

November 14, 1975

Dear :

This is in response to your letter of October 7, 1975, in which you inquired whether, in the absence of language in the trust instrument which restricts or precludes the trustees of a union pension trust fund from authorizing voluntary disclosure of data to a government agency, such disclosure would be prohibited by section 406 of the Employee Retirement Income Security Act of 1974 (the Act), and, if not, whether any provision of the Act would preclude such a trust fund from assuming the reasonable costs of producing the data requested by the government agency.

Section 406(a) of the Act prohibits a fiduciary (as defined in section 3(21) of the Act) with respect to an employee benefit plan from knowingly causing the plan to engage in certain specified transactions with any party in interest, as that term is defined in section 3(14) of the Act. I am enclosing a copy of the Act for your convenience. As you will note, section 3(14) does not include government agencies within the definition of "party in interest." Therefore, the Commission may receive the voluntary disclosure of plan data without engaging in a prohibited transaction under section 406 of the Act.

With respect to your second inquiry, it should be noted that section 404(a)(1)(A) of the Act provides that plan fiduciaries shall discharge their duties with respect to a plan solely in the interests of the participants and beneficiaries of the plan and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan. A decision as to what constitutes a reasonable expense of administering a plan must be made by the appropriate plan fiduciary or fiduciaries authorized by the plan instruments to make such determinations taking into account the plan's purposes and objectives. If the subject pension trust fund's cost in producing the data requested by the Commission is a reasonable expense of administering the plan in light of the plan's purpose

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and objectives, the Act would not preclude such an expenditure of plan assets. It should be noted that this second question would not be raised if the Commission were to pay the cost of producing the data requested by the Commission.

Sincerely,