

July 21, 1975

Dear :

This is in reply to your letter of January 14, 1975, requesting information as to how the Employee Retirement Income Security Act of 1974 (ERISA) affects the pension plan of a not-for-profit school. Participants and employer both contribute 5% of the employee's earnings. Benefits are payable on termination of employment and are not restricted to retirement. I will answer your questions sequentially.

1. Congressional power under the Commerce Clause has been found to cover educational and scientific activity carried on by non-profit institutions. For example, although the National Labor Relations Board declined to adjudicate on policy grounds in Trustees of Columbia University, 97 NLRB 424 (1951), it found that " . . . the activities of Columbia University affect commerce sufficiently to satisfy the requirements of the (LMRA) . . ." 97 NLRB at 425.
2. Section 4(b) of the ERISA, which lists employee benefit plans to which Title I does not apply, makes no provision for schools that are wholly tax exempt.
3. Any questions relating to coverage of a plan under Title IV of ERISA, Plan Termination Insurance, should be addressed to the Pension Benefit Guaranty Corporation.
4. Section 3(2) defines "an employee pension benefit plan" and "pension plan" as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program
 - A. provides retirement income to employees or
 - B. results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, to the plan, the method of calculating the benefits under the

plan or the method of distributing benefits from the plan". While the pension plan you refer to does not provide retirement income as specified in (A), it does provide deferred income distributed in a lump sum upon termination of employment as specified in (B). Therefore, the plan would not be exempt from the disclosure and reporting provisions.

5. At the present time simplified reporting is under consideration but no final determinations have been made.
6. I am enclosing a copy of the Plan Description Form EBS-1. The first two pages only plus the signature page, without supporting schedules, must be filed with the Department by August 31, 1975. It has been proposed that the complete EBS-1 and the summary plan description be filed with the Department and the summary plan description furnished to plan participants and beneficiaries by May 30, 1976.
7. The first Annual Report is not due until 210 days after the end of the plan year beginning after December 30, 1974. The Welfare and Pension Plans Disclosure Act (WPPDA) Form D-2 remains in effect for plans subject to the WPPDA for plan years ending through and including December 30, 1975.

Sincerely,