

January 9, 1976

Dear :

This is in reply to your recent letter concerning the Employee Retirement Income Security Act of 1974 (ERISA).

You state that a number of vacation plans exist among your building trades clientele. Some of these plans have been trusted and safe not, but, in all cases the funds to provide benefits are contributed solely by the employees. You ask whether or not such an employee benefit arrangement is subject to the ERISA.

The definition of "employee welfare benefit plan" contained in section 3(1) of the Act includes any plan, fund or program established or maintained by an employer or employee organization for the purpose of providing vacation benefits to participants. This definition was amplified in regulations published on August 15 (copy enclosed). While section 2510.3-1 provides that certain types of benefit arrangements are not plans, it does not exclude vacation plans other than those paid from the employer's general assets. Moreover, vacation plans are not listed among the statutory exemptions in section 4(b) of the Act. Thus it appears that the vacation plans about which you ask are subject to Parts 1, 4 and 5 of the ERISA (whether or not they have been trusted in the past), except to the extent they may be exempted from particular provisions.

Section 2510.104-20 of the August 15 regulations mentioned above exempts certain small welfare plans from particular reporting and disclosure requirements. However, these exemptions are applicable to vacation plans only if they are insured.

Assuming your plans are not insured, a short form description, consisting of the first two pages of Form EBS-1 (without schedules A, B and C) and the signature page (item 38 only) should have

been filed with the Department by August 31, 1975, or should be filed within 120 days after the date on which a plan becomes subject to the Act, whichever is later. Late filing of the short form plan description should be accompanied by a brief explanation of the delay in filing.

A revised and simplified version of the EBS-1 was published in the Federal Register of October 10, 1975, for comment. It is expected that the final version of the EBS-1 will be issued soon after the expiration of the comment period. Section 2520.104-3 of the August 15 regulations requires plan administrators to file the revised EBS-1 in full, as well as a copy of the summary plan description, by May 30, 1976. By the same date, a copy of the summary plan description must be furnished to plan participants and beneficiaries.

The Secretary has not yet exempted any welfare plans from the requirement in section 403(a) that they be held in trust, although a regulation on this subject under section 403(b) (4) is expected shortly.

We hope that this information is helpful to you. We regret the delay in replying to your inquiry.

Sincerely,