

EMPLOYER-SPONSORED RETIREMENT PLANS

ROLES AND RESPONSIBILITIES



A retirement plan is one of the best tools a business can use to attract and retain employees, promote employee loyalty, and reduce taxes. Setting up and maintaining a retirement plan is a smart way for a business to invest in its people.



There are many types of employer-sponsored retirement plans, each with their own features, benefits, rules, levels of complexity, and administrative requirements. Since 1974, the Employee Retirement Income Security Act (ERISA) has defined the rules, responsibilities, and duties of sponsoring and operating an employer-sponsored retirement plan. This document is intended to help plan sponsors understand the roles, responsibilities, and fees associated with operating an employer-sponsored retirement plan under ERISA.

PLAN SPONSOR RESPONSIBILITIES

To ensure that retirement plans are set up to benefit both the participants and the employer, ERISA requires that plans are designed according to specific rules and that individuals operating the plans are held to a fiduciary standard of care. A fiduciary standard of care is the highest duty of care in financial planning.

A fiduciary is a person who legally acts on behalf of and in the best interest of another person.

WHAT DOES IT MEAN TO BE A FIDUCIARY?

ERISA helps to define the standard of care that a fiduciary must adhere to, called the “Prudent Man Rule.” The Prudent Man standard of care¹ encompasses four duties:

1 Duty of Loyalty



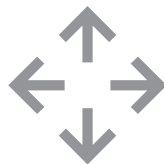
The duty of loyalty is an obligation to act solely in the interest of plan participants, for the exclusive purpose of providing benefits to those participants and beneficiaries, and defraying reasonable expenses of administering the plan.

2 Duty of Care



The duty of care requires a fiduciary to act with the “care, skill, prudence, and diligence ... that a prudent man acting in a like capacity and familiar with such matters would ...” under similar circumstances.

3 Duty to Diversify



The duty to diversify includes selecting investments that minimize the risk of loss.

4 Duty to Obey



The duty to obey includes administering the plan according to the plan documents and within the requirements and guidelines of ERISA.

WHO IS A FIDUCIARY?

ERISA retirement plans must have at least one fiduciary and oftentimes have many, including virtually anyone exercising discretion in the administration or operation of the plan. Plan sponsors are by definition fiduciaries and bear the ultimate responsibility for ensuring that the plan is run properly and compliant with the requirements imposed by ERISA. Fiduciaries may be liable for plan losses caused by a breach of duty, heightening the importance of their actions. To understand the risks and responsibilities, plan sponsors need to be aware of who is considered a fiduciary and the obligations that arise from that duty.

OUTSOURCING: MANAGING RESPONSIBILITIES AND RISK

Operating an ERISA plan can be challenging and it may be necessary for the plan sponsor to outsource responsibilities that require specific expertise to service providers. Plan sponsors may be able to mitigate risk by delegating fiduciary and administrative duties to qualified service providers.

Keep in mind that the plan sponsor is still responsible for selecting service providers and monitoring performance on a regular basis. Periodic monitoring is an important way for the plan sponsor to demonstrate that fiduciary duties are being met.

By putting consistent, sound processes in place, leveraging experts to help with duties, and monitoring service providers, a plan sponsor can help manage the risks associated with being a fiduciary.

Although outside the scope of this document, there is an opportunity for plan sponsors to leverage “model” plans and prototype documents drafted by regulators and/or experts in the field. Additionally, ERISA provides several plan designs and provisions to help a plan sponsor manage their risk, including participant-directed account² and qualified default investment account (QDIA)³ options.



The following is a basic list of ways in which a plan sponsor can help manage their fiduciary responsibilities:

1. SELECT COMPETENT AND QUALIFIED SERVICE PROVIDERS:

- Establish a process for selecting providers that offer fiduciary and administrative services
- Document why providers were selected

2. MONITOR AND EVALUATE:

- Is there an investment policy statement (IPS)? Is it being followed?
- Are plan operational requirements being adhered to?
- Are the service providers charging reasonable fees?

3. DOCUMENT AND COMMUNICATE:

- Document plan operations and processes
- Investment policy statement
- Document fiduciary obligations and procedures
- Identify and document parties and positions responsible for fiduciary obligations
- Communicate with participants under the ERISA requirements
- Provide accurate information upon request from service providers

²29 CFR 2550.404c-1 - ERISA section 404(c) plans

³29 CFR 2550.404c-5 - Fiduciary relief for investment in qualified default investment alternatives



SELECTING SERVICE PROVIDERS: ROLES

Understanding what service providers are appropriate for different fiduciary responsibilities is just one of the many important elements to consider when selecting a service provider. ERISA does not provide concrete guidance regarding which roles involved with the administration and management of a plan should be delegated. ERISA does provide specific duties and requirements that need to be covered, and in some cases the requirements to fulfill these roles. Most of the delegation of duties is left to the plan sponsor to allocate.

ERISA identifies three fiduciary roles that are required for a plan: A named fiduciary, a trustee, and an administrator.

PLAN FIDUCIARIES

ERISA lays out three fiduciary roles that are required for a qualified plan:

1. A named fiduciary
2. A trustee
3. An administrator

ERISA 402(A) NAMED FIDUCIARIES

Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

NAMED FIDUCIARY

Each plan is required to have a named fiduciary with the authority to control and manage the operation and administration of the plan. The named fiduciary can be the plan sponsor, the administrator, the trustee, or even an independent plan fiduciary. The named fiduciary is the primary fiduciary that plan participants can go to with questions or concerns about their retirement plan, unless plan documents dictate otherwise. The default for the named fiduciary is the plan sponsor; however, the trustee and the administrator will often share broad powers over the plan and the responsibilities as the named fiduciary.

TRUSTEE

Plan assets must generally be held in trust by one or more trustees. The trustee is responsible for the safekeeping and management of the assets. There are two types of trustees: discretionary trustees and directed trustees. The default is a discretionary trustee with the exclusive authority and discretion to manage and control the assets of the plan. A directed trustee does not have this exclusive authority. The directed trustee can be created when the trustee is required to either take direction from another fiduciary or the plan sponsor. Alternatively, the plan document may delegate the authority and responsibility for the assets of the plan to an ERISA 3(38) Registered Investment Advisor (RIA).

The RIA should not be confused with the trustee, nor can it fully replace a trustee. A trustee, by nature, will retain responsibilities for plan assets outside of the duties delegated to the RIA. The trustee will remain responsible for ensuring that assets are managed in compliance with plan documents, pursue contributions owed to the plan, and process participant directions in a timely manner. Additionally, the trustee will retain the responsibility to safeguard the assets of the plan.

ADMINISTRATOR

The administrator is the contact person with broad administrative responsibility for the plan. Naming an administrator under ERISA 3(16) effectively offloads the administrative fiduciary responsibilities from the plan sponsor. More specifically, everything which does not lie with another party lies with the administrator. This can include:

1. Creating and interpreting plan documents
2. Required reporting and disclosures
3. Distributing benefits
4. Developing policies and procedures
5. Tracking eligibility, vesting, and beneficiary forms

The administrator of a plan should not be confused with either the third party administrator (TPA) or the recordkeeper, both of which generally offer only nonfiduciary services. A plan sponsor or administrator will frequently leverage one or both of these services to handle ministerial tasks, as discussed below.

INDEPENDENT PLAN FIDUCIARY

The independent plan fiduciary is commonly referred to as an ERISA 402(a) fiduciary or Full Scope ERISA 3(21) fiduciary. While this role is not required by ERISA, it serves as an overarching plan fiduciary. The total scope of what is offloaded will be outlined in the plan document, but can include the power to outsource any and all functions with regard to the plan. While this set up does allow the plan sponsor to offload the maximum amount of fiduciary responsibilities, there are two key considerations. First, an independent plan fiduciary that outsources all administrative, trustee, and asset management services adds an additional layer of fees to the retirement plan. Second, the plan sponsor is still required to monitor and evaluate the performance of the independent plan fiduciary.

ERISA 403(A)(1)

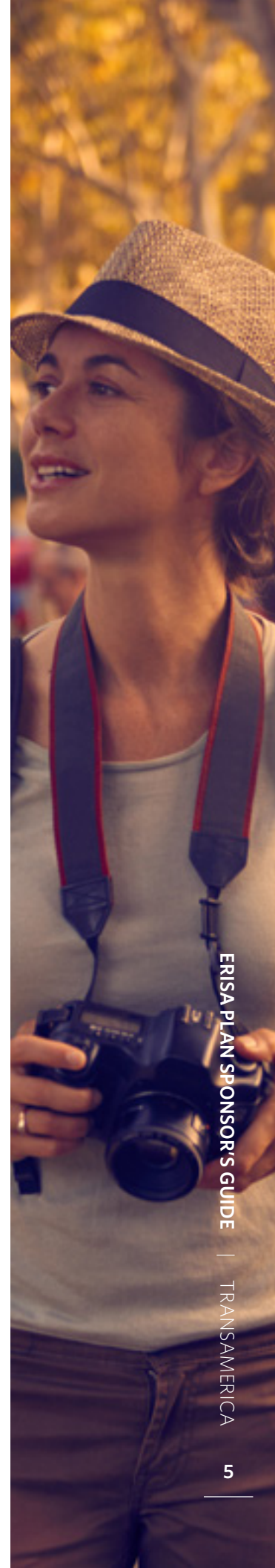
Benefit plan assets to be held in trust;
Authority of trustees

Except as provided in subsection (b) of this section, all assets of an employee benefit plan shall be held in trust by one or more trustees ... [and] shall have exclusive authority and discretion to manage and control the assets of the plan ...

ERISA 3(16)(A)

The term "administrator" means:

- i. the person specifically so designated ...
- ii. if an administrator is not so designated, the plan sponsor; or
- iii. ... as the Secretary may by regulation ...



OUTSOURCING

In addition to selecting plan fiduciaries, plan sponsors will often elect to outsource different asset management and administrative responsibilities to service providers. Outsourcing generally falls into two categories: fiduciary outsourcing and administrative outsourcing. Fiduciary outsourcing shifts the fiduciary responsibilities for managing or administering the plan. Administrative outsourcing focuses on providing nonfiduciary services to the plan such as mailing documents, filing paperwork, bookkeeping, etc. Fiduciary outsourcing is primarily done under three ERISA provisions:

1. ERISA 3(38) investment fiduciary
2. ERISA 3(21) fiduciaries

ERISA 3(38) INVESTMENT FIDUCIARY

An ERISA 3(38) RIA can be appointed to a plan to relieve the plan sponsor of the responsibility for investment management and oversight for the plan assets. This appointment can be in whole or in part, meaning that the investment advisor can be hired to manage the entire plan or just a portion of the plan. To the extent of this appointment, a 3(38) RIA has sole discretionary authority over the management of the assets appointed to his/her control. The plan sponsor retains the duty to prudently select and monitor the 3(38) RIA.

ERISA 3(21) FIDUCIARIES

ERISA 3(21) defines, in general terms, the circumstances under which a service provider becomes a fiduciary with regard to an ERISA qualified plan. 3(21) Fiduciaries provide either non-discretionary investment services or administrative services.

ERISA 3(21)(A)(I) NON-DISCRETIONARY INVESTMENT FIDUCIARY

A non-discretionary investment advisor under ERISA 3(21)(A)(i) provides investment recommendations, advice, assistance, or help to a plan. However, unlike a 3(38) investment advisor, the decision-making authority remains with the plan sponsor or other plan fiduciary. In this situation, the duties of the investment advisor could be to recommend investments to the plan sponsor, monitor those investments, suggest replacements, provide one-on-one advice to participants, or advise the plan sponsor on a fiduciary process and IPS.

ERISA 3(21)(A)(III) ADMINISTRATIVE FIDUCIARY

An ERISA 3(21)(A)(iii) administrative fiduciary can serve in a role similar to a 3(16) co-fiduciary, only this administrative fiduciary is appointed as a service provider and not named as the administrator in the plan document. The administrative fiduciary agrees to provide administrative services for a portion of the responsibilities of the plan and serves as a fiduciary only in those capacities. Generally, this role will supplement the role of the administrator and that of any TPAs and/or recordkeeping services.

ERISA 3(38)

The term "investment manager" means any fiduciary:

- A. who has the power to manage, acquire, or dispose of any asset of a plan; who
 - i. is registered as an investment ...
 - ii. is a bank, [or] ... an insurance company qualified to perform services described in subparagraph (A) ...
- B. [and] has acknowledged in writing that s/he is a fiduciary with respect to the plan.

ERISA 3(21)

A person is a "fiduciary" ... to the extent:

- i. exercises any discretionary authority or discretionary control respecting management of such plan ...
- ii. renders investment advice for a fee or other compensation, direct or indirect ...
- iii. has any discretionary authority or [] responsibility in the administration of such plan.

ADMINISTRATIVE OUTSOURCING

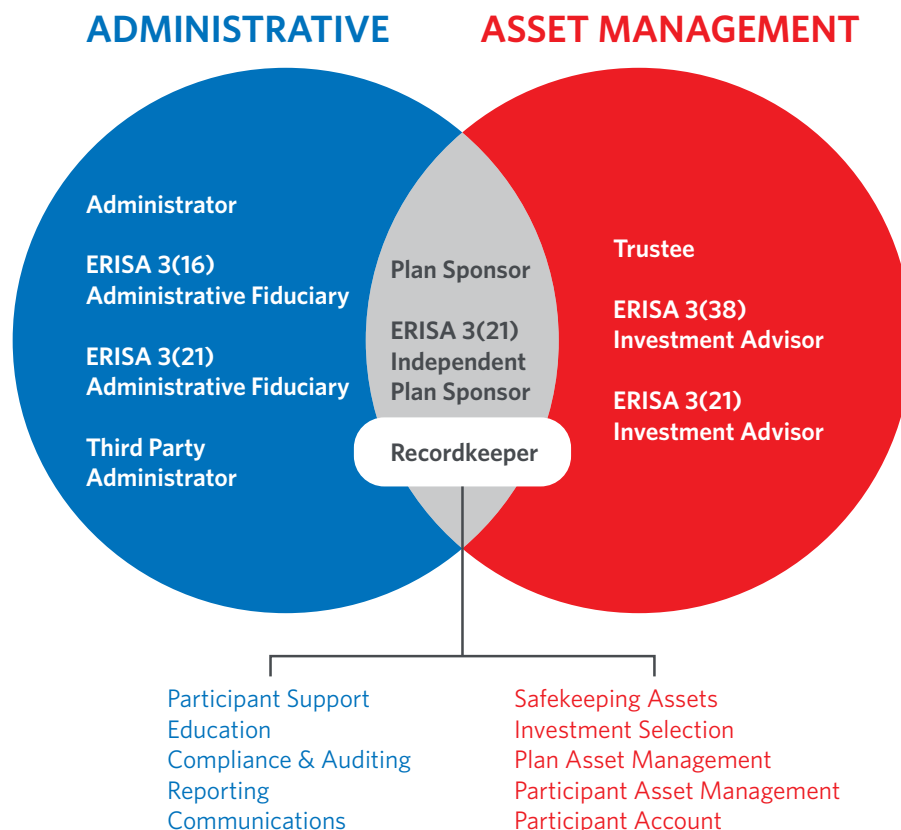
THIRD PARTY ADMINISTRATOR (TPA)

TPAs handle the operations of the plan and ensure that the retirement plan remains qualified under the Internal Revenue Code (IRC), preserving the tax-deferred status. They conduct compliance testing to ensure that the plan does not violate the nondiscrimination and top-heavy rules. Additionally, the TPA will likely complete the annual tax returns for the plan and file the Form 5500. TPAs are also frequently experts in plan design and can help to draft the plan documents. The plan sponsor retains the responsibility for providing accurate and timely data to the TPA. If the information provided is not correct, then the testing will not be correct either.

RECORDKEEPERS

Retirement plan recordkeepers are responsible for keeping track of plan assets. They account for each individual participant's accounts, like a bookkeeper would outside of a plan. They keep track of how much was invested, contribution type, earnings on investments, etc. The recordkeeper keeps track of the assets at the individual, not the aggregate, level. Recordkeepers often offer additional services to simplify a participant's access to information, including:

1. Maintaining a participant website and toll-free phone line
2. Participant-level bookkeeping
3. Printing and mailing account statements to participants
4. Requesting transactions on behalf of the participant
5. Providing retirement calculators, education, guidance, and enrollment materials





MONITOR, DOCUMENT, AND COMMUNICATE

Once the plan sponsor has delegated fiduciary responsibilities, it is important to ensure service providers are monitored and evaluated on a continuous basis. One factor that must be accounted for in the evaluation process is the fee collected by the service provider and whether it is reasonable in light of the services being rendered. Evaluating if fees are reasonable can be broken down into three components:

1. Due diligence
2. Reasonableness in terms of value
3. Fees relative to industry norms

ERISA 408(B)(2)

... making reasonable arrangements with a party in interest for ... services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid.

COVERED SERVICE PROVIDER

... enters into a contract or arrangement with the covered plan and reasonably expects \$1,000 or more in compensation, direct or indirect, to be received in connection with providing one or more [] services ...

DUE DILIGENCE

REVIEW THE SERVICES:

- a. Understand the services that are being provided to the plan
- b. Identify covered service providers⁴
- c. Determine direct and indirect compensation that is being paid to covered service providers⁵

A process for evaluating fees may include an examination of the current plan services and fees. Covered service providers (CSPs) are required to disclose all direct compensation received from the plan, indirect compensation received from third parties, and the services that are being provided in exchange for each. The CSP disclosure should allow a plan sponsor to evaluate whether the stated services are being provided in a manner consistent with the agreement and whether the associated fees are warranted.

It is important for the plan sponsor to ensure that any information missing from the CSP disclosure is obtained and proper procedures are taken in response to any omission. ERISA has very specific disclosure requirements for CSPs under ERISA 408(b)(2) and separate requirements for the plan sponsor when the CSP is not meeting obligations. It will be important for a plan sponsor to understand these obligations, define proper procedures for addressing any disclosure deficiencies, and to document the results of this analysis.

The plan sponsor should look at any change in costs and consider the following:

- Were the cost changes warranted and what drove the changes?
- Were the changes reported in a timely manner to the plan sponsor?
- Are there revenue sharing agreements between plan service providers?
- Does the revenue sharing offset direct plan fees? Are they credited back to the plan participants?
- How are the fees being assessed against the participants?
- Are participants with higher or lower balances being unfairly discriminated against or bearing too much of the burden?
- Does the plan provider offer fee equalization to ensure fairness?
- Were the funds chosen to meet revenue sharing needs or concerns?

This disclosure will also allow the plan sponsor to identify and assess any potential conflicts of interest on the part of the CSP.

⁴ERISA 408(b)(2)

⁵29 CFR 2550.408b-2(c)(1)(ix)

REASONABLENESS IN TERMS OF VALUE

ERISA provides no definition or set of guidelines for what is reasonable. What is reasonable for fees must be viewed both in light of the value of the services being rendered, in comparison to alternative solutions and industry norms, and as determined by following a prudent process of analysis. The fees are only half of the equation. A plan sponsor who only considers one side of this equation, either the cost or the value, is not meeting their entire fiduciary obligation. It is important to note that in weighing the services against the fees, the fees cannot outweigh the services being provided.

Service providers can be seen as adding value in two primary ways: they help effectively manage the administration of the plan, and also assist the plan sponsor in achieving the ultimate goal of helping plan participants meet their retirement needs.

A plan sponsor, in doing an objective analysis of the reasonableness of the fees, should consider the overall experience of the service provider and quality of the services being provided. The following questions may help guide such an analysis:

- What are the service provider's areas of expertise?
- What is its level of experience?
- What is its track record with the plan, and in general?
- What investment policy or process is being used?
- Are the services provided in a timely manner consistent with expectations?
- How satisfied are the participants in the plan with the levels of service provided?

The service provider can help the plan sponsor achieve the ultimate goal of helping plan participants meet their retirement needs. This results-oriented approach is key to evaluating the value of the service provided. The following could be considered to determine if the plan is helping meet the participants' end goals:

- What are the participation or deferral rates in the plan?
- Are participants taking advantage of the services available?
- How many participants are invested in a qualified default investment option versus making their own elections? Are the plan benefits easy to understand?
- What education and support is available to the participants?
- How is participant satisfaction with the plan?
- Are there additional services that could improve the outcome of the plan?

Once the analysis is complete, it will be important for the plan sponsor to ensure that any areas of concern are resolved. The plan sponsor should consider documenting the steps taken to evaluate the reasonableness of the fees, as well as the steps taken to resolve areas of concern. The plan sponsor will also want to document the procedures for dealing with subpar service providers, selecting new providers, and possibly renegotiating fees.

FEES RELATIVE TO INDUSTRY NORMS

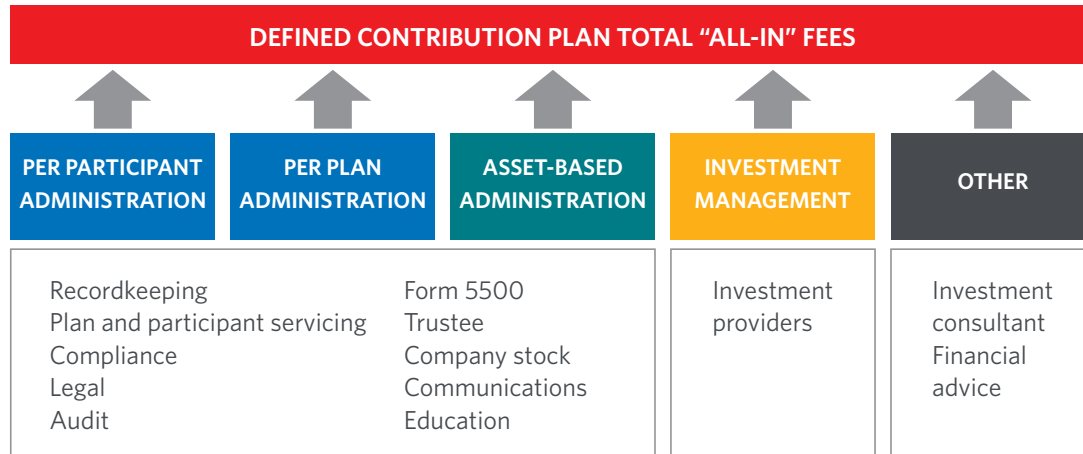
There are a few methods by which a plan sponsor can evaluate the reasonableness of plan fees in terms of industry norms. Benchmarking is one common method, either by the use of third-party sources, or customized assessments by third parties. Another option is a request for information (RFI) from comparable service providers in the industry or a request for proposal (RFP) from comparable service providers. While this is likely the most comprehensive approach to evaluating the reasonableness of current fees, it is also the most expensive. Plan sponsors may use a combination of these options to ensure they are meeting their fiduciary obligations.

In developing a benchmarking strategy, it is important to frame the comparison between plans carefully and appropriately. To ensure a fair and meaningful comparison, the fiduciary should consider the type of plan, amount of plan assets, number of participants, average account balance, and any unique plan requirements.

It is also important to consider the qualitative metrics on the benchmarked service providers. Quality of service, experience, and results should be considered. Third-party firms and consultants have numerous methodologies and the plan sponsor should understand the methodology and evaluate whether it provides a meaningful comparison. Plans may also consider leveraging more in-depth third-party assessments, RFIs, or RFPs on a periodic basis to capture additional insight into industry norms. The plan sponsor should document the process taken to evaluate the reasonableness of the fees, what benchmarks were used, and what terms were used in determining the appropriate group for comparison.

STANDARD RETIREMENT PLAN FEES AND EXPENSES

Fundamental to a plan sponsor's due diligence is understanding the fees that are being paid by the plan as well as any indirect fees generated as a result of the plan. While there is no standard structure for fees and expenses for a retirement plan, understanding the different mechanisms involved can help a financial professional understand the overall plan charges. In evaluating retirement plan fees as a whole, it helps to break the fee types down into two categories, such as asset management fees and administrative fees. Asset management fees are fees charged for holding, managing, and safeguarding plan assets. Administrative fees are focused on providing participant services, compliance testing, and the daily operations of the plan. There are three primary ways fees are charged: asset-based fees, participant-based fees, and itemized service fees.



Deloitte Consulting LLP, for the Investment Company Institute, "Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013," August, 2014

Transactions and other items not included: Loan initiation and maintenance, QDROs, distributions, self-directed brokerage, managed accounts, and other transactions driven by participant elections.

ASSET-BASED FEES AND EXPENSES

Asset-based fees are generally charged as a percentage of assets, either to the plan level or the underlying investment option. Asset-based fees are typically, though not exclusively, asset management fees. Asset-based fees fall into three general categories: wrap fees, expense ratios, and insurance charges.

WRAP FEES

Wrap fees are typically asset-based fees charged at the plan level rather than the investment option level. A wrap fee may be charged for providing any number and combination of services. Wrap fees are typically used on plan arrangements that do not use revenue sharing or insurance contracts and directly compensate service providers and fiduciaries to the plan. This can include compensating named or appointed fiduciaries, fiduciary services providers, and administrative service providers. Although wrap fees are typically charged for asset management, the fee may also be for administrative services such as investment selection and monitoring, recordkeeping, custodial and trustee services, compliance testing, providing participant education and enrollment meetings, and administrative overhead.

EXPENSE RATIOS

Expense ratios are typically single asset-based fees charged on the underlying investment products, or fund, and pay for a range of services from the fund providers. The expense ratios typically pay for investment management fees, administrative expenses, and any revenue sharing agreements at the fund provider level. Investment management expenses include the cost of the portfolio manager and the research expenses associated with the management of the fund. Administrative expenses include the investment management overhead associated with running a given fund, and would include providing customer services, mailing, etc.

REVENUE SHARING

Revenue sharing is built into the expense ratio on an investment option, compensates the fund company for marketing and distribution services, and is a form of an indirect fee. All 12b-1 fees and commissions are included in this expense and are typically paid as a commission to a broker for services to the plan. Revenue sharing may also be used to compensate a recordkeeper and/or a TPA. These fees may be used to offset or supplement additional asset-based fees charged at a plan level by the recordkeeper or TPA. In addition to 12b-1 fees, revenue sharing may also incorporate shareholder servicing fees and sub-transfer agency fees.

SHAREHOLDER SERVICING FEES

Shareholder servicing fees can only be paid to recordkeepers or TPAs, and cannot be used to compensate brokers. They are similar to 12b-1 fees but are typically used by no-load funds and are capped at 0.25% of invested assets. The lower fee eliminates the portion of the fee typically paid as compensation to brokers.

SUB-TRANSFER AGENCY FEES

This fee is also paid by the fund company to recordkeepers for services they provide to the fund company. Recordkeepers can save fund companies administration and overhead costs by opening omnibus accounts at the fund company and tracking the individual accounts separately for the plan participants. This is in lieu of setting up each participant as a separate individual account with the fund company, necessitating the fund provider to track individual accounts.

INSURANCE CHARGES

Insurance charges are single, asset-based fees charged for the underlying separate account funding vehicle, typically a variable annuity contract. These charges can be broken down into variable asset charges, mortality and expense fees, insurance related charges, and surrender or transfer fees. The variable asset charge reimburses the product provider overhead costs associated with administering the plan, including recordkeeping, providing participant education and services, and paying commissions to a broker as a form of indirect compensation. Mortality and expense fees pay for the insurance features of the contract, including annuitization, interest, and the expense of any guarantees. The variable asset charge, and the mortality and expense charges are frequently combined to create the mortality, expense, and administration fee. Insurance related charges cover the costs associated with any optional guarantees elected on the variable annuity contract, such as an enhanced living or death benefit. Surrender or transfer fees may be charged upon the early termination of a contract to reimburse the product provider for any expenses associated with the long-term contract not otherwise recovered.

PARTICIPANT-BASED FEES

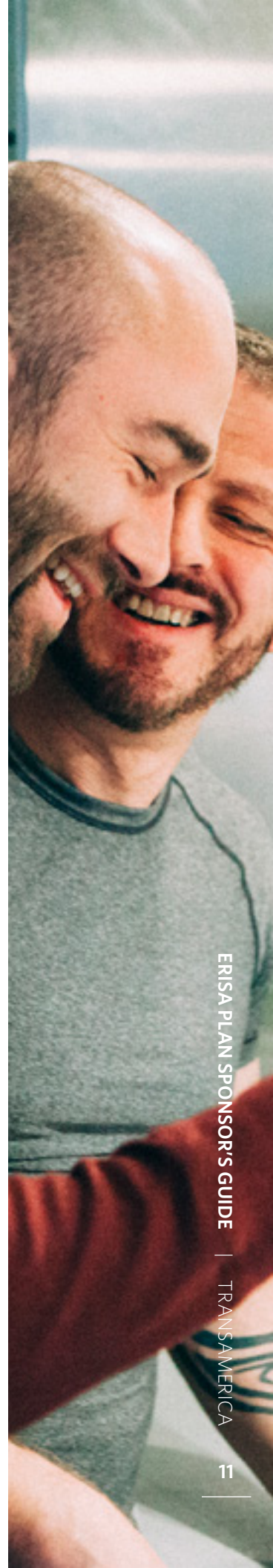
A participant-based fee is a flat fee charge per participant enrolled, or eligible to enroll, in the plan. Traditionally, these fees are used for administrative expenses but may also be used to provide or supplement fees on asset management services. The goal is to tie the fee to those participants who benefit from the service performed rather than spreading those costs to those who do not benefit. Additionally, there may be an annual base fee per participant. These fees may be charged directly to the participant, the plan, or plan sponsor directly. This type of fee is frequently used to pay for expenses associated with employee or participant education, communications, and recordkeeping.

ITEMIZED SERVICE FEES

Itemized service fees are similar to participant-based fees but are more transactional in nature. For example, an itemized fee might be charged at a plan level for the creation or termination of a plan, completing annual compliance tasks, or for a trustee or custodial services. Typical examples of participant-level itemized fees may include: originating and administering a participant loan, brokerage window use and transaction costs, investment advice fee, or a fee for holding outside assets.

IN SUMMARY

As the fiduciary to the plan, ultimately all decisions land with the plan sponsor. This fiduciary status comes with the obligations of loyalty, due care, diversification, and obedience. By prudently selecting and monitoring plan service providers, a plan sponsor can help manage these responsibilities and keep the plan on track toward preparing the participants for retirement.





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