U.S. Department of Labor Pension and Welfare Benefits Administration
Washington, D.C. 20210

DEC 9 1988

88-17A
Sec. 514

Mr. Edwin J. Guillot, Jr.
McConnell Valdes Kelley Sifre Griggs & Ruiz-Suria
G.P.O. Box 4225
San Juan, Puerto Rico 00936

Dear Mr. Guillot:

This is in reply to your request for clarification of an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether Section 5 of Puerto Rico Act No. 17 of April 17, 1931 (P.R. Act 17) is preempted under the preemption provisions of section 514 of title I of ERISA insofar as Section 5 limits or prohibits payroll deductions for the purpose of funding employee benefit plans covered by title I of ERISA.

You advise that you represent three employers (First Boston (Puerto Rico) Inc., First Boston Financial Services, Inc., and First Boston Corporation (Puerto Rico Branch)) which adopted the Employees' Profit Sharing Plan of The First Boston Corporation for the benefit of their employees performing services in the Commonwealth of Puerto Rico. You further advise that Section 5 of P.R. Act 17 generally prohibits employers from withholding or deducting amounts from employee wages unless the requirements of subsection 5(g) of P.R. Act 17 are met. You also note that in Opinion 84-18 (issued April 19, 1984), the Department of Labor (the Department) held that Subsection 5(g) of P.R. Act 17 was preempted under section 514(a) of ERISA. As a result of that advisory opinion, you ask for clarification whether the general prohibition in Section 5 of P.R. Act 17 against payroll deductions could result in the Commonwealth of Puerto Rico prohibiting any payroll deductions for employee benefit plans.

You advise that section 5 of P.R. Act 17 reads, in pertinent part:

> 5. Except as otherwise provided in this section, no employer may, for any reason, deduct or retain any part of the wages due to laborers, except:
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> …
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> (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,

> savings, 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 shall be used by the employer to pay the cost of said benefit or for the said purposes: (1) (sic) an insurance company, acceptable to the union or, in 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) (sic) 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.

Section 514 of title I of ERISA provides, in pertinent part:

> Sec. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.
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> …
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> (b)(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.
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> (B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b), (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any

> State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.
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> …
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> (4) Subsection (a) shall not apply to any generally applicable criminal law of a State.
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> …
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> (c) For purposes of this section:
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> (1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.
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> (2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.
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> (d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

Opinion 84-18 reiterated the Department's position that employee benefit plans are not excluded from coverage under title I of ERISA solely by virtue of being established or maintained in the Commonwealth of Puerto Rico and that the term "State" includes Puerto Rico for the purposes of title I of ERISA. That opinion also noted that, although Section 7 of P.R. Act 17 contains criminal penalties for violations of P.R. Act 17, including Section 5, P.R. Act 17 is not a generally applicable criminal law within the meaning of section 514(b)(4) of ERISA.

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.

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

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations