

August 6, 1975

Dear :

This is in response to your letter of June 27, 1975, in which you inquired whether an incorporated voluntary affirmative action program in known as " Inc." constitutes an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (the Act).

In your letter and the attached material the following representations are made:

has been formed under the Comprehensive Employment and Training Act of 1973 (CETA), pursuant to an agreement executed on June 23, 1975 between representatives of employers and employee organizations in the [city] area construction industry and [city] area organizations involved in the promotion of equal employment opportunity for minority persons and women. The corporation's primary responsibility will be to promote, develop and encourage the participation of minority persons and women in apprenticeship and similar training programs of the construction industry and other industries requiring skilled labor in . For the foreseeable future, will be federally funded with County acting as the Prime Sponsor in accordance with section 102 of CETA. However, it is possible that at some future date employers and employee organizations participating in the program may make contributions towards its funding.

The program will recruit minority persons and women as participants and provide them with career counseling and guidance. It may also furnish some generalized training and education. Participants will then be channeled into appropriate apprenticeship or similar training programs maintained by employers,

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employee organizations, or both. In addition, may provide counseling or even supplemental educational assistance such as tutoring to participants who have already entered apprenticeship programs.

On the basis of these representations, we have concluded that is not an employee welfare benefit plan within the meaning of section 3(1) of the Act. Although section 3(1) includes "apprenticeship or other training programs" within the definition of "employee welfare benefit plan," is not an apprenticeship or other training program of the kind contemplated by Congress in that section. is not a substitute for apprenticeship and other training programs which are subject to Title I of the Act: such training as may be provided through is incidental to its primary purpose of increasing the representation of minority persons and women in the construction industry and other industries requiring skilled labor in the area. This purpose is less closely associated with the relationship between employers and employees, which is the primary Congressional concern embodied in the Act, than with civil rights and equal employment opportunity, which are dealt with through other laws and governmental programs. Eligibility for participation in the program is geared to an individual's status as a minority person or woman, not to an employer-employee relationship. As a program oriented towards civil rights and equal employment opportunity, is designed to implement a national and local government policy, rather than to fulfill the immediate manpower needs of employers in private industry. In keeping with 's role in implementing a governmental policy, there is a significant degree of governmental involvement in , both at the local and national levels. This governmental involvement ensures that the goal of protecting 's funds against abuse will be met quite apart from those provisions of the Act which are designed to ensure such protection. Moreover, is subject to extensive regulations (29 CFR Part 98) issued under the authority of CETA, so that the requirements of ERISA, had they applied, would to a large measure have duplicated already existing federal controls.

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In your letter you raised an additional question as to whether                must be brought into compliance with Title I of the Act immediately because of the possibility that at some future date, employers and employee organizations may make contributions towards the funding of                . Since                is at present wholly federally funded (with some involvement in the distribution of funds on the part of                County), it is not subject to the provisions of the Act. If different funding arrangements are made in the future, the status of the program should then be re-evaluated in light of the specific arrangements proposed.

Sincerely,