

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:
Daniel Brown
(202) 523-8971

OPINION 81-67A
Sec. 407(d)(3)

AUG 10 1981

Mr. Hiram Knott
Olwine, Connelly, Chase, O'Donnell & Weyher
299 Park Avenue
New York, N.Y. 10171

Re: Identification Number: F-2003

Dear Mr. Knott:

By letter dated May 14, 1981, you requested our view as to whether a money purchase plan which constitutes part of an employee stock ownership plan (ESOP) is an eligible individual account plan for purposes of section 407(b)(1) of the Employee Retirement Income Security Act of 1974 (the Act).

Section 407(b)(1) of the Act provides that the limitations on the acquisition and holding of qualifying employer securities and qualifying employer real property contained in Act section 407(a) shall not apply to eligible individual account plans. Section 407(d)(3) of the Act defines the term "eligible individual account plan" to include an individual account plan which is an ESOP and which explicitly provides for the acquisition and holding of qualifying employer securities. In this context, an ESOP is defined in Act section 407(d)(6) to mean, in pertinent part, an individual account plan which is a stock bonus plan and money purchase plan both of which are qualified under section 401 of the Internal Revenue Code of 1954, and which is designed to invest primarily in qualifying employer securities. The ERISA Conference Committee Report indicates that a qualified money purchase plan designed to invest primarily in qualifying employer securities may be coupled with a qualified stock bonus plan. H.R. Rep. No. 93-1280, 93d Cong., 2d Sess. 313 (1974). Accordingly, a money purchase plan constituting part of an ESOP would not be subject to the limitations contained in section 407(a) of the Act with respect to the acquisition or holding of qualifying employer securities. See also 29 CFR §2550.407d-6(b).

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

Sincerely,

Alan D. Lebowitz
Assistant Administrator for Fiduciary Standards
Pension and Welfare Benefit Programs