



December 16, 1993

Mr. Kevin G. Long
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P.O. Box 13530
Sacramento, California 95853-4530

93-32A
ERISA SEC.
3(1),3(4),3(5)

Dear Mr. Long:

This is in reply to your request for an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the long-term disability program (the LTD Program) sponsored by the California Law Enforcement Association (CLEA) is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You advise that CLEA is a non-profit mutual benefit corporation that was formed to provide a program of disability benefits to law enforcement personnel in the State of California. CLEA is run by a Board of Directors appointed by certain "Participating Associations" described below.

The term "Participating Association" is defined in Article IV, Section 4.02 of CLEA's Bylaws (as revised and restated March 30, 1990) to "mean a Charter Association, Regular Association or Independent Association." "Charter Association" is in turn defined in Section 4.04 to mean "any law enforcement agency, association, union or club which elected to associate with [CLEA] as of March 30, 1990." "Regular Association" is defined in Section 4.05 to mean "any law enforcement agency, association, union or club for which (i) more than one hundred (100) of such association's Participants are Plan Members, and (ii) more than sixty percent (60%) of such association's Participants are Plan Members." ¹

"Independent Association" is defined in Section 4.06 to mean "any law enforcement agency, association, union or club electing to associate with [CLEA] which has less than one hundred (100) Participants enrolled in the Plan and is not a Charter Association." Each Charter Association and each Regular Association is authorized under Article VI, Section 6.04 of the Bylaws to appoint one person to the Board of Directors of CLEA.

CLEA's Bylaws, Article IV, Section 4.03, identifies those individuals who may receive disability benefits under the LTD Program.

Such individuals are limited to "any employee of a police department of a municipal or public corporation or district, or a peace or law enforcement officer who is a regular and salaried officer of the state or of any county or any other political subdivision or public or municipal corporation, if he or she is (i) a Participant in the Participating Association, (ii) an Eligible Individual or (iii) a Special Plan Member"

The term "Eligible Individual" is defined in Article IV, Section 4.07 of the Bylaws to mean "any sworn police officer residing within the State of California and not belonging to a Charter Association, Regular Association or Independent Association complying with such Plan Membership criteria as the directors may adopt from time to time in accordance with the restrictions on Plan Membership set forth in the Plan document." The term "Special Plan Member" is defined in Section 4.08 of the Bylaws to mean "persons who are not Eligible for Plan Membership solely because they are a retired sworn officer, but who are otherwise Eligible for Plan Membership and who, at the discretion of the Directors, are appointed as Plan Members. A Special Plan Member shall be Eligible for Plan Membership as determined by the Directors."

Each individual who wishes to receive benefits under the LTD Program must complete a payroll deduction card instructing his or her employer to deduct dues from his or her wages and to forward the withheld amounts monthly to the contract administrator for the LTD Program.

The term "employee welfare benefit plan" is defined in section 3(1) of Title I of ERISA 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) 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).

The benefits provided under the LTD Program are among those identified in section 3(1). However, to be considered an employee welfare benefit plan within the meaning of that section, an entity must also, among other criteria, be established or maintained by an employer, an employee organization, or both. The terms "employee organization" and "employer" are defined in sections 3(4) and 3(5), respectively, as follows:

(4) The term "employee organization" means 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 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.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of any employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

There is no support in your submission for a conclusion that CLEA, which established and maintains the LTD Program, is an employee organization within the meaning of section 3(4) of ERISA. CLEA does not exist "... for the purpose, in whole or in part, of dealing with employers. ..." Furthermore, CLEA cannot be consider an "employees' beneficiary association" as that term is used in section 3(4). In several opinion letters, the Department of Labor (the Department) has identified certain criteria for purposes of determining what constitutes an "employees' beneficiary association." One of those criteria is that membership in such an association must be conditioned on employment status -- for example, where membership is limited to employees of a certain employer or members of one union. Membership in CLEA is apparently open to both employers (law enforcement agencies) and employee organizations (associations, unions and clubs). Thus, the LTD Program is not established or maintained by an employee organization within the meaning of section 3(4) of ERISA, although CLEA may have employee organizations as members.

Section 3(5) of ERISA recognizes that a single employee welfare benefit plan might be established or maintained by a cognizable, bona fide group or association of employers, within the meaning of section 3(5), acting in the interests of its employer members to provide benefits for their employees. However, because CLEA is open to both employers and employee organizations, it is the position of the Department that CLEA is not an employer group or association. Thus, the LTD Program was not established and is not maintained by a bona fide employer group or association or by an employee organization and therefore does not constitute a single employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA. Instead, the Department considers that each employer within the meaning of section 3(5) or each employee organization within the meaning of section 3(4) that adopts the LTD Program to provide disability benefits to its employees or members has established a separate employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.²

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 an advisory opinion.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations

¹ The Bylaws do not define the terms "Participant" or "Member."

² We also note that section 4(b)(1) of Title I of ERISA excludes governmental plans from coverage under that title. The term "governmental plan" is defined in section 3(32) to include, in pertinent part: a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Depending on the relevant facts and circumstances, it is possible that some law enforcement agencies that adopt the LTD Program to provide disability benefits to their employees may constitute governmental entities described in section 3(32).