Paying Qualified Plan Expenses From Participant Account Balances

July, 2005

Department of Labor Field Assistance Bulletin 2003-3, issued May 19, 2003, addresses several questions frequently asked about the payment of plan expenses for defined contribution plans, when those expenses are paid from the trust. The bulletin assumes the expense being considered can legitimately be paid by the plan, based on plan document language and other applicable rules; and that the amount of the expense is reasonable.

A) When should expenses be charged **"pro rata"** account balances; and when should they be paid on a **"per capita"** basis?
   1) First of all, the fiduciary administering the plan must check to see what the plan documents say, if anything, about paying expenses from the plan.
   2) If the document does not address the question, then the fiduciary must utilize a method which is prudent, rational, and solely in the interests of the plan participants.
   3) Allocating expenses pro rata account balances is treated as equitable in most cases. However, it will not be deemed inappropriate if the fiduciary chooses to allocate certain fixed expenses on a per capita basis – e.g., recordkeeping, legal, auditing, annual reporting, claims processing, and similar administrative expenses.
   4) If the nature of a fee is related to the size of the funds, and it is being charged to the plan, then it must be allocated pro rata account balances, as opposed to using a per capita approach.

B) When may we charge expenses on a **"per use"** basis --- to the accounts of just those participants to whom the expenses apply, as opposed to charging them to all participants?
   1) We already had guidance saying we can charge specific participants for fees related to their personally chosen investment options or the processing of participant loans.
   2) Other existing rules do not allow charging just certain participants for materials and statements that must be made available to the participant.
   3) This bulletin states that a fiduciary may be justified in allocating investment advisory fees either pro rata account balances or on a utilization basis.
   4) Fees charged to individual accounts based on utilization of certain services can be charged in cases including the following circumstances:
      - The determination that a domestic relations order is a QDRO (This reverses DOL Advisory Opinion 94-32A.)
      - Distribution processing fees. (The Summary Plan Description must include a summary of provisions relating to the imposing of such fees on participants.)
      - Hardship withdrawals.
      - Calculation of benefit payment options.
   5) ERISA does not prohibit a defined contribution plan from charging fees to maintain the accounts of former employees while the employer pays these fees for active employees.

Retirement Management Services, LLC **301 Townepark Circle**
(502) 429-0767 www.consultRMS.com **Louisville, KY 40243**