

FLSA-901

February 28, 1983

This is in reply to your letter of *** and earlier correspondence in which you ask two additional questions about the Fair Labor Standards Act (FLSA) and the Wage and Hour Division's investigation of *** Restaurants under the Act. We are also in receipt of the copy of your letter which you sent to Secretary of Labor Donovan.

You ask where in the FLSA it is stated that a tip pool is invalid if employees contribute in excess of 15% of their tips to it. You also ask why tips cannot be shared with "back of the house" employees, such as cooks.

A valid tip pooling arrangement includes only employees who customarily and regularly receive tips. As we explained in our letter of *** this position regarding tip pooling is consistent with the express intent of the Congress in enacting the 1974 amendments to the FLSA. Also waiters and waitresses cannot be required to contribute a greater percentage of their tips than is customary and reasonable. For enforcement purposes Wage and Hour will not question contributions to a pool not exceeding 15% of the employee's tips. If such requirements are met, it is not necessary that the pooling be voluntarily consented to by the employees involved. While neither the FLSA nor the legislative history mentions this 15% standard, Wage-Hour has adopted it based on its experience in administering the law as it applies to tipped employees. Of course, there is nothing in the FLSA or in our enforcement policies and procedures that would prevent tipped employees from deciding, free from any coercion whatever and outside of any formalized arrangement, what to do with their tips, including sharing this with whichever coworkers and in whatever amount or percentage they please.

We trust the above is responsive to your inquiry.

Sincerely,

William M. Otter
Administrator