Some "Truths" About The Retirement Plan Business

By Ary Rosenbaum, Esq.

I'm very outspoken, probably too much. Many people in the industry don't like flamethrowers who call things as they see it. While it might cost me a speaking slot at some event, it has allowed me to have a following of other plan providers who like that I do call it as I see it. There are many "truths" out there in the retirement plan industry that plan providers may not be aware of and some plan providers who don't want to know about these "truths." This article is going to reveal some "truths" that many plan providers like you don't or don't want to know about.

Workplace culture comes from the top and only can change from the top

The reason I probably work on my own is the frustration when I worked for law firms and third-party administrators (TPAs). I never had the luxury of working for larger firms, I worked for firms with around 125 employees or less. My goal for every organization I worked for, whether it was for a job or volunteer work was to always improve it and make it better. My "luck" was that my desire to improve each organization was that there was a negative culture in place and I had no stroke to change it. Culture can only be changed by the top and many times, the leadership doesn't want to change the culture because they benefit from the disorder and any change would threaten their spot. A perfect example is a TPA I worked for where the Chief Operating Officer felt threatened by any high-ranking employee who wanted to change our very poor day to day operations when it came to plan compliance. Let's just that you could have created an All-Star TPA with the employees he helped push out because he wanted to protect his spot. A lot of the time, management may be unaware of a culture that doesn't breed competency. A good chunk of the time, management may actually be aware of the culture but is too paralyzed or busy to change it. Whether it's poor training, lack of checks and balances, or poor marketing, so many bad choices are rooted in a culture that can choke the success of any plan provider. The retirement plan industry is so competitive, no one can afford a culture that strangles their potential. There have been several organizations that I have been involved with (both business and personal) that I predicted their downfall years in advance because you can see the demise in a culture that can't grapple with the present and is ill-suited for the future. How many large and small plan providers we've seen right in front of our eyes that crumbled, just because their culture wouldn't allow them to adapt to a changing environment.

Participant direction really only benefited mutual fund companies

An advisor reached out to me and asked me if I ever wrote an article about why participant-directed 401(k) plans are better than the pooled, trustee directed plans that were more popular before the explosion of interest in daily valued plans. I told the advisor that I hadn't because I don't actually believe that participant-directed plans are better. I think the shift from trustee directed plans to participants directed plans only benefited mutual fund companies who pushed for the change when technology finally caught up. Coupled with a booming market in the 1990s, participant-directed plans were a natural sales gimmick and the reason for the gimmick is the mention of limited liability. The idea of participant-directed plans is that it's supposed to shield plan sponsors and ultimately, other fiduciaries (including advisors who serve in that role) under ERISA §404(c) from liability for losses sustained by the participants in their own investments. The problem with that proposition or selling point (especially in the late 1990s) was that the guarantee of liability protection isn't absolute, plan sponsors need a prudent fiduciary process in place if they want the most protection under ERISA §404(c). Handing out Morningstar profiles and not updating the fund lineup in 10 years will give the plan sponsor absolutely no protection, which is what I had to tell my old law firm's human resources director before she hired the advisor and TPA that I didn't recommend (Je me souviens, Pat). The problem with the ERISA §404(c) sales pitch is that advisors, mutual fund companies, and TPAs pushing it, never told plan sponsors in plain English that they had to have a prudent fiduciary process in place to get that protection. Another fun fact about participant-directed plans is that I believe that financial advisors were better off financially when plans were trustee directed? Why? They would be doing more work (with more liability) in the sense of helping the plan sponsor handle the entire investment of the plan and thus, getting more money for it. I'm sure they could get 100 basis points for a trustee directed plan instead of the 10 to 25 basis points

that they charge for a daily valued 401(k) plan. While most people may suggest that handling a trustee directed plan takes more work, just remember you would subtract the investment education meetings from a trustee directed plan. While some may suggest that the TPAs did very well in the move to participant direction, I'd ask about the TPAs that didn't make the switch to daily valuation and the many TPAs that went out of business after trying to make the switch (sorry, Harvey). The part of the industry that made out with the switch to participant direction and daily valuation was the mutual fund industry. Let's face facts, mutual funds weren't the dominant investment vehicle for defined benefit and other annual valuations plans, but they certainly became the dominant player for 401(k) plans. The mutual fund companies are the one part of the retirement industry that fully benefited from the switch to participant-directed plans and were part of the marketing machine that convinced plan sponsors to make the switch to participant-directed, daily valued 401(k) plans. However, let's be honest, participant-directed 401(k) plans are going to be the dominant plan out there because of the technology and because of the sales pitch of limited liability to plan sponsors.

If you're selling, know what you're talking about

The greatest 401(k) salesperson I ever knew was a guy by the name of Richa Laurita (may he rest in peace) and my running joke about Rich isn't that he couldn't spell 401(k) if I spotted him the 4, the 0, the 1, and the (k). The best part of it is that Rich would probably agree with me and even better than that, Rich never pretended he knew anything about them. When he needed help in closing a sale, Rich wouldn't have a problem in having me come in or bringing someone else that was qualified to talk about retirement plans. I've seen too many providers, especially financial advisors, who try to give reasons as to why one way for plan sponsors is better than another option, then get exposed for not knowing what they're talking about. A perfect example is when a broker tried to convince a medical practice from joining a multiple employer plan (MEP) I work on. The broker used the excuse of the one bad apple rule, the "boogeyman" warning for adopting employers not joining a MEP. The one bad apple rule is the belief that the compliance problems of one adopting employer could disqualify the entire MEP. This boogeyman warning is true but isn't grounded in reality because it's unlikely the Internal Revenue Service would do that and there is a voluntary compliance program to fix any problems. It's such a silly rule that the IRS is seeking to pretty much put the kibosh on it. When the prospective adopting employer heard about the rule and the likelihood it will be changed, it made the broker look like a fool. So selling retirement plan services, it's important what you're talking about. That means knowing about your services, as well as the services offered by the competition. While you don't need to be an ERISA expert as a financial advisor, you do need to know what you're talking about and when you don't know, don't be embarrassed to rely on a plan provider that does.

It's a close-knit business, so watch yourself

The retirement plan business is a great business. Sure, we have our issues, but it's a national business and you can have clients around the country and helping them out. You also work with other trusted plan providers who will help you when you need their help. While you're selling retirement plan services, never lose sight of the fact that it's a relationship-driven business, with your clients and with other plan providers. More importantly, it's a close-knit business. What that means to me is that your good work, your bad work, and the great way or terrible way you deal with clients and other plan providers will be known close and far. My favorite part of the business is building long-term relationships with plan providers around the country, who will refer me business. People around the country know, that no matter what, plan sponsors aren't going to get ripped off by my services, especially when they know the flat fee charge upfront. Great service is known far and wide, but unfortunately, terrible service is better known. In addition, stealing business from providers you work with is also part of the back-office talk when fellow plan providers meet for an event or sales meeting. Just remember, what you say and do will be held against you in a court of other plan providers. So if you treat clients and other providers well, it will help you in the long run.

It's not about fees, it's about value

Many of the local synagogues are struggling in my area and they blame the Chabad Lubavitch movement that doesn't charge dues. I contend that people don't belong to synagogues because they don't want to pay dues, the reason why they moved over to Chabad is that they saw no value in the dues that are paying. So many plan providers swore up and down that the sky would fall when fee disclosures were implemented in 2012 and that there would be a race to the bottom. While fees have gone down thanks to disclosure and competition, there has been no race to the bottom. There are still providers out there that are thriving even if they charge higher than most of the competition because it's all about value and not just about charging the lowest fee. Plan sponsor clients aren't going to leave you for 5 basis points less, they're going to leave because they don't see the value for what you're charging, i.e, you're unresponsive, you make too many errors and many other bad things.

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