

Reasonableness of Fees

The DOL summarized fiduciary obligations under ERISA Section 404 by explaining that the primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits, paying only reasonable plan expenses (also known as the duty of loyalty). Fiduciaries must act prudently (also known as the “duty of care” which requires that fiduciaries follow a process) and must diversify the plan’s investments to minimize the risk of large losses.

Plan fiduciaries have a responsibility to ensure that the services provided to their plan are necessary and that the cost of those services is reasonable. However, reasonableness is often difficult to assess for plan fiduciaries. Fees are important when considering both service providers and investments, but for purposes of this guide, we will primarily stick to service providers (though the concepts apply similarly). The DOL said “This responsibility [of understanding and evaluating plan fees] is ongoing. After careful evaluation during the initial selection, you will want to monitor plan fees and expenses to determine whether they continue to be reasonable in light of the services provided.”²

The Prudent Process: To determine the reasonableness of fees, as a plan sponsor, you will want to proceed with a prudent process:



- 1. Identify framework:** Determine the needs of the plan and participants to understand which services you need initially and reevaluate over time as it relates to each service provider.
- 2. Gather information:** To fulfill this step, according to the DOL, “service providers must provide certain information to you about the services they will provide to your plan and the compensation they will receive [known as the 408(b)(2) disclosure]. This information will assist you in understanding the services, assessing the reasonableness of the compensation (direct and indirect), and determining any conflicts of interest that may impact the service provider’s performance.”
- 3. Evaluate objectively:** Evaluate based on the needs of your plan and also benchmark fees based on other plans that are similarly situated to determine what fees are reasonable.
- 4. Decide + document:** Make a determination as to what is reasonable. Keep in mind that the DOL and courts agree that cheapest does not equate to reasonable. The DOL has specifically stated, “Nor is cheaper necessarily better.” It is important to make a comprehensive evaluation and document.
- 5. Revisit periodically:** Things change over time and, of course, should be periodically revisited.

² See DOL, Understanding Retirement Plan Fees, available here: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/understanding-retirement-plan-fees-and-expenses.pdf>.

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