

What is Fiduciary Liability?

Fiduciaries are liable for damages to a retirement plan caused by a breach of fiduciary duty.

Fiduciary liability is **personal**.

Fiduciaries are liable for an additional 20% penalty.

The statute of limitations is six years.

Reduce risk. Document your proper execution of 408(b)2 responsibility here.

Personal liability

TITLE 29--LABOR
CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS
Subtitle B--Regulatory Provisions
part 4--fiduciary responsibility
Sec.1109 Liability for breach of fiduciary duty

- (a) **Any person who is a fiduciary** with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter **shall be personally liable to make good to such plan any losses to the plan resulting from each such breach**, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.
- b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.
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Penalties

TITLE 29--LABOR
CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS
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part 4--fiduciary responsibility
Sec.1132 Civil enforcement

- (l) Civil penalties on violations by fiduciaries
- (1) In the case of--
- (A) any breach of fiduciary responsibility under (or other violation of) part 4 of this subtitle by a fiduciary, or
- (B) any knowing participation in such a breach or violation by any other person, the Secretary shall assess a **civil penalty against such fiduciary or other person in an amount equal to 20 percent** of the applicable recovery amount.

Statute of limitations

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SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS
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part 4--fiduciary responsibility
Sec.1113 Limitation of actions

No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of--

(1) **six years** after

(A) the date of the last action which constituted a part of the breach or violation, or

(B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation; except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

1110. No liability removal

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Sec. 1110. Exculpatory provisions; insurance

(a) Except as provided in sections 1105(b)(1) and 1105(d) of this title, **any provision** in an agreement or instrument which purports **to relieve a fiduciary from responsibility or liability** for any responsibility, obligation, or duty under this part **shall be void** as against public policy.

- *“under this part”*: refers to ‘part 4—fiduciary responsibility’ in the heading.
- *“purports”*: to promise explicitly or to imply.
- *1105(b) (1)*: two trustees divide responsibilities
- *1105(d)*: the hiring of investment managers