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Compliance with Laws and Regulations and Fiduciary Responsibilities

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About the Speakers

Richard F. Fischer, CPA
Partner, Louis Plung & Company
Audit & Assurance

- Joined the firm in 1999
- 27+ years of experience in audits, reviews, compilations, and internal controls
  - Specialty: employee benefit plan audits
- PICPA/AICPA
  - Actively involved in several PICPA committees, including Technical Committee on Employee Benefit Plans (Chair); Construction (former Chair); Accounting and Auditing; Employee Benefits; and Peer Review

About the Speakers

HENDERSON BROTHERS RETIREMENT PLAN SERVICES℠

Peter J. Valotta, AIF, MBA, MHMS
Relationship Manager, Henderson Brothers Retirement Plan Services

- Joined Henderson Brothers in February 2003
- Maintains The Accredited Investment Fiduciary® (AIF®) designation awarded by the Center for Fiduciary Studies
- Series 7 and 66 registered through LPL Financial
- Specializes in servicing Non-Profit Organizations and 403 (b) plans

Learning Objectives

- Effects of Laws and Regulations
- Responsibility of Management
- Responsibility of the Auditor
- Effect of AU-C 250 on Employee Benefit Plans
- Current Regulatory Environment
- What it Really Means to Understand Plan Fees
- Benchmarking: The Key to a Prudent Process

Fiduciary

- Are you a Fiduciary?
- Who is a Fiduciary?
- Named Fiduciary
- Functional Fiduciary

Fiduciary

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Day-to-day decision-makers and high level decision-makers are Functional Fiduciaries.

- Plan Sponsor
- Plan Administrator
- Third Party Administrator
- Independent Qualified Public Accountant

Fiduciary

Roles and Responsibilities

- Act solely in the interest of Participant and Beneficiaries
- Make Policy Decisions
- Act Under ERISA Standards of Conduct (as a Prudent Fiduciary)
- Ensure Plan Pays Only Reasonable Fees
- Monitor Service Providers Identify Parties in Interest

Most Common Failures

- Timely remittance of employee deferrals and repayment of loans
- Update plan documents to comply with current rules and regulations

Department of Labor Reports

- DOL reported that retirement plan non-compliance fines were up 33 percent for 2013
- DOL collected $1.69 billion in fines, voluntary fiduciary corrections and informal compliance resolutions in 2013 vs. $1.27 billion in 2012
- Who pays? The Plan? The Plan Sponsor? The Plan Administrator?

Most Common Failures

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According to Brett Goldstein "Most 401 (k) plans are not in compliance with the Internal Revenue Service (IRS) or DOL regulations. The shocking part is that most employers don't care and only correct the problem when they get caught."

Effects of Laws and Regulations

- The effect on financial statements of laws and regulations varies considerably
- Those laws and regulations to which a Plan is subject constitutes the legal and regulatory framework
- The provision of some laws or regulations have a direct effect on the Plan’s financial statements in that they determine the reported amounts and disclosures
- Other laws and regulations are to be complied with by the Plan Administrator and or Plan Sponsor

Effects of Laws and Regulations

- Other laws and regulations set the provision under which the plan is allowed to conduct its business, but do not have a direct effect on the Plan's financial statements
- Employee benefit plans operate in a heavily regulated industry
- Noncompliance with laws and regulations may result on fines, litigation, or other consequences for the Plan, Plan Sponsor or Plan Administrator
- It could have a material effect in the Plan's financial statements
- Serious violations of rules and regulations can result in Plan losing is tax qualified status

Effects of Laws and Regulations

Most violations can be resolved through:

- IRS Voluntary Compliance Program
- DOL's Voluntary Fiduciary Correction Program
- Fines and Penalties are generally the responsibility of Plan Sponsor

AU-C 250 defines **Noncompliance** as follows:
"Acts of omission or commission by the entity, either intentional or unintentional, what are contrary to the prevailing laws and regulations. Such acts include transactions entered into by, or in the name of, the entity or on its behalf by those charged with governance, management or employees."

AU-C 250 defines **Noncompliance** as follows:
“Noncompliance does not include personal misconduct by those charged with governance, management or employees of the entity.”

Responsibility of Management

It is the responsibility of management, with the oversight of those charged with governance, to ensure that the Plan is operating in accordance provisions of laws and regulations.

Responsibility of the Auditor

- We are not responsible for preventing noncompliance and
- Cannot be expected to detect noncompliance with all laws and regulations

Responsibility of the Auditor

We are responsible for:

- Obtaining reasonable assurance that financial statements as a whole are free from material misstatement, whether caused by fraud or error
- Need to take into account the applicable legal and regulatory framework

Responsibility of the Auditor

- Due to inherent limitations of an audit, an unavoidable risk exists that some material misstatements in the financial statements may not be detected
- Consequently the auditor's ability to detect material misstatements related to laws and regulations is greater

Effect of AU-C 250 on EBPs

- Legal Frame work
    - Plan Document
    - Department of Labor
    - IRS
    - Responsible party (Plan Sponsor and Plan Administrator)
    - Monitoring procedures

Effect of AU-C 250 on EBPs

- Plan Document
  - Eligibility requirements
  - Participant contributions
  - Investment allocation and deferral allocation
  - Fidelity bond
  - Spousal consent
  - Plan document is in compliance with current law. All amendments have been filed and implemented.

Effect of AU-C 250 on EBPs

- Department of Labor
  - Eligibility requirements
  - Timing of Deposits
  - Summary Annual Report and Summary Plan Description
  - Allocation of Investment income

Effect of AU-C 250 on EBPs

- Department of Labor
  - Parties in interest
  - SSA Data
  - PBGC

Effect of AU-C 250 on EBPs

- Department of Labor
  - Fees Paid by the Plan
  - Investment options
  - Filing of Form 5500

Effect of AU-C 250 on EBPs

- IRS
  - Contribution
  - IRS determination letter
  - Filing of Form 5500
  - Audited financial statements
  - Plan document

Current Regulatory Environment

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"Industry Eyes Lawsuits Over Pension Investment"

FINANCIAL TIMES

"401(k) Fees Gain a Bit of Clarity"

The New York Times

"What Your 401(k) Really Costs You"

U.S.News & WORLD REPORT

"Shining a Light on Murky 401(k) Plan Fees"

THE WALL STREET JOURNAL.

"Cracking Down on 401(k) Fees"

CNBC
FIRST IN BUSINESS WORLDWIDE.

"Labor Department Requires 401(k) Fee Disclosure"

Bloomberg

Current DC Regulatory Environment

Now, more than ever, it is critical for plan sponsors to understand plan fees.

A Spotlight on Fees

The Department of Labor and Congress are placing a great deal of emphasis on plan expenses and services:

- Form 5500 Schedule C reporting requirements
- 408(b)2 reporting requirements
- Participant level fee disclosure
- Pending legislation
- Lawsuits

SOURCE: Department of Labor (dol.gov)

What it Really Means to Understand Plan Fees

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Plan Fiduciaries have:
"…a specific obligation to…Ensure that fees [and] expenses are reasonable in light of the level and quality of services provided…"

To be successful, we believe they need to follow these three steps:

Step 1	Step 2	Step 3
Understand how fees are derived	**Determine** whether reasonable in light of services being provided	**Document** a prudent process

SOURCE: A Look At 401(k) Plan Fees, U.S. Department of Labor Publication, p.3

What it Really Means to Understand Plan Fees

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STEP 1: Understand how fees are derived

It's not enough to look at total plan costs – many factors influence plan fees

For illustrative purposes only

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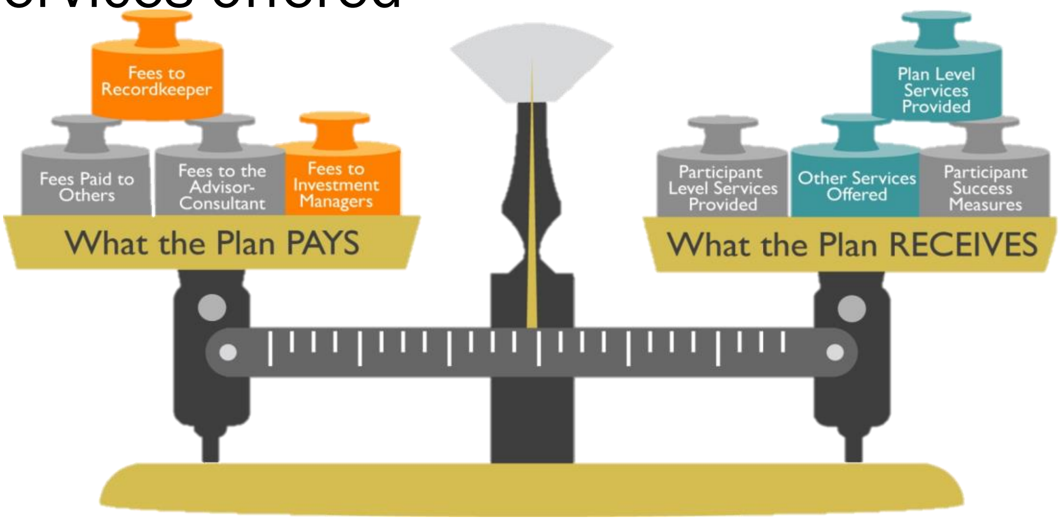
STEP 2: Determine whether fees are reasonable in light of services provided

In order to determine how "reasonable" fees are, it is important to evaluate factors such as:

- Plan level services provided
- Participant level services provided
- Participant success measures
- Other services offered



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What it Really Means to Understand Plan Fees

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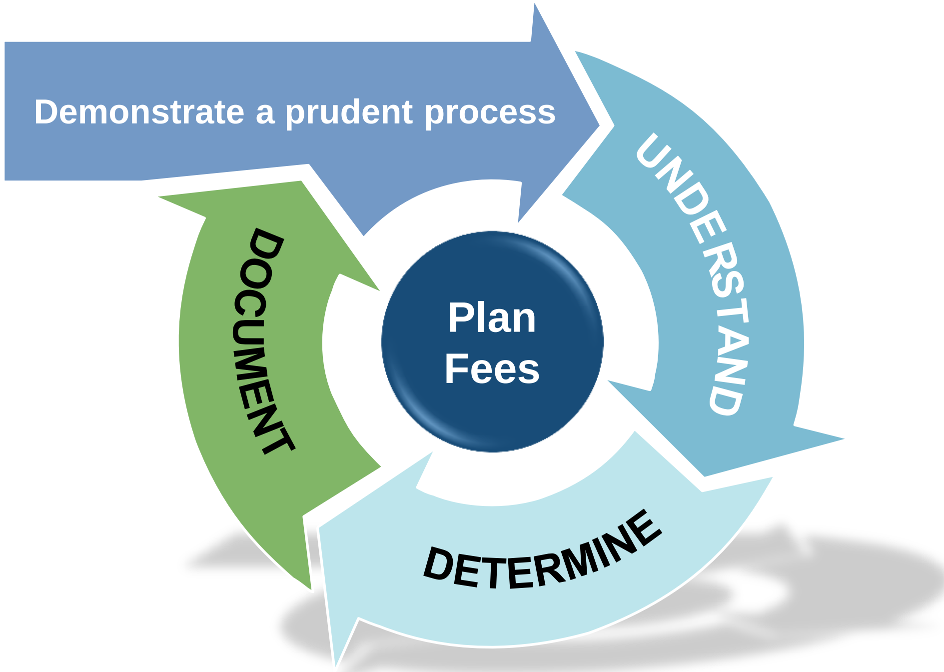
STEP 3: Document a prudent process

Plan fiduciaries should demonstrate that a prudent process was followed, including:

- Understanding plan fees and expenses
- Determining reasonableness of fees
- Documenting the decision-making process when selecting service providers



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Benchmarking: The Key to a Prudent Process

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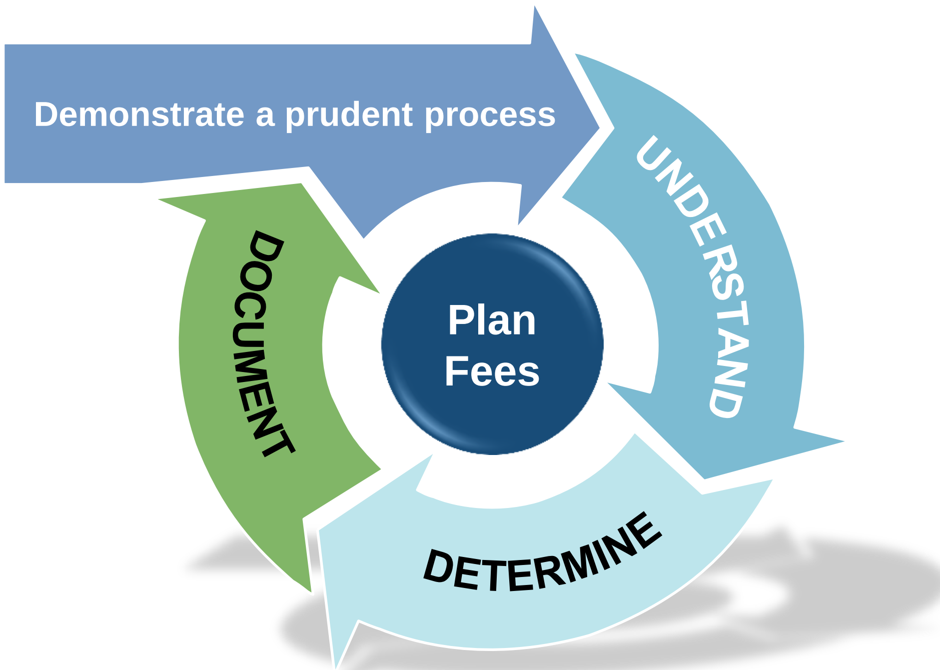
"Benchmarking" or evaluating and comparing plan fees and services to other similar plans:

- Can help you understand the fees paid by your plan
- Can help you determine whether fees are reasonable
- Provides documentation for your records



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Benchmarking: The Key to a Prudent Process

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Why is benchmarking important?

ERISA requires that all fees that a plan pays to service providers are reasonable in light of the services being provided.

"The service provider offering the lowest cost services is not necessarily the best choice for your plan."

In order to determine how "reasonable" a plan's expenses are, a plan sponsor should evaluate a number of factors beyond just cost.

GOAL: Not to have the lowest fees or the most services, but striking the right balance between fees charged and services rendered.

Benchmarking is one way to help plan fiduciaries determine what is "reasonable."

SOURCE: Department of Labor (dol.gov)

Explore New Ways to Benchmark Plans

Traditional approaches to benchmarking plan fees have not been effective:

1. Requesting periodic proposals from different vendors
    - Compares your plan to what you can get, not to what similar plans are actually getting
    - Doesn't include plan level data such as participation, deferral rates, etc.
    - Typically very time consuming
2. Using databases from 5500 fillings
    - Information may be dated and incorrect
    - May include fees and plan level data but not services being provided
    - Wide variance in pricing may make it hard to draw conclusions
3. Benchmarking produced by the plan provider
    - Comparative bias
    - Not independent

Benchmarking: The Key to a Prudent Process

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Best Practices

- Leverage independent, third party data
- Use an "apples to apples" comparison of your plan against other similar plans. Factors to consider include:
    - Plan size
    - Number of participants
    - Company industry
    - Employer match and
    - Allocation to index funds
- Provides the data needed to accurately understand and assess relative plan fees, support, services and success measures.

Benchmarking: The Key to a Prudent Process

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Be Ahead of the Curve

Review

- Benchmarking can help you:
    - Renegotiate with your provider for lower fees
    - Realize you may be paying for services you don't need
    - Improve low participation rates
    - Enhance your investment lineup
    - Revisit and improve plan design
    - Provide documentation for a fiduciary audit file

Next Steps

- Work with your advisor to utilize the benchmarking capabilities of an independent, third party specializing in retirement plan fee benchmarking

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Obtaining a Benchmarking Report

Step 1 Contact your advisor to discuss the benchmarking opportunity.

Step 2 Gather required information to submit to independent, third party specializing in retirement plan fee benchmarking .

Step 3 Once report is received, work with your advisor to discuss what steps you should take to modify fees if necessary.

SOURCE: Department of Labor (dol.gov)

Q & A

Questions?

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