## Advisory Council on Employee Welfare and Pension Benefit Plans

Report to the Honorable R. Alexander Acosta,
United States Secretary of Labor

# Mandated Disclosure for Retirement Plans – Enhancing Effectiveness for Participants and Sponsors

**November 2017**

## NOTICE

This report was produced by the Advisory Council on Employee Welfare and Pension Benefit Plans, usually referred to as the ERISA Advisory Council (the "Council"). The Council was established under section 512 of ERISA to advise the Secretary of Labor on matters related to welfare and pension benefit plans. This report examines Mandated Disclosure for Retirement Plans – Enhancing Effectiveness for Participants and Sponsors.

The contents of this report do not represent the position of the Department of Labor.

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## ABSTRACT

The 2017 ERISA Advisory Council ("Council") examined how to streamline the content and to make the delivery and availability of mandatory retirement disclosures more practical and effective. The Council focused on identifying concrete examples of improvements to the design and delivery of specific disclosures that could be applied in practice, with key principles that could be carried forward into future disclosures as they are developed. The work of the Council expanded on the findings of the 2005 and 2009 Councils, which examined communications to retirement plan participants and promoting retirement literacy and security by streamlining disclosures to participants and beneficiaries. Based upon testimony received during two sets of hearings supplemented by submissions of written material from interested stakeholders, the Council has provided recommendations for design and delivery improvements with respect to the Summary Plan Description, the Annual Funding Notice and the Summary Annual Report, and observations regarding best practices for efficient and effective participant communications.

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# EXECUTIVE SUMMARY

The 2017 ERISA Advisory Council ("Council") examined mandated retirement disclosures with the goal to improve the effectiveness and efficiency of the design and delivery of such disclosures. Building on the work of the 2005 and 2009 Councils, the Council sought to identify specific examples of mandated disclosures that could be simplified, eliminated or improved to achieve this objective. Over the course of two sets of witness hearings, the Council identified the Summary Plan Description (SPD), the Single Employer Annual Funding Notice (AFN), and the Summary Annual Report (SAR) as currently mandated routine retirement disclosures where effectiveness and efficiency could be improved and set forth recommendations in those areas. While the Council believes that the principles used to improve the disclosures mentioned above could be applied to other current and future mandated disclosures, the Council did not provide specific examples for other mandated disclosures.

The general theme of the findings of the Council, supported by witness testimony, was the need to make retirement disclosures more understandable and useful for participants and to organize information within the required disclosures to reflect life events so that information is available as the need arises. In addition, witnesses highlighted the additional need to strike a balance between providing too little information for participants to gain an adequate understanding of what the disclosure is trying to convey and providing too much information, which can become overwhelming and confusing.

For example, the intended purpose of the SPD is to provide summarized, accessible and reliable information to participants about their plan. However, several witnesses testified that the SPD, in its current form, contains far too much detail for a summary document. The Council proposes to address these objectives through the development of an alternative means of compliance by which the introductory portion of the SPD – referred to as the "Quick Reference Guide" – would be delivered annually to participants automatically, and the entire SPD or any full part of the SPD would be made available upon request. The Quick Reference Guide would be tailored around life event triggers, and would provide answers to basic questions about the plan.

With respect to defined benefit plan disclosures, the Council focused specifically on the Single Employer AFN, a complex multi-page disclosure containing detailed technical information about a defined benefit plan's funded status. Based on witness testimony, the Council drafted a modified model Single Employer AFN that reduces the overall size of the document and re-organizes the content with key information and a brief summary up-front and all other remaining information contained in an appendix.

Finally, while the AFN replaced the SAR disclosure requirement for defined benefit plans, the SAR is still required for defined contribution plans. The Council heard from most witnesses that the SAR does not provide defined contribution participants with helpful information about their own benefits. The Council recommends creating an alternative means for compliance by allowing plan administrators to provide a simple notification to participants about the availability

of the annual Form 5500, including instructions for how to access that filing, either as a stand-alone notification, or included as a part of other mandatory disclosure(s), such as the aforementioned Quick Reference Guide.

With these changes, the Council believes that these disclosures will be simplified and streamlined for plan participants, sponsors and administrators without sacrificing the quality of information that participants and other users of these mandatory disclosures receive.

## RECOMMENDATIONS

Based upon the testimony and research received and for the reasons stated, the Council recommends that the Department of Labor:

1. Provide plan sponsors and administrators with the option to comply with the Summary Plan Description and Summary of Material Modification requirements by distributing annually a "Quick Reference Guide," which would constitute the introductory portion of the Summary Plan Description. This alternative method of compliance would not eliminate the requirements to update the complete Summary Plan Description as legally required and to provide the complete SPD (1) upon initial eligibility and (2) upon request at any time.

2. Simplify the Single Employer Model Annual Funding Notice to provide basic introductory information regarding funded status and key metrics, with all other information contained in an appendix to the notice.

3. Create an alternative means for compliance with the current requirement to distribute a Summary Annual Report to defined contribution plan participants by allowing plans to notify participants about the availability of the annual Form 5500, including instructions for how to access that filing. The alternative disclosure could be provided as a stand-alone notification, or be included as a part of other mandatory disclosure(s), including the proposed Quick Reference Guide, which is a part of the Summary Plan Description.

4. Explore further the utility and effectiveness of electronic delivery mechanisms. Although the Council focused principally on the content of disclosures, the Council makes this recommendation because witness testimony suggested that permitting electronic delivery options may reduce the burden on plan sponsors while helping many participants better navigate and understand their benefits.

The Council has drafted sample disclosures related to the above recommendations for the Department's consideration, which are included in the appendices of the report.

# I. BACKGROUND AND GENERAL OBSERVATIONS

## Background

When the Employee Retirement Income Security Act of 1974 (ERISA) was first enacted, it included several requirements with respect to disclosures and reporting. In addition to the basic documents implementing the plan and periodic reporting to the applicable regulatory agencies, certain disclosures were designed to be distributed to plan participants and beneficiaries to provide useful information on plan provisions and operations (Note: references throughout this report to participants should be understood to include beneficiaries, as appropriate). Over the intervening 43 years, however, a myriad of new statutory and regulatory developments has occurred resulting in an overwhelming expansion in the number of required participant disclosures. (See United States Government Accountability Office ("GAO") report GAO-14-92, November 2013, *Private Pensions, Clarity of Required Reports and Disclosures Could Be Improved*)

In 2005, the Advisory Council on Employee Welfare and Pension Benefit Plans (the "Council") focused on *Communications to Retirement Plan Participants*. A Working Group was formed "to assess whether plan participants understand their rights and benefits under retirement plans and if existing ERISA-required communication tools were accomplishing the goal of full disclosure." The 2005 recommendations to the Department of Labor (the "Department" or "DOL") included the following:

With respect to Summary Plan Descriptions (SPDs):

- Provide regulatory or advisory guidance to help plan administrators prepare understandable and user-friendly SPDs;
- Enhance or create mechanisms to enforce the regulatory requirement that SPDs be understandable by the average plan participant; and
- Review court decisions granting legal superiority to SPDs and, if necessary, propose legislation to amend ERISA to reestablish the original purpose and status of SPDs that satisfy regulatory requirements.

With respect to Summaries of Material Modifications (SMMs):

- Propose legislation amending ERISA to shorten the deadline for distributing SMMs.

With respect to Summary Annual Reports (SARs):

- Revise the regulatory requirements for SAR contents and format.

Overall:

- Require an introductory statement for each type of mandatory disclosure and provide suggested language for these statements.

The 2009 Council, which focused on *Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries*, included similar recommendations for the Department's consideration. Two of the recommendations from the 2009 Council were:

- The DOL should review all pension plan disclosures required under Title I of ERISA and determine whether there are opportunities for streamlining such requirements.
- The DOL should encourage pension plan administrators to furnish participants and beneficiaries with a "quick start" guide that would help participants and beneficiaries get oriented to their plans. Prospectively, the concept of a quick-start guide could serve as a basis for a new streamlined, electronic-focused disclosure regime that is founded on the concept of progressive access.

The 2005 and 2009 Council recommendations were followed by the November 2013 GAO report referenced above. In addition to identifying "more than 130 distinct reports and disclosures," the GAO cited the 2005 and 2009 Council recommendations and encouraged the oversight agencies (DOL, Internal Revenue Service (IRS), and Pension Benefit Guaranty Corporation (PBGC)) to "improve their … reporting requirements and facilitate better readability of disclosures."

The GAO also included as its Appendix III: Disclosures with Readability Provisions under ERISA or IRC, a listing of the 11 instances in ERISA and applicable regulations that include the requirement that disclosures must be "written in a manner calculated to be understood by the average plan participant."

In view of this background, the 2017 Council formed an Issue Team - "Mandated Disclosure for Retirement Plans – Enhancing Effectiveness for Participants and Sponsors" - to consider these recommendations in more detail and to endeavor to provide the Department with further recommendations and specific examples to facilitate these goals. It should be noted that, although there are three primary agencies involved with retirement plan disclosures, this Council has restricted its considerations solely to those under the jurisdiction of the Department.

## General Observations

In addition to written submissions, the Council heard testimony from witnesses over four days of hearings that was generally consistent in agreement that the goal of providing disclosures that are understood and utilized by participants has not been fully achieved by current mandatory disclosures. Contrary to the intended purpose of the disclosures to inform participants about the plan(s) and to facilitate the monitoring of plan operations, the overwhelming number and content of the disclosures being provided defeat the stated purpose.

The Council's first witness was Professor Peter Wiedenbeck from Washington University in St. Louis School of Law. His testimony focused on four parameters: 1) the function of the disclosure rules; 2) the tension "between the understandability of information and the accuracy and completeness of information;" 3) the competing incentives of providing the disclosure and incenting the participants to utilize the information; and 4) the "major trouble spots."

Speaking on the function of disclosure, Prof. Wiedenbeck testified that the rules are an integral part of the statutory structure and are intended to achieve several goals:

- compliance and enforcement - allowing participants to monitor the plan's administration;
- economic efficiency - enabling participants to evaluate employment opportunities as well as plan their personal financial affairs; and
- collaboration, feedback and interaction - stimulating conversation and informing the plan sponsor of priorities and common concerns of participants.

However, these goals can be subject to the tensions of "optimal disclosure – not full disclosure." For example, ERISA requires the SPD to be both understood by the average participant and to be sufficiently accurate and comprehensive. Several witnesses testified that, in response to several court decisions, the SPD has burgeoned into a 'litigation shield,' a reiteration of the Plan document versus the plain language summary of the plan that was contemplated by ERISA. This has led to SPDs written in legalese that many participants either ignore and/or do not understand.

In addition to testimony regarding the volume and complexity of content in current disclosures, the Council received testimony focused on the timing of the disclosures. Multiple witnesses recommended consolidating disclosures and aligning their timing. This would enable plan sponsors to reduce some of the burden – both to the plan participants and the sponsor – of a seemingly endless rotation of required disclosures, often requiring duplicative content. Several witnesses recommended consolidation of disclosures, and some suggested participants would be better served if certain disclosures were provided when 'relevant' – that is, event-based.

David Godofsky of Alston & Bird noted:

> "[I]n providing too many notices to participants, there is an active harm that is done. There is a negative result that you get when you give people too many notices, and you have to balance that against the good that that does. ...What you do is you train all of these participants to think of all of these notices as junk mail. You train them not to read them. And so, when you have something that's really important for them to understand, it is lost in that great big pile, that mound of material."

Additionally, several witnesses testified that disclosures could be improved by including an introductory statement articulating the purpose of the notice. Jane Smith of the Pension Rights Center, testified that the reader should be told:

- What is this?
- Why am I receiving it?
- What do I do with it? Must I do anything?
- Will this affect my current or future benefits?
- Whom do I contact at the plan or Employee Benefits Security Administration (EBSA) with a question?

Pat Castelli of Niles Bolton Associates, testifying on behalf of the Society for Human Resource Management (SHRM), took a similar position, suggesting that when conveying "something important it is imperative to be direct as possible. Making it easy for the recipient to understand and digest the communication yields the best results."

The Council agreed, and concluded that best practice may be to incorporate action language at the beginning of the model notices indicating the purpose of the document, whether the document should be retained and what form of action, if any, is required of the participant, including statements such as "Action Required", "Action Requested", "No Current Action Required", "For Information Purposes Only."

While the timing and content of many disclosures is prescribed by statute, section 110 of ERISA provides explicit authority for the Secretary of Labor to designate alternative methods of compliance with any notice requirement within Title I, subtitle B, Part 1 of ERISA, subject to the following:

- Public notice and opportunity for comment must be provided;
- The alternative method must be consistent with the purposes of ERISA and provides adequate disclosure to participants and the Secretary of Labor;
- The originally required disclosure must increase the cost to the Plan or otherwise create administrative burdens; and
- The original required disclosure is viewed by the Secretary not to align with the interests of participants

As described in more detail in the following sections of this report, the Council focused on the SPD, the Single Employer AFN for defined benefit plans and the SAR for defined contribution plans in the interest of providing actionable recommendations to the Department related to specific disclosures. It should be noted that the SPD, SMM, SAR and AFN are all covered under Title I.

The Council believes that the recommended modifications to the notices referenced within this report meet the requirements to apply ERISA §110, thereby enabling the Department to implement the recommendations without statutory changes or legislative action.

# II. SUMMARY PLAN DESCRIPTION AND THE QUICK REFERENCE GUIDE

The shift from defined benefit plans as a primary source of retirement income to defined contribution plans makes it imperative that individuals understand their choices about retirement saving. The uncertainty about future rates of investment return, inflation, health status, income and other variables, as well as the need to understand the level of contributions required for an economically secure retirement underlies the importance of useful, effective plan communications. As stated by Prof. Wiedenbeck, the function of an SPD is not only to be an easily understood summary of the plan but *rather to promote economic efficiency*, thereby allowing participants and beneficiaries to better plan their financial affairs and consequently, to derive the maximum advantage from the retirement plan. He added that disclosures "give workers the information they need to evaluate alternative employment opportunities and allows workers to accommodate their personal financial affairs to the employer's program."

## Background on the Summary Plan Description

Section 102 and section 104(b) of ERISA set forth the content and delivery requirements for a SPD. Section 102(a) provides that the SPD must be written in a manner "calculated to be understood by the average participant" and be "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." Section 102(b) enumerates the specific plan information that must be disclosed. Section 104(b) of ERISA provides that the plan administrator must furnish an SPD to participants within 90 days of initial participation or receipt of benefits and again every five years (unless no amendments have been made to the plan, in which case the SPD must be distributed every ten years). If there is a modification or change in the plan's terms, the plan administrator must distribute a summary of material modification (SMM) within 210 days after the end of the year in which the change was effective.

In the ensuing years following promulgation of the regulations, the length of SPDs has grown, due to, among other things, a response to increased litigation (particularly class action lawsuits), in the effort to strike the appropriate balance between sufficient disclosure to participants to enable them to understand their benefits and a shield from litigation for plan sponsors.

## Summary of Witness Testimony and Council Discussion

Numerous witnesses testified that the SPD has developed into a behemoth document that does not serve participant interests because it is so detailed that it discourages participants from reading it at all. Terry Dailey of Mercer concurred with this sentiment, testifying that most content within SPDs is not very helpful to participants, while at the same time, SPDs constitute an administrative burden and significant cost to employers. Anthony Sorrentino of Silverstone Group summarized this point succinctly: "[w]e have taken the "summary" out of summary plan description." One witness, Mary Smith of Insurance Management Administrators, characterized the volume of disclosures as "punishing."

Some witnesses stressed the importance of the SPD in its current form as it plays a role in protecting the participants' interests. Michele Varnhagen of AARP acknowledged that it is the participant's obligation to read the SPD, and that when "something goes wrong," the SPD protects the participant as well as the employer. Jeanne Medeiros of the Pension Action Center of the Gerontology Institute at the University of Massachusetts commented that despite others' contention that SPDs are growing too long, participants need even more information to understand the plan, and should be told, up-front in an introductory paragraph, how the plan works, how to enforce the participant's rights, and that the SPD should be retained permanently.

Witnesses also emphasized the importance of the SPD in enabling participants to ascertain their rights at various critical junctures in their employment (especially when planning or at retirement). An SPD based on life events that correlates with stages of employment could tend to make an SPD easier for participants to use and provide relevant information at the point at which it is most needed.

**Summary of Proposed Quick Reference Guide**

Based on prior Councils' work and witness testimony, the Council considered opportunities to improve the usefulness and understandability of the SPD while also looking for opportunities to streamline disclosures without sacrificing the quality of the content. To that end, the Council developed a model introductory section of the SPD, the Quick Reference Guide, for a defined contribution plan, which is included in Appendix A. The Council proposes to establish an alternative compliance mechanism by limiting the automatic SPD distribution requirement to the Quick Reference Guide alone, which the Council proposes be distributed annually. An administrator that followed this procedure would be exempted from distributing the complete SPD every five or 10 years and from distributing an SMM. The Quick Reference Guide would include an up-front explanation of any plan changes that otherwise would be communicated in the SMM, and describe how participants could access the complete SPD, when desired. In addition, the Quick Reference Guide would include a brief summary of each part of the contents of the complete SPD that is mandated by the Department's regulations.

The Council believes that a Quick Reference Guide could be extremely helpful in enabling participants to focus on the most pertinent aspects of defined contribution plans that play a critical role in their retirement readiness. The intent of the Quick Reference Guide is to be an introductory communications section of the SPD containing basic plan information that the participant would receive, delivered in a manner that would not overwhelm readers, but would provide them with information on where to go for more information when they need it. If delivered electronically, as permitted under current regulations, each section should contain hyper-links to enable the reader to quickly and conveniently find more detailed information. If delivered via paper, each section should contain reference to the pertinent pages or section of the SPD and how to access it. In addition, the Quick Reference Guide would include plan sponsor and/or plan administrator contact information for any questions.

When asked to comment on the effectiveness of a Quick Reference Guide as a tool to enhance participant engagement and understanding about the broad provisions of a plan, witnesses were almost uniformly in favor of the concept as a voluntary disclosure alternative to the requirements to distribute the complete SPD and SMMs. For example, David Kritz, Norfolk Southern, testified on behalf of the American Benefits Council that the format in questions and answers (Q&A) was informative. He suggested the Quick Reference Guide could be used as a replacement to other currently required disclosures, especially notices such as the qualified default investment alternative notice and automatic enrollment notice. He suggested that the Council consider recommending the Quick Reference Guide as a safe harbor to meet the SPD disclosure requirement. Mr. Kritz also cautioned that the Quick Reference Guide should not become "a tool for litigation due to their failure to incorporate all of the terms of the underlying plans." To be understandable, a summary has to be a summary, rather than a description of all of the plan's terms."

Glen Willocks of TradeWinds Island Resort, testifying on behalf of SHRM suggested that the Quick Reference Guide be considered in the context of the need to be a voluntary tool to provide good information (including graphics), that it should be in plain language, retain flexibility, and not add to legal liability on the part of the employer. Likewise, Pat Castelli agreed that the Quick Reference Guide should be voluntary, not mandatory.

Megan Yost of Benz Communications was similarly in favor of the concept of a reference guide. She suggested that it prominently place up front why the communication was being disseminated to make it more direct and compelling to the reader. She further emphasized the need to use consistent terms, if a technical term was unavoidable, to define it immediately. She also recommended that communications contain a succinct call to action to enable the reader to understand the purpose of the communication and what action the reader is expected take in response to the disclosure.

Some witnesses felt that a checklist approach, rather than a prescribed format for a Quick Reference Guide would provide more flexibility and allow participant communications to be tailored to the specific retirement plan features. Specifically, Pat Castelli noted:

> "…a checklist of things that we need to make sure that we cover in our Quick Reference Guide would be preferable to having it prescriptively, these questions must be asked, and these questions must be answered. I would prefer to see that sort of option available to us so that we could then communicate in the method that best meets the needs of our employees."

Alternatively, Jack Towarnicky of the Plan Sponsor Council of America (PSCA) suggested that rather than a new document, disclosure should be pared down to include all salient SPD provisions in a "super mini SPD" to fit on one to two pages at a maximum.

Karen S. Feldman of the American Federation of Labor and Congress of Industrial Organizations testified that she supports the concept of a Quick Reference Guide, commenting that it could "provide a useful roadmap to the details included" in the SPD. However, Ms. Feldman also emphasized that a quick reference guide should never be a replacement to the SPD.

By making the Quick Reference Guide a component of the complete SPD, and not an additional stand-alone disclosure, the availability and existence of the complete SPD is not compromised. The complete SPD would remain available to participants and continue to be provided upon initial enrollment and as requested thereafter, satisfying the requirements under the regulations to be "sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan." Since the Quick Reference Guide would be distributed annually, the Council believes the requirement to automatically send out the complete SPD every five years, or every ten years if no changes occur, and the requirement to provide SMMs should be eliminated, reducing plan expenses that are often passed on to defined contribution plan participants.

The Council believes the Quick Reference Guide will strike the right balance between engaging participants with easier to understand communications and providing an overwhelming volume of detail, which can be daunting to participants and disregarded entirely by those it is intended to help. The Department and/or a future Council may also want to further explore the potential to apply the Quick Reference Guide to defined benefit plans.

# III. THE SINGLE EMPLOYER ANNUAL FUNDING NOTICE

With respect to defined benefit plans, the Council also focused on the complexity and understandability of the Single Employer AFN. The Council chose to focus on this annual disclosure since it is routine yet is complex and difficult to understand. In its current form, the Single Employer AFN is more confusing than helpful.

Generally, defined contribution plan disclosures are intended to provide participants with information to help them manage their own retirement accounts. In contrast, routine defined benefit plan participant disclosures are often intended to inform the participant of the overall status of the plan or to describe benefits provided under the plan, both of which are generally managed entirely by the plan sponsor. In addition, for defined benefit plans, the financial status and in some cases, benefit determination itself, involve complex actuarial concepts that are not easily understood by participants. As a result, effective communication of required defined benefit plan disclosures is difficult and often does not result in participants being more informed on their benefits or the financial status of their plan. In his testimony, David Godofsky noted:

> "…you have to meet people where they are. You can't walk into an eighth-grade classroom and start teaching calculus and relativity and expect to do any good. It's not going to happen."

and suggested:

> "So, what I would encourage you to think about is not, "How do we teach people the Ph.D. course and give them every piece of information that might be useful to them," but rather, "How do we meet them where they are and give them something that is useful to them, move them one step up the ladder in terms of their understanding, rather than trying to get them all the way to the top when that simply isn't going to happen."

This is an issue with respect to the AFN. The 2013 GAO report, referenced above, cited challenges of understanding the AFN including the following examples:

> "Representatives from an association of actuaries told us the notice is largely not read or not understood, and only a few of the numbers in the notice could conceivably be useful,"

and

> "A participant called Labor's call center saying he received this notice regarding the Pension Protection Act of 2006 and wanted to know if he had lost his benefits."

**Background on the Annual Funding Notice**

ERISA requires administrators of all single employer defined benefit plans to provide an AFN to the Pension Benefit Guaranty Corporation (PBGC) and to each plan participant. The AFN must include, among other things, the plan's funding percentage for the current and two preceding plan years, a statement of the value of the plan's assets and liabilities, a description of how the plan's assets are invested as of specific dates, and a description of the benefits under the plan that are eligible to be guaranteed by the PBGC.

After the release of the Pension Protection Act of 2006, which established the AFN requirement, additional disclosures were added to the notice under the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21) and other subsequent legislation, requiring additional asset, liability and funded status metrics to be included.

**Summary of Witness Testimony and Council Discussion**

In general, witnesses said that the AFN is confusing and overwhelming to participants in its current form. Michael Hadley of Davis & Harman noted:

> "As expressed in the preamble to the final rule on the AFN, the rule implementing the notice is intended to 'enhance retirement security and increase pension plan transparency by ensuring that workers receive timely and accurate notification annually of the funded status of their defined benefit pension plans.' However, the regulations and current model notice provide for a disclosure that is too long and contains extraneous and confusing information."

One notice that the Council reviewed reported a 2016 funding percentage of 97.51% with adjusted interest rates and 79.49% without adjusted interest rates. It is very difficult for a typical participant to judge the health of their plan when one funding measure is less than 80% while another is close to 100%. Another anecdotal example provided by witnesses was that a participant reportedly divided the total assets in the plan by the number of participants and assumed that the result was equal to each individual's share. The Council also heard from Monica Gajdel of Aon Hewitt, who stated:

> "As Aon performs benefit center outsourcing services, we receive many participant questions on this notice each year. In some cases, participants are concerned the plan is disappearing due to the plan termination information included. Some participants are confused between defined benefit plan assets and 401(k) plan assets, and believe the information in the notice describes how their specific benefit is invested or that the dollar amounts shown are somehow allocated specifically to them. Some think their benefit changes with asset or funding percentage changes. Many continue to simply ask why they are receiving the statement."

Ms. Gajdel made certain recommendations to improve the AFN, including:

- Directing readers to the Form 5500 information on the DOL website;
- Eliminating the MAP-21 supplement;
- Providing meaningful plan funding information;
- Eliminating year-end assets and liabilities;
- Simplifying the section on events having a material effect on assets or liabilities;
- Simplifying and providing flexibility for the funding and investment policies and the asset allocations; and
- Reducing the amount of information on plan terminations and PBGC guarantees.

Mr. Godofsky noted the readability score for the AFN would be at a high level and went on to suggest the AFN itself be streamlined and shortened since it is not serving its stated purpose in its current form. He also cited an anecdotal statistic that only 1 or 2 per 1,000 recipients call the plan administrator with questions, and that the most frequent question is "Do I have a benefit?" Mr. Godofsky shared a modified notice that was significantly shortened, providing only funded percentage information, allowing the plan sponsor to select a reasonable basis for liability determination, and suggested the elimination of any information that is already, or could be, contained in other disclosures.

The Council also received written testimony regarding the AFN from the American Academy of Actuaries stating that the AFN "is an example of a good idea gone wrong" and that "the AFN overwhelms participants with a flood of numbers that they will have neither the context nor technical expertise to interpret, leading to the very confusion the regulations specifically seek to prevent."

The Council also heard from several participant advocacy groups including Jeanne Medeiros, Jane Smith and Michelle Varnhagen.

Ms. Smith observed that the 2015 revision to the model AFN for multi-employer plans sets an example for establishing the basic reasons why participants are receiving the notice up-front and further contrasts this with the single employer AFN. In her comments to the Council she stated:

> "…they didn't redo the single employer notice the way they redid the [multi-employer] notice and the contrast is right there for anybody to really see."

In contrast, Ms. Varnhagen noted in her written comments that:

> "the defined benefit Annual Funding Notice is very concise and usually provides clear information on the funding level of the plan."

Ms. Medeiros noted, in reaction to the Council's draft notice provided to witnesses for consideration and comment that:

> "the sample AFN drafted by the Advisory Council incorporates some of the suggestions offered by previous witnesses, and seconded in my previous testimony. The introductory paragraph is particularly helpful, and seems to us to strike the balance between simplification and accuracy in a very helpful way."

**Summary of Proposed Revisions to Single Employer Annual Funding Notice**

The Council's recommendations incorporate some of the testimony received from witnesses by shortening the document and removing information that can be found in other sources, such as the SPD or Form 5500. Some witnesses suggested allowing plan sponsors to select their own measure of funded status if it is reasonable. The Council feels this would add to the confusion around the AFN since it may not tie to any other plan information that is publicly available. The

Council's recommendation calls for maintaining a basis for liability and asset determination that is consistent with that required under the Pension Protection Act of 2006 and subsequent amendments to the Act to maintain consistency with the funding determination used to develop minimum required contributions and for comparability across plans and plan sponsors.

The Council is recommending the elimination of information regarding PBGC benefits and guarantees in the event of a plan termination. The Council heard testimony indicating that this information can be confusing to participants, leading them to believe their plan may be terminating. In addition, these disclosures further add to an already lengthy and confusing participant notice, which the Council believes instead may be incorporated in the SPD for participant reference. In fact, SPD regulations provide that if pension benefits are insured under Title IV of ERISA, the SPD must contain a statement of this fact, a summary of the PBGC provisions of Title IV, a statement indicating that further information on the PBGC provisions can be obtained from the plan administrator or the PBGC, and the address at which to contact the PBGC. To repeat the PBGC disclosure in the AFN is duplicative and may be counter-effective by undermining participant understanding, potentially leading participants to conclude that the reason such information is being included is solely as a result of the plan's imminent termination or at-risk status.

While several witnesses supported the reduction or elimination of information regarding the PBGC from the AFN, in contrast, Mary Miller of Edison Electric Institute found value in the PBGC information contained in the AFN, explaining that participants may indeed worry about guarantee of their pension benefits, and therefore believes that the PBGC information should be retained in the annual statement.

The Council believes the AFN could be simplified to highlight the information that is most pertinent to defined benefit participants. Information that can be found in other places, such as the PBGC description in the SPD or the participant and asset detail in the Form 5500, could be referenced but need not be explicitly set forth in the AFN. Participants should be able to see the progression of the funded percentage of their plan to be informed about the security of their benefit. In addition, participants need to be informed if the funded status is low enough for benefit restrictions to apply, particularly if they are approaching retirement.

The Council heard testimony from several witnesses about the information on material events that is currently required in the AFN. While Monica Gajdel of Aon Hewitt and the American Academy of Actuaries provided written testimony regarding this topic, the Council did not propose any modifications to the AFN related to the reporting of material events since a more detailed review would be needed to recommend an approach in this area.

A summary of the changes to the AFN that the Council is recommending is as follows:

- Revise the AFN to create an abbreviated primary document summarizing high level 3-year funded status information and additional detail if the plan is "at risk" or has had a significant event. Move certain more detailed information to an appendix;
- Include language about what the funded status information means to the participant in terms of their accrued benefit;

- Remove language regarding the PBGC, which is also included in the SPD, and replace it with a reference to where to find the information;
- Remove detailed asset information and recommend referencing the Form 5500 for this detail, especially since the asset information previously contained in the AFN is unaudited and may not tie to other sources;
- Consolidate two credit balance (prefunding and carryover balances) categories into one credit balance line to minimize technical information, which can confuse plan participants;
- Add an appendix, where detailed information previously included in the primary portion of the document is now shown. This includes funding statuses determined with and without the adjusted interest rates from temporary funding relief provided under MAP-21, the Highway and Transportation Funding Act of 2014 and the Bipartisan Budget Act of 2015;
- Streamline the pension funding relief supplement to a few sentences when describing funded percentage in the appendix;
- Remove participant count information since this information is contained in the Form 5500 and is not directly relevant to the plan's funded status. Provide details on how to access the Form 5500 through the Department's EFAST system; and
- Maintain funded status as it applies under PPA.

A sample model notice, reflecting these updates, is presented in Appendix B for the Department's consideration.

# IV. THE SUMMARY ANNUAL REPORT

The SAR for defined contribution plans is a narrative summary of the Form 5500 and is required to be delivered to participants within nine months after the end of the plan year, or two months after the due date of the Form 5500 filing. However, the SAR for defined contribution plans lacks any actionable value to participants since, as a mere summary of the more detailed Form 5500, it contains no information that is relevant to the individual's defined contribution account, therefore it can be misleading due to the general nature of the information provided. Moreover, since the SAR is not distributed to participants until after the Form 5500 has been filed following the end of the previous plan year, the data reflected is untimely and not especially informative to participants.

**Summary of Witness Testimony and Council Discussion**

The Council heard testimony from many witnesses regarding the SAR, and the testimony with respect to both health and welfare plans as well as retirement plans was consistent in support of modification or elimination of the SAR distribution requirement.

Most witnesses testified that the SAR is of little or no value to participants and widely ignored.

For example, Mark Buckberg of Bond Beebe stated that:

> "…all of the information that's in the summary annual report can be gathered off the Form 5500, " and that " The 5500 is available for free online through the DOL's website and through sites like FreeERISA. Perhaps a better way to approach participants is to educate them. Educate them that they can find this information here, they can find it there. Point them where they want to get the information."

Michael Hadley concurred, suggesting

"The summary annual report is a notice whose time has come and passed."

Rebecca Chandler from Voya, testifying on behalf of the ABA Retirement Funds concurred with Michael Hadley, finding nothing actionable in the SAR, and suggested it could actually be misleading if participants were to rely solely on it. Further, she stated, there is a report production cost which trickles down to participants, and found it ironic that participants were paying for something of no value.

Jack Towarnicky agreed, commenting that as a plan participant, he does not bother to read the annual SARs he receives because the information is not useful to an individual participant. Some witnesses, including Will Hanson of the ERISA Industry Committee, called for the elimination of the report entirely. Other witnesses, including Brigen Winters of Groom Law Group, found the form outdated and felt that the report could be retained if improvements were made by including information in table form, and creating some type of summary quick start guide, tying back to the annual report. Other witnesses felt that the information in the SAR could easily be consolidated into other existing disclosure documents.

Several witnesses suggested that it would be important to notify participants of the availability of the Form 5500, whether that be in a standalone notification, or consolidated into another disclosure or set of disclosures.

**Summary of Alternative Approach to Satisfy the SAR Distribution Requirement**

Based on witness testimony at the June hearings, the Council formulated the proposal to eliminate the SAR and replace it with a requirement to notify participants as to availability of the Form 5500, and provide instructions on how to access or obtain the most recent 5500 filing. The proposal was as follows:

- Eliminate the requirement to provide a SAR directly to participants;
- Notify participants via alternative forms of communication that:
  - The most recent Form 5500 has been filed;
  - It is available via www.efast.dol.gov and can be located using the following plan information (employer to provide Plan name, EIN, Plan Number);
  - Whether it is available on the plan sponsor's website and how to access the document on that site;
  - Participant communications can include email, postcards or other communications if the plan sponsor can be reasonably confident that the communications will reach all plan participants (active employees, terminated employees entitled to a future benefit and retirees and beneficiaries currently receiving benefits);
  - Within the communications, plan sponsors should describe the general types of information included in the 5500 (e.g., participant counts, plan asset detail, etc.); and
  - Communications should also include a contact at the plan sponsor to whom participants can reach out to with questions.

The Council shared this proposal with several witnesses in advance of the August hearings and asked for feedback. Many testified in support of the proposal, reiterating the testimony of others suggesting elimination of the SAR, and replacing with a notice regarding the availability of the 5500. David Kritz testified that:

> "The American Benefits Council has long supported the elimination of the Summary Annual Report and recommends that it be eliminated for all benefit plans."

He further suggested that instead of the SAR, a notice that would tell participants that a Form 5500 was filed and how to obtain a copy would be helpful.

Glenn Willocks also supported the elimination of the SAR, commenting that it lacks practical value to participants in that it is untimely and does not contain any information specific to the participant.

In contrast, Jane Smith supported continued distribution of the SAR and testified:

"Participants in ESOPs, money purchase plans and traditional profit sharing plans continue to need this information. The SAR is a very short, straight-forward fill-in the blanks form. Rather than eliminate this disclosure, we suggest that EBSA review it to determine which information is not relevant to defined contribution plans."

The Council discussed the merits of proposing full elimination of the SAR distribution requirement compared to providing an alternative means to satisfy the SAR distribution requirement and concluded that recommending an alternative approach to satisfy the existing regulatory requirement would be more achievable and would meet the same objective. As a result, the Council's recommendation in this area creates an alternative means to the SAR for defined contribution plan participants, allowing plan sponsors to provide a notice to participants informing them as to the availability of the annual Form 5500, including instructions for how to access that filing.

In support of its proposal, the Council developed a sample notification for the Department's consideration, which is included in Appendix C.

# V. OTHER DISCLOSURES CONSIDERED BY THE COUNCIL

Based on information received during the June witness hearings, the Council endeavored to develop improved disclosures that could modify or replace the current ERISA §404(a)(5) notice requirements. Draft disclosure proposals were shared with witnesses for the August hearings, however, testimony the Council received at that time was inconsistent with the feedback received in June. As a result, it was determined that any recommendation to update and/or replace the ERISA §404(a)(5) disclosure requirements was premature and the 2017 Council encourages a future Council to conduct a more thorough review of the topic and the effectiveness of fee disclosures in general, including ERISA §404(a)(5).

## Background

There are three federal fee disclosure requirements that apply to ERISA retirement savings plans:

- Form 5500, and specifically schedule C;
- ERISA §408(b)(2), which went into effect in July 2012; and
- ERISA §404(a)(5), which also went into effect in July 2012.

This series of regulations is intended to increase transparency of direct and indirect service provider fees, paid by plans, to the participants and plan sponsors.

In establishing these rules, the Department expected that disclosing fees would engage participants and sponsors, induce them to comparison shop within a plan and police costs within a plan, and encourage sponsors to make changes if costs were judged to be too high. In its fact sheet released with the final rule in 2012, EBSA expected the effect would be to drive down costs to participants over the 10 ensuing years by a then-projected present value of $14.9B.

The rules under §408(b)(2) require that plan administrators take steps to ensure that the participants receive adequate information to make informed decisions with respect to their retirement plans. Specifically, the administrator is required to disclose information regarding the plan's investment options, including fee and expense information, and explain the participants' rights and responsibilities with respect to the investments. This requirement applies to the investment alternatives within the plan, but not to investments within a brokerage window, where fees are disclosed in confirmation statements of individual securities trades.

Information required in the disclosures includes two major categories: Plan-Related Information and Investment-Related Information.

Plan-Related Information

- General plan information, including the structure and mechanics of the plan;
- Administrative expense information – explaining administrative fees and expenses that may be charged to or deducted from all individual accounts (such as trustee fees, accounting fees, recordkeeping fees, etc.); and

- Individual Transactional Information — detailing expenses charged or deducted from the account of a specific participant or beneficiary based on actions taken by that person (e.g., participant loan origination, processing qualified domestic relations orders (QDROs), wire surcharges, etc.).

Investment-Related Information

- Performance data – including historical investment performance over specified periods;
- Benchmark information – appropriate comparative market indices over the same specified period; and
- Fee and expense information – total annual operating expenses expressed as both a percentage of assets and as a dollar amount for each $1,000 invested, as well as fees or restrictions on the participant's ability to purchase or withdraw from the investment.

The rule requires that such information be furnished to participants on or before the date they are first eligible to direct investments, and annually thereafter. The rule also requires that participants receive quarterly account statements showing the dollar amount of the plan-related fees and expenses that are charged to or deducted from their accounts, along with a description of the services related to such charge or deduction. The investment-related information must be provided in a chart or similar format that facilitates comparison of each investment option.

**Summary of Witness Testimony and Council Discussion**

During the Council's hearings in June, several witnesses, including Scarlett Ungurean, Executive Director of the ABA Retirement Plans, suggested that participants don't read the §404(a)(5) disclosures, and that the frequency of such disclosures should be revisited as their current timing does not enhance their usefulness. Ms. Ungurean suggested that fund fact sheets ABA prepares and distributes are a more effective and valuable communication.

Further, in written testimony, Ms. Ungurean and Ms. Rebecca Chandler stated:

> "While the 404a-5 disclosures have valuable information, they do not provide a context for participants 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 the 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."

Mark Buckberg, in discussing fee disclosure, concurred with the lack of usefulness, stating that the fee disclosures are not written in plain English and do not tell participants what they want to know. He explained that for most participants, disclosure of basis points applicable to a fund is not meaningful and that people want to get information that affects them."

Mary Ellen Signorille from AARP provided some testimony on the §404(a)(5) notice saying that when the DOL was developing the notice in 2006, AARP did its own testing, came up with its own disclosure form which people preferred, but nevertheless was not effective with all participants. Referring to understanding the notice, she concluded that some participants will never "get it."

Following the June hearings, the Council felt that the current §404(a)(5) disclosure could be more effective if it were replaced with a series of fund fact sheets, including a summary sheet, containing all the information on the investment options under the plan as set forth under the investments section of the §404(a)(5) regulations. The Council developed the following draft proposal for witness feedback:

- Eliminate §404(a)(5) fee disclosure in its current form;
- Require plan level expenses to be included in the plan Quick Start Guide proposed by this Council;
- Require that participant-specific plan level expenses continue to be reflected in participant quarterly statements;
- Require that plans develop, issue and maintain fund fact sheets that
    - Describe the objective of the fund and its asset allocation;
    - Illustrate the risk of each fund individually, and relative to the other funds in the plan;
        - That risk be communicated both as an easy to understand measure of volatility, including the amount of money at risk over a period of time;
    - Illustrate the historical performance of each fund;
    - Disclose the expenses of the fund, both as a % as well as a dollar cost per $X,XXX invested;
    - Notify participants via alternative forms of communication of:
        - Changes to the plan fees, or the fees of the investment funds as of a particular date;
        - Availability of new fund fact sheets, with instructions on how to access electronically, or to request printed copies of fact sheets; and
    - Communications should also include a contact at the plan sponsor who participants can reach out to with questions about their benefits.

Both the proposal and fund fact sheet sample were shared with witnesses in advance of the August hearings.

Some witnesses felt that the process of fee disclosure had been standardized and was operating smoothly. These witnesses suggested that to create a fact sheet requirement would put more burden on sponsors and possibly increase their liability exposure.

For instance, Glenn Willocks stated:

> "SHRM is concerned that requiring a plan sponsor to create a new fund fact sheet would be costly and could expose plan sponsors to increased liability for any errors or discrepancies between that fund fact sheet and the ones routinely created by investment managers or other third parties."

According to David Kritz, the American Benefits Council members are:

> "pretty comfortable with the existing §404(a)(5) disclosure…while some participants may ignore this disclosure, it is convenient for new enrollees to see in a single place the fees of a plan and all the investments that are available."

Both Mary Miller and Jack Towarnicky voiced concern about the fund fact sheet requirement and the cost of compliance, but did see value in providing better educational information on relative risk as well as cost and performance benchmarking. As part of the current requirement to produce a comparative chart, consideration could be given to enhancing the chart to provide more information on comparative risk and fee benchmarking. On the latter issue, the Council was concerned that by solely comparing fees and performance data, participants may simply choose the funds with the most recent highest performance, or the lowest cost funds in a plan lineup, without adequate consideration to risk-return tradeoff.

Given the complexity of the issues surrounding fee disclosure, and the varying opinions surrounding the current requirements, the Council felt that the issue required further research and consideration. Presently, the Council is not in a position to make any recommendation, other than to encourage the Department to undertake further research on the topic, including consideration to enhancing the comparative chart requirements, or perhaps suggest that a future Council consider the issue.

# VI. TIMING AND CONSOLIDATION CONSIDERATIONS

In addition to testimony regarding the number and content of the required disclosures, the Council also heard repeatedly about three aspects of timing:

- The disclosures are not meaningful because they are not timely;
- The disclosures are overwhelming to both plan sponsors and participants due to the perceived never-ending compliance calendar to send and receive the disclosures; and
- The disclosures would be more effective if they were timed to the need/event giving rise to the notice.

Regarding timeliness, as discussed elsewhere in this report, several of the required disclosures are made at a point where the ability of the participant to monitor the administration of the plan and/or make informed decisions has passed. For example, as noted, the SAR can be distributed up to 11-½ months after the end of the related plan year. In addition, several witnesses recommended the use of (voluntary) electronic distribution methods that could accommodate up-to-date as well as just-in-time disclosures. Testimony from Scarlett Ungurean and Rebecca Chandler summarized by stating that "[t]argeted, concise and just-in-time disclosures are most effective to encourage participants to act." They also recommended "[w]here possible, authorize one government agency to manage all participant-related disclosures for simplification …" This later recommendation is beyond the scope of this Council and this report, but was echoed by other witnesses.

Another comment frequently heard during the hearings was that participants tend to ignore many notices and disclosures due to the frequency and volume. This can be distracting and confusing to participants and creates a compliance burden on the plan sponsors as well. Mary N. Smith testified that, as a third-party administrator, she "feel[s] punished by the ever-mounting burden of compliance" and that she "must navigate a mountain of compliance responsibilities."

Several witnesses had specific comments as to where some disclosures overlap and/or have become outdated and unnecessary due to subsequent statutory and/or regulatory developments. Michael Hadley enumerated the following as examples:

- The pension benefit report under ERISA §209 and ERISA §105 requirements; and
- Deferred vested pension statement under Internal Revenue Code (IRC) §6057(e) and pension benefit statement under ERISA §105.

He further included in his written testimony a list of eleven notices that could be consolidated "… into a single, streamlined document…" (see Appendix D), further stating that "Each one of these notices was in response to a particular policy goal, but neither the Department nor Congress has ever asked whether they fit together, and which notices are key." As a result, most witnesses agreed that elimination of certain disclosures and the consolidation of others could greatly enhance the utility of the disclosure and lead to a greater likelihood that participants would be able to focus on and read the disclosure. These concepts were also highlighted in the

written submission of David M. Abbey and Shannon N. Salinas from the Investment Company Institute, which included specific recommendations of disclosures that could be consolidated and distributed in a timelier manner. (See Appendix D) They added "[P]lans could decide which of the aforementioned notice requirements to satisfy through the combined quick start notice. Similarly, when a participant leaves employment, the various notices and information that are provided could also be summarized in a "quick start" guide addressing distribution options and tax implications."

This last point highlighted what the Council heard from most of the witnesses - that participants are more likely to use and understand disclosures if they are provided at key decision points. These key points could include: at initial and open enrollment; during the accumulation and decumulation phases; upon the occurrence of an event (e.g., a life event, a plan event, etc.); and/or when there is a 'call to action.' For example, Stephen Wendel from Morningstar noted that in current disclosures, "we don't think carefully about what is required to help readers actually take action on the communication."

# VII. ELECTRONIC DISCLOSURE

**Background**

Although the 2017 Council's primary focus is on the burden and effectiveness of the content of mandated disclosures, many witnesses stated that to discuss this topic adequately, the Council must also consider delivery. Given that electronic disclosures play a significant role in current plan administration, many witnesses testified to their experiences with electronic media and plan participant engagement. Individual preferences on the medium and mode of delivery vary, so plan administrators have utilized a variety of approaches to better communicate with participants. The Council's findings are summarized below.

Lower distribution costs, reduced administrative burden, and more timely information updates are some of the generally accepted electronic delivery benefits. David Kritz stated:

> "We believe that distributing required communications electronically offers approaches that can better serve employees because it's easily accessible, searchable, low in cost, and satisfies the statutory notice requirements."

In addition, witness testimony indicated that standard paper disclosures are not as effective as intended, because notices get ignored or lost, and plan administrators cannot be certain that participants have actually received the documents. Electronic delivery can be provided in a more consistent, consumable format that is personalized to the intended reader. Most witnesses also testified that most day-to-day information is disseminated electronically, and that consumers have a broad expectation of receiving information electronically.

Witnesses discussed the notion of electronic delivery as the default delivery mechanism for disclosures, with the right to receive paper materials only upon request. Brennan McCarthy of Willis Towers Watson noted that

> "Probably the most thorny of the suggestions, is considering passive consent for electronic receipt of documents," but believes that "most employees would opt to receive their SPD electronically."

Mr. Kritz supports the notion that

> "…electronic should be the default method of delivery."

Mr. Hadley, cited a SPARK Institute study that estimated that

> "…switching to an electronic delivery default would produce $200 to $500 million in aggregate savings annually that would accrue directly to individual retirement plan participants."

Several witnesses pointed to other federal agencies, such as the IRS and SEC, that have advanced electronic dissemination of important information. Similar to the proposed Quick Reference Guide, Will Hansen of the ERISA Industry Committee observed that the SEC

instituted an e-proxy system permitting delivery of post-cards with instructions to publicly accessible websites for proxy materials. Michael Hadley observed that the Federal Thrift Savings Plan moved to default electronic delivery years ago.

Conversely, the Council heard testimony that generational, socioeconomic, and accessibility limitations should be considered in understanding that for some participants, traditional paper communications are still the preferred method of delivery. Sanford Walters of Kelly & Associates Insurance Group pointed out that

> "…only a third of people with less than a high school degree have internet access. Only 45 percent of people who make less than $25,000 a year have internet access. People who live in rural areas don't have great connectivity."

Mary Smith observed that

> "We really do not feel that senior and lower income people are electronically, technically up to date… there's still, we think, too big a part of the population that are not sophisticated enough to receive required notices in that fashion."

Sanford Walters further cautioned:

> "It's just not fair to employees to put the burden on them to have to go search out for information about when they can have a pension, what their investment options should be, when they should have health benefits."

Glen Willocks observed that electronic disclosure for his company's participants is not feasible:

> "Many of our employees do not speak English. Many of our employees share an email address or do not have an email address. We find it far more practical and effective to deliver a lot of these notifications in person at our annual enrollment meetings."

Jane Smith testified that disclosures should continue to be provided in hard copies, as they do not believe participants would or should have to take the additional steps to obtain the information needed in lieu of hard copy disclosures. Michele Varnhagen of AARP referenced AARP surveys on preference for electronic versus paper:

> "We have asked people over 50, we've asked people under 50: do you want your information on paper or do you want it electronically? And overwhelmingly people have said they want paper."

Jeanne Medeiros stated that

> "…moving to an all-electronic system of delivery would have a negative impact on our most economically vulnerable seniors…any method of delivery which requires the participant to take additional steps, such as visiting a library or senior center or asking a

> friend or family member if they can use their computer or having to make a specific written or verbal request for required disclosure is a disservice to participants."

Notwithstanding witnesses who advocate paper disclosures, the majority of witnesses concluded that participants do not read the paper that is sent to them, and many have difficulty navigating and understanding the paper disclosures.

From the above summary of the testimony, the Council concludes that an effective disclosure protocol would include aspects of electronic and paper delivery. In fact, although plan administrators comply with disclosure mandates through paper delivery, most use electronics when they want to be more targeted and effective in their communications. Further work and exploration is required to do this subject justice. Nevertheless, we summarize below some advantages discussed by witnesses.

**Best Practices in Electronic Delivery**

These best practices can be grouped into the following categories:

1. Content navigability
2. Layered or nested presentation of information
3. Enhanced user interaction including real-time call-to-action, where applicable
4. Cross device and platform compatibility

*Content navigability*

Content navigability is comprised of several components. The ability to easily search a table of contents and a document creates a more relevant and user-friendly experience for participants. Mr. McCarthy commented:

> "If you're going to focus on electronic distribution, maybe consider some guidelines around ease of navigation of the documents so that it's not just an exercise of taking an existing SPD that maybe doesn't have much communications value and putting it online. It's really being thoughtful about how it should be reformatted."

Additional navigability features include hyperlinked terms, definitions for terminology provided through links or hover texts, cross linked or referenced sections and plain language search capability, whereby user queries can be mapped or translated to generate applicable results.

*Information nesting*

Information nesting, which was mentioned by multiple witnesses, refers to the practice of layering information in accordance with the most relevant and most frequently searched. Nesting enables a drill down into various layers of information as needed by participants. Nesting has the potential to provide a simple experience and in-depth, relevant content simultaneously. Users can move from a high level to very detailed information without causing disengagement, which often accompanies a participant's lack of confidence when presented with too much content.

*Electronic delivery*
Electronic delivery presents opportunities to increase user interaction and related calls-to-action by acting as a gateway. Witness examples include embedded links to tools such as asset allocation illustrations or retirement income calculators. An additional example is providing a link to the participant's account login screen at the relevant communication points, such as beneficiary designation or electing deferral amounts.

*Cross-device compatibility*
Participants today have varying preferences with regard to their preferred electronic device and many may interchange among devices and device types. To preserve choice and flexibility, content presentation and navigability must be tailored to be functional across platform types. Additional flexibility to save and share across devices, such as opening content where the user's previous query left off may be useful.

**Data Collection and Analysis Related to Disclosure Utilization and Engagement**
A by-product of electronic delivery is the ability to collect and analyze data regarding user utilization. By measuring communications' effectiveness, one can improve future disclosures regardless of the delivery format.

Unlike traditional paper delivery, electronic communications are easily tracked for receipt without materially increasing cost or administrative burden. This point was noted as important to some witnesses. Beyond delivery, data related to "open rate," "engagement time," "download," "exploration beyond disclosure," and "click through to action" are also available for collection. Mr. McCarthy provided the eMag (electronic magazine) as an example:

> "The value to an eMag…is that you get analytics. So, we can tell how much time employees spend on a certain page and where their points of interest are, and that can help inform future communications."

**Innovation in Language Regulating Electronic Delivery**
Recognizing that regulations are generally static, but technology continues to evolve, the Council also heard testimony about the language regulating electronic delivery. Generally, the witnesses believed that making regulations more 'evergreen' and relevant is important even with continued innovation. Language in regulations and requirements often reflect the current standard of technology, which may not be applicable in the future. Mr. Hadley cautioned

> "I don't think whatever [language guidance and standards] we come with next should be tied to a particular electronic technology, because it's moving way too fast. …You want a flexible standard."

David Levine of Groom Law Group concurred, recommending a path

> "…that addresses certain principles about how people received things, because for what works today for instance, may be passé tomorrow."

**Guiding Principles**
The witnesses offered the following guiding principles:

1. Regulation should not be tied to any current form of technology as it is rapidly changing;
2. Regulation should not preclude innovation and needs to be broad in application to future technology; and
3. Language in regulations, guidance and model examples should provide flexibility to plan administrators so they may utilize features and capabilities to enhance participant engagement, such as the aforementioned best practices including navigable and hyperlinked documents among others.

Prof. Peter Wiedenbeck applauded and encouraged the Council to

> "…explore the advantages of increased reliance on electronic nested, progressive disclosure and maybe mobile access to plan information."

But he also cautioned that

> "the Labor Department is going to need to insist upon archiving of all that electronic disclosure and every version of that electronic disclosure in order to monitor and enforce the plan administrator's obligations under the various disclosure rules that are embedded in ERISA. You've got to be able to have access to the information that was provided if it's later challenged as inaccurate or incomplete."

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**References**
The following references have been provided as resources for additional information:

- SEC e-proxy system – links to full proxy statements
- Social Security Administration – Nearly all new claims are made on-line (mostly seniors)
- FINRA
- DOL's EFAST
- PEW "Internet and American Life Project" on daily rates of internet use by age
- OMB: Reducing Reporting and Paperwork Burdens 6/22/12
- EBSA: Final Rules Relating to Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans 4/9/02
- IRS: Use of Electronic Media for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents
- GAO: Private Pensions Revised Electronic Disclosure Rules Could Clarify Use and Better Protect Participant Choice (Sept 2013)

# VIII. CONCLUDING OBSERVATIONS

Given the quantity and complexity of existing ERISA disclosures that are distributed to participants, the 2017 Council examined how to streamline mandated retirement disclosures in a manner that improves their effectiveness and efficiency. Based on witness testimony and research, the Council recommended alternative disclosure approaches for the SPD, the Single Employer AFN, and the SAR that the Council believes will improve the usability and function of those documents. The Council believes that the principles used to improve the disclosures mentioned above could potentially be applied to other current and future mandated disclosures.

In general, there is a need to strike a balance between providing too little information for participants to gain an adequate understanding of what the disclosure is trying to convey and providing too much information, which can become overwhelming and confusing. With respect to the SPD, the Council developed a "Quick Reference Guide," which would be considered a part of the traditional SPD and would provide basic information about the plan up-front while allowing participants to access the complete SPD at any time. With respect to defined benefit plans, the Council drafted a modified model Single Employer AFN that reduces the overall size of the document and re-organizes the content for improved readability. Finally, the Council heard that the SAR does not provide defined contribution participants with helpful information about their own benefits. It recommended an alternative approach to satisfy the SAR requirement for defined contribution plans, allowing plan sponsors to notify participants as to availability of the Form 5500 and provide instructions on how to access or obtain the most recent 5500 filing instead. With these changes, the Council believes that these disclosures will be simplified and streamlined for both participants and sponsors without sacrificing the quality of information that participants and other users of these mandatory disclosures receive.

# APPENDIX

# APPENDIX A

**Quick Reference Guide – SPD Supplement**

ABC Sponsor 401(k) Plan

Quick Reference Guide

Month/Year

This Quick Reference Guide (the "Guide") is an introductory part of the Summary Plan Description to help you learn about the benefits offered under the ABC Sponsor 401(k) Plan, which is called the "Plan" in this Guide. You can have the complete Summary Plan Description (referred to as the "SPD") delivered to you at no cost at any time.

To get complete information about your 401(k) Plan, you can:

(1) Visit the website www.abc401k.info.com and click on the "See Complete SPD" tab,
(2) Call the *ABC 401(k) Plan Answer Line* at 888-888-8888, or
(3) Stop by the ABC Human Resource Department to ask for a complete copy of the Summary Plan Description, which is called the "SPD" in this Guide or to receive additional copies of this Guide.

This Guide will be updated to reflect any Plan changes as necessary and delivered to you no later than October 1st of each year that you continue to participate in or benefit under the Plan.

The SPD is a plain-language summary of all the Plan's provisions. It's important to remember the SPD, of which this Guide is a part, is only a summary. If you want to learn about the details of the ABC Sponsor 401(k) Plan, you should ask for a copy of the Plan document. If the information provided in the SPD is different than the provisions in the Plan document, the Plan document will govern; this means the Plan Administrator will follow the Plan document and apply the terms to you.

You should be aware that the Plan provisions may be changed or terminated by the Plan sponsor at any time [subject to any collective bargaining obligations]. **[There have been no changes to the Plan since this Guide was last provided to you.] [Alternative language: There have been changes to the Plan since this Guide was last provided to you. These changes are as follows: (describe the changes and indicate where to find details)]**

*How To Use This Guide*?

This Guide will give you basic information about the Plan and provide general answers to common questions. The Guide will also direct you to the specific sections of the SPD that will provide you more detailed information in response to common questions about the Plan. The references will be posted in boxes next to the text and will be shown as tabs on the website www.abc401k.info.com. [Alternative language for paper version: The references to the applicable page number and sections in the SPD are included within the descriptions below]. To

learn more about any topic, see the above box for all of ways you can request more information on the Plan.

*Basic Information about the Plan*

The Plan is called the *ABC Sponsor 401(k) Plan.* The Plan describes the retirement benefits made available to you by *ABC* [as required by the *ABC-Union* collective bargaining agreement, covering your employment beginning January 1, 2018 and ending December 31, 2020]. The Plan's IRS identification number is *88-8888888*. The Plan's assets are held in trust by a trustee, [name]. The name of the trust is ABC 401(k) Plan Trust. The Plan is administered by *ABC.* Both the Plan and the *ABC 401(k) Plan Trust* keep their books and records on a calendar year basis with each year running from January 1st to December 31st. A legal claim against the Plan will be accepted by the Plan Administrator. If you would like to send a letter to the Plan Administrator or to the trustee of the ABC 401(k) Plan Trust, address your letter to the ABC Sponsor 401(k) Plan Administrator, c/o Human Resources Department, ABC, 888 XYZ Lane, DEF City, VW State, 88888; or to the Trustee of ABC 401(k) Trust, c/o Human Resources Department, ABC, 888 XYZ Lane, DEF City, VW State, 88888. You may also get a copy of the Plan's annual report.

As a participant in the Plan or as a beneficiary of a participant in the Plan, you have significant legal rights under federal law. The SPD describes those rights. To learn more about your rights, any topic or the Plan's basic operations, to get a copy of the Plan document, the trust document, [or the collective bargaining agreement,] or to ask the administrator a question, see the above box for all of ways you can ask questions or get more information on the Plan. You may also visit the U.S. Department of Labor ("DOL"), Employee Benefits Security Administration ("EBSA") website at www.dol.gov/ebsa or call the DOL at 1-866-444-3272.

*When am I eligible to participate in the Plan?*

Click on the "*Eligibility*" tab

You are eligible to participate in the Plan as of your first day of employment. You will be automatically enrolled in the Plan unless you choose not to participate. Your initial contribution rate will be 3% of your salary. However, you may increase, decrease or stop contributing to the Plan at any time. [Describe any automatic contributions provisions here. Any applicable notices regarding automatic enrollment should be embedded here].

*How much can I save in the Plan each year?*

Contributions under the Plan are limited by the Internal Revenue Service ("IRS"). You can contribute 1% to 50% of your eligible pre-tax pay, up to IRS-defined limits. After-tax contributions (up to 15%) are permitted. Participants age 50 or older can make additional "catch-up contributions," up to IRS-defined limits. For example, in 2017, you can save up to $18,000. If you will be age 50 this year, you may save up to $6,000 more. Other limits may apply depending on your salary.

*How do I make contributions to the Plan?*

The Plan allows you to make contributions in a variety of ways: pre-tax, after-tax and Roth. Pre-tax contributions are deducted from your pay before any federal tax is taken out, so your taxable income is reduced. After-tax contributions are deducted from your pay after taxes have been deducted, so your taxable income is not reduced for contributions, but there are tax advantages on your investment earnings while your contributions are in the Plan. Roth contributions are similar to after-tax contributions except there are additional tax advantages if you receive a "qualified distribution."

Click on the *"Types of Contributions"* tab

*Does the Company contribute to my plan?*

ABC helps you save by matching a portion of your contributions. The amount of the matching contribution is 100% of the first 3% of your salary. In other words, say your salary is $500 per week and you decide to save 5% of your salary, or $25, ABC will make a matching contribution to the Plan of 3% of $500, or $15. For additional examples, and to see how your contributions can grow over time, click on the *"Company Matching Contributions"* tab.

Click on the "*Company Matching Contributions*" tab

*When do I have a right to the Company Matching Contributions Account?*

You have a right to the Company Matching Contributions being made to your account under a schedule based on your years with ABC. This is called "vesting," which simply means you "own" the amounts in this account. The vesting schedule is as follows: [insert vesting schedule]Remember you are always 100% vested in all your own contributions.

*How are my contributions invested under the Plan?*

The Plan provides a choice of xx different investment funds with different investment objectives and lets you choose investments that provide you with flexibility and the ability to balance your investment risk. If you decide not to choose one or more investment funds, you will be invested in the Plan's default investment fund, which is called a Target Retirement Date fund. For more information on the Plan's investment fund choices, including the Target Retirement Date group of funds, click on the *"Investment Choices"* box [this should also include the QDIA notice].

Click on the "*Investment Choices*" tab

*What costs do I pay to participate in the Plan?*

The Plan has two types of costs – administrative costs (for items such as recordkeeping, accounting and legal services) and investment costs (the fees charged by the professionals who manage the investments available under the Plan). Understanding the fees you pay when you invest in the Plan is an important part of your savings and retirement planning. For information on Plan fees and expenses, click the *Fees and Expenses* tab. [404(a)(5) Notice should be embedded here]

Click on the "*Fees and Expenses*" tab

*When can I take my money out of the plan (i.e. a distribution)?*

Since there are tax advantages under the Plan, the IRS limits the circumstances under which you get a distribution. Generally, you can receive a distribution relating to certain "life" events, such as your retirement, termination of employment, if you become disabled, or if you have an immediate and heavy financial need, called a "hardship distribution" or withdrawal (if your hardship meets the plan's requirements).

Click on the "*Distributions*" tab

Please be mindful of potential income tax consequences with distributions prior to certain age requirements. Currently, after you reach age 59 ½, you can make withdrawals of pre-tax and Roth amounts with no penalty. You may request a distribution of after-tax amounts at any time, however, you may not be able to contribute to the plan again for a short period.

*What if I have an account in the 401(k) plan at my last job?*

You may be able to "roll over" your account from your previous employer's plan to this Plan without incurring any income taxes on the "rollover." Click on the "Rollover" tab.

Click on the "Rollover" tab

*What if I disagree with the amount of my benefits?*

The Plan is governed by a law called the Employee Retirement Income Security Act (ERISA) which provides you with rights. ERISA gives you the right to request a review of any matter you disagree with. To submit a request for review, you must follow the rules in the Plan's appeal procedure. For details on the Plan's appeal procedure (including your rights to contact the U.S. Department of Labor and bring a lawsuit under ERISA) click on the "Appeals Procedure" tab.

Click on the "*Appeal Procedure*" tab

*What happens to my account if I die?*

When you first join the Plan, you will be asked to name someone to receive your account balance if you die – this person is called a beneficiary. If you are married, your spouse is automatically your beneficiary. For information on who can be named as your beneficiary, click on the "*Naming Beneficiaries*" tab.

Click on the *"Naming Beneficiaries"* tab

*Other Life Event Changes – Plan Participant Actions*

***What if I change my address?***

- Update your address and other contact information with the Plan administrator and be sure to update your information with your employer too.
- Contact XXX at via email at xxx or call xxx-xxx-xxxx between 8 a.m. to 10 p.m. Eastern Time to speak with a Participant Service Representative.

***What if I get married?***

- If you get married after your Plan entry date, you may need to update your Plan beneficiary information.
- Update your beneficiary with XXX via the email at xxx or call xxx-xxx-xxxx between 8 a.m. to 10 p.m. Eastern Time to speak with a Participant Service Representative.

***What if I get divorced or legally separated?***

- If you get divorced or legally separated after your Plan entry date, you may need to update your Plan beneficiary information.

***What if I become disabled?***

- If you become totally and permanently disabled, you can receive a distribution of your account balance. You are considered totally and permanently disabled if you are entitled to receive a disability pension from any other qualified pension plan sponsored by the Contributing Employer or the Trustees or from any government Plan.
- You must apply for a disability benefit and provide proof of your disability.

# APPENDIX B

ANNUAL FUNDING NOTICE
For
[*insert name of pension plan*]

**STANDARD NOTIFICATION - NO ACTION REQUIRED**

**All sponsors of pension plans (also called "defined benefit plans") are required by law to provide important information about the funding of the plan every year. The ABC Plan is continuing to operate and you will receive the benefit you have earned. You can request a statement of your current accrued benefit by contacting [insert plan sponsor contact information].**

## Introduction

The purpose of this notice is to report the funded status of your pension plan ("the Plan") and how that has changed over the last 3 years. The funded status is a measure of the assets held in trust as a percentage of the liability, which equals the estimated cost of providing all plan benefits that have been earned to date. Regardless of the current funded status of the plan, [*insert plan sponsor name*] must make contributions over time that will fund the pension benefits that have been earned.

## What Does the Funded Status Mean to Me?

In general, the funded status of a plan equals a value of the plan's assets divided by a measure of its liabilities as of a point in time. You will still receive the full benefit you have earned even if the plan is less than 100% funded. If the plan's funded status is less than 100%, contributions are structured with the objective of reaching 100% over a period of time. More detail is provided in the Appendix to this notice.

## How Well Funded Is Your Plan?

Under federal law, a plan's funded status is used to determine the amount of money the plan sponsor must contribute to the plan each year.

- The funded status, or Funding Target Attainment Percentage, is calculated by dividing the Plan's Net Assets by Plan Liabilities on the Valuation Date for the plan year.
- In general, the higher the percentage, the better funded the plan.
- Recent legislation has provided temporary funding relief to plans, allowing them to use a higher interest rate to determine funding requirements (lowering the liability and increasing the reported funded status)
- Additional detail regarding the asset and liability components of the funded status can be found in the Appendix to this notice.

| Funding Target Attainment Percentage | | | |
|---|---|---|---|
| | [insert Plan year, e.g., 2017] | [insert plan year preceding Plan year, e.g., 2016] | [insert plan year 2 years preceding Plan year, e.g., 2015] |
| 1. Valuation Date | [insert date] | [insert date] | [insert date] |
| **2. Funding Target Attainment Percentage with funding relief** | **[insert percentage]** | **[insert percentage]** | **[insert percentage]** |
| **3. Funding Target Attainment Percentage without funding relief** | **[insert percentage]** | **[insert percentage]** | **[insert percentage]** |

If you have questions about your plan's funded status, you should contact *[insert plan sponsor contact information]* for more information.

At-Risk Liabilities / Benefit Restrictions [*only if at risk or benefit restrictions apply*]

If a plan's Funding Target Attainment Percentage for the prior plan year is below a specified threshold, the plan is considered under law to be in "at-risk" status. This means that the plan is required to calculate a higher value of plan liabilities and, consequently, requires the employer to contribute more money to the plan. The Plan has been determined to be in "at-risk" status in [*enter year or years covered by the chart above*]. The increased liabilities to the Plan as a result of being in "at-risk" status are reflected in the At-Risk Liabilities row in the funded status table contained in the Appendix.

In addition, the law prohibits pension plans from making benefit improvements or providing certain accelerated payments (such as lump-sum payments or payments to be made only for a fixed period) if a plan falls below certain funding thresholds. The Plan [*is/is not*] currently subject to these thresholds and payment restrictions.

Events Having a Material Effect on Assets or Liabilities [only include if applicable]

Federal law requires the plan administrator to provide an explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. For the plan year beginning on [*insert the first day of the current plan year (i.e., the year after the notice year)*] and ending on [*insert the last day of the current plan year*], the following events are expected to have such an effect: [*insert explanation of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year*].

Pension Benefit Guaranty Corporation (PBGC)

The benefits in this plan are guaranteed by the PBGC up to certain maximum limits. See www.pbgc.gov for more information on this federal agency and the general benefits it covers. Information is also available that provides details on some common questions, such as what happens in the event a plan terminates and what benefits are guaranteed.

Right to Request a Copy of the Annual Report

You can obtain more information about the funded status of the plan and other important information about the plan at *[insert plan sponsor's benefits website]* or contact *[insert plan administrator contact information including name, address, phone, email]*.

You can also get a copy of the plan's annual report, called a "Form 5500", which includes detailed actuarial, participant and asset information, from the US Department of Labor at www.efast.dol.gov and using the search tool, or by contacting the Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. Or you may obtain a copy of the Plan's annual report by contacting your plan administrator at the address noted above.

For identification purposes, the official plan number is [*enter plan number*] and the plan sponsor's name and employer identification number or "EIN" is [*enter name and EIN of plan sponsor*].

## Single Employer Annual Funding Notice Appendix

***What are the detailed components of the Funding Target Attainment Percentage?***
The table below provides more detailed information about the calculation of the Plan's Funding Target Attainment Percentage shown in the main section of this notice.

| Funding Target Attainment Percentage | | | |
|---|---|---|---|
| | [insert Plan year, e.g., 2017] | [insert plan year preceding Plan year, e.g., 2016] | [insert plan year 2 years preceding Plan year, e.g., 2015] |
| 1. Valuation Date | [insert date] | [insert date] | [insert date] |
| 2. Plan Assets | | | |
| a. Total Plan Assets | [insert amount] | [insert amount] | [insert amount] |
| b. Credit Balances | [insert amount] | [insert amount] | [insert amount] |
| c. Net Plan Assets (a) – (b) = (c) | [insert amount] | [insert amount] | [insert amount] |
| 3. Plan Liabilities | | | |
| a. With Adjusted Rates | [insert amount] | [insert amount] | [insert amount] |
| b. Without Adjusted Rates | [insert amount] | [insert amount] | [insert amount] |
| 4. At-Risk Liabilities | [insert amount] | [insert amount] | [insert amount] |
| **5. Funding Target Attainment Percentage with funding relief (2c)/(3a)** | **[insert percentage]** | **[insert percentage]** | **[insert percentage]** |
| **6. Funding Target Attainment Percentage without funding relief (2c)/(3b)** | **[insert percentage]** | **[insert percentage]** | **[insert percentage]** |

*{Instructions: Report Valuation Date entries in accordance with section 303(g)(2) of ERISA. Report Total Plan Assets in accordance with section 303(g)(3) of ERISA. Report credit balances (i.e., funding standard carryover balance and prefunding balance) in accordance with section 303(f) of ERISA. Report Net Plan Assets, Plan Liabilities (i.e., funding target), and Funding Target Attainment Percentage in accordance with section 303(d)(2) of ERISA. The amount reported as "Plan Liabilities" should be the funding target determined without regard to at-risk assumptions, even if the plan is in at-risk status. At-Risk Liabilities are determined under section 303(i) of ERISA (taking into account section 303(i)(5) of ERISA). Report At-Risk Liabilities for any year covered by this chart in which the Plan was in "at-risk" status within the meaning of section 303(i) of ERISA, only if At-Risk Liabilities are greater than Plan Liabilities; otherwise delete the entire row designated as number 4. Round off all amounts in this notice to the nearest dollar.}*

***Why are two different Funding Target Attainment Percentages shown?***
The funding target attainment percentage is a measure of how well the plan is funded. The table above shows this information determined with and without the adjusted interest rates from temporary funding relief provided under The Moving Ahead for Progress in the 21st Century Act, the Highway and Transportation Funding act of 2014 and the Bipartisan Budget Act of 2015. Prior to 2012, pension plan liabilities were determined using a two-year average of interest rates. Under the temporary relief, pension plans also take into account a 25-year average of interest rates. This means that interest rates likely will be higher resulting in lower plan liabilities, a higher Funding Target Attainment Percentage and lower required employer contributions than under prior law. The temporary funding relief provisions of this federal legislation phase out beginning in 2021.

***How are the Plan Assets determined?***
Total Plan Assets is the value of the Plan's assets on the Valuation Date (see line 2 in the chart above). The asset values used to determine funding requirements are measured as of the first day of the Plan Year and are actuarial values. Because market values can fluctuate daily based on factors in the marketplace, such as changes in the stock market, pension law allows plans to use actuarial values that are designed to smooth out those fluctuations for funding purposes.

***What are Credit Balances and why do they matter?***
Credit balances were subtracted from Total Plan Assets to determine Net Plan Assets used in the calculation of the Funding Target Attainment Percentage shown in the chart above. A plan might have a credit balance, for example, if in a prior year an employer made contributions to the plan above the minimum level required by law. Generally, the excess contributions are counted as "credits" and may be applied in future years toward the minimum contributions a plan sponsor is required to make by law. While pension plans are permitted to maintain credit balances for funding purposes, they may not be taken into account when calculating a plan's Funding Target Attainment Percentage.

***How are Plan Liabilities determined?***
Plan Liabilities shown in line 3 of the chart above are the liabilities used to determine the Plan's Funding Target Attainment Percentage. This figure is an estimate of the amount of assets the Plan needs on the Valuation Date to pay for earned plan benefits and is based upon multiple assumptions, including interest rates.

***What is the funding and investment policy of the plan?***
Every pension plan must have a procedure for establishing a funding policy to carry out plan objectives. A funding policy relates to the level of assets needed to pay for promised benefits. The funding policy of the Plan is [*insert a summary statement of the Plan's funding policy*].

Once money is contributed to the Plan, the money is invested in a trust by plan officials, called fiduciaries, who make specific investments in accordance with the Plan's investment policy. Generally speaking, an investment policy is a written statement that provides fiduciaries who are responsible for plan investments with guidelines or general instructions concerning investment management decisions. The investment policy of the Plan is *[insert summary statement of the Plan's investment policy]*.

Detailed information regarding the specific investments of the plan can be found in the annual Form 5500 filing for the plan, available at www.efast.dol.gov, using the Employer Identification Number = XX – XXXXXX and Plan Number = XXX in the search tool.

For additional information about the plan's investments – contact [*insert the name, telephone number, email address or mailing address of the plan administrator or designated representative*].

# APPENDIX C

## Example of Form 5500 filing Participant Communication

On *[insert date of 5500 filing]*, *[insert plan sponsor*] filed the 20XX Form 5500 for *[insert plan name]* with the Employee Benefits Security Administration. This annual filing includes information such as the number of participants in the plan, assets held in trust, contributions and funding levels and amounts paid to service providers. The full Form 5500 is available at www.efast.dol.gov using the following search information for your plan.

Plan Name:

Plan Sponsor:

Employer Identification Number:

Plan Number:

You have the right to receive a copy of the full annual report, or any part thereof, on request. You also have the legally protected right to examine the annual report at the main office of the plan (address), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, D.C. or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, Room N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

If you would like more information about your plan's Form 5500 filing, please contact *[insert contact information]*.

# APPENDIX D

Eleven notices that could be combined and/or superseded by a Quick Start Guide

1. Qualified default investment alternative notice (ERISA section 404(c)(5)(B) and DOL Reg. section 2550.404c-5(d));

2. Notice of availability of cash or deferred election (Treas. Reg. section 1.401(k)-1(e)(2));

3. Participant fee and investment disclosure (DOL Reg. section 2550.404a-5);

4. Safe harbor notice (Code section 401(k)(12)(D) and Treas. Reg. section 1.401(k)-3(d));

5. ERISA automatic contribution arrangement notice (ERISA section 512(d)(3));

6. Eligible automatic contribution arrangement notice (Code section 414(w)(4) and Treas. Reg. section 1.414(w)-1(b)(3));

7. Qualified automatic contribution arrangement notice (Code section 401(k)(13)(E) and Treas. Reg. section 1.401(k)-3(k)(4));

8. Automatic enrollment under eligible combined defined benefit and defined contribution notice (Code section 414(x)(5)(B));

9. ERISA notice regarding availability of investment advice (ERISA section 408(g)(6) and DOL Reg. section 2550.408g-1(b)(7));

10. Code notice regarding availability of investment advice (Code section 4975(f)(8)(F)); and

11. Proposed regulations regarding target date funds (75 Fed. Reg. 73987 (Nov. 30, 2010)).