

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 82-40A
Sec. 107

AUG 10 1982

Mr. Mike Cavanaugh
Administrator
Harrison Electrical Workers Trust Fund
P.O. Box 12245
Portland, Oregon 97212

Dear Mr. Cavanaugh:

This is in response to your letter of March 24, 1982, concerning the application of the retention of records requirements under section 107 of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you indicate that the Harrison Electrical Workers Trust Fund (the Trust) went from a fully insured health and welfare contract to a self-insured arrangement effective January 1, 1981. You state that the records which the auditor uses to prepare the annual return/report Form 5500 are "recaps" provided by your office of claim drafts issued, as well as reports prepared by the stop-loss insurance carrier. In this regard, you request a formal determination by the Department of Labor (the Department) as to whether section 107 of ERISA requires the Trust to maintain for six years the health and welfare claims submitted by participants in the Trust, as opposed to the "recaps" used to prepare the annual return/reports.

Section 107 of ERISA provides that:

Every person subject to a requirement to file any description or report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 104(a)(2) or (3) of this title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under section 104(a)(2) or (3) (emphasis supplied).

Based on the information contained in your letter, it is the view of the Department that, while the auditor uses "recaps" in preparing the Trust's annual return/reports, the "recaps" absent the original claims records (including claims submitted) on which the "recaps" are based would not, as required by section 107 of ERISA, provide in sufficient detail all of the information necessary to verify, explain, clarify or check for accuracy and completeness matters of which disclosure is required. Accordingly, we are unable to conclude that retention of "recaps" without the underlying claims information would satisfy the records retention requirements of section 107 of ERISA.¹

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,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs

Enclosures

¹ This position is consistent with a prior position taken by the Department with regard to an analogous provision of the Welfare and Pension Plans Disclosure Act (WPPDA), the predecessor law to ERISA. The Department issued an interpretative bulletin on December 27, 1963 (28 Fed. Reg. 14413) relating to the records retention requirements of section 11 of the WPPDA. The language of section 11 is, in all relevant respects, identical to that contained in section 107 of ERISA. Section 486.3(b) of the bulletin (copy enclosed) provided, with respect to the types of records to be retained, in relevant part, that:

Such records include (but are not limited to) resolutions and matters relating to the plan for which a description or annual report is or may be required to be filed, journals, ledgers, checks, invoices, bank statements, contracts, agreements, vouchers, worksheets, receipts, claim records and payrolls ... which would tend to support information required in any report under the Act (emphasis supplied).