

DOL Provides Guidance on Payment of Plan Expenses

Recently, the U. S. Department of Labor (DOL) reiterated its position regarding expenses that can be paid from the assets of a qualified pension plan and those expenses that must be paid by the plan sponsor. ERISA's fiduciary responsibility rules govern the payment of qualified plan expenses.

Plan Fiduciaries Must Act Responsibly

In general, plan assets may not be used to benefit the employer. Plan assets may be used only to provide benefits to plan participants and their beneficiaries.

In most situations, the employer is considered a fiduciary of any qualified plan that it sponsors. ERISA requires a plan fiduciary:

- To perform his duties in the best interests of the plan participants and beneficiaries, and
- To pay plan administration expenses prudently and in accordance with the terms of the plan document.

Applying These Rules to the Payment of Plan Expenses

The DOL separates qualified plan-related expenses into two categories. Expenses that *must* be paid by the employer (i.e., the plan sponsor) are called "settlor expenses." Expenses that *may* be paid by the plan are called "plan expenses."

Settlor Expenses

In general, settlor expenses are expenses arising from voluntary activities relating to the establishment, design, and termination of a plan. For example, this would include expenses arising from:

- Deciding on the type of qualified plan to provide and its specific design.
- Preparing the initial plan documents and requesting an initial IRS letter of determination.
- Voluntarily revising the plan design.

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- Making a decision to terminate the plan.

These types of expenses cannot be paid by the plan. They must be paid by the employer because the decisions relating to the actual sponsorship of a plan are, in part, dictated by the employer's business needs, such as the need to attract and retain employees. In addition, expenses related to the preparation of FAS 87 or FAS 88 reporting cannot be paid from plan assets since this activity is driven by the plan sponsor's own financial reporting needs.

Plan Expenses

Plan expenses are expenses that are:

- Necessary,
- Connected to the operation of the plan,
- Reasonable in amount, and
- Authorized in the plan document to be paid by the plan.

Plan expenses include expenses related to:

- The preparation of actuarial valuations to determine ERISA funding requirements.
- Benefit calculations.
- Plan design revisions required by a new law or regulations.
- The preparation of Form 5500 Schedule B.

Since these types of expenses arise only after an employer has made the decision to sponsor a qualified plan and are incurred specifically in connection with the plan's operation, they may be paid by the plan, as long as this payment is permitted under the terms of the plan document.

The expenses listed above are simply examples of expenses and their typical classification as either settlor and plan expenses. These lists are not all inclusive. Many expenses do not fit clearly into one category or the other. For this reason, plan sponsors must make the final determination regarding payment of plan-related expenses only after consulting the plan's legal counsel.

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