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# 404a-5 FEE DISCLOSURES FOR RETIREMENT PLANS

SEPTEMBER 12, 2012

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# Fee Disclosures for Retirement Plans

## Today's Schedule

- Overview
- Sponsor to participant disclosures
- Anticipated outcomes
- Group discussion

# Fee Disclosures for Retirement Plans

## Overview

- Why fee disclosure? Why now?
  - To assist sponsors to fulfill fiduciary responsibility to determine reasonableness of plan service arrangements
  - To assist participants in making informed investment decisions when selecting asset allocation in plans
  - Department of Labor has been considering service provider fees for several years; first step was Form 5500 Schedule C
  - Media and market focus on achieving adequate retirement income, 401(k) lawsuits with regard to reasonable fees, and pointed media coverage encouraged DoL to issue regulations
  - Participants are being bombarded with information regarding retirement plan fees, raising both awareness and questions
  - Some information may conflict with plan communications regarding saving for retirement through an employer-sponsored DC plan.

## Fee Disclosures for Retirement Plans

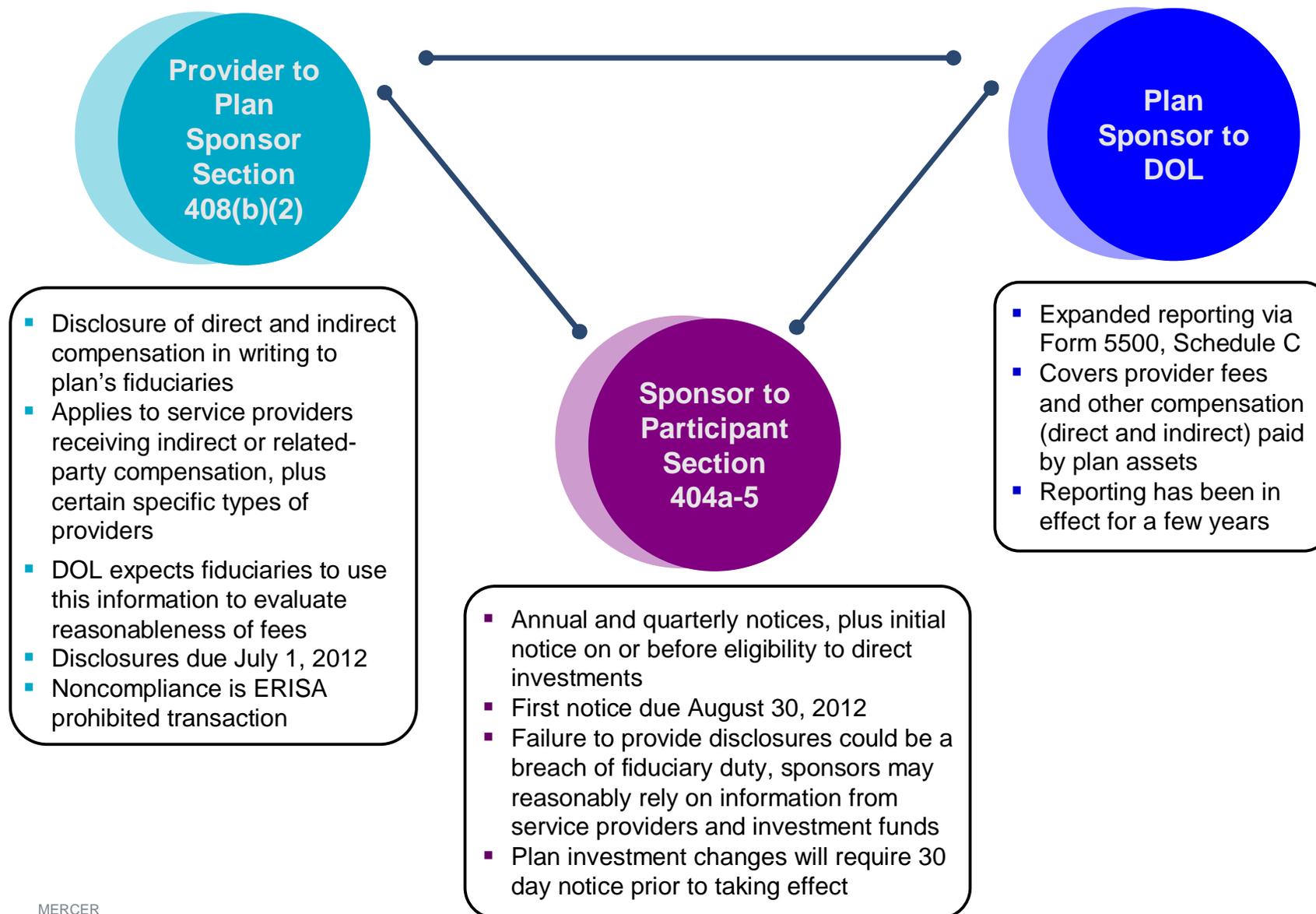
### Overview

- Recent ABC television news story on “excessive” 401(k) fees<sup>1</sup> provided guidance to participants, including
  - Decide the type of fund you in which you want to invest
  - Look for the fund with the lowest fee
  - If none of the fees are low, band together with co-workers and **push employer for better choices**
  - If that doesn't work, **make minimum contribution to get employer match**
  - **Put rest of retirement savings into a low-fee IRA**

<sup>1</sup>The Retirement Savings Drain – The Hidden & Excessive Costs of 401(k)s, Robert Hiltonsmith, Demos.org

# Administrative fee structures

## Overview of fee disclosure requirements



## Sponsor to Participant Disclosures – ERISA 404a-5

### Summary information

- DOL viewpoint is that disclosures are aimed at helping participants make informed investment decisions
- Applies to plan years starting on or after November 1, 2011
  - Initial notice were due August 30, 2012 for calendar year plans
  - Notice due 60 days after plan year start for plan years beginning between July 1, 2012 and November 1, 2012
  - First quarterly notice of actual charges must be sent within 45 days after end of quarter in which initial notice was due – November 14, 2012 for calendar year plans reflecting fees paid between July 1, 2012 and September 30, 2012
- Applies to participant-directed DC plans subject to ERISA (does not include SEPs or SIMPLE retirement plans)
  - Public sector and non-electing church plans may wish to mirror ERISA rules as best practice

## Sponsor to Participant Disclosures – ERISA 404a-5

### Summary information

- Disclosure audience includes
  - All eligible participants, whether enrolled in the plan or not
  - Terminated participants
  - Beneficiaries who have the right to direct investment of plan accounts
  - With multiple active vendors, all eligible employees will need to receive fee/investment information for all potential vendors, regardless of which is (are) actually utilized by each participant

## Sponsor to Participant Disclosures – ERISA 404a-5

### Summary information

- Required disclosures include initial / annual notice, quarterly notice, web site and materials to be provided on request
- Disclosure requirements distinguish between
  - Variable-return investments
  - Fixed-rate investments (does not include stable value or money market funds)
  - Annuities
  - Employer stock
- Recent guidance indicates that sponsors will need to disclose information on self-directed brokerage account or mutual fund window investments with at least 1% participation by plan participants
- No requirement to separately disclose revenue sharing – but must provide general explanation of practice, including on quarterly statements
- DOL intends to publish additional special rules for target-date funds

## Sponsor to Participant Disclosures – ERISA 404a-5

### Timing of disclosures

- Initial/annual disclosures
  - As noted, initial disclosures for current existing employees are due by August 30, 2012
  - Ongoing, initial disclosures must be provided on or before the date an individual can direct investments in the plan
  - Thereafter, annual disclosures (same content as initial disclosure) must be provided at least once in any 12-month period
  - Any changes to the general, administrative or individual information in the disclosure must be provided within 30 – 90 days **before** the effective date of the change
- Quarterly disclosures
  - Initial disclosures for current participants due by November 14, 2012
  - Ongoing, must be provided at least once in any 3-month period

## Sponsor to Participant Disclosures – ERISA 404a-5

### Content of initial/annual disclosures

- General plan information
  - What funds are available (including a description of brokerage windows), how participants should give investment instructions, and what transfer restrictions and voting rights may apply
  - As noted, recent guidance indicates investment options within brokerage windows with at least 1% of participants investing will need to be included
- Administrative expenses
  - What amounts – beyond what's reflected in an investment's total annual operating expenses – *may be* charged to participants' accounts for plan administrative services (such as legal, accounting and recordkeeping charges), and how amounts will be allocated

## Sponsor to Participant Disclosures – ERISA 404a-5

### Content of initial/annual disclosures

- Individual fees and expenses
  - What fees and expenses – beyond what's reflected in an investment's total annual operating expenses – *may be* charged to participant accounts on an individual basis (such as sales loads, redemption fees, and fees for loans, QDROs and brokerage windows)
- Comparative chart of investment options
  - How each investment alternative compares to other options in terms of past performance, fees and expenses, comparable benchmark returns, and other features (DOL provided model comparative chart)
  - Must include website address(es) where participants can find updated supplemental information about each investment's strategies, risks, portfolio turnover, performance and costs
  - Must include or provide link to glossary of terms

## Sponsor to Participant Disclosures – ERISA 404a-5

### Content and delivery of quarterly disclosures

- Actual administrative charges -- dollar amount *actually charged* to a participant's account during last quarter for administrative services
  - Must include general description of administrative services but does not need to break out charges on a service-by-service basis
  - Can omit fees reflected in an investment's annual operating expenses
  - For plans with revenue sharing, must explain that some administrative fees were paid from investment fund operating expenses
- Actual individual charges -- individual fees *actually charged* to a participant's account during last quarter (such as loan, QDRO or brokerage window fees)
  - No need to list fees reflected in an investment's annual operating expenses
- Delivery may be included in quarterly benefit statements or confirmation statements if distributed within timeframe set out in the regulations

## Sponsor to Participant Disclosures – ERISA 404a-5

### Content and delivery of other information

- Voting/tender rights and other “pass through” information
  - Any materials provided to the plan about the exercise of voting, tender or similar rights passed through to participants under plan terms
  - To be provided after investment in the fund
- Detailed investment materials
  - Prospectuses, financial reports and related materials
  - Statement of share or unit value
  - List of assets held by ERISA plan-asset vehicles
  - To be provided upon request
- Maintaining website access to supplemental information
  - May require establishing new sites for investments such as company stock, collective investments or separately managed accounts
  - Website must be accurate and current
  - Must inform participants how to request free paper copies of “supplemental” website information

## Sponsor to Participant Disclosures – ERISA 404a-5

### Initial/annual notice delivery methods

- Paper delivery
  - In-hand delivery at workplace
  - Insert in a periodical distributed to employees
  - Mailing by first, second or third class delivery
- Electronic delivery
  - Electronic rules are convoluted and not coordinated among different IRS and DOL published guidance; options include
    - 2002 Department of Labor safe harbor
    - Technical Release 2011-03R special conditions
    - Field Assistance Bulletin 2006-03 continuous web access/IRS e-delivery standards

## Sponsor to Participant Disclosures – ERISA 404a-5

### Initial/annual notices -- electronic delivery options

Required fee disclosure	Available method of e-delivery?			
	2002 DOL rules	TR 2011-03 special conditions	FAB 2006-03 continuous web access	IRS e-delivery standards
Initial/annual notice of plan-related information	Yes	Yes	If included in quarterly benefit statement (but may be impractical)	If included in quarterly benefit statement (but may be impractical)
Initial/annual notice of investment-related information (comparative chart)	Yes	Yes	No	No
Quarterly notice of fees charged	Yes	Yes	If included in quarterly benefit statement	If included in quarterly benefit statement
Updates to plan-related information	Yes	Yes	No	No
Information provided on request or related to pass-through voting	Yes	Yes	No	No

## Fee Disclosure in the Real World

### 401(k) fee lawsuit offers practical lessons for fiduciaries

- Recent federal district court decision (*Tussey v. ABB, Inc.*) held 401(k) plan fiduciaries liable for \$35.2 million
- The court held that fiduciaries violated their duties by:
  - Failing to monitor 401(k) plan recordkeeping costs
    - Monitoring only investment fees was insufficient
  - Utilizing excess 401(k) revenue sharing to subsidize certain other corporate services
  - Replacing a well-performing fund in order to reduce out-of-pocket corporate expenses
  - Failing to select less expensive share classes when available – Investment policy expressly required selection of lowest-priced available share class
- Ruling highlights the importance of:
  - Regularly benchmarking plan fees – more frequently when plan demographics or organizational make-up change
  - Using a market-based process to benchmark recordkeeping fees, taking into account the plan's purchasing power
  - Keeping investment and fee policies current, and making decisions in line with policies
  - Quantifying, understanding and monitoring all sources of revenue generated by the plan, including float revenue and revenue sharing
  - Taking action once fiduciaries learned fees may be too high

## Fee Disclosure in the Real World

### Anticipated Outcomes

- What have service providers completed?
  - Preparing and delivering 408(b)(2) notices to sponsors
  - Preparing and delivering 404a-5 disclosures to participants
  - Helping sponsors with multiple vendors coordinate 404a-5 disclosure content and delivery
- What actions are sponsors taking?
  - Creating an action plan to comply with both sets of disclosures
    - Reviewing and updating governance structure and documentation to include 408(b)(2) disclosures
    - Implementing a fee policy that includes disclosures and processes for determining reasonable service provider arrangements
    - Preparing to review provider disclosures for reasonableness and document findings
    - Benchmarking, negotiations, other due diligence

## Fee Disclosure in the Real World

### Anticipated Outcomes

- How are participants reacting?
  - Sponsors should be prepared to respond to participant inquiries and questions
    - If recordkeeper provides participant education and/or on-site service, coordinate response to participant questions
  - Depending upon delivery method and size of disclosure, concern that participants will not review and/or understand disclosures
  - Even with increased (and not always objective) media coverage, reaction to date has been minimal
- What next?
  - Create and implement your action plan
  - Prepare to respond to participant questions
  - Coordinate with recordkeeper(s) to ensure ongoing compliance
  - Document, document, document your processes and outcomes

## Fee Disclosure in the Real World

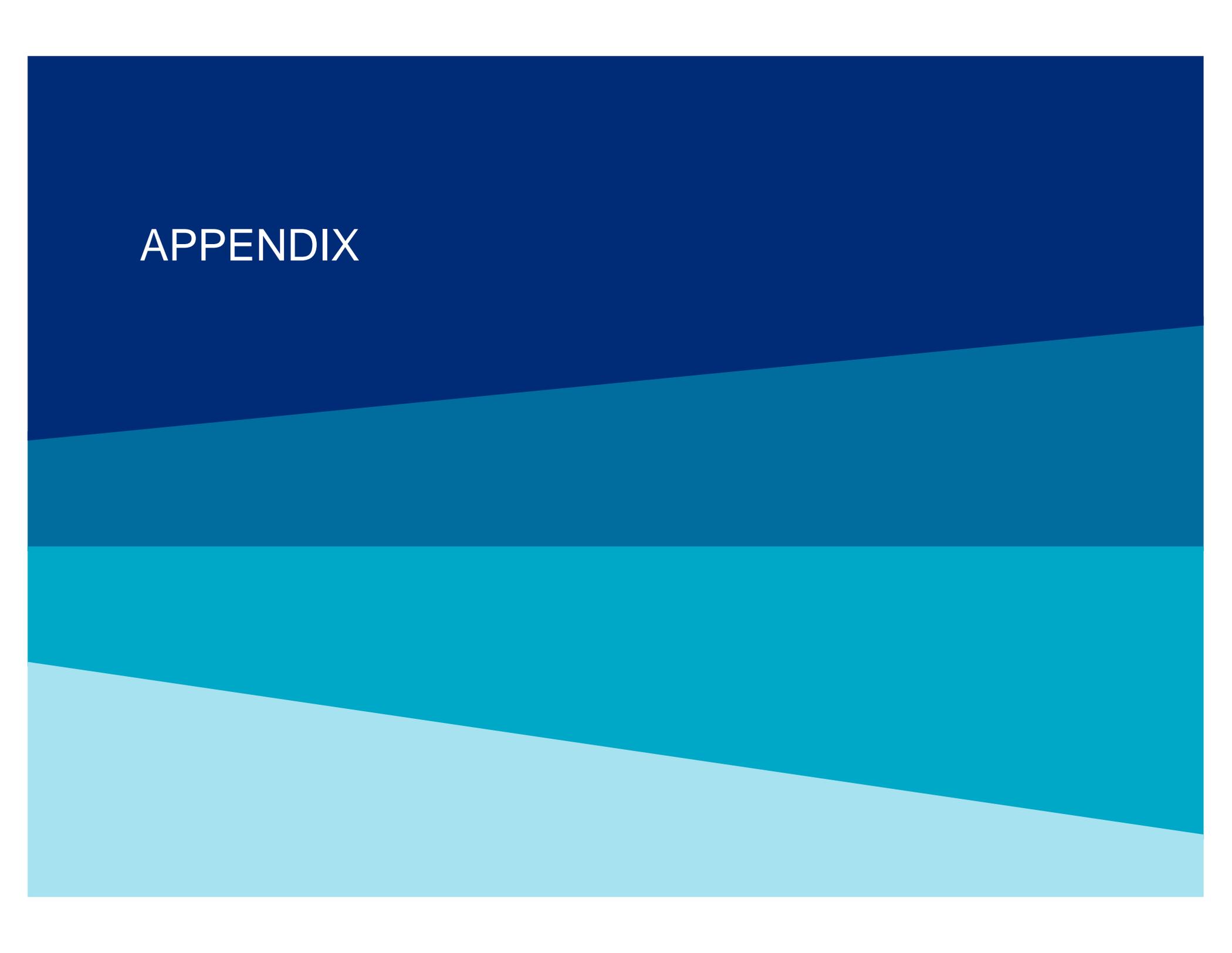
### Additional resources

- Department of Labor
  - Fact sheet summarizing 408(b)(2) requirements
  - Summary of changes between the interim and final rules
  - Final regulations
  - Sample notice
  - FAQs and Field Assistance Bulletins with additional guidance
- Vendors
  - Maintaining significant educational and practical resources on plan sponsor websites and in print publications
    - Recordkeepers, industry associations, SPARK
- Legal counsel
  - Should be involved in identifying covered service providers, reviewing reasonableness determinations, opining on disclosure compliance



Questions?

# APPENDIX

The image features a decorative background composed of four horizontal bands of different shades of blue and teal. The top band is a dark navy blue. Below it is a medium-dark teal band. The third band is a bright cyan color. The bottom band is a light sky blue. The boundaries between these bands are wavy, creating a layered, organic effect. The word 'APPENDIX' is centered in the top dark blue band in a white, sans-serif font.

## Timing and content of required disclosures

Sponsor to  
Participant  
Section  
404(a)(5)

### Initial / annual notice

<b>Who</b>	<ul style="list-style-type: none"> <li>a. All eligible participants, whether enrolled in the plan or not</li> <li>b. Terminated participants</li> <li>c. Beneficiaries who have the right to direct investment of their plan accounts</li> </ul>
<b>When</b>	<ul style="list-style-type: none"> <li>a. On or before date an individual can first direct investments</li> <li>b. Thereafter, at least once in any 12-month period</li> <li>c. Within 30 – 90 days before the effective date of a change to the general, administrative or individual information discussed below</li> </ul>
<b>What</b>	<ul style="list-style-type: none"> <li><b>a. General plan information.</b> What funds are available (including brokerage window description), how participants should give investment instructions, transfer restrictions and voting rights may apply</li> <li><b>b. Administrative expenses.</b> What amounts – beyond what’s reflected in an investment’s total annual operating expenses – <i>may be</i> charged to participants’ accounts for plan administrative services (such as legal, accounting and recordkeeping charges), and how amounts will be allocated</li> <li><b>c. Individual fees and expenses.</b> What fees and expenses – beyond what’s reflected in an investment’s total annual operating expenses – <i>may be</i> charged to participant accounts on an individual basis (such as loads; redemption fees; and loan fees, QDROs and brokerage windows)</li> <li><b>d. Comparative chart of investment options.</b> How each investment alternative compares to other options in terms of past performance, fees and expenses including comparable benchmark returns.             <ul style="list-style-type: none"> <li>i. Doesn’t need to include brokerage windows</li> <li>ii. Must include website address(es) where participants can find updated supplemental information about each investment’s strategies, risks, portfolio turnover, performance and costs</li> <li>iii. Must include or provide link to glossary of terms</li> </ul> </li> </ul>

## Timing and content of required disclosures (*cont'd*)

Sponsor to  
Participant  
Section  
404(a)(5)

### Initial / annual notice

**How**

- a. May rely on DOL electronic delivery standards, but DOL soon may change those rules
- b. May include the general, administrative and individual information in benefit statements or summary plan descriptions (SPDs) distributed within the timeframe set out in these regulations
- c. Must give new participants the most recent annual disclosure, plus any subsequent updates to general, administrative or individual information sent to other participants

## Timing and content of required disclosures (*cont.*)

Sponsor to  
Participant  
Section  
404(a)(5)

Quarterly notice	
<b>When</b>	At least once in any 3-month period
<b>What</b>	<p><b>a. Actual administrative charges.</b> Dollar amount <i>actually charged</i> to a participant's account during last quarter for administrative services</p> <ul style="list-style-type: none"> <li>i. Must include general description of administrative services but does not need to break out charges on a service-by-service basis</li> <li>ii. Can omit fees reflected in an investment's annual operating expenses</li> <li>iii. For plans with revenue sharing, must explain that some administrative fees were paid from investment fund operating expenses</li> </ul> <p><b>b. Actual individual charges.</b> Individual fees <i>actually charged</i> to a participant's account during last quarter (such as loan, QDRO or brokerage window fees)</p> <ul style="list-style-type: none"> <li>i. No need to list fees reflected in an investment's annual operating expenses</li> </ul>
<b>How</b>	May be included in quarterly benefit statements or confirmation statements if distributed within timeframe set out in these regulations

## Timing and content of required disclosures (cont.)

Sponsor to  
Participant  
Section  
404(a)(5)

<b>Voting/tender rights, other 'pass-through information</b>	
<b>When</b>	After investing in a fund
<b>What</b>	Any materials provided to the plan about the exercise of voting, tender or similar rights passed through to participants under plan terms
<b>Detailed investment materials</b>	
<b>When</b>	On request
<b>What</b>	<ul style="list-style-type: none"><li>a. Prospectuses, financial reports and related materials</li><li>b. Statement of share or unit value</li><li>c. List of assets held by ERISA plan-asset vehicles</li></ul>

# Administrative fee structures

## Recordkeeper revenue sources

Understanding the economics of various relationships when deciding on a fee structure

