

# CURRENT ISSUES IN THE DESIGN AND OPERATION OF DEFINED CONTRIBUTION PLANS

## **Fee Disclosures:**

## **Regulatory Requirements Regarding Plan Participants, Service Providers and Related Legislative Proposals**

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## DOL Final Regulations: Fee Disclosures to Participants in Defined Contribution Plans Background

- There is concern that participants in individual account plans do not have access to useful plan and investment information to make informed decisions concerning management of their retirement accounts.
- Final regulations on participant-level fee disclosures are the third piece of the DOL related initiatives.
  - Final regulations requiring service providers to disclose their compensation to plan fiduciaries
  - New requirements on Form 5500 Schedule C regarding service provider fees (generally effective for the 2009 plan year)
- Congressional initiatives also target fee disclosure.

# Overview of Final Regulations

- Final regulations are issued under ERISA § 404(a) (with conforming amendments to regulations under ERISA § 404(c)).
  - Final regulations are broader than ERISA § 404(c) because they will apply to all participant-directed plans (regardless of compliance with ERISA § 404(c)). This distinction is significant because these new requirements must be met unlike ERISA § 404(c) which is voluntary.
- DOL believes that ERISA § 404(a) imposes on plan fiduciaries of all participant-directed individual account plans a duty to furnish participants and beneficiaries information necessary to carry out their account management and investment responsibilities in an informed manner.
- Final regulations issued on October 15, 2010 effective for plan years beginning on or after November 1, 2011.

## Overview of Final Regulations (cont'd)

- **Disclosures to Plan Participants – Fee Disclosures Under Participant Investment Directed Plans Subject to ERISA – New Effective Date**

- Subsequently, the Department of Labor issued a release intended to coordinate the effective date of the very detailed fee disclosure requirements to plan participants by plan sponsors with the new delayed effective date for service provider disclosures to plans.
- The participant disclosure regulations continues to be applicable for plan years beginning after November 1, 2011 (essentially, for calendar year plans that provide for participant investment direction – the rules continue to be applicable for plan years commencing on January 1, 2012).
- **However**, the Department of Labor favorably provides an extended compliance deadline which impact initial disclosures required to be made to the participants. The new deadline is the later of the regulatory effective date (i.e., January 1, 2012 for calendar year plans) or 60 days after the service provider disclosure rules are effective.
- For calendar year plans the new favorable deadline results in the date of **May 31, 2012** (because of the delayed effective date of April 1, 2012 for the service provider provisions).

- **Note to Plan Administrators**

- Initial Notices must go to all participants and beneficiaries eligible to direct their investments, including those who become eligible in the early part of 2012 by **May 31, 2012**.

- **Quarterly Fee Disclosures**

- The quarterly disclosures required by the participant fee disclosure regulations will not be due until 45 days after the end of the first quarter in which the initial disclosures are required to be made. Thus, because the required initial disclosure deadline is **May 31, 2012** (within the second quarter of calendar year plans), calendar year plans must furnish their first quarterly disclosure by **August 14, 2012**.

## Overview of Final Regulations (cont'd)

- Final Regulations apply to a wide range of participant-directed retirement plans, including 401(k), 403(b), profit sharing and money purchase plans (would not apply to non-ERISA plans—e.g., church plans and governmental plans).
- Church plans and governmental plans could look to these new disclosure rules as "best practices" and modify their disclosure on a voluntary basis.

## Overview of Final Regulations (cont'd)

- Summary of Final Regulations:
  - Requires disclosure of certain plan and investment-related information, to participants and beneficiaries in participant-directed individual account plans;
  - Investment information must be presented in a format that makes comparisons between options easy; and
  - Disclosures must be provided on a regular and periodic basis.
  - Individual Account Plans that do not permit participant investment direction are not subject to the regulations.
  - Only plans subject to ERISA are covered but could become best practices for other plans – (e.g., church and governmental plans)

# Required Disclosure of Plan-Related Information

**I. Initial/Annual Disclosure** (on or before date of plan eligibility, and annually thereafter; and must notify participants generally within 30 but not more than 90 days prior to the effective date of any change to such information) Significantly, the materiality standard has been deleted from the final regulations.

**1) General Plan Information – is the First Category of Information to Be Disclosed**

- Explanation of when participants and beneficiaries may give investment instructions and any plan limitation on such instructions (e.g., restrictions on transfers to or from an investment alternative);
- Description, of or reference to, plan provisions relating to exercise of voting, tender and similar rights and any restrictions on such rights;
- Identification of any designated investment alternatives offered under the plan; and
- Identification of any designated investment managers.

# Required Disclosure of Plan-Related Information (cont'd)

## 2) Administrative Expenses

- Explanation of any fees and expenses related to plan administrative services (e.g., legal, accounting and recordkeeping) that may be charged to the plan and the basis on which such charges will be allocated (e.g., pro rata, per capita) to each individual account (to the extent not otherwise included in investment-related fees and expenses).

## 3) Individual Expenses

- An explanation of any fees and expenses that may be charged against a participant's individual account for services provided on an individual (rather than plan) basis (e.g., fees to process loans or QDROS).

## Required Disclosure of Plan-Related Information (cont'd)

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**Form:** This initial/annual information may be provided as part of plan's SPD or pension benefit statement (if such SPD/benefit statement is furnished at a frequency that satisfies the requirements of the regulations).

## **II. Quarterly Disclosures**

### 1) Statement of Actual Charges or Deductions

- In addition to the above, participants must receive statements quarterly, showing the dollar amount of the plan related fees and expenses (whether "administrative" or "individual") actually charged to, or deducted from, their individual accounts.

### 2) Administrative Expenses

- The dollar amount actually charged during the preceding quarter to the participants account for administrative services; and
- A description of the services provided to the participant for such amount (e.g., recordkeeping).

## Required Disclosure of Plan-Related Information (cont'd)

### 3) Individual Expenses

- The dollar amount actually charged during the preceding quarter to the participants account for individual services; and
- A description of the services provided to the participant for such amount (e.g., fees for processing loans, etc.).

**Form:** The final regulations clarify that this requirement may be satisfied through a confirmation or through inclusion on the quarterly benefit statement. This quarterly information may be included as part of a pension benefit statement.

# Required Disclosure of Investment-Related Information

## 2. ***INVESTMENT RELATED INFORMATION – is the Second Category of Required Information***

1) This category of required information under the final rule applies to each investment fund under the Plan.

- **Timing:** Must be provided to each participant or beneficiary upon eligibility in the plan, and annually thereafter.
- **Form:** The required information must be provided in a chart or similar format that allows comparison of such information for each designated investment alternative available under the plan.
  - The DOL has provided a model. See end of this presentation for model notice.
  - Using and accurately completing the DOL model chart is deemed to satisfy the investment-related disclosure requirements (use of DOL model is not required).
  - Footnote in preamble indicates that plan fiduciaries won't be liable for reasonable and good faith reliance on information furnished by their service providers with respect to the required investment-related disclosures.

# Required Disclosure of Investment-Related Information (cont'd)

Note: For purposes of the Final regulations, "designated investment alternative" does not mean brokerage windows, self-directed brokerage accounts, or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

- Content: With respect to each designated investment alternative offered under the plan, the following information must be provided:
  - 1) Identifying Information:
    - Name of investment alternative;
    - A statement indicating the name, address and phone number of the fiduciary to contact for information available upon request;
    - Specific internet website address to lead participants to supplemental information regarding the investment alternative (including name of issuer/provider, principal strategies and risks, assets comprising the portfolio, portfolio turnover, investment's performance and related fees and expenses);

# Required Disclosure of Investment-Related Information (cont'd)

- A statement that more current investment-related information (e.g., fee and expense and performance information) may be available at the listed website address.
- Type of the investment (e.g., money market fund, balanced fund, large-cap fund); and
- The proposed regulations would have required the type of management (e.g., actively or passively managed) to be disclosed – the final regulations eliminated that requirement.

## 2) Performance Data & Benchmark Information:

- *For investment alternatives without fixed returns (e.g., equity index fund):*
  - The average annual total return (percentage) of the investment for 1-year, 5-year and 10-year periods, if available (or for the life of the designated investment alternative if shorter) (measured at the end of the applicable calendar year);

# Required Disclosure of Investment-Related Information (cont'd)

For the next 10 years, a special rule applies to non-mutual fund investments, such as collective investment trusts if the plan administrator determines in good faith it does not have sufficient information to calculate these rates of return.

The special rule also allows use of a reasonable estimate of fees in calculating historic rates of return.

- A statement that an investment's performance is not necessarily an indication of how the investment will perform in the future; and
- current name and returns of an appropriate broad-based securities market index over the comparable periods listed above (cannot use a benchmark that is administered by an affiliate or the investment provider, its investment advisor or a principal underwriter, unless the index is widely recognized and used).
- *For investment alternatives with fixed returns (e.g., guaranteed investment contract):*
  - Fixed rate of return; and
  - Term of the investment.

# Required Disclosure of Investment-Related Information (cont'd)

## 3) Fee and Expense Information:

- *For investment alternatives without a fixed return:*
  - Amount and description of each shareholder-type fee (i.e., fees charged directly against a participant's investment), such as sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, purchase fees, and mortality and expense fees;
  - Total annual operating expenses of the investment expressed as a percentage (e.g., expense ratio) *and as a dollar amount for each \$1000 invested*; and any restrictions on ability to purchase (Must include descriptions of an equity wash or other type restriction) or withdraw.

# Required Disclosure of Investment-Related Information (cont'd)

- This disclosure based on dollars reflects a significant number of comments on the proposed rules indicating that a dollar based disclosure would be more useful to participants who cannot always convert operating expense ratios into dollars and thus the DOL views such an illustration as a more helpful way for a participant to understand the significance of fees.
- A statement indicating that fees and expenses are only one of several factors that participants should consider when making investment decisions. [This is a provision that employers supported – fear is all this expense disclosure may discourage participants from making investment.]
- *For investment alternatives with a fixed return:*
  - Amount and a description of any shareholder-type fees or restrictions that may be applicable to a purchase, transfer or withdrawal of the investment in whole or in part.

# Required Disclosure of Investment-Related Information (cont'd)

## **Benchmarks**

- DOL continues to believe that appropriate benchmarks may be helpful tools for participants to use in assessing the various investment options available under their plans.
- Others had argued that certain investment strategies are not managed to a benchmark and therefore providing benchmark information would be misleading.
- Investment options with fixed rates of return are not subject to this requirement.

# Required Disclosure of Investment-Related Information (cont'd)

## Final rules —

- Benchmark must be a broad based securities market index and it may not be administered by an affiliate of the investment fund unless the index is widely recognized and used.
- DOL notes if you have a mix of equity and fixed income — such as a balance fund (or presumably a target date fund) — the plan administrator may mix the returns of more than one appropriate index and provide that returns alongside the required benchmark provided the blended returns reflect the actual investment mix of the plan investment fund.
- The above guidance is obviously a complicated prescription to fulfill.

# Required Disclosure of Investment-Related Information (cont'd)

***In addition to the required investment-related information discussed above, the Final regulations also provide for the following:***

- Disclosures Subsequent to Investment: Any materials provided to the plan relating to the exercise of voting, tender and similar rights appurtenant to the investment, to the extent that such rights are passed through to the participant under the terms of the plan.
- Information to be Provided upon Participant Request:
  - 1) Copies of prospectuses (or any SEC-approved short-form or summary prospectus) or similar documents for non-registered investment alternatives;
  - 2) Copies of any financial statements, reports and any similar materials that have been provided to the plan (e.g., statements of additional information and shareholder reports);

# Required Disclosure of Investment-Related Information (cont'd)

- 3) Statement of the value of a share or unit of each investment alternative and the valuation date; and
- 4) List of assets comprising the portfolio of each investment alternative that constitutes plan assets, and the value of each such asset (or the proportion of the investment which it comprises).

## Other Information to be Provided:

Internet website address - an address must be provided to allow participants to obtain more specific additional information or more current information about the investment funds.

Glossary – a general glossary of terms must be provided to assist participants and beneficiaries in understanding the plan's investment options.

## Questions (cont'd)

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- Practically, how will permissible distribution methods apply? (consider practical implications of including annually required information in SPDs).
- Concern about overloading participants with too much information.

## Brokerage Windows

- Significantly, the regulations do not apply to "brokerage windows" or self-directed brokerage accounts.
- These are options that permit participants to select investments beyond those designated by the Plan.
- Unclear if exception applies where a large number of mutual funds are offered but some are screened out (probably not available).

# Annuities

- Deferred Fixed Annuities appear to be treated as investments with a *fixed rate of return*.
- Deferred Fixed Annuities that provide for the current purchase of a stream of retirement income are not subject to the disclosure of investment related information but must provide the following:
  - (i) name of option;
  - (ii) the option's goals or objectives;
  - (iii) factors that determine the price;
  - (iv) any limitations, or fees or charges, applicable to withdrawals or transfers;

## Annuities (cont'd)

- (v) Any fees that reduce amounts allocated to the option;
  - (vi) A statement that guarantees of an insurance company are subject to its long-term financial strength; and
  - (vii) An internet website address that provides the same above information.
- *For deferred variable annuities*, similar disclosure requirements apply. In addition, because it is a variable annuity where underlying investment experience is important, performance and expense information pertaining to the underlying separate account investments must be disclosed.
  - *Query:* How these annuity disclosure rules would play out with respect to church plans (from a best practices or voluntary viewpoint), which often provide a self-annuitization feature.

## Periodic Updating

- Any plan related Information must be updated within at least 30 days but not more than 90 days of the effective date of the change unless unforeseen circumstances prevent notice.
- The updating requirement significantly does not apply to investment-related information.
- Those types of changes can be included in the annual notice.
- Generally, the Regulations provide that the current electronic media rules promulgated by the DOL will control. Some argue these rules are too inflexible. The DOL will consider this issue further prior to the final regulations.

- General ERISA rules require participant consent to electronic media unless the participant has the ability to use a computer as a part of his or her work. Thus, the regulations are really not user friendly to paperless disclosures. The preamble to the final regulations, however, notes that DOL will request comments on the issue and that more guidance will come in this area.

## Effect on Prior Periods Prior to 2011

- As stated at the onset of this presentation, the final regulations reflect the DOL's view that plan administrators have a general fiduciary obligation to disclose information about plan investments and fees to participants and beneficiaries. But what about prior years? The final regulations appear to indicate if the employer satisfied 404(c) in the past the employer will be ok with respect to prior years but the DOL "expresses no view" with respect to other plans.

# Treatment of Existing Participants

- Impact on Present Participants in 2011 and in 2012 prior to the effective date: Remember that under the final rules the initial disclosure is generally due before a participant first exercises investment control, however the regulations provide a special rule which applies to individuals who are participants in covered plans on the date the regulations become applicable. It provides that existing participants must receive the requisite disclosures no later than 60 days after the applicable date.

## Penalties and Further Questions

- No specific monetary penalties are specified but a failure to comply could potentially lead to claims of fiduciary breach where equitable remedies would be sought by plan participants based on a failure to disclose relevant investment information.
- How will benchmarking work in reality? (i.e., benchmarks will often be determined by investment managers that will want investment to look good)

## DOL Announces Proposed Regulation With Respect to Disclosures Relating to Target Date Funds

- On November 29, 2010, the Department of Labor (DOL) announced proposed regulations that would require the disclosure of more detailed information about target date funds.
- The proposed regulations are intended to ensure that participants and beneficiaries obtain comprehensive information about target date funds that apply an age or target retirement-based asset allocation.
- The required disclosure provides more detail on fee disclosure but it would appear that general fee disclosure rules would also be applicable to target date funds.

## DOL Announces Proposed Regulation With Respect to Disclosures Relating to Target Date Funds (cont'd)

- To the extent information is not already disclosed, a description of the target date fund must:
- Explain the asset allocation – including how the asset allocation will change over time, and the point in time when the investment will reach its most conservative asset allocation. This explanation must include a chart, table or other graphical representation that illustrates the change in asset allocation over time and that does not obscure a participant's or beneficiary's understanding of the information.
- Explain the age group for whom the investment is designed – including the relevance of the target date and any assumptions about a participant's or beneficiary's contribution and withdrawal intentions on or after the date. This requirement only applies if an investment alternative is named or otherwise described with reference to a particular date (such as a target date). The preamble to the proposed regulations indicates that in the event a target date is not named, but a retirement date or other target date is referenced or implied in the description of the investment alternative's objectives or goals, this requirement applies.
- State that the participant or beneficiary may lose money by investing in the investment alternative – including losses near and following retirement, and there is no guarantee that investment in the alternative will provide adequate retirement income.

## DOL Announces Proposed Regulation With Respect to Disclosures Relating to Target Date Funds (cont'd)

- We note that the DOL proposed regs do propose changes to the Qualified Default Investment regs ("QDIA") re disclosure of investment fees and expenses that would impact target date funds. The current regs merely provide that a notice re the QDIA must describe the fees and expenses attendant to the QDIA. The proposed regs further flesh out this requirement indicating the notice re the fees and expenses must disclose: (a) any fees charged directly against the amount invested in connection with acquisition/sale/transfer/withdrawal; (b) annual operating expenses; and (c) any ongoing expenses in addition to annual operating expenses (e.g., mortality and expense fees).

# Table 1 – Variable Return Investments

## **APPENDIX to §2550.404a-5 – Model Comparative Chart**

### **ABC Corporation 401k Retirement Plan**

Investment Options – January 1, 20XX

This document includes important information to help you compare the investment options under your retirement plan. If you want additional information about your investment options, you can go to the specific Internet Web site address shown below or you can contact [insert name of plan administrator or designee] at [insert telephone number and address]. A free paper copy of the information available on the Web site[s] can be obtained by contacting [insert name of plan administrator or designee] at [insert telephone number].

#### **Document Summary**

This document has 3 parts. Part I consists of performance information for plan investment options. This part shows you how well the investments have performed in the past. Part II shows you the fees and expenses you will pay if you invest in an option. Part III contains information about the annuity options under your retirement plan.

#### **Part I. Performance Information**

**Table 1** focuses on the performance of investment options that do not have a fixed or stated rate of return. Table 1 shows how these options have performed over time and allows you to compare them with an appropriate benchmark for the same time periods. Past performance does not guarantee how the investment option will perform in the future. Your investment in these options could lose money. Information about an option's principal risks is available on the Web site[s].

# Table 1 – Variable Return Investments

Table 1—Variable Return Investments								
Name/ Type of Option	Average Annual Total Return as of 12/31/XX				Benchmark			
	1yr.	5yr.	10yr.	Since Inception	1yr.	5yr.	10yr.	Since Inception
<b>Equity Funds</b>								
A Index Fund/ S&P 500 www. website address	26.5%	.34%	-1.03%	9.25%	26.46%	.42%	-.95%	9.30%
							S&P 500	
B Fund/ Large Cap www. website address	27.6%	.99%	N/A	2.26%	27.80%	1.02%	N/A	2.77%
							US Prime Market 750 Index	
C Fund/ Int'l Stock www. website address	36.73%	5.26%	2.29%	9.37%	40.40%	5.40%	2.40%	12.09%
							MSCI EAFE	
D Fund/ Mid Cap www. website address	40.22%	2.28%	6.13%	3.29%	46.29%	2.40%	-.52%	4.16%
							Russell Midcap	
<b>Bond Funds</b>								
E Fund/ Bond Index www. website address	6.45%	4.43%	6.08%	7.08%	5.93%	4.97%	6.33%	7.01%
							Barclays Cap. Aggr. Bd.	
<b>Other</b>								
F Fund/ GICs www. website address	.72%	3.36%	3.11%	5.56%	1.8%	3.1%	3.3%	5.75%
							3-month US T-Bill Index	
G Fund/ Stable Value www. website address	4.36%	4.64%	5.07%	3.75%	1.8%	3.1%	3.3%	4.99%
							3-month US T-Bill Index	
Generations 2020/ Lifecycle Fund www. website address	27.94%	N/A	N/A	2.45%	26.46%	N/A	N/A	3.09%
							S&P 500	
					23.95%	N/A	N/A	3.74%
							Generations 2020 Composite Index*	

## Table 2 – Fixed Return Investments

\*Generations 2020 composite index is a combination of a total market index and a US aggregate bond index proportional to the equity/bond allocation in the Generations 2020 Fund.

**Table 2** focuses on the performance of investment options that have a fixed or stated rate of return. Table 2 shows the annual rate of return of each such option, the term or length of time that you will earn this rate of return, and other information relevant to performance.

<b>Table 2—Fixed Return Investments</b>			
Name/ Type of Option	Return	Term	Other
H 200X/ GIC www. website address	4%	2 Yr.	The rate of return does not change during the stated term.
I LIBOR Plus/ Fixed- Type Investment Account www. website address	LIBOR +2%	Quarterly	The rate of return on 12/31/xx was 2.45%. This rate is fixed quarterly, but will never fall below a guaranteed minimum rate of 2%. Current rate of return information is available on the option's Web site or at 1-800-yyy-zzzz.
J Financial Services Co./ Fixed Account Investment www. website address	3.75%	6 Mos.	The rate of return on 12/31/xx was 3.75%. This rate of return is fixed for six months. Current rate of return information is available on the option's Web site or at 1-800-yyy-zzzz.

# Table 3 – Fees and Expenses

## **Part II. Fee and Expense Information**

**Table 3** shows fee and expense information for the investment options listed in Table 1 and Table 2. Table 3 shows the Total Annual Operating Expenses of the options in Table 1. Total Annual Operating Expenses are expenses that reduce the rate of return of the investment option. Table 3 also shows Shareholder-type Fees. These fees are in addition to Total Annual Operating Expenses.

## Table 3 – Fees and Expenses (cont'd)

Table 3 – Fees and Expenses		
Name/Type of Option	Total Annual Operating Expenses As a %      Per \$1000	Shareholder-Type Fees
<b>Equity Funds</b>		
A Index Fund/ S&P 500	0.18%    \$1.80	\$20 annual service charge subtracted from investments held in this option if valued at less than \$10,000.
B Fund/ Large Cap	2.45%    \$24.50	2.25% deferred sales charge subtracted from amounts withdrawn within 12 months of purchase.
C Fund/International	0.79%    \$7.90	5.75% sales charge subtracted from amounts invested.
Stock		
D Fund/Mid Cap ETF	0.20%    \$2.00	4.25% sales charge subtracted from amounts withdrawn.
<b>Bond Funds</b>		
E Fund/Bond Index	0.50%    \$5.00	N/A

## Table 3 – Fees and Expenses (cont'd)

Name/Type of Option	Total Annual Operating Expenses As a %      Per \$1000	Shareholder-Type Fees
<b>Other</b>		
F Fund/GICs	0.46%    \$4.60	10% charge subtracted from amounts withdrawn within 18 months of initial investment
G Fund/Stable Value	0.65%    \$6.50	Amounts withdrawn may not be transferred to a competing option for 90 days after withdrawal.
Generations 2020/ Lifecycle Fund	1.50%    \$15.00	Excessive trading restricts additional purchases (other than contributions and loan repayments) for 85 days.
<b>Fixed Return Investment</b>		
H 200X/GIC	N/A	12% charge subtracted from amounts withdrawn before maturity.
I LIBOR Plus/Fixed-Type Invest Account	N/A	5% contingent deferred sales charge subtracted from amounts withdrawn; charge reduced by 1% on 12-month anniversary of each investment.
J Financial Serv Co./Fixed Account Investment	N/A	90 days of interest subtracted from amounts withdrawn before maturity.

## Table 4 – Annuity Options

The cumulative effect of fees and expenses can substantially reduce the growth of your retirement savings. Visit the Department of Labor’s Web site for an example showing the long-term effect of fees and expenses at [http://www.dol.gov/ebsa/publications/401k\\_employee.html](http://www.dol.gov/ebsa/publications/401k_employee.html). Fees and expenses are only one of many factors to consider when you decide to invest in an option. You may also want to think about whether an investment in a particular option, along with your other investments, will help you achieve your financial goals.

### **Part III. Annuity Information**

**Table 4** focuses on the annuity options under the plan. Annuities are insurance contracts that allow you to receive a guaranteed stream of payments at regular intervals, usually beginning when you retire and lasting for your entire life. Annuities are issued by insurance companies. Guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability.

# Table 4 – Annuity Options

<b>Table 4—Annuity Options</b>			
<b>Name</b>	<b>Objectives / Goals</b>	<b>Pricing Factors</b>	<b>Restrictions / Fees</b>
<p><b>Lifetime Income Option</b></p> <p>www. website address</p>	<p>To provide a guaranteed stream of income for your life, based on shares you acquire while you work. At age 65, you will receive monthly payments of \$10 for each share you own, for your life. For example, if you own 30 shares at age 65, you will receive \$300 per month over your life.</p>	<p>The cost of each share depends on your age and interest rates when you buy it. Ordinarily the closer you are to retirement, the more it will cost you to buy a share.</p> <p>The cost includes a guaranteed death benefit payable to a spouse or beneficiary if you die before payments begin. The death benefit is the total amount of your contributions, less any withdrawals.</p>	<p>Payment amounts are based on your life expectancy only and would be reduced if you choose a spousal joint and survivor benefit.</p> <p>You will pay a 25% surrender charge for any amount you withdraw before annuity payments begin.</p> <p>If your income payments are less than \$50 per month, the option's issuer may combine payments and pay you less frequently, or return to you the larger of your net contributions or the cash-out value of your income shares.</p>

Table 4 – Annuity Options (cont'd)

<p>Generations 2020 Variable Annuity Option</p> <p>www. website address</p>	<p>To provide a guaranteed stream of income for your life, or some other period of time, based on your account balance in the Generations 2020 Lifecycle Fund.</p> <p>This option is available through a variable annuity contract that your plan has with ABC Insurance Company.</p>	<p>You have the right to elect fixed annuity payments in the form of a life annuity, a joint and survivor annuity, or a life annuity with a term certain, but the payment amounts will vary based on the benefit you choose. The cost of this right is included in the Total Annual Operating Expenses of the Generations 2020 Lifecycle Fund, listed in Table 3 above.</p> <p>The cost also includes a guaranteed death benefit payable to a spouse or beneficiary if you die before payments begin. The death benefit is the greater of your account balance or contributions, less any withdrawals.</p>	<p>Maximum surrender charge of 8% of account balance.</p> <p>Maximum transfer fee of \$30 for each transfer over 12 in a year.</p> <p>Annual service charge of \$50 for account balances below \$100,000.</p>
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Legislative Proposals  
Regarding Plan Fee Disclosures

# Background

- 401(k) Fair Disclosure and Pension Security Act (H.R. 2989) sponsored by Rep. George Miller (D.-CA). (2009)
  - Requires disclosure by plan service providers to plan administrators
  - Requires detailed disclosure of fees and comparative investment options to participants and beneficiaries.
  - In certain instances, requires passively managed index funds to be offered.
  - Requires independence of investment advisors.

See Bernard F. O'Hare, Esq., "The Effectives of the 401(k) Fair Disclosure and Pension Security Act of 2009 on Employers Sponsoring Defined Contribution Plans: 'Enhanced Communications to Participants or More Compliance Pitfalls'?", 38 Tax Mgmt. Comp. Planning Journal, No. 2 (February 5, 2010)).

# Defined Contribution Fee Disclosure Act of 2010

- Proposed as part of the American Jobs and Closing Tax Loopholes Act of 2010 (H.R. 4213).
- The House passed this fee disclosure legislation (introduced by Rep. Miller), but the Senate's version dropped the fee disclosure legislation.
- Incorporates elements of the 401(k) Fair Disclosure and Pension Security Act.
- Some argue that Congress should let the DOL set the new disclosure rules on its own, and the passing of new legislation could stall that process.
- Others argue that the legislation is needed to give teeth to any new disclosure regulations and to ensure that such rules apply to providers that are not now subject to DOL oversight authority.

## Defined Contribution Fee Disclosure Act of 2010 (cont'd)

- Would require plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA") and non-ERISA plans (e.g., potentially church and governmental 403(b) plans as well as 457 plans) to comply with fee disclosure rules. **Differs in scope from regulatory initiatives, which only apply to ERISA plans.**
- Effective for plan years beginning after December 31, 2011 (and for existing contracts in effect on January 1, 2012).
  - This legislation is now in abeyance because the DOL did take action in this area but there is always the possibility that Congress will revisit these issues.

# DOL Interim Final Regulations: Disclosure by Service Providers

## Background

- In recent years, changes in how service providers are compensated have made it difficult for plan fiduciaries to understand the costs associated with specific services and whether service providers have conflicts of interest.
- This is important because plan fiduciaries are obligated under ERISA to act prudently when selecting plan service providers.
- Under ERISA Section 408(b)(2), plan fiduciaries must enter into "reasonable" contracts with service providers.
- Church and Governmental Plans are generally not subject to ERISA (unless they have so elected) but may look to these rules as "best practices."

## Background (cont'd)

- On December 13, 2007, the DOL proposed regulations to clarify what constitutes a "reasonable" contract or arrangement.
- The proposed regulations made the "reasonableness" standard more difficult to meet, by requiring new disclosures for certain service providers.
- As proposed, the regulations would take effect 90 days after publication of the final regulation.
- *Status:* Final regulations were published on July 16, 2010.
- By subsequent announcement, the DOL delayed the effective date to plan years beginning on or after January 2012.  
(See EBSA News Release February 11, 2011)

# Overview

- Does not apply to health and welfare plans. (Although DOL is considering expansion)
- Expanded group of service providers covered.
- No longer have to describe "all" services – level of detail will vary depending on the particular needs of the plan and plan fiduciary.
- Disclosures must be in writing, but a written contract for the service arrangement is not required.
- Applies to both pension and defined contribution plans.
- Direct compensation must be disclosed and may be done in the aggregate, but for RECORDKEEPING that must be separately disclosed.
- No longer required to provide conflict of interest disclosure – still must disclose indirect compensation.

## Covered Service Providers

- The regulations address the following service providers:
  - fiduciaries and registered investment advisers (including fiduciaries to investment vehicles that hold plan assets, if the plan has a direct equity investment);
  - firms providing recordkeeping or brokerage services to a participant-directed DC plan offering investment options through a platform; and
  - firms receiving "indirect compensation" (from sources other than the plan or plan sponsor) for accounting, actuarial, auditing, appraisal, banking, custodial, insurance, investment advisory (for the plan or participants), legal, recordkeeping, securities or investment brokerage, third-party administration, valuation, or consulting services.
    - 1) "Consulting" covers services related to formulating investment policies or selecting service providers or investments.

## Covered Service Providers (cont'd)

- Exceptions:
  - Service providers are covered only if they anticipate \$1,000 or more in services.
  - Exception for non-monetary compensation of \$250 or less in the aggregate during the term of the contract to address comments regarding gifts.

# Special Recordkeeping Disclosure Rules

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- Service provider must disclose all direct and indirect compensation – "reasonably expected to receive for recordkeeping."
- If no explicit charges – must furnish a reasonable and good faith estimate of the cost to the plan of recordkeeping.

# Timing of Disclosure

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- Provided at time the contract is entered into.
- Within 60 days of "any" change (the materiality standard has been deleted).
- Must provide any additional information required by ERISA and requested by fiduciaries within 30 days of request.

## Reliance on Information from Recordkeepers

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- Service providers may rely on information passed on by recordkeepers if the service provider has acted in good faith and with reasonable diligence, but if the service provider becomes aware of the error, must disclose within 30 days of knowledge.

# Prohibited Transaction Relief for Plan Fiduciaries

- To obtain the relief, the regulation requires that the responsible plan fiduciary:
  - did not know that the covered service provider failed or would fail to make the required disclosure and reasonably believed that the covered service provider disclosed the information required by the final rule; and
  - upon discovering the failure, requested in writing that the covered service provider furnish the information. If the covered service provider refuses to provide the requested information or fails to comply with the written request within 90 days, the responsible plan fiduciary must file a detailed notice (within 30 days of the 90 days or the refusal, if earlier) with the DOL which identifies, among other things, the service provider who failed to provide the information.

## Effective Date

- *Original Effective Date:* July 16, 2011
- One year from the date of publication in the Federal Register, which occurred on July 16, 2010. The 2011 date is effective for all new and existing contracts.

This effective date was subsequently postponed until plan years beginning on or after January 1, 2012.

**A New Date for Service Providers to Disclose Fees to Plan Sponsors** – The effective date for the final service provider regulations applicable to ERISA plans promulgated by the Department of Labor was again postponed and now is April 1, 2012. This new deadline is applicable to both calendar and non-calendar year plans.

(Note: to be effectively in compliance as of April 1, 2012, disclosures will have to be made to the fiduciary prior to April 1, 2012).