



CLIENT BULLETIN

Update on DOL Audits of Apprenticeship and Training Funds Over 200 in Progress and More to Come

The National Coordinating Committee for Multiemployer Plans (NCCMP) recently held its annual conference where 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.

Since that time the number of training and apprenticeship funds under audit has risen to over 200, according to one speaker at the 2011 International Foundation of Employee Benefits Plans (IFEBP) Annual Conference. Assistant Secretary of Labor Phyllis Borzi attended the 2011 IFEBP Annual Conference and again spoke of the need for training and apprenticeship fund trustees to conduct themselves in accordance with the fiduciary duties applicable to them under *ERISA*. General information on training and apprenticeship funds is at the end of this publication.

We reported on the DOL audit initiative in [Client Bulletin 2011-63](#), but no one says it better than Assistant Secretary of Labor Phyllis Borzi, who summed it up in a video posted on Youtube from the IFEBP at:
<http://www.youtube.com/user/IFEBP#p/u/0/992ruOplcVQ>.

We would note that Taft-Hartley apprenticeship and training funds are clearly generally subject to *ERISA*. Section 302(c)(5) of the *Labor Management Relations Act of 1947 (LMRA)* requires Taft-Hartley funds from employer contributions for benefits be placed in a "trust fund". Section 3(1) of Title I of *ERISA* defines the term "employee welfare benefit plan" to include:

[A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund or program was established or is maintained for the

purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise,

(A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, **apprenticeship or other training programs**, or day care centers, scholarship funds, or prepaid legal services, or

(B) **any benefit described in Section 302(c)** of the Labor Management Relations Act, 1947 [29 USCS Section 186(c)] (other than pensions on retirement or death, and insurance to provide such pensions).

Thus, Taft-Hartley apprenticeship and training fund trustees are subject to the fiduciary duties of *ERISA*, *just like pension and health plan trustees*.

The discussion of apprenticeship and training fund audits emphasized the lack of written documentation such as a Plan Document, SPD (unless exempt) and expense policies, among others. Examples were also given of allegedly excessive expenses at graduation ceremonies, as well as the lack of written documentation of the propriety and approval of such expenses, even if reasonable.

Part of the presentation also concerned documents often requested by the DOL in such audits. Apprenticeship and training funds were exhorted to get their documents in order before receiving a request from the DOL. An expanded list of documents requested in such audits is available by "[clicking here](#)."

Administrators of apprenticeship and training funds were also encouraged to verify that the plan was exempt from having to provide an SPD and/or file a Form 5500. *ERISA* regulation Section 2520.104-22(c) lists the requirements for such an exemption and is available by "[clicking here](#)". Apprenticeship and training fund administrators should know if their plan is exempt and have proper records verifying the same. To verify if your plan has such an exemption, conference attendees were provided with a phone number to call: (202) 693-8360.

Along the same lines, plans were encouraged to make sure they had their original tax-exempt letter for the fund.

Individuals responsible for administering and overseeing union apprenticeship plans should confirm their plan has the necessary documentation in place to comply with *ERISA*, as outlined in the link above. Consult with fund counsel for individualized advice. A broad spectrum general self-compliance checkup of their plan would be a good training exercise for trustees and administrators of apprenticeship and training funds.

Forewarned is forearmed. Avoid the train wreck of being unprepared for a DOL audit by preparing today.

A collection of resources designed to assist trustees and administrators of apprenticeship training programs in the United States and Canada is at: <http://www.ifebp.org/Resources/Apprenticeships/default.htm>.

Information on obtaining copies of the below journal articles is available at: <http://www.ifebp.org/Resources/Magazines/Reprints+and+Back+Issues.htm>.

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

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

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.

For those who attended the 2011 IFEBP Annual Conference, we would note that there were three sessions on this topic. Information-packed handouts for Sessions 801 and 803 are available for free download to attendees until December 2 at: <http://www.ifebp.org/Education/UsAnnual/SessionSelection/selection.htm>.

The 2011 conference sessions were:

Session 801 – Legal and Fiduciary Issues in Training and Education Funds
Karen L. Sollars, Michael A. Ledbetter, Ledbetter Parisi Sollars LLC

Session 803 – Preparing Your Apprenticeship Fund for a DOL Audit
Robert M. Archer, Archer, Bvington, Glennon & Levine, LLP

Session 804 – Workshop – Compliance Follow-up to Sessions 801 & 803
Karen L. Sollars, Ledbetter Parisi Sollars LLC

The IFEBP is sponsoring a conference “*Trustees Institute for Jointly Managed Training & Education Funds*” Monday, January 23 - Wednesday, January 25, 2012, Paris Las Vegas, Las Vegas, NV. For more information go to:

<http://www.ifebp.org/Education/Schedule/1232trusteesinstitute.htm>.

Recent FAQs about multiemployer leasing arrangements also addressed apprenticeship and training plans and should be consulted. See [Benefits News Briefs 2011-70](#). The FAQs are available by “[clicking here](#).”

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