

FLSA-722

June 24, 1975

This is in reply to your letters of April 1 and April 28, 1975, regarding the treatment under the regular rate standard for overtime pay of the Fair Labor Standards Act of sums paid to certain employees in lieu of benefits pursuant to the flexible benefits program of ***.

The flexible benefits program in question gives each covered employee an opportunity to tailor his total compensation package (within set limits) to trade-off monetary compensation for more or less health/medical coverage, employee life insurance, dependent life and accidental death and dismemberment coverage under specified benefit plans. There are minimum and maximum levels of benefits between which any level may be selected by the employee. The company wishes to allow the employees who have not selected the maximum level of benefits to receive a cash payment of 15 percent of the difference between the amount selected and the maximum amount. You ask whether the cash payment in lieu of benefits may be excluded from the employees' regular rates of pay under the terms of section 7(g)(3) of the Act and 29 CFR 548.3(e) as illustrated in section 548.305.

If the amount of the cash payments to a participating employee will not affect the overtime compensation of such employee by more than 50 cents a week on the average for the overtime weeks it may be excluded from the employee's regular rate under the Act. It does not appear that the payments in lieu of benefits, which will not exceed \$2.77 per month in the example you give, will affect the overtime compensation of the participating employees by more than 50 cents a week.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division