



Pension Analyst

Compliance Bulletin

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DOL approves use of summary prospectus to satisfy ERISA 404(c)

[ERISA Section 404\(c\)](#) relieves plan fiduciaries of liability for investment losses when a plan participant or beneficiary exercises independent control over the investment of his individual account. Compliance with ERISA Section 404(c) is optional. However, a plan sponsor must meet several requirements to qualify for the relief. One of these requirements includes providing a copy of the most recent prospectus either immediately before or immediately after a participant's or beneficiary's initial investment in a registered security, such as a mutual fund. In addition, prospectuses must be provided upon request to a participant and beneficiary invested in registered securities.

In January 2009, the Securities and Exchange Commission (SEC) provided a new summary prospectus option for complying with SEC prospectus rules. As a result of this SEC guidance, the Department of Labor (DOL) received a number of inquiries regarding whether a summary prospectus also may be used to satisfy the prospectus delivery obligations of participant-directed plans that intend to comply with ERISA Section 404(c).

In September 2009, the DOL issued [Field Assistance Bulletin \(FAB\) 2009-03](#), permitting the use of summary prospectuses to satisfy the prospectus requirement of ERISA Section 404(c).

Summary prospectus

The summary prospectus is a short-form document, written in plain English in a user-friendly format. The contents provide a summary of key information about a mutual fund that is useful to participants and beneficiaries in evaluating and comparing their plan investment options. For investors who want more information, the summary prospectus identifies a website that provides a link to the full prospectus.

The following information must be included at the beginning or on the cover page of the summary prospectus:

- The mutual fund's name;
- The share classes to which the summary prospectus relates, and the corresponding ticker symbols; and
- A legend containing the website address, the approximate date of the summary prospectus's first use, e-mail address, and toll-free telephone number where investors may obtain the statutory prospectus and other information free of charge. This legend may also include a statement that the summary prospectus is intended for use in connection with a defined contribution plan that meets the qualification requirements under 401(k) or a tax-deferred arrangement under 403(b), and is not intended for use by other investors.

The summary prospectus must also include information regarding the investment objectives or goals of the fund, fee and expense information, principal investment strategies, the risks associated with an investment in the fund, fund performance, investment advisors and sub-advisors, portfolio managers, purchase and sale of fund shares, tax information and financial intermediary compensation.

Under FAB 2009-03, if the summary prospectus is the most recent prospectus provided to the plan, providing the summary to participants and beneficiaries would satisfy the prospectus delivery requirement of ERISA Section 404(c).

Prudential's prospectus distribution process

Prudential or its agent generally distributes prospectuses to participants and beneficiaries upon enrollment in registered securities, as well as upon request. As a result of the guidance in FAB 2009-03, Prudential or its agent will distribute a summary prospectus if it is the most recent version of the prospectus.

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