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THE ROSENBAUM LAW FIRM P.C.

ADVISORS ADVANTAGE
A Publication for Retirement Plan Professionals

A "Crystal Ball" On Life After The New ERISA Fiduciary Rule.

We can see the future if we look closely enough.

The Department of Labor's (DOL) new fiduciary rule that is going to go in effect in April 2017 is going to have a profound change in how financial advisors work with their retirement plan clients. It's unchartered waters, since this is the first time that the rule has been changed since the implementation of ERISA was made effective in 1976. This article's purpose is to serve as a crystal ball to predicting the changes the fiduciary rule will have on the retirement plan business.

To read the article, please click here.

It's time to look at your books of business.

Time to look at it now.

Broker-dealers are certainly in a bind to comply with the new Fiduciary Rule and one aspect is sending disclosures to IRAs and qualified plans. This may be a good time for all type of plan providers such as brokers, registered investment advisors, and third party administrators to take a stock of their plans that are on their books.

Broker-dealers may find qualified plans on the books for companies that may no longer exists, which can certainly be a compliance headache especially fix it's an abandoned plan. There are plans on the books that are as obsolete as an 8 track like SAR-SEPa and Keogh plans, there may be money purchase plans that should have been merged into the employer's paired plan when the cap on deductible contributions to a profit sharing plan was increased in 2002. There are just so many plans that you might have on the books that have fallen through the crack because the company sponsoring may no longer being around or you might have forgotten about it.

While brokers try to figure out which type of plan gets the IRA or ERISA disclosure, this maybe a good time for all plan providers to check the plans on their books and whether some plans may need their attention for one reason or another.

Face facts: Retirement Plan Sponsors Only Seek Help When They Need It.

They are reactive, not proactive.

When I was at that semi-prestigious law firm many moons ago, I developed this plan review called the Retirement Plan Tune-Up. I'd look at the plan document, plan design, costs, the Fiduciary process, basically anything that the plan sponsor can grow at me and I'd do it for $750.

When I started my own law firm, I kept that program and even had brochures about it. I gave speeches at some great 401(k) Rekon events to tout them as well and I'll be honest, maybe I've done about 10 of them in 8 years. The fact is that most plan sponsors tune out the need to take care of their plan and usually only take care of it when it needs to. Plan sponsors for the most part are reactive rather than pro-active. They don't understand the threats to liability as a plan sponsor until it happens to them.

I'm not trying to be mean or to denigrate Plan sponsors. The fact is they're busy with running their business and they don't understand the nature of fiduciary responsibility and the continued need for vigilance. Some plan sponsors, but most don't and that is always going to be an uphill battle.

My opinion on Payroll Provider TPAs.

Just my two cents.

If there is one opinion that I have that is argued about many times is my two cents in the use of the largest payroll providers being in the Third Party Administration (TPA) business. Usually, the people who criticize my opinion tend to work for those payroll providers.

My opinion is my opinion, it's based on 18 years experience as an ERISA attorney, I doubt you can say my opinion is biased since I haven't worked for a TPA since 2007.

I believe that the TPA business is a very tough job, it just shouldn't be someone's ancillary business if you just see it as just an offshoot of your primary business. My problem with payroll provider TPAs is that they require too much of the plan sponsor to do the heavy lifting, aren't very creative in plan design, and they take an assembly line approach to retirement plans. Henry Ford once said you could pick the color of a Model T as long as it was black. Offering retirement plans on some sort of plain vanilla prototype with no discussion of other designs and combo plans with cash balance or defined benefit is malpractice if it costs the plan sponsor money by not

maximizing the use of employer contributions.

The McDonalds approach to fast food is fine, but retirement plans administration isn't something that you could quickly push out. Payroll Provider TPAs aren't a black or white issue; I'm sure a three employee company using safe harbor 401(k) might be a good fit. For most plan sponsors, it's not. I've seen less problems with standalone TPAs than those two big payroll providers in terms of issues and plan errors. Standalone TPAs have less of a churn rate than payroll provider TPAs, they have larger plans, more plans under administration, and are more efficient in plan design. In addition, What payroll provider TPAs forget to tell you is that if you fire them as a TPA, they'll fire you as a payroll customer and that payroll integration they talk about is something they offer to other plan providers like Empower. If payroll integration is such a big deal, why do they offer it to competing TPAs?

Again, it's my opinion based on 18 years of experience. Believe me, I'd make more money as an ERISA attorney by keeping my mouth shut about this because when you speak out against these big payroll providers, they don't refer you much business.

Rollovers are going to be a rough business.

It won't be easy to make money .

I have been saying all along that rollovers are going to be a very rough and difficult business after the new Fiduciary Rule gets final. You can just tell by the Department of Labor's (DOL) stance in their Fiduciary Rule Q&A.

According to Q&A 14, even an advisor who is going to charge a level fee to meet the best interest contract exemption must get information on an existing plan in order to determine whether it's in the best interest of the plan participant to rollover assets from that plan. Even if the advisor can't get that plan information, they must seek out alternative sources such as the Form 5500 or a reputable benchmark to demonstrate that it's in the participant's best interest to rollover. While this documentation requirement is stated in the level fee provision of the Best interest contract exemption, the DOL reiterated that any Fiduciary seeking such best interest standards should engage in a prudent analysis of factors and considerations to show that the rollover is the right thing for the Fiduciary to do.

So the good old days where closing the case was all about filling out rollover forms, the burden is going to be on the advisor to demonstrate that a rollover is in the former participant's best interest.

Special Deal on that401ksite.com Advertising.

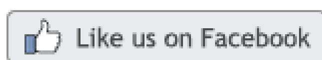
Time is going to tell.

With a successful late September launch, that401ksite.com is still accepting content from all retirement plan providers. Even if you published the articles on your own site, we're always interested in airing interesting content.

In addition, we're rolling back

advertising rates by 25% in order to interest retirement plan providers like you to advertise the only news site about retirement plans that is trying to attract both plan sponsor and plan provider readers.

Rates will now start as low as $750 annually (for our plan provider directory) and will also include discounted banner page ads. Please contact me for more information on advertising or article submissions.



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The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
516-594-1557
Fax 516-368-3780

ary@therosenbaumlawfirm.com
www.therosenbaumlawfirm.com

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