

September 21, 1976

Dear :

Thank you for your letter dated January 28, 1976, regarding the exclusion of certain severance payments to retired employees from coverage under the Employee Retirement Income Security Act of 1974 (ERISA). I am sorry we could not reply sooner. (Named) Corporation intends to offer these severance payments to employees who are eligible for retirement in order to reduce the workforce. You raise a number of questions about these payments.

According to the draft of the program, payments will be limited to a maximum of one year's compensation based on the January 1, 1976 rate, payments will be limited to certain types of employees, and all payments must be paid within one year of the employee's termination date.

Section 2510.3-2(b) of the regulation published August 15, 1975, provides that the term "employee pension benefit plan" shall not include "a plan, fund, or program under which payments are made on account of an employee's separation from the service of an employer other than on account of retirement if (i) all such payments are made to any participant are completed within one year after the participant's separation from service, and (ii) the total of all payments made within such year to any participant cannot exceed the participant's annual compensation level ...", A News Release issued April 26, 1976, announced that the Department intends to expand the definition of severance pay to include payments upon separation of service which do not exceed two years' final annual compensation, or extend to a period of more than twelve months beyond normal retirement age or the effective date of elected early retirement. The proposed severance payments, therefore, would not constitute an employee pension benefit plan. However, the plan does meet the definition of an employee welfare benefit plan within

P/OPINION 76-106

the meaning of section 3(1) of the ERISA since severance pay is one of the benefits described in section 302(c) of the Labor Management Relations Act, 1947. The plan would be subject to the reporting and disclosure and the fiduciary requirements of Title I, but not the participation, vesting, benefit accrual or funding requirements.

Your last four questions are not covered under Title I of the ERISA and the Department would have no jurisdiction in these areas.

Sincerely,

Enclosure