



Support for Retirement Plan Fiduciaries: *Keeping an Eye on Fees*

The numerous fiduciary responsibilities associated with managing employee benefit and retirement plans present compliance challenges for employers.

Put simply, it is a fiduciary's duty to act prudently and in the best interests of participants when it comes to decisions about the plan. At the same time, the law does not specify permissible levels of fees that can be charged by retirement and employee benefit plan service providers. However, fiduciaries are required to understand how plan fees are calculated and shared by participants, as well as determine the reasonableness of plan expenses.

In *Tibble v. Edison International*, the Supreme Court held that a 401(k) plan fiduciary has a continuing duty to monitor investments and remove imprudent options. In addition, the high court ruled that an allegation for breach of this duty may be considered without regard to ERISA's six-year statute of limitations period.

Many industry experts believe the court's ruling on *Tibble* may be perceived as opening the door for increased failure-to-monitor claims against defined contribution plan fiduciaries. With that as background, the following are practical suggestions employers should keep in mind when monitoring fees.

Prudent Processes for Managing Fees Can Lead to Significant Savings

- Conducting periodic reviews and benchmarking of plan fees are among the most important functions that plan sponsors and fiduciaries should complete
- This diligence helps an employer document processes designed to comply with the law
- Fee and service reviews conducted using experienced experts maximize potential financial savings
- By benchmarking the plan against other plans, plan sponsors gain leverage to negotiate lower fees with service providers. Our data indicates that many plans (assume approx. \$20M in assets) could realize between \$10,000 and \$50,000 in annual savings through periodic benchmarking, servicing efficiency analysis and fee negotiation.
- Through analysis of the various layers of fees and different payment mechanisms available, we have helped plans utilize less expensive share classes, and have explored different fee structures for transparency purposes.

Determining 'Reasonableness' of Fees

Lawsuits against plan fiduciaries appear to be on the rise. Many of these cases revolve around accusations and scrutiny of fees. For example, the Department of Labor (DOL) indicates that plan fiduciaries should consider fees when selecting specific investment options, and monitor the impact of those fees on account balances periodically. Plan fiduciaries are well served to utilize an experienced consultant. For example, a manufacturing company had thought, based on output from an independent third-party benchmarking database, that its plan fees were within a reasonable range. That preliminary indication was supplemented when the service provider offered a recordkeeping fee reduction of 14 percent. However, after USI Consulting Group performed a further benchmarking and analysis of required services, including use of a proprietary database, it was determined there was likely room for fees to move lower. The final result was that a 36 percent fee reduction was negotiated. In this case, this additional diligence saved participants more



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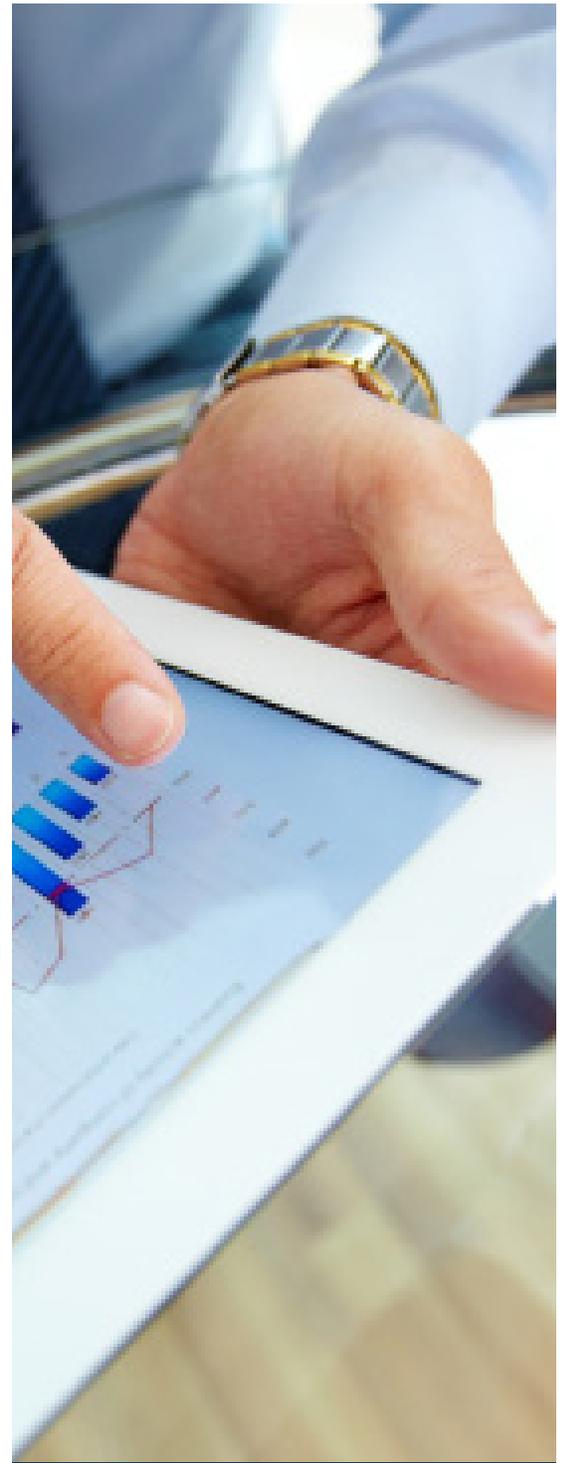
than \$100,000/year. Fee negotiations are best performed when working with a consultant that has the expertise and human talent necessary to visualize how the plan would look in the competitive bidding marketplace (rather than merely looking at a computer generated “benchmarking group”).

RFP process: “Marketing Your Plan for Optimal Pricing and Servicing Focused on your Goals”

The DOL sets forth that plan sponsors should take advantage of the RFP process every three to five years. The RFP may or may not end up with a change in service provider. One advantage is that the nature of an RFP places the fiduciary in a strong position to negotiate competitive fees and enhanced services with its current service provider. Also, the RFP process itself helps document that the fiduciary is acting prudently as required by ERISA.

To illustrate the dynamic power of an RFP, consider a large electronic distribution firm which chose to utilize our services and conduct an RFP. By marketing the plan with the goal of optimizing services and pricing, we negotiated a recordkeeping fee reduction of 63 percent. The RFP initiative saved plan participants over \$450,000 in the first year alone, along with commitments for enhanced servicing. Additionally, “breakpoint pricing” was negotiated pursuant to the RFP. Under this service agreement structure, asset-based thresholds automatically reduce fees as plan assets increase.

The above examples show how plan sponsors can fulfill fiduciary responsibilities with processes designed to help keep an eye on fees. In fact, the impact of an RFP, fee negotiation or benchmarking exercise often results in significant annual savings for plan participants. Lower fees applied against participant account balances also leads to a highly probability of collective “retirement readiness” and plan health.



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