

Financial Advisors Need To Value The Art Of Retirement Plan Design

By Ary Rosenbaum, Esq.

Back around 35 years ago, beer in this country was considered a mass produced, mass marketed business offering very low quality, light lagers. Beer was less of an alcoholic beverage and more of a slogan that was less filling or tasted great (while making Rodney Dangerfield a household name). Schlitz, which was at one point was one of the most popular beers in the country lost its popularity because to meet growing demand, affirmatively decided to cut corners and change their brewing and fermentation process by using cheaper ingredients. For beer lovers that wanted a better quality beer than what the American mass producers were making were left to drink foreign beers. That all changed in 1984, when Jim Koch co-founded the Boston Beer Company, which produces Samuel Adams beer. Samuel Adams Boston Lager was proof that there was a demand in this country for top notch beers with high quality ingredients. Boston Beer Company (now the largest American owner brewer) led the explosion of new micro breweries and a craft beer movement. Brewing no longer became just a simple business, it became an art form.

When it comes to the retirement plan business, very few people understand the role of a third party administration (TPA) firm. People who are not experienced in the business feel that all TPAs do is recordkeeping and/or performing simple mathematical discrimination tests. Very few plan sponsors and their financial advisors understand the value of a good TPA and their role in retirement plan design.

There are many TPAs out there that are like the mass producers of American beer, who churn out retirement plan designs that try to fit one size for all even though plan sponsors come in with all different shapes and sizes. Then there are other TPAs who take retirement plan design to an art form, which helps plans sponsors maximize contributions to their highly compensated employees, which in turns maximizes tax deductions and tax savings.



In sports and in business, you are only as good as the team that you are on. I have been on some good teams and not so good teams, so I know that sometimes I was only as good as an ERISA attorney if my fellow employees were good as well. So I am often surprised how financial advisors are not conscious of the team they need to help their clients or are very ho-hum about the team they select.

While financial advisors don't need to become experts in retirement plan design and administration, I believe that the coming changes in fee disclosure and the

change of the definition of fiduciary will require financial advisors to have more of a background in retirement plan issues. So while financial advisors don't have the time to learn about plan design or fiduciary liability issues, they need to work with the experts that do such as a TPA and an ERISA attorney.

A big part of my practice is working with financial advisors (for free) in developing a team approach in working with their clients and potential clients. That approach always requires the use of a good TPA and the use of a TPA will depend on location, cost, plan type, and plan size.

Plan sponsors and their financial advisors for the most part, don't know the value of a good TPA until they replace a bad TPA. A good TPA will administer and record keep the plan correctly, which will minimize potential fiduciary liability and plan sanction/disqualification. In addition, one of the most important functions of a good TPA is plan design.

Plan design to me is an art, or a game like Chess. It's also like logic in 9th grade math. It's putting a complicated puzzle together and requires a thorough proposal. Too often, a payroll provider or a bundled provider or the not so good unbundled TPAs treat retirement plans as if they came off an assembly line. In my mind, there is no cookie cutter approach to retirement plans in their design and in their plan documents. Every plan sponsor has different employee populations, needs, and financial resources. An ERISA attorney and/or a good TPA will sit down with the client and review their needs for a new

plan or to improve an existing plan. Based on the information collected, the ERISA attorney and/or the TPA will develop a retirement plan design that will fit the needs of that specific client. That design may be a safe harbor plan, new comparability plan design, or the use of another plan like a defined benefit plan or a cash balance plan. Through 13 years in the business, I have seen retirement plans maximize contributions for their employees and/or correct administrative errors by the use of a good TPA.

Retirement plans should be like suits, they need to be tailored to the specific needs of the plan sponsor. A plan sponsor that is a law firm has different demographics and financial resources that can support a more generous employer contribution to maximize contributions to highly compensated employees than a fast food restaurant can. Inefficient plan designs can leave money on the table and more money in the pockets of the Federal government because the employer failed to have a plan design that was fully efficient. Plan sponsors that can't afford large employer contributions could add an automatic enrollment feature to help with their deferral discrimination tests by having participants automatically defer a specific percentage of their salary as a deferral if they did not affirmatively opt out of participating in the salary deferral component of the plan.

I have had a client for 8 years now and it was as a result of a meeting that a financial advisor brought me in for because he wanted to close the deal (like Mariano Rivera, I'm a pretty good closer). The plan was being administered by a payroll company. The plan failed the deferral and matching discrimination tests by a wide margin. The owner of the company was getting a refund of \$10,500 of her \$12,000 deferral at that time. A review of the test by the payroll TPA was that the plan could have corrected the failed discrimination test by adding a \$7,500 qualified non-elective contribution. Even though it was there on the testing information, no one bothered to highlight that to the plan sponsor. Needless to say, the client paid the \$7,500 corrective contribution, avoided

all the refunds to the highly compensated employees, and implemented a safe harbor plan design the very next year. This client has been the client of the financial advisor and myself ever since (she thinks we are geniuses) because of this team approach).

I have a lawyer client who called me up a few years back and asked if there was a better plan design for him than the simplified employee pension (SEP) plan he had. Since he came into a \$500,000 fee, he wanted to see if there was something better out there than the maximum \$49,000 SEP contribution. I asked him how old



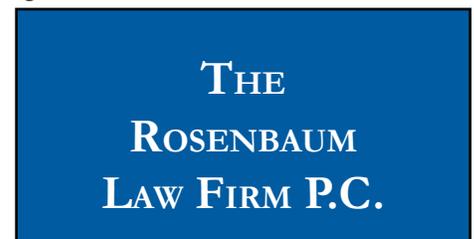
he was and how many employees he had. He hit the jackpot because he was 75 and he had no employees. Working with a TPA, I was able to design and implement a new defined benefit plan with an initial \$230,000 contribution. A \$230,000 tax deduction is a lot better than a \$49,000 deduction, you think?

My good friend, Carlos Tariche heads the New York sales offices for one of the leading cash balance TPAs. Carlos and I meet often when we both have presentations at 401(k) Rekon events for financial advisors. I always joke with Carlos that he's like the most popular girl at the prom because so many advisors that attend 401(k) Rekon want his business card because his presentation on cash balance design is an eye opener. Financial advisors are astounded by the tax savings for the plan sponsor and their highly compensated employees (which usually include the owners of the business) by the use of a standalone cash balance plan or in conjunction with a 401(k) plan.

While not trying to bore you with the details concerning this type of design,

financial advisors should seek out TPAs that offer cash balance plans if they work with plan sponsors that could support such a structure. All good TPAs will promulgate a study to determine whether a cash balance plan is feasible or whether there is another option out there like a defined benefit plan, safe harbor 401(k) plan, or floor-offset arrangement. Every plan sponsor should have their plan design reviewed every few years to determine whether what they have fits their needs. Some plan designs are inefficient; some plan designs are too costly. While it is a plan sponsor's fiduciary duty to have a plan design that fits their needs, a financial advisor who has the right team to assist them will certainly retain their client because of the white glove treatment they offer with the use of a good ERISA attorney and/or TPA.

I have seen financial advisors grow business with the use of a good TPA and I have seen advisors lose business because of referring clients to a bad one. Like I said, you are only as good as your team, so finding the right ERISA attorney and TPA is beneficial for helping a financial advisor grow and retain their business. If a financial advisor ignores the fact that the plan design does not maximize tax savings to the plan sponsor and their highly compensated employees or is too costly, they may lose that client to an advisor that won't ignore that fact.



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