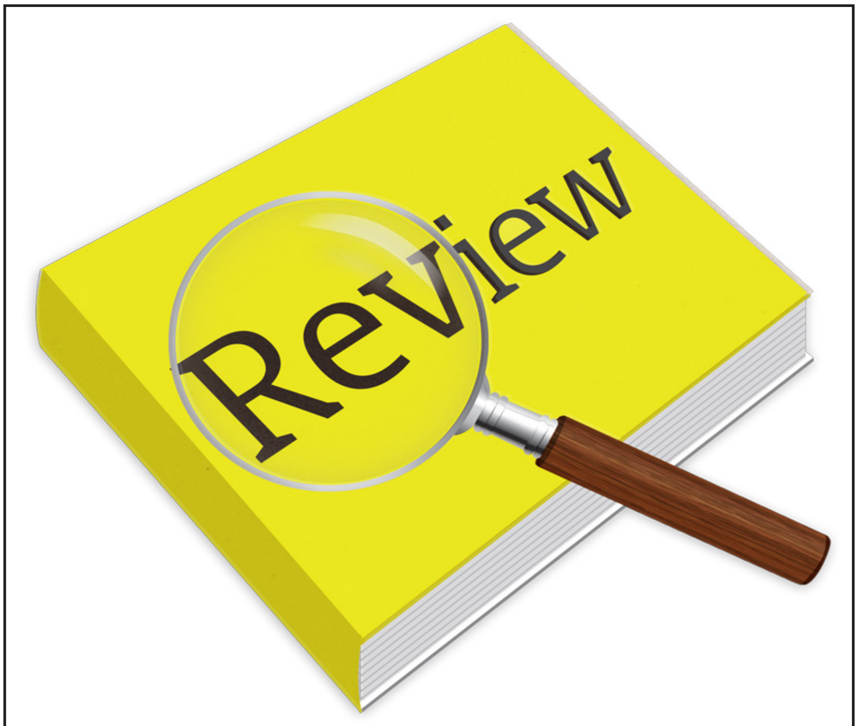
Why A Plan Sponsor Should Get A Plan Review

By Ary Rosenbaum, Esq.

Retirement plan sponsors tend to be reactive rather than pro-active. They would rather not spend money to undergo a plan review and assume everything is fine until they run into a big compliance issue or mistakes are discovered on a government audit. Like a good medical checkup, a plan review can discover and root out plan problems before they become bigger and costlier. This article is why plan sponsors should get an independent plan review from an ERISA attorney (cough, cough) or a retirement plan consultant.



Why a Plan Review?

Why do people get a checkup annually? Well, to make sure there is nothing wrong or to be concerned. When you get a checkup, they check your height, weight, blood pressure, and blood work. It's a great way to discover problems before they become bigger problems. How many times do we hear of people who were able to survive cancer because they were able to discover it before it spread? How many times do we hear of people who died of cancer just because they waited too long to discover if there really was something wrong? My grandparents had a long time friend who died while his family was on vacation in Romania just days after being diagnosed with Leukemia because he had this fear of doctors. So if a checkup is a great way to diagnose serious health problems, I think a plan review is a good idea for a plan sponsor to undertake. I'm not trying to say that life is on the same level as a retirement plan, but a serious problem with a plan could cost a lot of money like a serious illness. A plan review is a great way for plan sponsors to gauge the health of their plan and discover any administrative errors or problems before they become a bigger compliance headache. Plan sponsors in their role as plan fiduciaries should go through a plan review because it shows that they are taking their fiduciary duty and duty of prudence rather seriously.

Most Plan Sponsors Don't Go Through One

Since I started my own law practice in 2010, I've offered a plan review service called the Retirement Plan Tune-Up. For $750, I look at the plan document; plan administration, and the fiduciary process to gauge the health of the plan. Plan sponsors don't even have to pay for the fee, it can be charged to the plan's assets. I think it's a rather cost effective way for plan sponsors to make sure their plan is being run correctly. Yet, I've probably done about a dozen of these reviews in the past 6 years despite my marketing of it. Strange, isn't it? To be honest, not really. Plan sponsors tend to be reactive rather than pro-active. They are so focused on their business and they are so uninterested in the minutiae of running a retirement plan, it's not really something they're interested in. In addition, their retirement plan providers and staff never suggest that's a good idea. Plan sponsors don't know the problems that may occur in their retirement plan until it actually happens when fixing errors years later are costlier than if they were nipped in the bud years earlier. Plan sponsors aren't told of the troubles they may face as a plan fiduciary and their responsibilities associated with it until it's facing them. Plan sponsors also have this false sense of security because they trust their plan providers to do a credible job and don't discover that their providers were not doing a competent job until many years later. A good review every few years will keep the fines from the Internal Revenue Service (IRS) and Department of Labor (DOL) away. A plan sponsors can't afford to assume that everything with their retirement plan is going to plan. A good plan review will allow plan sponsors to have a better sense of security that their plan is in compliance.

What a good plan review may find.

Again, my Retirement Plan Tune-Up looks at the plan document, plan administration, and the fiduciary process of the plan. When it comes to reviewing the plan document, there are many issues that can be discovered. There are many plan sponsors that failed to timely adopt amendments and re-statement as required by the IRS that could lead to plan disqualification. Another big issue with plan documents is that the retirement plan may not be properly administered according to the terms of the plan document. When it comes to plan administration, many compliance tests may be done incorrectly because the third party administrator might have misidentified a highly compensated employee. Another big issue with administration could be an incorrect allocation of employer contributions. When it comes to the fiduciary process, there are many errors that can easily be detected. A plan sponsor's failure to adopt an investment policy statement or even failing to follow one is a big error. Failing to provide investment education or using only mutual funds from one fund family are plan issues that can be problems if there is any litigation. A good plan review can also gauge administrative expenses. My review of a 401(k) plan got a financial advisor once because they were charging double what most advisors were and the advisor never bothered to review the investment options with the plan sponsor for many years. These are just some of the compliance headaches that a plan review can detect. It gives the plan sponsor the ability to fix errors before they become bigger and costlier. Too often plan compliance errors are only discovered when the plan sponsor changes plan providers or on an IRS or DOL audit. From experience, correcting errors through voluntary compliance or self-correction costs a lot less than any penalties that an IRS or DOL agent will assess on an audit.

Rating Services Don't Tell The Whole Story

One of the great services out there are websites like Brightscope.com where a plan sponsor can type in their plan and get a score. The service offered by these types of sites or other benchmarking services is that it can give the plan sponsor an idea about some aspects of the plan's health. The problem with these services and sites is that its just based on information culled from the plan's Form 5500. A Form 5500 is the plan's tax return, so it's mainly dealing with plan assets and plan expenses. Whether the compliance testing is done correctly, where the plan allocations are done correctly, and whether the plan document is up to date are just some possible glaring plan problems that can't be identified on a Form 5500 so they don't factor in any scoring by these types of services and sites. Brightscope, Fi360, Fiduciary Benchmarks, and Plan Tools are excellent services for benchmarking plan fees; they don't do anything for plan compliance issues.

A plan audit is not a Plan Review

For retirement plans with more than 100 participants, they need an independent audit from a certified public accountant. While a plan audit may review some compliance testing and the terms of the plan document, those are just a cursory look to gauge the financial health of the plan. A plan audit is just a mechanism to ensure the financial health of the plan to pay retirement benefits to the plan participant and note any issues they discover that may impact their opinion on that health. A plan audit is about the financial health of the plan to pay benefits, that's it. It is not a plan review that could discover plan errors.

The need for an independent Plan Review

It's not just important for a plan sponsor to get a Plan Review, it's important that the review is independent. That means the review should not be connected with a current plan provider or prospective plan provider. A current plan provider can certainly do a plan review, but will they say the plan isn't doing well under their watch? What about a prospective plan provider? Are they going to say the plan is doing well under the provider they're trying to take away business from? In order for a pan sponsor to make sure a Plan Review is worth the paper it's written on, it's important they hire an independent ERISA attorney or independent plan consultant with no skin in the game on which plan providers should be used. An independent Plan Review will ensure that information told about the plan is done impartially so that the plan sponsor can determine whether the plan is healthy or not.

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