P/OPINION 77-36

4(a)(1)

April 22, 1977

Dear

This is in response to your letters of May 17 and August 16, 1976. You ask in your letters whether a dentist with an office in one state and a gross income of less than $250,000 a year, who maintains an employee benefit plan, is affecting interstate commerce and, thus, covered under the Employee Retirement Income Security Act of 1974 (ERISA). Please excuse the delay in responding. The press of issuing necessary regulations and other documents of general applicability has temporarily preempted staff resources.

Section 4(a)(1) of ERISA provides that coverage of ERISA shall apply to any employee benefit plan if it is established or maintained "by any employer engaged in commerce or in any industry or activity affecting commerce." The various forms of equipment, drugs and other materials used in your profession are sufficient to find that you as an employer are "engaged in commerce" and "affect commerce" within the coverage provisions of ERISA.

There have been numerous court cases which have held that activities of the kind carried on in the dental profession are sufficient to constitute engagement in commerce. Such activities include employees engaged in "sending, preparing, and receiving purchase orders, shipment orders, invoices, bills and checks" to or from out-of-state manufacturers and suppliers, Brennan v. State of Iowa, 494 F. 2d 100 (1974); office employees handling, preparing, and mailing office papers for transmission across state lines, Wirtz v. First State Abstract & Ins. Co., 363 F. 2d 83 (1966). Other activities, particularly the handling of goods or equipment that have moved in commerce are sufficient for interstate commerce coverage: handling and

use of x-ray equipment, Maryland v. Wirtz, 392 U.S. 183 (1968); regular use of soap, cleaning materials and linens from interstate commerce, Schultz v. Union Trust Bank of St. Petersburg, 297 F. Supp. 1274 (1969).

These and similar activities are sufficient to find you within the section 4(a)(1) commerce coverage provision of ERISA. Thus, your employee benefit plan is covered by ERISA.

The reference in your letter of May 17 to the exclusion of businesses earning less than $250,000 a year gross income probably refers to a Fair Labor Standards Act coverage provision, an Act unrelated to and not controlling upon ERISA coverage provisions.

Sincerely,