

Using Plan Assets To Pay Expenses

SITUATION: Our company currently picks up all the costs of operating our 401(k) plan. We are looking at using plan assets to pay for some of our plan's expenses.

QUESTION: Which plan expenses can be paid from the assets of a retirement plan?

ANSWER: Only certain plan expenses can be paid using the plan's assets. The U.S. Department of Labor (DOL) applies strict standards in determining the types of expenses employers can pass on to the plan. You need to be very clear on what is permissible and what is not so that you do not inadvertently violate the pension law.

DISCUSSION: Basically, plan assets can be used only for two purposes: to pay benefits to participants and beneficiaries and to pay the *reasonable* expenses of administering the plan. The administrative expenses of a 401(k) plan that *are* payable from plan assets include amounts paid for:

- Plan recordkeeping
- Routine nondiscrimination testing
- Trustee fees
- Preparation and distribution of benefit statements
- Plan accounting
- Safekeeping of plan assets
- Annual compliance auditing
- Preparation of Form 5500 and other legally required reports
- Claims processing
- Legal fees for determining if a domestic relations order is qualified (disclose in the summary plan description)
- Participant communications
- Third-party administrative expenses

A variety of expenses related to plan investment services, including management fees (investment advisory or account maintenance fees) and sales charges, also may be paid from plan assets.

What expenses *must* the employer/sponsor pay? Referred to as “settlor” expenses, they include amounts related to the establishment, design, and termination of a plan, such as legal or consulting services. Because settlor functions are essentially business-related activities, the employer is responsible for paying the associated expenses.

If a plan says that the employer will pay the plan's administrative expenses, the plan can be amended to provide for the plan to pay those expenses on a prospective basis. You should talk with your plan advisor about potentially amending your plan before you make any changes in your expense payment policies.