Daily Labor Report ®

Asset Manager Mergers Can Warrant Fresh Looks From Plan Sponsors

By Austin R. Ramsey

Sept. 22, 2021, 5:15 AM

- Once 400 U.S. recordkeepers now down to 150
- Plan sponsors can face lawsuits, federal audits

Financial service companies that track and allocate U.S. workplace retirement assets are merging and acquiring new practices at a record pace, often leaving employers unaware of the fiduciary responsibilities triggered by what can be mistaken for a mere change in name.

Great-West Lifeco Inc.-owned Empower Retirement finalized a $3.6 billion purchase of Prudential's retirement business in July, the latest in a series of recent industry buy-ups that has seen big names like BB&T, Mercer, and New York Life combine or relinquish their pension portfolios.

Technological leaps have led recordkeepers and third-party administrators to scale their businesses quickly, shrinking a landscape of more than 400 firms to just 150 in less than a decade, according to Captrust Financial Advisors LLC.

"When your recordkeeper is acquired or merges, you have a responsibility to make sure that the successor entity or replacement is going to provide the services you need at a reasonable cost," said Stephen Wilkes, a partner at The Wagner Law Group P.C. "Due to so many consolidations and changes in the industry, just being passive on this is not appropriate; you need to step up and do some due diligence."

'Business as Usual'

Sometimes new owners tell their employer clients that things will be "business as usual" or that services will get cheaper, but it's ultimately up to named plan fiduciaries to vet their new service providers as if they had recently conducted a request for proposals, Wilkes said. In fact, he added, when a new recordkeeper or third-party administrator takes over, that may be an excellent time to conduct a request for proposals, especially if its been five or more years since the last.

Consolidations and buy-outs are out of employers' control. They're not necessarily considered in the process, and client-level communication can be limited. That doesn't mean that plan sponsors are off the hook, said Lewis Rowe, a managing director at Institutional Investment Consulting.

"Sponsors should be exercising the same degree of due diligence when determining whether to remain with the new recordkeeper as they did when they selected the recordkeeper," he said.

At a minimum, plan sponsors should engage with new owners and ask direct questions about the services offered, the fee structures—which may differ—and what the company's long-term goals are.

Costly Consequences

Plan sponsors who fail to keep a clear paper trail of their new service provider vetting process may expose themselves to liability or additional federal oversight.

Even if a future lawsuit doesn't address recordkeeping contracts directly, they're an important point of contention in common excessive fees case, said Michael Kozemchak, another IIC managing director. Failure to show adequate control over third parties may be enough to counter a process-focused defense.

Importantly, the U.S. Department of Labor has directed a major recent auditing initiative at the way service providers handle participant data, with a careful focus on detailed contracts that guard against lax cybersecurity. New service providers can provide an excellent excuse to ensure that service agreements aren't stale, Kozemchak said.

"Legacy agreements don't typically consider cybersecurity or the liability that entails," he said. "These changes can let sponsors update plan provisions to take into account recent changes in legislation or regulation."

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