

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 81-43A
103, 104

APR 28 1981

Mr. Lawrence J. Hass
Groom and Nordberg
Suite 450
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Hass:

This is in response to your letter of July 23, 1980 regarding a term life insurance benefit program (the Program) developed by the Equitable Life Assurance Society of the United States (Equitable). You ask whether plans which participate in the Program may avail themselves of certain exemptions from the reporting and disclosure requirements set forth in regulations issued by the Department of Labor (the Department) under the Employee Retirement Income Security Act of 1974 (ERISA).

Specifically, your advisory opinion request concerns the question whether plan administrators which adopt the proposed Program will be exempt from certain reporting and disclosure requirements of ERISA pursuant to 29 C.F.R. §2520.104-20. In this regard, you ask the Department to rule that the prefunding of premium payments for life insurance coverage by means of a group annuity contract issued by Equitable, as described in greater detail below, meets the requirements of section 2520.104-20(b)(2)(ii).

The following is a summary of the facts and representations with respect to the proposed Program:

1. Equitable is a mutual life insurance company subject to the laws of the state of New York.
2. Equitable will provide life insurance coverage under individual yearly renewable term life insurance policies for both active and retired employees.
3. These contracts will be held in a trust established by the employer. The trustee of this trust (the RLR trustee) will be a person who may or may not be affiliated with the employer and could be removed by the employer. The RLR trustee will not receive or

- hold any premium payments or other monies or assets except insurance contracts or policies.
4. Coverage for active employees will be funded through current periodic premium payments under the yearly renewable term policies. These payments will consist of employer, and in some cases, employee contributions. They will be made directly by the employer to Equitable. Any employee contributions will be required to be forwarded by the employer to Equitable on a quarterly (or more rapid) basis. It is not expected that any of these premium payments will be funded to either employers or employees, except to the extent of computational errors in calculating employee contributions.
 5. Coverage for retired employees will continue to be provided under the same individual yearly renewable life insurance policies that were in effect before such employees' retirement. The premiums for employees' post-retirement coverage will be funded through a "retired lives reserve" (RLR) accumulated during their working careers as follows. The RLR will permit the employer to set aside funds under a group annuity contract during employees' working careers. The group annuity contract will be held by the RLR trustee. The employer will make periodic payments under the contract to Equitable and the funds set aside by the employer in this manner will be held by Equitable in its general assets. No such payments will be remitted to the RLR trustee.
 6. For each active employee who will be receiving post-retirement life insurance coverage, a funding account under the group annuity contract will be established. It is anticipated (but not guaranteed by the employer, the RLR trustee or Equitable) that contributions allocated to a group annuity contract funding account will be sufficient to purchase an annuity that will generate payments roughly equivalent to the premiums due after the retirement of the employee in order to continue the individual yearly renewable term policy providing the amount of coverage specified by the plan.
 7. No benefits under the group annuity contract may be paid to any active or retired employee or his beneficiaries.
 8. The RLR trustee will generally have broad discretion as to the allocation of employer contributions, proceeds of annuities under the group annuity contract, any funds withdrawn from the group annuity contract and dividends among and between the insurance policies and group annuity funding accounts, to the extent that all of the funding requirements are not met by premium payments for the life insurance contracts, employer contributions under the group annuity contract, annuity payments and dividends. An employee contribution towards premiums for an insurance policy cannot, however, be reallocated by the RLR trustee.

9. The RLR trustee will also be responsible for selecting the premiums option for the application of dividends on the individual life policies, designating the beneficiary and settlement option under such policies pursuant to the direction of the employee thereunder or the assignee thereof, and electing any administrative or contractual option offered by Equitable.
10. If the group annuity contract is terminated, it is contemplated that the RLR trustee will direct Equitable to apply the amounts accumulated under the contract to the payment of premiums for life insurance coverage for active or retired employees.

Your opinion request applies only to the Program as used in connection with plans covering less than 100 participants at the beginning of any plan year.

The requirements that must be met in order for a plan to qualify for the exemption in 29 C.F.R. §2520.104-20 are set forth in paragraph (b) of that section as follows:

This exemption applies only to welfare benefit plans --

- (1) Which have fewer than 100 participants at the beginning of the plan year;
 - (2)(i) For which benefits are paid as needed solely from the general assets of the employer or employee organization maintaining the plan, or
 - (ii) The benefits of which are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State, the premiums for which are paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members, provided that contributions by participants are forwarded by the employer or employee organization within three months of receipt, or
 - (iii) Both; and
 - (3) For which, in the case of an insured plan --
 - (i) Refunds, to which contributing participants are entitled, are returned to them within three months of receipt by the employer or employee organization, and
 - (ii) Contributing participants are informed upon entry into the plan of the provisions of the plan concerning the allocation of refunds.

In your letter, you state that the conditions set forth in paragraph (b)(3) of §2520.104-20, regarding refunds, will be met. In this connection, you assume that the plans in question are

employee welfare benefit plans subject to Title I of ERISA,¹ and you request an advisory opinion only on the question whether plans participating in the Program which have fewer than 100 participants at the beginning of the plan year would meet the requirements of paragraph (b)(2)(ii) of §2520.104-20, in view of the pre-retirement funding of post-retirement term insurance premiums through group annuity contracts as described above.

Under the circumstances described in your submission, it appears that all benefits provided through the Program would be provided exclusively through individual yearly renewable term life insurance policies or through such policies in conjunction with group annuity contracts, and that, while these policies and contracts would be held in trust, no such benefits would be provided out of any fund other than funds held by Equitable under insurance contracts. In this regard, the life insurance policies and the group annuity contracts involved in the Program are issued by an insurance company which you represent to be qualified to do business in a State. Under these circumstances, a plan participating in the Program, assuming it provided no benefits other than those provided through the Program, would be deemed to provide benefits exclusively through insurance contracts or policies issued by an insurance company qualified in a State.

With regard to premiums for these contracts and policies, while premiums payable after an employee's retirement on the employee's life insurance policy would be paid from the fund held by Equitable under the group annuity contract, these premium payments would be made pursuant to an arrangement under which all amounts paid as consideration by the employer to Equitable for life insurance coverage, both pre-retirement and post-retirement, would be paid directly by the employer to Equitable either from the employer's general assets or partly from its general assets and partly from employee contributions, and no funds disbursed from the employer's general assets would pass through the custody of any third party before being transmitted to Equitable. In addition, you represent that any employee contributions would be required to be forwarded by the employer to Equitable on a quarterly (or more rapid) basis. Under these circumstances, we are of the view that the requirements of paragraph (b)(2)(ii) would be satisfied. Our conclusion in this regard is based on the assumption that a plan participating in the Program offers no benefits other than those provided through the Program. In your letter you indicate that in some instances a plan participating in the Program might provide life insurance coverage in addition to that provided under the Program. In the absence of specific information concerning the manner in which any additional benefits provided under such a plan would be funded, we express no opinion on the question whether such a plan would meet the requirements of §2520.104(b)(2)(ii).

¹ We have enclosed two recent advisory opinions issued by the Department, ERISA Opinions 80-70A and 80-71A, in which the Department concluded that similar programs for pre-funding post-retirement term life insurance premiums through group annuity contracts were welfare plans, not pension plans, where no annuity benefits were payable to participants or their beneficiaries.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. This letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator
Pension and Welfare Benefit Programs

Enclosures