

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



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85-25A
Sec. 103

Mr. Leslie J. Miller
Staff Attorney
Corporate Law Division
American Medical Association
535 North Dearborn Street
Chicago, Illinois 60610

Dear Mr. Miller:

This is in response to your letter, on behalf of the American Medical Association Members Retirement Plan (the Plan), requesting an advisory opinion regarding the application of the annual reporting requirements under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested an opinion with respect to whether employers who have adopted the Plan are required under 29 C.F.R. §§2520.103-3 and 2520.103-9 to include with their annual reports copies of Schedule A's for insurance contracts in which assets of the Plan's Fixed Income Fund are invested.

Your letter sets forth the following facts and representations. The Plan is a master defined contribution pension plan sponsored by the American Medical Association (AMA) for its self-employed physician members and their employees. A sole proprietor or medical partnership which wishes to participate in the Plan adopts both the Plan and the American Medical Association Members Retirement Trust (the Trust). The Bank of New York is trustee (the Trustee) of the Trust. The sole proprietor or administrative partner of each employer is the administrator of that employer's plan and is responsible for filing the annual report.

The assets of the Plan are invested in the Trust which is a common trust maintained by the Trustee. The Trust consists of two funds: the Equity Fund which is invested primarily in common stocks; and the Fixed Income Fund which is invested in general investment contracts issued to the Trustee by various insurance companies. Individual participants may elect the portion of their accounts to be invested in each fund.

Each year the AMA prepares an information package for employers who have adopted the Plan containing instructions and information necessary for preparing and filing the annual report. In the past, this package has included copies of the Schedule A for each insurance contract to be attached to Form 5500-C or Form 5500-K.

As noted in your letter, §2520.103-3 prescribes an exemption from certain annual reporting requirements for plans whose assets are held in whole or in part in a common or collective trust maintained by a bank, trust company, or similar institution. Pursuant to that exemption, a plan investing in a common or collective trust is required only to report information regarding the value of units of participation in the common or collective trust held by the plan and transactions involving the acquisition and disposition of those units of participation (§2520.103-3(c)(1)). The annual report of such a plan also is required to include the annual statement by the bank, trust company, or similar institution of the assets and liabilities of the common or collective trust (§2520.103-3(c)(2)).¹ And, in such circumstances, the annual report is not required to include any information regarding the individual transactions of the common or collective trust (§2520.103-3(c)(1)).

Because it appears, based on the information contained in your letter, that employers adopting the Plan and Trust are maintaining plans participating in a common or collective trust as described in §2520.103-3(b), and because the general investment contracts appear to be issued to the trustees of the common trust fund rather than to the individual plans that participate in the Trust, it is the opinion of the Department that such employers are not required to include Schedule A's as part of their plan's annual report with regard to those assets of the common or collective trust invested in insurance contracts, provided the required report with respect to the common or collective trust is prepared and filed.

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

Sincerely,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations

Enclosure

¹ Subsection (c)(3) of §2520.103-3 provides that the statement of assets and liabilities of the common or collective trust is not required to be attached to the annual report filed by the administrator, if the administrator meets the requirements of 29 C.F.R. §2520.103-9 regarding the direct filing of the statement of assets and liabilities of the common or collective trust by the bank, trust company, or similar institution.