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# With Compliance Deadlines Approaching, It's Time to Evaluate Expenses of 401(k) and 403(b) Plans

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In anticipation of the summer deadlines for plan sponsors and providers to comply with the Department of Labor's final fee disclosure rules, we thought it would be helpful to summarize the key steps that plan fiduciaries should focus on when evaluating the fees paid for retirement plan services. These considerations are particularly timely in light of the recent Missouri federal district court decision *Tussey v. ABB Inc.*, awarding the plaintiff class more than $36 million for certain breaches of duty relating to the plan's administration.

Plan fees generally fall within one of the following five areas:

Record keeping services;

Trustee or custodial services;

Investment management services;

Consulting or advisory services;

Participant education services.

There is no "one size fits all approach" to evaluating the fees paid by a plan. Each service may be charged based on a percentage of assets, a per head fee, or a combination of both. Some providers bundle all of the services together and charge a single fee for all services, while others charge fees *a la carte*. Again, one approach is not necessarily better than another.

**Three Key Steps to Evaluating Fees**

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1. The most basic and essential step is for plan fiduciaries to identify and fully understand all the fees incurred by their plans. Although this may seem straightforward, that is not always the case as many fees are not immediately apparent. For example, if the funds within the plan's investment portfolio generate revenue sharing, it is critical that the plan fiduciaries fully understand the revenue sharing dollars generated by those investments and how the revenue sharing amounts are captured and applied for the benefit of participants. The new fee disclosure rules should help plan fiduciaries identify these fees.

2. The next step is to evaluate whether the fees paid by the plan or plan sponsor are justified given the level of services provided. As part of this process, fiduciaries should consider leveraging the plan's size to reduce plan expenses. This is typically achieved through a benchmarking analysis. Plan fiduciaries should also be mindful of the degree of services required given the unique characteristics of each plan and its participants. For example, some plan fiduciaries may place a greater or lesser value on participant education depending on the plan design and their own demographics. Put simply, fiduciaries should be asking whether the fees incurred are warranted and reasonable.

3. The final step is to document the plan fiduciary's analysis and conclusions and to verify that those conclusions are consistent with the plan documents, including the plan's investment policy. Plan fiduciaries should implement any appropriate action items following the documentation.

These steps should be periodically repeated.

## What This Means to You

It is important to remember that the Employee Retirement Income Security Act (ERISA) does not require plan fiduciaries to design their plans based on the lowest plan expenses possible. However, ERISA does require plan fiduciaries to act prudently and in the best interest of participants and beneficiaries. Accordingly, plan fiduciaries must continually monitor and evaluate plan expenses to fulfill their fiduciary responsibilities under ERISA.

## Contact Info

Please contact a member of the Employee Benefits & Executive Compensation practice group if you have questions or if we can assist in any way.

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