



Fiduciary  
Benchmarks

## NEWS RELEASE

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### FIDUCIARY BENCHMARKS RESPONDS TO YALE LAW PROFESSOR LETTERS

#### *Data and Approach Deserve a Failing Grade*

August 14, 2013 (Lake Oswego, OR) – Fiduciary Benchmarks (FBI), in response to the furor caused by thousands of letters that were sent from a Yale Law Professor, issues this press release to help plan sponsors, participants and their service providers understand flaws in the data and approach that were used for those letters.

Fiduciary Benchmarks analyzed many letters that were provided by their clients and concluded the following: *“The benchmark groups are poorly constructed, the fee analysis is incorrect and they miss the importance of cost-drivers and value-factors in their analysis. In our opinion, this makes the letters inappropriate for decision making from a fiduciary standpoint. And we do not believe these incorrect conclusions are solely due to the fact the data is old.”*

#### **Benchmark Groups**

With respect to benchmark groups, FBI noted that many of the letters received by plan sponsors referred to “your plan ranked xx,xxx out of 46,875”. In this regard, Tom Kmak noted the following: *“the underlying data used to support this conclusion was reached mostly from Form 5500 filings with more than 100 participants which included about 50,000 plans in 2009. And every letter provided to us that contained this reference referred to exactly 46,875 plans. This means that this portion of the letter placed these 46,875 plans in ONE benchmark group thus ignoring other factors that have a meaningful impact on plan pricing such as plan size, average account balance or industry. For example, our data shows that a plan with \$12 million in assets that has a high average account balance will cost about 20% less than a plan with a low average account balance.”*

#### **Fee Analysis**

With respect to the actual fee calculations, **FBI stated that the first letter it was provided stated the fees for one plan were 1.74% when FBI verified in June of 2011 that the actual fees were 1.10%. In addition, the next four letters showed the percentile rankings of fees to be substantially different than FBI’s proprietary database of thousands of plans from hundreds of service providers as shown by the table below:**

Plan Size	Average Balance	Yale Letter	FBI Report Result	FBI Verified Plan Fee	FBI Benchmark Median Fee	FBI Report Date
\$7.3 million	Low	57 <sup>th</sup> percentile	39 <sup>th</sup> percentile	0.85%	1.09%	Feb-13
\$8.3 million	Low	87 <sup>th</sup> percentile	55 <sup>th</sup> percentile	1.15%	1.10%	Oct-12
\$12.3 million	Medium	93 <sup>rd</sup> percentile	71 <sup>st</sup> percentile	1.05%	0.96%	Dec-12
\$19.5 million	Low	83 <sup>rd</sup> percentile	44 <sup>th</sup> percentile	0.79%	0.96%	Aug-12

Per Tom Kmak: *“For all of the letters provided to us, the conclusions from the study were off by a wide margin, whether it is the percentile rankings or the actual fee being cited.”* FBI noted that Form 5500 data has numerous limitations with respect to accurate fee benchmarking whether it be the existence of ERISA spending accounts or not properly accounting for participant-driven fees for a plan.

In addition, it is important for fiduciaries to remember that making sure TOTAL plan fees are reasonable is NOT the fiduciary duty. Instead, the fiduciary duty is to make sure that fees are reasonable BY PROVIDER. Per Tom Kmak: *“This is why data published on total fees can be misleading to a fiduciary. We have seen numerous cases where total plan fees may look reasonable but there are one or more service providers with higher fees where their cost-drivers and value-factors need to be closely examined.”* Kmak again notes that the current Form 5500 Schedule C does not facilitate proper comparisons among similar service providers which explains ASPPA’s recent request to the DOL on 7/29/2013 to revise the Schedule C.

### **Cost-Drivers and Value Factors**

**Most importantly, however, FBI noted that the letters were devoid of any mention of cost-drivers and value-factors that should have an impact on plan pricing.** For example, with respect to cost-drivers, FBI has seen corporate plans that ask their service providers for 100 or more days’ worth of in-person meetings versus plans that require no such meetings. This cost-factor should have an obvious impact on plan pricing.

With respect to value-factors, FBI data shows that the Average Deferral Percentage is generally 2% higher (e.g. 5% versus 3%) for plans in the 25<sup>th</sup> percentile versus plans in the 75<sup>th</sup> percentile **for similar plans in similar industries.** Other value-factors such as participant investment behavior can also vary widely from plan to plan. Kmak notes that achieving better results in these areas will mathematically benefit participants more than changes in fees. FBI believes this is why prior DOL guidance has specifically allowed for plan sponsors to consider the quantity and quality of services being provided when determining fee reasonableness for a service provider.

To reinforce the problem of using Form 5500 data for not only fee issues but for value-factors, FBI noted that some providers using Form 5500 data attempt to calculate participation rates from that data. One client of FBI noted that one of these service providers had their participation rate around 60% when the actual number was almost 90%.

To test this calculation further, FBI duplicated the participation rates from the Form 5500 for 1,000 plans. When compared to the ACTUAL participation rates from the FBI proprietary database, FBI noted that 52% of the calculated rates from the Form 5500 were off by 10% or more in either direction (e.g. the accurate number is 76% and the Form 5500 calculation showed 66% or less or 86% or more).

### **Summary**

In closing, FBI emphasizes that being a fiduciary is the highest duty known under the law. In that regard, any fiduciary initiative to review plan fees requires the use of data and methods that ensure results are accurate and complete. Tom Kmak noted: *“Researchers and business people at times focus on readily available data that is flawed as a means to address their initiatives. This is indeed common and at times effective. Here, however, a higher standard of data and method is required to support fiduciaries, plan participants and their service providers to fulfill this important and potentially litigious issue. In our minds, anything else is unacceptable”.*

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### **About Fiduciary Benchmarks**

Fiduciary Benchmarks is recognized as one of the industry’s leading services for independent, comprehensive, informative and cost-effective benchmarking services for retirement plans. Started in 2007 by several industry experts, the company now has hundreds of experienced and respected advisors/consultants using their benchmarking service and last year they provided thousands of benchmarking reports to their clients. Fiduciary Benchmarks’ proprietary database is constantly updated and all data is verified for accuracy and normalized thus making sure all comparisons are consistent with a procedurally prudent fiduciary standard. FBI’s benchmarking reports and data are also used by plan service providers such as TPAs and Recordkeepers to help their clients meet their fiduciary obligation to make sure fees are “reasonable.” For more information about Fiduciary Benchmarks, visit [www.fiduciarybenchmarks.com](http://www.fiduciarybenchmarks.com) or for more information about this press release please contact Tom Kmak at [tomkmak@fiduciarybenchmarks.com](mailto:tomkmak@fiduciarybenchmarks.com)

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