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NOBLE DAVIS CONSULTING, INC

PEACE of MIND

PLAN SPONSOR RETIREMENT PLAN UPDATE

Quarter 3, 2012

Did you know?

We were recently named a NorthCoast 99 winner for the fourth year in a row! The NorthCoast 99 awards recognize the top workplaces in Northeast Ohio.

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Puzzled about fee disclosure?

Recent articles have discussed how many small businesses have been confused by fee disclosure. The department of Labor (DOL) recently enacted law effective this year to help plan sponsors and plan participants better understand what they pay for their plan. The DOL intended to make fees more transparent, but it seems the new law is muddying the waters.

Specifically, it seems that plan sponsors are not aware whether the fees they are paying are appropriate. In a recent survey by ShareBuilder 401(k), forty five percent of plan sponsors answered that they thought a fee of 4% was a reasonable fee to pay for a 401 (k) plan. Actually, the study mentions that the average all-in fee for a small plan is between .99 and 1.83 percent. Furthermore, many sponsors didn't recall receiving any information about fee disclosure. This is problematic since sponsors have two responsibilities when it comes to fee disclosure. 1) They must understand the fees that are being paid through plan assets and make a determination as to if they are reasonable.; and 2) They must distribute the appropriate fee disclosure paperwork to the plan participants. The sponsor must also understand the disclosures and be able to answer participant questions about the materials.

We have changed our client package (see below) to include information on benchmarking your fees against the industry standards. We have also produced a simple and straightforward two page summary of the plan fees for your plan participants (if we are the recordkeeper for your plan). Many other fee disclosure documents either rely on you to complete them or are 20 plus pages long.

As always, we're here to help. Just give us a call!

BENCHMARKING

Actual Average Plan Fees per Participant	$ 298
Reasonable Range of Fees per Participant	$171-$316
Actual Total Plan Costs	$ 1,490
Reasonable Range of Total Plan Costs	$4,260-$7,879
Actual Total Plan Fees as a % of assets	1.49%
Reasonable Total Plan Fees as a % of assets	2.73%

Source of Benchmarking Data: 401(k) Averages Book 12th Edition. All rights reserved.
Benchmarking based on a plan with 25 participants and $250,000 in assets
Benchmarked fees do not include any participant initiated fees (for loans, distributions, etc.)

Are your employees ready for retirement?

According to a recent survey by the Employee Benefits and Retirement Association, the poor economy and weak financial markets have caused a 41% increase in workers that are over age 55, more than double from 2011. There has also been a three-fold increase in participants who are "not at all" confident they will be able to live comfortably through retirement. Seventy percent are not at all confident that Social Security and Medicare will provide benefits of at least equal value as today.

Obviously, more employees are working past retirement age. Some of it may have to do with the lack of confidence in the economy, but it mostly means that they cannot afford to retire at normal retirement age. Of course, with older workers comes higher health care costs, higher salaries and often lower productivity.

So, employers are beginning to embrace the concept of "retirement readiness" for their plan participants to help ensure that they can retire around their normal retirement age. Most financial advisors estimate that participants should have income after retirement that is equal to about 75-85% of their preretirement income. To achieve this, contributions into the participant's account typically need to be around 10% of income each year (can be from employee deferrals or from employer match or a combination) and need to start early in their career.

To deal with these issues, many employers have embraced a culture of retirement readiness. Granted, having enough money saved for retirement falls largely on the employee, but employers can now educate and guide those employees in better ways.

Recently, we have developed a report that shows you and your employees if they are on track for retirement. We look at their current account balance, compensation and contributions and project forward to their retirement age to predict their outcome. In your 2012 year end package, you will have a report that summarizes all of your employees as well as optional statements to share with your participants.

So, first, take a look and see how your employees are doing. If things aren't looking so good, we can think about ways to change your plan design to encourage more savings (such as automatic deferrals, automatic increases, etc.). Then, you can speak with your investment advisor about holding targeted education programs with your participants. Making sure the participants are appropriately investing their money is crucial. (You wouldn't want your young employees invested in the Money Market, for example.) Consider adding or changing employer contributions—such as changing your match from 100% on the first 3% of deferrals to 25% on the first 10% of deferrals since many employees choose their deferral level to coincide with the maximum employer match. And lastly, don't forget to look at how your employees are doing every year to see if your changes have made a difference.

Call us to discuss your options!

Record Retention

We are often asked how long plan records need to be kept. There are different rules from different agencies and for different records, and we'll try to outline them all here.

The Department of Labor (DOL) controls all of the ERISA related benefits for your plan. One section of ERISA states that all records pertaining to agency filings or to participant or beneficiary disclosure be retained and kept available for examination for at least six years after the filing date. The records to be maintained would generally include committee minutes, board resolutions, worksheets, supporting data and other information using to prepare the filings or disclosures.

Another section of ERISA states that an employer must "maintain benefit records with respect to each of its employees sufficient to determine the benefits due or which may become due to such employees."

It further states that the records must be maintained "as long as they may be relevant to a determination of benefits entitlements." And that "when it is no longer possible that records might be relevant to a determination of benefit entitlements, the records my be disposed of unless they are required to be maintained for a longer period under any other law."

So, we recommend the following:

KEEP FOR SEVEN YEARS

- 5500 forms
- Actuarial statements (for D/B plans)
- Determination Letter applications
- Summary Plan Descriptions
- Summary of Material Modifications
- Participant Benefit Statements

KEEP FOREVER

- Payroll records
- Age and service records
- Marital status records
- Beneficiary designations
- Actuarial accrued benefit analysis (for D/B plans)
- Plan documents and amendments
- IRS Determination Letters
- Trust statements
- Plan notices
- Election forms
- Distribution forms

Luckily, many of the "keep forever" items involve records you would normally keep anyway for tax purposes. And while we follow the above guidelines for the items you should keep for seven years, the ultimate responsibility falls on the plan sponsor. And annual self-audit, where all of the relevant materials are organized can help to make sure that the plan has the proper records saved and maintained.

It's the Small Things that Create the Greatest Liability for 401(k) Plan Sponsors

"For Want of a Nail" is a proverbial tale that shows that the smallest action can have huge consequences later down the line, just like a snowball effect. "For the want of a nail, the shoe was lost. For the want of a shoe, the horse was lost. For the want of a horse, the rider was lost. For the want of a rider, the message was lost. For the want of a message, the battle was lost. For the want of a battle, the kingdom was lost. And all for the want of a horseshoe nail." When it comes to being a retirement plan sponsor, the greatest threats in breaching fiduciary duty resulting in liability usually come from the smallest mistakes. So, this article is to let you know which mistakes to avoid that are nails that can cause your financial kingdom to be lost.

Not having Fiduciary Liability Insurance

Every plan subject to ERISA requires a bond which is used to protect plan assets from theft. It has nothing to do with fiduciary liability insurance, which is purchased to protest plan fiduciaries from litigation and liability costs associated with operating a retirement plan. Every retirement plan should purchase such insurance even if it's not required because litigation even for frivolous claims can be burdensome. I once has a client who had $1 million worth of litigation costs from a class action lawsuit regarding a 402 (b) plan of theirs and the insurance paid for almost all of it (the client was responsible for the $100,000 deductible) that was ultimately dismissed against them. You will be surprised how reasonable the rates of fiduciary liability insurance are, so contact your insurance broker for more information.

Not Hiring a Financial Advisor

It is surprising to see so many plans that don't actually have a financial advisor. While we may or may not be able to invest on our own, the rules are different with retirement plans. As an individual, you are responsible for our gains and losses. When you operate a retirement plan as a plan sponsor, trustee, or other fiduciary, you have a duty to the plan participants and beneficiaries. A fiduciary duty is the highest duty of care in equity and law and the role of a financial advisor for a retirement plan is a lot more than picking mutual funds. Unless you are a financial advisor, you need to hire one for your plan.

Not Having an Investment Policy Statement

Even if your plan has a financial advisor, you may not have a good one. There are many plans out there with a financial advisor who does nothing more than collect their asset-based fee every quarter. One of the important tasks that a competent financial advisor does is to protect their clients from liability and the easiest way is to develop an investment policy statement (IPS). What is an IPS? An IPS describes the criteria for what types of investment options are selected as well as to when they should be replaced (when they are no longer fitting those criteria). It's a blueprint as to why investments are selected and replaced and they are needed for a plan whether investments are directed by participants or by trustees. It's one of the easiest ways to minimize liability in any lawsuit regarding investment losses, so it's surprising that so many plans don't have one, especially those plans with investment advisors. It's an easy, but extremely important component of any retirement plan, so important that the Department of Labor (DOL) representatives have been asking for them when doing plan audits.

Not Providing Education to Plan Participants

Section 404(c) of ERISA is one of the most poorly understood topics in all of retirement plans. Section 404(c) offers relief to plan sponsors for the looses incurred by plan participants if the plan participants get to direct the investment of their account under a defined contribution plan (which includes a 401(k) plan). The problem is that the relief is limited or extended to the amount of information that you provide participants in order for them to make educated decisions about their investments. So the old trick of just providing Morningstar profiles of funds isn't going to cut it, so it's necessary for plan sponsors to provide enough investment education to plan par-

It's the Small Things—continued

ticipants to limit their liability. In addition, thanks to new DOL regulations, offering investment advice to plan participants can now be done by your current provider (if they adhere to the regulations) or you can farm it out to an outside provider. Investment advice is obviously more valuable to a participant because advising them how to invest is more valuable then giving them basic investment education (i.e. the difference between equity and income investments).

Not Reviewing Plan Investments

It's not enough to have an IPS and provide education to plan participants; plan sponsors also need to make sure that the investment options aren't like last week's bread—stale. Working with their financial advisors, a plan sponsor has to make sure that the investment options still fit the criteria set forth by the IPS. A running joke of mine is that if you want to see which mutual funds were great and popular 5 years ago, just check the most popularly held 401(k) invested mutual funds today. Having your 401(k) plan serve as a museum for formerly high returning mutual funds does a disservice to plan participants and raises your potential liability. As we remember with polyester leisure suits and ruffled shirts, styles change and what was great and popular years ago is out of style today. That is why you need to have a financial advisor review your investment lineup with you every 6 months (the larger the plan, perhaps more frequently) to ensure that the investment options still fit the criteria set forth by the IPS. Like the tagline from the movie Casino, no one stays on top forever. The same can be said about any investment option, so it's important that they be reviewed whether the plan's investments are participant directed or not.

Not Reviewing Plan Expenses

While we effectively have had the last 10+ years of very little gains to our retirement savings, there has been a boon in retirement plan litigation, with much in the litigation concerning plan expenses. As a plan sponsors, you have a fiduciary duty to pay reasonable expenses, especially if the plan participants are paying for the plan's expenses from their own individual accounts. Now with fee disclosure being delivered to your from your plan providers and your requirement to provide disclosure to participants if they direct the investments, there is more pressure to review plan expenses. Reviewing plan expenses isn't just looking at the disclosures and putting them in a drawer, it means checking them based on the services provided by benchmarking them against what is being offered by other providers. This benchmarking should be done every 1—3 years (based on the size of the plan) and should be documented. It should be noted that it's not about finding the lowest cost provider, it means paying expenses that are reasonable in relationship to the services provided.

Not Reviewing Plan Providers

When you hire a contractor for your home, you have someone to blame when the house expansion goes south. When it comes to the administration of your plan, you don't have that luxury. While you can delegate the administration of your plan to a TPA or financial advisor or and ERISA 3(38) fiduciary, you still ultimately bear the burden of responsibility if something goes wrong. While you can blame providers for their errors, you are still on the hook for liability. That is why it's important to review your plan providers to ensure that they are doing the job they say they are doing, to avoid potential heartache later.

Being a plan sponsor is a tough job and there is a tremendous amount of potential liability that goes with it. While it's a tough job, taking care of the small stuff that goes with it can minimize most of the liability. Good housekeeping goes a long way, so neglecting the small stuff will create the biggest retirement plan problems later. By taking care of all of the items in this article, you will eliminate most of the liability threats that go along with being a retirement plan sponsor.

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Mark Your Calendar

Stay on top of your retirement plan's mandatory deadlines! Here are some important dates in the upcoming months. (Please note that filing dates are for calendar year plans. Non-calendar year plans must adjust these dates.)

Each Payroll: Remit deferral and loan repayments within 7 business days (small plans) or as soon as possible (large plans).

October 15: Extended deadline for filing Plan's annual Form 5500 filing.

November 14: Third quarter PPA Statements due for participant directed plans. Quarterly fee disclosure documentation also due to plan participants.

December 2: Last date to send out annual notices for safe harbor, QDIA and automatic enrollment plans.

December 15: Summary Annual Report due for plans that extended the Form 5500

December 31: Last day to correct any failing compliance tests

December 31: Required Minimum Distributions must be paid to those affected participants over age 70 1/2

January 1: Check Cost of Living Adjustments (COLA) to consider the effects of any annual increases on deferral and catch up amounts

January 31: 1099-R Forms are due to participants who received distributions in the prior year

February 14: Fourth quarter PPA Statements and quarterly Fee Disclosure documents due for participant directed plans