

August 8, 1977

Dear :

Thank you for your letter requesting an opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the (named) Disability Plan (Disability Plan) and the Accidental Death and Dismemberment Plan (Accident Plan) of the (named) Association constitute welfare benefit plans under ERISA. We regret that our heavy workload has resulted in a delay in responding to your request.

You advise that the Association makes no contribution to either the Disability or Accident Plan and that participation in either is completely voluntary for members. Further, the Association receives no compensation or consideration in any form in connection with these plans. The Association has appointed (named), Inc., to negotiate with the insurer, send premium notices to participants and collect premiums as directed by the insurer and transmit them to the insurer, to keep the records, and to use its facilities to efficiently handle claims. You also submitted copies of both Plan contracts, the premium notice, and Association brochures used to publicize the Plans with your request.

Section 2510.3-1(j) of the Department of Labor regulations issued August 15, 1975, provides that:

For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include a group or group-type insurance program offered by an insurer to employees or members of an employee organization, under which

- (1) no contributions are made by an employer or employee organization;
- (2) participation in the program is completely voluntary for employees or members;

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(3) the sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and

(4) the employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

Based on the information you supplied in your request, both the Disability Plan and the Accident Plan meet the conditions 1, 2, and 4 of the cited regulations. However, neither Plan complies with the third condition. Through (named), Inc., the Association bills and collects premiums in a procedure that is neither a payroll deduction nor a dues checkoff for transmittal to the insurer. In addition, the Association through (named), Inc., negotiates with the insurer and assists members with claims. This exceeds the limited employee organization involvement contemplated in the regulations. In Opinion Letter 75-06 (copy enclosed) issued November 3, 1975, the Department of Labor held such employer involvement would remain the key for determining whether a plan is exempted under the regulations. The same would hold true for employee organization involvement.

Accordingly, both the Disability Plan and the Accident Plan are employee welfare benefit plans covered by Title I of ERISA.

Sincerely,