

Behaviors You Should Avoid With 401(k) Plan Providers

By Ary Rosenbaum, Esq.

Like Rodney Dangerfield, retirement plan providers don't think they get respect. They probably think that way with some of the 401(k) plan sponsors who use and abuse them. I always say that I want to treat people the way I want to be treated and I'm sure you feel the same way. This article is all about the behaviors you should avoid as a 401(k) plan sponsor in dealing with plan providers, whether they work for you or not.

Wasting their time

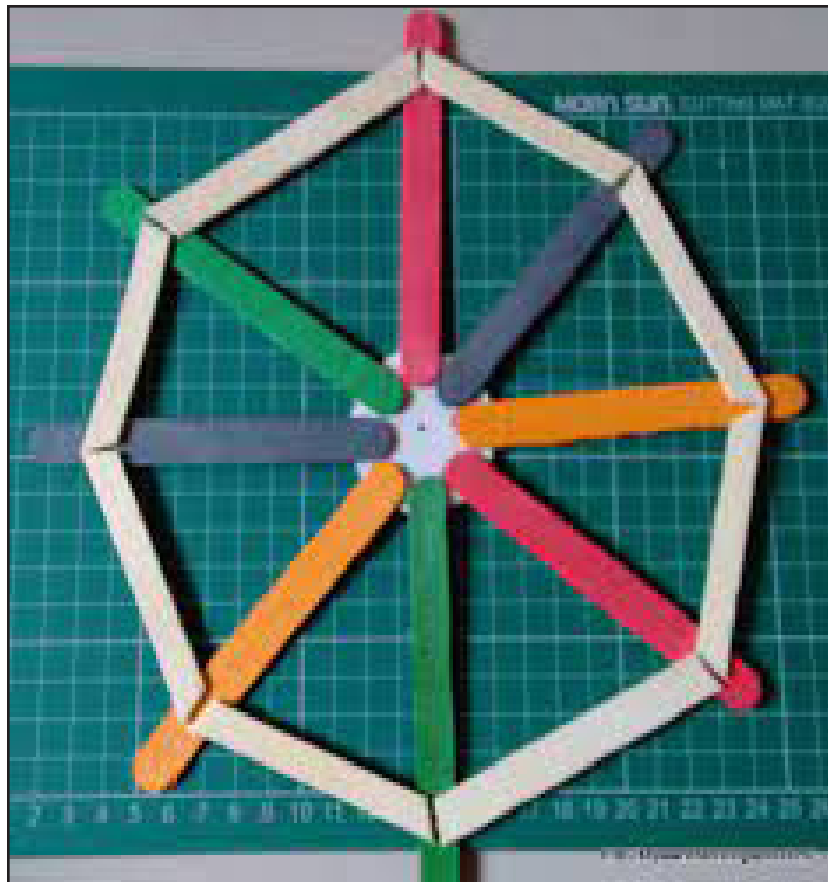
One of your jobs as a plan sponsor and plan fiduciary is to review your current plan providers for their efficacy and their cost. That means you might have to contact competing plan providers to compare services and costs. You need to review your current plan providers to make sure that they are providing the services that they promised. Not only do you need to make sure they're doing their job, but you also have to make sure they're not overcharging you. As you know, the costs for plan services have to be reasonable for the services provided. You can use a benchmarking service or a book like *The 401(k) Averages Book*. What could be easier is contacting other plan providers for their fees on a comparable service. Again, I think the most important is that when it comes to comparing services, you have to compare apples to apples when it comes to service level. A plan provider offering fewer services than your investment provider is likely going to be charging less too. You have to pay reasonable fees, not the cheapest fees. Picking a

plan provider just based on a cost on some silly race to the bottom would only hurt you in the long run. When getting quotes from competing plan providers, be upfront with them about what you're doing. I always say the two worst things you can do to people is give them false praise and false hope, so. If there is just no reason for you to get rid of the incumbent provider, just don't waste

Time is money and don't waste their time.

Not accepting responsibility for your own mistakes

There are a lot of things where things go wrong and it's the plan provider's fault. It could be the third-party administrator (TPA) who administers the plan incorrectly because of misreading the plan document or it could be a financial advisor who didn't remove an investment option despite the investment policy statement calling for it. Plan providers deserve scorn when they don't competently complete their job. However, when it's your fault, accept responsibility for it. If you're late with the salary deferral deposits into the 401(k) plan, that's your fault. If you provide incorrect information to the TPA through the census or neglect to inform them that you acquired a company that does or does not have a retirement plan, it's on you. If you are constantly canceling a meeting with your financial advisors and haven't abided by the terms of your investment policy statement in replacing an investment option, the blame is on you. They say that you can lead a horse to water, but you can't make



the time of the plan providers giving you a quote. I can count on one hand the plan providers or clients who wasted my time and had no qualms doing so. Time is a valuable commodity for anyone in business, so be mindful of that when seeking out other plan providers that will be helping you do your job as a plan fiduciary by giving you a quote and won't be getting your business.

him drink. A solid plan provider such as a TPA or financial advisor could help your plan remain in compliance, but you still have a responsibility not to get in their way by doing something foolish. Recently, I had a plan sponsor fighting with a TPA over incorrect information provided by the plan sponsor's accountant. While making unjust accusations against the TPA, I told the

plan sponsor that the unfortunate situation was their fault. Clients pay me for my honest advice and not what they want to hear. I'm sure people don't want to hear something is their fault when it is, but it's not the fault of the plan providers for mistakes you made.

Wanting them to do stuff for free

Years ago, I was completing tax returns as a side business with the hope I'd have enough to start my own law firm (only took another 10 years before my law firm could be a full-time gig). I had a relative that was dating someone that wanted me to do the significant other's tax return for free. They weren't engaged and they weren't married, and this was a hill I was willing to die on. If you do work for free, the recipient of your work doesn't think the work has any value. I refused to do the taxes for free (probably also because I didn't care for the guy either), and it's something I try to follow. The two times that I did retirement plan reviews for free with the advisor saying there would be more paying work down the way, I didn't get any work. So if you don't like working for free, don't demand that your retirement plan providers work for free either. Always put yourself in their shoes, it builds character and empathy, which is a wonderful trait. Recently a TPA told me that an advisor threatened to yank his plan sponsor clients from the TPA simply because there was a fee attached for drafting the Cycle 3 restatements. The advisor wanted the TPA to do them for free, except the problem was as the one drafting the documents, I wasn't willing to waive my fee. Almost all plan providers are not in the business of nickel and diming their clients and some work and charges are compulsory, such as a plan amendment and restatement. It costs plan providers time and resources to do their job, so free work can't support them or pay their employees. Years ago, I had a lumber company ques-



tion me as a TPA attorney that the tack-on amendments were merely a mail merge document, so I should be charging less, he got a little defensive when I asked him about how much cost the lumber he was supplying to his customers. If every client asked their plan provider to do something for free, they'd probably have to close their doors. If you don't give away work for free, don't expect plan providers do the same.

Getting in the way of their work

I had a friend in student government at Stony Brook that once proclaimed that he was the stick on the wheels of corruption. I loved that comment and have been ripping him off in one fashion or another for the last 25-plus years. When it comes to your retirement plan providers, don't be a stick in the wheels of progress. They have a job to do and you pay them for that job. Don't get in their way of doing their job and let them do their work. If your TPA asks for a census request, any delay will delay your compliance testing and valuation from being done, as well as the Form 5500. If you don't comply with your auditor's requests (if your plan requires one), then the audit can't be done. you need one for your Form 5500. Failure to conduct fiduciary meetings with your advisor by you delaying them puts you in harm's way because

it's a breach of your fiduciary process. The best thing you can do as a plan sponsor is to get out of the way of the work of your plan providers.

Treating them disrespectfully

I treat people the way I wanted to be treated and it usually works out well. When dealing with retirement plan providers, you should treat them well if they treat you well. Even if they make mistakes, there is absolutely no point in treating them disrespectfully. We all make mistakes, we aren't perfect. There are ways to

deal with plan provider errors without looking like a bully when you're angry. Retirement plan providers are professionals and they should be treated with some respect because they are servicing you. Treating them with disdain, even if they make an error, isn't going to help in crafting a solution for the error. There is no point in losing your cool for any issue because it doesn't offer the solution you need. You get more with honey than you do with vinegar.

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