

## Don't Be a Target -- Retirement Plan Fees and Expenses

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A rising number of challenges are being initiated by the plaintiffs' bar and **U.S. Department of Labor** investigators in the area of retirement plan asset charges and retirement plan expenses. Some employers have had to pay millions of dollars to settle these cases. Retirement plan sponsors and other plan fiduciaries (e.g., investment or administrative committees) should take heed of this trend and consider taking the following actions:

- **Establish a Process for Evaluating Administrative Expenses**

Retirement plan fiduciaries need to review and thoroughly understand the asset management fees and administrative expenses that are being paid from retirement plan assets to verify those fees and expenses are reasonable. Determining the reasonableness of fees requires evaluating what other providers charge in the marketplace for similar services to similarly-sized and situated plans. Employers may evaluate the reasonableness of compensation by requesting proposals from multiple vendors, engaging a benchmarking service or hiring a consultant with expertise in plan fee arrangements. Because of the constantly changing nature of the marketplace, this task must be performed on a regular basis. Depending on the size of the plan, services involved and applicable external factors, employer-fiduciaries should consider benchmarking provider fees if not annually at least every two to three years and whenever plan circumstances have changed significantly from those that previously existed. They should also make sure that the analysis takes into account all of the compensation the plan's providers are receiving, including indirect compensation derived from the plan's investment funds.

- **Evaluate Asset Share Class and Type of Investment in Light of Size of Plan's Assets**

The plan's fiduciaries should determine whether the retirement plan is invested in the lowest fee share class available to the retirement plan, and if not, should consider and document why it was prudent for a different share class to be utilized. For plans with significant assets, retirement plan fiduciaries should be prepared to justify a decision to use a mutual fund instead of a lower cost vehicle, like an ETF, a collective trust fund or separately managed account.

- **Document the Decision Making Process Relating to Fees and Expenses**

It is difficult to prove that the fiduciaries engaged in a prudent decision-making process if there is no record of the documentation reviewed by the fiduciaries or the advice they obtained in evaluating retirement plan fees and expenses. Note that plan fiduciaries need to demonstrate not only that they obtained the fee and expense information, but that they prudently and thoroughly analyzed it. Documentation should include minutes or notes regarding the decision along with a copy of the information that the fiduciaries considered in their analysis.

The bottom line -- retirement plan fiduciaries should assume they will be challenged on the retirement plan's investment fees and administrative expenses. Plan fiduciaries should take whatever steps are necessary so they can later demonstrate with substantiating documentation that they evaluated all of the fees and expenses and that the fees and expenses were reasonable compensation for the services provided and the amount of assets invested.



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