

June 7, 1976

Dear \_\_\_\_\_ :

This is in reply to your letter requesting a ruling whether the Employee Retirement Income Security Act of 1974 (ERISA) imposes limits on the amount or percentage of plan assets that may be invested in certificates of deposit of the same banking institution. You also ask whether there is a maximum amount or percentage of the total capitalization of that banking institution which could restrict the amount of interest bearing accounts a fund may purchase.

\_\_\_\_\_ of my staff recently discussed this matter with \_\_\_\_\_ of the bank, who indicated that a trustee of one of your pension accounts had expressed concern that ERISA imposed certain amount or percentage limits on the investment an employee benefit plan could make in any single investment vehicle. \_\_\_\_\_ requested that we follow the phone conversation with a letter expressing the Department's position on these issues.

The only language of ERISA which specifically limits the percentage amount of a particular asset that a plan may hold is found in section 407, and this limitation refers to the holding or acquisition of qualifying employer securities or real property. Other than the above-indicated section, the amount or percentage of plan assets that may be placed in a particular investment vehicle is governed by the general standards of fiduciary responsibility.

Section 404(a) (1) of ERISA sets forth the standards under which a plan fiduciary must discharge his duties with respect to an employee benefit plan. Among other things, a plan fiduciary must act solely in the interest of participants and beneficiaries under section 404(a) (1) (c) "by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;..." The Conference Report in discussing the standard imposed by

this requirement stated:

"The degree of investment concentration that would violate this requirement to diversify cannot be stated as a fixed percentage, because a prudent fiduciary must consider the facts and circumstances of each case."

The report goes on to list factors to be considered such as:

- (1) the purpose of the plan;
- (2) the amount of plan assets;
- (3) financial and industrial conditions;
- (4) the type of investment, whether mortgages, bonds or shares of stock or otherwise;
- (5) distribution as to geographical location;
- (6) distribution as to industries;
- (7) the dates of maturity.

Other than the language of section 407, discussed above, ERISA does not attempt to set specific percentage limitations on the investment practices of plans subject to the Act; rather, general standards such as the diversification standard and the relationship of the standard to the prudent man rule, also found in section 404 (a) (1), are to be the basis for investment decisions involving the assets of employee benefit plans.

I hope that these comments will be useful to you.

Sincerely,