

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 82-43A
Sec. 3(2), 3(1)

AUG 27 1982

Mr. Otis M. Smith
General Counsel
General Motors Building
3044 West Grand Boulevard
Detroit, Michigan 48202

Dear Mr. Smith:

This is in reply to your letter of July 16, 1982, requesting an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you request an opinion that the Guaranteed Income Stream Benefit Program (the GIS Program) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA and not an employee pension benefit plan within the meaning of section 3(2) of title I of ERISA.

You state that General Motors Corporation (GM) and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the UAW), have entered into a collective bargaining agreement effective April 12, 1982, and expiring September 14, 1984 (the 1982 Collective Bargaining Agreement), of which the GIS Program is a part. The GIS Program (effective March 1, 1982) applies to employees working in the collective bargaining unit on or after March 1, 1982, with 15 or more years seniority (10 or more years in the event of a plant closing) who are laid off on or after March 1, 1982, and during the term of the 1982 Collective Bargaining Agreement,

The laid-off employee, to be eligible for benefits, must have exhausted his weekly benefits under the GM-UAW Supplemental Unemployment Benefit Plan (the SUB Plan). An eligible employee with minor exceptions must also be "able and available" for work under the applicable state Public Employment Service for unemployment compensation purposes with minor exceptions, maintain an active registration with the Public Employment Service, and report to GM on a timely basis work-related income, statutory benefits, and other information relating to eligibility for or the determination of the amount of a benefit under the GIS Program. Exceptions are made for certain employees who are disabled and employees who participate in a GM-UAW approved vocational training program. An employee is disqualified from eligibility if he or she refuses an employment interview without good cause or an offer of certain employment by GM for work he

or she is capable of performing. The GIS Program provides that such refusal is disqualifying if GM offers to pay for certain interview and moving expenses defined in the GIS Program. An employee is also not eligible if he or she does not accept "suitable employment" (also defined in the GIS Program) with other employers arranged by or on behalf of GM or by the Public Employment Service.

In addition to payments ceasing upon an employee's loss of eligibility previously described, benefits stop upon, among other things, the earlier of the employee's death, attainment of age 62, retirement (except for recovery after disability retirement), resumption of employment with GM, acceptance of a Redemption Payment, refusal to apply for certain statutory benefits, termination of arranged employment for reasons over which the employee had control, or ceasing to work because of a strike or a leave of absence of 1 week or more.

There are two principal benefits -- the GIS Income Benefit and the GIS Insurance Coverage. The GIS Insurance Coverage provides health, surgical, and medical coverage similar to that provided active employees, offset by certain other benefits available to the employee, and a life insurance coverage of \$10,000. The GIS Income Benefit is calculated by adding 50 percent of the employee's weekly rate of pay plus 1 percent for every year of service over 15 years up to a maximum level. This amount is then reduced by 80 percent of work-related income, by amounts owed GM, by the employee's unrepaid overpayments under the SUB Plan, by 100 percent of disability, termination, and supplemental unemployment benefits from another employer, and by statutory benefits. Certain employees may accept a lump-sum Redemption Payment of \$5,000 less benefits received and the cost of insurance coverage in lieu of weekly benefits. The maximum GM liability under the GIS Program is currently limited to \$175 million.

The terms "employee welfare benefit plan" and "employee pension benefit plan" are defined in sections 3(1) and 3(2)(A) of title I of ERISA, in pertinent part, as:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean 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 (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean 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 by its express terms or as a result of surrounding circumstances such plan, fund, or program –

- (i) provides retirement income to employees, or
- (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

The GIS Program is not, by its express terms, an "employee pension benefit plan" within the meaning of section 3(2)(A) of ERISA. Further, based on your representations, the GIS Program would not result in a deferral of income by employees to the termination of covered employment or beyond. Therefore, unless, as a result of surrounding circumstances, the GIS Program provides retirement income to employees -- which it does not appear to do -- the GIS Program would not be an "employee pension benefit plan" within the meaning of section 3(2)(A) of ERISA.

You urge, in your submission, that the GIS Program provides unemployment benefits and not severance pay benefits. In view of our aforementioned conclusion that the GIS Program does not appear to be a pension plan, we do not believe it is necessary to address that question. Whether the GIS Program provides unemployment benefits or severance pay benefits, it is the position of the Department of Labor that the GIS Program is an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA.

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 advisory opinions.

Sincerely,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs