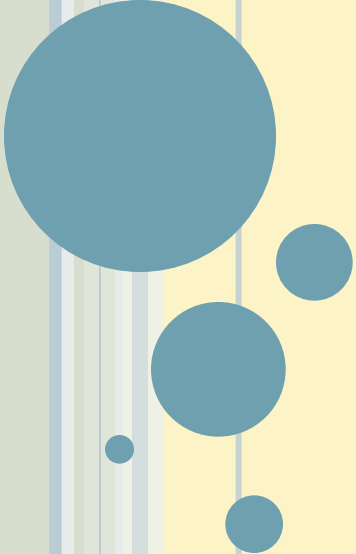


# **“A MAN’S GOT TO KNOW HIS LIMITATIONS”**



**National Look at 403(b) and 457(b) Plans, Plan  
Administration and Who Pays for  
Administration...**

# OVERVIEW

- The 403(b) and 457(b) marketplace with third party administrators (“TPAs”)
- Understanding what a TPA is
- How they are affecting the national marketplace
- Fees and how they affect your plan(s)
- A look to the future



# “YOU WANT TO PLAN THE GAME, YOU’D BETTER KNOW THE RULES”

- What is a TPA?
  - Third party administrator – provides some level of support benefit plan administration and/or transaction processing
  - What does a TPA do?
    - It depends
      - On what the agreement says...
      - No universal standard
      - DIY to full service available
        - › Checklists
        - › Providers of various services provided (next slide)
          - » Sometimes unnecessary services are provided



# KINDS OF “TPAS” IN MARKETPLACE

- **Common remitters** – payroll processing and contribution reconciling
- **Data Aggregators** – track participant account information and transactions that occur in accounts
  - May also track contributions by source (but not always)
- **Fee for Service** – provides some services necessary for plan support as selected by employer or as limited by TPA
- **Full service TPA** – can provide all services necessary for day to day administration, participant education and plan compliance
  - Employer may elect not to utilize all available services
- And variations on those themes...



# WHY DOES THE KIND OF TPA MATTER?

- Two main reasons
  - Risk and Cost
- The employer is responsible for the 403(b)/457(b) plan and everything that happens under the plans
- Whatever the TPA does not do must be done by another (the employer has ultimate responsibility)
- The employer is still responsible for what the TPA does on behalf of the employer
  - A good contract can provide financial protections, but cannot shift liabilities away from the plan sponsor



# TPA ROLE

- TPA represents the employer as compliance partner
  - What kind of partner do you want or need?
    - Full service partners
    - Quasi-partners
    - Data storage/managers
    - Common remitting services
    - Contract services
- YOU should know what role the TPA has
  - Relationship will define what services the employer has “elected” to perform



# FEEES

- Depending on level of support TPA is providing, cost will be factor for payer
- This has complicated the marketplace as reasonableness of fees depends on level of services provided
- 2010 Summit in Chicago
  - ASBO was represented
  - Report available at [www.ntsaa.org](http://www.ntsaa.org) and [www.asbo.intl.org](http://www.asbo.intl.org)
  - Impact (next slide)



# TPA FEES AND IMPACT ON MARKETPLACE

- Issue: Reasonableness of fees
  - Depends on services provided
    - Employers do not understand different levels of service
      - Full service, data aggregators, contract providers, etc
      - Independent or affiliated
    - Basis for applying the fees
      - Per participant
      - Per eligible employee
      - Per transaction
      - Free



# “WHAT DO YOU SAY, REVEREND? YOU THINK A PRAYER IS IN ORDER?”

- Who is paying the fees?
  - National Situation
    - Great regional variances
    - In some areas employers are paying all TPA fees
      - Larger districts
      - More RFP based
      - May be required by statute
      - Recommended by consultant
        - For quality control
        - As part of total benefits package



# NATIONWIDE REVIEW

- Strong Collective Bargaining Groups?
  - More involved in vendor issues than TPA issues
  - Usually vendors pay all or some portion of TPA fees
  - More difficult to pass on to employees
- Smaller districts
  - Vendors pay fees
  - More frequently, employers are paying fees
    - Or some portion of fees
- Trend is toward employer paying fees
  - May charge vendors some fees to offset expense
    - NOT “pay to play,” but plan participation fee



# FAILURE TO UNDERSTAND BASIS FOR DETERMINING FEES

- How fees are assessed
  - Flat fee, per head or “basis points”
  - Based on:
    - Eligible employees
    - Contributing participants
    - Participants with active account balances
    - Transactions
  - Some combination of the above
- Any TPA engagement should provide transparency of fee determination and specific services provided



# WHAT WILL THE TPA DO FOR THESE FEES?

- It depends...
- Plan document is blueprint
  - What is required
  - What is optional
  - Some administrative requirements
- Plan must operate in manner consistent with plan document
- Employer bears responsibility for proper administration **EVEN IF A TPA IS USED**
- If a task is required under the plan document, either
  - The TPA must do it, or
  - The employer is responsible getting it done



# “I TRIED BEING REASONABLE... I DIDN'T LIKE IT”

- Some provisions in one plan affect compliance requirements in another plan
  - Loans
    - Code limit applies to ALL plans sponsored by the employer
    - Coordination of information sharing required between vendors of most types of plans
  - Financial hardships from 403(b) and 401(k) plans
    - Limit deferral contributions in ALL other retirement plans and deferred compensation plans sponsored by the employer



# “YOU’VE GOT TO ASK YOURSELF ONE QUESTION: DO I FEEL LUCKY?”

- **Most Common Violations Discovered in 403(b) Audits**
  - “Universal availability” failure
    - Unique problem found in K-12 public schools
  - Plan document failures (expected)
  - Employee deferrals greater than the annual limits
    - Including the 15 year catch-up rule
    - AND the ordering rule if used with the aged 50+ catch up
  - Excess “aggregate” contributions
    - Employer and employee contribution limits
  - Employer contributions
    - 5 year post employment payments
  - Plan loans
  - Hardship distribution failures
  - Data failures related to former vendors
    - “Orphan account” problems (later slide)



# “I’VE BEEN CALLED A LOT OF THINGS, BUT NEVER FUNNY”

- Most Common Violations in 457(b) Plan Audits
  - Plan document problems
    - None or too many
  - Contribution limits
    - Final 3 year catch up
    - Improper use with aged 50+ catch up
  - Plan loans
  - Unforeseeable emergency withdrawal failures
  - Improper plan transfers
  - Data failure



# IRS AUDITS

- Quality of TPA is pivotal to audit result
  - Responsiveness to IRS requests
  - Procedures in place for compliance
  - Data available to test procedures
  - Front end transactions AND distribution transactions are essential
- IRS has follow up “compliance initiative” to earlier universal availability program
- Payroll based audits
- Leased employees/independent contractor audits
  - Identified as major issue in K-12 public schools



# ORPHAN ACCOUNT ISSUES FOR EMPLOYERS

- Rev. Proc. 2007-71 clarifies employers level of responsibility for contracts held by “former” vendors
  - No \$\$ to vendor for any employee after 2004
    - “not included in employer’s plan”
    - employer is not responsible for contracts
  - \$\$ sent after 2004, but vendor was not named as authorized vendor under executed 403(b) plan document (2009)
    - “good faith effort” on loans and distributions
  - \$\$ sent after 2009 or plan signed (if earlier)
    - Employer has full responsibility



# ORPHAN ACCOUNT ISSUES FOR TPAs

- Many TPA contracts “carve out” responsibility for “orphan account” transactions
  - Leaving responsibility with employer
  - May refer by dates
  - May refer to Rev. Proc. 2007-71
  - May use term “legacy accounts”
- But check to see how your TPA is (or is NOT) handling these accounts



# ORPHAN ACCOUNT ISSUES FOR EMPLOYERS

- Major reason why going to a single vendor does not “fix” compliance problems
- Managing “involvement” with orphan account vendors
  - Communications explaining level of contact and involvement
  - Satisfying IRS requirements
  - Handling employee expectations/complaints



# GOOD NEWS!

- Not a lot of federal legislative or regulatory activity on 403(b) or 457(b) plans
  - Some states are getting very involved
    - Proposing to use plans to replace traditional pension plans
    - Using variations of plans for DROPS, ERIPs, supplemental benefits and contract “buy outs”
      - State and local level programs
- Most “beltway” focus is on fee transparency regulation or regulating distributors of products sold under plans



# IRS WORKING ON...

- Prototype plan documents for 403(b) plans
  - Public education organizations will still be able to rely on “model” plan language provided under Rev. Proc. 2007-71
- IRS determination letter process for 403(b) plans
- Clarifying 403(b) plan termination requirements
- Updating voluntary correction programs
  - Self correction
  - TVC
  - Audit Cap
- Hope to extend correction programs to 457(b) plans



# “GO AHEAD, LET THE TEARS FALL IN THE BEER...”

## ○ Looking forward...

- Due to resource limitations, much guidance will “leak” from audit process
- Calmer waters overall, but
  - More volatile in TPA provider environment
    - “Failed” TPAs
      - Criminal results
      - Inadequate abilities or funding
      - Takeovers
    - Divorcing current TPA
      - Declining participation
      - Following audit
      - Poor responsiveness
      - Participant/vendor complaints



# TRENDS ON FEES

- Expectation within 5 years employers will pay all “plan” based fees
  - Including TPA fees
- Employees will pay all investment/product expenses and some kind of annual account or participation fee
- Some transaction costs will be paid by “plan” and some will be paid by participant
  - Loan processing fee
  - QDRO determination
  - Installment payments vs. lump sum



# NUMBER OF VENDORS

- Great regional variations
  - State laws
    - Open market states
  - Quality of TPAs used
    - Philosophy toward multiple vendors
    - Independent vs. affiliated
    - Fees
  - Pressures of marketplace
    - Size of districts
    - RFPs from 401(k) marketplace
    - Dedicated 403(b)/457(b) vendors commitment to marketplace
    - Marketing “schemes” by vendors to capture market share
      - Free TPA services in exchange for...
      - “relationships” with consultants or TPAs



# NUMBER OF VENDORS

- Not mentioned?
  - Plan participants
- Important for employers to remember value of plans for employees and the district
  - Supplemental retirement income
  - Potential funds for healthcare costs
  - Replacement for lost pension benefits or periods of unemployment
- Need to “retire” older, more expensive employees



# THE PERFECT PLAN

- Includes only those features that employer understands and is willing to support
- Is administered by a TPA capable of performing necessary tasks
- Is communicated to employees at least annually to satisfy IRS requirements and to encourage participation
- Includes a variety of investment providers and options that have demonstrated willingness to succeed in 403(b)/457(b) marketplace



A decorative vertical bar on the left side of the slide, consisting of several thin, parallel lines in shades of gray and blue. To the right of these lines are several overlapping circles of varying sizes, also in shades of blue and teal.

**“TAKE THESE THREE ITEMS, SOME WD-40, A VISE GRIP AND A ROLL OF DUCT TAPE. ANY MAN WORTH HIS SALT CAN FIX ALMOST ANY PROBLEM WITH THIS STUFF ALONE...”**

**From Gran Torino**

# IN CASE YOU NEED MORE HELP...

- Resources for Plan Sponsors
- Visit [www.irs.gov/ep](http://www.irs.gov/ep)
  - EP Examination Process Guide
  - Correction programs
  - EP Compliance Trends & Tips
  - Common violations
- [www.asbo.intl.org](http://www.asbo.intl.org)
- [www.ntsaa.org/employerplans](http://www.ntsaa.org/employerplans)
- The Source, 403(b) & 457(b) Plans 3<sup>rd</sup> Edition
  - See Chapter 7 for compliance and TPA selection and review materials
  - Available through [www.ntsaa.org](http://www.ntsaa.org) and [www.asppa.org](http://www.asppa.org)



# QUESTIONS

Thank You

