P/OPINION 77-23

3(1)
3(2)
4(a)
105(a)

February 14, 1977

Dear :

This is in reply to your letter to of our Area Office. You raise three problems: 1. coverage of your Split Dollar Plan under the Employee Retirement Income Security Act of 1974 (ERISA), 2. providing a statement of accrued benefits to participants, if requested, and 3. coverage of your Stock Purchase Plan. I am sorry we could not reply sooner.

1. Coverage of the Split Dollar Plan --

This Plan provides life insurance protection to participants with the employer and the participant splitting the cost of premiums. The employer is the owner of the policy and is eventually reimbursed for his share of the premiums. 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 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 320(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions)."

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The Split Dollar Plan was established and is maintained by the employer for the purpose of providing death benefits to participants and their beneficiaries through the purchase of insurance. The Plan is an employee welfare benefit plan within the meaning of section 3(1) and is covered under section 4(a). Since it is a welfare plan, it is subject to the reporting, disclosure and fiduciary requirements of Title I.

2. Statement of accrued benefits to participants --

You are concerned that since your plan is a Social Security offset plan, you cannot provide participants with a true evaluation of their accrued benefits. This, of course, would be true of all pension plans that provide for a Social Security offset. A statement of the accrued benefits with a clear statement that such accrued benefits will be reduced by the amount of Social Security benefits received upon retirement or in effect upon separation from service prior to retirement, whichever is lower (but will not be reduced further if Social Security benefits are increased following retirement), will satisfy the requirements of section 105(a) of the ERISA.

3. Coverage of your Stock Purchase Plan --

Employees may authorize payroll deductions up to 5% of salary for the purchase of stock. At the end of the plan year there is a matching 10% employer contribution and all stock is distributed. Section 3(2) defines an employee pension 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 by its express terms or as a result of surrounding circumstances such plan, fund, or program -- (A) provides retirement income to employees, or (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. "

Since the plan does not provide retirement income to employees nor result in a deferral of income for periods extending to the termination of employment or beyond, it is not an employee pension benefit plan within the meaning of section 3(2). It is not an employee welfare benefit plan since it does not provide any of the benefits enumerated in section 3(1). The plan, therefore, is not covered under Title I of the ERISA since it is neither an employee welfare benefit plan nor an employee pension benefit plan.

Sincerely,