

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 82-68A
Sec. 3(1), 3(5), 3(7), 3(6), 3(8)

DEC 21 1982

Mr. Paul K. Casey
Piper & Marbury
1100 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Dear Mr. Casey:

This is in reply to your letter of January 28, 1982, and your subsequent correspondence of June 11 and July 19, 1982, requesting an opinion from the Department of Labor (the Department) that the Easco Corporation Health Benefit Plan (the Plan) is an employee welfare benefit plan covered by title I of the Employee Retirement Income Security Act of 1974 (ERISA).

You state that under the Plan, Easco Corporation (Easco) provides health benefits for certain of its eligible employees and those of its subsidiaries. You listed Easco's subsidiaries in your correspondence. Participation under the Plan is limited to those groups of employees. The Plan has been in existence for some time; however, effective December 21, 1981, Easco provided for a self-funded arrangement for benefits not in excess of a specified amount. Aetna Life Insurance Company (Aetna) pays benefits in excess of such amounts under a group insurance policy. Under the document you submitted entitled "Health Benefit Plan under section 501(c)(9)," Easco and Aetna agree on the aggregate amount, termed the "Policy-holder Liability Limit." The benefits Easco pays are termed "Uninsured Benefits." Valid benefit claims in excess of the "Policy-holder Liability Limit" paid by Aetna are termed "Insured Benefits."

Pursuant to ERISA section 4, in pertinent part, title I of ERISA applies to any employee benefit plan if it is established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce except those plans exempt under section 4(b). Some plans covered by title I of ERISA are exempted from certain parts thereof. The term "employee benefit plan," as defined in section 3(3) of title I of ERISA, includes employee welfare benefit plans.

ERISA section 3(1) provides that the term "employee welfare benefit plan" includes "... 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,

through 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)." Health benefits of the type provided by the Plan are included in ERISA section 3(1).

The term "employer" is defined in ERISA section 3(5) 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." Easco meets this definition with respect to the Plan for the purpose of providing benefits for its employees and those of its subsidiaries.

The term "participant" is defined in section 3(7) of ERISA title I, in pertinent part, as "... any employee or former employee of an employer, ... who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer ..., or whose beneficiaries may be eligible to receive any such benefit." The employees of Easco and its subsidiaries are participants under the Plan.

The term "employee" is defined in section 3(6) of ERISA title I as "... any individual employed by an employer." Because Easco meets the definition of "employer" in ERISA section 3(5) with respect to the Plan, the individuals employed by Easco and its subsidiaries meet the definition of employee in ERISA section 3(6).

The term "beneficiary" is defined in section 3(8) of ERISA title I as "... a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." Persons designated by Plan participants or by the terms of the Plan are "beneficiaries" under section 3(8) of ERISA title I.

Because the Plan was established and is maintained by Easco, an employer within the meaning of section 3(5) of ERISA, to provide health benefits for Plan participants (solely eligible Easco employees and employees of its subsidiaries) and their beneficiaries, the Plan constitutes an employee welfare benefit plan as defined in ERISA section 3(1). An employer's program of benefits, which otherwise meets the definition in section 3(1) of ERISA, is deemed an employee welfare benefit plan by the Department without regard to whether the Plan provides benefits through insurance or otherwise.

Accordingly, the Department views the Plan as an employee welfare benefit plan covered by title I of ERISA both as it formerly provided for benefits and as it currently provides for benefits.

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