

DBRA-18

September 7, 1983

This is in further reference to the letter from you and *** and your meeting with members of my staff regarding fringe benefit payments under the Davis-Bacon Act. We regret the delay in responding.

In order to facilitate our response, we will restate the questions and provide you with a separate answer to each question.

Question: Can an employer make contributions to an employee's Individual Retirement Account (not to exceed the authorized dollar limits), and take credit for this contribution in the payment of wages to the employee working on a Davis-Bacon project?

Answer: A contractor may take credit for cash contributions to such an account for Davis-Bacon purposes, provided the contributions are made at least quarterly and the contributions are made at the same rate for both Government and non-government work.

Question: Can a participating employer (i.e., one which signs an apprenticeship agreement) make contributions which exceed the amount prescribed by the applicable wage determination and take credit for these contributions? If so, what methods may a contractor use to discharge his obligations to pay the prevailing wage rate in such a case?

Answer: A contractor is not limited in his contribution for apprenticeship training cost to the amount shown on the applicable wage determination. However, such contributions may not exceed the necessary cost incurred by the contractor in funding the program and the contributions must be made at the same rate for both Government and non-government work. A contractor performing work subject to a Davis-Bacon wage determination may discharge its prevailing wage obligations by paying cash or making contributions, or incurring costs or by any combination thereof for "bona fide" fringe benefits.

Question: Can a participating employer take credit for actual apprenticeship costs even when no amount is prescribed in an applicable wage determination? If so, what guidelines should the contractor follow in taking credit for such costs?

Answer: As you know, we are no longer issuing wage decisions listing apprenticeship training amounts or other fringe benefits separately; all fringe benefits are listed as a lump sum. Accordingly, the contractor's contribution rate would be determined by the necessary cost incurred in funding the program, and as discussed above, the same rate of contribution must be maintained on both Government and non-government work.

Question: Can a non-participating *** contractor/member contribute to the apprenticeship trust and take credit for the apprenticeship portion of the fringe benefit schedule of an applicable wage determination?

Answer: A non-participating contractor may not take fringe benefit credit for contributions to an otherwise bona fide apprenticeship trust if it is not participating in, or signatory to the particular apprenticeship training agreement to which it wishes to contribute.

Question: When no apprenticeship amount is prescribed in an applicable wage determination, can a non-participating *** contractor/member contribute to the *** apprenticeship trust and take credit for this contribution?

Answer: As discussed in the preceding answer, a non-participating contractor may not take credit for the contribution.

Question: Can a non-participating *** contractor/member who has been regularly contributing on private work to the *** apprenticeship trust, continue to contribute and take credit for this contribution on Davis-Bacon work?

Answer: As discussed previously, a non-participating contractor may not take credit for contributions to the apprenticeship trust.

Question: Can an eligible contractor (participating contractor) take credit for contributions to an approved apprenticeable trade in which formal training is not yet implemented?

Answer: If a participating contractor is signatory to the apprenticeship training agreement for a particular craft classification, and the training program has been approved by the U.S. Department of Labor, Bureau of Apprenticeship Training (BAT) or a State apprenticeship council recognized by BAT and not yet implemented, credit for contributions may be taken. However, our affirmative answer to this question is predicated on the assumptions that these costs incurred prior to implementation of formal training are start-up expenses for initiation of the program and training in the particular craft would be implemented shortly after contributions began to be accepted for that craft classification.

Question: Can an eligible contractor (participating contractor) take credit for contributions to an approved related apprenticeable trade? For example, can an eligible plumbing contractor contribute to an apprenticeship trust where there is no approved program for plumbers, but there is for pipefitters, and take credit for these contributions in the payment of wages to journeymen plumbers working on a Davis-Bacon project?

Answer: While the plumbers and pipefitters may be related crafts, it has been our experience that the apprentice training programs for each are approved and conducted separately. Accordingly, contributions made to an approved pipefitter's program may not be used as a fringe benefit credit against wages due a plumber, or vice-versa, where such programs are funded and functionally operated by separate training committees. However, in a situation where one

training committee administers and funds both programs jointly, a participating contractor's contribution may be credited against fringe benefits due for either craft.

Question: Can an eligible contractor (participating contractor) take credit for contributions to an approved unrelated trade? For example, can an eligible insulation contractor contribute to an apprenticeship trust where there is no approved program for insulation mechanics, but there is for many other trades, and take credit for these contributions in the payment of wages to the journeymen insulation mechanics working on a Davis-Bacon project?

Answer: Payments made by a contractor to an apprenticeship trust covering a variety of trades that do not include the particular craft of the contractor's mechanics cannot be credited towards meeting the contractor's wage obligations for those mechanics. It is our position that the cost incurred for one classification of laborer or mechanic may not be used to offset costs required to be incurred for another such classification.

Sincerely,

Dorothy P. Come
Assistant Administrator