPPA member is uncomfortable
disclosing a gift to a client, it's
probably a good indication that the
ASPPA member's judgment has been
affected by the gift.

Section Four of the ASPPA Code
refers to consideration paid not only
to the ASPPA member, but also to
anyone else in her firm. One way for
an ASPPA member to comply with
this requirement is to obtain access to
a full list of her firm's clients and take
reasonable steps to ensure that she
knows whenever anyone in the firm is
being paid with regard to a particular
transaction. Many firms fulfill
this requirement by maintaining
a database of clients and holding
periodic management meetings
to discuss pending projects. Such
practices can help ASPPA members
in the firm satisfy Section Four of
ASPPA's Code.

Firms also frequently have gift
policies that can make it easier for
ASPPA members to avoid accepting
presents, invitations, or other
Plan Consultant | sPring 2012

ASPPA member’s wife will receive a bonus if the client invests in the fund. Again, the ASPPA Code wouldn’t prohibit the ASPPA member from recommending that the client invest in the fund, but the ASPPA member would be wise to disclose his wife’s position with the fund to the client—and the possibility that his wife will receive a bonus—before recommending that his client invest in the fund.

A professional relationship may also need to be disclosed. For example, if an ASPPA member has worked frequently and developed a friendship with a particular TPA, it would normally be a good idea for the ASPPA member to disclose the existence of the friendship to the client before recommending that the client use the TPAs services. The principal could then make an informed decision about whether the ASPPA member’s recommendation was influenced by the friendship, and the ASPPA member would be

DISCLOSING RELATIONSHIPS
Gifts and gratuities aren’t the only potential pitfalls under Section Four; relationships count, too. An ASPPA member’s personal or professional relationships may also need to be disclosed to a principal if they’re not already apparent. For example, suppose an ASPPA member is an investment advisor and that his wife works as a vice president of a large investment fund that the ASPPA member wants to recommend to a client as an investment vehicle. The

Inevitably, plan consultants form professional friendships with peers in related professions, and frequently end up recommending their friends to the clients they serve.
in compliance with Section Four of ASPPA’s Code.

While Section Four of the ASPPA Code allows ASPPA members some discretion in determining whether a particular gift, gratuity, or relationship is material, it’s generally a good idea for ASPPA members to err on the side of disclosure to satisfy Section Four. Individuals’ ideas of materiality can differ substantially, but it’s usually more prudent to disclose too much than too little. A client will usually appreciate an ASPPA member’s candor and attention to professionalism if she is scrupulous about disclosing all sources of compensation and relationships.

If, however, the ASPPA member fails to disclose something that proves to be material later, her credibility can come into serious question. Disclosure need not always be formal—a casual conversation (“Since you’re looking for a new attorney, I’d like to recommend my friend Ralph Jones. I’ve done business with him for years, and he’s very skilled.”) may be enough. Recognizing, however, that memories fade, the ASPPA member may want to follow up with the client in writing to make sure that the disclosure was clear. An email (“Joan, it was great to see you today. Here’s the contact information for my friend Ralph Jones. As I mentioned, I’ve worked with him for years and think highly of him.”) may well be enough.

Section Four of ASPPA’s Code doesn’t require ASPPA members to decline third-party compensation or withdraw from personal friendships or business relationships. Section Four simply requires sufficient disclosure to maintain transparency in ASPPA members’ dealings with their clients. With thought and care, ASPPA members can usually meet Section Four’s requirements with little trouble and, in the process, strengthen their clients’ trust and their own reputation for professionalism.

Lauren Bloom is an attorney who speaks, writes, and consults on business ethics and responsible litigation risk management, and a contributing columnist for TheStreet.com. She is the author of the award-winning book, The Art of the Apology – How to Apologize Effectively to Practically Anyone and the e-book Elegant Ethical Solutions, A Practical Guide to Resolving Dilemmas While Preserving Your Business Relationships, available through the ASPPA Bookstore. She can be reached online at Lauren@businessethicsspeaker.com or by calling 703.585.0651.

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Visit www.asppa.org/boardnom for more information and to nominate a credentialed ASPPA member today!

**DEADLINE**

Nominations to be considered for the 2013 ASPPA Board of Directors must be received by **August 29, 2012**.

Visit www.asppa.org/PC for more information and to nominate a credentialed ASPPA member today!
Much has been written about the importance of fiduciary assessments of plan sponsors and other types of investment fiduciaries such as foundations. Often, the service provider who has the biggest influence on a plan or foundation’s fiduciary practices is the investment advisor. Under the Employee Retirement Income Security Act (ERISA), plan sponsors can hire investment advisors as co-fiduciaries to their plans, and are required to monitor them.

- What does a fiduciary assessment involve?
- Why is it important to investors?
- Can it improve investment performance?
- How does it help reputation management?
- What should advisors do?
Leading advisors undergo independent fiduciary assessments of their firms in order to convey to their clients that they’re seriously committed to their fiduciary responsibilities. In an age of distrust and financial scandal, it’s not sufficient to say that you’re registered with the Securities and Exchange Commission (SEC). SEC registration is a legal minimum requirement. SEC auditors will perform random audits on firms or when they suspect fraud, but their workload has been more than they can handle. I know of at least one investment advisor who was able to indefinitely postpone an SEC audit by sending the auditor information on his firm’s previous voluntary fiduciary assessment. After receiving the details of the fiduciary assessment, the SEC auditor seemed to lose interest.

An investment advisory firm that subjects itself to a third-party assessment is simultaneously confident, and desirous of continuous improvement. Its clients aren’t demanding these assessments (yet), but they acknowledge that transparency and full disclosure are now client necessities in this industry.

**HOW THE INVESTOR WINS**

Generally speaking, advisors must strike a balance between their professional obligations to achieve the best investment returns for clients, and to make a profit for their firm’s shareholders. According to Charles D. Ellis, (“The Winners’ Game,” *Financial Analysts Journal*, July/August 2011) “We’re losing the struggle to put our professional values and responsibilities first and our business objectives second.”

The struggle is being lost because many advisors aren’t investing sufficient resources in effective investment counseling. Effective counseling isn’t rocket science. It involves putting a plan in place with a prescribed asset mix, executing the plan in a consistent way, preparing for downturns, and spending time with clients—particularly when markets and emotions are at extremes.

“The independent advisor’s most important investment-related mission,” says Bob Veres in his white paper, “The Future of the Financial Advisory Business: Opportunities, Challenges and Trends in the Second Decade of the 21st Century,” “is to keep clients from self-destructing—an activity that, for many investors, is immensely more valuable than any portfolio management activity.”

Fi360, a training organization in Bridgeville, Pa., publishes a handbook entitled “Prudent Practices for Investment Advisors,” which describes 21 best fiduciary practices. This is a framework for effective counselling that’s substantiated by regulation and case law, and is considered by many leading advisors to be the road map for generating the best investment performance for their clients.

It’s been well documented that, in aggregate, investors suffer from a behavioral gap—their portfolios don’t do as well as the funds and products they invest in. This is probably because they trade too much, chase past performance, and then stray from their plan. Also, investors differ in many ways according to assets, income, spending obligations, market skills and experience, time horizon, and risk tolerance. One thing is certain: Whether individual or institutional, they need help in designing and managing suitable investment programs.

**THE FIDUCIARY ASSESSMENT**

Excellent advisors use independent fiduciary assessments as a governance tool. Assessments help keep the advisor accountable to the assessor and the investor, thereby creating a firm reminder of the professional values of the firm. Regular assessments force the firm to maintain processes that are sustainable, regardless of market conditions, thereby avoiding ad-hoc management decisions. The result is a systematic and effective investment management system resulting in higher investment returns over the long term.

An assessment should begin with a background check, including civil lawsuit databases and a review of public information such as the AdvisorCheck from the SEC and the Financial Industry Regulatory Authority’s (FINRA) BrokerCheck if applicable. Since the assessment is likely to be used to increase client trust, the background check is a necessary starting point.

Next, a review of all of the firm’s investment-related documents is necessary to ensure the fundamentals are sound. These documents include the investment policy statement (IPS) and the service agreement. As most know, the IPS is a foundational document for the investor. According to Fi360’s handbook (“Prudent Practices for Investment Advisors”) the best IPS documents define:

- The duties and responsibilities of all parties involved
- Diversification and rebalancing guidelines with specified risk, return, time horizon and cash flow parameters
Due diligence criteria for selecting investment options

Monitoring criteria for investment options and service vendors

Procedures for controlling and accounting for investment expenses.

The advisor’s service agreement has emerged as a central document for the disclosure of fees and conflicts of interest. The U.S. Department of Labor has finalized Regulation § 2550.408b-2(c), which contains mandatory requirements for advisors serving ERISA plans. The regulation is so prescriptive that it serves as a best practice for advisors to any client type. After all, an individual investor or foundation trustee should be equally sensitive to the disclosure of conflicts of interest.

The assessment should cover the advisor’s procedure for asset allocation. What capital market information is used to formulate risk and return models? What assumptions and investment theory is used? Generally, advisors are expected to rely on either (1) widely available computer tools such as mean-variance optimizers and Monte Carlo simulation, or (2) model portfolios that have been prepared using these same types of statistical programs. Models must be clearly articulated and a comparison to a standard model can help identify inconsistencies. For example, using a sample asset mix, how does the advisor’s modeled return and standard deviation compare to a standard? Can the differences be explained? While there is no single preferred asset allocation methodology, the advisor must have a sound and documented approach.

Regarding the implementation of investment strategies, does the advisor apply appropriate watch list

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### The fi360 Fiduciary Score

The fi360 Fiduciary Score bar charts provide a visual representation of the investment’s Score. The following thresholds provide the user with an easy to view assessment of the investment and a suggested course of action.

<table>
<thead>
<tr>
<th>fi360 Fiduciary Score: 0</th>
<th>0-9</th>
</tr>
</thead>
<tbody>
<tr>
<td>No fiduciary due diligence shortfalls.</td>
<td>10-25</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>fi360 Fiduciary Score: 1-25</th>
<th>25th Percentile</th>
</tr>
</thead>
<tbody>
<tr>
<td>The investment may be an appropriate choice for use in a fiduciary account.</td>
<td>26-50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>fi360 Fiduciary Score: 26-50</th>
<th>50th Percentile</th>
</tr>
</thead>
<tbody>
<tr>
<td>The investment has noteworthy shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, the investment may not need to be replaced.</td>
<td>51-75</td>
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</tbody>
</table>

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<thead>
<tr>
<th>fi360 Fiduciary Score: 51-75</th>
<th>75th Percentile</th>
</tr>
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<tbody>
<tr>
<td>The investment has considerable shortfalls. It may not be an appropriate choice if being considered in a search. However, if already in use, the investment may not need to be replaced.</td>
<td>76-90</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>fi360 Fiduciary Score: 76-100</th>
<th>90th Percentile</th>
</tr>
</thead>
<tbody>
<tr>
<td>The investment has significant shortfalls and may not be appropriate for use in a fiduciary account. Strongly consider replacing the investment if already in use.</td>
<td>91-100</td>
</tr>
</tbody>
</table>
procedures for underperforming investment options? Are watch list procedures regularly applied? A fiduciary assessment verifies the existence of a procedure through the examination of the investments held in the advisor’s client accounts. The examination should seek evidence of the advisor’s application of due diligence criteria on each of the investments. Factors such as track record, assets, management tenure, style consistency, and, of course, cost should be considered in the due diligence screens. Fi360 offers a Fiduciary Scoring Tool that simplifies the screening for these factors.

Naturally, there is no single approach to this discipline. It must be well-documented, thorough, and acted upon.

An assessment will seek evidence of written communication with investment managers, particularly when one is hired or fired. Documentation is essential. It serves as the best protection for an investment advisor in the event of litigation. The paper trail, or more realistically the electronic trail, is an effective means of ensuring accountability in the advisor’s team and evidence of adherence to an applied process for client management.

With the introduction of DOL regulation § 2550.404a-5 (known as “Participant Disclosure”), which is effective this spring, advisors to ERISA plans should also be assisting in the provision of investment-related fees, performance, and other information to plan participants and beneficiaries. While the ultimate responsibility falls to the plan sponsor, leading advisors will be knowledgeable of the regulatory requirements and able to help coordinate preparation of the disclosures.

The plan’s record-keeper will likely provide the majority of the required plan-related and administrative expenses, but it may fall on the advisor to provide the investment-related information. A good fiduciary assessment will query the advisor on this regulation. The regulation is intended to help ERISA plan participants, but many advisors will offer the same transparency to individuals as well as participants in non-qualified plans.

**SAFE HARBOR PROTECTIONS**

“Safe harbors” represent protections afforded to fiduciaries of employee benefit plans under ERISA. A rigorous fiduciary assessment of an investment advisor will query the specifics of the Act, serving as a checklist for compliance. The general safe harbor relates to the relief provided to fiduciaries from responsibilities as defined in Section 404(a) of ERISA. Similar relief is also provided in the Uniform Prudent Investor Act (UPIA) Section 9(a), Uniform Prudent Management of Institutional Funds Act (UPMIFA) Section 5(a), and Uniform Management of Public Employee Retirement Systems Act (MPERS) Section 6(d). Specific safe harbors in ERISA include:

- Section 3(38) of ERISA relates to the relief provided to fiduciaries from responsibility in connection with investment decisions made by an “investment manager.”
- Section 404(c) relates to the defense afforded to fiduciaries of participant-directed retirement plans.
- Section 404(c)(5) guides the investment of funds in qualified default investment alternatives (QDIAs) when a participant fails to direct the investment of his account.
- Sections 408(b)(14) and 408(g) relate to the relief provided to fiduciaries from responsibility in connection with investment decisions made by a “fiduciary adviser,” (as defined in the Pension Protection Act) who gives advice to participants.

 Better to ask about the requirements of these safe harbors in an assessment than in a courtroom! The assessment can be thought of as a plaintiff attorneys “discovery” in a potential litigation. An advisory firm that markets its own assessment can ward off plaintiff attorneys. Industry-leading insurance agencies such as the North American Professional Liability Insurance Association (NAPLIA) offer discounts on professional liability premiums to firms that are regularly assessed; they’re lower-risk clients.

**CLIENT FILE SAMPLING**

The best test of an advisory firm’s attention to its clients is a review of its actual files. I acknowledge that a client relationship is quite intangible and can’t be precisely assessed. Individuals have different personalities and behaviors, while investment committees can have vastly diverse priorities. Client files, however, are excellent indicators of the state of the relationship, and of the advisor’s organizational capabilities. Depending on the type of client, an excellent file should include:

- Client agreement (dated and signed)
- IPS (dated and signed)
- Documentation of the most recent account review
- Trust documents (if applicable)
- Investment Committee minutes
- Vendor Service Agreements
- Projected Cash Flow Analysis (for defined benefit plans)
- Documentation of the most recent rebalancing
- Documentation of due diligence for investment options
- Evidence of watch list procedures used
Some advisors say that their clients either refuse to meet, don’t have time, or simply don’t respond to meeting requests. The advisor’s attempts to meet (either by email or date of attempted call) should be kept within the file.

BUILDING TRUSTWORTHINESS
Leading advisory firms, particularly new or independent ones, know the importance of establishing trust with clients. With volatile markets, a seemingly endless debate on the “fiduciary standards” among legislators and industry groups, and the occasional scandal or lawsuit for breach of fiduciary duty, investors have cause for heightened distrust.

“The pursuit of trustworthiness is not a purely altruistic practice,” write Paul A. Argenti, James Lytton-Hitchins, and Richard Verity in “The Good, the Bad, and the Trustworthy.” (Strategy + Business, Winter 2010.) “It is a choice that some companies make to establish themselves in an age when corporate reputation matters. This doesn’t mean that to be trustworthy a company must be flawless. But the company must at the very least admit mistakes and accept responsibility for them, gain the commitment of all employees to fix broken business practices that cause harm or that no longer reinforce the business strategy, and offer a realistic plan to deliver on its promises in the future.”

The fiduciary assessment is rigorous and hence affects the culture of the organization. It’s a useful tool for advisory firms to gain commitment and accountability from staff. From a marketing perspective, it’s a tangible representation of that culture.

CONCLUSION
Regular fiduciary assessments of an investment advisor are rigorous activities that can lead to reduced risk and enhanced differentiation for the advisor, and improved investment performance for its clients. As the industry evolves over the next decade, plan sponsors, foundations, and individual investors will increasingly demand fiduciary assessments of their advisors. Those firms that voluntarily undertake these assessments will be industry leaders. PC

Carlos Panksep is general manager of the Centre for Fiduciary Excellence, LLC in Toronto, Ontario, Canada.
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Communication includes both speaking and listening, and cheap technology keeps us relevant and effective in the conversion.

Communication is the key to what we do every day, and we have to be ready to shift on the fly as our audience changes: that board of directors voting on whether to select us as their new provider; that busy executive director with whom we’ve worked for many years; participants seeking our counsel; or the myriad other professionals with whom we must coordinate our efforts to deliver excellent client service. We must continuously be at the top of our game.

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GANTTTER PROJECT
WWW.GANTTTER.COM

Any specialists in supply-chain management, logistics, or project management out there? If so, you’ve probably heard of a Gantt Chart, a type of bar chart that illustrates a project schedule.

Since many 403(b) advisors are consistently winning business en masse, Gantter Charts can be an effective way to communicate value to individuals or management considering selecting you as their advisor. Ever been involved in coordinating a conversion of 403(b) accounts from multiple vendors into three options? Use Gantter to map out a project plan and visually present it to your key stakeholders.

Gantter.com is a powerful, web-based project management tool that requires no software to be installed, and it completely integrates with Google Docs. Are you a Microsoft Project user? No problem. You can import your project files into Gantter.com and keep working.

There is no cost to use Gantter during the remainder of its development cycle, but you better act fast. There will ultimately be a small maintenance fee once the application is fully integrated and rolled out.

MAILCHIMP
WWW.MAILCHIMP.COM

My inbox is bombarded by 25-50 newsletters per week from various sources. How do you cut through all that noise to catch the attention of your readers? Recently, I noticed a few of the ones that fully integrated with social networks (Facebook, LinkedIn, etc.) were being delivered to me via MailChimp. Don’t let the name throw you off; MailChimp is easy to use and provides King Kong-sized functionality.

MailChimp not only helps you create and distribute eye-catching newsletters, but it also makes managing subscriber lists and tracking campaign performance a breeze. Throw in full integration with Google Analytics, Docs & Contacts, and you have a powerful tool that will actually tell you who opens those newsletters and cares about what you’re writing!

Whether you’re a small startup or a larger company, pricing is very user friendly. It’s free to use for up to 2,000 emails, with up to 12,000 sends per month. For additional bandwidth, monthly plans start as low as $10 per month.

LINKEDFA
WWW.LINKEDFA.COM

Social networks aren’t new, and neither are the compliance obstacles advisors face in trying to be a part of the social media conversation. Sure, you can scan Facebook, LinkedIn, and Twitter to read what’s on people’s minds, but how do you reach the masses with what you have to say?

LinkedIn may be your answer. It’s a social media hub designed specifically for financial advisors and the communication monitoring requirements they face. Create a LinkedIn account, add the user names and passwords for your Facebook, LinkedIn, and/or Twitter accounts, and presto—LinkedIn monitors all of your social media communications and emails you a full report every night. You can also generate on-demand tracking reports and have them sent directly to your inbox.

If you need a helping hand getting started with social networking, LinkedIn also sponsors a series of webinars just for financial advisors.

Oh, and it’s free!

BOX
WWW.BOX.NET

Share, manage, and access all your business content online. Box provides a secure online library for your files—documents, spreadsheets, proposals, even your favorite music and pictures. Download the free app for your PC or Mac to have Box automatically sync files from your desktop to your laptop while maintaining a secure offsite backup.

Need to collaborate with someone across town or across the country? No problem. Just add the files to a separate folder and add the email addresses of your collaborators to send them a link. You can control access permissions, allow users to upload, download, edit, or read-only. Even set an expiration date on the link.

With free apps for iPhone, iPad, and Android, you can access your Box files while on the go. It also integrates directly with SalesForce.com and LinkedIn.

Store up to 500 GB of data for only $15 per user per month.

Communication moves faster all the time. Whether you’re speaking or listening, using these tools will help you move fast enough to stay ahead of the curve. And, if you’re stuck in communication with someone and you want to get out, download Fake-A-Call to make sure you receive that phone call you absolutely have to answer just in time.
WHAT PANDORA CAN TEACH US ABOUT LEARNING

BY SARAH SIMONEAUX, CPC

Variety and short, intensive study periods work as well for adult CPE students as they do for younger learners.

Pandora is a personalized internet radio service that determines what you like to listen to. For example, you can select a “radio station” based not only on The Beatles, but based on The Beatles’ songs on the “Revolver” album. Pandora will select music with similar qualities to songs on the album, allowing you to give each tune a thumbs up or thumbs down. The more songs you rate, the better Pandora gets at predicting music...
you’ll like. Amazon and Netflix use similar technologies to suggest purchases and movies for their shoppers and viewers.

This innovative learning technology is being applied to public school students in Bronx, N.Y. through the School of One. School of One actually operates in a larger-than-normal classroom space with four options available to students when they walk in: working with teachers, learning one-on-one with virtual tutors, studying independently with books and computers, or working in a small group.

School of One uses a Pandora-like learning algorithm that incorporates ongoing data about students, the materials they use and the method they used that day to learn the concepts. The school then creates a unique schedule for every student, every day based on what learning option works best for the student and what he or she is studying.

We don’t yet have Pandora and the School of One learning algorithms in professional adult learning programs. We can, however, apply the principles of the technology when studying for a credential. Here are six tips to get started:

1. Start with the materials: In School of One, students are given the study materials they’ll be using well before they step into the classroom. Selecting different learning methods won’t work without knowing the learning objectives and the material to be mastered. Fortunately, credentialing programs, such as ASPPA’s Tax-Exempt & Governmental Plan Consultant (TGPC), list the learning objectives on their websites and provide materials in PDF and paper formats. Decide which program’s learning objectives best fit your practice and then obtain that study guide. However, wait to crack the books until after step 2.

2. Take a sample exam: School of One students take an assessment test before they start studying so the program can be tailored to their needs. Professional students can do the same by purchasing and taking a sample exam before diving into the materials. In general, there will be a one-to-one correlation between learning objectives and exam questions. You answer all the questions about who can sponsor a 403(b) or 457 plan correctly, for example, but you miss the questions dealing with what arrangement constitutes an ERISA plan. You can then find the pages of the study material that match the learning objectives dealing with ERISA plans and focus on that material first.

3. Vary the learning methods: The core concept of School of One is the varied learning methods students use every day. Adult students can apply this concept by incorporating different methods when studying for an exam. Use the PDF study guide, textbooks, online web courses, and office “lunch and learns” to mimic the variation in School of One. Students can use a LinkedIn or Facebook group to create virtual study groups. Skype is a great tool when you need to be face to face with your colleagues, but everyone is in a different location. I coach high school debate, and we use Skype to discuss debate resolutions and even have practice debates when I’m traveling on business. The key is to focus on the areas you identified when taking the sample exam and master one concept before moving on to the next topic.

4. Why cramming doesn’t work: We’ve all been told that waiting until the last minute to study is ineffective, but we’re likely to have crammed for a test at some point and felt that a passing result refutes this advice. However, studies consistently show that our brains’ ability to absorb concepts peaks at 30 to 50 minutes and plummets after that block of time. In fact, previously learned concepts can be lost beyond the 50-minute mark. In School of One, the students’ study plan requires them to take a break every 50 minutes and often suggests that they change from working one-on-one with a virtual tutor to working in a small group. Ideally, breaks shouldn’t involve “screen time” activities such as email, social networks, or YouTube videos. Research shows physical activity or speaking with colleagues or friends works better to help the brain store what you’ve just learned in long-term memory.

5. Wash, rinse, repeat: Colleges have also incorporated technological teaching methods designed to supplement the traditional professorial lecture. Student “clickers” are now used in many university classrooms to provide immediate feedback on how well students understand the material. Similar to audience response mechanisms long in use by the entertainment industry, clickers allow professors to repeat
study periods work well for everyone. Most important, interaction with each other continues to be the best way to solidify concepts we’ve learned on our own. 

Sarah Simoneaux, CPC, is president of Simoneaux Consulting Services in Mandeville, LA and a principal of Simoneaux & Stroud Consulting Services. She is a former president of ASPPA and previously served on the Education and Examination Committee as a Technical Education Consultant. Ms. Simoneaux wrote the textbook, Retirement Plan Consulting for Financial Professionals, which is used for the PFC-1 (Plan Financial Consulting - Part 1) course of ASPPA’s Qualified Plan Financial Consultant (QPFC) credentialing program.

6. Benefits of bootcamps: School of One founders expected to find that technology study sessions would be the most effective, especially for middle school students who’ve been immersed in technology since they were toddlers. To their surprise, face-to-face interaction in small groups and with teachers was equally or more effective in helping students learn difficult concepts, even for students who preferred “loner learning.”

The professional equivalent to the School of One findings is the bootcamp, or intensive study session. The interaction with other participants and the bootcamp instructor allows students to make connections between learning objectives and real-world situations. To be successful, bootcamp attendees should have already reviewed the material for the course’s learning objectives. Bootcamp instructors should also be familiar with the 50-minute concept in tip number four above.

Success in learning is the same for adults and kids—start with a plan. However, technology and knowledge about the different ways we learn demonstrates that the plan doesn’t have to start at “open your books to page one” or be the same for all of us. Variety and short, intensive

Concepts that students are taking longer to grasp. Clickers have been in use for more than five years, and data from the clickers has been used to determine what methods work best to increase student achievement.

The most consistent finding? Brief repetition of previous concepts at the beginning of every class can double the rate of student success on exams. Go over what you learned yesterday, last week, and last month—even when you think you know the material—before moving on to new concepts.

6. Benefits of bootcamps: School of One founders expected to find that technology study sessions would be the most effective, especially for middle school students who’ve been immersed in technology since they were toddlers. To their surprise, face-to-face interaction in small groups and with teachers was equally or more effective in helping students learn
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For as long as practitioners can remember, the rules for retirement plans have been frequently modified by the government. The past few months have been no exception with numerous changes to the existing rules as well as new guidance being proposed. 

The Government Affairs Committee (GAC) has been actively providing feedback to the government about the issues that affect our members, which have included the following recent comment letters and testimony.

**U.S. CONGRESS**


**TREASURY DEPARTMENT / INTERNAL REVENUE SERVICE**

ASPPA’s GAC submitted several comment letters to the Internal Revenue Service (IRS) regarding proposed guidance as well as issues raised by our members.

GAC requested that the IRS clarify the notice requirement for separated participants who are listed on IRS Form 8955-SSA and its predecessor, Schedule SSA to Form 5500, on December 20, 2011. ASPPA noted that in the past, many plan sponsors have relied on benefit statements and other documents provided to participants, collectively, to satisfy this requirement. ASPPA requested clarification that these practices are sufficient and will continue to constitute good faith compliance in the absence of specific regulatory standards. ASPPA also recommended that the IRS confirm that good faith compliance with the terms of the statute and existing regulations as outlined in the letter would be satisfactory pending further guidance for plan administrators. The comment letter is available at [http://bit.ly/GAC-122011](http://bit.ly/GAC-122011).

GAC asked the IRS on November 21, 2011 to eliminate the signature requirement when IRS Form 5558, Application for Extension of Time to File Certain
Employee Plan Returns, is filed to extend the due date for filing Form 8955-SSA. GAC requested that the exception granted under Treasury Regulation § 1.6081-11 for the Form 5500 series reports be applied or expanded to include Form 8955-SSA. The comment letter is available at http://bit.ly/GAC-112111.

ASPPA and the ASPPA College of Pension Actuaries (ACOPA) sent a letter to the IRS on November 10, 2011 regarding the deadline for amendments required to comply with Internal Revenue Code section 436. They requested that the deadline be extended to be concurrent with the recently extended deadline for certain hybrid plan amendments. The comment letter is available at http://bit.ly/GAC-111011.

On August 16, 2011, ASPPA, the National Institute of Pension Administrators (NIPA), and the American Institute of Retirement Education (AIRE) submitted comments to the IRS regarding the procedures and standards for approval of continuing education providers and programs under Circular 230. In particular, they recommended that an internet-based registration process be used to allow a qualifying sponsor to immediately receive a continuing education program number when registering a particular course or products. The comment letter is available at http://bit.ly/GAC-081611.

U.S. DEPARTMENT OF LABOR

ASPPA’s GAC also submitted comment letters to the U.S. Department of Labor (DOL) about issues that were important to our members and provided testimony to the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council).

ASPPA and the Council of Independent 401(k) Recordkeepers (CIKR) requested that the DOL extend the applicability dates of the DOL regulations issued under ERISA sections 404(a) and 408(b)(2) on December 19, 2011. They emphasized that as we come to the “finish line,” it’s of critical importance that sufficient time be provided to make the necessary system changes to implement the final rules. They recommended that the applicability date be extended to one year after the 408(b)(2) regulation is published in final form and that the applicability date for the 404(a) regulation should be extended until one year after the final 408(b)(2) regulation is published. The comment letter is available at http://bit.ly/GAC-121911.

GAC also submitted comments to the DOL on September 30, 2011 proposing modifications to its Voluntary Fiduciary Correction Program (VFCP) as it applies to the late deposits of elective deferrals. GAC recommended that the program be improved by adding a formal self-correction component for the late deposit of deferrals. This component would allow employers to correct in accordance with the current VFCP methodology without having to file an application with the DOL. Instead, the employer would report that it self-corrected under the program and would provide information on the Form 5500, Annual Return/Report of Employee Benefit Plan. The comment letter is available at http://bit.ly/GAC-093011.

Richard Carpenter testified on behalf of ASPPA at an Advisory Council on Employee Welfare and Pension Benefit Plans hearing on September 1, 2011 regarding data security and privacy issues. Mr. Carpenter emphasized that education is an integral part of any solution and that the DOL Strategic Plan for Participant & Compliance Outreach, Education and Assistance should be amended to include programs to assist the regulated community in dealing with these issues. A copy of Mr. Carpenter’s Statement for the Record is available at http://bit.ly/GAC-T-090111.

PENSION BENEFIT GUARANTY CORPORATION

ASPPA and the ASPPA College of Pension Actuaries (ACOPA) also recently addressed the following issues with the Pension Benefit Guaranty Corporation (PBGC).

ASPPA and ACOPA submitted comments to the PBGC on the proposed rule relating to benefit determinations and plan valuations for statutory hybrid plans on December 30, 2011. They recommended that the proposed regulations regarding § 4022 should be temporary and effective only for plan terminations occurring before the effective date of final Treasury regulations regarding market rate of return. They also recommended that the PBGC re-propose these rules in a manner consistent with the final Treasury regulations after the final market rate of return regulations are issued. The comment letter is available at http://bit.ly/GAC-123011.

ACOPA also joined five other organizations on September 26, 2011 in requesting that PBGC expand relief for filing errors regarding the election of the alternative premium funding target. The comment letter is available at http://bit.ly/GAC-092611.

MOVING FORWARD

GAC continues to communicate with the government to address the needs and concerns of members. To view all of GAC’s comment letters, visit www.asppa.org/comments. For all of GAC’s written testimony, visit www.asppa.org/testimony.

Debra Davis is assistant general counsel/director of government affairs with ASPPA in Arlington, Va.
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**APRIL**

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**Apr 5**
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**Apr 10-13**
EA-2B Examination Review Course

**MAY**

**May 1**
Final Registration Deadline for Spring Examinations

**May 3**
Postponement Deadline for A-4 Examination

**May 3-4**
NTSAA Compliance Conference Las Vegas, NV

**JUNE**

**Jun 4-5**
ACOPA Advanced Actuarial Conference • Boston, MA

**Jun 7-8**
ERPA Conference Washington, DC

**Jun 8**
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