

May 25, 1976

Gentlemen:

This is in reply to your letter of April 14, 1976, inquiring whether the (Association) has been accepted as a plan sponsor and is filing a plan description, EBS-1 Form, with the Department of Labor. I regret I was unable to reply sooner.

The Association contends it is providing an "Employee Benefit Plan" within the meaning of section 514, Public Law 93-406, to employers in (state) and that section 514 preempts the State Insurance Law. Because of this, you are concerned that you would be unable to assist residents of (state) who may request assistance in obtaining payment of employee benefits under the plan offered to employers by the Association.

Generally, the "plan sponsor", as that term is defined in section 16(B) of the Employee Retirement Income Security Act of 1974 (ERISA), is self-determined. The Department of Labor does not get involved in such determination unless the "plan sponsor" cannot be identified readily. As defined in section 16(B), the "plan sponsor" would be either an employer, an employee organization, or their representatives; i.e., a joint board of trustees, committee, association, etc. However, the term "association" means a group or association of employers such as a trade association acting directly or indirectly in the interest of an employer or employers in relation to an employee benefit plan which restricts plan participation to members of the association and/or their employees. It would not include an organization offering or soliciting participation by the public in a master or prototype plan, selling insurance, or furnishing plan services as the Association appears to be doing.

Under the provisions of section 2520.104-3(c) of a regulation published in the Federal Register August 15, 1975, generally, the filing of a complete Form EBS-1 may be deferred by plans subject to Part I of Title I of the ERISA until May 30, 1976, provided the plan files a short form plan description consisting of the first two pages of the Form EBS-1 (not including schedules A, B and C) and the signature page (item 38 only) on or before August 31, 1975. A search of our records has not disclosed that either a short form or complete EBS-1 Form has been filed with the Department of Labor by the Association to date.

I hope this information will be useful to you.

Sincerely,