



June 17, 1994

Mr. Alfred W. Gross  
Deputy Commissioner  
Virginia Bureau of Insurance  
Box 1157  
Richmond, Virginia 23209

**94-20A**  
**ERISA SECTION**  
3(40), 514(b)

Dear Mr. Gross:

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 Freedomm Spirit program (Freedomm Spirit) offered by Unitec Association (Unitec) and insured by The Centennial Life Insurance Company is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40) of Title I of ERISA.

You advise that Unitec is an Arkansas non-profit corporation that was originally incorporated as the Food Processors Association, Incorporated. Its current name was adopted on January 9, 1984. Its current by-laws, dated February 3, 1986, (the By-Laws) provide that its purposes are:

- a) To provide ordinary people opportunities for the exchange of ideas and information about, opinions on and experiences with high technology;
- b) To translate high-tech jargon about business and consumer products and processes into understandable language for the non-technical user; with special emphasis on health care. [sic]
- c) To provide members with timely and beneficial product information to enable them to make informed choices in the high-tech consumer market; and
- d) To promote effective ethical standards for the management of technology in business, professional, technical and social arenas.

By-Laws, Article II, Section 1.

Article III, Section 1 of the By-Laws further provides that, "Membership in UNITEC shall be available to any individual, proprietor, partnership, or corporation desirous of furthering the goals of the Association." Article III, Section 4 provides:

Non-member Associate: The following non-member Associate [status] will be available:

Associate: An individual, proprietor, partnership or corporation who desires to participate in some of the benefits of the Association without becoming a member may be approved for Associate membership by the guidelines set forth by the Board of Directors. Associates are not required to pay dues and are not eligible to vote or hold office in UNITEC.

The Unitec Board of Directors consists of seven persons elected in staggered three-year terms. Directors are elected at the annual meeting of Unitec by the voting members.

Freedomm Spirit is a program of health and life insurance available to eligible members of Unitec. It offers a choice of deductibles, out-of-pocket maximums, percentages of covered expenses, and individual or list billings. Freedomm Spirit is administered by Dun & Bradstreet Plan Services, Inc. The summary plan description states that Freedomm Spirit "is not an employer/employee benefit plan."

In telephone conversation with a representative of this Office, Mr. Henry L. Harris of your staff stated that, to his knowledge, Freedomm Spirit was not established and is not maintained pursuant to any collective bargaining agreement, that there are no rural electric cooperatives or rural telephone cooperative associations involved in Freedomm Spirit, and that the members of Unitec are not part of a "control group," as defined in section 3(40)(B) of Title I of ERISA.

Section 3(40)(A) defines the term "multiple employer welfare arrangement" to include:

an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained --

(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements,

(ii) by a rural electric cooperative, or

(iii) by a rural telephone cooperative association.

Based on the information presented, it appears that Freedomm Spirit is a MEWA within the meaning of section 3(40)(A). Participation in Freedomm Spirit is not limited to the employees of one employer, but is available to anyone who is between the ages of 18 and 65, who is an active member of Unitec, and who is self-employed, employed, or unemployed. Further, there is no indication that Freedomm Spirit was established or is maintained under or pursuant to one or more collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. Moreover, there is no indication that the employers of the individuals covered under Freedomm Spirit are members of a single control group.

It is, therefore, the Department's position that Freedomm Spirit is a MEWA within the meaning of section 3(40) of Title I of ERISA.<sup>1</sup>

Enclosed for your information is a copy of Opinion 90-18A (issued July 2, 1990), which addresses various questions concerning state regulation of MEWAs.

Because your request for an advisory opinion was concerned with the issue of whether or not Freedomm Spirit is a MEWA within the meaning of section 3(40) of Title I of ERISA, and because of the opinion above, we have determined that it is not necessary at this time to render an opinion as to whether Freedomm Spirit is an employee welfare benefit plan within the meaning of that title.<sup>2</sup>

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 relating to the effect of advisory opinions.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

Enclosure

<sup>1</sup> We note that in a letter dated August 16, 1993, Mr. Stephen A. Elliott, Vice-President of The Centennial Life Insurance Company, responding to an inquiry from your office, stated, "The Freedomm Spirit plan marketed to members of the Unitec Association in no way meets the definition of a plan under ERISA nor is there any employer involvement whatsoever." Although the definition of a MEWA under section 3(40)(A) of Title I of ERISA includes both plans covered under that title and other arrangements not covered under that title, the preemption provisions of section 514(a) would not preempt any state law that does not relate to employee benefit plans covered under Title I of ERISA.

<sup>2</sup> We also note that, in the letter cited above, Mr. Elliott raises questions about whether Freedomm Spirit is a MEWA within the meaning of the laws of the Commonwealth of Virginia and the regulations thereunder. We express no opinion in this letter concerning whether or not Freedomm Spirit is a MEWA within the meaning of Virginia's laws and regulations.