



Opinion 80-71A  
3(1)  
3(2)

December 1, 1980

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

Dear Mr. Maher:

This is in response to your letters of August 29, 1978, and October 26, 1978, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, your letters concern employee benefit plans established by employers in connection with seven trusts (the Trusts) in which certain insurance and annuity contracts issued by the Covenant Life Insurance Company are held. You represent that the wording of each of these trust agreements is identical except for the name of the trust. The following are the names of the Trusts:

1. Wholesale Consolidated Industry Covenant 79 Trust
2. Retail Trade Consolidated Industry Covenant 79 Trust
3. Transportation, Communication & Public Utilities  
Consolidated Industry Covenant 79 Trust
4. Contract Construction Consolidated Industry  
Covenant 79 Trust
5. Finance, Insurance and Real Estate Consolidated Industry  
Covenant 79 Trust
6. Manufacturing Industry Consolidated Industry Covenant  
79 Trust
7. Service Industry Consolidated Industry Covenant  
79 Trust

In your letters you inquire whether the employee benefit plans established when employers adopt one of the Trusts (the Plans) are employee pension benefit plans within the meaning of section 3(2) of ERISA and whether "Active Life reserve" accounts maintained pursuant to Group Deposit Administration policies held in the Trusts are considered to be part of the Plans.

You advise that the Trusts are sponsored by Covenant Life Insurance Company, Hartford, Connecticut. The trustee for the Trusts is Hartford National Bank and Trust Company, Hartford, Connecticut. An employer who wishes to establish

a group insurance plan executes an adoption agreement adopting one of the Trusts. Assets of the Trusts consist exclusively of insurance contracts issued by Covenant Life Insurance Company. According to your letters, 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 Deposit Administration policy issued to the trustee by the Covenant 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 Trusts 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 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 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. We noted that a review of the trust agreement for the Trust fails to disclose any reference to an "Active Life reserve" account, although there is reference to a "Retired Life reserve" account.

Sincerely,

Ian D. Lanoff  
Administrator  
of Pension and Welfare  
Benefit Programs

Enclosure