

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-2A
514(a)

DEC 22 1980

Mr. Michael C. Greenfield
Asher, Goodstein, Pavalon, Gittler, Greenfield and Segall, Ltd.
228 North LaSalle Street
Chicago, Illinois 60601

Dear Mr. Greenfield:

This is in response to your letter of May 12, 1980, requesting clarification of an advisory opinion issued to you on January 18, 1980 (Opinion 80-3A). In that opinion, the Department indicated that it had previously taken the position that there is an implied exception to the anti-assignment provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for state court decrees entered in marital proceedings ordering payment of a portion of a participant's benefit based on family support or community property claims to a non-employee spouse or former spouse of a participant whose pension is in pay status.

The question you raise involves the portion of the advisory opinion which states that the participant whose benefits are garnished must be "in pay status." Specifically, you wish to know whether the participant must be in pay status when the court decree is entered or when the decree is enforced. In this regard, you point out that the participant whose pension was garnished in the case on which Opinion 80-3A is based was not in pay status when the decree was entered. On the other hand, the decree did not order immediate payment of the participant's pension, but only payment "if, as, and when [the participant] shall receive any of the same."

In the Department's view, the requirement in Opinion 80-3A that the participant whose benefits are garnished be in pay status applies as of the time any payment is to be made by the plan. In the case on which Opinion 80-3A is based, it appears that the participant in question will be in pay status before any payment would be payable under the decree. As a result, when the participant's benefits become payable under the terms of the plan, those benefits may be paid to the participant's former spouse in accordance with the decree.

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 of Pension and Welfare Benefit Programs