

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



OPINION 80-34A 3(1)  
3(3)  
201(a)  
301(a)(1)

JUN 9 1980

Mr. James N. Schuth  
Miles & Stockbridge  
10 Light Street  
Baltimore, Maryland 21202

Dear Mr. Schuth:

This is in reply to your letter of February 26, 1980, requesting an advisory opinion regarding the applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the Black & Decker Dental Assistance Plan and Trust (the Plan). Specifically, you ask the following questions:

- 1) whether the Plan is an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA;
- 2) whether the Plan is an "employee benefit plan" within the meaning of ERISA section 3(3);
- 3) whether the Plan is an "employee benefit plan" as provided in ERISA section 514(b)(2)(B);
- 4) whether the Plan is exempt from the participation and vesting requirements of part 2 of title I of ERISA as an "employee welfare benefit plan" within the meaning of section 201(1); and
- 5) whether the Plan is exempt from the funding requirements of part 3 of title I of ERISA as an "employee welfare benefit plan" as defined in ERISA section 301(a)(1).

You state that the Plan is provided to employees of Black & Decker (U.S.) Inc. (the Employer) at its Hampstead, Maryland plant. You indicate that the Employer intends to make the Plan available to employees in other locations in the future. The Plan provides dental benefits to employees and their dependents according to an established schedule of dental service. Current employees automatically are eligible to participate in the Plan. New employees are generally eligible to participate following one year of continuous work for the Employer. Eligibility to receive dental benefits will terminate when the employee either (1) leaves the employ of the Employer; (2) fails to make a required payment; (3) the Plan terminates; or (4) the employee is transferred to a location of the Employer where the Plan is not in effect. Funding for the Plan is provided by a trust fund with Union Trust Company of Maryland, as trustee. The Plan is administered by a benefit committee composed of employees.

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).

As noted above, the Plan has been established by the Employer for the purpose of providing dental benefits to participants. In our view, a dental benefit is a type of medical benefit which is among the benefits described in ERISA section 3(1). The Plan is, therefore, an employee welfare benefit plan within the meaning of ERISA section 3(1).

Section 3(3) of ERISA defines the term “employee benefit plan” as “an employee welfare benefit plan or an employee pension benefit plan or a plan which is both...” Since, as we have concluded, the Plan is an employee welfare benefit plan, it is an employee benefit plan within the meaning of section 3(3) of ERISA. The definition of “employee benefit plan” in section 3(3) of ERISA governs that term throughout title I of ERISA in its entirety, including section 514, relating to the effect of title I on other laws. Since the Plan is an employee benefit plan within the meaning of ERISA section 3(3), it is an employee benefit plan as that term is used in section 514(b)(2)(B).

Moreover, the definition of “employee welfare benefit plan” in section 3(1) governs that term throughout title I of ERISA in its entirety, including sections 201(1) and 301(a)(1). Those sections set forth exemptions from part 2 of title I, relating to participation and vesting, and from part 3 of title I, relating to funding, respectively. Under section 201(1) and section 301(a)(1) employee welfare benefit plans are exempt from parts 2 and 3. Since the Plan is an “employee welfare benefit plan” within the meaning of section 3(1), it is therefore, exempt from parts 2 and 3 of title I of ERISA under sections 201(1) and 301(a)(1), respectively.

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