

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-28A
Sec. 3(1)

JUN 9 1983

Mr. P. Bruce Wright
Trubin Sillcocks Edelman & Knapp
375 Park Avenue
New York, New York 10152

Dear Mr. Wright:

This is in reply to your letter of October 28, 1982, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether a life insurance payroll deduction program developed by Provident Life & Accident Company (Provident) and United Enterprise Security Corporation (UESC) to be marketed on a group-type basis would constitute an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

You advise that your client, Provident, is a Tennessee insurance company. UESC is a Texas corporation specializing in the mass marketing of personal life insurance products and in the design and implementation of payroll deduction programs. Together Provident and UESC have designed the following individual life insurance program to be marketed on a group-type basis with the cooperation of employers. UESC would approach an employer to be permitted to present that employer's employees the opportunity to purchase an individual life insurance policy through payroll deductions. UESC would explain to the employees the nature and extent of various benefits they enjoy which are provided by the employer and the additional life insurance coverage UESC is offering under a separate program to each on a voluntary enrollment basis. The employer would not make any recommendations about the life insurance offered by UESC or its suitability to an employee's needs. Each employee interested in the life insurance coverage will pay all premiums for his or her policy which will be individually owned. You represent that the marketing and administrative advantages to the insurer resulting from the group-type approach together with the payroll deduction arrangements should produce significant premium savings to individuals insured. Provident will issue the individual insurance policies under the arrangement. Additionally, Provident will enter into a reinsurance agreement with a non-United States reinsurance company affiliated with or owned by the employer if the employer wishes. The reinsurance agreement will consist of the same terms and conditions that would be offered to any other reinsurance company and provide for cession to the reinsurer of up to 50 percent of the premiums attributable to insurance written under the program for that employer's employees. The premiums payable by the individual employees to Provident will not be affected by the reinsurance agreements but will be determined in accordance with ordinary group underwriting practices and will reflect economies produced by marketing and operating the program on a group-type basis.

Section 3(1) of ERISA defines the term "employee welfare benefit plan" to include:

... 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) ... benefits in the event of sickness, accident, disability, death or unemployment, ... 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).

In regulation 29 C.F.R. §2510.3-1 the Department of Labor (the Department) identified certain programs that would not be considered to constitute employee welfare benefit programs. Specifically, regulation section 2510.3-1(j) provides:

(j) Certain group or group-type insurance programs.

For purposes of Title I of the Act and this chapter, the terms “employee welfare benefit plan” and “welfare plan” shall not include a group or group-type insurance program offered by an insurer to employees or members of an employee organization, under which

- (1) no contributions are made by an employer or employee organization;
- (2) participation in the program is completely voluntary for employees or members;
- (3) the sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and
- (4) the employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

It is the position of the Department that, if an employer and Provident enter into a reinsurance agreement such as you describe concerning a life insurance program offered through payroll deduction to the employees of that employer, such a program would not be a group or group-type insurance program described in regulation section 2510.3-1(j). The employer, through its affiliate, would be receiving consideration in connection with the program -- the benefit of additional insurance business. As a result, the program would fail to meet the fourth condition of regulation section 2510.3-1(j). Moreover, the employer’s conduct would exceed the limited scope of involvement delineated in the third condition of regulation section 2510.3-1(j). It is the opinion of the Department that such employer conduct would also amount to the establishment and maintenance by the employer of a plan, fund or program which would provide a benefit within the meaning of ERISA section 3(1). It is, therefore, the position of the Department that the life insurance program to be offered by UESC and reinsured by an affiliate of the employer, as described above, would be an employee welfare benefit plan within the meaning of ERISA section 3(1). Such a plan would have to comply with the applicable provisions of title I of ERISA, including the fiduciary provisions of part 4 of that title.

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