**From:** anthony yudovich [mailto:new_man_43230@yahoo.com]
**Sent:** Friday, October 20, 2006 11:53 AM
**To:** EBSA, E-ORI - EBSA
**Subject:** opinion on changes to Pension Protection Plan

**I read article in Newspaper about your plans. I agree that people must save more. But you are trying to do only percentage of what you actually can do.**
**Please try to review all 401K plan situation.**

1. **To minimize funds expenses in 401K plans. Why participants must pay 12b fees? Fees must be competitive with no loaded index funds. 0.2-0.4%**
2. **Every participant must be charged fixed annual maintenance fee, instead of percentage of investment?**
3. **Every 401K participant must have other investment choices, then those provided by employer. Usually employer pays less for plan management, but funds provides chose funds with larger expenses for participants. I would call it conflict of interests.**
4. **Why it is so difficult to find cost of funds in 401K plan? They have many different classes X,Y,Z, A.**
5. **Require 401K plans to have index funds in all categories**

**Please look and evaluate my comments. US Department of labor ERISA did independent retirement plan evaluation and made recommendations in 2005, I read**
**http://www.dol.gov**

**Anthony**

**Also I would like you to read this:**

## There Is Trouble In 401(k) Land

*By Larry Swedroe, Contributing Writer*

The historical record provided by academic studies is very clear that the winning investment strategy is to invest in funds that are passively-managed index funds, exchange-traded funds (ETFs), and passive asset class funds. Unfortunately, a conflict of interest is preventing many individuals from investing passively inside of their 401(k) or other corporate-sponsored savings programs (such as profit-sharing plans).

For many individuals, a large percentage of their investments are inside of their company sponsored plans. These plans are set up as part of a company's overall benefit program, and like all benefit programs there are costs involved. Because of the expenses of providing and maintaining a plan, a conflict of interest can arise between what is best for the employer (least cost) and what is best for the employee (access to the best investment vehicles). Unfortunately for employees, this conflict is very often decided in favor of the employer.

The employer can save a large amount of money by not having to pay for the

administration of the employee benefit. Therefore, management is very interested when a fund family that provides high cost, actively-managed funds proposes to the employer that they will pick up all of the plan's administrative expenses if the employer makes their fund family the exclusive (or at least dominant) provider of investment alternatives. Unfortunately, the employees lose in the end as they accumulate fewer dollars in their retirement accounts. The reason is that high-cost active management is a loser's game.

It would be far better for both employers and employees to choose a plan that has low-cost, passive investment vehicles. If the employer could not afford the cost of the administration of such a plan, then the cost of the plan could be unbundled and passed on to each employee appropriately. Without proper education, employees may be concerned that they would then be charged for a service that in the past was "free." However, through education employees will learn that they have been paying for administration services all long - they just weren't being billed directly for those services. The costs showed up not in a bill, but through lower returns earned due to the higher internal expenses of the mutual funds in which they were investing. In the long term, charging employees directly for administration costs is significantly less expensive for them than paying the management fees of high-cost mutual fund companies while also incurring the extra (and mostly nonproductive) trading costs of active management.

Employers who opt for the expensive fund option are in basic conflict with the standards established for trustees in the American Law Institute's third rewrite of the Prudent Investor Rule. In 1992, in response to both the overwhelming body of academic evidence about the overall unsatisfactory performance of active managers and the benefits of passive asset class investing, the American Law Institute rewrote the Prudent Investor Rule. Here is some of what the Institute had to say in the revised version:

- The restatement's objective is to liberate expert trustees to pursue challenging, rewarding, non-traditional strategies and to provide other trustees with clear guidance to safe harbors that are practical and expectedly rewarding.
- Investing in index funds is a passive but practical investment alternative.
- Risk may be reduced by mixing risky assets with essentially riskless assets, rather than creating an entirely low-risk portfolio.
- *Active strategies entail investigation and expenses that increase transaction costs*, including capital gains taxation. Proceeding with such a program involves judgments by the trustee that gains from the course of action in question can reasonably be expected to *compensate for additional cost and risks*, and the course of action to be *undertaken is reasonable in terms of its economic rationale*.

By rewriting the Prudent Investor Rule, the American Law Institute recognized both the significance and efficacy of Modern Portfolio Theory and that active management delivers inconsistent and poor results. The Institute had the following to say about market efficiency, in summary:

- Economic evidence shows that the major capital markets of this country are *highly efficient*, in the sense that available information is rapidly digested and reflected in market prices.
- Fiduciaries and other investors are confronted with potent evidence that the application of expertise, investigation, and diligence in efforts to "beat the market" ordinarily promises little or no payoff, or even a negative payoff after taking account of research and transaction costs.
- Empirical research supporting the theory of efficient markets reveals that in such markets skilled professionals have rarely been able to identify under-priced securities with any regularity.
- Evidence shows that there is little correlation between fund managers' earlier successes and their ability to produce above-market returns in subsequent periods.

States such as New York and Pennsylvania have already passed legislation with two major revisions to the Prudent Investor Rule:

- Modern Portfolio Theory is adopted as the standard by which fiduciaries invest funds.
- Fiduciaries can avoid liability if they exercise reasonable skill and care in making a delegation to an agent. The agent will be held to the same standards as the fiduciary.

For those employers with fiduciary responsibility adopting Modern Portfolio Theory makes sense because:

- It can provide the maximum expected return for a given level of risk.
- It provides relief from liability for fiduciaries who are not in the investment business by appointing competent managers or advisors who invest according to its tenets.

One explanation for employers not adopting the tenets of the Prudent Investor Rule, particularly in light of the demand from more and more employees for passive investment choices, is the conflict of interest regarding expenses. Either that or they are simply unaware of the historical evidence, or perhaps they believe in the triumph of hope over experience and wisdom. In any case, it is the employees that lose. Employees should band together to demand that employers provide them with passive choices. They should also require employers to provide the education regarding modern investment strategies including Modern Portfolio Theory. Education is rarely available at the level required for employees to make informed decisions.

Another conflict of interest that is present in the 401(k) industry is on the sales side. There are many different ways for stockbrokers and investment advisors to be paid when selling 401(k) plans, depending on the type of mutual funds offered within the plan. There are plans with front or back loaded funds, 12b-1 fees, a percentage of new contributions, a fee based on plan assets, or a combination of different fee structures. The different fee structures provide the potential for a conflict of interest between the plan and

the investment advisor or stockbroker. An advisor to the plan is considered a fiduciary and is therefore responsible for making prudent recommendations in the participants' best interests. However, if one fund family is paying the stockbroker/advisor a higher commission or load than another, the potential for a conflict of interest exists. Thus, this type of relationship should be avoided.

Fortunately for both employees and employers, there are now several service providers that allow access to low-cost, passively-managed vehicles. One of the leading providers of such solutions is a firm called Benefit Street. Among the many benefits offered by these providers is the option for investors to choose from "prepackaged" lifestyle portfolios. These lifestyle portfolios are well diversified across domestic and international asset classes, and are tailored to the risk profile of each investor (offering for example options with 0%, 20%, 40%, 60% 80%, and 100% equity allocations). The investor simply chooses the appropriate lifestyle fund (from very conservative to very aggressive) and then the plan administration ensures that the regular deposits are allocated appropriately and even rebalanced on a regular basis. The plan sponsor should require that the plan's advisor or stockbroker provide the appropriate education to help individuals decide on the appropriate lifestyle choice.

One last point: While it is rational for employers to align the interests of employees with those of the owners, the practice of requiring employees to hold significant stakes in company stock goes against one of the basic principles of prudent investing: diversification. Often employers provide matching funds that must be held in company stock. As companies often provide matches against as much as fifty percent of what the employee invests, this forced investment often leads to the employee holding a very large percentage of their assets in the company stock. Holding a large percent of assets in any one stock is imprudent under any circumstances, but is doubly so when the holding is that of your employer. The reason is that if company does poorly, then not only will your investments do poorly but you may also lose your ability to earn income at the same time. This practice should either be prohibited, or a maximum limitation (such as ten percent of the employees holdings in the plan) should be established.
07/16/2002

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