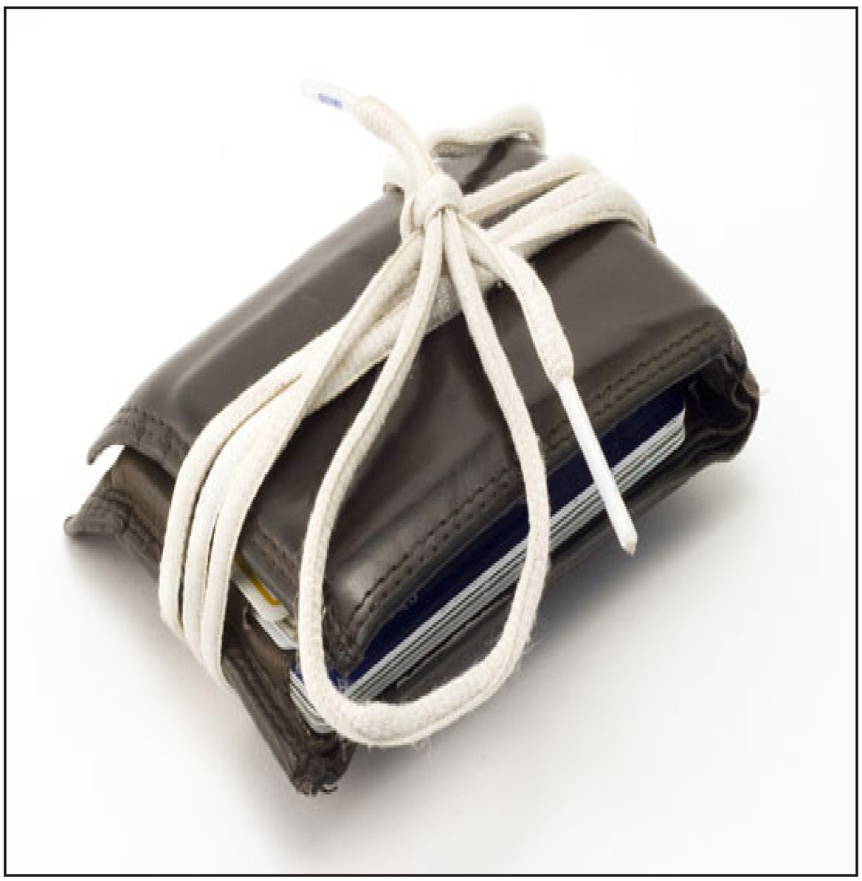
How 401(k) Plan Sponsors Can Improve Their Plan At Little Cost

By Ary Rosenbaum, Esq.

There are many ways that a retirement plan sponsor can improve their 401(k) plan, but they usually balk when it comes to the time and the money needed to rectify it. With so many issues regarding their business especially the increases in the cost of that other important employee benefit (health insurance), plan sponsors just don't have the patience to improve their 401(k) plan even in their duty as a plan fiduciary and the responsibility that comes with it. So this article is about how plan sponsors can simply improve their plan on a shoestring, which means low cost and not a lot of work on the part of the 401(k) plan sponsor.

Starting with Brightscope

I was a lowly associate at a semi-prestigious Long Island law firm (sorry, Lois) when I met Mike and Ryan Alfred. They had started brightscope.com which was going to be a plan sponsor friendly website where plan participants and plan sponsors could check the health of their 401(k) plan. I thought they had a fantastic idea and only wished they had offered me to buy into their new venture. When the Alfred brothers first started this business, they based most of the information that achieved their proprietary rating (and they still do) on Form 5500 that all ERISA covered 401(k) plans (which are those with employees) must file annually. The Alfred brother received some unjust criticism because the Form 5500 was from previous years since they weren't so quickly accessible. Thanks to mandatory e-filing of the Form 5500 by the government, the information on their website is more up to date. I supported the Alfred brothers from the beginning and they continue to be supporters of my endeavors as well. They received much criticism from the onset because they stood for transparency of 401(k) fees and that certainly was threatening to plan providers that didn't support such a noble ideal. As you may know by now, brightscope.com is one of the great tools out there for plan sponsors to make a quick check of their plan. It's really the first great step for plan sponsors to use in determining whether the plan is in good shape or not. It also helps that unlike many online benchmarking tools out there, it's free. It should be noted that since their ratings are based on Form 5500, it's not going to be an intensive review of the plan especially when it comes to effective plan administration and compliance. For example, my old law firm gets a Brightscope rating of 85 that is based on the information contained on their Form 5500. What the rating doesn't say and what the Form 5500 doesn't let Brightscope know is that the plan went 10 years without reviewing plan investments, having an advisor, and providing investment education to plan participants (I fixed all that without the proper thanks because I was the said lowly associate). Just a few year back, I understand the plan had an issue regarding their safe harbor plan design and had to fork over $100,000 in corrective contributions, but the Brightscope rating and the Form 5500 doesn't reflect that. However Form 5500 has plenty of information to gauge the health of the plan including plan expenses, average account balance, and the investments offered under the Plan. Still I think Brighscope is a fantastic tool for all plan sponsors to use in reviewing their plan. It's the first step and not the final and complete step in plan sponsors seeing how their plan stocks up and they can do it on a shoestring.



Benchmarking and reviewing the plan utilizing the services of another plan provider

Plan sponsors have a fiduciary duty to only pay reasonable plan expenses Reasonableness is determined on the services that are provided, so it doesn't mean that plan sponsors need to pick the cheapest plan providers. Fee disclosure regulations require all plan providers to furnish a disclosure to their plan sponsor clients of the fees that they charge directly or indirectly to the plan. Too many plan sponsors take their fee disclosure and just put in the proverbial "back of the drawer", so they don't review them. That's an absolute mistake and a potential breach of their fiduciary duty if other similar plans of size pays far less in fees. What's a plan sponsor to do? They can certainly hire a benchmarking service or do some research to ascertain whether the fees they are paying are reasonable or not. If the plan sponsor doesn't have the time to do the work on their own or doesn't want to pay for using benchmarking services, they would be wise to seek out other plan providers who can do the work for them. There are many competing plan providers out there with the resources and the experience to fully determine whether the fees you are paying are reasonable or not. Depending on their role as plan provider, they can also determine whether there are any issues beyond what's seen on Form 5500. For example, a financial advisor reviewing the plan can determine whether the fiduciary component of the plan is being well managed or not Plans where investments haven't been reviewed for years, where investments are underperforming or too expensive, and where no investment education is given to plan participants are major compliance issues that aren't going to be found. A plan provider that is a third party administrator (TPA) can also help a plan sponsor to determine whether there are any outstanding compliance issues that can't be reflected on the Form 5500. Too often compliance issues on the administration side aren't discovered until there is a change of the TPA or if there is an audit by the Internal Revenue Service (IRS). When compliance issues are discovered on a plan audit, I can tell you that an IRS auditor isn't so understanding and forgiving. Seeking out plan providers to benchmark fees and conducting plan reviews is an effective tool that can be done on the shoestring. The only issue is that competing plan providers want your business, so their job is not only to review the plan for you but also make a sale. So any plan review will always come from a certain point of view. If a plan sponsor wants a review of cost, compliance, and a general investment review, there is an unbiased option and it won't set the plan sponsor back that much.

The Retirement Plan Tune-Up

When I was that lowly associate at that semi-prestigious law firm (sorry again Lois), I wrote an article about the need for plan sponsors to review their plan just like they tune-up their car. That article about the need for plan sponsors to tune-up their plans gave me the somewhat bright idea to offer a plan review called the Retirement Plan Tune-Up. So when I started my own practice more than six years ago, I started offering the Retirement Plan Tune-Up. It's a plan review looking at all parts of the plan and based on the information provided by the plan sponsor. I take a look at the Form 5500, the valuation reports, and the investment materials to give a plan sponsor a broad review of the plan's overall health. Before plan sponsors get worried about the cost because that's what they usually do when it comes to attorney fees, I charge $750 for this review. Even better than the price, the cost of the review can be charged against the plan assets as an allowable plan expense so a plan sponsor doesn't need to pay that fee out of their own pocket. If interested, plan sponsors can contact me via the information provided in this article.

Seeking information on the Internet

The Internet is all about information and there are many resources in terms of articles and presentations available to plan sponsors that can help do a better job in their role as a plan fiduciary in managing their 401(k) plan. My new website that401ksite.com is a great resource as well as 401khelpcenter.com; plansponsor.com; and all my plan sponsor "self-help" articles at http://www.jdsupra.com/profile/Ary_Rosenbaum_docs/. Plan sponsors need to be aware of what they need to do because there is no textbook ever given to plan sponsors when they implement their 401(k) plan and what they actually need to do. So a plan sponsor should certainly seek out the plethora of information available out there that's free and easy to read.

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