

Greetings & a warm welcome to this week's edition of 401k Real Talk. This is Fred Barstein contributing editor at WealthManagement.com's RPA omnichannel and CEO at TRAU, TPSU & 401kTV - I review all of last week's stories and select the most important and interesting ones providing open honest and candid discussion you will not get anyway else. So let's get real!

Though adamantly claiming they are not outsourcing record keeping, [TIAA announced a deal to outsource](#) some of their functions to Accenture with 1500 of their employees moving, half in India.

Driven by declining margins and the need to continually update technology especially around digital interfaces and the growing use of AI, many providers like Vanguard and T Rowe Price have preceded TIAA in leveraging outsourcers.

TIAA has been in the news recently with multiple lawsuits and regulatory issues all surrounding their advice or managed account service which litigants claim has been driven by the need to improve margins, sometime at the cost of clients many of whom are more vulnerable than plans that have independent retirement plan advisors.

While the current edition of the DOL fiduciary rule has been stayed by a Texas federal court, the [GAO has recently issued warnings](#) about potential abuses with IRA rollovers which are addressed in the rule.

Commissioned by Congress in 2018 after the previous DOL rule was negated, the GAO found that conflicts of interest with mutual funds that pay advisors have resulted in lower returns for investors while many disclosures are misleading. They recommended stronger regulatory oversight as the IRS currently relies on the DOL to investigate abuses which the GAO said is not sufficient to address the abuses.

Not mentioned was the sale of annuities when participants terminate, which may result in even greater abuses than mutual funds, something that is addressed on the current DOL rule.

Following TDFs, investment conflicts of interest and record keeper fees, forfeiture accounts now seem to be the new darling of the plaintiff's bar with the Qualcomm case and quite a few others as well as a recently filed

lawsuit against LifePoint Health with \$2bn and 54,000 participants.

A [brilliant analysis by NFP's John Nelson](#) who has served as advisor, TPA and attorney, clearly defines the issue. Though a proposed IRS regulation and SOP, as well as many plan documents, allows plan sponsors to use proceeds of forfeiture accounts to offset the cost of matches rather than lower plan fees, ERISA states that plan assets shall never inure to the benefit of the employer and should be used for the exclusive benefit of participants.

The court in the Qualcomm case stated that ERISA trumps plan docs and that the DOL, not the IRS, should be weighing in.

If successful, these lawsuits will have major repercussions for many DC plans and could significantly increase costs for plan sponsors.

Though most think that government mandates have benefitted the private sector by increasing the number of plans, the [National Bureau of Economic Research validated that belief.](#)

Looking at employers with <100 workers in IL, OR, CA and CT from 2018-22, the Bureau found that 30,000 new private plans were formed. In CA, 45% of employers choose a private solution and 27% in OR and IL.

The study distinguished “compliers” most from the leisure and hospitality industries who likely would not have started a plan from “always takers” who would have anyway from industries like professional services.

A [column on Kitces.com](#) detailed the need for advisors to manage clients’ DC accounts and the issues they face.

One option is to review and recommend changes which do not always get implemented. Another is for an advisor to use a client’s credentials which is fraught with data and compliance risks.

Solutions from firms like Pontera, FutureCapital and Bloom, now owned by Morgan Stanley, seem to have addressed the issues but some state regulators are concerned, though their reach is limited to the few, smaller RIAs not regulated by the SEC.

Record keepers are also wary and may not indemnify breached accounts that allow 3<sup>rd</sup> parties to access them.

The issue is not going away and will likely need to be addressed in the courts or by regulators.

And, last but not least, [this week's LinkedIn Poll](#) asked: Within the next 5 years, what % of 401k assets will be in group plans like PEPs. Two thirds of you thought less than 25% while just 18% predicted >50%.

Look for my next LinkedIn poll on Friday.

So those were the most important stories from the past week. I listed a few others I thought were worth reading covering:

- [Groom outlines clarifications to the student loan program](#)
- [Another forfeiture lawsuit filed against \\$2B 403b plan](#)
- [How AI can create cybersecurity threats](#)
- [Are consumers becoming more receptive to retirement income?](#)
- [BC's Munnell details issues with rollover advice](#)

Please let me know if I missed anything or if you would like to comment. Otherwise I look forward to speaking to you next week on 401k Real Talk.