

# Simple Advice to Retirement Plan Sponsors

By Ary Rosenbaum, Esq.

I don't know about you, most of the advice I got growing up was usually wrong. Maybe some very unsuccessful people surrounded me when I was younger, but advice can be biased and self-serving at times. The best advice I would ever get was from successful people with great people skills and confidence in their own abilities. The problem with advice given to plan sponsors is that it's often self-serving by the plan providers who want to maintain or get the business from plan sponsors. So this article is simple advice to retirement plan sponsors that you can take or leave, I won't be offended. Of course if they don't take it, it may cost them.

## Remember why you put the retirement plan in the first place

They say the road to hell is paved with good intentions and whoever coined that phrase must have been a retirement plan sponsor because fiduciary responsibility and potential liability can be a headache. As a plan sponsor, you should always remember why you put it in the first place, to save for retirement for yourself and for your employees. If you never lose sight of that, then it makes it easier to understand your responsibility as a plan sponsor/fiduciary. When you remember that your money is there and you employee's money there, you become more vigilant. If you forget that and treat the retirement plan like that dirty K-cup machine in the break room, your plan is going to

be as disheveled as that coffee machine.

## Less is more when it comes to 401(k) fund lineups

We are a country of excess, just look at the national average weight. We usually think that more is more, so food portions at the local national chain restaurant can

be as disheveled as that coffee machine. While it may seem like a good idea to offer 30+ mutual funds in the plan because we think more choice is good, it actually overwhelms plan participants so much that they decide not to defer and actively participate in the Plan. Information overload isn't something any plan sponsor wants to provide plan partici-

pants, but it's an unintended consequence of giving too many choices. There is no reason that any plan should include more than 12-15 mutual funds (not including target date funds) because that should be enough to be a good cross of diversified investment options.

## Blind loyalty to plan providers is bad

I have worked at places where the employer had loyalty to employees and it usually was misplaced. Too often, employers think that employees are loyal and that loyalty deserves reciprocity just because they have been there so long. Longevity should not be confused with loyalty because some employees are too incompetent to go somewhere else. Being loyal to someone or to a provider should be more than longevity. When it comes to

plan providers, loyalty can be a reward for competent plan providers and it's a disaster if you have an incompetent plan provider. There are many reasons to have long-term providers because of cost, familiarity, and competence. Keeping a plan provider just because they have been there for that long reminds me of the actuary who wasn't good at his job and who we could never bring out for a sales meeting. Too often, I had



feed a Bulgarian weightlifter. The problem is that many times, more is not more, less is more. Eye makeup, men's cologne, and Old Milwaukee beer are examples of when less is more. The same can be said with 401(k) fund lineups where participants direct their own investments. Studies have shown that the more investment options available under the Plan, it has the unintended effect of depressing plan participa-

to fix major errors with retirement plan clients because of the incompetent work of plan providers. After fixing these errors, the plan sponsors state that they can't believe because they were using that provider for so long. There is nothing wrong with being loyal to plan providers, but you still need to benchmark fees and review their work. Blind loyalty will make you blind to the problems that might be affecting your Plan.



fees, plan design, and plan provider services on a regular annual basis. Reviewing isn't enough, you also need to memorialize these reviews to cover your "rear-end" in any potential litigation.

### **Picking providers just on cost is a big mistake**

Plan sponsors have a fiduciary duty to pay only reasonable plan expenses. That doesn't mean that a plan sponsor has to pay the lowest plan expenses, it just has to be

### **Plan design is more important than you think**

If you had two accountants and they both prepared tax returns to the letter of the law and one could get you a \$1,000 refund and another could get you a \$5,000 refund, who would you pick? Retirement plan design is a pretty hard concept for even retirement plan professionals to understand, so laypeople like plan sponsors don't understand it and don't value it. Like the accountant who could produce a better tax return, a good retirement plan design could help a plan sponsor like you maximize retirement savings for the highly compensated employees which means larger tax deductions. The best example is the work I did for a 75-year-old attorney many years ago. He had a self-employed pension plan where the maximum contribution at the time was \$49,000. I was able to have an actuary design a defined benefit plan where he could put away \$230,000 instead. That's a lot of shekels. Thanks to concepts such as cash balance plans, safe harbor 401(k), and new comparability/cross tested plans, you could save a lot more for retirement than just using a plain vanilla plan design where everyone gets the same pro-rata contribution. So when it comes to selecting a TPA, one should always consider whether the TPA is proficient in plan design because there are many that are not. Picking a TPA that doesn't have plan design expertise may require more mandatory contributions to the rank and file employees or not enough contributions to the highly paid.

### **There isn't anything out there that is a fit for every retirement plan sponsor**

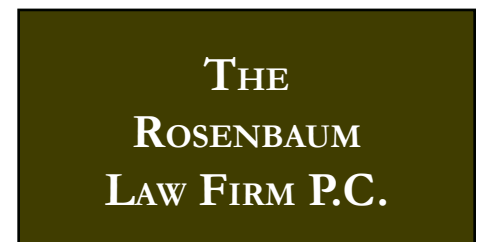
Retirement plan service providers are

very creative in crafting retirement plan solutions for their current and potential plan sponsor clients. These solutions may be a sophisticated plan design such as safe harbor or a white glove fiduciary solution like an ERISA §3(38) or ERISA §3(16) service. While these can be great solutions for many or most retirement plans, it's not a solution for everybody. For example, an ERISA §3(38) fiduciary is a great solution where a financial advisor will exercise discretionary control over the fiduciary process and assuming the liability that goes with it. While delegating control of the fiduciary process maybe a great idea, retirement plan sponsors that have proven that can effectively manage the fiduciary process don't need to give it up. A safe harbor 401(k) plan design is a great tool when combined with a cash balance plan and/or new comparability plan, but if a plan sponsor can't afford employer contributions and/or if the plan's compliance testing isn't an issue, it's not necessary. Retirement plan features are not one size fits all, it needs to fit the actual needs of your plan.

### **Being a plan sponsor is a never-ending marathon**

When retirement plan sponsors start their plan, they act like they are running a 100-yard dash. They are so quick to get everything in place and hire the plan provider, but then stop when everything is done just like the finish line at 100 yards. However, being a plan sponsor is a never-ending marathon. The race to keep the plan running and avoiding liability is a never ending marathon because a plan requires constant monitoring and upkeep. You should treat running a plan like a marathon, so that means proper pacing and regular intervals of plan review. So you need to review

reasonable based on the services provided. A plan sponsor can determine reasonableness by shopping the plan around or by benchmarking fees. One of the biggest fears concerning the fee disclosure regulations that were implemented in 2012 was that there would be a race to zero and plan sponsors would gravitate towards plan providers that charged the lowest fees. Picking a plan provider just based on their low fee is an absolute mistake. While there are many low cost plan providers that do a good job, there are those no frill providers that aren't good at what they do and will end up being more expensive when the plan sponsor has to pay to fix compliance mistakes caused by incompetent low cost providers. There are many reasons to pick a plan provider, just because they charge the lowest fee shouldn't be the only reason in selecting a plan provider.



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