

# Straight Talk for Retirement Plan Providers

By Ary Rosenbaum, Esq.

When I had the idea of starting a National ERISA practice 8 years ago, I knew I would have a tough time in getting clients especially when the law firm I was at had partners that weren't interested in selling my services to their clients. So I figured an easy way to market myself and network with other providers around the country is to provide content. You help a plan provider with articles that they can help themselves or market their services; they're going to remember you when they have retirement plan clients that need an ERISA attorney. I also had and still have an open door policy for providers to just give me a call without a bill due. It's straight talk and this article is also straight talk about some of the challenges in being a retirement plan provider.

## Where the business has come from, where it's going

I started in the retirement plan business 17 years ago and it's changed quite a bit. Technology has certainly helped, the Internet has automated many tasks

of retirement plan administration such as investment trading that used to be done manually back in the day. Even distributions can be made and approved with a click of a mouse on a website. In the old days (I would debate whether they were actually the good old days), plan providers weren't that much interested in fiduciary responsibility and other issues

that would retirement plan sponsors at risk. Plan costs were never a concern as many plan providers were paid far more than they were worth. It was all about assets and per head charges, charging a reasonable fee for the services provided weren't a consideration when fees weren't disclosed to plan participants. There were many more advi-

navigate the treacherous ocean of potential liability in being a plan fiduciary. For the third party administrator (TPA), it's a known fact that fee disclosure and technology has thinned profit margins. In addition, it's hard when plan sponsors don't know the value of a good TPA and don't understand the tradeoff when they pick a provider just based on price.



## It's all about limiting a plan sponsor's liability

People sometimes hate when I break down things into more basic terms, it didn't do me any favors working as an attorney at a law firm. Despite all the hoopla, bells, whistles, and fancy websites, what a plan provider needs to provide is very basic. The job of any good retirement plan provider is to minimize/limit a plan sponsor's liability, that's it. The nice charts, education/enrollment meetings, and website are great, but what really matters is that a plan provider does a credible job at shielding the plan sponsor from liability. Whether it's providing investment advisory services or TPA services or legal advice or auditing service, every service provider is in the

business of providing services that will limit a plan sponsor's liability. As a retirement plan provider, you need to know that basic concept because that's what matters most. The financial advisor who thinks they're a Broadway star or the payroll provider that just sees TPA services as just an ancillary service miss the boat on what they are there for. Know your role in helping plan spon-

sors in the retirement plan space, especially those advisors who dabbled in the business by maybe having 1-2 retirement plans on their books. Technology, litigation, and regulation have required advisors to become more specialized in handling retirement plans. Being an advisor is more than just picking funds, it's being an ombudsman to the plan sponsor in helping them

sors out. It's not about the glory; it's about limiting their liability.

### **Being cheap is not something to advertise**

When the fee disclosure regulations were implemented, everyone predicted that there was going to be a race to the bottom when it came to fees. So many plan providers thought they would take advantage by lowering their fees and championing their low fees as some sort of advertising advantage. I think advertising oneself, as a cheap plan provider service is a mistake. Cheap in price also infers cheap in service and I don't believe that retirement plan sponsors purchase retirement plan services just based on

price. There is nothing wrong with advertising that you are cheaper than the current plan provider as long as you can also demonstrate that you are providing more in service. So if the incumbent broker of record on a retirement plan is netting 50 basis points and the plan with doing little work and you're offering ERISA §3(38) services at half the cost, that's something to advertise because you are offering more in services for less of a cost. Cost is an important consideration as it relates to amount of services received for that cost. A plan sponsor does not have to pick the lowest cost provider; they need to only pay reasonable expenses for the services provided. Everyone forgets the "for the services provided" line, you can't afford to.

### **Avoid deriding the competition**

Years ago, there was a retirement plan provider that was under Department of Labor investigation. So every other plan provider searched through the Judy Diamond database and contacted their clients. These providers would mention that their current plan provider was in the papers and not for the right reasons. Quite honestly, I don't think any of these plan providers



got any clients from these calls. It's because when it comes to pick plan providers, a plan sponsor is going to select them based on what they like and not just to leave another plan provider. When you're soliciting prospective clients, criticizing the current provider will only take you so far. Plan sponsors will hire you for you, not just for complaining about the status quo.

### **Always be open to new ideas**

History is littered with businesses that refused to change with the times. Ask any shareholder or employee of Blockbuster Video. Regardless of the plan provider you actually are, it's always important to know what's out there in terms of a retirement plan business that is always changing. The retirement plan industry is littered with defunct plan providers that either refused to change or was too slow to change. That could be the TPA who didn't think there was a future for 401(k) plans or the financial advisor who didn't think they needed to actually service their clients. A registered investment advisor who says that ERISA §3(38) services is just marketing is someone that isn't open to new ideas. As a retirement plan provider, you can't afford not to have your ear to ground and

understand what's out there. I always tell the story of the producing TPA that I worked for where I emailed my bosses about how we should embrace automatic enrollment because it would help with compliance testing and increase assets under management, 9 years later and I'm still waiting to hear from them.

### **Embrace Technology**

Whether it's using the Internet to hire a provider that will provide investment advice to plan participants or websites that will streamline administration, you always need to embrace technology because technology will only help your

business. Ask any retirement plan provider that's been in business for more than 15 years and they are likely to tell you how technology has made their jobs as retirement providers easier because technology creates efficiency and efficiency lowers cost, which then allows the provider to be more competitive in their costs to the client.

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