

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO. 82-21A  
Sec. 104(b)(4), 402(b), 404(a)(1)(D), 402(c)

APR 21 1982

Gerald S. Clay, Esq.  
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Pioneer Plaza  
900 Fort Street  
Honolulu, Hawaii 96813

Dear Mr. Clay:

This is in response to your letter of May 28, 1981, concerning the obligation of your clients, the Trustees of the Glaziers and Glassworkers Trust Funds (the Funds)<sup>1</sup> to provide certain documents to contributing employers under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Trustees of the Glass/Metal Association of Hawaii and Glaziers and Glassworkers Training, Vacation, Health and Welfare, and Pension Funds (the Trustees) are required under ERISA to provide minutes of the Trustees' meetings, the treasurer's reports, audited reports by Certified Public Accountants, and reports submitted to the State and Federal governments to "contributing employers who are not participants or beneficiary parties" in the Funds.

You represent in your letter the following: The employer in question has requested the above-mentioned documents for the period from January 1, 1978 to March 18, 1981, and also for all subsequent periods.<sup>2</sup> The employer is a contributing employer to the Funds in question on behalf of its employees. None of the employees of the employer have made demand upon the Trustees for such reports.

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<sup>1</sup> The Funds consist of the following: Glass/Metal Association of Hawaii and Glaziers and Glassworkers Training Fund; Glass/Metal Association of Hawaii and Glaziers and Glassworkers Vacation Fund; Glass/Metal Association of Hawaii and Glaziers and Glassworkers Health and Welfare Fund; and Glass/Metal Association of Hawaii and Glaziers and Glassworkers Pension Fund.

<sup>2</sup> Although you refer in your letter to an attached Exhibit A with reference to a request for certain documents, no such attachment has been received by the Department.

Section 104(b)(4) of ERISA provides, in relevant part, that the plan "administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies...."

The obligations of the plan administrator under section 104 of ERISA are set forth by regulation at 29 CFR §2520.104b-1(b) as follows:

(b) Fulfilling the disclosure obligation --

(1) 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....

(2) For purposes of section 104(b)(4) of the Act, materials furnished upon written request shall be mailed to an address provided by the requesting participant or beneficiary or personally delivered to the participant or beneficiary.

The above-cited statutory provisions and regulations issued thereunder require a plan administrator to furnish, upon written request, copies of the latest annual report and the accompanying opinion of an independent qualified public accountant (where required as part of the annual report) to participants and beneficiaries. Because the other documents to which you refer in your letter, i.e., minutes of trustees' meetings, treasurer's reports (unless part of the plan's annual report), and reports submitted to State governments, do not necessarily constitute documents specifically delineated in section 104(b)(4) or "other instruments under which the plan is established or operated" within the meaning of section 104(b)(4), it is the view of the Department that such documents are not necessarily subject to the disclosure requirements of section 104(b)(4).<sup>3</sup>

Further, section 104(b)(4) refers only to plan participants and beneficiaries in describing the persons to whom disclosure is to be made. The Department, in Advisory Opinion 79-82A, a copy of which is enclosed, has stated that if information is required to be furnished to a participant or beneficiary under section 104(b)(4), the information must also be furnished to a third party where the participant or beneficiary has authorized in writing the release of the information to

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<sup>3</sup> Of course, if one of the documents should, in fact, constitute an instrument under which the plan is established or operated, it would have to be furnished in accordance with the terms of section 104(b)(4). For example, the minutes of a trustees' meeting which establishes a claims procedure or does any of the things described in section 402(b) and (c) of ERISA would have to be furnished in accordance with section 104(b)(4).

such third party. Absent such authorization, it is the Department's view that a plan is not required by section 104 of ERISA to provide such information to persons who are neither participants nor beneficiaries. Reports filed with the Department of Labor, however, are generally available for public inspection and copying at the Department's Public Disclosure Room in Washington, D.C.

It should be pointed out that section 404(a)(1)(D) of ERISA requires a fiduciary to discharge his duties in accordance with the documents and instruments governing the plan insofar as they are consistent with the provisions of Title I of ERISA. Therefore, if any of the Fund documents themselves, consistent with other provisions of Title I, require the furnishing or disclosure of the information about which you inquire to a participating employer upon request, Fund fiduciaries would be required to grant the request of that employer.

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,

Jeffrey N. Clayton  
Administrator of Pension and Welfare Benefit Programs

Enclosure