



# Plan Sponsors' Guide to ERISA 404(c)



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# Protection against liability



If your retirement plan allows participants to direct their own investments, compliance with Section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA) provides protection for you, the plan sponsor.

## Benefits for plan sponsors

In general, if a plan meets Section 404(c) requirements and related regulations, the plan sponsor and other fiduciaries are not liable for retirement plan account losses resulting from plan participants' investment decisions.

Compliance with Section 404(c) is optional, but you should carefully consider the implications of noncompliance: You, the plan sponsor, could be held liable for what happens with assets in employees' retirement accounts, even though you exercised absolutely no control over their decisions.

## 404(c) basic requirements

For your plan to comply with Section 404(c), at minimum it must meet these criteria:

1. Offer at least three different, internally diversified investment options with materially different risk and return characteristics
2. Let participants transfer their assets among the options as often as appropriate given the market volatility of the options
3. Give participants the opportunity to obtain enough information to make educated investment decisions, including:
  - a statement that the plan intends to satisfy the requirements of Section 404(c) and the effect of compliance
  - a description of each investment option, including its objectives, risk and return characteristics and investment managers
  - when and how participants can give instructions about investments, transfers and voting and tender rights
  - information about transaction fees and expenses
  - the name, address and phone number of the fiduciary and representatives who can provide this information

Upon request, the plan also must provide information such as:

- prospectuses for the investment options the plan offers
- annual operating expenses of each investment option
- past and current performance, net of expenses, for each investment option and the current value of units or shares

When you agree to comply with Section 404(c), your participants also benefit.

They know they will have access to effective tools and information they need to manage their own investments or implement advice from their financial advisor. They can count on their employer to provide:

- a broad and diverse range of investment options
- frequent opportunities to change how their accounts are invested
- educational opportunities that provide the information they need to make informed investment decisions

# How can we help?

The Standard provides tools to help you comply with Section 404(c):

- StanCorp Investment Advisers, Inc. offers investment advisory services to our retirement plan clients and accepts fiduciary responsibility for its services.
- You can select an appropriate mix from the investment options we offer.
- **Mainspring Retirement Plan Solutions<sup>SM</sup>** helps your employees make informed investment decisions:
  - Its **enrollment booklets** include detailed information about the plan's investment options and their performance.
  - **401(k) on the Brain<sup>®</sup>** seminars and **Retirement on the Brain** seminars (for registered plans) educate participants on topics ranging from basic decisions about saving and investing to issues faced by people nearing retirement.
  - The **Investor Profile Quiz** helps Mainspring Guided and Independent participants choose a diversified portfolio appropriate to their investment horizons and risk tolerance. It is available online and as a companion quiz with educational brochures.
  - Our **quarterly participant newsletters** provide information about retirement planning and investing in an attractive and readable format.
- The Personal Savings Center and INFOLINE let participants perform a number of actions, including enrolling in the plan, viewing account balances and transaction activity, obtaining current investment performance information, changing their contribution rates, estimating how much income they'll need in retirement and initiating loan and distribution requests.

## Fiduciary responsibilities

Even if relieved of liability for participants' investment decisions, the fiduciary retains responsibility for:

- selecting and monitoring the plan's investment options to ensure they remain competitive and meet the diverse needs of the plan's participants on an ongoing basis
- periodically reviewing the plan's operations to ensure that the frequency with which participants can change their investments continues to be appropriate given the volatility of the investment options
- ensuring that participants have been given sufficient disclosure about the plan's investment options on an ongoing basis

A plan sponsor may have to direct an investment if a participant fails to make an investment selection. The Pension Protection Act of 2006 provides a safe harbor to plan sponsors investing participant assets in Qualified Default Investment Alternatives. The plan sponsor must notify participants a reasonable time before each plan year and:

- explain their rights to designate how contributions and earnings are invested
- explain the default investment in which the contributions and earnings will be invested if no investment designation is made
- give participants a reasonable amount of time to make an investment designation, change their contribution amount or opt out

## Employer stock

ERISA limits the amount of employer stock that can be held by certain retirement plans and imposes these conditions:

- The stock must be publicly traded on a national exchange or other recognized market.
- The stock must be traded with sufficient frequency and volume to ensure that participant instructions can be executed promptly and efficiently.
- The same information provided to shareholders generally is also provided to participants.
- Voting, tender and similar rights are passed through to participants.
- A procedure is established and implemented and a fiduciary designated to maintain the confidentiality of information about participants' purchase, sale and holding of employer stock and the exercise of voting and other rights.
- An independent fiduciary can be appointed to ensure participants are not subjected to undue influence with respect to the exercise of shareholder rights.



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