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From: Mary L Patch [mailto:mary@steelecapital.com]
Sent: Tuesday, April 24, 2007 1:54 PM
To: EBSA, E-ORI - EBSA
Subject: Comments on Fee Disclosure in 401(k) Plans

To Whom It May Concern:

I applaud your efforts in bringing fees inside of retirement plans to light. I am looking forward to seeing the landscape of the retirement industry change for the better. As a professional in the industry, I welcome the opportunity to do my part to help enact the changes that are necessary.

The use of revenue sharing to offset plan expenses is not in and of itself a bad practice. The provider, to administer the plan according to all the laws that have been enacted, incurs costs. When new legislation is enacted, plans are reviewed to determine if documents should be updated. Processes are reviewed and altered to accommodate the law changes. Each step along the way, more work is put upon the administrative group. It is also put upon the advisor to provide the education to the employees about the new laws. All of this change costs the advisor and administrator money.

That being said, I cannot imagine a plan sponsor having to learn what I have learned about fees in qualified plans in order to make a good fiduciary decision on behalf of the employees. I have more than sixteen years of experience working strictly with retirement plans and determining the fees hidden inside of a qualified plan is next to impossible in the current environment, even with my background. Unfortunately, the employers sponsoring the plan do not have that level of knowledge about the industry and are now expected to ferret out fees and know the questions to ask providers. Plan sponsors do not have a standard benchmarking system to know what is an appropriate fee for the level of services provided.

I have researched many different providers, tried to uncover their revenue sharing practices, and attempted to understand their business models. No two providers use revenue sharing in the same fashion - and the mutual funds pay custodial platforms different amounts based on the level of “shelf space” their fund receives at that custodian. Without some consistency in the industry as to how it is used, how can we ever expect a plan sponsor to determine if the amount in question is appropriate for the services that are provided? What numbers do they use to benchmark their advisor and their administrator?

I do have some concerns about what disclosure will mean to employers and even more so to the employees. There are many advisors using low costs investments and collecting 12(b)1 commissions as a fee for service. When an advisor collects 0.25% trailing commission for the investments, what incentive is there for the advisor to service the plan, educate the employees or make changes to the fund line up when necessary? With this level of fee, the advisor cannot service the plan appropriately (assuming a smaller employer plan with $1M in assets as an example). My experience with this situation is the advisor may only have this one plan on their book of business and had no idea what they were selling or what services they should be expected to provide.

If an advisor is going to provide full fiduciary services to the retirement plan, they will need to charge a higher fee (staffing needs, fiduciary insurance, etc.). However, under a full disclosure scenario, this will lead the employer to determine the costs of running the plan are too high. In the end, the employees will not get the help they need to make good decisions on their investments. Fee disclosure will lead to fee compression and a loss of services to the employees in the long run - how can we avoid this from happening?

What I also see is that low expense ratio funds will become the rage. One thing we all have to realized is that low expense does not always equate to a higher return. I have seen advisors using the DOL Fee Disclosure worksheet in attempt to provide full disclosure. They do not have to disclose revenue sharing fees retained, only showing the expense ratio of the mutual fund. In our area, Principal is notorious in providing this worksheet and I find it laughable at how it is completed by them upon a client's request for full disclosure - the conflict of interest in the fact that every fund has their name on it is not even discussed. Only the fact that they have a bunch of low-cost (not to mention underperforming) funds for the employer to choose from is what is "disclosed". You can not even research their funds through Morningstar to give the client a comparison study!

For providers with proprietary investments, this disclosure issue may become a windfall. They can retain a portion of their own expense ratio and show the client what appears to be a low cost of running the plan. This practice places a monopoly in the retirement plan business - companies like Fidelity and Principal can quote their plan to zero fees if the client uses only their funds.

Another area of concern this creates is that the performance of the investment is completely overshadowed by the goal of "low expenses". I have seen plans with funds that have been in the bottom 10% of all funds retained because of the low expense ratio associated with the fund. Where is that benefiting the employee? A sub-par fund manager with low expenses can hurt the employee even worse than if they had a higher expense ratio fund with performance in the top quartile of their peers. If the fund manager warrants a higher fee than an index fund because they have consistently put up better numbers than the index, where is the adverse affect on the employee?

My recommendation to you is that similar to the insurance industry, advisors should have a designation that tells the client they are credentialed to be selling them a retirement plan. I work with a lot of advisors in the marketplace providing them a Registered Investment Advisory product and I can safely say I have not encountered many advisors who even understand revenue sharing, fee disclosure, fiduciary responsibilities nor the product they are representing. Through a designation (like the QPFC ASPPA has created), you can educate advisors on the industry and their responsibilities to the plan sponsor. Without appropriately educating the retirement plan sales force, you can hardly expect that a plan sponsor will receive full disclosure on all compensation and revenue sharing arrangements at the time of the sale.

I would love the opportunity to speak with you regarding what I have seen in my research of investment fees, expenses and the use of revenue sharing. I can be reached at the office at 800-397-2097 or on my business cell phone at 563-599-4594. Thank you for your time.

Sincerely,

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