

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



OPINION NO. 84-31A
(reference to 82-50A)
Sec. 3(1)

JUL 9 1984

Mr. Thomas F. Dean
McGuire, Woods & Battle
Ross Building
Richmond, Virginia 23219

Dear Mr. Dean:

This is in reply to your letter of February 28, 1984, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether REGIT is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

You advise that in 1983 for business considerations, trustees of the Realtors Group Insurance Trust (the Trust) formed a non-stock corporation, REGIT, which will assume all the obligations of the Trust and will continue sponsorship of the Trust's insurance programs. On September 22, 1982, the Department of Labor (the Department) issued Opinion 82-50A which held that the Trust was not an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA. You advise that, except for the formation of REGIT, there is substantially no change in the factual situation which was the basis for Opinion 82-50A. Accordingly, you ask that Opinion 82-50A be updated to confirm that REGIT is not subject to title I of ERISA.

Based on the information you submitted, it is the Department's position that the fact that the Trust's insurance programs will be assumed by REGIT would not alter our conclusion that the program does not in itself constitute an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

However, if an employer within the meaning of section 3(5) of title I of ERISA adopts an insurance program offered by the Trust or REGIT to provide benefits among those identified in section 3(1) of ERISA to its employees, that employer would be considered to have established or maintained a separate, single-employer employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA. Such a plan would be subject to the applicable portions of title I of ERISA including part 4 relating to fiduciary standards. We note, however, that this opinion does not address issues arising under ERISA's fiduciary standards with respect to the duties of the directors and officers of REGIT or the employers that participate in the arrangement.

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,

Morton Klevan
Deputy Administrator