

May 6, 1976

Dear :

Your letter to of (city) Regional Office concerning the receipt of compensation by the 12 trustees of the jointly administered Pension Plan under section 408(c)(2) of the Employee Retirement Income Security Act of 1974 (the Act), has been referred to this office for reply. We regret that the press of other work has delayed our response.

Section 408(c)(2) provides, generally, that a fiduciary may receive reasonable compensation for services rendered to a plan and may be reimbursed for expenses properly and actually incurred in the performance of his duties with a plan. However, a fiduciary who already receives full-time pay from an employer or association of employers whose employees are covered by the plan, or from an employee organization whose members are participants in the plan, may receive only reimbursement for expenses properly and actually incurred in connection with his plan duties.

With respect to the two union trustees who are full-time paid union officers, no compensation is permissible under section 408(c)(2). These trustees receive full-time pay from an employee organization whose members are participants in the Pension Plan and are, therefore, precluded by section 408(c)(2) from receiving compensation for their services to the plan.

Where, however, a trustee is paid on an hourly basis in his regular occupation and would not be paid for time spent in connection with his trust duties, he would not be deemed to be receiving full-time pay during those periods of time that he is performing his duties as plan trustee. Thus, the four journeymen union trustees who are paid on an hourly basis may receive compensation for services rendered in the performance of their duties with the plan, provided that they are not also receiving pay from an employer for those periods of time in which they are performing their trustee functions.

Section 408(c)(2) would, however, preclude payment by the plan of compensation to the four management trustees who are employers, or to the management trustee who is a full-time employee of the contractors' association. The regular, full-time compensation received by the trustees would not be diminished by their time spent on plan duties. Accordingly, these trustees would be considered to be receiving full-time pay from an employer or an association of employers.

The management trustee who functions primarily as an insurance broker does not receive full-time pay from an employer, an association of employers or an employee organization, and he may, therefore, be compensated by the plan for his services as a plan trustee.

Notwithstanding the above, you should be aware that section 414(c)(2) of the Act may provide a transitional exemption for the payment of compensation to the trustees referred to herein. On December 31, 1974, the Department issued ERISA IB-75-1 (enclosed herewith), which clarifies the scope of section 414(c)(4). As discussed in ERISA IB 75-1, a plan trustee serving as such on June 30, 1974, whose service meets the requirements of section 414(c)(4) of the Act, will be permitted to continue to receive compensation for his services as plan trustee until June 30, 1977. Thus, all of the trustees of the

Pension Plan Board who were serving as such on June 30, 1974, and whose service meets the conditions of section 414(c)(4) of the Act, may continue to receive compensation from the plan for the performance of their trustee duties until June 30, 1977, even if the payment of such compensation falls within the limitations of section 408(c)(2) of the Act.

Because your letter also raises questions under section 2003(c)(2)(D) of the Act and section 4975(d)(10) of the Internal Revenue Code of 1954, we have conferred with representatives of the Internal Revenue Service and they concur in the views set forth above as they apply to those sections.

Sincerely,