

Retirement Plan News article: Plan Expenses and Cost Cutting

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Employers have found themselves trying to accomplish competing goals: providing benefits for employees and managing the costs of running a business. Tough economic times have made this even more difficult. Some employers stopped making matching or other employer contributions. Others are looking at paying more of the plan's administration expenses out of the plan's assets.

ERISA allows employers to pay certain plan expenses with plan assets. Both the IRS and DOL have issued guidance on this subject. Employers should use caution when considering charging expenses to assets, however, because not all types of expenses can be paid from plan assets. The manner in which expenses are paid is also subject to certain restrictions.

Exclusive Benefit Rule

Internal Revenue Code Section 401(a)(2) states that the plan must be established and maintained by the employer for the exclusive benefit of the employees and their beneficiaries. This "exclusive benefit rule" would be violated if plan assets were used to pay for an expense that is considered to be the responsibility of the employer (a "settlor" expense) .

Settlor Expenses

There are two main types of expenses: "settlor" and "operational." Settlor expenses are the responsibility of the employer; and may not be charged back to the plan since they are discretionary expenses associated with the employer's business decisions.

Settlor expenses include plan design costs; legal costs for corporate issues involved in establishing a plan; nonrequired or discretionary plan amendments, such as changing eligibility or vesting features or adding hardship withdrawals or loan provisions; fees associated with correcting a plan error; and fees for filing Form 5500 late.

Operational Expenses

Operational expenses may be charged to the plan since they are necessary to maintain the qualification of the plan. Operational expenses include plan amendments for required law changes or changes in regulations. Thus, the EGTRRA plan document restatement (and other required plan amendments) and future document restatements (the six-year cycle) may be charged to plan assets.

Other operational expenses that may generally be charged to the plan include:

- Plan audit fees
- Qualified domestic relations order (QDRO) and qualified medical child support order (QMCSO) determinations
- Required fidelity bond
- Reporting and disclosure
- Third-party administrator fees
- Trustee and/or custodian fees
- Certain investment advisory and management fees
- Fees for participant enrollment/investment and election changes
- Check writing and distribution processing
- Loan initiation and annual administration
- Accountant fees
- Appraisal fees
- Actuarial fees

Reasonable plan administrative expenses may be charged to the accounts of former employees and beneficiaries, even though the accounts of current employees are not charged.

Allocating Charges

Expenses charged to the plan may be assessed *pro rata* (based on account balance) or *per capita* (based on equally sharing the expense among all the participants). This issue has been addressed in DOL **Field Assistance Bulletin 2003-3** and IRS guidance as follows:

Pro rata allocation: Expenses are allocated based on the value of the assets in each individual's account.

Per capita allocation: Expenses are allocated on an equal dollar or percentage basis to each participant's or beneficiary's account, regardless of the value of the individual's assets. This may be used for allocating certain fixed plan expenses, such as recordkeeping, legal, auditing, annual reporting, claims processing, and similar administrative expenses.

Fees that are based on account balances, such as investment management fees, should be charged on a *pro rata* basis because a *per capita* charge would appear to be arbitrary. Fees for services that provide investment advice to individual participants may be charged on either a *pro rata* or *per capita* basis, regardless of a participant's actual utilization.