

**FIELD ASSISTANCE BULLETIN NO. 2014-02**

DATE: December 8, 2014

MEMORANDUM FOR: MABEL CAPOLONGO, DIRECTOR OF ENFORCEMENT
REGIONAL DIRECTORS

FROM: JOHN J. CANARY
DIRECTOR OF REGULATIONS AND INTERPRETATIONS

SUBJECT: SUPPLEMENTAL FAQs ON APPRENTICESHIP AND
TRAINING PLAN EXPENSES – SKILLS COMPETITIONS

Field Assistance Bulletin (FAB) 2012-01 provides guidance to EBSA enforcement personnel on the use of plan assets by apprenticeship and training plans to pay for graduation ceremonies and advertising. Following the issuance of that guidance, we received questions on the application of the principles set forth in the FAB to the expenditure of plan assets on apprenticeship skills contests or competitions. Accordingly, we are issuing the following supplemental guidance to address those questions and to promote consistency among the Regional Offices in their enforcement positions on these issues.

Background

Apprenticeship contests or competitions allow apprentices and trainees to test and develop their skills in various elements of their trades, such as masonry, electrical work, carpentry, plumbing and pipefitting, ironworking, and HV/AC-R. The events often require application of the skills acquired through the apprenticeship program. Typically, experts score the participants' work based on standards in the trade. Competitions may be local, regional, national, or international. Frequently, the events require out-of-town travel by competitors and instructors. Apprenticeship and training plans often pay for the competitors' travel, lodging, meals and awards, as well as other expenses associated with organizing or conducting the contest.

Apprenticeship and training plans established by employers or labor organizations are "employee benefit plans" under ERISA and subject to the Act's fiduciary standards. As explained in FAB 2012-01, the structure and operations of apprenticeship and training plans may differ from that of other ERISA plans, but the plan fiduciaries must still abide by the general fiduciary standards in Part 4 of ERISA. ERISA section 404(a)(1) provides that a plan fiduciary shall discharge his duties solely in the interest of the participants, prudently and for the exclusive purpose of (1) providing benefits to participants and their beneficiaries, and (2) defraying reasonable expenses of administering the plan.

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 training program. In every instance, a plan must be able to justify expenses as appropriate means of carrying out their mission as benefit plans. 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. Moreover, expenses should be permitted under the terms of the plan, and approved by a responsible plan fiduciary in accordance with internal accounting, recordkeeping, and administrative controls designed to prevent inappropriate, excessive, or abusive expenditures of plan assets.

Applying these standards, FAB 2012-01 explains that expenditures for graduation ceremonies and advertising are permissible under certain circumstances. It directs DOL investigators to address the expenditures on a case-by-case basis, taking into account the purposes and characteristics of these plans. FAB 2012-01 describes general principles for determining whether the expenditures are consistent with ERISA's standards.

Q 1. On what basis may an apprenticeship and training plan pay for participation in a skills competition or contest?

Apprenticeship plans provide training and apprenticeship opportunities to plan participants. Competitions can promote the plan's legitimate goals both by directly providing training benefits to plan participants and by helping plan fiduciaries assess the effectiveness of their plan's training programs. Where this is the case, it is the Department's view that plans may treat the necessary costs of a plan's engagement in competitions as costs of administering the plan. In accordance with ERISA section 404(a)(1)(A), the plan may defray such costs where they are permitted under the terms of the plan, in the plan's interests, and are reasonable. Such expenses also should be approved by a responsible plan fiduciary in accordance with internal accounting, recordkeeping, and administrative controls designed to prevent inappropriate, excessive, or abusive expenditures of plan assets.

Thus, for example, a plan may pay reasonable expenses properly and actually incurred on behalf of apprentices participating as contestants in the skills contest, such as transportation to and from the competition, registration fees, along with accommodations and meals, if necessitated by out-of-town travel. A plan may also pay lost wages of the apprentices due to their absence from employment while participating in a competition.

Prizes for apprentices competing in the skills contest would be a permissible plan expense. The prizes should be consistent with the training purposes of the plan, which may include, for example, credits to cover plan-related tuition expenses or tools and equipment used in the trade. The amounts spent on such prizes would not be subject to the modest amount limitation applicable to gifts to recognize people who assist in organizing or conducting competitions (see discussion below), but should be reasonable in light of the financial situation of the plan and other relevant circumstances (such as the size and level (e.g., local, regional, national, international) of the competition), or could be donated in whole or in part by industry employers or trade associations.

A plan also may pay reasonable travel expenses of individuals other than apprentices (e.g., instructors) if they play a necessary role in the conduct of a competition (e.g., setting up the contest site or serving as judges). It may also be permissible in certain circumstances to pay for plan trustees or other plan officials to attend and observe the competition in order to assess possible improvements in the plan's training program. The approving plan fiduciary should ensure that any such observers have adequate experience to make an informed evaluation.

Use of plan assets to pay travel expenses for other plan officials, employer or union officials, or guests of contestants (including families) to attend and merely spectate would not be permissible. Similarly, it would

not be consistent with the prudence and exclusive purpose requirements of ERISA for a plan to pay for hotel accommodations and meals for days outside of the competition itself unless associated with necessary travel to and from the competition.

Q 2. May plan fiduciaries use plan assets to pay for expenses associated with organizing and conducting apprenticeship and training plan skills competitions?

Yes. Expenses for organizing or conducting competitions are permissible where (1) they are reasonable in light of the role played by the competition in supporting the training program; (2) they are approved in accordance with the terms of the plan and internal accounting, recordkeeping, and administrative controls designed to prevent inappropriate, excessive, or abusive expenditures of plan assets; and (3) the amount of the expense is reasonable in proportion to the amount of funds expended on the delivery of the primary apprenticeship and training benefits and is for costs of the competition.

Conducting and organizing a competition may require the expenditure of plan assets on the venue for the competition, travel, transport of necessary equipment, and communications to plan participants about the event. Gifts to those who assist in organizing or conducting competitions of modest value (e.g., \$25 gift cards) would be permissible.

Similarly, modest expenses for T-shirts and similar apparel that bear the logo of the plan could serve a legitimate plan purpose of promoting and marketing the apprenticeship program. Further, promotional advertisement of a competition in order to encourage the participation of apprentices and the support of employers also would be consistent with this purpose.

The prohibited transaction provisions of ERISA section 406(b) prohibit a fiduciary of a plan from dealing with the assets of a plan in his own interest or own account. Thus, fiduciaries involved in the decision for the plan to conduct or participate in a contest may not benefit themselves through the expenditure of plan assets related to that contest beyond the reimbursement of direct expenses related to organizing or participating in the conduct of the contest.

Q 3. What travel expenses are permissible for apprentices and these other individuals?

Assuming compliance with the above general principles, in the Department's view, permissible plan expenses would include the reasonable costs of meals, travel (e.g., airfare), and accommodations. Costs attendant to such travel, such as reasonable expenses for transportation from the airport to the hotel or competition site and return, baggage fees, airport parking or shuttle fees, and shipping costs for tools, equipment, and supplies necessary to conduct or compete in the contest generally would be permissible plan expenses. Alternatively, a plan could reimburse some travel expenses by using a reasonable "per diem" amount.

Competitions may sometime include a celebratory meal to recognize participants, judges, volunteers, and organizers, and to present awards to the contest winners. In general, if a plan was paying authorized attendees per diem expense in connection with their travel to participate in the competition, a plan could use those funds to cover the costs for those individuals to attend such dinners. Plans would have to deduct that amount from the meal or per diem reimbursement that they would otherwise pay to the apprentice or other authorized attendee. In other cases, for example, where the skills competition is local and attendees, therefore, are not receiving per diem expense, the standards articulated in FAB 2012-01 for use of plan

assets to pay for graduation ceremony expenses would apply to the use of plan assets to pay for such an awards dinner.

Permissible plan expenses would not include, for example, the costs associated with the personal itinerary of such participants such as hotel, meals or travel accommodations for days not associated with necessary travel to or from the competition or during the competition itself, or costs to upgrade travel tickets or hotel rooms (e.g., from coach to business class).

Q 4. May an apprenticeship or training plan reimburse employers for the wages paid by employers to participants during the competition?

In some cases, rather than paying the apprentice directly for lost wages due to participation in a skills contest, the plan may instead reimburse employers who agree to pay plan participants their wages and make related benefit plan contributions for time away from work to take part in a contest. Such reimbursements are permissible if they are made pursuant to a clear agreement arranged in advance, cover only the compensation the employer pays while the apprentice is absent from work to participate in the competition (excluding any overhead or other employer costs), the employer has no separate legal obligation to pay such compensation or make such contributions, such as for example, under a collective bargaining agreement, and the amount reimbursed is reasonable. In such circumstances, the employer, in effect, would be providing payroll services to the plan and receiving reimbursement for its direct expenses in providing that service. Prudent plan management would require sufficient internal accounting, recordkeeping, and administrative controls to prevent inappropriate, excessive, or abusive expenditures of plan assets.