

How To Fix Your 401(k) Plan On The Cheap

By Ary Rosenbaum, Esq.

There are many ways that a retirement plan sponsor can improve their 401(k) plan, but there are so many reasons why they don't. They complain they don't have the time and they don't have the money. As plan fiduciaries, you need to have the time to minimize your potential liability. As far as cost, there are many ways for you to improve your plan at very little or no cost. This article is about how you can fix your 401(k) plan on a limited budget.

Speaking to your current plan providers

There is an expression that I have: "You won't know unless you ask." Like most plan sponsors, most plan providers are reactive rather than proactive. So few will contact a plan sponsor on their own and offer suggestions on how to improve their plan. Being a plan provider is a hard job and most plan sponsors aren't so open to suggestions and ideas on how to improve things. A current plan provider such as the Third Party Administrator (TPA) can certainly give you plenty of ideas on how the plan can be improved. There might be cost-effective solutions to improve your plan. For example, if you have a low participation rate, automatic enrollment might be a good idea. If you can afford employer contributions, cross-

tested or safe harbor contributions might be a great idea. The financial advisor may have ideas on how to help participants with investing, such as offering investment advice or managed accounts. Plan providers want to keep your business, so there may be many adjustments that they could offer, including a discussion on pricing if your plan has hit certain limits. Again, you have no idea how they can help unless you ask.

ableness is determined by the services that are provided, so it doesn't mean that you need to pick the cheapest plan providers. Fee disclosure regulations require all plan providers to furnish a disclosure to you 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 mis-

take and a potential breach of their fiduciary duty if other similar plans of size pay far less in fees. What do you need to do as a plan sponsor? You can certainly hire a benchmarking service or do some research to ascertain whether the fees you are paying are reasonable or not. If you don't have the time to do the work or you don't want to pay for benchmarking services, it would be wise to seek out other plan providers who can do the work for you. There are many competing plan providers out there with the resources and the experience to



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

Plan sponsors have a fiduciary duty to only pay reasonable plan expenses. Reason-

ably determine whether the fees you are paying are reasonable or not. Depending on their role as plan providers, 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 on a 5500. A plan provider that is a TPA can also help you to determine whether any outstanding compliance issues can't be reflected on 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 to 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 you back that much. When it comes to free services from competing plan providers, I ask that you don't take advantage of this free help.

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

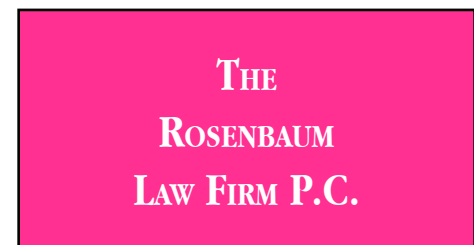


gave me the somewhat bright idea to offer a plan review called the Retirement Plan Tune-Up. So when I started my practice more than 14 years ago, I started offering the Retirement Plan Tune-Up. It's a plan review looking at all parts of the plan and based on the information provided by the plan sponsor. I take a look at Form 5500, the valuation reports, and the investment materials to give a plan sponsor a broad review of the plan's overall health. The best example is how it can work is when I reviewed a \$14 million plan and identified that not only was the broker on the plan making too much at 60 basis points, but he also wasn't doing his job by not developing an investment policy statement and by not reviewing plan investment options with the plan sponsor regularly. I've seen compliance testing issues that the TPA did not. So the review can certainly be a cost-effective tool in rooting out problems before they're discovered. 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 you don't need to pay that fee out of your pocket. If inter-

ested, 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 you that can help you do a better job in your role as a plan fiduciary in managing your 401(k) plan. My website is that401ksite.com, which is a great resource as well as 401khelp-center.com; plan-sponsor.com; and all my plan sponsor "self-help" articles at http://www.jdsupra.com/profile/Ary_Rosenbaum_docs/. You need to be aware of what you need to do because there is no textbook ever given to plan sponsors on how to deal with their 401(k) plan. You should certainly seek out the plethora of information available out there that's free and easy to read.



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