

## INDEX

- 401(k) plans, 2, 190. *See also* lawsuits
  - allocation errors in, 71
  - brokerage windows and, 175
- 403(b) savings accounts compared to, 4
- outside investments and, 71
- plan design and menus for, 33–37
- plan menus with, 33–37
- at Walmart, 28–29
- 403(b) savings accounts
  - under Employment Retirement Income Security Act of 1974, 4–5
  - 401k plans compared to, 4
  - in retirement plan litigation, 48
- 404(c) safe harbor provisions, in ERISA, 2, 6–7
  - guardrails under, 128–29
  - lawsuits and, 49–52
  - menu design under, 135–36
  - for participant-directed retirement plans, 15–16, 18–23
- active choice guardrails, 118–19
- allocation errors, 2–4, 71, 88
  - in alpha assets, 68–71
  - brokerage windows and, 173–80, 184, 186
- diversification issues, 72–86
  - excessive sector funds, 97
  - excessive/insufficient equity exposure, 101
  - familiarity bias, 73
  - with high-fee portfolios, 82
  - by participant age, 86
  - for target-date equities and funds, 85–86
- by employees, 75
- guardrails for, 158
  - low equity exposure and, 70
  - menu misuse, 87–90
  - outside investments and, 68–71
  - overweight investments and, 70
  - overweighting analysis, 76
  - portfolio performance analysis and, 103
  - prevalence of, 88
  - S&P index funds and, 68–71
  - in self-directed investments, 80–81
  - by single-investment option holders, 82
  - in tax-deferred accounts, 71–75
  - in University of Virginia retirement plan, 6–7, 75–82
  - weighting analysis of, 68
    - for idiosyncratic risk of portfolios, 79
    - of international share of equity holdings, 80
    - overweighting analysis, 75–82
- altering rule guardrails, 119
- Altering Rule Proposal, 26
- asset-based fees, 36
- asymmetric paternalism, 8–9
  - guardrails and, 115
- Benartzi, Shlomo, 120–22
- Braden v. Walmart Stores*, 51
- brokerage windows
  - advantages of, 172–73
  - cash reserve accounts, 178
  - conceptual approach to, 170–72
  - disadvantages of, 172–73
  - excess fees, 3

- brokerage windows (cont.)
  - fiduciary duty and, 181–88
    - disclosure requirements, 181–82
  - 401(k) plans and, 175
  - large menu defense, 171
  - misuse of, 170–72
  - no transaction fee funds, 179–80
  - participation allocation errors and, 173–80, 184, 186
  - qualified default investment
    - alternatives and, 179, 184, 185
  - take away effects, 180
  - tiers of, 173
  - time constraints for directing funds, 178
  - transaction costs, 3
- Buffett, Warren, 69–70
- cash reserve accounts, 178
- costs, of retirement plans, 30–32.
  - See also* fees
  - High-Cost Plan Proposal, 25
  - plan design and menus, 37, 40
    - for menu limitations, 36
  - transaction costs for brokerage windows, 3
- default rule guardrails, 118–19
- diversification errors, 2–3
  - allocation errors as, 72–82
    - familiarity bias, 73
    - in multiple studies, 73
  - exposure errors as, 74–75, 82–86
    - with high-fee portfolios, 82
    - by participant age, 86
    - for target-date equities and funds, 85–86
  - fee errors as, 82–86
    - in multiple studies, 73
  - guardrails for, 158
  - prevalence of, 88
  - in University of Virginia retirement plan, 6–7
- Dominated Fund Proposal, 25
- dominated funds, 3
  - plan design and menus and, 41–43
    - criteria for dominated funds, 41–42
    - performance of dominated funds, 42
  - duty. *See* fiduciary duty
  - dynamic default guardrails, 119–22
    - affirmative choice defaults, 122
    - Sell More Tomorrow proposals and, 120–22
  - Employment Retirement Income Security Act of 1974 (ERISA), U.S.
    - in case law, 1
    - components of, 2
    - 403(b) savings accounts under, 4–5
    - 404(c) safe harbor provisions, 2, 6–7
      - guardrails under, 128–29
      - lawsuits and, 49–52
      - menu design under, 135–36
        - for participant-directed retirement plans, 15–16, 18–23
      - hard guardrails under, 124
      - lawsuits under, 45–46
        - 404(c) safe harbor provisions, 49–52
      - menu design under, 133–34, 138–39
      - participant-directed retirement plans under, 2, 15–16
        - 404(c) safe harbor provisions, 15–16, 18–23
      - qualified default investment alternatives, 3
    - Enhanced Default Proposal, 25
    - Enhanced Fiduciary Duty Proposal, 26
    - Enhanced Kaldor Hicks efficiency, 138
    - enhanced qualified default investment alternatives, 25, 194
    - ERISA. *See* Employment Retirement Income Security Act of 1974
    - errors. *See specific errors*
    - ETFs. *See* exchange traded funds
    - ex ante analysis, of portfolio
      - performance, 92–96
      - of index funds, 95
      - of risk and return, 95, 96
    - ex post analysis, of portfolio
      - performance, 92–96
      - of index funds, 95
      - of risk and return, 95
    - excessive sector funds, 97

- excessive/insufficient equity exposure, 99
- exchange traded funds (ETFs), 170, 174
- exposure errors. *See* allocation errors
- familiarity bias, 73
- fee errors, 2–3
  - diversification issues, 82–86
  - in multiple studies, 73
  - guardrails for, 158
  - prevalence of, 88
- fee litigation laws, 49–53
- fees, for retirement plans, 30–41
  - asset-based fees, 36
  - data and methodology on, 32–37
  - empirical evidence for, 37–41
  - excess fees, 191–92
    - brokerage windows and, 3
    - investor excess fees, 41
    - portfolio performance analysis and, 97
  - high-fee portfolios, 82
  - for individual investments, 31
  - investor choice additional fund fees, 37
  - menu fund fees, 36
  - for operating costs, 30
  - Plan Menu Additional Fund Fees, 37
  - for pooled investments, 30–31
- fiduciary duty
  - brokerage windows and, 181–88
  - disclosure requirements, 181–82
  - menu design and, 132–34
  - methodological approaches to, 9–13
  - in participant-directed retirement plans, 18, 21
  - prudent approaches, 1–2
  - in retirement plan litigation, 47
  - scope of, 23–27
  - tradeoffs and, 132–34
- fiduciary law. *See also* lawsuits
  - methodological approaches to, 9–13
- field experiments, for retirement plan lawsuits, 59–67
  - fund retention predictors, 67
  - public response in, 61–63
  - results in, 63–66
  - sample attrition for control groups, 64
  - summary statistics, 65
  - treatment effects estimates, 66
  - treatment letters in, 60–66
- Fox, Edward, 185
- fund retention predictors, 67
- gold-based investments, 156
  - University of Virginia retirement plan and, 5–6
- goldbugs, 5, 6, 8
  - problematic portfolios and, 96
- government guardrails, 124–27
  - fiduciary backlash from, 126
- growth-oriented funds, 113
- guardrail interventions
  - Altering Rule Proposal, 26
  - Dominated Fund Proposal, 25
  - Enhanced Default Proposal, 25
  - Enhanced Fiduciary Duty Proposal, 26
  - High-Cost Plan Proposal, 25
  - methodological approach to, 9–13
  - participant-directed retirement plans, 25–26
  - Portfolio Guardrail Proposal, 25–26
- guardrails, 115–27
  - active choice, 118–19
  - advantages of, 115
  - allocation quality and, 162
  - analysis of, 189–96
  - asymmetric paternalism and, 115
  - default remapping and, 163
  - default rule, 118–19
  - dynamic default, 119–22
    - affirmative choice defaults, 122
    - Sell More Tomorrow proposals and, 120–22
  - under 404(c) safe harbor provisions, 128–29
  - goals and purpose of, 115
  - government, 124–27
    - fiduciary backlash from, 126
  - hard, 122–24
    - under Employment Retirement Income Security Act of 1974, 124–25
    - qualified default investment alternatives, 123, 125–26
  - informational, 116–18
  - under Internal Revenue Code, 129–30

- guardrails (cont.)  
 Kaldor Hicks efficiency and, 162–69  
 legal liability of, 127–30  
 under Pension Protection Act, 116–18  
 Sharpe ratios influenced by, 167  
 soft, 122–24  
 for target-date funds, 118–19  
 tradeoffs and, 123–24, 130  
 in University of Virginia retirement plan, 157–69  
   demographics of participants, 159  
   for diversification errors, 158  
   for exposure errors, 158  
   for fee errors, 158  
   portfolio holdings, 160  
   risk and return effects, 162
- Hacker, Jacob, 193–94  
 hard guardrails, 122–24, 185–86  
   under Employment Retirement Income Security Act of 1974, 124–25  
   qualified default investment alternatives, 123, 125–26  
*Harmon v. FMC Corporation*, 49  
*Hecker v. Deere*, 50–51, 187  
 High-Cost Plan Proposal, 25  
 high-fee portfolios, 82  
 home country bias, 113  
*Howell v. Motorola*, 20–22, 51–52  
*Hughes v. Northwestern University*, 16–17, 48, 144–46
- index funds  
   ex ante analysis of, 95  
   ex post analysis of, 95  
   in participant-directed retirement plans, 18–19  
 individual investment plans, fees for, 31  
 informational guardrails, 116–18  
 insufficient equity exposure. *See* excessive/insufficient equity exposure  
 Internal Revenue Code, 129–30  
 investor choice additional fund fees, 37
- Kaldor Hicks efficiency, 137–41  
   guardrails and, 162–69  
   streamlining and, 162–69  
 Kasten, Gregory, 177, 179  
 Keim, Donald, 149
- Langbecker v. Elec. Data Sys. Corp.*, 51  
 lawsuits, in retirement plan litigation  
   under Employment Retirement Income Security Act of 1974, 45–46  
   404(c) safe harbor provisions, 49–52  
   fiduciary duties and, 61  
   field experiments for, 59–67  
   fund retention predictors, 67  
   public response in, 61–63  
   results in, 63–66  
   sample attrition for control groups, 64  
   summary statistics, 65  
   treatment effects estimates, 66  
   treatment letters in, 60–66  
 401(k) lawsuits, 45–49  
*Braden v. Walmart Stores*, 51  
 density histograms for assets  
   under management, 53–58  
 density histograms for sued/unsued plans, 53–58  
 density histograms of plan level expenses, 56  
 fee litigation laws, 49–53  
 fiduciary duty, 47  
*Harmon v. FMC Corporation*, 49  
*Hecker v. Deere*, 50–51  
 history of, 46–48  
*Howell v. Motorola*, 51–52  
*Hughes v. Northwestern University*, 48  
*Langbecker v. Elec. Data Sys. Corp.*, 51  
 merits in, 53–58  
*Pfeil v. State Street Bank and Trust*, 52  
*Troutt v. Oracle Corp.*, 53  
 T-Tests of menu quality measures, 59  
*Tussey v. ABB*, 47–48  
 403(b) plans, 48  
 Schlichter role in, 45–48  
 Lehman Aggregate Index, 71

- litigation. *See* lawsuits  
 Loewenstein, George, 115  
 low equity exposure, 70
- Mankiw, Greg, 5, 6
- menu design, in plan design  
   competing interests in, 135–37  
   under Employment Retirement  
     Income Security Act of 1974,  
     133–34, 138–39  
   fiduciary duties and, 132–34  
   under 404(c) safe harbor provisions,  
     135–36  
   *Hughes v. Northwestern University*,  
     144–46  
   Kaldor Hicks efficiency and,  
     137–41  
   pension funds and, 134  
   streamlining in, 133  
   tradeoffs in, 132–34, 137–40  
     under Environmental, Social or  
     Governance reasons, 139  
   trustees and, 134  
   Veiled Paretianism and, 141–44
- menu effects, in participant-directed  
 retirement plans, 17–23  
   choice architecture in, 18–19  
   under 404(c) safe harbor provisions,  
     20–23  
   for index funds, 18–19  
   monitoring of, 19–23
- menu limitations costs, 36
- mistakes. *See* allocation errors;  
 diversification errors; exposure  
 errors; fee errors
- Mitchell, Olivia, 149
- monitoring, of participant-directed  
 retirement plans, 19–23
- mutual funds, in participant-directed  
 retirement plans, 24
- Nalebuff, Barry, 196
- Ning Tang, 71–72
- no transaction fee funds, 179–80
- outside investments, allocation errors  
 and, 68–71  
   in 401(k) plans, 71
- overweight investments, 70
- overweighting analysis  
   of allocation errors, 75–82  
   of exposure errors, 76
- Pareto improvement, 133, 137, 141–44,  
 157, 161–62
- participant-directed retirement plans.  
*See also* 401k plans  
 under Employment Retirement  
 Income Security Act of 1974, 2,  
 15–16  
   404(c) safe harbor provisions,  
     15–16, 18–23  
   guardrail interventions, 25–26  
   *Howell v. Motorola*, 20–22  
   in *Hughes v. Northwestern*  
     *University*, 16–17  
   menu effects in, 17–23  
     choice architecture in,  
       18–19  
     under 404(c) safe harbor  
       provisions, 20–23  
     for index funds, 18–19  
     monitoring of, 19–23  
   plan sponsors for, 15–17  
     fiduciary duty of, 18, 21  
     mutual funds, 24  
     Supreme Court cases,  
       16–17  
     *Tibble v. Edison*, 16–17
- paternalism. *See* asymmetric  
 paternalism
- pension funds, menu design with, 134
- Pension Protection Act (PPA), U.S.  
 (2006), 116–18
- performance. *See* portfolio  
 performance
- Pfeil v. State Street Bank and Trust*, 52
- plan design and menus, 31. *See also*  
 menu design  
   costs of, 37, 40  
   for menu limitations, 36  
   dominated funds and, 41–43  
   criteria for, 41–42  
   performance of, 42  
   with 401(k) plans, 33–37  
   future developments for, 43–44

- plan design and menus (cont.)
  - menu quality, 41
  - for participant-directed retirement plans, 17–23
    - choice architecture in, 18–19
    - under 404(c) safe harbor provisions, 20–23
    - for index funds, 18–19
    - monitoring of, 19–23
  - Plan Menu Additional Fund Fees, 37
  - plan size, 40
  - Plan Menu Additional Fund Fees, 37
  - plan menus. *See* plan design and menus
  - pooled investment programs, fees for, 30–31
  - portfolio choice, 118–19, 143
  - Portfolio Guardrail Proposal, 25–26
  - portfolio performance, analysis of
    - allocation errors and, 103
      - for portfolios with Sharpe ratios, 104
      - in regression-based assessments, 110
    - conceptual approach to, 91
    - for dominated funds, 42
    - ex ante analysis, 92–96
      - of index funds, 95
      - of risk and return, 95, 96
    - ex post analysis, 92–96
      - of index funds, 95
      - of risk and return, 95
    - with excessive fees, 97
    - external comparisons for, 108–109
      - for portfolios with Sharpe ratios, 109
      - for qualified default investment alternatives, 108
      - for target-date funds, 108–109
    - guardrails and, 162
    - for portfolios with Sharpe ratios, 100, 103
      - with allocation errors, 104
      - external comparisons for, 109
      - with high fees, 105
      - risk and return for, 104–107
    - for problematic portfolios, 96–103
      - with excessive sector funds, 97
      - with excessive/insufficient equity exposure, 99
    - goldbug portfolios, 96
      - with insufficient international equities, 97
      - risk and return in, 96
    - regression-based assessments, 107–11
      - allocation errors in, 110
      - idiosyncratic risks, 110
    - of risk and return
      - ex ante analysis of, 95, 96
      - ex post analysis of, 95
        - with excessive sector funds, 97
        - with excessive/insufficient equity exposure, 99
      - for non-TDF portfolios, 101, 103
      - for portfolios with Sharpe ratios, 104–107
      - of University of Virginia retirement plan, 92
    - streamlining and, 162
    - of University of Virginia retirement plan, 7, 92–96
      - exposure levels, 92
      - risk and return, 92
  - PPA. *See* Pension Protection Act
  - proactive fiduciaries. *See also* participant-directed retirement plans
    - employers' role in, 14–15
    - ideal fiduciaries, 23–27
    - menu effects for, 17–23
    - plan sponsors, 15–17
  - qualified default investment
    - alternatives (QDIAs), 3, 25, 189–90
    - brokerage windows and, 179, 184, 185
    - enhanced, 25, 194
    - external performance comparisons for, 108
    - streamlining of, 147–48
  - region funds, in retirement plans, 3
  - retirement plans. *See also* Employment Retirement Income Security Act of 1974; participant-directed retirement plans; plan design and menus; *specific companies; specific corporations*

- allocation errors in, 2–4
- cowboy hypothesis for, 5
- disaggregation of plan losses, 35
- diversification errors in, 2–3
- exposure errors in, 2–3
- fee errors in, 2–3
- goldbugs, 5, 6, 8
- investor restrictions, 33
- outflow issues, 192–93
- region funds, 3
- revenue sharing in, 31
- sector funds, 3
- risk and return. *See also* portfolio performance
  - guardrails and, 162
  - streamlining as influence on, 155–57
    - comparisons with pre-reform outcomes, 156
    - with gold-based investments, 156
  - for University of Virginia retirement plan, 92
- Schlichter, Jerry, 45–48. *See also* lawsuits
- SDBAs. *See* self-directed brokerage accounts
- sector funds, in retirement plans, 3
- self-directed brokerage accounts (SDBAs), 170, 173–76, 180. *See also* brokerage windows
- self-directed investments, allocation errors in, 80–81
- Selker, Paul, 175
- Sell More Tomorrow proposals, 120–22
- Sharpe ratio analysis
  - guardrails and, 167
  - portfolio performance and, 100, 103
    - with allocation errors, 104
    - external comparisons for, 109
    - with high fees, 105
    - risk and return in, 104–107
  - streamlining and, 167
- single-investment option holders, 82
- Social Security Plus (SSP) proposal, 193–96
- soft guardrails, 122–24, 185–86
- SSP proposal. *See* Social Security Plus proposal
- streamlining, 112–15, 147–57
  - allocation quality and, 162
  - asset type and, 151
  - default remapping and, 163
  - demographics of participants, 152
  - fund removal strategies, 113–14
  - goals and purpose of, 114–15
  - for growth-oriented funds, 113
  - home country bias, 113
  - Investment Policy Statements and, 114
  - Kaldor-Hicks efficiency and, 162–69
  - in menu design, 133
    - menu size, 148–49
  - of qualified default investment alternatives, 147–48
  - risk and return performance
    - influenced by, 155–57
    - comparisons with pre-reform outcomes, 156
    - with gold-based investments, 156
  - Sharpe ratios influenced by, 167
  - target-date funds, 150–52
  - in University of Virginia retirement plan, 150–55, 168–69
    - allocation changes in fund types, 153
    - coding of funds in, 151
    - error-correction and, 155
    - reforms of, 151
- Supreme Court, U.S. *See also* lawsuits
  - Howell v. Motorola*, 20–22
  - Hughes v. Northwestern University*, 16–17, 48, 144–46
  - participant-directed retirement plans and, 16–17
  - Tibble v. Edison*, 16–17
- Swensen, David, 69–70
- target-date funds (TDFs), 85–86
  - guardrails for, 118–19
  - portfolio choice and, 118–19
  - portfolio performance analysis of
    - external comparisons for, 108–109
    - for non-TDF portfolios, 101, 103
  - tax-deferred accounts, 71–75
- TDFs. *See* target-date funds
- Thaler, Richard, 120–22
- Tibble v. Edison*, 16–17

- tradeoffs, 10–11
  - fiduciary duty and, 132–34
  - guardrails and, 123–24, 130
  - in menu design, 132–34, 137–40
    - under Environmental, Social or Governance reasons, 139
  - transaction costs, brokerage windows and, 3
  - treatment letters, in retirement plan litigation, 60–66
  - Troudt v. Oracle Corp.*, 53
  - trustee, menu design and, 134
  - Tussey v. ABB*, 47–48
- underweighting analysis, of
  - international stocks, 100
- University of Virginia, retirement plans at, 4–7
  - allocation errors in, 6–7, 75–82, 87–90
  - asymmetric paternalism and, 8–9
  - diversification failures, 6–7
  - exposure errors, 87–90
  - fee errors, 87–90
  - 403(b) savings accounts, 4–5
  - gold fund, 5–6
  - guardrail interventions, 8–9
  - guardrails in, 157–69
    - demographics of participants, 159
    - for diversification errors, 158
    - for exposure errors, 158
    - for fee errors, 158
    - portfolio holdings, 160
    - risk and return effects, 162
  - portfolio performance analysis of, 7, 92–96
    - exposure levels, 92
    - risk and return in, 92
  - streamlining in, 150–55, 168–69
    - allocation changes in fund types, 153
    - coding of funds and, 151
    - error-correction and, 155
    - reforms of, 151
    - weighting analysis of, 7
- Veiled Paretianism, 141–44
- Walmart, retirement plan at, 28–29
  - Braden v. Walmart Stores*, 51
- weighting analysis
  - of allocation errors, 68
    - for idiosyncratic risk of portfolios, 79
  - international share of equity holdings, 80
  - of University of Virginia retirement plan, 7