U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

March 18, 1994 **FMLA-30**

Dear ***Name****,

This is in response to your letter forwarding correspondence from ***Name**** about the application of the Family and Medical Leave Act of 1993 (FMLA) to certain multi-employer Welfare trusts.

The FMLA provides that "eligible" employees may take up to 12 workweeks of job-protected leave in any 12-month period for the birth or placement of a child for adoption or foster care; to care for a child, spouse or parent with a serious health condition; or for the employee's own serious health condition that makes the employee unable to work. To be "eligible" under the FMLA, an employee must have worked for the employer for at least 12 months and for at least 1,250 hours in the previous 12 months, and must work at a location where the employer employs at least 50 employees within 75 miles. Employers covered by this law are required to maintain an eligible employee's group health benefits during FMLA leave under the same conditions as coverage would have been provided if the employee had worked continuously during the leave. Upon return from FMLA leave, the employee is entitled to be restored to the same employment position which the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

To maintain health benefits coverage under multi-employer health plans for employees on FMLA leave, the employer would have to make adequate contributions on behalf of the employee as though the employee had been continuously employed for the duration of FMLA leave. If the multi-employer health plan contains an explicit FMLA provision for maintaining coverage, such as through "pooled contributions" by all employers party to the plan, the employer must make arrangements to ensure that up to 12 weeks of coverage in any 12-month period is maintained for employees on FMLA leave. An employee using FMLA leave cannot be required to use "banked" hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed. (See Regulations § 29 CFR 825.211.)

How an employer ensures "adequate contributions" to maintain health benefits coverage on behalf of employees on FMLA leave is not addressed in the regulations. The regulations encourage plans to develop rules which would accommodate this FMLA requirement in the context of the situations in the particular industry. We are not familiar with the guidance referred to in ***Name**** letter that would prohibit the use of established reserves.

If I may be of further assistance to you, please do not hesitate to contact me.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

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