

Your Recordkeeper Contract May Now Be a 'Plan Document'

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Under ERISA Section 104(b)(4), upon written request of a participant or beneficiary, a plan administrator must furnish a copy of the “contract, or other instruments under which the plan is established or operated.”

In *Kelly v. Altria Client Services, LLC* (4th Cir. 2026), the Fourth Circuit, applying the dictionary meaning of “operate,” held that the administrative services agreement (the “**ASA**”) between Fidelity and the plan sponsor is a document under which the plan is operated because it directs Fidelity to answer calls and communicate with the plan sponsor and the plan participants, fulfill literature requests, take customer service calls, respond to inquiries about the plan, provide fund balances, and answer questions about investment performance.

The *Kelly* decision conflicts with other court decisions holding that ASAs are not covered documents under ERISA Section 104(b)(4) because they govern only the relationship between the employer and a service provider. Courts narrowly interpreting ERISA Section 104(b)(4) generally limit required disclosures to documents that describe the terms of the plan, its administration, or its financial status. See generally, *Hughes Salaried Retirees Action Committee v. Administrator of the Hughes Non-Bargaining Retirement Plan* (9th Cir. 1995).

Employers and plan administrators should work with counsel to determine whether their ASAs and other plan-related agreements may be documents under which the plan is operated and that may be subject to disclosure under ERISA Section 104(b)(4). If they are, plan administrators should maintain a current inventory of these agreements, review any confidentiality provisions for conflicts with disclosure obligations, and include the agreements when responding to written requests for plan documents. Failing to timely provide required documents exposes plan administrators to costly litigation and statutory penalties.

The opinion in *Kelly* is available [here](#).