



# SIMPLIFY, MINIMIZE, SUPPORT

MANAGING AN EMPLOYER'S FIDUCIARY RISK  
THROUGH THE *GROUP PLAN SOLUTION*<sup>SM</sup>

A WHITE PAPER PREPARED BY THE WAGNER LAW GROUP



TRANSAMERICA®



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# EXECUTIVE SUMMARY

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Transamerica's *Group Plan Solution*<sup>SM</sup> ("GPS")<sup>1</sup> is designed to provide fiduciary relief to small businesses that are unable or unwilling to accept all of the responsibilities traditionally associated with sponsoring 401(k) plans and other similar arrangements. Appendix A highlights how fiduciary oversight responsibilities that are traditionally imposed on employers are minimized through the *GPS*.

## OVERVIEW OF THE GROUP PLAN SOLUTION<sup>SM</sup>

Each adopting employer ("employer") signs an agreement to adopt a plan document under the *GPS*, and each employer is viewed as adopting its own plan ("component plan") for certain regulatory purposes. All component plans use the same service providers and investment vehicle—giving them the potential to enjoy cost savings through economies of scale.

## FIDUCIARY PROTECTIONS

### • Investment menu

The *GPS* uses the services of an investment manager responsible for managing the investment menu offered to component plan participants. As a duly appointed "3(38) investment manager" to the component plan, the investment manager (and not the employer) is primarily responsible for the prudence of its individual acts under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). However, the plan's named fiduciary remains responsible for the initial appointment and the ongoing decision to use an investment manager.

### • Named fiduciary responsibilities

Through the *GPS*, the employer delegates primary responsibility for managing certain aspects of plan operation to a non-investment, administrative fiduciary (the "administrative fiduciary"), which is named and serves as the component plan's "named fiduciary."<sup>2</sup> Thus, the employer's residual fiduciary duties are limited in nature, as described in the Limited Nature of Employer's Residual Responsibilities section below.

### • Form 5500

Every component plan must have a "3(16) plan administrator," a special kind of fiduciary with particular reporting and disclosure responsibilities under ERISA. As the 3(16) plan administrator, the administrative fiduciary is responsible for the Form 5500 filings. The employer remains responsible for providing reliable information and for engaging an accounting firm if the component plan is large enough to be subject to an audit requirement.

### • Participant disclosures

As the *GPS*' 3(16) plan administrator, the administrative fiduciary has oversight responsibilities for the preparation of required disclosures for participants (e.g., SPDs). Once they have been prepared, the administrative fiduciary is responsible for distributing benefit statements, and the employer is responsible for distributing the other applicable disclosures to its employees.

## LIMITED NATURE OF EMPLOYER'S RESIDUAL RESPONSIBILITIES

The residual fiduciary responsibilities for an employer are limited in nature. The employer must provide reliable data, remit contributions to the trustee of the component plan, distribute certain disclosures to its employees, and engage an accounting firm to conduct any necessary audits. It must also monitor the *GPS* 3(16) plan administrator's performance as well as the use of the investment vehicles used in the component plan.

## THIRD PARTY AUDITS TO SIMPLIFY EMPLOYER'S FIDUCIARY OVERSIGHT

An employer's decision to engage the administrative fiduciary to serve as a named fiduciary and 3(16) plan administrator would be viewed as a fiduciary act. To simplify the employer's duty of prudence to monitor the administrative fiduciary, fiduciary audits would be conducted at regular intervals, and written audit reports would be provided to the employer.



**The Wagner Law Group has prepared this white paper on behalf of Transamerica. It is intended for ERISA plan sponsors, as well as the financial professionals and other advisors who work with plan sponsors. Future legislative or regulatory developments may significantly impact the matters discussed in this paper.**

This white paper is intended for general informational purposes only, and it does not constitute legal, tax, or investment advice on the part of The Wagner Law Group, Transamerica, or their respective affiliates.



# INTRODUCTION TO THE *GROUP PLAN SOLUTION*<sup>SM</sup>

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In this paper, we will provide an overview of the relevant fiduciary requirements under ERISA, as well as a detailed explanation of how the *Group Plan Solution*<sup>SM</sup> is able to simplify and minimize an employer's fiduciary responsibilities under ERISA.

## **EMPLOYER'S FIDUCIARY ROLE IN "TRADITIONAL" PLAN ARRANGEMENT**

In traditional arrangements where the employer establishes its own plan, the employer also assumes primary responsibility for the management and administration of the plan. Customarily, the employer assumes and accepts this responsibility in its capacity as the named fiduciary and administrator of the plan as such terms are defined, respectively, under ERISA.

## **EMPLOYER'S TRADITIONAL DUTIES AS NAMED FIDUCIARY**

The named fiduciary of a plan is the fiduciary with the "authority to control and manage the operation and administration" of the plan.<sup>3</sup> In accordance with the requirement under ERISA Section 402(a), by definition, a named fiduciary must be "named" or otherwise designated in the plan's governing document.

In the case of a traditional arrangement, it is customary for the plan document to expressly identify the employer as the named fiduciary. When an employer is designated as a plan's named fiduciary, it generally has the fiduciary authority to make any and all benefits-related and investment-related decisions on behalf of the plan. For example, as the named fiduciary, the employer would be responsible for the following matters:

- Establishing and maintaining the plan's menu of investment options (or engaging a service provider to assist with such investment responsibilities).
- Ensuring that the plan is administered in accordance with its terms and ERISA.
- Engaging service providers to assist the employer with respect to the plan's operation, and maintaining fiduciary oversight with respect to those providers.

Acting in its capacity as the plan's named fiduciary, an employer is free to select any service provider it wishes. However, this selection decision itself is a fiduciary act which must be made in accordance with ERISA's fiduciary duty to act in a "prudent" manner and solely in the interest of plan participants.<sup>4</sup>

In addition, once a provider has been selected, the responsible fiduciary has a further duty to monitor the provider's performance on an ongoing basis.<sup>5</sup>

If a fiduciary to a plan, including an employer serving as the named fiduciary, were to breach its fiduciary duties under ERISA, it would be liable for any losses suffered by participants as a result of its breach.<sup>6</sup>

In order to satisfy this fiduciary duty when selecting service providers, an employer acting as a named fiduciary must satisfy the procedural requirements of ERISA. Specifically, the Department of Labor (“DOL”) has stated that the responsible fiduciary must engage in an “objective process” that is designed to elicit the information necessary to evaluate the following three criteria:

- The qualifications of the service provider.
- The quality of services provided.
- The reasonableness of the provider’s fees in light of the services provided.<sup>7</sup>

## **3** Important things:

- **Qualifications**
- **Quality**
- **Reasonableness**

For example, if an employer were to approve the plan’s payment of excessive fees to a service provider, it could be held liable and required to make the plan whole for such fiduciary breach. Similarly, if an employer were to fail to remove an imprudent investment option from the plan’s menu, the employer would be liable for any resulting losses sustained by the participants.

In addition to the employer becoming liable for any losses resulting from a fiduciary breach, the DOL may assess a 20% civil penalty on the applicable recovery amount to the plan.<sup>8</sup> The court may also award legal fees and other equitable relief to participants who are injured by a fiduciary breach.<sup>9</sup>

### **EMPLOYER’S TRADITIONAL DUTIES AS 3(16) PLAN ADMINISTRATOR**

A 3(16) plan administrator is technically a special kind of named fiduciary, but it is often helpful to view the 3(16) plan administrator as a separate and distinct type of fiduciary designated under the plan. Consistent with this view, it is customary for a plan document to expressly provide that the plan’s administrator will be the employer, and to separately provide in a different provision of the plan document that the plan’s named fiduciary will also be the same employer.<sup>10</sup>

As a matter of law, the 3(16) plan administrator is responsible for signing and filing the plan’s annual information return on the Form 5500. In the case of a large plan (generally defined as a plan with 100 participants or more) the 3(16) plan administrator must also engage a certified public accounting firm (“Audit Firm”) to conduct annual audits of the plan’s financial statements for purposes of its Form 5500 filings.<sup>11</sup>

The 3(16) plan administrator is also responsible for providing participant disclosures in accordance with certain provisions of ERISA.<sup>12</sup> For example, the 3(16) plan administrator has a duty to furnish summary plan descriptions (“SPDs”)<sup>13</sup> and quarterly benefit statements<sup>14</sup> to plan participants. Participant-level fee disclosures must also be delivered in accordance with DOL regulations. A copy of the plan document and other disclosures must also be provided by the 3(16) plan administrator to participants upon request.<sup>15</sup>

Unlike a named fiduciary, which may delegate any portion of its fiduciary responsibilities to another person, a 3(16) plan administrator cannot delegate any of its disclosure and reporting responsibilities to another fiduciary. Thus, an employer designated as a 3(16) plan administrator would remain responsible for satisfying these requirements, even if the employer relies on a third party provider to prepare and deliver the required disclosures. The penalties imposed on a 3(16) plan administrator for breaching its reporting or disclosure duties are significant, and they are specifically imposed on the 3(16) plan administrator (rather than the named fiduciary or any other person).<sup>16</sup>



## **3(16) Plan Administrator Defined:**

**This term is commonly used to refer to the administrator of a plan as defined in ERISA Section 3(16), which is a special kind of fiduciary with particular reporting and disclosure responsibilities.<sup>17</sup>**

If an employer serving as the 3(16) plan administrator failed to file a proper return on the Form 5500 on time, it would be subject to penalties from both the IRS and DOL. The DOL penalty for a delinquent return can run up to \$1,100 as indexed per day. The IRS penalty for a late filing is \$250 per day up to a maximum of \$150,000.

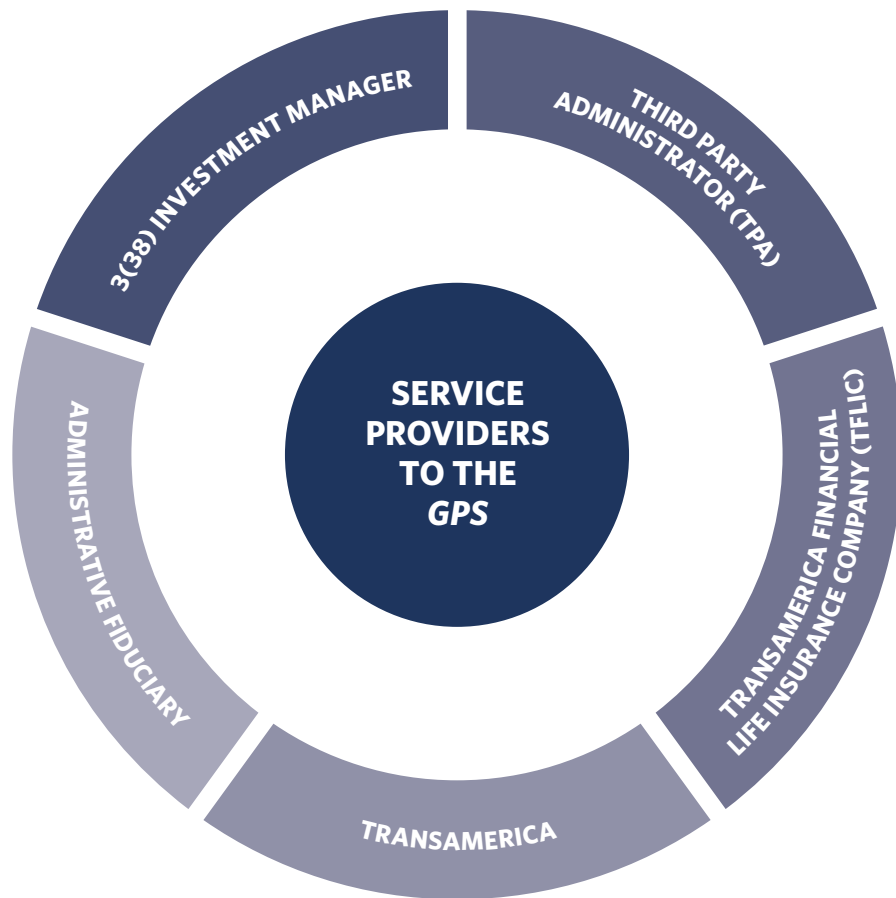
### **OVERVIEW OF THE GROUP PLAN SOLUTION<sup>SM</sup> AND ITS SERVICE PROVIDERS**

The *GPS* gives employers the opportunity to adopt component plans with minimal administrative burdens for each employer. Any number of employers may adopt component plans under the *GPS*, and there is no need for one employer to be related in any way to another. Although participants in the various component plans would collectively invest their accounts in the same investment vehicle, separate bookkeeping accounts would be maintained by the *GPS* on behalf of each employer and its individual participants.

Pooling participant accounts from multiple component plans for investment purposes offers the potential to enjoy substantial cost savings through economies of scale. These cost savings may be in the form of lower investment fees and expenses, as well as lower fees from the *GPS*' service providers.



Each component plan under the *GPS* is automatically and fully supported by various service providers that provide the services necessary for administrative, operational, and investment-related purposes. The service providers to the *GPS* are as follows:



**3(38) INVESTMENT MANAGER**

A 3(38) investment manager fiduciary manages the investment menu offered to all component plan participants.

**THIRD PARTY ADMINISTRATOR ("TPA")**

The third party administrator provides administrative services for each component plan under the *GPS*.

**ADMINISTRATIVE FIDUCIARY**

A non-investment fiduciary ("administrative fiduciary") provides certain fiduciary oversight services and other related services as the named fiduciary and 3(16) plan administrator for each component plan under the *GPS*.

**TRANSAMERICA**

Transamerica maintains separate bookkeeping accounts on behalf of individual participants and provides other related services as the provider of core recordkeeping services ("recordkeeper") for each component plan under the *GPS*.

**TRANSAMERICA FINANCIAL LIFE INSURANCE COMPANY (TFLIC)**

Though technically not a service provider, TFLIC is the issuer of the *GPS*' group annuity contract (if applicable) and provides a platform of investment options that may be offered to component plan participants.

See back cover for important footnotes.

## ADVISOR TYPES

### NON-DISCRETIONARY 3(21) FIDUCIARY

Provides non-discretionary fiduciary investment advice to the plan concerning the selection and monitoring of investments for the plan's menu.<sup>18</sup>

### DISCRETIONARY 3(38) INVESTMENT FIDUCIARY

Provides discretionary fiduciary investment advice to the plan and is responsible for the selection and monitoring of investments for the plan's menu. Referred to here as the 3(38) investment manager.

# 2

## Advisor types:

- **Non-discretionary 3(21) fiduciary**
- **Discretionary 3(38) Investment Fiduciary**

# FIDUCIARY PROTECTION FOR EMPLOYERS UNDER THE *GROUP PLAN SOLUTION*<sup>SM</sup>

## 3(38) INVESTMENT MANAGER'S MANAGEMENT OF THE INVESTMENT MENU

In traditional arrangements where the employer establishes its own plan, the employer typically works with a financial advisor when seeking assistance with the selection and monitoring of the plan's menu of investment options.

Although it is not common for a financial advisor to serve as a fiduciary, when they do, they most commonly serve as a "non-discretionary 3(21) fiduciary." Since this advice is non-discretionary, the employer must approve and implement any investment recommendations made by the non-discretionary 3(21) fiduciary. Thus, the employer remains responsible for the plan's investments as a co-fiduciary along with the non-discretionary 3(21) fiduciary.

Rather than relying on the services of a non-discretionary 3(21) fiduciary, the *GPS* uses the services of a 3(38) investment manager. This type of fiduciary offers the greatest fiduciary protection available under ERISA. A 3(38) investment manager must have the discretionary authority to unilaterally add or remove investments from the plan's menu on behalf of the plan. To qualify as a 3(38) investment manager, an investment manager must be either a bank, insurance company, or an investment adviser registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), or state law. It must also acknowledge in writing that it is a plan fiduciary, and it is able to satisfy the relevant requirements as an investment adviser registered under the Advisers Act.



When a 3(38) investment manager is appointed by the plan's named fiduciary, the 3(38) investment manager is responsible for the prudence of its individual acts or omissions under ERISA.<sup>19</sup> Thus, it would be responsible for its individual actions as a fiduciary, which would include the selection and monitoring of the investment menu offered to component plan participants. A 3(38) investment manager is able to offer the greatest fiduciary protection available to the employer under ERISA. It would also maintain an ERISA bond and professional liability insurance in recognition of its broad, discretionary investment powers.

It should be noted that a plan's named fiduciary would have an ongoing fiduciary responsibility to monitor any 3(38) investment manager appointed by it.<sup>20</sup> Even though the 3(38) investment manager alone would be responsible for its individual actions, the component plan's named fiduciary would remain responsible for the prudence of its initial appointment of the investment manager to serve as its 3(38) investment manager, and it would also have a duty to monitor the investment manager's performance on an ongoing basis. Thus, no employer would be responsible for the appointment of an investment manager as the 3(38) investment manager or for the management of its investment menu.

## **ADMINISTRATIVE FIDUCIARY'S ROLE AS NAMED FIDUCIARY AND SELECTION OF PROVIDERS**

As discussed, a plan's named fiduciary generally has the fiduciary authority to make any and all benefits-related and investment-related decisions on behalf of the plan. In traditional arrangements, the employer acting as the named fiduciary customarily engages various service providers to support the plan's operation. In addition to being responsible for the prudence of the initial engagement of its service providers, the employer has a continuing duty to monitor those service providers.

Conversely, with respect to the component plans under the *Group Plan Solution*<sup>SM</sup>, each employer would delegate primary fiduciary responsibility to the administrative fiduciary. As the named fiduciary, the administrative fiduciary alone would have the authority and the related responsibility for adjudicating benefit claims and appeals, interpreting the terms of the *GPS*' plan document, and making certain other fiduciary decisions on behalf of the component plan.

It would also have fiduciary oversight responsibilities with respect to its appointment of the investment manager to serve as the component plan's 3(38) investment manager and the engagement of non-fiduciary service providers (e.g., Transamerica as recordkeeper).

Because the administrative fiduciary has fully assumed these fiduciary responsibilities, the employer's residual fiduciary duties would be limited in nature only, as discussed in the following Limited Nature of Employer's Residual Responsibilities. For example, the employer would have no duty to monitor the individual actions of the 3(38) investment manager or any non-fiduciary service providers to the component plan. However, the employer would have a duty to monitor the administrative fiduciary and the services the administrative fiduciary provides as a named fiduciary and 3(16) plan administrator.

## **ADMINISTRATIVE FIDUCIARY'S FORM 5500 REPORTING RESPONSIBILITIES**

As discussed, a 3(16) plan administrator is responsible for providing the relevant disclosure materials (e.g., SPDs, 404a-5 disclosures) to participants in accordance with ERISA. In a traditional arrangement, the employer is customarily responsible for making such disclosures as the plan's deemed 3(16) plan administrator. For purposes of the component plans under the *GPS*, however, the administrative fiduciary would have oversight responsibility for the preparation of the mandatory participant disclosures as the 3(16) plan administrator for each component plan.

In its capacity as the named fiduciary, the administrative fiduciary also engages a TPA to complete the necessary Form 5500 filings on behalf of the component plan. Although the TPA prepares the required Form 5500 filings, the administrative fiduciary remains responsible for overseeing and signing the Form 5500 return as the 3(16) plan administrator.

Although all component plans under the *Group Plan Solution*<sup>SM</sup> use the same investment vehicle, each component plan would be viewed as a separate plan entity for purposes of the requirements of ERISA.<sup>21</sup> Thus, each component plan under the *GPS* must have its own named fiduciary and 3(16) plan administrator.

A separate Form 5500 would need to be filed on behalf of each component plan. Consistent with this regulatory view, the *GPS*' TPA will prepare a separate Form 5500 filing for each employer's component plan annually, and the administrative fiduciary will sign each individual Form 5500 for each component plan.

However, for the 2022 plan year, The SECURE Act<sup>22</sup> directed the IRS and the DOL to revise the Form 5500 filing rules and instructions to permit a group of defined contribution plans to file a single consolidated Form 5500. In order to qualify under the "group of plans" consolidated Form 5500 filing, the plans must share the same (1) trustee, (2) name fiduciaries (one or more), (3) plan administrator, (4) plan year, and (5) investments or investment options. The group of plans requirements do not require the plan sponsors to be related or affiliated.

Under the *GPS*, the administrative fiduciary will prepare and execute the consolidated Form 5500 filings for employer's plans that meet the SECURE Act's group of plans requirements.<sup>23</sup>

The TPA for each component plan under the *GPS* will prepare certain financial statements in its preparation of the annual Form 5500.<sup>24</sup> As discussed, if the component plan is a large plan with at least 100 participants for purposes of the Form 5500 reporting rules, an audit firm must conduct annual audits of the plan's financial statements. Although the administrative fiduciary would be responsible for signing and filing the Form 5500 generally, if necessary, the employer would be responsible for hiring an audit firm and arranging for annual audits of the financial statements as required for the component plan's annual filings on the Form 5500.

The employer would retain certain other residual responsibilities, such as providing reliable data to the administrative fiduciary and the TPA in their preparation and review of the Form 5500, as well as monitoring the administrative fiduciary's performance as discussed below in Limited Nature of Employer's Residual Responsibilities.

## ADMINISTRATIVE FIDUCIARY'S OVERSIGHT OF PARTICIPANT DISCLOSURES

As discussed, a 3(16) plan administrator is responsible for providing the relevant disclosure materials (e.g., SPDs, 404a-5 disclosures) to participants in accordance with ERISA. In a traditional arrangement, the employer is customarily responsible for making such disclosures as the plan's designated 3(16) plan administrator. For purposes of the component plans under the *GPS*, however, the administrative fiduciary would have oversight responsibility for the preparation of the mandatory participant disclosures as the 3(16) plan administrator for each component plan.

From an administrative and operational standpoint, the TPA and Transamerica would prepare the relevant disclosure materials, and the administrative fiduciary would be responsible for overseeing the TPA and Transamerica as they perform these services. Through the *GPS*, the employer would delegate to the administrative fiduciary the responsibility for the distribution of the quarterly benefit statements to participants in accordance with the requirements of ERISA. However, the employer would retain the minimal responsibility for delivering the other participant disclosures to its employees.



# MINIMIZATION OF EMPLOYER'S FIDUCIARY RESPONSIBILITIES

## LIMITED NATURE OF EMPLOYER'S RESIDUAL RESPONSIBILITIES

As a practical matter, certain fiduciary duties may not be delegated or transferred by a plan sponsor to other parties. Even though the administrative fiduciary serves as the 3(16) plan administrator and named fiduciary for each component plan under the *GPS*, the employer would retain certain residual fiduciary responsibilities.

The employer would have a fiduciary duty to ensure complete, accurate, and reliable information is provided to the administrative fiduciary and the *GPS*' other providers. The employer would also be responsible for remitting any contributions (e.g., matching contribution) to its component plan on a timely basis. As discussed above, if necessary, the employer would also remain responsible for arranging for annual audits of the component plan's financial statements.

The employer's initial decision under its component plan to approve the appointment of the administrative fiduciary as its named fiduciary and 3(16) plan administrator and the use of the TFLIC contract would be viewed as a fiduciary act. Thus, the employer would have a duty to ensure that its fiduciary approval of the administrative fiduciary and the TFLIC contract was made prudently, and it would also have an ongoing duty to monitor the administrative fiduciary and its performance as well as the use of the TFLIC contract as an investment vehicle for the component plan.



### **THIRD PARTY AUDITS TO SIMPLIFY FIDUCIARY OVERSIGHT OF ADMINISTRATIVE FIDUCIARY'S PERFORMANCE**

As discussed previously, in order to ensure the administrative fiduciary's performance is consistent with the fiduciary standards of ERISA, each employer would need to engage in an objective process designed to elicit the information necessary to evaluate the administrative fiduciary's qualifications, the quality of its services, and the reasonableness of its fees.

Furthermore, as part of its duty to evaluate the administrative fiduciary's general performance, the employer would need to evaluate how the administrative fiduciary is performing its specific duties as an overseer of the other providers (i.e., 3(38) investment manager, TPA, Transamerica).

Although the employer would not need to review the individual actions of the other providers, it would be prudent for the employer to gather sufficient information regarding the overall performance of the other providers for purposes of evaluating the administrative fiduciary's performance.

The information included in the fiduciary audit reports should provide substantial assistance to employers for their ongoing evaluation of the administrative fiduciary and the performance of its services as a named fiduciary and 3(16) plan administrator, including its specific services as an overseer of other providers.

Transamerica has been helping employers of all sizes with their retirement plans for more than 80 years. We work with financial advisors, third party administrators, and consultants to cover the spectrum of defined benefit and defined contribution plans.

**5 million strong:** **Recognizing the connection between financial wellness and personal well-being, we help participants save through their employer-sponsored retirement plans and develop strong habits designed to help them live better today.**

### **SIMPLIFY, MINIMIZE, SUPPORT**

The *Group Plan Solution*<sup>SM</sup> is a solution for small- and mid-sized business to offer a retirement plan to their employees. It's designed to provide fiduciary relief, reduce the administrative burden, transfer certain risks, and reduce the overall plan costs for businesses that are unable or unwilling to accept all of the responsibilities traditionally associated with sponsoring plans. In traditional arrangements, the employer customarily assumes primary responsibility over the management of the plan and its investment menu. These duties are minimized under the *GPS* as a result of the comprehensive support provided by the *GPS*' service providers. And support is provided by additional administrators, fiduciaries, and managers.

Through the *GPS*, the employer delegates primary responsibility for managing certain aspects of plan operation to the administrative fiduciary, which serves as the component plan's named fiduciary and 3(16) plan administrator. In addition, the administrative fiduciary has appointed a 3(38) investment manager to manage the investment menu offered to the component plan participants.

Appendix A summarizes how many of the fiduciary oversight responsibilities traditionally imposed on employers have been delegated and transferred by employers with component plans to other parties under the GPS. It should be noted that employers would have certain residual fiduciary responsibilities relating to their component plans. However, such duties would be limited. While there is no way to completely eliminate a plan sponsor’s fiduciary responsibilities, these duties would be significantly reduced and minimized for employers adopting component plans under the GPS.

## APPENDIX A

### COMPARISON OF EMPLOYER’S FIDUCIARY OVERSIGHT DUTIES: TRADITIONAL PLAN VS. GROUP PLAN SOLUTION<sup>SM</sup>

PLAN-RELATED SERVICE	SERVICE PROVIDER	IS EMPLOYER RESPONSIBLE FOR FIDUCIARY OVERSIGHT OF PLAN-RELATED SERVICE?	
		TRADITIONAL PLAN	GROUP PLAN SOLUTION <sup>SM</sup>
<b>PLAN’S INVESTMENT MENU</b>			
Selection and monitoring of menu	Advisor or investment manager	Yes	No, the administrative fiduciary is responsible.
Mapping from existing plan’s menu to new plan’s menu	Advisor or investment manager	Yes	No, the administrative fiduciary is responsible.
<b>PLAN OPERATION</b>			
Recordkeeping and investment platform services	Recordkeeper and/or platform provider	Yes	No, the administrative fiduciary is responsible.
Benefits administration and operational compliance	TPA	Yes	No, the administrative fiduciary is responsible. <sup>25</sup>
Mandatory disclosures to participants	Recordkeeper or TPA	Yes	No, the administrative fiduciary is responsible. <sup>26</sup>
<b>PLAN OPERATION</b>			
Form 5500	TPA	Yes	No, the administrative fiduciary is responsible. <sup>27</sup>
Audit report for plan’s financials (Form 5500)	Audit firm (CPA)	Yes	Yes
<b>FIDUCIARY OVERSIGHT OF SERVICE PROVIDERS</b>			
Monitoring advisor or investment manager	N/A	Yes	No, the administrative fiduciary is responsible.
Mandatory disclosures to participants	N/A	Employer is the plan’s 3(16) plan administrator and named fiduciary.	Yes, fiduciary audit reports are provided to simplify employer’s review.



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1. Previously referred to as *Retirement Plan Exchange*®.
2. The employer's decision to delegate responsibility is itself a fiduciary act, which must be made in accordance with ERISA's fiduciary duties.
3. ERISA Section 402(a).
4. ERISA Section 404(a).
5. DOL Field Assistance Bulletin 2002-3.
6. ERISA Section 409(a).
7. DOL Advisory Opinion 2002-08A. ERISA Section 404(a)(1)(A)(ii). See, also, DOL Field Assistance Bulletin 2002-3 and DOL Information Letters to D. Ceresi (February 19, 1998) and to T. Konshak (December 1, 1997).
8. ERISA Section 502(l).
9. ERISA Section 502(a)(3).
10. ERISA Section 3(16) provides that the administrator is "the person specifically so designated by the terms of" the plan's governing document. If no person is designated, the employer is automatically deemed to be the administrator.
11. ERISA Section 103.
12. A plan document could in theory allocate additional fiduciary responsibilities to the administrator. However, plan documents customarily provide in a separate provision that the named fiduciary will be the fiduciary responsible generally for the operation and administration of the plan.
13. ERISA Section 102.
14. ERISA Section 105.
15. ERISA Section 104(b)(4).
16. ERISA Section 502(c).
17. Despite the confusing similarity of terms, a third party administrator or any other provider of non-fiduciary administrative services should not be mistaken for a 3(16) plan administrator.
18. The term "non-discretionary 3(21) fiduciary" arises from the statutory definition of "investment advice" under ERISA Section 3(21).
19. ERISA Section 405(d)(1).
20. Section 2509.75-8, FR-17 of DOL regulations. See, also, *Hunt v. Magnell*, 758 F.Supp. 1292 (D. Minn. 1991).
21. DOL Advisory Opinion 2012-04A.
22. See Section 202 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act")
23. The agencies responsible for implementing the group of plans requirements for the Form 5500 filings are required to provide updated instructions for the new consolidated filings by January 1, 2022, which may address the filing of audited financial.
24. Transamerica will update employers regarding the group of plans Form 5500 filings as the responsible agencies issue guidance regarding its implementation.
25. The employer would remain responsible for remitting any contributions to its component plan on a timely basis.
26. The employer would remain responsible for the distribution (but not preparation) of certain disclosures to its own employees.
27. The employer would have a duty to ensure reliable information is provided to the GPS' other providers.

All Transamerica companies identified are affiliated, but are not affiliated with The Wagner Law Group.

Before adopting any plan you should carefully consider all of the benefits, risks, and costs associated with a plan. Information regarding retirement plans is general and is not intended as legal or tax advice. Retirement plans are complex, and the federal and state laws or regulations on which they are based vary for each type of plan and are subject to change. In addition, some products, investment vehicles, and services may not be available or appropriate in all workplace retirement plans. Plan sponsors and plan administrators may wish to seek the advice of legal counsel or a tax professional to address their specific situations.

The *Group Plan Solution*™ is not a multiple employer plan (MEP). Unlike a MEP, certain plan qualification and ERISA requirements are applied at the individual plan level.

An employer participating in the plan retains certain fiduciary responsibilities, including responsibility for retaining and monitoring the 3(16) plan administrator, for determining the reasonableness of its fees, and for periodically reviewing the plan as a whole. Transamerica does not act as a 3(16) plan fiduciary.