

The 2016 ERISA Advisory Council

Executive Summary to
The Secretary of Labor
November 10, 2016

The 2016 ERISA Advisory Council

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Topics for 2016

- Cybersecurity Considerations for Benefit Plans
- Participant Plan-to-Plan Transfers and Account Consolidation for the Advancement of Lifetime Plan Participation

Cybersecurity Considerations for Benefit Plans

- Deborah A. Tully, Issue Chair
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- Christine S. Hwang, Drafting Team Member
- Elizabeth Y. Leight, Drafting Team Member
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Cybersecurity Considerations for Benefit Plans

Our Goals:

- Identify useful information for plan sponsors, fiduciaries and service providers when evaluating and developing a cybersecurity program for benefit plans.
- Outline elements of cyber risk management strategies that can be scaled based on type, size and operational complexity of both plans and sponsors.
- Raise awareness about cybersecurity risks and key elements for developing a cybersecurity strategy specifically focused on benefit plans.

Cybersecurity Considerations for Benefit Plans

2011 Council Report:

Four major areas identified for effective practices and policies remain relevant today:

- Data management.
- Technology management.
- Service provider management.
- People issues.

Cybersecurity Considerations for Benefit Plans

2011 Council Report (cont.):

- The regulatory system and data security approaches might have weak, and possibly, unprotected areas because there are many different users and service providers in the benefit administration arena.
- Smaller employers and organizations are less likely to have the resources available to larger organizations.
- The 2011 Council recommended that the DOL develop educational materials and outreach efforts for plan sponsors, participants and beneficiaries.

Cybersecurity Considerations for Benefit Plans

Background:

- Cyber threats are a daily headline.
- Benefit plans and service providers are at risk.
- Not a question of IF, just a question of WHEN a breach will occur.
- There is no such thing as a cyber risk *elimination* strategy.
- The cost of a breach – detecting the extent, recovering data and restoring systems – can be substantial.

Cybersecurity Considerations for Benefit Plans

Background (cont.):

- Benefit plans use and share data with multiple third parties.
- Exchange of data involves sensitive employee, beneficiary and employer information.
- There is no comprehensive federal law governing cybersecurity for benefit plans.
- There are potentially conflicting state laws.

Cybersecurity Considerations for Benefit Plans

Purpose of Considerations Document:

- Enhance and broaden awareness of cybersecurity considerations to identify and address risks.
- Help plan sponsors, administrators, service providers and fiduciaries develop a scalable strategy to manage cybersecurity risks.
- Not intended to be prescriptive or a checklist.
- Not an opinion on fiduciary or settlor functions or acceptable fiduciary conduct.
- Not an opinion on preemption of state laws.

Cybersecurity Considerations for Benefit Plans

Considerations Document: Establishing a Strategy

- Identify the data (how it is accessed, shared, stored, controlled, transmitted, secured and maintained).
- Consider frameworks (NIST, HITRUST, SAFETY Act, and industry-based initiatives).
- Establish process considerations (protocols and policies covering testing, updating, reporting, training, data retention, third party risks, etc.).

Cybersecurity Considerations for Benefit Plans

Considerations Document: Establishing a Strategy (cont.)

- Customize a strategy (resources, integration, cost, cyber insurance, etc.).
- Strike the right balance based on size, complexity and overall risk exposure.
- Consider applicable state and federal laws.

Cybersecurity Considerations for Benefit Plans

Considerations Document: Contracting with Service Providers

- Define security obligations.
- Identify reporting and monitoring responsibilities.
- Conduct periodic risk assessments.
- Establish due diligence standards for vetting and tiering providers based on the sensitivity of data being shared.
- Consider whether the service provider has a cyber security program, how data is encrypted, liability for breaches, etc.

Cybersecurity Considerations for Benefit Plans

Considerations Document: Insurance

- Understand overall insurance programs covering plans and service providers.
- Evaluate whether cyber insurance has a role in a cyber risk management strategy.
- Consider need for first party coverage.

Cybersecurity Considerations for Benefit Plans

Recommendations:

- Based upon testimony and research, the 2016 Council offers two recommendations for the DOL's consideration.

Cybersecurity Considerations for Benefit Plans

Recommendation No. 1:

- Make this Report and its Appendices available via the Department's website as soon as administratively feasible to provide plan sponsors, fiduciaries and service providers with useful information on developing and maintaining a robust cyber risk management program for benefit plans.

Cybersecurity Considerations for Benefit Plans

Recommendation No. 2:

- Provide information to the employee benefit plan community of plan sponsors, fiduciaries and service providers to educate them on cybersecurity risks and potential approaches for managing these risks. The 2016 Council has drafted a sample document titled “Employee Benefit Plans: Considerations for Managing Cybersecurity Risks” (“the Cybersecurity Considerations Document”) for the Department as an illustration.

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

- Rennie Worsfold, Issue Chair
- Kevin T. Hanney, Issue Vice Chair
- Patricia M. Haverland, Issue Vice Chair
- Beth A. Almeida, Drafting Team Member
- Cynthia J. Levering, Drafting Team Member
- Dennis F. Mahoney, Drafting Team Member

Plan-to-Plan Transfers and Account Consolidation

Our Goals:

- Better understand current practices for rollovers and account consolidations.
- Gain insights into participant experiences with plan-to-plan transfers.
- Understand sponsor and service provider perspectives.
- Examine legal and regulatory issues that impact plan-to-plan transfers.
- Explore practical technology-based solutions and best practices.
- Consider state administered retirement initiatives and Treasury's *myRA* program with respect to account consolidations.

Plan-to-Plan Transfers and Account Consolidation

2014 Council:

- Employer-sponsored system is effective in facilitating payroll deductions into retirement plans.
- Many employer-sponsored plans accept eligible rollovers.
- The system remains highly ineffective when it comes to actually moving assets between plans.
- The overall foundational framework for plan-to-plan transfers is outdated and in need of modernization.
- Recommended standardization of forms and future Council study of technology solutions.

Plan-to-Plan Transfers and Account Consolidation

2015 Council:

- Heard testimony that half of the participants in a survey who cashed out would not have done so if it was as easy to roll assets into a new employer's plan as it is to roll over to an IRA or to cash out.
- Recommended DOL explore a joint-agency effort with Treasury to address participant confusion around IRC 402(f) notice to support plan sponsors who wish to promote lifetime participation.

Plan-to-Plan Transfers and Account Consolidation

2016 Council Findings:

Many factors hinder plan-to-plan transfers and account consolidation –

- Easier to roll over to IRA or cash out; small accounts automatically forced out.
- Forms and instructions are not standardized, often not readily available or transmittable electronically, and contain confusing jargon.
- Funds are often distributed by paper check.
- Procedures are complicated, time-consuming and/or manual.
- Indirect rollovers must be completed in 60 days or less.
- Unsupported features between plans, such as loans and Roth features.
- Lack of resources for participant decision-making.

Plan-to-Plan Transfers and Account Consolidation

2016 Council Findings (cont.):

Technology may offer solutions –

- Use of “middleware” to facilitate processes.
- A consortium approach to establish standard protocols and provide a technology-driven answer.
- Electronic transmission of funds, similar to ACH or ACATS.

Plan-to-Plan Transfers and Account Consolidation

2016 Council Findings (cont.):

Some plan sponsors have been successful in encouraging consolidation –

- “Roll-in” services.
- Concierge model.
- Proactive engagement.

All of these items require plan sponsor commitment, resources and oversight as well as service provider coordination.

Plan-to-Plan Transfers and Account Consolidation

2016 Council Findings (cont.):

Proactive communications can engage participants —

- Educate participants and plan sponsors.
- Design communications to build trust.
- Focus on ease of enrollment and importance of lifetime plan participation.

Plan-to-Plan Transfers and Account Consolidation

2016 Council Findings (cont.):

Legal and regulatory issues –

- Continued confusion about process for validating and accepting transfers.
 - A summary of existing guidance would be helpful.
 - Discontinuation of determination letter program adds to confusion.
 - Need to educate plan sponsors about IRS correction procedures.
- Need to revisit IRC 402(f) notice.
- Questions about application of Conflict of Interest rule to plan sponsor employees and service providers.

Plan-to-Plan Transfers and Account Consolidation

2016 Council Findings (cont.):

State administered retirement initiatives and Treasury's *myRA* Program —

- States are filling a gap in retirement coverage.
- Design elements being left to discretion of designated governing body responsible for oversight.
- Potential unintended consequence of hindering plan-to-plan transfer and consolidation.
- Encourage consideration of portability among state and local initiatives, *myRA* and employer-sponsored retirement plans.

Plan-to-Plan Transfers and Account Consolidation

2016 Council Recommendations:

- Based upon the testimony and research, the Council offers five recommendations for the DOL's consideration.

Plan-to-Plan Transfers and Account Consolidation

Recommendation No. 1:

Issue a Request for Information to explore how the Department can encourage and support the adoption of secure electronic data standards for the development of a process, system, platform and/or clearinghouse to facilitate acceptance and expedite processing of eligible rollovers into retirement plans covered by ERISA. This includes:

- Standard data elements
- Electronic forms and processing
- Electronic transfer of funds

Plan-to-Plan Transfers and Account Consolidation

Recommendation No. 2:

Publish retirement plan sponsor education to encourage sponsors to support plan-to-plan transfers, and publish sample participant communications that educate participants on the potential benefits of and process for consolidating accounts in a retirement plan covered by ERISA. The Council has drafted materials on these topics for the Department's consideration, which are included as Appendices to the report.

Plan-to-Plan Transfers and Account Consolidation

Recommendation No. 3:

Address questions regarding the Final Conflict of Interest Rule, its exceptions and any applicable Prohibited Transaction Exemptions as they relate to communications to participants by employees of plan sponsors and service providers regarding plan-to-plan transfers and account consolidation into retirement plans covered by ERISA.

Plan-to-Plan Transfers and Account Consolidation

Recommendation No. 4:

Encourage and/or collaborate with the U.S. Department of the Treasury to:

- Summarize existing guidance with respect to the requirements to grant relief from disqualification for eligible retirement plans accepting rollovers, and accordingly, provide plain language education to plan sponsors and administrators, and
- Revisit the IRC 402(f) notice for harmonization with the Labor Department objective of promoting lifetime plan participation as recommended by the 2015 Council and provide user-friendly accompanying guidance to encourage plan-to-plan transfers and account consolidation into retirement plans covered by ERISA.

Plan-to-Plan Transfers and Account Consolidation

Recommendation No. 5:

Engage in dialogue with states and political subdivisions considering and/or pursuing payroll-deduction savings programs, as well as with Treasury as it develops and oversees its *myRA** program, in order to identify impediments to portability between these programs and retirement plans covered by ERISA and to facilitate consolidation of participant accounts.

* *myRA*® is a registered trademark of the United States Department of the Treasury.