

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-3A
Sec. 3(2), 3(1)

JAN 17 1983

Mr. William A. Kennedy
Senior Attorney
Integon Life Insurance Corporation
Box 3199
Winston Salem, North Carolina 27102

Dear Mr. Kennedy:

This is in reply to your letter of March 25, 1982, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether a certain program which Integon Life Insurance Corporation (Integon) proposes to offer is an employee benefit plan covered by title I of ERISA.

You advise that Integon is a North Carolina corporation authorized to issue life insurance policies under the laws of several states. It is a member of a controlled group of corporations within the meaning of section 1563(a) of the Internal Revenue Code. The parent company of this controlled group is Ashland Oil, Inc. (AOI). Integon proposes to offer certain of its employees, certain employees of corporations affiliated with AOI, and certain employees of non-affiliated companies the opportunity to purchase life insurance policies. As planned, the policies to be offered will be the same as those it offers to the general public, no employer will contribute towards the premium payments for the policies, and the purchase of policies will be completely voluntary for affected employees. No employer will receive any consideration for an employee purchasing a policy. The sole involvement of employers will be, without endorsement, to permit Integon to publicize the availability of the life insurance policies and to collect, and promptly transmit to Integon, premium payments through payroll deduction if the employee requests. Materials distributed to the affected employees will clearly state that the purchase of a policy is completely voluntary and that the employer is not endorsing any life insurance policy offered under the program. The purchasing employee will be the owner of all policies acquired by him or her under the program and pursuant to the terms of the policy. Termination of employment with a company involved in the program will affect only the arrangement involving collection of policy premiums by payroll deduction although the characteristics of an employee group may permit Integon within sound underwriting practices to waive evidence of insurability for members of the group. Sales commissions on policies purchased by employees of AOI affiliates will be the same as those paid on the same type of policies purchased by employees of non-affiliated employers. Finally, although the program is not expected to involve any employee as to which there is an agreement between the employer and employee representatives, if the program does involve such employees, the arrangement will not be identified as having as one of its

purposes any benefit to an employee organization.

Section 3(3) of ERISA defines the term "employee benefit plan" to include both employee welfare benefit plans and employee pension benefit plans. The terms "employee welfare benefit plan" and "employee pension benefit plan" are defined in ERISA sections 3(1) and 3(2)(A) respectively 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 vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, 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 Department of Labor (the Department) sees no indication in your representations that the program you describe is an employee pension benefit plan within the meaning of section 3(2) of ERISA. However, in this context the Department has not reviewed either the materials to be given to affected employees or the policies to be offered under the program. This letter, therefore, will be limited to the issue of whether or not the program would constitute an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

In regulation 29 C.F.R. §2510.3-1 the Department identified certain programs it would not consider to constitute an employee welfare benefit plan. Specifically, regulation section 2510.3-1(j) provides:

(j) Certain group or group-type insurance programs.

For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include a group or group-type insurance program offered by an insurer to employees or members of an employee organization, under which

- (1) no contributions are made by an employer or employee organization;
- (2) participation in the program is completely voluntary for employees or members;
- (3) the sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program, to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and
- (4) the employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

Based on your representations, it is the position of the Department that the program proposed by Integon is a program described in regulation section 2510.3-1(j) and does not constitute 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