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YOUR MONEY | PUBLIC SACRIFICE

Think Your Retirement Plan Is Bad? Talk to a Teacher

By TARA SIEGEL BERNARD OCT. 21, 2016

Margaret Jusinski first got to know her investment broker through the breakfasts he provided when he visited her public school in the leafy suburbs of New Jersey, where she teaches middle-school children computer coding and how to build robots made of Legos.

After the bagels, muffins and coffee, the broker made his sales pitch — and Ms. Jusinski bought it. So did many of her colleagues.

The teachers only recently learned how much those meals actually cost them.

Had she been able to choose a simpler, less expensive plan instead of the broker's costly offering, Ms. Jusinski would have approximately 20 percent more in savings, according to an analysis performed for The New York Times. One colleague would have a balance 50 percent fatter. The list goes on.

"It is a heartbreaking situation for everyone," said Ms. Jusinski, a mother of two girls who turns 50 on Sunday. "Especially for the staff members who were looking to retire within the next few years."

Most Americans who save for retirement at work have 401(k) plans, which are generally offered by companies and must by law provide a mix of prudent investment options. But millions of Americans — public school teachers, clergy members, employees of religious institutions or nonprofits, and some charities — are not offered 401(k)'s. Instead they typically must rely on what are known as 403(b) plans, many of which are more lightly regulated.

As a result, the people who do the most good in the world, spending their careers helping others in exchange for modest paychecks, often get the worst retirement plans. In fact, millions of people who save in 403(b) plans may be losing nearly $10 billion each year in excessive investment fees, according to a recent analysis by Aon, a retirement consultant.

"It's a wealth transfer from those who don't know any better — Main Street — to those who do: Wall Street," said Scott Dauenhauer, a financial planner who works with public schoolteachers and as a consultant to school plans. "What makes me the most angry is that public school employees are not protected the same as their private sector counterparts."

Named for a section of the tax code, many 403(b) accounts are riddled with complicated, expensive investment products that can cost their owners tens of thousands of dollars, if not more, over their careers. The 403(b) accounts that many workers contribute to are not subject to the more stringent federal rules and consumer protections that apply to 401(k) plans. In fact, of the $879 billion in total 403(b) assets, more than half is not subject to federal retirement plan rules, according to Cerulli Associates, a research firm.

Those assets also escaped tighter protections issued in April by the Obama administration, which will require brokers to put the interests of their customers first when handling retirement dollars. "There is very little, if any, oversight, so you often end up with conflicted advice, high fees and low service," said Marcia Wagner, an employee benefits lawyer who has been practicing for more than 30 years.

While some school districts and states have begun vetting plans for public school employees, most teachers must still sort through a bewildering list on their own. Instead of just one provider offering a selected range of low-cost mutual funds — which is typical in a 401(k) plan — teachers and other public school workers might see options from several large providers, each with a dizzying array of prospective investments.

In some places, including California, Ohio, Texas and Washington, the lists may run much longer because of state laws that require it. Public school workers in California, for instance, have access to up to 59 providers and more than 220 investment products.

Often the providers are insurers like Valic, Voya, AXA and Lincoln Financial. And while a 401(k) plan might offer a small collection of plain-vanilla mutual funds that, say, track a major stock index or invest in bonds, the investments in many 403(b) plans are typically held inside annuities, which can be much more confusing.

For instance, many teachers are encouraged to invest in high-cost variable annuities, typically explained in thick instruction manuals filled with jargon. Buyers who later decide they want to move money into a lower-cost investment vehicle often learn their savings are being held hostage: Pay a surrender fee or the money must remain in the annuity.

Mark Eichenlaub, a seventh-grade language arts teacher who coaches cross-country track in Flossmoor, Ill., decided to pay the fee, about 5 percent of his balance, just so that he could extricate himself from a variable annuity sold by AXA, which subtracted more than 2.34 percent of his balance each year. In contrast, large 401(k) plans charge less than half a percent annually, according to BrightScope, a financial information company.

In a relatively short time, his costly switch "will pay for itself," said Mr. Eichenlaub, who is 38. (After months of lobbying his district for a lower-cost option, he persuaded school authorities to add one to their lineup this year.)

Despite the high cost of many 403(b) accounts, they are likely to play an increasingly important role paying for educators' retirement. For one thing, teachers in about a dozen states may not qualify for Social Security. And while public schoolteachers often are offered decent pensions, many of them do not work for the decades required to qualify for a full payout. And pension formulas are becoming less generous for newer recruits.

The 64 million workers with 401(k) accounts are covered by the Employee Retirement Income Security Act of 1974, overseen by the Labor Department. The law outlines minimum guidelines and protections for workers and requires employers or plan overseers to act in the best interests of participants.

But most assets in 403(b) accounts are invested in the murkier side of the market, which is not covered by the federal law, known as Erisa. Many hospitals and private colleges tend to hew more closely to Erisa standards, but a series of recent lawsuits against prominent universities argue there is still room for improvement.

New regulations from the Internal Revenue Service in 2009 helped tidy up some 403(b) administrative details. For instance, employers offering 403(b) plans were required to create a document detailing how the plan would be governed. But larger problems remained.

In many cases, basic information about costs isn't readily available online, only through an agent, which can have its own problems.

Tracee Huffman, a 26-year-old who teaches seventh and eighth graders in Norfolk, Va., became so fed up waiting for the representative to get back to her — it took more than six months — that she educated herself about costs and decided her personal individual retirement account was a better deal. "I have emailed the other vendors, but they always refused to respond to my questions via email," Ms. Huffman said. "They would prefer I drive to meet with them when my question is simple: 'Do you have a 403(b) that has an expense ratio under 1.5 percent? If so, I'm yours.'"

The teachers at Ms. Jusinski's school in New Jersey, which is in the affluent Bergen County town of Ho-Ho-Kus, recently learned they were paying more than that — sometimes much more.

Outside their school on a sunny afternoon in early June, parents picked up their children beneath a canopy of tall oak trees. And inside the school, half a dozen teachers gathered in a former kindergarten classroom that had a fireplace and bookcases with doors made of leaded glass.

Together, they assessed the collective damage to their 403(b) plans.

One of Ms. Jusinski's colleagues, Karen S., is a 62-year-old widow nearing retirement who agreed to discuss her situation if her last name was not used to protect her family's privacy. At the end of 2015 she would have had an additional $113,000 in savings — or nearly 50 percent more — had she not paid approximately $37,500 in commissions and various fees over the previous eight years and had instead invested in a simpler mix of low-cost stock and bond funds, according to an analysis performed by Mr. Dauenhauer, the 403(b) consultant.

"I am running around in my little Honda because someday I need to retire and there is no Plan B," she said. Her husband died of brain cancer when their three boys were 3, 5 and 7, leaving her to raise the children on her own.

(Mr. Dauenhauer, who reviewed both her account and Ms. Jusinski's, had no business relationship with the plans the teachers choose from.)

Ms. Jusinski paid more than $15,000 in fees and commissions over the previous eight years on an $87,000 account. She would have had almost $105,000 at the end of 2015 if she had been invested in a standard mix of low-cost stock and bond funds, according to Mr. Dauenhauer's analysis.

The teachers were each charged a fee of at least 2 percent of their savings to manage the money, in addition to sales charges of up to 6 percent each time they made a deposit, the analysis found. Moreover, the calculations didn't include the expenses of the dozens of mutual funds they were invested in, some of which exceeded 1 percent.

The Legend Group, the provider of the investments all these teachers hold, last year fired Walter Marino, their broker, according to a spokesman for the firm, who said his departure was unrelated to the investment fees. Mr. Marino didn't return calls seeking comment on his departure from Legend.

In August, after the teachers complained about their investments, Legend sent them letters stating that the charges "were consistent with the firm's policies." More recently, though, Legend met with them to seek more information about how much money they thought they lost.

Diane Mardy, the Ho-Ho-Kus superintendent of schools, said she hoped “that a spotlight is put upon this issue so that more safeguards are put in place for us all.”

The same broker, Mr. Marino, is involved in a similar dispute about a 90-minute drive east, in Copiague, N.Y.

At the local high school there, Valarie Williams, a 51-year-old speech pathologist, met with Mr. Marino after receiving a notice in her school mailbox saying that his firm, Legend, would visit to help teachers analyze whether their retirement portfolios were on track. “They brought snacks and all of that,” she recalled. In the end, Ms. Williams, who is divorced, said she transferred about $170,000 to Legend in the spring of 2014.

Mr. Marino helped her fill out the paperwork at her home, where she lives with two of her grown children, both disabled: a 27-year-old son with Down syndrome and a 25-year-old daughter, blind and severely disabled, whom she carries to her mother’s house next door most mornings before work.

But within months, she said, she felt something wasn’t right, nor could she make sense of her “convoluted” statements. She was still making contributions, but her balance was always less than her original investment. “The market wasn’t that bad,” Ms. Williams said. “I expected normal fluctuations.”

The broker told her that her account was “highly managed” and that she had to be patient.

One day, when photocopying her Legend statements at school, another teacher noticed and remarked, “Oh, you’re with Legend, too?” That teacher had a similar experience — and word spread beyond the copy room.

“That teacher told another teacher, then all of a sudden people started reaching out to me,” Ms. Williams said.

Two years after transferring her money, she, along with some current and former colleagues, are working with a lawyer to explore their options on how to resolve their situation with the brokerage firm. Ms. Williams’s lawyers said the teachers were charged multiple types of fees on their accounts, similar to what the teachers in New Jersey experienced.

"In cases like that, I call it using somebody's money as the firm's proprietary account," said Jenice Malecki, Ms. Williams's securities lawyer, who is also representing other employees at her school. "The firm takes all the profit and the customer gets nothing."

Joseph Kuo, the Legend Group spokesman, declined to comment on whether it thought the teachers were charged excessive fees.

Legend was on both schools' list of 403(b) providers, providing teachers with a sense of security. "When you tell your employees this is an approved product, they automatically assume the district did some due diligence on it," said Barbara Healy, a 403(b) consultant based in Scottsdale, Ariz. "And for the most part, the district does not pay any attention."

Participants in retirement plans covered by Erisa, the federal law, generally have the right to sue the plan overseer for failing to act in an employee's best interest. But many public school teachers can typically resolve grievances only through arbitration, since most investment providers mandate that disputes be settled that way.

The New Jersey teachers also turned to their local union for help, hoping they could find a better program to put their money in. The union representative recommended a sales agent affiliated with the retirement program run by the National Education Association, a union with three million members.

But the union's products weren't much different from what the teachers already had.

The N.E.A.'s Member Benefits group, a subsidiary, exclusively endorses a set of products from Security Benefit, a financial services company with nearly $32 billion in total assets that creates fixed and variable annuities and offers mutual funds. (The union's program for teachers receives at least $2.7 million from Security Benefit each year, according to regulatory filings, which it said it paid to operate the program.)

The products include an array of mutual funds, various annuities — and one lower-cost option in which investors can choose inexpensive index funds without a broker's assistance. But most new money from school employees is invested in the mutual funds sold by brokers, according to Gary Phoebus, chief executive of N.E.A. Member Benefits.

Fees in that program range from 0.35 to 1.25 percent. But that doesn't include another layer of expenses for the underlying investments, which run from 0.59 to 2.11 percent, according to Security Benefit, and in some cases additional sales or surrender charges

For comparison, total costs at a typical large 401(k) generally fall under 0.5 percent.

Mr. Phoebus defended the program, saying it offered a wide variety of options "to meet the diverse needs and comfort levels of members." The goal, he explained, was to balance fees while providing access to advice.

However, some employees of the union itself, as opposed to its subsidiary, do receive a better deal. Many are offered a 401(k) retirement plan managed by Vanguard, a mutual fund company known for its low costs.

As for Ms. Jusinski, the technology teacher in New Jersey, she has wrested back control of her retirement account, investing in the union's do-it-yourself option. But she worries about her fellow teachers all over the nation, still stuck in costly 403(b) plans.

"So many are mismanaged, shady operations," she said. "It's a crime."

Susan Beachy contributed research.

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