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Stand Up to Scrutiny

Your Action Plan for New 401(k) Transparency Rules by R. Brent Bennett

07 October 2011—

On October 14, 2010, the retirement game changed with the passage of 404(a)(5), the Department of Labor's (DOL) overhaul of transparency and the employee nest egg. As a result, beginning in April 2012, fees will now be clearly posted as a dollar amount on each participant's quarterly statements.

In the past, retirement plan statements shared the net return only but did not disclose all internal administrative fees charged to the participant. In fact, many participants and even some plan sponsors honestly still believe there are no fees in their 401(k) plan. Or, even worse, participants may think the company pays all the fees when in reality the majority of fees are passed through to employees.

The new DOL regulations make retirement plan fees completely transparent, and with these changes come heightened awareness, which can be a positive or negative depending on how the employer embraces these new disclosure rules.

Substantiate Your Decisions

As participants review their retirement statements, new concerns will start pouring in. With the additional passage of 408(b)(2), the plan sponsor must be ready to substantiate decisions they've made with regard to related fees. These questions will ultimately put increased scrutiny and fiduciary responsibility on the employer, who will need to more closely monitor and document their relative plan performance, advisor selection, plan provider and appropriateness of fees.

While the fees and rules haven't changed, employers will need to have documentation ready to support their research and due diligence process, which makes working with a competent advisor that much more important. The DOL "Look at 401(k) Plan Fees" report discusses the minutia that is expected to spur employers into a proactive mode.

The fact that fees in dollar amounts will be disclosed and communicated on 401(k) statements versus only fee percentages will require honest and strategic communications. Many large and some small employers with proactive retirement policies are already doing this. However, as participants compare notes with friends and relatives at other companies, there will after be huge fee disparities.

It is difficult for employers to define or claim that fees charged to a plan are "reasonable." There is and will continue to be greater scrutiny placed on the employer to ensure that every attempt was made to identify and understand administrative fees and expenses related to the plan investment and that decisions are made in the best interest of the participants. There is no stipulation that plan fees or the provider chosen is required to be the least expensive. However, there should be a documented process of the annual review, criteria used to rank providers and some benchmarking to show that the fees are reasonable.

Be Prepared to Answer Questions

With the help of a strategic 401(k) advisor, the employer should satisfactorily document an investment policy and fund selection and monitoring report for employee review, if requested. As the employer, five steps to prepare are outlined below:

Form a 401(k) committee to get employees involved in the review process. Having four to five peers providing input and fostering transparency can lead to a reduction in liability while subsequently engaging employees in the process.

By November 2011, benefit advisors to 401(k) plans are required under 408(b)(2) to provide a written service agreement and fee disclosure outlining the services they provide and the fees for those services. Meet with a benefits advisor in advance to ensure these documents are in order. Make sure to evaluate the advisor's expertise and capabilities to assist the company's 401(k) or 403(b) (equivalent to 401(k) but for non-profit) committees through this process.

Work with an advisor to create an investment policy statement that documents the plan's investment process and roadmap, including trigger events for the 401(k) committee to follow, as needed.

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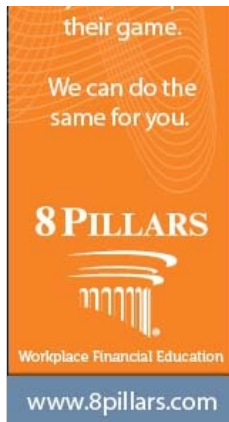
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Perform an annual plan review to benchmark investment options, plan level fees, service quality and other key areas. As plan assets grow, needs may change and should be addressed through this review.

Create a plan and documented schedule with attendance records for employee retirement education, new-hire enrollment meetings, and/or a communications schedule via email, statement distributions, webinars, etc.

Plan Ahead

Oftentimes participants and plan sponsors get consumed with having the highest-performing investments or a five-star rated fund and overlook basic compliance responsibilities. Although fund performance is extremely important, it is only one component in a long list of responsibilities and determining factors.

Of course, with a more educated employee come questions. But these can be tempered if the fee disclosure cards are laid on the table in earnest. It is now the employer's responsibility to understand what the fees and objectives are.

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