

One Minute Memo[®]



Professor's Letter Questions 401(k) Plan Fees, Reminds Companies of Their Fiduciary Obligations

Recently, a Yale Law School professor sent letters to thousands of companies informing them of an academic study that he and a colleague are conducting on the fees charged under 401(k) plans. In each letter, Professor Ian Ayres explains that his study is based on publicly-available data from 2009 collected by BrightScope, which maintains a public website that analyzes companies' retirement plans. In some of his letters he "identifies" a company's 401(k) plan as "a potential high-cost plan" and cautions the company to remember its fiduciary obligations when monitoring the plan's expenses. Professor Ayres' letters further indicate that, upon the conclusion of his study in early 2014, he will publicize in newspapers and through social media sites (such as Twitter) the names of the companies that he believes maintain high-cost plans. A sample copy of his letter can be found [here](#).

Many questions have been raised about Professor Ayres' study because it is based on data that is out-of-date and does not accurately portray plan fees or take into account the complexities of a plan's design and administration. As a result, the findings from his study may be suspect when they are published next year. Nevertheless, due to its large scope and the publicity that is likely to be generated, Professor Ayres' study serves as yet another reminder to companies to carefully consider their fiduciary duties under ERISA.

By: [Randell Montellaro](#), [Steven Lifson](#) and [Andrew Douglass](#)

[Randell Montellaro](#) is a partner in Seyfarth's New York office. [Steven Lifson](#) and [Andrew Douglass](#) are partners in the firm's Chicago office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Randell Montellaro at rmontellaro@seyfarth.com, Steven Lifson at slifson@seyfarth.com or Andrew Douglass at adouglass@seyfarth.com.