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# Letters About 401(k) Plan Costs Stir Tempest

Yale Law School Professor Tells 6,000 Companies He Plans to Publicize His Study

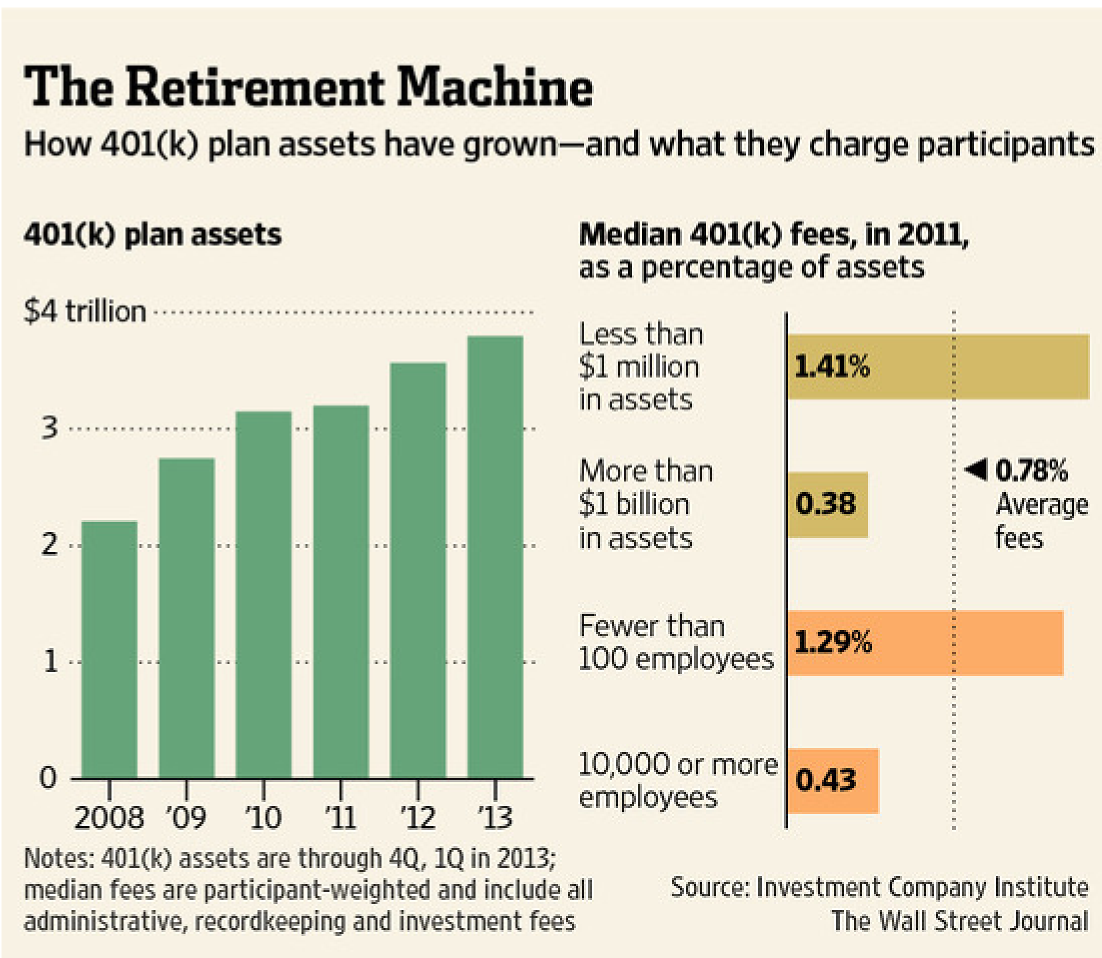
By KELLY GREENE

A Yale Law School professor is causing a ruckus among U.S. corporations with plans to publicize a study of employers' 401(k) plan costs.

The professor, Ian Ayres, has sent about 6,000 letters to companies, saying he would disseminate the results of his study using Twitter, with separate hashtags for each company.

Prof. Ayres has mailed out several different versions of the letter since June, and at least one said that he had identified an employer's 401(k) specifically "as a potential high-cost plan." He said that he and his research partner planned to publicize the results in spring 2014.

Tri-City Electrical Contractors Inc., in Altamonte Springs, Fla., received one such letter on July 5. It said that the company's plan ranked worse than 77% of plans of comparable size based on total plan cost.



"As a reminder, fiduciary duties are the most stringent imposed by the law, and require administrators to act solely in the interests of plan participants," continued the letter, which was reviewed by The Wall Street Journal.

The letters come as administrators of 401(k) plans have been under fire for what some workers and retirees say are excessive fees. Federal fee-disclosure rules went into effect last year requiring 401(k) administrators to better spell out the fees being charged to plan sponsors and participants.

More recently, Cigna Corp. and a Prudential Financial Inc. unit reached a $35 million preliminary settlement in June with workers and retirees who alleged that Cigna and Prudential, which bought Cigna's 401(k) plan in 2004, charged excessive fees and engaged in self-dealing. Both companies have denied the allegations.

A number of other large employer plans, including those sponsored by International Paper Co. and Ameriprise Financial Inc., are defending legal claims brought by workers involving fees, as well. Both companies declined to comment.

Prof. Ayres, 54 years old, also is an economics professor at Yale School of Management. He is widely published, according to a Yale Law School biography, having written more than 100 articles and 11 books.

Prof. Ayres wrote in the letters that he and his research partner plan to make the results of their study available to "newspapers (including the New York Times and [The] Wall Street Journal), as well as disseminate the results via Twitter with a separate hashtag for your company."

"Unsolicited and unwanted advice is what he offers, with a hint of menace," said John Rekenthaler, Morningstar Inc.'s director of research. "I've never heard of someone sending letters to thousands of plan sponsors.…It feels political."

Prof. Ayres referred questions about his letters to a spokeswoman at Yale Law School. She said Prof. Ayres still intends to publicize the aggregate results of his study, but "no company-specific data will be publicized that is based on 2009 data," which was the information used to generate the results described in the mass mailing. When asked if Prof. Ayres would publicize any company-specific information using more-recent data, the spokeswoman said she didn't know.

In one version of the letters sent by Prof. Ayres, he describes research posted online by him as "a study of the financial impact of investment and administrative fees in retirement plans."

He and his research partner, Quinn Curtis, an associate professor at University of Virginia School of Law, used data from Department of Labor filings made in 2009 and BrightScope Inc., the letter said. BrightScope is a San Diego financial-information firm that rates 401(k) plans.

Some 401(k) consultants and lobbyists have taken issue with using 2009 data, saying many plans have started disclosing more-detailed, complete fee data since then.

The larger criticism of the study is that it focuses on fees, which range widely. The average amount sponsors of small plans reported paying for record-keeping and administrative services was 1.33% of assets annually, compared with 0.15% for large plans, according to an April 2012 study by the Government Accountability Office.

But the professors' study didn't take into account the services—participant education, advice and automatically enrolling workers—which typically come at a cost but also can improve retirement investors' returns, industry experts said.

"There's no performance criteria involved. It's purely fees," said Brian Graff, chief executive of the American Society of Pension Professionals & Actuaries.

The draft paper posted online by Prof. Ayres doesn't disclose individual employer plans. Prof. Curtis didn't return a voice mail or email seeking comment. A Virginia law school spokesman said that Professor Ayres "is handling inquiries related to the letters." Neither professor received outside funding for the research, the spokespeople said.

Prof. Ayres asked BrightScope for data two years ago, according to the firm's chief executive, Mike Alfred. He said in an email that it is important to keep in mind that a plan's total cost "is a moving target and depends on how much of the plan is invested in certain funds (which changes daily). What we offer is a snapshot in time." He also said that the fee calculations are complex and have "continued to improve over time."

Companies getting such letters have lighted up the phone lines of 401(k) consultants, administrators and trade groups in their search to figure out if they are doing something wrong.

Tri-City faxed the letter it received to the company's 401(k) consultant, Jason Chepenik, whose Winter Park, Fla., firm has managed the plan since 1983.

Tri-City referred questions about the letter to Mr. Chepenik, who said he is awaiting a new analysis of the way the plan stacks up against plans in similar industries with comparable assets, employees and plan benefits. But he said that the plan is doing well given that its average account balance per worker was $52,000, compared with its record-keeper's average of $49,000.

"It's kind of shocking that a law professor would send out a letter to 6,000 plan sponsors who are voluntarily providing retirement benefits to their workers threatening them," said Mr. Graff of the pension and actuaries organization. "They're very upset.…He wasn't just picking on big companies. There are a lot of small businesses that got letters."

Still, "almost anything that highlights 401(k) fees and how important it is to keep them as low as possible is probably going to be helpful," said Francis Vitagliano, a research consultant at the Center for Retirement Research at Boston College.

"No plan sponsor who has carried out his duty needs to worry," said Jerome Schlichter, a St. Louis lawyer who has brought more than a dozen lawsuits in the past seven years against 401(k) plans by retirement savers alleging that their fees are too high.

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