

September 27, 1976

Dear :

Thank you for your letter requesting clarification of the coverage of severance pay plans and the definition of the term "employee's normal compensation" under the Employee Retirement Income Security Act of 1974 (ERISA). I am sorry we could not reply sooner.

You describe two severance pay plans that are not pension plans pursuant to section 2510.3-2(b) of the regulation issued August 15, 1975, and wish to know if they are "welfare plans." The answer is yes. Section 3(1) of the ERISA defines an employee welfare benefit plan, in part, 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 such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions)."

As you are aware, one of the benefits described in section 302(c) of the Labor Management Relations Act, 1947, is severance pay. Although, as you are aware, section 302(c) refers to money paid into a trust fund, section 3(1) of the ERISA does not require any special type of funding. Any severance pay plan that is not an employee pension benefit plan would be considered an employee welfare benefit plan under Title I of the ERISA provided it meets with the other requirements of section 4(a).

In answer to your second question, "employee's normal compensation" means the employee's regular rate of pay.

Sincerely,