



CLIENT BULLETIN

DOL Releases Field Assistance Bulletin 2012-01 with Guidance on Apprenticeship and Training Plans Use of Plan Assets For Graduation Ceremonies And Program Marketing

The DOL's Employee Benefits Security Administration (EBSA) just released *Field Assistance Bulletin (FAB) 2012-01, Citing Apprenticeship And Training Plans For Using Plan Assets For Graduation Ceremonies And Program Marketing*, in response to questions that have arisen in the course of EBSA's investigations of some apprenticeship and training plans about the use of plan assets to pay for graduation ceremonies and for advertising expenses.

The *FAB* also has references to helpful aids and information and should be read in full by each trustee and administrator of an *ERISA*-covered apprenticeship and training plan.

According to *FAB 2012-01*, the EBSA Regional Offices have asked whether the use of plan assets for these purposes violates *ERISA*'s exclusive purpose and fiduciary duty requirements. According to the *FAB*, the following guidance is intended to promote consistency among the Regional Offices in their enforcement positions on these issues.

The *FAB* is available at: <http://www.dol.gov/ebsa/pdf/fab2012-01.pdf> or by "[clicking here.](#)"

Noting that "*Not all employment-based job training and apprenticeship programs, however, are ERISA plans,*" the *FAB* then addressed the nature of allowable expenses for *ERISA*-covered job training and apprenticeship programs.

The *FAB* emphasizes that although the unique purposes of apprenticeship and training plans may result in differences in the structure and operations of such plans compared to other *ERISA* plans, the plan fiduciaries are still subject to and must abide by the general fiduciary standards in *ERISA* and recites the basic fiduciary duties under *ERISA*.

The *FAB* notes that some types of apprenticeship and training plan payments have been questioned by EBSA Regional Offices as part of recent routine investigations because the payments do not qualify as payments for plan training benefits and are not typical plan administrative expenses. The payments commonly fall into the categories of (1) *payments for meals, gifts, entertainment, or other expenses associated with graduation ceremonies* and (2) *payments to market, advertise or promote the apprenticeship or training program*.

The *FAB* continues that "*Although expenses for graduation ceremonies or, except in rare circumstances, commercial marketing of the plan would not be appropriate expenditures of plan assets for an ERISA pension plan or for other welfare benefit plans, we cannot unconditionally classify all such payments as per se impermissible in light of the special characteristics and aims of apprenticeship and training plans.*"

The *FAB* notes that in the context of apprenticeship and training plans, the "*exclusive purpose rule*" and the "*duty to manage plan assets prudently*" require plan fiduciaries to ensure the reasonableness of plan expenses in light of the educational objectives of the apprenticeship or training program.

In **every instance**, apprenticeship and training plan fiduciaries must be able to justify plan expenses as appropriate means of carrying out the plan's mission of training workers. The *FAB* **strongly warns** that when fiduciaries expend plan assets *without reasonably determining that the expenditures are likely to promote legitimate plan objectives*, they *breach their core fiduciary obligations* under ERISA and are personally liable for the resulting loss of plan assets.

The *FAB* recognizes that registered apprenticeship and training programs serve an important role in stimulating and assisting industries in developing the skilled workers needed to compete in a global economy and like many other educational enterprises, apprenticeship and training programs often award graduates certificates of completion, and in some cases, hours of college credit. The graduation ceremonies are often open to family members, plan officials, school instructors and administrators. Industry executives, civic leaders and others are sometimes invited.

A graduation ceremony that serves to congratulate graduates on their achievements and encourage them on their future endeavors may support the training objectives of the plan by establishing an incentive and goal for participants to successfully complete the program.

Similarly, like many other educational enterprises, the *FAB* notes that apprenticeship and training programs often have outreach programs to increase awareness of the program and encourage participation by eligible individuals. Certification requirements for apprenticeship and training programs may include outreach and recruitment efforts, such as (a) distributing information about the nature of programs, program admission requirements, current apprenticeship or training opportunities, sources of applications for the program, (b) publishing

advertisements in newspapers circulated in the general areas in which the program operates, (c) participating in workshops conducted by employment service agencies, school districts, and community-based organizations, and (d) cooperating with local school districts and vocational education systems to increase awareness of the program.

The *FAB* concludes this aspect of the discussion by stating:

“...in light of these characteristics of apprenticeship and training plans, we would not treat the plan’s payment of expenses associated with a modest graduation ceremony attended by graduating apprentices, family, plan officials, and other persons connected with the program or industry outreach, including light refreshments, as an impermissible use of plan assets provided: (a) the amount of the expense is modest in relationship to the plan’s assets; (b) the expenses were approved in accordance with internal accounting, recordkeeping, and administrative controls designed to prevent inappropriate, excessive, or abusive expenditures of plan assets; and (c) the expenses were for costs of the ceremony.

For example, we generally would not view a graduation dinner for all attendees, valet parking, or payments for travel or hotel accommodations for graduating apprentices or guests as permissible plan asset expenses.

On the other hand, a modest graduation ceremony offering light refreshments with diplomas or certificates for apprentices and token awards/gifts for non-apprentices (e.g., plan instructors or persons that supported the program) would be permissible.

The *FAB* next indicates that, similarly, certain outreach expenses related to the program can be paid for by the apprenticeship and training plans consistent with *ERISA*’s fiduciary requirements. However, the expenses must be for marketing or promotion of the apprenticeship or training program itself (e.g., *not for industry advancement or for sponsoring employers or employee organizations*) and the amount of the expense must be consistent with the fiduciaries’ obligation to be *prudent and economical* in the use of plan assets.

For example, *t-shirts* provided to apprentices bearing the logo of the apprenticeship or training program *may be appropriate plan expenses* if the expense is modest and the t-shirts are not purchased from parties in interest in prohibited transactions.

Conversely, *tickets to sporting and other entertainment events* for apprentices, plan officials, trustees, and contributing employers *would generally be unreasonable plan expenses*. In every instance, the fiduciary must thoughtfully ensure that the plan’s assets are being efficiently used to promote the plan’s training mission.

The *FAB* instructs EBSA investigators to address such expenses on a case-by-case basis taking into account the unique benefit characteristics of apprenticeship and training plans but be guided by *ERISA*’s exclusive purpose fiduciary rule. Investigators should evaluate whether specific goods or services are *reasonable*

expenses of administering an apprenticeship or training plan that provide benefits in the form of on-the-job and classroom instruction plus materials to apprentices. For example, *modest meals* provided by the plan for attendees at instruction programs, in some cases, may be *reasonable expenses closely associated* with providing training benefits under the plan.

In what should serve as a warning, the *FAB* notes that potential violations may be more prevalent in apprenticeship and training plans that lack written expense policies and internal controls. According to investigative reports, these abuses include lack of oversight of plan vehicles, equipment and other inventory; unreasonable instructor salaries and bonuses; employee meal stipends that are excessive or not reasonably related to the provision or promotion of the plan's training program; and payments for staff holiday parties, flowers, and donations to charitable, non-profit organizations, scholarship and memorial funds.

The *FAB* emphasizes that *ERISA* plan fiduciaries, should establish and implement adequate internal accounting, recordkeeping and administrative controls designed to prevent inappropriate, excessive, or abusive expenditures of plan assets.

Trustees and administrators of apprenticeship and training plans should review the plan's written policies and draft policies where there are none. Where the plan has written policies on expenses, etc., a self-check to see if the policies are being adhered to would also be prudent. This would also be a good time to review the policies with plan staff and make sure everyone has the same understanding of plan policies and procedures. Finally, having an annual or biannual review of policies to keep such policies current with evolving law and practice would seem like a wise practice.

The Department's Office of Labor Management Standards has published a list of some internal controls that may be useful for apprenticeship and training plans to consider that is available at: www.dol.gov/olms/regs/compliance/internal.htm or by "[clicking here](#)."

For prior Research Department issues on the apprenticeship and training plan audits see [Client Bulletins 2011-63](#) and [2011-76](#).

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