

4 (b) ✓
201
301
401

December 23, 1975

Dear :

This is in reply to your letters of March 31, and April 28, 1975, requesting a ruling on behalf of the (Company). You would like to know if the Company's unfunded non-qualified retirement benefit program (Pension System) is covered under the Employee Retirement Income Security Act of 1974 (ERISA). The Pension System, in force for 74 years, is being replaced by a qualified profit-sharing plan but the Company would like to continue the original program for 23 older employees (out of a total of 14,000 employees) who will be retiring within 10 years and will not have sufficient time under the profit-sharing plan to obtain retirement benefits comparable to those they would have received under the Pension System. You state that these older employees whose profit-sharing plan benefits will be supplemented by the Pension System are management employees and their salaries range from \$19,286 to \$67,992.

Section 3(2) of the ERISA defines an "employee pension benefit plan" and a "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 the 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, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits under the plan."

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The Pension System does meet the definition of an employee pension benefit plan and is covered under section 4(a) and not exempted under section 4(b). However, it is exempted under sections 201(2), 301(a)(3), 401(a)(1) and 4021(b)(6) on the basis that the plan is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees.

The Pension System, therefore, would be subject only to the Reporting and Disclosure and the Administration and Enforcement provisions of the ERISA.

In regard to reporting and disclosure, regulations issued on August 15, 1975 (40 Fed. Reg. 34526), a copy of which is enclosed, provide for an alternative method of compliance for unfunded or insured plans maintained by an employer for a select group of management or highly compensated employees. Such a plan may comply with the reporting and disclosure requirements by filing a statement with the Secretary of Labor in accordance with the provisions of section 2520.104-23 and providing any plan documents requested by the Secretary.

The Department of Labor has not published regulations defining what constitutes a "select group of management of highly compensated employees" within the contemplation of sections 203(2), 301(a)(3), and 401(a)(1) of the ERISA. Therefore, this determination letter is issued subject to the possibility of a regulation covering this area. However, in the event a regulation should be published which would adversely affect the conclusion reached herein, such regulation will not be applied retroactively, but only prospectively.

Sincerely,