U.S. GOVERNMENT ACCOUNTABILITY OFFICE
**441 G St. N.W.**
**Washington, DC 20548**

Monday July 28, 2014

The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
House of Representatives

**401(K) Plans: Response to Statements Concerning GAO's March 2013 Report on Rollovers**

Dear Congressman Miller:

At your request, we reviewed a report by Quantria Strategies LLC (Quantria), "Access to Call Centers and Broker Dealers and their Effects on Retirement Savings." While we share Quantria's concern about the adverse effects of cash-outs on retirement security, we found that the report mischaracterizes several points from our recent report, *401(k) Plans: Labor and IRS Could Improve the Rollover Process for Participants,* GAO-13-30.[1] Our report did not, as the Quantria report stated, indicate a strong preference for workers to keep their retirement savings in an employer plan rather than moving their savings to an IRA. Our report stated that individuals should be able to make informed choices about their retirement savings given their personal financial circumstances, rather than the convenience of the distribution option alone or because of a lack of understanding of the different distribution options. Our report also highlighted that, under current law and regulation, participants may choose IRA rollovers over other options because of administrative and procedural barriers, among other reasons. We made recommendations to the Department of Labor and the Internal Revenue Service to look at reducing those barriers, in part, to level the playing field between plans and IRAs, so that individuals have the opportunity to make the best choice given their unique financial circumstances. The report also maintains that there is no one-size-fits-all best choice.

Quantria also claims that our report ignores the risk of preretirement cash-out of retirement savings. In fact, our report highlighted this important consideration and noted that the information plans and providers give to participants regarding their distribution choices can and should include information about the potentially adverse consequences of cash-outs on their retirement security, and should include key information about each distribution option. We provide a concise correction of these and other mischaracterizations of our report in enclosure I to this letter.

[1] GAO, *401(k) Plans: Labor and IRS Could Improve the Rollover Process for Participants*, GAO-13-30 (Washington, D.C.: Mar. 7, 2013).

Sincerely yours,

Charles A. Jeszeck, Director
U.S. Government Accountability Office
Education, Workforce,
and Income Security Team

Enclosures – 1

(I) 401(K) Plans:  Response to Statements Concerning GAO's March 2013 Report on Rollovers

cc: Barbara Bovbjerg, Tamara Cross, Angie Jacobs, Mindy Bowman, Sharon Hermes, Craig Winslow, Jessica Botsford

## Enclosure I: 401(K) Plans: Response to Statements Concerning GAO's March 2013 Report on Rollovers

### Quantria Report Mischaracterizes Several Issues from GAO's Report

GAO Emphasized That Participants Should Choose What to Do with Their 401(k) Retirement Savings Based on Their Own Circumstances

The April 2014 Quantria Strategies LLC report[1] discusses how existing rules and services can affect an individual's retirement savings behavior. GAO agrees with many of the findings in the Quantria report concerning the challenges workers may face in realizing retirement security and the importance of minimizing cash-outs. For example, as our report, GAO-13-30, noted (p.39) participants separating from their employer may need help understanding the complicated tax implications of cashing out their 401(k) retirement savings. However, the Quantria report mischaracterizes several points from our recent report on rollovers and rollover information.[2]

Our report did not, as the Quantria report stated, indicate a strong preference for workers to keep their retirement savings in an employer plan rather than moving their savings to an individual retirement account (IRA). In fact, our report repeatedly states that individuals should make such distribution decisions based on their personal financial circumstances rather than the convenience of the distribution option alone or because of a lack of understating of the different distribution options (p.4, 29, and 45). The report highlighted the administrative and procedural barriers that can lead participants to favor an IRA distribution over rolling their savings into a new plan (p. 17-21), and we made recommendations to the Department of Labor (DOL) and the Internal Revenue Service (IRS) to take actions aimed at reducing obstacles and disincentives to keeping retirement savings in 401(k) plans so that individuals can better focus their decision making on what is best for them given their circumstances. The report also noted that while staying in a plan or rolling to a new employer's plan can be viable options, rolling over to an IRA can also be a reasonable choice (p. 45). Our report maintains that there is no one-size-fits-all best choice (p.1-2, 30, 45).

Quantria's report also found our report to be unclear as to whether our calls to 401(k) and IRA service providers requesting information about rollover options went to sales lines or to companies' call centers and stated that it, "clearly makes a significant difference in terms of the nature of the assistance." As described in our statement of methodology (p.54), each caller explained that the purpose of the call was to get information about the options available for 401(k) savings at his ex-employer's plan. Although we assume that different employees may have different areas and levels of expertise, we believe that it is reasonable to expect call center staff responding to phone calls from prospective customers would provide reliable information about their options either directly or by forwarding calls to other personnel. In highlighting the

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[1] Quantria Strategies LLC, *Access to Call Centers and Broker Dealers and Their Effects on Retirement Savings* (Davis & Harman LLP, Washington, D.C.: Apr. 24, 2014).

[2] GAO, *401(k) Plans: Labor and IRS Could Improve the Rollover Process for Participants*, GAO-13-30 (Washington, D.C.: Mar. 7, 2013).

favorable treatment given to IRA rollovers by some call center representatives, our report demonstrated that callers seeking assistance in managing their retirement savings when changing employers are not always given complete and objective information.

<u>GAO Has Repeatedly Highlighted the Adverse Consequences of Cash-outs from 401(k) Plans</u>

Quantria's report rightly emphasized the adverse effect of preretirement cash-outs on all participants, particularly minorities, and that participants are in need of improved information about their choices at the critical decision point of job separation. GAO shares this perspective, and we have issued several reports in recent years that analyze the effect of such account leakage on retirement security:

- *Private Pensions: Some Key Features Lead to Uneven Distribution of Benefits*, GAO-11-333 (Washington, D.C.: Mar. 30, 2011), pp. 37-38.

- *401(K) Plans: Several Factors Can Diminish Retirement Savings but Automatic Enrollment Shows Promise for Increasing Participation and Savings*, GAO-10-153T (Washington, D.C.: Oct. 28, 2009), pp. Highlights, 1-2, 7-8, 15.

- *401(K) Plans: Policy Changes Could Reduce the Long-term Effects of Leakage on Workers' Retirement Savings*, GAO-09-715 (Washington, D.C.: Aug. 28, 2009).

- *Private Pensions: Alternative Approaches Could Address Retirement Risks Faced by Workers but Pose Trade-offs*, GAO-09-642 (Washington, D.C.: July 24, 2009) pp. Highlights, 14, 16-17, 21, 31-32, 37.

GAO has also made several recommendations to DOL and others in these reports, some of which have been implemented, to help decrease leakage of savings from retirement accounts.

Quantria's report suggested that our March 2013 report ignored the risk of preretirement cash-out of retirement savings. We not only highlighted this issue in our report but made recommendations to address this concern. In our report, we described the 20 percent withholding and 10 percent additional tax penalty that may apply to cash outs (pp.9, 39-40). The report also noted that plans are required to disclose the negative consequences of cashing out to participants ***when distribution requests are made,*** but not when participants are making the decision, at the time when they most need such information. To that end we recommended that DOL develop a concise written summary of the four basic distribution options that list key factors for participants to consider, and require plan sponsors to provide that summary to them ***upon separation***, not only when they request a distribution (p.47). Quantria's report also cited data from a financial service provider showing that, compared to all former employees, those who received a proactive call or who received written communication had much lower cash-out rates. While we cannot assess the reliability of these data because they are cited anonymously and no information about the number of participants or assets of the plan was provided in the report, the results cited support our view that participants need to have appropriate information about options available to them when they leave their employer, especially regarding the tax consequences of cash-outs.

GAO Discussed Efforts to Reduce the Possibility That Fear of Fiduciary Status Will Hinder Provision of Advice

Quantria's report asserts that cash-outs will increase if call centers cannot provide information because of DOL's current regulatory effort related to the definition of a fiduciary and the application of its regulation to call centers and broker-dealers. [3] In making this contention, Quantria seems to have concluded that all types of assistance and information that financial service providers can provide to participants will be considered investment advice under DOL's pending regulations.[4] While we cannot speculate regarding DOL's rule making, we believe that this conclusion may be based on industry uncertainty concerning the distinction between investment advice and investment-related educational information. As stated in our report, some call center personnel who answered our calls made strong sales pitches for rolling over 401(k) retirement savings into IRAs. The majority of plan sponsors that responded to our survey about information provided to plan participants indicated, however, that service providers do not provide individualized advice to plan participants that, while helpful for participants in making rollover decisions, could result in providers being considered fiduciaries.

As table 1 details, DOL has provided guidance on what constitutes investment education that does not trigger fiduciary status. We have previously recommended that DOL revise its current fiduciary rule, in part, because we believe that a revision could result in participants being provided with better information with which to make decisions regarding their 401(k) retirement savings. Quantria's report emphasizes a concern that call centers will no longer be able to provide helpful guidance to those seeking such information. To the extent this concern is based on industry uncertainty or confusion about the distinction between investment advice that may trigger fiduciary status and investment education that will not, we would hope that any regulation DOL promulgates will mitigate this fear by better clarifying this distinction.

[3]DOL published a proposed rule on October 22, 2010. 75 Fed. Reg. 65,263. Citing requests from the public (including from members of Congress) for a greater opportunity to provide input, in September 2011, DOL indicated that it would withdraw its proposed rule and re-propose one at a later date.

[4]Quantria does not make any explicit claims about whether the guidance they believe so effective in discouraging cash-outs would be considered investment advice triggering fiduciary status.

**Table 1: EBSA's Guidance on Investment Education**

On June 11, 1996 EBSA issued an interpretive bulletin effectively defining participant investment education.[a] It identified specific categories of investment-related information that, when furnished to plan participants or beneficiaries, would not constitute the rendering of investment advice under the Employee Retirement Income Security Act of 1974 (ERISA). The categories of information include the following:

- Plan information—information and materials that inform a participant or beneficiary about the benefits of plan participation, ***the impact of preretirement withdrawals on retirement income***, the terms and operation of the plan, and other general plan information. Such information cannot reference the appropriateness of any investment option for a particular participant or beneficiary.
- General financial and investment information—***information and materials that inform a participant or beneficiary about, among other things, general financial and investment concepts***, historic differences in rates of return between different asset classes, effects of inflation, and estimating future retirement income needs. Such general information cannot directly relate to any investment alternatives available to participants and beneficiaries.
- Asset allocation models—***information and materials that provide a participant or beneficiary with models of asset allocation portfolios*** of hypothetical individuals with different time horizons and risk profiles. If an asset allocation model identifies specific investment alternatives available under a plan, the model must be accompanied by a statement that other investment alternatives having similar risk and return characteristics may be available under the plan.
- ***Interactive investment materials—includes questionnaires, worksheets, software, and similar materials*** that provide a participant or beneficiary the means to estimate future retirement income needs and assess the impact of different asset allocations on retirement income.

Source: GAO review of DOL's interpretive bulletin relating to participant investment education (codified at 29 C.F.R. § 2509.96-1(d)).

Note: Italics and bolding added by GAO.

[a] Interpretive Bulletin 96-1; Participant Investment Education, 61 Fed. Reg. 29,586 (codified at 29 C.F.R. 2509.96-1(d)).

We welcome Quantria's effort to highlight the serious challenge account cash-outs may pose to the retirement security of many participants, particularly low-wage and minority participants. However, contrary to their assertions, we share Quantria's concerns about retirement security and the adverse effect of cash-outs. We also do not favor any one account option when a participant separates from an employer, but support participants' informed decisions based on their own best interest, not on administrative expedience or a clever sales pitch. Given this perspective, rather than encouraging cash-outs, a balanced, carefully crafted fiduciary regulation could facilitate participants making sound, prudent choices regarding the disposition of their retirement account balances.

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