

FLSA-969

April 24, 1979

This is in reply to your letter dated March 23, 1979, requesting a ruling that contributions to a "Black Lung Benefit Trust", be excluded from covered employees' regular rates of pay under Section 7(e) of the Fair Labor Standards Act.

The authority to exclude from an employee's regular rate of pay payments made pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees is contained in Section 7(e)(4) of the Act. The requirements of the Secretary of Labor with regard to such plans are set forth in 29 CFR Part 778, copy enclosed.

In order for an employer's contributions to a benefit-plan to qualify for exclusion under Section 7(e)(4) of the Act, the conditions listed in Section 778.215 must be met. In this connection, it is noted that the plan does not provide for specified benefits or a formula for determining the amount to be contributed by the employer, which are required by Section 778.215(a)(3)(1) through (iv). As you may be aware the stated benefit provision predated the passage of the Black Lung Benefits Act. Thus, it is our opinion that the fact that this benefit plan does not contain such a provision would not invalidate an otherwise valid benefit plan, since in this instance the benefits are mandated by Section 412 of P.L. 89-376, as amended, 80 Stat. 34. However, reference to such benefits should be incorporate in the plan.

Additionally, since the plan does not provide for any specific employer contribution formula, nor provide for a substantial minimum contribution, the plan should be amended in this respect to be valid under Section 7(e)(4) of the FLSA.

Sincerely,

Xavier M. Vela
Administrator