



Conditions for plan management to elect an ERISA Section 103(a)(3)(C) audit

This tool is intended to assist plan management in assessing whether the conditions for electing an ERISA Section 103(a)(3)(C) audit have been met. *Note:* This tool uses the term *management* to include the plan administrator as described in the DOL's Rules and Regulations for Reporting and Disclosure under ERISA, as well as other members of management.

Overview

Section 103(a)(3)(C) of the Employee Retirement Income and Security Act (ERISA) allows plan administrators to elect to instruct the auditor not to perform any additional procedures with respect to the investment information prepared and certified by a bank or similar institution or by an insurance company that is regulated, supervised, and subject to periodic examination by a state or federal agency. The "ERISA Section 103(a)(3)(C) audit" election is implemented by [Title 29 U.S. Code of Federal Regulations \(CFR\) Parts 2520.103-8](#) and 103-12, which outline the Department of Labor's (DOL) Rules and Regulations for Reporting and Disclosure under ERISA.

In [DOL Information Letter 05-17-2002](#), the DOL observed that, consistent with the obligation of employee benefit plan administrators to file accurate and complete annual reports, it is the responsibility of the plan administrator to determine whether the conditions for electing an ERISA Section 103(a)(3)(C) audit, as set forth in ERISA and the DOL's rules and regulations, have been satisfied. As such, management should take steps to make sure they understand those rules before electing an ERISA Section 103(a)(3)(C) audit. Management should review what is covered by the certification and whether the certifying institution and certification comply with DOL rules and regulations before concluding whether an ERISA Section 103(a)(3)(C) audit is permissible, and whether the certified information may be used to satisfy their obligation to report the appropriate value of the assets in the plan's financial statements. ERISA Section 103(a)(3)(C) audits are not acceptable for plans that file Form 11-K with the Securities and Exchange Commission.

Management should be aware that the DOL and plan auditors have found certifications that did not meet the DOL requirements for an acceptable certification. Appendix A to this tool includes common deficiencies found in certifications, including incomplete certifications, omissions and errors in the certification, and information improperly certified. The DOL established requirements for qualified institutions to certify information to the plan administrator in 29 CFR 2520.103-5 - Transmittal and certification of information to plan administrator for annual reporting purposes.

Obtaining a proper certification from a qualified institution

DOL regulations in [29 CFR 2520.103-8](#) require that the investment information subject to the ERISA Section 103(a)(3)(C) election be prepared and certified by a bank or similar institution or by an insurance company that is regulated, supervised, and subject to periodic examination by a state or federal agency. Broker dealers and investment companies are not qualified institutions; however, some of those institutions may have established separate trust companies that could meet the requirements to be a qualified institution. [DOL Information Letter 05-17-2002](#) contains useful guidance concerning the certification requirements and determining whether the entity certifying investment information is qualified to do so.

DOL regulations in [29 CFR 2520.103-5](#) require that the certification be in writing and signed by a person authorized to represent the qualified institution. The plan administrator's responsibility for the plan's financial statements includes determining that the certification is signed by an authorized person. In addition, the regulations require that the institution certify both the accuracy and completeness of the investment information and provides the following sample certification language for the certifying institution:

The XYZ Bank (Insurance Carrier) hereby certifies that the foregoing statement furnished pursuant to 29 CFR 2520.103-5(c) is complete and accurate.

Certifications that address only accuracy or completeness, but not both, do not comply with the DOL's regulation and therefore are not adequate to allow the plan administrator to elect an ERISA Section 103(a)(3)(C) audit.

As noted in [DOL Information Letter 05-17-2002](#), if there is a question as to whether a party providing a certification as an authorized representative of a financial institution holding plan assets is in fact authorized to represent the financial entity for this purpose, as may be the case where there is not an explicit statement of authority included as part of the certification, the plan administrator must take steps to resolve this question before authorizing an ERISA Section 103(a)(3)(C) audit.

Some certifications may include language that is not included in the example language provided in the regulation, or the related reporting package may include language that calls into question whether the investment information (or certain investment information) is accurate and complete. Plan management should determine whether such a certification meets the requirements for electing an ERISA Section 103(a)(3)(C) audit.

1. Is the investment information prepared and certified by a qualified institution?

Indicate below the type of institution certifying the investment information:

Bank Insurance company Trust company

Agent qualified to certify on behalf of a qualified institution (document in the dialogue box below how plan management determined that an agent certifying on behalf of a qualified institution has the authority to do so (for example, obtaining and reading the agency agreement)).

Other type of institution _____

Document below plan management's considerations in assessing whether the entity is qualified to certify the investment information.

Plan management's conclusion:

Is the certification issued by a qualified institution?

Yes

No *Plan management cannot rely on the certification.*

2. Is the certification signed by an authorized representative?

If an explicit statement of authority to represent the certifying institution is not included as part of the certification, explain below the steps taken by plan management to determine the certification was signed by an authorized person.

Plan management's conclusion:

Is the certification signed, manually or electronically, by a person authorized to represent the qualified institution?

Yes

No *Plan management cannot rely on the certification without a signature by a person authorized to represent the qualified institution.*

3. Did the qualified institution certify both the accuracy and completeness of investment information?

If there is a question as to whether the qualified institution properly certified both the accuracy and completeness of the investment information, document below the steps taken by plan management to ensure a proper certification has been obtained.

Plan management's conclusion:

Does the qualified institution certify both the accuracy and completeness of the investment information submitted?

Yes

No *Plan management cannot rely on the certification and will need to take steps to obtain a proper certification.*

4. Does the certification or the related reporting package include language that qualifies or calls into question whether the investment information (or certain investment information) is accurate and complete?

If the certification includes qualifying language or the related reporting package includes language that may call into question whether the certification meets the requirements of the regulation, document below plan management's evaluation of, including procedures performed, and conclusions reached about whether the certification is still acceptable for electing an ERISA Section 103(a)(3)(C) audit.

Plan management's conclusion:

Does the certification or the related reporting package that includes language that qualifies or calls into question whether the investment information (or certain investment information) is accurate and complete meet the requirements for electing an ERISA Section 103(a)(3)(C) audit?

Yes

No *Plan management cannot rely on the certification and will need to take steps to obtain a proper certification.*

Determination that the certified investment information is appropriately measured

As part of its fiduciary duties, the plan administrator is responsible for determining whether the financial statements and note disclosures related to investment information are prepared in accordance with the applicable financial reporting framework. Plan investments generally are presented at *fair value* in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 820, *Fair Value Measurement*.

As noted in [DOL Information Letter 05-17-2002](#), in addition to determining whether the conditions for limiting the scope of an accountant's examination have been satisfied, plan administrators should take steps to make sure they understand the nature and scope of the certification the institution has provided before concluding that the certified information may be used to satisfy the administrator's obligation to report the appropriate value of the plan's assets. It is important that

the plan administrator review the certified investment information to determine that the investments have been valued as of the plan's year-end and that the method for determining their values is in conformity the applicable financial reporting framework. Although the qualified institution may certify that the investment information is accurate and complete, it does not necessarily mean that the certified investment information actually represents the appropriate values to be reported in the plan's financial statements.

Under ERISA, plan custodians or trustees are required to transmit and certify certain required information, which reflects information that is considered to be part of the qualified institution's "ordinary business records." The typical custodial service provided by trustees and custodians includes reporting values that are based on the best information available to them at the time the trust statements are produced. If the plan is invested solely in assets with readily determinable fair values, such as exchange-traded securities or other marketable securities, the trustee or custodian typically obtains values from nationally recognized pricing services.

However, in cases where the plan invests in assets without readily determinable fair values, the values in the trust statement may be a pass-through of the values provided by the fund issuer or general partner, or provided by a boutique vendor or broker for nonmarketable securities. In those cases, the reported values are based on the best information available to the trustee and custodian at the time the trustee or custodial report is prepared, which may or may not be fair value as of the plan's year end. Plan sponsors may also direct the trustee or custodian to use prices provided by a designated investment manager or fiduciary. The plan sponsor's contract or service agreement with the trustee or custodian will generally indicate how assets are to be valued and accounted for in periodic and annual reporting.

It is important to note that qualified institutions generally do not perform the fair value analysis required by generally accepted accounting principles (including the analysis required when using net asset value as a practical expedient) as part of the asset valuation and certification process. Management's responsibility does not necessarily end with the plan's receipt of the certification from the bank trustee. A fair value measurement analysis, which is beyond the scope of a certifying entity's production of annual statements and ordinary business records, is still required for all investments, especially for alternative investments or those assets that have not been priced by an independent source. This analysis is required to ensure that the value of the plan assets is consistent with the applicable accounting framework and ERISA requirements, regardless of whether the auditor is engaged to perform an ERISA Section 103(a)(3)(C) audit.

Plan management should understand the measurement basis used to report investments in the certified information and may need to make inquiries of the qualified certifying institution of the measurement basis used. In some cases, plan management may need to request the certifying institution to recertify or amend the certification for certain investments at their appropriate year-end values, or to exclude such investments from the certification. If the trustee or custodian amends the certification to exclude certain investments or management determines certain investments are improperly certified, management is responsible for engaging the auditor to perform audit procedures on those investments.

Document below the steps taken to ensure the certified investment information is appropriately valued for financial statement reporting purposes.

Plan management's conclusion:

Are the investments certified by the qualified institution properly valued as of the date of the plan's financial statements?

Yes

No *Plan management will need to take steps to obtain the appropriate values as of the plan's year end for the certified investment information.*

Overall conclusion

Have the conditions for electing an ERISA Section 103(a)(3)(C) audit been met?

Yes

No

Include any additional comments:

Prepared by (plan administrator): _____

Date: _____

Common deficiencies in ERISA Section 103(a)(3)(C) certifications

No certification or incomplete certification

- The plan administrator instructs the auditor to perform an ERISA Section 103(a)(3)(C) audit but does not obtain a certification from the qualified certifying institution.
- The plan changed custodians during the year, and neither entity certified the investment information. For example, the Plan used Entity X during the 20X5 plan year but changed to Entity Y on 12/31/X5. Neither Entity X nor Entity Y certified to the assets; for administrative ease the statements of Entity X showed the assets as liquidated and certified as a zero balance at 12/31/X5. Entity Y did not receive the assets until 1/9/X6 so appropriately could not certify as being held by Entity Y at 12/31/X5.
- The plan changed custodians during the year, and only received a certification from one of the custodians.

Omissions, errors, and qualifying language in the certification

- The certification does not include the plan name.
- The certification is not attached to plan investment information, so it's not clear what information is certified.
- The qualified certifying institution certifies to either the completeness or accuracy of the investment information, but not both.
- The certification is not signed.
- The certification is signed by an individual who is not authorized to represent the qualified institution.
- The certification(s) do not cover the entire period under audit.
- The certification does not cover the stated period (for example, the plan was terminated during the year (on 6/30/X6) but the certification states that it is as of and for the period ended 12/31/X6).
- The certification does not include all investments (for example, it covers separate account assets but does not cover general account assets).
- The certification is issued by an entity other than a qualified institution (for example, a recordkeeper that is not a bank, trust company, or insurance company) or similar institution, and is not acting as an agent for a qualified institution (for example, brokerage arms of certain banks/providers or investment companies).
- Qualifying language that conflicts with the assertion that certified information is accurate and complete (for example, a certification containing the following disclaimer language may impair the usefulness of the certification: "Values reflected for publicly-traded assets are from unaffiliated financial industry sources believed to be reliable. Values for non-publicly-traded assets may be determined from other unaffiliated sources. Assets for which a current value is unavailable may be reflected at the last reported price, at par, or may be shown as having nominal or no value. Reported values may not be the price at which an asset may be sold. Asset values are updated as pricing becomes available from external sources and may be updated less frequently than statements are generated.")

Information improperly certified

- Plan investments are certified by two different custodians when only one of them held the assets.
- The incorrect entity certifies the plan's investment information. This can happen when plans change custodians/trustees or merge with another plan. For example, Plan A merged into Plan B on 1/5/X6, and the transfer of Plan A's assets occurred on 1/15/X6. Prior to the merger Entity A was custodian for Plan A, and Entity B was custodian for Plan B; Entity B is the custodian for the merged Plan B. Entity B "backdated" the merger transaction to 12/31/X5 for a smooth transition on recordkeeping and certified all investment information, even though the processing and actual receipt of Plan A's assets had not yet occurred, and Entity A still held those assets.
- The certified statements include assets that are held by a separate custodian.

Incorrect/improper information certified

- The entity certifies current year ESOP units and activity, but the shares are certified at prior year values.
- Plan investments are improperly categorized in the certification (for example, the plan invests in a hedge fund that is listed in the certification as mutual funds).
- The certification includes investments purchased after year-end.
- The certified statements list the incorrect asset value due to errors in cutoff. For example, a plan purchases assets on 12/30/X5 (trade date) but the entity certifies the asset value is zero assuming the transaction will take 2 days to settle, but the actual settlement date was 12/31/X5.
- The certified trust statements include contribution and investment activity from the next period, indicating poor cutoff.

* * * * *

Disclaimer: This publication has not been approved, disapproved or otherwise acted upon by any senior technical committees of and does not represent an official position of the American Institute of Certified Public Accountants. It is distributed with the understanding that the AICPA Employee Benefit Plan Audit Quality Center is not rendering legal, accounting or other professional services in this publication. The application and impact of laws can vary widely based on the specific facts involved. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

This publication may be freely reproduced and distributed for intra-firm and client service purposes, provided that the reproduced material is not in any way for sale or profit.

Copyright © 2021 Association of International Certified Professional Accountants. All rights reserved.