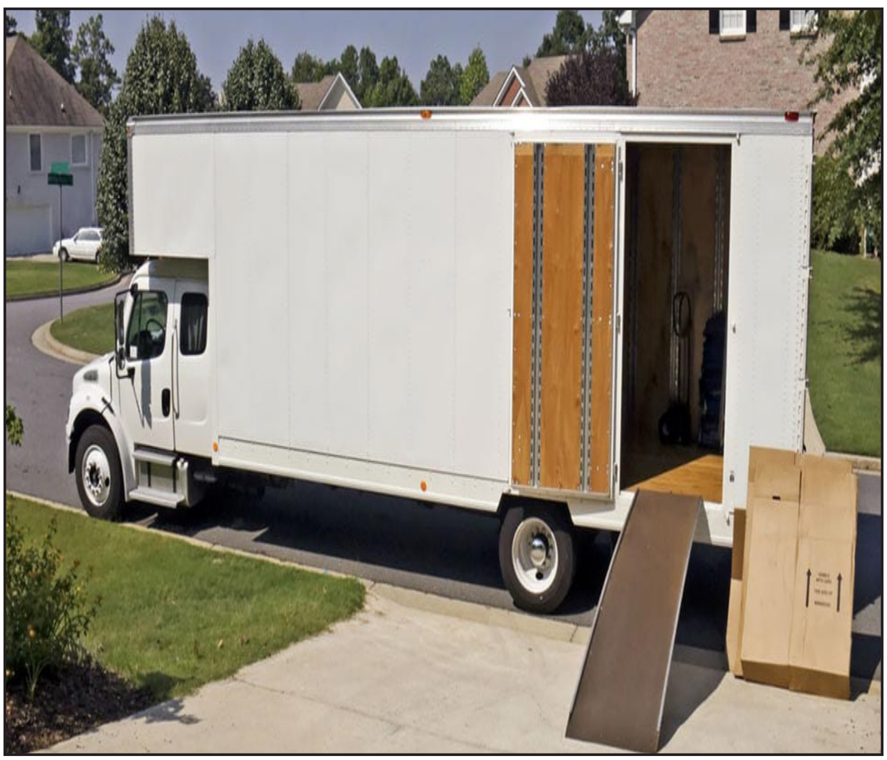
The Perilous Move From One 401(k) TPA To Another

By Ary Rosenbaum, Esq.

I hate moving. I hate the dread of packing. I haven't even decided to move from our home for our next residence and I'm already dreading the inevitable move. Transitioning from one third-party administrator (TPA) to another can be as traumatic a move as going from home to another. There are a lot of points to consider to avoid the headaches that can develop if you miss those points.

Review the contracts of both TPAs

Even before the move, have the current TPA contract and the prospective TPA contract reviewed. Contracts have legal consequences, so I certainly would recommend having them reviewed by an ERISA attorney (cough, cough). You need to know the notice requirements on how to terminate the incumbent TPA because you can't terminate on December 24th and expect a conversion to the new TPA done by the following week. Your soon-to-be terminated TPA might want some sort of deconversion fee for the switch to the new TPA. It's important to review their contract to see how termination and deconversion fees are handled. There is nothing worse than a surprise that the TPA may be entitled to or just demands compensation for being fired. I can assure a few TPAs will take being terminated personally and may not be as cooperative as they should be. For the new TPA, see how termination and deconversion fees are handled because no relationship with a plan provider lasts forever. With the new TPA, just make sure what was promised is reflected in the contract, you don't want to be sold a bill of goods that just isn't reflected in a legally binding agreement.



The new TPA needs to outline the conversion process

Converting plans isn't so easy. There may be weeks where the plan has to go through a blackout period where participants won't be allowed to trade within their 401(k) account if they're allowed to direct their investments. You need to know when and how long that process will be. You need to have the new TPA create expectations and have them fulfill them. There is nothing worse than being told how long the conversion process is and then finding out that it's actually, longer than that. Again, I hate surprises and you shouldn't be surprised about how long the conversion process is between the current TPA and the new TPA. The new TPA needs to thoroughly outline the conversion process, so you could understand what it entails. A conversion process doesn't occur through the flip of just one switch. They will also need to advise you of any required notices that need to go to plan participants, such as blackout notices.

Make sure to avoid missteps

They often say that first impressions mean the most. When it comes to new TPAs, those first steps in the transition mean the most as well. I have seen missteps in the transition process that occur that foul up the relationship with the new TPA to the point that the TPA is inevitably fired a short time later. As a TPA attorney, I know when we didn't do a good job during the conversion process and the inevitable firing was about a year away. Make sure the new TPA identifies the contact people in their conversion department as well as make sure who the deconversion team is on the current TPA. If the current TPA isn't cooperating, it's certainly not the fault of the new TPA. You may have to contact the deconversion team of the soon-to-be-former TPA if the new TPA can't get the required information for a smooth transition. There is privity between you and the old TPA, there is no privity between the old TPA and the new TPA, so expect to be involved if there is a lack of communication.

Make sure the new TPA reviews the old TPA's work

Compliance errors that a TPA commits are usually only discovered during a plan audit by the Internal Revenue Service (IRS) or Department of Labor (DOL) or during the conversion process between the old TPA and the new TPA. Make sure that the compliance process makes a thorough review of all compliance and allocation works by the former TPA. If mistakes have been made, the earlier they're discovered, the less costly it may be. Mistakes uncovered by your new TPA are going to be cheaper to fix than when caught by an IRS or DOL agent because they can slap on a penalty for any large error. A 401(k) plan is like a pristine machine, there are so many moving parts and just so many things that could go wrong. Whether it's compliance tests, misinterpretations of the plan document, failure to include eligible employees, or reporting the wrong definition of compensation, there are just so many things that could go wrong. A solid review by the new TPA can uncover any "buried bodies," which is my description of undetected plan errors.

Remember it's a two-way relationship

Things don't happen in a vacuum and there are always two sides of a coin and a relationship. A good relationship with a new TPA isn't just predicated on how they treat you because it's a two-way relationship. If you aren't forthcoming with them on information or you provide incorrect information, there are going to be problems in the relationship that no great TPA could handle. You have to be forthcoming on information, especially on any census requests. If you have another retirement plan, let the new TPA know that (that happened to me once, as an attorney for a TPA where they wanted us to handle the unknown 401(k) plan after we created the defined benefit plan). If you have ownership or affiliation with other companies, tell them as well. If you have extra money for employer contributions, you might want to talk about changing the plan contribution formula. If the new TPA is in the process of restating your plan document because of the conversion, you may want to explore some changes to your 401(k) plan like eligibility or any demographic changes that may need a plan provision change since the plan document is being redone anyway.

Follow up on the conversion process

Again, I hate surprises. If the conversion process is going great or if it's not, you should follow up to see the status. If the new TPA tells you're the conversion process and/or blackout period will last a certain time, it's best to find out if the period is going to be shorter or going to be longer. You need to be in the loop and the only way to insure that you will be in the loop is to be in constant contact with the conversion team at your new TPA. Also, find out who will serve as the day-to-day contact on your plan at the new TPA after the conversion process has been completed.

Happy or not, let them know

I will always say that most personal relationships that I've had that failed were as a result of miscommunication. Rather than be passive-aggressive, let the new 401(k) TPA know when their service isn't up to snuff. When missteps do happen at the beginning with a new 401(k) TPA, the passive-aggressive 401(k) plan sponsor usually doesn't let the new TPA and try to fix things. On the flip side, if the new 401(k) TPA is doing a fantastic job with the transition, let them know. The new 401(k) TPA will certainly appreciate the kind words since most plan sponsors are stingy with the compliment, not so much with complaints.

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