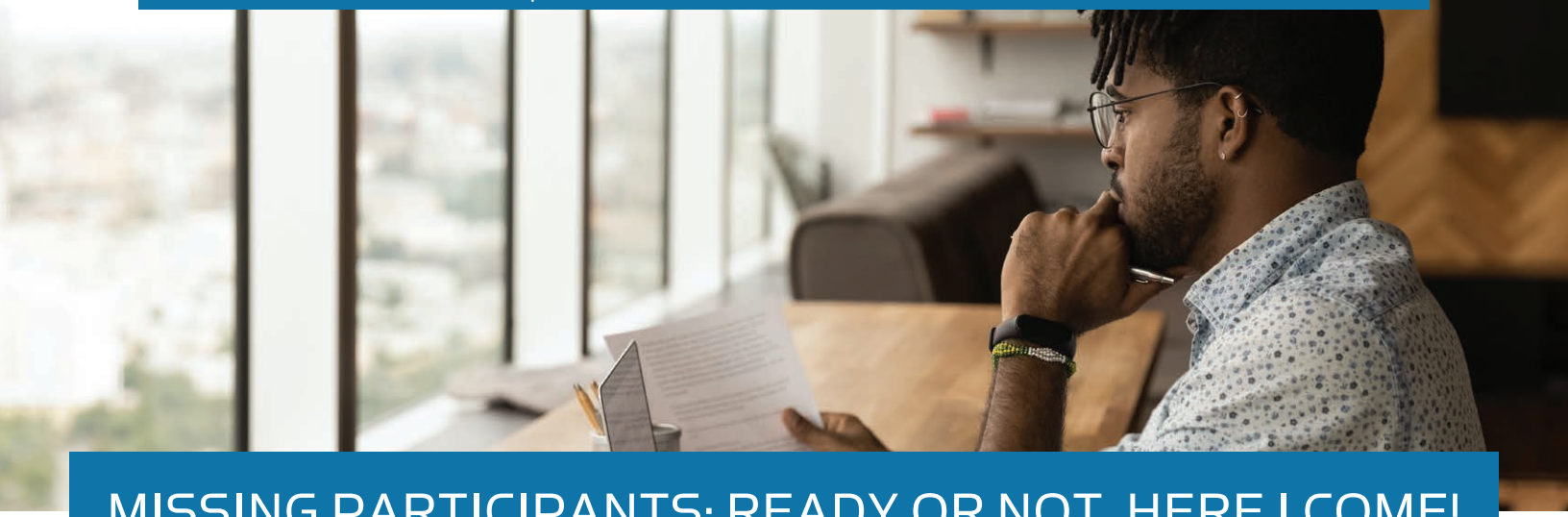

MISSING PARTICIPANTS: READY OR NOT, HERE I COME!

MOST PLAN SPONSORS CAN RELATE TO THE TRIALS AND TRIBULATIONS OF HAVING MISSING PARTICIPANTS IN THEIR RETIREMENT PLAN. At times, it may feel like you are on the losing end of an intense game of hide-and-seek. Your opponents, the missing participants, may not have intended to pick the best hiding spots, but in many cases, they have surely succeeded. Now you are tasked with tracking them down and upping your game to avoid this scenario in the future.

So, what are missing participants, exactly? Missing participants are former employees who left an account balance in a retirement plan and did not keep their contact information up to date. In addition, they may no longer actively manage their accounts. There are a few factors that have led to an increase in the number of missing participants in retirement plans over the years. Unlike the generations of our parents and/or grandparents, employees do not typically work their entire career with one firm anymore. Another contributing factor is the mobilization of the workforce. The ability to work remotely has mobilized employees even more these days. Some have chosen to relocate across the country while others find themselves living in a new locale every few months. Many of us can relate to this, especially over the past 18 months. With these two factors alone, it can be difficult to keep track of plan participants once they leave your firm.

It is important to develop procedures to ensure contact information is up to date and to illustrate the proactive measures employed in this effort. Whatever steps you implement, you should relay to employees and participants why keeping these details current is important and how it can affect them. Ask any employee if they would be okay with losing track of their retirement account - the answer would probably be a resounding no. A few ideas based on the Department of Labor's (DOL's) Best Practices are included below.

- **Annual Review:** Have plan participants verify their contact information on file at least annually. This includes addresses, phone numbers, and email addresses. You can also include a review of beneficiaries at this time. Keep in mind this does not only include current employees but terminated or retired participants as well. Also consider making the review part of your company's exit interview.
- **Mailings:** When completing a mailing, provide a form where recipients can update their contact information.
- **Returned Mail:** Initiate searches for participants as soon as mail has been returned as undeliverable. This includes mail marked as "return to sender," "wrong address," "addressee unknown," or otherwise.
- **System Log In:** If participants regularly log into a system, set a reminder or pop-up directing users to verify their contact information.

Unfortunately, even with the best of plans in place, plan sponsors may still have participants who go missing. So, not only do you need to incorporate procedures for ensuring contact information is up-to-date, but you also need to document procedures for locating participants once they go missing. The DOL provides a list of search methods that should be used to locate missing participants. Some of these methods are included below.

- Send a notice using certified mail through USPS or a private

delivery service with similar tracking features.

- Check the records of the employer or any related plans of the employer.
- Send an inquiry to the designated beneficiary or emergency contact of the missing participant.
- Use free electronic search tools or public record databases.

At some point, most plan sponsors will find themselves with participants who have gone missing. It's important to remember plan sponsors have a fiduciary responsibility to follow the terms of the plan document and ensure participants are paid out timely. Having a well-documented, organized process which addresses missing participants, along with proof the process is followed, will prove worthwhile.

More information regarding the Department of Labor's Best Practices can be located on their website.

https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/best-practices-for-pension-plans ■

SAFE HARBOR: A CURE FOR YOUR TESTING HEADACHES

A CRUCIAL REQUIREMENT FOR 401(K) PLANS IS THAT THE PLAN MUST BE DESIGNED SO IT DOES NOT UNFAIRLY FAVOR HIGHLY COMPENSATED EMPLOYEES (HCES) OR KEY EMPLOYEES (SUCH AS OWNERS) OVER NON-HIGHLY COMPENSATED EMPLOYEES (NHCES). To satisfy this requirement, the IRS requires that plans pass certain nondiscrimination tests each plan year. These tests analyze the rate at which HCE and key employees benefit from the plan in comparison to NHCEs. Failed tests can result in costly corrections, such as refunds to HCEs and key employees or additional company contributions. Luckily for plan sponsors, there is a plan design option – a safe harbor feature, that allows companies to avoid most of these nondiscrimination tests.

To be considered safe harbor and take advantage of the benefits afforded to safe harbor plans, there are several requirements that must be satisfied. Below we will take a look at the key characteristics of a safe harbor plan.

The plan must include one of the following types of contributions. The chosen formula is written in the plan document, and with the exception of HCEs, must be provided to all eligible employees each plan year. Please note that additional options, not covered here, are provided for plans that include certain automatic enrollment features.

- **Safe Harbor Match:** With this option, the company makes a matching contribution only to those employees who choose to make salary deferral contributions. There are two types of safe harbor matching contributions:
  - **Basic Safe Harbor Match:** The company matches 100% of the first 3% of each employee's contribution, plus 50% of the next 2%.
  - **Enhanced Safe Harbor Match:** Must be at least as favorable as the basic match. A common formula is a 100% match on the first 4% of deferred compensation.
- **Safe Harbor Nonelective:** With this option, the company contributes at least 3% of pay for all eligible employees, regardless of whether the employee chooses to contribute to the plan.

Unlike company profit sharing or discretionary match contributions, safe harbor contributions must be 100% vested immediately. In addition, the contribution must be provided to all eligible employees, even those who did not work a minimum number of hours during the plan year or who are not employed on the last day of the plan year.

In most cases, an annual safe harbor notice must be distributed to plan participants within a reasonable period before the start of each plan year. This is generally considered to be at least 30 days (and no more than 90 days) before the beginning of each plan year. For new participants, the notice should be provided no

more than 90 days before the employee becomes eligible and no later than the employee's date of eligibility. The safe harbor notice informs eligible employees of certain plan features, including the type of safe harbor contribution provided under the plan.

If all safe harbor requirements have been satisfied for a plan year, the following nondiscrimination tests can be avoided.

- **Actual Deferral Percentage (ADP):** The ADP test compares the elective deferrals (both pre-tax and Roth deferrals, but not catch-up contributions) of the HCEs and NHCEs. A failed ADP must be corrected by refunding HCE contributions and/or making additional company contributions to NHCEs.
- **Actual Contribution Percentage (ACP):** The ACP test compares the matching and after-tax contributions of the HCEs and NHCEs. A failed ACP must be corrected by refunding HCE contributions and/or making additional company contributions to NHCEs.
- **Top Heavy Test:** The top heavy test compares the total account balances of key employees and non-key employees. If the total key employee balance exceeds 60% of total plan assets, an additional company contribution of at least 3% of pay may be required for all non-key employees. It is important to note that a plan will lose its top heavy exemption if company contributions, in addition to the safe harbor contribution, are made for a plan year (e.g., profit sharing or discretionary matching contributions).

So, how do you know if a safe harbor plan is a good fit for your company? As discussed above, the primary benefit of a safe harbor plan is automatic passage of certain annual nondiscrimination tests. If your plan typically fails these tests, resulting in refunds or reduced contributions to HCEs and key employees, your company may benefit from a safe harbor feature. Predictable annual contributions also provide a great incentive for employees to save for their retirement. However, if you do not currently offer an annual match or profit sharing contribution to your employees, a safe harbor formula may significantly impact your company's budget. Except for a few limited exceptions, safe harbor contributions cannot be removed during the plan year, so it's important that a company is able to fund these required contributions. As with all things qualified plan related, the key is working with an experienced service provider who can design a plan to suit your company's needs! ■

LOOKING TO MAXIMIZE SAVINGS? CASH BALANCE COULD BE THE ANSWER!

SO, YOU ESTABLISHED A 401(K) PLAN FOR YOUR COMPANY AND HAVE BEEN CONTRIBUTING CONSISTENTLY FOR YEARS. The plan has likely afforded your company significant tax savings and has allowed you to attract and retain quality employees. While a 401(k) plan is a great savings vehicle, did you know there is a type of qualified retirement plan that will allow you to contribute significantly more than the maximum allowed in a stand-alone 401(k) profit sharing plan?

We are all familiar with defined contribution plans (e.g., 401(k) and profit sharing plans). You are probably also familiar with traditional defined benefit plans, or pension plans, historically sponsored by large companies to provide monthly retirement benefits to their retirees. For business owners that are looking for large tax deductions, accelerated retirement savings, and additional flexibility, another type of defined benefit plan, a cash balance plan, may be the perfect solution.

HOW DOES A CASH BALANCE PLAN WORK?

As mentioned above, a cash balance plan is a type of defined benefit plan. In general, defined benefit plans provide a specific benefit at retirement to participants. While traditional defined benefit plans define an employee's benefit as a series of monthly payments for life to begin at retirement, cash balance plans state the benefit as a hypothetical account balance. Each year, this hypothetical account is credited with following:

- A pay credit, such as a percentage of annual pay or a fixed dollar amount that is specified in the plan document.
- A guaranteed interest credit (either a fixed rate or a variable rate

that is linked to an index such as the one-year treasury bill rate).

The accounts in a cash balance plan are referred to as hypothetical because, unlike defined contribution plans, the plan assets are held in a pooled account managed by the employer, or an investment manager appointed by the employer. The hypothetical account balances are an attractive feature of cash balance plans because these accounts tend to be easier for participants to understand, as the annual benefit statements reflect the value of their account, similar to 401(k) profit sharing plan account statements.

Unlike a 401(k) profit sharing plan, a defined benefit plan guarantees the benefit each participant will ultimately receive. The plan's actuary calculates the benefits earned each year based on the terms of the plan document, which in turn determines the required employer contribution due to the plan.

When a participant becomes entitled to receive their benefit from a cash balance plan, the benefits are defined in terms of an account balance and can be paid as an annuity based on that account balance. In many cash balance plans, the participant also has the option (with consent from his or her spouse) to take a lump sum benefit that can be rolled over into an IRA or to another employer's plan.

WHAT IF I ALREADY SPONSOR A 401(K) PROFIT SHARING PLAN?

In most cases, cash balance plans work best when paired with a 401(k) profit sharing plan. To optimize the combined plan design, it's possible that certain provisions in your current plan may need to be amended. This is especially true if the cash balance plan covers non-owner employees. Due to the large benefits that are typically earned by the owner and/or other key employees, the combined plans must pass certain nondiscrimination tests. These tests are more easily passed when employer contributions are provided to the staff under the 401(k) profit sharing plan as safe harbor nonelective and profit sharing contributions. While company contributions in a stand-alone 401(k) profit sharing plan may be discretionary, when combined with a cash balance plan, these contributions become required as well, since without them, the combined plans will likely not pass all required nondiscrimination tests.

Upcoming Compliance Deadlines for Calendar-Year Plans

15th — **September 2021**

Required contribution to Money Purchase Pension Plans, Target Benefit Pension Plans, and Defined Benefit Plans.

Contribution deadline for deducting 2020 employer contributions for those sponsors who filed a tax extension for Partnership or S-Corporation returns for the March 15, 2021 deadline.

30th

Deadline for certification of the Annual Funding Target Attainment Percentage (AFTAP) for Defined Benefit Plans for the 2021 plan year.

15th — **October 2021**

Extended due date for the filing of **Form 5500** and **Form 8955**.

Due date for 2021 PBGC Comprehensive Premium Filing for Defined Benefit Plans.

Contribution deadline for deducting 2020 employer contributions for those sponsors who filed a tax extension for C-Corporation or Sole-Proprietor returns for the April 15, 2021 deadline.

ARE CASH BALANCE PLANS A GOOD FIT FOR EVERYONE?

Unfortunately, the answer to this question is no. The first question to ask yourself is if you wish to make contributions in excess of the defined contribution limit ($58,000 or $64,500 for participants over age 50 for 2021). If the answer to this is yes, then

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the demographics of the employer must be considered. Since the maximum contributions are age dependent, cash balance plans typically work best when targeted employees are older than the average age of other staff members. And maybe most importantly – do you anticipate consistent profits that will allow you to fund all required contributions for the foreseeable future?

CASH BALANCE PLANS SOUND TOO GOOD TO BE TRUE. WHAT'S THE CATCH?

If you've decided setting up a cash balance plan sounds like the perfect way to meet your retirement goals and attract and retain quality employees, you may be right! However, as good as this sounds, there are many important factors to consider before jumping in. Here are a few key considerations:

- Cash balance plans can be designed with some flexibility, such as setting up pay credits using a percentage of annual pay, but the annual contribution calculated by the actuary is required. When paired with a 401(k) profit sharing plan to pass nondiscrimination testing, the employer contributions to that plan become required as well.
- Because the annual interest credit is guaranteed, the employer bears the investment risk for the plan. If the rate of return on investments is less than expected, the required contribution may increase to make up for the shortfall.
- Qualified retirement plans must be established with the intent of being permanent. Many service providers recommend maintaining the plan for at least three to five years to satisfy this requirement.
- Cash balance plans are often more complex, and as a result, more costly to establish and maintain than defined contribution plans.

For employers that desire increased retirement savings and tax deductions, cash balance plans may be the perfect addition to their employee benefit program. However, as previously mentioned, they are not a good fit for everyone. It's important to work with an experienced service provider to determine if a cash balance plan is right for you. ■

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