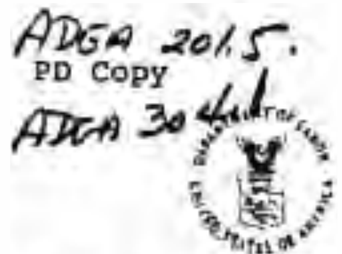

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

FEB 9 1978

This is in further reply to your letter concerning the application of the Age Discrimination in Employment Act (ADEA) to a retirement plan. We regret the delay in our response.

Until 1963, under a retirement plan instituted in the 1930's, the employer and participating employees jointly contributed on a 50-50 cost-sharing basis to purchase retirement annuity contracts underwritten by private insurance companies. In 1963, contribution rates to the plan for both the employer and employees were modified so as to be based on stated percentages of each covered employee's respective salary. At the same time, the employer undertook to contribute at a greater rate than employees, resulting in net increased contribution rates to the plan for each covered employee. Since 1963 the employer's rate of contribution has been further increased.

Employer and employee contribution rates do not vary with the employee's age and there are no restrictions based on age as to who may participate in the retirement plan. The amount of an employee's retirement income is dependent on his or her years of service, salary, and the amounts contibuted to the plan on the employee's behalf. Therefore older employees who were employed prior to 1963 while lower retirement plan contribution rates were in effect will receive lower retirement benefits than younger employees employed for comparable lengths of time but with longer experience under newer contribution rates.

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(3)

You ask whether differences in received retirement benefits which may arise from the changes in retirement plan contribution rates might be deemed to discriminate on the basis of age in violation of the ADEA.

Under section 4(a) of the ADEA, it is unlawful for an employer to discriminate against an individual between the ages of 40 and 65 with respect to compensation, terms, conditions or privileges of employment because of such individual's age. Retirement plans come within the scope of this prohibition and, if they discriminate on the basis of age, must meet the requirements of the exception in section 4(f)(2) in order to be deemed lawful. In the instant situation, since employer and employee contribution rates have not varied with an employee's age throughout the history of the plan, and since there are no restrictions based on age as to who may participate in the retirement plan, it is our opinion that the plan does not discriminate against any employees on the basis of age in violation of section 4(a). Any differences in the ultimate amount of retirement benefits received by employees with the same salary and years of service are based, not on age, but on the contribution rates generally in effect at the time of their employment. Therefore, there is no need to consider the exception in section 4(f)(2).

Sincerely,

William [illegible]
[illegible] Administrator
[illegible] Division

Xavier M. Vela
Administrator

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