CAMMACK RETIREMENT

Permissible Plan Expenses: What Can Plan Sponsors Pay from Retirement Plan Assets?

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The Employee Retirement Income Security Act (ERISA) requires retirement plan fiduciaries to evaluate all fees paid by the plan to ensure that the expenses are reasonable and necessary. However, a frequent question for many plan sponsors is which expenses are permissible to be paid by plan assets and which are not. While litigation over fees has increased, direction from the Department of Labor remains vague. The published guidance does provides specific, real-world examples; however, it does not cover all scenarios, nor does it apply to non-ERISA plan sponsors.

SETTLOR VS. ADMINISTRATIVE EXPENSES

The key to understanding whether an expense is permissible or not is determining who it benefits. The DOL refers to an expense that confers a benefit to the organization, rather than participants, as a settlor expense. These expenses generally relate to decisions regarding the amendment, establishment, or termination of a plan. An example is the cost of a plan design study for which the goal is to modify the employer contribution formula to reduce the contribution expense of the plan sponsor. In this example, the employer is benefiting from the expense of the study, rather than the participants. Thus, it cannot be paid by plan assets.

Other expenses, as long as they are reasonable and specifically benefit participants of the plan in question (and not some other plan), are permissible. Costs that are directly related to plan management, such as implementing plan changes, calculating benefits, communicating plan information to participants and beneficiaries, nondiscrimination testing, drafting plan amendments to maintain tax-qualified status, requesting determination letters, and Form 5500 preparation (including audit work, if applicable) are all reimbursable from plan assets.

While this can appear simple, in practice it is much more difficult. There are a number of services that fall into a grey area where it is unclear whether they benefit the plan sponsor or plan participants. This is a particularly complicated issue as it relates to compensating employees of the plan sponsor for their work on the retirement plan.

WHAT PLAN SPONSORS CAN DO

In order to help determine which specific expenses can be paid from plan assets and which cannot, plan sponsors can reference the charts that some law firms have published. However, if there is still doubt, outside counsel should be consulted to review the expenses they wish to pay from plan assets. This is particularly true for plans that are not subject to ERISA, since the Department of Labor guidance does not apply to them, but state law could.

CONCLUSION

Expenses paid by retirement plan assets can directly affect the account balances of plan participants; therefore, it is likely to continue to be an area of scrutiny for regulators. With the increased focus and litigation surrounding retirement plan fees, plan sponsors should carefully consider each expense paid by plan assets.

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For more information on our services, please contact **Mike Volo,** Senior Partner, at **781.997.1426** or **mvolo@cammackretirement.com**.

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