

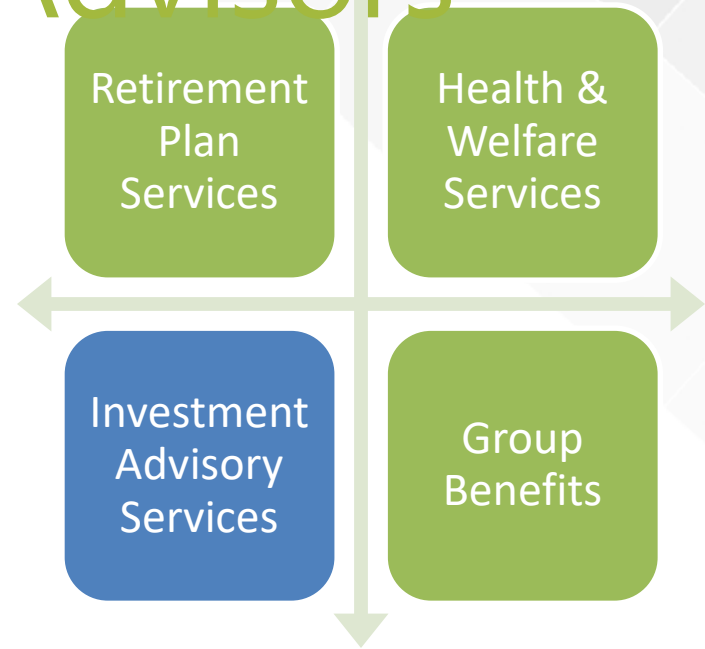
What We Can Learn from Recent 403(b) Lawsuits & How to Avoid ERISA Litigation

Presented by:

Lisa Jones, Esq., VP, ERISA Consulting Group
Ryan Campagna, CFP[®], SVP, Sentinel Pension Advisors

Sentinel Pension Advisors

- ▶ Expertise in Retirement Plan Fiduciary Governance
 - 3 CFAs on our Investment Management Team
 - 5 Certified Financial Planners
 - 14 Accredited Investment Fiduciaries
- ▶ Total Advisory Clients
 - 360 Plans Under Advice representing
 - **\$3.40** Billion in Retirement Plan assets under advice
 - Over 1,000 individual investor advisory accounts



- Top 100 Advisors in the United States (Financial Advisor Magazine)
- Top 10 Largest Average Account Balances (Plan Sponsor Magazine)
- CEFEX Designation (April 2014 & '15)
- 2015 Retirement Plan Adviser of the Year (PLANADVISER Magazine)

You're a Fiduciary...What does that mean?

Acting solely in the interests of plan participants and beneficiaries by...

Disclosing conflicts of interest (ahead of time)

Carrying out the duties with care, skill, and **diligence** that a prudent person would use

Diversifying investments to reduce risk of large investments losses

Following the terms of the plan document

Paying only **reasonable** expenses from plan assets

A New Era of Class Action Litigation

- ▶ In 2006 and 2007, Schlichter Bogard & Denton began to focus on qualified plans. Simultaneously filing against 18 of the largest U.S. corporations.
- ▶ Committees and other plan fiduciaries allegedly failed to abide by ERISA responsibilities in allowing recordkeepers to charge excessive fees and offering imprudent investment options.
- ▶ Since December 2015 at least 20 new cases have been filed, some with plan as low as \$10 million dollars

A New Era of Class Action Litigation

- ▶ Similar class action suits have been filed by other firms across the country given the success of earlier attempts
 - Tussey v. ABB
 - Tibble v. Edison
- ▶ Each new class action has become more distinct and complex
- ▶ New DOL Regulation now brings and even higher level of fiduciary awareness

The Target is Now Set on Higher Education

First waiveAugust 2016

- MIT
- NYU
- Yale



Soon after

- Duke
- Penn
- Emory
- Northwestern
- Vanderbilt
- Johns Hopkins
- Cornell
- USC
- Columbia

Alleged Breach: Failure to Offer Low-Cost Investments

What's the problem?

- ▶ Retail vs Institutional share classes
- ▶ Revenue Sharing
- ▶ Excessive Fees

Retail vs Institutional Share Classes

▶ Retail Share Class

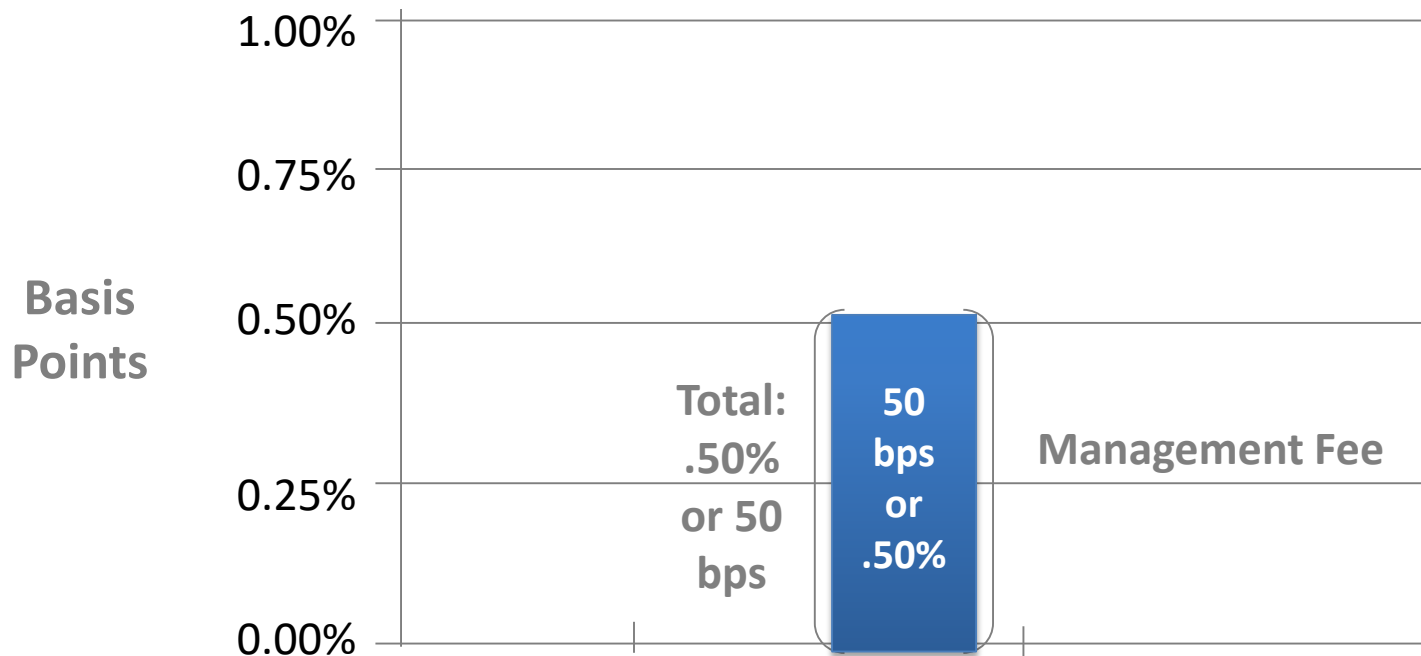
- Designed to accommodate the individual investor and smaller amounts of money to be invested. Often include sales charges and higher ongoing investment expenses.

▶ Institutional Share Class

- Institutional share classes of a mutual fund are typically designed for qualified retirement plans or institutional investors. Generally, the required minimum investments are higher than retail share classes and therefore receive a lower expense.

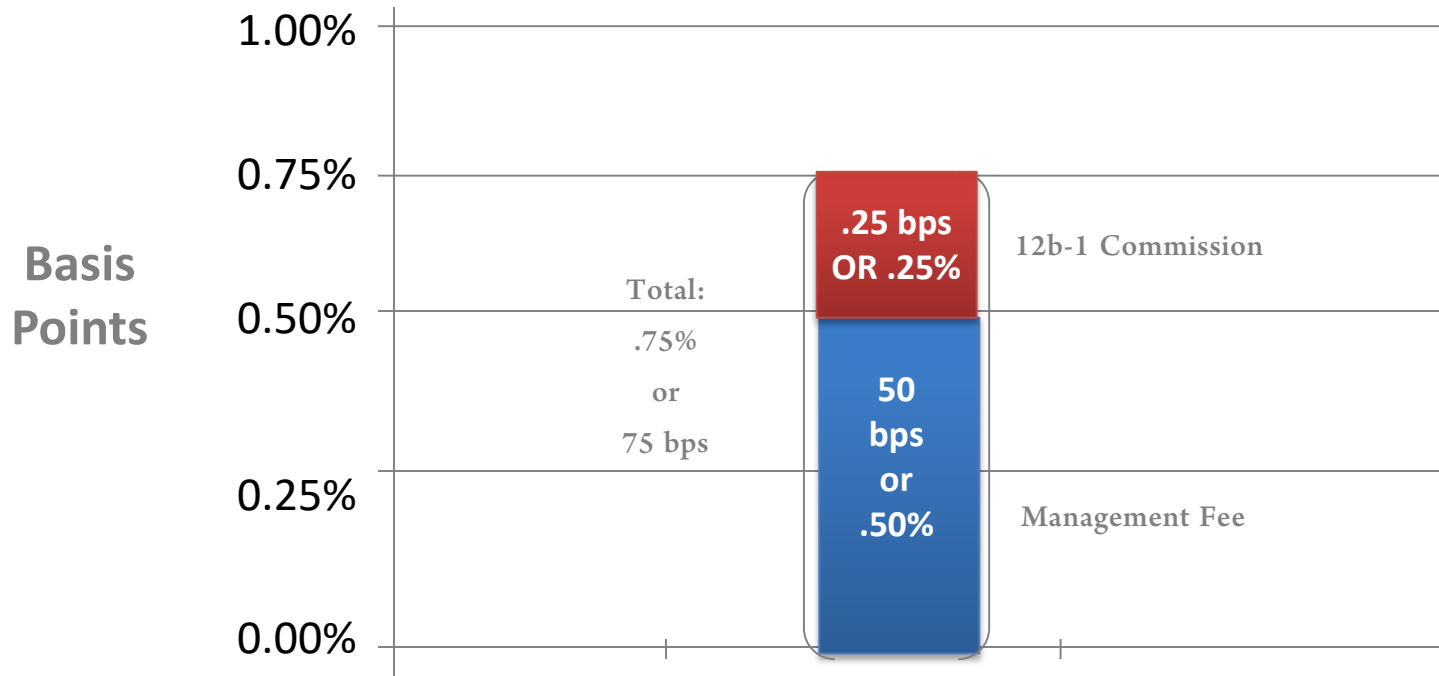
What is Revenue Sharing?

Management Fee – a charge levied by an investment manager for managing an investment fund. A mutual fund would be an example.



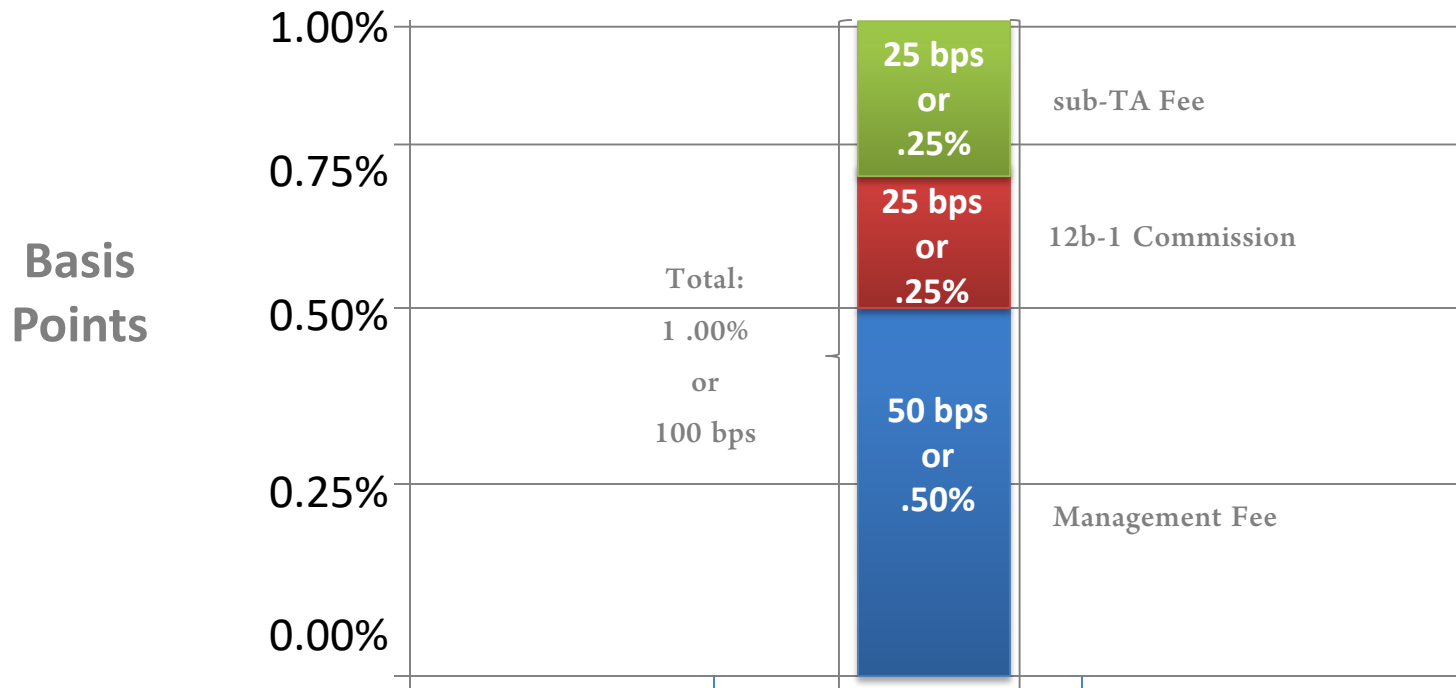
What is Revenue Sharing?

12B-1 Commission – an annual marketing or distribution fee on a mutual fund. A broker may receive a commission of 0.25% of assets.



What is Revenue Sharing?

Sub TA Fee – a fee for mutual fund companies and other financial services firms to prepare and maintain documents and records relating to shareholders accounts. Many 401(k) record-keepers receive and keep Sub TA fees.



Mutual Fund Share Class

Example

John Hancock Disciplined Value

Share Class	Management Expense	sub-TA Expense	12b-1 Expense	Total Expense Ratio
A	0.53	0.30	0.25	1.08
C	0.63	0.20	1.00	1.83
R1	0.72	0.25	0.50	1.47
R2	0.72	0.25	0.25	1.22
R3	0.72	0.15	0.50	1.37
R4	0.72	0.10	0.15	0.97
R5	0.72	0.05	0.00	0.77
R6	0.70	0.00	0.00	0.70

Sales charges may apply

Revenue Neutral

Cost Over Time...

ABC Retirement Plan

- Plan assets: \$10M
- Plan Participants: 100
- Record-keeper: **\$25K**

- \$250 per participant

ABC Retirement Plan 7 years later

- Plan assets: \$20M
- Plan Participants: 120
- Record-keeper: **\$50K**

- \$416 per participant

*The growth of sub-TA fees due to the growth in account balances far outpaces the extra administrative burden resulting from the additions in the work force

Alleged Breach: Multiple Recordkeepers

What's the problem?

- ▶ Limits purchasing power
- ▶ Increases recordkeeping fees
- ▶ “Paralysis by analysis” for participants
- ▶ Common Practice in Higher-Ed

Let's Look at Some Numbers...

Higher ED Plans & Recordkeepers

- ▶ 12.6% use one
- ▶ 23.4 use two
- ▶ 50% use more than six
- ▶ The momentum for consolidation is picking up!

How many investment options are too many?

- ▶ John's Hopkins: 400+ options
- ▶ Duke: 400+ options
- ▶ Vanderbilt: 300+
- ▶ NYU: two plans, 103/84
- ▶ The average DC plan offers 15 fund options, excluding target date funds

So What's the Solution?...Start a Legacy!

For Recordkeeper consolidation, you must understand and consider:

- ▶ The non-profit/403(b) world is unique
- ▶ The non-profit space has providers with legacy products that make change difficult
- ▶ Many of these older contracts are between the participant and the vendor, not the plan sponsor
- ▶ Pros and Cons of Fixed Accounts
- ▶ What is revenue sharing and how does it work
- ▶ Asset based fees vs. per participant fees

Fiduciary Boot Camp

“Let us do our job, so you can do yours.”

1. Create a Committee
 - Identify Plan Fiduciaries
 - Investment Policy Statement ,Committee Charter & Bylaws, and Fiduciary Acknowledgement letter
2. Understand Roles
 - Investment Advisor, Committee, Recordkeeper, Custodian, etc.
3. Training & Education
 - DOL and ERISA Law
 - **What unique features are we dealing with?**
 - Fiduciary Best Practices
4. Tools to Execute
 - Fiduciary Governance System



Questions?

