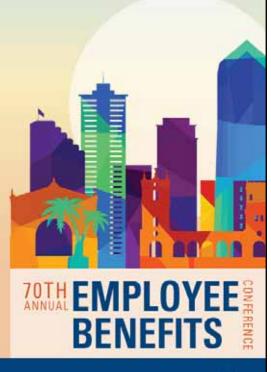
# **DOL Audits of Apprenticeship Funds**

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# Agenda

Fiduciary Status
Effective Training
Structure and Tax Status
Annual Filing Requirements
Best Practices and Internal Controls
Common Trustee Reports
Recommended Policies

#### Fiduciary

1) n. from the Latin fiducia, meaning "trust," a person (or a business like a bank or stock brokerage) who has the power and obligation to act for another (often called the beneficiary) under circumstances which require total trust, good faith and honesty. The most common is a trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators of estates, real estate agents, bankers, stockbrokers, title companies or anyone who undertakes to assist someone who places complete confidence and trust in that person or company. Characteristically, the fiduciary has greater knowledge and expertise about the matters being handled. A fiduciary is held to a standard of conduct and trust above that of a stranger or of a casual businessperson. He/she/it must avoid "self-dealing" or "conflicts of interests" in which the potential benefit to the fiduciary is in conflict with what is best for the person who trusts him/her/it. For example, a stockbroker must consider the best investment for the client and not buy or sell on the basis of what brings him/her the highest commission. While a fiduciary and the beneficiary must be primary, and absolute candor is required of the fiduciary. 2) adj. defining a situation or relationship in which a person is acting as a fiduciary for another.

# **Effective Training**

- Communicate
  - Employers
  - Union(s)
  - Participants
- Stay current on licensing
  - Instructors
  - Students
  - Jurisdictional

- Allow ample time
  - Preparation
  - Class time
- Monitor
  - Legislation/technology
  - Skills
  - Licenses
  - Demographics

#### **Reaching Students**

- Balance class time
  - Lectures, practical, textbooks
- Utilize several different delivery methods
  - PowerPoint, whiteboard, textbooks, charts, graphs, narratives, questions, vendors, videos and examples
- Utilize guest speakers knowledgeable on the subject area
  - Employers, sales and business representatives, experienced tradespersons
- Refer to real life experiences whenever possible
- Grades should be based on more than TESTS
  - Quizzes, written exercises and practical exams

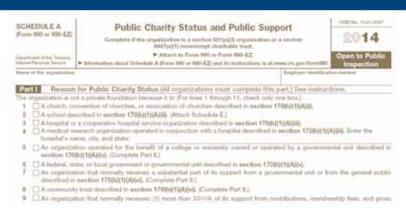
## Structure and Tax Status

- Common IRS Classifications
  - 501(c)(3)—Charitable
  - 501(c)(9)—Welfare Benefit Fund
  - 501(c)(5)—Union
    - School (170(b)(1)(A)(ii))
- Exemption from taxes
  - Income tax (always)
  - Use tax (school sometimes)
  - Sales tax (school sometimes)
  - Real estate taxes (school sometimes)
  - Deductibility of Donations to 501(c)(3)s



# Are You a "School" (170(b)(1)(A)(ii))?

- How to find out
  - Review tax determination paperwork
  - Review IRS Form 990 (Schedule A)
- What "schools" need to do
  - Have a non-discriminatory policy
    - Include a non-discriminatory policy in all written communications
    - Publish policy annually (local newspaper or on-line (Rev Proc 2019-22))
  - Must maintain
    - Records indicating racial composition of students and faculty
    - Copies of all catalogues, brochures and other communications with public
    - Copies of material used to solicit contributions



# **Filing Requirements**

#### • IRS

- 990 (Must)
- W2s and 941s (Employees)
- 1099Misc (Non-Employee Compensation)
- 1095C
- Department of Labor
  - 5500 (If exemption not obtained)
  - Scholarships
  - T-1?

#### • Other

- Charities filings
- Donation acknowledgments
- Grant/donor requisitions
- Audit of financial statements (Single/yellow book)



# Form T-1 (Report of Trusts)

Г

| December 2002           | Proposed                                        |   |
|-------------------------|-------------------------------------------------|---|
| October 2003            | Final rule established                          |   |
| July 2007               | Rule vacated via AFL-CIO vs. Chao               |   |
| March 2008              | Revised T-1 proposed                            |   |
| December 2008           | Final rule implemented (effective for 2009)     |   |
| July 2009–February 2010 | Extension, Public hearings, Proposed rescission |   |
| January 2011            | Rescinded                                       |   |
| May 2019                | Federal Register Proposes T-1                   |   |
| March 2020              | T-1 Becomes law                                 |   |
| March 2021              | 12 Month non-enforcement policy established     |   |
| December 2021           | Rescission (For now)                            | - |

- Controls over disbursements
  - Prohibit acceptance/disbursement of cash
  - 2 *manual* signatures
  - Approval of ACH/wire transfers
  - Verification that materials are received
  - Invoice approval process
  - Independent review of bank statements
  - Independent review of payroll
  - Do not pay your own credit card bill or expense reimbursement



#### **Budgets**

- Prepare and use budgets
  - A budget is a roadmap that everyone agrees on. It sets the anticipated general direction of the organization with input from appropriate individuals.
  - Start with past experience
  - Always compare budget to actual
  - Consider initiatives and changes in funding
  - Consider reserve levels
  - Operating Budget vs. Capital Budget
  - Consider discretionary expenditures
  - Do not get lost in the weeds!
  - Will not be exact, does not anticipate unknown crisis or emergency



- Document necessity of autos and related costs
  - Be sure income includes "Personal Use Auto"
- Receipts should be obtained for ALL expenditures
  - All meals should have a business purpose
- Consider Summary Plan Descriptions
- Director Expenditure Policy
- Travel Policy
- Acquisition Bid Policy
- Apprentice Insurance Policies



- Other items for which documented approval should exist (with limits and amounts)
  - Salaries
  - Conferences
  - Major purchases
  - Hotel/mileage reimbursements to apprentices
  - Graduation expenses
  - Marketing/promotional expenses
    - Contain Fund name
    - Consider cost sharing



- Maintenance of participant/class information
  - Certifications/Graduations
  - Composition (males, females, ethnicity)
  - Lists of classes held (including attendance and instructors)
  - Class attendance
  - Test grades
  - Grant requirements



## Things to Avoid

Charitable donations Holiday parties Golf outings Personal use of plan assets Extravagant graduation ceremonies Non-accountable expense plans



#### **Contracts and Agreements**

- Contracts
  - Current contracts should be maintained for ALL service providers. Details of hourly rates and items covered in/out of retainers should be detailed.
    - Accounting, legal, investment management, custodial
- Leases
  - Should be maintained for all rental agreements.
  - FMV considerations.
  - Leases should be negotiated by non-conflicted persons.
- Cost sharing arrangements with affiliated entities
- Participation agreements with related Trust Funds
- Grants



#### **Recommended Policies**

- Travel/expense reimbursement policy
- Director expense payment policy
  - Pre-approved
  - Less than specified threshold
  - Require authorization
- Investment policy (guidelines)
- Credit card usage and approval policy
  - Establish users, limits and terms of use





#### **Recommended Policies**

- Document retention and destruction
  - Requirements (IRS, DOL, Employment, Statute of limitations)
  - Considerations
    - Types of records
    - Retention periods
    - Records to be maintained indefinitely
    - Records which may be destroyed after a certain time
      - Specific period
      - After expiration of contract/agreement/sale
    - Notification of destruction to responsible parties
    - Litigation hold



#### **Common Trustee Reports**

- Directors report
  - Meetings and conferences
  - Status of initiatives
  - Approvals (conferences, pay rates, new equipment)
- Financial
  - Annual budget
  - Balance sheet
  - Income Statement (P&L)

- Class attendance
  - Contact hours
  - Apprentices vs. Journeymen
  - Absences (excused and unexcused)
- Apprentice status
  - Demographic



### **Cybersecurity Best Practices**

- Train employees on the risks of cybersecurity.
- Use virtual private networks (VPNs) when not in the office.
- Validate Remote Access—Multi-factor authentication is a must!
- Ensure all software is up to date (including antivirus and antimalware).
- Disable all non-essential ports.
- Consider penetration testing.
- Consider cybersecurity insurance.
- Verify backups exist and are functional.
- Be prepared to quickly detect and act.
- Passwords should be confidential, substantial and changed.

| Email Statistics [inbound] Help |           |       |      |  |
|---------------------------------|-----------|-------|------|--|
|                                 | Total     | Day   | Hour |  |
| Blocked                         | 6,464,482 | 6,499 | 156  |  |
| Blocked: Virus                  | 34,062    | 12    | 0    |  |
| Rate Controlled                 | 16,234    | 0     | 0    |  |
| Quarantined                     | 38        | 0     | 0    |  |
| Allowed: Tagged                 | 430       | 0     | 0    |  |
| Allowed                         | 949,327   | 659   | 58   |  |
| Total Received                  | 7,464,573 | 7,170 | 214  |  |

# Key Takeaways

- Establish and monitor internal controls
- Implement best practice policies
- Utilize budgets
- Obtain and document approvals
- Understand reporting requirements
- Communicate with employers, unions and participants

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Session Evaluation

