



**THE PLAN SPONSOR COUNCIL OF AMERICA**  
**Serving Retirement Plan Sponsors for More than 60 Years**  
500 Eighth Street, NW, Suite 210, Washington, DC 20004 202.863.7272  
ferrigno@401k.org

Edward Ferrigno  
Vice President, Washington Affairs

## **SUMMARY OF FINAL RULE ON FIDUCIARY REQUIREMENTS FOR DISCLOSURE IN PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT PLANS**

February 6, 2012

The Department of Labor published its final rule for disclosure of plan fees to participants on October 14, 2010. [The rule](#) was published in the Federal Register on October 20 and is effective December 20, 2010. Despite the early effective date, the “applicability date” is plan years beginning on or after November 1, 2011. Pursuant to a [July 2011 rule](#), a transition rule provides that initial disclosures must be provided by the later of 60 days after the applicability date or 60 days after the effective date of 29 CFR 2550.408b-2(c), the service provider fee disclosure regulation. The revised effective date for the service provider fee disclosure regulation is July 1, 2012. For plan years beginning on or after November 1, 2011, the initial disclosure will be required no later than August 30, 2012 (60 days after the effective date of the 408(b)(2) regulation). The notice also provides that the first quarterly disclosures are required 45 days after the end of the quarter in which the initial disclosure is required to be furnished. This date is November 14, 2012.

The final rule was preceded by a [proposed rule](#) that was published on July 23, 2008. The final rule generally follows the proposed rule, but significant additions, such as special rules for annuities, nonregistered investments, and employer securities; and numerous other adjustments, were made in the final rule. For the most part, the changes are beneficial and many of them were raised in [PSCA’s comment letter](#) on the proposed rule.

The Department published a [model comparative chart](#) as part of the final rule.

The DOL simultaneously amended the section 404(c) regulations to remove provisions made redundant by the new rule. The Department also clarified that section 404(c) does not provide any relief from the section 404(a) requirements concerning the selection and monitoring of a designated investment alternative.

*All section references are references to ERISA unless otherwise noted.*

### **OVERVIEW**

The proposed rule is an interpretation or delineation of the general fiduciary requirements under section 404(a). According to the rule’s preamble, “Where a plan assigns investment responsibilities to the plan’s participants and beneficiaries, it is the view of the Department that plan fiduciaries must take steps to ensure that participants and beneficiaries are made aware of their rights and responsibilities with respect

to managing their individual plan accounts and are provided sufficient information regarding the plan, including its fees and expenses, and designated investment alternatives, including fees and expenses attendant thereto, to make informed decisions about the management of their individual account plans.” The final rule establishes disclosure rules that, if met, satisfy this fiduciary requirement. The DOL’s approach that the disclosure duties outlined in the proposed rule are included in the current fiduciary standards has generated some concern that some courts may apply this reasoning retroactively in fee lawsuits. Unlike violations of the general reporting requirements in ERISA, violations of this provision will be addressed as a fiduciary breach.

- The rule applies only to individual account plans as defined in section (3)(34) that permit the participant or beneficiary to direct the investments in their account, except SEPs, SIMPLEs and IRAs. Governmental and church plans are not covered plans.
- The disclosure requirements apply to the plan administrator, or their representative, as defined in section 3(16). The plan administrator is generally the plan sponsor or its representative.
- A plan administrator may reasonably and in good faith rely on information received from or provided by a plan service provider or the issuer of a designated investment alternative.
- The Department, citing section 3(7), intends that the term “**participant**” means any employee eligible to participate in the covered plan, regardless whether or nor the employee is participating in the plan. “**Beneficiary**,” for purposes of this rule, means only beneficiaries with the right under the terms of the plan to direct investments held in their accounts.
- Disclosures are based on the latest information available to the plan.
- Except as explicitly required, fees and expenses may be expressed in terms of monetary amount, formula, percentage of assets, or per capita charge.
- All disclosures must be written in a manner calculated to be understood by the average plan participant.
- Nothing in the rule is intended to relieve a fiduciary from their duty to prudently select and monitor service providers or designated investment alternatives.

### **ELECTRONIC DISCLOSURE INTERIM POLICY**

The current guidance on distribution of required disclosures, as described in regulation 2520.104b-1 applies to this rule. However, the DOL has reserved final guidance on “manner of furnishing” pending completion of an [RFI on electronic distribution](#). The potential for action on a new and broader safe harbor for electronic distribution has broad implications for making disclosures under this rule. The DOL previously expressed confidence that any changes in electronic distribution would be completed before the applicability date of this rule, but that is very unlikely. In any event, any changes will not be able to be implemented by plan administrators prior to the date for initial disclosures. In its [comment letter on the RFI](#), PSCA asked that temporary relief, fashioned after Field Assistance Bulletin 2006-03, be afforded for disclosures under this rule.

On September 13, 2011, the DOL issued [Technical Release 2011-03](#) that provides interim policy for electronic disclosures under this rule until the DOL finalizes its new rules for electronic disclosures. In addition to the normal rule DOL disclosure rules, the release expands the availability of electronic disclosure methods for participant fee disclosures. As noted later in this paper, plan-related information may be included in the benefit statement mandated under section 105 of ERISA. In 2006, the DOL issued [Field Assistance Bulletin \(FAB\) 2006-03](#), which expands the normal DOL electronic distribution rules for furnishing the benefit statement. The Technical Release clarifies that the FAB applies to plan-related information included in the benefit statement, but it does not apply to plan-related information that is not included in a benefit statement or to the disclosure of investment-related information (which is not permitted to be included in the benefit statement).

The 2006 FAB expands the normal DOL disclosure rule in two ways – it permits the use of the less-stringent Treasury Department standard on “ability to effectively access an electronic medium” and it permits disclosure to be achieved by delivering a notice of availability of the required disclosure on a continuously accessible web site. Regarding the latter, the DOL said:

*“With regard to pension plans that provide participants continuous access to benefit statement information through one or more secure websites, the Department will view the availability of pension benefit statement information through such media as good faith compliance with the requirement to furnish benefit statement information, provided that participants and beneficiaries have been furnished notification that explains the availability of the required pension benefit statement information and how such information can be accessed by the participants and beneficiaries. In addition, the notification must apprise participants and beneficiaries of their right to request and obtain, free of charge, a paper version of the pension benefit statement information required under section 105. Such notification should be written in a manner calculated to be understood by the average plan participant, furnished in any manner that a pension benefit statement could be furnished under this Bulletin, and furnished both in advance of the date on which a plan is required to furnish the first pension benefit statement pursuant to section 105(a)(1)(A)(i) and (ii) of ERISA and annually thereafter.”*

The Technical Release also includes a new provision for electronic distribution of investment-related information and plan-related information that is not included in a benefit statement. The provision is an alternative to the normal DOL rules on electronic distribution. The provision appears to permit the “notice of availability on a continuously accessible web site” regime. All of the following conditions must be satisfied:

- 1) Participants and beneficiaries must **voluntarily provide** an e-mail address for the purpose of receiving electronic disclosure of fee information. The address must be provided in response to the initial notice described in the second bullet. The provision of the address cannot be a condition of employment; and the establishment of a business e-mail address does not satisfy this provision. However, an e-mail provided in order to access a secure continuously accessible web site housing the disclosures is considered to be voluntarily provided if the initial notice is provided.
- 2) An **initial notice** must accompany a request to voluntarily provide an e-mail address. It must specify that providing an address is voluntary and will result in electronic disclosure; a description

of the disclosures and how they can be accessed; the right to receive free paper delivery and how to do so; the right to opt out of electronic delivery and how to do so; and the process to update an e-mail address.

- 3) Following the year that an e-mail address is voluntarily provided, an **annual notice** must be provided to participants and beneficiaries that have voluntarily provided an e-mail address. The notice must include the initial notice disclosures except a notice that providing an e-mail address is voluntary and will result in electronic delivery. The notice must be furnished on paper unless there is evidence that the participant or beneficiary “interacted electronically” with the plan since the initial notice or preceding annual notice was furnished. Example of electronic interaction include resubmitting or confirming an e-mail address to the plan, sending or receiving a message with the plan, or logging onto the plan web site.
- 4) The plan administrator must take measures to ensure electronic receipt of transmitted information, e.g., return receipt, undelivered mail notice, or surveys or reviews of transmitted information.
- 5) The plan administrator must take “appropriate and necessary measures reasonably calculated to ensure that the electronic delivery system protects the confidentiality of personal information.”
- 6) Notices must be written in manner calculated to be understood by the average participant or beneficiary.
- 7) **Special Transition Provision** – For e-mail addresses on file with an employer, sponsor, or plan administrator (or designee) in the 30 to 90-day period prior to the date when initial disclosures are provided (not later than May 31, 2012), the e-mail addresses will be deemed voluntarily provided and the initial notice will be deemed to have been furnished if a **transitional group notice** is furnished. The transitional group notice must contain the disclosures in the initial notice except a notice that providing an e-mail address is voluntary and will result in electronic delivery. It must be furnished in the 30 to 90-day period prior to the date when initial disclosures are furnished. It must be furnished on paper unless there is evidence of electronic interaction with the plan in the twelve months before furnishing the transitional group initial notice.

The Special Transition Provision is not available for an employer (or its designee)-issued e-mail address unless there is evidence of electronic interaction “for plan purposes” in the twelve months preceding furnishing the transitional group initial notice. This appears to be a significant restriction of the transitional provision.

## **DISCLOSURE OF PLAN-RELATED INFORMATION**

The rule requires the disclosure of three types of plan information – general, administrative expenses, and individual expenses. All three categories must be disclosed on or before the date on which a participant or beneficiary can first direct his or her investment and at least annually (once in any 12-month period) thereafter. Administrative and individual expenses are also subject to quarterly reporting requirements.

A **notice and description of any change** must be provided at least 30 days, but not more than 90 days, in advance of the effective date of such change, or as soon as reasonably practicable in the case of unforeseen events or circumstances beyond the control of the plan administrator. The concept of a “material change,” included in the proposed rule, does not apply to the final rule.

The requirement to provide disclosures prior to the initial investment may be met by providing the most recent annual disclosure with any updates issued pursuant to the requirement to disclose any changes.

Disclosures provided on or before the date on which a participant or beneficiary can first direct his or her investment and at least annually may be provided as part of the Summary Plan Description or the quarterly benefit statement if those documents meet the timing requirements of this rule. The DOL notes that this does not preclude other means of satisfying disclosure requirements.

Quarterly disclosures may (or may not) be provided in the section 105 quarterly benefit statement.

### ***General Plan Information***

The notice of general plan information must include the following:

- The circumstances under which participants and beneficiaries may give investment instructions.
- Any specific limitations on such instructions, under the terms of the plan, including any restrictions on a transfer to or from a **designated investment alternative (a plan investment into which a participant or beneficiary may direct an investment in their individual account, but not a brokerage window, self directed brokerage account, or similar arrangement that enables participants or beneficiaries to select investments beyond those designated by the plan)**.
- Any plan provisions relating to the exercise of voting, tender, and similar rights related to a designated investment, and any restrictions on such rights.
- The identification of any designated investment alternatives offered under the plan.
- The identification of managers of designated investment alternatives.
- A description of any brokerage windows or similar arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

### ***Administrative Expenses***

An administrative expense for any fees and expenses for general plan administrative expenses (e.g., legal, accounting, recordkeeping), to the extent not reflected in the total operating expenses of any designated investment alternative, must be disclosed if they may be charged against the individual accounts of participants and beneficiaries. The notice must explain how the charges will be allocated (i.e., pro rata or per capital) to, or affect the balance of, each individual account.

Quarterly, the dollar amount of administrative expenses actually charged in the preceding quarter, with a description of the related services, must be disclosed. If applicable, in addition to the disclosure of these fees, a disclosure that some of the plan's administrative expenses for the preceding quarter were paid from the total annual operating expenses of one or more of the plan designated investment alternatives (e.g., through revenue sharing, 12(b)-1 fees, or sub-transfer agent fees) is required.

### ***Individual Expenses***

The third category is individual expenses, to the extent not reflected in the total operating expenses of any designated investment alternative, that may be charged against an individual account for services provided on an individual, rather than on a plan-wide basis. Examples include a QDRO fee, plan loan fee, advice, broker window fees, commissions, front or back-end loads or sales charges, redemption fees, transfer fees and similar expenses, and optional rider charges in annuity contracts.

Quarterly, the dollar amount of individual expenses actually charged in the preceding quarter, with a description of the related services, must be disclosed.

## **DISCLOSURE OF INVESTMENT-RELATED INFORMATION**

The plan administrator (or their designee) must provide to each participant, on or before the date on which he or she can first direct his or her investment and at least annually thereafter, with respect to each designated investment alternative the following information: (See special rules for employer securities, annuities and fixed-rate investments for specific exemptions to the general rules.)

### ***Identifying Information***

- The name of each designated investment alternative.
- The type or category of the investment (e.g. money market fund, balanced fund, large-cap stock fund, employer stock fund, employer securities).

*A requirement to indicate if the investment is actively or passively managed was not included in the final rule.*

### ***Performance Data***

**For investments without a fixed rate of return**, the average annual total return of the investment for the preceding 1, 5, and 10-year calendar year periods (or the life of the investment, if shorter) and a statement indicating that past performance is not necessarily an indicator of future performance.

**Average annual total return** means the average annual compounded rate of return that would equate an initial investment in a designated investment alternative to the ending redeemable value of that investment calculated with the before-tax methods of computation prescribed in Securities and Exchange Commission Form N-1A, N-3, or N-4, as appropriate, except that such method of computation may exclude any front-end, deferred or other sales loads that are waived for the participants and beneficiaries of the covered individual account plan.

**For an investment with respect to which the return is fixed or stated for the term of the investment**, both the fixed or stated annual rate of return and the term of the investment. If the issuer reserves the right to adjust the fixed or stated rate of return prospectively during the term of the contract or agreement, the current rate of return, the minimum rate guaranteed under the contract, if any, and a statement advising participants and beneficiaries that the issuer may adjust the rate of return prospectively and how to obtain (e.g., telephone or Web site) the most recent rate of return required under this section.

The DOL has concluded that money market mutual funds and stable value funds are investments without a fixed rate of return. Examples of investments with a fixed rate of return include certificates of deposit, guaranteed investment products, guaranteed insurance contracts, variable annuity fixed accounts, and similar interest-bearing contracts from banks or insurance companies.

The rule provides relief for plan administrators that do not have the information available on expenses attributable to the plan that are necessary to calculate 5 and 10-year total annual returns for investments that are not registered under the Investment Company Act of 1940. For plan years beginning before October 1, 2021, a plan administrator may use a reasonable estimate of such expenses or the most recently reported total annual operating expense of the designated investment alternative as a substitute for such expenses. The plan administrator must notify participants and beneficiaries if this approach is utilized.

### ***Benchmarks***

For investments without a fixed rate of return, the name and returns of an appropriate broad-based securities market index of the preceding 1, 5, and 10-year calendar years (or the life of the investment, if shorter). The benchmark cannot be administered by an affiliate of the investment issuer, its adviser, or a principal underwriter, unless the index is widely recognized and used.

The DOL indicates in the preamble that plan administrators may blend various benchmarks to reflect the composition of blended investments such as balanced and target date funds.

### ***Fee and Expense Information***

For investments without a fixed rate of return:

- The amount and a description of each shareholder-type fee, (fees directly charged against the investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange, fees, account fees, and purchase fees which are not included in the total operating expenses of the investment).
- A description of any restriction or limitation that may be applicable to a purchase transfer, or withdrawal of the investment in whole or in part (e.g., round trip, equity wash, or other restriction).
- The total annual operating expenses expressed as a percentage; (i.e., expense ratio).
- The total annual operating expense of the investment for a one-year period expressed as a dollar amount for a \$1,000 investment (assuming no returns and based on the total annual operating expense).
- A statement that fees and expenses are only one factor to consider when making an investment decision.
- A statement that the cumulative effect of fees and expenses can substantially reduce the growth of accounts and that participants and beneficiaries can visit the DOL EBSA site for a demonstration of the long term effect of fees and expenses.

For investments with a fixed return for the term of the investment, the amount and description of any shareholder-type fees and a description of any restriction or limitation that may be applicable to a purchase, transfer, or withdrawal of the investment in whole or in part.

### **Total annual operating expenses means –**

In the case of a designated investment alternative that is registered under the Investment Company Act of 1940, the annual operating expenses and other asset-based charges before waivers and reimbursements (e.g., investment management fees, distribution fees, service fees, administrative expenses, separate account expenses, mortality and expense risk fees) that reduce the alternative's rate of return, expressed as a percentage, calculated in accordance with the required Securities and Exchange Commission form, e.g., Form N-1A (open-end management investment companies) or Form N-3 or N-4 (separate accounts offering variable annuity contracts).

In the case of a designated investment alternative that is not registered under the Investment Company Act of 1940, the sum of the fees and expenses described immediately below before waivers and reimbursements, for the alternative's most recently completed fiscal year, expressed as a percentage of the alternative's average net asset value for that year–

- (A) Management fees as described in the Securities and Exchange Commission Form N-1A that reduce the alternative's rate of return,

- (B) distribution and/or servicing fees as described in the Securities and Exchange Commission Form N-1A that reduce the alternative's rate of return, and
- (C) any other fees or expenses not included above that reduce the alternative's rate of return (e.g., externally negotiated fees, custodial expenses, legal expenses, accounting expenses, transfer agent expenses, recordkeeping fees, administrative fees, separate account expenses, mortality and expense risk fees), excluding brokerage costs described in Item 21 of Securities and Exchange Commission Form N-1A.

### ***Internet Web Site***

An Internet Web site address that is sufficiently specific to provide participants and beneficiaries access to the following information regarding the designated investment alternative:

- The name of the alternative's issuer;
- the alternative's objectives or goals in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;
- the alternative's principal strategies (including a general description of the types of assets held by the investment) and principal risks in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;
- the alternative's portfolio turnover rate in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;
- the alternative's performance data (described above) updated on at least a quarterly basis, or more frequently if required by other applicable law; and
- the alternative's fee and expense information (described above).

A plan administrator may include additional information on the web site.

The DOL expects that the web site will be accurate and updated by the plan administrator "as soon as reasonably possible following a change, or notification thereof."

### ***Glossary***

A general glossary of terms to assist participants and beneficiaries in understanding the designated investment alternatives, or an Internet Web site address that is sufficiently specific to provide access to such a glossary along with a general explanation of the purpose of the address.

### ***Annuity Options***

If a designated investment alternative is part of a contract, fund or product that permits participants or beneficiaries to allocate contributions toward the future purchase of a stream of retirement income payments guaranteed by an insurance company, additional disclosure requirements that are detailed under "Special Rules – Certain Annuities" also apply. The disclosures under the special rule must be provided to the extent the disclosures are not made under the general requirements for the disclosure of Fee and Expense Information. The DOL intends that the application of the two rules will result in the disclosure of the both the annuity and portfolio components of a variable annuity.

### ***Disclosures on or before first investment***

The initial disclosure to a participant or beneficiary may be satisfied by providing the most recent annual disclosure. *Note, in the preamble, the DOL states the annual disclosure must be accompanied with "any required updates furnished to participants and beneficiaries."*

### ***Comparative Format***

A chart or similar format is required to facilitate comparison of the investment-related information described above and other disclosures under Special Rules for Certain Investments (see below). The comparative document must be designed to facilitate a comparison of such information for each designated investment alternative available under the plan. It must prominently display the date and include:

- the name, address, and telephone number of the plan administrator (or their delegate) to contact for the provision information available upon request (see below);
- a statement that additional investment-related information (including more recent performance data) may be available at the listed web site; and
- a statement that explaining how to request and obtain free paper copies of information provided on the web site, special disclosures about annuities, and special disclosures relating to fixed return investments.

A model chart is included in the final rule. A plan administrator may include additional information that the plan administrator deems appropriate, provided it is not inaccurate or misleading.

Charts from various service providers may be combined to form a single chart, but the distribution of separate component charts is not permitted.

A plan administrator that accurately uses the model comparative chart will be deemed to satisfy the requirements to disclose investment-related fees and expenses.

### ***Information to be Provided Subsequent to Investment***

Following the investment in a particular designated plan investment, each investing participant or beneficiary must be provided with any materials provided to the plan regarding the exercise of voting, tender, or similar rights to the extent such rights are passed on to such participant or beneficiary under the terms of the plan.

### ***Information to Be Provided Upon Request***

A plan must provide either at the time a participant or beneficiary can direct the investment of their account, or upon request, the following information relating to designated investment alternatives to each participant or beneficiary:

- Copies of prospectuses or any short form or summary approved by the SEC under the '33 or '40 Acts, or a similar document from entities not under SEC jurisdiction.
- Copies of financial statements or reports, such as a statement of additional information and shareholder reports, and any other similar materials relating to a designated plan investment to the extent such materials are provided to the plan.
- A statement of the value of a share or unit of each designated investment alternative and the valuation date.
- A list of the assets comprising the portfolio of each designated investment alternative that constitutes plan assets within the meaning of 29 CFR 2510.3-101 and the value of each such asset or its proportion of the investment alternative. (Mutual funds and some other investment products are not "plan assets" under 2510.3-101.)

### ***Special Rules for Employer Securities***

For designated investment alternatives designed to invest primarily in qualifying employer securities as defined in section 407:

- The requirement to describe principal strategies and risks in the web site does not apply, but it is replaced by a requirement to provide an explanation of the importance of a well-balanced and diversified investment portfolio. In the preamble, the DOL said it expects that plan administrators will use the language provided in Field Assistance Bulletin 2006-03 to satisfy this requirement. The language provides: "To help achieve long-term retirement security, you should give careful consideration to the benefits of a well-balanced and diversified investment portfolio. Spreading your assets among different types of investments can help you achieve a favorable rate of return, while minimizing your overall risk of losing money. This is because market or other economic conditions that cause one category of assets, or one particular security, to perform very well often cause another asset category, or another particular security to perform poorly. If you invest more than 20% of your retirement savings in any one company or industry, your savings may not be properly diversified. Although diversification is not a guarantee against loss, it is an effective strategy to help you manage investment risk."
- The requirement to disclose portfolio turnover in the web site does not apply.
- The requirement to disclose fees and expenses in the web site does not apply unless the employer securities are in a unitized fund.
- The requirement to disclose total annual operating expenses, both as a percentage and as dollar amount per \$1,000 invested, does not apply unless the employer securities are in a unitized fund.
- For non-unitized investments holding securities publicly traded on a national exchange or generally recognized market, "average annual total return," for purposes of reporting 1, 5, and 10-year performance is defined as the change in value of an investment in one share of stock on an annualized basis over a specified period, calculated by taking the sum of the dividends paid during the measurement period, assuming reinvestment, plus the difference between the stock price (consistent with section 3(18)) at the end and at the beginning of the measurement period, and dividing by the stock price at the beginning of the measurement period; reinvestment of dividends is assumed to be in stock at market prices at approximately the same time actual dividends are paid.
- The alternate definition of average annual total return also applies to non-unitized investments in employer securities that are not publicly traded on a national exchange or generally recognize market. In the preamble, the DOL anticipates that many of these securities do not declare dividends and that plan administrators will use Form 5500 valuation data in their calculation.

### ***Special Rules for Certain Annuities***

In the case of a designated investment alternative that is a contract, fund or product that permits participants or beneficiaries to allocate contributions toward the current purchase of a stream of retirement income payments guaranteed by an insurance company, the plan administrator shall, in lieu of the providing the investment-related disclosures regarding identifying information, performance data, benchmarks, fee and expense information and web site address, the following information:

- The name of the contract, fund or product;
- the option's objectives or goals (e.g., to provide a stream of fixed retirement income payments for life);

- the benefits and factors that determine the price (e.g., age, interest rates, form of distribution) of the guaranteed income payments;
- any limitations on the ability of a participant or beneficiary to withdraw or transfer amounts allocated to the option (e.g., lock-ups) and any fees or charges applicable to such withdrawals or transfers;
- any fees that will reduce the value of amounts allocated by participants or beneficiaries to the option, such as surrender charges, market value adjustments, and administrative fees;
- a statement that guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability; and
- an Internet Web site address that is sufficiently specific to provide participants and beneficiaries access to the following information –
  - The name of the option’s issuer and of the contract, fund or product;
  - Description of the option’s objectives or goals;
  - Description of the option’s distribution alternatives/guaranteed income payments (e.g., payments for life, payments for a specified term, joint and survivor payments, optional rider payments), including any limitations on the right of a participant or beneficiary to receive such payments;
- A description of costs and/or factors taken into account in determining the price of benefits under an option’s distribution alternatives/guaranteed income payments (e.g., age, interest rates, other annuitization assumptions);
- A description of any limitations on the right of a participant or beneficiary to withdraw or transfer amounts allocated to the option and any fees or charges applicable to a withdrawal or transfer; and
- A description of any fees that will reduce the value of amounts allocated by participants or beneficiaries to the option (e.g., surrender charges, market value adjustments, administrative fees).

***Special Rules for Fixed Return Investments***

Investments with a fixed return for the term of the investment must, in lieu of the regular web site address requirement, provide a web site with the following information:

- The name of the alternative’s issuer;
- the alternatives objectives or goals (e.g., to provide stability of principal and guarantee a minimum rate of return);
- the alternative’s performance data described in “disclosure of investment-related information” updated on at least a quarterly basis, or more frequently if required by other applicable law;
- the alternative’s fee and expense information described in “disclosure of investment-related information.”

***Special Rules for Target Date or Similar Funds***

The DOL has reserved this provision in anticipation of pending separate guidance on target date-type funds.

**CHANGES TO SECTION 404(c) REGULATIONS**

The disclosure requirements under the section 404(c) regulations (2550.404c-1) are amended to remove disclosure requirements specific to section 404(c) if they are met under the new rule. In those cases, references to the appropriate disclosures under the new rule replace the current 404(c) provisions.

The 404(c) regulations are also amended to specifically include the DOL's long-held position that section 404(c) does not provide any relief under the fiduciary duty to prudently select and monitor any designated investment manager or designated investment alternative under the plan. This finding was previously in a footnote of the section 404(c) regulation. We note that the DOL does not address the status of brokerage window investments included in a section 404(c)-compliant plan.