Predictions In The 401(k) Space

By Ary Rosenbaum, Esq.

Whether it's a presentation or an article, predictions over the future don't usually add up. Sure, then the 1964 World's Fair predicted video phone calls, we all still don't have our jetpacks, and an article on the Mets in the late 1980s about Fritz Polka being the starting catcher was way off. Yet certain predictions can't be way off base, because these things will be inevitable. I'm sure most people who went on the Web in the mid-1990s knew streaming video would be a thing. So here are some predictions about 401(k) plans that plan sponsors may want to keep tabs on, to see if this will be an issue down the line.

100% Vesting of Employer Contributions

When Red describes how Andy was able to escape by using his rock hammer to tunnel his way out, he says that what you need is pressure and time. When it comes to the history of vesting schedules before and after the implementation of ERISA (Employee Retirement Income Security Act of 1974 for those scoring at home), we notice a trend. The trend is lowering the requirement for participants of years of service to get full vesting of their employer contributions (salary deferral contributions are always fully 100% vested). Pre-ERISA, a participant terminated after 20 years of employment, could be denied any type of pension benefit. After ERISA and through Internal Revenue Code changes, the maximum is 6 years for vesting. Since this country doesn't provide much of a benefit under Social Security, people are living longer without much retirement savings, I expect there will be a time when there will be full and immediate 100% vesting for all employer contributions. Since the maximum right now is 6 years, I expect it will be some time before that takes place, but with enough pressure and time, it's inevitable.

A revisiting of fee disclosure

One of the greatest changes in the retirement plan business I witnessed was the implementation of fee disclosure requirements in disclosing administrative fees to plan sponsors and participants for daily valued 401(k) plans. It was needed because plan sponsors have a fiduciary duty to determine whether the administrative fees for their 401(k) plan are reasonable if participants pay for it. That was a problem when plan sponsors would have no idea how much their Third Party Administrator (TPA) was collecting in direct and indirect fees. For example, a plan sponsor could have thought their TPA wasn't charging them for anything or at a very low price without being told by the TPA that they were being compensated by undisclosed payments made by the mutual fund company. There was so much uproar over undisclosed fees and much litigation against larger companies sponsoring 401(k) plans, that the Department of Labor (DOL) implemented fee disclosure regulations that became effective in 2012. The fee disclosure regulations and technological improvements in the marketplace have caused fee compression, so plan sponsors are paying less in fees as a percentage of plan assets. The fee disclosures aren't perfect, there are improvement needs. One of the biggest mistakes that the DOL made with fee disclosures is not creating a boilerplate, uniform template that all plan providers should use. Uniformity would be great, but would be better is force plan providers to draft fee disclosures in a language that plan sponsors and plan participants could understand. I don't believe you need an ERISA attorney or a forensic accountant to figure out what these fee disclosures mean. Plan sponsors and participants shouldn't require some ERISA training to understand the fees being charged directly or indirectly to the Plan.

They won't get rid of the 401(k)

There have been so many criticisms over the years about 401(k) plans and how they destroyed defined benefit pension plans. The fact is that these private sector pension plans were going to be phased out regardless of 401(k) plans because the increased life expectancies mean more people live past 65 and employers were going to find that these plans were just too expensive to run. The negative part of 401(k) plans when compared to pension plans is that the bulk of the funding for retirement is shifted to the 401(k) participant. That won't change. Any idea that somehow, we can replace 401(k) plans with some government plan isn't going to fly, just like socialized medicine. The retirement plan industry, most employers, and most participants would fight any attempt to "nationalize" retirement plans, probably because of how the Federal government has managed Social Security, with the lack of a trust fund that could be invested to cope with a population that is growing larger and older. People will complain up and down about 401(k) plans and while I admit these plans have issues, no one has ever come up with a retirement plan idea that was better.

There will be more retirement plan coverage mandates

The push by states requiring employers to have a retirement plan or join their state IRA program will continue, as will the Internal Revenue Code requiring employers to allow long-time, part-time employees to participate in the salary deferral component of their plan. Since no one has a better idea than a 401(k) plan, we need to make sure more and more employees can have access to retirement plan coverage. More and more states will continue to pass laws, requiring retirement plans for employers with employees and some major states that have passed that law will enforce the law by finally offering their program, such as my home state of New York. While many employers will sign up with their home state plan, many employers will opt to have their own plan or join a Pooled Employer Plan, since again, people don't trust the government with the running of retirement plans. As far as including employees under current 401(k) plans, I think the push for including long-term, part-time employees and cutting back their eligibility from 3 years to 2years will eventually lead to a requirement that there will be no eligibility requirements for someone to participate in the deferral component of their 401(k) plan since the plan could still be tested as if they had a one-year eligibility wait.

Push for annuity products

They say what is old is new again and styles eventually come back, except for style from the 1970s. While we spent the first part of this millennium eliminating annuities as a payment option from 401(k) plans that didn't need it, concerns over lifetime income for retirement, have renewed the push to add annuity products into 401(k) plans as a payment option. Expect a further push for these options, as well as offering relief from plan sponsors in liability for offering these options. I won't be surprised if there was some mandate requiring plan sponsors to offer a lifetime income option within their 401(k) plan.

Bitcoin will be allowed in a 401(k) plan

They say timing is everything. Plan providers who wanted to offer it in 401(k) plans, planned for it when Bitcoin was $60,000 and launched it when Bitcoin was less than $20,000. Even though Bitcoin is the greatest investment I've ever made, I was vehemently against it being offered within 401(k) plans because the DOL was against it. The volatility of crypto was one thing, security was another issue. The introduction of spot Bitcoin and Ethereum Exchange Traded Funds (ETFs) means that Bitcoin and Ethereum investments will be allowed in 401(k) plans. The ETFs have helped eliminate much of the volatility of Bitcoin as well as security issues as they can be held in a custodial account, rather than a virtual wallet that can be hacked. A change in administration regardless of who wins, may install a DOL that will be friendlier to crypto investors and providers. But if the Securities and Exchange Commission is OK with ETFs, the DOL will eventually be too.

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