



## Über-Administration?

As we finish up 2015 and look towards 2016, we find ourselves waxing philosophically about the state of the retirement industry and what success may look like in the future, both for those of us who provide services and for those of us who are the sponsors and participants who receive those services.

Interestingly, what we have seen in the retirement plan administration industry mirrors what we have seen nationally – an Industrial Revolution of sorts, ranging from toll-free numbers and websites for participant services, to retirement outcome calculators, to systems for service providers to track deadlines and marketing leads and research technical questions. One would think that this makes the servicing of retirement programs easier and less expensive, but the opposite is often true.

As computers increasingly do what we used to do by hand with an HP 12C calculator and a pencil, Congress, the Department of Labor (DOL), and the Internal Revenue Service (IRS) have also increased the compliance burdens. Very much like most business people find that the advent of cell phones and email has made their day busier, not quieter, the changes in benefits technology have not always reduced the business of plan administration, and have likely enabled it to become more complex.

So, what kind of service provider is the model for the future? Are we going to see the benefits equivalent of the “citizen-driver” experience, where you can pick up administration on any street corner with a cell phone and get the same ride to your destination as you would with a taxi or a limo?

### *It's Not the Same Ride*

First, the last sentence of the prior section is not really a reflection of the true ridership experience. It is not the “same ride to your destination.” A person who spends his or her life driving a taxi or limo commonly has developed expertise that a part-time, “citizen-driver” may not. Simple short-cuts learned through experience might enable the full-time professional chauffeur to outperform those who merely follow their GoogleMaps or MapQuest directions. Furthermore, the smoothness, comfort, and accoutrements of the ride will likely be better in a limousine than they are in someone’s Honda that was used hours earlier to take the kids to school.

Does the citizen-driver get you to the destination? Absolutely. Does he or she do it in the same time, comfort, style? Likely not. Is the citizen-driver subject to the same licensing, insurance obligations, and regulations as the professional carriers? Likely not. As a result, in addition to the aesthetic qualities of the experience, the rider may accept more risk as a passenger of the citizen-driver than of the livery service.

Maybe time, comfort, and style are not important to you. Maybe you enjoy talking with regular citizens about their lives on the way to the airport or the restaurant, so that the “normal person” driver is fun for you. In that case, the advantages of the more formal services may not float your boat.

*So, Apply This to Benefits. . .*

Service providers to retirement plans occupy a wide spectrum of service levels. At one end is what we'll refer to as the "low-touch model": the everything through the computer, do a lot of your work yourself experience. In that type of service model, the plan sponsor makes many of its own decisions with little guidance, and the service provider simply effectuates those decisions and does the paperwork. The opportunity for error is ripe, chances are that the employee appreciation is low, but the cost is likely very small. Simplified employee pensions (SEPs) and SIMPLE IRA plans commonly have this type of structure, if there is a service provider for those plans at all. Some bundled approaches follow this model.

On the other end of the spectrum is the "high-touch model," or the "we hold your hand through everything" structure. This type of service provider looks to perform as many tasks as reasonably possible for the plan sponsor, and may also take the forefront in terms of employee involvement and education. Of course, a higher level of service commonly brings with it a larger price tag.

#### *Are You Making Affirmative Decisions About What Kind of Service Provider You Will Be?*

If you are a service provider, it is important to know your clientele, your employees, your systems, and your overhead. If you have billed yourself to your clients as being a high-touch provider, but your staff is not well-educated in pension rules, you have likely oversold your services. On the other hand, if you are trying to provide a high level of services on a very small fee schedule, you are likely having significant profitability problems.

#### *Are You Making Affirmative Decisions About What Kind of Service You Want to Buy?*

Similarly, as plan sponsors go through the RFP process to find service providers, it is important to identify the level of service you need. Perhaps you are a larger organization with a highly knowledgeable benefits team. If so, the level of service you need may be lower than a doctor group with a part-time HR manager who knows nothing about benefits.

#### *What Happens if You Have a Mismatch?*

Our Firm does a lot of work in the compliance arena, helping plans to correct technical errors, fiduciary breaches, and resolving participant complaints. These problems are commonly discovered when a new service provider is hired, and are often the result of situations in which a sponsor's "high-touch" needs were mismatched with a "low-touch" provider. The truth is: someone involved with the plan needs to know what has to be done and make sure that all the "Is" are dotted and the "Ts" crossed. If that is not handled, compliance problems arise. Those problems are usually discovered at the worst times, when a participant is upset, when the plan auditor is refusing to issue the audited financial statements, when the company is going through an M&A transaction and the plan fails a due diligence review, or when the IRS or DOL is in the conference room discussing penalties and fines.

It is a mistake to think that the fee lawsuits that are so highly publicized require the responsible plan fiduciary to purchase the services of the lowest cost provider. In the same way that NASA bids out the building of its spaceships and does not have to use the cheapest parts, a plan sponsor is not required to hire service providers that provide a level of attention to the plan that is insufficient to meet its needs. What is important is that the fiduciary can articulate (and hopefully does, in writing, in its records) why it chose the provider it uses, and why the additional cost is worthwhile.

#### *The Lesson for All*

As you go into 2016:

- If you are a service provider, be clear about the level of services you provide and the clients that can reasonably use those services. If you come across a potential client that is not a good fit for your organization, encourage them to go to one of your colleagues or competitors for the type of service they really need.
- If you are a plan fiduciary, understand the level of the services that you need, and appreciate that those

services are not free. You must engage in a cost-benefit analysis to determine the appropriate provider. Being on the bad end of a compliance problem is no fun, and costs significantly more money, time, and energy than hiring the right provider at the front end.

If we can be of any help to you as either a provider or fiduciary, please let us know. If you don't know what help you need (and, particularly fiduciaries, if you don't know what your plan responsibilities are or what services you need), call us. We'll help you figure it out.

### **Congratulations to Our Newest Georgia Lawyers!**

Congratulations to Alison Cohen and Jared Ferenczy on passing the Georgia Bar exam. Alison, who joined our firm at the beginning of 2015, came to us after 19 years of being a California lawyer. Trust her, taking another Bar exam so far out of law school was no mean feat. But, she did it with aplomb. Jared, who graduated from UGA Law in May, passed the Bar on his first try. He didn't seem to think it was an easier experience just because he was a recent graduate!

Both associates have taken their oaths as officers of the court, and we are very proud of them.

### **Upcoming Speaking Engagements in 2016**

*Come see our lawyers...*

- Ilene will be speaking at the FIS-sponsored Advanced Pension Conference in Orlando on Feb. 10-12.
- Alison will be presenting on January 28 to the ASPPA Benefits Council of Atlanta on ERISA Basics (preparing people to take ASPPA's RPF examination).
  - Ilene will be in Los Angeles, speaking for the NIPA chapter there on February 23.
- And, don't forget our Pensions on Peachtree conference, here in Atlanta, on April 25-26.

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BENEFITS LAW CENTER<sup>LLP</sup>  
*Your ERISA Edge*

Ilene Ferenczy • [ilene@ferenczylaw.com](mailto:ilene@ferenczylaw.com) | Leilani Robinson • [lrobinson@ferenczylaw.com](mailto:lrobinson@ferenczylaw.com)  
Gina Farmer • [gfarmer@ferenczylaw.com](mailto:gfarmer@ferenczylaw.com) | Aaron Moody • [amoody@ferenczylaw.com](mailto:amoody@ferenczylaw.com)  
Alison Cohen • [acohen@ferenczylaw.com](mailto:acohen@ferenczylaw.com) | Jared Ferenczy • [jferenczy2@ferenczylaw.com](mailto:jferenczy2@ferenczylaw.com)

2200 Century Parkway, Suite 560 • Atlanta, GA 30345  
11124 Kingston Pike, Suite 119-321 • Knoxville, TN 37934  
T-404.320.1100 • F-404.320.1105 • [www.ferenczylaw.com](http://www.ferenczylaw.com)