

**U.S. Department of Labor**

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



Reply to the Attention of:  
**OPINION NO. 82-47A**  
Sec. 3(2)

SEP 8 1982

Frank Persico, President  
Catholic University Federal Credit Union  
620 Michigan Avenue, N.E.  
Washington, D.C. 20064

Dear Mr. Persico:

This is in reply to your letter of May 21, 1982, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request confirmation that a multi-purpose payroll deduction arrangement which includes contributions to an Individual Retirement Account (IRA), made available to members of the Catholic University Federal Credit Union, will not be considered to be an employee pension benefit plan within the meaning of section 3(2) of title I of ERISA.

You state that the Catholic University Federal Credit Union (the Credit Union) was chartered in 1973 by the National Credit Union Administration. Membership in the Credit Union is limited to the staff and faculty of the Catholic University of America (the University) and their families. You state that the Credit Union is in compliance with the federal statutory scheme for credit unions. The University currently provides its employees the opportunity to have all or a part of their salaries sent to the Credit Union through payroll deductions for various purposes and 53 percent of the membership of the Credit Union uses payroll deductions to send funds to the Credit Union for loan repayment or savings. Since the University provides a qualified employee retirement plan, the Credit Union has not been actively seeking to provide IRAs to its members. However, with the passage of the Economic Recovery Tax Act of 1981, all persons with an earned income became eligible to contribute to an IRA. Since the University already has a payroll deduction program for the Credit Union, members of the Credit Union expect to be able to use it to contribute to an IRA if the Credit Union offers an IRA program.

You state further that the Credit Union has taken steps to implement an IRA program using payroll deductions. The Credit Union's IRA program meets all the requirements of the Internal Revenue Code of 1954 (as amended). In order for a member to establish an IRA and contribute through the University's payroll deduction program, the member would first enroll in the IRA program by executing an IRA application which would be approved by the Credit Union. The member would also execute a standard payroll deduction form in duplicate if contributions are to be made by payroll deduction. One copy of the form would be retained by the Credit Union and

the other copy would be sent to the University's Accounting Office marking the amount to be deducted or to be added to an existing payroll deduction. The University would not be aware of the purpose of the deduction.

The University does not presently permit payroll deductions for IRAs at other financial institutions although it does allow employees to have their net pay automatically deposited at Madison National Bank, Washington, D.C.

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

(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.

In regulation 29 C.F.R. §2510.3-2 the Department of Labor (the Department) identified certain programs which would not be considered to be employee pension benefit plans. With regard to IRAs, regulation section 2510.3-2(d) stated:

(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 --

- (i) no contributions are made by the employer or employee association;
- (ii) participation is completely voluntary for employees or members;
- (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
- (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.

The preface to regulation section 2510.3-2(d) indicates that the regulation was intended to clarify that IRAs which are not established or maintained by an employer or by an employee

organization are not employee pension benefit plans described in section 3(2)(A) of ERISA. The Department does not consider that, merely because the University permits an employee to designate amounts to be deducted from his or her payroll check and transmitted to the Credit Union for various purposes not necessarily known by the University, and the employee utilizes this arrangement to contribute to an IRA, the University has established or maintained an employee pension benefit plan. The University's multi-purpose payroll deduction program would not constitute an employee pension benefit plan within the meaning of section 3(2)(A) of ERISA merely because an employee could utilize the multi-purpose payroll deduction program to contribute to an IRA unless the employer or an employee organization under the facts and circumstances surrounding the specific situation would be considered to have contributed to, endorsed, or otherwise involved itself so as to be considered to have "established or maintained" the IRA program available through the multi-purpose payroll deduction program.

Nothing stated herein should be interpreted as expressing the Department's opinion as to whether, in offering the IRA program to its members, the Credit Union itself has established or maintains an employee pension benefit plan within the meaning of section 3(2) of title I 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