P/OPINION 75-21

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414

March 4, 1975

Dear :

Your letter of February 5, 1975, relating to ERISA IB 75-1, has been referred to me by of the Department of Labor for reply.

Section 414(c) of the Employee Retirement Income Security Act of 1974 applies to compensation for persons serving as fiduciaries to a plan who are already receiving full-time compensation from an employer or employee organization.

Since such a person is already a party in interest by virtue of section 3(14)(B) of the Act, section 406 might be construed to prevent the employee-fiduciary from receiving benefits or from receiving compensation for services rendered. Section 408(c) was inserted as an exemption from the section 406 prohibited transaction rules to enable such benefits to be received and such services to be rendered. The clause in section 408(c)(2) relating to full-time employees receiving solely reimbursement for expenses is a limitation within an exemption from section 406. Once it is understood to be merely this, and not an independent prohibition, it becomes apparent why section 414(c)(4) applies to such a situation, and why no reference has been made to section 408(c) in the interpretive bulletin.

For your information the Internal Revenue Service has taken an identical view of the analogous provisions of section 4975 of the Internal Revenue Code in their Technical Information Release (TIR 1329), a copy of which is enclosed.

Sincerely,