

Morgan Lewis

together

ERISA ADVISORY COUNCIL
Issues and Considerations Around
Facilitating Lifetime Plan Participation

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Comparing Different Legal Structures of ERISA Plans and IRAs

| | ERISA Plan | Non-ERISA IRAs |
|----------------------------|--|---|
| Overall Decision Makers | <ul style="list-style-type: none"> • Role of plan sponsor / settlor • Role of plan fiduciaries • Role of advisors to plan sponsor, fiduciaries and participants | <ul style="list-style-type: none"> • Role of IRA owner • Role of advisors |
| Key Structural Differences | <ul style="list-style-type: none"> • Plan fiduciary or advisor / provider creates investment line-up • Participants limited to Plan's investment offering <ul style="list-style-type: none"> ○ Open architecture? ○ Brokerage window? ○ Company stock? • Availability of institutional products (CITs, stable value, separately managed accounts) | <ul style="list-style-type: none"> • DIY for individual • Individuals have choice of providers and products • Wide range of products and services but excluding many institutional products |
| Regulatory Regime | <ul style="list-style-type: none"> • ERISA (fiduciary standards and prohibited transactions) • Internal Revenue Code (401(a) qualifications, RMDs and prohibited transactions, anti-alienation rules, etc.) • SEC (Form S-8) • Product and Service Specific (SEC, FINRA, CFTC, insurance and banking rules) | <ul style="list-style-type: none"> • Not subject to ERISA • Internal Revenue Code (IRA compliance, RMDs, withdrawal penalties and 4975) • Product and Service Specific (SEC, FINRA, CFTC, insurance and banking rules) |
| Reporting and Disclosure | <ul style="list-style-type: none"> • ERISA disclosures • IRC disclosures • Product and service specific disclosures | <ul style="list-style-type: none"> • IRC disclosures • Product and service specific disclosures |

Participant Facing Considerations on Distributions

1. Participant is decision maker unless automatically rolled over into an IRA
2. Different decision points require different “legal” review (tax, contract review, provider review, etc.) across available alternatives

Participant Facing Considerations on Distributions

3. Examples of ERISA Participant disclosures

- 404(a) Participant Fee Disclosure

- Not customized to participants
- No comparison to other plans or IRAs

- Special Tax Notice

- Generic information
- Not participant specific
- Does not address consequences of cash out to participant outcomes

- 404(c), SPD, SMM and SAR Disclosures

- Includes general plan or investment information, not distribution focused
- Participant specific information is limited

Participant Facing Considerations on Distributions

4. Rollover process is not automated
5. Inability to roll over loans
6. Communications and tools available through providers
7. Access to in (or out of) plan advisors

Ideas for Improvement

- Regulatory support and guidance to facilitate automation through examples and by increasing the dialogue
- Model transfer forms, processes and loan documents
- Participant impact focused disclosures

Employer Perspective - Changing the Dialogue

1. Focus on participant outcomes vs. DC plan as (supplemental) savings plan
2. Roll-ins vs. rollovers
3. Fiduciary questions concerning
 - Promoting roll-ins and rollovers
 - New product development for lifetime income solutions

DOL can help increase the dialogue and support new product initiatives in regulatory guidance.