

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-10A
3(2)

JAN 14 1981

Ms. Virginia M. Johnson
Assistant Secretary-Personnel Director
Michigan Millers Mutual Insurance Co.
BOX 30060
Lansing, Michigan 48909

Dear Ms. Johnson:

This is in response to your letter of May 8, 1979, requesting an opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Living Income Benefit (the Program) of Michigan Millers Mutual Insurance Co. (the Employer) must comply with the reporting and disclosure requirements of title I of ERISA. We regret that our workload has resulted in a delay in responding to your inquiry.

According to the documents you submitted with your request, the Program provides a monthly benefit to those employees age 55 or older with at least 15 years of service who retire from the service of the Employer on a pension. The monthly benefit under the Program is paid for up to 120 months. The amount of the monthly benefit is determined by a formula which is based upon the employee's actual years of service and an amount that appears to represent the amount of life insurance in effect at the employee's retirement for employees in the job classification of the retiring employee under a life insurance and employee benefit program sponsored by the Employer. The employees do not contribute towards the Program and all benefits are paid from current assets of the Employer.

ERISA section 3(2)(A) generally defines the term "employee pension 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 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(3) of ERISA defines the term "employee benefit plan" to mean an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

In view of the monthly benefit provided under the Program to retired employees, it is the view of the Department that the Living Income Benefit is an employee pension benefit plan within the meaning of section 3(2)(A) of ERISA, and therefore an employee benefit plan within the meaning of section 3(3) of ERISA.

The coverage of title I of ERISA, including the reporting and disclosure provisions thereof, is specified in section 4. Section 4(a) provides, in relevant part, that with the exception of plans described in section 4(b) and with certain exceptions from specific parts of title I, title I applies to any employee benefit plan if it is established or maintained by any employer engaged in commerce or in any industry or activity affecting commerce.

From the information you have provided, it appears that the Program is maintained by an employer engaged in commerce or in an industry or activity affecting commerce. Further, it does not appear that the Program is in any of the classes of plans exempted under section 4(b) from title I coverage.

Accordingly, unless the Living Income Benefit is otherwise excluded from coverage from the provisions of title I, it must comply with the requirements of that title including the participation, vesting, and funding provisions and the reporting and disclosure requirements contained in title I.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof regarding the effect of advisory opinions. This letter renders no opinion as to whether the Living Income Benefit as described is in compliance with the requirements of title I of ERISA.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs