2016 Advisory Council on Employee Welfare and Pension Benefit Plans

Participant Plan Transfers and Account Consolidation for the Advancement of Lifetime Plan Participation

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Over the last two decades, policymakers, sponsors and providers have managed a transition from a benefit-based retirement savings system – the traditional pension plan – to an account-based system – the variety of defined contribution plans, including 401(k) and 403(b) plans, that we now have. We have gone from a system of forced participation and contribution to a more flexible one in which the employee, generally, determines how much to save and how to invest her savings.

Along the way we have faced, and have begun to solve, a number of problems, most critically: how to get enough money into these plans and how to get the most efficient investment returns.

Significant problems remain. The Tax Code is a patchwork of competing policies and policy tradeoffs. The dominant plan-type – the 401(k) – provides a tax incentive that is widely misunderstood. I have yet to hear a coherent defense of matching contributions. And I defy anyone to quantify (or even coherently explain) the social utility of the 401(a) and 401(k) nondiscrimination regimes. 403(b) and 457 plans exist in a separate universe, with a legacy of rules reflecting historic policy concerns and priorities with respect to specific sub-communities – government workers, charities, hospitals and colleges and universities.

Those problems – the deeper and messier problems of fundamental retirement savings tax policy – cannot be addressed except in the context of a reconsideration of our tax system as a whole. Obviously, in the current political environment that project is incredibly problematic. And, frankly, above all our pay grades.

But, accepting where we are, there remains a critical area that presents a set of urgent, largely apolitical problems that must, and can, be solved. We have developed tools to deal with the challenges of getting enough money into plans and getting it efficiently invested. We have done little to address the challenge of what to do at the other end of the saving-and-investing process.

With regard to the latter problem, there are two major issues. How do you efficiently manage retirement income when the default payout is a lump sum, not an annuity? And the issue that is being addressed by this committee: How do you prevent job changes from draining assets from the retirement system? With respect to that second issue, the response of policymakers has, I believe, been wholly inadequate.

What should we do? In my view, two things. First – using the same strategy that has worked with respect to contributions and investments – we need an effective default that nudges terminating participants in the right direction. There should be a formal bias in our regulatory infrastructure that, unless a terminating participant is under, say, age 65 or formally elects otherwise, leaves retirement assets in the system.

What should that default be? Amongst the choices – e.g., leave the money in the prior employer's plan or roll it into an IRA– in my opinion the best default is to transfer an employee's retirement assets to the plan of her new employer: a money-follows-the-employee rule. And if there is a hiatus between employers, we should park the employee's money in a MyRA.

And, second, we have to build an infrastructure that makes such an approach practical. Others can speak better than I as to what such an infrastructure would require – a lot of work will have to be done to, e.g., reconcile different recordkeeping systems and match assets with employees as they change jobs.

I think the highest *regulatory* priority should be a set of rules that make that process easy: e.g., allowing administrators to rely on a representation (a simple box-check) about the eligibility of assets for such a transfer; simple, boilerplate disclosure; and a simple process for opt-outs.

Setting up such a system is going to require sponsors and providers to do a lot of work to make the process work. A lot of this will come under the heading "easy to say, hard to do." If we're going to impose that burden on the private stakeholders, then we must insist that regulators not obsess over technicalities. Any feature of the regulatory infrastructure that makes such transfers harder – e.g., a reluctance to embrace electronic solutions – should have to clear a very high bar.

In my opinion, our goal should, from the participant/user's point of view, be a simple, seamless and nearly transparent process. When an individual quits work at employer A and goes to work at employer B, if he does nothing, his retirement assets should simply show up on his next statement from the employer B plan. And if there is no employer B plan, then he'll just get a statement from the MyRA authority.

If this were a business, we would probably already have such an infrastructure in place. Indeed, the current popularity of IRAs as a rollover destination is the result of private sector efforts to make the IRA rollover process simple, easy and transparent.

In my opinion, there's no reason why we can't do the same thing for a money-follows-the-employee process.