

You Need To Tell Your 401(k) TPA What You Got

By Ary Rosenbaum, Esq.

A good third party administrator (TPA) can handle the day-to-day administration of a daily valued 401(k) plan and a good part of that job is handling the compliance end through various forms of discrimination testing. A TPA can only do an effective job based on the information that a plan sponsor provides and that the information is correct. Making chicken salad out of chicken crap might work for some businesses, it doesn't work well in the world of retirement plans especially when the Internal Revenue Service (IRS) and the Department of Labor are auditing plans to ensure compliance with the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA). A TPA needs to know certain things from 401(k) plan sponsors and this article will let them know what you need to provide your TPA.



Letting the TPA know what other retirement plans you have

You would think it would be silly that a plan sponsor wouldn't tell their TPA about other plans they may sponsor, but it's happened. I'll never forget when I was the head ERISA attorney of a TPA, we working on a defined benefit plan for a business owned by a famous politician. We did such a great job that they wanted us to handle their 401(k) plan. Of course, we asked: what 401(k)

plan? Not letting a TPA know all about the retirement plans and businesses you own will make compliance testing meaningless because they'll be wrong. When you have multiple plans, the TPA needs to make sure that you don't have contributions that might not be deducted on your tax return (because they may exceed the deductible limits if you have other plans) as well as concerns about coverage testing and providing minimum benefits to the lower paid employees. Another issue with having another plan tucked away that the TPA doesn't know

about is that the other plan has a TPA who may not be aware of the other plan and both TPAs would actually have to work together to make sure that the plans pass compliance testing by being tested together.

Let the TPA know about interrelated businesses

All qualified retirement plans such as a 401(k) plan must meet minimum coverage requirements to ensure that a plan doesn't discriminate in favor of highly compen-

sated employees. The minimum coverage requirements can be satisfied if when compared to the percentage of highly compensated employees covered under the plan, 70% of non-highly compensated employees must be covered as well. The problem with coverage as well as other compliance tests and limits, the Internal Revenue Code treats some businesses as one employer for purposes of qualified plans. The first group of businesses that might be treated as one employer is when companies are a part of a controlled group of businesses. The rule

basically states that, if two or more corporations, trades, or businesses are part of a controlled group of businesses, then the controlled group members are treated as a single employer when applying certain employee benefit plan requirements under the Internal Revenue

Code. Examples of controlled groups include parent-subsidiary, brother-sister, or some combination of the 2. There are specific ownership attribution rules for trusts, spouses, adult and minor children, parents, and grandparents. Similarly, two or more employers who are members of an affiliated service group are also treated as a single employer even if they don't have large enough ownership requirements that would make them part of a controlled group. The affiliated service group rules were propped

up in 1980 to thwart employers from setting up businesses with the sole intent of avoiding the controlled group rules. The affiliated service group rules were designed to preclude an entity from establishing an employee benefit plan for just one entity if there are 2 or more organizations that constitute an affiliated service group which, for employee benefit plan purposes, would be aggregated into a single employer. Best example would be two medical practices that set up a company that employed nurses that services those two medical practices. Rather than trying to bore you with details on how to determine whether your other related businesses constitute a controlled group or affiliated service group let the TPA professionals handle it by identifying the other related businesses and the ownership of each business so the TPA can figure out whether several businesses constitute a controlled group or affiliated service group



Let the TPA know about all your employees.

After year-end, the TPA has a lot to do because the annual Form 5500 is due July 31st (until October 15th if extended) and there is all this compliance testing that they have to complete. So the TPA will send out a census and information request to the plan sponsor annually. The information request should ask you whether you have any interrelated businesses that may constitute a controlled or affiliated service group. The census report will ask you for a list of all your employees with their date of birth, hire date, termination date (if terminated employment), and compensation. It's important that you identify all of your employees including any part-timers. Not identifying all your employees will make all the compliance tests defective if those unidentified employees were actually eligible to partici-

pate in the plan. Making sure compliance testing such as coverage, the actual deferral percentage test, and Top Heavy is important because if errors are made, they're usually only discovered years later on an IRS audit or when there is a change of TPA and certain corrective measures can no longer be used. Discovering errors later down the road may risk penalty or submission to a voluntary correction program where corrective contributions may have to be made.

Let the TPA know about changes in your business

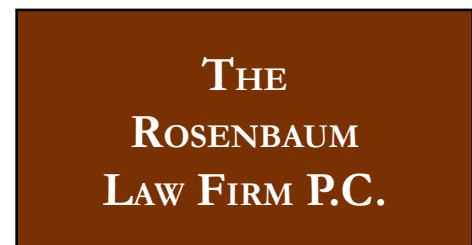
Your 401(k) plan needs to fit your business needs and the needs of your employees. When your needs change, your TPA needs to know. For example, if 20% of your workforce is eliminated, the TPA should be contacted to determine whether a partial termination occurred. If business conditions are bad in terms of profit, the TPA should be contacted if any required or stated contributions to the plan must be made especially if there is a burden in making those contributions. If a business is expanding in a positive way, the TPA should be contacted whether additional contributions can be made and whether a cross-tested allocation or a defined benefit plan are opportunities that should be explored. If there is a demographic change in the business

especially in ages of employees and/or compensation, the TPA needs to know to see whether that may affect the current plan design or compliance testing. Regardless of the change, it's important that the TPA is on top of it by letting them know of any business changes.

Let the TPA know when you're late with one of your tasks

Whether it's not filing the Form 5500 on time or depositing salary deferral contributions, any lateness to your required tasks open you up to possible compliance problems and/or penalties.

It's important that any late tasks be identified to your TPA to make sure that any issues are kept to a minimum. Unlike the common cold, completing tasks late are issues that don't get away by themselves. They usually snowball to bigger compliance headaches that plan sponsors have a tougher time to fix. So it's imperative that the TPA knows exactly when you're late in completing one of your required tasks.



Copyright, 2018 The Rosenbaum Law Firm P.C.
All rights reserved.
Attorney Advertising. Prior results do not guarantee similar outcome.

The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
(516) 594-1557

<http://www.therosenbaumlawfirm.com>
Follow us on Twitter @rosenbaumlaw