When Can a Plan Pay for Conference Expenses?

Plan fiduciaries may be able to use their ERISA account to pay for "reasonable plan expenses."

By Ian Kopelman

ERISA strictly regulates the use of plan assets to pay costs that arise in administering a qualified retirement plan. As a general rule, administrative expenses that may be paid by the plan must be reasonable in amount and otherwise qualify for payment by the plan. Identifying administrative expenses that meet these criteria presents an ongoing challenge for plan fiduciaries, particularly in the case of expenses associated with attending an educational conference.

The general rules governing the use of plan assets to pay administrative expenses can be found in an exemption to the prohibited transaction rules in Section 406 of ERISA. Section 406 generally prohibits the transfer to or use of plan assets by or for the benefit of a party in interest, including a plan fiduciary or employee involved in plan administration and operation (a "plan representative") with respect to the plan. Section 408 of ERISA contains an exemption to this rule providing that the prohibition does not apply to the use of plan assets to pay reasonable compensation for services rendered to the plan. The application of the exemption is addressed in DOL Regulations issued under Section 408, which provide that reasonable compensation can include reimbursement by the plan for direct expenses properly and actually incurred by a plan representative. Case law and DOL Advisory Opinion Letters make clear that expenses associated with attending an educational conference can qualify as direct expenses payable from plan assets for this purpose.

To date, the DOL has issued no specific formal guidance on the subject of what constitutes a direct expense eligible for reimbursement from the plan in the context of attendance at an educational conference. However, a review of the Section 408 Regulations and a recent update to the DOL Enforcement Manual provides some general rules and direction for the plan fiduciary responsible for determining if an expense can be paid by the plan.

General Rules

1. Whether compensation is "reasonable" is determined based on the particular facts and circumstances of a case.
2. An expense is not a direct expense that can be reimbursed by the plan if the expense would be sustained even if services are not provided to the plan, or if it represents overhead costs.
3. A plan may advance funds for direct expenses properly and actually incurred in the performance of the plan representative's duties with the plan if the amount of the advance is reasonable with respect to the amount of the direct expenses likely to be incurred in the immediate future (such as during the next month) and the plan representative accounts to the plan for the expenses.
4. No prohibited transaction occurs when a party dealing with the plan pays for a plan representative to attend an educational conference if a plan fiduciary reasonably determines, in advance and in writing and without regard to whether such expenses will be reimbursed, that (a) the plan's payment of educational expenses in the first instance is prudent, (b) the expenses are consistent with a written plan policy or provision designed to prevent abuse, (c) the conference has a reasonable relationship to the duties of the attending plan representative, and (d) the expenses for attendance are reasonable in light of the benefits afforded to the plan by such attendance and payment of these expenses by a party dealing with the plan is unlikely to compromise the plan representative's ability to carry out his or her duties faithfully under ERISA. It should be noted that this rule, as set forth in the DOL Enforcement Manual, is intended to address a third party's reimbursement of expenses. However, if reimbursement by a third party under these circumstances is not a prohibited transaction, then reimbursement by the plan of the same expenses under the same circumstances cannot be prohibited.

Specific guidelines for determining if a plan's payment of particular expenses associated with a plan representative's attendance at an educational conference is permitted by ERISA can be derived by applying the general rules above and informal guidance from the DOL.

Specific Guidelines

1. The plan's terms must permit payment of expenses from plan assets.
2. A plan fiduciary (other than the one attending the conference) must determine in advance and in writing that:
   a. payment of the expenses is prudent and consistent with a written plan provision or policy designed to prevent abuse;
   b. the conference has a reasonable relationship to the plan representative's duties with the plan; and
   c. the expenses are reasonable in light of the benefit the plan representative's attendance at the conference provides to the plan.
3. The plan representative attending the conference must document and account for each expense paid by the plan.
4. The plan cannot pay any expense that would be incurred if the plan representative did not provide services to the plan.
5. The plan's payment of expenses is limited to an amount equal to the expenses that would be incurred if the plan representative attended the conference only for the period during which he or she actually attends conference sessions (the "reimbursement period"). The plan representative is responsible for any expenses resulting from conference attendance before or after the reimbursement period.
6. Subject to the above restrictions, a plan can pay the following expenses:
   - Registration fees (additional fees for late registration may not be eligible);
   - Costs of transportation to attend the conference for the reimbursement period;
   - Expenses for taxis or rental cars if necessary for attendance;
   - Costs for lodging during the reimbursement period; and
   - Meals (other than for entertainment or meals unrelated to attendance at the conference) during the reimbursement period.
7. The plan *cannot* pay the following expenses:
   - Transportation expenses incurred because the plan representative opted to arrive at the conference before or leave the conference after the reimbursement period;
   - Hotel room charges for nights before or after the reimbursement period;
   - Hotel room charges in excess of the basic rate, such as charges resulting from a spouse's attendance;
   - Meals that constitute entertainment, are unrelated to conference attendance or occur before or after the reimbursement period;
   - Expenses for entertainment, such as movies, reading material or attending a dinner or similar entertainment function at the end of the conference; and
   - Personal expenses that would be paid by the plan representative while at home, such as health club or spa fees, massages, alcohol, bottled water, or cleaning and laundry services.

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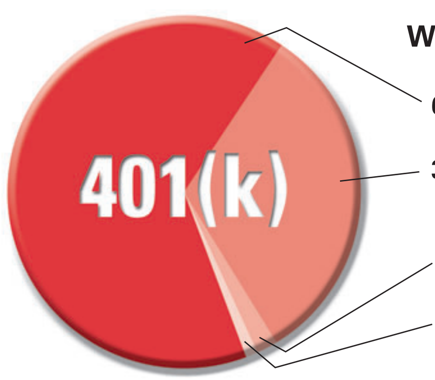
Is the 401(k) System Working?



What finance and HR executives are saying:

65% say the current system works fine or needs only slight modification

32% say the system is generally working, but could use a number of improvements

2% say the system is not working and needs wide-scale changes

1% say the current system should be replaced

Source: June 2009 CFO Research Services survey prepared in collaboration with Charles Schwab