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Publications

DOL Issues Significant New Guidance on Plan Expenses

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Establishing and operating an employee benefit plan costs money. A plan's expenses can be paid directly by the employer or they can be paid from the assets of the plan. Although employers typically fund plans and thus indirectly pay even when expenses are paid from plan assets, the legal implications of using plan assets to pay expenses are significant and the rules for doing so are strict. The November-December issue of the Legal Report contained an article outlining those rules. Since then, the U.S. Department of Labor (DOL) has issued significant new guidance on the issue.

The DOL guidance comes at a time when many employers, particularly those with overfunded defined benefit plans, are interested in getting the most mileage possible out of the plan's excess assets. In addition, many sponsors of defined contribution plans are determining that the business bottom line requires that they consider shifting some of the costs of maintaining the plan to the plan and its participants. Although we will briefly set out all of the rules applicable to the payment of plan expenses, this article will focus mainly on two of them (1) the prohibition on the payment of settlor expenses, as modified by the new DOL guidance, and (2) the but for test, an old rule that has caused particular difficulties for employers seeking to expense reimbursements from plan assets.

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