U.S. Department of Labor Pension and Welfare Benefits Administration
Washington DC 20210

March 22, 1993

Mr. Thomas G. Corcoran, Jr.
Coordination Council for
North American Affairs
4201 Wisconsin Avenue, N.W.
Washington, D.C. 20016-2137

93-10A
ERISA SECTION
3(1), 4(b)

Dear Mr. Corcoran:

This is in reply to your request for an advisory opinion from the Department of Labor (the Department) regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether a proposed group health program (the Program) for employees of the Coordination Council for North American Affairs (the CCNAA) would be an employee welfare benefit plan covered by Title I of ERISA.

Your submission contains the following facts and representa- tions. The CCNAA is the unofficial representative of the people of Taiwan established pursuant to Section 10 of the Taiwan Relations Act (the TRA). See 22 U.S.C. §3309. The TRA provides that "[t]he absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979." 22 U.S.C. §3303(a). The CCNAA has been considered to have the status of a foreign state for purposes of the Foreign Sovereign lmmunities Act of 1976 (the FSIA), 28 U.S.C. §§ 1330,1332(a)(4),1602-161 1. Millen Industries v. CCNAA, 855 F.2d 879, 883 (D.C. Cir. 1988).

You further represent that the Program CCNAA proposes to establish would provide accident, medical, surgical and dental benefits to employees of CCNAA resident in the United States who would include Republic of China (Taiwan) nationals, United States nationals, and individuals maintaining both Republic of China and United States citizenship.

Section 3(1) of Title I 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) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits...

Section 4(b) of Title I of ERISA excludes the following categories of employee benefit plans from coverage under Title I of ERISA:

> (1) governmental plans (as defined in §3(32));
>
> (2) church plans (as defined in §3(33)) with respect to which no election has been made under §410(d) of the Internal Revenue Code of 1986;
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> (3) plans maintained solely for the purpose of complying with applicable workers' compensation laws or unemployment compensation or disability insurance laws;
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> (4) plans maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or
>
> (5) excess benefit plans (as defined in §3(36)) that are unfunded.

Because the Program would be established and maintained within the United States by an employer (CCNAA) and provide accident, medical, surgical and dental benefits to employees, it would constitute an employee welfare benefit plan as defined under section 3(1) of ERISA. Furthermore, it does not appear that the Program would fall within a category of exempt plans listed in section 4(b) of ERISA. Although section 4(b) of ERISA exempts certain plans from the requirements of Title I of ERISA, it does not expressly exempt plans established or maintained by foreign governments from coverage under Title I. Accordingly, it is the view of the Department that the Program proposed by the CCNAA would constitute an employee welfare benefit plan covered by Title I of ERISA.

The Department expresses no view as to whether, or under what circumstances, CCNAA may be entitled to rely on a claim of sovereign immunity as a defense to noncompliance with laws of the United States. The validity of any such claim must be determined under the FSIA.[1] See Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480 (1983); Segni v. Commercial Office of Spain, 835 F.2d 160, 162 (7th Cir. 1987).

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 an advisory opinion.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations

[1] It should be noted that, while the Department has issued prior advisory opinions in this area based on international comity, the Department has since concluded that with the enactment of the FSIA the application of such principles is inappropriate.