

U.S. Department of Labor

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



OPINION 80-64A

104

NOV 3 1980

Mr. Charles H. Harris
Charles H. Harris & Associates, Inc.
1151 W. Robinhood Drive, Suite 12B
Stockton, California 95207

Dear Mr. Harris:

This is in response to your letters of January 25 and August 2, 1978, requesting an advisory opinion regarding the reporting and disclosure provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, your letters concern the question whether the limited exemption set forth in regulation 29 C.F.R. §2520.104-21 for certain group insurance arrangements is available with respect to the San Joaquin Employers Insurance Trust (SJET).

In this regard section 2520.104-21 provides an exemption from reporting and disclosure requirements that would apply to individual welfare plans participating in a group insurance arrangement. The circumstances described in your letters indicate that SJET is not itself an employee benefit plan, but rather a vehicle through which insurance is purchased to fund benefit programs sponsored by employers and self-employed individuals.¹

Thus, while you indicate that SJET intends to comply with the applicable reporting and disclosure requirements if the exemption is not available, it does not appear that those requirements would apply to SJET, but rather to individual employee benefit plans participating in SJET.²

You represent in your letters that SJET was established on October 15, 1976, with Union Safe Deposit Bank, Stockton, California, as trustee and Charles H. Harris & Associates, Inc., Stockton, California, as administrator. SJET's purpose is to provide group life and disability insurance for persons in the agricultural industry, including its suppliers and servicing organizations, through group insurance contracts. Such contracts have been purchased from Continental Life & Accident Company, Boise, Idaho. The trustee's duties include the following: (1) the holding of the master policy or policies of insurance, and (2) the receipt and safekeeping of all premiums and fees due to the trust or administrator, who pays the insurer all premiums when due. Each participating employer must pay, on a monthly basis, the portion of the insurance premiums applicable to his employees, together with any other fees. Eligible employers must execute an application and subscription to SJET before their employees may participate in the program. The insurance company will not accept an individual group of over 20 employees under SJET and the largest group participating in SJET has eight employees.

¹ This conclusion is supported by, among other things, the promotional literature distributed to employers which you furnished with your August 2, 1978 letter. This literature indicates that unlike an employee welfare benefit plan, SJET was not established by a group or association of employers, but that, instead, employers have been persuaded to participate in SJET by commercial solicitation.

² As you may be aware, under regulation 29 C.F.R. §2510.3-3(b), the term "employee benefit plan" as used in title I of ERISA generally does not include any plan, fund, or program under which no employees are participants covered under the plan. For purposes of section 2510.3-3, moreover, an individual and his or her spouse are not deemed to be employees of a trade or business which is wholly owned by the individual or by the individual and his or her spouse. In view of your statement that 90 percent of the individual group units in SJET are self-employed farmers with no employees, it appears that many of the group units participating in SJET are not employee benefit plans subject to title I of ERISA.

The requirements that must be met in order for welfare plans participating in a group insurance arrangement to qualify for the exemption in section 2520.104-21 are set forth in paragraph (b) of that section as follows:

This exemption applies only to welfare plans, each of which has fewer than 100 participants at the beginning of the plan year and which are part of a group insurance arrangement if such arrangement:

- (1) Provides benefits to the employees of two or more unaffiliated employers, but not in connection with a multi-employer plan as defined in section 3(37) of the Act and any regulations prescribed under the Act concerning section 3(37);
- (2) Fully insures one or more welfare plans of each participating employer through insurance contracts purchased solely by the employers or purchased partly by the employers and partly by their participating employees, with all benefit payments made by the insurance company: Provided, that--
 - (i) Contributions by participating employees are forwarded by the employers within three months of receipt,
 - (ii) Refunds, to which contributing participants are entitled, are returned to them within three months of receipt, and
 - (iii) Contributing participants are informed upon entry into the plan of the provisions of the plan concerning the allocation of refunds; and
- (3) Uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and the conduit for payment of premiums to the insurance company.

In light of your statement to the effect that the largest group unit participating in SJET consists of eight employees, the welfare plans participating in SJET meet the requirement that each of the participating plans must have fewer than 100 participants at the beginning of the plan year. You also state that the individual units participating in SJET are completely independent of each other. This appears to imply that there are at least two unaffiliated employers whose benefit programs are provided through SJET. You also state that SJET obtains new business through brokers and agents who wish to use the SJET program as a means to service the health insurance needs of their clients. Thus it appears that SJET is not a multiemployer plan as defined in section 3(37) of ERISA, since a multiemployer plan must, among other requirements, be maintained pursuant to one or more collective bargaining agreements.

Further, the individual benefit programs of employers participating in SJET appear to be fully insured through SJET under a group insurance contract held in SJET, and the copies of the insurance contract and certificate of insurance furnished with your letters indicate that benefit payments are made by the insurance company.

Finally, SJET, which is a trust, serves as a holder of the insurance contract, and the conduit for payment of premiums to the insurance company.

Your letters and the accompanying materials do not, however, indicate whether the individual welfare plans participating in SJET provide for employees to make contributions in addition to those made by their employers, and, if in fact employee contributions are made, whether welfare plans participating in SJET meet the requirements of paragraph (b)(2) regarding the treatment of employee contributions and refunds to which employees may be entitled. In the absence of this information, we are unable to determine whether welfare plans participating in SJET would qualify for the exemption set forth in section 2520.104-21. Nevertheless, as discussed above, it appears that apart from the requirements of paragraph (b)(2) of that section, all of the applicable requirements would be met.

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