Important Details About 401(k) Plan Providers That Employers Never Ask About

By Ary Rosenbaum, Esq.

I've been through enough rodeos, even those weren't literal "rodeos." I love asking questions that no one else asks, perhaps that is the Larry David in me. Yet for 401(k) plan sponsors, there are tons of things that they may ask of plan providers they hire, but there are important questions they never ask. This article is all about important details about plan providers that 401(k) plan sponsors never bother to ask about, but should.

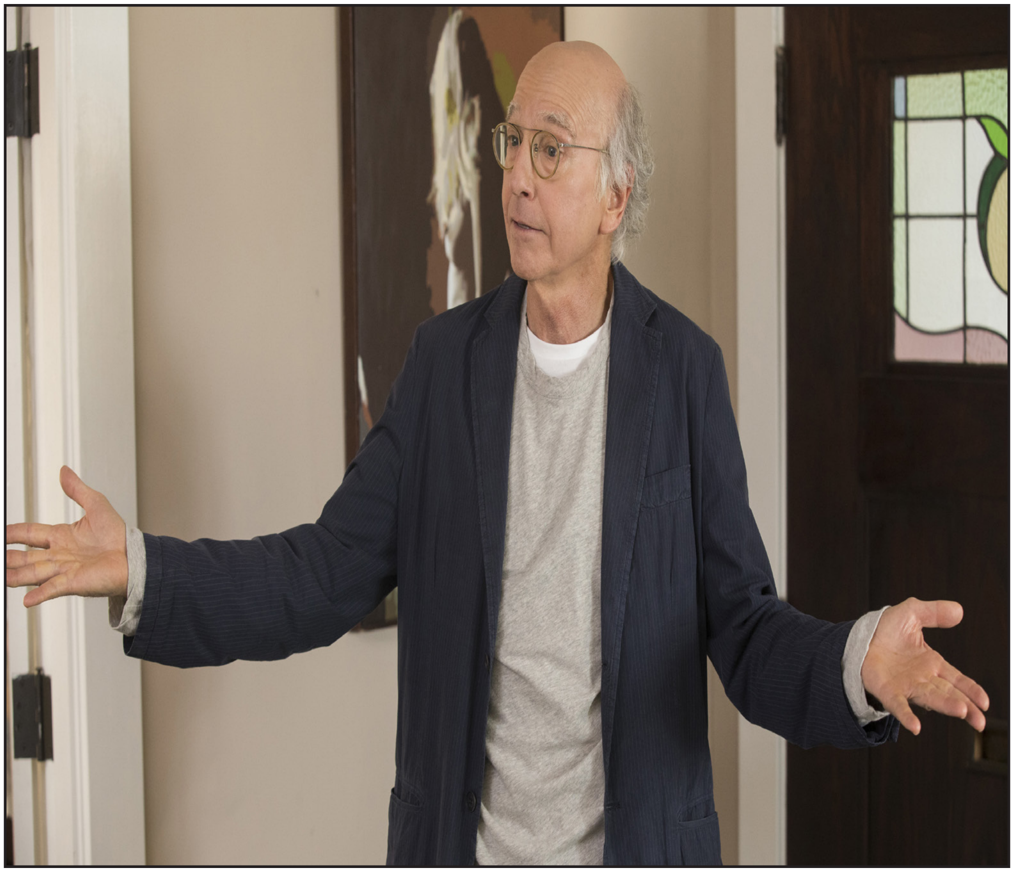
Credentials

I have been admitted to the New York State Bar since February 4, 1998. It was the same year that I was admitted to the Massachusetts and California bars, even though I'm inactive (but they still collect annual dues). For 25 years, I have been an ERISA attorney. Yet, I can count on my hand how many times people actually verified that. Practicing law without a license is a crime, yet people still do that. For many retirement plan provider positions such as an attorney, financial advisor, and accountant, there are licensing requirements. Yet most plan sponsors never check the websites that could verify whether someone has proper licensing or not. Many state licensing websites and financial advisor checks, will even show whether they are licensed or not. In addition, they may show if there were any substantiated complaints, license suspensions, or admonishments. A complaint that is unsubstantiated is of little use. I still laugh about the owner of a New Jersey-based third-party administrator (TPA) who filed a complaint about me because his feelings were hurt. To this day, don't know if the TPA owner ever mailed it, or if the Attorney Grievance Committee immediately laughed it out. There has never been a plan provider that hasn't been complained about, because it's impossible to make every plan sponsor happy. As far as the TPA business, anyone can set one up. My 18-year-old son, attending college, could put out a sign that he's

a TPA. TPAs don't require licensing and that is certainly a problem. For the TPA business, a simple use of the "Google Machine" will help you discover whether the principals of a TPA you are trying to do business with, have worrisome situations they would like to hide. Years ago, I hired a waterproofing company, off of Google. A better Google search would have indicated they had numerous complaints and further search would show that the operator of the company lost his podiatry license for Medicare fraud. A perfect example is Jeff Richie of Vantage Benefits, who I knew. A simple Google search would have indicated that he was barred from the securities business by the Securities and Exchange Commission. Anyone who would have Googled that and didn't hire him, probably would think him stealing millions from his clients and going to jail, was a small logical leap. Even one of my former bosses, the most miserable boss you'd ever meet, lied about his ASSPA's QKA credential because he never kept up with his continuing education. There will always be people who claim things about themselves that aren't true and easily disprovable, but no one bothers to try to disprove them. In addition, plan providers may have initials behind their name, that denote an acronym for a professional designation. QPA, QKA, CLU, and CFP, are just some of the acronym professional designations that are legitimate. Yet, believe it or not, there are acronym designations that are self-ordained or meaningless. I could call myself a Rabbi by self-ordaining myself, but if a Rabbinical college didn't confer the degree on me, it's meaningless. If the plan providers have professionals with designations, make sure it's real and legitimate.

Insurance

Plan providers make mistakes. That's why there is an entire insurance industry out there, that insures retirement plan providers. Whether it's a TPA, advisory firm, fiduciary service provider, accountant, or attorney, there are enough insurance products out there, to protect them and protect you. There is nothing wrong with asking a plan provider what their insurance coverage looks like. Like with plan sponsors, it's always possible that the plan providers have the wrong type of coverage. For example, there might be a financial advisor acting as an ERISA §3(38) fiduciary, whose current policy doesn't cover that type of service. Years ago, I worked for a TPA where the daily trading processor made a huge mistake. The processor was eventually fired, but my boss didn't get too angry, because he said that was the reason for an errors and omissions insurance policy. There is nothing wrong with asking plan providers about their insurance. If they act defensive and evasive, that could be a cause for concern.



What's the churn rate?

Retirement plan providers will often mention how many retirement plans they work on, especially TPAs. There will be certain TPAs who will tour how many plans they administer, but they might not want one fact to come out. Bigger isn't necessarily better and a better measure is how long a 401(k) plan sponsor will stay with a certain provider, especially a TPA. There are retirement plan providers that won't tout their churn rate, especially TPAs. What's a churn rate? A churn rate (which can also be called an attrition rate) is a measure of the proportion of individuals or items moving out of a group over a specific period. It is one of two primary factors that determine the steady level of customers that a business will support. So for a 401(k) plan provider, the churn rate when applied to a customer base of retirement plan providers, is the proportion of plan sponsors who leave a plan provider during a given period. So a TPA that touts how many plans they have under administration, might actually be awful in their services if they have a high churn rate. A smaller TPA might be a better fit if they have a lower churn rate. The longer that a 401(k) plan sponsor is with a plan provider, the assumption is that the service is very good. Obviously, that is highly dependent that 401(k) plan sponsors understand who is a good retirement plan provider or not.

What's the training?

There are people in the retirement plan business who have been there for 20 years and don't know much since they never got the proper training or any type of continuing education. This is important because the retirement plan business isn't a stagnant business. The laws and regulations concerning 401(k) plans are always changing. A good retirement plan provider will make sure that the required employees are up to date with these changes. I worked for TPAs that recruited administrators right out of college (including my alma mater, Stony Brook University). The problem is they gave them very little training and very little continuing education. Like with Drivers Education, if you don't give employees the right training, they will never be good. I was an attorney working on the site of a TPA and was scratching my head over how an administrator treated available sources for hardship, even allowing earnings on deferrals, which at the time in 2002, wasn't allowed since 1988. I worked at another TPA where the 401(k) administrator was using a 7-year vesting schedule for matching contributions, even though that was allowed 5 years ago. I have seen plan administrators with 2 years of experience that are more competent than those with 25 years because they got the proper training from day one, and continuing to this day. Plan providers, especially TPAs have a duty to properly train their employees and make sure the training is continuous. Otherwise, the level of service will suffer. There is nothing wrong to ask about it.

THE ROSENBAUM LAW FIRM P.C.

The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
(516) 594-1557

http://www.therosenbaumlawfirm.com
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