MEMO# 27150

April 3, 2013

GAO Issues Report on 401(k) Plan Rollovers

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TO: PENSION COMMITTEE No. 8-13
PENSION OPERATIONS ADVISORY COMMITTEE No. 8-13 RE: GAO ISSUES REPORT ON 401(k) PLAN ROLLOVERS

The GAO has issued its long awaited report on 401(k) rollovers, titled "401(k) Plans – Labor and IRS Could Improve the Rollover Process for Participants," [1] prepared for Senator Tom Harkin, Chairman of the Senate Committee on Health, Education and Pensions, Senator Bill Nelson, Chairman of the Senate Special Committee on Aging, and Representative George Miller, Ranking Member of the House Committee on Education and the Workforce. The GAO was asked to identify challenges separating plan participants may face in (1) implementing rollovers; (2) obtaining clear information about which option to choose; and (3) understanding their distribution options. In completing the report, the GAO states that it reviewed relevant federal laws and regulations, interviewed federal officials and industry experts (including plan service providers), conducted a survey of plan sponsors (through PLANSPONSOR and the Society for Human Resource Management), and made undercover calls to 401(k) plan service providers to determine what information is provided to plan participants. Additionally, the GAO collected written responses to questions used in their service provider interviews from 25 additional service provider firms.

Report Findings

The report includes the following findings:

The Direct Rollover Process Can Be Inefficient and Encourages Participants to Choose the IRA Option. The report concludes that 401(k) plan processes for handling separated participants' accounts create barriers for participants to roll their savings into a new plan, making IRA rollovers easier and faster for those who want to consolidate their savings after separating from an employer. The report identifies the following two barriers: (1) rollover waiting periods; and (2) complex verification processes.

Participants Are Subject to Pervasive Marketing of IRAs, but May Receive Limited Assistance Regarding Their Distribution Options. The report states that unnamed so called "industry experts" informed the GAO that much of the information and assistance participants receive is through marketing efforts of service providers touting the benefits of IRA rollovers and such information is not always objective. The report states that, as the GAO has reported in the past, the opportunity for service providers to sell participants their own retail investment products and services, such as IRAs, may create an incentive for service providers to steer participants toward the purchase of such products and services even when they may not serve the participant's best interests. [2]   Further, the report concludes that absent adequate agency guidance about the application of ERISA's fiduciary definition (including the types of information and assistance that constitutes investment advice and which may trigger fiduciary liability) many plan sponsors and service provider are uncertain and concerned about what they can provide to plan participants and therefore may unnecessarily limit the education they provide to plan participants about their distribution options when separating from employment.

Participants Face Challenges in Making Rollover Decisions. The report concludes that complex information such as investment choices, fees, and tax liabilities make it difficult for participants to understand and compare distribution options. With respect to fees, the report concludes that IRA fee information is difficult to find and, if found, is difficult to understand. The report further concludes that the information participants receive may not clearly explain distribution options or be provided in a timely manner.

Report Recommendations

The GAO includes the following recommendations in the report:

1. The IRS and DOL should review the lack of standardization of sponsor practices relating to plan-to-plan rollovers and of policies affecting participants who leave plan savings in a former employer's plan, with the aim of taking any regulatory action they deem appropriate.
2. The IRS and DOL should work together to communicate to plan sponsors IRS's guidance on the relief from tax disqualification provided for plans that accept rollovers later determined to have come from a plan that was not tax-qualified.
3. The IRS should revise its rules that allow plans and providers to send direct-rollover distribution checks to individuals rather than to the receiving entities to which the checks are written.
4. The DOL should develop a concise written summary explaining a separated participant's distribution options and listing the key factors a participant should consider when comparing possible investment options. The DOL should require that plan sponsors provide that summary to a participant upon separation from an employer.
5. The DOL should finalize its initiative to clarify the ERISA definition of fiduciary, and in doing so, require plan service providers, when assisting participants with distribution options, to disclose any financial interests they may have in the outcome of those decisions in a clear, consistent, and prominent manner, the conditions under which they are subject to any regulatory standards (such as ERISA fiduciary standards, SEC standards or others) and what those standards mean to the participant.

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We will be discussing the report and our concerns with the report's methodology during our joint Committee call scheduled for Tuesday April 9, 2012 at 3:00 p.m. Eastern time. [3]

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endnotes

[1] The report is available here: http://www.gao.gov/assets/660/652881.pdf.

[2] The report references GAO's January 2011 report titled "401(k) Plans – Improved Regulations Could Better Protect Participants from Conflicts of Interest," available here: http://www.gao.gov/new.items/d11119.pdf.

[3] See Memorandum to Pension Committee No. 7-13, Pension Operations Advisory Committee No. 6-13 [27133], dated March 27, 2013.