

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO. 82-17A  
Sec. 101

MAR 10 1982

Ms. Char A. Short  
Manager of Client Services  
A.S. Hansen, Inc.  
Suite 1000, Pennzoil Place  
711 Louisiana Street  
Houston, Texas 77002

Dear Ms. Short:

This is in response to your letter in which you have requested the opinion of the Department of Labor (the Department) concerning the effect of Revenue Ruling 81-137 on certain reporting and disclosure requirements under Part 1 of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the number of inquiries concerning ERISA has resulted in a delay in responding to you.

Revenue Ruling 81-137, referred to in your letter, describes both the circumstances under which each company in a controlled group of corporations will be treated as maintaining a "separate single plan" and the circumstances under which a "single plan" will be found to exist with respect to the controlled group as a whole for purposes of the minimum funding standards of ERISA. You state that one of your clients is a controlled group of 167 companies, each of which has from 5 to 30 employees, and each of which is treated as maintaining a "separate single plan" under Revenue Ruling 81-137. You have inquired whether each such plan would also be considered a separate plan by the Department for purposes of the reporting and disclosure requirements of Title I of ERISA.

It is the view of the Department that a defined benefit pension plan that would be treated as a "separate single plan" under Revenue Ruling 81-137 would also be considered a separate plan with respect to each employer for purposes of the reporting and disclosure provisions of Title I of ERISA. Accordingly, the administrator of each such plan would be responsible for complying with the reporting and disclosure requirements of Title I of ERISA, including those requirements relating to the annual report, summary annual report and the summary plan description.

With regard to your inquiry about the requirements of other agencies, the Department does not have the authority or discretion to make changes in the reporting requirements of Forms 5300, 5302, Schedule SSA, Schedule B (re: minimum funding standards), or Form PBGC-1 and reportable events. Accordingly, any changes to these forms requirements would need to be considered by the IRS or PBGC rather than by the Department.

Finally, with regard to the application of the reporting and disclosure requirements to separate plans maintained by companies under common control, you have inquired whether steps can be taken to simplify these requirements. As you may already know, the Department has made a number of paperwork reductions and simplifications for various classes of plans subject to Part 1 of Title I of ERISA. In this regard, the Department has eliminated the Plan Description Form EBS-1 and the requirement of an independent qualified public accountant's report for small plans, i.e., plans with fewer than one hundred participants at the beginning of the plan year.<sup>1</sup> The Department also has implemented an annual reporting system for small plans whereby a registration statement is filed for two years out of three and a complete report including financial information for the third year. Additionally, the Department has implemented a simplification in the annual reporting requirements for plans which participate in master trusts, including those plans maintained by a controlled group of corporations.

Thus, while the Department is committed to protecting the interests of plan participants and their beneficiaries by requiring appropriate and adequate reporting and disclosure, it is also alert to its responsibility to make reductions, wherever possible, in the unnecessary paperwork burdens which may be imposed upon plans. In this regard, section 110 of ERISA provides a means for petitioning the Department to prescribe, in the case of pension plans, an alternative method for satisfying any requirement of Part 1 of Title I of ERISA. However, no assurances can be given regarding the Department's disposition of any such petition.

The above constitutes an advisory opinion under ERISA Procedure 76-1 (issued August 27, 1976, copy enclosed). Accordingly, it is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

I hope that you will find this information helpful. If you have any questions relating to this response, please contact George Holmes of the Division of Reporting and Disclosure at (202) 523-8515.

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<sup>1</sup> In this regard, you ask whether a controlled group with 167 small companies each having a separate plan with less than 100 participants each would, nevertheless, be considered as maintaining one plan of over 100 participants for purposes of applying the requirement of an independent accountant's report. The Department does not require aggregation of such separate plans for that purpose.

Sincerely,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs

Enclosure