



*"NativeOne helps Tribes level the playing field by providing experts in financial services who are committed to Native American interests. This combination of experience and integrity results in a model that delivers value, transparency and overall fairness."*

*~ Don Lyons, Founder and President of NativeOne Financial and Member of Morongo Band of Mission Indians*

## 401(K) PLANS FOR TRIBAL ENTERPRISES



A Native American owned and managed financial services corporation

### ARE YOU AN AUDIT RISK?

**RELATIONSHIP PRICING.** Service providers often offer favorable pricing when a client awards them multiple lines of business. The most common example is when a lender agrees to competitive loan terms with the understanding that it will be awarded the 401(k). The 401(k), however, cannot be used to negotiate better loan terms because it is a corporate benefit. Plan Sponsors actions must be "solely in the interests of the participants".

**PROPRIETARY FUNDS.** Many service providers offer proprietary funds as investment options. Many times the provider is compensated more for offering these funds, it (at minimum) creates the appearance of impropriety regardless of fund quality.

**FEE TRANSPARENCY.** Many funds have hidden compensation arrangements. These undisclosed arrangements negatively impact investment results and encourage service providers to promote one fund over another regardless of best performance.

CONTINUE ON NEXT PAGE...

The 401(k) market is one of the most heavily regulated. Many tribes falsely assume that sovereign immunity exempts them from those regulations. However, several courts have found that the provisions of ERISA do apply.<sup>1</sup>

ERISA requires the plan sponsor to act solely in the interests of plan participants. The courts have interpreted this requirement very aggressively in favor of plan participants. In 2008, the U.S. Supreme Court unanimously granted an individual participant the right to sue the sponsor for mismanagement of a 401(k) plan.<sup>2</sup>

### NATIVEONE SERVICES

At NativeOne, we offer services which help plan sponsors and investment committee members reduce their exposure for fiduciary liability. Our programs are designed to:

- improve risk management;
- lower costs;
- ensure operational compliance;
- and provide a meaningful benefit to employees.

### INDEPENDENT CONSULTANT

Many plan sponsors are happy with their current program. The growing trend, however, is to engage an independent consultant to review and to oversee the service provider simply as a matter of sound risk management. Our services include:

- the development of investment policy statements;
- selection and monitoring of plan investment options;
- auditing of service provider fees and revenue sharing arrangements. With full fee transparency and disclosure we ensure excess revenue is credited back to the plan;
- management of employee education and communication resources; and development of a compliance calendar with our legal department to ensure your plan is operating within a "compliance framework".

1. See *Labor Industry Pension Fund v. Warm Springs Forest Products Industries*, 939 F.2d 683 (9th Cir. 1991); *Smart v. State Farm Ins.*, 868 F.2d 929 (7th Cir. 1989); see also *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174 (2nd. Cir. 1996).

2. *LaRue v. DeWolff, Boberg & Associates, Inc.*, 552 U. S. 248 (2008); see also *Martin, et al. v. Caterpillar Inc., et al.*, Case No 07-1009 (Nov. 5, 2009) (\$16.5 million settlement from employer for unreasonable and excessive fees).



A Native American owned and managed financial services corporation

#### ARE YOU AN AUDIT RISK? (CONTINUED)

**EDUCATION.** Plan sponsors must provide participants with the tools they need to make appropriate decisions. In *DiFelice v. US Airways, Inc.*, the court dismissed claims of participants where the sponsor provided formal education which clearly and effectively communicated the risk of investment.

**TERMINATED EMPLOYEES.** Approximately one-third of participants are no longer employed by the plan sponsor which creates at least two unintended consequences. First, administrative costs of the plan are directly related to the number of participants. Second, all participants have the right to sue the plan sponsor regardless of employment status or reason for termination.

**FIDUCIARY GUARANTEES.** A plan sponsor should carry an adequate amount of fiduciary liability insurance. In addition, many service providers will act as co-fiduciary and/or provide fiduciary guarantees to help limit the risk associated with sponsoring the plan.

#### SERVICE PROVIDER

You may also choose to take advantage of our fully bundled administrative offering. In addition to the consulting services above, our state of the art administrative platform includes:

**OPEN ARCHITECTURE INVESTMENTS.** An extensive offering of well-known mutual funds, collective trusts, managed portfolios, and separate accounts and the ability to design your own investment menu without a proprietary offering.

**ON-SITE EMPLOYEE EDUCATION AND SUPPORT.** Enrollment support and counselling on retirement, estate and income tax planning delivered by our financial experts.

**AWARD-WINNING EMPLOYEE COMMUNICATIONS.**

**SUPERIOR EMPLOYEE ACCOUNT ACCESS.** Via phone or Internet, 24 hours a day, 7 days a week. Complete Administrative Services; and

**PLAN DOCUMENT PREPARATION.** Prototype, volume submitter and custom documents, Summary Plan Descriptions ("SPDs"), government filings and amendments.

#### ABOUT NATIVEONE:

NativeOne was formed by members of the Native American community in an effort to promote fairness that was often lacking in vendors selling services to Indian Country. NativeOne, consequently, is committed to providing Tribal enterprises and governments with the best solutions and service in the industry.



Please contact us for more information about our company and how we can help your Tribe continue to achieve its success.

Dennis Smith • Co-Founder & Senior Vice President • 732 291 2600 • [dsmith@NativeOneFinancial.com](mailto:dsmith@NativeOneFinancial.com)