

2021 The year of **new** beginnings and hope.

With the uncertainty that overwhelmed all of us in 2020, let this year bring new beginnings and hope for all of us. In this edition, learn how to prevent making common fiduciary errors and what to do with those terminated employees who have left their account balances in your plan. Lastly, don't miss the reminder on how participants qualify for a tax saver's credit.


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Don't Skip the Match₁

This month's employee memo encourages employees to conduct a regular examination of their retirement plan to determine whether any changes need to be made. Download the memo from your Fiduciary Briefcase at fiduciarybriefcase.com

Skip the Line, But Don't Skip the Match!



Jagger

- 22 years old
- Earns **\$50,000** per year
- Loves to shop

His employer matches **50%** up to **6%** of Jagger's contributions

Jagger only contributes **2%** so he can shop more.

This earns him an additional **\$41.67** per month in company match.

<p>By not maximizing the company match,</p> <p>Jagger will leave \$1,000 on the table in one year.</p>	<p>By the time Jagger reaches retirement age, he will have left more than \$43,000 on the table.</p>
<p>If Jagger put the extra \$1,000 towards his retirement, assuming an average return of 10% per year, (from 22 to 65) the \$1,000 per year would grow to \$592,400</p>	<p>On average, employees leave \$1,336 in matching funds on the table each year.¹ Don't make the same mistake!</p> <p><small>¹2015 Financial Engines study.</small></p>

Advice At A Higher Level

An ounce of prevention is worth a pound of cure. This saying is universal, and certainly applies to fiduciary responsibility. Beginning the year with an eye towards avoiding some of the most common errors makes sense. Most fiduciary errors are unintentional or even well meaning. Here are some examples.

Following Plan Documents and Communicating Changes

Possibly the most frequent source of fiduciary breach, interpretation of plan provisions is not always intuitive. The remittance of participant deferrals “as soon as administratively possible” means as soon as possible, not as soon as convenient. A common response when a plan administrator is asked how they determined applicability of a specific plan provision (e.g., eligibility for employer match) is “the prior administrator told me how to do it”. This response does not necessarily instill confidence that it is being handled correctly. Many administrative errors go on for years, and every year not corrected is another fiduciary breach. A common example is the management of plan forfeitures (non-vested assets left in plan by a terminated participant). The rule is to allocate these assets annually at years end. This can be a costly and administratively cumbersome correction, but all too often it’s not accomplished annually which violates the rule forbidding plan unallocated assets.

The definition of compensation in the plan document may not be the same definition used by your payroll department/service. Furthermore, many plans and employers have different naming conventions for the various money types: deferrals, employer match, bonuses, pre-tax health insurance premiums, FBA plan, commissions and tips, or fees for professional services may be included as compensation. When plan documents are changed or updated, compensation administration needs to follow. It is a good idea to check this periodically to ensure consistency.

Participant loans are another area that can cause issues, especially if more than one loan is allowed at a time or loan payback is allowed to continue post termination of service.

Often, plan operations do not match up with the plan terms. This includes the terms in plan documents, the summary plan description, loan procedures, and an Investment Policy Statement (IPS).

Changes in the plan should be communicated to plan participants. A summary of material modifications should be given to plan participants within 210 days after the end of the plan year in which the modifications were adopted.



Participant Eligibility

Plan documents should have a definition of employees (hours worked or elapsed time) and the requirement for eligibility to participate and employer contributions. The manner in which hours are calculated, hiring dates, or compensation calculations could be problematic. ERISA does not recognize the term “part-time employee.” It strictly takes into consideration hours worked or elapsed time to determine eligibility for deferrals and employer match. In addition, the SECURE Act just created additional requirements as regards long-term part-time employees’ eligibility.

ERISA Reporting and Recordkeeping

Employers are required to maintain records relating to employee benefit plans per ERISA. Record maintenance varies by type of document for both plan level and participant level records. Plans with 100 participants or more must file Form 5500 Annual Returns/Reports of Employee Benefit Plan and conduct an annual audit. Smaller plans must also file annual reports, with plans with less than 100 participants filing Form 5500-SF.

Investment Policy Statement

Maintaining and following an IPS is of utmost importance. There have been successful lawsuits where an employer acted in the best interest of participants, but IPS had requirements that the fiduciaries failed to follow to the letter and the result was costly to plan sponsors.

Understanding and Discharging ERISA Fiduciary Responsibilities

Many plan sponsors and fiduciaries are not fully aware of their roles/responsibilities. ERISA law pertaining to DC plans is quite complex and sometimes unintuitive and unclear (What does “procedural prudence” really mean?). Our Fiduciary Fitness Program is designed to gauge the fiduciary health of your plan, explain applicable fiduciary mitigation strategies, and to remedy, and hopefully avoid, fiduciary breaches. It is quite comprehensive, clear, and includes the ERISA required documentation

Correcting ERISA Compliance Mistakes

Many ERISA compliance problems can be corrected through voluntary compliance programs, when detected early by the plan, to reduce the potential for fines and penalties. The Department of Labor has the Delinquent Filer Voluntary Compliance Program (DFVCP) and the Voluntary Fiduciary Correction Program (VFCP). Through these programs, Plan Administrators can file delinquent annual reports through the DFVCP, and the VFCP allows fiduciaries to take corrective measures resulting from certain specified fiduciary violations for relief from enforcement actions. In addition, the Internal Revenue Service (IRS), through the Employee Plans Compliance Resolution System (EPCRS), has both the Voluntary Compliance Program (VCP) and Self Correction Program (SCP) which allow plan sponsors and other plan fiduciaries to correct failures in the plan's operational compliance prior to being discovered by the IRS.

The best answer to these concerns is to avoid fiduciary breaches. Financial professionals can often detect the possible emergence of potential fiduciary breaches before they manifest and consult on options to avoid these breaches altogether.

Former Employees with Plan Assets are Still Plan Participants₃



Plan Sponsors should understand that terminated employees who left their account balance in your plan, are still considered participants under ERISA. As such, they have the same rights as current employees. They cannot contribute to their account under the plan but otherwise they have the same ERISA protected rights as plan participants.

One protected right is to receive all ERISA required notices that current participants

receive. The distribution of notices to former employees can be challenging. With online notice distributions now allowed, it may ease this problem a bit, but losing track of former employees through undeliverable mail or emails can be troubling.

Participant direction of investments and notice of investment changes is another obligation that is more difficult with terminated employees. A fundamental fiduciary responsibility is to provide sufficient investment information such that participants can make consistently informed investment decisions. In the event the stock market goes through a bear market cycle, former employees may become disgruntled if they did not receive proper and required investment information based on which they may have prevented financial losses.

Small account balances belonging to former employees can be problematic for plan providers as well as plan fiduciaries. This can lead to greater administrative recordkeeper costs. In addition, having terminated employees in your plan may cause your plan to be subject to an annual plan audit at a potential cost of around \$15,000.

One step many plans take to mitigate this exposure to some extent is to adopt a cash-out limit (usually \$1,000 or \$5,000). With a cash-out limit, terminated participant accounts may be distributed after communicating that they need to take a distribution directly or a rollover to an Individual Retirement Account or another qualified plan. For participant accounts in excess of \$5,000 you must obtain consent from employees requesting to take their account balances out of the plan. It is advantageous for plan sponsors to persistently reach out to former employees to request they take their money out.

The Department of Labor (DOL) has been focused on missing participants with dormant accounts. As with any fiduciary task as part of your annual request that former employees take their money it is advisable that all correspondence (both sent and returned) be documented to evidence your communication efforts. Internet searches can be helpful to find those who leave no forwarding address.

Participant Corner: Tax Saver's Credit Reminder₄

You may be eligible for a valuable incentive, which could reduce your federal income tax liability, for contributing to your company's 401(k) or 403(b) plan. **If you qualify, you may receive a Tax Saver's Credit of up to \$1,000 (\$2,000 for married couples filing jointly) if you made eligible contributions to an employer sponsored retirement savings plan.** The deduction is claimed in the form of a non-refundable tax credit, ranging from 10% to 50% of your annual contribution.

Remember, when you contribute a portion of each paycheck into the plan on a pre-tax basis, you are reducing the amount of your income subject to federal taxation. And, those assets grow tax-deferred until you receive a distribution. If you qualify for the Tax Saver's Credit, you may even further reduce your taxes.

Your eligibility depends on your adjusted gross income (AGI), your tax filing status, and your retirement contributions. To qualify for the credit, you must be age 18 or older and cannot be a full-time student or claimed as a dependent on someone else's tax return.

Use this chart to calculate your credit for the tax year 2021. First, determine your AGI – your total income minus all qualified deductions. Then refer to the chart below to see how much you can claim as a tax credit if you qualify.

Filing Status/Adjusted Gross Income for 2021			
Amount of Credit	Joint	Head of Household	Single/Others
50% of amount deferred	\$0 to \$39,500	\$0 to \$29,625	\$0 to \$19,750
20% of amount deferred	\$39,501 to \$43,000	\$29,626 to \$32,250	\$19,751 to \$21,500
10% of amount deferred	\$43,001 to \$66,000	\$32,251 to \$49,500	\$21,501 to \$33,000

IRS Form 8880

For example:

A single employee whose AGI is \$17,000 defers \$2,000 to their retirement plan will qualify for a tax credit equal to 50% of their total contribution. That's a tax savings of \$1,000.

A married couple, filing jointly, with a combined AGI of \$42,000 each contributes \$1,000 to their respective retirement plans, for a total contribution of \$2,000. They will receive a 20% credit that reduces their tax bill by \$400.

With the Tax Saver's Credit, you may owe less in federal taxes the next time you file by contributing to your retirement plan today!





1 January 2021. Don't Skip the Match. *Retirement Times*. <https://rpag.com/pmprichui/resourcecenter>

2 January 2021. Common Fiduciary Errors. *Retirement Times*. <https://rpag.com/pmprichui/resourcecenter>

3 January 2021. Former Employees with Plan Assets are Still Plan Participants. *Retirement Times*. <https://rpag.com/pmprichui/resourcecenter>

4 March 2021. Participant Corner: Tax Saver's Credit Reminder. *Retirement Times*. <https://rpag.com/pmprichui/resourcecenter>