

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION 81-70A

Sec 514

SEP 9 1981

Mr. Jon Michael Grogan  
Mayer, Brown & Platt  
231 South LaSalle Street  
Chicago, Illinois 60604

Dear Mr. Grogan:

This is in response to your request for an advisory opinion regarding the preemption of state laws under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the State of Illinois general interest rate laws are preempted under ERISA section 514.

Section 4, Chapter 74 of the Illinois Revised Statutes restricts the rate of interest which may be charged individuals in loan transactions. Under the Illinois statute, the current permissible rate of interest for loans made to individuals is 9 percent. At the time of your request the prime interest rate was approximately 17 percent, mortgage rates ranged between 12 - 15 percent, and ordinary personal loan rates approximated or exceeded those rates where not prevented by usury limitations. You state that certain of the employee pension benefit plans of which your client, Continental Illinois Bank and Trust Company, is trustee, contain provisions whereby loans may be made by the plan to plan participants.

The possibility that such loans might be made by plans to individuals raises the question of the extent to which Section 4, Chapter 74 of the Illinois Revised Statutes might survive the preemptive effect of title I of ERISA.

Section 514 of ERISA provides, in part, as follows:

(a) Except as provided in subsection (b) of this section, the provisions of titles I and IV of ERISA shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b)

....

(b)(2)(A) Except as provided in subparagraph B, nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

Section 514 does not preempt only those state laws which conflict with ERISA but all state laws relating to employee benefit plans. The reasons for broad preemption of state laws were succinctly stated by Senator Javits during final congressional consideration of ERISA:

Both the House and Senate bills provided for preemption of state law, but -- with one major exception appearing in the House Bill -- defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension plans not clearly connected to the Federal regulatory scheme.

Although the desirability of further regulation - at either the State or Federal level - undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required - but for certain exceptions - the displacement of State action in the field of private employee benefit programs. 120 Cong. Rec 29942 (Aug. 22, 1974).

ERISA section 514(b)(2)(A) provides an exception from the preemption provision of ERISA section 514(a) for, among other laws, those state laws regulating the banking industry. However, the Illinois general interest rate statute was not designed to regulate the banking industry as such. Rather its purpose is a broad proscription regulating all loan transactions rather than a specific regulation of the banking industry.

Therefore, since the Illinois general rate statute purports to regulate all loan transactions within the state, it would be preempted by ERISA section 514(a) to the extent it applies to employee benefit plans.

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 effect of advisory opinions.

Sincerely,

Ian D. Lanoff  
Administrator  
Pension and Welfare Benefit Programs