DCIIA / SPARK Public Policy Forum

Washington, DC | June 6 - 7, 2023

In June 2023, more than 300 DCIIA and SPARK members and guests met in Washington, DC, to learn about and discuss the legislative and regulatory environment, data privacy, and related issues in the retirement landscape. DCIIA and SPARK would like to thank the Forum sponsors and steering committee, and all speakers and moderators, for their participation and support.

This recap provides a high-level overview of the two days' sessions. Access slide decks (member login required), speaker details, a link to our post-Forum episode on the "Inside DCIIA" podcast, and more on the DCIIA website – look under Events / DCIIA/SPARK 2023 Public Policy Forum.

DAY ONE

ECONOMIC UPDATE – IT AIN'T OVER 'TIL THE FED LEADER SINGS

Ethan Harris, Bank of America

Inflation and its overall impact on the economy were discussed, along with the headwinds and tailwinds we are facing as well as the impact of actions taken by the Fed. Our speaker's "bad news" prediction was that there will not be a soft landing, but his "good news" prediction was for an overall mild recession.

LEGISLATIVE UPDATE WITH HILL STAFFERS

Jamie Cummins, U.S. Senate Committee on Finance (Republican Staff);
Naveen Parmar, U.S. Senate;
Lori Prater, U.S. Congressman Mike Kelly, Ways and Means Committee Member;
Michael Sinacore, U.S. Senate Committee on Health, Education, Labor & Pensions

Moderator: Melissa Kahn, SSgA

Featuring experts from the Hill, this panel considered recent legislation including the audience question, "(When) will we see a Secure 3.0?" Panelists expressed a strong preference to see the impact of the current measures before introducing new ones. Other interests cited included the ability to understand the effectiveness of S2.0 measures in supporting savings by low-income workers. One panelist emphasized the value of employer-sponsored plans and the efforts of states to extend coverage. Related and supporting priorities include the new student loan match and efforts at initiating savings early. The panel ended on a note of potentially reimagining the retirement system, emphasizing auto-enrollment, matching contributions, and options for workers not covered at their workplace.

VIEWS FROM THE DEPARTMENT OF LABOR

Ali Khawar, Employee Benefits Security Administration (EBSA)

Moderator: Lazaro Tiant, Schroders

Khawar answered questions and provided EBSA's viewpoint in the areas of the ESG Rule, SECURE 2.0, and participant communications and disclosures.

Note: This session was covered, with permission, by Pensions & Investments – see "DOL took thumb 'off the scale' in finalizing new ESG rule, official says"

PERSPECTIVES ON ESG POLICY AND FACTORS

Allen Bond, Jensen Investment Management;
Ross Bremen, NEPC;
Ed Farrington, Impax

Moderator: Nikki Pirrello, Pensions & Investments

Panelists discussed investor demand for ESG mandates, the political and regulatory landscape in the U.S. now and in the future, the movement toward global standards, net zero initiatives and impact on investment/divestment, and how diversity, equity, and inclusion fits into the ESG conversation. The session opened with two audience polling questions with interesting results: "Do you believe we should do away with the term ESG investing?" -- 52% responded "yes, wholeheartedly," and in response to "In 10 years' time, will you be more likely to be sued for including or for excluding ESG criteria in your investment portfolio?" – 71% responded, "excluding."

PRAGMATIC CONSIDERATIONS OF SECURE 2.0

Jaime Erickson, Abbott Laboratories;
Kendra Kosko Isaacson, Senator Murray's Office;
Stephanie Stearman, FIS Global

Moderator: Denise Faggella, Accenture Federal

Panelists representing legislative, plan sponsor, and recordkeeper perspectives discussed SECURE 2.0 provisions cited as being of most interest in a DCIIA member survey: "Rothification" of catch-up and employer matching contributions, student loan matching, and emergency savings. The panel offered their views on the most important considerations with respect to implementation of the required provisions and discussed whether some of the provisions in the Act were diluting the industry message around the importance of saving for retirement.

LITIGATION UPDATE

Jamie Fleckner, Goodwin Proctor

Moderator: Marla Kreindler, Morgan, Lewis & Bockius LLP

These legal experts discussed the high number of ERISA litigation cases still being filed and offered insightful guidance for plan sponsors on suggested steps to be taken for documenting decision making and processes for all fiduciary actions.

INTERSECTIONALITY OF FINANCIAL RESILIENCY AND FINANCIAL WELLNESS

Josh Dietch, NMG Financial Services Consulting; Joanna Smith-Ramani, Aspen Institute Financial Security Program

Moderator: Lisa Massena, DCIIA

How is the retirement savings system doing – and what is CFERS? The session started with a brief panelist definition of financial inclusion and statistical highlights of how well the system is working today to create financially secure retirements across the U.S. workforce. Bottom line: we've got a lot of good things going on, and there's a great deal more work to do. Discussion centered around key initiatives that are part of the solution, including state Auto IRA programs and recent federal legislation. Importantly, we will need a way to measure progress against the approximately 57 million worker coverage gap that is often cited. The Collaborative for Equitable Retirement Savings is a partnership working to understand demographic differences in retirement savings outcomes by the plan-eligible workforce. CFERS currently holds data on about 350,000 worker lives across a range of plans and is on a trajectory of achieving one million lives included by year end. Recordkeepers and plan sponsors are encouraged to join the project.

SOCIAL SECURITY REFORM AND THE DC SYSTEM

***Richard Johnson, Urban Institute;
Gary Koenig, AARP Public Policy Institute;
Aron Szapiro, Morningstar***

Moderator: Catherine Reilly

Bringing Social Security onto a sustainable basis will require either cuts to benefits, tax increases, or some combination of the two. This session discussed the most probable paths for reforms and how these would impact the DC retirement system. Key takeaways were the importance of retaining the universal nature of the benefit and the increasing role of the private sector in providing lifetime income, inflation protection, and Social Security optimization strategies.

SWING PRICING / HARD CLOSE

Shelly Antoniewicz, ICI

Moderator: Drew Carrington, Franklin Templeton

This quick-hitting fireside chat got off to an interactive start with the audience voting by show of hands who was in favor of swing pricing/hard close. The panelists discussed whether it is a "solution in search of a problem" and what the implications for retirement plans would be. If the proposal goes into effect, despite industry comments and letters in opposition, the panelists discussed the potential massive cost to rebuild infrastructure for mutual fund providers and intermediaries.

IMPLEMENTING A GUARANTEED RETIREMENT INCOME EXPERIENCE

***Joe Hendrickson, Allianz;
Cathy Marasco, Nationwide***

Moderator: Ryan Grosdidier, SS&C Technologies

The passage of the SECURE Act in 2019 provided a catalyst for the release of new, innovative guaranteed retirement income solutions. Recordkeepers are now setting strategies to meet the decumulation needs of their plan sponsor clients and participants. This panel discussed how advances in product and technology are enabling the efficiency and scalability needed to implement a holistic retirement income program. They shared how to implement retirement income solutions within a recordkeeping system and their thoughts on how to create a participant experience that is both easy to understand and robust enough to forecast and explain guaranteed benefits.

COMBATTING FRAUD

***David Levine, Groom Law Group;
Beth Pattillo, Leidos;
Doug Peterson, Empower***

Moderator: Lavina Mehta, Franklin Templeton

Fraud in the retirement industry has evolved from primarily known actors (e.g., family members) to anonymous, professional fraudsters. These parties have access to so much data from large corporate and government data breaches that fraud has become increasingly hard to combat. There are three parties that control data who can be impacted by fraud – the recordkeeper, plan sponsors, and participants. This session reviewed the general nature of fraud and safety programs that are being developed by recordkeepers and plan sponsors as well as looking to the future to see what new technologies are being developed.

DAY TWO

LEGISLATIVE REVIEW AND RECENT IMPACTS

Chris Gaston, Davis & Harman;
Michael Hadley, Davis & Harman;
Adam McMahon, Davis & Harman

Data privacy is inherently a 'best practices' puzzle but ambiguous legislation and contradictory regulations have caused additional confusion. Employers and service providers can best adjust to the changing landscape through having clear service contracts that detail data gathering and usage protocol with specified data elements. A standard regulatory solution on a national level would be impactful if it was industry neutral, flexible in the paths to compliance, and enforced. Nine states have consumer data protection laws, but there are challenges to applying the new laws to employment data, as they were written to target "big tech." On the federal level, the American Data Privacy Protection Act (ADPPA) was introduced in 2022 and passed by committee votes, but it failed due to a lack of consensus. Standardized legislative solutions continue to be challenged between state and federal interests, while the current election cycle has also impaired taking action.

CORE RESEARCH FINDINGS: PHASE ONE RECAP AND PHASE TWO PROGRESS REVIEW

Deb Dupont, LIMRA;
Pam Hess, DCIIA Retirement Research Center

The SPARK Institute partnered with the DCIIA Retirement Research Center (RRC) and LIMRA to launch Phase Two of a research study exploring data privacy and sharing sensitivities. LIMRA conducted a robust participant survey which revealed that nearly 60% of participants believed their employer should offer programs to relieve financial, physical, and emotional stress, which demonstrates the ongoing, growing desire for holistic financial wellness programs. However, 59% of respondents were very concerned about who has access to their information; and interestingly, 75% of participants believed recordkeepers held the legal responsibility for safeguarding their plan participation and account. The RRC provided insights from their research interviews and focus groups with plan sponsors, recordkeepers, consultants, and more. 76% of employers were concerned with data usage amongst third parties, while individual service agreements were the primary guide for how data was used in acquisition, cross-selling, and housing. Currently, there are no standardized agreements across the industry, as data usage is uniquely specified within each contract, where some do not address termination, self-populated data usage, and more. 67% of employers across all sizes were interested in an industry-wide solution to drive increased participant trust, reduced legal liability, and enhanced portability of data.

DISCUSSION OF KEY QUESTIONS IN PLAN DATA

Kathleen Connelly, Fiduciary Decisions;
Greg Long, Alight Solutions

Moderator: David Levine, Groom Law Group

Speakers addressed two key questions that were identified in Phase One of research and discussed in earlier working groups:

1. How do we assure plan participants that their data is being properly used, as they continue to express concerns about usage?
2. Should plan data be considered a plan asset? If so, what are the fiduciary implications?

Recordkeepers noted that ‘there are no magic words’ to significantly increase participant trust, but there are steps that can be taken to improve rapport. Participants did trust their employers to act in their best interest, as employers were generally more conservative in providing data. To continue that trend, recordkeepers only asked for data required to administer the plan, while optional financial wellness programs could be pivoted to ask for participant consent rather than providing disclosures of usage. Additionally, plan data as a plan asset was ambiguous due to ERISA implications. Data termination upon the end of service agreements, where usage was directed by individual contracts, was touched on as well. Overall, all parties across the system have generally encouraged a standardized solution proposal to address key concerns on trust, usage, and retention policies.

DISCUSSION OF KEY QUESTIONS IN PLAN DATA PART II

Rachel Kugelmass, SS&C Retirement Solutions;
Stephen Budinsky, RVK

Moderator: Julia Bardmesser, My Corporate Ally

Building on the previous discussion, panelists’ discussion addressed two core questions:

1. Both plan participants and plan sponsors demanded that vendors not hold data once their contract ends. How can we best achieve this and ensure compliance?
2. Plan sponsors expressed a strong ownership of the data and said repeatedly that data is lent when necessary, but not shared with other parties. How can industry practitioners address this demand?

Recordkeepers expressed concerns with conflicting requests from plan sponsors, as plan sponsors sought increased security while also inquiring about data following the seven-year retention period. Generally, data termination was subject to the specific clauses of individual service agreements. The data related to plan administration and bundling was terminated following the seven-year retention period; however, the usage of data acquired from financial wellness programs and other supplementary services was not commonly addressed in the original contracts. Advisors and financial wellness providers sought more seamless data sharing and access practices, as financial wellness services fundamentally provide value to participants. However, advisors expressed challenges to accessing data due to restrictions from recordkeepers and general concern from plan sponsors on data privacy. Advisors did believe that data should be treated as a plan asset for optimal security. There is an industry opportunity to streamline financial wellness services by providing more seamless access for advising purposes and third-party providers, while mitigating cybersecurity risks through regulatory action or a standardized industry solution.

ABOUT DCIIA

The Defined Contribution Institutional Investment Association (DCIIA) is a nonprofit association dedicated to enhancing the retirement security of America’s workers. DCIIA’s diverse group of members include investment managers, consultants and advisors, law firms, recordkeepers, insurance companies, plan sponsors and other thought leaders who are collectively committed to the best interests of plan participants. For more information, visit: www.dciia.org.

ABOUT SPARK

The SPARK Institute is a member-driven, non-profit organization and leading voice in Washington for the retirement plan industry. Our members include recordkeepers, mutual fund companies, brokerage firms, insurance companies, banks, consultants, trade clearing firms and investment managers. For more information, visit: www.sparkinstitute.org.

DCIIA
Defined Contribution
Institutional Investment Association