Some Unpleasant Truths About The Retirement Plan Business

By Ary Rosenbaum, Esq.

I think the world of the retirement plan industry, but I'm the guy who likes to speak the unspeakable truths because by pinpointing what's wrong, we can make this industry better, the problem with speaking some unspeakable truths, is that it's not for everyone because as they said in the movie, A Few Good Men, some people can't handle the truth. Whether it was college, law school, or work, I'm always the one who calls it as he sees it and offers suggestions on his things can be approved, it's what has kept me out of certain circles, but I'm in the circle that I want to be. This article is all about some unpleasant truths about the retirement plan business and what we can do about it.

Fee disclosure didn't end the business, but we have work to do

When I worked as an attorney for a third-party administration (TPA) firm and I fired heard of revenue sharing, I thought it was something wrong. The reason why I thought it was wrong was that it reminded me of the payola scandal of the late 1950s where certain record companies were paying radio disc jockeys money to play the recordings of their top artists. Payola was illegal because a law was implemented to make it illegal, that's the only difference between payola and revenue sharing. The problem with revenue sharing is that it was never disclosed, a plan sponsor was led to believe that a 401(k) plan full of index funds was more expensive to administer than a plan with actively managed funds that paid revenue sharing. Fee disclosure regulations in 2012 implemented by the Department of Labor (DOL) added fee transparency, which was needed for plan sponsors who had a fiduciary duty to pay only reasonable fees, which was almost an impossibility because they had no idea how much fees they were paying. Fee disclosure didn't kill the business (more on that chicken little argument later): it did make fees more competitive. The problem with fee disclosure has always been that the DOL never required any type of uniformity in terms of fee disclosure. Disclosure is far too long and far too "legalese" for typical plan sponsors and participants to understand, to the point that many plan sponsors and participants still think that administration for their plan is free. I understand the problem of requiring some sort of uniform fee disclosure because fees, especially on the TPA, can be based on a variety of plan metrics. Despite that, I hope the DOL could require a uniform one-page summary for all plan providers to disclose fees to plan sponsor clients, something like a sticker price disclosure, akin to when you buy a new car. When I review fee disclosures as an ERISA attorney, it takes me time to decipher what certain plan providers charge. Imagine someone trying to read these disclosures without a legal background and semester of contracts law. The problem with the industry is that any uniform summary of fee disclosures is that we won't impose this requirement on ourselves, we have to wait for the government to regulate us on that.

The worst thing that can happen to a plan provider sometimes is being bought

A very well-known registered investment advisor (RIA) from a huge advisory practice that I have worked with, told me that his company was being purchased and how great this opportunity was. These purchase opportunities are usually great for the people with equity in these retirement plan practices, but this usually does little for the clients and the employees. For the most part, these practice buyouts, especially on the TPA side, don't work out. Why? One major reason is that the leadership of these practices cashed out and usually are looking for the exit, after their usual 3-year contract to stay on, has expired. Often, this often leads to a brain drain of the talent of the company that didn't have an equity stake. A TPA in my area that was bought a few years back has already seen a brain drain of the talent that made them a great company and eventual target of a larger practice. Their marketing director, their top

actuary, and their top salesman are gone, on to greener pastures and more stability. I'm sure you know the story of a TPA that I had to report to the DOL concerning excessive and unnecessary termination/ annual and 5500 preparation costs for a plan where I had to terminate their services after 8 years of working with them. What happened? They were bought by another TPA and the people we loved, especially the owner, were gone. With the purchase, we noticed a change in the level of service over time and it got so bad, that a change had to be made. I'm not saying this happens all the time, I've noticed one particular large TPA that has bought several smaller practices and been doing a great job in maintaining the leadership and staff of these smaller TPA shops. I'm not going to be the person to make a blanket statement that all practical mergers and buyouts are bad, I'm just saying I've seen it blow up more than I've seen successful practice integrations.

We have work to do on participant education

Technology has really changed the retirement plan business, it doesn't look recognizable to me if I was still stuck when I started in 1998. However, the one thing that hasn't changed much is the plan enrollment/education meetings. For the most part, it's the only facet of the industry that hasn't changed much. Jokingly, I state that I've seen funerals more lively than most participant enrollment/education meetings. There are many providers out there that have injected life into these meetings by making things interesting, but most providers haven't. The point to inject life into these meetings can be done easily in two steps. The first step is to make sure the content provided in those meetings is on a level that participants could understand. As an ERISA attorney, I can tell you when people speak on a level that clients don't understand, just by working in two law firms. I've only gained a following on social media because I've been able to break down difficult retirement plan topics in a language that plan sponsors and plan providers can understand. If you speak on a level that participants can understand, you can certainly go a far way. When it comes to content, less is more because too much information provide can confuse or overwhelm participants. The second step to injecting life into enrollment meetings is by adding fun. Whether it's free food or gift card prizes, make sure that enrollment meetings aren't as exciting as a funeral (or less exciting, in many situations).

The only thing that can kill this business is the government

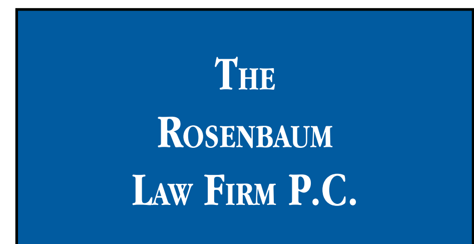
The retirement plan business will always have challenges. I have n optimistic view because I've seen regulatory changes in this business that have drastically improved the industry, while other people thought the sky was falling. Fee disclosure didn't create that race to zero in fees that detractors thought would and the fiduciary rule change didn't make brokers an endangered species in the industry. The one thing that could truly hurt the retirement business is the federal government. A law change that could limit or eliminate the tax benefit of pre-tax salary deferrals for 401(k) plans could hurt the business, both short term, and long term. Any President Biden proposal that eliminates the pre-tax deferral or transformation to a tax credit should be fought vigorously because salary deferrals are the biggest portion of retirement plan assets and any change to that would hurt the business. Even eliminating pre-tax deferrals and making them all after-tax Roth should be fought because any change to the system will likely to led salary deferrals and we can't afford that.

The most valuable assets are your employees

One of the hardest parts of being a retirement plan provider, especially a TPA, is finding good employees that can handle the work in a professional and competent manner on your behalf. So why do so many plan providers treat their employees with disdain? The reason I started my own practice was that I just could no longer deal with being an employee. I have to admit that with almost 19 years working as a TPA and two years at a law firm, the worst employers were actually union lawyers. The people who are in the job of protecting employee rights as part of their job treated their employees with absolute disdain. The problem with the employee-employee relationship is that no employee ever thought they were overpaid and no employer ever thought they paid their employees too little. People want to be treated with respect and that they matter. It's hard to compensate people and fully satisfy them, but a big part of your business has to be a solid and consistent core of employees. If you treat people well, you will create a loyal group of good employees. Treat them poorly with zero empathy (hello, Manny), don't be surprised that your front door essentially becomes a revolving door of employees. It's hard to find good and experienced workers in this business and any turnover wastes time and money in hiring and training new employees.

COVID will have some long term improvements in this business

COVID is challenging for families and businesses affected by it. However, I think that even with all the challenges, the retirement plan business rose to the occasion. While we don't know when this COVID pandemic will eventually end, we certainly know that COVID will have a long-term effect on this business. One long-term effect will be the cutdown in business travel. I'm not talking about the major industry conferences that will likely struggle in the future (including my own That 401(k) Conference), I'm talking about basic business travel such as enrollment meetings, client recruitment meetings, and meeting other plan providers. As we saw from this pandemic, online meetings like Zoom work. You may see this as a way to cut back on travel in the future with fewer necessary in-person meetings. The cost of having an online Zoom meeting is far less than a travel budget. In addition, I can see plan providers cutting back on office space and allowing a larger portion of the workforce to work from home. Renting space is a cost you could cut back on, as long as the employees working from home can be productive as the ones in the workplace.



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