



PLAN SPONSOR

404(c) Compliance Checklist

By complying with ERISA section 404(c), sponsors and other fiduciaries of retirement plans with participant-directed investments may shield themselves from liability for poor investment decisions made by plan participants. If a retirement plan meets the requirements of ERISA section 404(c), no plan fiduciary will be liable for any loss that is the direct and necessary result of a participant's exercise of control over the investment of his or her plan account.

For example, ERISA section 404(c) protects a plan fiduciary from being liable for the losses suffered in a down market by the 60-year-old who invests his entire account in an aggressive growth fund. However, plan fiduciaries are responsible for the selection or retention of particular investment options and for investments required by the plan or directed by the plan sponsor.

This checklist will help you determine how well you are complying with ERISA section 404(c). ***This checklist is for informational purposes only and is not intended to provide authoritative guidance or legal advice. Consult your attorney or other advisor for guidance on your particular situation.***

1. The plan offers a broad range of investment alternatives.
 - Generally, this is satisfied by having an investment menu that includes diversified funds from equity, fixed income and capital preservation asset classes.
 - Investments available under the plan allow participants to control both the potential returns and the degree of risk.
 - The plan offers at least three core options that are diversified and have materially different risk and return characteristics.
2. The plan provides participants with an opportunity to exercise control over assets in their accounts, subject to reasonable restrictions.
 - The plan offers participants the opportunity to change investments as frequently as appropriate in light of the volatility of plan investments – at least quarterly.
 - Restrictions on participants' investment directions are reasonable, applied uniformly to participants and comply with certain guidelines. For example, a plan fiduciary may decline to implement a participant's investment election if the election would result in a "prohibited transaction" under ERISA or the Internal Revenue Code.
 - Participants are provided with (or are able to access) information that is sufficient to help them make informed election decisions.
3. Participants exercise independent control over their plan investment decisions. Determining whether a participant acted independently involves looking at the facts and circumstances of each situation. For example, a participant does not act independently when he or she is subjected to improper influence by a plan fiduciary in connection with the transaction.

4. The plan supplies participants with certain information regarding the plan and its investment options, including the following information:
- Regular and periodic disclosures of plan-related and investment-related information. To comply with this requirement, plans must adhere to the participant-level fee disclosure requirements under ERISA section 404(a). More information on the participant-level fee disclosure requirements is available on the Department of Labor’s [website](#) (under the Retirement Plans section).
 - A notice that the plan intends to comply with ERISA 404(c) and fiduciaries may be relieved of liability for investment losses as a result of participant investment decisions. This can be provided in the summary plan description.
 - If applicable, information regarding employer securities offered as an investment alternative under the plan, including a description of special procedures for ensuring the confidentiality of the purchase, holding and sale and the exercise of voting, tender and similar rights. In addition, participants must be provided with the name, address and phone number of the plan fiduciary responsible for monitoring compliance with the special procedures for employer securities.

This article is not a legal interpretation of ERISA and is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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