Gifts From Providers

Committee members must abide by certain rules

Gifts from service providers are problems for plan committee members. By gifts, we mean things like meals, free attendance at conferences, trips, golf outings and tangible items. This is an issue the Department of Labor (DOL) reviews in its investigations, though the DOL investigator will disregard reasonably priced, non-cash items that are worth less than $250 annually—a dollar limit specified, along with other requirements, in the DOL's Employee Benefits Security Administration (EBSA) Enforcement Manual. Under the Employee Retirement Income Security Act (ERISA), larger amounts can lead to fiduciary violations and prohibited transactions—or, in extreme cases, worse.

Before accepting gifts from providers, plan committees need to adopt a formal policy. The policy should prohibit members from accepting gifts above the $250 annual limit, provide an approval mechanism for expense reimbursement to the plan by a service provider for educational expenses, and have a reporting procedure for violations. In addition, records of all gifts from plan service providers should be retained for at least six years.

To make this more concrete and help committees comply with the DOL's rules, here are examples of situations we have encountered in advising clients:

• **A committee member attends a dinner paid for by a service provider to discuss the service relationship.** This is OK, as long as the cost of the committee member's dinner is below the limit. As a best practice, though, committee members should consider paying for their share of the tab.

• **A committee member attends numerous client dinners.** The $250 "insignificant" threshold applies separately to each service provider, but it takes into account all items received from a single provider in a year. Whether this committee member is over the limit depends on the value of the meals and whether they were paid for by multiple service providers or just one.

• **A committee member accepts a small personal gift or token such as an office item with the service provider's name on it.** This should be OK. Accepting a $20 pen, coffee mug or phone charger should not land a committee member in hot water with the DOL. Accepting a $300 golf club is problematic—especially because the value is over $250. One issue with expensive gifts is that the service provider is paid by the plan, yet the committee member receives the gift personally. The obvious question is, is the committee member taking advantage of participant money? In one real-life case, a fiduciary accepted a motorcycle from a service provider, which led to criminal charges by the DOL.

• **A committee member accepts a gift card for $200 from a service provider, but no other gifts during the year.** While under the dollar limit, committee members should never accept cash or cash equivalents such as gift cards. The DOL's Enforcement Manual recognizes "gifts, gratuities, meals, entertainment or other consideration" below the dollar limit, but specifically excludes cash or cash equivalents.

• **A service provider offers to reimburse a committee member for costs of attending its educational conference, the value of which would exceed $250.** This situation requires careful consideration and advance approval by the committee. If the cost of attending the conference would be a prudent expenditure that is expected to benefit the plan—that is, if the subject matter is related to the member's duties—and the amount of the reimbursement is reasonable and isn't likely to compromise the member's impartiality, it should be OK if the committee has a written policy for those reimbursements and has preapproved it. The committee should ensure that accepting the reimbursements would not violate plan terms or the terms of the DOL enforcement policy; that policy states that the committee's decision and the factors it took into account should be in writing—for example, in the committee minutes.

• **Along with the offer described above, the service provider says it will reimburse the committee member and his or her spouse for first-class airfare and an extended hotel stay.** This would not be acceptable. Spousal travel or overly expensive accommodations may lead to DOL enforcement action, as would extended trips where plan business is not the consistent focus.

The DOL has yet to issue formal guidance on the receipt of gifts and other non-cash items by committee members. The source for our comments about the written policy and the $250 threshold is found in the DOL's EBSA Enforcement Manual. Chapter 48 describes the department's Fiduciary Investigations Program, and the issue of gifts is discussed in paragraph 13.

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