Retirement Services Guidance

LOCKTON

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DoL Issues New Guidance on Appropriate Plan Expenses

In our recent article, *Permissible Plan Expenses and Those That Fall on the Wrong Side of the Fence* (The Key – First Quarter 2012) we discussed how ERISA requires fiduciaries to evaluate all fees paid by the plan to ensure those expenses are related to a necessary fiduciary function. Expenses that fall outside of the fiduciary bucket *must be paid for directly by the employer* and may not come out, derive or originate from plan assets. The failure to pay an expense from the proper source can result in significant penalties and costs for a plan sponsor.

On April 2, 2012, the Department of Labor (DoL) issued Field Assistance Bulletin 2012-01 providing guidance on appropriate plan expenses in the context of apprenticeship and training plans. These plans have unique characteristics not present in most welfare and pension plans however; the Bulletin provides insight into the DoL's views regarding the permissibility of certain types of plan expenses to be paid by any ERISA plan. According to the DoL:

- Payments to promote, advertise or market a plan would, "except in rare circumstances" not be permissible.
- Any expense paid from plan assets must be justified as "appropriate and helpful to the plan obtaining the service in carrying out the purposes for which the plan is established or maintained."
- Using plan assets to buy tickets to sporting events and other entertainment events for plan participants, employers or fiduciaries is not permitted.
- The plan may not make donations to fiduciaries' or officials' favored charities or causes.

The DoL also identified specific plan expense "abuses" that it had found to be common: unreasonable staff salary, excessive employee meal stipends or meals not reasonably related to plan business, payments for staff holiday parties, flowers, donations to charitable/ non-profit organizations or scholarship and memorial funds.

Fiduciaries should establish and implement adequate internal accounting, recordkeeping and administrative controls designed to prevent inappropriate, excessive or abusive expenditures of plan assets. We recommend that plans establish a written expense policy. By creating and following a written expense policy, fiduciaries should be able to avoid many of the questionable expenses identified in the Bulletin. It may also help to avoid a potential internal control letter identifying material weaknesses and significant deficiencies in the plan's internal controls in the yearly audit.

If you have questions about what plan expenses you may pay using forfeiture accounts, revenue sharing or investment assets of your plan, contact your Lockton Retirement Services team.

Fiduciary Risk Management: Compliance Services
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