

*August 27, 2021*

**Testimony of Dennis Simmons and Michael Kreps  
On Behalf of the Committee on Investment of Employee Benefit Assets (CIEBA)  
Before the  
2021 Advisory Council on Employee Welfare and Pension Benefit Plans  
Meeting on  
“Understanding Brokerage Windows in Self-directed Retirement Plans”**

**Key Points:**

- CIEBA is a trade association that represents many of the nation’s most experienced investment fiduciaries.
  - CIEBA’s membership includes more than 110 of the country's largest pension fund and 401(k) plan investment fiduciaries, and our Members manage more than \$2 trillion of defined benefit and defined contribution plan assets on behalf of more than 17 million plan participants and beneficiaries.
  - CIEBA represents the interests of CIOs who have decades of experience in serving as investment fiduciaries for many of the country’s largest and most sophisticated pensions and 401(k) plans.
  - CIEBA and our Members are committed to promoting policies that are protective of plan participants and that work to help promote a more effective retirement savings system.
- Many flavors of “Brokerage Windows:”
  - Brokerage windows rarely provide participants with full access to any conceivable investment.
    - Frequently, windows are limited to a broad array of mutual funds.
  - CIEBA Members do not – and cannot – approve or actively monitor the investments available through the brokerage window.
    - CIEBA Members do, however, carefully select and monitor the service provider making the window available and the fees applicable to utilizing the brokerage window option.
- Data from the proprietary 2019 “CIEBA Annual Membership Profile” survey confirm that brokerage windows are common in CIEBA Members’ plans.
  - 54% of CIEBA Member respondents offered some form of a brokerage window in 2019.
  - Only a small percentage of CIEBA Member plan assets, approximately 2.8% in 2019, was invested through the brokerage window.
  - There has been very little change in these numbers from year to year, and preliminary data from the 2020 CIEBA Annual Membership Profile confirm no major shift anticipated in either plan adoption or participant utilization.
- Primary reason for offering window is to encourage participation.
  - CIEBA Members ensure employees and retirees have access to the best possible retirement savings program.
  - CIEBA Members leverage their fiduciary expertise and experience and their plans’ significant asset levels to offer participants access to low-cost, high-performing investment options and cost-effective administration.
  - However, 401(k) plans cannot be “all things to all people.”

- Some participants may want or need an investment option that is not available under the plan.
    - For example, participants' investment preferences may be driven by religious convictions or policy preferences, and if those participants do not have the ability to access the type of investments they prefer, they may leave the plan.
    - That is a bad outcome from a public policy perspective because almost everyone is better off with their savings in a professionally managed, tax-advantaged plan.
    - The brokerage window prevents that outcome by helping participants achieve their goals without leaving the plan.
- The brokerage window is also a useful tool in helping fiduciaries comply with their duties.
  - CIEBA Members prudently select and monitor a lineup of designated investment alternatives.
    - Lineups vary in size but are typically limited to a reasonable number of options.
    - The designated lineup simplifies participant-directed investment decisions and ensures that fiduciaries are able to devote the time and resources to properly monitor the available options.
    - Participants often request different types of asset classes or investment options.
      - It is simply not practical and would result in added and burdensome administrative cost for a fiduciary to provide *all* options necessary to satisfy *all* preferences.
        - For example, imagine taking on the responsibility of selecting and monitoring multiple target date fund series so options are available to satisfy all participants' environmental, religious, and policy preferences.
  - The brokerage window allows plan fiduciaries to keep the plan's investment lineup of designated investment alternatives to a manageable size.
- Given the limited but important role brokerage windows play in many 401(k) plans, we caution the Department of Labor against imposing any new burdens or responsibilities on plan fiduciaries with respect to the brokerage window.
  - CIEBA Members offer brokerage windows because it is in the best interest of participants.
    - Participants are made aware of all fees, if any, for using the service.
    - Participants are also provided with the legally required investment disclosures.
- If the Department of Labor were to impose new disclosure or monitoring obligations, CIEBA Members would almost certainly consider eliminating the brokerage window.
  - CIEBA Members generally view the brokerage window as a way to respond to participant requests for certain investment options that are not otherwise appropriate as a designated investment alternative for all participants.
  - CIEBA Members offer the brokerage window as a way to limit their risk or, at the very least, offer a low-risk plan feature.
  - Provided that CIEBA Members prudently select the brokerage window service provider – something they are very comfortable doing – they have satisfied their fiduciary duties.

- ERISA investment fiduciaries are not in a position to monitor what participants invest in through the brokerage window.
    - To do so would require an enormous investment of time and resources, all for a very small piece of the plan.
- CIEBA certainly supports the Department of Labor preventing abuse if, for example, a brokerage window is being used to skirt ERISA's fiduciary duties.
  - However, we are not aware of any trend in such abuse, and if it is occurring, the Department can and should address it on a case-by-case basis through enforcement.
- Questions from the ERISA Advisory Council Members?