

Nationwide's 401(k) record-keeping fees are excessive, lawsuit claims

Plaintiffs claim practice of charging plans a percentage of assets is unreasonable.

June 28, 2017 [By Greg Iacurci](#)

Nationwide has been sued for allegedly charging 401(k) plans excessive record-keeping and administration fees in a lawsuit that also challenges the practice of assessing fees based on the amount of plan assets.

Plaintiff Alana Schmitt, a participant in the Andrus Wagstaff, PC 401(k) Profit Sharing Plan, a small plan with 27 participants and \$1.1 million in assets, is “seeking return of the excessive and unreasonable asset-based fees charged by Nationwide ... and to prevent Nationwide from charging those excessive fees in the future,” according to a complaint filed June 27 in Ohio district court.

The 401(k) plan contracted with Nationwide under the provider's Retirement Flexible Advantage Retirement Plans Program, which charges an annual 1% fee on plan assets, covering the program fee, and financial adviser and administration expenses, the complaint says.

That amounts to a fee that's roughly 10 times more than what would constitute a reasonable fee for the Andrus Wagstaff plan, the plaintiff alleges. The plaintiff arrived at this number by using numbers from a survey conducted by NEPC, an investment consulting firm, which found median record-keeping cost to be \$64 per plan participant in 2015.

Nationwide's 1% fee amounted to a charge of \$500 per plan participant in 2015, according to the plaintiff, who's bringing the lawsuit on behalf of all similarly situated retirement plans. Rather, a reasonable fixed fee for record-keeping service would be between \$35 and \$64 per participant, the plaintiff claims.

In a statement, Nationwide said, “We are aware of the recent fee allegation that has been made against us, and we are assessing the complaint. We are confident in the value of the services that we offer, and we will respond to the allegation accordingly.”

Nationwide is the sixth-largest record keeper in the industry by number of defined-contribution plans, servicing more than 37,000 plans, according to data from *InvestmentNews* sister publication *Pensions & Investments*. It administers around \$113 billion in assets.

Based on its 1% fee, Nationwide potentially earns \$1 billion per year in excessive compensation, according to the complaint.

“Responsible record keepers charge record-keeping fees for each plan participant rather than as a percentage of plan assets,” the complaint says. “Otherwise, as plan assets increase through participant contributions or investment gains, the record-keeping revenue increases without any change in the services provided.”

A Nationwide spokesperson didn't immediately return a request for comment.

This isn't the first time Nationwide has been sued in connection with 401(k) fees. In 2014, the firm paid \$140 million to settle a lawsuit alleging it failed to disclose revenue-sharing payments it received from non-proprietary mutual funds.

The recent lawsuit, Schmitt v. Nationwide Life Insurance Co. et al, comes as there's been a [wave of 401\(k\) litigation](#) attacking employers and financial services companies for breaching their fiduciary duties due to excessive fees.