How 401(k) Plan Sponsors Should Deal With Plan Enrollment/Education Meetings

By Ary Rosenbaum, Esq.

Plan sponsors are constantly inundated by articles and plan providers talking about issues dealing with administrative costs, fiduciary responsibility, and general compliance, that there is one topic that plan sponsors usually drop the ball on. It's the enrollment and plan education meetings that they either don't hold or put absolutely no effort into. The enrollment/education meetings are an important part of limiting a plan sponsor's liability when 401(k) investments are directed by plan participants. This article is about why and how plan sponsors need to inject life into plan enrollment/education meetings.

Why they need to have them

The reason why most 401(k) plans are participant-directed is that of the idea that under ERISA §404(c), plan sponsors may have liability protection from losses sustained by participants from the losses made by investments they made in their account. Unlike what most plan sponsors think, the liability protection isn't automatic and it will be minimized or eliminated if the plan sponsor doesn't follow a process to properly manage the fiduciary component of the plan. A plan sponsor must have a prudent process in place to select and replace plan investments and they must actually follow it. Thanks to some great plan providers out there especially financial advisors who understand 401(k), many plan sponsors know about the fiduciary process and know that a best practice is developing an investment policy statement (IPS) that serves as the blueprint for selecting and replacing plan investments and following it. Yet the one facet that I believe many plan providers and way too many 401(k) plan sponsor ignore or pay limited attention to is the plan education and enrollment meetings that participants should attend as part of meeting the requirements of ERISA §404(c). The problem with ERISA §404(c) is that the requirements are vague and such good practices such as the development of an IPS isn't mandated and required. The same can be said of providing investment education and having meetings to inform participants about the plan and general investment concepts. ERISA §404(c) however does require that sponsors provide participants with enough information so that the participants can make informed investment decisions. So that's why at the very least, participants should receive information and at the very least, it should be investment education to talk about basic investing concepts. Handing out summary plan descriptions to participants and Morningstar profiles and wishing them good luck will give little protection to the plan sponsor in terms of liability for losses sustained by participants. That's why 401(k) sponsors and their plan providers (especially the financial advisor) should make sure there are consistent and repeated enrollment meetings for newly eligible participants which should also include an investment education component for the newly eligible and current participants.

They need to go through with it

Plan sponsors need to have these plan enrollment/education meetings and the problem is that many treat it like a visit to the dentist; they try to avoid it as much as possible. Since enrollment/education meetings should tie into the 401(k) plan's entry dates, it's not something a plan sponsor should postponing forever. New participants need to know the specifications of the plan and the investments that are available. Current participants need to know if there are any changes in the fund lineup that could impact their investment selections. Plan sponsors need to understand that holding these meetings aren't just for the benefit of the

participants, they also need to understand that it's a benefit to them by holding them. Enrollment/education meetings are a fundamental component in the fiduciary process in order to limit a plan sponsor's liability exposure under ERISA §404(c).

Keep good records

I don't think it's enough that a 401(k) plan sponsor actually holds a plan enrollment/education meeting on a regular basis. I think they need to do a little more housekeeping in order to limit their liability exposure. I think recordkeeping the activities surrounding the enrollment/education meetings go a long way to helping a plan sponsor limit their liability. As discussed before, ERISA §404(c) liability protection is all about following a process and in order for future use in a plan audit or litigation, it's important for the plan sponsor to document that they actually followed the process. That's why it's important that a plan sponsor takes attendance at all plan enrollment/education meetings. An aggrieved participant suing a plan sponsor will have less of a leg to stand on if the plan sponsor can show that the participant attended the meeting. If they didn't, it's important for the plan sponsor to document the communication they alerted employees to the event. In addition, any plan education materials or presentations handed out to participants should be preserved to show the plan sponsor's process to get that liability protection offered by ERISA §404(c). Good recordkeeping to show how the 401(k) plan sponsor followed the process indicated under ERISA §404(c) will get most, if not all of that liability protection offered under that section.

It's not a funeral

The problem that I have with most enrollment meetings is that I've seen funerals that are livelier. I think too many 401(k) plan sponsor and plan providers treat enrollment/education meetings as if it's being held with a gun pointed behind their back. While these meetings are part of the fiduciary process, they don't need to be held as if it's a trip to the proctologist. These meetings need to be informative, but they could have a little fun. There is nothing in ERISA §404(c) that say these meetings should be as much fun as watching a television test pattern or watching paint try. It's important that the participants be engaged and that means hiring a financial advisor that could actually hold meetings in an interesting way. More engaged participants will likely increase participation, which will help out the employees and the plan sponsor as well. A plan sponsor needs an advisor who can connect with an audience of plan participants. Any licensed broker or registered investment advisor can pick out funds, not everyone knows how to get plan participants engaged. Investment education doesn't have to be dry. All it needs to be done is broken down to a level that participants who don't invest on their own, can understand. Something as simple as offering a gift card for a trivia contest or just a drawing to entice attendance can go a long way in building up interest. Plan enrolment/education meetings are only boring if we let them be boring.

Offer investment advice

As part of the ERISA §404(c) liability limiting process, investment education must be offered. Investment education is all about the basic concepts of investing and the connection to the investment lineup offered under the plan. A good investment education meeting will get participants to understand dollar cost averaging, types of asset classes, and retirement readiness. Investment education is different than investment advice. Investment advice is essentially specific advice on how a participant should invest, based on their background, income, age, and retirement goals. While all participants would get the same investment education, obviously participants wouldn't get the same investment advice. The problem is that not every investment advisor offers investment advice because of the cost of complying with the investment regulation or because they're a broker and they don't get a level fee, regardless of the investment options in the plan. The good news is that 401(k) plan sponsor can still offer investment advice when their financial advisor can't by hiring an outside vendor (usually online) to handle the investment component like my friends at rj20. Plan participants who get investment education have better returns than participants who don't. Plan participants who have better returns than participants who only get investment educations. Participants who get better returns on their 401(k) investments are less likelier to sue than participants who don't do as well. When it comes to offering investment advice, obviously the plan sponsor should weigh the costs of offering it versus the liability protection it could offer.

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