

Plan Sponsors Have the Ultimate Responsibility for Their Retirement Plans

December 27, 2022

PRACTICES Retirement Plans, Employee Benefits and Executive Compensation

Administration of retirement plans generally requires numerous parties – third party administrators (“**TPA**”), payroll processing companies, and investment managers to name a few. However, even if a third party handles most of the day-to-day administration of the plan the ultimate financial responsibility for retirement plan compliance falls on the plan sponsor, while the ultimate fiduciary responsibility for compliance remains with the plan administrator named in the plan document, who is often, but not always, the plan sponsor. The reality is, if there is an operational issue or certain plan documentation issues with the plan, it will be the plan sponsor and usually not the TPA who is required to defend how the plan has been administered in any audits by the IRS or DOL, or in any litigation.

To mitigate possible operational errors, plan administrators should periodically review and update their processes and procedures and confirm that participant elections are being reviewed and implemented correctly by their TPA and in accordance with the plan’s terms. This is particularly important with respect to participant hardship withdrawals, beneficiary designations, distributions, and plan loan approvals, as an error may lead to a costly corrective action to retain the plan’s qualification status under the Code. The IRS has noted that it is up to plan administrators to track items such as hardship distributions and loan approvals, even if the plan’s TPA processes such transactions. Plan administrators are responsible for maintaining documentation supporting hardship withdrawals and loans, and must be able to prove that such distributions or loans were properly made. This is also important if the plan administrator has notice that the self-certification or other documentation provided by a participant may be false or internally inconsistent.

Additionally, plan sponsors should review their ERISA plan-related documents, including third party service agreements, to ensure that there are consistent provisions in effect for the delegation of fiduciary duties, if any, and plan administrators should ensure that such provisions are followed. Generally, TPAs include language in their service provider agreements providing that their services are ministerial, administrative services and not fiduciary services. Therefore, it is crucial that both the plan sponsor and the fiduciary responsible for engaging the TPA determine what type of indemnification language exists under the TPA agreement, if any, along with understanding the limitation of liability and related liability carveouts.

Even though administrative duties with respect to qualified retirement plans are typically outsourced to TPAs, delegating plan fiduciary duties and including indemnification protections in service provider agreements can help mitigate plan liability. However, it is important to keep in mind that the plan administrator cannot disclaim all of its responsibilities and should therefore implement a consistent process with the TPA for reviewing participant documentation in accordance with the plan and ERISA. Reviewing documents and operations and conducting annual check-ins with third party service providers are easy ways to avoid unwanted compliance surprises and will help the plan administrator and plan sponsor ensure that the retirement plan is being administered as intended.