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Thank you for your letter requesting an opinion regarding the application of the Fair Labor Standards Act (FLSA) to a "cafeteria plan." You wish to know whether amounts paid by the employer in the employee's behalf for reimbursement of medical expenses under a cafeteria plan are considered wages under Section 3(m) of the FLSA.

As you explained in a telephone conversation with a member of my staff, the cafeteria plan concept is discussed in Section 125 of the Internal Revenue Service Code. The cafeteria plan in question provides that employees may have deducted from their wages amounts for the reimbursement of medical expenses incurred during the pay period. For example, if an employee, who earns a monthly salary of $1000, incurs $200 in medical expenses during the month, the employer will pay the employee $800 and will pay the $200 medical expenses in behalf of the employee. The dollar limit of the medical expense reimbursement is established by the employer. The same dollar limit applies to all employees. However, the employees retain the option of receiving cash wages in lieu of the medical reimbursement payment during each pay period.

Under Section 3(m) of the FLSA, an employer may include as wages the reasonable cost or fair value of board, lodging or other facilities furnished to the employee. Although medical expenses paid by the employer on the employee's behalf do not technically constitute "board, lodging, or other facilities" within the meaning of Section 3(m), it is our opinion that such payments may be included as "wages." As discussed in Section 531.40(c) of the enclosed WH Publication 1210, sums paid at the employee's direction to third persons are treated as payments to the employee.

We trust this is responsive to your inquiry. If you have further questions, please feel free to contact us.

Sincerely,

Henry T. White, Jr.

Henry T. White, Jr.
Deputy Administrator

Enclosure