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



MAR 12 1979

Mr. P. H. McCarthy, Jr.
McCarthy, Johnson & Miller
605 Market Street, Suite 1300
San Francisco, California 94105

Dear Mr. McCarthy:

This is in reply to your inquiry concerning coverage of the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund (the Fund) under the Employee Retirement Income Security Act of 1974 (ERISA) and ERISA title I reporting and disclosure requirements applicable to the Fund. We regret the delay in responding to your inquiry due to the volume of correspondence concerning ERISA.

You represent that prior to the consent decree in EEOC; et al. vs. Local Union No. 3, International Union of Operating Engineers, C-71-1277, U.S. District Court for the Northern District of California, the Fund was operated as a jointly administered apprenticeship and training fund for eligible employees. After the consent decree, the terms under which the Fund was operated were changed to provide employment opportunities to black employees and Mexican American employees which had previously been denied. You question whether the Fund's operation in compliance with a consent decree means that it does not constitute an employee welfare benefit plan within the meaning of ERISA section 3(1). If the Fund is an employee welfare benefit plan within the meaning of ERISA title I, you wish to apply for all exemptions applicable to an apprentice and training plan such as you describe.

The term "employee welfare benefit plan" is defined in section 3(1) of ERISA as " . . . any plan, fund, or program, which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions)."

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Because the Fund was established and is maintained by employers and an employee organization to provide apprenticeship and training benefits to participants and beneficiaries, the Fund is an employee welfare benefit plan within the meaning of ERISA section 3(1), notwithstanding the fact that a consent decree may have produced modifications in the manner in which the Fund is administered. Unlike certain programs initially established by employers pursuant to judicial order as a result of charges of discrimination brought by minority groups, which primarily combat such discrimination and only incidentally provide training to minority employees, the Fund provided apprenticeship and training benefits to participants and beneficiaries before the consent decree referred to above went into effect, and it continues to do so. The only effect of the consent decree on the Fund was the resulting modification in Fund documents to provide increased employment opportunities for minority groups. Such modifications do not affect the status of the Fund as an "employee welfare benefit plan" within the meaning of ERISA title I. For the above reasons, the Fund constitutes an employee welfare benefit plan covered by ERISA title I.

Certain exemptions from applicable reporting and disclosure requirements are available for dues financed training plans maintained by employee organizations and training plans with fewer than 100 participants. If the Fund meets the criteria provided by regulation for such exemptions, it may obtain the benefit of such exemption without the need for an individual application. (29 CFR §§ 2520.104-20, 2520.104-26, 2520.104-41, and 2520.104-46.)

In addition, the Department is presently considering extending to training plans certain exemptions from ERISA title I reporting and disclosure requirements. These exemptions currently apply only to plans which provide solely apprenticeship benefits. You may wish to refer to the Department's January 17, 1978 news release (copy enclosed) concerning the present exemption.

While the Department is considering this matter, it is not contemplated that applications for individual exemptions from reporting and disclosure requirements received from training plans will be acted upon favorably. Such applications will be delayed pending a decision by the Department whether to extend the present exemption.

However, you may wish to submit written comments as to whether an extension of exemptive relief to training plans would be appropriate. The Department will consider such comments in developing any proposal. If the Department decides to extend the exemption, it will publish any proposed revision for public comment in the Federal Register, and you will also have an opportunity to submit your views, or any additional comments, at that time.

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At the present time, training programs which do not provide benefits solely for apprenticeship training, and which are not covered by other presently available exemptions mentioned above, must furnish the Department with a plan description (however, see proposal to not require the filing of Form EBS-1, 43 FR 54268 (November 21, 1978)) and summary plan description, an annual report, a statement of material modification and changes in the plan, and other data which the Secretary of Labor may request. Plan administrators must also furnish participants with a summary plan description, a statement of material modification and changes, and a summary annual report.

The reporting and disclosure materials generally provide information as of the end of a plan year. Thus, contrary to what you have suggested in your letter, there is no need for plans to project the number of participants available in future years in order to comply with ERISA title I reporting and disclosure requirements.

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

Enclosures