COVID-19 and Paying Fees from Plan Assets:

What You Need to Know

FuturePlan by Ascensus

Businesses throughout the country are facing unprecedented challenges during the COVID-19 pandemic. As a result, business owners are looking for ways to lower their expenses. Plan sponsors may use plan assets (both forfeitures and participant accounts) to pay expenses; they must, however, act in the best interest of participants and should ensure that IRS and Department of Labor rules are followed.

What types of fees are allowed to be paid out of plan assets?

Qualified retirement plans can pay a variety of plan expenses from their plan assets, but there are limitations. To determine whether a specific plan expense can be paid out of plan assets, the employer must determine whether that expense is a "settlor expense" or an "administrative expense."

- **Settlor expenses cannot be paid out of plan assets.**
  Expenses that a plan sponsor incurs when making a *business decision* about the plan are normally settlor expenses, and typically relate to the *choices* plans can make in establishing, designing, or terminating the plan. Examples of settlor expenses include initial plan document drafting fees, discretionary plan amendment fees, IRS correction program fees, and new business installation fees.
- **Administrative expenses can be paid out of plan assets.**
  Expenses that arise from the ongoing operation of a plan are usually considered administrative expenses. Examples of administrative expenses include payments for IRS-required plan amendments, annual recordkeeping, annual compliance, Form 5500 preparation, CPA auditing for large plan filers, and distribution and loan processing fees that are paid by the plan sponsor.

What are forfeitures and how can they be used to offset costs?

- When a plan participant terminates employment with an account that is not fully vested, the non-vested amount is moved to a holding account, referred to as a forfeiture account.
- Forfeiture accounts may be used in multiple ways, and the options are identified in the plan document. If your plan document allows, forfeitures can be used for payment of administrative expenses, which are outlined above.
- The plan document will dictate how forfeitures must be used—and when they must be used. In general, the IRS will not permit forfeitures to remain unallocated past the end of the plan year in which they arise.

What about paying fees directly from participant accounts?

Plan sponsors that choose to pay plan expenses directly out of participant accounts must do this in a uniform and nondiscriminatory manner. The plan expense must be charged against all applicable participants (for example, all former employees) in the same manner and must not favor the highly compensated employees.

- One common method for debiting fees from plan assets is to allocate fees based on the participant's account balance in relation to the entire plan balance, or in other words, proportionately or pro rata.

- Fees may be taken from participant accounts on a per capita basis, or a uniform (flat) amount pulled from each participant's account. The per capita method is most often used when the fee is a set amount, such as an annual recordkeeping fee. For example, if there were ten participants in the plan and the annual recordkeeping fee was $3,000, each participant would be charged $300. This method could disproportionately impact smaller account balances.
- Plan sponsors may also choose to charge each individual participant a fee for using a feature of the plan. This method is most often used for distribution fees and loan origination fees, where the fee is the result of one participant's request.
- Finally, an employer can establish what is most commonly referred to as an "ERISA budget account" to be used as a separate account within the plan to pay fees. The ERISA budget account method places 12b-1 fees and sub-transfer agent fees generated from investments into a separate account within the plan, to be used to pay administrative fees.

We're here for you.

Reach out to your FuturePlan TPA consultant for support and expert guidance throughout this difficult time. We're ready to help you answer client questions and make informed decisions, connecting you with ERISA experts and providing any other expert advice you may need.