

OCTOBER 18-21, 2015 | GAYLORD NATIONAL  
NATIONAL HARBOR, MD

**Workshop 52:  
Marketing IRA  
Rollovers**



**Fred Reish  
Marcy Supovitz**

**AHEAD  
OF THE  
CURVE**

ASPPA  
Association of Student Financial Planners

2015 ASPPA ANNUAL CONFERENCE  
MAKING RETIREMENT PLANS WORK

asppaannual.org

## The DOL and IRA Rollovers

The focus on distributions and rollovers is driven by the aging of the baby boomers in a defined contribution world.

The Department of Labor's 2005 guidance on "capturing rollovers" from retirement plans was the first step in regulating advisory services for distributions and rollovers. (DOL Advisory Opinion 2005-23A)

Workshop 52: Marketing IRA Rollovers - October 20, 2015



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## The DOL and IRA Rollovers

The GAO's March 2013 report: "401(k) PLANS: Labor and IRS Could Improve the Rollover Process for Participants"

- heightened the awareness of conflicts of interest in the rollover process; and
- increased the likelihood of greater regulation of IRA rollovers.

The concern is the movement of money from a fiduciary environment—low cost and high quality—to retail—higher costs and conflicts of interest.

Workshop 52: Marketing IRA Rollovers - October 20, 2015

2



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## GAO Report on Rollovers

*"The plan participants are often subject to **biased information and aggressive marketing** of IRAs when seeking assistance and information regarding what to do with their 401(k) plan savings when they separate or have separated from employment with a plan sponsor. In many cases, **such information and marketing come from plan service providers.**" [Emphasis added.]*

*continued . . .*

Workshop 52: Marketing IRA Rollovers - October 20, 2015

3



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## GAO Report on Rollovers

Continued . . .

*“ . . . the opportunity for service providers to sell participants their own retail investment products and services, such as IRAs, **may create an incentive for service providers** to steer participants toward the purchase of such products and **services even when they may not serve the participants’ best interests.**”*  
[Emphasis added.]

*continued . . .*

Workshop 52: Marketing IRA Rollovers - October 20, 2015

4



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## GAO Report on Rollovers

Continued . . .

*“Finally, some of the call center representatives did not mention the option of leaving funds in the old plan, 12 of 30 representatives raised doubts about the caller’s ability to roll over to a new 401(k) plan, and several emphasized the rollover assistance they provide.”*

Workshop 52: Marketing IRA Rollovers - October 20, 2015

5



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Distributions and Rollovers

*“Rolling assets out of a plan is a broad area that affects plan advisers, consultants, participants and fiduciaries in 401(k) plans, says Jerry Schlichter.”*

*continued . . .*

---

“Don’t Let Money in Motion Cause a Breach,” PlanSponsor.com, July 8, 2014.

Workshop 52: Marketing IRA Rollovers - October 20, 2015

6



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Distributions and Rollovers

Continued . . .

*“If the plan sponsor provides access to someone pushing IRA [individual retirement account] products, that raises the question of whether there is a **fiduciary breach**,’ he says. **The plan sponsor should monitor communications to participants with an eye out for . . . red flags.**”*  
[Emphasis added.]

Workshop 52: Marketing IRA Rollovers - October 20, 2015

7



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## FINRA 2013 Report on Conflicts of Interest

Why?

### *Customer liquidity events and suitability monitoring:*

*Firms monitor the suitability of registered representatives' recommendations **around key liquidity events in an investor's lifecycle where the impact of those recommendations may be particularly significant**, for example, **at the point where an investor rolls over his pension or 401(k)**. [Emphasis added.]*

Workshop 52: Marketing IRA Rollovers - October 20, 2015

8



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## FINRA Regulatory Notice 13-45

### The IRA Rollover Decision

*A recommendation to roll over plan assets to an IRA rather than keeping assets in a previous employer's plan or rolling over to a new employer's plan should **reflect consideration of various factors, the importance of which will depend on an investor's individual needs and circumstances**. [Emphasis added.]*

Workshop 52: Marketing IRA Rollovers - October 20, 2015

9



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## The IRA Rollover Decision FINRA Regulatory Notice 13-45

- Investment Options
- Fees and Expenses
- Services
- Penalty-Free Withdrawals
- Protection from Creditors and Legal Judgments
- Required Minimum Distributions
- Employer Stock

*. . . the list is not exhaustive.*

Workshop 52: Marketing IRA Rollovers - October 20, 2015

10



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## The IRA Rollover Decision Considerations beyond the FINRA Notice

- **Withdrawal Flexibility**
  - Systematic Withdrawals
  - Annuity Options
- **Investment Guarantees**
  - Stable Value Option
  - Bond Laddering
- **Penalty-Free Withdrawals**
  - First-time home purchase
  - Qualified education expenses
- **Backdoor Roth IRAs**
  - Pro-rata rule
  - Unexpected tax bills

Workshop 52: Marketing IRA Rollovers - October 20, 2015

11



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE





### The IRA Rollover: 10 Tips to Making a Sound Decision

The largest source of IRA contributions comes from individuals who move their money from their employer-sponsored retirement plans such as 401(k) and 403(b) plans when they leave a job, according to the Employee Benefit Research Institute.

If you are considering rolling over money from an employer plan into an IRA—or if you have been in contact with a financial professional to do so—follow these tips to decide whether an IRA rollover is right for you.

1. **Evaluate your transfer options.** You generally have four choices. You can usually keep some or all your savings in your former employer's plan (check with your benefits office to see what the company's policy is). You can transfer assets to your new employer's plan, if allowed (again, check with the benefits or human resources office). You can roll over your plan assets into an IRA. Or you can cash out your balance. There are pros and cons to each, but cashing out your account is rarely a good idea for younger individuals. If you are under age 59½, the IRS generally will consider your payout an early distribution, meaning you could owe a 10 percent early withdrawal penalty on top of federal and applicable state and local taxes.

2. . . . .

[The Tips list a series of factors.]

Workshop 52: Marketing IRA Rollovers - October 20, 2015

12



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## FINRA Examination Priorities

*In 2014, reviewing firm rollover practices will be an examination priority, and staff will **examine firms' marketing materials and supervision in this area.** FINRA will also evaluate securities recommendations made in rollover scenarios to determine whether they comply with suitability standards in FINRA Rule 2111. [Emphasis added.]*

Also in FINRA 2015 Examination Priorities.

And in SEC 2014 and 2015 Examination Priorities.

Workshop 52: Marketing IRA Rollovers - October 20, 2015

13



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Preamble: Definition of “Fiduciary”

The new DOL fiduciary proposal says:

*“Under the definition, a person renders investment advice by (1) providing **investment or investment management recommendations** or appraisals to an employee benefit plan, a plan fiduciary, participant or beneficiary, or **an IRA owner or fiduciary, and . . .**”* [Emphasis added.]

“Definition of the Term ‘Fiduciary’: Conflict of Interest Rule – Retirement Investment,” Department of Labor, EBSA, April 15, 2015.

Workshop 52: Marketing IRA Rollovers - October 20, 2015

14



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Preamble: Definition of “Fiduciary”

*“ . . . , **including a recommendation to take a distribution of benefits or a recommendation as to the investment of securities or other property to be rolled over or otherwise distributed from the plan or IRA; . . .**”* [Emphasis added.]

Workshop 52: Marketing IRA Rollovers - October 20, 2015

15



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE





## Preamble: Education and Rollovers

*“However, as the proposal’s text makes clear, one **does not act** as a fiduciary merely by providing participants **with information about plan or IRA distribution options**, including the consequences associated with the available types of benefit distributions.” [Emphasis added.]*

Distribution education is discussed in FINRA Regulatory Notice 13-45.

Workshop 52: Marketing IRA Rollovers - October 20, 2015

16



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Prognosis for Final Fiduciary Rule

- Recommendations about distributions or rollover investments:
  - Fiduciary status
  - Best interest: Prudence and loyalty
- Prohibited transactions and exemptions:
  - PTCE 84-24
  - Best Interest Contract Exemption (BICE)
- Non-fiduciary education

Workshop 52: Marketing IRA Rollovers - October 20, 2015

17



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Fiduciary Prohibited Transactions

However, if the advisor's recommendations could increase his compensation or an affiliate's compensation, the prohibited transaction rules would apply:

- ERISA §406(b) for ERISA-governed plans.
- IRC §4975 for tax-qualified plans and IRAs.

But, there are exemptions, or exceptions, for some transactions. However, their conditions must be satisfied.

Workshop 52: Marketing IRA Rollovers - October 20, 2015

18



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## American Retirement Association Proposed “Level-to-Level” Exemption

- Level compensation on both sides of transaction
  - Plan comp may differ from IRA comp but neither varies based on investment recommendations
- Written agreement prior to rollover transaction
- Disclosure comparing comp at plan and IRA level
- Documentation outlining why rollover is in the best interest of the participant

Workshop 52: Marketing IRA Rollovers - October 20, 2015

19



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Compliance Steps for Advisers

- Education on four alternatives: Considerations
- Checklist for discussion
- Disclosures of fees and expenses for advice and IRAs
- Participant acknowledgment

Workshop 52: Marketing IRA Rollovers - October 20, 2015

20



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Checklist of Distribution Considerations

The checklist describes the four alternatives generally available to participants:

- Leave the money in the plan;
- Transfer the money to the plan of a successor employer;
- Roll the money over into an IRA.
- Take a taxable distribution.

Workshop 52: Marketing IRA Rollovers - October 20, 2015

21



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## The Distribution Checklist

The checklist also lists the considerations that would be the most important to the typical participant, including:

- Expenses
  - investments
  - services
  - administration
- Range of investments
- Services
- Distribution flexibility

Workshop 52: Marketing IRA Rollovers - October 20, 2015

22



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Questions?

Workshop 52: Marketing IRA Rollovers - October 20, 2015

23



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## FRED REISH

**ESQ., APM**

**Partner, Drinker Biddle & Reath LLP**

1800 Century Park East, Suite 1500

Los Angeles, CA 90067

(310) 200-4047 / (310) 229-1285 [fax]

Fred.Reish@DBR.com

[www.linkedin.com/in/fredreish](http://www.linkedin.com/in/fredreish)

[www.drinkerbiddle.com](http://www.drinkerbiddle.com)

FOLLOW FRED ON TWITTER @FREDREISH

## MARCY SUPOVITZ

**CPC, QPA, QKA, AIF, ChFC**

**Principal, Boulay Donnelly & Supovitz  
Consulting Group, Inc.**

55 Linden Street

Worcester, MA 01609-4612

[msupovitz@bdsconsultinggroup.com](mailto:msupovitz@bdsconsultinggroup.com)

(508) 755-8888 x226 / (508) 890-2302 [fax]

[www.bdsconsultinggroup.com](http://www.bdsconsultinggroup.com)



**AHEAD  
OF THE  
CURVE**

**2015 ASPPA ANNUAL  
CONFERENCE**

