

There are a number of different models for delivering the services necessary to maintaining a 401(k) plan. Traditionally, these have fallen into three categories:

1. Bundled
2. Unbundled
3. Semi-bundled

“Bundled” refers to a situation where the company providing investment options provides recordkeeping and basic testing and reporting services. Under this scenario, a company that is not large enough to have substantial ERISA-trained staff will have to remember to seek advice at appropriate times from outside ERISA counsel. This option can be dangerous for small to medium-sized employers, as illustrated in the following example:

A fast food franchisee (i.e., 600 employees) sought our help after receiving a letter from the Department of Labor. The franchisee had, for several years, been using a bundled 401(k) from a very well known provider.

One of the reporting issues each year is whether the plan is large enough to require audited financial statements. Generally, if a plan has more than 100 participants (120 under certain circumstances) on the first day of a particular year, audited financial statements of the plan must accompany its Form 5500 for the year. If those audited financial statements do not accompany Form 5500, the Department of Labor may consider it to be a failure to file. “Participants,” for this purpose, means all those with an account balance plus all others who are entitled to make 401(k) deferral contributions.

The provider sent census data requests each year that were protective to the carrier, but not entirely clear to their clients. The client only informed the carrier each year of participants with an account balance, and the carrier prepared Form 5500 that way. This resulted in no audited financial statements accompanying Form 5500 for five years during which they were required. Now you may legitimately think that a person at the carrier’s home office would have noticed that it was unreasonable that a fast food franchisee with 40 locations to have only 80 employees eligible for the 401(k) plan. However, the “automaton” nature of staff at bundled providers did not lead to that result.

As you are probably aware, penalties for failure to file Form 5500 can be huge (i.e., up to \$1,125 per day). This client was faced with five years of such failures. The client was delighted that we were able to catch-up the delinquent filings and negotiate the penalty down to \$50,000. But the point is that the reason this all happened was that the client was not well-suited to use a bundled provider.

“Unbundled” refers to a situation where a recordkeeper (separate from the funds provider) handles all recordkeeping, trades, administrative services, etc. This approach has an advantage in that there is independence between the funds provider and the recordkeeper, but there are inherent disadvantages, as well. For example, the trade may not be as quick and “seamless.” Also, because most of the unbundled recordkeepers are large, there can be the same bureaucracy and lack of local service experienced with bundled providers.

“Semi-bundled” means a situation where the funds provider provides trading and recordkeeping services, but all other needs are met by an independent consultant (sometimes called a third-party administrator or

TPA). This approach tends to be the “best of both worlds” for most employers with less than 5,000 employees.

Retirement plan consultants are generally very knowledgeable, provided you select those with appropriate credentials. At minimum, a competent provider will have “journeyman” credentials (QKA or QPA) from the American Society of Pension Professionals and Actuaries (ASPPA), and some may also be Certified Pension Consultants (CPCs), CPAs, or attorneys.

Typical duties of the consultant in a semi-bundled platform include:

- plan design
- plan documentation
- preparation of Form 5500
- testing of all governmentally imposed and plan limits
- answering sponsor questions about plan operation
- tax and ERISA advice to plan sponsor
- representation before Internal Revenue Service and Department of Labor (generally limited to CPAs and attorneys, although IRS recognizes EAs and ERPAs as well)

The advantages a plan sponsor derives from the semi-bundled approach include:

- assured compliance
- best plan design ideas
- local service
- personalized assistance with complex details (this will be very important with the new mandatory reporting system "EFAST 2.")

As a financial services representative, there is a substantial advantage to the semi-bundled approach: The consultant's technical knowledge can be applied during the sales process, and business persistence is longer!

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