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March 28, 1975

Dear :

This is in response to your letter requesting an opinion as to whether the provision of deduction check-offs by an employing railroad for insurance premiums of workers constitutes an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA).

Under the ERISA, one of the essential elements for an employee benefit plan is that it be established or maintained by an employer, an employee organization, or both. To meet this criterion, there must exist some involvement by either the employer or the union or both. According to the statement of facts in your letter, check-off of premium payments for insured benefits is the employing railroads' only connection with provision of insurance to employees. Your letter is silent on union involvement with any aspect to the provisions of insurance to employees. The facts presented do not demonstrate establishment or maintenance of an employee benefit plan under the ERISA. They show only a vehicle (employer check-off) for payment of individual insurance contracts.

Coverage would not be precluded if other employer or union involvement exists. Our position is based solely on the following statements in your letter: Employees of the railroads have a payroll deduction check-off privilege for payment of premiums for various types of life insurance and accident and health insurance policies; the policies are sold directly by insurance companies on an individual basis to railroad workers and the decisions of whether to purchase insurance, to determine the type of coverage, and to maintain or drop the policy remain with the individual worker; the policies vary in benefits, premiums and provisions, are individually underwritten by the insurance companies and are issued directly to employees and the entire premium is paid, via the check-off vehicle, directly to the insurers by the employing railroads.

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Assuming the foregoing statements to be accurate, and further assuming the absence of other facts which would tend to show additional involvement by the railroads, the unions, or both, it is the opinion of this Department that the railroads' practice of providing for payroll deduction check-offs for premium payments on individual insurance policies does not constitute an employee benefit plan under the Employee Retirement Income Security Act of 1974.

We trust that this answers your question and hope you will not hesitate to write us if we can be of any further assistance.

Sincerely,