

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



October 3, 1995

95-25A  
ERISA SECTION 3(32)

Mr. Keith B. Betzina  
Heller, Ehrman, White & McAuliffe  
333 Bush Street  
San Francisco, California 94104-2878

Dear Mr. Betzina:

This is in reply to your request for an opinion on behalf of the Los Angeles Police Relief Association, Inc. (hereinafter, LAPRA). You ask whether three LAPRA benefit arrangements (hereinafter, the Plans) are excluded from Title I of the Employee Retirement Income Security Act of 1974 (ERISA) as "governmental plans" within the meaning of section 3(32) of that Title. You state that the Plans cover only police officers employed by the Police Department of the City of Los Angeles, California (hereinafter, the LAPD) and employees of LAPRA itself; that LAPRA pays most of the cost of providing benefits from the Plans for LAPRA's employees; and that the unions representing participating police officers bargain collectively with the LAPD to secure its payment of most of the cost of providing benefits from the Plans for police officers.

You represent that LAPRA is a nonprofit corporation under California law and has a constitution and bylaws that describe its operations. According to these documents, the primary source of LAPRA's operating funds is its members' dues, but LAPRA may also accept contributions and gifts. LAPRA accepts as members only current and former LAPD officers.<sup>1</sup> Membership is voluntary and limited; there currently are approximately 12,200 members, who include 8,100 police officers who currently work for the LAPD and 4,100 of the LAPD's retired police officers. LAPRA members elect from among themselves a board of directors consisting of eleven members. Those directors also elect the officers for LAPRA from among themselves.

LAPRA's constitution and bylaws prohibit bargaining, or otherwise dealing, with the LAPD concerning members' employment. Other, separate organizations represent the LAPD's police officers in bargaining with their employer.<sup>2</sup> LAPRA is intended to benefit retired and active LAPD police officers and their beneficiaries solely through the provision of health and other welfare-type benefits.<sup>3</sup> The guidance that you request pertains to only three

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<sup>1</sup> Specifically, the constitution and bylaws of LAPRA confine its membership to "the Chief of Police, and to sworn members of the Los Angeles Police Department, as defined in the Charter of the City of Los Angeles . . ." According to LAPRA's rules about membership, its membership before 1971 may have included individuals other than LAPD police officers, but you represent that currently only LAPD police officers are eligible to be members of LAPRA.

<sup>2</sup> The Command Officers' Association represents those LAPD police officers with the rank of captain and above, and the Police Protective League represents those LAPD police officers with the rank of lieutenant and below.

<sup>3</sup> The Internal Revenue Service (hereinafter, IRS) recognizes LAPRA as a "voluntary employees' beneficiary association" (VEBA) within the meaning of section 501(c)(9) of the Internal Revenue Code (hereinafter, the Code). However, as the Department of Labor has noted in many previous advisory opinions, the meaning of the term "VEBA" in the Code is not necessarily coextensive with the term "employees' beneficiary association" as used in the definition of an "employee organization" in section 3(4) of Title I of ERISA.

of LAPRA's benefit arrangements: LAPRA's group medical insurance with Blue Cross (hereinafter, LAPRA Health), its supplemental dental plan with Safeguard (hereinafter, LAPRA Dental), and its group medical insurance plan with California Care (hereinafter, LAPRA Medical).

With respect to LAPRA members who participate in the Plans, the LAPD is required, pursuant to collective bargaining agreements in effect for them, to contribute a major portion of the cost of their participation. The LAPD's contributions to LAPRA Health and LAPRA Medical constitute approximately 80 percent of the cost of coverage for participating LAPRA members; for LAPRA Dental, they equal about 54 percent of the cost of coverage. LAPRA members who are active employees of the LAPD pay the remaining cost of their coverage through a payroll deduction system managed by the LAPD. You do not specify whether retired LAPRA members must also contribute to the cost of their coverage under the Plans.

LAPRA employs individuals who, among other matters, administer the Plans, and (as mentioned above) it allows its employees to participate in the Plans. The Plans currently cover 17 LAPRA employees, who thus constitute less than two-tenths of one percent of all Plan participants. Also as mentioned above, LAPRA contributes to the Plans to cover part of the cost of providing coverage to its employees, and it provides a payroll deduction system through which its employees contribute the remaining cost of their coverage by the Plans.

ERISA section 4(b)(1) provides that Title I of ERISA does not apply to "governmental plans" as defined in ERISA section 3(32). ERISA section 3(32) defines the term "governmental plan," in pertinent part, as "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof" or by any of their "agenc[ies] or instrumentalit[ies]."

It is evident that the LAPD is a governmental employer within the meaning of ERISA section 3(32), inasmuch as it operates as an integral part of the government of the City of Los Angeles, either as a "political subdivision" or an "agency or instrumentality" of that City. Moreover, it appears that, based on your representations, LAPRA constitutes an "employee organization," within the meaning of ERISA section 3(4). Although LAPRA is not a labor union (as referenced in the first part of section 3(4)), in that it does not deal with employers on behalf of its members, it satisfies the criteria applicable to an "employees' beneficiary association" (as referenced in the second part of section 3(4)):<sup>4</sup>

- 1) membership in the association is conditioned on employment status -- for example, membership is limited to employees of a certain employer or union;<sup>5</sup>
- 2) the association has a formal organization, with officers, bylaws, or other indications of formality;

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<sup>4</sup> The criteria were developed while the Welfare and Pension Plans Disclosure Act (WPPDA), 29 U.S.C. § 302 (1970) was in effect. The WPPDA, which was repealed in 1975 when ERISA was enacted as its successor law, also used the term "employees' beneficiary association."

<sup>5</sup> Participants in an "employees' beneficiary association" must share commonality of interest with respect to their employment relationship (i.e., they constitute employees of a single employer or members of one union). The employees must participate in the organization in such a way that its functions and activities are controlled by its members, in form as well as in fact, either directly or through regular election of directors, officers, or other similar representatives of members.

3) the association generally does not deal with employers (as distinguished from organizations described in the first part of the definition of an "employee organization" (e.g., a labor union)); and

4) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.

First, you represent that LAPRA's members are exclusively active police officers employed by the LAPD and former police officers retired from the LAPD. Second, LAPRA is formally organized as a nonprofit corporation, with a constitution and bylaws that provide for LAPRA members to elect its directors, who further elect its officers; and, at least in form, LAPRA members appear to control their organization, either directly through their voting or indirectly through their election of directors whose right it is to elect LAPRA's officers. Further, nothing in your submission indicates that LAPRA's members fail in fact to control its operations. Third, LAPRA does not deal on behalf of its members with the LAPD regarding their conditions of employment or other matters. Fourth, LAPRA was established, at least in part, to provide welfare-type benefit arrangements to its members, who, in this instance, are all government employees.

Inasmuch as the facts and representation contained in your letter and accompanying documents establish that the LAPD is a governmental employer described in ERISA section 3(32) that provides substantial funding for the Plans, and inasmuch as participation in the Plans is limited to LAPRA members (i.e., only current or former employees of the contributing governmental employer) and employees of LAPRA who constitute less than two-tenths of one percent of participants, it is the view of the Department that the Plans constitute "governmental plans" within the meaning of section 3(32) of ERISA and thus are not subject to the provisions of Title I of ERISA pursuant to section 4(b)(1) thereof.

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

Sincerely,

ROBERT J. DOYLE  
Director of Regulations and Interpretations