



May 1, 2026

Gabriel A. Hamilton
Holland & Hart LLP
800 W. Main Street, Suite 1750
Boise, ID 83702

2026-01A
ERISA SEC.
3(5)
3(40)

Dear Mr. Hamilton:

This is in response to your request, on behalf of the Idaho Farm Bureau Federation (IFBF), for an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act (ERISA) of 1974, as amended, to the Idaho Farm Bureau Federation Health Plan (Plan). Specifically, you asked whether the Plan would constitute (1) an “employee welfare benefit plan” within the meaning of ERISA section 3(1) that is maintained by a “group or association of employers” within the meaning of ERISA section 3(5); and (2) a “multiple employer welfare arrangement” (MEWA) within the meaning of ERISA section 3(40).

You provided the following facts and representations in support of your request. The IFBF is a federation of 39 county farm bureaus (County Farm Bureaus) within Idaho, operating as a nonprofit corporation since 1942. Each County Farm Bureau is affiliated through an agreement with the IFBF but remains an independent nonprofit entity. The IFBF represents 10,770 farmers and ranchers and tenants and landlords of land engaged in the production of agricultural products across Idaho. Its mission and activities include, among other things:

- Correlating County Farm Bureaus’ activities related to national and state legislation;
- Developing Idaho agricultural policies;
- Cooperative marketing and distribution;
- Providing scholarships, training, and advocacy for farmers and agriculturalists in Idaho; and
- Promoting agricultural stability and efficiency while addressing community welfare issues affecting the agriculture market.

The IFBF also provides members with exclusive discounts on insurance,¹ travel, equipment and other services, along with access to scholarships, community programs and agricultural resources.

The IFBF is governed by a Board of Directors that is elected by the IFBF’s Regular Members acting through delegates chosen by each County Farm Bureau. Membership in a County Farm Bureau automatically confers membership in the IFBF. “Regular” membership is available to

¹ You noted that IFBF members founded the Farm Bureau Insurance Company of Idaho on May 1, 1947, to offer affordable insurance to farmers and ranchers in furtherance of the IFBF’s mission. The IFBF and the Farm Bureau Insurance Company of Idaho are separate entities with separate management and operations. The Farm Bureau Insurance Company of Idaho and its subsidiaries offer a wide variety of insurance, including automobile insurance, home insurance, and farm and ranch insurance, some of which are available exclusively to IFBF members. However, they do not offer health insurance among their product lines.

persons engaged in producing agricultural products, such as farmers and ranchers, including tenants or landlords of land used to produce such products. “Associate” memberships are available to persons and organizations interested in agriculture. Only Regular Members in good standing can vote at IFBF meetings or serve on the board of directors of their County Farm Bureau, as delegates to the IFBF, or as IFBF officers.

You represent that the IFBF proposes to establish the IFBF Employer Consortium (Consortium) and the Plan. The Plan will provide fully insured group health insurance coverage from Blue Cross of Idaho Health Service, Inc. (Blue Cross of Idaho) to employees of eligible IFBF members that elect to participate in the Plan (Participating Employers). Only the following members may become Participating Employers: Regular Members of the IFBF who (i) are actively engaged in the business of producing agricultural products; (ii) are based in Idaho; (iii) employ at least two full-time employees (working a minimum of 30 hours per week, including at least one common-law employee); and (iv) sign a Participation Agreement. By signing this Participation Agreement, each Participating Employer in the Plan will also become a member of the Consortium. The Participation Agreement will memorialize the Participating Employers’ control over the Plan through their Consortium membership (as discussed below), specify their rights and responsibilities under the Plan, and delegate premium billing and collection directly to Blue Cross of Idaho.

The Consortium Bylaws and the Benefits Committee Charter will set forth the organizational structure and govern the membership and operation of both the Consortium and the Plan. Under these governing documents, the Consortium will be the sponsor of the Plan, as defined under ERISA section 3(16)(B). To enable effective fiduciary oversight of the Plan, the Consortium will delegate the role of Plan fiduciary and Plan administrator, as defined under ERISA sections 3(21)(A) and 3(16)(A), to a “Benefits Committee.” This Benefits Committee will also act as the governing board of the Consortium. The Benefits Committee will control and manage all the operations and the administration of both the Consortium and the Plan.

Any action by the Benefits Committee will require a majority vote by the Benefits Committee members present at a meeting where a quorum is established. Terminating the Plan, however, will require approval of the Benefits Committee and two-thirds (2/3) of the Participating Employers. The IFBF will initially appoint an Interim Benefits Committee, which will be replaced by a Benefits Committee, duly elected by the Participating Employers, no later than six months after the Plan has at least one Participating Employer. The Benefits Committee will consist of up to five members and be distinct from the IFBF and not under its direction or control. Only employees of Participating Employers can serve on the Benefits Committee.

Each year, the Consortium will hold an annual meeting to elect Benefits Committee members and conduct other business. Participating Employers may nominate and elect eligible individuals to serve on the Benefits Committee for one-year terms. During the annual election, each Participating Employer may cast one vote for each open seat, and nominees receiving the most votes at a meeting where a quorum is established will be elected. A Benefits Committee member may be removed by a majority vote of the Participating Employers.

The term “employee welfare benefit plan” is defined in ERISA section 3(1) to include, among other things:

any plan, fund, or program . . . 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 . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment

Although the Plan will provide benefits described in ERISA section 3(1), to be an employee welfare benefit plan, the Plan must also, among other criteria, be established or maintained by an employer, an employee organization, or both. There is no indication that an employee organization within the meaning of ERISA section 3(4) would be involved in establishing or maintaining the Plan.² Therefore, this letter will only address whether the Plan would be “established or maintained by an employer” within the meaning of ERISA section 3(1).

The term “employer” is defined in section 3(5) of ERISA as “any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.” The Department has taken the view, on the basis of the definitional provisions of ERISA as well as the overall statutory scheme, that in the absence of the involvement of an employee organization, a single “employee welfare benefit plan” may nevertheless exist where a cognizable, bona fide group or association of employers acts in the interests of its employer members to establish a benefit program for the employees of member employers. *See, e.g.*, Advisory Opinion 2017-02AC (sub-group of employer members of trade association can be a bona fide group or association of employers acting as an “employer” within the meaning of ERISA section 3(5)); Advisory Opinion 2019-01A (employer members of a retailer cooperative can be a bona fide group or association of employers under ERISA section 3(5)).

A determination of whether there is a bona fide employer group or association must be made on the basis of all the facts and circumstances involved. Among the factors considered are the following: how members are solicited; who is entitled to participate and who actually participates in the association; the process by which the association was formed, the purposes for which it was formed, and what, if any, were the preexisting relationships of its members; the powers, rights, and privileges of employer members that exist by reason of their status as employers; and who actually controls and directs the activities and operations of the benefit program. The employers that participate in a benefit program must be united by a commonality of interest and must, either directly or indirectly, exercise control over the program, both in form and in substance, in order to act as a bona fide employer group or association with respect to the program. *See* Advisory Opinions 2024-02A, 2019-01A and 2008-07A.

² Section 3(4) of ERISA states that:

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.

The Department has expressed the view that where several unrelated employers merely execute identically worded trust agreements or similar documents as a means to fund or provide benefits, in the absence of any genuine organizational relationship between the employers, no employer group or association exists for purposes of ERISA section 3(5). Advisory Opinion 96-25A. Similarly, where membership in a group or association is open to anyone engaged in a particular trade or profession regardless of their status as an employer, and where control of the group or association is not vested solely in employer members, the group or association is not a bona fide group or association of employers for purposes of ERISA section 3(5). Advisory Opinion 90-19A.

The Department has also concluded that a sub-group of employers within a broader group or association can constitute a bona fide group of employers within the meaning of ERISA section 3(5) capable of sponsoring a multiple employer plan. *See, e.g.*, Advisory Opinion 2024-02A (sub-group of employer members of an association representing regional colleges and universities was a bona fide group of employers); Advisory Opinion 2005-20A (sub-group of franchisee employer members was a bona fide group of employers). In cases where the employers that participate in the plan do not have the ability to control the association (*e.g.*, where the employers participating in the plan do not have the voting control over the governing body of the group or association), the group or association itself cannot serve as the “employer” sponsoring the plan because the participating employers would not be able to control the plan through control of the group or association. However, in such circumstances, membership in the group or association can nevertheless satisfy the requirement that the sub-group of employers have a genuine organizational relationship unrelated to the provision of benefits, and the documents governing the sub-group of employers and the plan can be structured so that the sub-group of employers participating in the plan control the sub-group and the plan, both in form and in substance. Advisory Opinions 2024-02A and 2017-02AC.

In this case, you represent that the IFBF is a long-standing association of Idaho farmers and ranchers, operating as a nonprofit corporation since 1942. The IFBF’s members have joined together to advance the IFBF’s mission, which is to promote the economic, political, and social interests of Idaho farmers and ranchers. To support this mission, the IFBF engages in substantial and ongoing activities. Regular Members of the IFBF consist of entities engaged in the business of producing agricultural products in Idaho, and participation in the Consortium and the Plan will be limited to only those Regular Members with at least two full-time employees. Thus, the IFBF was established for purposes other than the provision of insurance, participation in the Consortium and the Plan is limited to employer members of the IFBF, and the Participating Employers in the Consortium and the Plan have a long-standing history of collaboration through their IFBF membership, working together to advance the common interests of Idaho’s agricultural community. Therefore, the Department would view these Participating Employers as having a commonality of interest and a genuine organizational relationship unrelated to the Plan through their IFBF membership. Furthermore, control over the Consortium and the Plan is vested solely in the Participating Employers, as specified in the Consortium Bylaws and Benefits Committee Charter, which grant Participating Employers the power to control and direct the activities and operations of the Consortium and the Plan by virtue of their authority to nominate, elect, and remove the Benefits Committee members.

Based on the information provided, and assuming the aforementioned governing documents are adopted as described in this letter, it is the Department's view that the Participating Employers would, at least in form, constitute a bona fide group or association of employers for purposes of ERISA section 3(5), and the Plan, at least in form, would constitute an employee welfare benefit plan for purposes of Title I of ERISA. Whether the Participating Employers exercise control in substance over the Consortium and the Plan is an inherently factual issue on which the Department will not rule in an advisory opinion.

We note that without regard to whether the Plan constitutes an employee welfare benefit plan, the Plan is a MEWA within the meaning of ERISA section 3(40). Section 3(40) defines the term MEWA, subject to certain exceptions not relevant here, to mean an employee welfare benefit plan, or any other arrangement, which is established or maintained for the purpose of offering or providing any benefits described in ERISA section 3(1) to the employees of two or more employers.

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. This opinion relates solely to the application of the provisions of Title I of ERISA addressed in the letter. It is not determinative of any particular tax treatment under the Internal Revenue Code and does not address any other federal or state law.

Sincerely,

Jeffrey J. Turner
Director
Office of Regulations and Interpretations