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

July 14, 1994

Mr. Leonard P. Larrabee, III
Dreyfus Service Corporation
200 Park Avenue
New York, N.Y. 10166

94-27A
ERISA SECTION
514(a)

Dear Mr. Larrabee:

This is in response to your request concerning the application of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have inquired whether New York Labor Law section 193 (McKinney 1986) (Section 193) is preempted by section 514(a) of Title I of ERISA to the extent that Section 193 requires employee benefit plans covered by Title I of ERISA to secure written authorization for employee elective deferrals from their wages.

You advise that Dreyfus Service Corporation (Dreyfus) provides a variety of services to employee benefit plans throughout the United States and that some of the plans permit eligible employees to direct that their salaries be reduced and contributed to a qualified trust as elective deferrals. Dreyfus has developed a program that plan sponsors can adopt to allow eligible employee participants to implement salary reduction arrangements via telephone or voice response system. Any salary reduction arrangement implemented by telephone or voice response is promptly confirmed in a written statement mailed to the participant. Dreyfus maintains a record of each salary reduction election, and a report of all salary reduction elections and changes to these elections is provided to the plan sponsor on a regular basis.

Section 193 generally prohibits employers from making deductions from the wages of an employee unless certain criteria are met. Section 193 provides, in pertinent part:

> 1. No employer shall make any deduction from the wages of an employee, except deductions which:
>
> > a. are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or
> >
> > b. are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on file on the employer's premises.

> Such authorized deductions shall be limited to payments for insurance premiums, pensions or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.

Section 514(a) of Title I of ERISA provides:

> (a) **Supersedure; effective date.** 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) [29 USCS section 1003(a)] and not exempt under section 4(b) [29 USCS section 1003(b)]. This section shall take effect on January 1, 1975.

Section 514(a) of ERISA broadly preempts all state laws insofar as they relate to employee benefit plans covered by Title I of ERISA, subject only to certain exceptions expressly provided in section 514(b) of ERISA. Section 514(c)(1) of ERISA defines "state laws" as "all laws, decisions, rules, regulations, or other state action having the effect of law, of any state." There is no question that Section 193 constitutes a "state law" within the meaning of section 514(c)(1).

The issue to be determined is whether Section 193 "relates to" an ERISA employee benefit plan. The Supreme Court has construed the words "relates to" broadly. A law "relates to" an employee benefit plan if it has "a connection with or a reference to such a plan." Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983). See also Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990). Courts have held that a state law relates to an ERISA plan if it "is specifically designed to affect employee benefit plans, if it singles out such plans for special treatment, or if the rights or restrictions it creates are predicated on the existence of such a plan." United Wire Welfare Fund v. Morristown Memorial Hospital, 995 F.2d 1179, 1192 (3d Cir. 1993) (footnotes omitted). Moreover, a state law may be preempted "if its effect is to dictate or restrict the choices of ERISA plans with regard to their benefits, structure, reporting and administration, or if allowing states to have such rules would impair the ability of a plan to function simultaneously in a number of states." Id. at 1193.

In the view of the Department of Labor (the Department), Section 193, by requiring written authorization for employee wage deductions of contributions or payments for "insurance premiums, pension or health and welfare benefits," and "similar payments for the benefit of the employee," clearly "relates to" benefits provided under employee benefit plans in that it is specifically designed to affect employee benefit plans and seeks to restrict the choices of such plans with regard to the administration of their funding policies.

Section 402(b) of ERISA requires plans to provide for a funding policy consistent with the plan's and ERISA's objectives. Dreyfus' salary reduction arrangement appears to constitute at least part of such a funding policy.

Therefore, it is the position of the Department that, to the extent that Section 193 is interpreted to limit, prohibit, or regulate the funding of employee benefit plans covered by Title I of ERISA, including wage deductions to employee benefit plans covered by Title I of ERISA, it is preempted by section 514(a) of ERISA.

You advise that other states have laws similar to Section 193 that require wage deductions to be made pursuant to a written authorization. Your request specified only the New York law, and the conclusions reached in this letter are specific to the representations and facts herein presented. However, as we noted in Opinion 93-04A (issued March 9, 1993), section 514(a) of ERISA is, by its own terms, self-executing. It contains no provision that conditions its effect on any action to be taken by the Department or any other governmental body.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the Procedure explains the effect of advisory opinions.

Sincerely,

Robert J. Doyle
Director of Regulations
and Interpretations