

U.S. Department of Labor

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



OPINION 80-61A
4(b)(4)

OCT 22 1980

Mr. Richard H. Fay
Reed Smith Shaw & McClay
1150 Connecticut Avenue
Washington, D.C. 20036

Dear Mr. Fay:

This is in response to your letters of June 2 and June 12, 1980, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Rockwell International Overseas Corporation International Pension Plan (the Plan) is a plan maintained outside the United States primarily for persons substantially all of whom are nonresident aliens within the meaning of ERISA section 4(b)(4) and thus is not covered by title I of ERISA.

The plan document submitted with your June 2, 1980 letter indicates that the Plan is limited to certain employees of Rockwell International Corporation (Rockwell) and its subsidiaries and affiliates. To be eligible for participation, an employee must be a regular full-time employee of Rockwell or one of its subsidiaries or its affiliates, under age 65 when last hired, a participant in any "Voluntary Benefits" or "Social Security Benefits" for which he or she is eligible and must not be a United States "expatriate." You represent that this means United States citizens are excluded from participation. You further advise that the Plan is intended to benefit third country nationals who in the course of their employment by Rockwell work in several different countries and participate in a number of private retirement plans and government social security programs. You state that the aggregate benefits accrued from these plans may be smaller than the benefits employees would accrue if they stayed under one plan their entire career. The Plan is designed to reduce this differential in benefits. You further state it is your understanding that no resident aliens of the United States participate in the Plan and that all participants are currently employed outside of the United States. The Plan provides that all costs of the Plan are borne by Rockwell. You represent that these costs are ultimately borne by the foreign subsidiaries or affiliates of Rockwell who employ the participants. The Plan is administered by a subsidiary located in Bermuda. No assets are held or trust established in the United States for the Plan.

Section 4(b)(4) of ERISA excludes from coverage under title I any plan "maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens." Based on the foregoing facts and representations and assuming that your understanding is correct that no persons other than nonresident aliens participate in the Plan, it is the opinion of the Department that the Rockwell International Overseas Corporation International Pension Plan is a plan described in ERISA section 4(b)(4) and, therefore, it is not covered by title I of ERISA.

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.

In your letter of June 2, 1980, you also state your opinion that the Plan is not covered by title IV of ERISA. If you desire an official opinion on that matter you should request it from the Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

Sincerely,

Ian D. Lanoff
Administrator
of Pension and Welfare Benefit Programs