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How a Financial Advisor Can Start Or Grow Their 401(k) Advisory Business



It's odd, but I do get some great ideas from professional wrestling in my business approach

as an ERISA attorney/retirement plan provider. Like in pro wrestling, becoming a retirement plan provider who is successful is all about getting "over" and there are plenty of gimmicks you can use that very few other plan providers are doing. So this article is all about what you can do as a retirement plan provider that most of your competition isn't.

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We need to be honest that Crypto doesn't belong in 401(k) plans

In the 30 plus years of investing, investing in cryptocurrency has been a wild ride. Mostly ups, but lots of downs. What makes sense as a small portion of investments that I'm willing to lose makes no sense as a 401(k) investment.

What we do in our private lives for investments in our business, what we allow as an investment in a 401(k) plan is different if we are a plan fiduciary or if we counsel them. The wild ride of Crypto, especially the negative volatility makes it clear that it's a bad



investment for most plan participants. When the crypto market plunged on a particular Sunday, I bought. Many 401(k) participants would have panicked and locked in their losses rather than wait the next day, only to see prices spike over 25% as a rebound.

Crypto is a highly speculative and unregulated investment, it doesn't belong on a 401(k) fund lineup anytime soon.

Congress proposed legislation to allow ESG



In the 30 years that I've been an investor, I've always strived for the best performance, that's me. Other people may want to strive for performance, but make a difference and I think they should have that right. So do some folks in Congress.

U.S. Senators Tina Smith, D-Minnesota, and Patty Murray, D-Washington, and U.S. Representative Suzan DelBene, D-Washington, have introduced

legislation in Congress that they say definitively approve retirement plans to have the choice that they can choose to consider environmental, social, and governance (ESG) factors in their investment decisions or offer ESG investment options.

The bill, called the Financial Factors in Selecting Retirement Plan Investments Act, would amend the Employee Retirement Income Security Act (ERISA) to allow retirement plans to consider ESG factors in their investment decisions, as long as they consider such investments in a prudent manner consistent with their fiduciary obligations. The legislators note that this is the same legal standard that ERISA already applies to non-ESG investment factors.

As an ERISA attorney, I like certainty and I think any change to ERISA to allow ESG funds for the plans and plan participants for those that want it, is something I could get behind.

Advisors need to "get" plan design

In sports and in business, you're only as good as the team that you are on. I have been on some good teams and not-so-good teams, so I know that sometimes I was only as good as an ERISA attorney if my fellow employees were good as well.



So I am often surprised how financial advisors are not conscious of the team they need to help their clients or are very ho-hum about the team they select.

So while financial advisors don't have the time to learn about plan design or fiduciary liability issues, they need to work with the experts that do such as a third-party administration (TPA) firm and an ERISA attorney.

A big part of my practice is working with financial advisors (for free) in developing a team approach in working with their clients and potential clients. That approach always requires the use of a good TPA and the use of a TPA will depend on location, cost, plan type, and plan size.

Plan sponsors and their financial advisors, for the most part, don't know the value of a good TPA until they replace a bad TPA. A good TPA will administer and record keep the plan correctly, which will eliminate potential fiduciary liability and plan sanction/disqualification. In addition, the most important function of a good TPA is plan design. Plan design to me is an art or a game like Chess. It's also like logic in 9th-grade math. Too often, a payroll provider or a bundled provider or the not-so-good unbundled TPAs treat retirement plans as if they came off an assembly line.

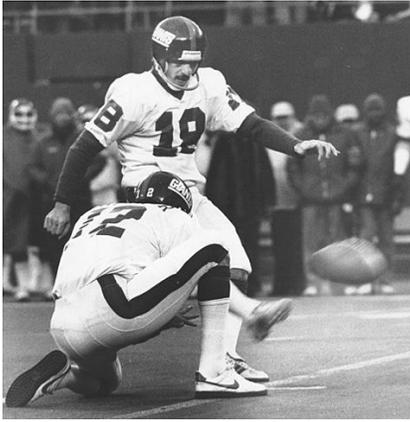
In my mind, there is no cookie-cutter approach to retirement plans in their design and their plan documents. Every plan sponsor has different employee populations, needs, and financial resources. An ERISA attorney and/or a good TPA will sit down with the client to review their needs for a new plan or to improve an existing plan.

Based on the information collected, the ERISA attorney and/ or the TPA will develop a retirement plan design that will fit the needs of that specific client. That design may be a safe harbor plan, a new comparability plan design, or the use of another plan like a defined benefit plan or a cash balance plan. Through 23 years in the business, I have seen retirement plans maximize contributions for their employees and/or correct administrative errors by the use of a good TPA.

I have had a client for 17 years now and it was as a result of a meeting that a financial advisor brought me in, for a potential client he was trying to recruit. The plan was being administered by a payroll company. The plan failed the deferral and matching discrimination tests by a wide margin. The owner of the company was getting a refund of \$10,500 of her \$12,000 deferral at that time. A review of the test by the payroll TPA was that the plan could have corrected the failed discrimination test by adding a \$7,500 qualified non-elective contribution. Even though it was there on the testing information, no one bothered to highlight it to that company. Needless to say, the client paid the \$7,500 corrective contribution, avoided all the refunds to the highly compensated employees, and implemented a safe harbor plan design the very next year. This client has been the client of the financial advisor and myself ever since (she thinks we are geniuses) because of this team approach. I have seen financial advisors grow business with the use of a good TPA and I have seen advisors lose business because of referring clients to a bad one. As I said, you are only as good as your team, so finding the right ERISA attorney and TPA is beneficial for helping a financial advisor grown and retain their business.

Beware of that bribe

I have been a New York Giants football since the days of Ray Perkins, Brad Van Pelt, and Joe Danelo. 4 Super Bowl victories have been far more rewarding than my time as a Mets fan.



Thinking about football reminded me of a client my employer, a third-party administrator was trying to smooth out a relationship with the new benefits manager of a law firm with \$25-30 million of assets in their 401(k) plan. Without any prodding by our firm, this benefits manager said he was a Jets fan and he circled out from a schedule of games of the ones he would like to attend. That was the benefits manager's message that he wanted my TPA to buy him Jets tickets and the TPA got the message by buying these tickets. Needless to say, that law firm was still a client for many years after.

Like Don Fanucci in Godfather Part II, there will always be plan sponsor representatives that would like their beak wet. This type of bribery is something that will always be available in the retirement plan marketplace, but it's up to the plan sponsor and its providers to make sure that any gifts are de minimis to avoid any prohibited transactions and under the board conduct that could put the plan sponsor in danger.

As a plan sponsor, you need to make sure that there are checks and balances. Having one person making all the decisions is likelier to be prone to bribery and kickbacks than a situation where a committee makes the decisions. Any guidelines that restrict what gifts can be made and requirements of plan providers to report these transactions (just like labor unions and their providers must do annually) will go a long way to make sure that the selection and retention of plan providers are above board.



**Registration
open for live
events.**

We have finally rescheduled our 2020 events for 2021.

Our St. Louis event is scheduled for Friday, September 10th with a Cardinals game that night. To sign up, please click [here](#).

Our Minneapolis event has been rescheduled for Friday, September 24th with a Twins game that night. To sign up, please click [here](#).

Our Houston event has been scheduled for Wednesday, September 29th with a game that night. For more information and to sign up, please click [here](#).

For more information on sponsorship, please contact [me](#).





We will do it again virtually in 2022.

That 401(k) National Virtual Conference this January was such a hit, we will do it again for 2022. It's far easier to have dozens and dozens of advisors to show up for an event virtually, instead of asking them to take 4 days out of their life and thousands of dollars to attend an event elsewhere.

That 401(k) Virtual Conference will be Thursday-Friday, January 27-28, 2022.

This virtual event will have it all: great presentations to help grow your 401(k) business and a couple of celebrity guests.

Attending the event for two days will start with start at an early bird fee of \$20.22. That price will increase by 50% in the Fall.

To sign up for the event or get more information, click [here](#).

For information on sponsoring the event, click [here](#).

To see some my interview with Walt Frazier from the past Conference, click [here](#).

To see some of my interview with Dwight Gooden from the past Conference, click [here](#).

For a video of Day 1 from the 2021 conference, click [here](#).

For a video of Day 2 from the 2021 conference, click [here](#).

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ADVISORS ADVANTAGE
A Publication for Retirement Plan Professionals

VOLUME 12 ISSUE 8
August 2021

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