

November 20, 1975

Dear :

Your letter of August 2, 1975, addressed to the Regional Office of the Department of Labor, has been referred to this office for reply. In your letter, you inquire as to the legality of a proposed loan by one or more plans of a professional corporation to a physician employee shareholder who is also a participant, party in interest and trustee of the plans. According to your letter, the plans authorize loans to parties in interest who are participants if the loans are made available to all participants on a nondiscriminatory basis, are adequately secured and bear a reasonable rate of interest.

Section 406(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (the Act) prohibits the lending of money or other extension of credit between a plan and a party in interest of the plan. However, as you are aware, the prohibitions of section 406 do not apply to loans made by a plan to parties in interest who are participants or beneficiaries of the plan if the enumerated conditions of section 408(b)(1) of the Act are met.

It should be noted that section 408(d) makes section 408(b) unavailable for transactions which involve a loan of any part of the income or corpus of a plan to a shareholder-employee (as defined in section 1379(d) if the Internal Revenue Code of 1954) of the plan. Thus, the applicability of section 408(b)(1) to the particular loan contemplated in your letter depends, among other things, on whether the proposed recipient is such a shareholder-employee of the lending plan or plans. The trustees of the plan are, of course, responsible for determining whether the provisions of section 408(b)(1), or of any other section of the Act, are applicable to the plan.

Sincerely,