June 4 401(k) Real Talk

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 this 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!

To almost no one's surprise, the self-proclaimed crypto president's administration [rescinded the DOL's warnings about the use of crypto currency]() in DC. Biden's acting EBSA director Ali Khawar warned DC plan sponsors in 2021 to take "extreme care" when offering these types of investments almost guaranteeing an investigation if they did.

Though some had thought that the DOL warning was an overreach, based on this week's LinkedIn poll, there is real skepticism about whether offering this alternative investment will improve participant outcomes.

After paying the SEC a $97m fine in 2021 in a joint investigation with the NY attorney general for making misleading statements and failing to disclose conflicts of interest, TIAA was recently sued by participants from 2 plans with $9bn and 28,000 participants seeking class action status claiming excessive fees and poor performing proprietary investments.

Specially, the complaint alleges that TIAA did not use available lower share classes on underperforming proprietary funds in their managed account thereby generating more revenue highlighting the danger of a provider using proprietary investments with no independent advisor overseeing the plan rampant in the university and government markets. As in the Pentegra case, which led to a $39 m jury verdict, plans without an independent co-fiduciary advisor or consultant are more susceptible to malfeasance.

Despite sardonic quips by DC industry apologists that forfeiture lawsuits are a joke, both United Healthcare and UBS were recently sued for misuse of forfeiture funds used to offset matches continuing the spate of similar cases.

Most lawsuits focus on instances where plan sponsors do not follow their own documents but it is not clearly settled whether assets in these accounts are plan assets subject to the exclusive benefit rule.

Noted ERISA attorney and former leading RPA Matthew Eickman detailed in a recent WealthManagement.com article why emotional reactions to forfeiture lawsuits are a disservice to plan sponsors and fiduciaries and mask an opportunity for retirement plan advisors to demonstrate an educated perspective to help their clients take steps to achieve greater protection.

Commissions are dead, right with everyone favoing asset based fees? Don't tell that to the 23% of affluent investors who prefer commissions according to a Cerulli study favored by those with limited engagement and high-income younger investors.

And while the move to fee based has been the hallmark of fiduciary RPAs, there is a current trend for flat fee plus charges for additional services like one on one meetings and advisor managed accounts. Plan sponsors are increasingly questioning whether advisor fees should increase with assets and encompass all services even if some are not used.

There are several macro trends forcing defined contribution record keepers and advisors to change their business models with the most prevalent being plan fee declines while the cost of technology and service rise.

Accelerating that trend is the move by advisors, especially larger firms like aggregators, to automate the record keeper RFIs and RFPs.

Read my recent WealthManagement.com column detailing how automated due diligence is accelerating both record keeper and advisor consolidation.

Last but not least, the recent LinkedIn poll asked whether more access to crypto in DC plans will improve participant outcomes. 44% think it will hurt outcomes and about 20% think that either it will help, not sure or, the big cop out, it depends. Way too many lawyers answering the poll this week.

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

- Alera reveals client data breach

- Senate hearing on new EBSA director scheduled this week
- Navigating participant cyberthreats
- Why plans do not want lifetime income options
- Hub partners with TIFIN to leverage AI

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.