

IN THIS ISSUE:

- >> Allowable Plan Expenses: Can the Plan Pay?
- >> Timely Transmittal of Employee Contributions
- >> 401(k) Market Intelligence: How Does Your Plan Compare?

RETIREMENT REPORT

Allowable Plan Expenses: Can the Plan Pay?

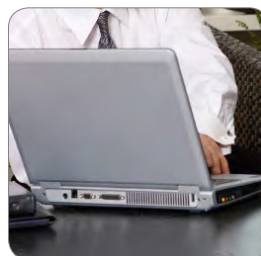
The payment of expenses by an ERISA plan (401(k), defined benefit plan, money purchase plan, etc.) out of plan assets is subject to ERISA's fiduciary rules. The "exclusive benefit rule" requires a plan's assets be used exclusively for providing benefits. ERISA also imposes upon fiduciaries the duty to defray reasonable expenses of plan administration. General principles of allowable expenses include the following:

- The expenses must be necessary for the administration of the plan.
- The plan's document and trust agreement must permit use of plan assets for payment of expenses.
- The expenses must be reasonable and incurred primarily for the benefit of participants/beneficiaries.
- The expense cannot be the result of a transaction that is a prohibited transaction under ERISA, or it must qualify under an exemption from the prohibited transaction rules.

Ultimately the ability to pay expenses from a plan trust is a facts and circumstances determination that needs to be made by plan fiduciaries. Because it is possible that the DOL may challenge such determinations it is important that fiduciaries consult ERISA counsel prior to paying questionable expenses from a plan trust and document the decision and reasoning.

Timely Transmittal of Employee Contributions

One of the most important fiduciary responsibilities is centered on the timeliness of remitting employee contributions. While the DOL has issued a 7-day Safe Harbor rule for plans with less than 100 participants, no Safe Harbor exists for larger plans. The key wording in the law for fiduciaries



to remember is "as soon as administratively feasible" in regards to the timing of sending employee contributions to the respective service provider. Many DOL audits are triggered when late

contributions are identified during the annual audit or noted on a plan sponsor's 5500. We encourage our clients to revisit internal procedures and establish timing standards that are "as soon as administratively feasible."

> 100 years
of building
relationships
of trust

401(k) Market Intelligence: How Does Your Plan Compare?



Many plans sponsors want to know how their retirement plan stacks up to a typical plan. Following is a brief compilation of statistics from a variety of industry sources to help you see how your plan compares.

- 60.3% of plans offer immediate eligibility (defined as one month or less of service)
- 39.5% of plans provide immediate vesting for matching contributions
- The most common match formula is \$.50 per \$1.00 up to 6% of pay (51.8% of all plans)
- 38.4% of plans have an automatic enrollment feature
- 72% of plan sponsors use a life-cycle or target date fund (TDF) as the default option

[*The target date is the date of expected withdrawals at retirement; the fund is not guaranteed at the target date or any other time. These funds are subject to risk, including the loss of principal.]

- Plans offer an average of 18 funds for both participant and company contributions
- Company contributions average 2.1% of payroll
- 33% of plan sponsors have no investment committee, though it varies heavily by plan size

- 66.7% of companies retain an independent investment advisor to assist with fiduciary responsibilities
- Investment advice is offered in 60.1% of plans; 21.6% of participants used advice when it was offered
- 41.3% of plans allow participants to make Roth after-tax contributions
- Self directed brokerage accounts are offered in 15.5% of plans
- 61% of plans offer a loan provision to participants (and is more commonly associated with large plans)
- Hardship withdrawals are permitted in 85.6% of plans
- 34.2% of plans have a Safe Harbor plan design in lieu of ADP/ACP testing

[Sources: PSCA, 401(k) and Profit Sharing Plan Eligibility Survey 2010; PSCA 53rd Annual Survey of Profit Sharing and 401(k) Plans, published in 2010; Employee Benefit Research Institute; Aon Hewitt Trends & Experiences 2010]

Communication Corner: It's Never Too Late

This month's sample participant communication memo briefly reviews why it's never too late to start saving for retirement. Encourage participants to enroll in the plan today, especially if you have open enrollment coming up in July.

"Retirement Report" is published monthly by Retirement Plan Advisory Group's marketing team. This material is intended for informational purposes only and should not be construed as legal advice and is not intended to replace the advice of a qualified attorney, tax adviser, investment professional or insurance agent.

To remove yourself from this list, or to add a colleague, please email nharry@vgic.com. Investment advisory services offered by Van Gilder Retirement Solutions, LLC © 2011. Retirement Plan Advisory Group. All rights reserved. 110603 RPAG 2011-40