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# Investing with Confidence

What investment details are required by the 404(a) disclosure regulation?

**IN OCTOBER 2010**, the U.S. Department of Labor (DoL) issued its final regulation amending §404(a) of the Employee Retirement Income Security Act of 1974 to require fiduciaries of participant-directed individual account plans to disclose certain plan- and investment-related information to plan participants and beneficiaries, and its disclosure requirements apply starting with plan years that begin on or after November 1, 2011 (for calendar-year plans, January 1, 2012). In my column “Getting Out of the Way of 404(a)” (May-June 2011), I detailed the plan-related disclosures of the regulation. This column touches the host of investment-related disclosures required by the regulation.

## Investment-Related Information

Under the regulation, plan sponsors are required to provide participants or beneficiaries with the following investment-related information for each designated investment alternative (DIA) offered under the plan: identifying information, performance data, benchmark information, fee and expense information, each DIA’s Internet Web site address, and a glossary. It is anticipated that service providers will make this information available to plan sponsors, but plan sponsors will need to review the information for accuracy and clarity.

## Special Disclosure Rules

For DIAs designated to invest in qualifying employer securities, plan sponsors are required to provide participants and beneficiaries with a statement regarding the importance of a diversified investment portfolio. Under the regulation, qualifying employer securities are exempt from certain requirements such as providing fee and expense information and total annual operating expenses to participants and beneficiaries.

For DIAs consisting of a contract, fund, or product that allows participants and beneficiaries the option of allocating contributions toward the purchase of an annuity, plan sponsors are required to provide: name of the contract, product, or fund; the objectives or goals of the contract, product, or fund; the factors that determine the price of the contract, product, or fund; all limitations on a participant’s or beneficiary’s ability to withdraw or transfer amounts allocated to the contract, product, or fund, along with any costs asso-

ciated with doing so; all fees that will reduce the value of amounts allocated by participants or beneficiaries to the contract, product, or fund; an explanation that an insurance company guarantee is subject to its financial strength and claims-paying ability; and the Internet Web site where additional information can be obtained.

For a DIA whose return is fixed for the investment term, plan sponsors are required to provide an Internet Web site that includes the following: name of the DIA’s issuer; the DIA’s goals or objectives; performance data about the DIA (updated at least quarterly); and fee and expense information related to the DIA. Generally, this information will be made available by the service provider.

## Timing and Method of Investment-Related Information Disclosures

Disclosures of investment-related information must be provided to each participant or beneficiary before such participant or beneficiary can first direct their investments, and then annually. Initial investment-related disclosures must be furnished to existing participants or beneficiaries no later than 60 days after the applicability date.

Plan sponsors are required to provide the investment-related information in a chart (or similar scheme) that allows participants or beneficiaries to compare information about each of the DIAs offered. The chart must display clearly the date and include: the name, address and telephone number of the plan sponsor (or its designee) to allow participants or beneficiaries to make requests for more information; an explanation that additional investment-related information about the DIAs can be accessed at the listed Web site address; and a description of how participants and beneficiaries can obtain (free of charge) paper copies of the information contained on such Web site.

Plan sponsors can include additional information to enable further DIA comparisons as long as this information is not inaccurate or misleading.

When requested, plan sponsors also must provide the following information about plan DIAs when a participant or beneficiary requests such information: prospectuses; all financial statements and/or reports; a report on the value of a single share or unit of every DIA, along with the date the valuation was made; and a list of the assets contained in the portfolio of each DIA and the value of such asset.