

REPORT TO PLAN SPONSORS

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Saving Money in Hard TimesBy [Fred Reish](#)

With the bad economy, and its negative impact on the cash flow, we are being asked about ways to reduce costs for 401(k) plans. While the largest cost is usually the matching contributions, the expenses of operating a plan are next. We are working with a number of plan sponsors to transfer the payment of those costs to their plans. However, there are traps for the unwary. Not every expense can be paid from plan assets. Some must be paid by the plan sponsor. This article discusses which can and which cannot.

For our purposes, expenses are divided into two categories: settlor expenses and administrative or fiduciary expenses. The former, settlor expenses, must be paid by the plan sponsor (which is, in legal language, the settlor of the plan). The second category—administrative or fiduciary—are obligations of the plan and may be paid with plan assets.

The following is a partial list of expenses that may be paid from a plan:

- Fees for administration or recordkeeping.
- Fees for amending the plan for law changes.
- Fees for submitting the plan to the IRS for a favorable determination letter.
- Fees for investment advice.
- Fees for audited financial statements of “large” plans (that is, plans with 100 or more participants).
- Fees for participant services, including education, investment advice, investment management, and enrollment.
- Fees for provider searches.
- Fees for reviewing and implementing domestic relation orders (QDROs).
- Fees for legal advice, for example, concerning plan operation, fiduciary responsibilities, or plan interpretation.

Examples of expenses that cannot be paid from the plan include:

- Fees for advice on the adoption or design of a plan.

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- Fees for a feasibility study for a new plan or change in plan design.
- Fees related to the preparation of the plan sponsor's corporate financial statements (even though part of those statements may related to the plan).

This is just a partial list of the “do’s” and “don’ts” for using plan money to pay expenses. There are other, more complicated, situations. For example, a plan may reimburse a plan sponsor for certain expenses, but only under very limited circumstances; legal advice is needed to avoid a prohibited transaction for payments to a plan sponsor.

A related issue is how to allocate the payments among the participant accounts. In most cases, the best approach is allocate pro rata to all account balances. That would apply, for example, to expenses for plan compliance work. In some cases, though, it may be better to allocate the expenses of specific accounts or on a equal basis to all participants. These allocation decisions are fiduciary decisions; as a result, the plan fiduciaries—for example, the plan committee—should carefully consider the reasonableness of any allocation method and should make a formal decision that is reasonably connected to the fairness and logic of the analysis. Legal advice should be sought if the fiduciaries are not knowledgeable about the issues or comfortable with making the decision.

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