TPA VS. RECORD-KEEPER: WHERE'S THE CONFUSION?

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When I got my first defined contribution job after spending five years in a defined benefit administrative office, I had no idea what a recordkeeper was—just that I was working for one. I didn't know there was another type of DC service provider called a Third Party Administrator (TPA). Looking back now with greater knowledge and perspective, I realize we were a little of both. We kept track of participant records, allocating contributions and investment earnings and determining vesting and distribution amounts, and produced participant statements and non-discrimination testing reports. But we didn't handle any money or write checks nor did we do any governmental reporting.

But I started wondering – is the difference between the TPA and recordkeeper that ambiguous? Do plan sponsors know what type of provider they have in you as their TPA? And what happens when the two are combined, or bundled, as they are at times?

First, let's look at what they *do* in an unbundled situation.

A TPA runs many of the day-to-day aspects of the plan, keeping it up and running properly:

- Plan document maintenance including amendments and restatements
- Vesting calculations for withdrawals, distributions and loans
- Annual compliance testing including verifying eligibility and vesting
- Annual governmental reporting including Forms 5500 and notices to employees
- Go-between between the plan sponsor and the recordkeeper who has plan assets

A recordkeeper provides bookkeeping of participant records, tracking their money:

- Management of participant investment account including writing checks for withdrawals, distributions and loans based on TPA reports
- Requesting trades in participant accounts based on participant direction
- Participant enrollment and education materials
- Tracking of participant contributions, earnings and investment elections
- Preparation and distribution of participant statements

Now, let's look at *what* they are. Are they fiduciaries? Simply answered—TPAs yes; recordkeepers no.

TPAs must act as "prudent persons" in fulfilling their duties, so many of which center around compliance to ensure that the plan is administered for the exclusive benefit of plan participants and beneficiaries.

Recordkeepers, although they manage employee investments, even making buys and sales, typically act as custodian. They do not manage the underlying mutual funds or individual stocks and bonds in brokerage accounts: they merely follow the participants' instructions.

And finally, there's the bundled program, which combines TPA and recordkeeper services. It's a one-stop-shop that can make plan administration and investment selection and monitoring easier for the plan sponsor. There the lines between responsibilities can get even vaguer. Duties and responsibilities should be spelled out and thoroughly understood by all parties or confusion can reign.

What happens if things start "falling through the cracks?" If the plan sponsor and his providers get things mixed up?

It's very easy for a plan to fall out of compliance – participant deferrals aren't properly accounted for; employees don't get to participate at the proper time; withdrawals, distributions and loans are made in incorrect amounts based on incorrect vesting or given to ineligible participants; plans discriminate in favor of highly compensated employees; governmental reporting is done incorrectly and untimely – and the list can go on and on. I'm sure you can add some more examples.

The takeaway, though, is unmistakable. The plan sponsor is on the hook for his plan following all the rules and regulations governing qualified retirement plans. To do this, he often looks to professional providers for assistance.

So…the plan sponsor realizes he needs someone to help with his 401(k) plan and is talking to retirement plan companies about their services. It's confusing and overwhelming, even if he has the help of a consultant. To begin with, he doesn't have a good feel for the difference between a TPA and a recordkeeper. He doesn't have a clear idea of what he needs which, of course, makes it difficult for him to choose a provider.

As Jone´ E. Liuzza, ERPA, QPA, QKA wrote on http://blog.acgworldwide.com/recordkeeper-tpajust-like-peas-carrots (accessed 4/1/2019), TPAs and recordkeepers are a lot like "peas and carrots." They're different even though both provide retirement plan services. And in a bundled approach where the TPA and recordkeeper are one and the same, they do "go together like peas and carrots" in a vegetable dish.

As part of his exploratory process to find the right provider, the plan sponsor talks with you. And you discuss the type and level of services he wants to determine what he needs. Does he need you, a TPA? A recordkeeper? Both, unbundled? Or both together, bundled?

Does the plan sponsor know you're a TPA, what that is and why it's important? And why should he care?

It comes down to the level and type of administrative duties he wants you to do, and the level of fiduciary responsibility he's wanting to give you. If he's looking for someone to take care of compliance and plan document issues and make governmental filings, he's going to choose a TPA – you, and also a recordkeeper to keep track of participant records. That's two providers.

The plan sponsor should care what type of provider you are so he has a clear picture of his and your duties, especially if he's wanting a provider to take on fiduciary responsibility. If that's the case, he needs a TPA like you since a recordkeeper is not a fiduciary and the sponsor shouldn't expect him to be one.

Thus things get unclear when a plan sponsor wants a provider but doesn't know what he wants or needs; sometimes he doesn't even understand that he's a fiduciary. So it's up to you to clarify the situation, even if it means directing him to a recordkeeper if he wants a simple menu of bookkeeping services.

A good solution? Prepare a document such as a white paper that carefully explains the difference between a TPA and a recordkeeper, unbundled vs. bundled approaches. Discuss fiduciary responsibilities and duties.

Include a checklist of the main services a TPA fiduciary can provide, perhaps a "Top 10." Then lay out the case for you as their TPA at the end along with your contact information. Print copies to hand out to prospective clients; you may also want to have a downloadable version available on the "contact us" page of your website.