

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO. 82-67A  
Sec. 3(2)

DEC 21 1982

Ms. Kimberly T. Henry  
Davis, Graham & Stubbs  
P.O. Box 185  
Denver, Colorado 80201

Dear Ms. Henry:

This is in reply to your letter of August 16, 1982, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Individual Retirement Account (IRA) payroll deduction program the Colorado National Bank of Denver (CNB) proposes to offer employees of employers not affiliated with CNB is an employee pension benefit plan within the meaning of section 3(2) of title I of ERISA.

You advise that CNB currently offers IRAs to the general public. These IRAs may be opened with a minimum contribution of \$50. The IRA earns the interest rate of a regular savings account until the IRA reaches \$500. At that point the IRA is invested according to the customer's investment directions in a higher yielding account. CNB now proposes to offer an IRA payroll deduction program to employees of employers not affiliated with CNB. Under the proposed program the IRA will be opened with a minimum contribution of \$50 and immediately invested in a higher yielding IRA account pursuant to the employee's instructions. If the employee terminates his or her employment with the employer before the IRA reaches \$500, the funds will be transferred to an account earning the regular savings account interest rate. The proposed IRA payroll deduction program will not be offered to employees of CNB or its affiliates.

Section 3(2)(A) of title I of ERISA defines the term "employee pension benefit plan" 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 -- (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 within the meaning of section 3(2) of ERISA. Specifically with regard to 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 --

- (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.

If the IRA payroll deduction programs offered by CNB to employees of employers not affiliated with CNB otherwise meet the criteria of regulation section 2510.3-2(d), the Department will not view the IRA payroll deduction programs of those employers to be one or more employee pension benefit plans within the meaning of section 3(2) of title I of ERISA merely because the terms and conditions of IRAs offered through a payroll deduction program differ from the terms and conditions of IRAs offered by CNB to individuals who do not make IRA contributions through a payroll deduction program.

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