



Randal S. Yoshida
Yoshida & Associates
Pacific Guardian Center, Mauka Tower
737 Bishop Street, Suite 2730
Honolulu, Hawaii 96813

2012-06A
ERISA SEC.
3(1)

Dear Mr. Yoshida:

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 Hawaii Laborers' and Employers' Cooperation and Education Trust Fund (LECET Fund) is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You represent that the LECET Fund was jointly established by the General Contractors Labor Association and the Building Industry Labor Association (collectively, "Association") and the Laborers International Union of North America, Local 368, AFL-CIO (Union) as of December 1, 1993, pursuant to the Amended Trust Agreement Establishing the Hawaii Laborers' and Employers' Cooperation and Education Trust Fund (Trust Agreement). The LECET Fund is one of six funds that comprise the Hawaii Laborers' Joint Trust Funds. The Hawaii Laborers' Joint Trust Funds is comprised of six separate funds including the LECET Fund, an annuity fund, a pension plan, an apprenticeship and training plan, a health and welfare plan, and a vacation and holiday plan. The LECET Fund was established and is operated as a labor management cooperation committee under section 302(c)(9) of the Labor Management Relations Act of 1947 (LMRA), as amended, 29 U.S.C. § 186(c)(9).

The activities and affairs of the LECET Fund are administered by a joint board of trustees, which is empowered "to control and manage the assets, operation and administration of the Fund." Trust Agreement, Article IV, Section 1. The Trust Agreement provides that four Association appointed trustees and four Union appointed trustees comprise the Board of Trustees. Trustees may be removed at any time by the entity that appointed them. The LECET Fund is funded through contributions made by individual employers as specified in collective bargaining agreements and the Trust Agreement.

The LECET Fund's purposes as stated in the Trust Agreement are as follows:

- a. To develop and implement programs, services, and activities designed to strengthen and enhance the labor management relationship, and organizational effectiveness of the Individual Employers;
- b. To foster the general economic development and welfare of the construction industry which the Individual Employers and employees represented by the Union participate in, including, productivity, quality of workmanship, economy of operation within Hawaii's construction industry;
- c. To promote area and industry wide labor-management relationship and cooperation as provided for by section 302(c)(9) of the Labor Management Relations Act, 29 U.S.C. section 186(c)(9), for any and all of the purposes set forth in section 5(b) of the Labor-Management Cooperation Act of 1978;
- d. To improve the job security of Employees who are covered by the Collective Bargaining Agreement and to improve, in general, the job opportunities for these employees;
- e. To educate the Individual Employers and the customers of the Individual Employers of the work of the Fund; and
- f. To engage in any other lawful activities incidental or related to the accomplishment of these purposes.

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

[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 (other than pensions on retirement or death, and insurance to provide such pensions).

Based on the information and representations you provided, it does not appear that the LECET Fund provides any benefit included in section 3(1)(A) or section 3(1)(B) of ERISA.

It is the position of the Department of Labor (the Department) that section 3(1)(B) of ERISA does not incorporate as a covered benefit every arrangement described in section 302(c) of the LMRA. Rather, the Department clarified the definition of an "employee

welfare benefit plan,” in 29 C.F.R. § 2510.3-1(a)(3), with regard to benefits described in section 302(c) of the LMRA, by stating:

Section 302(c) of the LMRA lists exceptions to the restrictions contained in subsections (a) and (b) of that section on payments and loans made by an employer to individuals and groups representing employees of the employer. Of these exceptions, only those contained in paragraphs (5), (6), (7) and (8) describe benefits provided through employee benefit plans. Moreover, only paragraph (6) describes benefits not described in section 3(1)(A) of the Act. The benefits described in section 302(c)(6) of the LMRA but not in section 3(1)(A) of the Act are “. . . holiday, severance or similar benefits.” Thus, the effect of section 3(1)(B) of the Act is to include within the definition of “welfare plan” those plans which provide holiday and severance benefits, and benefits which are similar (for example, benefits which are in substance severance benefits, although not so characterized).

Although the Department issued this regulation before subsection 302(c)(9)¹ was added to the LMRA, the principle it articulates remains fully applicable. The language in section 3(1) of ERISA indicates that, to constitute employee welfare benefits under Title I of ERISA, benefits, including those described in section 302(c) of LMRA, must be benefits “provided” to “participants or their beneficiaries” and be payable upon a particular occurrence. Based on your representations, the only benefits which can be said to be provided by the LECET Fund’s activities accrue generally to the construction industry in Hawaii and participating employers and their covered bargaining unit employees as a whole rather than to individual participants or beneficiaries. The Department has concluded that generalized industry and workplace improvements of the sort that may be generated by the activities of a labor management cooperation committee are not “benefits” covered by section 3(1)(B) of ERISA through incorporation of section 302(c) of the LMRA. *See, e.g.,* Advisory Opinion 91-27A. *See generally Massachusetts v. Morash*, 490 U.S. 107 (1989) (definition of what type of welfare benefits are covered by ERISA 3(1) determined by reviewing the statute as a whole and its purposes). Further, there is no indication in the submission that the Fund is an employee pension benefit plan within the meaning of section 3(2) of Title I of ERISA.

The Trust Agreement for the LECET Fund you submitted with your advisory opinion request included references to ERISA. The website of the Hawaii Laborers’ Joint Trust Funds, which, as noted above, is comprised of six separate funds including the LECET Fund, contained a general sentence describing all six funds as “ERISA benefit funds.” You maintain, however, that the LECET Fund was not established for the purpose of providing, nor has it ever provided, any benefit described in section 3(1) of ERISA. In

¹ Section 302(c)(9) of the LMRA provides that the restrictions in 302(a) shall not apply “. . . with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.”

addition, you advise that no provision in the Trust Agreement has been interpreted by the Board of Trustees as authorizing the LECET Fund to provide any benefits described in section 3(1) of ERISA. Finally, you represent that the Fund's Trust Agreement has been amended to remove all references to ERISA, and the Hawaii Laborers' Joint Trust Funds has removed any reference to the LECET Fund as an ERISA benefit fund from its website. The Department generally would not treat a fund as automatically subject to ERISA merely because it has been labeled as an ERISA-covered plan by a sponsoring employer or employee organization. See *McMahon v. Digital Equipment Corporation*, 162 F.3d 28 at 38 (1st Cir. 1998) ("We do not hold that an employer's mere labeling of a plan determines whether a plan is an ERISA plan . . ."). See also *Donovan v. Dillingham*, 688 F.2d 1367, 1373 (11th Cir. 1982) (courts look to the surrounding circumstances to "ascertain the intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits" when determining whether a plan is subject to ERISA).

Accordingly, based on the information and representations you provided, it is the position of the Department that the LECET Fund is not an employee benefit plan covered under Title I of ERISA. The absence of any explicit limitation in the Trust Agreement that would prevent the Fund from providing ERISA-covered welfare or pension benefits to participants or beneficiaries precludes us from assuring you that the Fund will not be an employee benefit plan if it is operated so as to provide a welfare or pension benefit within the meaning of Title I of 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,

Susan Elizabeth Rees
Chief, Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations