

ERISA 404(c) Compliance Gaps



404(c) COMPLIANCE GAPS

Very few participant-directed retirement plans are in compliance with ERISA Section 404(c).

As a consequence, most Plan Sponsors and Plan Fiduciaries are personally responsible for the investment results attributable to participant-directed investment decisions.

The MOST COMMONLY OVERLOOKED 404(c) COMPLIANCE REQUIREMENTS are listed below:

PUBLISH THE NAMES OF 404(c) FIDUCIARIES WHO ARE SPECIFICALLY RESPONSIBLE FOR:

- Receiving and carrying out participant investment directions
- Providing investment information

DELIVER PROSPECTUSES TO PARTICIPANTS:

- Fund prospectuses must be provided to participants either immediately prior to or immediately following their initial investment in a particular fund

DISCLOSE TO PARTICIPANTS ALL EXPENSES CHARGED AGAINST THEIR ACCOUNTS:

- Annual disclosure of all expenses to participants

ESTABLISH AND MAINTAIN PROCEDURE TO SELECT INVESTMENT OPTIONS THAT FULFILL 404(c) REQUIREMENTS FOR PARTICIPANT ASSET ALLOCATION:

- Written criteria for selecting asset classes
- Periodic monitoring of asset classes offered

DISCLOSE ALL TRADING RESTRICTIONS (e.g. Stable Asset account)

IDENTIFY "CORE" INVESTMENT OPTIONS:

- No trading restrictions permitted on core options

DOCUMENT AND DISTRIBUTE RULES AND PROCEDURES FOR VOTING AND TENDER RIGHTS:

- Typically, provisions of the SPD, Plan document and enrollment materials conflict with each other

PROVIDE NOTICE OF INTENTION TO BE A 404(C) PLAN TO ALL PARTICIPANTS AND BENEFICIARIES:

- Make sure to include terminated participants and beneficiaries who have account balances
- Clearly explain that Plan participants – and NOT Plan fiduciaries - will be fully responsible for investment decisions

The MOST COMMONLY OVERLOOKED 404(c) COMPLIANCE REQUIREMENTS are listed below:

PROVIDE 404(c) INFORMATION FOR POOLED ACCOUNT INVESTMENT OPTIONS:

- In the absence of a prospectus, appropriate investment information still must be delivered to participants by vendors

ESTABLISH AND PUBLISH COMPREHENSIVE WRITTEN 404(c) PROCEDURES

PLAN SPONSORS MUST BE AWARE OF AND CARRY OUT THEIR SPECIFIC 404(c) RESPONSIBILITIES

A PLAN SPONSOR MAY NOT:

- Improperly influence participants in making their investment choices
- Conceal material non-public facts regarding any investment option
- Accept instructions from a participant knowing him or her to be legally incompetent
- Permit unreasonable charges against participant accounts

A PLAN SPONSOR MUST:

- Annually confirm that expenses charged against participant accounts are reasonable
- Distribute 404(c) Notice to all participants and beneficiaries