

U.S. Department of Labor

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



JUL 15 1985

85-27A

Mr. Bruce O. Jolly, Jr.
McGlinchey, Stafford, Mintz, Cellini & Lang, PC
Suite 5100
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006

Dear Mr. Jolly:

This is in reply to your requests for advisory opinions: (1) that Government Employees Credit Union in San Antonio, Texas (GECU), is an employees' beneficiary association within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974 (ERISA); and (2) that the legal services plan GECU may offer is an employee welfare benefit plan covered by ERISA.

With regard to your request, you have provided, in your letters and accompanying documents, the following facts and representations. GECU, San Antonio, Texas, is a state-chartered, federally insured credit union providing financial and financially related services to the employees of a number of individual employers who are specifically within the field of membership of the credit union. Because GECU is a credit union chartered under Texas law (Texas Revised Civil Statutes, Article 2461-1.01, *et seq.*), its membership is necessarily limited to persons who share "a definable community of interest, including a community of interest based on occupation, association, or residence." Pursuant to Texas law, the bylaws of GECU specifically list the sponsoring entities whose employees are eligible for membership in GECU. You indicate that the list, while extensive, demonstrates the desire of employers, particularly small employers, to make available to their employees credit union services as an employee benefit.

According to Exhibits B and C, accompanying your March 27, 1985 letter, the GECU field membership includes: employees of the Federal Government residing or employed in Bexar County, or contiguous counties, Texas, and those paid and supervised out of Bexar County, Texas; employees of contractors, concessionaires, or nonappropriated fund activities working regularly at United States Government bases or installations in Bexar County, Texas; students of San Antonio Community College District; students, as well as employees, of all components of the University of Texas system located in San Antonio, Texas; and employees of certain employers in telecommunications, trucking, advertising, travel, food services, and various other trades and industries.

You state that the prepaid legal services plan will be available to all members of the credit union within the described field of membership, and that membership in the credit union is generally conditioned on an employment status. Further, you state that GECU has a formal organization with officers, bylaws, and other indications of formality. The ownership and control of the credit union is vested, by law, in the members of the organization. GECU is authorized under Texas law to make legal services benefits available to its members; the credit union does not deal with employers on behalf of its members with respect to employee benefits or other employment related matters; and one of the purposes of the credit union is to establish welfare benefit plans within the meaning of section 3(1) of ERISA. For these reasons, you believe the GECU is an "employee organization" within the meaning of ERISA section 3(4). In this regard, you cite Advisory Opinion No. 81-61A, in which the Department concluded that a particular credit union did constitute an employee organization.

Prepaid legal services is one of the benefits delineated in ERISA section 3(1) constituting a welfare benefit. However, in order to constitute an "employee welfare benefit plan" within the meaning of ERISA section 3(1), a plan, fund, or program must, in addition to providing one of the benefits delineated in that section, be established or maintained by an employer within the meaning of ERISA section 3(5) or an employee organization within the meaning of ERISA section 3(4), or both.

Your submissions contain no representations or contentions that the prepaid legal service plan is being established or maintained by GECU as either an employer¹ or an employee organization within the meaning of the first part of the definition in section 3(4) of ERISA (i.e., before the semi-colon - "any labor union or any organization of any kind, ... in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships."). Accordingly, the only issue is whether GECU constitutes an "employees' beneficiary association", as that term is used in the second part of the definition of employee organization in ERISA section 3(4), i.e., after the semi-colon.

While the term "employees' beneficiary association" is not defined in title I of ERISA, the Department applies the criteria it developed for defining the same term under the Welfare and Pension Plans Disclosure Act in determining whether a particular association or organization is an "employees' beneficiary association" within the meaning of ERISA section 3(4). Therefore, in order to conclude that an association or organization is an "employees' beneficiary

¹ Employees of GECU participate in and purchase prepaid legal services solely on the basis of their membership in GECU and apart from their status as employees of GECU (Exhibit B, section 3.01 N.).

association" within the meaning of ERISA section 3(4), the Department must find that: 1) membership in the association is conditioned on employment status -- for example, membership is limited to employees of a certain employer or members of one union; 2) the association has a formal organization, with officers, bylaws, or other indications of formality; 3) the association generally does not deal with an employer (as distinguished from organizations described in the first part of the definition of "employee organization"); and 4) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.²

Pursuant to the first criterion, an association's members must have a commonality of interest with respect to their employment relationships, i.e., members must be employed by employers who have some identifiable and definable relationship to one another (See Advisory Opinion No. 81-61A in which the Department found the membership to be limited to "employees of several related employers" (emphasis supplied).)³ Accordingly, the commonality of interest requirement cannot be satisfied by a mere showing that members are in an employed status or work in the same location or have a day-to-day working relationship. The GECU field of membership includes, in addition to non-employee members (i.e., students of San Antonio Community College District and students of all components of the University of Texas system located in San Antonio, Texas), employees of employers in a wide and diverse range of industries and trades (e.g., telecommunications, trucking, advertising, travel, food service, realty, investing, among others) which have no apparent relationship with one another on which the Department can base a finding that there is a commonality of interest with respect to the members' employment relationships. Accordingly, the Department is unable to conclude, on the basis of the facts and representations presented, that the Government Employees Credit Union in San Antonio, Texas, is an employees' beneficiary association, within the meaning of ERISA section 3(4) and, therefore, an employee organization as defined by that section. Accordingly, it is the opinion of the Department that a prepaid legal services plan established or maintained by the Government Credit Union in San Antonio, Texas, would not constitute an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA.⁴

² Welfare and Pension Plans Disclosure Act, Interpretative Manual, section 315.100 (1965).

³ We note that this standard is considerably narrower than the standard to which you refer in Article 2461-3.01 of the Texas Revised Statutes (Supp. 1985) providing that "[m]embership in a credit union is limited to the incorporators and other persons ... who: ... share a definable community interest, in accordance with the articles of incorporation of the credit union, including a community of interest based on occupation, association, or residence."

⁴ This letter does not, however, address the question whether any of the employers whose members participate in the program has established or maintained a separate employee benefit plan that is subject to the requirements 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 effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations