



Fee Benchmarking Should Be a Priority in the Wake of 401(k) Plan Fee Litigation

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401(k) plan fiduciaries that have not benchmarked 401(k) plan fees and expenses against market rates recently should do so in 2014, in light of legal victories secured in 2013 by 401(k) plan participants. In several noteworthy cases, plan participants prevailed in lawsuits alleging that employers and plan fiduciaries allowed their 401(k) plans to charge excessive administrative and/or investment management fees and expenses. A few examples are noted below, but there are several others.

- *Huizinga v. Genzink Steel Supply & Welding Co.* In August 2013, the U.S. District Court for the Western District of Michigan ordered 401(k) plan fiduciaries to restore \$321,000 to participants after concluding that they breached their fiduciary duties and paid excessive service provider fees to the plan's third-party administrator.
- *Nolte v. Cigna Corp.* In July 2013, the U.S. District Court for the Central District of Illinois approved a \$35 million settlement involving CIGNA and its 401(k) participants alleging, among other things, breaches of fiduciary duty and payment of excessive service provider fees.
- *Tibble v. Edison Int'l.* In March 2013, the U.S. Court of Appeals for the Ninth Circuit ruled that Edison International's 401(k) plan fiduciaries breached their fiduciary duties by including retail-shares of three mutual funds without first conducting an investigation into the possibility of institutional-share class alternatives.

A service provider's fee disclosure, standing alone, does not necessarily give the plan fiduciary adequate information to assess whether a fee is reasonable. Benchmarking a service provider's fee against its peers allows plan fiduciaries to make "apples to apples" fee comparisons, and, thus, more informed decisions. Fiduciaries should periodically solicit and review bids from at least three service providers to obtain fee and expense data and/or hire an independent consultant to conduct the search and make related recommendations. We will continue to monitor this trend in 2014.

If you would like additional information regarding benchmarking of fees or have questions and/or comments regarding this Benefits Blast, please do not hesitate to contact me or another member of the W&S team.

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