

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 82-60A
Sec. 3(1), 3(2)

NOV 12 1982

Mr. Peter J. Sherry
Vice President
Ford Motor Company
The American Road
Dearborn, Michigan 48121

Dear Mr. Sherry:

This is in reply to your letter of June 17, 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 Salaried Income Security Plan (the SIS Plan) is an employee welfare benefit plan within the meaning of section 3(1) of ERISA and not an employee pension benefit plan within the meaning of section 3(2) of ERISA.

You advise that the SIS Plan was adopted by the Board of Directors of Ford Motor Company (Ford) to provide certain benefits to salaried employees of Ford and certain participating subsidiaries. Implementation of the SIS Plan is contingent upon receiving an advisory opinion from the Department of Labor (the Department), that the SIS Plan is not an employee pension benefit plan. The SIS Plan consists of Basic Benefits and Supplemental Benefits.

Basic Benefits are equal to 100 percent of base salary to be paid for the first 2 months and 50 percent of base salary to be paid thereafter for a number of months equal to years of service for employees with fewer than 10 years service and for 20 months for employees with at least 10 years service. The benefits for the first 2 months are offset by unemployment compensation or trade readjustment allowances the employee receives for this period, but thereafter, there is no offset. To be eligible for Basic Benefits, a salaried employee must have 1 year of service and be laid off or released at Ford's option or under mutually satisfactory conditions. Eligibility for Basic Benefits ceases if the employee is reemployed by Ford, retires under Ford's General Retirement Plan, or refuses certain Ford reemployment. With Ford's approval, an employee may elect a lump-sum payment of the remaining 50 percent Basic Benefits plus the value of insurance continuation premiums for the period these benefits would have been payable. Employees eligible for Supplemental Benefits would also receive a lump-sum payment of up to \$5,000 in lieu of the Supplemental Benefits.

There are two elements to the Supplemental Benefits - a Supplemental Income Benefit and Insurance Coverage. The Insurance Coverage consists of certain life insurance and of hospital, surgical, and medical coverage at a level generally provided for active salaried employees. The Supplemental Income Benefit is equal to 50 percent of the employee's monthly base salary, plus an additional 1 percent for each year of service over 15 years, up to a maximum amount set by the plan documents. This amount is then reduced by disability, termination, or supplemental unemployment benefits; statutory benefits; overpayments or other amounts owed to Ford; and 80 percent of work-related income.

Employees eligible for Supplemental Benefits are salaried employees of Ford, working on or after March 1, 1982, with 15 or more years of service and laid off during the period from March 1, 1982, through September 1984. Further, the employee must have exhausted his or her Basic Benefits. The employee must also, with minor exceptions, be "able and available" for work under the applicable state Public Employment Service for unemployment compensation purposes and report to Ford, work-related income, statutory benefits, or other information relating to eligibility for and determination of the amount of Supplemental Benefits. Ford may also require the employee to maintain an active registration with the Public Employment Service. Exceptions are made for certain employees who are disabled or participating in a Ford-approved vocational training program. An employee is disqualified if he or she refuses an employment interview without good cause or an offer of employment by Ford for work which he or she is capable of performing. Ford will pay for certain interview and relocation expenses defined in the SIS Plan. An employee is also not eligible if he or she does not accept "suitable employment" (as defined in the SIS Plan) with other employers arranged by or on behalf of Ford or by the Public Employment Service.

In addition to benefits being suspended upon loss of eligibility, Supplemental Benefits cease upon the earlier of: (1) resumption of employment with Ford, (2) acceptance of a lump-sum payment of \$5,000, less Supplemental Benefits received and the cost of insurance, (3) refusal of an interview or employment with Ford under certain specified conditions, (4) failure to report information related to determining eligibility for or the amount of benefits, (5) refusal to apply for statutory benefits, (6) death, and (7) retirement (except for recovery after disability retirement), or (8) attainment of age 62.

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:

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 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 SIS Plan 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 SIS Plan 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 SIS Plan provides retirement income to employees - which it does not appear to do - the SIS Plan 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 SIS Plan provides unemployment benefits and not severance pay benefits. In view of our aforementioned conclusion that the SIS Plan does not appear to be a pension plan, we do not believe it is necessary to address that question. Whether that the SIS Plan provides unemployment benefits or severance pay benefits, it is the position of the Department that the SIS Plan 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