

Know what you're paying

How understanding your 401(k) fees can save you money and keep you out of trouble **Interviewed by Sue Ostrowski**

If you don't know what you're paying for — and getting from — your 401(k) plan, you could be facing a potential employee lawsuit. While plan sponsors aren't required to choose the lowest cost plans, they are expected to know what they are paying and select ones with reasonable fees, says Mike Rogers, director of pension services at Burr Pilger Mayer.

"It's not about the lowest fees, it's about the reasonableness of the fees for the services being provided," Rogers says. "If you have one payroll, no special enrollment needs, everyone works in the same building and you have a tech-savvy work force, a vendor should charge you X. But if you have six offices, run four different payrolls, have English and Spanish enrollment needs and need someone to be at each of your offices once a quarter, that should cost X-plus. But if both companies are paying identical fees, a case could be made that the first plan is overpaying and you could be open to a lawsuit from participants."

Smart Business spoke with Rogers about fee transparency, benchmarking, and how a 401(k) specialist can lower your fees and help keep you out of legal trouble.

How important is fee transparency?

Fee transparency is the No. 1 issue. As a plan sponsor, when you select a vendor and your fund lineup, you need to know how much you're paying each of the parties. The vendor should fully disclose upfront every component of the fees so that you don't get hit with a lawsuit down the road on something that you didn't know anything about.

The 401(k) plan lawsuits today aren't like those against Enron, where someone bought stock at \$90 a share and it fell to \$2. These lawsuits are about whether you, as the plan sponsor, picked a fund or a vendor that costs too much. It doesn't matter that the mutual fund was up 40 percent last year; it's that there are less expensive versions of that fund available. As a plan sponsor, you need to be able to justify why you're using a fund with a more expensive fee class.

The Bush administration said, 'We are going to mandate how fees are disclosed both to the plan sponsors and to the participants so they know where their money is going.' The proposed regulations got tabled but are expected to be finalized this



Mike Rogers
Director of pension services
Burr Pilger Mayer

year. What participants and plan sponsors really want to know is how much they're paying for their plan and the funds. As a fiduciary, the plan sponsor is responsible for monitoring fees, but getting fee transparency is akin to sighting the Loch Ness monster.

How can a 401(k) specialist help reduce fees and share fiduciary duties?

A specialist can match your needs and expectations with those of an appropriate vendor. There are so many vendor options that it is hard for anyone that doesn't specialize in this area to properly match your needs, expectations and costs with the various providers. The best answer for your company may be a plan that doesn't pay commissions and uses low-cost mutual funds.

In addition, simply hiring a 401(k) specialist can cause vendors to be more proactive. Once you bring in a specialist, vendors realize that person knows how the game is played, and they may be more open to looking for ways to save you money or renegotiate fees.

As a fiduciary, the plan sponsor is personally liable in the event of a failure to fulfill his or her fiduciary responsibilities. But there's no reason a plan sponsor should have to go it alone. Because 401(k)

specialists focus on this area, they are typically a named fiduciary right alongside that sponsor. The two main differences between brokers and consultants are how they are paid and whether they can cross the line to fiduciary status. Many existing contracts specifically state that the vendor or broker will not be acting as a fiduciary.

What are the benefits of fixed pricing versus asset-based fees?

Historically, this has been an asset-fee business that charged on the size of your assets. If you have \$1 million in your 401(k) plan and someone charges 50 basis points, that's a \$5,000 fee. When the plan grows to \$2 million in assets, that fee goes to \$10,000 regardless of whether your provider did any more work for you. The industry is seeing a switch to more fixed pricing despite the objections of many of the providers.

Fixed pricing allows for cost certainty and cost containment in your plan. If you pay \$5,000 today on \$1 million, and the plan goes to \$2 million and you still pay \$5,000, then the fee, as a percentage of assets, is declining as your plan assets continue to grow. Fixed pricing also allows your 401(k) specialist to focus on doing what's best for your business instead of chasing the highest commissions.

How can benchmarking help you keep tabs on fees?

Benchmarking lets the plan sponsor see what it is paying in fees against comparable companies in its industry and of similar size. You need to distinguish between how much you are being billed and how much the vendor is charging participant accounts. The average plan sponsor, if the vendor doesn't send a direct bill, may think the plan is free. But it's not free. Everybody has to get paid, and if you're not being billed directly, the expenses of the investments are higher and the participants are paying for those fees. Considering company executives typically have the highest balances, reducing asset-based fees is a win-win for everyone. When you start benchmarking, it becomes very apparent that your fees are X and they really should be X-minus. <<

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