



SEP 03 2014

The Honorable John Kline
Chairman
Committee on Education and Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kline:

This responds to your July 11, 2014, correspondence to Secretary of Labor Thomas E. Perez requesting the Department of Labor (Department) rescind a Wage and Hour Division (WHD) determination that field surveyors performing on-site work that is functionally integrated with construction are subject to the Davis-Bacon Act (DBA) labor standards provisions. Secretary Perez has asked that I respond directly to you in this matter.

As you are aware, on March 22, 2013, WHD issued a final ruling letter responding to a request from the International Union of Operating Engineers (IUOE) for WHD to recognize field surveyors as a subclassification of operating engineers. The final ruling letter did not grant IUOE's specific request that field surveyors generally be classified as laborers or mechanics for purposes of the DBA. The letter clarified that, consistent with longstanding Department guidance, appropriate consideration will be given to application of DBA labor standards provisions to survey crew workers employed by contractors and subcontractors in work performed immediately prior to or during actual construction in direct support of construction crews. In such circumstances, the final ruling advised that DBA labor standards provisions will be applied to individuals performing such work when they perform primarily physical and and/or manual work (including those workers who use tools or are performing work of a trade). The final ruling reaffirmed that professional surveyors who meet the requirements for exemption under the Fair Labor Standards Act, 29 CFR 541, are not considered laborers or mechanics and are not covered by the DBA. In order to communicate this final ruling and provide the appropriate guidance to the contracting community, WHD issued All Agency Memorandum (AAM) No. 212 on that same date.

For more than 50 years, the Department has taken the position interpreted the statute to find that some work undertaken immediately prior to or during construction that is performed by survey crew members may be subject to the DBA labor standards provisions. WHD's final ruling letter provided additional guidance as to the scope of duties that should be considered as physical and manual work in determining whether a survey crew member may be considered as a laborer or

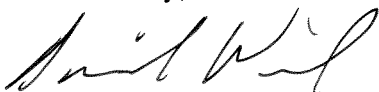
mechanic. This determination is consistent with the DBA and the Department's longstanding interpretation of coverage of laborers and mechanics.

I appreciate the concerns raised in your correspondence regarding the importance of receiving stakeholder feedback and input in implementing policy decisions and determinations. As soon as we became aware of certain stakeholder concerns, WHD senior staff met with representatives of the National Society of Professional Surveyors (NSPS) and other interested parties. In that meeting, WHD offered to consider any evidence provided by any party that related to this matter, and has repeated this offer in all subsequent correspondence regarding this determination.¹ In addition, WHD advised the stakeholders of the process for appealing the final ruling letter to the Department's Administrative Review Board (ARB). To date, WHD has not received any specific evidence or information that would contradict the information contained in the final ruling. In addition, no party has filed an appeal of the determination to the ARB.

While some parties have suggested that the guidance that followed the final ruling letter was confusing, I note that WHD has received and has responded to more than 50 conformance requests from federal contracting agencies indicating that our guidance has been followed in numerous cases. In addition, WHD has not received any concerns or questions regarding the inclusion of data on covered surveyor work as part of new prevailing wage surveys being conducted since the issuance of the final ruling letter on March 22, 2013.

I appreciate receiving your correspondence in this matter. Please know that my agency is committed to working with your committee and your constituents in addressing concerns regarding the final ruling letter and in providing compliance assistance to facilitate the implementation of this determination. If you, your staff, or any of your constituents would like to further meet on this, we would be happy to accommodate such a request. If you have further questions or concerns, please contact Ms. Carmen Torres in the Department's Office of Congressional and Intergovernmental Affairs. She may be reached at (202) 693-4600.

Sincerely,



Dr. David Weil
Administrator

¹WHD sent letters to the NSPS and the Associated General Contractors of America on December 2, 2013, inviting these organizations and their members to provide any factual information or materials that would be relevant to ensuring appropriate WHD determinations in accordance with the applicable statutory and regulatory framework.