

Operational Policies for Your Apprenticeship Training Fund

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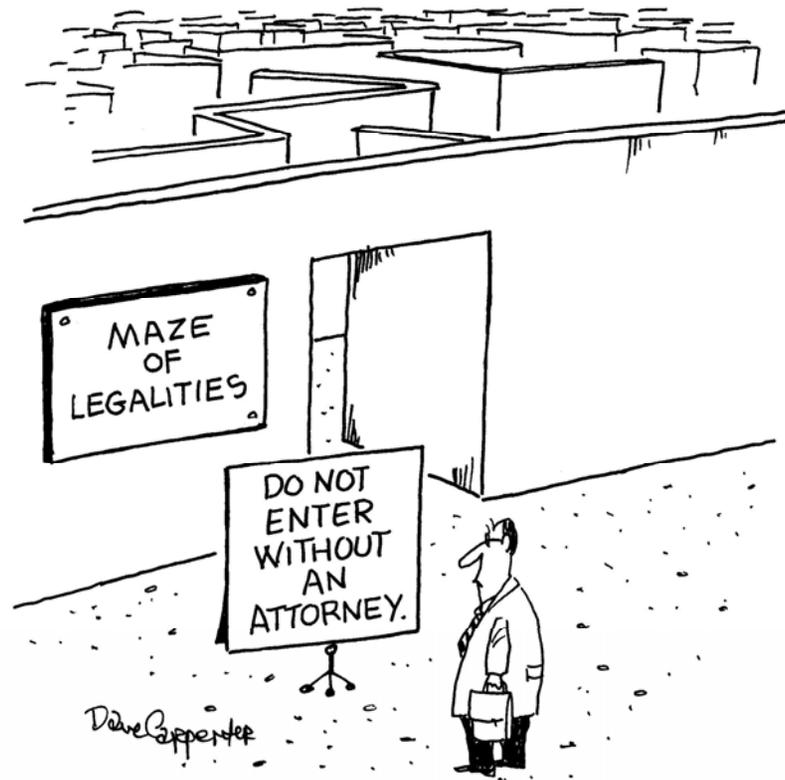
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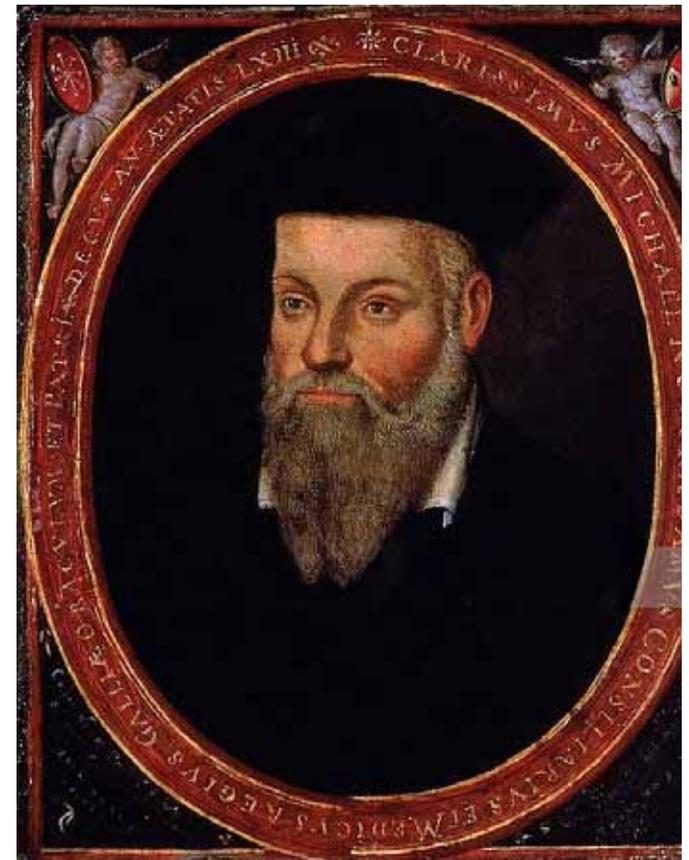
Opening Thoughts



Opening Thoughts

- In this session and at this conference, you will be given and hear A LOT of information
- While your duty as fiduciaries is the highest in the law, it does not require possession of a crystal ball!*
- Process matters as much and, in many instances, MORE so than the result

*If you have one, however, see me after class; let's talk...



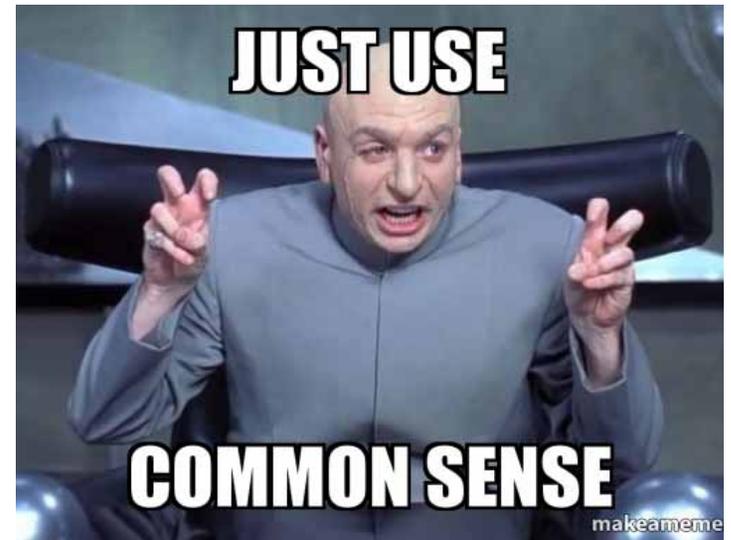
Not Too Hot...Not Too Cold...

- When it comes to content—Not too much, not too little
- You want sufficient detail to address the issue at hand, but not so much that you hem yourself in or make a policy too complex to follow
- **Whatever you write down—
Remember you are stuck with it!**



Golden Rules

- Not too much, not too little
- Be practical
- Use common sense in drafting and in practice
- Follow these rules, and 99% of the time you will end up ok!



Top Policies for Training Funds

- Trustee expenses
- Cybersecurity
- Credit cards
- Vehicles
- Harassment and whistleblower
- Record retention
- Enabling (expenditures requiring ratification, not trustee approval)
- Disability self-identification

Trustee Expenses—Key Components

- Trustee expenses are a target-rich environment for regulatory audits
- Travel and conferences (what is covered, what is not)
 - Food and beverage (mostly covered)
 - Hotel and incidentals (mostly covered)
 - Airfare/rental cars (mostly covered)
 - Friends and family (not covered)
 - Personal entertainment (not covered)

Trustee Expenses—Key Components

- If you have multiple funds involved, endeavor to have one policy for all funds, as often trustees attend on behalf of various funds
- For educational conferences, require an attendance certificate!
- Remember the rules on content—Not too much, not too little. Be practical!

Trustee Expenses—Key Components

- Process for review and appeals
 - First level typically with administrator
 - Uniform application for reimbursement submissions
 - Second-level Trustee, joint committee or full board + legal counsel
- Distribution to Trustees
 - Hard to enforce the unknown
 - **Best practice: Distribute copies to attending trustees before each conference**

Cybersecurity

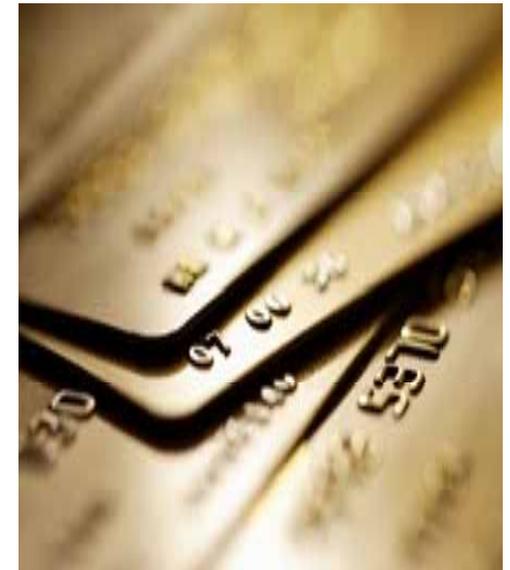
- Mirror DOL best practices—These are largely borrowed from the NIST Model
- Training plans with common providers can often piggyback on the surveys being done for sister plans (pension, health, etc.) to lower the costs of annual surveys and compliance
- **Keep in mind, not all providers are equal in terms of risk**

Cybersecurity

- Document your findings, but remember these are best practices, not regulations that carry the force of law
- Approaches on this topic do vary, most plans will send surveys or questionnaires, collect generic audit reports (SOC-2 etc.) and verify insurance
- On-site or fund-retained third parties to do virtual or physical verification of controls carry significant risk to both the fund and the entity being tested—If you take this approach, proceed carefully

Credit Cards

- To have or not to have? Board decision, but typically cards will be limited in spend
- Lay out permitted uses, documentation required to substantiate expenses
- Review process is critical to ensuring expenses are valid; user should sign off on policy and bill



Vehicles

- Some plans may reimburse auto and associated insurance; others will pay for and own the vehicles
- Basic requirements will include detailing permitted usage, requirement to have a good driving record, verification of license status
- **If the employee with the car gets to use it for personal use, this needs to be accounted for on the W-2!**

Vehicles

- Have rules on replacement of vehicles, particularly if the vehicle was purchased
- Private sales may generate slightly more money, but creates risks for the Fund, especially if the buyer is a party in interest or affiliated with a party in interest
- **Best practice: Require the sale to a licensed dealership with proceeds towards the replacement vehicle, or if no vehicle is replaced, the money goes back to the fund**

Harassment

- Particularly for a school with instructors and students, this is an important policy to have
- Prohibit harassment, give examples of what you mean, and make sure it applies to everyone
- Inform employees and apprentices that this is a disciplinary issue up to and including termination

Harassment

- Assure complainants that they will not be punished for good faith complaints (No retaliation)
- Keep investigations confidential to the extent possible
- Give complainants a choice of who receives the complaint

Harassment

- Ensure there is an alternate method of reporting in case the individual designated is the harasser
- Alternate options in lieu of the coordinator or instructor could be the board of trustees or a committee with labor and management representation
- **Best practice: Distribute the policy regularly, and hold initial training sessions about the policy**

Whistleblower

- Another 'check a box' on the Form 990, so best to have one in place
- Key elements of this policy will be protection for the whistleblower and again, an alternate reporting method. Can mirror what you adopt for the harassment policy
- **Best practice: Distribute the policy regularly, and hold initial training sessions about the policy**

Record Retention

- Retained records will broadly fall into a few categories:
 1. Records required to be kept under ERISA and the Internal Revenue Code
 2. Records DOL/EBSA required related to the operation of the apprenticeship program
 3. If you are receiving grants, related records on expenditures and distribution of those funds

Record Retention—General Guidelines

- Most documents will have a shelf life of around 6 years under ERISA, perhaps varying somewhat by state for other documents related to state law claims or property
- Tax records are often kept slightly longer, perhaps 7 years, particularly for certain investments
- Your trust document, amendments to it, determination letter and by-laws should be permanent records

Record Retention—General Guidelines

- Personnel records, contracts, bank statements, time records, ledgers, internal financials, inventory records, vendor documentation—Again in most instances, 6 years will be sufficient, but check state laws if a longer period may be required
- If you have a professional third-party administrator, many of these records will be electronically stored on a permanent basis in any case

Enabling Resolution

- Trustees typically will not want to have to approve each minor expenditure in real time
- Enabling resolutions allows for a set amount to be spent by say the training director or coordinator, which can then be ratified at fund meetings
- These policies often also set forth rules on bid requirements for capital improvements, or actions that subordinate bodies can take in regional or statewide funds with multiple schools

Disability Self-Identification

- EEOC requires that programs required to develop an affirmative action plan (those with five or more apprentices) develop a self-identification procedure
- An invitation to self-identify as disabled must be done:
 - 1) During application to the program;
 - 2) Upon acceptance, and
 - 3) Annually thereafter
- DOL has a model form that must be used for this purpose

Disability Self-Identification

- Plan can provide information about reasonable accommodations for ADA-qualifying disabilities
- Individuals with an ADA-qualifying disability then are to request an accommodation, rather than the program seeking them out for it
- Submitted forms must be kept separately from personnel files, and individuals involved with intake/interviewing, dispatch, supervision or testing may not be provided with the disclosure form

Key Takeaways

- Follow the Golden Rules—Practical, common sense and the Goldilocks rule
- Distribute policies frequently, cannot enforce the unknown
- Update policies as needed and as circumstances call for it
- Good processes and common sense will 99% of the time keep you out of trouble



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