



WHD-OL-1978-0005

February 7, 1978

L. E. Irish, Esq.
Caplin & Drysdale
1101 Seventeenth Street, NW
Washington, DC 20036

OFLS-77-11-49

Dear Mr. Irish:

This is in reply to your letter dated November 22, 1977, and telephone conversations with a member of my staff on November 30, 1977. You ask if the transfer of funds from an existing SUB Reserve Fund Trust to a new legal services plan, or the payments made under the legal services plan's provisions, will affect the employees' regular rates of pay under the Fair Labor Standards Act and the basic hourly rates under the Walsh-Healey Act.

You state that the existing funds from the Chrysler UAW Hourly Employees SUB Reserve Fund Trust (first approved as excludable from the regular rate of pay under section 7 (e) (4) of the Act, January 4, 1968), will be transferred, in part, to an employer funded legal services benefit program. This program is a result of certain provisions of the Tax Reform Act of 1976, which assures that, for an initial 5-year period, personal legal services can be provided for employees on a tax-free basis and that a trust holding funds for that purpose can qualify for tax exempt status. Since the actuarial prognostication for the funds to be transferred is 5 to 7 years, before depletion, there will be no yearly funding. The plan's continuance will become a matter for collective bargaining if the pertinent Tax Reform provisions are extended. The transfer of funds to the legal services plan meets all the conditions specified in 29 CFR 778.215.

The Plan will provide personal legal services on a broad range of matters to certain corporation employees. It is your opinion that the Plan would come within the 7 (e) (4) exclusion "contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance, or similar benefits for employees;".

The remainder of the Reserve Trust Funds will be transferred to the Hourly Fund SUB Plan (this SUB plan was first determined to be excludable from the regular rate of pay under the Fair Labor Standards Act and the Walsh-Healey Public Contracts Act, December 30, 1955). As a result of this transfer the corporation will have its contributions also make certain lump-sum retirement payments to eligible retirees and surviving spouses.

If this corporation receives approvals of the legal services Plan from the Internal Revenue Services and the Department of Labor, the Funds will be transferred and the SUB Reserve Fund Trust will be terminated.

It is our opinion that the funds when transferred to the Hourly Fund and the legal services plan, as well as the payments made pursuant to the legal services plan, may be excluded from the regular rate of pay under the Fair Labor Standards Act and the basic hourly rate under the Walsh-Healey Public Contracts Act.

Sincerely,

Xavier M. Vela
Administrator

Cc: SMU; RO Phila w/c/inc., GF w/inc., Blue File, Subj File w/c/inc, Branch Chron,
Admin w/c/inc. Frank. Asst Admin.

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).