



July 11, 1994

Ms. Catherine A. Powers  
Benefits Attorney  
Air Line Pilots Association  
535 Herndon Parkway  
P.O. Box 1169  
Herndon, Virginia 22070

94-25A  
ERISA SECTION  
3(1),2510.3-10)

Dear Ms. Powers:

This is in response to your request on behalf of the Air Line Pilots Association, International (ALPA) regarding the applicability of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the ALPA Group Legal Expense Insurance Plan (the LEI Plan) is an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA.

You advise that ALPA is an unincorporated association that represents, for purposes of collective bargaining under the Railway Labor Act, 42,000 pilot members who fly for 44 commercial airlines. The Department of Labor (the Department) notes that ALPA files yearly as a labor organization (File No. 000179) under the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

Section 3(4) of Title I of ERISA provides:

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, 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; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

For the purposes of this opinion, we assume that ALPA is an employee organization within the meaning of ERISA section 3(4).

You represent that the LEI Plan was established on June 1, 1992, to provide group prepaid legal services to ALPA members and ALPA employees. The group insurance under the LEI Plan is held in ALPA's name.

You state that ALPA makes suggestions to the insurer that provides the legal expense insurance under the LEI Plan regarding the design and plan structure of the LEI Plan and that "[a]fter considering [ALPA's] input on plan design and structure, along with market competition, the insurer sets the premium rates on an actuarial basis."

You further represent that ALPA informs its own eligible employees about the LEI Plan through internal memoranda and the LEI Plan brochure. ALPA also provides its members with information regarding the LEI Plan, including a copy of the LEI Plan brochure. The LEI Plan brochure is titled "ALPA-Sponsored Legal Plan" and states that the plan "has been designed specifically for your membership group". A final paragraph, titled "The Legal Plan Designed For Your Group", provides:

You can enroll in the MLS Legal Plan with confidence, knowing that it has been selected by the association to which you belong. The fact that ALPA chose Midwest Legal Services to provide this important family protection is the best guarantee that the MLS Legal Plan is right for you.

You represent that participation in the LEI Plan is voluntary. Participants in the LEI Plan may elect either to have premiums deducted from their paychecks or to be billed for the premiums directly by ALPA. Premiums are collected by ALPA and forwarded to the insurer.

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

[A]ny 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 [29 USCS section 186(c)] (other than pensions on retirement or death, and insurance to provide such pensions).

The LEI Plan provides group prepaid legal services. "Prepaid legal services" is itself specified in section 3(1)(A) as a benefit. In addition, section 302(c)(8) of the Labor-Management Relations Act, 1947 (LMRA), lists as a benefit "defraying the costs of legal services for employees or their families, and dependents for counsel or plan of their choice," and therefore, such benefits are, pursuant to ERISA section 3(1)(B), covered by ERISA. See 29 C.F.R. section 2510.3-1(a)(3).

Although the LEI Plan provides a benefit that is specified in ERISA section 3(1), in order to be an employee welfare benefit plan, it must also, among other criteria, be established or maintained by an employer or an employee organization, within the meaning of section 3(1). You assert that ALPA does not establish or maintain the LEI Plan because the program meets the requirements for a group insurance program set forth in regulations of the Department at 29 C.F.R. section 2510.3-1(j). Regulation section 2510.3-1(j) describes certain group or group-type insurance programs in which the involvement of the employer or employee organization in the operations of the program is so minimal that such involvement does not constitute establishment or maintenance of the arrangement for purposes of ERISA section 3(1). Thus, the issue presented in this case is whether the LEI Plan is a group insurance program as described in regulation section 2510.3-1(j) and therefore not an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

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; tary for employees or members;
- (2) participation in the program is completely volun-
- (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 Department's position that a program will be excluded from Title I of ERISA pursuant to regulation section 2510.3-1(j) only if the activities of the employer or employee organization do not exceed any of the limitations set forth in the regulation. In the Department's view, ALPA's involvement in the operations of the LEI Plan, as described below, exceeds certain limitations of regulation section 2510.3-1(j).

First, ALPA endorses the LEI Plan within the meaning of section 2510.3-1(j)(3). An employer or employee organization will be considered to have endorsed a group or group-type insurance program if the employer or employee organization expresses to its employees or members any positive, normative judgment regarding the program. An employer or employee organization may, in the course of permitting an insurer, insurance agent, or insurance broker to market a group or group-type insurance program to its employees or members, facilitate the publicizing and marketing of the program, but only to an extent short of endorsing the program.<sup>1</sup> An endorsement within the meaning of section 2510.3-1(j)(3) occurs if the employer or employee organization urges or encourages employee or member participation in the program or engages in activities that would lead an employee or member reasonably to conclude that the program is part of a benefit arrangement established or maintained by the employer or employee organization.

The brochure that ALPA provides to its employees and members specifically and clearly characterizes the LEI Plan as designed and selected by ALPA. "ALPA-Sponsored Legal Plan" and the ALPA logo are prominently displayed on the front of the brochure. We view this labeling and packaging as expressions of ALPA's positive, normative judgement regarding the program. An ALPA employee or member, reading this brochure, would reasonably conclude that the program is part of a benefit arrangement established or maintained by ALPA.

Furthermore, ALPA's suggestions to the insurer on plan design and structure represent direct involvement in the LEI Plan in excess of that permitted by regulation section 2510.3-1(j)(3). Regulation section 2510.3-1(j)(3) limits the functions of the employer or employee organization with respect to the program to permitting the insurer to publicize the program to employees or members, collecting premiums through payroll deductions or dues checkoffs, and remitting premiums to the insurer.

Therefore, on the basis of the facts, representations, and documents provided, we conclude that ALPA's involvement in the LEI Plan exceeds the minimal and neutral involvement contemplated by ERISA section 2510.3-1(j). It is the opinion of the Department that the LEI Plan is established or maintained by ALPA and that it is an employee welfare benefit plan subject to Title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Robert J. Doyle  
Director of Regulations  
and Interpretations

Enclosure

' See, e.g., Letter to Mr. Jerry L. Oppenheimer, dated Dec. 16, 1976, (copy enclosed). In that letter the Department opined that a communication to employees or members that states that the employer or employee organization is "enthusiastic" about a program would be an endorsement within the meaning of section 2510.3-1(j)(3). Similarly, a communication that states that the employer or employee organization has "arranged" for a group or group-type insurance program might be an endorsement if, taken together with other employer or employee organization activities, it leads employees or members to reasonably conclude that the insurance program is one established or maintained by the employer or employee organization.