U.S. Department of Labor Employee Benefits Security Administration
Washington, D.C. 20210

David P. Wolds
Wolds Law Group
4747 Executive Dr., Suite 250
San Diego, CA, 92121

2026-02A
3(40)
3(5)

Dear Mr. Wolds:

You requested, on behalf of the Automotive Benefits Association ("ABA" or "Association"), an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") to the Blue and Gold Automotive Health Trust Fund Welfare Benefit Plan ("Plan"). Specifically, you asked whether the Plan would constitute an "employee welfare benefit plan" within the meaning of ERISA section 3(1) maintained by a "bona fide employer group or association" within the meaning of ERISA section 3(5). You also asked whether the Plan would be a "multiple employer welfare arrangement" within the meaning of ERISA section 3(40) ("MEWA"), that is "fully insured" within the meaning of ERISA section 514(b)(6)(D).

You provided the following facts and representations in support of your request. The National Automotive Parts Association, commonly known as "NAPA," is a subsidiary of Genuine Parts Company, a large auto parts distributor. NAPA employers distribute and install automotive replacement parts and accessories and provide automobile and truck repair services throughout North America. The ABA was established on July 27, 2018, as a Texas nonprofit corporation (and is also tax-exempt under Section 501(c)(6) of the Internal Revenue Code) exclusively to serve the interests of NAPA Retail Auto Parts Stores (NAPA Retail Store) and Auto Care Repair Centers (NAPA Auto Repair Center) employers; thus, ABA membership is restricted to those two categories of employers ("ABA Members"). The Plan covers over 3,500 employees of more than 200 NAPA Retail Stores and over 400 NAPA Auto Repair Centers.

In addition to the availability of health and ancillary benefit coverage for ABA Members' employees, you represent that ABA provides services and facilities designed to make ABA Members' businesses efficient, profitable, and competitive and the ABA was specifically created to provide ABA Members with a central source for the following:

1. Human resource services, employee educational and professional development programs; training and sales support; employee recruitment and retention; and compliance with applicable federal and state laws;
2. Advocacy on behalf of NAPA member employers before governmental regulatory bodies; providing legislative updates; and, informing on issues of common interest in the auto parts distribution business;
3. Negotiation of preferred pricing on products and services for members; and,
4. Access to business insurance coverage.

Only ABA Members or their duly authorized representatives may be members of ABA's Board of Directors. ABA Members control the Association through the election of the Board with each member having one vote for each Director position to be elected. Directors serve staggered three-year terms, member voting is non-cumulative, and proxies are not allowed. The election of Directors occurs at the annual meeting of the ABA Members. ABA Members also have the right to vote on any amendment of the ABA Bylaws as well as any decision to dissolve ABA or merge it into another organization, and any other similar fundamental actions defined in Section 22.164 of the Texas Corporations Code.

The Plan is funded through the Blue and Gold Automotive Health Trust Fund ("Trust Fund or Trust"), which is controlled by NAPA "Participating Employers." The Trust Agreement defines a "Participating Employer" as "any employer which is a NAPA Retail Store or Auto Repair Center party to a Participation Agreement with the Trust Fund employing at least two (2) employees who are eligible for coverage under the Benefit Plan." The Plan's Fringe Benefit Contribution Payment Guidelines for Participating Employers state that only active members of the Association may participate in the plan and that if an employer ceases to be an active member, the participation in the Plan will end.

The Plan is administered by a board between five and seven Trustees who are the "named fiduciaries" under ERISA. The Trust Agreement provides that Trustees are elected by a simple majority of Participating Employers who vote in periodic elections to be conducted no less frequently than every five years. Eligible Trustee candidates may be nominated by the Board of Directors, a majority of the then-serving Trustees, or by written petition submitted to the Board of Directors no later than September 1 of the year of the Trustee's election, signed by the lesser of ten (10) Participating Employers or ten percent (10%) of the total number of Participating Employers. Trustee appointments terminate in three ways: (1) by voluntary resignation, (2) by a simple majority of the Participating Employers agreeing to the termination in writing and providing notice of the date of termination, or (3) by the Association via written notice of the date of termination.

The Trust Agreement may be amended or terminated by written action of the Trustees or by an instrument in writing agreed to and adopted by the Trustees and a majority of the Participating Employers. Termination may also occur by the termination or expiration of all adoption agreements requiring the payment of contributions to the Trust Fund. In all cases, amendment or termination of the Trust cannot be directed in a way that violates the Code, ERISA, or the duty of the Trustees to participants.

The Plan's Summary Plan Description describes the Plan as "a welfare benefit plan providing group medical and supplemental benefits through a multiple employer trust fund." Trustees are authorized to provide benefits through the purchase of insurance policies and all Plan benefits are provided through fully insured contracts via fully licensed insurers in each state where benefits are provided to ABA Members. The Plan is funded by employer and employee contributions to the Trust Fund, which in turn pays monthly premiums to the carriers for insurance coverage. An independent third-party administrator ("TPA") receives and manages contributions and provides comprehensive administrative services. The current TPA is Future Plan Polycomp, Inc., a subsidiary of Ascensus, LLC.

Participants submit claims directly to the insurance company. The Trustees have delegated the review of denied benefit claims to the insurance company, which has acknowledged in writing its status as a "Claims Fiduciary" under ERISA and also has the authority to interpret the terms of the Plan (including the insurance policies), to determine eligibility for Plan coverage or benefits, and to make any related findings of fact. Decisions made by the Claims Fiduciary are final and binding on participants and beneficiaries of the Plan to the full extent permitted by law. This delegation, combined with the terms of the insurance policies, creates contractual rights for participants and beneficiaries against the insurance company to enforce their rights to benefits under ERISA. Consequently, you assert that the plan meets the definition of a "fully insured" plan under section 514(b)(6)(D) of ERISA.

The term "employee welfare benefit plan" is defined in ERISA section 3(1) to include, among other things, "any plan, fund, or program . . . 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 . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment . . . ." In addition to providing the types of benefits described in ERISA section 3(1), ERISA section 3(1) requires that the Plan must, among other criteria, be established or maintained by an employer, an employee organization, or both, if it is to be treated as an "employee welfare benefit plan" within the meaning of ERISA.

ERISA section 3(5) defines the term "employer" 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."[1] The Department has taken the view, based on both the definitional provisions of ERISA and overall statutory scheme, that in the absence of the involvement of an employee organization, a single "employee welfare benefit plan" may nevertheless exist where a cognizable, bona fide group or association of employers acts in the interests of its employer members to establish a benefit program for the employees of member employers, and exercises control over the program. *See, e.g.*, Advisory Opinion 2017- 02AC (sub-group of employer members of trade association can be a bona fide group or association of employers acting as an "employer" within the meaning of ERISA section 3(5)); Advisory Opinion 2019-01A (employer members of a retailer cooperative can be a bona fide group or association of employers under ERISA section 3(5)).

To determine whether an arrangement is a bona fide employer group or association for purposes of ERISA section 3(5), all relevant facts and circumstances must be considered. These facts and circumstances include: how members are solicited; who is entitled to participate and who actually participates in the group or association; the process by which the group or association

[1] Section 3(4) of ERISA defines "employee organization" as "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." There is no indication that an employee organization within the meaning of ERISA section 3(4) is in any way involved in the Plan. Therefore, this letter focuses on whether Participating Employers may act as a bona fide employer group or association for the purpose of establishing the Plan within the meaning of ERISA section 3(5).

was formed; the purposes for which it was formed, and what, if any, were the preexisting relationships of its members; the powers, rights, and privileges of employer members that exist by reason of their status as employers; and who actually controls and directs the activities and operations of the benefit program. The employers that participate in a benefit program must, either directly or indirectly, exercise control over the program, both in form and in substance, in order to act as a bona fide employer group or association with respect to the program. *See, e.g.*, Advisory Opinion 2019-01A; Advisory Opinion 2017-02AC. An important consideration is whether the person or group that maintains the plan is tied to the employers and employees that participate in the plan by some common economic or representational interest and genuine organizational relationship unrelated to the provision of benefits. *See, e.g.,* Advisory Opinion 2005-20A; Advisory Opinion 2008-07A; Advisory Opinion 96-25A.

The Department has expressed the view that where several unrelated employers merely execute identically worded trust agreements or similar documents as a means to fund or provide benefits, in the absence of any genuine organizational relationship between the employers, no employer group or association exists for purposes of ERISA section 3(5). Advisory Opinion 96-25A. Similarly, where membership in a group or association is open to anyone engaged in a particular trade or profession regardless of their status as an employer, and where control of the group or association is not vested solely in employer members, the group or association is not a bona fide group or association of employers for purposes of ERISA section 3(5). *See* Advisory Opinion 90- 19A.

The Department also has concluded that a sub-group of employers who are members of a trade or industry association can constitute a bona fide group of employers within the meaning of ERISA section 3(5) capable of sponsoring a multiple employer plan. *See, e.g.*, Advisory Opinion 2005-25A. In cases where the employers who participate in the plan do not have the ability to control the association (e.g., where the employers participating in the plan do not have voting control over the governing body of the association), the association itself cannot serve as the "employer" sponsoring the plan because the Participating Employers would not be able to control the plan through control of the association. However, the membership in the trade or industry association can satisfy the requirement that the subgroup of employers have a genuine organizational relationship unrelated to the provision of benefits, and the documents governing the plan can be structured so that the sub-group of employers participating in the plan control the program, both in form and in substance. *See* Advisory Opinion 2024-02A.

In this case, the Participating Employers have a commonality of economic interest and a genuine organizational relationship unrelated to the provision of benefits under the Plan. In the Department's view, ABA Participating Employers share a commonality of economic interest because ABA was formed exclusively to serve the business-related interests of NAPA Retail Stores and Auto Repair Centers and membership in the Association is restricted to those two groups of employers.

In addition, you represent that the Participating Employers have a genuine organizational relationship and history of organized cooperation among each other through their membership in ABA that is unrelated to the provision of welfare benefits under the Plan. ABA has an organizational history dating back to 2018. This organizational relationship provides substantial benefits to Participating ABA Members in connection with their ABA membership that are

separate and distinct from their participation in the Association, Trust and Plan, including human resources tools and programs, staff education and training resources, advocacy at the federal and state level on behalf of ABA Member interests, regulatory and legal compliance assistance information, and negotiated prices on goods and services for members.

The employers participating in the Association, Trust and Plan appear to control the Plan at least in form. Under the ABA Bylaws and the Trust Agreement, the Participating Employers will constitute a sub-group of ABA Members consisting solely of employers with common law employees who will be covered by the Plan, and the Participating Employer ABA Members will have the power to control and direct the activities and operation of the Trust, and the Plan, by reason of their authority to nominate, elect, and remove Board members of the Association as well as the Trustees of the Plan's Trust.

The Trust terms provide that Trustees have full authority and may carry out their powers through the means of motions, resolutions, or by implementing administrative policies and rules. A majority of the Participating Employers may direct the Board of Trustees by delivering written instructions, so long as such directions would not violate the Code, ERISA or other duties under the Trust agreement. The Trustees have authority to provide benefits either directly or by contracting with insurance carriers and have delegated claims review and decisions to those insurers.

Based on the ABA Bylaws, the Trust Agreement, and the other instruments governing the Plan are as described in this letter, it is the Department's view that the Participating Employers could, at least in form, constitute a bona fide employer group or association in relation to the Plan for purposes of ERISA section 3(5), and the Plan could, at least in form, therefore be a single multiple employer plan. Whether the Participating Employers exercise control in substance over the benefit program is an inherently factual issue on which the Department generally will not rule in an advisory opinion.

We note that without regard to whether the Plan constitutes an employee welfare benefit plan, the Plan is a MEWA within the meaning of ERISA section 3(40). Section 3(40) defines the term MEWA, subject to certain exceptions not relevant here, to mean an employee welfare benefit plan, or any other arrangement, which is established or maintained for the purpose of offering or providing any benefits described in ERISA section 3(1) to the employees of two or more employers.

With respect to whether the Plan would be a "fully insured" MEWA for purposes of the ERISA preemption provisions set forth in ERISA section 514(b)(6), ERISA section 514(b)(6)(D) provides that a plan-MEWA:

> shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary [of Labor] determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

Deciding whether a particular plan-MEWA is "fully insured" within the meaning of ERISA section 514(b)(6)(D) requires an examination of the insurance contract. *See, e.g.,* Advisory

Opinion 2005-20A. You have not provided, and the Department has not examined, the contracts, and cannot conclude that the Plan would be fully insured within the meaning of ERISA section 514(b)(6)(D). There is nothing in your submission, however, that would lead us to conclude that the Plan would not be fully insured if an insurance policy consistent with your representations is secured to guarantee all the benefits under the Plan so long as the insurer retains first-in-line responsibility for the payment of all claims incurred by the Plan participants and beneficiaries. *See* Advisory Opinion 93-11A; Advisory Opinion 2019-01A.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is subject to the provisions of that procedure, including section 10 thereof, relating to the effect of advisory opinions. This opinion relates solely to the application of the provisions of Title I of ERISA addressed in the letter. It is not determinative of any particular tax treatment under the Internal Revenue Code and does not address any other issues arising under ERISA or any other federal or state laws.

Sincerely,

Elizabeth Schumacher,
Acting Director
Office of Regulations and Interpretations