U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210

OPINION NO. 84-25A
Sec. 3(2)

JUN 18 1984

Mr. P. Garth Gartrell
Vorys, Sater, Seymour and Pease
Post Office Box 1008
Columbus, Ohio 43216

Dear Mr. Gartrell:

This is in reply to your letter of November 28, 1983, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether two individual retirement programs to be implemented by Armco, Inc. and its affiliates constitute an employee pension benefit plan within the meaning of section 3(2) of title I of ERISA.

You advise that your client, Columbia National Life Insurance Company (Columbia), is a member of the Armco, Inc. controlled group. Armco, Inc. wishes to implement two payroll deduction programs permitting its employees and the employees of its affiliates to invest in Individual Retirement Accounts (IRAs). At the beginning of each calendar year employees will be able to designate an amount to be withheld from their paychecks and deposited in the programs. Employees may participate in both programs and change either the amount to be withheld or the designation of investments at any time during the year. The amount withheld, however, may not exceed the limitations set forth in section 219 of the Internal Revenue Code (the Code).

There will be no employer contributions and participation is entirely voluntary and will not affect participation in other plans. You further advise that employer involvement is limited to providing employees with a notice from the two IRA sponsors, responding to inquiries on the mechanics of the program, and referring other inquiries to the appropriate sponsor. The employer will also collect designated contributions through payroll deductions and remit them promptly to the appropriate sponsor. Except as noted below, no employer will receive any consideration other than a charge for services rendered in connection with the payroll deduction.

One program (Program A) will be sponsored by an investment manager not affiliated with Armco, Inc. The investment manager will offer a variety of investment alternatives regularly managed by the investment manager in a program offered to the general public. No investment alternative will involve more than a de minimus investment in Armco, Inc. and its affiliates. Investments are made independently by the investment manager as part of its investment strategy for a particular group.

The second program (Program B) will be sponsored by Columbia. The only available investment under Program B is a guaranteed annuity qualified as an IRA under Code section 408(b). If a favorable advisory opinion is rendered herein, you advise that Columbia will market programs identical to Program B to the general public. Participants in Program B may purchase the annuity for the same price and under the same terms and conditions as those offered to the general public.

The term "employee pension benefit plan" is defined in section 3(2)(A) of title I of ERISA to

include:

> . . . 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 -
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> (i) provides retirement income to employees, or
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> (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.

In regulation 29 C.F.R. §2510.3-2 the Department of Labor (the Department) identified certain programs which it would not consider to constitute employee pension benefit plans within the meaning of section 3(2) of ERISA. Specifically regarding IRAs, regulation section 2510.3-2(d) provides:

> (d) Individual Retirement Accounts. (1) For purposes of Title I of the Act and this chapter, the terms "employee pension benefit plan" and "pension plan" shall not include an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1954 (hereinafter "the Code") and an individual retirement bond described in section 409 of the Code, provided that
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> (i) no contributions are made by the employer or employee association;
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> (ii) participation is completely voluntary for employees or members;
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> (iii) the sole involvement of the employer or employee organization is without endorsement to permit the sponsor to publicize the program to employees or members, to collect contributions through payroll deductions or dues checkoffs and to remit them to the sponsor; and
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> (iv) the employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

Subsequently in Opinion 81-80A (issued December 19, 1981) to which you refer, the Department stated that, if certain specified criteria are met, an IRA payroll deduction program would not be considered to be an employee pension benefit plan even though the program was limited to one product of an IRA sponsor who was not the employer of those employees eligible to contribute through payroll deduction or an affiliate of the employer. In Opinion 82-13A (issued February 17, 1982) to which you also refer, the Department stated that an IRA payroll deduction program which met certain specified criteria would not be considered to be an employee pension benefit plan even though the program was limited to a product of an IRA sponsor which was the employer of the employees eligible to contribute through payroll deduction or an affiliate of the employer. The Department has stated that an IRA payroll deduction program which met the criteria set forth in Opinion 81-80A or the criteria set forth in Opinion 82-13A would not be considered to be an employee pension benefit plan within the meaning of section 3(2) of ERISA.

It is the position of the Department that the Armco IRA payroll deduction program will not be considered to be an employee pension benefit plan merely because it offers more than one IRA product. The fact that one of the programs offered by Armco includes an IRA sponsored by an affiliate of Armco would not alter this position.

The foregoing 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.

The Department has generally declined to issue advisory opinions on whether a particular IRA payroll deduction program is a plan within the meaning of regulation section 2510.3-2(d). Therefore, the Department will not, at this time, issue an advisory opinion regarding the applicability of that regulation to Program A and Program B.

Sincerely,

Morton Klevan
Deputy Administrator