

# Empowering Participants – Plan Distributions and the Plan Sponsor

## *Executive Summary*

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As millions of Baby Boomers approach retirement age, many need to decide whether to leave their savings in their workplace defined contribution plans or take distributions and, if so, whether to roll their retirement money into IRAs. Retirees need to make sound decisions about plan distributions (including rollovers) that are in their best interests. To do so, participants need to get the “full picture” on all of their options.

Empower Retirement recently partnered with Drinker Biddle & Reath LLP, to lay out the key regulatory goals related to educating participants on plan distribution options, how plan sponsors should approach their fiduciary responsibilities, and share some of Empower’s solutions to these challenges. What follows is a brief executive summary of the recently published paper “Empowering Participants – Plan Distributions and the Plan Sponsor.”

### **Regulatory Goals**

Policymakers and government regulators —particularly FINRA, the SEC, DOL and GAO—want to make sure that participants are getting the education and assistance they need to make sound distribution decisions based on information that is materially complete and free from bias.

As fiduciaries, ERISA imposes duties of prudence and loyalty on Plan Sponsors. And FINRA recognizes the need for clear, comprehensive and unbiased distribution services. FINRA Regulatory Notice 13-45 provides guidelines for recommending a rollover or transfer of assets from an employer-sponsored retirement plan to an IRA, requiring service providers to educate participants about the options available to them and the considerations for deciding among those options. One of these options, which must be addressed, is to leave the funds in the employer-sponsored plan.

In early 2013, the GAO noted that many participants did not have a good understanding of their distribution options. Further, it noted that the materials and assistance offered by some vendors were confusing or too generic to be helpful. The DOL likewise wants to encourage plan sponsors and providers to give participants the information and education needed to make sound decisions based on their personal circumstances.

Here are some more specifics on policymakers’ concerns and goals:

- **Ensuring clear information.** The information needs to include adequate detail to help participants weigh the relevant advantages and disadvantages of their options. On the other hand, it needs to be sufficiently succinct, to-the-point, and not overly-technical, so that participants will be able to understand and make informed decisions based on the education.
- **Ensuring comprehensive information.** Information and education need to be provided on all available distribution options, not just IRA rollovers.
- **Avoiding biased information.** Service providers’ IRA platforms and investments are an important part of their businesses, which can create a potential conflict of interest when their representatives assist participants with distribution decisions. At the same time, providers offer valuable services to participants who lack the financial or investment knowledge to make sound decisions. The key to protecting participants’ best interests is to make sure they receive unbiased education and information so that the potential conflict of interest is properly managed and mitigated. Service provider representatives should present all available distribution options and relevant considerations in a fair, balanced and unbiased manner.

## Plan Sponsor Duties

Plan Sponsors should make sure that their providers are giving participants the information they need to make informed decisions based on their individual goals and preferences.

Plan Sponsors should evaluate their provider's policies and procedures for assisting participants with distribution decisions. Doing so is at least a fiduciary best practice. At the same time, Plan Sponsors should be reluctant to dictate participants' decisions or prevent their providers from furnishing valuable information to participants, as long as it is clear, comprehensive and unbiased. High-quality distribution services will help ensure that participants can make informed decisions about the option that best suits their personal needs in retirement. Plan Sponsors and their officials are usually not familiar with participants' personal financial situations and needs, and as a result, should be reluctant to make specific recommendations to participants about distributions. Instead, Plan Sponsors would better serve their participants by working with their service providers to ensure that participants receive clear, comprehensive and unbiased information about their distribution alternatives and the considerations for making the best decisions.

## Drinker Biddle & Reath on Empower's Solution

Empower understands that this is an important issue for Plan Sponsor clients. Based on a thorough review, Drinker Biddle & Reath concludes in their white paper that Empower's processes and procedures, including its call center training and supervisory procedures, address the concerns of policymakers for communications to participants regarding their distribution alternatives. Drinker Biddle & Reath states:

"Our conclusion is that the Empower retirement call center procedures for educating participants about their options, and explaining the key factors for making decisions, meet the expectations of the governmental regulators and meet or exceed industry practices."

To help mitigate potential conflicts of interest, Empower's call center representatives have an individual bonus structure that awards them for both IRA rollovers to Empower, and for participants who elect to stay in their current employer plans on the Empower platform. In fact, each representative's target goals are weighted slightly heavier to "stay-in-plans" than they are to IRA rollovers. Eligibility to receive any bonus is conditioned upon the representative maintaining a high level of call quality.

Drinker Biddle & Reath has also reviewed Empower's written policies and procedures, training program, supervision and

monitoring policy, and written educational and marketing materials, as they relate to distribution services for Empower's Plan Sponsors. Based on this review, Drinker Biddle & Reath concludes that:

### Empower's Policies and Procedures Encourage:

- Clear Communications
- Comprehensive Communications
- Unbiased Communications

### Empower's Policies and Procedures Discourage:

- Aggressive IRA Sales
- Participant Misunderstandings that They Are Receiving Investment Advice from Fiduciaries
- Participant Misunderstandings About "Free" IRAs

**Drinker Biddle & Reath's conclusion is that the Empower retirement call center procedures and their materials for educating participants about their options, and explaining the key factors for making decisions, meet the expectations of the governmental regulators and meet or exceed industry practices.**

For more information or to access the complete White Paper, please visit [www.myerira.com](http://www.myerira.com).

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