



Trump, 401(k) Litigation & Index Funds

Three Things Employers Must Prepare for in 2017

Date: February 1st, 2017 – 10:00 – 11:00 am Pacific



L O C K T O N R E T I R E M E N T S E R V I C E S

Webinar Overview

- ❖ Trump Administration Impact on Retirement Plan Policy
 - ❖ 401(k) Litigation Themes and Takeaways
 - ❖ Index Funds: Truth or Myth
 - ❖ Next Steps for Plan Sponsors & Fiduciaries
 - ❖ Wrap-Up
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- ❖ Please submit questions via the chat feature, we will address them at the end of the prepared remarks

Speaker Introductions

Rick Unser, Moderator

- ❖ Retirement Plan Consultant
- ❖ Host, 401(k) Fridays Podcast
- ❖ Nearly twenty years of industry experience
- ❖ Help employers & plan sponsors:
 - Enhance fiduciary protection
 - Streamline plan operations, and
 - Improve participant retirement readiness



Samuel Henson, JD

- ❖ VP Legislative & Regulatory Affairs
- ❖ ERISA Attorney
- ❖ Subject matter expert on ERISA compliance, DOL/IRS activities, and the legislative landscape
- ❖ Former DOL Investigator





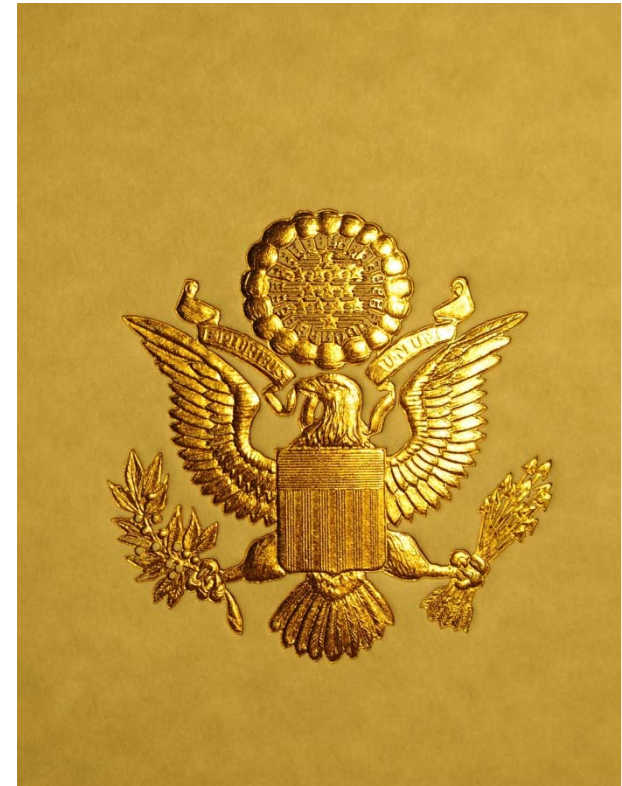
Trump Administration Impact on Retirement Plan Policy



Things to Monitor During the New Administration

❖ Trump Impact

- ✓ Who knows what to expect?
- ✓ Rolling back of Obama era regulations
- ✓ Clear emphasis on executive orders
- ✓ Clearly influenced by an inner circle



DOL Nominee & EBSA Initiatives

❖ Andrew Posner



- ✓ Hardee's/Carl's Jr. CEO, Labor Attorney, Billionaire
- ✓ Clearly favors the self-regulation of the labor market
- ✓ Will challenge many Obama era policies (Overtime, ACA)
- ✓ Confirmation battle?

❖ Retirement Specific Policies

- ✓ Fiduciary Rule
- ✓ State Run Plans
- ✓ Open MEPS



Treasury Nominee & IRS Initiatives

❖ Steve Mnuchin



- ✓ Goldman Sachs, Hedge Fund Manager
- ✓ Tax Reform is #1
- ✓ Confirmation battle?

❖ Retirement Specific Policies

- ✓ Lifetime Savings Limits
- ✓ All-Roth
- ✓ Income based limits
- ✓ Small employer impact



Congress & Legislative Proposals

- ❖ Republican Agenda
 - ✓ Repeal/Replace of ACA is #1
 - ✓ Tax Reform is #2
 - ✓ Leveraging budget reconciliation
- ❖ RESA Proposal
 - ✓ What is it?
 - ✓ Where it's at?
 - ✓ Will it pass?



Supreme Court

- ❖ Trump Nominee
 - ✓ Judge Neil Gorsuch
 - ✓ Federal Judge, 10th US Circuit Court of Appeals, Denver, CO
 - ✓ Can he get confirmed?
- ❖ Future ERISA (either retirement or ACA) litigation?
 - ✓ ACA Challenges
 - ✓ Church Plans
 - ✓ Private Equity





401(k) Litigation Themes & Takeaways



Dramatic Spike in Litigation?

- ❖ Who is bringing these cases?
- ❖ Why are they bringing these cases?
- ❖ Why hasn't the DOL stepped in?
- ❖ Is there an end in sight?



Common Themes?

- ❖ Investment Fees
 - Share Class Pricing
 - Proprietary Products
 - Active Management
- ❖ Administrative Fees
 - Recordkeeping
 - Participant Advice
- ❖ Performance
 - MMF v. Stable Value



What Can Employers Do?

- ❖ Plan Governance
 - ✓ Process
 - ✓ Decision
 - ✓ Documentation
- ❖ Fiduciary Support
 - ✓ Engagement of expertise and risk shifting
- ❖ Insurance Strategies
 - ✓ E&O, D&O
 - ✓ Fiduciary Liability



Index Funds: Truth or Myth

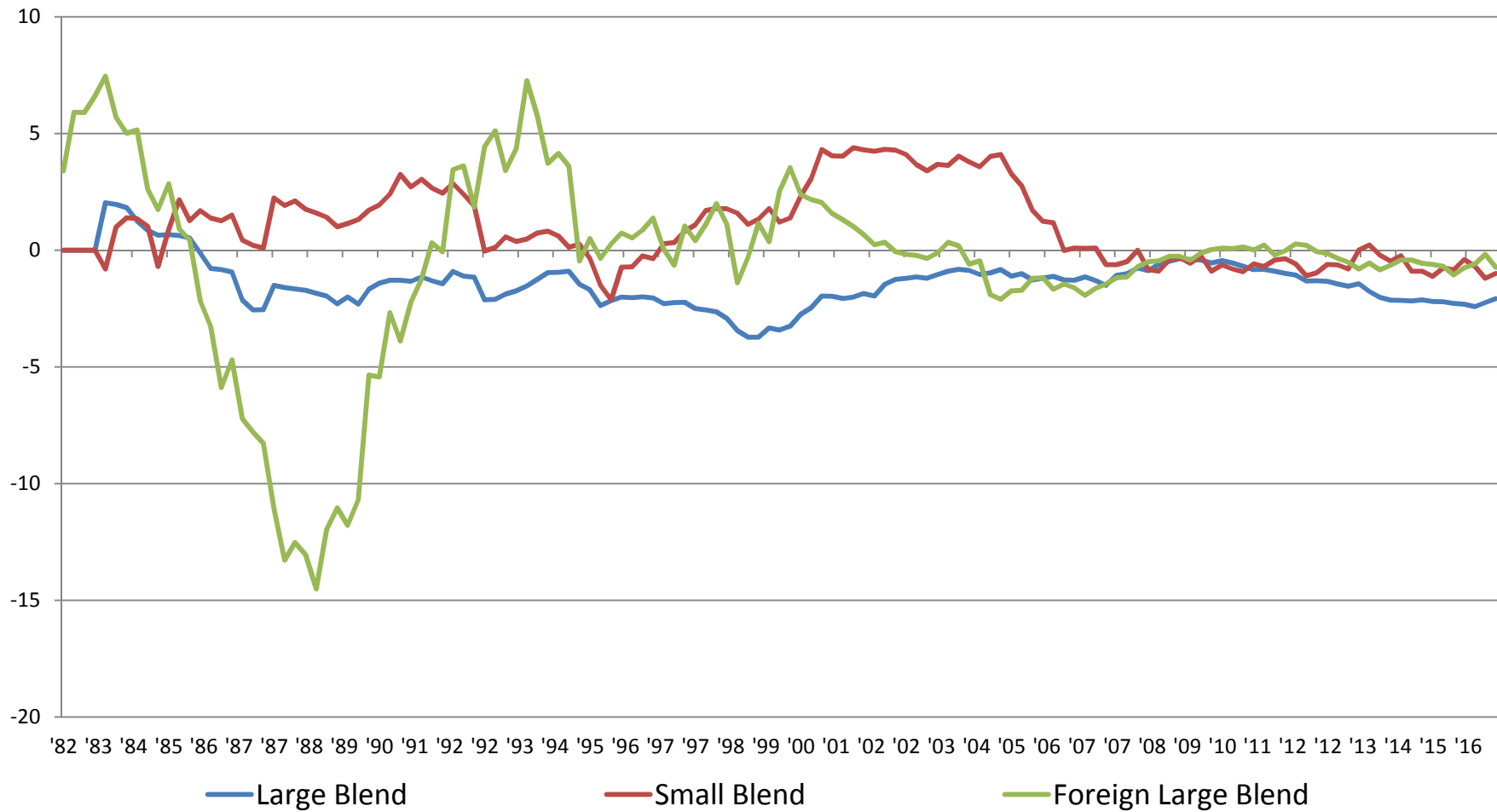


We Use Index Funds in our 401(k) So We Won't Get Sued

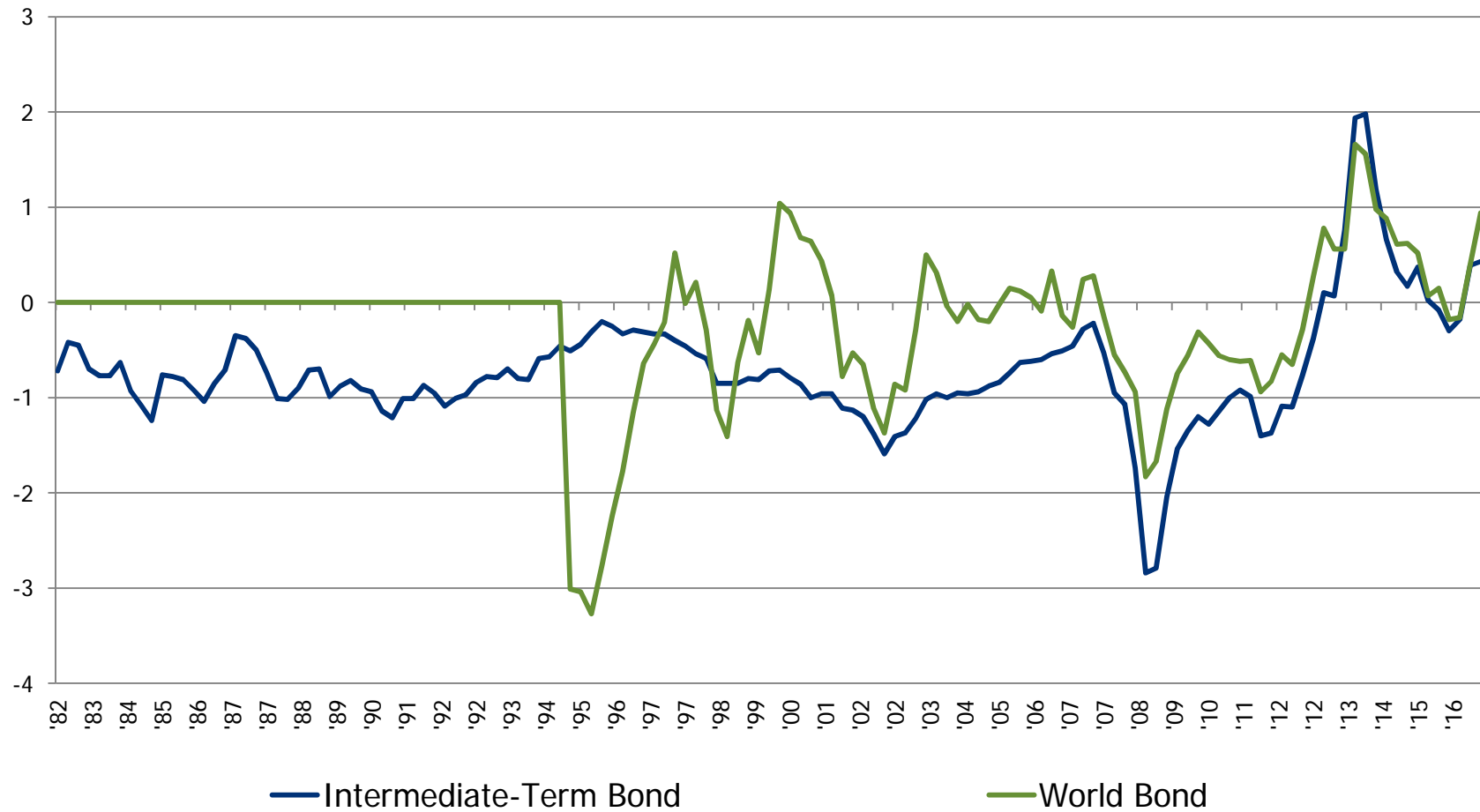
Truth or Myth?

Truth or Myth?

Historical Performance of Active Management vs. Benchmark



Historical Performance of Active Management vs. Benchmark



All Index Funds are the Same

Truth or Myth?

Truth or Myth?



Wrap-up



Next Steps for Plan Sponsors

- ❖ Benchmark retirement service provider fees & compensation
 - ❖ Inquire about potential changes in services under DOL Conflict of Interest Rule
 - ❖ Discuss & document investment menu diversity
 - ❖ Review formal plan governance procedures
 - ❖ Evaluate procedures for service provider selection
 - ❖ Review E&O or D&O policies for ERISA fiduciary liability coverage or consider stand alone fiduciary liability policy
-
- ❖ This webinar has been approved for one hour of SHRM and HRCI Recertification Credits, we will send an email to all attendees later in the week

Could One Question Change the Future of Your 401(k) Plan?

1

The One Question

"What have you always wanted to ask your employees about your retirement plan but have been afraid to?"

2

How Employees React

We will record how real retirement plan participants answer them! Don't worry, it won't be your participants!

3

The Big Reveal!

Podcast Episode & White Paper

To Learn More or Participate:
www.401kfridays.com/question

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Feedback or questions?

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