



CLIENT BULLETIN

Update on DOL Audits of Union Apprenticeship and Training Funds Graduation Ceremony Expenses in the Cross-Hairs

The National Coordinating Committee for Multiemployer Plans (NCCMP) recently held its annual conference. One topic of discussion was the current DOL auditing of union apprenticeship and training funds. According to one presenter, as of July 2011 there were over 80 such DOL audits in progress. An attendee noted he had heard that the head of the DOL for his region was planning on auditing "every apprenticeship and training fund there was." No one says it better than Assistant Secretary of Labor Phyllis Borzi, who summed up the DOL audit initiative in a video posted on Youtube at:

<http://www.youtube.com/user/IFEBP#p/u/0/992ruOplcVQ>.

At the end of this publication is some general information on such funds and *ERISA*, as well as information on the NCCMP. An excellent summary article to also review is *Training and Education Funds: An Overview of Legal and Fiduciary Issues*, Ledbetter, Michael A.; Benefits & Compensation Digest; v44 no6 pp 22-25 Jun 2007; journal article.

We will assume some familiarity with construction trade-union apprenticeship and training programs; however, we would note that apprenticeship and training funds are subject to *ERISA*. Even if the funds are exempt as "labor organizations" under IRC Section 501(c)(5) or as "charitable organizations" under IRC Section 501(c)(3), they are a type of "health and welfare" fund under *ERISA*. See *Running Your Training Fund Like a Business*, Beebe, Lawrence R.; Benefits & Compensation Digest; v45 no6 pp 36-41 Jun 2008; journal article.

As part of the presentation, the discussions focused on:

1. The possible *ERISA* violations being investigated by the DOL and what such plans can do to meet their *ERISA* fiduciary duties.
2. The types of documents being requested in such audits.

Let's take a closer look, as "*forewarned is forearmed.*" As always, you should consult fund counsel for legal advice regarding your fund's specific situation.

The following is an excerpt from a journal article regarding the *ERISA* problems such funds may have and why:

Many training fund coordinators come from a union background. They are familiar with how unions operate. Unions are governed by the Labor-Management Reporting and Disclosure Act (LMRDA) (also known as the Landrum-Griffin Act) and are reportable to the Office of Labor Management Standards (OLMS) of the U.S. Department of Labor. A multiemployer training fund is governed by the Labor Management Relations Act (also known as the Taft-Hartley Act) and the Employee Retirement Income Security Act (ERISA). ERISA funds are reportable to the Employee Benefits Security Administration (EBSA) of the U.S. Department of Labor.

What does all this mean? Unions have a structured hierarchy and the leadership can act in almost any manner approved by its members. A union can sponsor social events, for example, and can give monies to charity. This is the background of many training fund coordinators.

The Department of Labor (DOL) states in its Web site that those who exercise management control over a plan are fiduciaries. According to DOL, "the primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses." The plan coordinator who runs the training fund on a day-to-day basis must gain the consensus of trustees, both union and management, before taking action. The plan coordinator who runs the training fund must remember that. Sponsorship of golf tournaments, payments for tributes ads and donations to charity, all of which may be acceptable in a union environment, are expenses that are not permitted in a training fund environment.

Running Your Training Fund Like a Business. Beebe, Lawrence R.; Benefits & Compensation Digest; v45 no6 pp 36-41 Jun 2008; journal article

Possible ERISA Violations

ERISA requires that expenses are to be for the sole benefit of the participant and beneficiaries as well as for reasonable and necessary expenses of administering the plan. Our discussions emphasized examples where the DOL focused on looking for excessive expenses at events such as graduation ceremonies, as well as proper written documentation for the propriety and approval of such expenses, even if they seem reasonable.

As in any discussions involving DOL audits of *ERISA* health or pension plans, some "horror" stories were shared that allegedly occurred, such as a very large graduation banquet for a relatively small number of graduates and plainly excessive meal and alcohol expenses. Assistant Secretary Borzi's video also highlighted other "horror" stories, especially the one regarding a million-dollar embezzlement. However, such stories were countered by other funds scrupulously following the law.

We'll take a look at some of the questions raised and suggestions for apprenticeship/training funds avoiding running afoul of *ERISA regarding such expenses*.

- Who should attend at the fund's expense? Should the plan pay the expenses for only graduates or should the plan also pay for the expenses of spouses, children, family members, trustees, union or management officials?

No clear answer was given, only that the plan should follow the *ERISA* requirement that expenses must be for the sole benefit of the participant and beneficiaries. They must also be reasonable and necessary expenses of administering the plan.

- What expenses are allowable? Can the plan include dinner, alcohol, and advertisements?

During our discussion, the consensus appeared to be that the DOL's "normal" rules for alcohol use and dinner would apply. That is, a drink or two could be reasonable. No extravagant meal expenses. Consult your fund's expense reimbursement policy for guidance.

- Is a "graduation" ceremony part of the "benefit" of the training received under the plan? Does the Trust, CBA and Plan Document allow for such an expense?

The suggestion was made to include "graduation" as part of the "benefit" under the plan. The plan should consider incorporating language into the Trust and Plan Document, and even perhaps the CBA that graduation expenses were allowable and proper expenses of the plan.

- Does the plan have a written record of the graduation expense being approved? Were the expenses of the event incurred in accordance with the plan's written expense and reimbursement policy?

The importance of documentation was emphasized by all. It is not enough to have the proper written policies if they are not followed.

Common Documents Requested During a DOL Audit

The second point of the presentation also concerned documents often requested by the DOL in such audits. Apprenticeship and training funds were encouraged to get their documents in order before receiving a request from the DOL. One problem voiced by an attendee was that there is a lack of awareness that these apprenticeship and training funds are covered by *ERISA* and its fiduciary requirements and other rules.

Below is a list of documents that are commonly requested by the DOL:

- Trust and amendments
- Plan and amendments
- IRS Determination letter
- CBA
- Adoption Agreements
- Union Constitution and Bylaws
- Area-wide agreements
- Fund policies and procedures
- Trustees and committee meeting notes/minutes
- Plan Sponsor agreements
- Service provider agreements
- Annual report
- Contracts with affiliated funds for shared expenses
- Details of plan expenses
- List of trustees
- List of employees
- W-2's
- 1099's
- Fidelity bond
- General Liability Insurance policy
- D&O insurance policy
- Fiduciary liability policy
- Records of contributions and collections
- List of property owned by fund
- Fund's investment policy
- Annual audit
- Plan loans
- Training records
- Form 990
- The kitchen sink

Individuals responsible for administering and overseeing union apprenticeship plans should confirm that their plan has the necessary documentation in place to comply with *ERISA*, as outlined above. Consult with your fund counsel for individualized advice. Even under *ERISA*, it is not wrong to recognize the milestone of graduation from an apprenticeship and training program if done within reason and in compliance with the rules discussed herein.

Apprenticeship and training fund audits may also focus on collections and other matters, as noted in *The Intricacies of Apprenticeship Training Fund Collections*, Sollars, Karen; Benefits Magazine; v48 no6 pp 34-39 Jun 2011; journal article. A general self-compliance checkup of their plan would be a good training exercise for trustees and administrators of apprenticeship and training funds.

For more information on the National Apprenticeship System and the governing regulations, see [Research Memo 2008-59, DOL Publishes Final Regulations on National Apprenticeship System](#).

Information on obtaining copies of any journal articles cited herein can be obtained from the IFEBP website at:

<http://www.ifebp.org/Resources/News/Periodicals/Reprints+and+Back+Issues.htm>.

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LEGAL DISCLAIMER: Information contained in this publication is not legal advice, and should not be construed as legal advice. If you need legal advice upon which you can rely, you should seek a legal opinion from your attorney.

Apprenticeship Plans – General Information

The Labor-Management Relations Act (the Taft-Hartley Act) was passed in 1947 and banned financial transactions between employers and labor organizations. One notable exception permits the funding of apprenticeship training trust funds through employer contributions.

With passage of the National Apprenticeship Act (the Fitzgerald Act) in 1950, a new level of protection for apprentices and apprenticeship programs was developed. This act officially authorized the Department of Labor (DOL) as the governing agency for apprentices and apprenticeship programs. The Internal Revenue Service (IRS) and Employee Retirement Income Security Act (ERISA) provide the laws and regulations for the establishment and administration of an apprenticeship training trust fund, as the apprenticeship training program is an *employee welfare benefit plan* by its definition. As with other employee welfare benefit plans, a board of trustees must pursue monies owed to its apprenticeship training fund.

There are two main classifications of apprenticeship training funds subject to ERISA

Localized apprenticeship training funds are developed within a particular local union and supported by contributions from signatory employers.

Regional apprenticeship training funds are not affiliated with just one local union. These funds are sponsored by multiple labor-management groups from different local unions; the participating local unions sponsor applicants who, upon completion of the program, return to those sponsoring local unions. Contributions come from employer signatories from all participating local unions, usually through a percentage of gross total monthly pay from employers. Regional apprenticeship funds are generally independent of the participating local unions.

The Intricacies of Apprenticeship Training Fund Collections, Sollars, Karen; Benefits Magazine; v48 no6 pp 34-39 Jun 2011; journal article (Excerpt)

National Coordinating Committee for Multiemployer Plans

The NCCMP is a non-profit membership organization founded in 1974 in response to a clear lack of understanding of multiemployer plans that was demonstrated by lawmakers during the enactment of ERISA. It is dedicated exclusively to the advocacy and protection of multiemployer plans, their participants and their families. The NCCMP has achieved an unparalleled track record of results and is looked to as the voice of multiemployer plans.

The NCCMP monitors, on a non-partisan basis, legislative, regulatory and legal developments from conception to implementation to enforcement; effectively representing the interests of multiemployer plans and participants every step of the way.

By communicating with government officials, members of Congress and staff about the unique characteristics of multiemployer plans, the NCCMP has saved multiemployer plans hundreds of millions of dollars in regulatory and administrative costs.

excerpted from: <http://www.nccmp.org/about/index.html>