

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**4101:9-4-04 Allowance of contributions to a fund, plan, or program.**

- (A) Pursuant to division (E)(2) of section 4115.03 of the Revised Code, commerce will allow credit for the "rate of contribution" irrevocably made by an employer to a trustee or to a third person pursuant to a fund, plan, or program. No credit will be allowed to the extent the employer will be able to recapture this rate of contribution or in any way divert said funds to his own use or benefit, except where the employer can demonstrate that he has erroneously contributed an excessive amount, he may recapture said amount without affecting the credit previously given, provided that he received no credit for the amount he seeks to recapture. In order for an employer to receive the credit, a trustee or third person must act in a fiduciary capacity and must assume the usual fiduciary responsibilities imposed upon trustees by applicable state or federal law. The terms fund, plan, or program are intended to recognize the various types of arrangements commonly used to provide the funded benefits contemplated by division (E)(2) of section 4115.03 of the Revised Code.
- (B) Fringe benefits credits shall be presumed to be paid at a rate not to exceed the amount of contributions for fringe benefits set forth in the applicable prevailing wage rate schedule for the locality. In the event that an employer seeks fringe benefit credit which exceeds the amount set forth in the applicable prevailing wage rate schedule, the employer shall provide the department with documentation which supports such excess credit.
- (C) Funds, plans, or programs which violate applicable state or federal law will not be recognized for the purposes of determining the allowable credit.