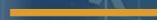




WEALTHSPIRE

Fiduciary Fitness Program



**Education Module #6:
ERISA Section 404(c) Compliance**

Fiduciary Fitness Program

Module 6: ERISA Section 404(c) Compliance

This module will explain the protection from liability afforded to fiduciaries by ERISA Section 404(c) for participant-directed accounts and the requirements that must be met to receive the 404(c) protection.

ERISA Section 404(a) states that a fiduciary:

- Shall discharge his or her duties with respect to a plan with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims
- Section 404(a) addresses the fiduciary's duty in regards to plan management

ERISA Section 404(c)

- Section 404(c) provides protections to the plan and plan fiduciaries for participant investment decisions
- Pertains to individual accounts allowing participants and beneficiaries to exercise control of their account
- The participant or beneficiary shall not be deemed to be a fiduciary by reason of exercising control, and no person who is otherwise a fiduciary shall be liable for any loss, or by reason of any breach, which results from such exercise of control
- Participant-directed account plans must comply with ERISA Section 404(c) if fiduciaries wish not to be held liable for a participant's or beneficiary's imprudent investment decisions
- Fiduciaries do not have any obligation under ERISA Section 404(c) to provide investment advice to participants or beneficiaries

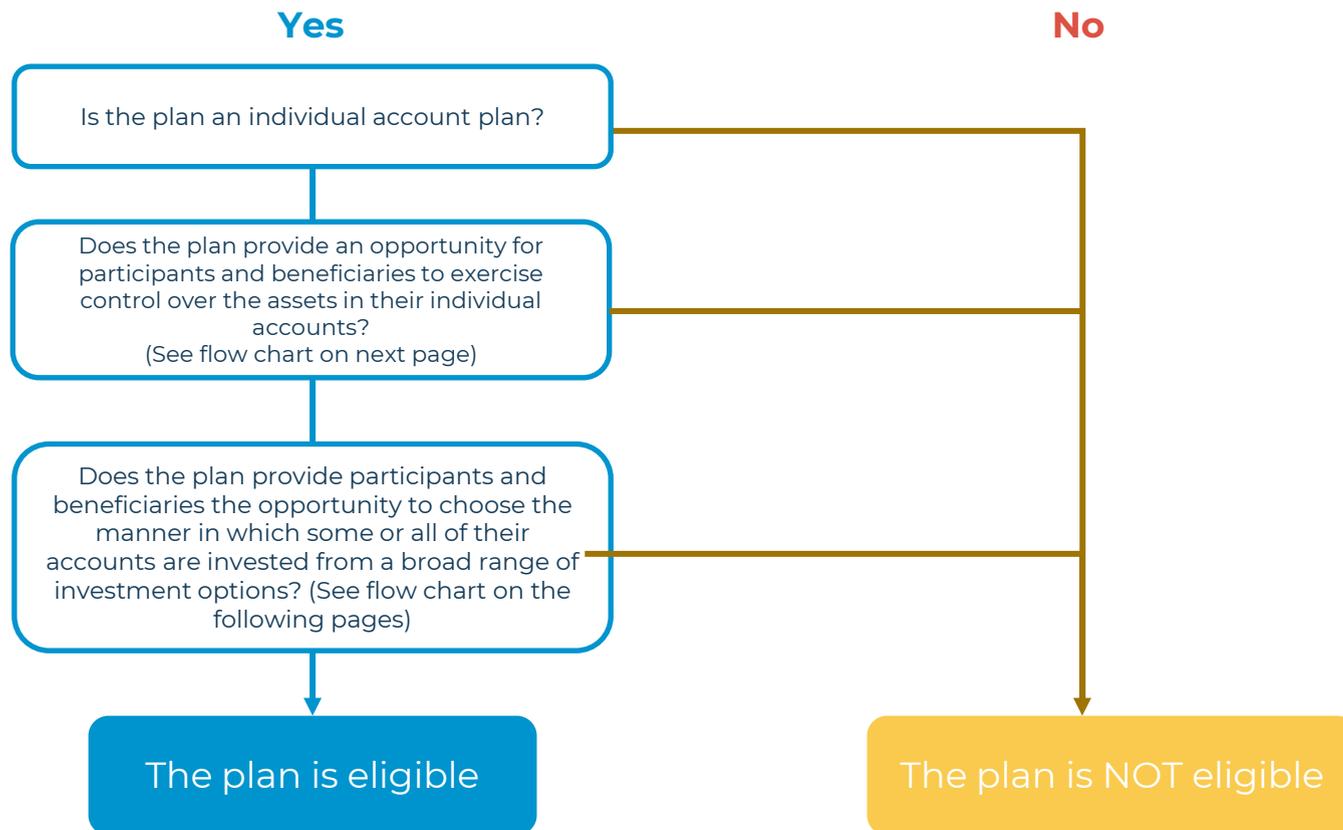
ERISA Section 404(c)

- An individual account plan is eligible for Section 404(c) protection if it allows participants and beneficiaries to:
 - Exercise independent control over the assets in their individual accounts
 - Choose from a broad range of investment options

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Module 6: ERISA Section 404(c) Compliance

Determining if a Plan is Eligible for Section 404(c) Plan



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Exercising Independent Control

- A participant or beneficiary exercises control only if:
 - He or she has a reasonable opportunity to give investment instructions to an identified plan fiduciary and may receive written confirmation of those instructions; and
 - He or she is given enough information to make informed decisions about the plan's investment options or has the opportunity to obtain such information
- Whether a participant or beneficiary exercises independent control depends on the facts and circumstances; one is not considered independent if:
 - A plan fiduciary or plan sponsor improperly influences a participant or beneficiary with respect to a transaction
 - A plan fiduciary conceals material non-public facts about an investment unless such disclosure would violate any provision of federal or state law that is not preempted by ERISA
 - The responsible plan fiduciary accepts investment instructions from a participant or beneficiary who they know is legally incompetent

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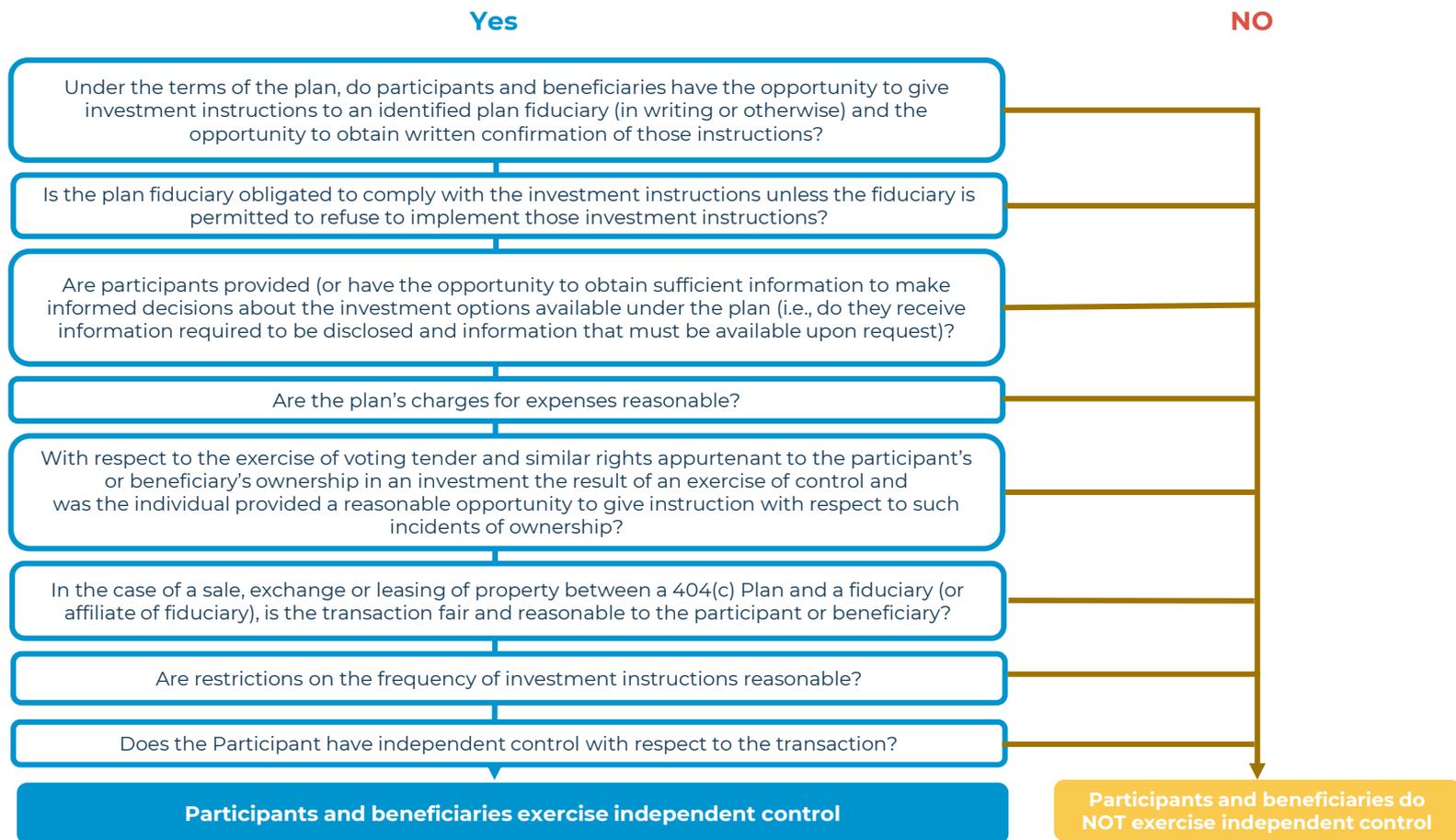
Required Disclosures

- In order to exercise control, participants and beneficiaries must receive enough information to make an informed decision
- As a result, the identified fiduciary is required to provide the appropriate information to participants and beneficiaries **before** an investment is made
- Plan fiduciaries are required to provide the latest information available to plan participants and beneficiaries either directly or upon request
- Examples:
 - A description of the annual operating expenses for each investment option that reduce the rate of return and the aggregate amount of such expenses expressed as a percentage of average net assets for each investment option
 - Copies of any prospectuses, financial statements and reports, and any other materials relating to each investment option
 - A list of the assets comprising the portfolio of each investment option, the value of each such asset

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Determining if Plan Provides an Opportunity to Exercise Independent Control Over Assets



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Module 6: ERISA Section 404(c) Compliance

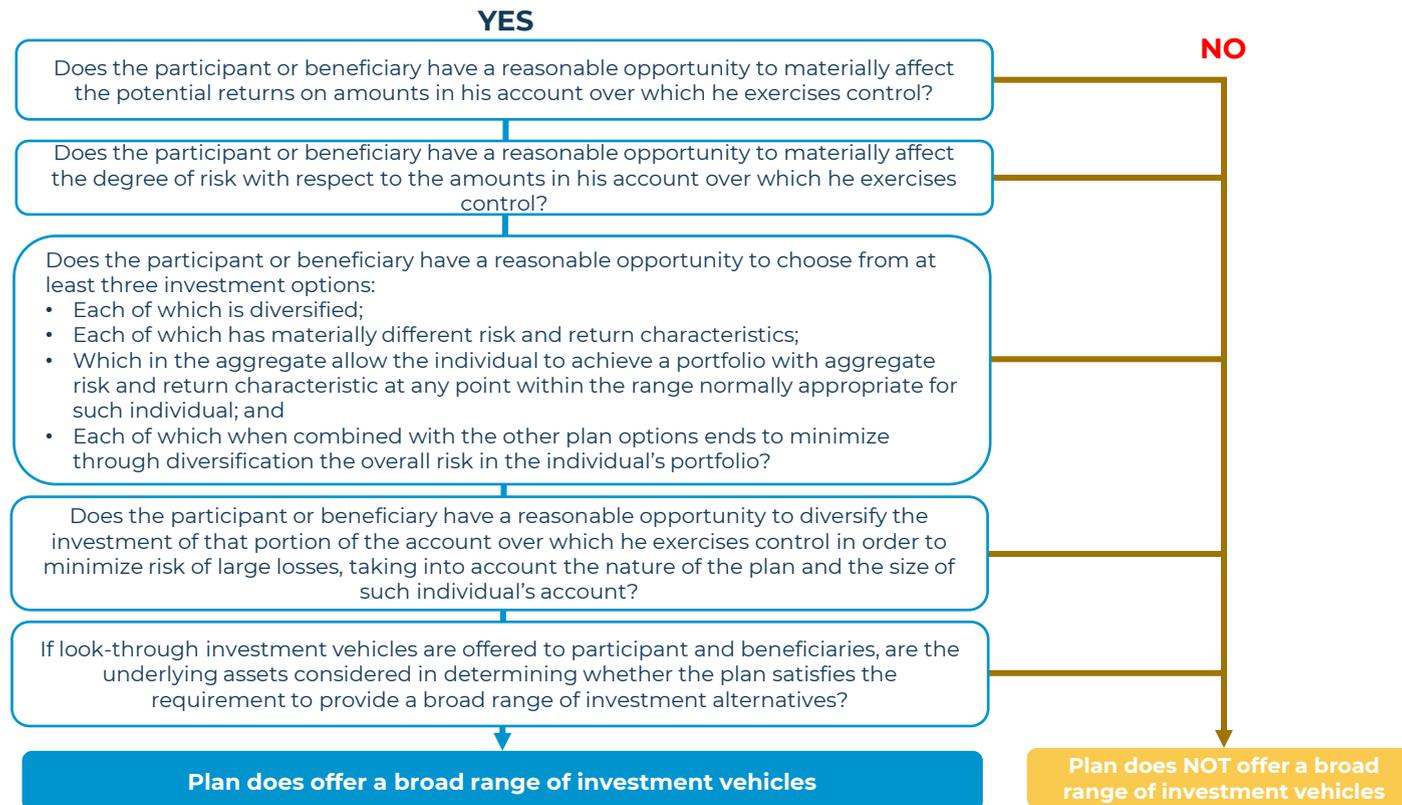
Range of Investment Options

- A broad range of investment options is considered available only if they provide each participant and beneficiary with a reasonable opportunity to:
 - Materially affect the potential return on amounts in the individual account
 - Choose from at least three investment options that are diversified, have different risk/return characteristics, and achieve diversification with appropriate risk/return range
 - Diversify the investment of that portion of the participant's account that they are permitted to exercise control in order to minimize the risk of large losses

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Module 6: ERISA Section 404(c) Compliance

Determining if a Plan Provides a Broad Range of Investment Options



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Module 6: ERISA Section 404(c) Compliance

Reasonable Opportunity to Diversify

- A plan satisfies the requirements by offering “see-through” investment vehicles (e.g., mutual funds and other similarly pooled investment vehicles)
- Additional factors to consider are:
 - The nature of the investment options available under the plan; and
 - The size of that portion of the individual’s account over which he or she may exercise control.

Reasonable Opportunity to Diversify

- A plan may impose restrictions on how often participants and beneficiaries may give investment instructions
- Restrictions must be considered reasonable

Reasonable Opportunity to Diversify

- Generally, a fiduciary may refuse to implement a participant’s or beneficiary’s investment instructions if those instructions would:
 - Result in a prohibited transaction
 - Generate income that would be taxable to the plan
 - Violate the terms of the plan documents (and related instruments) if such plan documents (and related instruments) comply with Title I of ERISA
 - Result in a loss in excess of a participant’s or beneficiary’s account balance
 - Jeopardize the plan’s tax qualified status under the Code

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Module 6: ERISA Section 404(c) Compliance

Participant's Failure to Make an Investment Election

- Can occur upon a participant's auto-enrollment into the plan or in the event an investment option is removed
- Defaulting assets to the plan's QDIA or mapping to another investment option are available courses of action that offer fiduciaries Section 404(c) protection

Requirements for Protection When Assets Defaulted to QDIA

- Participant had the opportunity to make an investment election but did not do so
- Assets invested in a "qualified default investment alternative" as defined by the regulations
- Notice provided to participants in advance of the first investment in the QDIA, and also annually
- Information about the QDIA, such as the prospectus, must be provided to participants
- Participants must have the opportunity to direct the investment of their account out of the QDIA as often as they can change their elections for other investment options offered under the plan
- Plan must offer a broad range of investment alternatives, as described above

Reasonable Opportunity to Diversify

- The QDIA regulations describes mechanisms for investing participant contributions, does not identify specific types of investments
 - Goal is to ensure the default investment is appropriate for long-term retirement savings objectives
- Examples of qualifying investments include target date funds, professionally managed accounts and balanced funds
 - A capital preservation investment option may be used for only the first 120 days of participation, not long term
- QDIA must be managed by an investment manager, plan trustee, plan sponsor, named fiduciary or an investment company registered under the Investment Company Act of 1940

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Requirements for Protection When Assets are Mapped

- Mapping occurs when plan sponsors remove an investment option and transfer money to another investment option
- Fiduciary protection is available if all of the following are met:
 - The participant exercised control over his or her investments before the change
 - The change results in a reallocation of amounts invested in the discontinued investment option to a new investment option or to a remaining investment option under the plan
 - The new (or remaining) investment option is reasonably similar in terms of risk and return to the discontinued option
 - At least 30 but no more than 60 days before the effective date of the change, participants receive a notice stating that the change will occur
 - The participant has not provided affirmative investment instructions to move to another investment option before the effective date of the change

Action Step

- Complete the Section 404(c) checklist
- Provide participants with the Section 404(c) Notice annually
- Provide QDIA and mapping notices as applicable

Disclosures

SE= Strategy Equivalent

The CIT exclusively available to RPAG utilizes the same manager and strategy as the Scored fund equivalent, which is highlighted and shown below the CIT option. The Scored fund equivalent generally has a higher fee and is shown for CIT investment due diligence purposes only. The average score includes Strategy Equivalent scores where utilized. For Group Series funds, if Strategy Equivalents are included, the specific Strategy Equivalent(s) within each given series will be indicated in the Allocation (Series Funds) and/or Selection (Underlying Funds) section(s) within the detailed report.

Non-scoring funds will be assigned a letter.; The letter definitions are HIS= fund does not have enough performance history to Score; SPC= fund is in a specialty category that does not Score; OTH= fund may no longer be active, not in database or available to Score.

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