

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



DEC 3 1987

87-10A
Sec. 104(b)(4)

Mr. Howard C. Herb, Jr.
P.O. Box 727
Media, Pennsylvania 19063

Dear Mr. Herb:

This is in response to your letter concerning the application of certain disclosure requirements under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested the opinion of the Department on whether the minutes of trustees' meetings relating to the trustees' review of an investment manager's performance is required to be disclosed pursuant to section 104(b)(4) of ERISA.

Section 104(b)(4) 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 Department, in interpreting section 104(b)(4), has expressed the opinion that minutes of trustees' meetings do not necessarily constitute "other instruments under which the plan is established or operated" within the meaning of section 104(b)(4).¹ In the context of those opinions, however, and as noted in your letter, the Department also indicated that if a document, such as trustees' minutes, 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 claim 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).

With regard to your request, it is the view of the Department that trustees' minutes containing information concerning the trustees' review of the performance of an investment manager would not, solely because of the inclusion of such information in the minutes, constitute "other

¹ See: Advisory Opinion Nos. 82-21A, 82-33A

instruments under which the plan is established or operated” within the meaning of section 104(b)(4) and, therefore, would not be subject to disclosure pursuant to that section. We should note, however, that to the extent such information is included as part of the plan’s latest annual report, that information would have to be furnished under section 104(b)(4) in response to a written request from a participant or beneficiary for a copy of that annual report.

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

Sincerely,

Elliot I. Daniel
Associate Director for Regulations and Interpretations