U.S DEPARTMENT OF LABOR
Pension and Welfare Benefit Programs
Washington, D.C. 20216

MAR 11 1977

OPINION 77-27 A

3(1)
3(2)

Mr. H. T. Egliht, Manager
Personnel Department
Shell Oil Company
One Shell Plaza
P.O. Box 2463
Houston, Texas 77001

Dear Mr. Egliht:

This is in reply to your letter concerning the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence has resulted in a delay in responding.

You stated that Shell Oil Company (the Company) has had various severance arrangements in effect for many years. The present severance program (the Plan) became effective June 1, 1976, and will terminate December 31, 1976. In accordance with the Plan's provisions, payments are made in a lump sum from the general assets of the Company and will not exceed two years final annual compensation due an employee. You question whether the Plan is required to file a plan description on a Form EBS-1 and an annual report on a Form 5500.

The Department of Labor has adopted an advisory opinion procedure (ERISA Procedure 76-1, copy enclosed) which describes the general procedures for issuing information letters and advisory opinions under ERISA. Pursuant to ERISA Procedure 76-1, this letter is to have the effect of an advisory opinion.

Section 3(2) of ERISA defines the term "pension plan" to include any program maintained by an employer to the extent that it provides retirement income or results in a deferral of income to periods extending to the termination of covered employment or beyond. Section 4(a) indicates that such plans are subject to the provision of Title I of ERISA.

Section 2510.3-2 of regulations issued by the Department on August 15, 1975 (copy enclosed) clarifies the definition of the term "pension plan" for the purposes of Title I. As indicated in section 2510.3-2(b), severance pay plans meeting the qualifications specified therein will not be deemed pension plans within the meaning of section 3(2).

On April 26, 1976, the Department issued a press release (copy enclosed) announcing its intention to expand the definition of severance pay to include payments upon separation from service which do not exceed two years final annual compensation, or extend for a period of more than 12 months beyond normal retirement age or the effective date of elected early retirement. These payments will be permissible if they come from the employer's general assets and are clearly defined as severance pay rather than a pension. Although revised regulations covering severance pay plans have not yet been issued, employers are entitled to rely on the information contained in the press release.

Based on the information supplied, it would appear that the Plan would be deemed a severance play plan, rather than a pension plan, pursuant to section 2510.3-2(b) and the April 26, 1976 press release. Your inquiry, however, relates to the reporting and disclosure obligations of the Plan.

Section 3(1) of ERISA defines the term "welfare plan" to include any program established or maintained by an employer to the extent that it provides any benefit described in section 302(c) of the Labor-Management Relations Act of 1947 (LMRA). Section 302(c) of the LMRA includes severance benefits. Therefore, as indicated in section 2510.3-1 of the August 15, 1975 regulations the term "welfare plan" includes programs which provide severanc benefits.

The Plan you describe is, therefore, a welfare plan within the meaning of section 3(1) of ERISA. As such, it is subject to Parts 1, 4, and 5 of Title I which contain the reporting and disclosure, fiduciary responsibility, and enforcement provisions respectively. In accordance with the provisions of Part 1, the Plan will be required to file, among other reports, a plan description on a Form EBS-1 and an annual report on a Form 5500.

Sincerely,

Fred W. Stuckwisch,
Director
Office of Regulatory Standards
and Exceptions