eBenefits Alert: Universities Sued Over Retirement Plan Fees

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Last week, a number of prominent universities became the targets of lawsuits alleging they breached their fiduciary duties to participants. The lawsuits allege that the universities, all of which have large plans, had bargaining power to reduce retirement plan fees, that they should have exercised their bargaining power, and that their failure to do so resulted in a significant loss of retirement savings for participants. The plaintiffs further allege that the universities selected investment alternatives that significantly and historically underperformed benchmarks, again resulting in significant loss of retirement savings.

The targeted plans have a few things in common. Each one had multiple record-keepers and a large number of investment options. One had as many as 400 different investment alternatives. The plaintiffs allege that the large number of investment options confuses participants, and that many of the investment options were grossly overpriced. All of the targeted plans are 403(b) plans. Lawsuits over allegedly excessive fees in 401(k) plans are nothing new, but 403(b) plans have received much less of this sort of attention until now.

403(b) plans are available only to nonprofits and certain governmental organizations. Many have been in existence for much longer than the now-more-common 401(k) plan. For historical reasons, 403(b) plans are particularly favored by institutions of higher education. 403(b) plans used to be more "hands off" for the employer. They also traditionally included investment vehicles with annuity wraps, sometimes in individual contracts. The plaintiffs allege that certain such vehicles in the university plans were inappropriately expensive.

When IRS regulations making the 403(b) more like a 401(k) became effective in 2009, many plan sponsors streamlined their operations, reduced their number of service providers, and paid more attention to the administration of their plans. Now the time has clearly come for renewed focus on fiduciary obligations and investments.

If your organization sponsors a 403(b) plan, or a 401(k) plan, now is a good time to implement or update your plan committee's fiduciary training and processes. How do you sort through the available investment alternatives and select the most appropriate ones? How do you monitor the performance of the plan? How do you determine whether the fees the plan pays are reasonable?

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If you have concerns or questions about your institution's fiduciary obligation to its 403(b) plan participants, contact a member of Gray Plant Mooty's Employee Benefits Practice Group.