

February 7, 1975

Dear :

In response to your letter of January 24, 1975, enclosing a letter dated January 13, 1975 from of The Life Company, I am pleased to be able to give the following guidance:

Our latest interpretative bulletin, ERISA IB 75-2, a copy of which is enclosed herewith, makes clear that when a plan purchases a policy or policies on an insurance company's general assets account, the plan assets consist of the policy, and not the underlying assets of the insurance company. If all the plan assets consist of such policies, the responsibility of plan fiduciaries to exercise the section 404(a) requirements of the Employee Retirement Income Security Act of 1974 (ERISA) in the selection of the insurance company and the policies purchased would be the major responsibility which could give rise to liability (assuming that section 406 does not apply to the transaction with the particular insurance company).

As for the section 404(a)(1)(C) requirement of diversification if 100% of the plan assets are in policies written on the general asset account, the Conference Report states "generally a plan may be invested wholly in insurance or annuity contracts without violating the diversification rules, since generally an insurance company's assets are to be invested in a diversified manner."

With respect to the question of comparing liability in the insurance situation to those of other modes of investment, much would depend on the individual situation. As to the need for fiduciary liability insurance, as you know, section 410(b) of the Act allows such insurance, but does not require it. The question of whether such insurance is necessary in any particular case is a matter for consideration by the fiduciary and his adviser.

Sincerely,