The Future Is The Undiscovered Country For 401(k) Plan Providers

By Ary Rosenbaum, Esq.

"The undiscover'd country from whose bourn / No traveller returns," that's Hamlet Act III, Scene 1. It's also the title of Star Trek VI: The Undiscovered Country, where it's considered that the future is the undiscovered country. The retirement plan space is always changing. Things were different 10 years ago, and it was far different when I started more than 25 years ago. I can't predict the future, because if I did, I'd concentrate on next week's winning Powerball numbers, more than changes in this business. There are many changes going on in this retirement plan business, it's just good business to see the changes a mile away, rather than after it's occurred. This article is all about upcoming changes in the retirement plan business, and. what effect it will have on plan providers.

The new, new, new, new fiduciary rule, we think

As stated, I've been in the retirement plan business for 25 years and I think for the past 15-20 years, the Department of Labor (DOL) has tried successfully and mostly unsuccessfully at a half dozen attempts at changing the fiduciary rule definition. The latest, proposed change, just like the one in 2015-2016, is being ushered out with a Presidential election around the corner. That one from the 2015-2016 rule from the Obama administration cost millions and millions in legal and compliance fees. Those fees were wasted as President Trump was elected and the rule was eventually withdrawn. I can't tell you who will win the 2024 Presidential election, but I will tell you that any change to the fiduciary rule will create a lot of trepidation and angst among any financial advisor in the retirement plan business.

The horizontal expansion of certain plan providers

Lefty Ruggiero said it best in Donnie Brasco: "When they send for you, you go in alive, you come out dead, and it's your best friend that does it." I worked for almost five years for a producing third-party administrator (TPA) and I thought it was weird that other financial advisors would bring us plans to administer since our registered investment advisory (RIA) firm was. essentially potential competition. While most producing TPAs are hands-off with plans belonging to advisors that they administer, that has not stopped other producing TPAs from replacing these advisors with their own affiliated firms. If you have noticed, certain larger plan providers have purchased RIA firms, and they will have a horizontal expansion of their business. Plan providers who are publicly traded companies, need to increase revenue to please their shareholders. One avenue is to expand their business. Being custodians and TPAs, as well as having a. trust company may not be enough. They will certainly see advisory services as just a synergy to their existing business for continued growth. If you are a financial advisor, I'm not saying these large providers will steal your business. What I'm saying is they're a potential competitor. At the very same producing TPA that. I was at, we used the largest mutual fund company as one of our custodians. That didn't stop their direct TPA business from trying to recruit our clients. The retirement plan business is very competitive and at times, cutthroat. So a plan provider you work with might have an affiliated service that might try to poach your clients. It's extremely important to be aware of the competition, even. If the competition is a plan provider you work with, on a daily basis.

The threat of AI

Artificial Intelligence is a growing issue. For me, as a fan of the Terminator movies, I worry about Judgement Day, and the machines taking over. Artificial Intelligence in the retirement plan space is like any other technological breakthrough. It creates new efficiencies and it will eliminate jobs, performed by humans. I started in the retirement plan business in 1998, before the industry caught up with the Internet. Most participant investment elections were done by pen and paper, some used the phone. It was only until the next century/millennium that most 401(k) plan participants had the ability to make investment changes online. A participant website probably eliminated many customer service jobs. I haven't raised the price of plan documents I draft in 25 years because it's so much easier and quicker to draft a plan document these days. Artificial Intelligence (AI) will forever change how this retirement plan business operates. Investment advice and plan design are two areas where AI/"Skynet" might do well. As an ERISA attorney, I don't suspect that I will be completely replaced by AI, state bar associations will make sure of that. While it's a certainty that efficiencies created by AI will force many employees to be placed on waivers, AI will also have the opportunity to create jobs. Like the wave caused by the sea earthquake in The Poseidon Adventure that toppled Poseidon was inevitable, so is AI. Technology like a wave, can't be stopped. It's how we deal with this change, that will determine our fate in this business.

PEPs

For about 5 minutes in 1989, Lambada was a craze. OK, maybe it lasted more than 5 minutes, but the dance craze launched two movies. I didn't think it would catch on because there only appeared to be one song that everyone danced to, kind of like the Macarena. A fad is a form of behavior that develops within a culture in which a group of people enthusiastically follow an impulse, usually for a short period of time. Some fads are successful such as Cabbage Patch Kids, while others like Lambada and Crystal Pepsi are not. When introduced in 2021, Pooled Employer Plans (PEPs) were a big deal. It filled a need and a niche, ever since the Department of Labor said "open" Multiple Employer Plans with unrelated employers were not single plans for purposes of ERISA and Form 5500. It's been nearly 3 years of PEPs and while it seems that every plan provider wants to offer one, not many have grown PEPs to a situation where its size has truly led to cost savings for those that adopt one. You see the press releases that. announce the creation of PEPs, but you don't see the press releases when they close up shop as some PEPs have already done so. I think the most successful PEPs so far as the MEPs that converted over. I run one MEP that is in the process of being a successful PEP after its conversion. I think PEPs have space on that shelf of plans and can be attractive as a fiduciary solution for many smaller plans. Until they achieve a size of critical mass, it won't be the cost savings that many plan providers would like to promote. One wise thing that most plan providers have done is that they haven't priced PEPs to the point where they are truly lowering their fees to get PEP business that hasn't materialized. If plan providers got a nickel for every time that advisors would claim they would have an audience for PEPs, they'd be rich. I think PEPs will be an effective solution for many plan providers and adopting employers, as long as struggling PEPs close up shop and narrow the market because I think there are still too many PEPs out there.

Government IRA programs are a good thing

I'm not a fan of the government being involved in retirement plans, I believe Social Security is projected to go belly up right around when I'm supposed to receive benefits. That being said, I like where states and localities are forcing employers to adopt a retirement plan or join their IRA program. Anything that is legal to increase retirement plan coverage for private employers and their employees is a good thing. More importantly, it opens up the market for these private employers to start their own plans or join a PEP. As a plan provider, I think it becomes easier to offer a 401(k) plan to these covered employers that have to offer a plan because a 401(k) plan as a standalone or PEP is a better option than some government-sponsored IRA programs. If you're building a PEP or want to market 401(k) plans, states and localities forcing employers to offer a plan or join their IRA program is a good thing. More employers covering more employees is a good thing for the retirement plan business.

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