



July 1, 1994

Ms. Catherine A. Powers  
Benefits Attorney  
Air Line Pilots Association  
535 Herndon Parkway  
P.O. Box 1169  
Herndon, Virginia 22070

**94-22A**  
ERISA SECTION  
3(l),2510.3-10)

Dear Ms. Powers:

This is in response to your request on behalf of the Air Line Pilots Association, International (ALPA) regarding the applicability of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the ALPA Group Term Life Insurance Plan (the TLI Plan) is an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA.

You advise that ALPA is an unincorporated association that represents, for purposes of collective bargaining under the Railway Labor Act, 42,000 pilot members who fly for 44 commercial airlines. The Department of Labor (the Department) notes that ALPA files yearly as a labor organization (File No. 000179) under the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

Section 3(4) of Title I of ERISA provides:

(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 in 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.

For the purposes of this opinion, we assume that ALPA is an employee organization within the meaning of ERISA section 3(4).

You represent that the TLI Plan was established in 1953 to provide term life insurance to ALPA members and certain ALPA employees. The group insurance under the TLI Plan is held in ALPA's name. You state that ALPA makes suggestions to the insurer that provides the insurance under the TLI Plan regarding the plan design, plan structure, and

premium rates of the TLI Plan and that "[a]fter considering [ALPA's] input on plan design and structure, along with plan experience and market competition, the insurer sets the premium rates on an actuarial basis."

You further represent that ALPA informs its own eligible employees about the TLI Plan through internal memoranda and the TLI Plan brochure. ALPA also provides its members information regarding the TLI Plan, including a copy of a TLI Plan brochure. The TLI Plan brochure that is provided to such members displays the ALPA logo and address and refers to the TLI Plan as "ALPA's Group Term Life Insurance for the protection you need" and "ALPA Life Coverage."

You represent that participation in the TLI Plan is voluntary. ALPA participants in the TLI Plan may elect either to have premiums for the plan deducted from their paychecks or to be billed for the premiums by ALPA. ALPA forwards the premium payments to the insurer. In addition to forwarding members' premiums, you state that ALPA pays the insurance premium for covering ALPA's general counsel.

Apprentice members of ALPA may accept or reject an automatic \$10,000 of life insurance coverage under the TLI Plan during a probationary employment period. You represent that premiums are not charged to the apprentice members; nor does ALPA pay premiums for this coverage. Further, you state, "[a]ny loss associated with this coverage is charged against the [TLI] Plan experience." Notwithstanding this representation, page 2 of Endorsement No. 5 of the insurance contract between ALPA and the insurer provides:

If You are an Apprentice Member, You shall automatically receive \$10,000 of Insurance, paid for by ALPA. This Amount shall stay in force until: (1) You cease to Be an Apprentice Member; or (2) it has been in force for one year; whichever occurs first. [Emphasis added]

Section 3(1) of Title I of ERISA defines the term "employee welfare benefit plan" to include:

[A]ny 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 [29 USCS section 186(c)] (other than pensions on retirement or death, and insurance to provide such pensions).

Although the TLI Plan provides a benefit that is specified in ERISA section 3(1), in order to be an employee welfare benefit plan, it must also, among other criteria, be established or maintained by an employer or an employee organization, within the meaning of section 3(1). You assert that ALPA does not establish or maintain the TLI Plan because the program meets the requirements for a group insurance program set forth in regulations of the Department at 29 C.F.R. section 2510.3-1(j). Regulation section 2510.3-1(j) describes certain group or group-type insurance programs in which the involvement of the employer or employee organization in the operations of the program is so minimal that such involvement does not constitute establishment or maintenance of the arrangement for purposes of ERISA section 3(1). Thus, the issue presented in this case is whether the TLI Plan is a group insurance program as described in regulation section 2510.3-1(j) and therefore not an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

Regulation section 2510.3-10) provides:

(j) **Certain group or group-type insurance programs.** For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include a group or group-type insurance program offered by an insurer to employees or members of an employee organization, under which

- (1) no contributions are made by an employer or employee organization;
- (2) participation in the program is completely voluntary for employees or members;
- (3) the sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and
- (4) the employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

It is the Department's position that a program will be excluded from Title I of ERISA pursuant to regulation section 2510.3-1(j) only if the activities of the employer or employee organization do not exceed any of the limitations set forth in the regulation. In the Department's view, ALPA's involvement in the operations of the TLI Plan, as described below, exceeds certain limitations of regulation section 2510.3-1(j).

First, ALPA endorses the TLI Plan within the meaning of section 2510.3-1(j)(3). An employer or employee organization will be considered to have endorsed a group or group-type insurance program if the employer or employee organization expresses to its employees or members any positive, normative judgment regarding the program. An employer or employee organization may, in the course of permitting an insurer, insurance agent, or insurance broker to market a group or group-type insurance program to its employees or members, facilitate the publicizing and marketing of the program, but only to an extent short of endorsing the program.<sup>1</sup> An endorsement within the meaning of section 2510.3-1(j)(3) occurs if the employer or employee organization urges or encourages employee or member participation in the program or engages in activities that would lead an employee or member reasonably to conclude that the program is part of a benefit arrangement established or maintained by the employer or employee organization.

The brochure that ALPA provides to its employees and members specifically and clearly characterizes the TLI Plan as ALPA's group term life insurance. The ALPA logo and address are prominently displayed on the front of the brochure. We view this labeling and packaging as expressions of ALPA's positive, normative judgment regarding the program. An ALPA employee or member, reading this brochure, would reasonably conclude that the program is part of a benefit arrangement established or maintained by ALPA.

Second, ALPA does not comply with the requirement of regulation section 2510.3-1(j)(1) that no contributions be made to the program by the employer or employee organization. ALPA makes contributions to the program by paying to the insurer the premium for its general counsel. Moreover, the insurance contract specifies that ALPA pays the insurer for apprentice member life insurance coverage.

Finally, ALPA's suggestions to the insurer on plan design and structure represent direct involvement in the TLI Plan in excess of that permitted by regulation section 2510.3-1(j)(3). Regulation section 2510.3-1(j)(3) limits the functions of the employer or employee organization with respect to the program to permitting the insurer to publicize the program to employees or members, collecting premiums through payroll deductions or dues checkoffs, and remitting premiums to the insurer.

Therefore, on the basis of the facts, representations, and documents provided, we conclude that ALPA's involvement in the TLI Plan exceeds the minimal and neutral involvement contemplated by ERISA section 2510.3-1(j). It is the opinion of the Department that the TLI Plan is established or maintained by ALPA and that it is an employee welfare benefit plan subject to Title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of the 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> See, e.g., Letter to Mr. Jerry L. Oppenheimer, dated Dec. 16, 1976, (copy enclosed). In that letter the Department opined that a communication to employees or members that states that the employer or employee organization is "enthusiastic" about a program would be an endorsement within the meaning of section 2510.3-1(j)(3). Similarly, a communication that states that the employer or employee organization has "arranged" for a group or group-type insurance program might be an endorsement if, taken together with other employer or employee organization activities, it leads employees or members to reasonably conclude that the insurance program is one established or maintained by the employer or employee organization.