Fiduciary Corner

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Fiduciary Update—Rollover Considerations

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Retirees who roll over assets into IRAs are "going into the wild, wild West," - Karen Friedman, executive VP and policy director of the Pension Rights Center, a Washington, D.C. - based group representing retirees

Source: The Seattle Times; "401(k) Rollover Boom enriches brokers at retirees' expense"

In this edition of Fiduciary Corner, COMPERIO is providing an update on a topic that we highlighted in July 2013 discussing the practice of Advisors working in a dual role of being both the advisor to a 401(k) Plan Committee and also providing education services/advice as an advisor to plan participants.

Fast forward 12 months and there have been several interesting and we believe, important developments that could lead to significant changes in the regulations governing how advisors interact with retirement plan participants.

Retirees are shifting assets out of defined benefit and defined contribution plans in droves, the *Seattle Times* and the Department of Labor report. The shift totaled $321 billion in 2012, an increase of about 60% over the course of the decade, according to Cerulli Associates. IRA's hold about $6.5 trillion, beating out the $5.9 trillion in 401(k)-style accounts, according to figures cited by the *Seattle Times*.

Recently, Bloomberg published one of the first extensive articles addressing this issue. The article contained the results of a three (3) month study into 401(k) rollovers. In summary, the article found that:

1. Many plan participants are receiving bad advice in regards to the benefits of rolling their retirement assets from a 401(k) plan to an IRA;
2. There is a significant amount of nebulous marketing being done by advisors leading people to believe that they are somehow associated with the organization that sponsors the 401(k) plan;
3. There is a general lack of transparency and education around the fees associated with rollover IRA products.

Federal regulators have stepped in to target rollover abuse. The Department of Labor plans to propose rules in January 2015 mandating that brokers and other advisors act in clients' best interest during the rollover process and Congress has directed the Government Accountability Office (GAO) to place a priority on providing a solution to this issue.

As a plan sponsor, it is important to educate yourself on the various business models advisors use in the marketplace, in order to answer questions that arise. Comperio has developed a checklist of questions to ask an advisor to determine the level of service they can provide and the method of compensation. Please contact Jim or Scott for a copy of the questions.

For your review, below is a re-print of the original July 2013 article:

On March 7, 2013, the Government Accountability Office (GAO) released the results of a recently concluded study into the practices of how financial services firms' encourage rollovers when working with 401(k) plan participants.

The GAO found that many firms are encouraging participants to move into IRA's despite the fact that the move may not be in the participants' best interest.

401(k) Plans and IRA's are big business.

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The Government Accountability Office (GAO) last year found conflict of interests were fueling IRA growth.

Advisors that work with 401(k) plans are continually searching for ways to expand their revenue and many advisors are attempting to do that by expanding participant education services to capture rollover assets.

There is a growing faction of advisors that have developed a model to service both the plan sponsor and plan participants. This "hybrid model" provides traditional fiduciary governance, investment due diligence and vendor management services as a fee based advisor in a fiduciary capacity to the Plan Sponsor while also wanting to establish relationships with employees to increase the potential for IRA rollovers from the employee education services that they provide through their broker dealer.

Advisor Structure

More advisors are moving to a hybrid model for their practices. Under this model, an advisor has licenses with both the SEC as a Registered Investment Advisor and FINRA serving as a broker with a Broker Dealer. Comperio discussed the three most popular models in a Fiduciary Corner article in 2011.

The hybrid structure gives the advisor the flexibility to act in a fiduciary capacity to the Retirement Plan Committee under the RIA umbrella and, whenever possible, retain the ability to receive compensation for selling products to plan participants (i.e. rollover IRA's to individual participants) as a result of providing educational services.

It is important for Retirement Plan Committees to understand the advisors' business structure in order to identify potential conflicts of interest. Committees should ask the following questions to identify the advisor business structure and capabilities:

How is your advisory practice structured as an organization? (which of the three structures - RIA only, Broker-Dealer or Hybrid)

Explain how your practice will work with our Committee to eliminate potential "conflicts of interest" in working for both the retirement plan committee and providing employee education services?

Provide a detailed description of how your firm provides employee education services?
(Do they coordinate with providers to leverage the providers resources and expertise or do they develop and deliver education content separately?)

What is the level of experience of the individuals that will be responsible for delivering employee education?

Describe in detail, the process you employ in working with recently terminated or retiring employees?

The GAO study is important because over 95% of all IRA dollars are coming in the form of rollovers from 401(k) plans. In our opinion, the next step for the GAO will be to study the rollover process and the effects of fees in IRA's versus 401(k) plans. The focus on fee transparency is bringing to light, and in many cases, reducing 401(k) fees but at the end of the day, if participants roll their balances into high cost IRAs due to conflicted advice it is doing a disservice to those participants. Plan Sponsors have a fiduciary duty to oversee the advice being provided to their plan participants. A lack of oversight could result in the plan having more serious issues, such as prohibited transactions occurring in the plan, if their advisor is a fiduciary on the 401(k) and provides conflicted advice to plan participants.

This is a new trend that COMPERIO wanted to bring to Plan Sponsors attention as the government and regulatory entities begin to focus more on rollover options. In addition, many Plan Sponsors need to be aware of their advisors' legal structure and the ramifications of education/advice they provide to plan participants.

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