P/OPINION 75-17

3(2)

December 17, 1975

Dear :

This is in reply to your communication dated September 22, 1975, regarding an inquiry received by you from . [He] states that he has a client to whom the requirements of the Employee Retirement Income Security Act fo 1974 (ERISA) as they pertain to inclusion of employees with just one year of service rather than the present requirement of four will inflict a severe hardship and almost certainly discontinue his retirement program and inquires as to the requirements and possibilities of obtaining a three or four year delay phasing in period for his client in meeting the participation requirements of the ERISA.

Although, under certain circumstances, the ERISA provides the Secretary of Labor with authority to grant temporary variances with respect to vesting and the accrual of benefits (section 207); to extend the years required to amortize any unfunded past service liability in the case of defined benefit pension plans (section 304): and to prescribe an alternative method of satisfying the reporting and disclosure requirements for pension plans (section 110), the Secretary of Labor has no authority to grant a variance with respect to any pension plan, as defined in section 3(2), from the participation standards.

Under the circumstances, it is not possible for the Secretary of Labor to grant a three or four year phasing in delay of the minimum participation standards as requested by on behalf of his client.

I hope this information will be helpful in replying to . As requested, your correspondence is returned herewith.

Sincerely,