

# In Support of your Clients

## Being a Resource for the Aftermath of 408(b)(2) & 404(a)(5)

*Education – Preparation – Solution*

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CONFIDENTIAL



# A Note from the 401(k) Academy President

*The Regulations have arrived*

Just a few words:

"An important goal of the 401(k) Academy and its Financial Advisor members is to work closely with strategic partners like CPA firms. Clients of our strategic partners can really benefit from the tools and process developed at the 401(k) Academy. These solutions are designed to help Employers understand the complex area of Retirement Plans and in the end give them the confidence and information they need to make smart decisions. By growing our partnership you will gain comfort in being a retirement resource for your clients as the Academy is an extension of your team."



# Your Clients Face This Reality

*The Regulations have arrived*

## **Tussey v. ABB, Inc., Dist. Court, WD Missouri 2012**

*The U.S. District Court ruled against manufacturing company ABB Inc. and concluded it breached its fiduciary duties by failing to monitor the fees it paid to Fidelity Management Trust Co. in addition to other fiduciary violations ([Tussey v. ABB Inc., W.D. Mo., No. 2:06-CV-04305](#)). In failing to monitor recordkeeping costs, the court found ABB liable for \$13.4 million in lost fees, and \$21.8 million lost by the plans in 'mapping,' or replacing Wellington with the Freedom Fund. (3% of total plan assets)*

ABB, Inc. was found to have violated the following fiduciary duties:

- **Ignoring payment of fees**
- **No fee benchmarking**
- **Ignored outside consultant review**
- **Poorly written and largely ignored Investment Policy Statement (IPS)**
- **To use more costly shares of certain Fidelity funds**

***Class exemption from the prohibited transaction provisions of ERISA for a plan fiduciary who enters into a contact without knowing that the service provider has failed to comply with the final regulation***

1. Identify the covered service provider who failed to provide proper disclosure
2. Request the missing information
3. If you do not receive proper disclosure within 90 days then you must send a written notice to the DOL
4. You must prudently terminate future services with the provider

# Introduction

*A Team Approach*

## **FINANCIAL ADVISOR**

The Financial Advisor firm will quarterback the entire plan. Emphasis on the development and execution of the Employee Educational Campaign. Leading the Fiduciary Review Process. A clear SERVICE AGREEMENT will be established to match the individual objectives of your plan and it's participants.

## **RETIREMENT PLAN ADMINISTRATOR**

The Retirement Plan Administrator, sometimes referred to as a TPA or Third Party Administrator will be responsible for all compliance work. Examples: Plan Documents and Amendments, Discrimination Testing, IRS Filings

In summary, you pay the TPA to make sure your plan is run correctly in the eyes of the DOL and the IRS (Department of Labor, Internal Revenue Service)

## **RECORDKEEPER**

The RecordKeeper is also referred to as the vendor or the program. The RecordKeeper is the entity that provides the actual packaged product. Offering a list of investment options and the employee access to websites that allow participants to trade from one investment to another. Delivering Quarterly Statements to the participants. Providing educational tools via the web and live at your locations. Fiduciary Tools and Support.

# The 1<sup>st</sup> Major Change in Transparency

*Up Coming Regulation Change*

## **408(b)(2) Fee Disclosure Regulations went into effect on July 1<sup>st</sup>, 2012**

The objective of this new regulation is to disclose all fees and sources of revenue to the **Plan Sponsor**

- 1. You must KNOW all fees associated with you plan**
  - **Plan Providers**



**Once and fore all uncovering all hidden fees**

# The 1<sup>st</sup> Major Change in Transparency

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### 1. Knowing your Fees

- Applies to services providers expecting to receive at least \$1,000 in compensation in connection with their services
- Direct & Indirect compensation must be furnished in writing to the plan fiduciary along with a list of services performed
  - Bundled vs Unbundled (payroll providers)
- All potential conflicts of interest must be brought forth
- Investment related information must also be disclosed

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1. You must **KNOW** all fees associated with you plan
  - Plan Providers
2. You must **UNDERSTAND** all fees associated with your plan
  - You and your Financial Advisor



**Once and fore all uncovering all hidden fees**

# Basic Fee Education

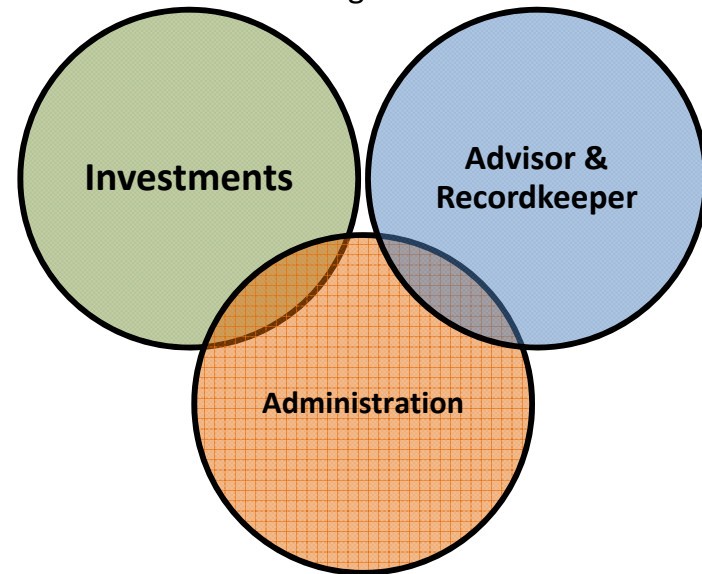
## Unlocking 401(k) Hidden Fees

### Fee Disclosure

Unfortunately, most plan sponsors do not understand the many iterations of retirement plan fees. This analysis will “pop open the hood” and show you how the engine works with regards to hidden fees and revenue sharing.

### Three Major Areas of Fees

1. Expense Ratio/Fund Cost
2. Asset Based Fee/Wrap Fee
3. Hard Dollar Costs/Written Check



\$1,000,000 plan	Program A	Program B	Program C
Fund Cost	1.00%	1.50%	2.00%
Asset Based	.50%	.50%	waived
Hard Dollar	\$5,000	waived	waived
<b>Total Cost</b>	<b>2.00%</b>	<b>2.00%</b>	<b>2.00%</b>

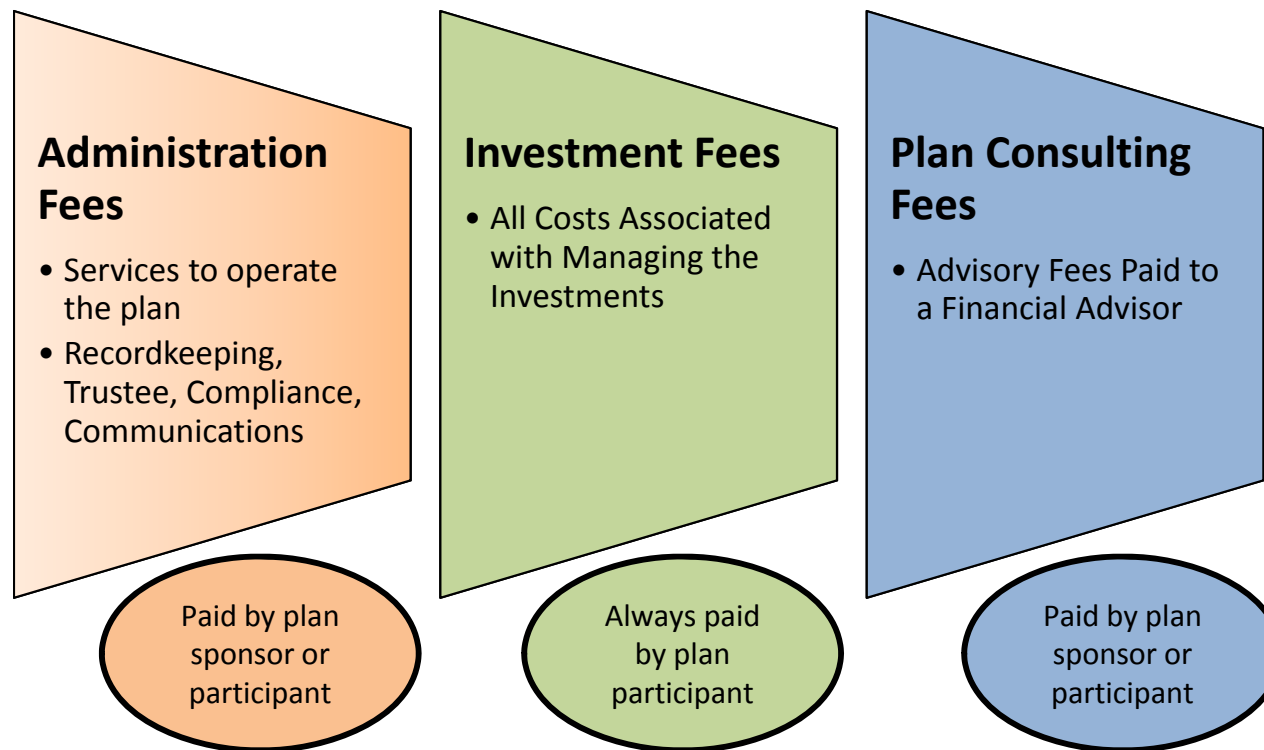


# Basic Fee Education

## *Understanding Participant Costs vs Employer Costs*

### How Fees Are Paid

When making important decisions around plan costs, you have to consider who will bear these costs. Will it be an Employer Cost or a cost of the Employees. Most programs allow flexibility in this choice and the customizable options.



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2. You must **UNDERSTAND** all fees associated with your plan
  - You and your Financial Advisor
3. You must **DETERMINE** if your plan fees are **REASONABLE**
  - The DOL/IRS has not given a breakdown of reasonable



**Once and fore all uncovering all hidden fees**

# The 2<sup>nd</sup> Major Change in Transparency

*Up Coming Regulation Change*

## **404(a)(5) Initial Disclosure: Quarter III 2012**

The objective of this new regulation is to allow participants to understand the underlying costs of their retirement plan

1. Quarterly Statement Disclosure
  - a. All fees (nickel and dime)
  - b. Investment Costs
  - c. Disclosure Materials
  
2. Knocking on the Plan Sponsors door

## **Frustration in Understanding**

# The 2<sup>nd</sup> Major Change in Transparency

*Up Coming Regulation Change*

Issued October 14, 2010

“The final rule also provides that when a plan allocates investment responsibilities to participants or beneficiaries, **the plan administrator must take steps to ensure** that such participants and beneficiaries, **on a regular and periodic basis, are made aware of their rights and responsibilities with respect to the investment of assets** held in, or contributed to, their accounts and are provided **sufficient information** regarding the plan and the plan’s investment options, **including fee and expense** information, to make informed decisions with regard to the management of their individual accounts.”

# The 2<sup>nd</sup> Major Change in Transparency

*Up Coming Regulation Change*

## Plan Related Disclosure

1. General Plan Information – structure and mechanics of plan such as how to give investment instructions, list of investment options and brokerage windows
2. Administrative Expense Information – an explanation of any fees and expenses for general plan administrative services charged to all individual accounts. Ex. Legal, accounting or recordkeeping services
3. Individual Expenses Information – expenses charged to a participant based upon actions taken by the participant  
Ex. Plans loans, QDRO's, distributions, etc.

# The 2<sup>nd</sup> Major Change in Transparency

*Up Coming Regulation Change*

## Investment Related Disclosure

1. Performance Data – 1, 5 and 10 year returns and for fixed rates of return, the annual rate of return
2. Benchmark Information – name and returns of an appropriate index
3. Fee and Expense Information – total annual operating expenses expressed both as a percentage of assets and as a dollar amount per \$1,000
  - Internet Web site address – access to additional information regarding investment options
  - Glossary – terms to assist participants

# The 2<sup>nd</sup> Major Change in Transparency

*Up Coming Regulation Change*

## The Financial Press

- There will be a lot of articles written about how participants are being forced to pay high fees
- How participants should demand plans with less fees
- They will express opinions and mislead participants about what fees are reasonable not recognizing small plans have to have a higher level of expenses

# The Solution to your Headache

*Up Coming Regulation Change*

## A Comprehensive 401(k) Plan Analysis

- The Department estimates that the rule will be economically significant. The non-discounted costs for the first year are estimated to be approximately \$153 million.
- **The first year costs are attributable to reviewing and analyzing the regulation, conducting a compliance review to ensure that service providers comply with the regulation, and preparing any new disclosures required by the regulation.**
- Costs in the second and subsequent years are expected to fall to an estimated \$37 million.



# The Process

*We Deliver Value*

## Objectives

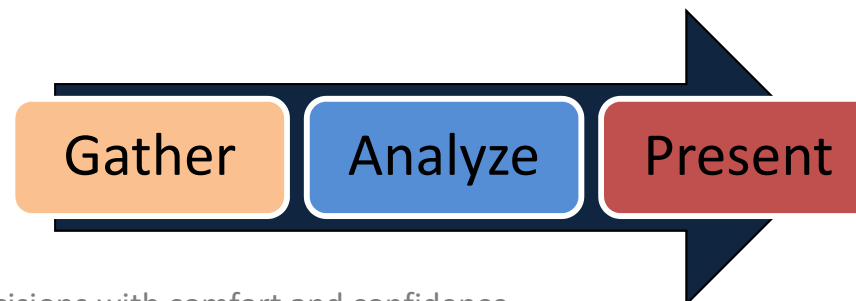
The purpose of this Plan Analysis Package is to allow you, the plan sponsor, to make a **time-efficient** and well informed retirement plan provider decision. This analysis package documents fees, services, investment options and fiduciary tools to how your current plan compares to industry leading programs. The analysis itself goes a long way in **helping plan fiduciaries meet their responsibilities as set forth by ERISA.**

## The Analysis Process

The process begins with a full assessment of your current provider. Through our **industry knowledge** and in depth research of the documents you provided we are able to highlight the strengths and weaknesses of your current provider as well as give a clear, detailed understanding of your current fee structure. After assessing your existing program we take your company's specific objectives and reach out to the leading retirement plan providers to request proposals from the best of the best in terms of your specific objectives.

## Fiduciary Review

Regardless the outcome of this process, you are encouraged to take all of the Plan Analysis pieces provided; FEE COMPARISON, FUND COMPARISON, VENDOR COMPARISON, OVERALL PROPOSAL MATERIALS and supplement this information with a company board minutes. Now you have solid documentation that you care about your plan and it's participants, you take your role seriously and **this analysis package is your proof.**



# Introduction

*Your time is important!*

## Efficient

We know that your time is valuable. This entire process was developed to be super sensitive to your time. It is by design that we only ask you for 3 vital pieces that we need to insure a comprehensive and accurate analysis. These pieces are easy to gather and minimize the time spent on your firm's end.

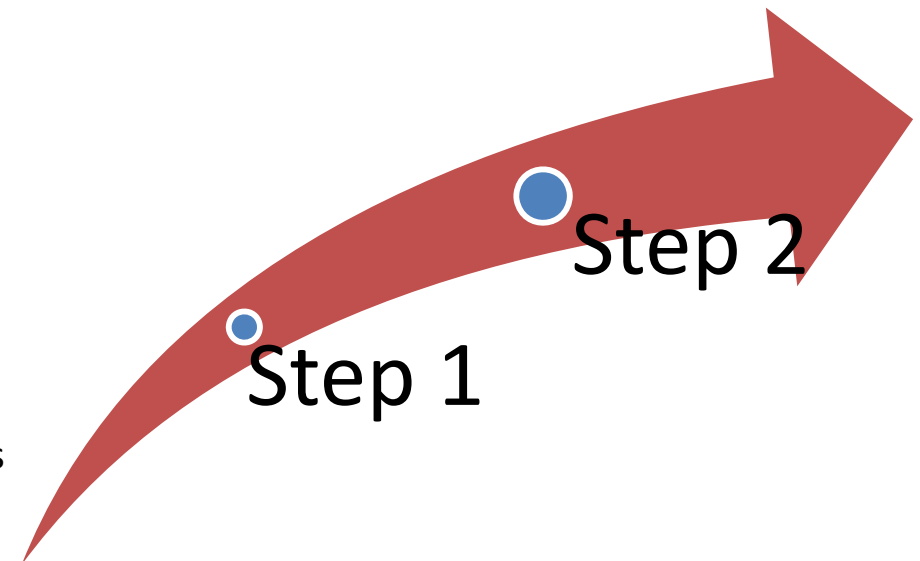
## 2 Step Process

The entire Plan Analysis Process is completed in a simple 2 step approach.

**STEP ONE:** Initial fact finding meeting that takes 10-15 minutes of your time.

**STEP TWO:** Analysis Presentation that takes 30-45 minutes of your time.

*Steps One & Two can be done either on-line meetings or face to face meetings*



# Summary & Questions

*Comfortable and Confident*

- Our Industry is going through a drastic change that will greatly affect you and your clients
- As of July 1<sup>st</sup> 2012 your clients must:
  - Know their plan fees
  - Understand their plan fees
  - Determine if their fees are reasonable
- We are here to help
  - Full Independent Comprehensive Analysis that will prepare your client for the current landscape
    - No Cost
    - No Obligation
    - Only 30-45 minutes of your time
    - **FIDUCIARY REVIEW**
- Questions

# Contacting your Team

## Aftermath of 408(b)(2) & 404(a)(5)

*Education – Preparation – Solution*

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