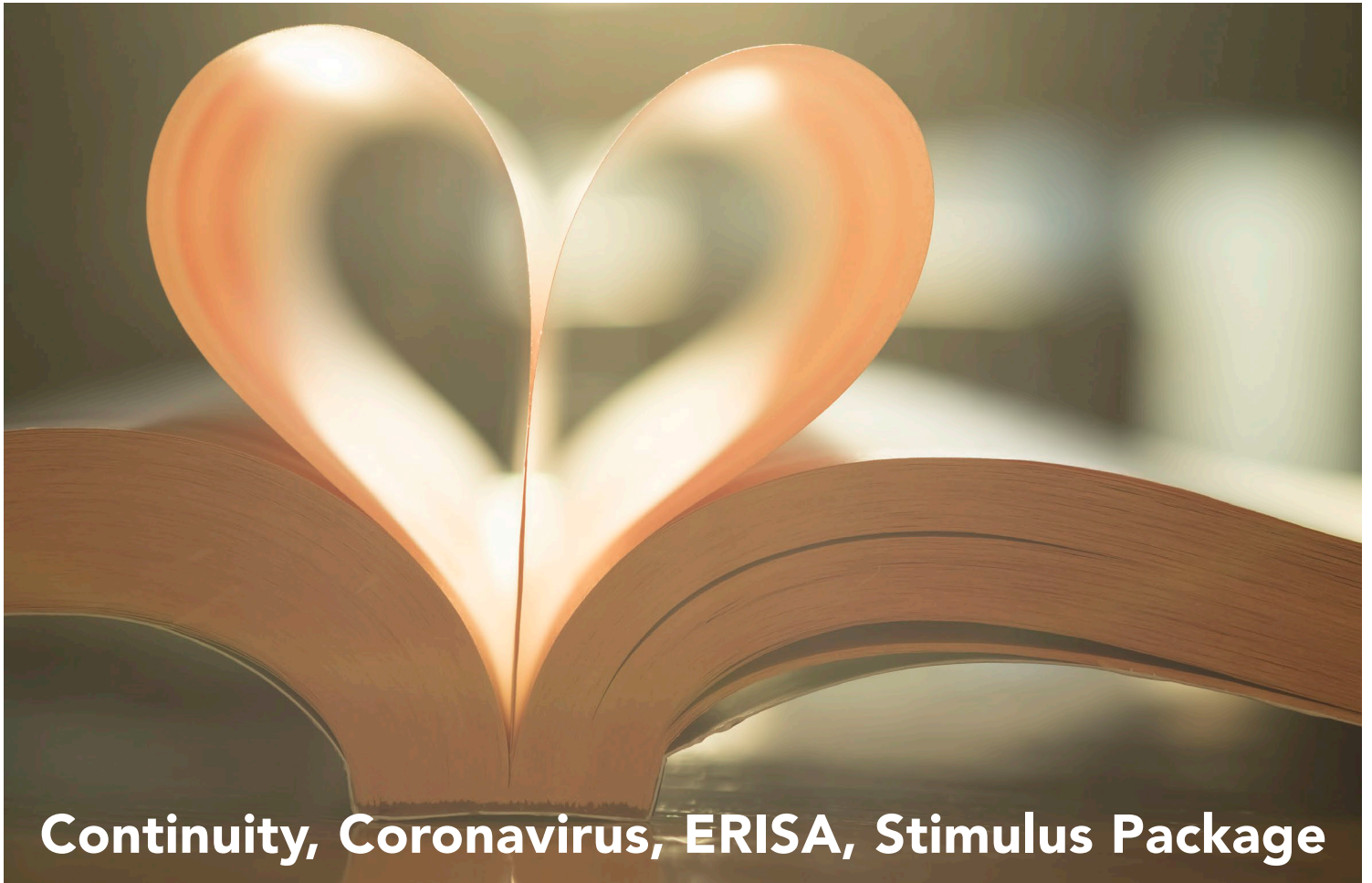


# Retirement Times

FEBRUARY 2021



## Continuity, Coronavirus, ERISA, Stimulus Package

The coronavirus relief includes a “temporary rule preventing partial plan terminations” for plan sponsors of defined contribution retirement plans. The provision specifically states, “A plan shall not be treated as having a partial termination (within the meaning of 4119(d)(3) of the Internal Revenue Code of 1986) during any plan year which includes the period beginning on March 13, 2020 and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021 is at least 80 percent of the number of active participants covered by the plan on March 13, 2020.”

This provision allows defined contribution retirement plan sponsors to avoid the requirements that terminated participants must be 100% vested in plan benefits. Prior to the adoption of this provision they would have triggered partial plan termination due to layoffs, furloughs, or terminations of employment if they experienced a reduction in eligible employees equal to, or exceeding the IRS’s 20% presumptive threshold. Ultimately though, the determination of partial plan termination is a facts and circumstances test.

## Private Equity Investments in Defined Contribution (DC) Plans



Private equity funds invest in privately held companies whose stock is not traded on public exchanges. Private equity fund managers expect to increase the value of their investments by providing capital and acumen for the purpose of improving performance/value of these companies.

The Department of Labor (DOL) recently released an “information letter” regarding the potential inclusion of private equity investments in DC plans. The DOL indicated that it will allow DC plans to offer indirect investment in private equity funds in certain circumstances but, questions remain, are they a good fit for your plan participants and what are the fiduciary liability implications?

The DOL guidance only covers allocation decisions made by the fund’s asset managers when private equity would be one of multiple categories of equity investments within the fund (e.g., target date funds). The guidance does not cover a defined contribution plan allowing individual participants to invest their accounts directly in private equity investments. Further, the guidance was clear that investments in private equity investments present substantial legal and operational issues for fiduciaries of ERISA individual account plans. One issue concerns the typical multiyear holding period for portfolio companies, and the challenge in providing an accurate stock valuation before a sale.

The DOL letter states that plan fiduciaries considering a private equity investment option in multi-asset class funds should consider:

- Whether the fund has managers with “the capabilities, experience, and stability” to handle private equity
- Whether the proportion of the fund’s allocation to private equity investments is appropriate based on the “cost, complexity, disclosures, and liquidity” considerations
- Whether the fund has “adopted features related to liquidity and valuation” that give participants the ability to move their investment allocations “consistent with the plan’s terms”
- The fund suitability in light of the plan’s “participant profile,” including their ages, contribution and withdrawal tendencies

These considerations are somewhat interpretational and can lead to issues which create potential fiduciary liability.

When considering the inclusion of any investment the plan fiduciary must act with skill, care, and due prudence in determining the suitability for participants. This responsibility applies even more importantly for private equity investments, whether a single or multi asset investment option.



## Common Fiduciary Errors

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.



THIS MONTH'S PARTICIPANT MEMO:  
**DON'T SKIP THE MATCH**

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.

## 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

By not maximizing the company match,  
Jagger will leave **\$1,000**  
on the table in one year

By the time Jagger reaches retirement age,  
he will have left more than  
**\$43,000**  
on the table

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**

On average, employees leave  
**\$1,336**

in matching funds on the table each year.<sup>1</sup>

**Don't make the same mistake!**

<sup>1</sup>2015 Financial Engines study

**Earn your full savings potential by hitting the full match plus more. For help finding the correct deferral amount for you, contact our financial professional, Kevin Donahue AIF®, CRPC® at [kevin@risensonfinancial.com](mailto:kevin@risensonfinancial.com) with any questions you may have.**

This material was created to provide accurate and reliable information on the subjects covered but should not be regarded as a complete analysis of these subjects. It is not intended to provide specific legal, tax or other professional advice. The services of an appropriate professional should be sought regarding your individual situation.

To remove yourself from this list, or to add a colleague, please email us at [kevin@risensonfinancial.com](mailto:kevin@risensonfinancial.com) or call 813-512-2746



## Helping Employers Manage Their Retirement Plans with Confidence

### Our Mission

Risen Son Financial strives to help employers reduce the cost of their retirement plans and the liability of their responsibilities by naming ourselves as fiduciaries to the plan and participants. We believe this builds the foundation to help employees reach their ideal financial future, through one-on-one education, risk analysis, and financial planning.

### Why Us?

Based in Land O' Lakes, Florida, Risen Son Financial serves as retirement plan partners and investment fiduciaries for large and small businesses across the nation. Fulfilling the duties of good faith and trust, clients choose us knowing we will go above and beyond. As an Independent Financial Advisor, Risen Son Financial represents clients to the marketplace without any bias or conflicts of interest. We're accountable to you and your best interests. Risen Son Financial serves as a named fiduciary for both the plan and participants. As your Plan Fiduciary, we evaluate plan design, mitigate risks, conduct reviews, and offer solutions helping to improve performance. As Participant Counselors, we also serve as fiduciaries providing customizable advice and resources for the participants.

### Our Process

At Risen Son Financial, our first step is to review the current cost and value being received by the plan. We can do this by reviewing the 404(a)(5) (participant fees) and 408(b)(2) (plan fees) disclosures that plans are required to distribute and receive from vendors. If these are not readily available, we can also review fund lineups and statements.

### We meticulously review the retirement plan, including these 4 costs:

1. **Recordkeepers** – Receive funds from the employer and employee paycheck. Their main responsibility is to keep record of the contributions a participant receives and investment gains. Additionally, recordkeepers do the buying and selling of investments that the participant chooses, while also providing a website and quarterly statements.
2. **Administrators** – Make sure the plan meets the requirements set forth in the IRS code. They handle, testing, compliance, vesting, eligibility, loans, and withdrawals. Many times, administrators are "bundled" with the recordkeeper.
3. **Investments** – Contributions are deposited into investments. They have their normal expense ratio; however, these often come loaded with internal fees like 12b-1, sub-TA, concession and wrap. This is called "indirect compensation" or "revenue sharing." Often, an investment company will pay the recordkeeper a fee to be included in the investment lineup.
4. **Advisors or Brokers** – There is a difference. As a named fiduciary to the plan and participants, Advisors give advice, recommendations, and/or have discretionary control of investments, along with being the quarterback of the plan. This includes benchmarking all fees paid to vendors and shopping plan costs to keep fees reasonable. Advisors are held to the best interest standard. In contrast, Brokers are held to the suitability standard. Brokers can't give advice nor can they name themselves as a fiduciary to the plan. Brokers sell a product as a representative of a larger entity.

Once all fees are known, we benchmark those fees and services being received to the open market. We then use this benchmarking to get the cost of the plan reduced. We accomplish this by either going to the current provider to have them reduce the cost or moving the plan to a platform that will, along with providing for the needs of the plan. Being completely independent we can work with all providers which allows us to provide conflict-free and bias-free advice.



#### About Kevin Donahue, CRPC®, AIF®

Kevin Donahue is the owner of Risen Son Financial. After serving four years in the United States Navy, he graduated from Florida State University in 2004 earning a bachelor's in Computer Science and a minor in Mathematics. Seeing firsthand, the impact of retirement saving and planning with his own parents, Kevin entered the financial services business to pursue his passion of helping clients meet and exceed their financial goals and visions. During his career, Kevin has passed and/or currently holds the series 6, 7, 63 and 65 exams along with obtaining Chartered Retirement Planning Counselor (CRPC) designation from the College for Financial Planning. This designation encompasses pre- and post-retirement needs, wealth management, estate planning, and the entire retirement planning process. Additionally, he holds the Accredited Investment Fiduciary (AIF), which empowers investment professionals with the fiduciary knowledge and tools they need to serve each client's best interests.

Kevin resides in Land O' Lakes, with his wife Brittany and their twin boys Andrew and Noah.

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