

# 404(c) Checklist

**Plan Sponsor (PS):** \_\_\_\_\_  
**Plan Name(s):** \_\_\_\_\_  
**Record Keeper (RK):** \_\_\_\_\_  
**Advisor:** \_\_\_\_\_

Under the Employee Retirement Income Security Act of 1974 (ERISA), the fiduciaries of retirement plans are responsible for all investment decisions, including those made by the participants in participant directed plans, unless the plan is an “ERISA Section 404(c) plan.” Section 404(c) of ERISA provides that if a plan permits the participants to exercise control over the assets in their accounts and they actually do so, the fiduciaries are not liable for any loss which results from such exercise of control so long as the plan complies with the requirements of the Department of Labor Regulation under Section 404(c). That Regulation describes the circumstances under which a participant or beneficiary is considered to have exercised independent control over the assets in his account as contemplated by Section 404(c).

This checklist is intended to assist the fiduciaries to monitor the plan they serve is an “ERISA Section 404(c) plan.” It lists the requirements that must be met (including a reference to the Department of Labor regulation where that requirement can be found) and provides an explanation of the requirement and instructions regarding compliance where appropriate.

The checklist below is organized in five sections. The first section lists the general requirements for plans that intend to comply with section 404(c); the second section lists the information that must be furnished to participants; the third section lists the information that must be available to participants, upon request; the fourth section lists the special requirements that apply to plans which include employer securities as an investment option; and the fifth section lists restrictions that may be imposed.

<b>I. General Requirements</b>	<b>Is This Requirement Satisfied? (Yes Or No)</b>	<b>How Is This Requirement Satisfied?</b>
1. The plan must be an “individual account plan”– i.e., a 401(k) plan or profit sharing plan? <i>2550.404c-1(b)(1)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2. The plan must permit the participants to give instructions, written or otherwise, with respect to the investment of their accounts. <i>2550.404c-1(b)(1)(i)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. The plan must provide participants the opportunity to exercise control over the assets in their accounts <b>NOTE:</b> This requirement is fully discussed in Section II, below. <i>2550.404c-1(b)(2)(i)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	

(Continued)

I. General Requirements	Is This Requirement Satisfied? (Yes Or No)	How Is This Requirement Satisfied?
<p>4. The plan must provide participants the opportunity to receive written confirmation of investment instructions</p> <p>NOTE: This requirement can be satisfied automatically by providing confirmation of investment instruction.</p> <p><i>2550.404c-1(b)(2)(i)(A)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>5. The plan must offer participants a choice from a broad range of investment alternatives.</p> <p>A plan will meet this requirement only if the available investment alternatives are sufficient to provide the participant with a reasonable opportunity to satisfy the requirements listed below:</p> <p><i>2550.404c-1(b)(3)(i)</i></p> <p>The participants must be able to choose from at least three investment alternatives that will permit them to materially affect the potential return and the degree of risk on amounts in their individual accounts.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>a. Each alternative must be diversified.</p> <p><i>2550.404c-1(b)(3)(i)(B)(1)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>b. Each alternative must have materially different risk and return characteristics.</p> <p><i>2550.404c-1(b)(3)(i)(B)(2)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>c. In the aggregate, the alternatives must enable the participant by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant or beneficiary</p> <p><i>2550.404c-1(b)(3)(i)(B)(3)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>d. Each of the alternatives, when combined with investments in the other alternatives, tends to minimize through diversification the overall risk of a participant's portfolio.</p> <p><i>2550.404c-1(b)(3)(i)(B)(4)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>e. The participants must be able to diversify the investment of their accounts so as to minimize the risk of large losses, taking into account the nature of the plan and the size of participants' accounts.</p> <p><i>2550.404c-1(b)(3)(i)(C)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	

(Continued)

<b>II. Information That Must Be Available Upon Request</b>	<b>Is This Information Available to Participants Upon Request? (Yes Or No)</b>	<b>How Is This Requirement Satisfied?</b>
<p>a. The plan must identify the fiduciary (or the person designated to act on its behalf) to provide requested information (described in items i–v, below)</p> <p><b>NOTE:</b> Such information must be based on the latest information available to the plan. Most plans automatically provide much or all of this information to participants. Nonetheless, it still must be provided on request.</p> <p><i>2550.404c-1(b)(2)(i)(B)(2)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>i. A description of the annual operating expenses of each investment alternative (e.g. investment management fees, administrative fees, and transaction costs) which reduce the rate of return to participants and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment alternative.</p> <p><i>2550.404c-1(b)(2)(i)(B)(2)(i)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>ii. Copies of any prospectuses, financial statements and reports, and any other materials relating to the investment alternatives available under the plan, to the extent such information is provided to the plan.</p> <p><i>2550.404c-1(b)(2)(i)(B)(2)(ii)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>iii. A list of the assets comprising the portfolio of each designated investment alternative which constitute plan assets.</p> <p><i>2550.404c-1(b)(2)(i)(B)(2)(iii)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>(a) The value of each such asset identified in item iii. above (or the proportion of the investment alternative which it comprises).</p> <p><i>2550.404c-1(b)(2)(i)(B)(2)(iii)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>(b) With respect to each asset identified in item iii. above, which is a fixed rate investment contract issued by a bank, savings and loan association, or insurance company, the name of the issuer of the contract, the term of the contract, and the rate of return on the contract.</p> <p><i>2550.404c-1(b)(2)(i)(B)(2)(iii)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	

(Continued)

<b>II. Information That Must Be Available Upon Request</b>	<b>Is This Information Available to Participants Upon Request? (Yes Or No)</b>	<b>How Is This Requirement Satisfied?</b>
iv. Information concerning the value of shares or units in designated investment alternatives available to participants under the plan, and the past and current investment performance of designated investment alternatives, determined, net of expenses, on a reasonable and consistent basis.  <i>2550.404c-1(b)(2)(i)(1B)(2)(iv)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
v. Information concerning the value of shares or units in designated investment alternatives held in the account of the participant.  <i>2550.404c-1(b)(2)(i)(B)(2)(v)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	

<b>III. Employer Securities</b>	<b>Is This Requirement Satisfied? (Yes Or No)</b>	<b>How Is This Requirement Satisfied?</b>
<b>If a plan provides for employer securities as an investment alternative available under the plan, the following eight requirements must be met.</b>		
1. The stock must be a qualifying employer security as defined in ERISA Section 407(d).  <b>NOTE:</b> This includes employer stock or an interest in a publicly traded partnership.  <i>2550.404x-1(c)(4)(i-ii)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2. The qualifying employer securities (i.e., the company stock must be publicly traded on a national exchange or other generally recognized market)  <b>NOTE:</b> The securities must be traded on the New York Stock Exchange, the American Stock Exchange/ NASDAQ National Market System or other recognized market. Securities traded in the “pink sheets” or other less recognized markets are not included, and thus, 404(c) protection is not available with respect to those employer securities (or with respect to closely-held stock).  <i>2550.404c-1(c)(4)(iii)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Such securities must be traded with sufficient frequency and in sufficient volume to assure that participant directions to buy or sell the security may be acted upon promptly and efficiently.  <i>2550.404c-1(c)(4)(iv)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	

(Continued)

III. Employer Securities	Is This Requirement Satisfied? (Yes Or No)	How Is This Requirement Satisfied?
<p>4. Information provided to shareholders of such securities must also be provided to participants with accounts holding such securities.</p> <p><b>NOTE:</b> This would include annual and periodic reports, proxy statements and the like.</p> <p><i>2550.404c-1(c)(4)(v)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>5. Voting, tender, and similar rights with respect to such securities must be passed through to participants with accounts holding such securities.</p> <p><i>2550.404c-1(c)(4)(iv)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>6. Information relating to the purchase, holding, and sale of securities, and the exercise of voting, tender, and similar rights with respect to such securities by participants, must be maintained in accordance with procedures which are designed to safeguard the confidentiality of such information, except to the extent necessary to comply with Federal laws or state laws not preempted by ERISA.</p> <p><i>2550.404c-1(c)(4)(vii)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>7. The plan must designate a fiduciary who is responsible for ensuring that the procedures required under the preceding requirements are sufficient to safeguard the confidentiality of the information, such procedures are being followed, and the independent fiduciary is appointed.</p> <p><i>2550.404c-1(c)(4)(viii)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>8. In situations in which the fiduciary named in 7 above determines involve a potential for undue employer influence upon participants, with regard to the direct or indirect exercise of shareholder rights, the fiduciary named in 7 above must appoint an independent fiduciary to carry out activities related to employer securities to prevent undue employer influence upon participants with regard to the direct or indirect exercise of shareholder rights.</p> <p><i>2550.404c-1(c)(4)(ix)</i></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	

(Continued)

IV. Plan May Impose Reasonable Restrictions	Does The Plan Impose This Restriction? (Yes Or No)
<p>a. A plan may charge participants' accounts for the reasonable expenses of carrying out investment instructions. If the plan imposes such charges, the plan must establish procedures to periodically inform the participants of actual expenses incurred with respect to their respective individual accounts.</p> <p><i>2550.404c-1(b)(2)(ii)(A)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>b. A plan may permit a fiduciary to decline to implement investment instructions by participants which would result in a prohibited transaction described in ERISA section 406 or section 4975 of the Internal Revenue Code or would generate unrelated business taxable income for the plan.</p> <p><i>2550.404c-1(b)(2)(ii)(B)(i-ii)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>c. A plan may impose reasonable restrictions on the frequency with which participants may give investment instructions, so long as the requirements listed in the next two sections are met.</p> <p><i>2550.404c-1(b)(2)(ii)(C)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>i. The first requirement to satisfy the "frequency of instructions" requirement is that for each investment alternative made available by the plan, participants are permitted to give investment instructions with a frequency which is appropriate in light of the market volatility to which the investment alternative may reasonably be expected to be subject.</p> <p><i>2550.404c-1(b)(2)(ii)(C)(1)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>ii. The second requirement to satisfy the "frequency of instructions" requirement is that for at least three of the investment alternatives satisfying the "broad range" requirement described below, participants are permitted to give investment instructions no less frequently than once within any three month period.</p> <p><i>2550.404c-1(b)(2)(ii)(C)(2)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>d. In order for Participants to have independent control over their accounts, Plan fiduciaries may not:</p> <ul style="list-style-type: none"> <li>i. Improperly influence participants in making their investment choices</li> <li>ii. Conceal material non-public facts regarding an investment option</li> <li>iii. Accept instructions from a participant knowing him or her to be legally incompetent</li> </ul> <p><i>2550.404c-1(c)(2)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

This checklist is being used to assist the plan sponsor to better fulfill its responsibilities in connection with the requirements under Section 404(c). It is for informational purposes only. Please note that this checklist is not meant to ensure compliance with Section 404(c) or ERISA and is not legal advice or a legal opinion. You should consult with legal counsel regarding compliance with ERISA and other applicable laws. The relationship between the plan sponsor and the advisor, and the services provided by the advisor, are governed by the agreement entered into with the advisor. ERISA Section 404(c) does not relieve the fiduciaries of responsibility for the prudent selection and monitoring of the investment options offered under the plan. Further, to the extent a participant decides not to exercise control over his or her account, the fiduciaries remain responsible for prudently allocating the assets in that participant's account. Thus, the fiduciaries must prudently select and monitor the appropriate "default account" for the participants.

The references above and practices as indicated are based upon data and information provided by several parties including but not limited to the plan sponsor, record keeper, custodian, trustee, auditors and other parties. Further, various documentation must be maintained by the plan sponsor to substantiate the satisfaction of requirements indicated in this checklist. No assurance can be given that regulatory bodies or a court of law will agree that the checklist conforms to Regulation 404(c).

To the extent you are receiving investment advice from a separately registered independent investment advisor, please note that LPL Financial is not an affiliate of and makes no representation with respect to such entity.