

Paying Expenses Out of Plan Assets

With the continued economic uncertainty, many companies are looking at ways to cut the costs of providing retirement benefits as a means of lowering overall business expenses. Some employers have reduced or suspended matching contributions. Some are charging more of the expense of maintaining a plan to the plan itself. Take care if you're thinking about combining these two cost-saving measures.

Not all plan-related expenses can be charged to the plan. It's important for all employers to know what can and cannot be paid by the plan. Otherwise, you run the risk that the payment could be deemed a prohibited transaction. Subject to certain exceptions, plan fiduciaries, including plan sponsors, may use plan assets *only* to provide benefits to plan participants and beneficiaries and to pay reasonable expenses of administering the plan.

Business or “Settlor” Expenses

Employers sometimes confuse plan-related business expenses — which aren't payable from plan assets — with plan administration expenses. The U.S. Department of Labor (DOL) has long held that costs incurred to design, establish, and terminate plans — so-called “settlor functions” — are not reasonable expenses of administering a plan. These expenses are incurred for the benefit of the employer and involve services the employer can reasonably be expected to pay in the normal course of its business operations.

Plan Amendments

While the costs of designing a plan can't be charged to the plan, fees related to maintaining the plan's tax-qualified status, including drafting amendments required by tax law changes, generally *can* be paid out of plan assets — with some exceptions. For example, if maintaining tax-qualified status involves the employer having to analyze and choose from several options for amending its plan, the expenses incurred in that analysis would be settlor expenses that *cannot* be paid out of plan assets.

What does this mean for employers that have amended or are considering amending their plan documents to reduce or suspend matching contributions? Because such an amendment benefits the employer and not the plan participants, these employers would be well advised to pay the costs of the amendment (and any other amendment that reduces employees' benefits) themselves and not out of plan assets.

Allowable Administration Expenses

So what expenses can the plan pay? Generally, plan assets can be used to pay these and similar administration expenses incurred in operating the plan:

- Fees paid to maintain a plan's tax-qualified status
- Trustee fees
- Annual accounting of trust assets
- Recordkeeping expenses
- Costs of valuing assets

- Certain investment management fees and expenses
- Employee communication expenses for participant disclosure statements
- Costs of computing participant benefits
- Fees for participant enrollment/election changes
- Fees for participant investment changes/elections
- Expenses for participant loan administration
- Costs of administering qualified domestic relations orders
- Certain legal fees