

June 10, 1976

Dear _____ :

This is in reply to your letter of April 2, 1976, addressed to _____, requesting a ruling of the Department that the investment of 100% of the above-referenced trust's assets in diversified fixed income securities is a diversification of plan assets within the meaning of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (ERISA).

With respect to that portion of your letter which may be factual in nature (i.e., whether the particular investments are diversified so as to minimize the risk of losses), the policy of the Department is not to issue rulings as to matters of an inherently factual nature, such as investment quality of securities or classes of securities.

With respect to the legal issue raised in your letter (whether a plan's portfolio may be deemed to be diversified within the meaning of section 404(a)(1)(C) of ERISA if 100% of its assets is invested in diversified fixed income securities) this issue is of a nature that cannot be resolved prior to the issuance of regulations, and we therefore are unable to issue any ruling with respect thereto.

However, you may wish to consider, for your general information, the following material from page 305 of the Conference Report accompanying ERISA (H.R. Rep. No. 93-1280, 93d Cong., 2d Sess. (1974)):

The conferees intend that, in general, whether the plan assets are sufficiently diversified is to be determined by examining the ultimate investment of the plan assets a plan may be invested wholly in insurance or annuity contracts without violating the diversification rules, since generally an insurance company's assets are to be invested in a diversified manner.

It is our understanding that, due in part to restrictions on investments in common stock and real estate for production of income imposed by state statutes (see, e.g., section 81 of the New York Insurance Law), insurance companies have traditionally held over 70% of their assets in fixed income securities. See Huebner & Black, Life Insurance, 8th ed., pp. 712-713 (Prentice-Hall 1972).

Sincerely,