

## **FLSA-956**

May 3, 1984

This is in reply to your letter of March 23 requesting an opinion as to whether or not the bonus plan of one of your clients will qualify as a percentage of total earnings bonus plan which satisfies the overtime pay requirements of the Fair Labor Standards Act (FLSA).

Under the plan, your client pays a bonus to employees based on a percentage of total monthly earnings, including overtime, when certain sales goals of a store are met or exceeded. For example, the bonus is computed at the rate of 70 percent of the employee's total weekly gross pay (including overtime pay) for four full sales weeks immediately preceding the close of a fiscal month. This amount is then divided by four, and the amount so computed is paid as a bonus to the employee.

Where an employer's payments under a bonus plan are based upon a percentage of total earnings of the employee, the payments may be excluded from the regular rate of pay if the conditions prescribed in section 778.210 of the enclosed copy of 29 CFR Part 778 are met. Under the method of allocation discussed in this section, where a bonus is paid as a production incentive percentage of the employee's total compensation, including straight time, overtime, bonuses, and commissions, the overtime pay due under the Act is automatically included and no additional computation or payment of overtime is required.

Based on the information contained in your letter, it is our opinion that the percentage of total earnings bonus plan would not affect the regular rate of pay and would comply with the overtime pay requirements of the Act.

If you have any further questions, please do not hesitate to let us know.

Sincerely,

William M. Otter  
Administrator

Enclosure