

September 30, 1976

Dear :

This is in reply to your letter dated February 18, 1975, requesting an opinion as to whether the tax deferred annuities of (named) are covered plans under section 4(a) of the Employee Retirement Income Security Act of 1974 (ERISA). Section 7.01 of both of (named)'s contracts permits an employee to terminate his annuity agreement and redeem the contribution at will.

Section 3(2) of the ERISA defines an "employee pension benefit plan" and "pension plan" as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer . . . to the extent that by its 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 from the plan." Although the tax deferred annuities of (named) do permit an employee to terminate his annuity agreement and redeem the contribution at will, the contracts provide in section 6 for effecting a retirement annuity or effecting a variable annuity. Section 8, Death Benefits, gives a beneficiary the option of selecting a retirement annuity or a variable annuity. The plans, therefore, provide retirement income or a deferral of income for periods extending to the termination of covered employment or beyond. The fact that participants may choose not to do this would have no bearing on coverage. In view of the foregoing, both plans are covered under the ERISA.

Sincerely,