An Employer's "Recipe" for having a Great Retirement Plan

By Ary Rosenbaum, Esq.

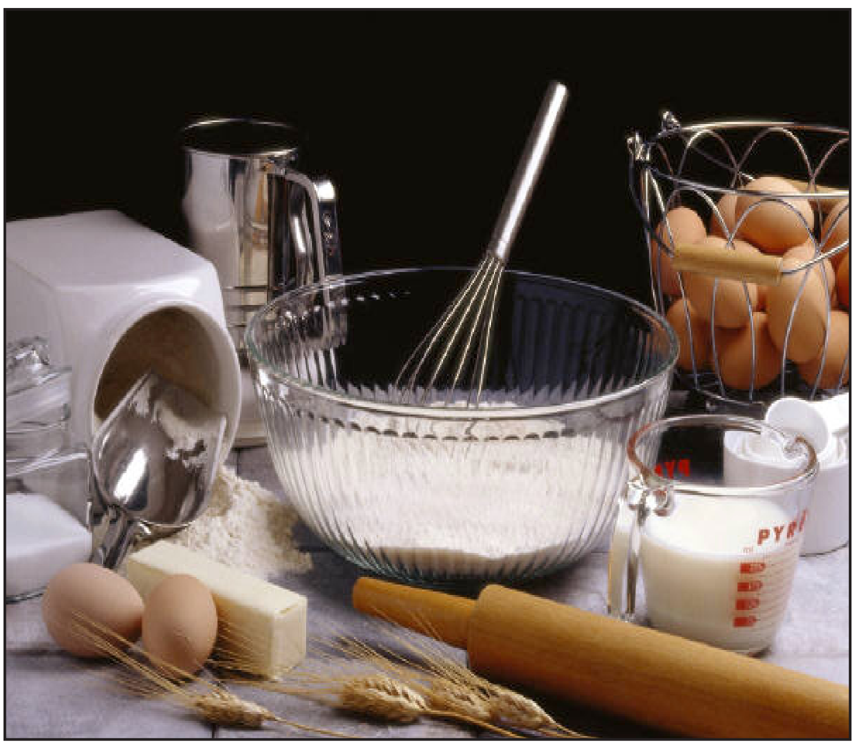
Every good meal needs a good recipe and every good recipe needs good ingredients. While many products out there have secret ingredients (Coca-Cola), others have secret ingredients that aren't (that Big Mac special sauce is essentially Russian Dressing). When it comes to operating a retirement plan, the secret ingredients for the recipe for having a great retirement plan don't have to be a secret. This article will let you know the "secret" recipe for having a great retirement plan.

You, the Plan Sponsor

We can talk all day about what it takes ultimately to have a successful retirement plan, but it starts with you as the plan sponsor. Whether you decide to assume the responsibility yourself or whether you delegate most of that responsibility to an ERISA fiduciary, but it's still your ultimate responsibility to make it so. Like a high school game of pick em, you have to select the providers and put your plan in place. While you have to select your team of providers, you also need to select the team at your office who will serve as the contacts for your plan providers to work with on the day-to-day administration of your plan. Whether that's a full-blown retirement plan committee, your HR staff, or someone in finance, it's important to have someone who can handle the role. The best plan sponsors are those that know what they don't know, but make sure to keep tabs on what their providers do as well as having an open mind.

Paper the process

In school, we were taught to take notes. We need notes to study. When it comes to being a retirement plan sponsor, you need to take good notes and document the process. What is the process? Well, everything that involves a decision in your retirement plans. Selecting and changing plan providers, approving all plan documents, and approving and changing plan investments are some of your fiduciary responsibilities that need to be documented. The reason they need to be documented is not only because you need to have good plan records, you need it to limit your liability. Whether it's being contacted by the Internal Revenue Service (IRS) or Department of Labor (DOL) for an audit/investigation or a lawsuit by an aggrieved plan participant, documenting the decision making process for your plan will go a long way in limiting the liability potential to you as plan fiduciaries.

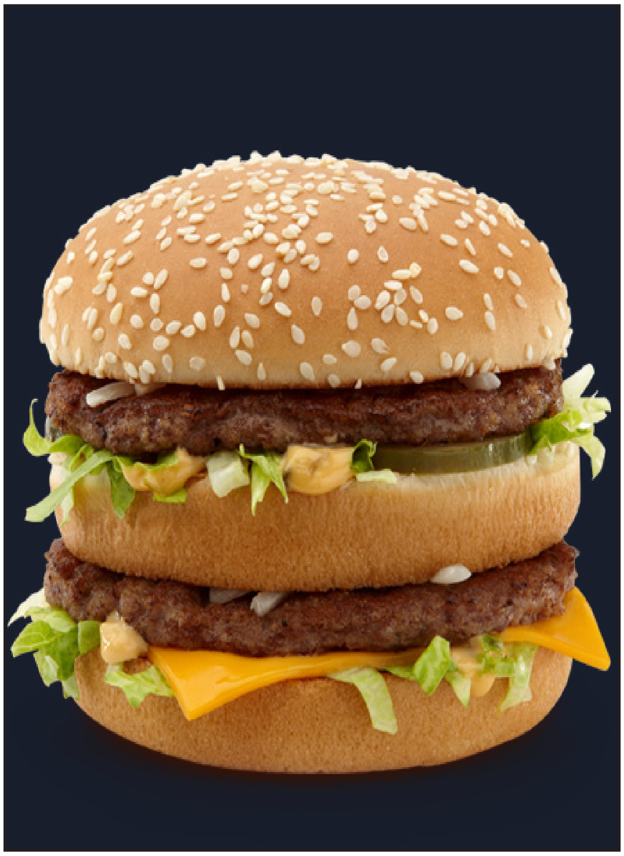


A competent TPA

Out of all your plan providers, the single most important ingredient to a successful retirement plan is the third party administrator (TPA). A TPA is responsible for the recordkeeping of your plan, as well as the preparation of Form 5500. Since the TPA handles the most technical and difficult aspects of the workings of a retirement plan, it stands to reason that most plan errors you may suffer are derived from an incompetent TPA. On the other, a good TPA will provide you with seamless administration as well as plan consulting that can maximize the retirement savings of your most important employees through intricate plan designs. Too many plan sponsors tear the TPA as a no-frill product, but good TPAs has lots of frills. Too many plan sponsors focus on TPA fees and try to pick TPAs based on cost; a great retirement plan is where the TPA is picked on competence.

The right financial advisor

Folks in the retirement plan industry can argue whether you should pick a broker or a registered investment advisor (RIA) as your retirement plan financial advisor and some will argue whether you should pick an advisor who has a certain investment style. While you can pick an RIA because the RIA will serve as a plan fiduciary and a passive style has less risk, the real importance is that you can pick an advisor who understands their role in the fiduciary process of a retirement plan. While touting certain funds and strategies are nice, the role of a financial advisor is to help you button the buttons that you have trouble with, i.e., selecting plan investments and helping participants select investments (if your participants direct their own investments.



Have an investment policy statement

Whether your plan is participant directed or the investments are directed by the trustees, picking these investment options aren't enough. Your plan needs an investment policy statement (IPS). The IPS papers the process of selecting and replacing the investment options offered under the plan. It lays out your investment objectives as well as criterion for which type of investments you will select and replace. It is essentially a blueprint as to why you selected and replaced the investments offered under your plan and outside of the plan document, is probably the most important piece of papers you can have when it comes to protecting yourself as a plan sponsor. Your retirement plan's financial advisor needs to help you develop an IPS, review and edit the IPS when needed, and selecting and replacing the investment options of the plan when they no longer fit the needs of the IPS on at least a semi-annual basis.

Educating plan participants

Plan sponsors offer participant directed retirement plans because ERISA §404(c) is supposed to limit the plan sponsor's liability for losses incurred by participants when participants direct the investments in their accounts. The problem is that it's supposed to, but only if the plan sponsor follows a process that includes selecting plan investments based on the IPS, plus giving participants enough information so that they can make informed decisions in choosing their investments. In order to give them enough information, you need to make sure that your employees get investment education, which should be provided by one of your providers (usually the investment advisor). Investment education is general information about investing. Thanks to a change in DOL regulations, you can now more easily provide investment advice. Investment advice s far more thorough than investment education because it's your plan provider advising participants which investments they should make based on their financial situation and future. If your plan providers don't offer advice, you can hire an outside provider like RJ20.com which will charge a very reasonable per participant charge.

Fiduciary Liability Insurance

Even if you do everything right, there is no guarantee that you will have an aggrieved plan participant (such as an employee you fired for cause) that will try to sue. So to protect you from the cost of litigation, you need to purchase fiduciary liability insurance that will help you avoid going into your pocket to pay the cost of being sued.

Review the Plan

In order to avoid breaching your fiduciary responsibility, you need to be vigilant and the way to do is a plan review. While it should be annual, it must be done at least once every few years. The review should be through. You should review your plan document and determine whether the plan is being administered according to the document's terms. You should review the fee disclosures you receive from your plan providers and determine whether they are reasonable by benchmarking them against what other providers charge. You should also review the administration of your plan and determine whether the plan still fit your needs and whether there are other plan provisions you should consider than can augment your plan in maximizing contributions to your highly compensated employees. While you probably don' have the background to make such a thorough a review, you certainly can hire someone who can. You can hire an ERISA attorney or an independent retirement plan consultant. Yours truly has been performing these reviews for plan sponsors around the country for as little as $750. So whomever you pick to do the review, you will find that this preventative care will help you spot issues before they become problems.

The recipe to make a great retirement plan isn't such a secret. It just takes dedication on your part and the ability by you to surround yourself with the very best in plan providers.

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