

DBRA-81

February 9, 1981

This is in reply to your letters requesting specific guidelines for qualifying a pension plan under the Davis-Bacon Act. Specifically, you are interested in knowing such information as "who qualifies as trustees, eligibility, age, length of service, maximum age, benefits, earliest retirement, normal retirement, late retirement, also vesting formula."

There are few specific guidelines for qualifying a pension plan under the Davis-Bacon Act. For your information, we are enclosing a copy of the Davis-Bacon Act and our Regulations, 29 CFR Part 5, which set forth the general requirements and standards for fringe benefit plans and programs under the Act. You will note that Subpart B discusses the Department's interpretation of the fringe benefit provisions of the Davis-Bacon Act.

Generally speaking, a pension plan will qualify for Davis-Bacon purposes if (1) it meets the standards and requirements of the Employee Retirement Income Security Act of 1974 (ERISA), (2) the trustees of the plan are independent of and not affiliated with the contractor (i.e., not owners, officers, or employees of the firm), and (3) employer contributions to the plan are made not less often than quarterly during performance of the work subject to the Davis-Bacon Act.

With the exception of the item of trustees, all the items you specifically referred to in your letter are addressed by ERISA. Questions regarding ERISA, however, should be referred to the Labor Management Services Administration, Pension and Welfare Benefits Program of the U.S. Department of Labor, Washington, D. C. 20210.

If after reviewing the above and the enclosed material you have specific questions you wish answered or plans you wish reviewed under the provisions of the Davis-Bacon Act, we will be happy to do so.

Sincerely,

Dorothy P. Come
Assistant Administrator