

May 25, 1976

Dear :

This is in reply to your letter dated January 23, 1976, requesting a determination that two gratuitous payment programs of Inc. are not employee pension benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA) pursuant to section 2510.3-2(e) of the regulation issued August 15, 1975. I am sorry we could not reply earlier.

Program A provides for an automatic escalation of pension benefits for retirees who retired prior to February, 1974. These retirees were "vested" in their right to begin receiving incremental payments three years after retirement. Program B covers long term employees of an acquired subsidiary. Inc. guaranteed these employees a minimum pension of \$50 per month, later changed to \$75, supplementing any smaller payments due them under the Inc. Pension Plan with funds from the company's general funds. This program was adopted in 1972 and applied to all retirements from the subsidiary through January 1, 1976.

According to section 2510.3-2(e) the term "employee pension benefit plan" does not include voluntary gratuitous payments by an employer to former employees who separated from the service of the employer if:

1. payments are made out of the general assets of the employer,
2. former employees separated from the service of the employer prior to September 2, 1974 (this is now being changed to the end of 1976 -- see enclosed news release),
3. payments commenced prior to September 2, 1974 (this also is now being changed to the end of 1976),
4. each former employee receiving such payments is notified annually that the payments are gratuitous and do not constitute a pension plan.

Both programs satisfy requirements one and two and Program B satisfies the third requirement. However, some of the retirees in Program A will not receive their first payment until February 1977. This is later than the latest permissible date, the end of 1976. It should be noted that these requirements apply to each participant, not when the plan as a whole is established and payments started. Also, in regard to the fourth requirement, you state that retirees in Program A are "vested" in their right to receive these supplemental benefits and, in Program B, the minimum payment is guaranteed. This does not satisfy the fourth requirement that payments be gratuitous and do not constitute a pension plan. Payments may not be granted for more than a year at a time and the employer must be under no legal obligation to make such payments.

Based on the above, it is concluded that both Program A and Program B of _____ Inc. are employee pension benefit plans and are subject to Title I of the ERISA.

Sincerely,