Fiduciary Duty and Investment Advice: Attitudes of Plan Sponsors

Executive Summary

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AARP
Real Possibilities

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AARP collected the data for this project through an online survey administered by PLANSPONSOR to employers that sponsor defined contribution plans. S. Kathi Brown of AARP's Research Center wrote the report, and Jennifer Leslie proofed the report. The author would like to thank the following AARP staff for their valuable input: Cristina Martin-Firvida, Tom Nicholls, Rebecca Perron, Jean Setzfand, Mary Ellen Signorille, Laura Skufca, Mary Wallace, Alicia Williams, Ryan Wilson, and Melissa Castro-Wyatt.

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INTRODUCTION

Today millions of American workers save for retirement in employer-sponsored defined contribution retirement savings plans, such as 401(k)s and 403(b)s, and must make investment decisions that can have lasting consequences for their retirement security. In order to assist plan participants with these decisions, financial institutions that provide these plans ("DC providers") often field inquiries from participants, providing investment-related advice that plan participants may interpret as being offered with their best interest in mind. However, for many situations in which advice is offered by DC providers, current regulations do not require the providers to act in the best interest of plan participants. In recent years, the Department of Labor has considered changing regulations that affect investment advice offered by DC providers to participants in employer-sponsored plans.

In light of the Department of Labor's proposal to update the existing regulations, AARP undertook two surveys in 2013 to measure support for requiring investment advice to be in the best interest of plan participants. The first of the two surveys, a survey of participants in 401(k) and 403(b) plans, was conducted in May 2013 and is described in detail in a separate report.[1]

The second survey, which is the focus of this report, expands on the first by gauging the perspective of the employers that sponsor defined contribution plans ("plan sponsors"). This survey was conducted from late June through mid-September 2013 among 3,010 plan sponsors.[2] It examines a range of issues related to investment advice for plan participants, including whether plan sponsors think that advice offered to plan participants by DC providers should be in the best interest of plan participants (i.e. whether such advice should be held to a "fiduciary standard").

This Executive Summary presents an overview of key findings from the survey of plan sponsors and, when possible, draws comparisons to the survey of plan participants. More detailed information about the survey's findings are included in the full report.[3]

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[1] AARP. *Fiduciary Duty and Investment Advice: Attitudes of 401(k) and 403(b) Participants,* September 2013.

[2] Defined contribution plans are retirement plans to which employers and/or employees make contributions. Examples of common employer-provided defined contribution plans include 401(k) plans, 403(b) plans, 457 plans, and thrift savings plans. See the full report for a more detailed definition of defined contribution plans and other key terms.

[3] The full report, *Fiduciary Duty and Investment Advice: Attitudes of Plan Sponsors*, is available at www.aarp.org/research/surveys.

KEY FINDINGS

Similar to the recent survey of 401(k) participants, this survey of plan sponsors reveals widespread support for requiring advice from DC providers to be in the best interest of plan participants and for requiring DC providers to clearly explain when their advice is not required to be in the plan participant's best interest. While most sponsors indicate that they trust their DC provider to offer advice in the best interest of plan participants, the majority also agree that it is important to receive advice from an independent advisor unaffiliated with the plan and that advice offered by DC providers may be influenced by the money that the provider makes from the plan's investments.

Some of the survey's specific findings are as follows:

Availability of One-on-One Advice from DC Provider

- Nearly two in three (65%) plan sponsors say that their DC provider offers one-on-one investment advice or consultation to their plan participants (over the phone, in person, and/or online). Just over one in three (35%) say that their provider does not offer such one-on-one advice.

Support for Enhanced Requirements of DC Providers

- Nearly nine in ten (89%) plan sponsors say that they would favor (68% "strongly," 21% "somewhat") requiring DC providers to ***give advice that is in the best interest of plan participants***. Just 7 percent oppose this requirement, while 5 percent gave no answer.
    - Sponsors whose DC provider offers one-on-one advice are especially likely to be in favor of *requiring DC provider advice to be in the best interest of plan participants*. For example, over nine in ten (92%) sponsors whose DC provider offers one-on-one advice favor (strongly or somewhat) requiring this, compared to just over eight in ten (83%) sponsors whose DC provider does not offer one-on-one advice.

- Nearly as many plan sponsors (88%) favor requiring DC providers to ***clearly explain to plan participants*** if the provider's advice is not obligated to be in the participant's best interest (59% "strongly" favor, 29% "somewhat" favor).

> *Comparison to Plan Participant Survey*:
> AARP's separate survey of plan participants revealed similar levels of widespread support for each of these requirements. Specifically, 93 percent of plan participants said that they would favor requiring DC providers to give advice in the best interest of participants; and, 89 percent said that they would favor requiring DC providers to clearly explain if the provider's advice is not obligated to be in the participant's best interest.

Likelihood to Act Without Government Mandate

- In the absence of a government mandate, relatively few plan sponsors express a high likelihood of imposing these requirements on their own. Specifically, if the government were to choose <u>not</u> to impose these requirements, four in ten (40%) plan sponsors whose DC provider offers one-on-one advice say that they would be "very likely" to require their provider's advice to be in the best interest of plan participants. Nearly as many (38%) indicate that their organization is "somewhat likely" to impose such requirements on their provider. This leaves nearly one in five (18%) who are unlikely to consider imposing such requirements in the absence of government mandates, and another 4 percent who provided no answer.

Trust that DC Provider's Advice Is in Participant's Best Interest

- Despite the large share of plan sponsors who favor requiring DC provider advice to be in the best interest of plan participants, an equally large share (91%) of plan sponsors trust (completely or somewhat) their DC provider to offer investment advice that is in the best interest of plan participants.

- However, trust is more widespread among sponsors whose provider currently *offers* one-on-one advice than among sponsors whose provider does *not* currently offer one-on-one advice.
    - Of those sponsors whose DC provider offers one-on-one advice, more than nine in ten (96%) at least somewhat trust their provider to give advice that is in the participant's best interest. In comparison, of those sponsors whose provider does *not* offer one-on-one advice, eight in ten (80%) say that they would at least somewhat trust their provider to give advice in the participant's best interest. Notably, the share of sponsors who "completely trust" their provider to give advice in the best interest of participants is only 28 percent among those sponsors whose provider does *not* offer participant advice. In contrast, among sponsors whose provider *does* offer participant advice, nearly two in three (65%) report that they "completely trust" their provider's advice.

Comparison to Plan Participant Survey:
AARP's separate survey of plan participants uncovered similar levels of trust in the provider's advice, with nearly nine in ten (87%) plan participants indicating that they would trust their plan provider to offer advice in their best interest.

Importance of Independent Advice and Acknowledgement of Conflicts of Interest

- Over three in four (77%) plan sponsors agree (strongly or somewhat) that *it is important for DC plan participants to receive investment advice from an independent advisor who does not make money from the plan's investments*.
    - Sponsors whose DC provider currently offers one-on-one advice to plan participants are less likely than other sponsors to agree that independent advice is important. For example, among sponsors whose provider offers one-on-one advice to plan participants, approximately four in ten (42%) "strongly agree," compared to more than half (52%) of those whose provider does *not* offer one-on-one advice.

- Despite the large share of sponsors that acknowledge the importance of independent advice, considerably fewer acknowledge the conflicts inherent in advice offered by DC providers. Specifically, under six in ten (56%) agree (somewhat or strongly) that the *advice offered by DC providers to plan participants may be influenced by the money that the provider makes from the plan's investments.*

Comparison to Plan Participant Survey:

In AARP's separate survey, plan participants expressed widespread agreement with each of the above sentiments.[4]

- Like plan sponsors, approximately eight in ten (81%) plan participants agreed that it is important to receive advice from an independent advisor.
- Over eight in ten (84%) plan participants agreed that advice from plan providers may be influenced by the money the provider makes from the underlying investments, making plan participants more likely than plan sponsors to agree that provider advice may be conflicted.

IMPLICATIONS

The findings from this survey demonstrate that a majority of DC plan sponsors support enhanced requirements that hold advice from DC providers to a fiduciary standard as well as requirements for DC providers to clearly disclose upfront the limitations of advice that is not held to a fiduciary standard. Although most trust their DC provider to offer advice in the best interest of plan participants, more than half acknowledge that a DC provider's advice may be conflicted. This suggests that many sponsors understand the need for stronger protections despite a sense of comfort with their own provider. Moreover, sponsors whose providers currently offer participant advice are especially likely to support holding advice to a fiduciary standard. The particularly widespread support among this group is a testament to the value that sponsors most likely to be affected by the regulatory change would place on greater assurances that their participants are protected from conflicted advice.

[4] The wording of the statements included in the separate survey of plan participants varied somewhat from the wording of the statements in the survey of plan sponsors. See the full report for more information.

Although some sponsors indicate that they may impose their own requirements on plan providers in the absence of a federal requirement, it is important to remember that requirements designed by individual employers are likely to vary from employer to employer, leaving some plan participants with considerably less protection than others. Additional research may be useful to learn more about the specific requirements that some sponsors expect to institute themselves. The advantage of federally imposed requirements is that federal requirements would provide the same protection to all covered plan participants.

FOR FURTHER INFORMATION

Please see the full report, which is available at http://www.aarp.org/research/surveys.