

**MEMO# 23772**

September 9, 2009

## **DOL Approves Use of Summary Prospectus for Plan Participants**

[23772]

September 9, 2009

TO: PENSION MEMBERS No. 41-09  
SEC RULES MEMBERS No. 95-09  
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 41-09  
TRANSFER AGENT ADVISORY COMMITTEE No. 69-09  
SMALL FUNDS COMMITTEE No. 17-09  
BROKER/DEALER ADVISORY COMMITTEE No. 51-09    RE: DOL APPROVES USE OF SUMMARY PROSPECTUS FOR PLAN PARTICIPANTS

Yesterday the Department of Labor approved the use of the mutual fund summary prospectus to satisfy the ERISA section 404(c) regulation that requires that plan participants receive a prospectus. Under the regulation, in order to receive the fiduciary protection of ERISA section 404(c), a participant in a participant-directed plan must receive, for any investment subject to registration under the Securities Act of 1933, a copy of the most recent prospectus either immediately before or following the participant's initial investment. The regulation also requires that copies of the latest prospectus provided to the plan be provided to participants upon request. In 2003, the Department of Labor concluded that the Profile Prospectus would qualify as a "prospectus" for this purpose. [\[1\]](#)

Field Assistance Bulletin 2009-3, [\[2\]](#) issued yesterday, states that the Summary Prospectus may be used to satisfy the obligation to furnish a mutual fund prospectus, if the Summary Prospectus is the most recent prospectus provided to the plan. Similarly, if a participant requests a copy of the prospectus, and the most recent prospectus received by the plan is a Summary Prospectus, the plan may provide the Summary Prospectus in satisfaction of the request.

The FAB states that the 404(c) regulations do not define “prospectus” and the Summary Prospectus is a “is a short-form document, written in plain English in a clear and concise format, and its required 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. Moreover, if a participant or beneficiary wishes additional information, the Summary Prospectus provides an Internet address that leads directly to the statutory prospectus as well as a toll free (or collect) telephone number and e-mail address for obtaining free of charge in paper or by email the statutory prospectus and other information.”

Michael L. Hadley  
Associate Counsel

**endnotes**

[1] See Advisory Opinion 2003-11A (September 8, 2003).

[2] A copy of Field Assistance Bulletin 2009-3 is available here:  
<http://www.dol.gov/ebsa/regs/fab2009-3.html>.

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.