

U.S. Department of Labor

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



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Sec. 3(1), 3(5), 3(6), 3(7), 3(8)

Mr. John E. Kratz, Jr.
Attorney at Law
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1100 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Dear Mr. Kratz:

This is in reply to your letter of September 24, 1984, requesting an advisory opinion from the Department of Labor (the Department) that the Landmark Financial Services Inc. Group Life, Disability, and Health Plan (the Plan) is an employee welfare benefit plan covered by title I of the Employee Retirement Income Security Act of 1974 (ERISA).

In your correspondence you state that the Plan was established by Landmark, Inc. (Landmark) to provide certain benefits, as discussed hereinafter, for eligible employees and the eligible employees of its subsidiaries and affiliates. In general, the Plan provides life insurance, long-term disability, medical, and hospitalization benefits. Types of benefits, classes of eligible employees, extent of coverage and related matters are determined in accordance with the terms of the group insurance policies issued to Landmark by the Sun Life Assurance Company of Canada (Sun Life). The Plan has been in existence for a number of years; however, effective October 1, 1982, the Plan was amended to provide funding in part through a trust exempt from taxation under section 501(c)(9) of the Internal Revenue Code (IRC). Landmark contributes to the trust to provide sufficient funds for current and future benefit liabilities under the Plan. Disbursements are made from the trust at the direction of the employee benefit trust committee provided for under the trust agreement (section 4.2) to satisfy the benefit obligations under the Plan. Pursuant to an insurance agreement with Sun Life, benefits under the Plan are paid by Landmark up to an aggregate amount, and benefits in excess of such an amount are paid by Sun Life.

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." Landmark meets this definition with respect to the Plan for the purpose of providing benefits for its employees and those of its subsidiaries and affiliates.

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 Landmark and its subsidiaries and affiliates 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 Landmark meets the definition of "employer" in ERISA section 3(5) with respect to the Plan, the individuals employed by Landmark and its subsidiaries and affiliates 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 Landmark, an employer within the meaning of section 3(5) of ERISA, to provide health benefits for Plan participants (eligible Landmark employees and employees of its subsidiaries and affiliates) and their beneficiaries, the Plan constitutes an employee welfare benefit plan as defined in ERISA section 3(1). An employer's program of benefits is deemed an employee welfare benefit plan by the Department

when it meets the definition of section 3(1) of ERISA, 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.

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,

Elliot I. Daniel
Acting Assistant Administrator
Office of Regulations and Interpretations