

▶ **FIDUCIARY FOCUS:**

New U.S. Department of Labor Retirement Plan Disclosure Regulations

This material is an educational discussion of the new Department of Labor (DOL) regulations governing fee disclosures, which provides ideas and suggestions on this topic and should not be construed as legal advice. Advisers, plan sponsors and others should consult their own designated adviser and legal counsel, if applicable, for specific guidance on their particular circumstances.

Executive Summary

There has been a great deal of discussion and concern surrounding the two long-awaited fee disclosure rules taking effect in 2012. The new regulations under the Employee Retirement Income Security Act of 1974 (ERISA), Section 408(b)(2), and ERISA, Section 404(a)(5) make significant changes to the required disclosures to be made to both plan sponsors and plan participants and require all plan service providers to furnish more information about their services, expenses and fees.

This paper explains the two new types of disclosure; lists what will be required to be disclosed; and discusses what advisers and other service providers to these plans should consider to prepare for these new regulations.

Comparative Chart of the New Regulations

	§408(b)(2)	§404(a)(5)
What is it?	The statutory exemption allowing plan service providers to be compensated for their services without engaging in a prohibited transaction.	The disclosure of certain plan and investment-related information, including expense and fee information, to participants in participant-directed individual account plans, such as 401(k) plans.
Purpose	To assist plan fiduciaries in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider's performance of services. Also to assist plan fiduciaries and administrators in obtaining the information they need from service providers to satisfy their reporting and disclosure obligations under ERISA.	To give the estimated 72 million participants covered by 401(k)-type retirement plans greater information regarding the expenses and fees associated with their plans in order to help them better manage their retirement savings.

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	§408(b)(2)	§404(a)(5)
Effective Date	April 1, 2012	No later than 60 days after the latter of the first day of the first plan year beginning on or after November 1, 2011, or April 1, 2012. For calendar year plans, this means that such initial disclosures must be made by May 31, 2012. Plan administrators must deliver the initial quarterly disclosure statement to participants no later than 45 days after the end of the quarter. For calendar year plans, this means that such initial quarterly disclosure statements must be made by August 14, 2012.
Who Must Disclose	“Covered service providers” who are defined as those providers who entered into a contract or arrangement with a covered plan, reasonably expecting to receive \$1,000 or more in compensation, direct or indirect, in connection with providing certain services to the plan.	The disclosure obligations fall on the “plan administrator.” The plan administrator is the party designated as such in the plan document. Absent any such designation, the employer is the plan administrator.
Content of Disclosures	<ul style="list-style-type: none"> • Describe the services provided. • Describe whether the services provided are fiduciary services or services under the Investment Advisers Act of 1940 or any State law, or any other type of covered service. • Describe what compensation is being received and how it is being received. • Make additional disclosures regarding investment services, discussed in greater detail on the following pages. 	<ul style="list-style-type: none"> • Regularly disclose to plan participants the features of the plan that affect the investment of their plan accounts. • Regularly disclose to plan participants a wide variety of expenses and fees that are or could be charged to the plan in general and deducted from the plan accounts of all participants. • Regularly disclose to plan participants a wide variety of expenses and fees that are or could be charged against their plan accounts, rather than on a plan-wide basis.
Penalty for Failure to Comply	If a plan engages in a prohibited transaction, the Internal Revenue Code of 1986, as amended, imposes an excise tax of 15% on the amount involved in the prohibited transaction. The excise tax increases to 100% of the amount involved if the prohibited transaction is not corrected. There can also be other consequences, such as lawsuits against the parties who participate in the prohibited transaction.	If the plan administrator fails to provide participants with the information the Regulation requires, the plan administrator will be deemed to have violated its fiduciary duty under ERISA, in the eyes of the DOL. In that event, the plan administrator could be held liable for monetary damages to participants for monetary losses they would have avoided had they received the information the plan administrator is required to provide them.

	§408(b)(2)	§404(a)(5)
How to Prepare	<ul style="list-style-type: none"> • Evaluate your exposure to the requirements. • Evaluate your disclosure obligations. • Modify your existingservice contracts or implement service contracts. • Seek legal advice. 	<ul style="list-style-type: none"> • Familiarize yourself with the requirements of the Regulation. • Prepare to assist plan administrators, where necessary, with the collection of information they will need to provide to plan participants. • Prepare to assist plan administrators, as needed, with answering questions that plan participants will have as a result of this new disclosure requirement.

PART ONE - §408(b)(2)

The U.S. Department of Labor (DOL) has published a regulation under Section 408(b)(2) of the Employee Retirement Income Security Act (ERISA) clarifying the circumstances under which plan service providers can be compensated for their services without engaging in a prohibited transaction, §2550.408b-2(c). The regulation will become effective on April 1, 2012.

Background - Prohibited Transactions

What Are They. The Employee Retirement Income Security Act of 1974, as amended (ERISA), prohibits a number of transactions between “parties in interest” and ERISA-covered retirement plans. A party in interest includes persons providing services to a plan. For example, a registered investment adviser (RIA) or stockbroker providing services to a retirement plan is a party in interest. The ERISA prohibitions preclude (among many other acts) the furnishing of services between a plan and a party in interest and the transfer of plan assets to a party in interest. Thus, absent an exemption, the plan could not employ the RIA or stockbroker or use plan assets to pay their fees.

What Happens If A Prohibited Transaction Occurs? If a plan engages in a prohibited transaction, the Internal Revenue Code of 1986, as amended, imposes an excise tax of 15% on the amount involved in the prohibited transaction. The excise tax increases to 100% of the amount involved if the prohibited transaction is not corrected. There can also be other consequences, such as lawsuits against the parties who participate in the prohibited transaction.

Exemption. Under ERISA §408(b)(2), a contract or arrangement between the plan and the service provider is legally permissible if it is reasonable, the services are necessary to the plan, and the plan pays only reasonable compensation for the services offered by a service provider. The current DOL regulation provides detail regarding what constitutes a “reasonable arrangement,” “necessary services,” and “reasonable compensation.” In the past, these requirements have not been particularly difficult to meet, and service providers have been able to avail themselves of the exemption.

New Regulation Imposes Additional Requirements to Avoid Prohibited Transactions

The New Regulation. The new DOL regulation imposes an additional requirement on “covered service providers” that offer certain services to “covered plans.” The additional requirement requires disclosure to the plan of the fees and other compensation the covered service provider expects to receive from its services.

Definitions. “Covered service providers” are those providers who entered into a contract or arrangement with a covered plan, reasonably expecting to receive \$1,000 or more in compensation, direct or indirect, in connection with providing certain services to a “covered plan.” Those services are as follows:

- ▶ Fiduciary services provided directly to a plan by a fiduciary.
- ▶ Services provided directly to a plan by an RIA.
- ▶ Brokerage services and recordkeeping provided to an individual account plan (e.g., a 401(k) plan) that permits participants to direct investments in their accounts, if one or more designated investment alternatives are made available (through a platform or similar mechanism) in connection with the brokerage services or recordkeeping.
- ▶ Services performed for “indirect compensation,” including accounting, appraisal, auditing, banking, consulting (i.e., related to development or implementation of investment policies or the selection or monitoring of service providers or plan investments), custodial, insurance, investment adviser (for the plan or its participants), securities brokerage, third-party administration, and valuation services.

A “covered plan” includes practically any retirement plan subject to ERISA, other than a simplified employee pension – SEP IRAs, simple retirement accounts – SIMPLE IRAs, or individual retirement accounts (IRAs), or individual retirement annuities.

The Format and Timing of Disclosure Under §408(b)(2)

Format, Delivery. The covered service provider must provide the required disclosure described below in writing to the “responsible plan fiduciary,” the plan official with authority to cause the plan to enter into, extend or renew, a contract or arrangement with a covered service provider.

The rule does not require the covered service provider to make disclosures in any particular format or manner. As a result, the disclosures may be made through multiple documents.

Timing Of Disclosure Requirements. For contracts and arrangements between covered plans and covered service providers that are in place prior to April 1, 2012, a covered service provider must provide the required disclosure described below on or before that date. For contracts and arrangements put in place after that date, a covered service provider must provide the required disclosure reasonably in advance of the date the contract or arrangement is entered into, extended or renewed, with limited exceptions.

Disclosure Of Changes. A covered service provider must disclose a change to the information disclosed as soon as practicable, but not later than 60 days from the date on which the service provider is informed of the changes. However, if the disclosure was precluded due to extraordinary circumstances beyond the service provider's control, the information must be disclosed as soon as practicable.

Content of Required Disclosure Under §408(b)(2)

The following is a brief summary of the disclosure requirements.

Services. The covered service provider must provide a description of the services to be provided to the covered plan pursuant to the contract or arrangement.

Status Of Service Provider. If applicable, the covered service provider must state that it (or an affiliate or a subcontractor) will provide, or reasonably expects to provide:

- ▶ if applicable, fiduciary services directly to the plan or to an investment contract, product or entity (such as a collective investment fund) that holds plan assets and in which the covered plan has a direct equity investment;
- ▶ if applicable, services directly to the covered plan as an investment adviser registered under either the Investment Advisers Act of 1940 or any State law;
- ▶ if applicable, any other covered service as described above in the section "Definitions."

Compensation. The covered service provider must describe all of the compensation it (or an affiliate or a subcontractor) expects to receive including the following:

- ▶ direct compensation
 - compensation paid directly from the covered plan;
- ▶ indirect compensation
 - compensation received from any source other than from the plan, the plan's sponsor, or the covered service provider (or an affiliate or a subcontractor); and
 - the description must identify the services for which the indirect compensation will be received and the payer of the indirect compensation;
- ▶ compensation paid among the covered service provider, an affiliate, or a subcontractor
 - disclosure is required only if the compensation is determined on a transaction basis (e.g., on the basis of commissions, finder's fees, or soft dollars) or is charged against the covered plan's investment and reflected in the net value of the investment (e.g., 12b-1 fees); and
 - the disclosure must identify the services for which compensation will be paid and the payers and recipients of the compensation; and
- ▶ compensation payable to the covered service provider (or an affiliate or a subcontractor) in connection with the termination of the contract or arrangement.

Expression Of Compensation. Compensation, whether direct or indirect, can be expressed as a fixed dollar amount, a formula, a per capita charge for each participant, a percentage of the covered plan's assets, or if none of these can be used, any other reasonable method. Any expression of compensation must permit the evaluation of the reasonableness of the compensation.

Recordkeeping Services. There are additional disclosure requirements related to recordkeeping services provided to the covered plan.

Manner Of Receipt Of Compensation. The disclosures must contain a description of the manner in which the compensation will be received, such as whether the covered plan will be billed or the compensation will be deducted directly from the covered plan's account(s) or investments.

Investment Disclosure – Fiduciary Services For Pooled Investments Such As Collective Investment Funds. In the case of a fiduciary who manages a separate contract, entity or product in which the covered plan has an equity interest (such as a collective investment fund), the following information must be disclosed for each investment in which the covered plan has the direct equity interest and for which the fiduciary services will be provided pursuant to the contract or arrangement:

- ▶ a description of any compensation that will be charged directly against the amount invested in connection with the acquisition, sale, transfer of, or withdrawal from the investment contract, entity, or product (e.g., account fees, deferred sales charges, exchange fees, purchase fees, redemption fees, sales charges, sales loads, and surrender charges);
- ▶ a description of the annual operating expenses (e.g., expense ratio), but only if the investment return is not fixed; and
- ▶ a description of any ongoing expenses in addition to annual operating expenses (e.g., mortality and expense fees, wrap fees).

This requirement can be satisfied if a covered service provider who provides brokerage or recordkeeping services gives the information to the responsible plan fiduciary.

Investment Disclosure – Brokerage Services And Recordkeeping. In the case of a person providing brokerage services to an individual account plan (e.g., a 401(k) plan) that permits participants to direct the investment of their accounts, if one or more designated investment alternatives are made available in connection with the brokerage services, the broker must disclose the same information described in the paragraph above for each designated investment alternative for which brokerage services will be provided pursuant to the contract or arrangement with the covered plan.

Additional Information On Request. Upon request of the responsible plan fiduciary or plan administrator, the covered service provider must furnish any other information relating to compensation received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements of ERISA and the forms, regulations, and schedules issued thereunder. The covered service provider must disclose the information no later than 30 days following receipt of a written request from the responsible plan fiduciary or plan administrator unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable.

Basic Fiduciary Duty

Basic Fiduciary Duty. Compliance with the DOL's new regulation does not absolve the responsible plan fiduciary from exercising basic prudence in the selection of competent covered service providers and investment alternatives for a covered plan.

The Duty To Monitor. The responsible plan fiduciary is obligated as a matter of law to monitor the performance of all service providers, including covered service providers, described in the DOL regulation, the expenses and fees they charge, and the performance of the investment alternatives the responsible plan fiduciary has selected for the plan.

Where a change in service providers, their expenses and fees, and/or investment alternatives is prudent, the change must be made. The fiduciaries charged with the responsibilities under the plan document are responsible for making the change and are liable where they do not if a court determines the failure to make the change damaged the plan participants. Among the tools such fiduciaries have to help them with their duty to monitor are the following:

- ▶ Requests for proposals (RFPs).
- ▶ Plan fee benchmarking - documentation showing that their fees are reasonable in comparison to their peers.
- ▶ The use of advisers or consultants who can compare the plan's current investments and the expenses and fees being charged to the plan to other alternatives.

PART TWO - §404(a)(5)

The U.S. Department of Labor (DOL) recently published a Regulation under Section 404 of ERISA. §2550.404a-5 requires the disclosure of certain plan and investment-related information to participants in participant-directed individual account plans, such as 401(k) plans. A major focus of the requirements is on expenses and fees.

The Consequence If The Plan Administrator Does Not Provide Participants The Required Information. If the plan administrator fails to provide participants with the information the Regulation requires, the plan administrator will, in the eyes of the DOL, be deemed to have violated its fiduciary duty under ERISA to disclose pertinent information to participants. In that event, the plan administrator could be held liable for monetary damages to participants for monetary losses they would have avoided had they received the information the plan administrator is required to provide them.

§404(a)(5) – Preliminary Issues

Definitions. The Regulation applies to defined contribution plans where the participants control the investment of their plan accounts. The new Regulation does not apply to individual retirement accounts (IRAs), individual retirement annuities, simplified employee pensions (SEP IRAs) and simple retirement accounts (SIMPLE IRAs).

The disclosure obligations fall on the “*plan administrator*.” The plan administrator is the party designated as such in the plan document. Absent any such designation, the employer is the plan administrator.

The required disclosures relate to “*designated investment alternatives*” under the plan. The term does not encompass brokerage windows or self-directed brokerage accounts or other similar arrangements that allow participants to select investments beyond those the plan has designated.

§404(a)(5) – What Information Must Be Disclosed

Plan-Related Information – General. On or before the date on which a participant can first direct his or her investments and at least annually thereafter, the plan administrator (or its delegate) must provide the participant with the following:

- ▶ The circumstances under which participants may give investment instructions.
- ▶ Any limitation on such instructions, such as restrictions on transfers to or from a designated investment alternative.
- ▶ A description or reference to plan provisions relating to the exercise of voting, tender and similar rights pertaining to an investment in a designated investment alternative.
- ▶ An identification of designated investment alternatives under the plan.
- ▶ An identification of any designated investment manager.
- ▶ A description of any brokerage windows or self-directed brokerage accounts available under the plan.
- ▶ Changes to any of the above information, which generally must be provided at least 30 days, but not more than 90 days, in advance of the effective date of the change.

Plan-Related Information – Administrative Expenses And Fees. On or before the date on which a participant can first direct his or her investments and at least annually thereafter, the plan administrator (or its delegate) must provide participants with the following:

- ▶ An explanation of expenses and fees for general plan administrative services that potentially can be charged against participants’ plan accounts and that are not reflected in the total annual operating expenses of any investment alternative, and the basis on which such charges are allocated to, or affect the balance of, participants’ plan accounts.
 - Pro rata based on the relative size of such accounts or per capita.
 - Examples are accounting, legal, and recordkeeping expenses and fees.
- ▶ Changes to the above information, which generally must be provided at least 30 days, but not more than 90 days, in advance of the changes.
- ▶ At least quarterly, the dollar amount of the expenses and fees described above that are actually charged during the preceding quarter to the participants’ plan accounts for such services, together with the following information.
 - A description of the services to which the charges relate.
 - An explanation of whether some of the plan’s administrative expenses for the preceding quarter were paid from the annual operating expenses of one or more of the plan’s designated investment alternatives.
 - Examples are 12b-1 fees, sub-transfer agency fees, etc.

Plan-Related Information – Participant-Specific Expenses And Fees. On or before the date on which a participant can first direct his or her investments and at least annually thereafter, the plan administrator (or its delegate) must provide participants with the following:

- ▶ An explanation of any expenses and fees that potentially can be charged against an individual participant's account, rather than on a plan-wide basis, and that are not reflected in the total annual operating expenses of designated investment alternatives.
 - Examples are fees for processing plan loans or qualified domestic relations orders, investment advice, using brokerage windows, commissions, front- or back-end loads or sales charges, redemption fees, transfer fees, and optional rider charges in annuity contracts.
- ▶ Changes to the above information, which generally need to be provided at least 30 days, but not more than 90 days, in advance of the change.
- ▶ At least quarterly, the dollar amount of the expenses and fees described above that are actually charged during the preceding quarter to the participants' accounts and a description of the services to which the charges relate.
- ▶ The plan administrator (or its delegate) can satisfy the initial disclosure requirements related to participant-specific expenses and fees that must be provided on or before the date on which a participant can first direct his or her investments by furnishing to the participant the most recent annual disclosure furnished to all participants along with any updates furnished to participants for purposes of these requirements.

Designated Investment Alternative-Related Information. On or before the date on which the participant can first direct his or her investments and at least annually thereafter, the plan administrator (or its delegate) must automatically provide the following information with respect to each designated investment alternative offered under the plan.

▶ **Identifying Information.**

- The name of each designated investment alternative.
- The type of investment, such as a money market fund, balanced fund, large cap stock fund, employer stock fund, employer securities, etc.

▶ **Performance Data and Expenses and Fees.**

- If the investment return is not fixed, the following information.
 - The average annual total return of the designated investment alternative for 1, 5 and 10 calendar-year periods (or since inception of the designated investment alternative, if shorter) and a statement that past performance is not necessarily an indication of how the investment will perform in the future.
 - The name and returns of an appropriate broad-based securities market index over the 1, 5 and 10 calendar-year periods (or since inception of the designated investment alternative, if shorter) comparable to the performance data for the 1, 5 and 10 calendar-year periods described above.

- A description of each shareholder-type fee, such as account and purchase fees, commissions, deferred sales charges, exchange fees, redemption fees, sales loads, and surrender charges, that are not included in total annual operating expenses of any designated investment alternative, and a description of any restrictions that may be applicable to a purchase, transfer or withdrawal of the investment (such as “round trip” or “equity wash” restrictions).
 - The total annual operating expenses of the investment expressed as a percentage (i.e., an expense ratio) calculated in accordance with the Regulation.
 - The total operating expenses of the investment for a one-year period expressed as a dollar amount for a \$1,000 investment.
 - A statement that expenses and fees are only one factor that participants should consider when selecting investments.
 - A statement that cumulative expenses and fees can substantially reduce the growth of a participant’s account and that participants can visit the DOL’s website for an example of the long-term effects of expenses and fees.
- If the investment return is fixed, the following information:
- The fixed or stated rate of return and the term of the investment. If the issuer of the investment reserves the right to adjust the fixed or stated rate of return, a statement of the current rate of return, the minimum rate guaranteed, and a statement advising plan participants that the issuer can adjust the rate of return and how to obtain the most recent rate of return (e.g., telephone or website).
 - The amount and a description of shareholder-type fees (like those described above) and a description of any limitation or restriction applicable to a purchase, transfer or withdrawal of the investment.

► **Internet Website Address.**

- The plan administrator must provide an Internet website address to provide access to the following information regarding the designated investment alternatives.
 - The name of the issuer of the designated investment alternative.
 - The investment alternative’s objectives.
 - The investment alternative’s performance data updated on at least a quarterly basis (or more frequently if other applicable law requires).
 - The investment alternative’s expense and fee information.
 - The investment alternative’s principal strategies (including a general description of the types of assets held by the investment alternative) and principal risks.
 - The investment alternative’s portfolio turnover rate.
- If the investment return is fixed, the Internet website needs to address only the first four of these categories of information.

- ▶ **A General Glossary.** A general glossary of terms to assist participants in understanding designated investment alternatives or an Internet website address to provide access to such a glossary.
- ▶ **Annuity Information.** Certain annuity information.
- ▶ **Information Provided On Or Before The Participant Can First Direct Investments.** The plan administrator (or its delegate) can satisfy the initial disclosure requirements concerning designated investment alternative-related information that must be provided on or before the date on which a participant can first direct his or her investments by furnishing to the participant the most recent annual disclosure furnished to all participants along with any updates furnished to participants for purposes of these requirements.

Manner Of Presentation – Comparative Data. The plan administrator (or its delegate) must furnish the designated investment alternative-related information described above on a chart that is designed to facilitate the comparison of such investment-related information for each designated investment alternative available under the plan, and that also includes the following:

- ▶ A statement with the name, address and telephone number of the plan administrator (or its delegate) to contact to obtain the information pursuant to a participant request, as described below.
- ▶ A statement that additional investment-related information is available at the Internet website address described above.
- ▶ A statement explaining how to request and obtain free-of-charge paper copies of the information required to be made available on the Internet websites described above.

The DOL has prepared a model statement (available in the Appendix) that addresses the comparative format requirement alluded to above. Use of it ensures automatic compliance, but is not required. Many plan administrators will use it.

Information Required To Be Provided Subsequent To A Participant's Investment. The plan administrator (or its delegate) must furnish to each participant, subsequent to investment in a designated investment alternative, any materials provided to the plan related to the exercise of voting, tender and surrender rights, if such rights are passed through to participants under the terms of the plan.

Information Provided Upon Participant Request. The plan administrator (or its delegate) must furnish to each participant upon his or her request the following information:

- ▶ Copies of any prospectus or short form or summary prospectuses, the form of which the SEC has approved.
- ▶ Copies of any financial statements or reports relating to designated investment alternatives if they are provided to the plan.
- ▶ A statement of the value of a share or unit of a designated investment alternative as well as the date of the valuation.
- ▶ A list of the assets comprising the portfolio of each designated investment alternative and the value of each such asset or the proportion of the investment which it comprises.

§404(a)(5) – Form of Disclosure

Form Of Disclosure. The plan administrator (or its delegate) may provide the plan-related information, plan administrative expenses, and individual expenses that can be charged to participants' accounts in the plan's summary plan description or as part of a pension benefit statement furnished to participants at least each calendar quarter, so long as such statements are furnished at the frequency that the Regulation requires, i.e., on or before the date on which a participant can first direct his or her investment and at least annually thereafter.

Information about the expenses and fees that are actually charged to the participants' accounts for general plan administrative services and the expenses and fees actually charged to a participant's account, rather than on a plan-wide basis, can be included as part of a quarterly pension benefit statement furnished to the participant.

Expenses and fees can be expressed as a monetary amount, a formula, a percentage of assets, or a per-capita charge.

CONCLUSION

The new fee disclosures will help plan sponsors understand what they are paying for their plans and what services they get for what they are paying. Additionally, it will allow plan participants to be better informed and more aware of the expenses and fees they are paying for their retirement plans. With that in mind, however, an adviser to a plan needs to be prepared for the potential short-term challenges that these new disclosures will bring.

Some plan sponsors may be unaware of the costs associated with their retirement plan, and many plan participants may be confused or even shocked to see expenses and fees in black and white after the regulations go into effect. Once these expenses and fees are outlined in the new disclosures, participants may put more pressure on plan sponsors to prove that they are meeting their fiduciary duty to act in the best interests of their plan participants. Also, plan sponsors may be more willing to reassess their current relationships with advisers who are unable to help them understand their plan's fee structure and justify it to participants. Plan sponsors with relatively high cost plans may have to take action and may turn to advisers who can help them find lower cost options.

All of this signifies a great opportunity to help plan sponsors make their plans better and help them to ensure a dignified retirement for their plan participants.

Appendix: Model Comparative Chart

ABC Corporation 401(k) 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 Website 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 website[s] can be obtained by contacting [insert name of plan administrator or designee] at [insert telephone number].

Document Summary

This document has three 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 website[s].

Table 1 — Variable Return Investments								
Name/ Type of Option	Avg Annual Total Return as of 12/31/XX				Benchmark			
	1yr.	5yr.	10yr.	Since Inception	1yr.	5yr.	10yr.	Since Inception
Equity Funds								
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			
Bonds Funds								
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.			
Other								
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*			

*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.

Source: The Department of Labor, Employee Benefits Security Administration.
www.dol.gov/ebsa/modelcomparativechart.doc

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.

Table 2 — Fixed Return Investments			
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 website 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 website or at 1-800-yyy-zzzz.

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			
Name/ Type of Option	Total Annual Operating Expenses		Shareholder - Type Fees
	As a %	Per \$1000	
Equity Funds			
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/ Int'l Stock	0.79%	\$7.90	5.75% sales charge subtracted from amounts invested.
D Fund/ Mid Cap	0.20%	\$2.00	4.25% sales charge subtracted from amounts withdrawn.
Bonds Funds			
E Fund/ Bond Index	0.50%	\$5.00	N/A
Other			
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.

Source: The Department of Labor, Employee Benefits Security Administration.
www.dol.gov/ebsa/modelcomparativechart.doc

Table 3 — Fees and Expenses (continued)		
Fixed Return Investments		
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.

The cumulative effect of fees and expenses can substantially reduce the growth of your retirement savings. Visit the Department of Labor’s website for an example showing the long-term effect of fees and expenses at 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			
Name	Objectives / Goals	Pricing Factors	Restrictions / Fees
Lifetime Income Option www.website address	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.	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. 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.	Payment amounts are based on your life expectancy only and would be reduced if you choose a spousal joint and survivor benefit. You will pay a 25% surrender charge for any amount you withdraw before annuity payments begin. 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.

Source: The Department of Labor, Employee Benefits Security Administration.
www.dol.gov/ebsa/modelcomparativechart.doc

Table 4—Annuity Options (continued)			
Generations 2020 Variable Annuity Option www.website address	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. This option is available through a variable annuity contract that your plan has with ABC Insurance Company.	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. 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.	Maximum surrender charge of 8% of account balance. Maximum transfer fee of \$30 for each transfer over 12 in a year. Annual service charge of \$50 for account balances below \$100,000.

Please visit www.ABCPlanglossary.com for a glossary of investment terms relevant to the investment options under this plan. This glossary is intended to help you better understand your options.

Source: *The Department of Labor, Employee Benefits Security Administration.*
www.dol.gov/ebsa/modelcomparativechart.doc

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This article was written by David H. Williams, Esq., Schiff Hardin LLP. Mr. Williams is an attorney with particular expertise in employee stock ownership plans (ESOPs), other tax qualified retirement plans, health and welfare plans, and executive compensation. His practice focuses on representation of parties in the design, implementation, and administration of employee benefit plans, and representation of retirement plan fiduciaries.

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