U.S. Department of Labor Pension and Welfare Benefits Administration
Washington DC 20210

March 9, 1993

Ms. Victoria A. Judson
Steptoe & Johnson
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

93-05A
ERISA SECTION
514(a)

Dear Ms. Judson:

This is in reply to your request for an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask on behalf of your client, International Business Machines Corporation (IBM), whether Section 5 of Puerto Rico Act No. 17 of April 17, 1931, as amended, (P.R. Act 17) is preempted under section 514(a) of Title I of ERISA to the extent Section 5 prohibits payroll deductions for the purposes of funding employee benefit plans covered by Title I of ERISA.

You advise that IBM maintains the IBM Tax Deferred Savings Plan (the IBM Plan), which is a profit sharing plan and which, as of July 1, 1992, provides benefits to employees performing services in the Commonwealth of Puerto Rico. The IBM Plan, you further advise, permits salary reduction contributions and provides for matching employer contributions. The IBM Plan permits withholding and deductions from wages for employee contributions to the IBM Plan.

Section 5 of P.R. Act 17 generally prohibits employers from withholding or deducting amounts from employee wages unless certain criteria are met. Specifically, Section 5 provides, in pertinent part:

> Except as provided in this section, no employer may, for any reason, deduct or retain any part of the wages due to laborers, except:
>
> (g) when the laborer authorizes his employer in writing to deduct from his wages a sum stipulated by the laborer or stipulated in a labor collective agreement entered into between an employer and a representative of his employees in an appropriate unit for collective bargaining as an assessment or payment toward any plan or group, pension, saving, retirement, allowance, annuity life, life, accident and health and hospital insurance policy, any combination of these plans, or any similar social security plan authorized by the laborer and by the union in case there exists a labor organization duly certified or recognized to bargain

collectively with the employer or authorized by the laborer and the Secretary of Labor and Human Resources in the case of nonexistence of such labor organization duly certified and recognized, but in both cases for the sole benefit of the laborers or their dependents or beneficiaries, provided that the employer contributes with a sum not less than the sum contributed by the laborer and subject to the condition that said deduction be used by the employer to pay the cost of said benefit or for the said purposes: (1) an insurance company, acceptable to the union or, in the default thereof, to the Secretary of Labor and Human Resources, which has issued a contract insuring the employees and is authorized to operate in Puerto Rico under the supervision of the Commissioner Of Insurance of Puerto Rico, or (2) a trust bank acceptable to the union or, in default thereof, to the Secretary of Labor and Human Resources, authorized to operate in Puerto Rico under the supervision of the Secretary of the Treasury. If the deductions are not used as aforesaid, no deduction shall be made until the plan or insurance policy has been approved in writing by the Secretary of Labor and Human Resources of Puerto Rico. Every plan or policy under this section shall be filed with the Department of Labor and Human Resources of Puerto Rico before it takes effect. No deduction shall be made for any plan or insurance which permits the employer to receive, take or withhold for his own use and benefit the total or any part of the sum deducted. All plans shall contain appropriate provisions to permit the voluntary retirement of any laborer in a manner consistent with the continuation and due operation of the plan....

In Opinion 84-18A (issued April, 19, 1984) to which you refer, the Department of Labor (the Department) stated:

> Thus section 5(g) of [P.R. Act 17] is a State law (within the meaning of section 514(c)(1) of ERISA). Further, it appears that section 5(g) has been interpreted to apply to benefits provided by an employer under an employee benefit plan. Accordingly, to that extent, section 5(g) of [P.R. Act 17] relates to employee benefit plans covered by title I of ERISA and is preempted under section 514(a) of ERISA....

In Opinion 88-17A (issued December 19, 1988) to which you also refer, the Department stated:

> To clarify the position stated in Opinion 84-18 that Subsection 5(g) of P.R. Act 17 is preempted by section 514(a) of ERISA, it is the position of the Department that to the extent that Section 5 of P.R. Act 17 is interpreted to limit, prohibit, or regulate the funding of employee benefit plans covered by title I of ERISA, including payroll deductions to employee benefit plans covered by title I of ERISA, it is preempted by section 514(a) of ERISA.

At this time, the Department sees no reason to alter the positions taken in Opinions 84-18A and 88-17A. Accordingly, it is still the position of the Department that section 514(a) of Title I of ERISA preempts Subsection 5(g) of P.R. Act 17 to the extent that subsection is applied, or attempted to be applied, to employee benefit plans covered under Title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provision of the procedure, including section 10 thereof relating to the effect of an advisory opinion.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations