
Leveraging Regulatory
Changes to Engage Employees
BALANCING ROLES, RESPONSIBILITIES AND RISK
Presented by: Michael Brown, Managing Partner
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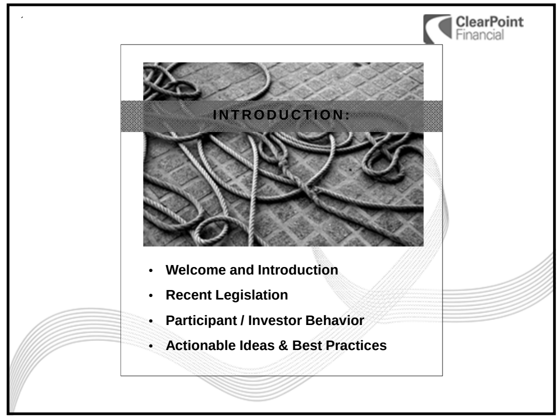
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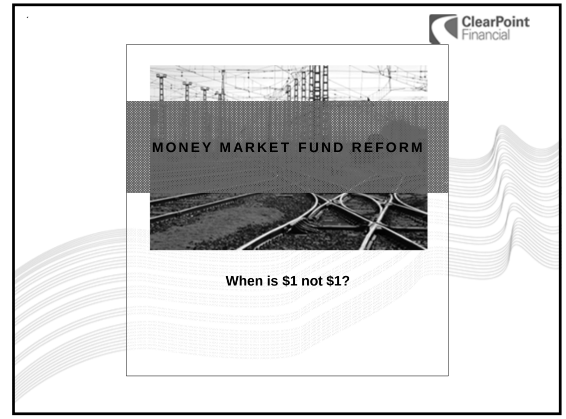
INTRODUCTION:
• Welcome and Introduction
• Recent Legislation
• Participant / Investor Behavior
• Actionable Ideas & Best Practices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MONEY MARKET FUND REFORM
When is $1 not $1?

Money Market Reform

A Brief History

- Boring stuff until '08/09 financial collapse
- Lehman Brothers folds, chaos ensues, trust ceases
- Commercial paper market stops working
- Prices cannot be obtained, paper not trading
- U.S. Gov't backstopped $1 NAV

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Money Market Reform

What's Coming
- Effective October 2016
- Retail / Institutional fund differentiation
- Institutional fund NAV floats
- Retail (non-government) fund maintains constant $1 NAV
  - 2% liquidity fee
  - And/or up to a 10 day redemption gate
  - Intended to stem potential run on the system

Implications
- More stable value funds
- More government money market funds (99.5% cash, gov't, repurchase)
- Pension plans not natural persons – likely switch to gov't fund
- Disclosure & reporting changes
- Investment Policy Statement reviews

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Supreme court affirms duty to monitor investments

Definition of Fiduciary - Unchanged

ERISA says a person is a Fiduciary to the extent that he/she:

(i) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets;

(ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan or has any authority of such plan or has any authority or responsibility to do so or,

(iii) has any discretionary authority or discretionary responsibility in the administration of such a plan.

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Tibble vs. Edison International

CLAIM:

Sponsor breached fiduciary duty by choosing higher cost retail funds when identical lower cost institutional funds available.

FACTS:

- In 1999 Edison offered several mutual fund investments in their 401(k) plan that had higher fees than other nearly identical funds (retail share vs. institutional shares).
- Edison claimed plaintiffs could only sue over funds initiated in the previous 6 year statute of limitations.
- Justice Stephen Breyer : "ERISA's fiduciary duty is derived from the common law of trusts, which provides that a trustee has a continuing duty – separate and apart from the duty to exercise prudence in selecting investments at the outset – to monitor, and remove imprudent, trust investments."
- The fact that the funds were materially equivalent was important – the focus was on the fees associated with the funds that could materially effect a participant's internal rate of return.

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Tibble vs. Edison International

OUTCOME:

- On May 18, 2015, the U.S. Supreme Court held that fiduciaries who select investment options for 401(k) plans have a continuing duty under ERISA to monitor the investment options in the plan.
- Case was sent back to 9th District for new consideration under the assumption that the selection date is not important, but monitoring of investment can also be applied.

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What the Supreme Court did tell us…

- There is a difference in fiduciary duties to select funds and to monitor.
- Fiduciaries do have ongoing duty to monitor investments
- The statute of limitations begins when the breach of duty to monitor the fund occurs. (But note the next slide…)

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What the Supreme Court didn't tell us…

- If there is a duty to monitor, what exactly are we monitoring?
- What special circumstances could require a fiduciary's obligation to review a specific fund?
- How often should you review funds?
- How long should a fund be on "watch" – 6, 12, 18 months?
- Would the review criteria be the same upon initial investment as continuing investment?

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What Has Changed?

Recent focus is on the "Duty to Monitor Investments" or "What are the fees?"

- Retirement Plan Investment Committees should have a prudent investment process that is documented and repeatable
- Engaged in a thoughtful decision-making process for selecting and **monitoring** the investment options in accordance with the plan's investment policy statement
- Increased focus now on what the fees paid for investments are used for: Any Revenue Sharing used to reduce the amount of recordkeeping fees should be completely disclosed to participants

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Takeaways

Takeaways
- Stricter guidelines on maintaining due diligence
- Increased demand for co-fiduciary services
- Fewer investment options
- Increased lawsuits

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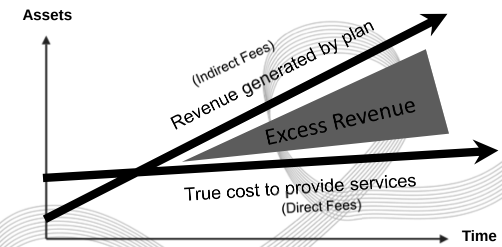
Service Provider Economics



Asset Growth in the Plan Over Time

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20 years in the oven – still baking

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What Is the Proposed Rule?

Amend definition of "fiduciary" by expanding what it means to provide "advice"

- Would legally require brokers who advise a plan as to investments to be fiduciaries even if they ultimately don't make final investment decisions.
- All advisors would have to clearly reveal all fees paid by investments, including revenue sharing and commissions.
- The investment advisor can set compensation practices, but must act in the "best interest" of the plan participant and clearly disclose any potential conflicts of interest, like hidden termination fees.
- Advisors who are now fiduciaries could be sued by plan sponsors and participants as well as the DOL.

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Fiduciary cases are settling in the millions

- In November, 2014, MassMutual agreed to pay $9.475 million to retirement plan participants to settle a suit that claimed it breached its fiduciary responsibility when it got revenue-sharing payments from investment advisors and mutual fund companies.
- In December, Nationwide Life Insurance and its affiliate, Nationwide Financial Services, settled a $140 million lawsuit that claimed that the revenue-sharing payments Nationwide received from several mutual fund companies violated ERISA.
- Also in December, Lockheed Martin settled for $62 million a class action claiming that the company offered investment options in its retirement plan that had excessive fees.

Nationwide, MassMutual and Lockheed Martin deny any wrongdoing.

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Rethinking Assumptions

Inertia Illustrated

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Germany	Austria
12%	1%
☑ donate organs	☑ don't donate
12% Donors	99% Donors

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A Tale of Two Countries

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Australia
- Superannuation started in 1992 (21 years ago)
- $1.5 Trillion

United States
- 401(k) began in 1978 (35 years ago)
- $2.8 Trillion
- But… U.S. has 14 times population of Australia!

Source: BusinessWeek 5.3.13 – Retirement Savings Done Right

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2014 Retirement Survey — Key statistics

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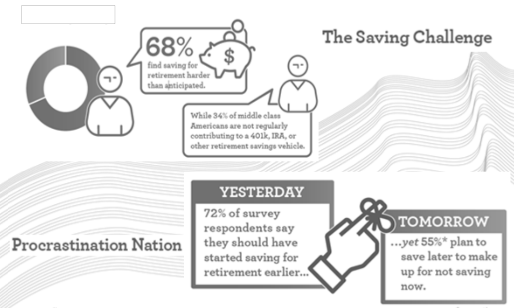

Source: Wells Fargo Retirement Survey, 2014

*non-retirees

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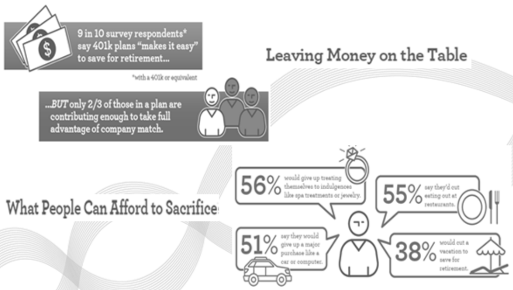
2014 Retirement Survey — Key statistics



Source: Wells Fargo Retirement Survey, 2014
Source: Wells Fargo Retirement Survey, 2014

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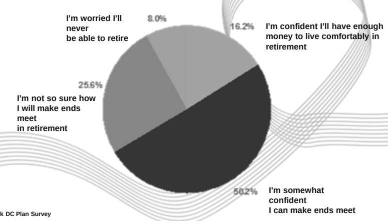
2014 Retirement Survey — Key statistics

Few feel confident their preparation will get them the retirement they want
Only 16% of participants feel they will have enough money to retire on time

How confident are you that you'll have enough money to retire at the age you plan to retire at?



Source: BlackRock DC Plan Survey

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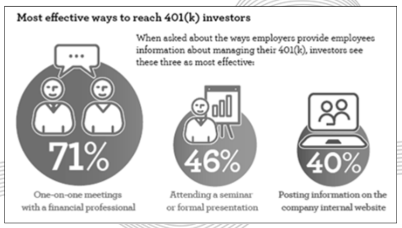
How participants like to receive information

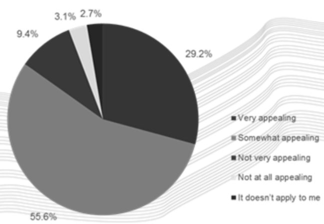
Effective ways employers can provide 401(k) information



Source: Wells Fargo Retirement Survey, 2014

How appealing to you is the idea of a target date fund?

FINDING: Participants favor increased plan sponsor guidance and investment options, like target date funds, designed to ensure they are investing appropriately



Source: BlackRock DC Plan Survey

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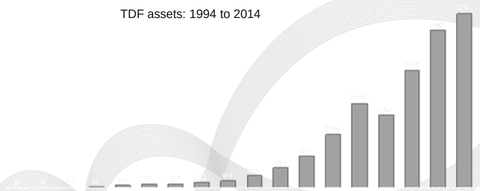
TDF Adoption Rates

Target Date fund projections:
50% of all DC assets by 2020 (approx. ~$3.8tr AUM)

TDF assets: 1994 to 2014



Source: BlackRock DC Plan Survey

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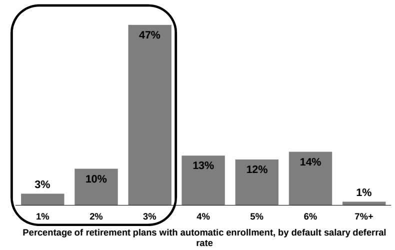
Presumed Deferral Rate

If default deferral rate is too low, participants may still be set up to fail



Source: *57th Annual Survey, PSCA's Annual Survey of Profit Sharing and 401(k) Plans, 2013* plan experience; page 68. Note: Numbers are rounded up and, as a result, may total more than 100%

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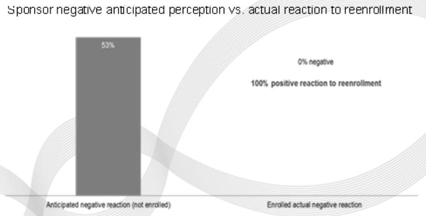
Negative Perceptions

Q: Biggest hurdle to not implementing re-enrollment?
A: The perception of negative reaction

Plan sponsors that automatically reenrolled participants unanimously claim positive reaction from participants



Source: BlackRock DC Plan Survey

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Despite clear benefits, negative perceptions of reenrollment exist. If, like others, you're considering reenrolling participants, focus on the facts

	Perception	Reality	Consideration
1	Participants will resist change	Employees want and appreciate your help	Most plan sponsors who reenroll participants find that resistance is less of an obstacle than anticipated
2	Reenrollment is too difficult	Reenrollment doesn't have to be painful	Reenrollment often doesn't create much more administrative work beyond restructuring an investment menu
3	Reenrollment will be costly	Costs can be offset by savings and by tailoring plan design	In the case of high staff turnover, a plan sponsor may choose to auto enroll employees after six months of tenure
4	Communicating change is expensive & time consuming	Communication can be cost effective & clear-cut	If reenrollment coincides with a change in the plan lineup or design, plan sponsors already need to communicate to participants. Leverage these efforts without adding significant costs
5	I can handle reenrollment myself	Your recordkeeper & investment managers can help	If done correctly, reenrollment has the potential to significantly increase participation rates, so it is critical to enlist expert help
6	Market conditions are unfavorable. I'll wait until they change	When it comes to reenrollment, there's no time like the present	The benefits participants receive from their plan are long lasting – and easily exceed any potential temporary losses related to movement in or out of an investment at an inopportune time

Source: BlackRock DC Plan Survey

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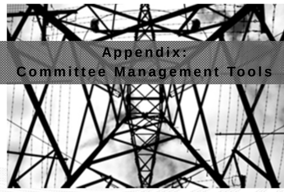
Turning insight into action: The opportunity is now

	Participant Reality	Sponsor Action
1	Participants see saving as their top priority and responsibility, but worry that they are failing	Auto-enroll, Auto-escalate & Company Match
2	Participants give employers high marks for pre-retirement support, but welcome more guidance	Target Date QDIA, Investment Menu Simplification & Re-enrollment
3	Participants and plan sponsors differ on post retirement responsibility, highlighting a critical gap – the need for a retirement income solution	Retirement Income Option

Source: BlackRock DC Plan Survey



Appendix: Committee Management Tools

- **Committee topics of interest**
- **Sample committee meeting minutes**
- **Fiduciary Calendar**
- **Annual fiduciary checklist**

Sample committee topics of interest

COMMITTEE MEETING TOPICS OF INTEREST

- Review potential meeting topics
- Pick the ones that interest you
- Set Goals around topics of interest to the committee

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Sample committee meeting minutes

COMMITTEE MEETING MINUTES

- The minutes document review material, action items and topics for discussion.
- All committee members should review prior meeting minutes.
- Prior Minutes should be approved at the onset of the meeting.

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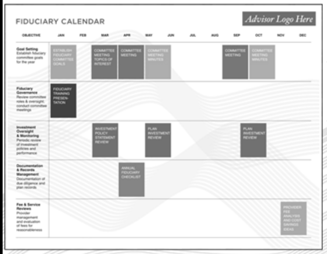
Sample annual fiduciary calendar



- Outline important fiduciary activities, dates, deliverables
- Examples:
  Q1: Review vendors
  Q2: Review TD Funds
  Q3: Fee review
  Q4: Create education Plan

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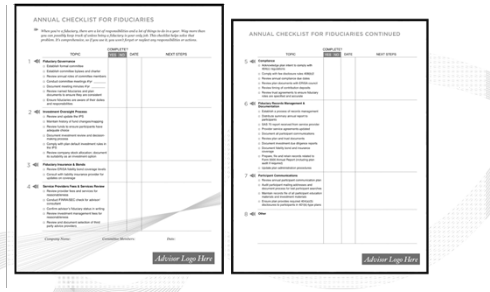
The annual fiduciary checklist



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Thank You

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