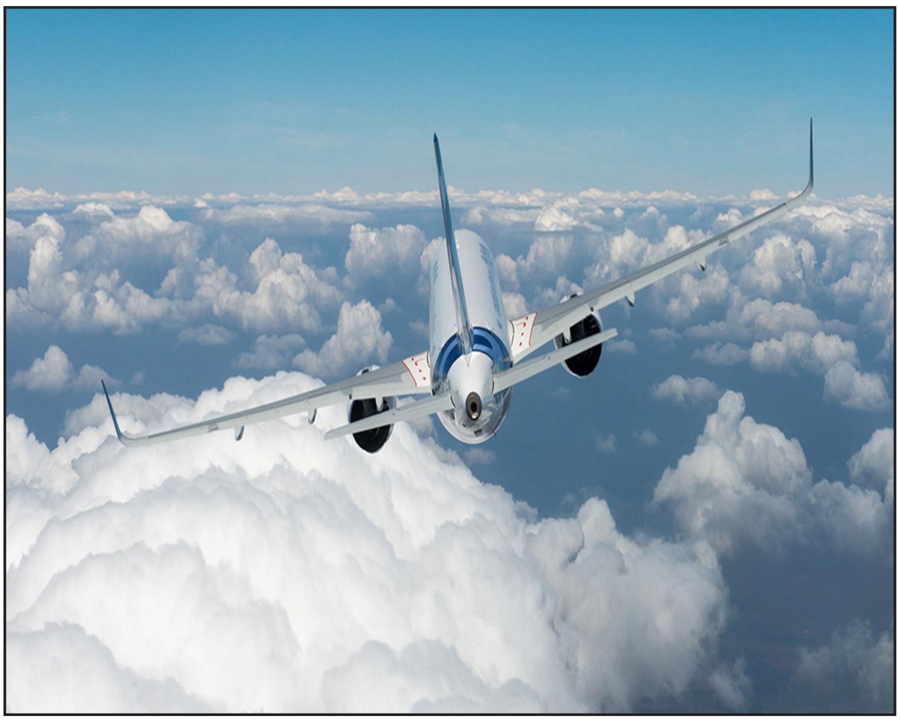
Some Tips To Plan Providers During These Turbulent Times

By Ary Rosenbaum, Esq.

22 years as an ERISA attorney, I've seen many hills and a few valleys. I've seen quite a few plan providers die in these valleys. After a booming market for the last few years, the Coronavirus pandemic has caused a huge valley and the problem is that we don't even know, to what extent. There is more to the Coronavirus pandemic that we haven't seen yet and it may cause a valley for this business for the next years or so. What's important is how we navigate this valley because while it may be challenges for some, there is an opportunity for all of us in growing our business as we navigate against a powerful storm.

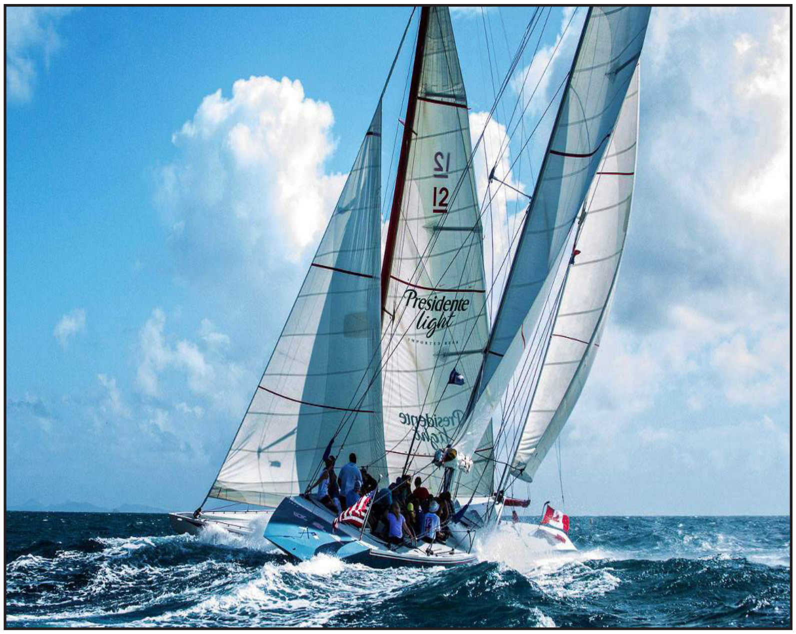


The double-tap of Coronavirus

Since starting as an ERISA attorney in 1998, there were two huge market meltdowns. The tech market crash of 2000 coupled with the September 11th attack was a huge market correction that negatively impacted the 401(k) business until 2002. In 2008, we had the housing market bubble burst, which almost took down our entire financial industry with it. The Coronavirus pandemic will likely have a greater negative impact on our economy. Tens of millions of people unemployed don't do wonders for the overall economy. In addition to stimulus payments being paid to Americans through the CARES Act, the Federal government also added some changes to allow for flexibility of retirement plan participants to access an in-service distribution that would be free from the early retirement distribution penalty for those receiving a distribution prior top attaining age 59 ½. This new distribution form is different from the regular hardship distribution because all participants will have to do is attest that they have been negatively impacted by COVID-19 by having it, or having a spouse or dependent who has it, or have been negatively impacted at work because of COVID-19. While this distribution is a great option for participants who desperately need funds, we know as retirement plan providers that it's a terrible thing. It's a terrible thing for participants because they are raiding retirement plan assets for today's needs, especially after the stock markets plunged because of Coronavirus. Also, increased participant loan amounts as allowed for by the CARES Act due to Coronavirus will also have a negative impact because retirement savings ordinarily invested will now be loaned out to a participant where interest will only be accruing at 1 percent over prime. Also, if you get paid as a plan provider on plan assets, this "leakage" from this Coronavirus distribution or increased plan loans isn't good for your bottom line. While the CARES Act will be bad for business, we don't exactly have much choice as millions of our fellow Americans are struggling financially from Coronavirus. During Passover, children at the Seder ask questions as to why Passover is different from all other nights? The CARES Act and the allowable Coronavirus distributions are why this pandemic is different from all other bear markets.

You can't afford to do free work

A lot of the larger, bundled providers have announced that they will waive all participant fees resulting from Coronavirus related distributions. The beauty of bundled providers is that they see their role as a third-party administrator (TPA) as an ancillary business since they're in the TPA business to distribute their mutual funds. When they see TPA work as ancillary and their meat and potatoes are mutual funds, it makes sense that they can afford to waive these distribution fees. While it's noble of them to waive fees, I don't think any unbundled TPA should match them. Many years ago, an advisor asked me if I drafted Solo 401(k) plans and I told him that I couldn't compete with free when the Fidelity and Charles Schwabs of the world charge nothing for the plan document. It's my opinion that your time is valuable and whether it's participant distributions or giving financial advice, you need to be compensated for your time. If you're a TPA and you have a full load of distributions that need to be



processed because it's Coronavirus, that's a ton of work you have to do that needs to be compensated. While waiving fees for participants taking these distributions is a nice thing to do, consider your business and the time and the cost that is needed to process those distribution requests. I'm not even going to debate whether being good to participants by waiving the distribution fee will help you with the plan sponsor since most sponsors I've represented care very little about the fees charged to a participant for any form of distribution. I don't think the goodwill shown towards participants receiving a distribution will do much with the powers that be, which is the plan sponsor. In the end, we can debate whether waiving these fees is a good thing for your business, but my feeling has always been that any work you provide should be compensated. Anytime I have given away free legal services, I've devalued my legal services.

You can sell in times like these

From experience, when times are bad, employers usually don't want to talk about 401(k) plans, especially setting up new ones. However, when 401(k) plans are having awful returns because of the market, plan sponsors tend to focus on one issue at times like that: they focus on fees. History has shown that concerns about 401(k) fees and calls for fee disclosure (before the regulation was implemented) always spikes when the stock market has hit the skids. I never took a course in psychology, but I think that happens because plan sponsors who feel helpless about the markets will focus on something they can control, which are the fees on their plan. Marketing your services as a plan provider maybe like swimming against the tide, but I think it's wise to do because much of the competition isn't. Whether it's pooled employer plans in 2021 or an eventual bull market, there is plenty of positive things to talk about when talking to potential plan sponsor clients.

Keeping the team together

If I've learned one thing over the past 22 years is that good help is hard to find. We work in an industry that requires knowledge and knowledge only comes through proper training. The sad part is that there are so many people in this industry that don't have the requisite training. If you have well trained employees, it's important you keep them because great employees are few and far between. I worked as an attorney affiliated with a Long Island based TPA during the 2000-2002 market correction. It was a TPA that was always struggling, even after it was bought by a national accounting and consulting firm in 1999. The struggles were because there were too many chefs in the kitchen who were indecisive and needed to be paid. There were the same chefs who poorly ran the business until that national firm gobbled it from them. As the TPA struggled, there was a hiring size (except to hire one of the boss' daughters as a receptionist because she needed something to do) and a pay freeze. Eventually, they had to let go a handful of employees. When I learned that 6-8 people were going to be let go, I figured in my head who would be let go because I assumed the weakest and most inefficient employees would be let go To my surprise, nobody on my list was terminated. The point here is that any retraction of business will lead to a retraction of staff. If you can avoid letting people go, do that. Good talent in the retirement plan business is hard to come by. So it's important that if you do have to make cuts, don't cut back on the more expendable employees, rather cut the less talented "favorites".

We will get through this as long as we can see

When I left the law firm I worked for, to start my practice, I predicted that they wouldn't do very well. They were led by someone who liked to talk but didn't like to lead. 10 years later, I'm doing OK and the law firm is half the size of what it was when I left. There will be plan providers that will close up shop or be bought out during this financial crisis and the reason was that those providers were being mismanaged. Running a business is like running a sailboat, you have to change your tactics based on the existing conditions. When I let Meyer Suozzi 10 years ago, I knew that social media was the future of bringing in clientele. The managing attorney, Lois, thought little of it (despite her husband doing it in his practice), she acted as if my approach was the same as selling fresh fish out of the trunk of my car. You will only survive in this business if you identify change and change your approach. You can't have the same approach to business when times are good and when times are bad, you also have to identify changes in the business landscape. Despite all the awards that she received, I knew someone like Lois was stuck in the 1980s and the only way I could develop my clientele that could support myself and my family is by starting on my own. Don't be arrogant like Lois was, understand that the business is constantly changing and that you have to adapt to change, just like the crew on an America's Cup ship.

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