An Employer's Guide for Selecting Retirement Plan Providers

By Ary Rosenbaum, Esq.

Too often, retirement plan providers are selected at the family dinner table, the golf outing, or a house of worship. While those are nice places for social gatherings, they are not the ideal place for selecting plan providers. Selecting competent plan providers is part of your fiduciary duty as a plan sponsor. So selecting a provider must be through an actual process where you review potential providers in each area (administration, financial advisory, ERISA attorney and auditors (if needed)) before selecting one and document the entire method of selection. So this article is about what you should look for in selecting a retirement plan provider.

Number of plans

When looking at potential providers, ask for the amount of retirement plans that they handle. Now this doesn't mean that you should pick a provider just based on who has the most plans because that it is not a measure of competence, it just means that you need to make sure that any provider you may work with is either not a fly by night operation or an operation that treats their spot in the retirement plan industry as a hobby. Hiring a financial advisor who only handles one retirement plan probably isn't a good idea nor is a third party administrator (TPA) that handles 5 plans.

Types of plans

There is no retirement plan provider out there that handles all types of retirement plans in all different sizes. So you need to find retirement plan providers that are a good fit for your plan. A TPA that only handles defined benefit plans isn't a good fit if you have a 401(k) plan and the financial advisor who only handles plans with more than $25 million in assets is probably not good for you if your plan has less than a $1million. When hiring an ERISA attorney makes sure that they handle the types of plans you have because there is a large difference between single employer retirement plans and multi-employer (union) plans. Every retirement plan provider has their own niche, so it's important your plan meets their niche and their services meet your needs.

Bonding and Liability Insurance

Make sure that any potential retirement plan provider has enough insurance, which actually protects you. Whether it's errors and omissions; fiduciary liability, or malpractice insurance, it is important that your provider hast the protection to compensate you if something goes wrong. A TPA with no insurance is of no use to you if they have caused an error that costs you in liability and/or penalties and they close up shop because they can't afford to compensate you.

A Clear Fee Structure

While the Section 408(b)(2) regulations require all plan providers to provide you with disclosures of their fee structure, there is still enough retirement plan industry jargon to confuse you. For example, a TPA can have many different ways they charge a fee so it's important you understand them. A TPA can have an asset-based fee, a fee base on participant head count, or a flat fee as well as charges for distributions and plan document work. A TPA can charge you, the plan, or be compensated by a third party such as revenue sharing payments paid my mutual fund companies. An ERISA attorney can charge you a flat fee (that's what I do because plan sponsors deserve cost certainty) or by the hour and even charge you for any disbursements they made (including copies and mailings, which I never do). While registered investment advisors (RIAs) charge an asset based fee, there are some that charge a flat fee. Brokers can be compensated in a variety of ways including receiving 12b1 fees that mutual fund companies pay. So identify all potential fees and contact a provider if you don't understand their fee.

Breadth of services offered

Not all plan providers of the same type

offer the same level of service. An unbundled TPA may offer different services than what is known as a bundled TPA. A TPA may offer you a day-to-day contact for your issues or offer a team approach of plan contacts, When it comes to financial advisors, a registered investment advisor can be a plan fiduciary while a broker cannot. You can hire an RIA to serve as an ERISA §3(38) fiduciary, a §3(21) fiduciary, or as a co-fiduciary. That's important because an ERISA §3(38) fiduciary can eliminate almost all your liability in the fiduciary process while a co-fiduciary role will not. An ERISA attorney from a law firm can offer you an attorney-client relationship while the ERISA attorney working for a TPA can't. So while reviewing potential plan providers, identify the services they offer so you can make a comparison between potential providers of the same type. In addition, make sure you get the services that you want from a provider. If it's important to have a snazzy participant website for your 401(k) plan, don't hire the provider whose website looks like it was created back in the day of Netscape and Mosaic. Not all providers are alike and neither are their services, you can have high end, mid-range, and no-frills service. So you certainly need to know what services any potential provider is offering. Treat retirement plan provider shopping like shopping for car. You have enough different makes, models, and price levels to get your head spinning.

Qualifications and Experience of the Professionals Involved

When reviewing potential plan providers, find out about the professionals behind these providers. Find out what their qualifications are and find out about their experience. Now don't select a provider just because one provider has been longer in business than another because years of experience is not a true measurement of competence because there are enough people in the retirement plan industry with more than 25 years experience that are incompetent because I know, I worked with a few. Check that the financial advisor is properly licensed and the ERISA attorney is admitted to the bar. Plan sponsors have been defrauded in the past by plan providers who either didn't have the right credentials or lied about the credentials they claimed to have. A TPA where your day-to-day contact has credentials with ASPPA (American Society of Pension Professionals & Actuaries) is probably a better fit than the TPA whose administrators have limited training.

Recommendations from other plan providers

There is nothing wrong with asking your current plan providers for a recommendation for another non-competing provider. So asking your financial advisor for a TPA or ERISA attorney recommendations is usually a good idea as long as the recommendations are free from any bias, which is less likely if the current provider offers you 2-3 recommendations. A few years ago there was a story about a TPA that recommended their clients a specific plan auditor only for it to be discovered that the principals of the TPA were principals in that auditing firm (I know the story first-hand). The best recommendations are independent without any bias.

"Google" or research the potential provider for any potential issues

A few years back, I hired a waterproofing company to add a French drain to my house as I had flooding issues in my home. If I had bothered to check the Better Business Bureau, I would have seen the complaints this business and could have avoided hiring them and complaining about them later. So it's important to 'Google" (Yahoo is OK too) or research any potential plan provider for any issues with clients as well as any Internal Revenue Service or Department of Labor investigations or sanctions. For financial advisors, check FINRA's website and Brightscope.com. So if someone is touting himself or herself as a fiduciary and you "Google" them only to discover that they were under DOL investigation for most of the issues that a good fiduciary would protect you against, it's best not to hire them. Being a fiduciary requires the highest standard of care at law and the last thing you want to do is put your truth and responsibility in with a provider that does not have a sterling reputation.

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