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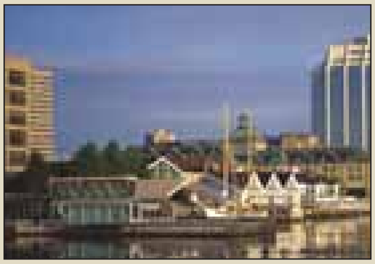

Trustee Expenses—

What Plan Personnel Need to Know

by Kathleen M. Jackson

Why should a plan have a trustee expense reimbursement policy? Learn what trustee expenses are acceptable to be reimbursed by the plan. Trustees have a burden to substantiate a reimbursable expense and determine that those expenses are reasonable. The Department of Labor (DOL) and the Internal Revenue Service (IRS) usually review trustee expenses during an audit of the plan. This article will assist plan personnel in understanding trustee-reimbursed expenses and expense reimbursement policies.

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Trustee Expenses—What Plan Personnel Need to Know

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The reimbursement of trustee expenses can become a problem if not handled correctly. Under the Employee Retirement Income Security Act (ERISA), a trustee may receive reimbursement of reasonable expenses that are properly and actually incurred in the performance of the trustee's duties with the plan. DOL regulations define *reasonable* as depending on the particular facts and circumstances of each case. The expense must be in the interest of the participants and beneficiaries and not for the personal benefit of the trustee or any other fiduciary.

Expense Reimbursement Policy

A plan should have a written expense policy that is adopted by the board of trustees. The plan auditor, counsel and administrator should assist the trustees in developing a written policy. The policy supports the rationale for the plan's payment of certain categories of expenses. The policy should address the fact that a written receipt for all expenses incurred should be maintained. A generic receipt or credit card statement alone may not be sufficient. If a receipt is missing, efforts should be made to obtain a duplicate receipt from the restaurant, hotel or airline.

It is extremely important that proper documentation be noted on receipts submitted with the expense report. The receipt should include the five **Ws**—**who** was in attendance, including the business relationship of those persons; **what** was the nature of the expense; **when** the meeting was held; **where** the meeting was held; and **why** the meeting was held, or the business purpose of the meeting, including subjects discussed. This documentation should be noted on the credit card receipts and maintained along with the statements as part of the expense reimbursement support. If original receipts are not submitted with the expense report, or submitted without the required documentation, reimbursement may be denied to the trustee. A time limit should also be established, in which the trustees should provide a written itemized expense report to the fund administrator.

A standard expense report form should be used to document those expenses requiring reimbursement. The International Foundation of Employee Benefit Plans has a sample of a trustee expense voucher available on its Web site at www.ifebp.org.

Reimbursable expenses should not include expenses of a personal nature or expenses that do not relate to business of the plan. Some examples of nonreimbursable expenses are golf, massages, in-room movies or rental of a fishing boat.

The trustee expense reimbursement policy may require the auditor, during the plan's annual audit, to review trustee-reimbursed expenses to ensure that proper documentation is included and that the expenses are reasonable in accordance with the policy.

A sample list for expenses to be addressed by the policy might be as follows:

- Lodging expenses
- Meal and entertainment expenses
- Travel by public transportation (common carrier)
- Other out-of-town travel
- Automobile rental
- Taxi fares
- Parking and toll expenses
- Telephone
- Miscellaneous/other expenses.

The propriety of various expenses depends upon the policy adopted by the board of trustees. Trustee reimbursement policies should address several items.

Reimbursements

Trustee reimbursement policies should require each trustee to submit a written itemized expense report within a reasonable time period after the expense was incurred. A reasonable time period is as soon as practicable, normally within 30 days of the event absent unusual circumstances. Original receipts with proper documentation should be provided to support all items on the expense report. IRS does not require receipts for expenditures under $75. DOL, however, has not adopted this standard and thus may require receipts for all expenditures. A safe rule is to require receipts for all items for which receipts are customarily and reasonably available. For example, in the case of tips to a doorman or bellhop, a receipt is not usually available. However, a contemporaneous record should suffice (a

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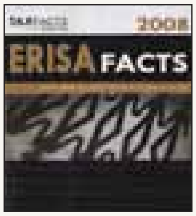

Frank J. Bitzer and Nicholas W. Ferrigno Jr. (National Underwriter Company). 808 pages. Item #8709. $51 (I.F. Members $49). For more book details, see www.ifebp.org/books.asp?8709.

ERISA: The Law and the Code

Sharon F. Fountain, editor. (BNA Books). 950 pages. Item #8734. $147 (I.F. Members $140). For more book details, see www.ifebp.org/books.asp?8734.

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record of the date, amount and purpose completed by the one being reimbursed). Cab drivers almost always provide receipts upon request.

Per diems are amounts paid to a plan trustee that the trustee need not account for or reimburse. Per diems are generally unacceptable to DOL because of the requirement for reimbursement of actual documented expenses.

Educational Conferences

Educational conferences designed to better enable a trustee to perform his or her duties are a part of a trustee's fiduciary duties. Payment for reasonable expenses incurred by a trustee who attends educational conferences is allowable. The trustee expense reimbursement policy should address obtaining approval from the board of trustees. The policy may limit the number of conferences a trustee may attend on an annual basis. If the same conference is being held in multiple locations, the trustee should attempt to attend the location closest to home. The policy may include a requirement that the trustee submit the certificate of attendance.

Travel

The plan can properly reimburse a trustee for actual reasonable expenses via airline or automobile travel. This policy may provide that boarding passes and e-ticket receipts from the air travel accompany the expense report. These documents will substantiate that the ticket claimed as air travel was actually used. If travel is by automobile, reimbursement in the amount of each mile driven at the applicable IRS rate is allowable. The standard mileage rate is currently $0.505 per mile. Normally, however, the amount reimbursed for mileage should not be greater than the cost of airline travel, unless unusual circumstances arise such as medical reasons. Proper accounting is required before mileage is reimbursed.

First-class airfare is usually not a reasonable expense reimbursable under the plan. However, if the plan's written reimbursement policy allows for first-class airfare, documentation of the facts and circumstances under which first-class travel would be permitted and the reasons why it is necessary should be maintained by the plan.

Car rental at the meeting site generally should require chairperson approval based on facts and circumstances such as economy.

Lodging

Actual cost of lodging is reimbursable at single occupancy rates, provided that proper receipts are submitted with the expense report. The difference between single and double occupancy rates, if any, is considered a personal expense. The hotel should not be extravagant and should be located close to the meeting site. A reasonable expense is for a comfortable and safe room near the location of the meeting or educational conference.

Reimbursable expenses may be incurred for meeting days, as well as one day traveling to and one day traveling from the meeting.

Meals

Only the reasonable cost of meals for a trustee may be reimbursed. Expenses for meals for spouses, family and other guests are not reimbursable expenses. A practice at some conferences is for one trustee to pay for a meal for a trustee of another plan, and in exchange, the trustee of the other plan will pay for a meal on another day. Neither trustee should be reimbursed for the meal expense of a trustee from another plan. These are not expenses related to the plan paying for the expense reimbursement.

Lost Wages

A trustee may in some circumstances also be reimbursed for lost wages as a result of attending an educational conference. The plan, however, can only reimburse nonsalaried, hourly employees for straight time wages actually lost due to their attendance at a trust event or educational conference. Plans cannot reimburse a trustee who is already compensated for his or her time spent on trustee business, whether it is attendance at a meeting or an educational conference.

Meeting Location

If those attending a plan meeting travel from different parts of the United States, there is no specific meeting site that must be favored. However, in selecting a meeting location the trustees must be aware of the relative costs of the various locations. The trustees do not have to choose the least expensive location, but they should compare the costs of a few locations with that of holding the meeting at the fund office. Meals and hotel rooms associated with the meeting location should be reasonable.

If the trustees are located within a single region or city, the plan meeting should be held in that city or region, unless reasonable circumstances for holding the meeting elsewhere can be documented.

Per Diem and Advances

Per diems are amounts paid to a plan trustee that the trustee need not account for or reimburse. Per diems are generally unacceptable to DOL because of the requirement for reimbursement of actual documented expenses.

Expense advances can be made prior to a meeting or conference. Most policies will not permit a trustee to receive an advance more than 30 days prior to the departure date. The expenses for which an advance is used must be documented as soon as possible after the meeting, and any excess funds must be returned to the plan.

ERISA prohibits the extension of credit to a trustee. However, DOL regulations permit advances if three conditions are met:

1. The expense is incurred in the immediate future, such as within the next month.
2. The advance is to cover direct expenses properly and actually incurred in a reasonable amount.
3. The trustee accounts to the plan at the end of the period covered by the

advance for the expense properly and actually incurred and returns any excess to the fund.

The amount of the advance should be reasonable with respect to the direct expenses that are likely properly and actually incurred by the trustee during the period covered by the advance, provided that an expense reporting is made to the plan for expenses actually incurred and refunds are made for any monies advanced in excess.

Unused portions of the advance that are not reimbursed by a trustee in a timely manner may become an extension of credit by the plan, which is a prohibited transaction under ERISA.

Furthermore, an expense advance must only be used for the types of expenses that a plan can pay and that are reasonable in amount.

Trustee Compensation

A trustee may receive reasonable compensation from a plan for services rendered to the plan, as well as reimbursement for reasonable direct expenses properly and actually incurred in the performance of plan duties and that are otherwise reimbursed. However, if a fiduciary is already receiving full-time salary from an employer, employer association or union whose members participate in the plan, he or she may not receive compensation but can receive reimbursement for reasonable direct expenses that are properly and actually incurred.

Note, however, if fiduciaries are not already being paid from a union, employer association or employer, they may receive appropriate compensation for services provided to the plan.

Who Cares About Trustee Expenses?

DOL is the federal agency that is charged with administering and enforcing the fiduciary rules under ERISA. DOL reviews trustee expenses during its audits and determines if there is any breach of fiduciary duty. IRS now includes the review of trustee expenses as a part of its audit. An IRS examiner looks for evidence of abuse; for example, spouses accompanying trustees when on plan business at the expense of the plan. IRS is also able to refer any findings to DOL, so the chance that a violation will be detected is increased.

Why Should Plan Personnel Care?

DOL generally will not settle personal claims, paid out of plan assets, that it considers to be improper under the law, without full reimbursement back to the plan. DOL may also require the trustee who has received the benefit of an improper expense payment to pay interest on any amounts paid back to the plan, as well as the 20% penalty required under Section 502(1) of ERISA. Under the Internal Revenue Code, there is a 15% excise tax due on the amount of any such transaction.

Expenses paid out of plan assets must not only be permissible by law, but also reasonable under the circumstances. For example, a hotel room is a permissible expense for a trustee traveling on plan business, but if the amount of the hotel room is excessive or exceeds the amount for a comfortable and safe room near the location of the meeting or the conference, the excess may not be reimbursable by the plan.

The payment of plan assets for expenses that are not reasonable is a prohibited transaction under ERISA. Depending on the circumstances, it could also be construed as a violation of certain criminal statutes applicable to persons dealing with employee benefit plans. Fiduciary insurance usually does not cover criminal defense.

DOL has challenged plan reimbursements to trustees for movies, health club fees, massages, golf, magazines, newspapers, gift shop purchases, cigars, alcohol and toiletries; and, of course, any expenses for spouses, families or guests. Dry cleaning and laundry services are also considered to be personal expenses under most circumstances.

Trustees have a burden to substantiate a reimbursable expense and determine that those expenses are reasonable. There should be an adequate review process in place at the fund office, as a part of the trustee expense reimbursement policy. The fund administrator should ensure that an expense reimbursement form is completed with all receipts attached and that the form is submitted for reimbursement in a timely manner.

Should an employee benefit fund undergo an IRS or DOL audit, rest assured that one of the first items on the document request list will be trustee reimbursements. It is important for a trustee to take the steps necessary for protection by ensuring that the fund has an appropriate expense reimbursement policy that is comprehensive, concise and consistent. **B&C**

Author's note: There may be ERISA considerations where a fiduciary receives a gift, gratuity or other thing of value because of fiduciary status. These considerations are beyond the scope of this article.

This article is for informational purposes only. It is not legal advice. Any policies or questions relating to reimbursed expenses should be reviewed by plan counsel.

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