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Program Agenda

7:30 AM - 9:00 AM - Registration and Continental Breakfast
8:50 AM - 9:00 AM - Opening Remarks

9:00 AM - 9:50 AM - Session 1: Regulatory and Compliance Update for Benefit Plans

10:00 AM - 10:50 AM - Session 2: Employer Strategies to Monitor PBM Performance
10:50 AM - 11:10 AM - Refreshment Break

11:10 AM - 12:00 PM - Session 3: Fiduciary Trends and Data Security
12:00 PM - 1:00 PM - Lunch

1:00 PM - 1:50 PM - Session 4: Blending Health & Wellness with Financial Wellness
1:50 PM - 2:10 PM - Refreshment Break

2:10 PM - 3:00 PM - Session 5: Preparing for Benefit Plan Audits

3:10 PM – 4:00 PM - Plan Sponsor Roundtable: Closed-Door Discussion of Plan Issues

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About SBEN

At SBEN, you are part of a community of Benefits Professionals dedicated to ongoing education, networking opportunities, the cultivation of relationships and the pursuit of personal and professional development.

With over 135 members in the Southeastern United States, SBEN provides a forum for Benefits Professionals of all disciplines to share information, learn, grow and succeed.

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Benefits of Membership

Learn From Others: The SBEN hosts two to three educational events per year in the Southeast. (Continuing Education Credits available.)

Build Relationships: Through our many educational events/leadership opportunities connect with professionals in the employer-sponsored benefits industry.

Gain Leadership Experience: Get involved and elevate your experience through leadership, planning, communications and fundraising.

Stay Informed: Get our monthly newsletter with links to timely resources and updates on SBEN events.

Share Educational Collateral: Promote the thought leadership of your organization by submitting articles to share with members via the email newsletter.

Discounted Rates for Events: Membership includes special pricing for SBEN events.

Grow with us: Be part of this exciting time as we explore additional opportunities for collaboration, networking and education in 2018.

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We thank you for your participation in today's event! To show our gratitude, we would like to offer you an exclusive discount to join SBEN:

Become a 2018 SBEN Member & $50 will be credited towards your membership dues

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Regular Rates:	Discounted Rates:
Plan Sponsor - $125	Plan Sponsor - $75
Service Providers - $275	Service Providers - $225

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REGISTER NOW

SBEN Annual Educational Conference - April 18-20, 2018

Evergreen Marriot Conference Resort - Stone Mountain, GA

9:00 AM - 9:50 AM - Session 1: Regulatory and Compliance Update for Benefit Plans
Speakers: Daniel T. Sulton, Shareholder, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
D. Douglas Dorman, Vice President, Human Resources, Greenville Health System

Daniel is a member of the firm's employee benefits and executive compensation practice group and focuses his practice in the area of employee benefit plan compliance and litigation. Daniel brings a unique perspective to his practice, having worked in human resources as a manager of employee benefit plans and payroll, in-house counsel for a Fortune 500 company and in private practice. His experience serves his clients well as he advises employers on all aspects of health and welfare plan design, strategy and administration. He also counsels employers on retirement and executive compensation issues and represents clients in benefit plan litigation.

Doug Dorman recently retired from Greenville Health System, where he served as Vice President of Human Resources for over twenty years. Greenville Health System, an integrated healthcare delivery system with nine hospitals, grew from about 5,000 employees to over 15,000 employees during his tenure. Prior to coming to Greenville in 1995, Doug was Vice President of Human Resources for Horizon Hospital System in western Pennsylvania. Doug holds an MBA from the University System of New Hampshire and a BA from Middlebury College in Vermont. He is a Fellow in the American College of Healthcare Executives and a Riley Institute Diversity Fellow.

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The SBEN 2018 Regulatory and Compliance Update

Presented by

D. Douglas Dorman, Greenville Health System

Daniel T. Sulton, Ogletree Deakins

Ogletree Deakins

Employers & Lawyers, Working Together

Agenda

- Tax Reform
- ACA Updates
- Paid Leave
- Wellness Programs Update
- Other Regulatory Updates

Tax Reform

- Expansion of “Million-Dollar Cap” rules for deductible compensation
  - Once a covered employee (SEC definition), always covered
  - Includes certain pay previously excluded (e.g., performance-based, commissions, stock options, etc.)
  - Applicable to non-profits with 21% excise tax on amounts above $1M to covered employees
  - Written, binding contracts in effect on 11/2/17 grandfathered

Tax Reform

- Extended time to rollover or repay retirement plan loans at the time of severance of employment or plan termination
  - Deadline based on time to file individual tax return
- Repeal of Individual Mandate effective 1/1/19
  - IRS enforcement applicable until 2019
  - ACA reporting requirements still applicable

Tax Reform

- No deduction allowed for settlement payments subject to a nondisclosure agreement if such payments relate to:
  - claims of sexual harassment or sexual abuse; or
  - related attorney's fees

Tax Reform

- FMLA tax credit (pilot program expires after 2019)
  - At least 2-weeks annual paid FMLA at 50% normal pay to full-time employees (pro-rata for part-timers)
  - Only for employees earning up to 60% of HCE level ($72K or less in 2018) and employed at least 1 year
  - Tax credit starting at 12.5% of total wages paid and increasing up to 25%

Tax Reform

	Included in Income	
Fringe Benefit	**Pre-Tax Reform**	**Post-Tax Reform**
Moving expense reimbursement	Employee – No	Employee – Yes
Achievement awards	Employee – No Employer – Deductible	Employee – Yes Employer – Not deductible (exceptions apply)
Entertainment Expense	Employee – No Employer – Deductible if related to trade or business	Employee – No Employer – Not deductible (exceptions apply)

ACA Updates

- Executive Order: *Promoting Healthcare Choice and Competition Across the United States* (Oct. 2017)
  - Expand use and availability of HRAs *(IRS Notice 2017-67)*
  - Expand ability of small employers to buy Association Health Plans *(DOL Prop. Rule Jan. 2018)*
  - Lengthen durations and allow renewal of short-term, limited duration insurance (STLDI).

ACA Updates

- IRS 226-J Letters – enforcement of employer mandate
  - Proposed assessments of Employer Shared Responsibility Payment (ESRP) for 2015
  - Opportunity to respond within 30 days (agree/object/extend)
  - Submit any corrected information (i.e. employment status, full-time status, offer of coverage/enrollment)

ACA Updates

- Forms 1095-B/1095-C (*IRS Notice 2018-06*)
  - Deadline to provide forms to individuals extended from January 31, 2018 to March 2, 2018
  - Good-faith completion of the forms also extended
  - Deadline to file with the IRS remains January 28, 2018 (April 2, 2018 if filing electronically)
- "Cadillac" tax delayed until 2022

Paid Leave

- Mandatory state paid leave laws
  - 7 statewide paid leave laws (AZ, CA, CT, MA, OR, VT, WA)
  - Over 30 local paid leave ordinances
- Federal contractor required paid leave
  - Federal contractors must provide 7 days paid sick leave (48 CFR 52.222-62)

Paid Leave

- Patchwork requirements resulting in complex and expensive administration for employers
- ERISA preemption uncertainties
  - DOL Advisory Opinion 2005-13A – No ERISA preemption
  - 6th Circuit: *Newson case*, 768 F.3d 561 (2014) – ERISA preemption

Paid Leave

- Workflex in the 21st Century Act (H.R. 4219)
  - Provides ERISA preemption of state and local paid leave laws
  - Employer choice to offer minimum days of paid leave and at least 1 type of flexible work arrangement
  - Currently stalled in U.S. House of Representatives at subcommittee level

Retirement Plan Opinion Letters

- Previously, plans were submitted to the IRS every 5 years, based generally on EIN
- Now, determination letters only available in limited circumstances
  - Initial plan qualification
  - Plan termination
  - Pre-approved plans
  - Other circumstances as determined by the IRS

Retirement Plan Opinion Letters

- How to stay compliant in the new regime?
  - Use the IRS “Required Amendments List”
    - Adopt amendments by the end of the second calendar year following the year in which the list is issued (unless otherwise specified)
  - Use the IRS “Operational Compliance List”
    - Review plan operations annually
  - Use ERISA counsel
    - Review current plan document and any future amendments to ensure compliance

Wellness Programs

- EEOC wellness program rules
  - Voluntary wellness programs with adequate employee protections ensure compliance with ADA and GINA
  - Controversial incentives limit = 30% of total cost of self-only coverage
- *AARP v. EEOC* case – D.C. Circuit
  - December 20, 2017 the court held incentive provisions of EEOC wellness program rules invalid effective January 1, 2019 and EEOC must issue revised regulations

Other Updates

- Fiduciary Rule – full implementation delayed until July 1, 2019
- Disability plan claims procedures – new rules apply to claims filed on or after April 2, 2018
- Mental Health Parity and Addiction Equity Act (MHPAEA)
  - IRS FAQ Part 38 (July 16, 2017) – coverage of eating disorders must be consistent with MHPAEA
  - Applied Behavioral Analysis therapy limits may violate MHPAEA

2018 SBEN Regulatory and Compliance Update

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Shareholder
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10:00 AM - 10:50 AM - Session 2: Employer Strategies to Monitor PBM Performance
Speaker: Tim Thomas, Owner, CrystalClearRx

Tim Thomas is the President of Crystal Clear RX and has 38 years' experience as a pharmacist. His management background includes residency training and being a Director of Pharmacy at both a hospital and an HMO. For the last 25 years Mr. Thomas has been involved in managed care pharmacy with expertise in formulary, benefit design and financial analysis of the pharmacy benefit. He developed a PBM in the 1990's and has held senior positions within the PBM industry. In 2008 he created Crystal Clear Rx, a pharmacy benefit consulting and research firm that is singularly focused on helping clients realize better value from their pharmacy benefit by unraveling the PBM black box and contracting process, providing actionable data analysis and cost effective solutions. Mr. Thomas is a graduate of the University of South Carolina College of Pharmacy.

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Employer Strategies to Monitor PBM Performance

(And more importantly what can you do for your clients to save them money)

My Goals for Today

- To disrupt what you may or may not know about PBMs
- To give you some ideas that actually might produce results for managing Rx benefits cost
- Discuss Specialty Pharmacy costs: The elephant in the room

Let's start with

- Rx cost used to represent 5% of health plan spend, often exceeds 20 % today

- Specialty Pharmacy cost will soon be 50 % of the total drug spend

- PBMs are making enough money to buy insurance companies

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Assumptions that might be

- AWP Discounts are the best way to judge a PBMs performance
- Mail Order Drugs cost less than Retail
- Bigger is always Better
- There is nothing I can do about Pharmacy costs

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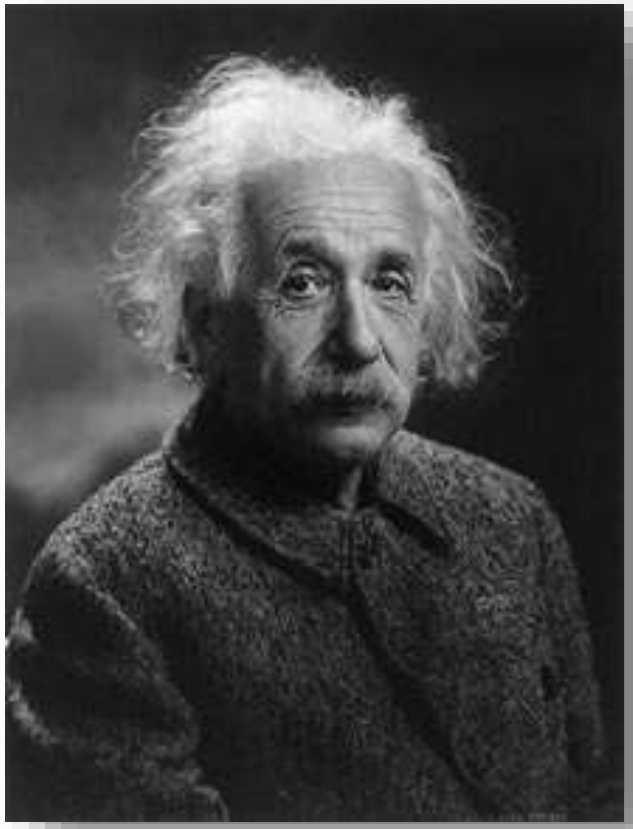
Who said “The definition of insanity is doing the same thing over and over again and expecting different results”

1) Benjamin Franklin
2) Mark Twain
3) Old Chinese Proverb
4) Albert Einstein

We'll go with Albert…

"Not everything that counts can be counted. Not everything that can be counted counts."



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The current way most PBMs are judged

- AWP Discounts are a flawed and misleading way of judging PBM performance

- Let’s look at Retail Generics (Usual AWP Discount is AWP minus 70 to 75 %)

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Retail Generics AWP DISCOUNT

FRAUD

	AWP Discount	Unit Cost
Company ONE	76.61 %	$ 0.551
Company TWO	80.22 %	$ 0.299
Difference		$ 0.2511

So for every 1,000 lives Group ONE is paying about

$ 100,000 MORE Annually (or $ 100 per person)

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Mail order is always cheaper than retail.

Total cost per unit ALL Generics

Group	1	2	3	4	5
Mail Service Channel	$1.7498	$1.3445	$1.9516	$1.1419	$1.8686
Retail Service Channel	$1.3809	$1.0423	$1.7025	$1.0433	$1.7793

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Bigger is always better.

Bigger PBMs may buy better, but are you getting all of the value of the buying power?

The model (Transparent or Traditional) doesn't matter. What matters is:

- What are you actually paying
- Contractual Terms
- Service

BIGGER IS BETTER ???

- Comparison of Big PBMs to smaller PBMs Retail Generics June 2017

Client	7	12	81
AWP Discount	AWP - 78.90	AWP – 78.03	AWP – 80.12
Unit Cost	$ 0.510	$ 0.304	$ 0.489

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BIG MYTH: There is nothing I can do about Rx cost

- Negotiate a better PBM contract with help from an unbiased resource
- Monitor PBM performance
- Look at your benefit design
- Engage members and providers

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You need to monitor PBM performance!

- Things change
- Make sure the PBM contract protects you financially
- Know what to look for

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PBM notified and monitoring began in February 2017

AWP Discount vs Unit Cost			
Retail Generics			
Year/Month	AVG AWP %	Unit Cost	# Rxs
2017/01	73.21	$0.5987	9,815
2017/02	73.09	$0.6007	8,716
2017/03	79.67	$0.4620	9,620
2017/04	79.91	$0.4578	8,702
2017/05	79.64	$0.4728	9,172
2017/06	79.91	$0.4859	8,950

At 500,000 generic units per month worth $ 70,000 per month

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AWP example (bucket move)

A PBM can move a generic into a brand name bucket to make both discounts artificially increase.

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PBM formulary choices that cost $

- **Vimovo** (Naprosyn and Nexium)
- Cost of Vimovo 90 days
  - **$ 2,279**
- Cost of both generics 90 days (2 prescriptions)
  - **$ 40**

- **Namenda XR** (Memantine)
- Cost **$ 800**
- Cost of Generic **$ 60**

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When you get 100% of rebates you are getting 100% of rebates.

Quote from a PBM contract:

"Rebates" means retrospective rebates that are paid to XXXX, or otherwise retained by XXXX, pursuant to the terms of a rebate contract negotiated independently by XXXX with a pharmaceutical manufacturer, and directly attributable to the utilization of certain pharmaceuticals by Enrollees. **Rebates do not include administrative fees paid by pharmaceutical manufacturers** to XXXX, or product discounts or similar remuneration received by subsidiary pharmacies of XXXX."

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Specialty Rx
40-50% of the Drug Spend

- 1% of population
- Rest of population

Traditional Rx
50-60% of the Drug Spend

- 30-40% of population
- Rest of population

Should it be managed the same way that traditional pharmacy has been managed?

Specialty Pharmacy costs compared

- **Tecfidera 240mg**

(Month Supply)

Acquisition Cost Plus Fee

$ 6,680

Traditional Pharmacy Pricing

$ 6,874

- **Humira 40mg**

(Month Supply)

Acquisition Cost Plus Fee

$ 3,516

Traditional Pharmacy Pricing

$ 4,476

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Things you can do before it goes off the rails

- Get the best help available
- Review and improve your PBM contract(s)
- Find the best set of services for your situation (Carving out?)
- Monitor what goes on and have market check provision
- Engage your providers and members

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Questions?

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Contact Information

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www.CrystalClearRx.com

Crystal Clear Rx

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11:10 AM - 12:00 PM - Session 3: Fiduciary Trends and Data Security
Moderator: Tom Simonson, Vice President, Lockton
Speakers: Ken Janik, Partner, Nelson Mullins
David Witz, CEO, FRA Plan Tools

Ken Janik is a partner of Nelson Mullins Riley & Scarborough LLP in Columbia where he practices in the areas of executive compensation, taxation, ERISA and employee benefits, and corporate law. Mr. Janik is certified by the Supreme Court of South Carolina as a tax specialist.

David J Witz, AIF®, GFS® is the CEO/Managing Director of Fiduciary Risk Assessment LLC (FRA) and PlanTools, LLC a consulting and Software as a Service technology firm that delivers risk management solutions including performance assessments, benchmarking, revenue sharing data base, advisor qualification assessments, target date analytics, online document lockbox, fiduciary LMS training and fiduciary governance solutions. David is also co-founder and VP of Catapult, Inc. a universal web-based RFP solution. David has over 36 years of industry experience in multiple retirement plan disciplines.

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For:
ABC COMPANY
FEBRUARY 2, 2018

ERISA Fiduciary Training

Presented by:
KENNETH ALLAN JANIK
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Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Agenda

- ERISA Fiduciary Duties
- Potential Liabilities
- Specific Duties of Committee

ERISA Fiduciary Duties

Key Terms:

- **ERISA:**
  - **Employee Retirement Income Security Act of 1974**
  - **Federal law**
  - **Establishes fiduciary standards with respect to operation of retirement plans and investment of assets (among other things)**

Key Terms:

- **Fiduciary:**
  - ***Discretionary administration* or *operation* of an ERISA qualified plan**
  - **General fiduciary liability limited to scope of fiduciary authority**
  - **Functional test under ERISA**

Key Terms:

- **Named Fiduciary:**
  - **Required by ERISA**
  - **Named Fiduciary required to be named in plan instrument as a fiduciary by the employer**
  - **Is a fiduciary for all purposes of a plan**
  - **Committee is either directly or indirectly a *Named Fiduciary***

Key Terms:

- **Plan Administrator:**
  - **Required by ERISA**
  - **Is responsible for all aspects of plan operation**

Fiduciary Duties Imposed Under ERISA

- Duty of Undivided Loyalty/Exclusive Benefit
- Duty of Prudence
- Duty to Follow Written Plan
- Duty to Diversify
- Avoidance of Prohibited Transactions

Fiduciary Duties Imposed Under ERISA

- **Duty of Undivided Loyalty/Exclusive Benefit:**
  - **Duty to discharge responsibilities solely in the interest of the participants and beneficiaries and to act for the exclusive purpose of providing benefits to participants and beneficiaries and defraying administrative expenses**

Fiduciary Duties Imposed Under ERISA

- **Duty of Prudence:**
  - **Duty to act with the care, skill, prudence and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims**
  - **"Prudent-expert" standard as opposed to a prudent-lay person standard**
  - **Duty to act with <u>procedural</u> & <u>substantive</u> prudence**

Fiduciary Duties Imposed Under ERISA

- **Duty to Follow Written Plan:**
  - **Duty to discharge responsibilities in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with other obligations imposed by ERISA**
  - **If imprudent, fiduciaries not permitted to merely follow the plan document**

Fiduciary Duties Imposed Under ERISA

- **Duty of Diversification:**
  - **Duty to diversify plan investments to minimize risk of large losses, unless under the circumstances it is clearly prudent not to do so**
  - **Whether a fiduciary has discharged his obligations under ERISA is generally based on the "facts and circumstances" surrounding his actions and decisions**

Fiduciary Duties Imposed Under ERISA

- **Avoidance of Prohibited Transactions:**
  - **Fiduciaries must not cause a plan to engage in transactions if the fiduciary knows or should know that such transaction constitutes a *"prohibited transaction"* under ERISA**
  - **A prohibited transaction is any transaction between an employee benefit plan and "disqualified persons" or "parties in interest"**

Fiduciary Duties Imposed Under ERISA

- **A "*party in interest*" is:**
  - **Any fiduciary of the plan;**
  - **Any *employer* whose employees are covered by the plan;**
  - **Any service provider of the plan; or**
  - **Generally, a corporation, partnership, trust or estate of which fifty percent (50%) or more is owned directly or indirectly by the persons listed above**

Fiduciary Duties Imposed Under ERISA

- **The definition of "disqualified person" in the Internal Revenue Code (Code) is nearly identical (with some limited exceptions) to this ERISA definition**

Fiduciary Duties Imposed Under ERISA

- **Non-Enumerated Prohibited Transactions:**
  - **Self-dealing or conflict of interest;**
  - **Dealing with the plan's assets in party's own interest or on its/his/her own account;**

Fiduciary Duties Imposed Under ERISA

- Participating in any transaction involving the plan on behalf of a party (or representing any party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries; or
- Receiving any consideration from any party dealing with the plan in connection with a transaction involving plan assets
- Facts and circumstances test

Fiduciary Duties Imposed Under ERISA

- **The purpose is to prevent a fiduciary from being put into a position of *dual loyalties* that would prevent them from acting *exclusively for the benefit of a plan's participants and beneficiaries***

Fiduciary Duties Imposed Under ERISA

- **Intent is to require plan fiduciaries to be cautious and think carefully before entering into any arrangement that might possibly not be exclusively in the best interests of participants & beneficiaries**

Potential Liabilities

Potential Liabilities

- **Personal liability**
  - **Disgorgement of profits**
  - **Difference between plan's actual investment return and the return that would have been expected if plan had been invested prudently**
  - **Other equitable or remedial relief as a court may deem appropriate**

Potential Liabilities

- Attorney's fees
- Penalties imposed by U.S. Department of Labor
- Excise taxes imposed by IRS
- Criminal liability

Protection Against Potential Liabilities

- **Indemnification/Insurance:**
  - **ERISA fiduciary liability insurance — covers breaches, negligence and defense costs**
  - **Typically does not cover fines & penalties, punitive damages, taxes and wages, claims involving dishonesty, fraud, criminal acts or willful or reckless violations**
  - **ERISA bond — every fiduciary must be bonded for 10% of the amount of funds the fiduciary handles up to a maximum of $500,000 ($1M if employer stock held in plan)**

Protection Against Potential Liabilities

➢ Special Fiduciary Protection – ERISA 404(c)

- Fiduciaries are relieved of liability with respect to the participants' selection of investments and the performance of those investments.

- Fiduciaries remain responsible for the prudent *selection and monitoring* of each plan's investment alternatives.

Protection Against Potential Liabilities

Special Fiduciary Protection – ERISA 404(c)

- Section 404(c) protection is available if:
  - the plan permits participants to exercise independent control over their own plan accounts,
  - the plan offers a "broad range of investment alternatives," and
  - participants actually exercise control over their investments.
- Participants' investment directions must be properly implemented;

Protection Against Potential Liabilities

- **Special Fiduciary Protection – QDIAs**
  - **Protection similar to Section 404(c) protection**
  - **Must offer a "safe-harbor" to make plan investments in qualified default investment arrangements (QDIAs) on behalf of participants.**

Protection Against Potential Liabilities

Special Fiduciary Protection – QDIAs

- Plan fiduciaries must:
  - adopt and monitor QDIAs;
  - not provide for any transfer or withdrawal fees for the first 90 days following the participant's first investment in a QDIA;
  - allow participants to transfer their investments out of a QDIA at least quarterly; and
  - provide certain required notices to participants and beneficiaries about QDIAs.

Committee Responsibilities

Responsibilities of Committee

- **Committee is directly or indirectly (on behalf of the organization) the "Named Fiduciary" of all qualified employee benefit plans sponsored by your organization**
- **Committee members *MUST*:**
  - **Read and understand the Plan's Investment Policy Statement (the "IPS"). Members must discharge their duties in compliance with the IPS.**

Responsibilities of Committee

- **Committee members *MUST (cont'd)*:**
  - **Consider whether IPS is current and recommend changes, as necessary**
  - **Be familiar with the plans sponsored by your organization and periodically review key terms with Plan Administrator**
  - **Follow diligence in hiring investment managers and others**

Responsibilities of Committee

- **Committee members *MUST (cont'd)*:**
  - **When possible, request those presenting at meetings to provide information in advance, with sufficient time for review and analysis**
  - **Review material provided carefully**
  - **Hold and attend regular meetings**
  - **Be prepared and ask questions for clarification and understanding**

Responsibilities of Committee

- **Committee members *MUST (cont'd)*:**
  - **Require that minutes be kept and review minutes from prior meetings carefully**
  - **Consider whether actions are consistent with the requirements of the IPS**
  - **Review and compare fund results and require investment managers to discuss all investments and decisions**

Responsibilities of Committee

- **Committee members *MUST (cont'd)*:**
  - **Eliminate funds that cannot be justified**
  - **Replace managers if unsatisfactory results**
  - **Retain experts and consultants when necessary, observing diligence in hiring and retention**
  - **Report at least annually to the Board**
  - **Monitor closely all actions with respect to the plans**

QUESTIONS?

Presented by:

[INSERT ATTORNEY INFO]

FRA PlanTools

CyberSecurity Challenges

For Workplace Fiduciaries

CyberSecurity

Willie Sutton was once asked why he robbed banks, his response: *Because that's where the money is!*

Star Wars is fiction, the Dark Web is Not!

Before anything else, preparation is the key to success**. Alexander Graham Bell**

Cyber-Attacks

Examples of Breaches

- Sony's film division
- Healthcare Co's stolen laptop resulting in $1.679M in damages
- Equifax

Retirement plan examples

- In 2016, a union's pension plan data was taken hostage by a hacker for 3 bitcoins. The data was retrieved from a backup server and the ransom was not paid.

- In 2016, a governmental defined contribution plan with over $3.5 billion in assets lost $2.6 million, taken from the plan in the form of fraudulent loans from 58 participant accounts. Reports indicate that in that case, the funds were restored to the plan by the company that administered the plan.

What is the Risk?

1. Legal defense,
2. Monetary rewards,
3. Restoration of lost assets and lost opportunity costs,
4. Cost of regulatory agency investigations and penalties resulting from a breach,
5. Making breach notifications,
6. Providing post-breach identity-theft protection,
7. Post-breach employee protection,
8. Public/employee relations/crisis communications,
9. Cybersecurity improvement costs,
10. Increased insurance premiums

CyberSecurity Fiduciary Obligations

Fiduciary Obligations

- There is no specific federal law or regulation dealing with 401k cybersecurity
- Fiduciaries are tasked with monitoring service providers this includes cybersecurity risk
- Why? Because a cybersecurity breach puts plan assets, which a fiduciary is responsible to protect, at risk

ERISA's Reference to CyberSecurity

DOL Regulation 2520.104b-1(c): Electronic media must ensure

(i) actual receipt of the transmitted information,

(ii) it protects the confidentiality of personal information relating to the individual's accounts and benefits (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by individual's other than the individual for whom the information is intended),

EBSA Technical Release No. 2011-03: DOL the following condition if using electronic media for disclosures:

"The plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the electronic delivery system protects the confidentiality of personal information."

CyberSecurity

FBI top Priority

DOL 2011 & 2016 ERISA Advisory Counsel

- It is not whether but when

AICPA Service Organization Control (SOC)

- SOC1 – Evaluates internal controls
- SOC2 - focuses on the security, availability, processing integrity, confidentiality, or privacy of a service provider's IT-enabled systems and the ability of those systems to protect the data and confidentiality of the parties who utilize the service provider

2017 ASPPA Annual Conference

- Intentional hacking
- Unintentional release of files
- Email phishing to steal information

SPARK Institute

- Formed a Data Security Oversight Board

SPARK – Data Security Oversight Board

Original Focus: To create a data security standard for all industry players.

Conclusion: One standard is not attainable nor desirable and should not be attempted.

Why? Because a diverse framework makes a stronger defense whereas a single standard puts everyone at risk.

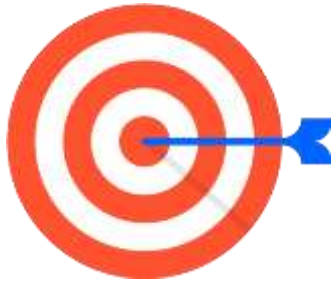
Revised Direction: Standardization of how security capabilities are reported so workforce fiduciaries have a uniform way to conduct vendor comparisons of cybersecurity.

SPARK: established 16 control objectives and a 4 step process

- Recordkeeper hires a third-party independent auditor
- Auditor uses SPARK 16 control objectives
- Auditor creates a SOC2 or AUP for consultants and plan sponsors, and
- Plan consultant or plan sponsor uses report to grade recordkeepers

IS THIS ENOUGH?

Key Questions

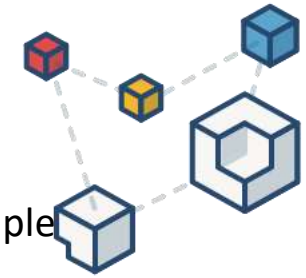


Insurance:

1. Do you have cybersecurity insurance, does your vendor?
2. Are you indemnify if there is a breach by your vendor?
3. Is it first party coverage which does not require a lawsuit to recover?
4. Will they provide a copy of the policy & endorsements for coverage limits & retention?

Due Diligence Questions:

1. Does the service contract address cybersecurity?
2. Obtain a copy of their SOC1 & 2 report
3. Obtain copy of their cybersecurity policies & procedures
4. Ask for documentation on any breach they have experienced
5. Request copies of internal tests conducted
6. Request copies of 3rd party validation/audits that have been comple
7. Has blockchain been implemented?



Thank you!

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TURNING IDEAS INTO REALITY!

1:00 PM - 1:50 PM - Session 4: Blending Health & Wellness with Financial Wellness
Moderator: Marti Smith, Consultant, Lockton
Speakers: Donn Hess, Director of Marketing & Communications, Lockton Retirement Services
Melissa Anchia, Health Risk Solutions Consultant, Lockton

As the Director of Lockton Retirement's Marketing and Communications, Donn is responsible for refining and implementing the marketing strategy. He also develops plan sponsor and participant communication materials to support the work of the service teams. Donn also leads product development for retirement services with many years of experience, including developing interactive data applications, multi-channel communications, and education campaigns. As Lockton Retirement Services continues to develop, Donn will focus on expanding media opportunities and marketing materials with the attorneys and retirement experts on staff. Donn has a diverse background in marketing and new business development. He previously developed campaigns and increased sales for nationally recognized companies in financial services, retirement, and investing.

As a Health Risk Solutions Consultant, Melissa's experience is working with mid-to-large size employers in developing strategies to engage employees in health behavior change, to develop a culture of accountability, and improve workplace productivity using creative program solutions and motivating incentive designs. Melissa works with account teams to identify client needs and goals and support them through program implementation. She provides one-on-one consultation to South East Employee Benefit clients for health management strategies. It has been her responsibility to develop relationships with carrier and vendor partners to support client's current programs and issue RFP's for new program offerings.

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Blending health and wellness with financial wellness

LOCKTON

What is financial wellness?

Dimensions of well-being

	SAMPLE ACTIVITIES	
Physical Feeling well	▪ Biometric screening and health assessment. ▪ Preventive exam and age-related screenings. ▪ Device-enabled step tracking. ▪ On-site fitness opportunities.	▪ Physical activity, nutrition and weight loss education. ▪ Targeted programs (diabetes, heart disease). ▪ Tobacco-free campus and tobacco cessation. ▪ Healthy food policies and program offerings.
Meaning and purpose Mental and behavioral	▪ Community service and volunteer activities. ▪ Work-life balance initiatives. ▪ Stress management education and workshops.	▪ Resiliency and mindfulness programs. ▪ Meditation and yoga. ▪ Quiet rooms.
Financial Effective money management	▪ Financial education workshops. ▪ 1:1 financial planning with adviser.	▪ Employer match for 401(k). ▪ 401(k) plan auto-enrollment and auto-increase.
Social Quality relationships	▪ Corporate and peer challenges. ▪ Employee appreciation (e.g., picnic, BBQ). ▪ Recognition among peers.	▪ Group classes and education. ▪ Relaxation areas at the worksite.

The rise of financial wellness

FINANCIAL BASICS

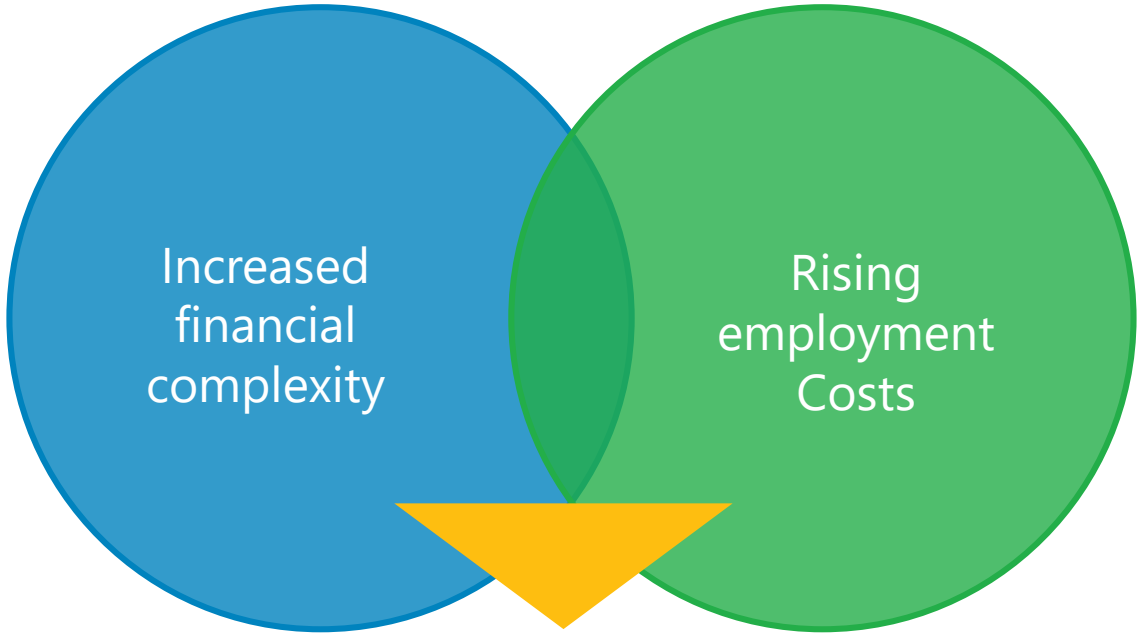
- Budgeting.
- Debt reduction.

"NEXT BEST DOLLAR"

- Consumer-driven benefits.
- Student loans.
- Saving vs. Debt.
- Multiple goals.
- Lifestyle protection.

RETIREMENT READINESS

- Realistic expectations.
- Income strategies.



The need for financial wellness.

EXPENSE

- Delayed retirement.

LOST PRODUCTIVITY

- Financial stress.
- Absenteeism.
- Presenteeism.

RISK MANAGEMENT

- Disability.
- Workers' compensation.
- Attraction and retention.

Addressing employee needs: affordability

61%

of Americans report money, work and economy as very or somewhat significant sources of stress.

Employees covered by employer-sponsored health plans are spending more out of pocket for healthcare costs compared to previous years – higher deductibles, higher average payment per deductible and shift from co-payments to co-insurance.

56%

of Americans are very or somewhat worried they might not have affordable health coverage in the future (employee cost-sharing is far outpacing wage growth).

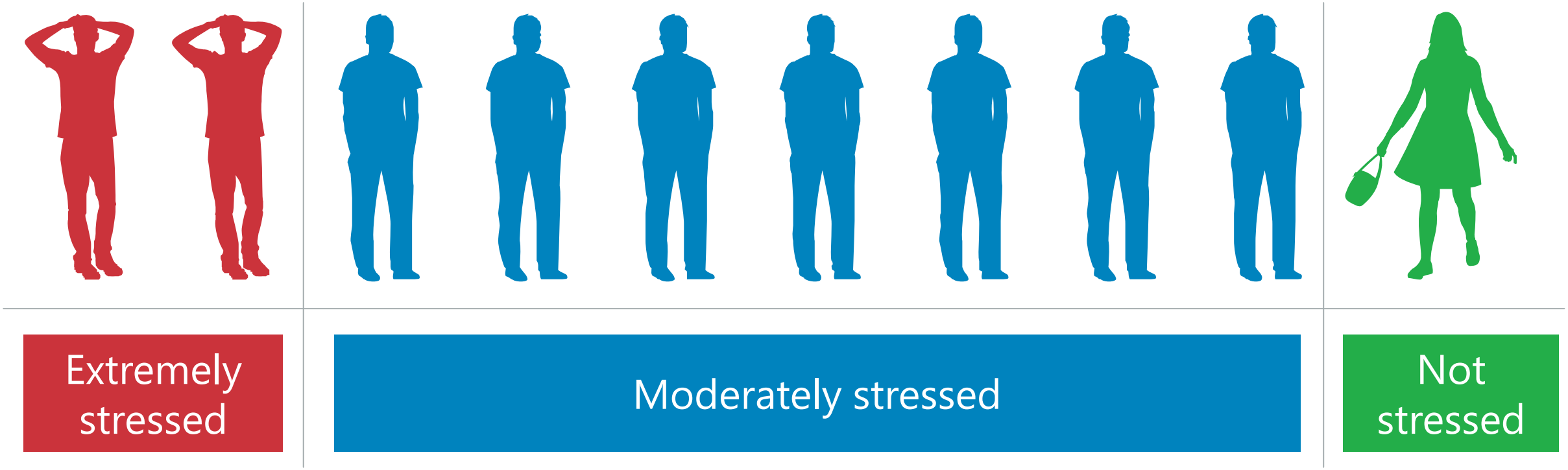
Estimated **1 in 4**

Americans forego needed healthcare due to financial concerns.

Affordability, socioeconomics and consumer confusion

Sources: American Psychological Association Stress in America 2017, Peterson-Kaiser Health System Tracker Oct 2017, Peterson-Kaiser Health System Tracker 2017, Bankrate.com survey June 2017.

Most employees have at least some stress



Source: *Finding the Links Between Retirement, Stress, and Health,* Lockton, 2016

20% of Americans 65+ today are still working[1]

3 reasons why:

THEY LIVE LONGER

Life expectancy for highly educated men has increased 5 years+ since 1979.[3]

THEY LIKE WORKING

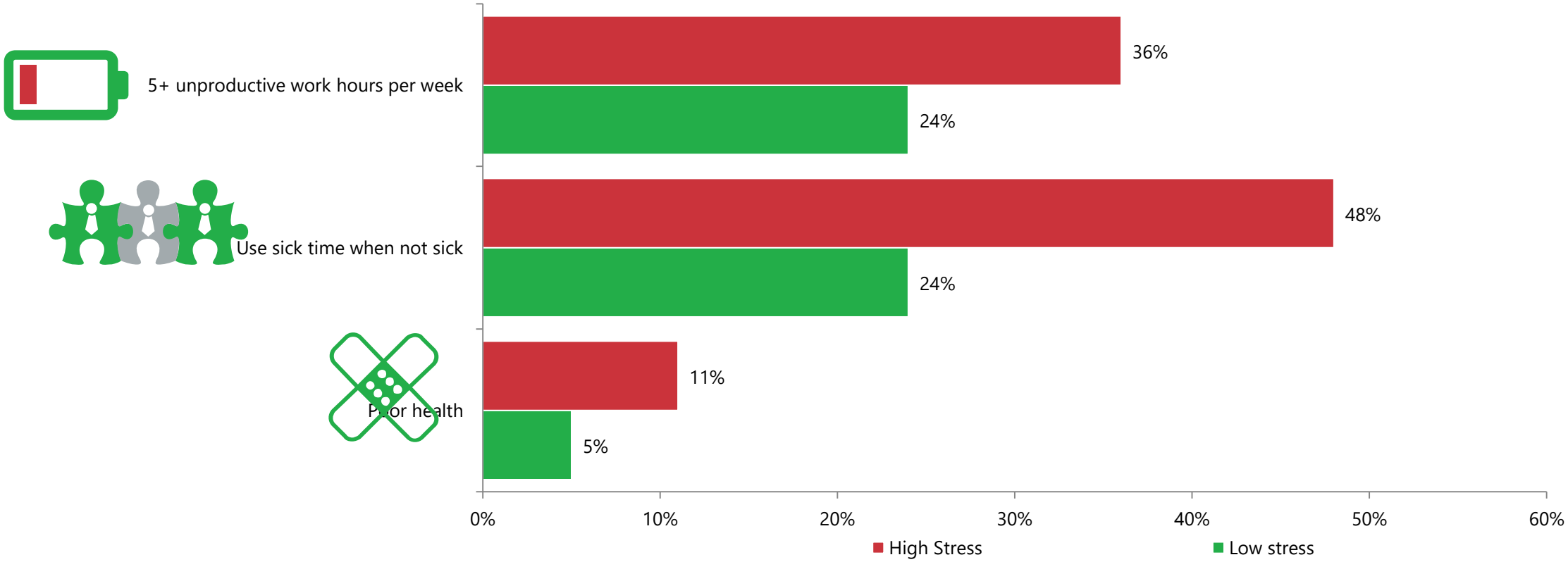
36% of employees 65 or older work because they enjoy it.[2]

THEY NEED MONEY

60% of US households have no retirement account.[2]

[1]U.S. Bureau of Labor Statistics, 2016
[2]Transamerica Center for Retirement Studies, 2016
[3]Boston's Center for Retirement Research, 2015

The numbers quantify the concern



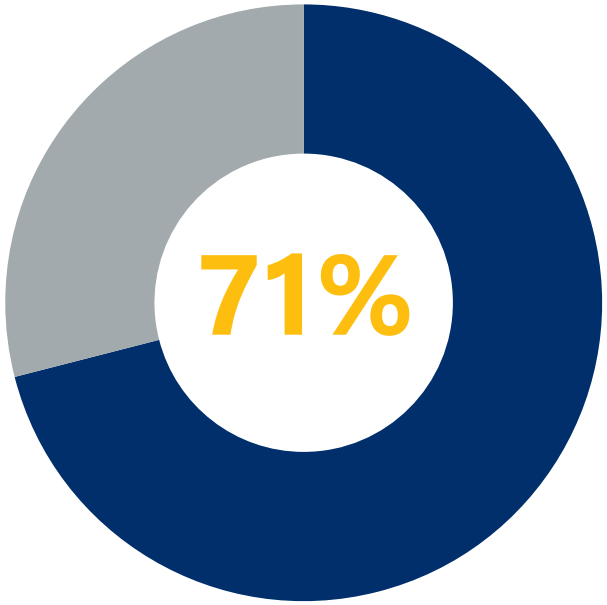
Source: *Finding the Links Between Retirement, Stress, and Health*, Lockton, 2016

The employer perspective

	HARD DOLLARS	SOFT DOLLARS
COST	■ Salary premium for older workers. ■ Chronic stress related healthcare expense. ■ Decreased high deductible plan use.	
PRODUCTIVITY		■ Higher levels of absenteeism. ■ Higher levels of presenteeism.
RISK MANAGEMENT	■ Workers' compensation/disability.	
RETENTION		■ Trouble attracting millennials. ■ Frustrated executives.

Less retirement education, more financial well-being

Money drives stress, stress drives cost.



Cite **money** as the top source of stress.

Top financial **concerns:**

- Retirement.
- Medical costs/healthcare.
- Standard of living.
- Debt.

- Workers reporting high stress were **$413 more costly** per year than those not at risk for stress.
- Smokers were **$587 more costly** per year than non-smokers.

"Financial Wellness at Work: A Review of Promising Practices and Policies," Consumer Financial Protection Bureau, August 2014
"Economy and Personal Finance Poll," Gallup, April 2014

Using benefits to drive engagement — aligning workforce and opportunities

BENEFITS OFFERED

Is your benefits package meeting the needs of key constituents?

WELL-BEING

Focus on physical, meaning and purpose, financial and social.

Reexamine your program through a different lens.

Consider life event stressors and support.

COMMUNICATION

What do you communicate beyond open enrollment?

Should you enhance your communications strategy and deliverables?

Add mobile technology?

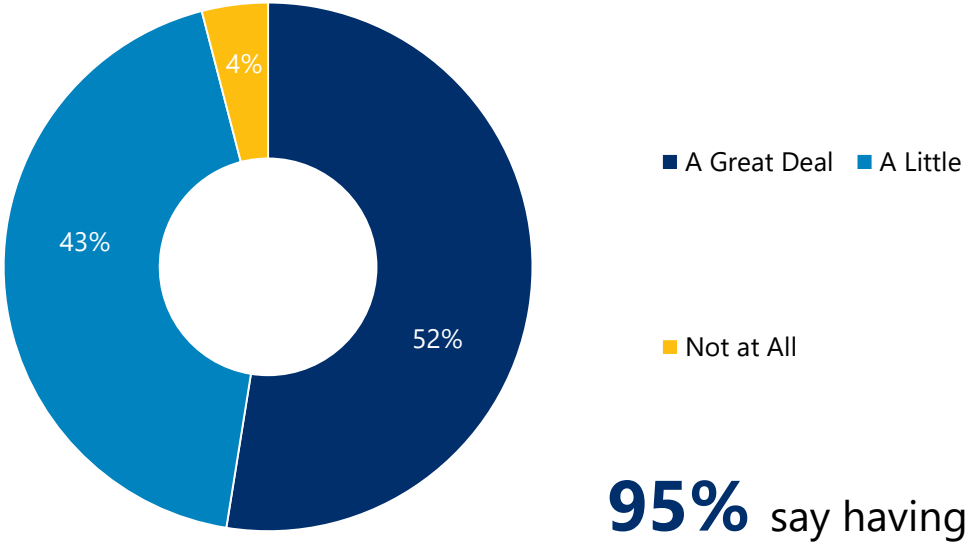
CONSIDER YOUR **WORKFORCE**

Workforce dynamics vary greatly by employer.

Recognizing each employer's unique constituencies will facilitate the development of effective engagement strategies.

Retirement success can ease stress

How much does your employer's retirement plan ease your financial concern?



95% say having a retirement savings plan helps ease financial concerns.

RESPONDENTS WITH . . .	REPORTED JOB SATISFACTION LEVELS	
	HIGH	LOW
Access to a defined benefit plan	48%	21%
Employers contributing nothing to a retirement plan	7%	20%
Employers contributing less than 5%	46%	59%
Employers contributing 5-9%	33%	22%
Employers contributing 10% or more	14%	0%

Source: *Finding the Links Between Retirement, Stress, and Health*, Lockton, 2016

Financial basics matter too

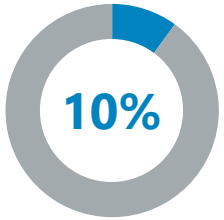
PERCENTAGE OF RESPONDENTS WHO . . .	LOW FINANCIAL STRESS	HIGH FINANCIAL STRESS
Know their credit score	91%	73%
Use a personal budget	57%	39%
Know their debt-to-income ratio	60%	31%
Have more than 6 months' living expenses saved	51%	7%

Source: *Finding the Links Between Retirement, Stress, and Health*, Lockton, 2016

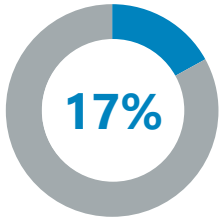
Engagement and business outcomes

Employers in the top quartile of the Gallup 2016 Meta Analysis on Engagement in the Workplace:

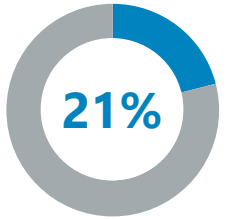
Outperformed peers by:



Customer ratings

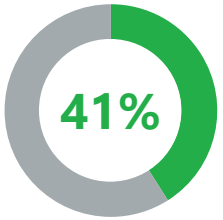


Productivity

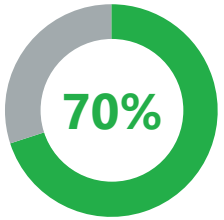


Profitability

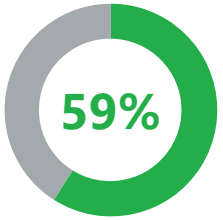
Experienced significantly lower:



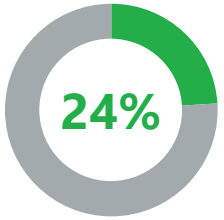
Absenteeism



Safety incidents



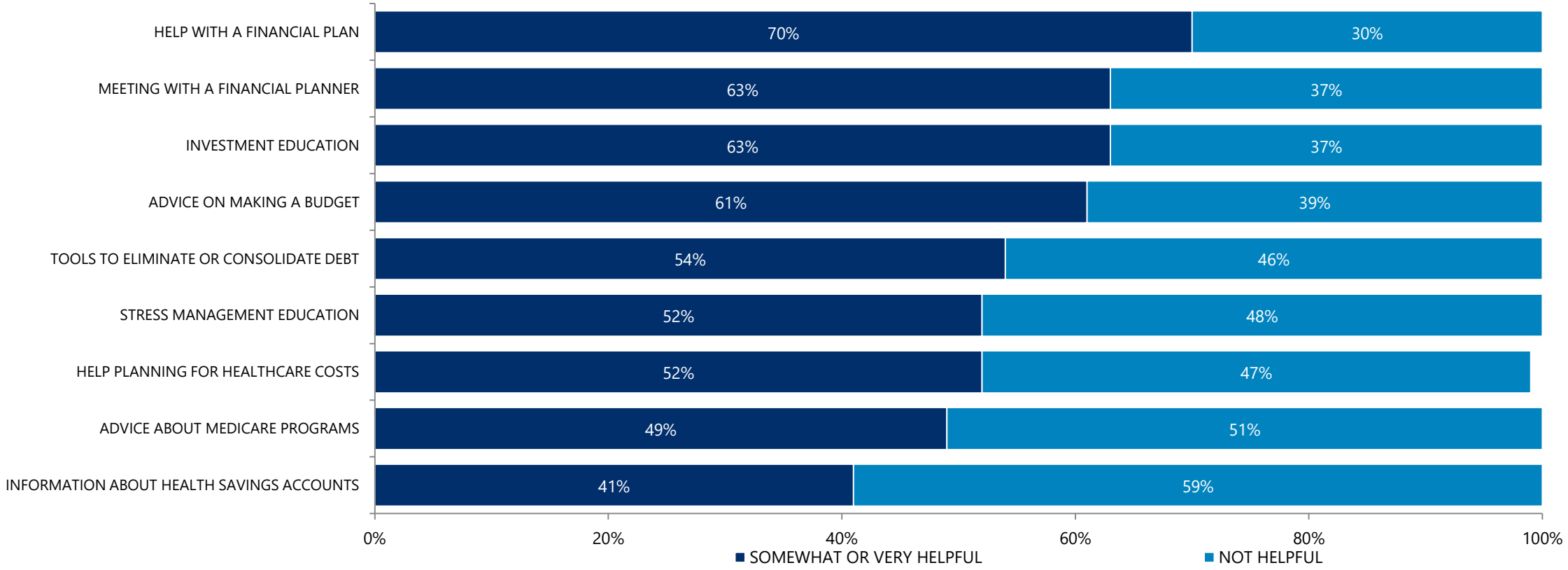
Turnover in low turnover organizations



Turnover in high turnover organizations

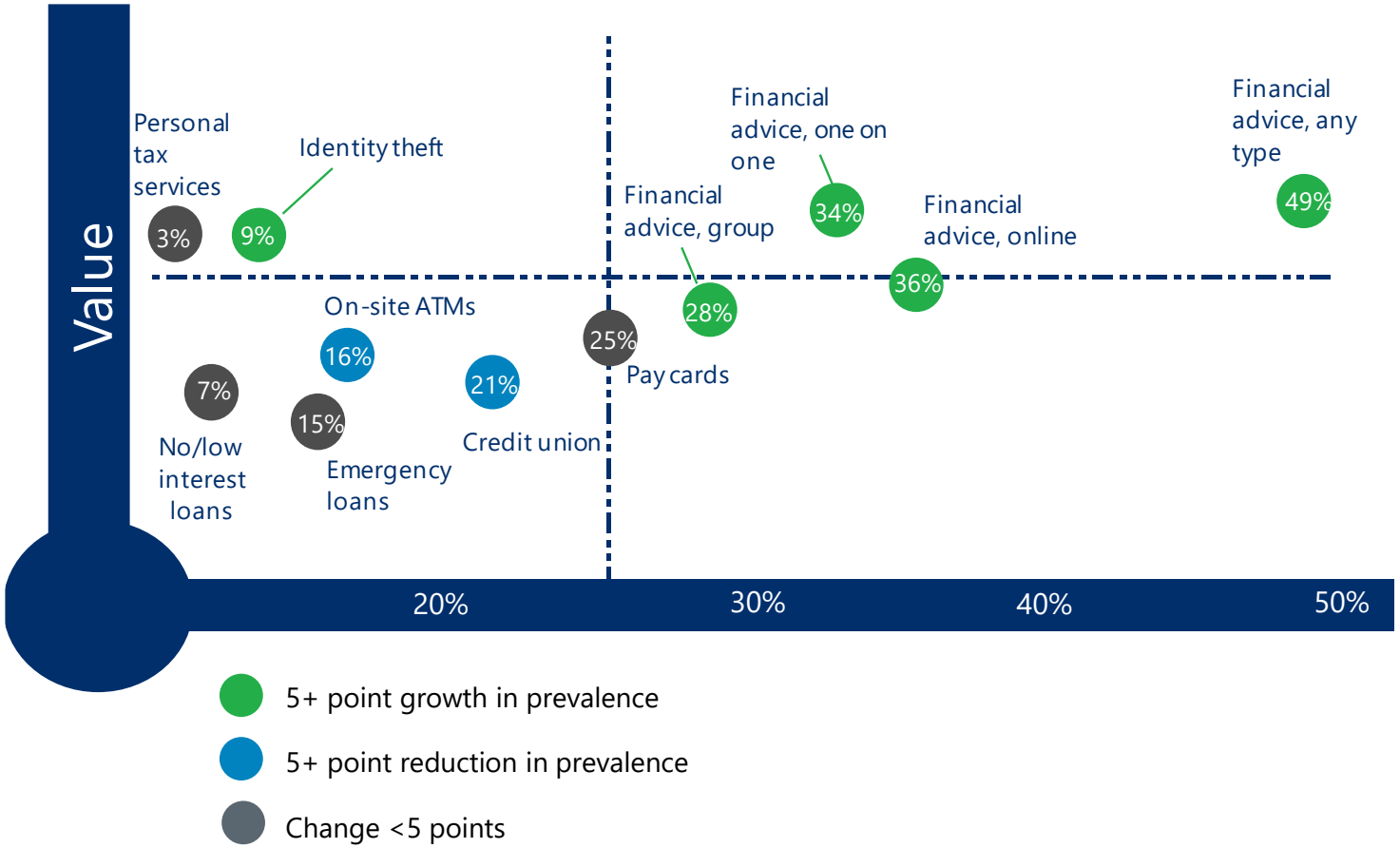
Financial wellness — where employees want help

To what extent would the following decrease your financial concerns?



Source: Finding the Links Between Retirement, Stress and Health, Lockton 2016.

Financial services prevalence



- Increase in **financial advice** and **identity theft.**
- Largest advisory growth in:
  - Online resources (19% in '14 to 36% in '17)
  - One on one (17% in '14 to 34% in '17

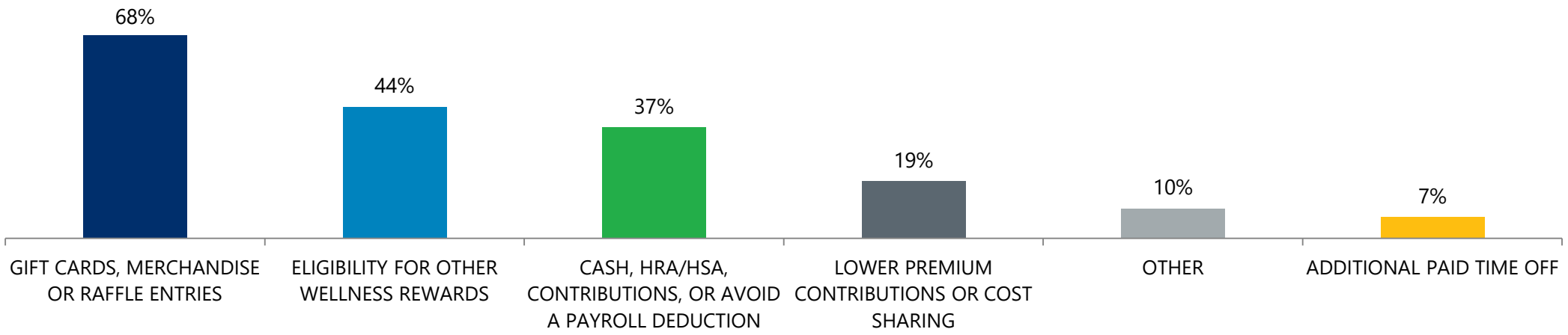
Source: SHRM Employer Engagement Survey 2017.

The physical impact of retirement readiness

EXPERIENCED PHYSICAL SYMPTOMS ALMOST ALL THE TIME/FREQUENTLY WHILE AT WORK	PERCENTAGE OF RESPONDENTS IN THESE CATEGORIES		
	AHEAD IN SAVING FOR RETIREMENT	ON TRACK IN SAVING FOR RETIREMENT	BEHIND IN SAVING FOR RETIREMENT
Fatigue	19%	19%	31%
Feeling overwhelmed	9%	13%	31%
Anxiety or nervousness	7%	10%	23%
Headaches	5%	10%	23%
Clenched jaw or teeth grinding	4%	11%	16%
Insomnia	3%	7%	11%
Upset stomach	5%	4%	14%
Depression	3%	6%	11%
Sense of impending doom	1%	4%	11%

Source: *Finding the Links Between Retirement, Stress, and Health*, Lockton, 2016

Program incentives



Why it matters/key considerations

- Employers should consider the following when designing an incentive program:
  - Does the incentive drive the desired behaviors?
  - What incentive and value will be most meaningful and motivating for employees?
  - Will a health plan-related incentive resonate with the population?
  - Would a reward-based incentive be more suitable?
- Employers should ensure incentive programs are compliant with ACA, HIPAA and EEOC regulations.

Source: Kaiser Family Foundation Employer Health Benefits Annual Survey, 2017.

Consider the rollout

- Sense of urgency.
- Incentive.
- Reminders.
- Multiyear timeframe.

What's next?

- RE-EXAMINE YOUR BENEFITS HOLISTICALLY.
  Are the in line with your employee demographics and needs?

- CREATE AN ENGAGEMENT STRATEGY.
  How will you incent employees to take the right action?

- MEASURE.
  What are not only the plan behavior changes, but how does your company's bottom line benefit?

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RISK MANAGEMENT • EMPLOYEE BENEFITS • RETIREMENT SERVICES

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Our Goal | To be the best place to do business and to work

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2:10 PM - 3:00 PM - Session 5: Preparing for Benefit Plan Audits
Speaker: Stephen Pelcher, Senior Manager, Elliott Davis

With more than eight years of experience in public accounting, Stephen understands the risks and complexities of all types of qualified employee benefit plans and has expertise in compliance as well as the auditing of these plans. Stephen's client service approach is to focus on areas of high risk in order to mitigate his clients' fiduciary exposure. He also provides assurance services to clients in the manufacturing and distribution industry, as well as to retail entities. Additionally, Stephen has experience working with international clients, including foreign parent companies with multiple operating units across the U.S.

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Preparing for Benefit Plan Audits (How to Protect Yourself from Risk)

Stephen Pelcher, CPA

Senior Manager

February 16, 2017

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Why does this discussion matter?

- The number of 401(k) plans has grown to more than 300,000 plans covering more than 42 million people
- The U.S. Department of Labor ("DOL") has stepped up its enforcement activities dramatically looking for prohibited transactions, delinquent remittances of 401(k) employee contributions and other ERISA noncompliance
- The DOL, the courts and Congress are actively working to define the fiduciary responsibilities of companies with respect to their employee benefit plans

Why does this discussion matter?

- DOL "Assessing the Quality of Employee Benefit Plan Audits"
- 7,300 CPA's for 81,000 plans
- 61% fully complied, 39% had one or more major deficiencies, 17% failed to comply.
- Findings:
  - A clear link between number of EBP audits performed by CPA and quality of work
  - EBP specific training contributed to better work
  - Employee Benefit Plan Audit Quality Center ("EBPAQC") firms produced audits with fewer deficiencies
  - During 2015, DOL emailed 60,000 plan administrators regarding their findings.

Fiduciary Responsibility - Common Issues

- No employee benefit plan committee
- Minutes related to key plan sponsor decisions not documented or retained
- Lack of investment policy
- The client utilizes outsourced services (e.g. TPA or payroll) and there is no documentation of over-sight or review of services provided
- The plan sponsor does not review SOC 1 Report (formerly SAS 70 Report)
- The client fails to maintain fidelity bond requirements (e.g. no fidelity bond or did not meet minimum coverage)

Top 10

1. Compensation
   - Plan sponsor misapplies the definition of compensation
   - Exclusion of bonuses, manual checks, fringe benefits, severance pay (as defined by the terms of the Plan document)
2. Eligibility
   - Employees are participating before they are eligible
   - Employees are not given the opportunity to participate when they become eligible
   - The plan sponsor does not retain evidence that eligible employees are informed of their right to participate

Top 10

3. Contributions
   - Remitted to wrong participant account due to client data input errors
4. Missing Data
   - The plan sponsor is missing payroll data such as employee change sheets or timecards
5. Forfeitures
   - Misapplication of forfeitures
   - Forfeitures were not allocated within the 2 year time frame as required

Top 10

6. Distributions
   - The plan made unauthorized distributions (i.e. no valid documentation for hardship distributions or did not obtain a loan first where loans are permitted by the Plan)
7. Vesting
   - Incorrect vesting period
8. Late Remittances
   - Employee 401(k) contributions and loan repayments to these “small” plans must be deposited by plan sponsors no later than the seventh business day following the payroll date. Rules differ for “large Plan”

Top 10

9. Census
   - Incomplete census
   - Census does not reconcile to payroll records
10. Plan Loans
   - Loans not made in accordance with Plan document

DOL Hot Topics

- Partial Plan Terminations
  - 20% or more - closing of a plant, downsizing or product line
  - Can occur over 3 year period - previous, current and next year
  - Separated participants become fully vested
- Using the Work of a Pricing Specialist
  - ESOPs, privately held stock, pension valuations
- Timeliness of Contributions
  - Plan management is responsible for ensuring contributions are made in a timely manner

Could you be liable?

- Many administrators of employee benefit plans do not monitor compliance with plan documents, legal or regulatory requirements
- Federal agencies and Congress have adopted tough new rules that place responsibility for mismanaged retirement plans in the hands of company directors and officers
  - Agencies are working with private plaintiffs to go after individual directors and officers in court when a pension plan collapses
- A poor quality audit of a plan's financial statements can have dire consequences for the sponsor and the participants
  - The DOL and the IRS have developed audit programs that impose sanctions of up to 20% of plan assets for failing to manage a plan in accordance with the plan document, the Internal Revenue Code and ERISA requirements. i.e. sanctions imposed on plan assets of $4,000,000 translates to a $800,000 penalty to be paid by the Company

What's the difference?

- Today, more than 10,000 CPA firms perform more than 80,000 annual audits of employee benefit plans
- 54 firms perform more than 100 plan audits
- 8,200 CPA firms perform 5 or fewer plan audits
- Many firms offer low fee pricing but may not be qualified to perform audits of this highly specialized area
- When selecting an auditor for your plan financial statements, there are several factors to keep in mind
  - Purpose of the audit
  - Uniqueness of plan audits
  - CPA firm resources
  - Reasonable size ERISA audit practice
  - Understanding the limited-scope audit exception

Stephen Pelcher, CPA

Email: stephen.pelcher@elliottdavis.com

Phone: 864.242.2619

Website: www.elliottdavis.com

Elliott Davis, LLC/PLLC is one of the largest accounting, tax and consulting services firms in the Southeast and ranks among the top 50 CPA firms in the U.S. With offices in SC, NC, and TN, the firm provides clients across a wide range of industries with smart, customized solutions and its people with rewarding opportunities. Founded in 1925, Elliott Davis is a member of The Leading Edge Alliance, an international professional association of independently owned accounting firms based in the U.S. and is strategically aligned with LEA Europe and LEA Asia Pacific, a worldwide network of more than 450 offices in 100 countries around the globe. For more information about Elliott Davis and its services, visit http://www.elliottdavis.com.

3:10 PM – 4:00 PM

Plan Sponsor Roundtable:

Closed-Door Discussion of Today's Topics and other Plan Issues

Moderator:

Alanna Tanner, Director, Employee Benefits, Amick Farms, LLC

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