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

OPINION 77-29 A

MAR 16 1977

3(2)

Mr. Edwin P. Morrow
President, Financial Planning
Consultants, Inc.
2113 Central Avenue
Middletown, Ohio 45042

Dear Mr. Morrow:

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 state that your firm will be marketing a group Individual Retirement Annuity (IRA) designed especially for the technical services industry. Many of the members of the National Technical Service Association, a trade association of corporate employers, wish to assist their employees participating in the IRA plan by defraying the monthly administrative charge of $1.00 per employee. This charge is not a part of the IRA plan assets nor is it part of the "deductible and qualified" employee contribution. You request a determination that employers can contribute a nominal administrative fee on behalf of employees who wish to obtain an IRA and still remain exempt from the provisions of Title I of ERISA.

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 2510.3-2(d) of regulations issued by the Department on August 15, 1975 (copy enclosed), to which you refer, indicates that for purposes of Title I of ERISA, the term "pension plan" shall not include IRA's meeting the conditions specified therein. One of these conditions is that the employer's involvement in the program must be limited to permitting the sponsor to publicize the program and to remitting employee contributions. The employer is not permitted to endorse the program.

Mr. Edwin P. Morrow

OPINION 77-29 A

It has been determined that the payment of an administrative fee by an employer on behalf of its employees would constitute the endorsement of an IRA program. Therefore, a program which called for such an employer payment would not qualify under section 2510.3-2(d) and would be deemed a pension plan within the meaning of ERISA.

Section 4(a) of ERISA indicates that pension plans are subject to the provisions of Title I. It should be noted, however, that sections 201(6) and 301(a)(7) exempt IRA programs from coverage under Parts 2 and 3 of Title I which contain the participation, vesting and funding provisions. Therefore, such programs are subject only to Parts 1, 4, and 5 of Title I of ERISA which contain the reporting and disclosure, fiduciary responsibility, and enforcement provisions respectively.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions

Enclosures