

A RISK MANAGEMENT ALERT

Seyfarth Insight For Benefit Plans



The 401(k) Plan Recordkeeper and “Revenue Credit Accounts” - DOL Advisory Opinion 2013-03A

Facts: In addressing revenue sharing and reasonable fee considerations, some 401(k) plan recordkeepers set up a “revenue credit”, *bookkeeping only*, account. A certain dollar amount of the revenue sharing the recordkeeper receives with respect to the plan is credited to this account. Upon direction, the recordkeeper will pay (up to the revenue credit amount) fees of third party service providers to the 401(k) plan; payment being made directly to the provider, by reimbursing the employer or by deposit into the plan.

Question: Are revenue sharing amounts received by the recordkeeper and deposited as general assets of the recordkeeper considered “plan assets” under ERISA?

Answer: In general, recognizing that facts may vary, the DOL in Advisory Opinion 2013-03A concluded that the 401(k) plan asset is the plan’s contract right with respect to the bookkeeping credited amount. However, the actual revenue sharing payments received by the recordkeeper generally are not plan assets.

The DOL also commented on plan fiduciary obligations as to:

- (i) “the negotiation of the specific formula and methodology” of the revenue sharing credited to the plan;
- (ii) being “capable of periodically monitoring” the recordkeeper as to correctness of the revenue credit amount; and
- (iii) assuring that third party expenses paid from the revenue credit are reasonable.

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