

# 401(k) Fee Disclosure For the “You Never Told Me” Employees

By Dennis Ackley

The Department of Labor’s required 401(k) fee disclosure to participants – starting as soon as November 1, 2011 – will be received by many employees as generally good news...but not by all.

It will be good for employees who work for organizations that have been informing them about the 401(k) fees they pay. It will further clarify and reinforce what they know. Yet even for these employees, it might be the first they learn about the plan’s administrative fees.

For employees who believe their 401(k) is free – bad news. These “you never told me” (YNTM) employees could blame their employer for allowing fees to be taken out of their accounts without telling them.

For some YNTM employees, having never been told they were paying fees might matter as much or more than the size of the fees.

## ***Most don’t know... management thinks they do***

In a 2007 AARP study, only 17% of employees said they knew they were paying 401(k) fees – 65% believed they paid no fees, 18% did not know for sure.

In other words, 83% were YNTM employees in 2007. Perhaps more know today – some because of the Securities and Exchange Commission’s recently expanded mutual fund fee disclosure rules.

A good way to find out if you have YNTM employees is to ask a few employees (other than HR and finance staff) questions like, “Our 401(k) is free, isn’t it?” or “The company pays all the 401(k) fees, doesn’t it?”

It’s no mystery why some people think 401(k)s are free. Things we buy have price tag and sales receipt – except many 401(k)s. And a few of the 401(k) fee explanations have been more obfuscation than clarification.

In a 2009 Transamerica study, 73% of 401(k) plan sponsors said they believed their employees had a clear understanding of fees. Your CFO or Chief Legal Counsel might be in this majority. They might say, “It’s no big deal. Just send out the disclosure and tell employees their fees are now even easier to understand. They’ll be happy.”

YNTM employees won’t be happy.

## ***Fee communication could be bad***

An organization’s “true colors” – how it really values its employees – show when it has to communicate bad news. When things are good, it’s easy to say, “We’re a best-in-class employer...we have direct and honest communication...etc.”

If you have not been communicating clearly about fees, your YNTM employees might see the new disclosure as proof these are empty slogans. This erodes trust between

the organization’s “most valuable resources” and management. Trust is a key ingredient in retaining high-performing employees.

Some employees will be in the “I’ve never read that” group. If you’ve been communicating fees prominently, add a phrase in the disclosure such as “As we have shown for several years in highlights brochure....” That should help dampen their negative reactions.

If this will be your organization’s first easy-to-understand fee disclosure, tell the leaders of the 401(k), benefits and employee communication to prepare now for unpleasant questions and negative reactions.

News organizations are publicizing the coming of 401(k) fee disclosure. Some employers are expanding their fee communication. With the word getting out, your YNTM employees might learn about fees soon. They might call, email or tweet their questions and concerns to your call center, HR staff or executives – putting them on the defensive. It makes the situation worse when answers aren’t immediately forthcoming. It’s worse

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yet when the answers differ among various sources.

### Choosing among not-so-good choices

If there’s been no clear fee communication, you might need to explain the employer’s role in not communicating earlier. Get input on your approach from senior management, legal counsel, benefits staff, fund managers, recordkeeper and others who will likely become involved in discussions with your YNTM employees.

Here are four approaches. You might come up with others. There is no great choice – only the lesser of the bad choices.

#### **“We recently learned about the fees, and now we are telling you.”**

If you tell employees that you’re just as surprised as they are, you might direct any ensuing anger toward the recordkeeper and fund managers. But sooner or later, won’t employees question why the plan administrator or HR did not know about fees? And if you blame the recordkeeper and fund managers for not disclosing fees, won’t employees expect them to be fired...perhaps sued?

#### **“We assumed you knew...”**

Another not-so-good approach would be to act like you were sure employees already knew about fees. In the disclosure you could insert, “This is a government-required summary. As you know, fees are taken out of your...” Prepare for a backlash. YNTM employees could ask, “Why would you think we knew? You never told us.”

#### **“We had to wait for the government’s form.”**

You could blame the government. But you might still need to answer, “Why didn’t you at least tell us something?”

#### **“We are sorry we didn’t make this clearer before now....”**

Apologizing is honest. And honesty is better than other approaches. But being sorry might not let you off the hook for uncomfortable questions like, “Why did you let us go on for years believing the 401(k) was free?”

If it’s likely you’ll eventually have to issue an apology for not communicating, you probably should start with one.

You’ll also need to decide how to introduce the fee disclosure. Will you just send it out or have some communication leading up to it? Will you publish

background information in the organization’s newsletter (electronic or paper) about how investments are selected and the role fees play in the selection? Will the organization’s leadership be involved? Will the recordkeeper or fund managers send employees a letter, be interviewed in the newsletter or conduct meetings following the disclosure?

### ***Don’t overlook the positives***

Don’t try to spin bad news as good news. But consider mentioning what might be some positive things.

If your organization provides automatic or matching contributions, perhaps you could show how that money was far more than enough to pay the fees.

If the organization is paying some or all the recordkeeping, consulting, legal or related fees, you could mention them.

You might also mention the employer-paid salaries of people who manage and support the plan.

Another positive is that the government now requires detailed fee disclosure be made to plan administrators. Although this rule has been delayed until January 1, 2012, this will make it easier to evaluate fund managers and providers, and to determine whether the fees are reasonable and competitive.

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### **Don’t “Q&A” bad news**

Questions with answers isn’t the best way to communicate bad news. You don’t want employees to infer that unless a question is asked you aren’t providing answers. Rather, you want to show you are fully forthcoming with information.

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### ***Delivering the tough content***

Part of doing the best job in communicating bad news is preparing for the worst. Start by considering how to answer tough employee questions. Again, invite the benefits, HR and communication staffs, as well as representatives from the recordkeeper and investment funds, to help brainstorm the content. Then use their responses to write statements that deal proactively with employees’ concerns and alleviate their need to ask these tough and uncomfortable questions.

You can’t wish away tough questions. But you might be able to provide enough information in the

announcement so you end up addressing the issues before employees ask.

Here are some tough questions that might help you prepare the content to use in the fee disclosure communication.

- Until now you haven't told us about 401(k) fees we've been paying. What else about the 401(k) haven't you told us?
- Why did we have to wait until the government forced you to tell us about fees?
- Why do you use "basis points", "expense ratios" and "load" to hide fees? Why don't you just call them "fees"?
- On what page of the materials you've sent us over the years did you tell us about fees?
- In the highlights brochure it says "you do not pay sales fees." But it never says we pay any other fees. Why did you mislead us?
- My neighbor pays less than \$5 for every \$1,000 invested. Why are we paying nearly twice that? Are our funds twice as good? And if not, can we get the same funds and fees my neighbor has?
- I guess the "free pizza" provided by the people running the 401(k) meeting wasn't really free. In fact, we have also been paying for the meeting guy...right?
- If I use a fund that has higher price, will I get more value? Or should I just choose the fund with the lowest fees?
- In the ten years that my investments went down, did you stop taking out fees?
- Why do I pay more just because I have a larger account? I'd get the same services if I had half as much.
- We were never told in simple terms that fees were being taken out. Can we sue to get our money back?
- Show me where I signed something saying I agreed to pay anything. And tell me who got our money and what did they do with it.
- Did the head of HR know we were paying fees...did the CEO know? If yes, why didn't they tell us? And if no, why didn't they know?

- You say the fund manager has finally provided a detailed breakout of the fees we pay. Why didn't you demand an accounting long ago?

Keep in mind if your YNTM employees don't learn all they want to know from the disclosure, they will jam your phone lines and email boxes with questions. And they might take the responses they get and spread them through the organization in conversations and social media.

### ***A model that's missing key parts***

The DoL offers a disclosure model employers can follow. It's a template to present fee information, historical performance comparisons of the investment options and selected benchmarks, as well as a summary of any annuity option.

Like many investment fund summaries, the DoL's model sends a mixed message. It has the obligatory "don't rely solely on past performance in judging..." type of statement. Then it shows only history. It's also curious that one of the most agreed-upon principles of investing is missing – diversification

Adding a few words about each fund's goals and diversification would be useful.

Also missing from the model is an ingredient required in good employee communication – an answer to, "What am I supposed to do with this information?" Unless this is addressed, will employees believe the communication is subtly telling them to pick the cheapest fund?

You might want to add something like, "Although low fees are an important consideration, some funds with higher fees might better meet your investment needs and goals. The plan offers choices so you can select the mix of funds or fund that you find works best for you."

All fee disclosure communication should be reviewed by legal counsel and service providers.

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### ***How did obscuring fees get started?***

In a nutshell, the lack of fee clarity is mostly due to the evolution of 401(k) plans from mutual fund look-a-likes to real retirement plans. No malice involved...just people doing what had worked in the past.

In the 1980s, the mutual fund industry saw the growing number of 401(k) plans as an opportunity to acquire new customers for its funds by providing

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recordkeeping services. Many employers and employees saw mutual funds as attractive opportunities for investments and services. Thus a new 401(k) retirement industry emerged. To a large extent, it followed the mutual fund approach rather than adopting provisions of traditional retirement plans. For example, employees were not automatically enrolled, no automatic employer contributions were made, no “accrued account” remained in the plan when vested employees changed jobs, and, for the most part, no lifetime incomes were paid.

Before the new DoL and recent SEC requirements, 401(k) fees have often been communicated the way fees had been presented to mutual fund customers – often tucked in the back of a wordy prospectus.

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### ***An unfortunate distraction***

Fees should have been communicated clearly to employers and employees 20 to 30 years ago.

Unfortunately, this new fee communication, which is part of the evolution of 401(k)s into more effective retirement plans, risks turning some employees against the plans because of a “gotcha” over fees. And it comes when employees need to be saving more for retirement – not less.

Despite past omissions, starting now to be clear and forthright about fund and plan fees can begin to promote trust and encourage employees to save for their retirement needs.



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### **Dennis Ackley**

For 20 years Dennis Ackley has been an advocate for clarity and accountability in retirement education – helping workers gain the knowledge to achieve the financial future they want. His award-winning communication programs on retirement, investing, and health care have reached three million employees at hundreds of employers. For more articles and more information, visit

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