

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



OPINION NO. 84-26A

Sec. 514

JUN 18 1984

Mr. Juan Antonio Garcia
Commissioner of Insurance
P.O. Box 8330
San Juan, Puerto Rico 00910

Dear Mr. Garcia:

The purpose of this letter is to advise you that, pursuant to section 514 of title I of the Employee Retirement Income Security Act of 1974 (ERISA), H.B. 943 (No. 33), approved May 6, 1983, to add section 19.031 to Act No. 77 of June 19, 1957, as amended, known as the "Insurance Code of Puerto Rico" and Act No. 113, approved June 2, 1976, to add a new chapter 19 to Act No. 77 (hereinafter referred to as the Insurance Code) are preempted with respect to collectively bargained employee benefit plans covered by title I of ERISA.

It has come to the attention of the Department of Labor (the Department) that collectively bargained employee benefit plans subject to title I of ERISA have been regulated under the above Insurance Code because they provide services on a prepaid basis.

The Department has the responsibility for administering title I of ERISA. Section 514 of title I of ERISA provides, in pertinent part:

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV 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). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(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.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

The term "State" is defined in section 3(10) of title I of ERISA to include Puerto Rico.

In this respect, we note that the Department has concluded previously, in another context, that employee benefit plans are not excluded from coverage under title I of ERISA solely by virtue of being established or maintained in Puerto Rico. See Advisory Opinion 78-6A (issued March 13, 1978) copy enclosed. Also enclosed for your information are other advisory opinions concerning employee benefit plans in Puerto Rico.

Title I of ERISA applies to any employee benefit plan established or maintained by an employer, an employee organization, or by both to provide benefits to employees and their beneficiaries except those plans specifically exempt under section 4(b) of title I.

The term "employee benefit plan" is defined in section 3(3) of title I of ERISA as "... an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." An "employee welfare benefit plan" is defined in section 3(1) of title I as "... 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, though 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 vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, 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)." (Emphasis supplied.) The term "employer" is defined in section 3(5) of title I as "... any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity." The term "employee organization" is defined in section 3(4) of title I as "... any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan."

Thus, the Insurance Code is a State law within the meaning of section 514(c)(1). If the Insurance Code has been interpreted to apply to an employee benefit plan subject to title I of ERISA, the Insurance Code is preempted with respect to such an employee benefit plan unless it is a multiple employer welfare arrangement. A multiple employer welfare arrangement is defined, in pertinent part, as:

... an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained –

(i) under or pursuant to one or more agreement; which the Secretary finds to be collective bargaining agreements,"

It should be noted that section 514 does not preempt state regulation of insurance policies sold to employee benefit plans.

It should also be noted that, although section 514(b)(6), which was added to ERISA by P.L. 97-473 enacted January 14, 1983, saves from preemption state regulation of multiple employer welfare arrangements, whether or not employee benefit plans, section 3(40) of ERISA, also added by P.L. 97-473, explicitly excludes from the definition of multiple employer welfare arrangement employee welfare benefit plans or other arrangements which are established or maintained "(i) under or pursuant to one or more agreement; which the Secretary finds to be collective bargaining agreements,"

In this regard, we have enclosed for your information a letter dated September 28, 1983 which the Department sent to Insurance Commissioner Bill Gunter. This letter sets forth our views on federal preemption of state regulation of employee welfare benefit plans under ERISA, after the enactment of P.L. 97-473.

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,

Morton Klevan
Deputy Administrator

Enclosures