

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 81-68A
Sec. 104

AUG 13 1981

Lawrence J. Hass, Esquire
Groom and Nordberg
Suite 450
1775 Pennsylvania Avenue, NW
Washington, D.C. 20006

Dear Mr. Hass:

This is in response to your letter on behalf of the Western Conference of Teamsters Pension Trust Fund (the WCT Plan) in which you have requested the Department of Labor's (the Department) opinion with respect to the application of paragraph (b)(1) of 29 CFR §2520.104b-1 issued under the Employee Retirement Income Security Act of 1974 (ERISA).

Specifically, you have requested that the Department render an opinion that the WCT Plan may distribute certain plan materials¹ by third-class mail without a guarantee of return and forwarding postage. Section 2520.104b-1(b)(1), concerning the manner in which materials are distributed to participants and beneficiaries, provides, in relevant part, that:

Where certain material, including reports, statements, and documents, is required under Part 1 of the Act and this part to be furnished either by direct operation of law or on individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries. Material which is required to be furnished to all participants covered under the plan and beneficiaries receiving benefits under the plan (other than beneficiaries under a welfare plan) must be sent by a method or methods of delivery likely to result in full distribution.... Material distributed through the mail may be sent by first, second, or third-class mail. However, distribution by second or third-class mail is acceptable only if return and forwarding postage is guaranteed and address correction is requested. Any material sent by second or third-class mail shall be sent again by first-class mail or personally delivered to the participant at his or her worksite (emphasis added).

¹ These materials include the summary plan description, information about material changes to the plan, and the summary annual report.

In support of your request you state that the WCT Plan currently receives contributions on behalf of more than 600,000 employees working for more than 15,000 employers in 13 western States. In addition, over 100,000 persons are currently receiving retirement benefits under the WCT Plan. In an effort to reduce the administrative expense of furnishing plan materials to these participants and retirees, the WCT Plan proposes to distribute materials by third-class mail with requests for address corrections and a re mailing by first-class mail of the material to everyone for whom an address correction is received, but without a guarantee of forwarding and return postage on the first mailing. You represent that this proposed method of delivery, when followed by a redistribution of materials by first-class mail upon receipt of an address correction, will considerably reduce the WCT Plan's distribution expenses while continuing to ensure that each participant will receive plan materials to the same extent as would be the case if return and forwarding postage were guaranteed.

Based on the information contained in your letter and supporting documentation, it is the Department's opinion that the distribution of materials by plans to participants and beneficiaries using second or third-class mail without a guarantee of return and forwarding postage where such plans redistribute the materials, upon receipt of an address correction, by first-class mail would be a method of delivery likely to result in full distribution, provided that the regulations of the Postal Service providing that senders may receive address corrections on second or third-class mail as a matter of right on the payment of requisite fees remain in full force and effect.

The Department is aware that this opinion appears to be inconsistent with that portion of section 2520.104b-1(b)(1) which states that "... distribution by second or third-class mail is acceptable only if return and forwarding postage is guaranteed and address correction is requested."

Whether this requirement is to be read only as an example is unclear from the language of the regulation. It is the view of the Department, however, that the requirement is meant to ensure full distribution of material. Accordingly, if, as represented, the proposed method of delivery is as likely to result in full distribution as the method described in the regulation, the proposed method will fulfill the disclosure requirements of section 2520.104b-1.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Morton Klevan
Deputy Administrator
Pension and Welfare Benefit Programs