

3(1)

3(2)

September 19, 1977

Dear:

Thank you for your request for a ruling on the status of the (name)Supplemental Termination Benefits Plan (STBP) under the Employee Retirement Income Security Act of 1974 (ERISA). You request the following rulings:

- (1) The STBP is not a pension plan because it is not intended to provide retirement income.
- (2) If the STBP is a pension plan, elimination of the annuity purchase feature would remove it from such classification.
- (3) If the STBP is not a pension plan, it is a welfare plan.

We regret that our heavy workload has resulted in a delay in responding to your inquiry.

You advise that the STBP is payable to full-time staff members upon certain types of termination of service. The benefits payable are determined by a schedule based on years of service with the (named). The benefit is paid wither in a lump sum if it is less than 14 weeks salary or in 12 monthly payments if in excess of 14 weeks. In addition, for staff members who are eligible for early retirement and whose benefits exceed 14 weeks salary, the benefit is in the form of a TIA-CREF annuity. Your request notes that, but for the annuity feature of the STBP applicable to terminees eligible for early retirement, the STBP would appear to meet the requirements of section 2510.3-2(b) of the regulations published August 16, 1976.

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In Department of Labor regulations section 2510.3-2(b), (40 FR 34532, August 15, 1975), a severance pay plan can be distinguished from a pension plan. A severance pay plan is not a pension plan if “. . . (1) All such payments made to any participant are completed with one year after the participant's separation from service, and (ii) The total of all payments made within such year to any participant cannot exceed the participant's annual compensation level, as determined under paragraph (b)(2) of this section.”

In a news release on April 26, 1976 (a copy of which is enclosed), the Department of Labor announced it intended to revise this definition of severance pay plans “. . . to include payments upon separation from service which do not exceed two years annual compensation, or extend for a period of more than 12 months beyond normal retirement age or the effective date of elected early retirement. These payments with be permissible if they come from the employer's general assets and are clearly defined as severance pay rather than a pension.”

In the absence of the issuance of new regulations with respect to severance pay plans and with respect to the status of contracts purchased under section 403(b) of the Internal Revenue Code, we are unable to respond to your first request for an advisory opinion. If, after the issuance of these regulations, you will still have a question with respect to the status of STBP, we suggest that you resubmit your request for an advisory opinion. With respect to your second and third requests, it is the opinion of the Department of Labor that, if the STBP is determined to be a pension plan, elimination of the annuity purchase feature would remove it from such classification and make it a welfare plan.

Sincerely,

Enclosure