



ERISA section 404(c) checklist

What is it?

Section 404(c) of the Employee Retirement Income Security Act (ERISA) provides plan fiduciaries with certain protections from liability with respect to investment decisions made by plan participants, provided the requirements of Section 404(c) are satisfied.

The goal is to provide plan participants with sufficient information to make informed investment decisions. To be in compliance with Section 404(c), plan participants must be provided with a variety of disclosures, both proactively and reactively. Fiduciaries must still prudently select the investment alternatives and monitor the investment performance of these selections.

Compliance with ERISA Section 404(c) is not mandatory. However, the U.S. Department of Labor effectively removed the majority of the disclosure requirements required under ERISA Section 404(c), by supplanting them with the mandatory requirements of the ERISA Section 404(a)(5) participant fee disclosure regulations enacted in October 2010.

Compliance with ERISA Section 404(a)(5) effectively leaves only two remaining disclosures specifically dedicated to compliance with ERISA Section 404(c), namely:

1. The plan must state it intends to comply with ERISA Section 404(c).
2. Where employer securities are offered to plan participants, the plan offers information regarding the holding and tender of employer's securities and the voting rights associated with employer securities.

Use the following checklist to learn about the major requirements of ERISA 404(c):

Participants must be provided

- Notification that the plan intends to comply with ERISA section 404(c) and that the fiduciaries may be relieved of liability for investment losses as a result.
- Name, address and phone number of the plan fiduciary responsible for providing ERISA 404(c) required disclosures (or the name of any person designated by the plan fiduciary to provide such disclosures on the fiduciary's behalf).
- Ability to change investments at least once quarterly, or as frequently as appropriate in light of the volatility of plan investments.
- Policies and procedures for investing in the plan.
- An opportunity to provide instructions to an identified plan fiduciary to invest their accounts among at least three diversified investment alternatives (employer stock may not be one of the three alternatives):
 - That offer materially different risk and return characteristics
 - That allow participants to choose among investments to achieve a portfolio with aggregate risk and return characteristics appropriate for the participant
 - Each of which, when combined with investments in the other alternatives, tends to minimize, through diversification, the overall risk of a participant's portfolio

- Printed or online copies of the prospectuses for investment alternatives that are registered securities, either immediately before or after they initially invest.
- A description of the investment alternatives and the investment objectives and risk and return characteristics of each alternative, including information relating to the type and diversification of assets within the portfolio of the investment alternative.
- Written confirmation of their investment instructions upon request.
- Names of any designated investment managers.
- A description of the transaction fees and expenses, which affect the participant's account balance.
- Any materials provided to the plan relating to the exercise of voting, tender or similar rights, and an opportunity to exercise such rights by giving instruction to a plan representative.

- If employer securities are an investment alternative, additional disclosures and information is required on participants' voting rights and who can exercise them.
- An explanation of any specified limitations on such instructions under the terms of the plan, including any restrictions on the exercise of voting, tender and similar rights.
- Procedures for periodically informing participants of actual expenses incurred in their accounts.

- Copies of any prospectuses, financial statements and reports provided to the plan
- A list of the assets comprising the portfolio of each designated investment alternative
- Information concerning the value of shares or units in designated investment alternatives
- Information concerning the value of shares or units in designated investment alternatives held in the account of the participant

Must be available upon request

- A description of the annual operating expenses of each designated investment alternative

Please recall that ERISA Section 404(c) is not mandatory. For guidance and to determine if your plan might benefit from compliance with 404(c), please contact your legal counsel.

How RBC Wealth Management can help

At RBC Wealth Management, we work closely with you to help design and maintain the appropriate retirement plan to meet your company's growing needs.

RBC Wealth Management, an entity of Royal Bank of Canada, (TSX, NYSE: RY), is one of the nation's biggest full service regional securities firms.

This list should not be construed as an exhaustive listing of the steps to comply with ERISA 404(c).

RBC Wealth Management does not provide tax or legal advice. The information in this guide is for educational purposes. Please consult with your tax or legal counsel for advice.