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November 22, 2019

Sent by email to: www.regulations.gov

The Honorable Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Comments on Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA (RIN 1210-AB90)

Dear Assistant Secretary Rutledge:

Thank you for the opportunity to comment on your recently published notice of proposed rulemaking: "Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA" (RIN 1210-AB90) (Proposed Rule). The rulemaking relates to a matter of great importance to Segal Consulting (Segal), and our approximately 400 multiemployer pension plan clients covering 3.8 million participants.

In addition to providing services to plans in the multiemployer sector, Segal is part of a larger group, The Segal Group, which provides actuarial, employee benefits, investment programs, insurance solutions and human capital consulting services to employers and employee benefit plans in other sectors throughout the United States. The Segal Group also includes Segal Benz (formerly known as Benz Communications), a leader in the field of employee benefits communications work.

Our unique experience in providing services to ERISA-covered plans across sectors serves as a backdrop for the comments we offer about plan sponsor communications and related disclosures. Provided below are Segal's comments on provisions of the Proposed Rule, as offered from a multiemployer pension plan perspective, as well as Segal Benz's more broadly applicable comments on the effectiveness of required disclosures.

Summary of the Proposed Rule

Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) requires that certain disclosures be provided to participants and beneficiaries. The Proposed Rule creates a new "safe harbor" method of disclosure for pension plans that wish to provide required disclosures electronically. Specifically, plans that satisfy certain criteria may, but are not required to, provide disclosures electronically, under the "notice and access framework" as a default, with an "opt out" available for participants who wish to continue receiving paper disclosures. The Proposed Rule, in Section D(1), requests comments on the Proposed Rule and also includes, in Section D(2), an Information Request that sets forth a number of questions for consideration by the public. The Proposed Rule does not cover health and welfare plan disclosures, which the Department of Labor (DOL) says it will address in future guidance.

General Comments on the Proposed Rule

We generally support the Proposed Rule's safe harbor "notice and access framework," with the "opt out" feature available to participants who prefer to receive paper copies of required disclosures. For plans that have been able to establish an electronic means of communicating with participants and beneficiaries, use of electronic disclosure is an efficient and cost-savings measure that enhances participant and beneficiary engagement.

As the DOL further develops the final version of the Proposed Rule, we request consideration of the comments provided below with respect to pension plans. We also urge the DOL to extend the final rule to health and welfare plans.

Specific Comments in Response to Section D(1) of the Proposed Rule: Request for Comments on Proposed Regulation

As part of its compliment of services provided to multiemployer clients, Segal offers Administration and Technology Consulting (ATC). The ATC reviews clients' information technology infrastructure to create plan operational efficiencies and improvement in member services. The following comments offered by Segal's ATC practice are in response to Section D(1) of the Proposed Rule which invites comments on all facets of the Proposed Rule.

1. Collection of Electronic Addresses

As described in Section B(1) of the Proposed Rule, to use the new safe harbor, a pension plan must obtain an electronic address (employer-provided email, personal email or "smartphone" number) for the participant or beneficiary. The plan also must have a system to identify invalid or inoperable electronic address (such as when an individual leaves employment). If the plan cannot promptly cure such addresses, the individual is deemed to have opted out of electronic delivery until the plan obtains a valid electronic address.

We agree with this approach as it allows plan offices with an electronic capabilities to use procedures that are already in place. For example, some plan offices collect e-mail addresses through enrollment in the participant portal (website). The user must provide several identifying pieces of information (already collected and stored in the plan's database) that are validated against it. This method is acceptable for a workflow in an ERISA-covered health plan where personally identifiable information and protected health information is displayed and should be acceptable for e-mail address collection for pension plans.

2. Standards for the Website

Section B(4) of the Proposed Rule provides that the website where documents are made available must meet certain standards, including that, where applicable, the website must reasonably protect the confidentiality of any personally identifiable information. Each document posted must also meet certain requirements (e.g., timely posting, suitable for reading online and if printed, searchable electronically, etc.).

We suggest rewording the security language to better protect the interests of participants and beneficiaries. For example, websites should be required to obtain a TrustE certification (or equivalent certification) demonstrating responsible data collection and practices that are consistent with regulatory requirements and privacy accountability.[1] Alternatively, we suggest that plans be required to follow the U.S. Commerce Department's National Institute of Standards and Technology's guidelines.[2] We also suggest that plans' websites be required to implement IT accessibility standards so that all participants have ready access to electronic disclosures.[3]

3. Special Rule for Severance from Employment with Plan Sponsor

Section B(7) of the Proposed Rule states that at the time an employee leaves covered service, the plan must obtain a new electronic address or ensure the continued accuracy of the current electronic address to continue using the proposed safe harbor. Multiemployer plans are specifically requested to comment on this requirement.

We suggest that the Proposed Rule be modified to provide flexibility to plans in identifying the triggering event that requires the plan to obtain new electronic addresses. For example, depending upon the trade and work performed, employees could have multiple employers in the same year, if not the same month. As such, seeking re-validation of emails based on employment could be burdensome to the participants and plan administrators.

Additionally, if employees are provided e-mail addresses through their employers (which is not typically the case in the multiemployer sector but applies to other sectors) and are subsequently terminated from employment, employers should deactivate the terminated employee's email

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1 Information on TrustE certification is available at: https://www.trustarc.com/privacy-certification-standards/

2 See the National Institute of Standards and Technology's Special Publication 800-95Guide to Secure Web Services available at: https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-95.pdf.

3 See the U.S. Government Services Administration Government-wide IT Accessibility Program available at: https://www.section508.gov/

address. The plan administrator would then follow the protocol for invalid email addresses and mark the employee's electronic mailing record as "opt out" until the employee provides a valid e-mail address.

Specific Comments in Response to Section D(2) of the Proposed Rule: Request for Information on Effectiveness of ERISA Disclosures

In addition to comments in response the Section D(1) of the Proposed Rule, Segal's ATC and Segal Benz offer the follow comments in response to the Request for Information in Section D(2) of the Proposed Rule.

Question 1: What is the best way to measure effectiveness of a disclosure? Should participant engagement or attentiveness to plan affairs be a measure of the effectiveness of mandated disclosures? If so, how can the Department have a more meaningful impact on the engagement through mandated disclosures? Are there factors other than design, delivery, and content that should be considered by the Department? Please direct the Department's attention to relevant research and evidence that illuminates how and to what degree plan disclosures can be made more effective, and how regulation (or deregulation) can best promote effective disclosure.

Extensive prior testimony provided by Segal Benz (formerly known as Benz Communications) to the ERISA Advisory Council (Advisory Council) relates directly to the issues raised in Question 1. In August 2015, Jennifer Benz, founder and former CEO of Benz Communications (now Senior Vice President, National Practice Leader for Communications for Segal Benz) offered testimony to the Advisory Council discussing potential solutions for effectively engaging retirement plan participants through written communications. Ms. Benz's testimony is attached as Exhibit 1 of the Appendix.

In August 2017, Megan Yost, former Engagement Strategist for Benz Communications (now Vice President and Engagement Strategist for Segal Benz) presented testimony to the ERISA Advisory Council with respect to reducing the burden of mandated disclosures. Her testimony also discusses increasing the effectiveness of such disclosures. Included in her written testimony are several appendices containing recommendations describing how to make required documents more compelling so as to encourage participant and beneficiary engagement. Ms. Yost's testimony is attached as Exhibit 2 of the Appendix.

Question 16: Well-designed plan websites or internet-connected apps may benefit plan participants by effectively communicating plan information, including by adopting features not possible with paper, such as interactive videos, calculators, and layered design. What common features have plan administrators adopted in their websites or apps that are effective in communicating plan information to participants and attracting participants to engage in activity with their plan accounts online? What are the benefits of these features, and how do they achieve them? Should any such features be required by regulation?

Multiemployer plan websites have the ability to upload plan documents, disclosures, etc. to make them available to participants. The most common practice is to provide a link to the document(s) through the plan's participant portal (website). Some sites notify users upon login that new documents are available for review. However, few portals use videos or other more engaging methods of communicating plan information to the participant. Many sites provide activity logs to track when and how often participants open specific documents, videos or other media.

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Thank you for the opportunity to provide comments on this very important subject. If you have any questions about these comments please contact me at 617-424-7330 or dbrenner@segalco.com

Sincerely yours,

David B. Brenner
Senior Vice President, Segal Consulting
National Director of Multiemployer Consulting

APPENDIX

EXHIBIT 1

BENZ
COMMUNICATIONS

Testimony on Behalf of Benz Communications

By Jennifer Benz

Founder & CEO

Before the

United States Department of Labor

Advisory Council on Employee Welfare and

Pension Benefit Plans

(ERISA Advisory Council)

August 19, 2015

Sample Model Notice to Provide Retirement Education to Plan Participants

Thank you for the opportunity to appear before you today. I am honored to present to the committee once again, and discuss potential solutions for effectively engaging retirement plan participants in saving for their financial future.

I am Jennifer Benz, founder and CEO of Benz Communications. We're an award-winning marketing firm specializing in employee benefits communication. Our clients include those among the Fortune 500 and 100 Best Companies to Work For in America. We create simple, but effective, communication pieces—similar to the sample model notice I'll share today—to break through the jargon and complexity of health care and retirement, and inspire employees to take the next step in being healthier and more financially secure.

It's important to note that it's difficult for employees—across all income levels—to grasp the nuances of retirement planning, and change entrenched financial behaviors. It's helpful, maybe even liberating, for U.S. employers to understand that while workers' education and affluence varies, our minds operate the same. Steve Wendel, author and principal scientist at financial guidance firm HelloWallet, put it well when he said, "You can double the usage of your programs by acknowledging that employees aren't stupid. They aren't terrible. They're just human."

Renowned psychologist BJ Fogg created a formula that leverages our humanity to create positive behavior change. The formula (B = M + A + T) illustrates that behavior change occurs when motivation, ability, and a trigger all happen in the same moment. When we put that equation into retirement planning terms, motivation is covered, since we're almost universally motivated toward having more money. Or, in the case of an employer match, not losing out on money.

So then to complete the equation, we need to heighten employees' abilities, by presenting retirement saving as easy to do, and provide an effective and timely trigger.

It's with those tenets in mind that our team crafted a sample model notice for retirement education.

We believe the notice should:

- **Be simple and clear**—written at an eighth-grade level, free of jargon like "investments," "contributions," or "mutual funds." It also should feature simple visual elements to help participants navigate the content, and clearly understand "What's next?" after they read it.
- **Create a sense of urgency** through four critical calls to action—saving early, saving more, keeping money in the plan (encouraging participants away from plan loans, withdrawals, and cash-outs), and calculating retirement income.
- **Be delivered at meaningful "trigger" points** in employees' careers: when starting and departing a job. These are critical decision points when employees consider, "What should I do with my money?" They are also times when workers are more likely to think openly about financial matters—starting a new employment chapter or closing an old one creates feelings in us of having a fresh slate to do things "the right way." Such trigger points may or may not coincide with other required notices, but it could be helpful if delivery were streamlined overall, to keep participants from being overwhelmed.
- **Be electronically distributed**, or delivered in print as a concise, one-page document. Electronic distribution allows employers not only greater ease and reduced cost, but also increased measurement proficiency. They can track email bounces, open rates, and click-throughs to gauge effectiveness in ways that traditional mail simply doesn't offer. Further, email distribution allows for viewing online or via a mobile device, which is now a primary—if not the No. 1—way Americans communicate. Pew Research Center data

tells us that nearly all Americans use the Internet,[1] and two-thirds have mobile access via a smartphone.[2] Also, statistics from Prudential show that the top three ways that employees prefer to receive benefits information are all digital.[3]

- **Point to rich online resources.** Finally, we encourage the DOL to create a robust, mobile-optimized website that uses the best of modern, interactive, and engaging communications. It could be a combination of existing resources, such as those on MyMoney.gov, and new resources. The site could include:
  - Calculators to assess how much you'll have to live on in retirement, including your retirement plan balance and your current savings level.
  - Mistakes to avoid in saving for your future—again, loans and cash-outs.
  - Short videos that explain the basics of retirement plans—putting investing into accessible terms—and feature "success stories" from retirees. There are great examples at dayonestories.com.
  - Checklists for important retirement-related events, such as switching jobs and turning age 65.

Building on those five key elements, here is the sample model notice we've created.

Saving made simple: 4 mistakes to avoid

One day, you're going to retire—whether you're planning to work for the next 5 years or the next 50. No matter when you stop working, your retirement plan is the key to your future. Social Security payments will help. But to enjoy life the way you want, you'll need your own savings, too.

To set yourself up for success, avoid these 4 mistakes:

1 Procrastinating.

The key to a happy, restful retirement is to save as much as possible—for as long as possible. Your 401(k) makes it easy, because the money comes out of your paycheck before you even miss it. If you haven't joined your plan or started saving, do it now!

2 Stealing from your future self.

That's what you do when you take a 401(k) loan. Sometimes times get tough financially, but a 401(k) loan should be your very last option.

3 Cashing out.

When you change jobs, you might be tempted to "cash out" and withdraw all your savings from your 401(k) plan—don't do it! Here's why: You'll have to pay taxes on the money, and a 10% penalty, too. You'll be left with about half in cash now—and back to zero for retirement. Instead, "roll over" the money into a 401(k) at a new job—or keep it in the old one. You'll skip penalties, pay lower fees, and stay on track to retire when you want.

4 Relying on guesswork.

1 + 1 = 2. Knowing how much money you need in retirement can be just as easy. Chances are it's a pretty big number. But knowing is better than guessing. Use a retirement calculator (there are lots of them online)—you'll have an answer in minutes.

Get information on avoiding these mistakes and more at dol.gov/yourfuture.

Conclusion

Thank you again for the time to share our recommendations. I am delighted that you are investigating this topic, and are open to against-the-grain ideas about how employers and the DOL can work together to help more Americans live happy, successful, and financially secure lives.

1. http://www.pewinternet.org/data-trend/internet-use/latest-stats/
2. http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/
3. http://research.prudential.com/documents/rp/Report-8th-Annual-BB-GroupBenefits-Theme5.pdf

EXHIBIT 2

Testimony on Behalf of Benz Communications

By Megan Yost

Engagement Strategist

Before the

United States Department of Labor

Advisory Council on Employee Welfare and

Pension Benefit Plans

(ERISA Advisory Council)

With Respect to

Reducing the Burden and Increasing the Effectiveness of Mandated Disclosures

August 22, 2017

Thank you for the opportunity to participate in this discussion today. I am honored to present to the committee once again, and share my perspective on engaging employees with their health and retirement benefits, particularly on the important topic of plan disclosures.

My name is Megan Yost, and I am an Engagement Strategist at Benz Communications. We are a communications and marketing agency solely, purposefully, and passionately focused on employee benefits. We help great companies inspire people to improve their health, their finances, and their futures. Many of our clients are among the Fortune 500 and 100 Best Companies to Work For in America. These companies care deeply about attracting and retaining the best and the brightest employees—and they're using benefits as a key part of their talent strategy. They're also uniquely positioned to influence health and retirement decision-making, given the role they play in supporting the lives of millions of Americans and their families.

To help American workers use and appreciate their benefits, the single most important thing we can do as an industry is to make sure employees understand *why* these benefits matter and *why* we provide related disclosures. All too often, benefits communications and disclosures focus on how a plan or service works. Yet, as leadership expert Simon Sinek has famously said, communications that focus on "features and benefits and facts and figures" don't compel people to take action or motivate behavior.[i] To connect with the part of the brain that controls decision-making, we must explain what's in it for employees and articulate why it matters—essentially answering the question, "Why should I give up my precious time to read this?"

Without a prominent "why," you lose a precious opportunity to build literacy and inform decision-making among employees. People are craving information and guidance, but too often, communications—especially required disclosures—are not presented in a way that captures attention, highlights the plan's value, or makes a positive impact on plan engagement.

Both plan sponsors and employees alike will rejoice in the EAC's initiative to streamline and simplify health and retirement plan disclosures. While the Council is re-examining these documents, we urge you to not just focus on features and facts, but to simply and clearly express the purpose and intention of these materials—using language and visuals that the average person with low levels of health and financial literacy can understand. Reframing disclosure documents to include this information will help employees understand why they are receiving this communication, what it will tell them, and how it will affect them, and encourage key actions.

It's with this perspective that we have evaluated the materials shared with us in advance of today's hearing. Included with this testimony are several appendices containing our recommendations about how to make the draft documents more compelling for people in order to more actively engage them with their health and retirement plans. Additionally, more specific recommendations for the ABC Sponsor Health Plan Guide are outlined in ***Exhibit 1*** below.

We encourage the Council to consider the primary goal of each document that's being drafted. Is it to inform employees of their rights? If so, then it's likely that employers will view creating and sending the disclosure as a perfunctory compliance exercise in "checking the box." Employees also won't get much from that approach either. They'll likely find the information confusing and won't pay much attention to it. If, however, the goal of a document is to get people to make a decision, then we must think first like marketers—and consider what we know about our audience and what we want them to think, feel, and do. While it may sound like a tall order to accomplish two seemingly conflicting goals of compliance and marketing, there are some industries—including tech and pharmaceuticals—that do it all the time when marketing their own product. The end result of all benefits communications should help employers further their business goals, benefits usage, and enhance their relationship with their employees.

Exhibit 1

ABC Sponsor Health Care Plan Guide (the "Guide")

We recommend reframing and simplifying the Guide to prioritize the most salient information for plan participants, eliminate meta information about the document, and make it more compelling. Enclosed in ***Appendix A***, we have reoriented the Guide into a "Quick Facts" to illustrate how the Council could consider streamlining the Guide. Note, while we have removed or reworded some sections of the Guide, the goal of the Quick Facts is to demonstrate a simplified approach. We would expect the Council would need to review and make adjustments to the information contained within a document of this nature.

In addition to the themes above, the following outline is a list of more specific recommendations to improve the readability of the Guide and reduce the burden of disclosure for plan sponsors.

- Frame the document around information participants care about most, such as eligibility, coverage, and cost.
- Layer information presented. In order to contain the disclosure document to a reasonable page length (e.g., no more than four pages), some information cannot be described in detail. For this information, you can use call-outs to direct participants to the relevant plan documents (e.g., the SPD) for additional information. Too many call-outs and tabs, however, make documents confusing and distracting. In order to maximize efficacy, use call-outs sparingly (i.e., providing helpful tips, calls to action, or places to go for more information).
- Avoid jargon and terminology that employees wouldn't use in everyday conversation with friends, neighbors, colleagues, or family. When a technical term is necessary, be sure to define it immediately within the context of the sentence to enhance clarity. Additionally, use defined terminology consistently. Interchanging unfamiliar words will only serve to further confuse participants.
- Make the document easier to scan. The manner in which information is presented can help enhance participants' comprehension. People are accustomed (and should be able) to access what's most relevant to them at a glance.

Conclusion

Thank you again for including Benz Communications in this discussion and for being receptive to bold recommendations. I am delighted that you are reimagining the form, frequency, and substance of the disclosures provided to plan participants. This initiative offers a tremendous opportunity to improve the experiences for both plan sponsors and employees. Better disclosures have the power to help more Americans enjoy happy, successful, and financially secure lives. Thank you.

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[i] https://www.ted.com/talks/simon_sinek_how_great_leaders_inspire_action#t-329857

Quick Facts about the ABC Sponsor Health Care Plan

To help you better understand our ABC Sponsor Health Care Plan (the "plan"), here are quick facts about who's eligible to enroll, covered health care services, and changes to the plan effective [date]. For more detailed information about the plan and how it works, refer to the summary plan description ("SPD"), available online at [web address] or by calling [number].

Comment [MY1]: Lead with the benefit. Highlight what's in it for participants.

Comment [MY2]: Call out the purpose of the document at the beginning.

Comment [MY3]: Reiterate where to go for more information periodically throughout document.

What types of health plans do we offer?

We offer three different types of health plans:

Comment [MY4]: Make the document easy to scan and visually digest.

1) The health maintenance organization program (HMO) (that we call the [plan name])
2) The preferred provider organization program (PPO) (that we call the [plan name])
3) The high deductible health care program (that we call the [plan name])

Comment [MY5]: Tie together unfamiliar terminology with more familiar terms.

WHO CAN ENROLL IN THE PLAN?

Comment [MY6]: Use simple headers for quick and easy reference.

You can enroll in the plan if you:

- Regularly work at least [30] hours per week;
- Pay any required premiums through automatic payroll deductions; and
- Continue to work in an eligible position with ABC Company.

Special enrollment rules apply if you're not actively at work (e.g. you're on a leave of absence) or if you are Medicare-eligible. Refer to our SPD or [xyz benefits website] for more information.

Certain family members can also enroll:

- Your legal spouse
- Your qualified domestic partner
- Your children (or domestic partner's children) under age 26

See the summary plan description or [xyz benefits website] for more details about specific eligibility requirements for family members.

WHEN CAN I ENROLL?

You're eligible to enroll in benefits beginning on your first day of employment (or on the first day you're employed in an eligible job at ABC Company). You'll have 31 days from your hire date to enroll. If you don't enroll, you'll be assigned medical coverage, for you only. See [xyz website or the summary plan description] for more details.

Comment [MY7]: This section was rewritten and simplified based on the most common industry approach to eligibility vs. waiting 60 days.

The elections you make (or the coverage you receive if you don't enroll) will be in effect through December 31 of the year. You'll have the opportunity to make changes for the following year during the annual enrollment period—usually held in the fall. You can also make changes during the year if you have a life event, such as:

- You get married or divorced
- You have or adopt a dependent child
- Your spouse loses employer health care coverage
- Your spouse or dependent lose their premium assistance under a government program such as Medicaid or the Children's Health Insurance Program ("CHIP")
- Your child no longer qualifies as a dependent (e.g., became too old)
- Your spouse or dependent dies or becomes disabled

If your coverage ends, you may be eligible for continuation coverage (often called "COBRA"). Refer to the SPD for more information.

To change your coverage, [notify the ABC Human Resources Department] within XX days of the. You may be asked to provide evidence to verify your change. The change to your coverage will apply retroactively to the date of the event.

WHEN DOES COVERAGE BEGIN?

Your coverage begins on the first day of the month after you become eligible. For example, if you are hired on June 1, your coverage begins on July 1.

Unless your coverage is terminated (for example, you leave the company or you no longer work [30] hours per week), your coverage will continue until the end of the calendar year. To continue coverage into the next calendar year, you may re-enroll in the plan during annual enrollment.

WHEN DOES COVERAGE END?

Coverage ends if:

- You are no longer employed in an eligible position with ABC Company and you do not continue your coverage through COBRA
- You are a family member of an ABC Company employee who stops participating in the plan
- You are a family member of an ABC Company employee and no longer qualify for coverage
- Your annual coverage expires because you do not renew your coverage
- Your COBRA continuation coverage expires
- You do not pay your premiums on time
- You choose to stop your coverage based on a permissible life event that happens
- You do not enroll in Medicare Parts A and B as required
- Your employer discontinues coverage under the plan
- The plan is terminated, or
- You die.

If you are no longer eligible to participate in the plan, your coverage ends the last day of the month in which you become ineligible.

Note: Dependent children may be protected from loss of coverage as a result of the loss of student status if that status was lost due to a medical condition.

SERVICES & COSTS

What do my health plans cover?

Here are some things you should know about all of the health plans—referred to as coverage programs—made available under the plan.

Comment [MY8]: Use familiar terminology. Whenever possible, avoid industry jargon. When using technical terms, define immediately.

Each coverage program:

√	Has no maximum limit on the amount of benefits that are available to you in one year or over your lifetime.
√	Allows you to choose your primary care doctor, including doctors who specialize in particular care.
√	Does not require prior authorization for gynecological or obstetrical care.
√	Provides preventive care services.
√	Guarantees that participants be provided maternity coverage for hospitalization for at least 48 hours after a vaginal birth and at least 96 hours after a cesarean section.
√	Guarantees that participants who have a mastectomy will have coverage for reconstructive surgery.
√	Provides for mental health and substance abuse disorder coverage.
√	Provides coverage for pre-existing conditions.

Additionally, if your dependent child is enrolled in Medicaid or the Children's Health Insurance Program ("CHIP"), you might be eligible for premium assistance.

How do I find the medical providers and prescription drugs available to me?

Contact our Plan Administrator, [insert name and contact info], for a list of participating medical service providers or available prescription drugs under each program.

How do I find what each plan will cost me?

Premiums for each type of health plan as well as deductibles and co-pays charged for each service are outlined in the accompanying summary of benefits and coverages ("SBC") document.

Comment [MY9]: Layer information and direct participants where to go for more details.

Can I make a claim if a benefit was denied?

Each time that you receive benefits under the plan you will receive an explanation of benefits form ("EOB"). If you believe that a benefit should have been covered and was not, you may file a claim within 180 days of the date you received the EOB.

CHANGES TO THE PLAN

Have any changes been made to the ABC Sponsor Health Care Plan since last year?

No changes have been made to the eligibility or coverage provisions.

Certain co-pays and deductibles for the coverage programs have changed and are described in the enclosed SBC document.

Comment [MY10]: Employers may want flexibility to move this section forward in the document, depending on their particular circumstances in a given year (e.g., employees' familiarity with the notice and the magnitude of changes taking place).

Comment [MY11]: Separate what has and has not changed for participants, so that information doesn't feel misleading (as it could when combined in the same paragraph).

PERSONAL INFORMATION

Will my personal health information be shared?

Your personal health information may not be disclosed without your permission to anyone not involved with the administration or operation of the plan.

MORE INFORMATION

How can I learn more?

This document is intended to provide a brief summary of eligibility, coverage, and changes to the plan.

For more details about the plan and how it works, visit [website] or call [number] for the summary plan description, the trust document, [or the collective bargaining agreement].

Comment [MY12]: Remind participants of the document's purpose and where to go for more detailed information, particularly about how the plan works under more specific circumstances.

404(a)5 Fee Disclosure Proposal

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

Example of Notification of change to fund (email or postcard)

On *[insert date of impending change [plan sponsor*] the following changes are being made to you plan investments"

Fund 1 – xxxxx
Fund 2 – xxxxx
Fund 3 -

You don't need to take any action.

Revised fact sheets for each investment option are available at www.sponsor401k.com/investments or by calling (800) 000-0000.

Comment [MY1]: This sometimes causes confusion as plan administrators default to presenting Gross Expense Ratios, which can be misleading if investment managers cap, waive, or otherwise reimburse fund fees, thereby making the Net Expense Ratios more representative of the fees participants actually pay.

Comment [MY2]: Clarify

Comment [MY3]: Be sure this contact or dedicated contacts are prepped on the changes and they know when the communications and disclosures are being distributed in case there is an influx of calls—you want callers to have a good experience, too.

Comment [MY4]: The most important message to share with participants is why a change is being made. This often gets lost in communications about what's changing.

Comment [MY5]: Make sure to signal what action, if any, is required. You don't want employees to receive a large overwhelming legal notice, get to the end, and still not be quite sure what to do with it.

Comment [MY6]: Keep in mind that using "fund" and "investment option" interchangeably is not intuitive to participants, as both are jargon to them. It's better to use one term consistently so as not to confuse participants.

Mutual Fund | Growth | Your Second Quarter Update

6/30/2017

XYZ Large Cap Growth Fund (XYZGF)

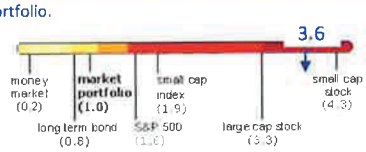
Fund summary

- Invests primarily in large-capitalization U.S. stocks that tend to grow more quickly than the broad market.
- Primary risk, apart from general stock market volatility, comes from the fact that its focus on large-capitalization growth stocks may, at times, underperform the broader stock market.
- As of 6/30/2017, this fund cost $50/share.

There can be no assurance that the Fund will achieve its investment goal.

Risk

- Risk describes how much and how suddenly the value of investments in the Fund could change (e.g., high risk investments could grow fast, but drop just a quickly).
- The bar below measures the Fund in relation to "market risk," the amount of risk in a hypothetical portfolio that includes all the cash, bonds, and stocks in the same proportion as held by U.S. investors.
- The risk of **3.6** is 3.6 times as risky as the hypothetical market portfolio.



- The average risk of funds available in your plan is **1.9**.

Estimated potential one-year loss in the Fund for your $5,000 investment if market conditions are poor: $x,xxxx

Expenses

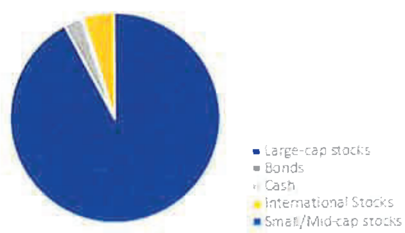
These are the fees and expenses you pay each year as a percentage of your investment in the fund.

- Expense Ratio (%) 0.50%
- Per $1,000 investment $5.00

You pay **$25** in expenses on your **$5,000** investment in this fund for this year.

The fund also pays transaction costs when it buys and sells securities ("or turns over" its portfolio). A higher turnover rate may indicate higher costs. These costs are not reflected in operating expenses. The turnover for this Fund is **11.0%.** The average turnover rate of funds in your plan is 10%.

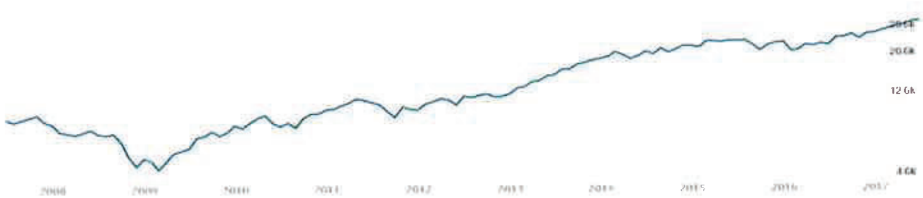
Asset Allocation



Each asset class (such as large-cap stocks, bonds, or cash) represents a different investment category with different risk and return profiles.

Historical Performance of the Fund

This graph shows the growth of a $10,000 investment over the last 10 years. It does not include fees or expenses. Historical performance does not guarantee future results.



Please contact Jane Smith at 1-800-555-5555 for questions regarding this fund and your retirement plan. Updated fact sheets for each investment option are available at www.plansponsor.com/investments

Comment [MY1]: Labels:
Ideally there would be consistent, industry-standard labels, similar to the approach taken with objective-based white labelling practice in DC plans (e.g., growth, capital preservation, income protection, etc.) The style (in this example, "growth") could be addressed in the fund summary.

Comment [MY2]: Fund summary:
This FFS does not describe the goal of the fund. Is it to match the performance of other large U.S. companies or beat their performance? Is this fund active or passive? The language in the summary describes how the fund works but not its goals.

Bullet #1 – Define "large-capitalization."

Bullet #2 – This isn't saying anything—eliminate or re-write?

Bullet #3 – Can you connect this better to the expense example to help tie the math together for people?

Comment [MY3]: Bold disclaimer:
The fund's goal isn't defined, so it won't be clear to people if and when it doesn't achieve its goal. Can you instead say something like: Investing is risky and you may lose money?

Comment [MY4]: Risk:
We like the direction of this section, especially using a graphic to help enhance the message. Bullets #2 and #3 could use some clarification and simplification. It's not clear that the "market portfolio" in the diagram ties back to bullet #2, so participants may not understand it when it's referenced in the diagram. We also suggest simplifying the funds included in the diagram; there are too many undefined examples.

Bullet #4 – This may anchor participants around a statistic that they don't really understand and could drive action toward sub-optimal behaviors, including focusing on low-risk funds as opposed to anchoring participants around funds that will help them achieve certain outcomes.

Comment [MY5]: Red disclaimer:
This may anchor participants on short-term performance over longer-term purpose and outcomes.

Comment [MY6]: Expense ratios:
We like that you crunched the numbers for expenses—let's do the math and make it simple.

The presentation of these figures can cause confusion if Gross and Net Expense Ratios are different (i.e., if investment managers cap, waive, or otherwise reimburse fund fees). Therefore, Gross Expense Ratios can be misleading if Net Expense Ratios are more representative of the fees participants are actually paying.

Comment [MY7]: Asset allocation: Can you simplify asset classes to stocks, bonds, and cash? To minimize confusion, size and style should be categories within those broader buckets.

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

STANDARD NOTIFICATION - NO ACTION REQUIRED

All traditional pension plans (also called "defined benefit pension plans") are required to provide this notice every year. This notice does *not* mean that the Plan is terminating. It also does *not* mean that you won't receive the benefit you have earned.

Comment [MY1]: Tell the reader what this notice is first—before what it is not.

Introduction

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

Comment [MY2]: This document is missing the "WHY." Why do plans want to share this information with employees? Why should employees care? Employees are looking for why this message matters and why it is relevant to them. The "WHY" is the single, most important message to them. They're less concerned about the mechanics of how the math works.

What Does the Funded Status Mean to Me?

Comment [MY3]: Simplify the language used throughout. Consider graphics to illustrate the math vs. writing it out. Aim for 8th grade reading/comprehension level.

In general, the funded status of a plan equals a value of the plan's assets divided by a measure of its liabilities as of a point in time. How the funded status is determined depends upon its purpose. For example, the funded status used to determine contributions is different from the funded status used for accounting purposes. For purposes of this notice, the funded status is the "Funding Target Attainment Percentage" used to determine contributions under the Pension Protection Act of 2006 (PPA). More detail is provided in the Appendix to this notice.

If the plan's funded status is less than 100%, contributions are structured with the objective of reaching 100% over a period of time. The PPA restricts the plan from providing benefit improvements and paying lump sums and certain other forms of benefit if its Funding Target Attainment Percentage is less than 80%. If you are considering retiring in the near future, you should be aware of these potential benefit restrictions as you plan.

While the 80% threshold is used to apply benefit restrictions under PPA, it is not necessarily indicative of a plan's financial soundness. Plans with a funded status above 80% may still be subject to risk if the plan sponsor does not have sufficient financial resources to support the plan, while sponsors whose plan's funded status is below 80% may have a specific contribution strategy to improve the funded status over time. It is important to understand the specific circumstances of each plan and plan sponsor when evaluating funded status. A more detailed explanation of this can be found here – https://www.actuary.org/files/80_Percent_Funding_IB_071912.pdf

How Well Funded Is Your Plan?

Comment [MY4]: Consider moving this to the front page, shortly after the introduction. It outlines what participants care most about. Details about how it was determined can come after.

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

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

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

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

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

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

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

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

Federal law requires the plan administrator to provide an explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. An event is material if it, for example, is expected to increase or decrease Total Plan Assets or Plan Liabilities by five percent or more. For the plan year beginning on [*insert the first day of the current plan year (i.e., the year after the notice year)*] and ending on [*insert the last day of the current plan year*], the following events are expected to have such an effect: [*insert explanation of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year, as well as a projection to the end of the current plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities*].

Right to Request a Copy of the Annual Report

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

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

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

Summary Annual Report Proposal

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

Comment [MY1]: Clarify

Example of Form 5500 filing Participant Communication

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

Plan Name:

Plan Sponsor:

Employer Identification Number:

Plan Number:

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

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

Comment [MY2]: Include a sentence about the purpose of this filing, so employees understand the message's significance and relevance to them.

For example, consider addressing the following questions: "Why should I care? Why does my employer have to do this? How does it protect my interests?"

Comment [MY3]: This could be simplified. For example, "To receive a copy of the report, go [here] or [here]." Is the depth of this meta information necessary? It sounds like legalese instead of helpful calls to action.