

**U.S. Department of Labor**

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



Reply to the Attention of:  
**OPINION NO. 81-87A**  
Section 3(1)

DEC 22 1981

Mr. D.H. Biaett  
Vice President and Counsel  
Crum & Forster Corporation  
305 Madison Avenue  
Morristown, New Jersey 07960

Dear Mr. Biaett:

This is in reply to your letter of June 1, 1981, and your subsequent correspondence with the Department concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Salary Continuation Plan (the "Plan") of Crum and Forster Corporation (the Corporation). Specifically, your inquiry concerns whether the Corporation's program of salary continuation constitutes a mere payroll practice within the meaning of 29 C.F.R. S2510.3-1(b)(2) rather than an employee welfare benefit plan described in ERISA section 3(1) and, thus, is excluded from ERISA title I coverage.

The following representations were made in connection with your request for an advisory opinion. The Corporation is a holding company in the insurance industry. The Corporation owns, directly or indirectly, all the capital stock of approximately 50 corporations and owns indirectly 50 percent of the capital stock of another corporation. Subsidiary corporations are grouped into nine profit centers. In each profit center, at least one corporation serves as the employer for the profit center's employees. The Corporation itself has less than 10 employees; however, the Corporation's organization (including all subsidiaries) has approximately 9,700 employees. All subsidiaries of the Corporation except two participate in the "Plan."<sup>1</sup> The "Plan" provides for the continuation of an employee's biweekly paycheck during periods of illness, maternity, or injury for up to a maximum of 26 weeks. The Corporation, or each participating subsidiary of the Corporation, pays benefits under the "Plan" only to its eligible employees using its own general assets. The "Plan" is unfunded and uninsured. All permanent employees who have been employed for at least 3 months are eligible to participate in the "Plan." Amounts payable biweekly during absences for illness, maternity, or injury are determined according to a schedule

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<sup>1</sup> As indicated in your telephone conversations of August 6, 1981 and August 7, 1981 with Patricia Nitchie of our staff, the two subsidiaries not participating in the "Plan" had separate salary continuance arrangements before being acquired by the Corporation and have continued to use them. The two arrangements are distinguishable from the "Plan" and are not the subject of this advisory opinion.

based on the employee's length of employment. For a certain number of weeks, depending on the length of employment of the employee, full base salary is paid. For a certain number of additional weeks, also depending on the employee's length of employment, two-thirds of base salary is paid. Accordingly, an eligible employee with 5 or more years of service will continue to receive biweekly paychecks in the amount of full base salary for up to 26 weeks if absence for illness, maternity, or injury continues during that entire period.

Section 3(1) of ERISA in relevant part 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 ... benefits in the event of sickness, accident, disability ...."

Department of Labor regulation section 2510.3-1 identified certain practices that would not be considered employee welfare benefit plans within the meaning of ERISA section 3(1). Specifically, regulation section 2510-3-1(b)(2) provides that the term "employee welfare benefit plan" will not include "... [p]ayment of an employee's normal compensation, out of the employer's general assets, on account of periods of time during which the employee is physically or mentally unable to perform his or her duties, or is otherwise absent for medical reasons (such as pregnancy, a physical examination or psychiatric treatment)...."

It is the position of the Department that payment of less than normal compensation from an employer's general assets during periods in which an employee is absent for medical reasons may under certain circumstances, also constitute a practice that is not an employee welfare benefit plan. Accordingly, on the basis of your representations, it is the position of the Department that, except as provided for under separately maintained plans of the subsidiaries described in the footnote on page 1, above, the Corporation's policy of continuing the salary of its employees and each subsidiary's policy of continuing the salary to its own employees during periods of inability to work because of illness or accident up to a maximum of 26 weeks do not constitute an employee welfare benefit plan under ERISA title I.

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,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs

Enclosures