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# Commco Comments

Timely Information and Updates for Employers and Retirement Plan Sponsors

## Charging Administrative Fees to Terminated Plan Participants

If you have former employees who have left their balances in your company's employer-sponsored plan, you do have some options. First, you may be able to force anyone with a vested balance of less than $5,000 to take a distribution, depending on the "force-out" provision adopted in your plan document. Many plan documents even require that these participants be forced out each year.

But what about those with a vested balance over $5,000, who the law says must be allowed to remain in the plan even if they left your company years ago? It still adds an administrative burden to have their accounts active, and may add to your plan's administrative costs as well. To offset this, the IRS and Department of Labor (DOL) allow you to adopt a provision charging a "reasonable" administrative fee to the accounts of terminated employees.

**What is considered reasonable?**
The legal guidelines don't set a number in stone. The idea is that the fee amount should offset any costs (both in-house labor and third-party vendor fees) incurred by the plan sponsor for maintaining the account, but should not be used as a way of generating revenue. The fee must be stated in the participant fee disclosure, and the plan sponsor should maintain documentation on how the fee amount was calculated. Generally, a fee in excess of $100 per year would not be considered reasonable.

**How can I start charging this fee?**
The first step will be to contact your third-party administrator (TPA) to discuss your plan's provisions and options. The plan document may or may not need to be revised, and you will need to send updated disclosures to all eligible participants anytime the plan's cost structure changes. Once you have the green light from your TPA, it's time to set your administrative procedure for how and when to charge the fee. Keep in mind that this is a fully manual process you will need to follow each year, and generally requires significant work that can't be fully outsourced to any plan service provider.

While it is possible to set a rule such as "the fee will be charged each year on the anniversary of your termination date," it could make a lot of extra work for you to be tracking all those dates. The simplest thing is to choose one day a year on which all of your terminated participant fees will be charged.

You'll also want to set a rule for who the fee will be charged to – for example, if you charge the fees on May 1 each year, it might not be fair to include someone who just left their employment on April 15 and hasn't had much time to consider or act on their distribution options yet, especially since someone who leaves employment on May 15 would get almost a full year to act before being charged.

Most commonly, plan sponsors choose to assess the fee sometime in the spring, around March or April, to anyone who terminated on or before December 31 of the previous year. You can use a rule like this as a guideline and adjust the specific dates

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*A terminated participant fee exceeding what amount would generally not be considered "reasonable"?*

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to fit your business needs. The details of the rule you choose are not as important as making sure that it's fully documented and applied consistently and equally so that there's no appearance of discrimination.

**How does charging the fee work?**
The actual process will vary depending on your plan's investment provider. The basic guidelines are fairly standard across the board, though:

1. It will be the plan sponsor's responsibility to set and follow the administrative procedures. Neither your plan's investment provider, financial advisor, nor third party administrator will track whether the fee is being charged.
2. It's best to send out a notice each year at least 30 (but not more than 90) days before charging the fee, encouraging participants to take a distribution to avoid it. This might help motivate some of them to take action so that your list of ex-employee accounts grows shorter over time.
3. The plan's investment provider will have their own specific form or Letter of Instruction format that they will want to receive from a plan trustee each time with specific instructions on who to charge, how much to charge, and what to do with the money.
4. The money deducted from participant accounts can't simply be returned to the plan sponsor. It must be used to offset specific administration costs. Generally this is demonstrated by having the funds sent directly from the plan provider to the TPA as an offset against their fees.

If you are considering adopting a charge to terminated participants, or need help with setting your policies and assessing the fee when the time comes, email us at newsletter@thecommco.com. Our team is always happy to assist.