Recent Changes That Plan Providers May Not Like

By Ary Rosenbaum, Esq.

On Curb Your Enthusiasm, Ed Asner was a guest star, playing an elderly man who wanted to change his will. Based on a recommendation by Larry David, Ed's character visited the attorney Joel Reynolds at his office. Unfortunately, it was Casual Friday and Ed's character was offended because he thought it looked unprofessional and he asked why Joel should dress like he's at home when he's not at home? While it's Casual Friday at my home office every day, I never knew why the day at the office was a thing. As far as things in the retirement plan business, there are some trends out there that I'm not too crazy about that you might ponder as a retirement plan provider.

The consolidation in this business continues

Ever since the announcement that there would be fee disclosure regulations in 2012, there has been an explosion in mergers and acquisitions in the retirement plan space. Many insurance companies exited the business, probably realizing that a fee disclosure environment wasn't going to be as profitable. Several third-party administration (TPA) firms and registered investment advisory firms have become 800-pound gorillas in the industry by going on a buying spree. While many smaller plan providers fear these large providers because of size, my issue has nothing to do with that, as a fan of the free market system. My issue with consolidation in the business is the change that comes with consolidation. I once worked for two TPAs that were bought and change is inevitable. Consolidation to me means that plenty of good retirement plan professionals will find themselves on waivers, where they lose their jobs because they might be considered redundant. A smaller workforce isn't necessarily better, especially when it's people we know that have been given their unconditional release. There are plenty of employees in the retirement plan space that aren't very good, but there are talented and qualified plan professionals that lose their jobs, thanks to consolidation. I also know small TPAs that get bought out, and there is a slow exodus of that firm's brightest minds and the reason I would use them. It makes no sense for one firm to buy another and let the staff that made the purchased firm such a target, leave. Unfortunately, it happens more often than not. As for those that worry they're too small for the "big boys," I think being smaller is an advantage. Larger firms aren't as nimble and I think those that might be paying off the cost of their acquisitions, may design to jettison certain types of retirement plans and accounts that aren't as profitable as others. As a plan provider, I see the consolidation as an opportunity and you might find some good staff along the way.

Niche investment retirement plans

When I grew up, there were two types of Cheerios. Now, I think there is a couple of dozen. Do we really need an Ancient Grains Cheerios? General Mills thinks we do, as they feel adding different varieties for different tastes will lead to more sales. What works for cereal or toothpaste doesn't work for retirement plans, because of the nature of fiduciary duty. Pooled Employer Plans (PEPs) are so popular these days as a new product, it seems there is a new one created every five minutes. An advisor I know has told me that about a dozen PEPs have already gone out of business. Providers selling PEPs remind me of anyone who opened a store for a fad. How many people lost money opening up a video rental store or a beanie baby store? PEPs, unlike a fad, are here to stay. However, I think most PEPs will ultimately fail because they fail to collect enough plan assets to make the pricing

and profits substantive. There is so much competition out there and I understand that there is a need for providers to make their PEPs stand out. A couple of plan providers have developed what I call a niche PEP, one based on an investment strategy. I've seen at least one provider offer a PEP with a focus on ESG (Environmental, Social, and Governance) funds. I don't know if there will be that many. companies that would select a PEP because its investment strategy is ESG funds. The problem with ESG funds are twofold: 1) ESG funds can underperform the market and 2) for every two mutual fund companies, you have 3 opinions on what constitutes an ESG fund and what companies are proper to invest in. While companies that join a PEP relinquish their fiduciary duty to a Pooled Employer Provider by joining a PEP, they still have a duty to review the PEP and its features and while we currently have a Democrat as President, a change in the White House may reverse the Department of Labor's opinion on whether ESG funds raise any fiduciary concerns as being a proper 401(k) plan investment. An ESG "flavored" PEP may even draw some scrutiny now, in addition to what might be apathy in the marketplace. To me, an ESG "flavored" PEP is a solution looking for a problem. I understand the marketing aspect of it, I just have issues on the fiduciary side of things.

The good and bad of state-mandated IRA programs

I like any idea that increases retirement plan coverage and savings. So when the Internal Revenue Code was amended to allow automatic enrollment and qualified default investment alternative, I thought they were great things. While state-mandated retirement programs that require employers that don't have a retirement plan to offer one or join the state IRA program (individual retirement account) will increase retirement plan coverage, I do have an issue with these state-mandated IRA programs. My issue is for the employers who enroll in it, rather than signing up for a PEP (which is the situation I think a PEP is perfect for) or a plan on their own. An IRA program will allow for fewer salary deferrals and employer contributions than a typical 401(k) plan. In addition, since it's an IRA program, participants will probably get very little assistance in terms of their directed investments. Small business plans like a SIMPLE-IRA get very little help, certainly a lot less than small 401(k) plans. Also, if it's a state program, you're not sure how the program's providers were selected (that's my political cynicism). I think these programs are great hunting grounds for plan providers and their PEP because I believe that due to political cynicism, employers will decide to go with a private-sector retirement plan, rather one run by the state.

The cutback in sponsor dollars and live events

I've been running regional conferences called That 401(k) Conference since 2018. It's fun to travel to Major League Baseball and National Football League stadiums around the country and meet financial advisors and plan providers, it's a great way to network, especially if we have a baseball game to watch also. This little thing called the COVID pandemic has put a wrench into things. The hope is that eventually, we can go fully back to normal and hold 6-9 events a year. The problem asides from attendance (thanks to the variants) are sponsorship dollars. So many plan providers have made severe cutbacks to their marketing budget. We have had almost two years of no events, so it was expected that providers would cut back spending when they don't need to. The problem is that I don't know if we will ever get back to fully normal with fully attended events and plan providers flush with dollars for marketing and sponsoring these events. For me, I could stop hosting conferences tomorrow and I'll be fine. However, there are some great trade organizations and companies that are dependent on the revenue for a national conference. I think the new normal will be a cut back in attendance and marketing budgets and the new normal will last a while. By the way, check that401ksite.com for further information on all my live events.

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