U.S. DEPARTMENT OF LABOR
Pension and Welfare Benefit Programs
Washington, D.C. 20216

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OPINION 77-24 A

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3(32)

Richard B. Covey, Esquire
Carter, Ledyard, and Milburn
Two Wall Street
New York, N.Y. 10005

Dear Mr. Covey:

This is in reply to your letter concerning the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence has resulted in a delay in responding.

You state that the Mary Muldoon Fund (the Fund) is maintained by New York State United Teachers (Teachers) to provide assistance to needy members. Teachers is an unincorporated association of teachers and other educators employed in New York State.

The Fund derives its funding through contributions from Teachers, voluntary contributions, bequests, and income from the principal of the Fund. The Fund is administered by a Fund Committee which makes grants on the basis of facts submitted by the applicant. Grants may be in the form of monthly allowances to augment a retirement benefit too low to maintain a reasonable standard of living or a lump sum payment to cover an emergency situation. You question whether the Fund is subject to the requirements of ERISA.

The Department of Labor has adopted an advisory opinion procedure (ERISA Procedure 76-1, copy enclosed) which describes the general procedures for issuing information letters and advisory opinions under ERISA. Pursuant to ERISA Procedure 76-1, this letter is to have the effect of an advisory opinion.

Sections 3(1) and 3(2) of ERISA define the term "welfare plan" and "pension plan" to include programs established or maintained by employee organizations. However, the Fund provides a charitable benefit in the event of financial difficulty rather than one of the benefits enumerated in section 3(1) and 3(2). Therefore,

the Fund is neither a welfare plan nor a pension plan and is not subject to the provisions of Title I of ERISA.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions

Enclosure