Using ERISA Accounts to Help Manage Fee-Related Fiduciary Responsibilities
ERISA is a highly complex area of law. The information contained in this material is strictly educational in nature, is not exhaustive in scope and is not intended as legal advice. Clients are strongly encouraged to obtain legal advice from a qualified expert.
 Employer Fee Responsibilities

Employers have many fee-related responsibilities mandated by the Employee Retirement Income Security Act (ERISA) with respect to defined contribution plans, including 401(k) plans. Each retirement plan must name a plan fiduciary. In many small and mid-sized plans, the named fiduciary is the plan sponsor—the employer adopting the plan. For simplicity, we will refer to the plan fiduciary as the “employer” in this guide.

ERISA requires the employer to act prudently, solely in the interest of the plan’s participants and beneficiaries, and for the exclusive purpose of paying benefits and defraying reasonable administrative expenses. The employer also has a fiduciary obligation under ERISA to monitor service and investment providers and to ensure that retirement plan fees are reasonable and necessary for the administration of the plan. To help employers fulfill these obligations, the Department of Labor (DOL) requires service and investment providers to provide clear and complete fee information to employers. If ERISA “revenue sharing” is part of the fee structure, employers have an obligation to understand how the revenue sharing works, analyze the amount of revenue sharing being received by plan service providers, and make a prudent decision regarding the reasonableness of fees relative to the services provided, taking revenue sharing into account.

DOL Three-Part Fee Disclosure Initiative

To help ensure employers have the tools they need to perform their fiduciary functions and to provide the information participants need to manage their plan accounts (in participant-directed plans), the DOL launched a three-part fee disclosure initiative.

1. IRS Form 5500, Schedule C

The first step in the DOL’s initiative was to expand the fee information being reported to the DOL and the Internal Revenue Service (IRS) by expanding the service provider fee information on the plan’s annual “tax return”—the Form 5500—on Schedule C, beginning with the 2009 plan year forms. Schedule C is only required for plans with 100 or more participants.

2. Service Provider Fee Disclosure (ERISA 408(b)(2))

This initiative requires “covered” service providers to disclose plan-related fees to employers before entering into a service relationship. Service providers must disclose both direct and indirect compensation they receive in connection with providing “covered” services to a plan.

- Direct compensation is compensation a service provider receives directly from the plan, for example, compensation paid directly from participants’ accounts.
- Indirect compensation is compensation a service provider (or an affiliate) receives from a source other than the plan, the employer or the covered service provider (for example, a “finder’s fee” or commissions paid to a plan’s financial advisor).

The service provider disclosures must describe how the compensation is paid, for example, billed directly or debited from plan assets. The portion of fees related to recordkeeping services must be separately disclosed, including any applicable revenue sharing or “fee offset” arrangements.

3. Participant-Level Fee Disclosure (ERISA 404a-5 Regulations)

Participant-level fee disclosures help ensure that current and eligible plan participants have access to certain information needed to make informed decisions about their plan participation, and can “comparison shop” among the plan investments available to them. In addition to general plan and investment information, participants must receive a description of administrative expenses (such as recordkeeping, legal and accounting), and how they will be allocated to each participant’s account (for example, on a pro rata or per capita basis) and, if applicable, a statement informing participants that a portion of the fees is paid through revenue sharing. Additionally, at least once per quarter, participants must receive a statement listing the fees they were actually charged for administrative services, plus a description of those services.
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Bundled Services: A “Free Recordkeeping” Myth

If an employer is not paying recordkeeping fees either through direct billing or by debiting them from participant assets, it does not mean the administrative services are being provided free of charge—it usually means that the recordkeeper is receiving other compensation, either directly or indirectly.

Some service providers offer “bundled” arrangements in which a single provider or group of providers package their services together (such as investments, recordkeeping and trustee services) for a combined fee. In these arrangements it may appear that recordkeeping services, for example, are “free” when in fact the recordkeeping fees are being offset by investment fees. In other “unbundled” service arrangements—such as when investments are offered separately by independent firms—if a recordkeeper is not assessing a direct fee, the recordkeeper is probably receiving revenue sharing from an investment provider to cover its costs. These payments are a form of “indirect” compensation under the fee disclosure regulations.

In either case, the recordkeeper estimates the revenue sharing payments to be received from the investment managers and reduces its gross service fees by that amount. At least superficially, this would be reflected as lower recordkeeping fees. Under the DOL fee disclosure rules, the cost of these recordkeeping fees must be segregated and separately disclosed, thus eliminating the “free recordkeeping” myth. It is the employer’s fiduciary responsibility to analyze service providers’ fee arrangements and determine whether the total fees assessed are reasonable.

Revenue Sharing

From the ERISA perspective, revenue sharing generally refers to payments by an investment provider, such as a mutual fund company or insurance company, to other plan service providers. The premise of these payments is that the service provider is performing services (such as administrative recordkeeping and/or shareholder services) that would otherwise need to be performed by the investment provider.

Revenue sharing is sometimes paid in the form of sub-transfer agent (sub-TA) fees, and calculated as a percentage of assets (such as 0.25% or 25 basis points). A single mutual fund may have multiple share classes with different potential revenue sharing amounts, resulting in a higher overall expense for the share class paying the highest revenue sharing. The employer must decide on a case-by-case basis whether it is beneficial to select a fund with a certain level of revenue sharing payments that will be used to reduce administrative costs, or to select a fund (or a particular share class of a fund) with lower expenses that will necessitate a higher recordkeeping fee.

With the increased transparency of revenue sharing under the DOL’s fee disclosure regulations, employers may be increasingly vulnerable to participant challenges targeting fee arrangements.

ERISA Accounts Go by a Variety of Names

<table>
<thead>
<tr>
<th>ERISA Account</th>
<th>Administrative Fee Credit Account</th>
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<tbody>
<tr>
<td>ERISA Budget Account</td>
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<tr>
<td>ERISA Bucket</td>
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<tr>
<td>ERISA Fee Recapture Account</td>
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<tr>
<td>ERISA Reimbursement Account</td>
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<tr>
<td>Expense Budget Account</td>
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</table>

One way many employers are monitoring revenue sharing payments is through the use of an “ERISA account.” These accounts are receiving increasing attention in the retirement industry. ERISA accounts are designed to help plans manage costs by recapturing certain revenue sharing dollars and using those dollars to pay plan administrative expenses. The employer’s intent is to track and control which services are purchased using the ERISA account. Revenue sharing recapture strategies, including the ERISA account, are increasingly being used as part of an employer’s comprehensive fee analysis and fiduciary oversight.

Employers need to take their fiduciary responsibilities seriously: Lawsuits by plan participants have challenged employers on fee-related issues on the basis that the employer breached its fiduciary duties by paying excessive fees, or for personally benefiting from transactions involving plan assets. In one case, Tussy v. ABB, Inc., the plan fiduciary was held liable for its failure to adequately monitor plan fees and revenue sharing. The court found that the plan sponsor breached its fiduciary responsibilities when replacing one of the plan’s investment options with a different fund because the plan fiduciary’s decision was motivated in part by the revenue sharing payments they would receive from the new fund, which would reduce fees the plan sponsor would have to pay for 401(k) services and would subsidize other corporate services outsourced to the new investment provider.

With the increased transparency of revenue sharing under the DOL’s fee disclosure regulations, employers may be increasingly vulnerable to participant challenges targeting fee arrangements.
Revenue sharing used to fund ERISA accounts does not appear to give rise to any inherent ERISA violations, and may serve to reduce overall plan costs and provide plans with services that might not otherwise be affordable. Retirement plan industry criticism of revenue sharing stems largely from the fact that the arrangements can be complex, so employers do not understand them, and may end up paying excessive fees. Indeed, the U.S. Government Accountability Office (GAO) found that sponsors of an estimated 48% of plans surveyed did not know if their service providers engaged in revenue sharing arrangements. Many employers may not have asked their plan service providers about investment-related fees, such as 12b-1, sub-transfer agent or wrap fees. Some of the concerns about the “hidden” nature of these fees have been addressed by the DOL’s fee disclosure regulations.

**DOL’s View of ERISA Accounts**

ERISA accounts are designed to help plans manage costs by recapturing some level of revenue sharing dollars and using those dollars to pay plan expenses. The DOL guidance regarding ERISA accounts is quite limited. In the [Supplemental FAQs About the 2009 Form 5500 Schedule C](#) (Questions 13 & 14), the DOL describes common fee capture arrangements, including ERISA accounts, and explains how to report payments to and from ERISA accounts on Schedule C. The FAQs also indicate that ERISA accounts can be combined with other payment options, such as employer-directed payments or debits from participant accounts, where the ERISA account balance does not cover all of the service provider costs.

The DOL again discussed ERISA accounts in a 2013 advisory opinion clarifying when revenue sharing payments become plan assets. The service provider, in the advisory opinion, received revenue sharing payments in connection with the plan’s investments, maintained a bookkeeping record of the payments, and applied credits based on the amount of revenue sharing to offset fees charged to the plan. The DOL concluded that in this situation the revenue sharing would generally not be considered a plan asset. Revenue sharing deposited into the plan trust, however, would be considered a plan asset, subject to the plan fiduciary’s direction as to how the revenue sharing will be allocated. The plan’s legal right to receive the revenue sharing is also considered a plan asset even if the revenue sharing has not yet been deposited into the plan. Whether the revenue sharing is held outside the plan by the service provider or deposited in the plan, the responsible plan fiduciary (typically the employer) must act prudently in deciding whether to enter into or continue a revenue sharing arrangement, which means the plan fiduciary must understand the formula, methodology and assumptions used in the plan’s revenue sharing arrangements, and must be capable of periodically monitoring these arrangements.

In view of the limited regulatory guidance regarding ERISA accounts, an employer that decides to establish an ERISA account should consult with its legal advisor to set the parameters both for how it will structure the ERISA account and how it allocates the amounts credited to the account.

**ERISA Account Structure**

Increasingly, recordkeepers that offer ERISA accounts report that they are typically established as a separate account within the plan. The following are some structural and operational considerations that employers should review with their legal advisors and the recordkeepers that offer ERISA accounts.

- The employer must operate the plan in accordance with the plan documents and therefore should begin its analysis of fee payment options by reviewing the plan document and ensuring any plan amendments necessary for the implementation of an ERISA account are made.
- An ERISA account within a plan typically is set up as a separate account within the plan trust, separate from the forfeiture account or other plan accounts.
- One source of “credits” or “contributions” to ERISA accounts may be mutual funds that enable ERISA revenue sharing (through the plan recordkeeper’s use of sub-TA fees).
- Credits or contributions to the account are not treated as plan contributions so they don’t count toward any of the annual IRS plan limits. Employers should discuss with their recordkeeper how these amounts will be tracked and reported to the employer.
- ERISA account assets are used to pay plan expenses; they are not used to satisfy an employer contribution, such as matching contributions, or to pay other business expenses.

Like other fee-related activity, deciding how revenue sharing should be allocated to cover plan expenses and how to allocate any ERISA account assets that exceed plan expenses are important ERISA fiduciary functions.
ERISA Accounts as a Source of Fee Payments

Two approaches commonly seen in administering revenue sharing are to (1) deposit revenue sharing into a separate account within the plan trust (ERISA account) or (2) have the recordkeeper retain the revenue sharing and apply “credits” to offset the expense of plan administration and pay for additional services at the employer’s direction.

Either way, ERISA accounts can provide an additional source of payments for plan expenses. As plan assets grow, the amount available in the ERISA account generally grows as well. Notably, it is possible that the revenue sharing amount allocated to the recordkeeper or other service provider will exceed a reasonable fee for the services. This may be easier to evaluate and monitor with the disclosures required under the DOL 408(b)(2) rules; use of an ERISA account may further facilitate this. Fees allocated to the ERISA account are precisely accounted for, and the employer directs how those fees are used. Any “excess” may be available to purchase additional plan services or allocated to participant accounts.

The employer must continually monitor whether each plan investment option, including any revenue sharing component, is prudent for the plan. For example, if lower cost share classes exist and ERISA account credits exceed what is appropriate for plan services, perhaps a different share class with lower costs is warranted.

ERISA Account Considerations

There are a number of considerations an employer should keep in mind when evaluating the use of an ERISA account. First and foremost, an ERISA account within a plan constitutes plan assets and accordingly, plan fiduciaries should ensure they are applying their fiduciary practices to the account just as they do with respect to other plan assets.

Limited DOL Guidance

As discussed earlier, currently there is limited DOL guidance addressing ERISA accounts. Employers will want to partner with a legal and/or ERISA expert and proceed based on their guidance.

Complexity

Revenue sharing arrangements can be complex and challenging for an employer to understand. If an ERISA account is available as an option, the structure of these arrangements can vary from one service provider to another. All revenue sharing should be fully disclosed under 408(b)(2) service provider disclosure rules, but even with these disclosures it may be hard to calculate exactly how much revenue sharing will be generated in a participant-directed plan, especially a new plan. Ultimately, it depends on which investments participants select. An employer may need to make certain estimates based on anticipated participation rates (which generally will be higher in an auto enrollment plan) and estimated investment selections.

Timing and Direct Payments to Employer

Timing can also be an issue. For a new plan, a calendar quarter or two may pass before significant revenue sharing is allocated to the account. Many administrative fees are assessed quarterly. An employer may need to consider whether it will pay initial fees until the ERISA account is adequately funded. Having the employer pay the fees initially and then collect payment later from the ERISA account may raise ERISA-prohibited transaction concerns. Further, if any ERISA account or revenue sharing arrangement results in direct payments to the employer, the employer should consult its counsel to assess potential ERISA conflicts of interest and prohibited transaction violations.
Case Study:
Fee Payment Options

Assume a 401(k) plan has $2.5 million in plan assets and 80 plan participants. The average account balance is $31,250 and the annual recordkeeping fee is $4,100. The employer wants to explore various options for paying the recordkeeping fee.

**Option 1**
The employer could pay the entire fee ($4,100) directly from its own assets, and debit no assets from the plan.

**Option 2**
Recordkeeping fees could be debited from plan assets. Many plan documents permit such fees to be paid from the forfeiture account, if available, and then debited from participant accounts. If there is $3,000 in the forfeiture account, the employer could debit the remaining $1,100 from participant accounts.

**Option 3**
If the plan has an ERISA account, some recordkeepers enable the fees credited to the account ($6,250) to be used to pay all or a portion of the recordkeeping expenses. Excess dollars in the ERISA account ($2,150) might then be available through the recordkeeper to allocate back to participant accounts on an annual basis.

### How a service provider may structure an ERISA account
(as described in option 3 of case study)

<table>
<thead>
<tr>
<th>Fund Name</th>
<th>Share Class</th>
<th>Estimated Fund Balance</th>
<th>Sub-Transfer Agency Fees*</th>
<th>Estimated ERISA Account Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund A</td>
<td>Retirement</td>
<td>$330,000</td>
<td>0.25%</td>
<td>$825.00</td>
</tr>
<tr>
<td>Fund B</td>
<td>Retirement</td>
<td>$250,000</td>
<td>0.25%</td>
<td>$625.00</td>
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<tr>
<td>Fund C</td>
<td>Retirement</td>
<td>$325,000</td>
<td>0.25%</td>
<td>$812.50</td>
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<tr>
<td>Fund D</td>
<td>Retirement</td>
<td>$200,000</td>
<td>0.25%</td>
<td>$500.00</td>
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<tr>
<td>Fund E</td>
<td>Retirement</td>
<td>$125,000</td>
<td>0.25%</td>
<td>$312.50</td>
</tr>
<tr>
<td>Fund F</td>
<td>Retirement</td>
<td>$125,000</td>
<td>0.25%</td>
<td>$312.50</td>
</tr>
<tr>
<td>Fund G</td>
<td>Retirement</td>
<td>$200,000</td>
<td>0.25%</td>
<td>$500.00</td>
</tr>
<tr>
<td>Fund H</td>
<td>A</td>
<td>$225,000</td>
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<td>$562.50</td>
</tr>
<tr>
<td>Fund I</td>
<td>A</td>
<td>$125,000</td>
<td>0.25%</td>
<td>$312.50</td>
</tr>
<tr>
<td>Fund J</td>
<td>A</td>
<td>$125,000</td>
<td>0.25%</td>
<td>$312.50</td>
</tr>
<tr>
<td>Fund K</td>
<td>A</td>
<td>$175,000</td>
<td>0.25%</td>
<td>$437.50</td>
</tr>
<tr>
<td>Fund L</td>
<td>A</td>
<td>$120,000</td>
<td>0.25%</td>
<td>$300.00</td>
</tr>
<tr>
<td>Fund M</td>
<td>A</td>
<td>$175,000</td>
<td>0.25%</td>
<td>$437.50</td>
</tr>
<tr>
<td>Estimated Total</td>
<td></td>
<td>$2,500,000</td>
<td></td>
<td>$6,250.00</td>
</tr>
</tbody>
</table>

**Summary**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated annual recordkeeping fees</td>
<td>$4,100.00</td>
</tr>
<tr>
<td>Estimated ERISA account credits</td>
<td>$6,250.00</td>
</tr>
<tr>
<td>Estimated excess dollars in ERISA account to be allocated to participant accounts</td>
<td>$2,150.00</td>
</tr>
</tbody>
</table>

*For simplicity, the sub-TA fee for each fund listed in the example is 0.25%. Typically, the actual rate will vary from fund to fund.
# Case Study: Comparing Revenue Sharing, Zero Revenue Sharing and Traditional Bundled Plan Pricing

<table>
<thead>
<tr>
<th>Option 1</th>
<th>Revenue Sharing</th>
</tr>
</thead>
</table>
| An employer establishes a 401(k) plan and selects investment options (or a particular share class of investments) that pay revenue sharing to the plan recordkeeper. These investment options have a higher expense ratio than investment options paying no or lower revenue sharing amounts, but the employer determines that the revenue sharing should be adequate to cover recordkeeping expenses each quarter. | - Revenue sharing payments are calculated based on a percentage of the plan assets invested in each fund (such as 0.20% of assets or 0.35% of assets).  
- The revenue sharing payments are credited by the recordkeeper to an ERISA account within the plan (or in some cases credited to an account outside the plan).  
- The employer directs the recordkeeper to pay the plan’s recordkeeping fees from the ERISA account.  
- Under the DOL participant fee disclosure rules, participants are provided an explanation that a portion of the plan’s recordkeeping costs are paid through revenue sharing. |

<table>
<thead>
<tr>
<th>Option 2</th>
<th>Zero Revenue Sharing</th>
</tr>
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</table>
| An employer establishes a 401(k) plan and selects investment options (or a particular share class of investments) that pay minimal or no revenue sharing. These investment options offer a lower expense ratio than investments that pay revenue sharing to the plan recordkeeper, so the employer will have to cover recordkeeping expenses from other sources. The employer has decided to pay the recordkeeping fees by debiting participant accounts. | - Employer directs the recordkeeper to debit the quarterly recordkeeping fees from each participant’s account on a per capita or pro rata basis.  
- Under the DOL participant fee disclosure rules, the amount debited from each participant’s account will be reflected on their quarterly statement. |

<table>
<thead>
<tr>
<th>Option 3</th>
<th>Traditional Bundled Plan Pricing</th>
</tr>
</thead>
</table>
| An employer establishes a 401(k) plan and pays the “off-the-shelf” price of the plan, which is the fee schedule published by the provider. The fee schedule indicates that fees are reduced to zero at a certain asset threshold—hence the perception of a “free plan.” The employer selects investment options that pay various levels of revenue sharing to the provider/recordkeeper. The plan reaches the asset threshold for zero fees and it appears that the plan no longer pays recordkeeping fees. | - In this scenario, the provider’s “off-the-shelf” price and zero fees have revenue sharing built into the fee structure.  
- Typically, the service provider estimates the revenue payments to be received from the investment managers available on the recordkeeping platform, and reduces its gross service fees by the amount of the anticipated revenue sharing.  
- The published fee schedule would reflect these lower fees.  
- Under the 408(b)(2) service provider fee disclosure regulations, the cost of the recordkeeping services must be disclosed to the employer.  
- Unless all investment managers on the platform pay the same level of revenue sharing, the service provider is assuming the risk that the revenue sharing from the mix of investments selected by plan participants, plus the fees published in the fee schedule, are sufficient to cover the provider’s gross fee rates. It is possible that the service provider will receive a larger (or smaller) total fee than anticipated, based on the investments selected. |
Allocation Concerns
The DOL has acknowledged the legitimacy of both *per capita* and *pro rata* allocations of costs across plan balances in other contexts, and many plans rely on these methods to allocate plan expenses when all or a portion is paid from the ERISA account. As a fairness issue, however, some employers are concerned that participants who have selected investments that enable greater revenue sharing amounts are paying the bulk of plan expenses, subsidizing those participants who have selected investments that are contributing little or nothing to the ERISA account. The DOL has not provided specific guidance regarding the allocation of revenue sharing among plan participants beyond the *pro rata* and *per capita* options discussed earlier. Some recordkeepers now report that they have developed capabilities for crediting participants whose investments generated the amounts being used to pay administrative expenses. As with other fee-related responsibilities, deciding how to allocate revenue sharing is a fiduciary responsibility under ERISA. Once again, any employer considering using an ERISA account should consult with a qualified expert regarding allocation options.

Some employers who are concerned about allocation fairness have adopted a “zero revenue sharing” policy approach. These employers select lower cost investments that do not pay revenue sharing and then debit participant accounts for the recordkeeping fees on either a *pro rata* or *per capita* basis. The amount debited from each participant’s account to cover administrative expenses must be disclosed to the participant under the fee disclosure regulations.

Employers who move from a revenue sharing approach to zero revenue sharing may need to explain to participants why their accounts are now paying recordkeeping fees. Determining whether to select a fund that enables revenue sharing payments to reduce express administrative costs, or whether to select funds with lower investment expense ratios but enable little or no revenue sharing, is a fiduciary decision. Employers interested in the latter approach should ensure that their recordkeeper and other service providers offer a sufficiently broad investment lineup with low expense ratios as well as fee structures that support zero revenue sharing.

Types of Fees
To make prudent cost-benefit decisions, employers must understand the types of fees their retirement plans may incur. Fees fall into five main categories: settlor fees; investment-related fees; plan administration fees; individual transaction fees and “other” fees.

**Settlor Fees**
- Fees related to the employer’s decision to establish or terminate a plan (such as certain legal or tax planning fees and plan design fees).
- Must be paid by the employer—not from plan assets.
- Generally described in the engagement letter or contract relating to the services.
**Investment-Related Fees**

- Fees for managing plan investments and investment-related services.
- Generally described in investment disclosure (such as prospectus or annuity contract), and expressed as a percentage of assets.
- Generally reduce the net total return of the investments (deducted from investment returns).
- Fees related to the sale or distribution of investments, which vary depending upon the type of investments and are typically based on a percentage of assets invested and paid by participants.

Examples of these fees include:

- Mutual fund “12b-1” fees which are ongoing fees paid from fund assets that may be used to pay commissions to brokers and other sales people and to cover the costs of advertising or promoting the fund to investors. Some mutual funds also charge sales fees related to the purchase of shares (front-end load) or redemption of shares (back-end load or redemption fees).
- Variable annuity contract insurance-related charges, and “surrender” or “transfer” fees, that are in addition to the investment management and administration fee.

**Plan Administration Fees and Individual Transaction Fees**

- Plan administration fees:
  - Are assessed for day-to-day operations of the plan (such as recordkeeping and third party administrator (TPA) fees).
  - Are generally described in service agreement between employer and service provider and include:
    - Set-up fee.
    - Quarterly or annual fee (which can be a per-employee fee, flat fee, or some combination).
  - Transaction fees related to specific transactions in a plan (such as participant loans and distributions):
    - Are expressed as a flat dollar amount rather than a percentage of assets.
    - Are often debited from the affected participant’s plan account balance but may also be paid by employer or from plan assets.

**Other Fees**

- Trustee fees.
- Fees for special educational programs or investment support.

These types of fees may also be assessed against plan assets.

**ERISA Accounts: An Alternative Way to Pay Plan Fees**

It is clear that the DOL’s new fee disclosure rules focus on whether employers are satisfying their fiduciary responsibilities to evaluate plan fees, including applicable revenue sharing arrangements. For plan sponsors, meeting fiduciary obligations requires an understanding of all fees being paid to the plan. Despite these complexities, some employers may decide that ERISA accounts can help them better manage and pay plan fees, and be a part of an employer’s comprehensive fee analysis and fiduciary oversight.
Plan Sponsor Best Practices

1 Develop and document a fee strategy
   - Appoint a team of internal staff and outside experts to serve as ERISA fiduciaries, responsible for service provider selection and oversight, including fee analysis.
   - Ensure that all fiduciaries understand their obligations.
     - Obtain educational support, if needed (for example, from an advisor, TPA, or recordkeeper).
     - Tap outside expertise (such as accountants and attorneys).
   - Formalize and document the decision-making process.
   - Identify who has the authority to act (such as to hire or fire service providers, or to select investment options), for example, senior management staff, an investment committee or the board of directors.

2 Collect and analyze fee information
   - Collect fee disclosures from all covered service providers.
   - Understand what fees are being paid and from what source, including any revenue sharing.
   - Benchmark fees against other service providers to determine whether costs are “reasonable.”
   - Create fee projections comparing various options.
   - Tap outside experts for help as needed.

3 Document decisions
   - Develop a process for documenting fee-related decisions.
   - Retain supporting information, such as board minutes, plan committee minutes, and presentation materials from consultants and advisors.

4 If an ERISA account is to be established within the plan, formalize the arrangement in writing
   - Review your plan document to ensure it permits an ERISA account and amend if necessary.
   - Ensure your recordkeeping service agreement explains how the ERISA account will be administered.
     - What types of fees will be paid from the account?
     - How will the account be handled under the fee disclosure regulations?
     - How will the employer be notified or invoiced for plan fees?
     - How will the employer authorize the payments from the ERISA account?

5 Conduct periodic reviews of all fee arrangements and adjust as needed
   - Evaluate the amount allocated to the ERISA account against fees appropriate for services at least annually.
   - Benchmark fee “reasonableness.”
The Right Way to Invest

We believe The Right Way to Invest is to make global connections, look to the long term, invest with proven teams, and take intelligent risks.

Our long-term investment focus aligns with the long-term goals of retirement plan participants. We work closely with plan sponsors, advisors, relationship managers and consultants for defined contribution plans. We share insights on how plan sponsors can manage plans more effectively and best serve the needs of plan participants. These include informed perspectives on plan design optimization and plan efficiency measurement, as well as education on fiduciary issues to better assess and manage risk.

1. Source: See ERISA 404(a)(1).
2. Source: See ERISA 408(b)(2).
3. For purposes of ERISA, “revenue sharing” broadly refers to the payment of plan expenses through fees charged against plan investments. However, under the federal securities laws, “revenue sharing” specifically refers to payments made to firms from the assets or resources of an investment fund adviser or distributor relating to the promotion, offering, marketing, or distribution of the investment funds, and/or the retention of assets in such funds. Understanding this distinction is important to any discussion or analysis regarding revenue sharing in these contexts. References in this guide to revenue sharing are strictly in the ERISA context.
6. The 408(b)(2) rule exempts plan fiduciaries who did not know that the service provider failed to provide one or more required disclosures. To qualify for this exemption, the plan fiduciary must, upon discovery, request in writing that the missing disclosure be provided. If the service provider fails to timely comply, the plan fiduciary must timely notify the DOL of such failure. 401(k) Plans: Increased Educational Outreach and Broader Oversight May Help Reduce Plan Fees (April 24, 2012).
7. DOL Advisory Opinion 2013-03A (July 2013)

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