Advisory Council on Employee Welfare and Pension Benefits Plans
(the "Council")
Mandatory Participant Disclosures - June 7, 2017 (v. June 13, 2017 FINAL)

ABA Retirement Funds Program (Background and Demographics)

The ABA Retirement Funds ("ABA RF") sponsors the ABA Retirement Fund Program (the "Program"), which is a fully-bundled retirement program available to lawyers and law firms that are members of the American Bar Association ("ABA") and related organizations. The Program offers to firm employees an array of investment choices through their adoption of a number of qualified defined contribution prototype plans, and comprehensive recordkeeping and related services to promote and support their plans. The Program offers the same services with the exception of maintenance of plan documents to non-prototype plans.

The ABA RF is an Illinois not-for-profit corporation formed in 1963 that is governed by a Board of Directors (the "Board") elected by the ABA Board of Governors.

Currently, about 3,900 employers have adopted the Program representing about $5.6 billion in total assets. The majority of plans have less than four employees and have adopted the Program's master trust (e.g., a kind of prototype plan). Approximately 30% of these employers meet the definition of sole proprietors and, therefore, their plans are not subject to the Employee Retirement Income Security Act of 1974, as amended (ERISA). The Program provides benefits to about 37,000 participants who are dispersed across the United States with about 80% being active participants in their respective plans. The majority of our participants are ages 40 to 60 with the remainder of the participants equally divided for ages less than 40 and greater than 60.

The Program is the premier-association sponsored retirement plan in the United States with characteristics of a large institutional defined contribution plan, as well as a retail retirement solution that is offered to small firms and sole proprietors. ABA RF has a four person internal staff that is located in Chicago. ABA RF also has outside legal counsel.

The Board meets quarterly and as needed to establish and monitor compliance with Program objectives and policies. The Board carries out its responsibilities through an organizational structure, which assigns specific Program operational segments to appropriate committees for research and recommendation to the Board.

The ABA RF outsources Program operations to a number of vendors and retains oversight responsibilities for these vendors. Voya Institutional Plan Services (Voya) provides recordkeeping and plan administration services to all of the plans in the Program.

Our comments relate solely to defined contribution plans using the Program's master and prototype plan and their participants. The Program is responsible for preparing the plan documents and having them approved by the IRS and for preparing the related summary plan descriptions ("SPDs"), which include the necessary 404(c) disclosures.

The recordkeeper issues quarterly participant statements and sends them out either through the mail or electronically, as elected by the participant. Also, the recordkeeper sends out the safe harbor notice regarding distributions to IRAs for amounts exceeding $1,000.

The Program distributes participant statements on a quarterly basis and prepares the DOL Regulation Section 2550.404a-5 ("404a-5") disclosure (along with the glossary, which is posted online) for all plans and sends it to all eligible employees on the Program's recordkeeping system (Voya). While the quarterly statements report fees deducted from participant accounts, plan sponsors are responsible for providing advance notice to participants of any changes in expenses described in the 404a-5 disclosure, which may be charged against their accounts that are not reflected in the annual operating expenses of the investment options.

The Program prepares and provides participant notice templates to plan administrators including: QDIA Notice, SPDs for prototype plans, summary of material modifications ("SMMs"), and a summary annual report.

While the Program offers online investment advice and managed accounts, its provider relies on the SunAmerica advisory opinion issued by the DOL and therefore is not required to provide additional disclosures to participants.

Viewpoint

The responses to these questions are compiled based on information from the ABA Retirement Funds, as Program sponsor, Program participants through the Program's most recent survey, and from the Program's plan administrators through feedback from client services representatives.

Voya Institutional Services, while represented at this meeting, is not testifying for management or for other Voya clients other than the ABA Retirement Funds Program, as its service provider for recordkeeping and administration services.

Witnesses

Scarlett Ungurean – Ms. Ungurean is the Executive Director of the ABA Retirement Funds Program and reports to the Board of Directors, the sponsor of the Program. She is responsible for the daily oversight of the Program.

Rebecca Chandler – Ms. Chandler, as Vice-President Client Services at Voya Institutional Plan Services, is responsible for assisting the plan administrators of the Program's largest plans, which number 316 and account for approximately half of the Program participants and assets.

Summary – Lessons to Consider for Future Disclosures

- Plan sponsors will always adhere to safe harbor format regardless of usefulness of layout or information for participants
- Participants are not likely to read and take time to understand disclosures whether the notice is sent once or annually; as a result, the frequency of communications should be limited
- Frequent communications, i.e., annual disclosures, do not mean that the communications are more useful to participants
- It is more likely that a participant will read a shorter disclosure
- Disclosure should be in the appropriate context and not lead participants to a specific decision
- Targeted, concise, and just in time disclosures are most effective to encourage participants to act
- The Council should not lose sight of the costs to comply with interpreting regulations and guidance issued by the DOL (including legal costs) and to comply with any associated disclosure requirements (including soft costs such as time required by employers, which interferes with a small business owners' focus on their businesses). While the issue of content of participant disclosures was addressed in the topic questions, the responsibility for the creation of the disclosures was not. The applicable disclosures should be required to be created by the most suitable party based on the nature of the content of the required disclosure. For example, recordkeepers or discretionary investment managers, if applicable, are best suited to create disclosures relating to investment option expense ratios and performance, as required by Section 404a-5. Therefore, these plan providers should be held accountable for the creation and accuracy of the disclosures, whereas, plan administrators should be responsible for their distribution. However, the disclosure of any "special charges" to participants by the plan sponsor, e.g., allocation of plan audit costs, should remain the responsibility of the plan administrator
- Where possible, authorize one government agency to manage all participant-related disclosures for simplification for the plan sponsors that are required to comply with disclosure regulations

Questions

A. Are there duplicative disclosure requirements and/or specific disclosures that could be eliminated or combined to relieve the burden on the plan sponsor and/or the participants/beneficiaries?

The frequency of issuance of the QDIA notice should be reconsidered. We recommend that plan participants receive the notice at the time of their eligibility to enroll in the plan(s) and it should not be required to be issued annually, unless the employers make any plan changes.

The information presented in the Summary Annual Report for a defined contribution plan is confusing for a participant and does not provide any valuable information for the reader; as a result, we recommend that it be eliminated. The same information, which is included in the plan's Form 5500, is already publicly available through the DOL website in the event a participant wanted to review the information provided in this report.

The SMM may or may not be of value to participants. For example, recently our Program had a change of trustee, a notice of which was sent out to all participants. This SMM referred to paragraphs in the SPD; however, the disclosure, while it legally conformed to the required disclosure, was not information that the participant could act on or would have an impact on the ultimate benefit received by the participant. We recommend that an SMM only be sent if the plan change has financial implications to participants.

While preparing for this meeting, I listed those disclosures that participants are required to receive. In some cases it required additional research to distinguish between DOL and IRS required disclosures. The need for completing this research illustrates that plan sponsors have many participant disclosure requirements to monitor and maintain from different government agencies, which is confusing for the plan sponsor; collaboration between the agencies, as related to mandatory participant disclosures would simplify the plan sponsor's monitoring.

The 404a-5 disclosure requires that performance information be included. Since this information is already provided to participants in their quarterly statements, it appears unnecessary to repeat this information. The timing of the disclosure (April in the case of the Program) reflects the most recent annual performance, not the most recent performance of the funds, which can cause confusion. Further, participants may be led to believe the best performing fund at the time is the most suitable option for them. This disclosure may be seen as nudging the participant to act in a manner that is not in the best interests of the participant. Participants tend to chase performance; the elimination of this information would significantly shorten the disclosure.

Recently, online equity trade commissions executed in the Program's brokerage window were reduced. 404a-5 disclosure required a notice be sent to participants advising them of the reduction. We believe given the nature of the change, that the requirement for this decrease in cost to be reported was unnecessary. We recommend only requiring the issuance of these types of notices if there is an increase in expenses to the participants.

B. Is the content of the disclosures understandable and are there specific recommendations and examples that can be provided to improve the communication of the content in existing disclosures?

D. Are the disclosures valuable to users and are the disclosures material to a participant's understanding of the plan and their decision making?

We have combined the responses to questions B. and D. since content and value of disclosures appear to have similar considerations.

While the 404a-5 disclosures have valuable information, they do not provide a context for participant's to make decisions.

- For example, the expense section of the disclosure drives participants to less expensive options, which in most cases would be indexed investment options.
- In addition, the returns section of the 404a-5 requires that plan sponsors use a broad market benchmark, which can be misleading. For example, for a 2050 Retirement Date Fund, the Program uses the S&P 500. There is no broad market benchmark to accurately reflect the underlying investment in the Fund, since it is composed of domestic equities (both large and small capitalization companies), international equities, and some non-traditional type investments. Since the Fund is mostly composed of equity securities we have chosen the most recognized equity benchmark available to the public.
- As indicated in previous question, the inclusion of performance may drive participants to select the highest performing fund without consideration as to whether that investment is suitable for their circumstances.
- Plan administrators have commented that the document is too lengthy, overwhelming for their participants, and they aren't confident that their participants are reading the disclosures.

Because of the structure of the Program and its long history, the Program has requirements under an SEC no action letter to provide disclosures generally required under SEC Form N1-A. While the requirement relates only to disclosures provided to plan sponsors, the Program voluntarily prepares and distributes an abbreviated summary of each investment fund to each participant. This disclosure not only provides the required disclosure under 404a-5, but provides additional information to allow a participant to make an informed decision regarding investment selection. An example of the summary disclosure for the Program's Large Cap Index Equity Fund is attached. However, in order to ensure compliance and avail plan sponsors of the safe harbor provided by the DOL, the Program also sends along the 404a-5 disclosure with each summary disclosure document.

The Program surveys Program participants on a regular basis. One of the questions related to comprehension of the 404a-5 fee disclosures provided to participants. While a large number of participants were surveyed (4,000), the response rate was low at 5.4%. However, of those respondents surveyed, 11% reported that they were dissatisfied with the disclosures, while 21% reported that they were indifferent with the remainder (68%) reported that they were satisfied or very satisfied. While the majority of the survey respondents had a positive response, the number of respondents must be considered. In addition, direct feedback from plan sponsors indicates that the plan sponsors believe that their participants are not reading the disclosure. Another question related to participants' satisfaction with information included in their quarterly account statements; 85% reported they were satisfied or very satisfied. While this response was extremely positive, we would contend that participants would continue to be satisfied and would even find it valuable if additional information were added to their statements; specifically, the translation of their balance to a personal pension amount or annual cash payout in retirement. Simply translating the existing amount using a conservative discount rate would provide valuable information to assist participants with their retirement planning. If recordkeepers are unable or unwilling to add this disclosure to the quarterly statements, we would recommend conveying this information separately to participants at least annually in perhaps a format consistent with social security disclosures, which are familiar to participants and may be more readily used for planning purposes.

C. Are disclosures readable in accordance with federal plain language guidelines?

The ABA RF uses an attorney to interpret all regulations and guidance issued by the DOL. As an organization that sponsors a retirement fund for the legal community with a governing Board comprised of attorneys it is very important that the participant disclosures be accurate. The interpretation of the regulations requires significant resources. For example, the interpretation and implementation of the 404a-5 regulations took over 6 months from commencement of the review of the regulations to issuance of the disclosures.

We recommend that the Council consider that there is a cost associated with each required disclosures to ensure compliance. Small businesses need assistance to comply with disclosures and may not have the resources to hire an attorney. These legal requirements are a barrier for small business to having a defined contribution plan. To assist small businesses, the main service provider to a plan should prepare the necessary disclosures and where appropriate prepare the necessary sample disclosure; otherwise costs can be prohibitive to comply with DOL regulations.

The Program completes a regular survey of a sample of its plan administrators. Ninety-eight percent of plan administrators that responded to the survey indicated that it was helpful for the Program to prepare and mail 404a-5 disclosures on their behalf. This response illustrates that small businesses value and benefit from assistance on this specific disclosure.

E. When should disclosures be made to participants to optimize the objective of the specific disclosures?

Disclosures should be made in a “just in time” fashion, i.e., delivered at the time it is most relevant to participants. The disclosure should be delivered when participants are actively considering their retirement plan options. This would be best delivered upon plan eligibility and enrollment.

See response to question A. regarding ABA RF’s opinion relating to the optimal distribution of certain disclosures.

For the SPD, it would be most beneficial to time the distribution of the disclosure to coincide with a participant’s life stage or other key event. For instance, the SPD should be kept current and distributed with the following timing:

- on request
- upon a change to the benefit provided to plan participants, e.g., a change to the employer match
- upon a change to the method or timing of allowable plan participant distributions, e.g., the addition of a hardship withdrawal provision

- at the time the employee becomes a participant in the plan

To increase the usefulness of this disclosure, it would be helpful to divide the allocation into a number of sections and have it distributed perhaps as follows to:

- new employees provide enrollment information, the benefit calculation and the employer match, i.e., information to assist a new employee to determine if he/she should participate in the plan; and
- participants age 60 provide information relating to distribution options and required minimum distributions or on request.

F. Should the disclosures indicate "Action Required"; "Action Requested"; "No Current Action Required"; "For Information Purposes Only" or other introductory comments to inform participants of their purpose?

Yes, the Program's practice is to include headings on our disclosures similar to those listed in the question. We believe it is valuable to direct participants' attention to the specific disclosure being issued, especially, as most disclosures, if not all, are "no action required".

G. Would a 'Summary'/Quick Start Guide" to disclosures help achieve the above objectives?

We don't believe that this type of document relating to disclosures would assist the majority of participants; it would simply represent another document, which participants would disregard or file with other plan related communications. From a plan sponsor perspective, it would result in another document that would need to be delivered to participants and maintained.

H. What is/are the most effective and efficient methods of design and distribution?

The most effective methods of communicating with participants are in a targeted manner and time sensitive manner. So, as noted above for the SPD, where possible, notices should only be sent as frequently as necessary and to the segment of the participant population for whom the disclosure is relevant.

For those participants that elect electronic distribution for their quarterly statements, the Program notifies participants monthly when their statements are available for review; otherwise, these statements are mailed. It would be most cost effective and efficient to distribute all statements electronically.

Other compliance information is sent electronically, where not legally prohibited, to those participants where email addresses have been provided; otherwise, disclosures are mailed to the participant's address of record.

The summary disclosure document referenced in B./D. above are sent annually by mail.

I. How do the above considerations differ between small, medium and large single and multiemployer plans?

From the Program's perspective, a participant is a participant, so we do not believe there are significant differences in the considerations for participants' disclosures in large, small, or multiemployer plans. However, in many cases large plans have staff to manage the disclosure process, whereas, small plans rely on others to assist them with the disclosures, which can result in a significant time commitment and out-of-pocket expense for small business owners.

Also, please refer to our comments noted in the response to C. above.

U.S. Equity Funds

Large Cap Index Equity Fund

Overview

The Large Cap Index Equity Fund seeks to replicate, before taking into account Fund expenses, the total rate of return of the S&P 500 by investing generally in securities included in that Index. **There can be no assurance that the Fund will achieve its investment objective.**

Investment Advisor

MTC has retained State Street Bank and Trust Company, through its SSGA division, to serve as Investment Advisor with respect to the Large Cap Index Equity Fund. The assets of the Fund are invested through the State Street S&P 500 Flagship Non-Lending Series Fund, which is a collective investment fund maintained by State Street Bank. MTC may, in the future and at its discretion, employ other Investment Advisors to provide investment advice with respect to the Fund.

Fees and Expenses of the Fund

The fees and expenses (expenses that you pay each year as a percentage of the value of your investment) that you may pay if you buy and hold Units of the Fund, as set forth in the Disclosure Document, are as follows:

	Total Annual Fund Operating Expenses	[redacted]	[redacted]
Large Cap Index Equity Fund	[redacted]	[redacted]	[redacted]

[redacted]

See the Disclosure Document under "Deductions and Fees" for more information about the Fund's annual operating expenses.

The table below demonstrates how expense ratios may translate into dollar amounts and helps you to compare the cost of investing in the Fund with that of investing in mutual funds or other investment products. Although your actual costs may be higher or lower, the table shows how much you would pay on an initial investment of $10,000 if estimated annual fund operating expenses remain the same as stated in the preceding table, you earn a 5% annual return on your investment in the Fund, and you hold your investment in the Fund for the periods noted.

[redacted]	1 Year	3 Years	5 Years	10 Years
Large Cap Index Equity Fund	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover rate may indicate higher transaction costs. These costs, which are not reflected in the annual fund operating expenses or in the above example, are reflected in the Fund's reported performance. See "Portfolio Turnover" in the General Information section for more information.

Principal Investment Strategies

The Fund invests in securities of U.S. companies included in the S&P 500 in approximately the same capitalization weights as they appear in that Index. The Fund, in addition to its equity investments, also generally maintains a position with a notional value of less than 5% of its assets in unleveraged S&P 500 stock index futures contracts. The S&P 500 represents approximately 80% of the U.S. equity market based on market capitalization. As of December 31, 2016, the largest company in the S&P 500 had a market capitalization of approximately $617.6 billion and the smallest such company had a market capitalization of approximately $2.4 billion. The S&P 500 is reconstituted on a periodic basis by the sponsor of the Index. Standard & Poor's Financial Services LLC, which sponsors the S&P 500, does not sponsor the Fund, and is not affiliated in any way with the Fund.

The Fund may concentrate in particular industries to the extent the S&P 500 concentrates in those industries.

The Fund may invest temporarily for defensive purposes in high-quality short-term fixed-income securities. These securities may also be used to invest uncommitted cash balances or to maintain liquidity to provide for redemptions.

Primary Risks

An investment in the Fund could lose money over short or even long periods. You should expect the Fund's Unit price and total return to fluctuate within a wide range, like the fluctuations of the overall U.S. stock market. The Fund's performance could be impacted by, among other things, the principal risks associated with its investment strategies and its specific investments.

The principal risks associated with the Fund include: Equity Securities, Large Cap Equities, Derivatives and Tracking Error Risk and Risks Associated with Index Investing. These risks are detailed in "Compilation of Principal Risks" section in the General Information section.

See the Disclosure Document under "Risk Factors" for more information about the risk factors associated with an investment in the investment options under the Program.

An investment in the Fund is not a deposit of a bank and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

Annual Total Returns

The following bar chart and table are intended to help you understand the risk of investing in the Fund by showing changes in performance from year to year. Past performance of the Fund is not a guarantee of future results. Shorter term performance swings are shown by inclusion of the highest and lowest quarterly returns occurring during the years depicted on the chart. Performance information is included for each full year in which the Fund has been in operation.

HIGHEST QUARTER RETURN

Return [redacted]

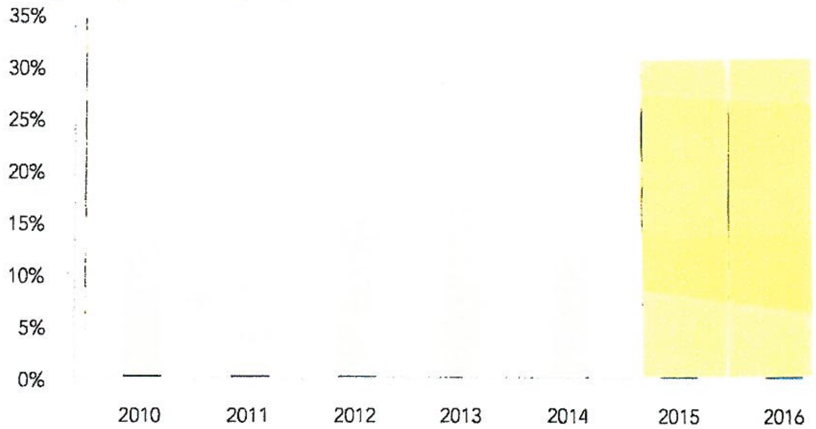
2nd Quarter [redacted]

LOWEST QUARTER RETURN

Return [redacted]

3rd Quarter [redacted]

Large Cap Index Equity Fund



Average Annual Total Returns

Refer to the Disclosure Document for information regarding how the average annual total returns of the Fund over one-year, five-year and ten-year periods ended December 31, 2016 (or since inception, if shorter) compare with those of a relevant market index that has investment characteristics similar to those of the Fund. After-tax returns are not included since the Program is available only to tax-qualified employee retirement plans exempt from federal income tax.

Updated performance information is available on the Program's website at **www.abaretirement.com** or by calling the Program toll-free at 800.348.2272.