

November 12, 1975

Dear :

This is in response to your letter of July 7, 1975, inquiring whether a defined benefit pension plan containing supplemental early retirement benefits satisfied the requirements of section 204(b)(1)(G) of the Employee Retirement Income Security Act of 1974 (ERISA). The defined benefit pension plan may not satisfy those requirements.

The general rule of section 204(b)(1)(G) is that a defined benefit plan does not satisfy the requirements of section 204 of the Act if a participant's accrued benefit is reduced on account of age or service. However, in determining whether there has been such a reduction, certain amounts may be disregarded if (1) they do not exceed Social Security benefits and (2) terminate when Social Security benefits commence. The purpose of section 204(B)(1)(G)(i) and (ii) is to allow an early retiree to maintain a retirement income equivalent to the retirement income of a person retiring when social security benefits commence.

In your letter you describe a supplemental early retirement benefit that may be as high as \$300 per month. To the extent that this benefit exceeds social security benefits, the plan does not satisfy the requirements of section 204 of the Act. "[A]n accrued benefit may not be reduced on account of increasing age or service (except to the extent of social security supplements or their equivalents)." (emphasis added) Conference Report, H.R.Rep. No. 1280, 93d Cong., 2d Sess. 273 (1974), 8A U.S. Cong. & Admin. News 672 (September 20, 1974). The benefits described in your letter appear to be social security supplements or their equivalent that exceed the allowable amount. As a result a participant's accrued benefit will be reduced on account of an increase in age. This reduction violates the requirements of section 204 of the Act.

Sincerely,