



## **ERISA Section 404(c) Compliance Checklist**

# ERISA Section 404(c) Compliance

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ERISA section 404(c) relieves plan sponsors and other fiduciaries from liability for losses resulting from participants' direction of their investments. This protection applies only to participant-directed investments, and not to investments required under the plan or directed by the plan sponsor.

To take advantage of ERISA section 404(c), the plan must satisfy three categories of requirements:

- 1) Investment menu requirements
- 2) Plan design and administrative requirements
- 3) Information and disclosure requirements

Category requirements are outlined below.

Fiduciaries can preserve Section 404(c) protection even in situations where a participant fails to make an affirmative election and the participant's account is defaulted into a particular investment alternative. See Qualified Default Investment Alternative (QDIA) requirements for more information.

## Investment Menu Requirements

ERISA 404(c) states you must offer a broad range of investment alternatives with differing potential for investment risk and return. This is satisfied by meeting three requirements noted below.

Does the plan allow participants to make investment decisions?	Yes	No
Does the plan offer three or more investment options?	Yes	No
Does the plan offer at least three "core" investment options with materially different risk and return characteristics?	Yes	No
Is it possible for participants to allocate assets among the three core options in such a way that they can achieve any prudent point on the risk/return spectrum?	Yes	No
Is each core option itself diversified?	Yes	No

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## Plan Design and Administrative Requirements

ERISA 404(c) plans must give participants the right to timely direct the investment of their account. The following requirements are easily satisfied as long as participants have online access.

Are participants permitted to transfer into and out of each core option at least quarterly?	Yes	No
Are participants permitted to transfer into and out of any option as frequently as warranted by the investment's anticipated volatility?	Yes	No
Does the plan offer at least three "core" investment options with materially different risk and return characteristics? <i>More volatile investments might require the right to make changes more frequently than quarterly. A plan that permits daily changes for all investments will always satisfy this requirement.</i>	Yes	No
Are participants permitted to transfer into core investment options at least as frequently as they are permitted to transfer out of the most volatile investment option available?	Yes	No
Is there an identified plan fiduciary who is responsible for ensuring that participant investment instructions are carried out?	Yes	No
Does the plan give participants the option to receive written confirmation of their investment instructions?	Yes	No
If the plan offers employer stock as an option, does the plan provide a description of the procedures established to provide for the confidentiality of information relating to the purchase, holding and sale of employer securities and the exercise of voting, tender and similar rights?	Yes	No

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## Information and Disclosure Requirements

There are two categories of information and disclosures: (1) items required to be provided to participants automatically in advance of investment and (2) items required to be provided only on participant request.

Does the plan provide notification that it intends to comply with 404(c) and that plan fiduciaries are not liable for any losses resulting from participants' investment instructions?	Yes	No
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*This is provided in the plan's Summary Plan Description (SPD)*

Is the following information given to participants before they make investment decisions:*	Yes	No
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- A description of each available investment option including its objective, risk and return characteristics, and portfolio holdings.
- The procedures for giving investment instructions.
- A description of any charges incurred for the purchase or sale of any investment option (e.g., sales loads, deferred sales charges, redemption or exchange fees).
- If the plan passes voting rights through to participants, information describing those rights.
- A description of the information available upon request (described below) and the fiduciary responsible for providing the information.

Is the following information available to participants upon request?*	Yes	No
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- A description of each option's annual operating expenses.
- Prospectuses, financial statements or other materials provided to the plan relating to an investment option.
- Each investment option's portfolio holdings, their values or percentage of the portfolio, and, for any fixed-rate insurance or bank contract, the issuer, contract term and rate of return.
- The value of shares or units for each investment option, and past and current performance determined net of expenses.
- The value of shares or units held in the participant's account.
- The value of shares or units for each investment option, and past and current performance determined net of expenses.

\*Most of the following participant information required under ERISA Section 404(c) became a mandatory requirement under ERISA Section 404(a)(5) effective for plan years beginning on or after November 1, 2011.

# ERISA Section 404(c) Compliance

## Qualified Default Investment Alternative (QDIA) Requirements

Under the DOL's QDIA regulations, fiduciaries can preserve Section 404(c) protection even in situations where a participant fails to make an affirmative election and the participant's account is defaulted into a particular investment alternative. To qualify for the QDIA safe harbor, a plan must satisfy certain procedural requirements and offer a default investment alternative that is recognized by the QDIA regulations.

Are plan participants given the opportunity to direct the investment of their account?	Yes	No
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Does the plan's default fund meet the requirements of the QDIA rule?	Yes	No
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Investment alternatives that meet QDIA requirements include:

- A fund with a mix of investments that takes into account the individual's age or retirement date—for example, a target-date fund.
- An investment service that allocates contributions among existing plan options to provide an asset mix that factors in the individual's age or retirement date—a managed account.
- A fund with a mix of investments that considers the characteristics of the group of employees as a whole, rather than each individual—a balanced fund.

Does the plan provide a notice to participants, including beneficiaries with an account balance, 30 days in advance of the first investment in the QDIA and 30 days prior to every plans year thereafter?	Yes	No
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Are participants permitted to transfer out of the QDIA as frequently as from other plan investments, but at least quarterly?	Yes	No
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Does the plan not impose financial penalties or otherwise restrict the ability of a participant to transfer out of the QDIA and into any other investment alternative available under the plan?	Yes	No
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This checklist is provided for informational purposes only. It is not intended to provide authoritative guidance or legal advice. You should consult your own attorney or other advisor for guidance on your particular situation.