

New ERISA Disclosure Requirements

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July 26, 2012

According to a recent survey conducted by the AARP, 71 percent of 401(k) plan participants think they pay no fees relating to their retirement accounts. In many cases, this misconception is due to opaque fee arrangements that make it difficult to determine exactly how much was being paid by the retirement plan, by whom and to whom. Even if the responsible plan fiduciaries were aware of the plan level costs, existing fee arrangements make it difficult for each participant to determine what portion of those costs were being charged to or deducted from their account in one way or another.

Two new impending sets of federal disclosure rules should help plan fiduciaries and participants better understand plan costs. The first set of rules require that plan fiduciaries be better informed by service providers about the details of fees and costs associated with their service arrangements. A second set of rules will require the plan fiduciaries to disclose information to plan participants regarding overall plan costs, as well as each participant's individual share of the costs associated with their retirement account.

Disclosures by Service Providers to Plan Fiduciaries

Retirement plans that are subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA), are generally prohibited under ERISA Section 408 from contracting for plan services unless the contract is for necessary services at a reasonable cost. Contracts for unnecessary services or for services at more than reasonable compensation would be a "prohibited transaction," exposing the parties involved to penalties and personal liability for resulting plan losses. It is the responsibility of the plan fiduciaries to determine that both of these requirements are satisfied. Although a determination that a service is necessary would normally be fairly straightforward, a determination that the cost is reasonable is impossible without adequate information and can be a difficult proposition even with detailed information. In addition, without good information about the sources of payment and how those payments are being shared, the plan fiduciaries may not be able to assess possible biases or conflicts of interest which may be present in the service arrangement.

The Department of Labor (DOL) issued final regulations on February 2, 2012 under ERISA Section 408(b)(2), describing the cost disclosures required to avoid "unreasonable" or "prohibited" service arrangements. The new regulations generally apply to any plan that is subject to ERISA, with limited exceptions.

Covered Service Providers. Only a service provider that contracts directly with the covered plan, termed a "covered service provider" (CSP), will have an obligation to disclose information to a "responsible plan fiduciary" (the plan fiduciary with the authority to contract for services). CSPs include any party providing fiduciary services (including fiduciary services to an investment vehicle in which a plan directly invests), registered investment adviser services, recordkeeping or securities/brokerage services for an account balance plan which allows participant-directed investments, or accounting, actuarial, appraisal, banking, custodial, investment policy, monitoring, insurance, investment advisory, recordkeeping, brokerage, administration or valuation services when the service provider, or its affiliate or subcontractor, reasonably expects to receive any indirect compensation. If the services will be provided as a fiduciary or registered investment adviser, the agreement must state so. Only arrangements where more than \$1,000 in compensation is reasonably expected to be received by the CSP, and/or by an affiliate or subcontractor of the CSP over the term of the contract, are covered.

Timing of Disclosures to Responsible Plan Fiduciaries. The initial disclosure of compensation from the CSP to the responsible plan fiduciary must generally be made before the effective date of a plan service contract, as well as before any renewal or extension of an existing contract. Disclosure

regarding investment options in participant-directed investment arrangements is required before the investment is added as an option. Ongoing disclosures of changes to investment-related information are required to be made as soon as is practicable in some cases, and annually in other cases. When information is requested from the CSP by a plan fiduciary or plan administrator to comply with a plan's reporting or disclosure obligations, that information must normally be provided reasonably in advance of the stated compliance date for the reporting or disclosure obligation. Errors or omissions in data must be corrected promptly, and in any event within 30 days of when the error or omission is known to exist.

Information that Must be Disclosed by CSPs. In general, CSPs must describe to the plan fiduciary the services to be provided and all direct and indirect compensation to be received by a CSP, its affiliates, and any subcontractors. The specific disclosures that will be required vary somewhat from one type of service provider to the next, according to the nature of the services, whether the CSP receives direct or indirect compensation and the details of any compensation sharing.

In the case of fiduciaries to funds in which a plan invests directly, or record keepers who make investment options available to participants, information regarding the costs associated with the investments must be disclosed, such as sales loads and other costs or fees. If services will be reduced by other compensation which may be received by the service provider, a good faith estimate of the eventual cost to the plan is required.

A written description of the services to be provided is required, in enough detail to allow that fiduciary to make an informed decision about the necessity of the services and the overall compensation to be received for those services.

If a CSP or its affiliate or subcontractor receives any indirect compensation, concerns arise about possible bias or conflicts of interest because of other interests which give rise to that other compensation. Thus, for indirect compensation, disclosure of the arrangement between the CSP (or subcontractor or affiliate) and the source of the indirect compensation is required. Indirect compensation includes anything of value that is even remotely related to the plan service arrangement, whether or not it is for services provided to the plan.

The manner of receipt of compensation must be disclosed. For example, the compensation might be billed or deducted from plan accounts or investments. Where compensation will be shared among the CSP and any subcontractor or affiliate, compensation which is transaction based or charged against the asset values must be described, along with identifying the payers and recipients of the compensation and a description of their relationship. Compensation due on termination of the service arrangement must be described, with a description of how any prepaid amounts will be calculated and refunded.

Providing Estimates and Summaries to Plan Fiduciaries. A CSP may provide estimates of fees where the fees themselves are not ascertainable at the time the disclosure is required, provided the method and assumptions used to prepare the estimate are also explained. Although the DOL does not require a summary or guide to assist fiduciaries who receive the required information, the DOL encourages CSPs to provide a summary and, in fact, included a format for such a summary as an appendix to the final regulation. The DOL is considering whether to require a summary beginning at some later date.

Disclosures by Plan Fiduciaries to Plan Participants

The rules discussed above address information that CSPs are required to disclose to responsible plan fiduciaries. The second set of rules, under ERISA Section 404(a)(5), relates to disclosures by plan fiduciaries to plan participants in ERISA-covered account balance plans which allow participant-directed investments. IRAs, individual retirement annuities, SEP plans or simple retirement accounts are not covered by the rules.

Timing of Disclosures to Plan Participants. General information must be provided to participants and beneficiaries by the date upon which they can first direct investments, and at least annually thereafter. For calendar year plans, the initial *annual* disclosure must be furnished to participants no later than August 30, 2012, which is 60 days after the July 1 effective date for disclosures by the CSPs to the plans. The annual statements will provide the latest available general operational, identification and expense information. The general and operational information will include investment election

procedures, limitations on elections and investments into or out of available investments, voting rights and information about general plan administration expenses which may be charged to participant accounts in addition to expenses inherent in the investment funds. For administration expenses, there must be an explanation of how those costs will be allocated to individual accounts. Identification data will include the investment alternatives which are offered, information on any investment managers, and information about "brokerage windows" and self-directed brokerage or similar accounts.

Changes in the required annual information generally must be disclosed at least 30 and not more than 90 days before the effective date of the change, unless due to unforeseeable or circumstances beyond the control of the plan administrator, in which case the revised information must be provided as soon as is reasonably practicable.

The first *quarterly* statement to participants at an account level, indicating how much of those costs are actually being periodically allocated to each participant's account, must be furnished no later than November 14, 2012.

Other Prospective Disclosures that Must be Made to Plan Participants. By the date a participant is permitted to direct investments, there must be provided an explanation of any personalized fees or expenses that may be charged prospectively against the participant's account on an individual basis, such as for processing loans, distributions, domestic relations orders, etc.

Information must be provided regarding the available investments, including the name and type of the investment, performance data, benchmark data, and fee and expense information. Where an annuity purchase option is included in an investment, additional information about that option may be required. Investment information should be provided in a comparative format to ease understanding, with contact information for requesting further information or hard copies of data.

Once an investment is elected, additional information must be provided to the participant, such as information about voting rights. Upon request, copies of any prospectus, financial statements or reports, valuations and portfolio assets must be provided.

Plan administrators may act reasonably and in good faith in relying on information provided by service providers and the issuers of investment alternatives.

What You Should Know

The new fee disclosure requirements will require more detailed and more readily understandable cost information for participants. This should result in heightened participant awareness of plan costs, which of course is the purpose of the new rules. Better information from the CSPs is critical to this improved participant understanding. However, once participants understand that they are actually paying costs associated with their retirement accounts, or in some cases once participants have a better understanding of the levels of cost charged to their account and the reasons for those costs, plan administrators and fiduciaries should be aware they will be the recipients of more questions and complaints. Some participants may ask for older historical information and may take the position that their plan's fiduciaries should have done more, and earlier, to lower the plan's costs. Some plans have already instituted better communications to help participants understand both the needs for services and their inherent costs and that "cheapest is not always best."

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Tax Implications of the 2010 Health Care Laws

July 12, 2012

Now that the Supreme Court has decided, by a 5-4 majority, that the Patient Protection and Affordable Care Act (ACA) will survive its constitutional challenges, taxpayers must ready themselves for a variety of important tax changes made by the ACA and other federal legislation enacted in 2010, some of which are scheduled to be implemented starting January 1, 2013. These changes include a 3.8 percent surcharge on net-investment income for certain wage-earners, a 0.9 percent increase in employment taxes for higher earners and a bevy of new responsibilities and credits for employers. In addition, beginning in 2014 the very controversial shared responsibility payment is scheduled to be implemented -- such payment, recently upheld by the Supreme Court as a constitutional tax, applies to those who wish not to comply with the ACA's Individual Mandate. The following is a brief overview of just some of such tax changes.

3.8 Percent Surtax on Net-Investment Income

In order to help fill any budget gaps caused by the expansion of Medicare, the Health Care and Education Reconciliation Act of 2010 added a 3.8 percent tax on "net-investment income" starting in 2013. Net-investment income includes capital gains, dividends, interest, annuities, royalties and rents (other than rents received in the ordinary course of business).

This tax will only apply to joint filers with income (slightly modified) in excess of a \$250,000 threshold and single filers with income exceeding \$200,000, beginning in 2013. To the extent the amount of income exceeding the threshold is less than net-investment income, such lesser amount is taxed.

Noticeably missing from the legislation's definition of net-investment income is the cash built-up in life insurance policies, tax-exempt income and earnings within qualified retirement plans. However, distributions from a traditional IRA will contribute to the balance tested against the threshold amounts of \$250,000 (\$200,000 for single filers), while Roth IRA distributions will not be counted. Therefore, those taxpayers contemplating a rollover of a traditional IRA to a Roth IRA, which is allowed for high-income individuals this year, now have an extra incentive.

0.9 Percent Increase for Certain High-Income Earners

In addition, beginning in 2013, taxpayers may be surprised to learn that if they make more than \$200,000 (\$250,000 for joint filers), an additional 0.9 percent will be added to the Medicare tax on wages earned. Currently, the taxpayer is required to pay 1.45 percent on the wages earned, while the employer makes a matching contribution. However, for those with wages exceeding the threshold amounts, an additional 0.9 percent tax is added to the employee portion of required contributions.

This is an increase that is seldom mentioned in relation to other tax increases within the ACA, but it will affect many taxpayers over the course of the coming years. Those taxpayers who might be subject to this additional amount of tax may wish to reconsider engaging in deferred compensation plans this year, as well as consider selling non-qualified stock options prior to year-end.

Shared Responsibility Payment

Taxpayers who choose not to comply with the Individual Mandate provisions of the ACA may be required to remit a shared responsibility payment along with their taxes. Individuals who elect not to purchase health insurance for months beginning January 1, 2014, must decide whether the Individual Mandate applies to their personal situation, and then whether they qualify for any exceptions to the payment.

Generally, the Individual Mandate requiring that taxpayers carry at least minimum health insurance

coverage applies to all taxpayers who file a return, unless they are members of a religious sect that is recognized as having beliefs in conflict with the Mandate, belong to a health care sharing ministry, are not a citizen or national of the U.S. or an alien lawfully present in the U.S. or are currently incarcerated.

Unless the individual is not required to purchase insurance as described in the preceding paragraph, the individual will be required to pay a penalty for any month in which he or she does not meet the requirements for minimum coverage. That is unless the cost of the required monthly coverage exceeds eight percent of such individual's annual income, the individual is a member of an established Indian tribe, the individual is determined to be under hardship by the Secretary of Health and Human Services or is otherwise legislatively exempted from the payment.

The payment is calculated on a monthly basis as the lesser of 300 percent of the "applicable dollar amounts" or the sum of the "applicable dollar amounts" for all individuals with respect to whom the taxpayer is responsible for who fail to meet the coverage requirements. The applicable dollar amount is phased-in for 2014 and 2015 at \$95 and \$325, respectively. However, in 2016, the applicable dollar amount stabilizes at \$695, indexed for inflation. Further, if the foregoing amounts are less than a stated percentage of income in excess of certain amounts (2.5 percent for years 2015 and beyond), the higher amount will be deemed the penalty owed.

It is important to note that persons listing another individual as a dependent on their return will be responsible for such dependent's payment under the ACA, and joint-filers will be jointly and severally liable for one another under the ACA.

There have been several questions regarding the IRS's ability to enforce the shared responsibility payment. The IRS may not rely on several of the typical means utilized for collections, including the notice of federal tax lien, levies and criminal proceedings. Because the IRS is explicitly disallowed from utilizing these methods for collecting the shared responsibility payment, one of the few remaining viable methods for enforcement is the Service's ability to set-off amounts owed against refundable credits and other refunds due to the taxpayer. Therefore, it may prove difficult for the IRS to collect shared responsibility payments from certain taxpayers who are unwilling to voluntarily comply with the payment and are not otherwise entitled to refunds of taxes paid or credits due. However, a taxpayer should not rely on the IRS's inability to collect the payment because such limiting provisions are subject to change in future years through amendments to the ACA.

Employer Penalties under Health Care Reform

Another area of significant change is among employers with 50 or more full-time employees or full-time equivalents (large employers). The ACA imposes a non-deductible penalty on large employers, beginning in 2014, if any of their full-time employees qualify for and receive federal subsidies.

The excise tax is calculated at \$2,000 annually multiplied by the total number of employees minus 30. For example, an employer with 100 employees subject to the excise tax would pay $\$2,000 \times (100-30) = \$140,000$, if minimum essential coverage is not made available. For those employers who do offer minimum essential coverage, they will pay the lesser of the above-referenced amount or \$3,000 multiplied by the number of employees who qualify for and receive federal subsidies.

Employers with less than 50 FTEs are encouraged to provide coverage for their employees with small business tax credits to help offset the employer contribution toward employee premiums.

Further, those employers that offer flexible spending accounts under a cafeteria plan will also need to pay close attention to the required limitations made effective in 2013 under the ACA. The maximum amount of pre-tax contributions allowed by each employee on an annual basis is set at \$2,500. Because of this lowered amount, lawmakers are exploring the advisability of limiting the harsh effects to those who have money remaining in such accounts at year-end, which is currently a complete forfeiture; but as of now no leniency measures are available.

Conclusion

This Alert is intended to cover only certain tax changes made by the 2010 health care laws. It is important that taxpayers remain informed and well advised in order to strategically and efficiently traverse the ever-changing landscape of taxpayer compliance. Should you have any questions

regarding any of the topics above or any other tax-related matters within such health care laws, please contact any one of the following attorneys in the Firm's Tax Department:

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FULL DISCLOSURE ON THE NEW FEE DISCLOSURES

ERISA SEMINAR SERIES

Bill Robinson

Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC

August 8, 2012



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According to a recent survey conducted by AARP,
71% of 401(k) plan participants **think they pay no fees**
for their retirement accounts.

This misconception is about to change, as a result of **two sets** of related rules:



- One is intended to require certain service providers to disclose to plan fiduciaries information related to fees they receive;
- The second is to require plan fiduciaries to disclose to plan participants information related to the costs associated with participating in their retirement plan.

1. Disclosures by Service Providers to Plan Fiduciaries

- Retirement plans which are subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") are generally prohibited from contracting for plan services unless the contract is for necessary services at a reasonable cost.
- Contracts for services at more than reasonable cost would be a "prohibited transaction", exposing the parties involved to penalties and personal liability for resulting plan losses.
- It is the responsibility of the plan fiduciaries to determine that these requirements are satisfied.

1. Disclosures by Service Providers to Plan Fiduciaries *(Cont.)*

- The Department of Labor ("DOL") issued final regulations on February 2, 2012 under ERISA Section 408(b)(2), describing the cost disclosures which are required to avoid "unreasonable" or "prohibited" service arrangements.
- The new regulations generally apply to any plan which is subject to ERISA, with limited exceptions



1. Disclosures by Service Providers to Plan Fiduciaries *(Cont.)*

A. Covered Service Providers

- Only a service provider that contracts directly with the covered plan, termed a "covered service provider" ("CSP"), will have an obligation to disclose information to a "responsible plan fiduciary" (the plan fiduciary with the authority to contract for services).
- Only arrangements where more than \$1,000 in compensation is reasonably expected to be received by the CSP, and/or by an affiliate or subcontractor of the CSP, over the term of the contract, are covered.



1. Disclosures by Service Providers to Plan Fiduciaries (Cont.)

A. Covered Service Providers (Cont.)

• CSPs include any party providing:

- (i) fiduciary services
- (ii) registered investment adviser services
- (iii) recordkeeping or securities/brokerage services for an account balance plan which allows participant-directed investments, or
- (iv) a myriad of ancillary services, such as custodial, investment policy, monitoring, investment advisory, recordkeeping, administration or valuation services - when the service provider, or its affiliate or subcontractor, reasonably expects to receive any indirect compensation.



Disclosures by Service Providers to Plan Fiduciaries

1.B. Timing of Disclosures to Responsible Plan Fiduciaries

- The initial deadline for complying with the regulation is **July 1, 2012**. Thereafter, disclosure of compensation from the CSP to the responsible plan fiduciary must generally be made before the effective date of a plan service contract, or before any renewal or extension of an existing contract.
- Disclosures regarding investment options in participant-directed investment arrangements are required before the investment is added as an option.

Disclosures by Service Providers to Plan Fiduciaries

1.B. Timing of Disclosures to Responsible Plan Fiduciaries *(Cont.)*

- Ongoing disclosures of changes to investment-related information are required to be made as soon as is practicable in some cases, and annually in other cases.



Disclosures by Service Providers to Plan Fiduciaries

1.C. Information That Must be Disclosed by Covered Service Providers *(Cont.)*

- In the case of fiduciaries to funds in which a plan invests, or record keepers who make investment options available to participants, information regarding the costs associated with the investments must be disclosed, such as sales loads and other costs or fees.



Disclosures by Service Providers to Plan Fiduciaries

**1.C. Information That Must be Disclosed
by Covered Service Providers (Cont.)**

- The services that will be provided for the plan must be described in writing to the responsible plan fiduciary, in enough detail to allow that fiduciary to make an informed decision about the necessity of the services and the overall compensation to be received for those services.



Disclosures by Service Providers to Plan Fiduciaries

1.D. Indirect Compensation

- If a CSP receives any indirect compensation, concerns could arise about the CSP's possible bias or conflicts of interest because of circumstances which give rise to that other compensation.
- Thus, for indirect compensation, disclosure of the arrangement between the CSP and the source of the indirect compensation is required.
- Indirect compensation includes anything of value that is even remotely related to the plan service arrangement, whether or not it is for services provided to the plan.

Disclosures by Service Providers to Plan Fiduciaries

1.E. Providing Estimates to Plan Fiduciaries

- A CSP may provide estimates of fees where the fees themselves are not ascertainable at the time the disclosure is required, provided the method and assumptions used to prepare the estimate are also explained.



Disclosures by Service Providers to Plan Fiduciaries

1.F. Providing Summaries to Plan Fiduciaries

- DOL does not require a summary or guide to assist fiduciaries who receive the required information, but encourages CSPs to provide a summary and, in fact, included a format for such a summary as an appendix to the final regulation.
- The DOL is considering whether to require a summary beginning at some later date.

Disclosures by Service Providers to Plan Fiduciaries

2. Disclosures by Plan Fiduciaries to Plan Participants

- The second set of rules, under ERISA Section 404(a)(5), relates to disclosures by plan fiduciaries to plan participants in account balance plans which allow participant-directed investments.
- IRAs, individual retirement annuities, SEP plans or simple retirement accounts are not covered by the rules.



Disclosures by Service Providers to Plan Fiduciaries

2.A. Timing of Disclosures to Plan Participants

- Information must be provided to participants and beneficiaries by the date upon which they can first direct investments, and at least annually thereafter.
- For calendar year plans, the initial *annual* disclosure must be furnished to participants no later than August 30, 2012, which is 60 days after the July 1st effective date for disclosures by the CSPs to the plans.



Disclosures by Service Providers to Plan Fiduciaries

**2.A. Timing of Disclosures to
Plan Participants (Cont.)**

- Changes in the required annual information generally must be disclosed at least 30 and not more than 90 days before the effective date of the change, unless due to unforeseeable or circumstances beyond the control of the plan administrator, in which case the revised information must be provided as soon as is reasonably practicable.

Disclosures by Service Providers to Plan Fiduciaries

**2.A. Timing of Disclosures to
Plan Participants (Cont.)**

- The first *quarterly* statement to participants at an account level, indicating how much of those costs are actually being periodically allocated to each participant's account, must be furnished no later than November 14, 2012.
- There must be an explanation, where applicable, that some of the prior quarter's administration expenses were paid from the operating expenses of one or more of the offered investments.

Disclosures by Service Providers to Plan Fiduciaries

2.B. Disclosures That Must be Made to Plan Participants

- The annual statements will provide the latest available general operational, identification, and expense information.
- For administration expenses, there must be an explanation of how those costs will be allocated to individual accounts.
- Required identification data will include the investment alternatives which are offered, information on any investment managers, and information about "brokerage windows" or self-directed brokerage or similar accounts.
- Also by the date a participant is permitted to direct investments, there must be provided an explanation of any personalized fees or expenses that may be charged against the participant's account on an individual basis, such as for processing loans, distributions, domestic relations orders, etc.

Results of These Two Rules...

Heightened Awareness by Participants

- The new fee disclosure requirements should result in heightened participant awareness of plan costs.
- Once participants understand that they are actually paying costs associated with their retirement accounts, or have a better understanding of the levels of cost charged to their account and the reasons for those costs, plan administrators and fiduciaries should be aware they will be the recipients of more questions and complaints.
- Some participants may ask for older historical information and may take the position that their plan's fiduciaries should have done more, and earlier, to lower the plan's costs.



Results of These Two Rules... *Heightened Awareness by Participants (cont.)*

- Consider instituting better communications to help participants understand both the needs for services and their inherent costs and that "cheapest is not always best".



Be On The Lookout...

Upcoming Tax Newsletter will include an article that recaps what we have spoken about here today!

Tax News

303-544-2000/303041
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 EXPAND YOUR EXPECTATIONS

Target Tax Allocations for Partnerships and Limited Liability Companies
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For decades, tax practitioners viewed the rules of partnership taxation, which generally apply to both partnerships and limited liability companies, as the ground for aggressive tax planning. At the heart of the strategy was a focus on a company's allocation methods rather than its partner performance. This conventional approach recognized significant tax planning opportunities and typically bore the tax burden with the aim of maximizing operating profits. The Treasury has done with the development and internalized with its promulgation of final regulations under Section 704(b).

In This Issue

- Target Tax Allocations for Partnerships and Limited Liability Companies
- Estate Planning After the Tax Act of 2010
- Out of Sight Isn't Out of the IRS's Mind: The Expanding Universe of Foreign Disclosure Requirements
- Spotlight on Asset-Rich Beneficiaries
- Attorney Rob Willbark

Estate Planning After the Tax Act of 2010
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President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 on December 17, 2010 (the Act). This highly important legislation was enacted to reduce the amount of the tax rates established by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). EGTRRA had resulted a series of steadily increasing estate tax exemption amounts and steadily decreasing rates, which culminated in regard of the estate tax for one year (2010), followed by a reinstatement of the 2001 tax rates in 2011.

Chief among the purposes of the Act was a reinstatement of the estate tax, but with some favorable provisions. As in 2001, the estate tax applies to the gross estate of the decedent less the amount of allowable deductions. The tax provisions of the Act are set to expire on December 31, 2012. Whether or not the Act will sunset on that date, causing the rates to revert to pre-2010 levels, is unclear. So, unless the Congress acts, there may be little advantage of the Act's favorable provisions.

Out of Sight Isn't Out of the IRS's Mind: The Expanding Universe of Foreign Disclosure Requirements
Michael S. Foster 2012.03.01
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Taxpayers who fail to comply with U.S. income tax and foreign asset reporting requirements face draconian civil and criminal penalties, and enforcement of these requirements receives priority for the IRS. For example, violating offshore tax evasion leads the list of operational priorities for the IRS. Critical investigative direction for the 2011 fiscal year for the IRS began in early January 1, 2011, another disclosure requirement takes effect for taxpayers with interest in a foreign account.

Under U.S. income tax law, U.S. citizens and residents must report and pay U.S. income tax on their worldwide income, not just income originating in the U.S. Also, U.S. banking and income tax laws require filing of yearly information return disclosing ownership of certain foreign accounts and assets. Failure to report foreign income or file required information returns can result in severe civil and criminal penalties, even where no tax is due. Following is a brief discussion

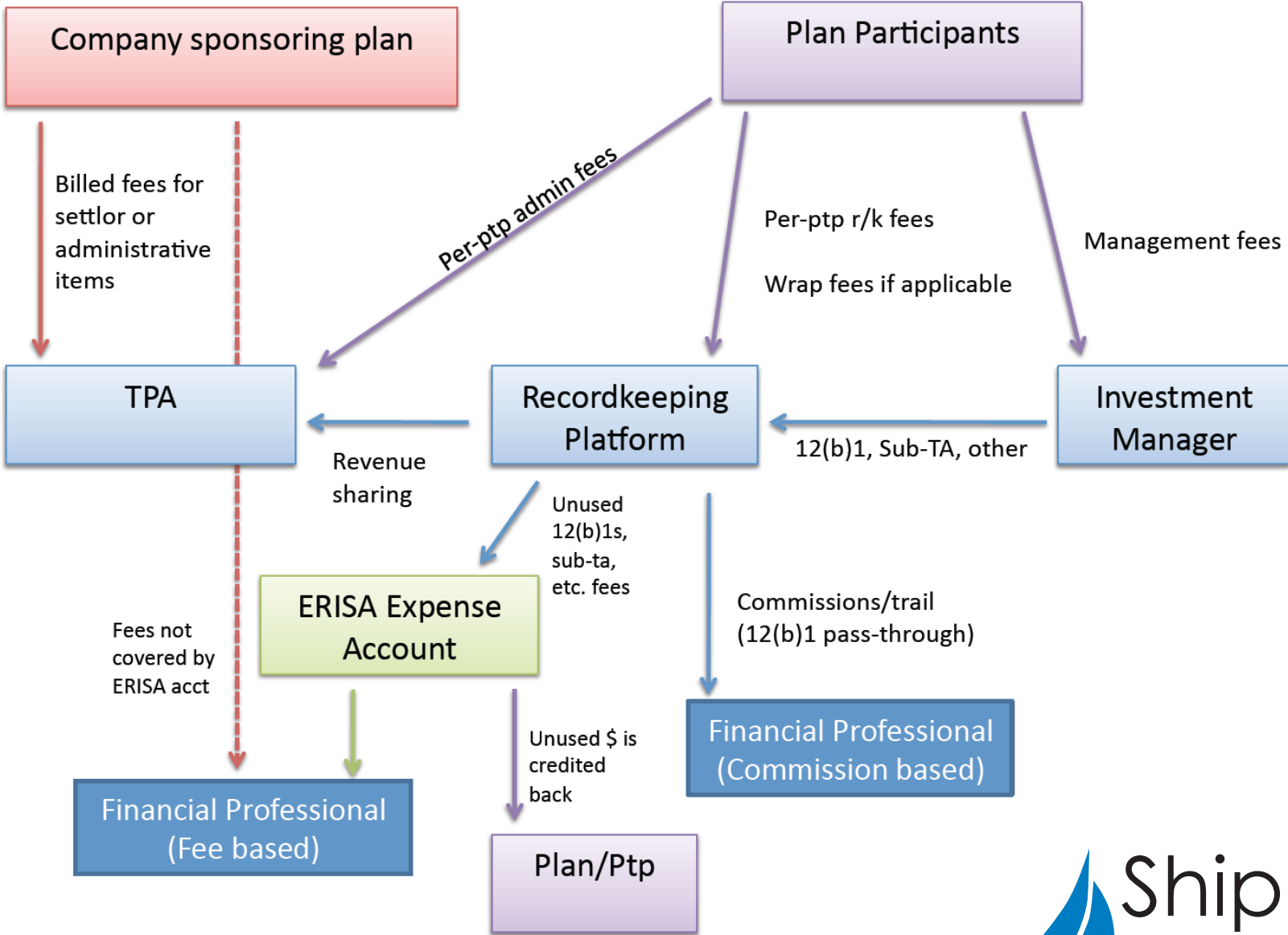
PLAN COST COMPONENTS

INVESTMENT MANAGEMENT FEES	PLAN ADMINISTRATION AND RECORDKEEPING EXPENSES	PLAN START-UP OR CONVERSION COSTS	INVESTMENT CONSULTING / PLAN ADVICE EXPENSES
<ul style="list-style-type: none"> • Mutual Funds • Collective Trust Funds • Annuities • Separately Managed Accounts 	<ul style="list-style-type: none"> • Processing Recordkeeping • Participant Education, VRU, website • Trustee/Custodial Services • Compliance Testing • Plan Documents and Amendments • Distributions & Contribution Administration 	<ul style="list-style-type: none"> • Initial Plan Design • Education and Enrollment • Installation • Plan Document/Filing • Changes in Plan Services 	<ul style="list-style-type: none"> • Benchmarking, vendor search • Due Diligence, Hiring, Retaining, Monitoring of Funds & Investment Managers • Investment Policy Statement Preparation • Fund & Investment Manager Fee Negotiation • Education Strategy

OTHER FEES (LEGAL AND ACCOUNTING)

- Plan Audit Fees
- Attorney/legal fees
- Union Negotiations
- Penalties
- Plan design studies

FEE FLOW IN A RETIREMENT PLAN (UNBUNDLED)



Follow the Money – (Hypothetical Example)

Examining a sample plan, and following the math step-by-step, will help illustrate how dollars flow between various entities. This sample plan features the common objective of having plan revenue pay all costs, with no hard-dollar fees paid by the sponsor or participants.

Sample Plan – XYZ Client

Plan Objective: No out-of-pocket cost for plan sponsor or participant

Total Plan Assets:	\$10,000,000
Investment Lineup:	Predominantly Mutual Fund A-Share Classes
Participants:	350
Administrative and Recordkeeping Fee:	\$12,500
Broker Compensation:	Commission-based payment from the mutual fund 12b-1 fees

The complete revenue and expense statement for the XYZ Plan is shown below:

XYZ Plan Expenses and Fee Credit Analysis

Fund Name	Fund Balance	Plan Participants	Expense Ratio	Net Fund Expense	12b-1 Fee	Shareholder Servicing	Sub-TA Fee Credits	Total Revenue Credit
Large Cap Growth Fund	\$1,000,000	175	0.0133	\$13,300	0.0025	0.002	\$ 875	\$5,375
S&P 500 Fund	\$2,000,000	275	0.0059	\$11,800	0	0.001	\$1,375	\$3,375
Large Cap Value Fund	\$1,750,000	200	0.0123	\$21,525	0.0025	0.002	\$1,000	\$8,875
Mid Cap Growth Fund	\$ 250,000	125	0.0162	\$ 4,050	0.0025	0.002	\$ 625	\$1,750
Mid Cap Core Fund	\$ 350,000	200	0.0144	\$ 5,040	0.0025	0.002	\$1,000	\$2,575
Mid Cap Value Fund	\$ 400,000	100	0.0135	\$ 5,400	0.0025	0.002	\$ 500	\$2,300
Small Cap ABC Fund	\$ 700,000	150	0.0140	\$ 9,800	0.0025	0.002	\$ 750	\$3,900
International Large Cap Fund	\$ 650,000	125	0.0150	\$ 9,750	0.0025	0.002	\$ 625	\$3,550
Intermediate Bond Fund	\$ 530,000	250	0.0094	\$ 4,982	0.0015	0.002	\$1,250	\$3,105
Stable Value Fund	\$1,700,000	120	0.0075	\$12,750	0	0.002	\$ 600	\$4,000
Target Date 2020	\$ 70,000	15	0.0114	\$ 798	0.0025	0.002	\$ 75	\$ 390
Target Date 2030	\$ 150,000	25	0.0118	\$ 1,770	0.0025	0.002	\$ 125	\$ 800
Target Date 2040	\$ 300,000	25	0.0120	\$ 3,600	0.0025	0.002	\$ 125	\$1,475
Target Date 2050	\$ 150,000	5	0.0122	\$ 1,830	0.0025	0.002	\$ 25	\$ 700
	\$10,000,000			\$106,395	\$15,220	\$18,000	\$8,950	\$42,170

Total Annual Recordkeeping and Reporting Fee	\$12,500
Annual Investment Advisor Fee (flat dollar)	\$ -
Annual Investment Advisor Fee (asset-based fee)	\$15,220
Total Annual Recordkeeping, Reporting and Investment Advisor Fees	\$27,720
Less: Total Revenue Credit Offset	\$(42,170)
Annual Net Plan Credit (or Annual Additional Fee Due)	\$14,450

Step 1

Expenses of a Single Mutual Fund on the Platform

A good first step in understanding total plan revenue and expense is to look at a typical fund in the XYZ plan.

Small Cap ABC Fund Fee Analysis (from chart on previous page)

A Class Shares Expense Example		
Management Fee	0.80%	<ul style="list-style-type: none"> • 0.60% retained by Small Cap ABC investment manager • 0.20% paid to recordkeeper (shareholder servicing)
Distribution (12b-1) Fees	0.25%	<ul style="list-style-type: none"> • Paid to dealer of record for sales and marketing support by a commission-based financial advisor
Other Fees	0.35%	<ul style="list-style-type: none"> • \$5 per participant paid to recordkeeper (Sub-T/A fees) • Remainder retained by Small Cap ABC Fund
Total Operating Expenses	1.40%	

Management Fee (0.80%)		Distribution (12b-1) Fee (0.25%)	Other Fee (0.35%)	
\$700,000 @ 0.80% = \$5,600		\$700,000 @ 0.25% = \$1,750	\$700,000 @ 0.35% = \$2,450	
Retained by Small Cap ABC Fund for investment manager (0.60%)	Paid to recordkeeper for shareholder servicing (0.20%)	Paid to dealer of record	\$5 per participant paid to recordkeeper (Sub T/A Fees)	Retained by Small Cap ABC Fund
\$4,200	\$1,400	\$1,750	\$750	\$1,700
Total Small Cap ABC Fund Expenses Paid by Plan Participants = \$9,800 (1.40% of \$700,000)				

Next, translate these percentages into dollar terms for the Small Cap ABC Fund:

Total Plan Assets Invested in Small Cap ABC Fund – \$700,000

Total Plan Participants in Small Cap ABC Fund – 150

Step 2

Understanding the Total Revenue Credit

In this example, Small Cap ABC Fund retains \$6,110 in revenue (\$4,410 management fee + \$1,700 in other fees) and the dealer of record is paid \$1,750 (12b-1 fees). The remaining revenue of \$2,150 represents revenue sharing, which may be used by plan providers to offset plan fees such as recordkeeping and other plan charges. The amount of the 12b-1 and other revenue sharing is shown as a Total Revenue Credit in the XYZ Plan.

Who	What	How Much
Dealer of Record	Distribution and marketing (12b-1) revenue paid to Financial Advisor's dealer, a percentage of which is paid to the broker of record	\$1,750
Recordkeepers	Revenue shared with recordkeepers to offset fees associated with plan administration	\$1,400 Shareholder Servicing \$ 750 Sub T/A Fees \$2,150
Total Revenue Credit	\$3,900 or 56 basis points	39% of total expenses

Who gets 12b-1 revenue?

A recordkeeper can also be paid from a 12b-1 pool. If the recordkeeper receives a payment from a 12b-1 pool, it may be used to offset administration fees or paid to a financial advisor for servicing the plan.

Step 3 and Step 4

Total Revenue Credit and Expenses for XYZ Plan

Adding the revenue-sharing dollars produced by 12b-1, shareholder servicing and sub T/A features for all funds in the XYZ Plan produces a Total Revenue Credit of \$42,170. As mentioned earlier, this credit represents the amount available to offset other plan costs. In the XYZ Plan example, the other fees total \$27,720 and are composed of recordkeeping/administration costs (\$12,500) and investment advisor commission fees (\$15,220).

Since the Total Revenue Credit of \$42,170 exceeds recordkeeping/administration costs and investment consulting fees, the XYZ Plan meets the objective of having plan revenue pay for plan operating costs.

If you've done a good job, the Total Revenue Credit should approximate total plan fees. If you end up with excess credits, consider the following:

- Find a share class of funds with lower expenses or revenue-sharing arrangements.
- Use any excess credit to pay for additional participant education programs or to enhance other participant materials (such as information on plan investment options or other aspects of retirement planning).

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
February 2012

Final Regulation Relating to Service Provider Disclosures Under Section 408(b)(2)

The Employee Retirement Income Security Act (ERISA) requires plan fiduciaries, when selecting and monitoring service providers and plan investments, to act prudently and solely in the interest of the plan's participants and beneficiaries. Responsible plan fiduciaries also must ensure that arrangements with their service providers are "reasonable" and that only "reasonable" compensation is paid for services. Fundamental to the ability of fiduciaries to discharge these obligations is obtaining information sufficient to enable them to make informed decisions about an employee benefit plan's services, the costs of such services, and the service providers.

Background

- The Employee Benefits Security Administration (EBSA) is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of ERISA.
- The agency oversees approximately 718,000 private pension plans, including 498,000 participant-directed individual account plans, such as 401(k)-type plans.
- In recent years, arrangements for how services are provided to employee benefit plans and how service providers are compensated (e.g., through revenue-sharing and other arrangements) have become increasingly complex.
- Many of these changes have improved efficiency and reduced the costs of administrative services and benefits for plans and their participants. However, the complexity resulting from these changes has made it more difficult for many plan sponsors and fiduciaries to understand how, and how much, service providers are compensated.
- This final rule establishes, for the first time, specific disclosure obligations for plan service providers to ensure that responsible plan fiduciaries are provided the information they need to make better decisions when selecting and monitoring service providers for their plans.
- EBSA published an interim final rule (IFR) on July 16, 2010, and thereafter received approximately 45 written comments from plan sponsors, fiduciaries, service providers, financial institutions, and various industry representatives of employee benefit plans and participants. The final rule replaces the IFR with minor changes and revisions.

Overview of Final Regulation

- The final rule requires covered service providers (CSPs) to provide responsible fiduciaries with information they need to:
 - Assess reasonableness of total compensation, both direct and indirect, received by the CSP, its affiliates, and/or subcontractors;
 - Identify potential conflicts of interest; and
 - Satisfy reporting and disclosure requirements under Title I of ERISA.
- The final rule applies to ERISA-covered defined benefit and defined contribution pension plans. It does not apply to simplified employee pension plans (SEPs), SIMPLE retirement accounts, IRAs, and certain

annuity contracts and custodial accounts described in Internal Revenue Code section 403(b). The final rule does not apply to employee welfare benefit plans. EBSA intends to separately publish proposed disclosure requirements for welfare benefit plans in the future.

- The final rule applies to covered service providers who expect at least \$1,000 in compensation to be received for services to a covered plan. The final rule applies to the following covered service providers:
 - ERISA fiduciary service providers to a covered plan or to a “plan asset” vehicle in which such plan invests;
 - Investment advisers registered under Federal or State law;
 - Record-keepers or brokers who make designated investment alternatives available to the covered plan (e.g., a “platform provider”);
 - Providers of one or more of the following services to the covered plan who also receive “indirect compensation” in connection with such services:
 - Accounting, auditing, actuarial, banking, consulting, custodial, insurance, investment advisory, legal, recordkeeping, securities brokerage, third party administration, or valuation services.
- The final rule includes a class exemption from the prohibited transaction provisions of ERISA for responsible plan fiduciaries that enter into service contracts without knowing that the covered service provider (CSP) has failed to comply with its disclosure obligations. The class exemption requires that fiduciaries notify the Department of the disclosure failure. Fiduciaries can file the notice online at www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html.

Disclosure Requirements

Disclosure of Services and Compensation

- Information required to be disclosed by a CSP must be furnished in writing to a responsible plan fiduciary for the covered plan. The rule does not require a formal written contract delineating the disclosure obligations.
- CSPs must describe the services to be provided and all direct and indirect compensation to be received by a CSP, its affiliates, or subcontractors.
- “Direct compensation” is compensation received directly from the covered plan. “Indirect compensation” generally is compensation received from any source other than the plan sponsor, the CSP, an affiliate, or subcontractor.
- In order to enable a responsible plan fiduciary to assess potential conflicts of interest, CSPs who disclose “indirect compensation” also must describe the arrangement between the payer and CSP pursuant to which indirect compensation is paid. CSPs must identify the sources for indirect compensation, plus services to which such compensation relates.
- Compensation disclosures by CSPs will include allocations of compensation made among related parties (i.e., among a CSP’s affiliates or subcontractors) when such allocations occur as a result of charges made against a plan’s investment or are set on a transaction basis.
- CSPs must disclose whether they are providing recordkeeping services and the compensation attributable to such services, even when no explicit charge for recordkeeping is identified as part of the service “package” or contract.
- Some CSPs must disclose an investment’s annual operating expenses (e.g., expense ratio) and any ongoing operating expenses in addition to annual operating expenses. For participant-directed individual account plans, such disclosures must include “total annual operating expenses” as required under the Department’s new participant-level disclosure regulation at 29 CFR §2550.404a-5.
- The final rule contains a “pass-through” for investment-related disclosures furnished by recordkeepers or brokers. A CSP may provide current disclosure materials of an unaffiliated issuer of a designated

investment alternative, or information replicated from such materials, provided that the issuer is a registered investment company (i.e., mutual fund), an insurance company qualified to do business in a State, an issuer of a publicly-traded security, or a financial institution supervised by a State or Federal agency.

- Service providers may use electronic means to disclose information under the 408(b)(2) regulation to plan fiduciaries provided that the covered service provider's disclosures on a website or other electronic medium are readily accessible to the responsible plan fiduciary, and the fiduciary has clear notification on how to access the information.

Summary or Guide to Initial Disclosures

- EBSA strongly encourages CSPs to offer responsible plan fiduciaries a "guide," summary, or similar tool to assist fiduciaries in identifying all of the disclosures required under the final rule, particularly when service arrangements and related compensation are complex and information is disclosed in multiple documents.
- EBSA has included a Sample Guide as an appendix to the final rule that can be used on a voluntary basis by CSPs as a model for such a guide.
- EBSA intends to publish a notice of proposed rulemaking in the near future under which covered service providers may be required to furnish a guide or similar tool to assist responsible plan fiduciaries' review of initial disclosures. EBSA did not adopt such a requirement at this time and will request comments and specific data from interested persons on how to cost effectively structure a guide or similar requirement.

Ongoing Disclosure Obligations

- Changes: Generally, CSPs must disclose changes to initial information as soon as practicable, but no later than 60 days from when the CSP is informed of such change. Disclosures of changes to investment-related information are to be made at least annually.
- Reporting and Disclosure Requirements: Service providers must disclose compensation or other information related to their service arrangements upon the request of the responsible plan fiduciary or plan administrator, reasonably in advance of the date upon which such person states that they must comply with ERISA's reporting and disclosure requirements.

Disclosure Errors

- The final rule allows for timely corrections of an error or omission in required disclosures when a CSP is acting in good faith and with reasonable diligence. Such corrections must be made not later than 30 days from the date that the CSP knows of the error or omission.

Overview of Changes from Interim Final Regulation

- The final rule reflects a number of technical and other changes in response to comments received on the interim final rule, including the following:
 - An exclusion for certain Internal Revenue Code section 403(b) annuity contracts and custodial accounts;
 - Expansion of the information that must be disclosed concerning a CSP's receipt of indirect compensation to include a description of the arrangement between the payer and the CSP pursuant to which indirect compensation will be paid;
 - Conformance of investment-related disclosures for covered plans' designated investment alternatives to the requirements of the Department's participant-level disclosure regulation; and
 - A separate provision for the disclosure of changes to investment-related information, which must be updated at least annually.

- For a more detailed discussion of these and other changes, see EBSA's release entitled "Changes to Final Fee Disclosure Rule" (February 2012).

Costs and Benefits of the Final Regulation

- EBSA estimates that significant benefits will result from the reduced time and cost for fiduciaries to obtain compensation information needed to fulfill their fiduciary duties, the discouragement of harmful conflicts of interest, reduced information gaps, improved decision-making by fiduciaries about plan services, enhanced value for plan participants, and increased ability to redress abuses committed by service providers. These benefits will outweigh the costs associated with the rule.
- EBSA estimates that the final rule will be economically significant. The non-discounted costs for the first year are estimated to be approximately \$164 million. The first year costs are attributable to reviewing and analyzing the regulation, conducting a compliance review to ensure that service providers comply with the regulation, and preparing and delivering any new disclosures required by the regulation. The Department estimates that 50 percent of the disclosures will be mailed at a first year cost of \$9.5 million for materials and postage. Costs in the second and subsequent years are expected to fall to an estimated \$43 million (\$1.5 million attributable to materials and postage costs).

Effective Date; Impact on Participant-Level Disclosures

- The final regulation is effective for both existing and new contracts or arrangements between covered plans and CSPs as of July 1, 2012. The IFR's April 1 effective date was extended to July 1, 2012 in order to allow CSPs more time to respond to the specific changes made to the IFR, which are contained in the final rule. Service providers not in compliance as of July 1, 2012, will be subject to the prohibited transaction rules of ERISA section 406 and Internal Revenue Code section 4975 penalties.
- Plan administrators are reminded that the final rule's new July 1 effective date also will impact when disclosures must first be furnished under EBSA's participant-level disclosure regulation (29 CFR § 2550.404a-5). The transitional rule for the participant-level disclosure regulation was revised in July 2011 so that the first disclosures would follow the effective date of the 408(b)(2) regulation. Consequently, for calendar year plans, the initial annual disclosure of "plan-level" and "investment-level" information (including associated fees and expenses) must be furnished no later than August 30, 2012 (i.e., 60 days after the 408(b)(2) regulation's July 1 effective date). The first quarterly statement must then be furnished no later than November 14, 2012 (i.e., 45 days after the end of the third quarter (July through September), during which initial disclosures were first required). This quarterly statement need only reflect the fees and expenses actually deducted from the participant or beneficiary's account during the July through September quarter to which the statement relates.

APPENDIX to §2550.408b-2(c) – Sample Guide to Initial Disclosures

ABC Service Provider, Inc. (ABC)
Guide to Services and Compensation
Prepared for the XYZ 401(k) Plan

The following is a guide to important information that you should consider in connection with the services to be provided by ABC to the XYZ 401(k) Plan.

Should you have any questions concerning this guide or the information provided to you concerning our services or compensation, please do not hesitate to contact [*enter name of person and/or office*] at [*enter phone number and/or email address*].

Required Information	Location(s)
Description of the services that ABC will provide to your Plan.	Master Service Agreement § 2.4, p. 1
A statement concerning the services that ABC will provide as [<i>an ERISA fiduciary</i>][<i>a registered investment adviser</i>].	Master Service Agreement § 2.6, p. 2
Compensation ABC will receive from your Plan ("direct" compensation).	Master Service Agreement § 3.2, p. 4
Compensation ABC will receive from other parties that are not related to ABC ("indirect" compensation").	Master Service Agreement § 3.3, p. 4 Stable Value Offering Agmt § 3.1, p. 4
Compensation that will be paid among ABC and related parties.	Master Service Agreement § 3.5, p. 6
Compensation ABC will receive if you terminate this service agreement.	Master Service Agreement § 9.2, p. 11
The cost to your Plan of recordkeeping services.	Master Service Agreement § 3.4, p. 5

Required Information	Location(s)
<p>Fees and Expenses relating to your Plan's investment options.</p> <p>*Total Annual Operating Expenses</p>	<p>(1) <u>Capital and Income Fund</u></p> <p>Trans. Fees: InvestCo Prospectus, Fund Summary, p. 2 TAE: * InvestCo Prospectus, Fund Summary, p. 2</p> <p>(2) <u>International Stock Fund</u></p> <p>Trans. Fees: www.weblink/ABCProspInv2/trans.com TAE: www.weblink/ABCProspInv2/taoe.com</p> <p>(3) <u>Small Cap Fund</u></p> <p>Trans. Fees: www.ABCweblink/ProspInv3/trans.com TAE: www.weblink/ABCProspInv3/taoe.com</p> <p>(4) <u>Bond Market Index Fund</u></p> <p>Trans. Fees: www.weblink/ABCProspInv4/trans.com TAE: www.weblink/ABCProspInv4/taoe.com</p> <p>(5) <u>Stable Value Fund</u></p> <p>Trans. Fees: Stable Value Offering Agmt, § 2.4, p. 3 TAE: Stable Value Offering Agmt, § 2.3, p. 3</p> <p>(6) <u>Money Market Fund</u></p> <p>Trans. Fees: www.weblink/ABCProspInv6/trans.com TAE: www.weblink/ABCProspInv6/taoe.com</p>

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								
Name/ Type of Option	Average 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	
Bond Funds								
E Fund/ Bond Index www. website	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.

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 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.

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 As a Per % \$1000	Shareholder-Type Fees
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/ International Stock	0.79%	\$7.90	5.75% sales charge subtracted from amounts invested.
D Fund/ Mid Cap ETF	0.20%	\$2.00	4.25% sales charge subtracted from amounts withdrawn.
Bond 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.
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 Web site 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	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.	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 anv

	<p>you own 30 shares at age 65, you will receive \$300 per month over your life.</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>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>
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<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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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.

Benchmarking Considerations/Resources

Conduct periodic benchmarking studies

Examine various aspects of the plan:

Quantitative

Costs
Participation rates
Plan design comparative to expense

Qualitative

Types/quality of services
Availability of services
Participant services

Consider using a consultant and/or financial advisor

Third party services:

- Make sure you're comparing apples to apples
 - Plan size and structure
 - Industry
- Make sure data is "fresh"
- Make sure the comparison group is big enough

Additional resources:

Pension Data Sources: www.401ksource.com 401k Averages Book (updated annually), 401k Averages Book Fee Worksheet, 401k Book Service Summary Worksheet

Ann Schleck & Co (www.annschleck.com)

- Monarch Online Fee Benchmarker – online tool that compares advisor/consultant fees (both commission and fee-for-service) to a database of industry norms for a selected plan size
- Monarch Advisor Fee Almanac – provides fee benchmarking information on advisor fee trends, methods, and pricing norms, along with over 20 fee and service illustrations for defined contribution plans ranging in size from startup to \$500 MM in assets.

BrightScope (www.brightscope.com) - based on plan audit information (2 years old) and proprietary metrics

Fiduciary Benchmarks, Inc – (www.fiduciarybenchmarks.com) considers fees, services, support and success measures across Benchmarks Reports, based on real plan data from a cross section of service providers

Department of Labor (www.dol.gov) - Understanding Plan Fees, free plan lookup

Profit Sharing Council of America's Annual Survey: (<http://www.pasca.org/401-k-plan-research>) A comprehensive annual survey of profit sharing and 401(k) plans. The results of these surveys helps 401(k) and profit sharing plan sponsors identify the latest industry trends and benchmarking data.

Full Disclosure on Fee Disclosures



Courtenay Shipley, AIF, CRPS
Shipley Capital Advisory



Agenda



- Quick background
- Dissecting plan fees
- Cost components
- Tussey v ABB
- What to do next



The Why?

- ERISA (Employee Retirement Income Security Act) says plan sponsors must...
 - Act prudently & solely in the best interest of participants and beneficiaries
 - Ensure services are necessary and pay “reasonable” fees for them
 - Section 408(b)(2) outlines *reasonable* service relationships

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The Why?

- Service providers can provide services to a plan if:
 - Services are *necessary* for the establishment or operation of the plan
 - Compensation is *reasonable* for the services provided
 - The arrangement or contract is *reasonable*

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The Why?

- But...it's complicated.
 - DOL: let's make it easier by requiring disclosures about who's getting paid to do what and how much
 - More information = better decisions

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The Who?

Two components affect your fiduciary duties and compliance responsibilities to your plan and participants:

1

Service provider disclosure regulations (for you)

408(b)(2)

Applicability date: 7/1/2012

2

Participant disclosure regulations (for your employees)

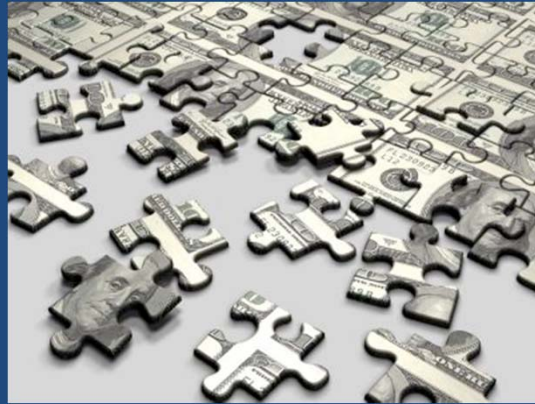
404(a)

Applicability date: 8/30/2012 for calendar year plans

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Retirement Plan Costs



Cost Components 101

Investment Management Fees	Plan Administration and Recordkeeping Expenses	Plan Start-up or Conversion Costs	Investment Consulting/Plan Advice Expenses
Mutual Funds Collective Trust Funds Annuities (GWB) Separately Managed Accounts	Processing Recordkeeping Participant Education, VRU, website Trustee/Custodial Services Compliance Testing Plan Documents and Amendments Distributions & Contribution Administration	Initial Plan Design Education and Enrollment Installation Plan Document/Filing Changes in Plan Services	Benchmarking, vendor search Due Diligence, Hiring, Retaining, Monitoring of Funds & Investment Managers Investment Policy Statement Preparation Fund & Investment Manager Fee Negotiation Education Strategy



Cost Components 101

- Other Fees (legal and accounting)
 - Plan Audit Fees
 - Attorney/legal fees
 - Union Negotiations
 - Penalties
 - Plan design studies



How Fees Are Calculated

Fee Type	Charges Based On:	Examples
Asset-based	Amount of plan assets, in % or basis points (1bps = .01%)	Investment expense, contract/annuity fee
Per-person	# of participants in the plan or # eligible	Administration, processing
Transaction-based	Execution of a service or transaction	Loan fee, plan amendment
Flat rate	Fixed charge	Annual audit fee

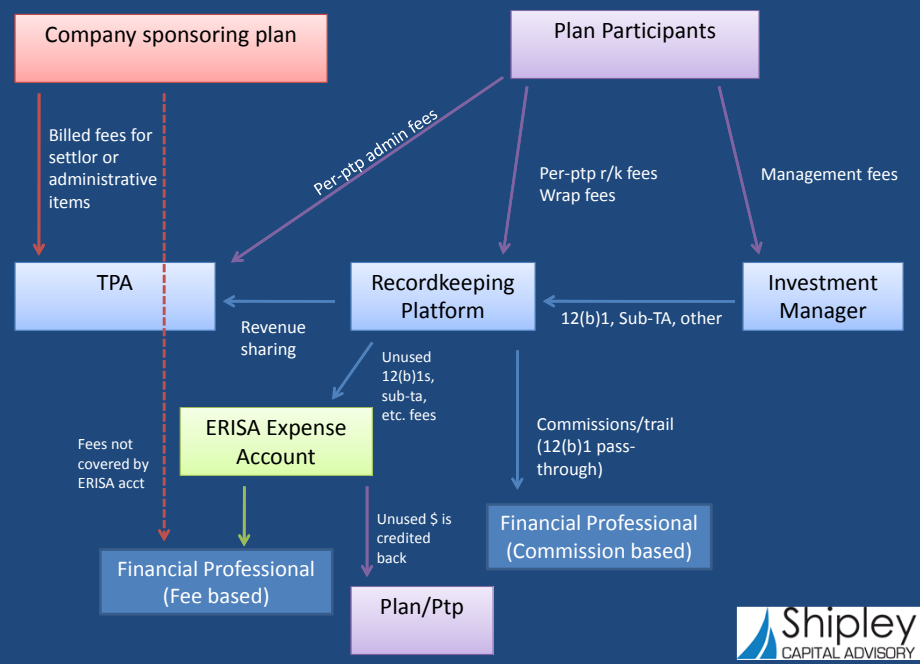


Follow the money

- “Direct” fees: bill, stated, direct from plan
- “Indirect” fees: from other sources
 - Built-in, hidden, revenue sharing agreements, “your plan is free,” etc.
 - Revenue Sharing: a portion of investment fees are used to subsidize the cost of plan administration.



Fee Flow in a Retirement Plan (Unbundled)



Sample expense breakdown (Mutual fund)

Small Cap ABC Fund Fee Analysis		
Management Fee	0.80%	0.60% retained by Small Cap ABC investment manager 0.20% paid to recordkeeper (shareholder servicing)
Distribution (12-b1) Fees	0.25%	Paid to dealer of record for sales and marketing support by a commission-based financial advisor
Other Fees	0.35%	\$5 per ptp paid to recordkeeper (Sub-T/A fees) Remainder retained by Small Cap ABC Fund
Total Operating Expenses	1.40%	



What that means to the plan:

Management Fee (0.80%)		Distribution/12-b1 Fee (0.25%)	Other Fees (0.35%)	
\$700,000 x .0080 = \$5600		\$700,000 x .0025 = \$1750	\$700,000 x .0035 = \$2450	
Retained: .60% inv. mgr	To R/K: .20% Rev Share	To dealer of record (to pay broker)	\$5/ptp to R/K: Sub T/A	Retained
\$4200	\$1400	\$1750	\$750	\$1700
Total paid in ABC Small Cap Fees by Participants = \$9800 (1.40% of \$700,000)				

Hypothetically, if the plan costs \$10,000 in recordkeeping and administration, so far we have \$1,400 + \$750 = \$2,150 to apply to that amount.

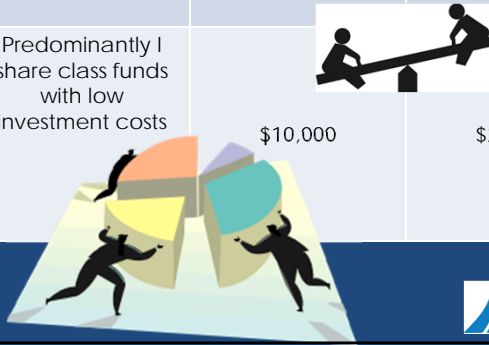
...we still need \$7,850!



How It Impacts the Participant

Plan Cost: \$37,500

Objective	Share class	Participants pay thru mutual fund revenue sharing	Plan Sponsor Pays
Plan revenue pays for all expenses, with <u>no out of pocket fees</u> for the plan sponsor or participants	Predominantly A share class funds with revenue sharing	\$42,170	\$0
Provide <u>the lowest investment cost</u> option with sponsor paying hard-dollar expenses not absorbed by plan revenue	Predominantly I share class funds with low investment costs	\$10,000	\$27,500

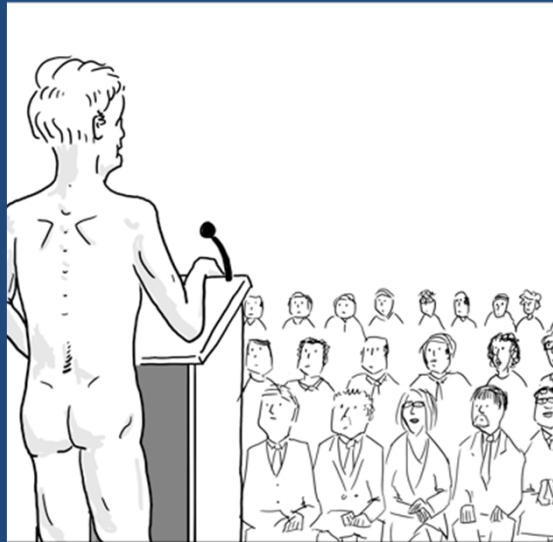


Quick Review:

- DOL's Purpose: to help plan sponsors make better decisions and provide info to meet ERISA's "reasonable" fee mandate
- Plans aren't free. Fees are paid directly or indirectly. Providers might share fees.
- Typically participants bear costs unless the plan sponsor makes up the difference.
- You're about to receive more info that should help you decipher your plan's total cost: a starting point for "reasonable"

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So – what do I mean when I talk about “radical transparency”?



Real Life: Tussey v ABB, Inc

Overview

- 3/31/12: 81-page discussion of how a retirement committee should conduct its fiduciary business
- Involved 2 401(k) profit sharing plans of ABB, Inc., \$1.4+ billion in assets and approx 17,000 participants
- Fiduciary retirement committee of ABB selected the investment funds and administrative platform (Fidelity)
- Bundled: Fidelity was TPA, recordkeeper, and provided investments
- Collected revenue sharing from the mutual funds, including 12b-1 fees, and some per-participant fees



Real Life: Tussey v ABB, Inc

What went wrong

- No comparison of expense ratios or revenue sharing, other than to ensure no bill to ABB
- IPS did more harm than good: removal procedures, low cost
- No independent investment advisor; looked to Fidelity for information (Fidelity looked out for their own interests, not the participants)
- Fidelity retained all revenue sharing. The committee didn't know how much or that the plan was paying above the market for services.



Result

- *Committee Members Personally Liable:* \$35 million of the damages awarded to the plaintiffs is the personal liability of the members of the committee.
- Fidelity Trust was also found liable as a fiduciary for retaining \$1.7 million in "float" interest that it retained





Strategy

- July 1 Plan Sponsor Information
 - Potential Issues:
 - Completeness
 - Format
 - Context
 - Is cheaper better?
 - Not necessarily



Strategy

- Plan Sponsor information:
 - Put the information in context
 - Map it out
 - Ask questions, check the numbers
 - Which services are attached to what?
 - Consider asking for a fee review
 - Consider benchmarking your plan
 - Informally – second opinion
 - Formally – 3rd party service, like plans, like industry
 - Build your fiduciary file

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Benchmarking...

What are you comparing?

- Item 1 is 3x Item 2 in quantity
- Item 1 is half the price of Item 2
- Item 1 requires 3x as much time as Item 2
- Item 3 is 500xs as much in quantity, half the price of Item 1, 50xs as much in time



Strategy

- Participant Strategy
 - Help from recordkeeper
 - Incorporate into education
 - Use 3rd party pieces/people
 - You don't have to take our word for it...
 - Put it in context for them:
 - Timeliness, accuracy, statements, website, people, etc
- Documentation for your files!

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Final Review

- Understand your service providers' compensation and services, and identify potential conflicts of interest
- Deadlines:
 - 7/1/12 Plan sponsor disclosures
 - 8/30/12 Participant disclosures (calendar year plans)
- Use resources provided today!
 - Our toll-free number: 888-339-1411

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Questions?
Questions?
Questions?



Disclosures

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