

DBRA-79

March 2, 1981

This is in reference to your letter concerning the inclusion of certain payments made for travel and subsistence for the purpose of meeting the prevailing wage requirement of the Davis-Bacon and Related Acts.

Initially, we would like to point out that travel and subsistence payments are not considered bona fide fringe benefits within the meaning of the Davis-Bacon Act. See Regulations, 29 CFR 5.29(f).

Nor are such payments normally considered wages. In determining whether such payments may be included in the employee's basic hourly rate of pay (wages) under the Davis-Bacon Act, we follow the principles established pursuant to section 3(m) of the Fair Labor Standards Act. See also 29 CFR Part 531. Thus, such payments may not be primarily for the benefit or convenience of the employer if they are to be considered wages. Under that Act, where the amount of such payments reasonably approximates the expense incurred; i.e. are not excessive in relation to the expenses incurred, the payments are excluded from the employee's wages under section 6 and from the regular rate of pay under section 7(a)(2) of that Act. See also IB 778.217(c) copy enclosed.

Based on the information you have submitted, it appears that the only portion of the contributions to the travel and subsistence benefit fund which may be considered wages, would be that portion of the 20 percent monthly retainage remaining at the end of the year, which does not constitute reimbursement for expenses incurred. In other words, if there are monies remaining in the fund at the end of the year, which are in excess of the travel and subsistence expenses incurred, the distribution of such funds to the employees would be considered wages earned by the employees, and could be used as an offset against the prevailing wage requirements.

Sincerely,

Dorothy P. Come
Assistant Administrator