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BofA pension plan unusual, experts say; Workers directing their virtual accounts considered uncommon

RICK ROTHACKER
Staff Writer

The Bank of America Corp. pension plan targeted in a class-action lawsuit and a federal audit is unlike plans at most other companies, benefits experts say. The Charlotte company's cash-balance pension plan has an unusual feature that allows participants to put part of their money in hypothetical investments that rise and fall with the market. In most cash-balance plans, participants receive an interest credit tied to inflation or another benchmark.

This feature is at the center of a lawsuit filed this summer by plan participants alleging the bank violated federal pension rules in an effort to make profits at the expense of employees. The suit likened the pension plan to an "arbitrage scheme" in which the bank pocketed more money when employees' investments suffered.

Company spokeswoman Eloise Hale said the pension plan meets applicable laws and that Bank of America will defend itself against all claims. It plans to file a response to the lawsuit in January, she said.

Cash-balance plans are like typical defined-benefit pension plans, offering a monthly payment to retirees. But they are also similar to a 401(k) plan because employees have a "virtual" account showing the value of future benefits.

Since the 1990s, an estimated 1,200 employers representing 7 million employees have converted to these types of plans. They are seen as more favorable to younger, mobile workers because they can roll their accrued balances into Individual Retirement Accounts when they leave the company. In a traditional plan, workers don't have access to the money until retirement.

Cash-balance plans also can help companies control the rising cost of funding pensions by reducing long-term debt and providing accounting gains.

Cash-balance plans, however, have been the subject of lawsuits alleging they shortchange older workers. A federal court ruled in 2003 that IBM Corp. violated worker rights in its pension conversions, and the appeal is being closely watched for its impact on other plans. The company in September agreed to a settlement that would cap its potential liability at $1.7 billion.

In Bank of America's cash-balance plan, according to an April securities filing, participants receive two types of credits: a "compensation credit" and an "investment credit."

The compensation credit can range from 2 percent to 8 percent of an employee's salary depending on age and years of service. The investment credit varies according to the performance of hypothetical "investment measures" selected by the employees. These measures correspond to the investment funds available in the company's 401(k) plan.

Employees are not in danger of losing their initial balance or compensation credits, according to the filing, but they are not guaranteed an additional return on their money.

Benefits experts say cash-balance plans typically offer employees a compensation credit as well as an interest credit that offers a guaranteed rate of return -- not one tied to fluctuating markets. That's important because inflation can erode their nest egg's value.

"Bank of America's cash-balance plan where employees direct the (hypothetical) investment is unique," said Gordon Young, retirement practice leader at Mercer Human Resource Consulting.

Accounting firm PricewaterhouseCoopers helped design the plan, according to the employee lawsuit. The firm has a similar investment plan for its employees and faces a class-action lawsuit filed last month by the attorney handling the Bank of America suit. A PricewaterhouseCoopers spokesman said the firm's plan was lawful.

Among eight of the largest private employers in Charlotte, Duke Energy Corp. and BellSouth Corp. said they provide cash-balance plans, but neither offers one where employees direct their investments. Wachovia Corp. said last year it plans to transition to a cash-balance plan in 2008. The plan will give employees a yet undetermined interest credit, but not investment choices like Bank of America.

The lawsuit against Bank of America calls the plan, which stemmed from predecessor NationsBank Corp., "unusual and aggressive." The company makes money on the plan because it can invest dollars pegged for the cash-balance plan better than employees, the suit contends.

The plan "cynically depended on the company...profiting from its employees' investment mistakes and presumed naivety," the suit alleges.

In addition to moving pension money to the cash-balance plan, Bank of America encouraged employees to transfer $2.7 billion in 401(k) plan assets to the cash-balance plan in 1998 and 2000, according to the lawsuit filed in federal court in Illinois, which has ruled favorably for plaintiffs in the IBM case. The ability to transfer in 401(k) assets is another unusual feature of the Bank of America plan, experts said.

Last month, Bank of America disclosed the Internal Revenue Service was auditing the 1998 and 1999 tax returns for the pension plan and 401(k) plan. The IRS is reviewing whether the transfer of assets was lawful, it said.

Christopher Julian, a Bank of America employee who participates in the plan, said he finds it unusual because the "investment measures" don't have a correlating ticker symbol or share amount so he can track performance and fees on his own. The employee lawsuit argues the investment measures include excessive fees. "There is no transparency in how they value this," said Julian, who is currently on leave from the bank.

Hale, the spokeswoman, said Bank of America could not comment on the lawsuit, but said its plan offers "many advantages to our associates, and we believe they meet the needs of today's diverse and mobile work force."

While unusual, Bank of America's plan stems from a trend to offer employees more choice in their retirement benefits, said Lynn Dudley, senior counsel for the American Benefits Council, a trade group representing Fortune 500 companies. "Some employees are interested in do-it-yourself investing," she said. "Some employees respond to that." She acknowledged that a company could save money by not offering a guaranteed return to employees.

Mike Johnston, retirement practice leader at benefit firm Hewitt Associates, said employees pushed for more 401(k)-like retirement benefits in the booming 1990s, but that enthusiasm has waned in recent years. He said these plans are a valuable part of an employee's retirement savings, but noted any kind of cash-balance plan could create the appearance of benefiting the employer. That's because the company's own investments can perform better than either a guaranteed rate or employee-directed investments. "The employer never promises to pass along investment returns," he said. "I can understand employees feeling that is odd. If (the company) makes more or less, is that bad? I don't know."

Pension Plans There are two types of defined benefit retirement plans.

Traditional: pays out a monthly amount based on salary and years of service in retirement.

Cash balance: virtual account increases over the years and can be taken with employees when they leave company.

Rick Rothacker: (704) 358-5235; rrothacker@charlotteobserver.com