

Greetings & a warm welcome to this week's edition of 401k Real Talk. This is Fred Barstein contributing editor at WealthManagement.com's RPA omnichannel and CEO at TRAU, TPSU & 401kTV - I review all of this week's stories and select the most important and interesting ones providing open honest and candid discussion you will not get anyway else. So let's get real!

Just as more lawsuits alleging misuse of forfeiture accounts to offset a plan's match are being filed, two notable cases were recently dismissed with prejudice.

A Minnesota federal court stated that the [Wells Fargo](#) plan documents did not require the use of forfeiture assets to offset costs of administration, something a California court echoed in [a case against JP Morgan](#).

For plans with ambiguous language in plan documents or that require that the assets be used for the benefit of participants may still be vulnerable but at this point no court has rules that forfeiture assets are plan assets and must be used to offset costs with failure to do so a breach of the duty of loyalty.

After the IRS Abbott private letter ruling and SECURE 2.0, pundits predicted a boom in [adoption of student loan debt repayment programs](#). Results are different with Callan reporting just 12% of larger plans offering and just 2.6% of plans according to PSCA.

Complying with mandatory provisions has taken precedence for plans and providers alike with cost and time to implement student loan programs not insignificant – one expert asked whether they should be combined with retirement plans.

Though a noble endeavor, like HSAs, student loans are just another wrinkle in what can seem like an overwhelming task for plans and providers alike though Voya, now offering a free program through Savi, claims it will be a great retention tool. Regardless, the demand is tepid with limited revenue opportunities.

With CITs seeming to be taking over the DC world, especially with plans sold by RPAs, a comprehensive article by the International Foundation of Employee Benefits Plans [details their strengths and weaknesses](#) in comparison to mutual funds.

With \$4 trillion in assets, 10x than in 2000, and more than mutual funds in TDFs, CITs are booming mainly due to lower costs and greater flexibility. But they come with a price including less transparency, liquidity and accountability.

Advisory firms and providers can negotiate fees and receive additional revenue setting up more challenging disclosure for plan sponsors with potentially different pricing on the same investments depending on the firm offering it. With one CIT provider dominating, it's not hard to imagine possible conflicts of interests and issues that may eventually end up in court.

While proponents of managed accounts may be cheering the Bechtel case, leading ERISA attorney and former RPA Matthew Eickman [cautions about reading too much into the decision](#).

The complaint alleged that the cost of the managed accounts used as the QDIA and 63% of participants through Bechtel's record keeper Empower dramatically increasing their fee, were too high compared to TDFs.

A federal court dismissed the complaint without prejudice because the plaintiffs did not provide

meaningful benchmarks that showed that the managed account fees were too high – he stated that they could not reasonably be compared to TDFs active investment costs cannot be compared to passive.

Like with CITs, mutual funds are more opaque requiring a deeper understanding of costs especially about who is being paid what and for which services as well as, ultimately, whether they are reasonable.

A large broker/dealer putting together a case to leverage the convergence of wealth and retirement for their board to get more resources called looking for ammunition. Their first question was whether this “convergence” is real, something no one is brave or stupid enough to deny these days with all due respect to those stuck in the 401(k) echo chamber. The real question is who can be successful and how.

Like Mount Everest, convergence is not a mirage but, for most, it might as well be.

Read my recent [WealthManagement.com column](#) about how some firms are succeeding but no one is close to the summit yet.

So those were the most important stories from the past week. I listed a few others I thought were worth reading covering:

- [Why retirement committee fiduciary training should be a priority](#)
- [Advisors should not ignore private market investing](#)
- [U.S. Sen. Warren questions Empower's private market initiative](#)
- [Do advisors need to harmonize their message to record keepers](#)
- [How RPAs are creating additional revenue through wealth management](#)

Please let me know if I missed anything or if you would like to comment. Otherwise I look forward to speaking to you next week on 401k Real Talk.