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## **'Digital design': A new line of defense against ERISA lawsuits?**

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By Editorial Staff      Thu, Jan 31, 2019

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*'A reliable way to avoid potential litigation is to... develop processes for determining which digital designs and elements are most relevant for participant success,' said Shlomo Benartzi. The UCLA professor is advising Voya Financial on improving participant outcomes.*

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Voya Financial and UCLA behavioral finance specialist Shlomo Benartzi have produced a new thought-leadership document that explores the potential influence of “digital design” on a participant’s retirement savings decisions and on his or her welfare in retirement, according to press release this week.

The paper, “The Digital Fiduciary: Overseeing Retirement Plans in the Digital Age,” was written by Benartzi and is being promoted through the Voya Behavioral Finance Institute for Innovation. It suggests that improving participants’ online user experiences could represent a new line of defense against breach-of-fiduciary-duty lawsuits.

“Enhancing the design of an enrollment website can increase the number of workers who personalize their enrollment by 15% and increase overall plan contributions by 10%,” the release said. It cites double or triple default contribution rates, without a reduction in enrollment, after changes in online enrollment experience. The “number of blank lines on a retirement plan website can help shape an employee’s level of diversification,” Voya said.

“In the 20th century, overseeing an employee benefit plan meant having a deep knowledge and expertise of investing and plan design. Now, in the 21st century, retirement security often depends more on fast decisions made on smartphones, and the designs that influence them, than on investment performance,” said Benartzi, in the release.

“By introducing the digital fiduciary concept, our goal is to underscore that if you want to do the right thing for your employees and plan participants — if you want to act prudently on their behalf — then you need to understand how people think and decide in the digital world. It is therefore essential for plan sponsors to add effective digital design to their skill set.”

Voya points out that ERISA (the Employee Retirement Income Security Act of 1974), requires plan fiduciaries to act with diligence “under the circumstances then prevailing.” The paper suggests that leveraging the power of digital design could theoretically help minimize the legal liability associated with providing a retirement plan if it satisfies

participants and produces positive retirement outcomes.

The paper suggests these steps for plan sponsors and advisors to consider:

**Making the right thing easy:** “Default” options can strongly influence decision-making. In the online world, defaults are used for saving rates and expected retirement ages. Rethinking existing defaults and considering more optimal defaults can be easy and effective.

**Testing and retesting:** Plan sponsors should select plan providers that routinely test different digital designs. Such testing must be done in a rigorous, reiterative and careful manner for constant improvement.

**Establishing a digital policy statement:** Sponsors should consider establishing a statement for digital policies, comparable to an investment policy statement, describing the objectives of a plan provider’s digital designs and the process for measuring and improving those designs.

“Regardless of future fiduciary regulations, history teaches us that a reliable way to avoid potential litigation is to keep the success of plan participants front and center, and to develop processes for determining which digital designs and elements are most relevant for participant success,” said Benartzi.

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