



OPINION NO. 84-30A
Sec. 408(a), PTE 79-60

JUL 6 1984

Edward A. Scallet, Esquire
Thompson & Mitchell
Suite 1000
1120 Vermont Avenue, N.W.
Washington, D.C. 20005

Re: Identification Number F-2879A

Dear Mr. Scallet:

This is in response to your letters of March 30, 1984, and April 9, 1984, requesting an advisory opinion regarding the application of Prohibited Transaction Exemption 79-60 (44 FR 59018, October 12, 1979) (PTE 79-60).

You represent that the Wetterau, Inc. Group Insurance Plan (the Plan) provides dental, disability and life insurance benefits to its participants through the purchase of insurance. Sales of insurance are effected through licensed agents or brokers who are compensated by commission payments from the insurer. You state that the employees of Wetterau, Inc. and certain wholly-owned subsidiaries are eligible to participate in the Plan. These subsidiaries include Glen-Wohlberg & Company and its wholly-owned subsidiary, the Sistrunk Insurance Agency (collectively, the Agencies). The agencies are engaged primarily in the sale of insurance to the public and have employees participating in the Plan. However, all insurance purchased by the Plan to date has been placed through unaffiliated agents and brokers.

You ask whether PTE 79-60 permits Glen-Wohlberg & Co. and Sistrunk Insurance Agency to effect sales of insurance to the Plan, and to receive commissions thereon, if the conditions of the class exemption are met.

PTE 79-60 provides, in pertinent part, that the restrictions of section 406(a) and 406(b) of ERISA shall not apply to sales of insurance or annuity contracts effected for an employee benefit plan maintained by an insurance agent or broker, and to the receipt of sales commissions in connection with such sales by an agent or broker, if certain conditions are met. In addition, the first of the four alternative requirements of section (a) of the exemption is that the insurance agent or broker effecting the sale and/or receiving the commission is an employer any of whose employees are covered by the plan.

It is the Department's opinion that an insurance agent or broker "maintains" an employee benefit plan for purpose of PTE 79-60, when it makes contributions to the plan on behalf of its employees. In our view, the fact that other affiliated entities also make contributions to the same plan on behalf of their respective employees does not alter our conclusion. Therefore, the Agencies would be covered by the relief granted in PTE 79-60, if all the other conditions are met.

This letter is an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure explains the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Acting Assistant Administrator for Fiduciary Standards
Office of Pension and Welfare Benefit Programs