Life and Opportunities for Retirement Plan Providers after Fee Disclosure

By Ary Rosenbaum, Esq.

As a plan provider, the wait for fee disclosure was like waiting for your wedding. It took a lot of time, a lot of preparation, and a lot of anticipation. Just like your wedding, July 1, 2012 came and went. Just like the day after your wedding, you have your whole life in front of you and you wonder what you are going to do with the rest of your life. This article is about how plan providers can survive and thrive after fee disclosure regulations are finally on the books.

The impact will take a while

Too many plan providers (especially those who were transparent before disclosure regulations were ever drafted) thought the world as we know it would change on July 1, 2012, as if the Earth would swallow it up the wicked providers who hid fees just like what happened to Edward G. Robinson in The Ten Commandments. Any change in business is going to take some time to show its impact. We see it happening as we speak as there is further consolidation in the industry as some providers see opportunity and others want to exit the stage. While fee disclosure regulations are supposed to keep a level playing field among providers, there is enough leeway that some of the old tricks of the trade may still be out there. The old days of telling potential clients that you disclose fees and some of the other providers aren't fully transparent are over, but there is enough out there to still take advantage of the change.

Review your disclosures for clarity

I am the square peg in the round hole and I wasn't a good fit at firms where the person in charge had large law firm training. My background is from the third party administration (TPA) side of things since my first 9 years in this business was spent working at a TPA. Since I come from a place where less is more, that was in conflict with people who felt using legalese and jargon was needed to justify their fees. So being on my own, I have been able to develop a practice by speaking clearly to other retirement plan providers and my plan sponsor clients. Fee disclosure, like any other required retirement plan document has legal jargon in it, but there is enough leeway to allow you to

draft it in a manner that most plan sponsors will understand. Many plan providers feel that if they load their disclosures with enough jargon or legalese, they can hide the ball with their fees. Some providers such as TPAs who used to pocket revenue sharing payments are now disclosing fees as some inflated plan custody charges. The problem with drafting fee disclosure with such jargon is that eventually the jig will be up; plan sponsors will identify the legitimate fees from the inflated ones. In addition, confusing fee disclosure language will only confuse plan sponsors and confused plan sponsors don't make happy clients. When it comes to client recruitment and retention, clear fee disclosures that most plan sponsors will understand is better than fee disclosures that they don't understand. Bottom line, plan sponsors need to look at their fee disclosures and see whether they are easily to be understood by plan sponsors that have to review them and take them out to shop it around. My grandmother always said you should wear clean underwear because you never know where you are going to be, I'm sure wherever she is, she'd tell plan sponsors to make sure their fee disclosure are clean from jargon and misinterpretation because you never know where these disclosures will be seen and by whom. While I know it took some time to get those initial disclosures out, now maybe a perfect to see whether those disclosures can be drafted better to help you grow or maintain your business. If you need help, I know a great ERISA attorney who can do it for a song and a flat fee (cough, cough).

Augment you service with an ERISA fiduciary status

Whether you are a TPA or a financial advisor, you can certainly offer the services that you currently provide, but it may make sense of offering a "concierge service" for the plan sponsors that either need it or demand it. When it comes to concierge service, I'm not talking about the folks who can get you the dinner reservation or Broadway show tickets, I'm talking about offering ERISA fiduciary services. If you are a TPA it means offering an ERISA §3(16) service where you are a named fiduciary and plan administrator. If you are a financial advisor, it may mean offering an ERISA §3(21) or §3(38) service (keep in mind that a §3(38) service can only be offered by specific institutions (brokerage houses can't be §3(38) fiduciaries). This additional ERISA fiduciary service is something that should be offered to the client who need and demand it, which means that it's not a perfect fit for every client. If you're a TPA, you can offer your service through your entity or by setting up another entity to act solely in that role (there are advantages and disadvantages to both, ask me). If you are a financial advisor, you can offer ERISA services, but I caution you to so because of the added liability associated with it. If you don't have the background to offer these services, considering team up with another advisor who can serve as an ERISA §3(38) or full scope §3(21) fiduciary where you still can act in your co-fiduciary/advisor role.

Marketing and Social Media

I can say this and I hope that you are not offended, but most marketing by retirement plan providers isn't very good, I say it actually sucks. When you market your services, you have to target it to those who will be clients as well as referral sources for potential clients. Some providers produce marketing materials that look like they were printed from Print Shop off of my Apple IIe computer while other materials look like they were delayed by a stuffy law firm. For TPAs, I believe the problem is that many TPAs fail to make the client or potential client understand what they do and why their services are better and more cost effective with what a payroll provider may offer. Clients need to understand that they get what they pay for and a low cost provider does can actually put them in harm's way without them realizing it. Plan providers need to communicate with their clients, their potential clients, and referral sources their value proposition. For a TPA, plan design and competent administration should be stressed. For the financial advisor, it's about how the financial advisor can help with the fiduciary process. Saying you're cheaper than the current provider by 10 basis points or a few thousand dollars isn't going to cut it, your audience needs to know why you are a better value than your competition. Again, all marketing pieces needs to be easily understood, so take no offense, many actuaries should not be writing them. As far as social media, you maybe limited by ethical considerations, but the fact that you have to exploit it within your own limits. Social media is about information, not commercialization. It helps build your reputation as

an effective service provider. Effective social media is about communicating your expertise to the people that either need it or are looking for those that need it. Bad social media is the same as spam e-mail, something that is tossed and never read. I think you should write the way that it's easily understood by the audience you need to target. I have seen what humor and a couple of references to the movie Caddyshack can do to help the process.

Don't malign the competition

Years ago, the TPA I worked for was rocked by some serious allegations regarding a connected plan auditor. While the evidence was uncontroverted and unexplained, I know of no governmental actions taken against them or their principals. That being said, when the story broke, dozens and dozens of financial advisors were calling their clients from readily available commercial retirement plan databases. These plan providers called clients with reports of the transgressions made against this TPA. I know of no client that bolted because if this inundation of phone calls. I believe that plan sponsors don't leave their current plan providers because what a potential provider is saying about them. Plan sponsors change plan providers because they are unhappy of the service they are getting and/or the prices they are being charged for these services. They are also going to hire a new provider because they are a better fit, not because all they did was malign the incumbent provider. You need to stress what you do as a provider and how it's a better value and fit than what they are currently receiving. Potential clients will hire you because of what you have to offer, not because you told them that their current provider isn't very good. There are enough plans out there to pursue without going negative. This industry is closely knit, so others may hear what you say out there. People hate negativity; the only people who like it are negative people. Most plan sponsors want to hire a plan provider who wows them, not providers who depress them with tales of how awful the current providers are.

Offer something that the competition is not

Movie stars love goodie bags by attending events. These bags have chockfull of items that every star thinks they need. Plan sponsors probably would like goodie bags too. While I don't think plan providers should ever be giving away luxurious items or sports tickets to get business (there are prohibited transaction rules to consider), I am talking about adding a little something extra to their service that plan sponsors could use in the administration of their plan. It could be something as little as a plan review or paying for an outside attorney to review the plan (cough, cough) or discounting with an outside payroll provider. Look what the competition is offering and see whether you can add something to your service that plan sponsors can use. Your service is all about value and offering something additional at a discount or gratis that they could use with their plan is a good idea.

THE ROSENBAUM LAW FIRM P.C.

The Rosenbaum Law Firm P.C.
734 Franklin Avenue, Suite 302
Garden City, New York 11530
(516) 594-1557

http://www.therosenbaumlawfirm.com
Follow us on Twitter @rosenbaumlaw