



CYPEN & CYPEN NEWSLETTER for August 15, 2019

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Never Forget September 11, 2001
and
Always Remember May 2, 2011

1. IS THERE A RETIREMENT CRISIS?:

A recent article by *Plansponsor* is the next in what appears to be a media blitz of pieces sending a similar message - there is a retirement crisis in this country. It's not a pleasant picture to think about people retiring without enough money to live on, and this particular article incorporates all of the potential "retirement doomsday" scenarios, such as a lack of coverage (many people do not have access to employer-sponsored retirement plans at all), lack of savings (older employees who haven't saved enough for retirement, or have no retirement savings outside of Social Security), and a lack of income protection in retirement (people are living longer and avoiding annuities like the plague). However, as I pointed out in a recent Twitter post, the notion of a retirement crisis is not consistent with my personal experience with retirees. Over the years, I have encountered countless retirees, both professionally and personally. Of that number, not one individual was

struggling to survive. In fact, many have the opposite problem - they actually have more than enough money in retirement and have difficulty spending money (and quite possibly because they read these same media articles telling them they are doomed to run out of money!). Surveys of actual retirees support my experience; if there are a lot of retirees struggling out there, they are not appearing in the data. So, is the retirement crisis real - or is it media hype? The answer, as is the case with many similar issues, is that there is a bit of truth to both notions. When I posted on Twitter, I received a spirited response from one follower telling me to look at my own client plans to see the number of participants that are nowhere near their savings targets, highlighting that the number of 50-year-olds who are just starting to save is staggering. And, we know that many people who work for smaller employers do not have access to employer-sponsored retirement plan coverage at all. Furthermore, most people are not great with money, so to expect them to suddenly turn into people who are great with money in retirement is unlikely. On the flip side, as this article points out, most of the retirement crisis articles are predicated on data showing that many defined contribution account balances are insufficient to support a comfortable retirement, when, in fact, this is just a small piece of the retirement equation. To figure out whether a person will thrive in retirement from a financial perspective, there are many pieces to the puzzle, including: Social Security (while often viewed as a "safety net," it will actually provide sufficient income by itself for many employees earning less than \$40,000 prior to retirement), pension income, income generated by defined contribution retirement plan account balances, earned income (since, for an increasing number of people, retirement is more about what happens next than ceasing to produce income at all), expenses in retirement, degree to which the retiree is insured against financial risks (e.g., long-term care insurance, health insurance, *etc.*), longevity, familial situation, and taxes, among others. As one of my Twitter followers pointed out, even the decision as to where to retire can be a significant piece of the puzzle in determining whether individuals will have a successful retirement. So, in the end, while the notion of a retirement crisis has some truth and some hype to it, it almost never hurts to save more. And, if telling people there is a crisis motivates them to put more money aside for retirement, it can't be a bad thing! Michael A. Webb, Cammack Retirement Group, August 1, 2019.

2. FIDELITY AT CENTER OF NEW STRATEGY FOR ERISA BREACH LAWSUITS:

A recent spate of fiduciary breach lawsuits against [Fidelity Investments](#) represents a new strategy by plaintiffs' attorneys to identify alleged ERISA violations affecting defined contribution plans, industry observers say. The litigation argues that Fidelity violated ERISA through offering competitors' mutual funds to Fidelity clients. The lawsuits by current and former DC plan participants focus on the adequacy of fee disclosure and whether record keepers are considered defined contribution fiduciaries. Plaintiffs alleged that Fidelity is a fiduciary and is charging "secret" fees; Fidelity responded that it discloses

the fees and that it isn't a fiduciary. Lawsuits filed in February, March and April argued that Fidelity's management of its Fidelity FundsNetwork makes it subject to ERISA rules governing fee transparency and self-dealing. These lawsuits have been consolidated into a single [class-action complaint](#), In Re Fidelity ERISA Fee Litigation. The participants' complaints were filed on behalf of respective DC plans as well as "similarly situated" DC plans. However, the plans are neither plaintiffs nor defendants. The FundsNetwork is an open architecture investment platform that Fidelity makes available to competing asset managers that provide their products to Fidelity's DC clients. Fidelity charges "infrastructure fees" to some of these providers so it can maintain the FundsNetwork platform, the company wrote in a July 1 response to the lawsuits. The FundsNetwork connects "hundreds of asset management companies offering a total of over 10,000 mutual funds" to Fidelity investors, the company wrote. Plan participants accused Fidelity of operating a "secret" payment "kickback" scheme by charging and manipulating fees to mutual fund providers. "Fidelity's receipt of the kickback payments at issue violates ERISA's prohibited transaction and fiduciary duty rules, and should not be countenanced," said the consolidated complaint filed May 15 in a U.S. District Court in Boston. The consolidated complaint lists 10 lawyers in six law firms representing current or former participants in 11 defined contribution plans. "The secret payments do not bear any relationship to the services performed by Fidelity," said the complaint, adding that the infrastructure payments are made "at the expense of the plans and participants." The complaint said fees charged by mutual fund companies to DC plans would be higher due to their paying the infrastructure fees. Fidelity's July 1 [response](#) asked that the lawsuit be dismissed. The infrastructure fees "were heavily negotiated with the fund managers" and the fees were "disclosed to all investors," Fidelity wrote.

Excess compensation

If Fidelity were declared a fiduciary, it would have to follow rules requiring it to charge plans no more than the cost of its service and agree to remit excess compensation to plans that Fidelity received from third parties, the company wrote. "If service providers were deemed fiduciaries to 401(k) plans when negotiating their compensation ... there would be no providers left in the business," Fidelity added. "Nothing in ERISA prevents Fidelity from acting in its own interest when negotiating its compensation." The Fidelity case has attracted the attention of regulators in Massachusetts; Boston is Fidelity's home town. In late February, the Massachusetts Securities Division, a unit of the secretary of the commonwealth's office, sent "preliminary inquiry letters" to Fidelity and "certain funds" in the FundsNetwork program, according to an email from Debra O'Malley, a spokeswoman for William Galvin, the secretary of the commonwealth. The letters requested the identity of all Massachusetts pension and retirement plans in which Fidelity is a fiduciary or service provider; details of all fees payable by mutual fund firms to Fidelity; a description

of the "infrastructure fee;" the names of Fidelity units that receive the fee; and a description of how the fees are disclosed. The lawsuits also have attracted the attention of ERISA attorneys, who note that participants' lawyers continue to seek new angles for ERISA challenges. "Over the years, the plaintiffs' bar has become more sophisticated," looking beyond the "old generic claims that sponsors overpaid," said Michael Kreps, a partner at Groom Law Group, whose firm represents sponsors in ERISA cases and isn't involved in the Fidelity litigation. Regardless of the outcome, Mr. Kreps said sponsors must pay close attention to contract terms with service providers. "Sponsors have the obligation to understand the fees and make sure they talk to service providers about fees and services," he said. "Sponsors need to show they have a prudent process in place to address fees."

Fee transparency

A key issue in the Fidelity case is the fee-transparency section of ERISA called Section 408(b)(2). The plaintiffs argued that the infrastructure fees "clearly constitute" indirect compensation, requiring disclosure by Fidelity to clients to meet the ERISA guidelines, according to their complaint. "Fidelity does not disclose the amount of these secret payments." However, a three-page [notice](#) provided by Fidelity to institutional investors said the infrastructure fee is disclosed to new clients and in annual 408(b)(2) notices to existing clients. The notice was issued Feb. 28 following the filing of the first infrastructure fee lawsuit. "These fees are not in connection with Fidelity's services to the plan and are not considered indirect compensation under 408(b)(2) regulations," the notice said. "The infrastructure fee is not paid by participants, plans record kept by Fidelity or by plan sponsors." The notice also said sponsors aren't required to disclose the infrastructure fee to participants because this fee "is not charged for Fidelity's services to any plan and is not paid by participants or plans." Even though sponsors haven't been named as defendants in the Fidelity case, attorneys note that they should pay close attention. "If plaintiffs are correct, the onus would be on the sponsor to go to the Labor Department to say this isn't adequate disclosure," said Allison Wielobob, general counsel for the American Retirement Association, Arlington, Va. To any DC sponsor under any circumstance, "we say make sure fees are reasonable and well known," said Ms. Wielobob, whose trade group hasn't commented on the Fidelity case. "If the responsible plan fiduciary received this disclosure and did not fully understand -- or simply did not know what 'infrastructure fees' were, because that is not a term of art -- the fiduciary had a responsibility to follow up with Fidelity," Marcia Wagner, founder and managing partner of The Wagner Law Group, Boston, wrote in an email. Her firm isn't involved in the Fidelity case. "A plan sponsor needs fully to understand what it is paying for," she added. "It may not need to know exactly how the fees are being allocated among the relevant parties, but it needs to understand the overall bottom-line cost of the product." Robert

Steyer, *Pensions & Investments*, July 22, 2019.

3. SOCIAL SECURITY -- BENEFICIARIES AFFECTED BY BOTH THE WINDFALL ELIMINATION PROVISION (WEP) AND THE GOVERNMENT PENSION OFFSET (GPO):

The Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) are two separate provisions that reduce Social Security benefits for workers or and their eligible family members if the worker receives (or is entitled to) a pension based on employment not covered by Social Security. Certain beneficiaries may be subject to both the WEP and the GPO if they are dually entitled to Social Security retirement and spousal (or survivors') benefits and also receive a noncovered government pension. As of December 2018, 263,775 Social Security beneficiaries were affected by both the WEP and the GPO. They accounted for 38% of spouses and survivors affected by the GPO and 14% of beneficiaries affected by the WEP. The provisions' benefit offsets create complications in calculating and administering Social Security benefits. Overpayments to dually entitled Social Security beneficiaries affected by both the WEP and the GPO have been an issue for the Social Security Administration (SSA) since the WEP was enacted in 1983. In January 2013, SSA's Office of the Inspector General (OIG) estimated that SSA has overpaid approximately \$349.5 million to 10,546 dually entitled beneficiaries who were identified among those in current-payment status and whose WEP reduction was not applied properly and \$320.6 million to 10,122 dually entitled beneficiaries in current-payment status whose GPO offset was not imposed correctly. OIG's estimates further indicated that SSA overpaid those beneficiaries an additional \$231.9 million from 2013 to 2017, and that SSA may continue overpaying them approximately \$46.4 million annually if no corrective action is taken. Other studies show that beneficiaries who were subject to both the WEP and the GPO tended to have lower average Social Security benefits and household wealth than those affected by only the WEP or the GPO. In addition, some state and local government employees might become dually entitled and subject to both provisions through an extension of Social Security coverage under a Section 218 Agreement. See [here](#) for full report. Zhe Li, Analyst in Social Policy, R45845, Congressional Research Service (CRS), July 30, 2019.

4. WHY PUBLIC PENSIONS ARE TAKING MORE RISK:

Public pension funds, particularly those with higher underfunded statuses, are taking on more risk as rates stay low. In a low-interest-rate environment, public pension funds facing widening gaps between their assets and liabilities are making riskier investments, [new research shows](#). The United States Federal Reserve has kept interest rates low in the wake of the Great Recession of 2008 to 2009. The federal funds rate is now hovering around 2.5 percent, with the Federal Reserve signaling that it will keep rates there for the

time being. Members of the Federal Reserve Bank of Boston set out to determine how persistently low rates affect the tolerance of public pension plans, particularly those that are underfunded, meaning the value of their assets is worth less than their obligations. In a research paper entitled “Reach for Yield by U.S. Public Pension Funds,” published earlier this month, four members of the Boston Fed, along with a member of the Board of Governors of the Fed, concluded that this combination of factors pushes pensions to take more risk. The researchers used the Public Plans Database from the Center for Retirement Research at Boston College, pulling plan-level annual data from 2001 through 2016 for 170 public pension funds. According to the paper, 114 of those funds were administered by states, while 56 were administered locally. The sample covered 95 percent of public pension plan membership nationwide, the paper said. The researchers estimated that one-third of public pension funds’ total risk was related to underfunded status or low interest rates, research published on July 8 showed. The researchers found that risk-taking behavior related to underfunded status alone was responsible for about 12 percent of total risk taken on by the funds. The researchers noticed that those low-interest rates and underfunded statuses, when combined, increased risky investing strategies. “The effect of a lower funding ratio on risk-taking behavior was more pronounced when interest rates were relatively low,” such as the period between 2012 and 2016, according to the research. The public pension funds that were affiliated with states or municipalities that had weaker financial situations (higher levels of public debt or worse credit ratings) also took on more risk, the researchers showed. If a state is allowed to default on its debt, public pension funds will often take on more risk, according to the research. The extra risk taken on by those public pension funds is essentially shifted onto taxpayers, who -- if the state defaults on its debt -- would pay the price, the research shows. In other words, pension funds taking the most investment risk tend to be those on the most precarious financial footing. “Risk-taking behavior is most pronounced among funds with sponsors with the least ability to bear additional risk,” the paper showed. Alicia McElhaney, *Institutional Investigator*, July 19, 2019.

5. PLAINTIFFS CLAIM VICTORY IN FIRST RULING CHALLENGING DB PLAN

ACTUARIAL ASSUMPTIONS:

As detailed in our [alert](#) last month, two plaintiffs’ law firms have filed a flurry of putative class-action lawsuits challenging the calculation of “optional forms” of benefits (*i.e.*, non-single life annuities) and early retirement benefits under defined benefit pension plans. The firms have now filed nine lawsuits, all generally alleging that the mortality table (although, in some cases, plaintiffs also challenge the plan’s interest rate) that is used to calculate participants’ early retirement or optional forms of benefits is not reasonable because it is outdated. The use of an outdated mortality table, plaintiffs argue, produces early retirement or optional forms of benefits that are not “actuarially equivalent” to a

single life annuity at normal retirement age (the default benefit under ERISA). Plaintiffs seek the difference between their benefits as calculated under the plan and their benefits as calculated using allegedly reasonable actuarial assumptions--generally, the assumptions set forth in the Treasury regulations pursuant to Internal Revenue Code ("Code") section 417(e)(3). Defendants in many of these lawsuits have filed motions to dismiss, and more motions are expected. The U.S. district court in Minnesota in *Smith v. U.S. Bancorp*, however, is the first to decide on a motion to dismiss. In *Smith*, the plaintiffs, each of whom retired before normal retirement age of 65, filed an action against U.S. Bancorp, the Employee Benefits Committee, and unnamed fiduciaries (collectively, "U.S. Bancorp") challenging the U.S. Bank Pension Plan's ("Plan") "early commencement factors" ("ECF") used to calculate early retirement benefits. Depending on the age at which a participant retires, the plaintiffs allege that a participant could receive between 38 percent and 90 percent of his or her normal retirement benefit. These ECFs, the plaintiffs argue, unreasonably reduced plaintiffs' benefits such that their early retirement benefits were not actuarially equivalent to their normal retirement benefits in violation of ERISA. As in the other lawsuits, the plaintiffs seek declaratory and equitable relief, as well as benefits under the plan after the plan is reformed. The plaintiffs also bring fiduciary breach claims against the defendants for either failing to administer the Plan in accordance with ERISA or, in the case of the company, failing to monitor the fiduciaries administering the Plan. Below we review the arguments raised in support of and opposing the dismissal of plaintiffs' claims, and the court's ruling denying the motion.

U.S. Bancorp's Motion to Dismiss

In its motion to dismiss, U.S. Bancorp made six principal arguments, many of which are similar to arguments made by other defendants in these lawsuits:

1. No standing to enforce Treasury regulations. There is no private right of action to enforce the Code and related Treasury regulations that are the basis for the plaintiffs' claims that the ECFs must be calculated using "reasonable" actuarial assumptions. Similarly, ERISA section 502(a)(3) does not authorize actions to enforce the Treasury regulations.
2. Nothing in ERISA requires the use of reasonable actuarial assumptions. There is no requirement under ERISA that assumptions used to calculate early retirement benefits be "reasonable," nor did Congress prescribe any particular assumptions that must be used. This is in contrast to elsewhere in ERISA where Congress did impose a reasonableness requirements (e.g., in the calculation of withdrawal liability) or specific actuarial assumptions (e.g., in calculating lump sum benefits).
3. Plaintiffs did not sufficiently allege that the ECFs are not reasonable. Even if there is a "reasonableness" requirement under ERISA, the plaintiffs' complaint did not

contain sufficient allegations that the Plan's ECFs are outside the range of reasonableness. Comparing the Plan's ECFs to ECFs calculated using other assumptions does not alone establish unreasonableness.

4. Plan reformation is unavailable under ERISA section 502(a)(1)(B). Reformation is an equitable remedy that is unavailable under ERISA section 502(a)(1)(B), which generally only allows a participant to sue for benefits under the terms of the Plan.
5. Plaintiffs failed to plead a failure to monitor claim. Nowhere in the complaint did plaintiffs allege that U.S. Bancorp had a duty to monitor (e.g., no allegation that it had the authority to appoint and remove fiduciaries).
6. Plaintiffs' claims are time-barred. Plaintiffs' claims are time-barred by the Plan's 30-month statute of limitations, and, with respect to the plaintiffs' fiduciary breach claims, by ERISA's 6-year statute of limitations. Plaintiffs knew or should have known of the allegedly unreasonable ECFs in 2002 when the ECFs were adopted or, at the latest, in 2003, when the Plan document containing the ECFs was published.

The Court Denies U.S. Bancorp's Motion to Dismiss

The court issued an opinion denying U.S. Bancorp's motion to dismiss. The court sided with the plaintiffs in finding that the plaintiffs' claims are for actuarially equivalent benefits under ERISA, and are not claims under the Code or Treasury regulations. The court adopted the plaintiffs' argument that, instead, the Code and Treasury regulations provide guidance as to the meaning of ERISA's actuarial equivalence requirement. The court went on to state that U.S. Bancorp is incorrect that there are no requirements under ERISA for calculating and applying the ECFs to produce actuarially equivalent benefits, and that there is case law to suggest that "two methods of payment are actuarially equivalent when their present values are equal under a given set of actuarial assumptions." The court suggested that "in determining the present value of any distribution of any accrued benefit from a defined benefit plan, the plan must take into account specified valuation rules as set forth in section 417(e)." The plaintiffs allege in the complaint that the ECFs are not calculated in accordance with these requirements; therefore, the court held that the claims cannot be dismissed. With respect to the fiduciary breach claim against the company, the court cursorily held that plaintiffs sufficiently pled the claim. As to the claims' timeliness, the court noted that a case is generally not dismissed under Federal Rule of Civil Procedure 12(b)(6) on the basis of a potential statute of limitations defense. In any event, the court found that there are factual disputes regarding whether the Plan's limitation period applies and on what date any limitations period began to run. As noted above, the *Smith* decision denying U.S. Bancorp's motion to dismiss is the first with respect to the motions to dismiss filed by defendants in these lawsuits. Accordingly, although the *Smith* court's decision is a setback for U.S. Bancorp, the decision also was likely a

disappointment for the defendants in the other 8 lawsuits, and for plan sponsors that are concerned they could be targeted next. And while it is unclear whether the *Smith* decision will influence courts deciding motions in other of these cases, the plaintiffs in those cases are certainly trying to get as much momentum from the decision as possible. Indeed, the plaintiff in *Herdon v. Huntington Ingalls Industries, Inc. et al.*, in his opposition to the defendants' motion to dismiss, cited *Smith*, stating that the court held that ERISA's actuarial equivalence requirement requires the use of current interest and mortality assumptions. Additionally, the plaintiffs' apparent win in the *Smith* case could embolden the plaintiffs' law firms to file additional complaints against other plan sponsors and fiduciaries. Not only did the decision likely give plaintiffs a shot of optimism (whether founded or not) that these cases will move to discovery (and, thus, increasing the chances of settlement), but plaintiffs read the *Smith* court's opinion as requiring the use of current interest rate and mortality assumptions. With that view of the law, the plaintiffs' firms will be incentivized to file as many lawsuits as possible challenging plans with assumptions that do not match the current Treasury regulations. We continue to monitor these cases and will review each decision on these motions to dismiss as they come down. Groom Benefits Brief, July 19, 2019.

6. A 'DIFFICULT PERIOD' PUSHES DC ASSETS INTO THE BASEMENT:

Thanks to a brutal fourth quarter, defined contribution asset managers were hard pressed to find positive news by the end of last year. Most broad asset categories saw a drop in assets under management: passive and active domestic equity; active and passive international equity; passive global equity; and active global/international fixed income, according to an analysis of *Pensions & Investments'* 2018 survey of DC money managers. Internally managed U.S. institutional tax-exempt assets fell 5.2% to \$5.84 trillion in 2018; total assets sank by 5.4% to \$6.69 trillion as of Dec. 31. "The market in general had a difficult period," said Greg Ungerman, senior vice president and defined contribution practice leader for consultant [Callan](#) LLC, San Francisco. Like other DC consultants and asset managers interviewed, Mr. Ungerman attributed much of the declines in the various equity asset categories to market activity rather than to participants making pronounced investing changes. "DC participants are not driving one asset class vs. another," said Ross Bremen, a partner at investment consultant [NEPC](#) LLC, Boston. "DC participants tend to move after markets have already moved." However, if DC participants exercised patience, their account balances likely would have rebounded. For the first half of 2019, the S&P 500 stock index climbed 18.54%; the Russell 2000 gained 16.98%; the MSCI All Country World index ex-U.S. advanced 13.6%; and the Bloomberg Barclays U.S. Aggregate Bond index rose 6.11%. The *P&I* analysis reveals several broad trends last year:

- Passively managed equity assets fell less than their active counterparts in both domestic and international categories.
- Domestic equity assets fared better than international equities as assets declined less.
- Passively managed domestic fixed-income assets rose at a higher rate than actively managed domestic fixed income assets.
- Target-date fund assets rose 2.8% to \$1.48 trillion in 2018 and were up 133.5% over five years. Custom target-date fund assets slipped 0.8% to \$137.3 billion, but they are up 155.8% over five years.

The broad asset categories from *P&I's* survey incorporate underlying assets from target-date and balanced funds, mutual funds, separate accounts and commingled funds such as collective investment trusts. Although active domestic equity and passive domestic equity assets both fell in 2018, the latter has enjoyed such significant growth in recent years that it is poised to overtake the former. For the 12 months ended Dec. 31, actively managed domestic equity assets dropped 9.5% to \$1.52 trillion while passively managed domestic equity assets declined 6% to \$1.49 trillion, according to the *P&I* survey. For the five years ended Dec. 31, passive domestic equity assets climbed a cumulative 65.6% vs. active domestic equity's gain of 4.6%. A continuing bull market and greater fee fealty by plan sponsors are some of the reasons for the surge in passive investing, consultants said. ERISA lawsuits challenging fees have prompted sponsors to offer more index funds, said Bradford L. Long, partner and research director of global public markets for investment consulting firm [DiMeo Schneider & Associates](#) LLC, Chicago. And if active managers, especially in areas such as large-cap domestic equity, cannot outperform respective indexes, sponsors will offer --- and participants will choose -- less expensive index funds, he added. "For every one of my clients, they are looking to add more passive equity funds," said Martin Schmidt, principal at MAS Advisors, a defined contribution consulting firm in Chicago. "They are not looking to add more active equity funds." Passively managed equity has done well because "it offers value for money and convenience," said Nick Nefouse, managing director, co-head of the LifePath target-date business and head of the defined contribution investment and product strategy at [BlackRock](#) Inc., New York. "You know what it is, and you can do it very cheaply." Mr. Nefouse acknowledged the impact of ERISA lawsuits on some sponsors' actions. "Litigation is a driver, but that doesn't mean everybody looks for the lowest cost possible," he said. BlackRock is the second-largest manager of passive domestic equity for DC plans. Its passive domestic equity assets declined 6.5% to \$406.8 billion last year vs. \$435 billion in 2017, in line with the overall trends identified by *P&I*. "Asset flows tend to follow markets," said Mr. Nefouse said. The largest passive domestic equity manager --

[Vanguard Group](#) Inc., Malvern, Pa. -- ran counter to the national trend, as assets rose 2.6% to \$737.2 billion last year vs. \$718.8 billion in 2017. Vanguard has benefited from sponsors' greater use of target-date funds, especially as qualified default investment alternatives, said James Martielli, the firm's head of defined contribution advisory services. Index-based target-date funds are "getting the lion's share of flows" vs. actively managed target-date funds among Vanguard clients, he said. Although sponsors are adding index-based investments, they aren't coming as replacements to active investments, he added. Vanguard's recent annual analysis of client activity shows 63% of DC plans offered an "index core" last year, continuing a steady annual increase compared to 38% in 2009. During this period, the percentage of clients offering an index core and target-date funds rose to 59% from 29%. Vanguard defines an index core as "broadly diversified index funds" for U.S. stocks, U.S. bonds and international stocks. "The definition includes index funds for large-cap U.S. stocks, intermediate or long-term bonds, and developed markets," according to Vanguard's report. Vanguard remained the top provider of total internally managed DC assets with \$1.04 trillion as of Dec. 31, a 4.2% gain for the year. BlackRock remained in second place with \$829.8 billion, down 3% from the end of 2017.

International equity pinched

International equity assets fell further than their domestic counterparts last year. Actively managed international equity dropped 21.2% to \$371 billion last year, while active domestic equity lost 9.5% to \$1.52 trillion. "International markets have clearly lagged," said Steve Caruthers, a Los Angeles-based equity investment specialist at Capital Group Cos. Weaker economies, tariff-caused trade tensions and turmoil over Brexit are the primary reasons why aggregate assets in international equity markets have been depressed, he said. However, amid the overall declines of actively managed international equities in the *P&I* database, Capital Group emerged virtually unscathed. The leader in actively managed international equities reported assets of \$142.1 billion last year vs. \$144.6 billion in 2017. "Healthy net flows to the American Funds target-date series in 2018 contributed to Capital Group's strong showing," Mr. Caruthers said. "In addition, EuroPacific Growth Fund and New Perspective Fund had positive net flows exceeding \$1 billion in 2018. The American Funds target-date series exceeded \$10 billion in net new flows in 2018." Capital's active domestic equity assets also fared well vs. competitors as last year's \$156.7 billion in assets was essentially flat compared to \$159.6 billion in 2017. It was a different story for Fidelity, whose actively managed international equity assets fell 30.2% to \$62.4 billion in 2018 vs. \$89.3 billion in 2017, placing second in the *P&I* database. During the same period, its active domestic equity assets -- also the second largest in the *P&I* database -- dropped 8.4% to \$290.2 billion from \$316.7 billion. The largest manager of passive international equities, [State Street Global Advisors](#), Boston, saw assets fall 23.7% to \$77.1 billion last year. "The markets have been

punishing international equities," said David Ireland, senior managing director and global head of defined contribution. SSGA's passive international equity assets also were affected last year by the loss of a large client due to a "pricing related" issue, said Mr. Ireland, who declined to identify the former client. Mr. Ireland said the overall forecast for passive equity is favorable given sponsors' desire to reduce costs, expand lineups, reduce fiduciary risk and increase the use of target-date funds. SSGA remained the third-largest manager of passive domestic equity assets last year with \$157.9 billion, down 7.1% from the end of 2017. Although sponsors and consultants preach diversification, international equity remains dwarfed by domestic equity in DC plans, a residue of home-country bias, DC consultants said. International equity remains the "poor stepchild" of DC plan asset allocations, said Mr. Schmidt of MAS Advisors. "Plan sponsors are not looking to expand the types of international offerings." Robert Steyer, *Pensions & Investments*, July 22, 2019.

7. FDIC AND FINANCIAL REGULATORY REFORM – TITLE I AND IDI RESOLUTION PLANS:

The Dodd-Frank Wall Street Reform and Consumer Protection Act requires that bank holding companies with total consolidated assets of \$50 billion or more and nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve periodically submit resolution plans to the Federal Reserve and the Federal Deposit Insurance Corporation. Each plan, commonly known as a living will, must describe the company's strategy for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure of the company. These plans must include both public and confidential sections. Companies subject to the rule are required to file their resolution plans on a staggered schedule. The largest bank holding companies are required to submit their plans on or before July 1 each year. This group comprises domestic companies with \$100 billion or more in nonbank assets and foreign-based companies with \$100 billion or more in U.S. nonbank assets. Nonbank financial companies that are designated by FSOC also must submit on or before July 1. All other firms generally are required to submit their plans on or before December 31 each year. Requests for extensions are reviewed by the Federal Reserve and the FDIC and have been granted in limited instances. The public sections available on the FDIC's website have not been edited or reviewed by the FDIC and are provided exactly as submitted by the companies. All files are in PDF format. For information on, or help with downloading the PDF reader visit [PDF Help](#). See full article [here](#). Federal Department Insurance Corporation, 2019.

8. DID YOU KNOW BENJAMIN FRANKLIN SAID THIS?:

Genius without education is like silver in the mine.

9. PONDERISMS:

Why call it a building if it's already been built?

10. INSPIRATIONAL QUOTES:

Keep all special thoughts and memories for lifetimes to come. Share these keepsakes with others to inspire hope and build from the past, which can bridge to the future. - Mattie Stepanek

11. TODAY IN HISTORY:

On this day in 1945, V-J Day, Japan surrenders unconditionally to end WW II.

12. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.