

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



JAN 9 1979

Mr. Stephen Gainer
Counsel
Bank of America Legal Department
Bank of America National Trust
and Savings Association
Box 37000
San Francisco, California 94137

OPINION 79-2 A

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Dear Mr. Gainer:

This is in reply to your letter of June 2, 1978, requesting an advisory opinion as to whether the Wells Settlement Trusts described therein are covered by the Employee Retirement Income Security Act of 1974 (ERISA) title I.

In your letter you make the following representations concerning the four trusts which collectively comprise the Wells Settlement Trusts. The four trusts were established pursuant to a consent decree in Wells et al. v. Bank of America et al., No. C-71 409 CBR, in the United States District Court for the Northern District of California and the appeal in Goetz et al. v. Bank of America, No. 73-1167, before the Ninth Circuit Court of Appeals. The Wells case in which the Equal Employment Opportunity Commission intervened involved allegations that Bank of America discriminated against its women employees with regard to promotions and other personnel practices. The four trusts were established by the consent decree to provide relevant educational and developmental programs for those members of the class of plaintiffs who were employed by the Bank of America at the time of the decree. One of the trusts, the Management Training Trust, provides incentive payments to beneficiaries who agree to enter a training program to prepare them for promotion within the employment structure of Bank of America. A second trust, the Self-Development Trust, disburses grants to beneficiaries to enable them to develop their creative and intellectual capacities through education, travel or public service which need not be related to banking. A third trust, the International Development Trust, makes incentive payments to beneficiaries who agree to undertake and complete training by Bank of America to develop them for international banking work. The fourth trust, the Women Employees Trust, makes grants to beneficiaries to support their efforts in developing management skills. The implementation of the consent decree will be under the supervision of four boards of trustees, an independent board for each of the trusts, composed of women employees of the trustor

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bank. A Trust Administrator acts as liaison between the four boards of trustees and all parties to the consent decree, between the four boards of trustees and their respective beneficiaries, and between the four boards of trustees and the Court. The Trust Administrator is an employee of the Bank of America whose responsibilities to the Court, the boards of trustees, and the beneficiaries are maintained independently of her responsibilities to the Bank. The Court has retained jurisdiction over the management of the trusts, and periodic reports respecting the trusts are filed with the Court, for its review, by the boards of trustees. As part of the review process, the Court also receives the comments of the Equal Employment Opportunity Commission.

On the basis of the representations set forth above, we have concluded that the Wells Settlement Trusts are not employee welfare benefit plans within the meaning of ERISA section 3(1). Although section 3(1) includes "apprenticeship or other training programs" within the definition of "employee welfare benefit plan," the Wells Settlement Trusts are not apprenticeship or other training programs of the kind contemplated by Congress in that section. Unlike the apprenticeship and other training programs contemplated in section 3(1) of ERISA, the Wells Settlement Trusts, as a program oriented toward equal employment opportunity, are designed to implement a national government policy, rather than to fulfill the immediate personnel needs of employers in private industry. In addition, the involvement of the Equal Employment Opportunity Commission in the supervision of the Wells Settlement Trusts' activities and the retention by the District Court of jurisdiction over the management of the trusts insure that the goal of protecting the trusts against abuse will be met quite apart from those provisions of ERISA which are designed to assure such protection.

Your letter contains no factual representations from which it might be concluded that the Wells Settlement Trusts constitute employee pension benefit plans within the meaning of section 3(2) of ERISA. If the trusts are neither employee welfare benefit plans nor employee pension benefit plans, they are not employee benefit plans within the meaning of section 3(3) of ERISA and, therefore, under section 4(a) of ERISA, are not covered under title I of ERISA.

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This Letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof, relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs