A Plan Sponsor's Guide To Selecting Retirement Plan Providers

By Ary Rosenbaum, Esq.

Since I was about nine and saw it on HBO, one of my favorite movies has been Caddyshack. I loved Caddyshack years before I even liked golf and years before I was mature enough to get all the jokes. One of my favorite scenes is when Judge Elihu Smails corners Ty Webb and asks Ty what was his score was for the last round he played. Ty said he didn't keep score and Judge Smails wondered how Ty would be able to measure himself against other golfers. Ty quickly retorted he could against them measure by height. When it comes to evaluating plan providers to consider hiring, it's hard to develop a metric that would gauge whether a provider should be hired or not. You can't measure by height. So this article is to evaluate how to select plan providers from every Tom, Dick, Harry, and Jane that wants you to select them to be your plan provider.

Look for experience, but don't too much stock in experience

When it comes to hiring a plan provider like a third party administrator (TPA) or a financial advisor, you need to have to hire someone that has enough experience in the retirement plan space. There are too many financial advisors who have their Series 7 or have their registered investment advisor (RIA) designation without ever having worked on a 401(k) plan. What's even scarier is that there is no proper licensing for a TPA, so anyone can just start one without knowing how a retirement plan actually operates. So you need to make sure that every retirement plan provider you consider has experience with servicing the type of plan you have of similarly situated companies. So that means if a TPA only knows how to handle defined benefit plans and you have a daily valued 401(k) plan, you may want to consider someone else. Same with financial advisors or TPAs that only handle plans of larger or smaller companies than your business. You also need to find out whether the plan provider employees also have the requisite background with retirement plans and actually get training. I know from experience that many TPA employees get no training at all. The double-edged sword of experience is that you shouldn't hire someone just because they have more experience than other providers. For example, I always talk about the 50/50 rule regarding law firms, 50% of law firm partners are excellent lawyers and the other 50% were only partners because of the politics of the other 50% of partners (the good lawyers) that pushed them. I can recall a TPA that had 25+ years in the business but the owner lost their actuary certification because of malfeasance and caused countless plan sponsors to be in serious trouble because he never bothered to do any annual valuation reports for his clients. Only good experience matters, so you certainly need to investigate whether the providers you consider have the experience they claim to have. Who can forget plan fiduciary Matthew Hutcheson who was only a fiduciary expert just because he said he was? He's got about 13 years left to go in his sentence for absconding $3 million of plan participants' retirement savings. My biggest regret in the retirement plan business was taking Matt at face value until I was told of missing money from Matt's plans.

Cost is key, but not the only key

As a retirement plan sponsor, you're a fiduciary. That means you have a higher duty of care with participants' money than you have with your own money. One of the duties of a retirement plan fiduciary is to pay only reasonable plan expenses. Thanks to fee disclosure regulations that require plan providers to reveal true costs of plan administration to plan sponsors, plan sponsors are becoming more knowledgeable about plan fees. It should be noted that you don't have to pick the cheapest provider; the only requirement is that the fees you pay are reasonable when compared to the services you are provided. So if you want to hire a TPA that also serves as an ERISA §3(16) administrator or hire a financial advisor who wants to offer financial advice to plan

participants, you have the right to pay more to get more plan services. So when it comes to fees, you need to benchmark them against what other plan providers charge for similar services. It's not fair to compare the TPA who serves as a §3(16) administrator with a website that has all the bells and whistles with the cheap TPA who just offers third party plan administration and not much more. Compare apples to apples, not apples to oranges or grapes. I've also known from my experience as a law firm client, as a homeowner, as a human being, that selecting someone to hire just based on cost is usually a terrible idea. Cost should be a concern, but not the only concern.

Make sure plan providers can connect with your plan participants

Everything in life in my mind is about making a connection. Making friends, getting clients, selling products, or anything else out there is making a positive connection with the audience. You only make friends that you can connect with and you only get hired by potential clients you can connect with. So it's important that whatever plan provider you hire that they have the ability to connect with your plan participants. The reason you want a good connection is because when you really think about it, the job of a retirement plan provider is really to help minimize the liability exposure of being a plan sponsor. If you have a 401(k), a good TPA and/or advisor will be able to make a connection with a plan participant where they can participate and defer under their Plan, make informed investment decisions, and properly save for retirement. Retirement plan providers that fail to connect to plan participants, fail to motivate them, and leave a plan with some liability concerns especially if the plan allows the direction of plan investments. If you're hiring a financial advisor or considering one, make sure they will advise you how they will educate plan participants over plan investment options and if they will improve their rate of return which in turn will decrease liability and will also increase plan participation. I work on a §403(b) plan and I have seen the difference that can be made by hiring a financial advisor that will engage plan participants in enrollment meetings which has increased participation on the salary deferral side as well as increasing that rate of return for plan participants.

Don't be over wowed by all the bells and whistles

When I used to shop for a car with my wife, I used to always fight for the satellite radio. There are other options that we can never pick for a car like leather seats (I remember how they feel in the summer) or spoilers because higher end options come with a higher price. While it's important that a participant directed 401(k) plan has an easy to use website for participants to use for investments, they don't necessarily need all the bells and whistles that some providers offer. The larger TPAs can afford the fanciest websites because they have the resources to afford that. There is a cost to these high-end websites and picking a provider just because they have the flashiest website and apps isn't the most prudent thing to do. Competent service by a TPA is more important than a flashy website and/or app.

Pick a provider that can be part of a team

Too often, I've seen a financial advisor get hired to work on a plan and the first thing they want to do is to hire a new TPA. This decision is made regardless of whether the TPA needs to be replaced or not. The decision is only made because a financial advisor only wants to use a certain TPA. There are many reasons to change a TPA, but I think changing a TPA just to make a certain advisor comfortable isn't the right thing to do. A plan provider needs to have the ability to work with other provider, not with just the ones they are comfortable with for one reason or another.

Don't put all your eggs in one basket

There are plan providers who can act as a TPA, offer legal services through their legal department, and then serve as a financial advisor through an affiliated financial services company. I think it's a mistake to keep all your eggs in one basket and to hire one provider in all the necessary plan provider roles. Like most lawyers, I was a political science major and I'm a big fan of a system of checks and balances. Plan providers that are independent of each other allows enough flexibility for them to check the other providers and alert the plan sponsor if one provider isn't doing their job competently. So it's my opinion that plan sponsors are better off by hiring multiple plan providers than just allowing one to handle everything. Peace of mind is extremely important for a plan sponsor.

Don't "juice in" plan providers

Selecting plan providers needs to be an above the board process and hiring plan providers just because they are related to you or related to someone or is friends with someone is never a good idea. It's hard to fire your cousin or your banker or someone's spouse, so why start? There needs to be legitimate reasons as to why you hire a plan provider and being related to someone or giving someone a heads up because they know someone in the decision making process isn't a fair and rational process in selecting plan providers.

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