

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION 81-47A  
3(1), 3(5)

MAY 28 1981

Mr. John D. Hintze  
Davis, Hockenberg, Wine, Brown & Koehn  
2300 Financial Center  
666 Walnut Street  
Des Moines, Iowa 50309

Dear Mr. Hintze:

This is in response to your letters of April 29 and July 8, 1980, requesting an advisory opinion regarding the reporting and disclosure requirements of employee welfare benefit plans under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion from the Department addressing -- (1) the proper entity to file the annual report (Form 5500) for the Iowa Bankers Benefit Plan (IBBP); (2) whether only one annual report is required for IBBP; and (3) whether "333" is the proper plan number to be assigned to IBBP on Form 5500.

You state that Iowa Bankers Insurance and Services, Inc. (IBIS) established IBBP (then known as the Iowa Bankers Insurance and Services, Inc. Voluntary Employees Beneficiary Association) on September 1, 1978. The purpose of IBBP is to provide a vehicle for banks located in Iowa to provide health, dental, disability and life insurance benefits to their employees. Participation in IBBP is limited to "member banks," defined in the IBBP trust agreement to mean: any bank that owns a share of common stock issued by IBIS; the Iowa Bankers Association; the Department of Banking of Iowa; IBIS itself; Iowa Transfer System, Inc.; and Iowa Bankers Mortgage Corporation. The three individual trustees of IBBP are subject to removal by IBIS, which also has authority to appoint successor trustees. Each participating bank decides which of the benefit programs it desires to provide for its employees. Any member bank which was participating in a group insurance program administered by IBIS when IBBP was established or any other member bank which makes a written application to IBIS may participate in IBBP. IBBP has self-insured health insurance benefits; it receives contributions from participating banks and arranges for the payment of health benefits through an "Administrative Services Only" contract with an insurance carrier. The dental, disability, and life insurance benefits are funded by contributions from participating banks to IBBP which pays the premiums to a commercial insurance carrier.

Resolution of the reporting and disclosure issues presented in your request rests upon the issue of whether IBBP is one employee welfare benefit plan within the meaning of section 3(1) of ERISA or each participating bank maintains a separate employee welfare benefit plan.

Section 3(1) of ERISA defines the term "employee welfare benefit plan" to include:

... any 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 (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).

Although IBBP provides benefits among those listed in ERISA section 3(1)(A), to be an employee welfare benefit plan, it must, among other criteria, also be established or maintained by an employer or an employee organization, or both.

There is no indication that IBBP was established or is maintained by an employee organization as that term is defined in ERISA section 3(4). Further, on the basis of your submissions, we are unable to conclude that IBBP was established or is maintained by an "employer" as that term is defined in section 3(5) of ERISA. If more than a single employer is involved in the establishment or maintenance of a plan and no employee organization is involved, the employers must, in order to be deemed to be, in the aggregate, an "employer," constitute a bona fide "group or association of employers," within the meaning" of ERISA section 3(5).

Although IBIS might be viewed as having established IBBP, it is not clear from your submissions whether IBIS is such a group or association. The Department has taken the view, on the basis of the definitional provisions of ERISA, as well as the overall statutory scheme, that there must be some organizational relationship among employers in forming a group or association and establishing the plan. In contrast, where several unrelated employers merely execute identically worded "trust agreements" or similar documents offered by an independent third party as a means to fund benefits, no employer association, and, consequently, no employee benefit plan within the meaning of section 3(3) of ERISA, can be recognized.

A determination whether a purported group or association of employers 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 pre-existing 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 association and the benefit program.

Your submissions do not provide sufficient information concerning the relationship of IBIS and its member banks for us to determine whether IBIS is a "group or association" of employers for purposes of section 3(5) of ERISA. Although ownership by member banks of one or more shares each of the common stock of IBIS, for example, may be a relevant factor in such a determination, your submissions do not indicate what rights and powers, if any, are the incidents of such ownership.

If IBIS is not a bona fide group or association of employers, then each member bank that provides benefits for its employees through IBIS or IBBP maintains a separate employee welfare benefit plan, and each such plan must comply with the reporting and disclosure requirement of Part 1 of ERISA that are applicable to it. On the other hand, if one multiple employer plan can be recognized in this case, the designated administrator of the plan would be the proper person or entity to file that plan's annual report. In that event, it appears that "501" would be the proper plan identification number (assuming that the plan in question would be the only welfare plan maintained by IBIS). See specific instructions relating to line item 5(c), Form 5500.

Enclosed for your information are copies of several letters indicating positions that the Department has taken in the past regarding the definition of "group or association" of employers for purposes of section 3(5) of ERISA. You may find them helpful in your analysis of whether IBIS falls within that definition.

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

Sincerely,

Ian D. Lanoff  
Administrator of Pension and Welfare Benefit Programs

Enclosures