

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



October 9, 1998

98-08A  
ERISA SEC. 3(1), 3(40)

Barbara G. Sweet, National Director  
Federation of American Consumers and Travelers  
318 Hillsboro Avenue  
P.O. Box 104  
Edwardsville, Illinois 62025

Dear Ms. Sweet:

This is in response to your request for a reconsideration of Opinion 97-14A, issued May 7, 1997, to Mr. Douglas C. Stolte, Deputy Commissioner, Virginia Bureau of Insurance. In that opinion, the Department of Labor (the Department) concluded that the health care program (the FACT Program) offered by the Federation of American Consumers and Travelers (FACT) to its members is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40)(A) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and therefore, at least to the extent provided in ERISA section 514(b)(6)(A), the FACT Program is subject to applicable state insurance law.

You state that "FACT member benefits are offered only to individuals regardless of their employment status, having no connection whatsoever with their employers, if any." You also state that it is your belief that the FACT Program does not constitute an employee welfare benefit plan within the meaning of section 3(1) of ERISA or a MEWA within the meaning of section 3(40) because it was not established and is not maintained by an employer within the meaning of section 3(5). You further state your position that the FACT Program is not a MEWA under the laws of the Commonwealth of Virginia.

The term "employee welfare benefit plan" is defined in section 3(1) to include any plan, fund, or program established or maintained by an employer or by an employee organization to provide certain identified benefits to employees of the employer or members of the employee organization. The term "employer" is defined in section 3(5) to include a group or association of employers acting in the interest of an employer with regard to an employee benefit plan. The Department has previously indicated the criteria it uses to identify a bona fide group or association of employers for the purposes of Title I of ERISA (for example, see Opinion 82-57A, dated November 2, 1982).

The term "employee organization" is defined in section 3(4) to include either an employee organization such as a union which deals with an employer regarding the conditions of employment or an employees' beneficiary association which does not deal with employers on behalf of employees. The Department has also previously indicated the criteria it uses to identify employees' beneficiary associations for the purposes of Title I of ERISA (for example, see Opinion 80-86A, dated December 1, 1980).

Based on your statements that membership in FACT is not limited to employers, it is our position that FACT is not an employer within the meaning of section 3(5) of Title I of ERISA. Additionally, it is our position that FACT is not an employee organization within the meaning of section 3(4) because it does not deal with employers on behalf of employees and it does not meet the criteria of an employees' beneficiary association because its membership is not limited to either the employees of one employer or the members of one union. Accordingly, the health care program

offered to members of FACT is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA because it was not established and is not maintained by an employer or an employee organization.

The definition of a MEWA in section 3(40) of Title I of ERISA includes “an employee welfare benefit plan or any other arrangement (other than an employee welfare benefit plan)” (emphasis added) that is established or maintained for the purpose of providing benefits to the employees of two or more employers. Thus, a health care program may be a MEWA even though it is not an employee welfare benefit plan. The health care program offered to members of FACT was established and is maintained for the purpose of providing health care to any member of FACT. In Advisory Opinion 97-14A, the Department stated that “we are assuming for the purposes of this letter that the members of FACT include the employees of at least two employers.” Nothing in the materials you submitted indicates this assumption is incorrect. Accordingly, the Department maintains the position stated in Advisory Opinion 97-14A that the health care program offered to members of FACT is a MEWA within the meaning of section 3(40).

However, nothing herein should be interpreted as the Department’s position on the issue of whether the health care program offered to members of FACT is an entity described in the Commonwealth of Virginia’s insurance code or any other statute of the Commonwealth of Virginia.

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

Sincerely,

John J. Canary  
Chief, Division of Coverage, Reporting and Disclosure  
Office of Regulations and Interpretations

cc: Virginia Bureau of Insurance