



July 22, 2025

Audrey A. Millemann
Weintraub Tobin 400 Capitol
Mall, 11th Floor
Sacramento, California 95814

2025-02A
ERISA Sec.
3(1), 3(4)

Dear Ms. Millemann,

This is in response to your request for guidance regarding Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the California Association of Professional Firefighters (CAPF) Long Term Disability Plan (CAPF LTD Plan) and the National Peace Officers and Fire Fighters Benefit Association (NPFBA) Long Term Care Plan (NPFBA LTC Plan) are “employee welfare benefit plans” within the meaning of section 3(1) of Title I of ERISA. In 2015, the Department issued an advisory opinion concluding that the California Law Enforcement Association (CLEA) Long Term Disability Plan (CLEA LTD Plan) was not an ERISA-covered plan based on facts that are substantially similar to those described with respect to CAPF (Advisory Opinion 2015-01A). CLEA and CAPF jointly established the NPFBA LTC Plan.

CAPF LTD Plan

The following summary is based on the materials and representations you provided in support of your request and should not be treated as factual findings by the Department. CAPF is a non-profit mutual benefit corporation that provides self-funded long-term disability benefits and self-funded long-term care benefits to participating firefighting personnel and members of fire departments throughout the State of California. Various unions and other profit and non-profit mutual benefit associations established CAPF which formed the trust that established the CAPF LTD Plan in 1985 pursuant to California Insurance Code sections 11400-11407. Those sections allow firemen’s, policemen’s, or peace officers’ benefit and relief associations to be formed for the purpose of aiding their members or dependents of their members in case of sickness, accident, distress, or death. These associations are required to have a governing body elected by the membership, use assets only to pay benefits, and are prohibited from using assets to solicit or procure new members. Associations established under these sections of the California Insurance Code receive a certificate of authority and are exempted from other provisions of the California Insurance Code and other state laws relating to insurance.

CAPF’s by-laws indicate that the directors of CAPF may “seek low-cost disability protection for all plan participants by self-funding welfare benefits.” CAPF is also permitted to adopt and maintain other benefit plans, including a long-term care plan and an accidental death and dismemberment plan. This letter addresses only the CAPF LTD Plan and the NPFBA LTC Plan.

Section 4.01 of the by-laws describes eligibility for the CAPF Plan as “a participant or member of a Participating Association in accordance with the rules for membership or participation in such Participating Association.” Section 4.02 defines those “eligible for plan membership” as “any employee of a fire department of a municipal or public corporation or district; provided that

he or she is a Participant in a Participating Association, an Eligible Individual or a Special Plan Member, ... and subject to such additional requirements as may be established by the Directors.”

Participating Associations include “Charter Associations,” “Regular Associations,” and “Independent Associations.” A Participating Association is defined as “a fire department, agency, association, union or club electing to associate with [CAPF] and approved by the president of [CAPF] for association.” A Charter Association is a Participating Association “which elected to associate with [CAPF] on or before April 1, 1989.” Charter Associations and Participating Associations that are eligible to vote for Directors are Regular Associations. Regular Associations are distinct from Independent Associations. Independent Associations are Participating Associations that, together with “Eligible Individuals,” vote for one elected Director. You provided us with a current listing of approximately 159 participating firefighters’ associations.

An “Eligible Individual” is defined in section 4.04 of the by-laws as “any employee of a fire department of a municipal or public corporation or district not belonging to a Participating Association who complies with such Plan Membership criteria as the Directors may adopt from time to time in accordance with the restrictions for Plan Membership set forth in the Plan document.” Section 4.05 of the by-laws defines “Special Plan Member” as “persons who were previously Plan Members, but are not eligible for Plan Membership solely because (i) they do not belong to a Participating Association, or (ii) they are a retired firefighter, but who are otherwise eligible for Plan Membership and who, at the discretion of the Directors, are appointed as Special Plan Members.” “Special Plan Members are Eligible for Plan Membership as determined by the Directors.”

Under its by-laws, a board of Directors manages the affairs of CAPF. Directors generally serve a one-year term or until a successor has been appointed and qualified. The responsibilities of the board include establishing CAPF’s Executive Board; appointing and removing officers, agents and employees of CAPF unless otherwise provided by contract; and preserving powers and duties for them that are consistent with the law, the articles of incorporation and the by-laws. Section 9.01 of the by-laws provides that the board has the power to adopt plans such as the CAPF LTD Plan, adopt and maintain trusts for which the trustees shall be CAPF Directors, and determine all benefit provisions, eligibility, and claims.

Under section 6.04 of the by-laws, the Directors of CAPF’s board are selected as follows. The Plan Participants from each Charter Association and Regular Association are entitled to elect one Director. Eligible Individuals and Independent Associations may jointly elect one Director for every one thousand (1,000) of the sum of (i) Eligible Individuals and (ii) Plan Participants from the Independent Associations. There are approximately 117 Directors named by Charter or Regular Associations for the CAPF board. CAPF’s by-laws are silent as to the actual voting procedures of the Participating Associations except to state that the results of the voting by each Participating Association be communicated to CAPF. You state that CAPF generally does not have the means to, and does not, verify whether the named Directors are elected by the membership of that particular Participating Association. There are currently 590 individuals, out of a total of over 18,000 participants in the CAPF LTD Plan, who are Eligible Individuals or members of Independent Associations.

Section 3(1) of ERISA defines the term “employee welfare benefit plan” in relevant part as:

[A]ny plan, fund, or program ... established or maintained by an employer or by an employee organization, or by both, to the extent 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 ... medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment ...

Although it appears that the CAPF LTD Plan provides benefits described in section 3(1) of ERISA, to be an employee welfare benefit plan, the plan, fund or program must also, among other criteria, be established or maintained by an “employer, an employee organization, or by both” as those terms are defined under ERISA. Because you have represented that the CAPF LTD Plan was not established or maintained, wholly or partially, by the State of California¹ or any other employer, this letter addresses only whether the program is established or maintained by an “employee organization” within the meaning of section 3(4) of ERISA.

Section 3(4) of ERISA defines the term “employee organization” to mean:

[A]ny 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.

It does not appear that CAPF “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” such as labor disputes, wages, hours of employment, or conditions of work. Therefore, CAPF would not be an employee organization within the meaning of the first part of the definition contained in section 3(4), *i.e.*, that portion appearing before the semi-colon. Nor, as explained below, does it appear that CAPF is an “employees’ beneficiary association” within the meaning of the second part of section 3(4), after the semi-colon.

ERISA does not define the term “employees’ beneficiary association.” The Department, however, applies criteria developed for the same term under the Welfare and Pension Plans Disclosure Act (WPPDA).² Accordingly, an association or organization qualifies as an “employees’ beneficiary association” within the meaning of section 3(4) of ERISA, only if employees participate in it and it meets the following criteria: (1) membership is conditioned on employment status—for example, membership is limited to employees of a certain employer or

¹ The fact that all the participants in a plan are government employees would not in and of itself result in the plan being treated as a governmental plan under ERISA section 3(32). *See* Advisory Opinion 80-22A (plan covering only employees of the State of Maryland but maintained and established by an employee organization is one or more employee welfare benefit plans within the meaning of section 3(1)).

² The criteria were developed while the WPPDA, 29 U.S.C. § 302 (1970), was in effect. The WPPDA, which was repealed in 1975 when ERISA was enacted as its successor law, also used the term “employees’ beneficiary association.”

members of one union; (2) the association has a formal organization, with officers, by-laws or other indications of formality; (3) the association generally does not deal with employers (as distinguished from organizations described in the first part of the definition of “employee organization”); and, (4) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan. *See, e.g.,* Advisory Opinion 2015-01A, Advisory Opinion 92-19A.

Based on your submissions, CAPF appears to have some of the characteristics of an employees’ beneficiary association in that it has a formal organization, it generally does not deal with employers, and it was organized, in part, to provide welfare benefits. However, in the Department’s view, CAPF membership is not conditioned on employment status nor do employees “participate” in CAPF as the Department has interpreted those requirements under section 3(4) of ERISA.

Regarding the employment status condition, the Department has consistently stated that members in an employees’ beneficiary association must be related to each other through a common economic or representation interest, unrelated to the provision of benefits. *See* Advisory Opinion 2015-01A (no requisite commonality among law enforcement officers who are employees of the State of California and multiple counties, cities and municipalities in the State of California); *see also* Advisory Opinion 77-59A (the concept of commonality means in general that membership in an employees’ beneficiary association is conditioned on employment in a common working unit, *e.g.,* employees of a single employer or members of one union); Advisory Opinion 92-19A (association with active membership open only to police officers employed by the City of Richmond has required commonality); Advisory Opinion 93-09A (employees of same employer working at same location have requisite commonality). The Department has also recognized commonality for purposes of ERISA section 3(4) where the members are employed by more than one employer if the employers share common ownership. *See* Advisory Opinion 85-27A (citing to Advisory Opinion 81-61A); *see also* Advisory Opinion 81-61A (plan offered to members of a credit union where membership is limited to employees of one employer and its subsidiaries has requisite commonality); Advisory Opinion 79-19A (plan limited to employees of Goodyear and its subsidiaries and coordinated with the welfare benefits offered by Goodyear has requisite commonality).

Plan members of CAPF (*i.e.,* individuals who participate in the CAPF LTD Plan) are not employees of a single employer or group of affiliated employers or members of a single employee organization. Rather, membership in the CAPF LTD Plan is open to members of Participating Associations, which includes employees of any number of unrelated employers, as well as Eligible Individuals and Special Plan Members, who are not members of any Participating Association. For example, CAPF members include employees of multiple cities and municipalities in the State of California. In the Department’s view, having the same occupation or being employed by similar employers does not provide the type of employment-based commonality that characterizes an employees’ beneficiary association. *See* Advisory Opinion 2015-01A (employees of a variety of employers in law enforcement not sufficient for commonality); *see also* Advisory Opinion 90-11A (employees of a variety of employers in the railroad industry not sufficient for commonality).

Another potential basis for commonality for an employees' beneficiary association—that the members are all members of the same union or employee organization—is also not satisfied by the CAPF arrangement. We do not view this commonality requirement as satisfied where the association's membership extends to individuals belonging to a variety of associations, unions or clubs. *See* Advisory Opinion 85-02A (benefit program of employee organization not a single plan because plan participants are represented by different unions or no union at all, although all are employees of public school districts).

The Department is also unable to conclude that the employee members “participate” in CAPF within the meaning of section 3(4) of ERISA. The Department has interpreted this requirement to mean that the members must participate in the association in such a way that its functions and activities are controlled by the members, in form as well as in fact, either directly or through the regular election of directors, officers, or other similar representatives. *See* Advisory Opinion 80-63A (benefit arrangement covering federal employees nationwide is not an employees' beneficiary association where there is no evidence of employee control over association); Advisory Opinion 80-74A (members of association did not have meaningful involvement in or control of association that ceded all voting rights to plan trustee and administrator).

As noted above, participants in CAPF's LTD Plan are not members of CAPF *per se*. Rather, most are eligible for CAPF's benefit programs by reason of membership in a Participating Association. You advised us that CAPF does not have the means to, and does not verify, whether the named directors are elected by the members of their Participating Associations. Thus, the Department is unable to conclude that CAPF is an organization in which employee members participate by controlling, directly or indirectly, its functions and activities.

Accordingly, it is the view of the Department that the CAPF LTD Plan does not constitute an employee welfare benefit plan within the meaning of ERISA section 3(1) because the requirement that such plans be “established or maintained by an employer or by an employee organization, or by both” is not satisfied. However, the associations whose members participate in the CAPF LTD Plan may themselves constitute employee organizations under ERISA 3(4), in which case the associations may be sponsoring employee welfare benefit plans for their employee members through the CAPF LTD Plan. To the extent CAPF acts as a fiduciary for those plans, CAPF would be subject to all of ERISA's fiduciary responsibility provisions, including the prohibited transaction provisions.

NPFBA LTC Plan

According to the documents you provided to us, CLEA and CAPF merged their long-term care plans to form the NPFBA. CLEA and CAPF appoint the trustees responsible for administering the NPFBA LTC Plan. Based on the analysis and conclusions above with respect to the CAPF LTD Plan, and the analysis and conclusions in Advisory Opinion 2015-01A with respect to the CLEA LTD Plan, the Department is of the view that the NPFBA LTC Plan is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA. Because CAPF and CLEA individually are not employee organizations within the meaning of section 3(4) of ERISA, they are likewise not jointly an employee organization for the same reasons. However, the associations whose members participate in the NPFBA LTC Plan may themselves constitute employee organizations under ERISA 3(4), in which case these associations may be sponsoring

employee welfare benefit plans for their employee members through the NPFBA LTC Plan to the extent it provides benefits that constitute benefits under ERISA section 3(1). To the extent the trustees of the NFPBA LTC Plan act as fiduciaries with respect to such plans, they would be subject to all of ERISA's fiduciary responsibility provisions, including the prohibited transaction provisions.

You have not asked, and this letter does not address, whether the "long term care" benefits provided by the NPFBA LTC Plan constitute "welfare benefits" within the meaning of section 3(1) of ERISA and, importantly, does not alter our conclusion that the NPFBA LTC Plan does not constitute an employee welfare benefit plan under ERISA.

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,

Jeffrey J. Turner
Director
Office of Regulations and Interpretations