

NEWS & INSIGHTS

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# Higher education retirement plan settlements highlight need for regular compliance reviews

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On May 21, 2021, the U.S. District Court for the Southern District of New York granted preliminary approval of a \$13 million class-action settlement agreement (the Settlement) between the Trustees of Columbia University's Voluntary Retirement Savings Program (Columbia Plan or Plan) and affected plan participants. The Columbia Plan is a 403(b) plan, a type of qualified retirement plan similar to a 401(k) but sponsored by tax-exempt and government entities.

The class-action lawsuit filed on behalf of Columbia Plan's participants alleged that the Plan's Trustees breached their fiduciary duties under the Employee Retirement Income Security Act of 1974, as amended (ERISA) by failing to properly monitor the Plan's administrative and investment-related fees and the investment options provided to Plan participants. In addition to the \$13 million payment, the Settlement requires that the Plan's trustees complete ongoing compliance tasks and perform mandatory fiduciary training at its own expense.

### *A rise in breach of fiduciary duty lawsuits for 403(b) plans*

The Settlement highlights a recent trend of ERISA-related litigation where higher education institutions and other non-profit organizations sponsoring 403(b) plans are sued for breaching their fiduciary duties; specifically, for paying excessive fees and providing plan participants with underperforming investment options.

It is worth noting that before the Internal Revenue Service (IRS) issued substantial 403(b) regulations in 2007, very little attention had been given to non-profit 403(b) plan compliance concerns. The 2007 regulations under Code section 403(b) are an attempt to align the 403(b) rules with the qualified plan rules applicable to for-profits (i.e., 401(k), profit-sharing and other qualified retirement plans). To be clear, for-profit retirement plan sponsors have also been targeted in excessive fee litigation cases. However, 403(b) plan sponsors are advised that, along with the 2007 regulations, the IRS and the U.S. Department of Labor (DOL) have increased their review, investigation and oversight of 403(b) plans. In addition, as plan participants are becoming better informed regarding available plan investment options and the fees imposed thereon, we are seeing an increase in excessive fee litigation against 403(b) plan sponsors.

### *Fiduciary duty requires prudent, ongoing action*

Plan sponsors are not required to achieve the most favorable investment results or offer the least expensive investment options. Nevertheless, they must show that they acted with prudence and in the best interest of the plan's participants when selecting the plan's investment options, monitoring the plan's investment returns and expenses, and evaluating investment advisors. Given the multitude of ERISA lawsuits against 403(b) plan sponsors (most notably, institutions of higher education) plan sponsors should conduct ongoing compliance reviews to ensure they are fulfilling their obligations under ERISA. Further, plan sponsors are strongly advised to conduct an internal audit and evaluate and document their plan's internal controls, establish investment policies and procedures, regularly monitor the plan's investment options, and ensure that the plan's service providers are fulfilling their duties to the plan.

### *Seek legal advice on maintaining compliance or meeting fiduciary obligations*

Saxton & Stump's [Employee Benefits and Executive Compensation](#) team regularly assists 403(b) plan sponsors and fiduciaries in maintaining compliance with their fiduciary obligations under ERISA. If you have any questions regarding these matters, please do not hesitate to contact [Sarah K. Ivy](#).

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