

K.I.S.S. Advice to 401(k) Plan Sponsors

By Ary Rosenbaum, Esq.

KISS is one of my favorite rock n roll groups, but K.I.S.S. is also a theory that has helped me in life and as an ERISA attorney. K.I.S.S. means Keep It Simple, Stupid. I'm not trying to say you're stupid, I'm just saying that if you keep things rather simple as a 401(k) plan sponsor and don't overthink things, you'll be fine. This article is about simple concepts you need to remember and help you keep your plan and yourself out of harm and liability's way.

Remember why you put the retirement plan in the first place.

They say the road to hell is paved with good intentions and whoever coined that phrase must have been a retirement plan sponsor because fiduciary responsibility and potential liability can be a headache. As a plan sponsor, you should always remember why you put it in the first place, to save for retirement for yourself and your employees. If you never lose sight of that, then it makes it easier to understand your responsibility as a plan sponsor/fiduciary. When you remember that your money is there and your employee's money is there, you become more vigilant. If you forget that and treat the retirement plan like that dirty K-cup machine in the break room, your plan is going to be as disheveled as that coffee machine.

Less is more when it comes to 401(k) fund lineups.

We are a country of excess, just look at the national average weight. We usually think that more is more, so food portions at the local national chain restaurant can feed a Bulgarian weightlifter. The problem is that many times, more is not more, less is more. Eye makeup, men's cologne, and Jagermeister are examples of when less is more (Jagermeister feels like drinking bat-

we think more choice is good, it overwhelms plan participants so much that they decide not to defer and actively participate in the Plan. You don't need five large-cap growth mutual funds in your fund lineup. Information overload isn't something any plan sponsor wants to provide plan participants, but it's an unintended consequence of giving too many choices. There is no reason that any plan should include more than 12-15 mutual funds (not including target date funds) because that should be enough to be a good cross of diversified investment options.

Blind loyalty to plan providers is bad.

I have worked at places where the employer had loyalty to employees and it was pretty much misplaced. Too often, employers think that employees are loyal and that loyalty deserves reciprocity just because they have been there so long. Longevity should not be confused with loyalty because some employees are too incompetent to go somewhere else. Being loyal to

someone or a provider should be more than longevity. When it comes to plan providers, loyalty can be a reward for competent plan providers and it's a disaster if you have an incompetent plan provider. There are many reasons to have long-term providers because of cost, familiarity, and competence. Keeping a plan provider just because

tery acid). The same can be said with 401(k) fund lineups where participants direct their investments. Studies have shown that the more investment options available under the Plan, it has the unintended effect of depressing plan participation in salary deferrals. While it may seem like a good idea to offer 50+ mutual funds in the plan because



they have been there for that long reminds me of the actuary who wasn't good at his job and who we could never bring out for a sales meeting. Too often, I had to fix major errors with retirement plan clients because of the incompetent work of plan providers. After fixing these errors, the plan sponsors stated that they couldn't believe it because they had been using that provider for so long. There is nothing wrong with being loyal to plan providers, but you still need to benchmark fees and review their work. Blind loyalty will make you blind to the problems that might be affecting your Plan.

Plan design is more important than you think.

If you had two accountants and they both prepared tax returns to the letter of the law and one could get you a \$1,000 refund and another could get you a \$5,000 refund, who would you pick? Retirement plan design is a pretty hard concept for even retirement plan professionals to understand, so laypeople like plan sponsors don't understand it and don't value it. Like the accountant who could produce a better tax return, a good retirement plan design could help a plan sponsor like you maximize retirement savings for the highly compensated employees which means larger tax deductions. The best example is the work I did for a 75-year-old attorney many years ago. He had a self-employed pension plan where the maximum contribution at the time was \$49,000. I was able to have an actual design of a defined benefit plan where he could put away \$230,000 instead. That's a lot of shekels. Thanks to concepts such as cash balance plans, safe harbor 401(k), and new comparability/cross-tested plans, you could save a lot more for retirement than just using a plain vanilla plan design where everyone gets the same pro-rata contribution. So when it comes to selecting a TPA, one should always consider whether the TPA is proficient in plan design because many are not. Picking a TPA that doesn't



have plan design expertise may require more mandatory contributions, contributions to the rank and file employees, or not enough contributions to the highly paid.

There isn't anything out there that is a fit for every retirement plan sponsor.

Retirement plan service providers are very creative in crafting retirement plan solutions for their current and potential plan sponsor clients. These solutions may be a sophisticated plan design such as a safe harbor or a white glove fiduciary solution like an ERISA §3(38) or ERISA §3(16) service. While these can be great solutions for many or most retirement plans, they are not solutions for everybody. For example, an ERISA §3(38) fiduciary is a great solution where a financial advisor will exercise discretionary control over the fiduciary process and assume the liability that goes with it. While delegating control of the fiduciary process may be a great idea, retirement plan sponsors that have proven that can effectively manage the fiduciary process don't need to give it up. A safe harbor 401(k) plan design is a great tool when combined with a cash balance plan and/or new comparability plan, but if a plan sponsor can't afford employer contributions and/or if the

plan's compliance testing isn't an issue; it's not necessary. Retirement plan features are not one size fits all, it needs to fit the actual needs of your plan.

Being a plan sponsor is a never-ending marathon.

When 401(k) plan sponsors start their plan, they act like they're running a 100-yard dash. They are so quick to get everything in place and hire the plan provider, but then stop when everything is done just like the finish line at 100 yards. However, being a plan sponsor is a never-ending marathon. The race to keep the plan running and avoid liability is a never-ending marathon because a plan requires constant monitoring

and upkeep. You should treat running a plan like a marathon, meaning proper pacing and regular intervals of plan review. So you need to review fees, plan design, and plan provider services on a regular annual basis. Reviewing isn't enough, you also need to memorialize to cover your "rear-end" in any potential litigation.

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