EMPLOYEE BENEFITS 20/20

ALL EYES ON THE SECURE ACT AND ERISA LITIGATION

MARCH 2020

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THE SECURE ACT

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SECURE Act

- On December 20, 2019, the "Setting Every Community Up for Retirement Enhancement Act", or "SECURE Act", became law
- Some changes are mandatory; others permissive
- Varying effective dates
- Amendments due no later than end of 2022 plan year
- Policy behind changes:
  - Encouraging retirement savings
  - Incentivizing use of options to help ensure savings last through retirement
  - Streamlining plan administration

SECURE Act
Eligibility Changes

- <u>Eligibility Issues</u>: Long-term part-time workers who work more than 500 hours for their employer, for three consecutive years, would be eligible for coverage
  - For 401(k) plans only (not 403(b) plans, which are already subject to universal availability requirements)
  - For employee deferrals only – not employer match
  - Exempt from testing
  - Mandatory; for plan years after 12/31/2020 (*i.e.*, first effective 1/1/2024)
    - Will require plan sponsors to track hours of part-time workers

SECURE Act
Safe Harbor Plan Contributions & Notices

- QACA Safe Harbor: The automatic contribution maximum for qualified automatic contribution arrangements (otherwise known as "QACA safe harbor plans") has increased from 10% to 15%
  - Optional; for plan years after 12/31/2019 (though unclear mid-year change could be implemented)

- QNEC Safe Harbor: Adds an option to retroactively amend a plan to become a nonelective safe harbor plan either 30 days before the end of a plan year, OR no later than the last day of the following plan year (as long as the QNEC contribution is at least 4% - higher than the usual 3%)
  - Optional; for plan years after 12/31/2019

- QNEC Safe Harbor Notices: Eliminates annual safe harbor notice for QNEC safe harbor plans (but not for matching safe harbor plans)
  - For plan years after 12/31/2019

SECURE Act
Distribution Issues

- **Birth/Adoption**: In-service, penalty-free retirement plan withdrawals of up to $5,000 will be permitted within one-year of the birth or adoption of a child, with an option to repay these distributions under certain circumstances
  - Optional; for plan years after 12/31/2019

- **Disasters**: Special disaster-related distributions of up to $100,000 will be exempt from the 10% early distribution penalty if distribution is taken in connection with federal disasters declared between 1/1/2018 and 2/18/2020
  - Optional; effective immediately

- **Loans**: Plan loans can't be made through credit cards or similar arrangements
  - Mandatory; effective immediately

SECURE Act
Distribution Issues

- **RMDs**: The age by which retirement plan participants must begin receiving RMDs has been extended from 70 ½ to 72 for those who reach 70 ½ after 12/31/2019
  - Mandatory; for employees reaching age 70 ½ after 12/31/2019

- **Death RMDs**: Death RMDs must be made within 10 years, subject to certain exceptions for surviving spouses and other qualified beneficiaries who make an election within one calendar year of the employee's death
  - Mandatory; for employees who die after 12/31/2019

SECURE Act
Distribution Issues

- Lifetime Income Fiduciary Safe Harbor: Fiduciaries of defined contribution plans will have greater fiduciary protection if they decide to offer lifetime distribution options, such as annuities
  - Optional; effective immediately

- Lifetime Income Statement: Annually, retirement plans must provide plan participants with lifetime income illustrations (with government to provide models)
  - Mandatory; effective 12 months after DOL issues interim final rules, model disclosures, or assumptions to be used in disclosures

SECURE Act
Distribution Issues

- 403(b) Plans:
  - For terminating 403(b) plans, distribution permitted of in-kind individual 403(b) custodial accounts
    - Optional; guidance expected from Treasury Department in 6 months
  - In-service distribution permitted of an in-plan, lifetime income investment option no longer offered under plan, during the 90-day period before the option becomes unavailable, effective after 12/31/2019

- Defined Benefit Pension Plans:
  - Permits in-service distribution feature at age 59 ½ (lowering it from the current age 62)
    - Optional; effective for plan years after 12/31/2019

SECURE Act
Administrative Issues

- Adoption of New Plan: Permits later adoption of a new plan, which will now be effective as long as it is adopted and signed after the end of the employer's tax year, but no later than the due date for the employer's tax return for that year (as extended)
  - Optional; for employer fiscal years after 12/31/2019
- Small employers; MEPs: Small employers who meet certain conditions can benefit from financial incentives and credits to establish retirement plans and automatically enroll workers, and will also be able to pool together with other unrelated employers to form multiple employer plans
  - Optional; for plan years after 12/31/2020

SECURE Act
Administrative Issues

- <u>Nondiscrimination testing relief for frozen defined benefit plans</u>

- <u>Consolidated 5500 Reporting</u>: Permits consolidated 5500 reporting for an employer with multiple defined contribution plans, if they share trustees, fiduciaries, plan years, and investment selections, for plan years after 12/31/2021
  - Also, 10x increase in IRS taxes (separate from DOL penalties) for failure to file 5500/8955-SSA (maximum of $150K per 5500 and $50K for 8955-SSA), for returns filed after 12/31/2019

LESSONS LEARNED FROM RECENT ERISA LITIGATION

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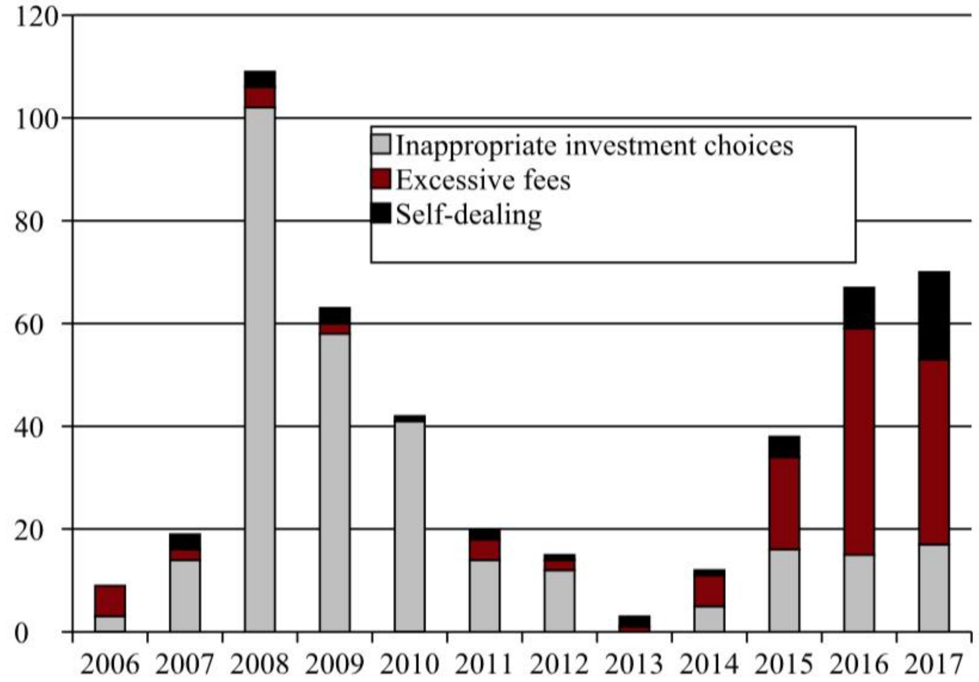
Overview of 401(k) and 403(b) Class Action Litigation

Number of Complaints Related to 401(k) Plans by Type of Complaint, 2006-2017



Note: The number of complaints in this figure exceeds the total number of 401(k)-related complaints because many cases have multiple bases for claims.

Source: Bloomberg Bureau of National Affairs, *ERISA Litigation Tracker* (2018).

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Litigation Over Inappropriate Investment Choices

- ERISA does not spell out specifically what type of investment options are appropriate, but instead emphasizes the diligent and prudent process of selection. Lawsuits challenging inappropriate investment choices have focused on:
  - Including company stock in the 401(k) plan, especially where stock value drops (Sears; Radio Shack; Lehman Brothers)
  - Offering money markets instead of stable value funds
  - Including funds that underperformed over sustained periods, and new funds that do not have sufficient performance history

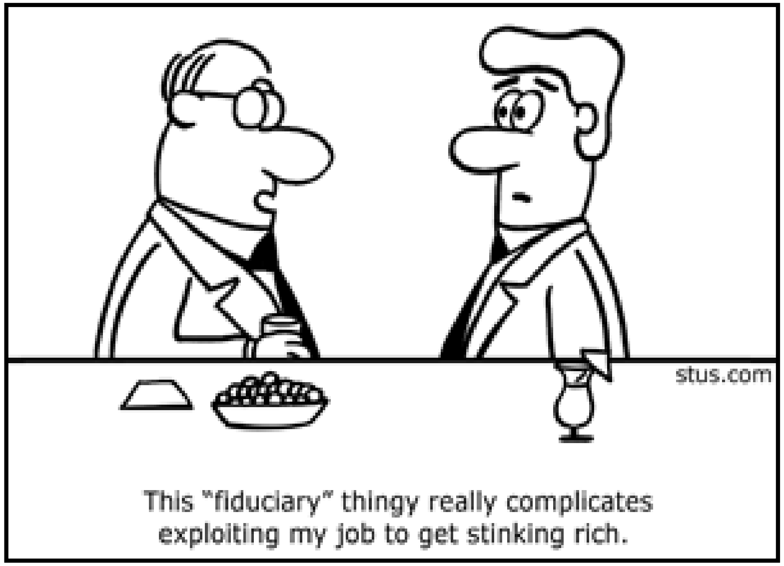
Litigation Over Excessive Fees

- Over the last 6+ years, the majority of 401(k) class actions have focused on the fees charged to plan participants; over the last three years, this litigation trend has extended to 403(b) plans

- The template for these cases has largely remained the same, focusing on allegations that include:
  - Unreasonable investment and administration fees;
  - Improper fee payment methodology; and/or
  - Use of retail versus institutional share classes

- Because so many of these lawsuits are able to survive motions to dismiss, most excessive fee lawsuits settle before reaching summary judgment or trial
  - Philips North America agreed to pay **$17 million** to settle a lawsuit alleging that the company's plan charged excessive investment management and investment fees
  - Merrill Lynch paid **$25 million** to settle a lawsuit alleging that the company profited from unreasonable 401(k) plan fees
  - Many prominent universities have settled their 403(b) plan lawsuits, ranging from **$3.5 million** (Brown) to **$14-14.5 million** (John Hopkins and Vanderbilt) to **$18 million** (MIT), along with court-ordered changes to their conduct

Litigation Over Self-Dealing



- In the ERISA context, self-dealing refers to actions taken by a plan fiduciary that serve its own interests rather than the best interests of plan participants.

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Litigation Over Self-Dealing

- These claims are more common in cases involving large financial service firms, referring to instances in which employers direct employees to their own proprietary investment funds, which may have poor performance or excessive fees, or be too new to have established any suitable performance history
  - For example, there have been lawsuits against BlackRock, Fidelity, Invesco, T.Rowe Price, Morgan Stanley, Charles Schwab, and JP Morgan

- Self-dealing lawsuits have had mixed results to date, with some defendants (including Wells Fargo and Putnam Investments) prevailing on these kinds of claims, while others have settled (Principal Life)
  - Deutsche Bank agreed to pay nearly **$22 million** to settle a lawsuit alleging that its plan fiduciaries violated ERISA by retaining Deutsche Bank-affiliated investment products "that a prudent and unbiased fiduciary would not have retained"
  - Jackson National Life Insurance Co. agreed to pay **$4.5 million** to settle a lawsuit alleging that the company profited at the expense of employees by adding costly proprietary investment funds to its plan

Consequences of Investment and Fee-Related Plan Litigation

- According to a study by the Center for Retirement Research, consequences of 401(k) litigation include:
  - Greater use of passive investment options with lower fees
  - Elimination of niche investment options focused on particular industry sectors or commodities
  - Increased fee transparency
  - Lack of innovation in plan design

- Key features of 403(b) settlements have included mandates for behavioral change – implementation of plan oversight and governance committees; investment policy statements; appointment of independent investment advisors; benchmarks and RFPs for recordkeepers; and obligation to report periodically to Court and plaintiffs' counsel

Lessons for Retirement Committees

- Regularly review and reassess all investment options for performance, fees, and other features, focusing on other funds with similar risk/return and asset class characteristics

- Regularly evaluate and negotiate fees
  - Know your fiduciary duties under ERISA
  - Be sure you understand your current fee structure, and alternatives available
  - Be sure that you are asking not just about lowest fees and share classes, but the most efficient share classes
  - Explore non-mutual fund alternatives, like CITs

- Carefully select and maintain your qualified, independent advisors, so you can prudently rely on their advice and recommendation

- Document your processes for making prudent fiduciary decisions – not just the result, but the rationale supporting the decision and the process used

Litigation Over Actuarial Assumptions

- Over the last year, several companies sponsoring large defined benefit pension plans (such as PepsiCo, Anheuser Busch, American Airlines, MetLife, US Bancorp, and most recently UPS) have been hit with class action lawsuits challenging the actuarial assumptions used to calculate optional forms of benefits and early retirement benefits as being "unreasonable"
  - ERISA prescribes the mortality table and interest rate assumptions that must be used to calculate lump-sum equivalent benefits but does not prescribe them for other purposes
  - Instead, there are plan-based actuarial assumptions used to convert the regular annuity form of benefit into optional annuity forms, and to calculate reductions to early retirement benefits

- A bit early to extract "lessons learned"
  - Six of the eleven lawsuits have survived a motion to dismiss and are moving to the next stage
  - One motion to dismiss has been granted for failing to plausibly allege actuarial assumptions violated ERISA's anti-forfeiture provision because such provision protects right to retirement benefits at normal retirement age but plaintiffs chose early retirement benefits. Plaintiffs were granted opportunity to file amended complaint but withdrew their lawsuit before doing so.

- Nevertheless, a prudent response for plan fiduciaries would be to schedule a review of the plan-based actuarial assumptions and consult with their actuary to assess their reasonableness

Cyber Litigation

- Lawsuit against Estee Lauder retirement plan
  - $99,000 stolen from participant account within 1-month period, over 3 transfers
  - Importance of fiduciary liability insurance
  - Understanding cybersecurity protocols of third party service providers

COBRA Litigation:
Deficient COBRA notices

- *Hicks et al. v. Lockheed Martin Corp.* – class action alleging "deficient" COBRA election notices
  - Alleged deficiencies due to failure to (i) include a "date certain" on which COBRA coverage ends; (ii) include address for payment of premiums; (iii) identify plan administrator; and (iv) be written in a manner calculated to be understood by the average plan participant
  - Settled in September 2019 for $1,250,000 (estimated settlement payments of $14 to approximately 54,000)

- *Pruitt et al. v. Best Buy Co., Inc.* – class action alleging confusing and incomplete election notices
  - Best Buy did not use DOL model election notices
  - Alleged deficiencies due to failure to (i) include address for payment of premiums; (ii) identify plan administrator; (iii) explain how coverage can be lost; and (iv) include instructions on election process
  - Settled in February 2020 before Best Buy filed response (terms unknown)

- *Grant et al. v. JP Morgan Chase & Co.* – class action alleging practice of providing two election notices caused COBRA enrollment instructions to be unclear, leaving participants unable to make informed decisions
  - Court compelled arbitration based on arbitration agreement signed by participant in 2013
  - Confidential settlement reached in November 2019

COBRA Litigation: Deficient COBRA notices

- *Robles et al. v. Lowe's Companies, Inc.* – class action alleging incomplete and confusing COBRA election notices; provided two separate mailings with COBRA election information; provided "general phone number and website" without explicit enrollment instructions or a physical election form

- *Rigney v. Target Corporation* – alleging election notice itself did not explain how to enroll in COBRA and did not include election form; "piecemeal" methodology for providing critical CPBRA-related information

- *Riddle v. PepsiCo* – in denial of motion to dismiss, court found that use of multiple notices potentially failed to comply with COBRA regulations; directing employees to website and phone number without providing election form may fail to comply; nearly identical to DOL model notice may not be sufficient

- *Vazquez et al. v. Marriott International, Inc.* – class action alleging English-only COBRA election notice was deficient
  - Settled in September 2019

COBRA Litigation: Failure to timely provide COBRA notices

- *Randolph v. Baton Rouge Parish School Board* – former employee alleged School Board failed to timely provide COBRA election notice
  - Declaration under oath that benefit notices were automatically generated and mailed was insufficient proof absent other evidence that COBRA notice was actually timely mailed
  - Court noted School Board's failure to provide copy of notice mailed to employee

Lesson #1: Confirm COBRA notices include required information

Notice	Timeframe for Providing Notice	Content Requirements
Initial (General) Notice	Within first 90 days of coverage	• Plan name • Name, address and telephone number for more information • General description of COBRA coverage available under plan, including classes of individuals who may become QBs, employer's obligation regarding certain QEs, maximum coverage period, when and why coverage may be extended, plan's requirements for paying COBRA premiums • Explanation of QB's responsibility to notify plan administration of QE and description of procedures for providing notice • Explanation of QB's responsibility to notify plan administrator of SSA determination of disability and description of procedures for providing notice • Explanation of the importance of keeping plan administrator informed of current addresses of all plan participants • Statement that notice does not fully describe COBRA coverage or other rights and availability of more complete information from plan administrator and in SPD DOL model notice available but "use of the model notice is not mandatory." DOL expects model notice to be revised.

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Lesson #1: Confirm COBRA notices include required information

Notice	Timeframe for Providing Notice	Content Requirements
Election Notice	Within 14 days after the plan administrator is notified of a qualifying event; or 44 days if the employer is the plan administrator	• Rights to COBRA coverage • How to make a COBRA election • Name of COBRA administrator • How to obtain additional information • Name of plan and name, address, and telephone number of COBRA administrator • Identification of QE • Identification of QBs (by name or status) • Date coverage terminates (or has terminated) if COBRA is not elected • Explanation of how to elect COBRA coverage and deadlines for making elections • Statement that each qualified beneficiary has an independent right to elect COBRA • Explanation of consequences if COBRA is not elected or is waived • What COBRA coverage is available, for how long, and (for less than 36 months) how coverage can be extended for disability or second QEs • How COBRA coverage might terminate early • Payment requirements, including due dates; grace periods; consequences of delayed payment or nonpayment; and payment address(es) • Statement of importance of keeping the plan administrator informed of current address • Statement that election notice does not fully describe COBRA or the plan, and that more information is available from plan administrator or in the plan's SPD DOL model notice available but "use of the model notice is not mandatory." DOL expects model notice to be revised.

Lesson #1: Confirm COBRA notices include required information

Notice	Timeframe for Providing Notice	Content Requirements
Notice of Early Termination of COBRA Coverage	As soon as practicable after the decision to terminate COBRA coverage is made	▪ Reason coverage will terminate earlier than end of applicable maximum coverage period ▪ Date coverage will terminate ▪ Any rights qualified beneficiary may have under the plan or applicable law to elect alternative group or individual coverage (*e.g.*, conversion right)
Notice of Unavailability of COBRA Coverage	Within 14 days after receiving an individual's notice of qualifying event	▪ Explain reason for denial of COBRA coverage

Lesson #2: Confirm notices meet other content requirements

- Purpose of notices is to "help participants and beneficiaries understand how to exercise their COBRA rights."

- Notice must be written "in a manner calculated to be understood by the average plan participant."
  - Use simple, straightforward language
  - Provide sufficient information so that participants understand how to elect COBRA and the consequences for failing to do so
    - ***When and how*** to elect, ***where*** to send payments, ***who*** is the plan administrator, ***what*** happens if not elected or timely payments not made
  - If model notices are used, supplement with plan-specific information

Lesson #3:
Review COBRA notice procedures

- Is delivery method appropriate?
  - Was notice sent by means reasonably calculated to reach the recipient?
  - Different delivery methods can and should be used for different notices
    - Consider if delivery method will provide notice to covered spouses

- Are records sufficient to show adequate COBRA notices are timely provided to each QB?
  - Sufficient records may include copy of notices provided, documentation of dates and addresses used for mailings, employee signature acknowledging hand delivery
  - Maintain written COBRA notice procedures
  - Proof of receipt not required (*e.g.*, certified mail receipt)

Lesson #4:
Review COBRA administrator contract

- Review indemnification and hold harmless provisions
  - Will the administrator indemnify you for deficient notice and/or failure to provide notice liability?

- Review limitation on liability language
  - Are the limits high enough to cover COBRA litigation liability?

Litigation Over Out-of-Network Medical Claims

- Increase in claims brought by out-of-network providers against health insurers and self-funded health plans
  - Litigation often involves large-value claims such as those involving air ambulance transports, free-standing emergency rooms and surgical centers for cosmetic surgery or pain management

- Claimant must be a plan participant or beneficiary – providers with written assignments from participant permitting provider to "stand in the shoes" of the participant to pursue claims and litigation
  - *Davita, Inv. v. Marietta Memorial Hospital Employee Health Benefit Plan* – Court dismissed ERISA fiduciary breach claims brought by provider because assignment agreement was ambiguous ("any cause of action")

- Even in cases where a valid assignment is made, the assignment cannot give providers greater rights than the rights of a plan participant
  - Must exhaust administrative remedies
  - Must comply with limitations period – short limitations periods in plan document terms have been upheld
  - Must comply with forum-selection clauses – restrictive clauses in plan document terms have been upheld

Litigation Over Out-of-Network Medical Claims

- Plan documents and anti-assignment clauses
  - ERISA includes anti-assignment provisions applicable to pension benefits, but is silent on the issue of assignability of health care benefits
  - Absent specific plan language prohibiting assignment, courts generally recognize the right of provider to sue ERISA plan to enforce the right to benefits due under the plan
  - Circuits that have address anti-assignment clauses in group health plan documents have held that terms of an unambiguous anti-assignment provision must be enforced
    - *Medical Society of the State of New York et al. v. UnitedHealth Group* – Assignment agreement was void; "You may not assign your benefits under the Policy to a non-network provider without our consent"
  - Certain actions may render a plan's anti-assignment clause unenforceable; anti-assignment provisions should address payments to providers

Mandatory Arbitration of ERISA Claims

- Enforceability of arbitration provisions in retirement plan documents
  - *Dorman v. Charles Schwab Corp.* - Ninth Circuit fiduciary breach case addressing mandatory arbitration provisions in ERISA plan documents
  - Court upheld 401(k) plan arbitration provision requiring individual arbitration of any claim, dispute, or breach arising out of or related to the plan and waiver of right to bring a class or collective action
- Implications for retirement plan sponsors and terms of plan documents
  - *Epic Systems Corp. v. Lewis* – Supreme Court held in non-ERISA case that independent employment agreements with mandatory arbitration and class action waiver are enforceable
  - *Munro v. USC* - Ninth Circuit held general arbitration provisions in employment agreements do not prevent individuals from bringing class actions alleging breach of fiduciary duty under ERISA because the plan was not a party to the employment agreement; therefore, if arbitration of ERISA claims is desired, plan sponsor must ensure that plan documents include an express requirement to arbitrate any claims, and a class/collective action waiver
  - Multiemployer plans must already arbitrate trustee deadlock and withdrawal liability disputes
- Arbitration and DOL claims and appeals rules for group health plans
  - Binding arbitration can be used as a form of benefit dispute resolution when plan offers voluntary levels of appeal
  - Voluntary appeal must occur only after exhaustion of required appeals; cannot impose fees or costs; and must toll any defense based on timeliness

Mandatory Arbitration of ERISA Claims

- Pros/Cons of Arbitrating ERISA Claims
  - Pros
    - Private proceeding
    - Potentially faster, and less costly, resolution of any dispute
    - Potentially friendlier to defendants
  - Cons
    - Arbitrators may not be familiar with ERISA
    - Arbitrators may split decisions rather than ruling in favor of the employer/plan sponsor
    - No right to appeal
    - Not bound by precedent, and do not set precedent, so there is the risk of inconsistent rulings
    - Each claim must be addressed one-by-one, on its on merits; does not offer employer/plan sponsor the benefit of resolving issues at a class level
- Forced Arbitration Injustice Repeal (FAIR) Act, *H.R. 1423*
  - Passed by House of Representatives
  - Would prohibit pre-dispute, mandatory arbitration agreements for, among other things "employment disputes"; not clear whether this could be interpreted to include benefit plan disputes under ERISA

QUESTIONS?

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Employee Benefits Update December 2019

Congressional Spending Bills Repeal Cadillac Tax and Other ACA Taxes and Pass Retirement Plan Changes

Repeal of Cadillac Tax and Other ACA Taxes.

Ending years of speculation amid multiple delays, Congress permanently repealed the Affordable Care Act's ("ACA") 40% excise tax on generous health plans – known as the "Cadillac Tax" – as part of the spending bills necessary to extend federal funding. The Cadillac Tax was originally scheduled to take effect in 2018, but was twice delayed, most recently to 2022, due to widespread unpopularity. The Cadillac Tax would have imposed a 40% tax on employers for certain high-value employer-sponsored health plans with annual premiums over a maximum dollar threshold (projected to be $11,200 for single coverage and $30,150 for family coverage in 2020).

The spending bills also repealed two other ACA taxes: the 2.3% excise tax on medical devices, which originally took effect in 2013, but was then suspended for 2016 and 2017, and the health insurance providers industry fee, which took effect in 2014.

Retirement Plan Changes.

As part of the spending bills, Congress also passed the "Setting Every Community Up for Retirement Enhancement Act", or "SECURE Act", and some other miscellaneous changes that impact retirement plans. Highlights of this new legislation include the following:

- The automatic contribution maximum for qualified automatic contribution arrangements (otherwise known as "QACA safe harbor plans") has increased from 10% to 15%.
- Penalty-free retirement plan withdrawals of up to $5,000 will be permitted in the case of birth or adoption of a child.
- Special disaster-related distributions will be exempt from the 10% early distribution penalty.
- The age by which retirement plan participants must begin receiving required minimum distributions (RMDs) of their plan benefits has been extended from 70-1/2 to 72.

Important Dates

January 13:

- Post Schedule MB attachment from the Form 5500 for 2019 on company intranet, assuming Form 5500 was filed by October 15, 2019
- Fund Q4 2019 contribution to defined benefit pension plan

January 31:

- Report value of health coverage on Form W-2
- Verify retirement plan recordkeepers have provided Forms 1099-R to participants who received distributions in 2019
- File Form 945 to report income tax withheld from retirement plan distributions during 2019

- The fiduciaries of 401(k) and other defined contribution plans will have greater fiduciary protection if they decide to offer lifetime distribution options, such as annuities. In addition, retirement plans must provide plan participants with a lifetime income illustration.

- Small employers who meet certain conditions can benefit from financial incentives and credits to establish retirement plans and automatically enroll workers, and will also be able to pool together with other unrelated employers to form multiple employer plans.

- Long-term part-time workers who work more than 500 hours for their employer, for three consecutive years, would be eligible for coverage under employer-sponsored retirement plans.

Further details regarding the changes being introduced as part of the SECURE Act and the funding bills will be forthcoming as additional guidance is issued by the IRS and DOL.

If you have any questions about the repeal of the ACA taxes or the SECURE Act, or would like to discuss any other employee benefits issues, please contact any member of our Employee Benefits group below.

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Plan Design Issues to Consider under SECURE Act

Issue -Eligibility & Contributions	Effective Date	Considerations
Eligibility and plan participation of long-term, part-time workers as long as employee works 3 consecutive 12-month periods with at least 500 hours in each period.	For plan years beginning after 12/31/2020. For purposes of counting hours, only service performed after 12/31/2020 needs to be taken into account, and plan sponsors can disregard earlier service periods	Mandatory; will require plan amendment and review of employee records systems. Required element is for these individuals to be able to make deferrals; it is permissible to continue to exclude them from matching or other employer contributions, and to exclude them from nondiscrimination testing
QACA 401K Plans – increase in maximum default contribution rate from 10% to 15% (though 10% cap retained for first year of participation)	Plan years beginning after 12/31/2019	Will require plan amendment
401(k) Plan using QNEC safe harbor design – elimination of annual safe harbor notice requirement	Plan years beginning after 12/31/2019	Operational, unless plan document specifies provision of notice, in which case a plan amendment will be necessary
401(k) Plan can retroactively convert to QNEC safe harbor: (i) retro amendment made 30 days before end of plan year, or (ii) retro amendment providing QNEC of at least 4% (instead of usual 3%) for that year and is made no later than last day of the following plan year	Plan years beginning after 12/31/2019	Operational; then plan amendment necessary

Issue - Distributions	Effective Date	Considerations
RMDs – death payouts generally within 10 years, unless certain eligible designated beneficiaries (such as surviving spouses, minor children, disabled or chronically ill persons, or those within 10 years of the participant's age) elect to receive distributions over their lifetime by making an election within 1 calendar year of the account owner's death. Surviving spouses will also continue to be able to defer distributions until the account owner would have attained age 72 (required beginning date)	For employees who die after 12/31/2019	Mandatory; will require plan amendment
RMDs – required beginning date increased to age 72	For distributions required to be made after 12/31/2019 with respect to individuals who attain age 70-1/2 after 12/31/2019	Mandatory; will require plan amendment. Operationally, there will be bifurcated distributions for RMDs for those who turned 70-1/2 before 12/31/2019, and those who turned 70-1/2 after 12/31/2019
Plan loans – can't make through credit card or similar arrangement	For loans made after enactment of SECURE Act (12/20/19)	Mandatory; may require updates to plan loan terms or policies
In-service withdrawal of up to $5,000, penalty-free, in the 1-year period following the birth or adoption of a child (excluding adoption of spouse's child);	Distributions after 12/31/2019	Permissible; would require plan amendment

permissible repayment under certain circumstances		
Lowering of age from 62 to 59-1/2 for in-service distributions from defined benefit pension plans	Plan years beginning after 12/31/2019	Permissible; would require plan amendment
Fiduciary safe harbor for selection of lifetime income producer to provide an in-plan annuity	Effective upon enactment (12/20/2019)	Permissible
Qualified disaster distributions of up to $100,000 are exempt from the 10% early distribution penalty tax if the distribution is taken in connection with federal disasters declared between 1/1/2018 and 2/18/2020 (60 days after enactment)	Effective upon enactment (12/20/2019)	Permissible; likely narrow application. Would require plan amendment
In-kind distribution of lifetime investment options without regard to plan distribution restrictions, provided that the investment is no longer authorized to be held under the plan and the distribution is made by direct transfer to another retirement plan or IRA	Effective for plan years beginning after 12/31/2019	Permissible, but likely narrow application
In kind distribution of individual 403(b) custodial accounts in event of 403(b) plan termination	Within 6 months after enactment (by 6/20/20), Treasury to issue guidance	

Issue – Plan Operations & Administration	**Effective Date**	**Considerations**
NDT relief for closed DB plans (“soft frozen”) - closed to new entrants, but existing participants continue to accrue benefits, provided that certain requirements are met	Enactment of SECURE Act (12/20/2019), with an option to apply the rules to plan years beginning after 12/31/2013	Operational – coordinate with recordkeeper
Combined 5500s for group plans with same trustees, named fiduciaries, investment options	Annual reports to be filed for plan years beginning after 12/31/2021	Operational – coordinate with recordkeeper
New disclosure obligation to provide DC plan participants with annual benefit statement including a lifetime income disclosure, outlining the monthly payments that a participant would receive if current account balance were provided as an annuity	Applies to benefit statements furnished more than 12 months after latest to occur of DOL issuing (i) interim final rules, (ii) model disclosure, or (iii) the assumptions that may be used in the disclosure	DOL directed to issue regs and model disclosure
Pooled open MEPs to allow unrelated small employers the opportunity to offer a single retirement plan	Plan years beginning after 12/31/2020	
Timing of adoption of new plans – considered timely adopted if signed after end of tax year but before the tax filing date for that year (including extensions)	Plans adopted for tax years beginning after 12/31/2019	Operational

****Plan Amendment deadline: End of first plan year beginning on or after January 1, 2022 (i.e., 12/31/2022 for calendar year plans) – though 2024 for collectively bargained and governmental plans

A LOOK AT 401(k) PLAN FEES

U.S. Department of Labor
Employee Benefits Security Administration

This publication has been developed by the U.S. Department of Labor, Employee Benefits Security Administration.

To view this and other EBSA publications, visit the agency's Web site at:
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This booklet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Updated August 2013

A LOOK AT 401(k) PLAN FEES

U.S. Department of Labor
Employee Benefits Security Administration

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Introduction

More and more employees are investing in their futures through 401(k) plans. Employees who participate in 401(k) plans assume responsibility for their retirement income by contributing part of their salary and, in many instances, by directing their own investments.

If you are among those who direct your investments, you will need to consider the investment objectives, the risk and return characteristics, and the performance over time of each investment option offered by your plan in order to make sound investment decisions. Fees and expenses are one of the factors that will affect your investment returns and will impact your retirement income.

The information contained in this booklet answers some common questions about the fees and expenses that may be paid by your 401(k) plan. It highlights the most common fees and encourages you, as a 401(k) plan participant, to:

- Make informed investment decisions;
- Consider fees as one of several factors in your decision making;
- Compare all services received with the total cost; and
- Realize that cheaper is not necessarily better.

Keep in mind, however, that this booklet is a simplified explanation of some common 401(k) fees. It is not a legal interpretation of the nation's major retirement benefits protection law, the Employee Retirement Income Security Act (ERISA), or other laws, nor is this information intended to be investment advice.

1. Why consider fees?

In a 401(k) plan, your account balance will determine the amount of retirement income you will receive from the plan. While contributions to your account and the earnings on your investments will increase your retirement income, fees and expenses paid by your plan may substantially reduce the growth in your account which will reduce your retirement income. The following example demonstrates how fees and expenses can impact your account.

Assume that you are an employee with 35 years until retirement and a current 401(k) account balance of $25,000. If returns on investments in your account over the next 35 years average 7 percent and fees and expenses reduce your average returns by 0.5 percent, your account balance will grow to $227,000 at retirement, even if there are no further contributions to your account. If fees and expenses are 1.5 percent, however, your account balance will grow to only $163,000. The 1 percent difference in fees and expenses would reduce your account balance at retirement by 28 percent.

In recent years, there has been a dramatic increase in the number of investment options typically offered under 401(k) plans as well as the level and types of services provided to participants. These changes give today's employees who direct their 401(k) investments greater opportunity than ever before to affect their retirement savings. As a participant you may welcome the variety of investment options and the additional services, but you may not be aware of their cost. As shown above, the cumulative effect of the fees and expenses on your retirement savings can be substantial.

You should be aware that your employer also has a specific obligation to consider the fees and expenses paid by your plan. ERISA requires employers to follow certain rules in managing 401(k) plans. Employers are held to a high standard of care and diligence and must discharge their duties solely in the interest of the plan participants and their beneficiaries. Among other things, this means that employers must:

- Establish a prudent process for selecting investment options and service providers;
- Ensure that fees paid to service providers and other expenses of the plan are reasonable in light of the level and quality of services provided;
- Select investment options that are prudent and adequately diversified;
- Disclose plan, investment and fee information to participants to make informed decisions regarding their investment options under the plan; and
- Monitor investment options and service providers once selected to make sure that they continue to be appropriate choices.

2. What are 401(k) plan fees and who pays for them?

If you want to know how fees affect your retirement savings, you will need to know about the different types of fees and expenses and the different ways in which they are charged.

401(k) plan fees and expenses generally fall into three categories:

Plan administration fees. The day-to-day operation of a 401(k) plan involves expenses for basic administrative services – such as plan recordkeeping, accounting, legal and trustee services – that are necessary for administering the plan as a whole. Today, a 401(k) plan also may offer a host of additional services, such as telephone voice-response systems, access to a customer service representative, educational seminars, retirement planning software, investment advice, electronic access to plan information, daily valuation and online transactions.

In some instances, the costs of administrative services will be covered by investment fees that are deducted directly from investment returns. Otherwise, if administrative costs are separately charged, they will be borne either by your employer or charged directly against the assets of the plan. When paid directly by the plan, administrative fees are either allocated among participant's individual accounts in proportion to each account balance (i.e., participants with larger account balances pay more of the allocated expenses) or passed through as a flat fee against each participant's account. Either way, generally the more services provided, the higher the fees.

Investment fees. By far the largest component of 401(k) plan fees and expenses is associated with managing plan investments. Fees for investment management and other investment-related services generally are assessed as a percentage of assets invested. You should pay attention to these fees. You pay for them in the form of an indirect charge against your account because they are deducted directly from your investment returns. Your net total return is your return after these fees have been deducted. *(See pages 4-6 for more information on investment-related fees.)*

Individual service fees. In addition to overall administrative expenses, there may be individual service fees associated with optional features offered under a 401(k) plan. Individual service fees are charged separately to the accounts of participants who choose to take advantage of a particular plan feature. For example, individual service fees may be charged to a participant for taking a loan from the plan or for executing participant investment directions.

401(k) plan investments and services may be provided through a variety of arrangements:

Employers may directly provide, or separately negotiate with and hire different providers for, some or all of the various services and investment alternatives offered under their 401(k) plans (sometimes referred to as an unbundled arrangement). The expenses of each provider (i.e., investment manager, trustee, recordkeeper, communications firm) are charged separately.

In many plans, some or all of the various services and investment options may be offered by one provider for a fee paid to that provider (sometimes referred to as a bundled arrangement). The provider will then pay out of that fee any other service providers that it contracts with to provide the services.

Some plans may use an arrangement that combines a single provider for certain services, such as administrative services, with a number of providers for investment options.

Regardless of the arrangement used, fees need to be evaluated, keeping in mind the cost of all covered services.

3. *What fees are associated with my investment choices in a 401(k) plan?*

Apart from fees charged for administration of the plan itself, there are three basic types of fees that may be charged in connection with investment options in a 401(k) plan. These fees, which can be referred to by different terms, include:

- ♦ **Sales charges** (also known as **loads** or **commissions**). These are transaction costs for buying and selling of shares. They may be computed in different ways, depending upon the particular investment product.

- ♦ **Management fees** (also known as **investment advisory fees** or **account maintenance fees**). These are ongoing charges for managing the assets of the investment fund. They are generally stated as a percentage of the amount of assets invested in the fund. Sometimes management fees may be used to cover administrative expenses. You should know that the level of management fees can vary widely, depending on the investment manager and the nature of the investment product. Investment products that require significant management, research and monitoring services generally will have higher fees. *(See page 7.)*

- ♦ **Other fees.** This category covers services, such as recordkeeping, furnishing statements, toll-free telephone numbers and investment advice, involved in the day-to-day management of investment products. They may be stated either as a flat fee or as a percentage of the amount of assets invested in the fund.

In addition, there are some fees that are unique to specific types of investments. Following are brief descriptions of some of the more common investments offered under 401(k) plans and explanations of some of the different terminology and unique fees associated with them.

Some Common Investments and Related Fees

Most investments offered under 401(k) plans today pool the money of a large number of individual investors. Pooling money makes it possible for individual participants to diversify investments, to benefit from economies of scale and to lower their transaction costs. These funds may invest in stocks, bonds, real estate and other investments. Larger plans, by virtue of their size, are more likely to pool investments on their own – for example, by using a separate account held with a financial institution. Smaller plans generally invest in commingled pooled investment vehicles offered by financial institutions. Generally, investment-related fees, usually charged as a percentage of assets invested, are paid by the participant.

Mutual funds. Mutual funds pool and invest the money of many people. Each investor owns shares in the mutual fund that represent a part of the mutual fund’s holdings. The portfolio of securities held by a mutual fund is managed by a professional investment adviser following a specific investment policy. In addition to investment management and administration fees, you may find these fees:

- ♦ Some mutual funds assess sales charges (see above for a discussion of sales charges). These charges may be paid when you invest in a fund (known as a **front-end load**) or when you sell shares (known as a **back-end load**, **deferred sales charge** or **redemption fee**). A front-end load is deducted up front and, therefore, reduces the amount of your initial investment. A back-end load is determined by how long you keep your investment. There are various types of back-end loads, including some which decrease and eventually disappear over time. A back-end load is paid when the shares are sold (i.e., if you decide to sell a fund share when a back-end load is in effect, you will be charged the load).

- Mutual funds also may charge what are known as **Rule 12b-1 fees**, which are ongoing fees paid out of fund assets. Rule 12b-1 fees may be used to pay for commissions to brokers and other salespersons, to pay for advertising and other costs of promoting the fund to investors and to pay various service providers of a 401(k) plan pursuant to a bundled services arrangement. Some mutual funds may be advertised as “no-load” funds. This can mean that there is no front- or back-end load. However, there may be a 12b-1 fee.

- **Target date retirement funds**, which are often mutual funds, hold stocks, bonds, and cash investments. These funds are designed to make investing for retirement more convenient by automatically changing your investment mix or asset allocation over time. Target date funds may charge different fees even with the same target date. If a target date fund invests in other mutual funds (often called a “fund-of-funds”), fees may be charged by both the target date fund and the other funds.

Collective investment funds. A collective investment fund is a trust fund managed by a bank or trust company that pools investments of 401(k) plans and other similar investors. Each investor has a proportionate interest in the trust fund assets. For example, if a collective investment fund holds $10 million in assets and your investment in the fund is $10,000, you have a 0.1 percent interest in the fund. Like mutual funds, collective investment funds may have different investment objectives. There are investment management and administrative fees associated with a collective investment fund.

Variable annuities. Insurance companies frequently offer a range of investment options for 401(k) plans through a group variable annuity contract between an insurance company and an employer on behalf of a plan. The variable annuity contract “wraps” around investment options, often a number of mutual funds. Participants select from among the investment options offered, and the returns to their individual accounts vary with their choice of investments. Variable annuities also include one or more insurance elements, which are not present in other investment options. Generally, these elements include an annuity feature, interest and expense guarantees, and any death benefit provided during the term of the contract. In addition to investment management fees and administration fees, you may find these fees:

- **Insurance-related charges** are associated with investment options that include an insurance component. They include items such as sales expenses, mortality risk charges and the cost of issuing and administering contracts.

- **Surrender and transfer charges** are fees an insurance company may charge when an employer terminates a contract (in other words, withdraws the plan’s investment) before the term of the contract expires or if you withdraw an amount from the contract. This fee may be imposed if these events occur before the expiration of a stated period, and commonly decrease and disappear over time. It is similar to an early withdrawal penalty on a bank certificate of deposit or to a back-end load or redemption fee charged by some mutual funds.

Stable value funds. A common investment option that generally includes fixed income securities and one or more contracts issued by banks or insurance companies that provide protection of contributions invested (the principal) and accumulated interest, as well as a rate of return that may be fixed, linked to an index, or reset periodically based on the performance of the fund's investments. These funds may have investment management and other administrative fees associated with their operation.

While the investments described above are common, 401(k) plans also may offer other investments which are not described here (such as employer securities).

4. Where can I get information about the fees and expenses charged to my 401(k) plan account?

If you have questions about the fees and expenses charged to your 401(k) plan, review the documents noted below or contact your plan administrator.

The following information is available from your plan:

- ♦ If you direct the investments in your account, your plan will provide information about your rights and responsibilities under the plan related to directing your investments. This includes plan and investment-related information, including information about fees and expenses, that you need to make informed decisions about the management of your account. The investment-related information is provided in a format, such as a chart, that allows for comparison among the plan's investment options. The plan should provide this information before you can direct investments for the first time and annually thereafter. You also will receive a statement with information on fees and expenses for administrative or individual services actually paid from your individual account at least quarterly. This statement does not include charges paid indirectly from the investment options you have chosen.

  A model chart that is similar to what you may receive is included in the back of this publication. It includes performance data for each investment option over 1, 5 and 10 years; returns of an appropriate broad-based securities market index (referred to as a benchmark) over these same time periods for comparison; and fee and expense information on the costs of running each investment option (expense ratio) and service and shareholder-type fees (such as sales charges). The chart also includes a glossary to help you understand the investment options offered by your plan.

  To help you use this information, see EBSA's publication *Maximize Your Retirement Savings – Tips on Using the Fee and Investment Information From Your Retirement Plan*. These tips also will help you use the periodic fee and investment information from your plan to see if you want to make any changes.

- Your 401(k) plan's **summary plan description (SPD)** will tell you what the plan provides and how it operates. It may tell you about the investments offered by your plan, the fees and expenses paid by the plan, and how those expenses are allocated among plan participants. A copy of the SPD is furnished to participants when they join a plan and then every 5 years if there are material modifications or every 10 years if there is no modification.

- The plan's **annual report (Form 5500 series)** contains information regarding the plan's assets, liabilities, income and expenses and shows the aggregate administrative fees and other expenses paid by the plan. However, it will not show expenses deducted from investment results or fees and expenses paid by your individual account. You may examine the annual report for free online at **www.efast.dol.gov**. In general, the **summary annual report**, which summarizes the annual report information, is distributed each year.

You also may request copies of prospectuses or similar documents from your plan as well as financial statements provided to your plan, and share values for your plan's investment options (with the valuation date). In addition, you may want to consult the business section of major daily newspapers, business and financial publications, rating services, the business librarian at the public library, or the Internet (see the list of helpful Websites at the back of this booklet). These sources will provide information and help you compare the performance and expenses of your investment options with other investments outside of your 401(k) plan.

If, after doing your own analysis, you have questions regarding the rates of returns or fees of your plan's investment options, ask your plan administrator for an explanation.

5. What other factors might impact the fees and expenses of my 401(k) plan?

- Funds that are "actively managed" (i.e., funds with an investment adviser who continually researches, monitors, and actively trades the holdings of the fund to seek a higher return than the market) generally have higher fees. The higher fees are associated with the more active management provided and sales charges from the higher level of trading activity. While actively managed funds seek to provide higher returns than the market, neither active management nor higher fees necessarily guarantee higher returns.

- Funds that are "passively managed" generally have lower management fees. Passively managed funds seek to obtain the investment results of an established market index, such as the Standard and Poor's 500, by duplicating the holdings included in the index. Thus, passively managed funds require little research or trading activity.

- If the services and investment options under your plan are offered through a bundled program, then some or all of the costs of plan services may not be separately charged to the plan or to your employer. For example, these costs possibly may be subsidized by the asset-based fees charged on investments. Compare the services received in light of the total fees paid.

- Plans with more total assets may be able to lower fees by using special funds or classes of stock in funds, which generally are sold to larger group investors. “Retail” or “brand name” funds, which are also marketed to individual and small group investors, tend to be listed in the newspaper daily and typically charge higher fees. Let your employer know your preference.

- Optional features, such as participant loan programs and insurance benefits offered under variable annuity contracts, involve additional costs. Consider whether they have value to you. If not, let your employer know.

- Retirement plans, such as 401(k) plans, are group plans. Therefore, your employer may not be able to accommodate each employee’s preferences for investment options or additional services.

6. Is there a checklist I can use to review my 401(k) plan’s fees?

There is an array of investment options and services offered under today’s 401(k) plans. Answers to the following 10 questions will help in gathering information about the fees and expenses paid by your plan. If you cannot find the answers, ask your plan administrator.

401(k) Fees Checklist

1 What investment options are offered under your company’s 401(k) plan?

2 Do you have all available documentation about the investment options under your plan and the fees charged to your plan?

3 What types of investment education are available under your plan?

4 What arrangement is used to provide services under your plan (i.e., are any or all of the services or investment options provided by a single provider)?

5 Do you and other participants use most or all of the optional services offered under your 401(k) plan, such as a participant loan program and insurance coverage?

6 If administrative services are paid separately from investment management fees, are they paid for by the plan, your employer, or are they shared?

7 Are the investment options tracking an established market index or is there a higher level of investment management services being provided?

8 Do any of the investment options under your plan include sales charges (such as loads or commissions)?

9 Do any of the investment options under your plan include any fees related to specific investments, such as 12b-1 fees, insurance charges, or surrender fees, and what do they cover?

10 Does your plan offer any special funds or special classes of stock (generally sold to larger group investors)?

This booklet is only the beginning of your educational process. You should ask questions and educate yourself about investments. Monitoring your current investment selections and reviewing the investment options offered under your plan are part of a process that you, as an informed participant, will need to undertake continually.

Keep in mind that the law requires the fees charged to a 401(k) plan be "reasonable" rather than setting a specific level of fees that are permissible. Therefore, the reasonableness of fees must be determined in each case.

In Conclusion ...

When you consider the fees in your 401(k) plan and their impact on your retirement income, remember that **all services have costs**. If your employer has selected a bundled program of services and investments, **compare all services received with the total cost**.

Remember, too, that higher investment management fees do not necessarily mean better performance. Nor is cheaper necessarily better. **Compare the net returns relative to the risks among available investment options**.

And, finally, **don't consider fees in a vacuum**. They are only one part of the bigger picture including investment risks and returns and the extent and quality of services provided. Keep in mind the importance of diversifying your investments.

7. What other sources of information are available?

Listed below are some organizations and their Websites, phone numbers and publications that can help in your research.

From the **Employee Benefits Security Administration:**

Maximize Your Retirement Savings – Tips on Using the Fee and Investment Information From Your Retirement Plan

Target Date Retirement Funds Investor Bulletin

What You Should Know About Your Retirement Plan

Savings Fitness: A Guide to Your Money and Your Financial Future

Taking the Mystery Out of Retirement Planning

Website:
www.dol.gov/ebsa
Toll-free Publication Hotline:
1-866-444-3272

From the **Securities and Exchange Commission**:

Get the Facts on Saving and Investing

Invest Wisely - An Introduction to Mutual Funds

Ask Questions - Questions You Should Ask About Your Investments

Website:
www.sec.gov
Toll-free phone information service:
1-800-SEC(732)-0330

From the **Board of Governors of the Federal Reserve System**:
Website:
www.federalreserve.gov

From the **Comptroller of the Currency**:
Website:
www.occ.gov
Toll-free Hotline:
1-800-613-6743

From the **American Savings Education Council (ASEC)**:
Website:
www.choosetosave.org/asec
Phone:
(202) 659-0670

From the **Certified Financial Planner Board of Standards**:
Website:
www.cfp.net
Toll-free Hotline:
1-800-487-1497

From the **Financial Industry Regulatory Authority**:
Website:
www.finra.org
Phone:
(301) 590-6500

Model Comparative Chart

ABC Corporation 401k Retirement Plan

Investment Options – January 1, 20XX

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

Document Summary

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

Part I. Performance Information

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

Table 1—Variable Return Investments

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

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

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

Table 2—Fixed Return Investments

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

Part II. Fee and Expense Information

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

Table 3—Fees and Expenses

Name / Type of Option	Total Annual Operating Expenses		Shareholder-Type Fees
	As a %	Per $1000	
Equity Funds			
A Index Fund/ S&P 500	0.18%	$1.80	$20 annual service charge subtracted from investments held in this option if valued at less than $10,000.
B Fund/ Large Cap	2.45%	$24.50	2.25% deferred sales charge subtracted from amounts withdrawn within 12 months of purchase.
C Fund/ International Stock	0.79%	$7.90	5.75% sales charge subtracted from amounts invested.
D Fund/ Mid Cap ETF	0.20%	$2.00	4.25% sales charge subtracted from amounts withdrawn.
Bond Funds			
E Fund/ Bond Index	0.50%	$5.00	N/A
Other			
F Fund/ GICs	0.46%	$4.60	10% charge subtracted from amounts withdrawn within 18 months of initial investment.
G Fund/ Stable Value	0.65%	$6.50	Amounts withdrawn may not be transferred to a competing option for 90 days after withdrawal.

Generations 2020/ Lifecycle Fund	1.50% $15.00	Excessive trading restricts additional purchases (other than contributions and loan repayments) for 85 days.
Fixed Return Investments		
H 200X / GIC	N/A	12% charge subtracted from amounts withdrawn before maturity.
I LIBOR Plus/ Fixed-Type Invest Account	N/A	5% contingent deferred sales charge subtracted from amounts withdrawn; charge reduced by 1% on 12-month anniversary of each investment.
J Financial Serv Co. / Fixed Account Investment	N/A	90 days of interest subtracted from amounts withdrawn before maturity.

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

Part III. Annuity Information

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

Table 4—Annuity Options

Name	Objectives / Goals	Pricing Factors	Restrictions / Fees
Lifetime Income Option www. website address	To provide a guaranteed stream of income for your life, based on shares you acquire while you work. At age 65, you will receive monthly payments of $10 for each share you own, for your life. For example, if you own 30 shares at age 65, you will receive $300 per month over your life.	The cost of each share depends on your age and interest rates when you buy it. Ordinarily the closer you are to retirement, the more it will cost you to buy a share. The cost includes a guaranteed death benefit payable to a spouse or beneficiary if you die before payments begin. The death benefit is the total amount of your contributions, less any withdrawals.	Payment amounts are based on your life expectancy only and would be reduced if you choose a spousal joint and survivor benefit. You will pay a 25% surrender charge for any amount you withdraw before annuity payments begin. If your income payments are less than $50 per month, the option's issuer may combine payments and pay you less frequently, or return to you the larger of your net contributions or the cash-out value of your income shares.
Generations 2020 Variable Annuity Option	To provide a guaranteed stream of income for your life, or some other period of time, based on	You have the right to elect fixed annuity payments in the form of a life annuity, a joint and survivor annuity,	Maximum surrender charge of 8% of account balance. Maximum transfer fee of

www. website address	your account balance in the Generations 2020 Lifecycle Fund. This option is available through a variable annuity contract that your plan has with ABC Insurance Company.	or a life annuity with a term certain, but the payment amounts will vary based on the benefit you choose. The cost of this right is included in the Total Annual Operating Expenses of the Generations 2020 Lifecycle Fund, listed in Table 3 above. The cost also includes a guaranteed death benefit payable to a spouse or beneficiary if you die before payments begin. The death benefit is the greater of your account balance or contributions, less any withdrawals.	$30 for each transfer over 12 in a year. Annual service charge of $50 for account balances below $100,000.

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

Understanding Retirement Plan Fees and Expenses

To view this and other EBSA publications, visit the agency's Web site at:
www.dol.gov/ebsa.
To order publications, contact us electronically at:
www.askebsa.dol.gov.
Or call toll free: **1-866-444-3272.**

To speak to a benefits advisor, visit the Employee Benefits Security Administration's Web site at **www.dol.gov/ebsa** and click on "Request Assistance."
Or call toll-free: **1-866-444-3272.**

This material will be made available in alternative format to persons with disabilities upon request:
Voice phone: (202) 693-8664
TTY: (202) 501-3911

This booklet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Understanding Retirement Plan Fees and Expenses

December 2011

U.S. Department of Labor
Employee Benefits Security Administration

Understanding Retirement Plan Fees and Expenses

As the sponsor of a retirement plan, you are helping your employees achieve a secure financial future. Sponsoring a plan, however, also means that you, or someone you appoint, will be responsible for making important decisions about the plan's management. Your decisionmaking will include selecting plan investments or investment options and plan service providers. Many of your decisions will require you to understand and evaluate the costs to the plan.

The Federal law governing private-sector retirement plans, the Employee Retirement Income Security Act (ERISA), requires that those responsible for managing retirement plans — referred to as fiduciaries — carry out their responsibilities prudently and solely in the interest of the plan's participants and beneficiaries. Among other duties, fiduciaries have a responsibility to ensure that the services provided to their plan are necessary and that the cost of those services is reasonable.

This booklet will help you better understand and evaluate your plan's fees and expenses. While the focus is on fees and expenses involved with 401(k) plans, many of the principles discussed in the booklet also will have application to all types of retirement plans.

Remember, however, that this booklet provides a simplified explanation of plan and investment fees. It is not a legal interpretation of ERISA or other laws, nor is it intended to be a substitute for the advice of a retirement plan or investment professional.

Why consider fees?

Plan fees and expenses are important considerations for all types of retirement plans. As a plan fiduciary, you have an obligation under ERISA to prudently select and monitor plan investments, investment options made available to the plan's participants and beneficiaries, and the persons providing services to your plan. Understanding and evaluating plan fees and expenses associated with plan investments, investment options, and services are an important part of a fiduciary's responsibility. This responsibility is ongoing. After careful evaluation during the initial selection, you will want to monitor plan fees and expenses to determine whether they continue to be reasonable in light of the services provided.

There has been a dramatic increase in the number of investment options, as well as level and types of services, offered to and by plans in which participants have individual accounts. In determining the number of investment options and the level and type of services for your plan, it is important to understand the fees and expenses for the services you decide to offer. The cumulative effect of fees and expenses on retirement savings can be substantial.

When plans allow participants to direct their investments, fiduciaries need to take steps to regularly make participants aware of their rights and responsibilities under the plan related to directing their investments. This includes providing plan and investment related information, including information about fees and expenses, that participants need to make informed decisions about the management of their individual accounts. Participants must receive the information before they can first direct their investments in the plan and annually thereafter.

What are the types of plan fees and who pays for them?

There are a variety of plan fees and expenses that may affect your retirement plan. The following is an overview of some of those fees and expenses and the different ways in which they may be charged.

Plan fees and expenses generally fall into three categories:

Plan administration fees. The day-to-day operation of a plan involves expenses for basic administrative services — such as plan recordkeeping, accounting, legal and trustee services — that are necessary for administering the plan as a whole. In addition, a profit sharing or 401(k) plan also may offer a host of additional services, such as telephone voice response systems, access to a customer service representative, educational seminars, retirement planning software, investment advice, electronic access to plan information, daily valuation, and online transactions.

In some instances, the costs of administrative services will be covered by investment fees that are deducted directly from investment returns. In other instances, when the administrative costs are billed separately, they may be borne, in whole or in part, by the employer or charged directly against the assets of the plan. In the case of a 401(k), profit sharing, or other similar plans with individual accounts, administrative fees are either allocated among individual accounts in proportion to each account balance (i.e., participants with larger account balances pay more of the allocated expenses (a "pro rata" charge)) or passed through as a flat fee against each participant's account (a "per capita" charge). Generally the more services provided, the higher the fees.

Investment fees. By far the largest component of plan fees and expenses is associated with managing plan investments. Fees for investment management and other related services generally are assessed as a percentage of assets invested. Employers should pay attention to these fees. They are paid in the form of an indirect charge against the participant's account or the plan because they are deducted directly from investment returns. Net total return is the return after these fees have been deducted. For this reason, these fees, which are not specifically identified on statements of investments, may not be immediately apparent to employers. *(See pages 5-9 for more information on investment-related fees.)*

Individual service fees. In addition to overall administrative expenses, there may be individual service fees associated with optional features offered under an individual account plan. Individual service fees may be charged separately to the accounts of those who choose to take advantage of a particular plan feature. For example, fees may be charged to a participant for taking a loan from the plan or for executing participant investment directions.

Plan administrative and investment services may be provided through a variety of arrangements:

Some or all of the various plan services and investment alternatives may be offered by one provider for a single fee paid to that provider (sometimes referred to as a bundled arrangement). The provider will then pay, out of that fee, any other service providers that it may have contracted to provide the services.

In other cases, plans may obtain services and investments from a variety of providers (sometimes referred to as an unbundled arrangement). The expenses of each provider (e.g., investment manager, trustee, recordkeeper, communications firm) are charged separately.

Plans also may use an arrangement that combines a single provider for certain services, such as administrative services, with a number of different providers for investments.

Fees need to be evaluated keeping in mind the cost of all covered services.

What fees are associated with the investment choices in my retirement plan?

Apart from fees charged for administering the plan itself, there are two basic types of fees that may be charged in connection with plan investments or investment options made available to participants and beneficiaries. These fees, which can be referred to by different terms, include:

- **Sales charges** (also known as **loads** or **commissions**). These are basically transaction costs for buying and selling shares. They may be computed in different ways, depending on the particular investment product.

- **Management fees** (also known as **investment advisory fees** or **account maintenance fees**). These are ongoing charges for managing the assets of the investment fund. They are generally stated as a percentage of the amount of assets invested in the fund. Sometimes management fees may be used to cover administrative expenses. You should know that the level of management fees can vary widely, depending on the investment manager and the nature of the investment product. Investment products that require significant management, research, and monitoring services generally will have higher fees. *(See page 9.)* Be aware that higher investment management fees do not necessarily mean better performance.

In addition, there are some fees that are unique to specific types of investments. Following are brief descriptions of some of the more common investments available to retirement plans and explanations of some of the different terminology or unique fees associated with them.

Some common investments and related fees:

Most investments offered by smaller plans pool the money of a large number of individual investors. Pooling money makes it possible for smaller plans and participants in individual account plans to diversify investments, to benefit from economies of scale, and to lower their transaction costs. These pooled funds may invest in stocks, bonds, real estate, and other investments. Larger plans, by virtue of their size, are more likely to pool investments on their own — for example, by using a separate account held with a financial institution. Smaller plans generally invest in commingled pooled investment vehicles offered by financial institutions, such as banks, insurance companies, or mutual funds. Generally, investment-related fees, usually charged as a percentage of assets invested, are paid by the participant or the plan.

Mutual funds. Mutual funds pool and invest the money of many people. Each investor owns shares in the mutual fund that represent a part of the mutual fund's holdings. The portfolio of securities held by a mutual fund is managed by a professional investment adviser following a specific investment policy. In addition to investment management and administration fees, you may find these fees:

- Some mutual funds assess sales charges (see above for a discussion of sales charges). These charges may be paid when you invest in a fund (known as a **front-end load**) or when you sell shares (known as a **back-end load**, **deferred sales charge**, or **redemption fee**). A front-end load is deducted up front and, therefore, reduces the amount of your initial investment. A back-end load is paid when the shares are sold. A back-end load is determined by how long you keep your investment. There are various types of back-end loads, including some that decrease and eventually disappear over time.

- Mutual funds also may charge what are known as **12b-1** fees, which are ongoing fees paid out of fund assets. 12b-1 fees may be used to pay commissions to brokers and other salespersons, to pay for advertising and other costs of promoting the fund to investors, and to pay various service providers to a plan pursuant to a bundled services arrangement.

- Some mutual funds may be advertised as "no load" funds. This can mean that there is no front- or back-end load. However, there may be a 12b-1 fee.

Collective investment funds. A collective investment fund is a trust fund managed by a bank or trust company that pools investments of retirement plans and other similar investors. Each investor has a proportionate interest in the trust fund assets. For example, if a collective investment fund holds $10 million in assets and your investment in the fund is $10,000, you have a 0.1 percent interest in the fund. Like mutual funds, collective investment funds may have a variety of investment objectives. There are no front- or back-end fees associated with a collective investment fund, but there are investment management and administrative fees.

Variable annuities. Insurance companies frequently offer a range of investment alternatives for individual account plans through a group variable annuity contract between an insurance company and an employer on behalf of a plan. Variable annuities include one or more insurance elements, which are not present in other investment alternatives. Generally, these elements include an annuity feature, interest and expense guarantees, and any death benefit provided during the term of the contract. The variable annuity contract "wraps" around investment alternatives, often a number of mutual funds. Participants select from among the investment alternatives offered, and the returns to their individual accounts vary with their choice of investments.
In addition to investment management fees and administration fees, you may find these fees:

- **Insurance-related charges** are associated with investment alternatives that include an insurance component. They include items such as sales expenses, mortality risk charges, and the cost of issuing and administering contracts.

- **Surrender and transfer charges** are fees an insurance company may charge when an employer terminates a contract (in other words, withdraws the plan's investment) before the term of the contract expires or when a participant withdraws an amount from the contract. These charges may be imposed if these events occur before the expiration of a stated period and commonly decrease and disappear over time. They are similar to an early withdrawal penalty on a bank certificate of deposit or a back-end load or redemption fee charged by some mutual funds.

Pooled guaranteed investment contract (GIC) funds. A common fixed income investment option, a pooled GIC fund generally includes a number of contracts issued by an insurance company or bank paying an interest rate that blends the fixed interest rates of each of the GICs included in the pool. There are investment management and administrative fees associated with the pooled GIC fund.

While the investments described above are common, plans also may offer other investments that are not described here (such as employer securities).

What other factors might have an impact on the fees and expenses of my retirement plan?

Funds that are "actively managed" (i.e., funds with an investment adviser who actively researches, monitors, and trades the holdings of the fund to seek a higher return than the market as a whole) generally have higher fees than funds that are "passively managed" (see below). The higher fees are associated with the more active management provided and increased sales charges from the higher level of trading activity. While actively managed funds seek to provide higher returns than the market, neither active management nor higher fees necessarily guarantee higher returns.

Funds that are "passively managed" generally have lower management fees. Passively managed funds seek to obtain the investment results of an established market index, such as the Standard and Poor's 500, by duplicating the holdings included in the index. Thus, passively managed funds require little research and less trading activity.

What steps can I take to evaluate plan fees and expenses?

Fees and expenses are one of several factors to consider when you select and monitor plan service providers and investments. The level and quality of service and investment risk and return will also affect your decisions.

- Begin by establishing an objective process to aid in your decisionmaking. This process should include an understanding of the fees and expenses you will pay and a review of those charges as they relate to the services to be provided and the investments you are considering.

- Before negotiating with prospective providers, think about the specific services you would like from a service provider (e.g., legal, accounting, trustee/custodian, recordkeeping, investment management, investment education or advice). Include the types and frequency of reports you wish to receive, communications to participants, meetings for participants, and the frequency of participant investment transfers.

- You will also need to consider the level of responsibility you want the prospective service provider to assume, the services that must be included in any retirement plan, the possible extras or customized services you wish to provide, and optional features, such as loans, Internet trading, and telephone transfers.

- Once you have a clear idea of your requirements, you are ready to begin receiving estimates from prospective providers. Give all of them complete and identical information about your plan and the features you want so that you can make a meaningful comparison. This information should include the number of plan participants and the amount of plan assets as of a specified date.

- For a service contract or arrangement to be reasonable, service providers must provide certain information to you about the services they will provide to your plan and the compensation they will receive. This information will assist you in understanding the services, assessing the reasonableness of the compensation (direct and indirect), and determining any conflicts of interest that may impact the service provider's performance.

- Once you have selected a service provider or investments, be prepared to monitor the level and quality of the services and performance of investments to make sure they continue to be reasonable and they suit the needs of your employees. Make sure that you receive information on a regular basis so that you can monitor investment returns and service provider performance and, if necessary, make changes. Review any notices received from the service provider about possible changes to their compensation and the other information they provided when hired (or when the contract or arrangement was renewed).

By continuing to ask questions, you can make better decisions for your plan and your employees.

How do I need to provide fee and expense information to the participants in my plan?

For plans that allow participants to direct the investments in their accounts, plan and investment information, including information about fees and expenses, must be provided to participants before they can first direct investments and periodically thereafter – primarily on an annual basis with information on fees and expenses actually paid provided at least quarterly. The initial plan related information may be distributed as part of the Summary Plan Description provided when a participant joins the plan as long as it is provided before the participant can first direct investments. The information provided quarterly may be included with the Individual Benefit Statement.

The investment related information needs to be presented in a format, such as a chart, that allows for a comparison among the plan's investment options. A model chart is available on **www.dol.gov/ebsa**. If you use information provided by a service provider that you rely on reasonably and in good faith, you will be protected from liability for the completeness and accuracy of the information.

In Conclusion ...

Fees and expenses are an important component in managing your retirement plan. For further information, you may want to consult the following resources at **www.dol.gov/ebsa**:

- *Meeting Your Fiduciary Responsibilities*
- *Selecting an Auditor for Your Employee Benefit Plan*
- *Reporting and Disclosure Guide for Employee Benefit Plans*

U.S. Department of Labor
Employee Benefits Security Administration

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2020 COMPLIANCE CALENDAR
FOR
CALENDAR-YEAR RETIREMENT, HEALTH AND WELFARE BENEFIT PLANS

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JANUARY

By January 15: Post Schedule MB attachment from the 2018 Form 5500 (defined benefit pension plan actuarial information) on company intranet, assuming Form 5500 was filed by October 15, 2019

Fund Q4 2019 contribution to defined benefit pension plan

By January 31: Report value of health coverage on Form W-2

Confirm retirement plan recordkeepers have provided Forms 1099-R to participants who received distributions in 2019

File Form 945 to report income tax withheld from retirement plan distributions during 2019

Other Special Projects:

- Schedule quarterly meetings of Benefits Committee through December 31
- Review first payroll file to confirm new deductions have been accurately loaded into internal systems (*e.g.*, 401(k) deferrals and health and welfare plan premiums and deductions) and review payroll configuration to confirm it conforms to retirement plan definition of pay
- Confirm contracts for all benefit providers have been signed, including insurance policies, administrative service agreements, and HIPAA business associate agreements
- Update company intranet with new benefit plan documents, Summary Plan Descriptions, Summaries of Material Modifications, policies, and forms
- Provide information in response to annual compliance questionnaires or other requests for information from retirement plan recordkeepers
- Continue tracking data to satisfy ACA reporting obligations for 2020 (which will be due in 2021) regarding offers of coverage to FTEs and provision of minimum essential coverage
- Work with retirement plan recordkeepers to perform nondiscrimination testing, including 410(b) minimum coverage testing, 402(g) limit testing, 401(k) and 401(m) ADP/ACP testing, 415 limit testing, 414(s) compensation testing, and top-heavy testing for 2019 plan year

FEBRUARY

By February 1:	Confirm 401(k)/403(b) plan recordkeepers have provided Q4 2019 quarterly statements to participants, including fee disclosure information (deadline is February 15)
By February 28:	Confirm retirement plan recordkeepers have filed Forms 1099-R (due date is March 31 if filing electronically)
	File ACA information reporting returns (Forms 1094-C and 1095-C) for 2019 (due date is March 31 if filing electronically)
	PBGC Form 1-ES estimated premium payment (flat-rate premium for plans with over 500 participants) is due to the PGBC
By February 29:	Complete online disclosure to CMS regarding "creditable coverage" status for prescription drug coverage to Medicare Part D individuals

Other Special Projects:

- Work with FSA/125 plan recordkeepers or brokers to perform applicable nondiscrimination testing, including 105(h) testing, 125 testing, and 129 testing for 2019 and projected testing for 2020
- Hold quarterly meeting of Benefits Committee to review 2019 year-end investment performance, fees, plan administration data, and plan operational issues
- Evaluate retirement plan design changes under "SECURE Act"

MARCH

By March 1:	File DOL Form M-1 for MEWAs
By March 2:	Provide 2019 ACA information reporting returns (Forms 1095-B and 1095-C) to individuals
By March 15:	Deadline to apply to the IRS for a waiver of the minimum funding standard for defined benefit and money purchase pension plans
	Process corrective distributions to "cure" failed 2019 ADP/ACP tests for 401(k) plan to avoid paying the 10% excise tax (a later June 30 deadline applies to 401(k) plans with eligible automatic contribution arrangements)
	Fund all 2019 company contributions to retirement plans by due date for corporate tax return in order to deduct contributions for 2019 tax year (unless Form 7004 has been filed to extend due date for corporate tax return, permitting funding by September 15)
	File Form 8928 to report excise taxes for noncompliance with certain group health plan requirements (COBRA; HIPAA special enrollment, portability and nondiscrimination rules; newborn mothers' health; mental health parity; and failure to meet certain ACA requirements), unless Form 7004 has been filed to extend due date for corporate tax return, permitting filing by September 15
	Deadline to adopt defined benefit plan amendments for the prior year for funding purposes
By March 31:	Receive elections from eligible ESOP participants to diversify a portion of their ESOP accounts
	Confirm retirement plan recordkeepers have filed Forms 1099-R, if filing electronically
	File ACA information reporting returns (Forms 1094-C and 1095-C) for 2019, if filing electronically
	File Form 5330 to report excise taxes and payment for excess 2018 plan year ADP/ACP contributions (or Form 5558 to request extension of up to 6 months to file)
	File Retiree Drug Subsidy (RDS) reconciliation with CMS for 2018

APRIL

By April 1:	Confirm retirement plan recordkeepers paid initial required minimum distributions to participants who turned age 70 ½ in 2019
By April 15:	Fund Q1 2020 contribution to defined benefit pension plan
	File Form 8928 to report excise taxes for noncompliance with obligation to make comparable HSA contributions, unless Form 7004 has been filed to extend due date for corporate tax return, permitting filing by October 15
	Complete electronic filing with PBGC under ERISA 4010 (notice of underfunding) if AFTAP is less than 80% for 2019, if not previously filed
	Process distributions of excess 402(g) deferrals under 401(k)/403(b) plan for 2019
By April 30:	Distribute Annual Funding Notice for defined benefit pension plan with more than 100 participants
	Pay final 2019 comprehensive PBGC premium due to the PBGC for plans that filed an earlier estimated variable rate premium in the October 15, 2019 comprehensive filing

Other Special Projects:

- Schedule open enrollment planning meetings with brokers and consultants to discuss potential design changes to health and welfare plans for 2021
- Confirm with health plan vendors that quarterly Medicare Secondary Payer (MSP) reports are being filed with CMS
- Begin 2019 plan year audits for retirement plans and funded welfare trusts
- Confirm ESOP trustees are working with valuation firms to begin annual independent appraisal process

MAY

By May 1: Provide notice of benefit restrictions under IRC Section 436 to participants if AFTAP for defined benefit pension plan (certified by actuary as of April 1) is less than 80% and notice has not previously been provided

By May 15: Confirm 401(k)/403(b) plan recordkeeper has provided first quarter benefit statements to participants, including fee disclosure information

File Form 990 returns for tax-exempt trusts or voluntary employee beneficiary associations (VEBAs) (or file Form 8868 to automatically extend due date to August 15)

Other Special Projects:

- Hold quarterly meeting of Benefits Committee to review investment performance, fees, plan administration data, and plan operational issues for quarter ending March 31

JUNE

By June 30: Process participant ESOP diversification elections that were made by March 31

Process corrective distributions to "cure" failed ADP/ACP tests for 401(k) plan with eligible automatic contribution arrangement for 2019, to avoid the 10% excise tax

Other Special Projects:

- Obtain insurance renewals from all vendors
- Work with retirement plan recordkeepers to provide modeling or projections of cost impact and nondiscrimination testing impact of any design changes being discussed or unusual plan features (*e.g.*, level of company contributions; safe harbor, auto enrollment or auto escalation features; varying employee groups; etc.)

JULY

By July15:	Fund Q2 2020 contribution to defined benefit pension plan
By July 28:	Distribute revised Summary Plan Descriptions or Summaries of Material Modifications reflecting material changes made to plans that were adopted and became effective in 2019
By July 31:	File Forms 5500 and 8955-SSA for retirement plans, and Forms 5500 for health and welfare plans with more than 100 participants (or file Form 5558 to extend due date to October 15)
	Distribute annual benefit statements to participants in non-participant-directed account retirement plans (*e.g.*, ESOPs) unless Form 5558 has been filed to extend due date for Form 5500 until October 15; issue distribution forms for terminated participants
	Distribute Annual Funding Notice for defined benefit pension plans with less than 100 participants (unless Form 5558 has been filed to extend due date for Form 5500 until October 15)
	Provide notice to terminated vested employees reported on Form 8955-SSA describing the amount of their vested benefits (unless Form 5558 has been filed to extend due date for Form 5500 until October 15)
	File Form 5330 to report excise taxes related to employee benefit plans for 2019 (*e.g.*, late remittance of participant contributions, excess 401(k) plan contributions, etc.)
	File Form 720 and pay PCORI fee of $2.45 per covered life for plan years ending between January 1 and September 30, 2019 (due from self-insured medical plans)

Other Special Projects:

- Finalize health and welfare plan design for 2021
- Prepare annual report of Benefits Committee to Compensation Committee or Board of Directors, if required by the Benefits Committee charter
- Work with retirement plan recordkeepers and auditors on Forms 5500
- Work with health and welfare plan vendors on Forms 5500

AUGUST

By August 1:	Late filing deadline to file Forms 1094-C/1095-C schedules for 2019
By August 15:	Confirm 401(k)/403(b) plan recordkeeper has provided second quarter benefit statements to participants, including fee disclosure information
	File Form 990 returns for tax-exempt trusts or VEBAs, assuming Form 8868 was filed to extend due date (or file a second Form 8868 to request an extension of the due date to November 15)

Other Special Projects:

- Hold quarterly meeting of Benefits Committee to review investment performance, fees, plan administration data, and plan operational issues for quarter ending June 30
- Review ERISA fidelity bond coverage and fiduciary liability insurance coverage levels with risk management, and renew or change as appropriate
- Schedule 401(k)/403(b) education seminars for employees to be held in the fall

SEPTEMBER

By September 15: Fund all 2019 company contributions to retirement plans by due date for corporate tax return in order to deduct contributions for 2019 and to avoid funding deficiency for defined benefit pension plans

File Form 8928 to report excise taxes for noncompliance with certain group health plan requirements (COBRA; HIPAA special enrollment, portability and nondiscrimination rules; newborn and mothers' health; mental health parity; and failure to meet certain ACA requirements), assuming Form 7004 was filed to extend due date

Form 5500 due for plans eligible for an automatic extension linked to a corporate tax extension

Minimum funding deadline for pension plans

By September 30: Distribute Summary Annual Reports for retirement plans, and for health and welfare plans with more than 100 participants (unless Form 5558 has been filed to extend due date for Form 5500, permitting distribution by December 15)

Confirm actuary for defined benefit pension plan certifies AFTAP for 2020

Other Special Projects:

- Finalize budget for 2021 and obtain approvals, as appropriate, from Compensation Committee or Board of Directors for benefit plan design changes
- Finalize retirement plan changes for 2021, so changes can be incorporated into annual notices that will be distributed between October 1 and December 1
- Conduct 401(k) educational seminars for employees
- Confirm the annual 404(a)(5) fee disclosure notice for each defined contribution plan has been updated and provided to participants within the last 14 months

OCTOBER

By October 14:	Distribute notice of Medicare Part D creditable prescription drug coverage to health plan participants (unless notice has been provided in open enrollment materials)
By October 15:	Fund Q3 2020 contribution to defined benefit pension plans
	Adopt retroactive amendment to correct 410(b) minimum coverage or 401(a)(4) nondiscrimination testing failures for 2019
	File Form 8928 to report excise taxes for noncompliance with obligation to make comparable HSA contributions (assuming Form 7004 was filed to extend due date)
	File Form 5500 and 8955-SSA for retirement plans, and Form 5500s for health and welfare plans with more than 100 participants (assuming Form 5558 was filed to extend due date for Form 5500); if plan is using QSLOB testing, file Form 5310-A as notice of QSLOB election
	Complete and make payment for annual premium payment, single employer plan variable rate portion of premium, and flat-rate premiums due to PBGC
	Distribute annual benefit statements to participants in non-participant-directed account retirement plans, *e.g.*, ESOPs (assuming Form 5558 was filed to extend due date for Form 5500); issue distribution forms for terminated participants
	Distribute Annual Funding Notice for defined benefit pension plans with less than 100 participants (assuming Form 5558 was filed to extend due date for Form 5500)
	Provide notice to terminated vested employees reported on Form 8955-SSA describing the amount of their vested benefits (assuming Form 5558 was filed to extend due date for Form 5500)
By October 31:	Provide notice of benefit restrictions under IRC Section 436 to participants if AFTAP for defined benefit pension plan (certified by actuary no later than October 1) is less than 60% and notice has not previously been provided

Other Special Projects:

- Work with 401(k)/403(b) plan recordkeeper to prepare notices, including QDIA notice, safe harbor notice, and auto enrollment notices, as required (to be distributed by December 1)
- Have ESOP trustees meet to review and accept annual valuation report for 2019
- Finalize and distribute open enrollment communications and Summaries of Benefits and Coverage.

NOVEMBER

By November 15:	Confirm 401(k)/403(b) plan recordkeeper has provided third quarter benefit statements to participants, including fee disclosure information
	File Form 990 returns for tax-exempt trusts or VEBAs if Form 8868 was filed to extend due date
	Distribute summary annual reports to participants if Form 5500 deadline was extended due to a corporate tax filing extension
	Summary of Benefits and Coverage ("SBC") due to participants for each group health plan option that is offered. In addition, unless previously provided during open enrollment or at some other time this Fall, the following documents should be provided to employees and other required recipients: (i) an updated CHIP notice; (ii) annual notice required under the Women's Health and Cancer Rights Act; (iii) a Medicare Part D notice; (iv) a notice of "grandfathered plan status" under the ACA (if applicable); (v) a HIPAA notice of privacy practices for any self-funded plans, or a statement describing the availability of the HIPAA notice of privacy practices and where the notice can be accessed; (vi) the ADA wellness plan notice (if applicable); (vii) notice required under ACA Section 1557 (if applicable); (viii) Michelle's Law notice (if student status is used to determine eligibility for any purpose); (ix) ACA notice regarding choice of providers; (x) a copy of the COBRA general notice; and (xi) ERRP notice (if applicable)
By November 30:	Distribute 401(k)/403(b) plan notices, including QDIA notice, safe harbor notice, and auto enrollment notice

Other Special Projects:

- Conduct annual open enrollment (dates TBD)
- Hold quarterly meeting of Benefits Committee to review investment performance, fees, plan administration data, and plan operational issues for quarter ending September 30

DECEMBER

By December 15: Distribute Summary Annual Reports for retirement plans, and for health and welfare plans with more than 100 participants (assuming Form 5558 was filed to extend due date from Form 5550)

By December 31: Adopt plan amendments for discretionary plan changes that have taken effect during 2020, and interim amendments required by statute or regulations to be adopted by year-end

Confirm retirement plan recordkeepers have paid annual required minimum distributions (RMDs) to participants whose required beginning date occurred prior to 2020

Process corrective distributions to “cure” failed ADP/ACP tests for 2019 with payment of 10% excise tax

Provide defined benefit pension plan participants with an annual notice about the availability of pension benefit statements, or provide participants with an annual notice about the availability of (and the means to obtain) the pension benefit statement for 2020 if the alternative notification approach is being used for 2020

Correct DCAP discrimination testing failures

Provide eligible ESOP participants with notice about their rights to diversify a portion of their ESOP accounts

Deadline for a safe harbor plan to remove its safe harbor status for the following year, or for an existing defined contribution plan to convert to a safe harbor plan (other than a non-elective safe harbor plan)

Deadline for actuary’s certification of 2020 AFTAP to prevent presumed AFTAP of less than 60% from applying January 1, 2020 (or retroactively to October 1, 2020, if range certification is issued prior to October 1, 2020)

Other Special Projects:

- Remind employees and participants to review and elect aged-50-and-over catch-up contributions in 401(k)/403(b) plans, to be effective January 1, 2021
- Notify employees of cost of living increases in regular and catch-up contribution limits in 401(k)/403(b) plans, to be effective January 1, 2021
- Work with finance and payroll departments to set up internal systems to reflect retirement plan contribution and compensation limits for 2021