

U.S. Department of Labor

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



OPINION 80-63A

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3(4)

NOV 3 1980

Mr. Dan S. Brandenburg
Mercier, Sanders, Baker & Schnabel, P.C.
Suite 800
730 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Brandenburg:

This is in response to your letter of April 25, 1978, regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the WAEPA Group Insurance Plan (the Program) is an employee welfare benefit plan within the meaning of section 3(1) of ERISA. Please excuse the delay in responding.

You advise that Worldwide Assurance for Employees of Public Agencies, Inc. (WAEPA) was founded in 1943 to provide low cost life insurance to Federal employees. Membership in WAEPA is limited according to section 3.01 of the by-laws to United States Government employees other than those serving in United States Armed Forces. The Program offers life insurance and accidental death and disability insurance only to members of WAEPA. You represent that WAEPA constitutes an employee organization within the meaning of section 3(4) of ERISA and that the Program constitutes an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

Section 3(1) of ERISA defines an employee welfare benefit plan 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).

Section 3(4) of ERISA defines an employee organization as:

... any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

The benefits provided under the Program constitute benefits among those enumerated in section 3(1). However, to be an employee welfare benefit plan within section 3(1), the Program, among other elements, must be established or maintained by an employer, an employee organization, or both. Since, in your letter, you represent that WAEPA is an employee organization, we shall only address that issue.

You represent that WAEPA is not an employee organization within the first part (before the semi-colon) of the definition provided in section 3(4) of ERISA. The Department sees no reason to disagree with this representation. Instead, you assert that WAEPA is an employees' beneficiary association within the meaning of the second part of the definition.

Although ERISA does not define "employees' beneficiary association," the Department has interpreted the term, under both ERISA and the Welfare and Pension Plans Disclosure Act, to mean an organization in which employees participate and in which the members share a commonality of interest with respect to their employment relationships, e.g., employees of a single employer or members of one union. The requirement of employee participation means that the functions and activities of the organization are in fact controlled by its members, either directly, or through the regular election of directors, officers, etc.

It is the Department's view that the members of WAEPA, as non-military employees of the United States Government, do possess the requisite commonality of interest to establish an employees' beneficiary association within the meaning of section 3(1) of ERISA. We have not, however, been able to determine from the materials which accompanied the advisory opinion request, whether the members of WAEPA participate in and control the organization in a meaningful way.

Although the directors of WAEPA are United States Government employees, it is not apparent from your submissions how these persons are selected, nor is it clear whether meetings of the membership are ever held, or whether the members exercise a voice in the operations of WAEPA in any significant way.

Because we are unable to conclude that the members of WAEPA participate in the organization, we cannot determine whether WAEPA constitutes an employees' beneficiary association within the meaning of section 3(4) of ERISA. We therefore state no view to whether the Program is an employee welfare benefit plan subject to ERISA.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs