

November 7, 1977

Dear :

This is in response to your letter in which you ask whether (named) Savings and Loan Association would be a party in interest within the meaning of section 3(14) of the Employee Retirement Income Security Act of 1974 (ERISA). I regret that our heavy workload has resulted in a delay in responding to your letter.

By letter dated March 18, 1975, (named) Savings and Loan Association (the Association) requested an opinion of the Department as to whether a particular transaction between the Association and the (named) Pension Trust of (State) (the Plan) would constitute a prohibited transaction under section 406 of ERISA. The proposed transaction was a sale by the Association to the Plan of participation interests in loans made by the Association. By letter dated October 22, 1975, the Department replied in part that, if the plan presently has no relationship with the Association that causes the Association to be a party in interest as that term is defined in section 3(14) of ERISA, the proposed transaction would not constitute a direct transaction prohibited by section 406(a)(1).

In your letter, you ask whether a specific relationship involving the Association would cause the Association to be a party in interest with respect to the plan under section 3(14).

You represent that the Association is a joint venturer with a building contractor (the Contractor) in a joint venture in which the Contractor has a 50 percent interest. The joint venture builds condominiums, with the Association providing the capital and the Contractor acting as the developer and builder. Many carpenters perform work on projects that the joint venture has under construction. However, neither the Association nor the

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joint venture directly employs any carpenters on whose behalf the Association or the joint venture makes contributions to the Plan. Carpenters who are employees of the Contractor have performed minor tasks for the joint venture, but only as employees of the Contractor and not as employees of the joint venture.

You contend that the Association appears to be a party in interest with respect to the Plan within the meaning of section 3(14)(I) because it holds a 10 percent or more interest in a joint venture described in section 3(14)(G). You request an advisory opinion that, if the Contractor were to hold less than a 50 percent interest, the Association would not be a party in interest because the joint venture would not be an entity described in section 3(14)(G).

Section 3(14) of ERISA defines the term "party in interest" in part to mean,

as to an employee benefit plan --

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(C) an employer any of whose employees are covered by such plan;

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(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of --

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

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(iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E); (or)

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- (I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

Further, the same section provides that the Secretary of Labor may by regulation prescribe a percentage lower than 50 percent for subparagraph (G).

Based on the representations in your letter, it is our view that the Association would not be a party in interest with respect to the Plan under circumstances where the Contractor, which we assume to be a party in interest by virtue of it being an employer of persons covered by the Plan, owns less than a 50 percent interest in the joint venture. Under this circumstance, the joint venture would not be an entity described in section 3(14)(G) and, accordingly, the Association would not be an entity described in section 3(14)(I). Of course, this view might change if the Secretary of Labor prescribes a lower ownership percentage for purposes of section 3(14)(G), pursuant to authority described above.

We wish to point out that our consideration of the transaction proposed in your letter does not relate to any provisions of ERISA not discussed herein. Thus, for example, we are not hereby rendering any opinion on whether the Association is a party in interest for any reason not discussed in this letter.

Because your letter also raises questions under section 4975(e)(2) of the Internal Revenue Code of 1954, we have conferred with representatives of the Internal Revenue Service and they concur in both the conclusion and analysis contained in this letter.

Sincerely,