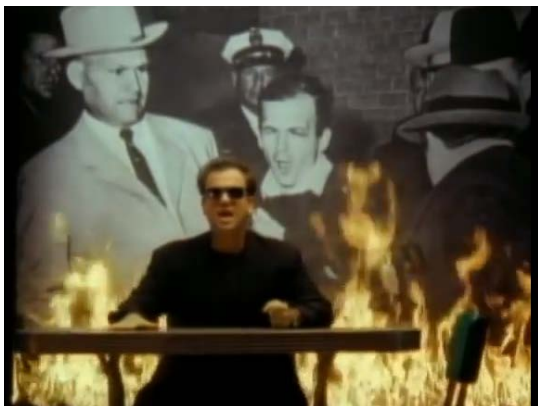
The Rosenbaum Law Firm P.C.

Advisors Advantage

A Publication for Retirement Plan Professionals

We Didn't Start The 401(k) Fire; It's Always Been Burning.

The problems have always been there.



I live in Long Island, so I think by a local law, I have to be a Billy Joel fan. He's not up there with Aerosmith, The Eagles, and Fleetwood Mac for me, but he's up there. I know it's blasphemy to say it, but I always loved his song: "We Didn't Start The Fire". Billy isn't the greatest fan of one of his biggest hits because it really has no melody, but I like what the song stands for: history is littered with tumultuous times, it's always been going on. There has been much concern over the new Presidential administration and whether it may spell gloom and doom for the 401(k) industry. This article is all about the tumultuous times that the 401(k) industry is going through and why we'll overcome it because it's not the first time it happened.

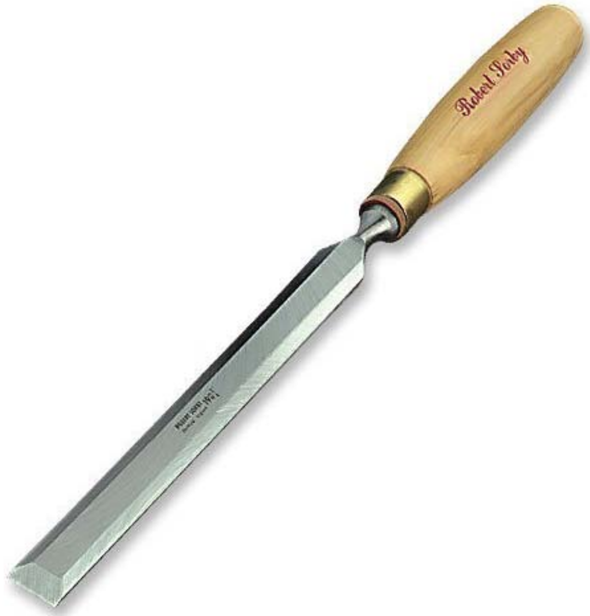
To read the article, please click here.

Don't Chisel Other Plan Providers.

It's not right to do that to fellow plan providers.

I sell some stuff on EBay. Basically I'm selling collectibles I no longer want for collectibles I do want (vintage graded sports cards). I set a starting bid and a buy it now price and occasionally I'll get the EBay member who'll ask if I'll sell the product for less than my starting bid. The answer is always no because it's less than my starting bid and if I wanted to sell the item for $5 less, I would have sold it for $5 less.

The point here is that if you're the gatekeeper for a plan sponsor if you're a plan provider, I don't think it's right to chisel

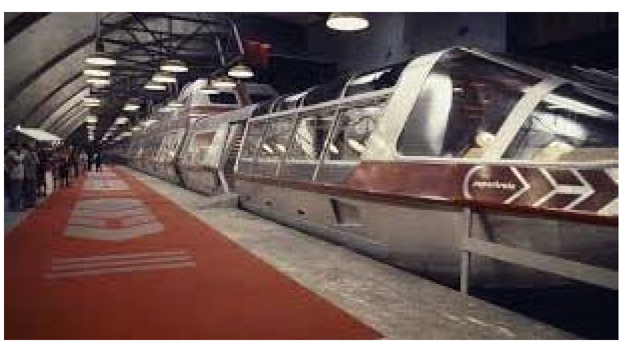


other plan providers. I've been in this business for 19 years and I've never asked a plan provider (especially a third party administrator (TPA)) to take less than what they've quoted. Why? I treat people the same way I wanted to be treated and I don't want people to do that to me especially when a TPA friend of mine consistently tells me that I charge too little. Is saving the plan sponsor an extra $250 going to help the client? Honestly, I think it's going to tick off plan providers more than it will get your clients happy.

People may think it's blasphemy that I suggest that you should save clients money, but getting competitive bids from other plan providers is far better than just trying to chisel plan providers you want to work with. Margins in this business are getting lower and lower and plan providers have set their fees for a reason. There are some great TPAs out there who charge a $10,000 minimum. Rather than trying to undercut their entire fee schedule, I'll find a TPA that will charge less for a smaller plan. This retirement plan business is all about relationships and the last thing you want to do is develop a relationship among other plan providers that you care less about quality of service and more about squeezing plan providers to lower their schedule of fees.

Make sure everyone is on board with the change.

Otherwise, it will be a bumpy ride.



Sometimes no matter how hard you work on a plan and do such a great job, oe person working for your client can cost you them as a client.

When I worked for a third party administrator (TPA), we were referred a 401(k) plan by the financial advisor. I thought we did a really good job. The problem is that the human resources director hated us from day one because we wouldn't do the work she received from the previous TPA she liked. She made it a point that she wasn't for the TPA change.

She was a problem from Day 1, but we took the case because we had a great relationship with the advisor. Some people you can never satisfy, so I think she was always going to find a reason to get rid of us.

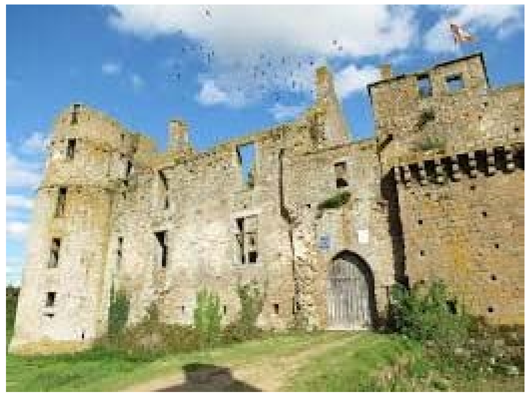
At one point, the client seemed to be interested in changing the plan by making it a K-SOP, basically adding an employer stock ownership feature (ESOP) to it.

The client's advisor asked me about our experience with it and I was honest, I said we had a couple of those cases. My boss who also was an ERISA attorney, flew out to meet the client and discuss adding the stock ownership component.. Story cut short, we lost the client as well as the advisor.

The point here is that you should always make sure everyone is on board with the change because if not, understand that you will fight a never-ending battle not to get fired.

The problem with fiefdoms.

An organization will struggle with that.



The Brady Bunch was probably everyone's vision of what a perfect family was. There two sets of a parent with three children of their own and together they blended the families and everything ended up happily after a 22-minute episode. It might have been fantasy, but the idea is that people should come together and get along.

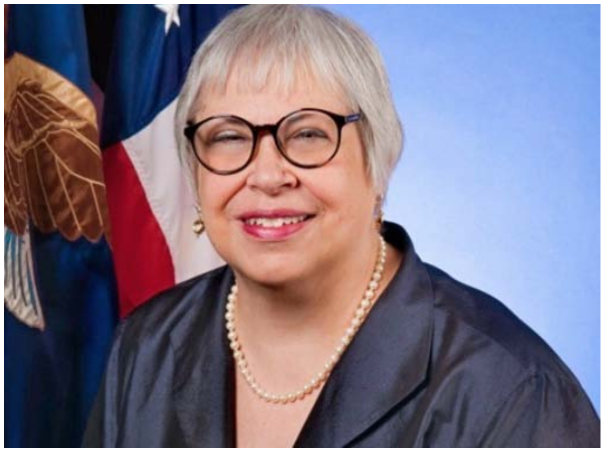
Businesses need to come together and get along. There can be a Balkanization of a business where there are separate fiefdoms or divisions. I would see that often with law firms where the law firm was brought together by adding solo lawyers together so each lawyer was protective of their client list. I've seen that with a third party administration firm where the compliance department fought with the administration department and when the head of administration took over the entire operation, the compliance department resigned en masse (I saw it all). I had a struggle just getting a client list from a chief operating officer who didn't want anyone to have one, so I had to create one with administrators who treated their list of clients as some fiefdom.

Businesses lose money by being inefficient and when departments don't work together, there is less money to make. You don't need an MBA course to tell you that. I've seen so much inefficiency in these type of scenarios and it drives me crazy because I'm a one lawyer shop. You need to maximize revenue and reduce anything that impedes that. The problem is that medium and small sized businesses don't realize how much money they're leaving on the table by not getting rid of the little kingdoms.

What Phyllis Borzi got wrong.

Not everything she did was perfect.

It's been about 4 months since Phyllis Borzi left her position as the head of the Employee Benefit Security Administration (EBSA) and as time passes by, we can certainly opine on her accomplishments in that position. Of course, since I'm highly opinionated, I'm going to opine on the one area that Ms. Borzi got wrong.



While Borzi was given marching orders from the White House to allow states and municipalities to get into the small business IRA business (follow?) that would get more employees covered under her retirement plans, her administration screwed up one area of retirement plan coverage that never corrected for the last 4 years of her tenure.

Where did Borzi go wrong? Under her administration, EBSA effectively killed open multiple employer plans (MEPs) which allowed for unconnected employers to adopt these plans and avoid the bulk of the headaches of being a retirement plan sponsor. I say EBSA effectively killed these open MEPs through an advisory opinion on a MEP that created a plan sponsor to implement the MEP. I'll never understand why the MEP wanted that advisory opinion and I certainly understand some of the reasons why EBSA went the way it did, I'll never understand why they punted on offering guidance for these Open MEPs to allow them operate as one single plan for ERISA purposes. I think some EBSA guidance was warranted especially because I still believe they got it wrong since their opinion conflicts with Internal Revenue Code Section 413(c).

When you compare what the open market can offer, I believe Open MEPs are a better choice for retirement plan coverage than any IRA products offered by a state or municipality. People don't trust governments and what employees can save under a qualified plan are far greater than what an IRA can offer.

So while Congress has failed in implementing Open MEP legislation, I still think the one thing that Borzi got wrong was the advisory opinion on Open MEPs and the failure to issue guidance to allow them.

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