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3(2)

June 2, 1976

Dear :

This is in reply to your letter dated September 16, 1975, requesting confirmation of interpretations under the Employee Retirement Income Security Act of 1974 (ERISA) on severance pay, bonuses, individual retirement accounts and gratuitous payments given you by the Area Office. You also would like additional clarification concerning severance pay plans. I am sorry we were unable to reply sooner.

A severance pay plan which does not meet the requirements of section 2510.3-2(b) of the August 15, 1975 regulation regarding time of completion of payments and the maximum total payment will be considered to be a pension plan. If it does meet these requirements, it will be considered to be a welfare plan. Section 3(1) of the ERISA defines an employee welfare benefit plan 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, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) 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 this section refers to money paid into a trust fund, section 3(1) of the ERISA does not require any special type of funding. Any severance

P/OPINION 76-66

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 the other requirements of section 4(a).

If bonuses, individual retirement accounts and gratuitous payments to retirees meet the applicable requirements of section 2510.3-2(c), (d) and (e) respectively of the regulation, they will not constitute either welfare plans or pension plans within the meaning of sections 3(1) or 3(2) of the ERISA and will not be covered under Title I. However, if they do not meet these requirements, they will constitute pension plans within the meaning of section 3(2).

For your information I am enclosing a copy of the April 26, 1976 News Release effecting severance payments and supplemental payments to retirees.

Sincerely,