

U.S. Department of Labor

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



OPINION 80-70A

3(1)

3(2)

DEC 1 1980

Mr. Kenneth L. Maher
Williams & Brooke, P.C.
One Financial Plaza
Hartford, Connecticut 06103

Dear Mr. Maher:

This is in response to your letters of August 29, 1978, and November 3, 1978, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the employee benefit plans established when employers adopt the GTO-79 Group Insurance Trust (the Trust) are separate employee pension benefit plans within the meaning of ERISA section 3(2) and whether the "Active Life reserve" accounts maintained pursuant to the Group Deposit Administration policies held in the Trust are "part of" such plans (these plans are collectively referred to in this letter as "the Plans").

You advise that the Trust is sponsored by Alexander Hamilton Life Insurance Company, Farmington Hills, Michigan. The trustee for the Trust is Rhode Island Hospital Trust National Bank, Providence, Rhode Island. An employer who wishes to establish a group insurance plan executes an adoption agreement adopting the Trust. Trust assets consist exclusively of insurance contracts issued by Alexander Hamilton Life Insurance Company. The only benefits provided under the Plans are death benefits. Adopting employers may set aside funds in an "Active Life reserve" account, which consists of a "Group Flexible Deposit Retired Life" policy issued to the trustee by the Alexander Hamilton Life Insurance Company, to pay group term life insurance premiums after an employee's retirement. At retirement, the amounts in the "Active Life reserve" account for an employee are transferred to a "Retired Life reserve" account from which group term insurance premiums are paid.

Section 3(2)(A) of ERISA defines an "employee pension 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 by its express terms or as a result of surrounding circumstances such plan, fund, or program --

- (i) provides retirement income to employees, or
- (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

Section 3(1) of ERISA defines an "employee welfare benefit plan" to include:

. . . 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) . . . benefits in the event of sickness, accident, disability, death or unemployment

In your letters you state that the only benefit provided under any of the Plans is a death benefit. If this representation is accurate, the Plans apparently do not provide retirement income to employees, or result in a deferral of income by employees for periods extending to the termination of covered employment or beyond. Under these circumstances,

the Plans would not be employee pension benefit plans within the meaning of section 3(2)(A) of ERISA, although they would be welfare plans within the meaning of section 3(1), since death benefits are among the benefits listed in that section. You also mention, however, that the assets of the Trust consist in part of annuity contracts. We assume that any annuity benefits provided under the Plans are not paid to employees or former employees of adopting employers. In addition, we assume that the Plans do not provide for any payments to employees or former employees of adopting employers and that any payments under the Plans are made to a beneficiary designated by an employee or former employee upon the death of such employee or former employee. If any of these assumptions is invalid, we might be unable to conclude that the Plans are not pension plans.

The preceding 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.

You also ask whether the "Active Life reserve" accounts established under the Group Deposit Administration policy is part of each adopting employer's plan.

On August 28, 1979, the Department published proposed regulations (copy enclosed) relating, in part, to the definition of "plan assets" for purposes of title I of ERISA (prop. reg. 2550.401b-1, 44 FR 50366). The regulation was repropoed, in part, on June 6, 1980 (45 FR 38084).

Pursuant to section 5.03 of ERISA Procedure 76-1, the Department believes that it is in the best interests of the sound administration of ERISA not to respond substantively to the question you have raised with respect to the "Active Life reserve" accounts in the absence of final regulations under sections 401(b) and 403(a) and (b) of ERISA. However, if after regulations under those provisions of ERISA have been issued in final form you continue to have questions concerning their application, you may wish to consider submitting another request for an advisory opinion to the Department.

Moreover, we note that a review of the trust agreement dated November 13, 1974, for the GTO-79 Group Insurance Trust fails to disclose any reference to an "Active Life reserve" account, although there is reference to a "Retired Life reserve" account in the amendment to the trust agreement dated August 1, 1977. Apparently, the agreement was also amended on July 21, 1975, and March 12, 1976, but copies of such amendments were not furnished to the Department. In this connection section 6.02(b) of ERISA Procedure 76-1 requires that where a request for an advisory opinion pertains to only one step of a larger integrated act or transaction, the facts, circumstances, etc., must be submitted with respect to the entire transaction. Therefore, if you decide to submit another request for an advisory opinion to the Department, you may wish to supplement your request in this regard.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs

Enclosure