

TECHNICAL BULLETIN



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Pension and Welfare Benefits Administration
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DEPARTMENT OF LABOR ANNOUNCES ENFORCEMENT POLICY ON PARTICIPANT CONTRIBUTIONS TO CAFETERIA PLANS AND CONSIDERATION OF A REGULATORY EXEMPTION

The Department of Labor's Pension and Welfare Benefits Administration today announced its enforcement policy with respect to the application of its recently published plan assets-participant contribution regulation under the Employee Retirement Income Security Act (ERISA) to cafeteria plans described in section 125 of the Internal Revenue Code.

Pursuant to the regulation (53 FR 17627, May 17, 1988), amounts that a participant pays to or has withheld by an employer for contribution to a plan (including elective contributions) are plan assets which must be held in trust. The effective date of the regulation is August 15, 1988.

Since the publication of the final rule, the Department has received a number of inquiries from interested persons regarding the impact of the regulation on cafeteria plans. In this regard, the Department recognizes that the application of the regulation to cafeteria plans may raise particular problems for plan sponsors and fiduciaries seeking to comply.

The announced enforcement policy states that the Department will not assert a violation in any enforcement proceeding solely because of the failure to hold participant contributions to cafeteria plans in trust. The policy will be effective pending consideration by the Department of regulatory exemptive relief from the trust requirement for certain welfare plan arrangements.

In conjunction with the enforcement policy, the Department also has announced its willingness to consider applications for a regulatory exemption from ERISA's trust requirements for those

welfare plan arrangements with respect to which it can be demonstrated that the establishment of a trust would severely impede their operation and where it can be also demonstrated that the exemption would be protective of the interests of participants and beneficiaries.

Interested parties are invited to submit exemption applications, including information concerning the appropriateness of providing exemptive relief retroactive to the effective date of the regulation, to the following address by September 30, 1988:

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