The Problems And Perils In Changing Your 401(k) TPA

By Ary Rosenbaum, Esq.

I hate moving and I've only had to do it a handful of times in my life. I've always said that moving can be a traumatic experience. Packing away items over time isn't any fun, as well as the need for paring things done. It's also not fun when you make the move and have to unpack. When you change third-party administrators (TPAs), it's like moving and it can be traumatic. This article is all about the TPA change, which involves a conversion process that can start a whole host of problems for you as a plan sponsor.

Make sure you're making the change for the right reason

Changing TPAs take a lot of work before, during, and after the conversion process. Before you commit to the change, make sure that you're making the change for the reason. Look at the root causes as to why you're making the change and make sure they make sense. You might be making the change because the current TPA is offering poor service or is substantially more expensive than the new TPA while offering the same level of service. Maybe the new TPA has a website that will make it easier for your employees to get involved and actively participate in the Plan. When making the change, make sure it's the right reason for you. In the old days when I was working for a TPA, many changes were not made for the benefit of the plan sponsor, but for the benefit of the financial advisor who might have steered business to the TPA, they liked or because it was easier for them to get paid. Changing TPAs is a difficult and treacherous process that will take plenty of your time and focus, so make sure it's done because you think it will be beneficial to you and your participants.

Have your contracts reviewed by an ERISA attorney

Signing a contract with a new TPA is a legally binding document with so many issues and concerns. That is why it's important to have your contract reviewed by an ERISA attorney. While most corporate attorneys are excellent, ERISA is a language that they don't understand. Have your TPA contract reviewed by an ERISA attorney at a reasonable fee (cough, cough).

Know the cost of the de-conversion process

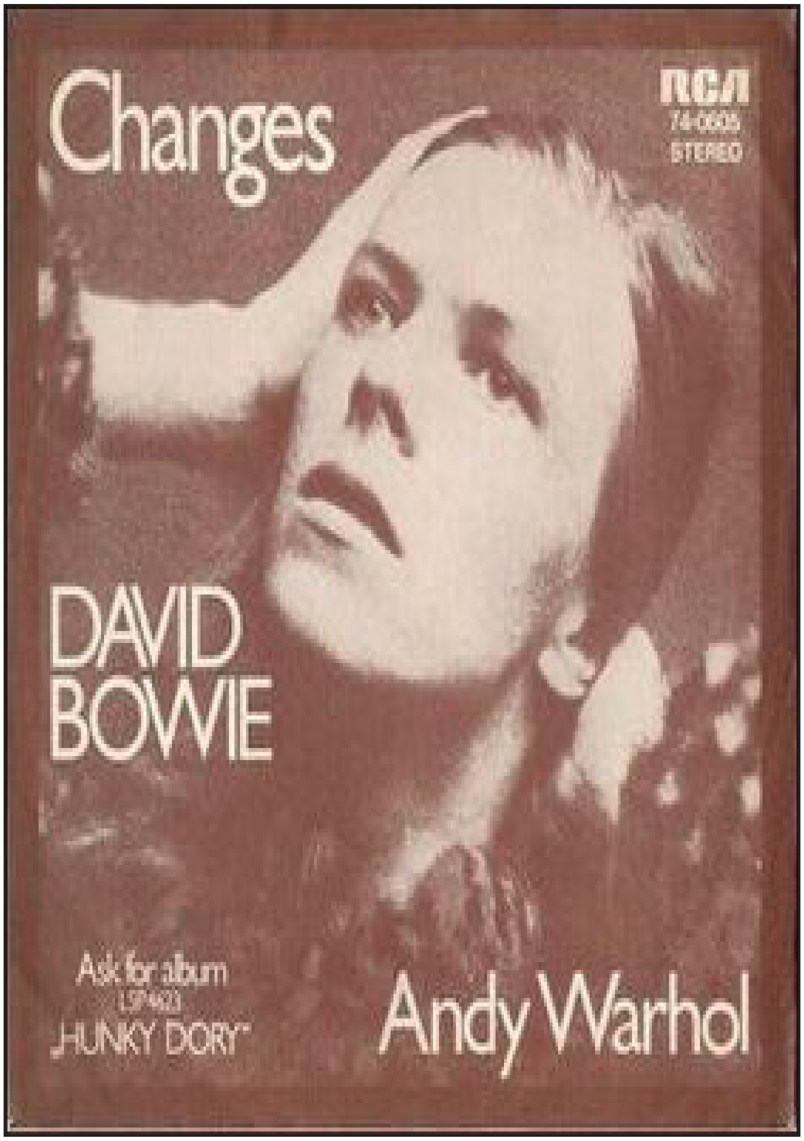
If you're changing TPAs, the old TPA may charge you for switching to a new TPA. The current TPA being replaced may charge a termination fee as a cost for their work of de-converting your plan from their system. Whether a de-conversion should require a fee charged by your fired TPA is up for debate, but the cost should not. Any fees being charged by your soon to be former TPA should be fully listed and disclosed in your contract with them. I worked for a TPA where it felt that the termination/de-conversion process free was pulled out of a hat. Thanks to the fee transparency world we now live in, you should not be charged any termination fee if it hasn't been disclosed to you in the contract with your TPA.

Identify any surrender charge or market value adjustments

If your current TPA is part of some bundled provider solution offered by an insurance company, you need to identify any surrender charges the plan has to pay because the contract was terminated before the term was up. In addition, you should also make sure that if there is a change of your stable value fund because of the change of TPA that there is no market value adjustment that will cause your participants to lose some money in their investments in stable value funds. Like with the cost of the de-conversion process, you need to know any surrender charges or market value adjustment so that you can identify all the costs entailed with switching TPAs.

Know how long the conversion process will take

Converting your plan from one TPA to another isn't easy. It can't be done with a flick of the switch. There may be a long period of time where your 401(k) plan might be in "blackout." The blackout period is the period of time where plan participants won't be able to access their account and change their investment election. If the stock market is volatile, that could be a major problem if participants can't shift their account balance in one way or another. As you decide to make a change of TPAs, you should be told how long the process will take, especially the blackout period. As part of the process, you will have to notify your plan participants about the blackout period and the length of it. It's important than any commitment by the new TPA to the length of the blackout period shouldn't be written in stone, but followed as closely as possible. There can always be hiccups along the way that delay the end of the blackout period, but you should always be advised if there are any.



Make sure who you're dealing with at the new TPA

A great TPA salesman can be a joy to work with. I know, I worked almost 10 years with Rich Laurita, who was the greatest TPA salesman I ever met. So many of the great relationships I developed in the retirement plan industry are with people I met through Rich. The problem with great salesman like Rich is that after you sign the contract with the new TPA, you may not see any more of them because they have to sell, sell, sell. Before you even sign the contract with the new TPA, find out who you will be working with on their side in the conversion process and who will be the person or people you will deal with on a day-to-day basis. Not knowing who you will work with on your 401(k) plan is kind of like how I felt on the first day of first grade, it's awkward meeting people.

Make sure you get off on the right foot with the new TPA

I believe that first impressions mean the most and I'm lucky I overcame that mantra with my mother in law. It's important that you get off on the right foot with your TPA. Through my experience in working for and with TPAs, getting off on the wrong foot is usually catastrophic for the plan sponsor-TPA relationship. When it starts off badly, it usually doesn't get any better. Most plan sponsor-TPA relationships that start off badly, usually ends up being bad all the way through. Your new TPA should understand your expectations and their level of service should be consistent with the expectations they created for you in suggesting you hire them and fire the incumbent TPA.

Don't be passive-aggressive

If there was one behavior that I could have changed when I was younger was being passive-aggressive. That behavior when I dealt with friends, family, and bosses caused problems that I could have avoided if I was honest with my feelings. Passive-aggressive behavior is characterized by a pattern of passive hostility and an avoidance of direct communication. If you are unhappy with what your new TPA is providing in their services to you, tell them. Give them the opportunity to fix what you think is broken in their level of service to you. People aren't mind readers and if you don't feel this TPA is meeting your needs or the service isn't great, let them know. Stewing over their service and not letting them know, won't help you, your employees, and your TPA.

They may uncover something in the conversion process

A lot of times 401(k) plan sponsors are unaware of the errors caused by their TPA. Errors by their TPA are usually found on an Internal Revenue Service or in the conversion process to a new TPA. I've seen too many 401(k) plan sponsors in for a rude surprise when their new TPA discovers errors in the conversion process caused by the previous TPA. It's a little jarring, but can be unexpected if you didn't have credible knowledge of the effectiveness of your previous TPA. If your previous TPA was incompetent, there was no way they were going to discover errors on their own.

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