

DOL Audits of Apprenticeship Funds

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International Foundation
OF EMPLOYEE BENEFIT PLANS 

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 may join together in a business venture or a purchase of property, the best interest of 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

The image shows a portion of IRS Form 990, Schedule A, titled "Public Charity Status and Public Support". It includes the following text:

SCHEDULE A
(Form 990 or 990-EZ)

Public Charity Status and Public Support
Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.
▶ Attach to Form 990 or Form 990-EZ.
▶ Information about Schedule A (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

Department of the Treasury
Internal Revenue Service

2014
Open to Public Inspection

Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.
The organization is not a private foundation because it is: (For lines 1 through 11, check only one box.)

- A church, convention of churches, or association of churches described in section 170(b)(1)(A)(i).
- A school described in section 170(b)(1)(A)(ii). (Attach Schedule E.)
- A hospital or a cooperative hospital service organization described in section 170(b)(1)(A)(iii).
- A medical research organization operated in conjunction with a hospital described in section 170(b)(1)(A)(iv). Enter the hospital's name, city, and state.
- An organization operated for the benefit of a college or university owned or operated by a governmental unit described in section 170(b)(1)(A)(v). (Complete Part II.)
- A federal, state, or local government or governmental unit described in section 170(b)(1)(A)(vi).
- An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in section 170(b)(1)(A)(vii). (Complete Part II.)
- A community trust described in section 170(b)(1)(A)(viii). (Complete Part II.)
- An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross

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)

Reporting receipts and disbursements of any Trust a Union is interested in

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...)



Best Practices and Internal Controls

- 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



Best Practices and Internal Controls

- 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



Best Practices and Internal Controls

- 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



Best Practices and Internal Controls

- 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

