

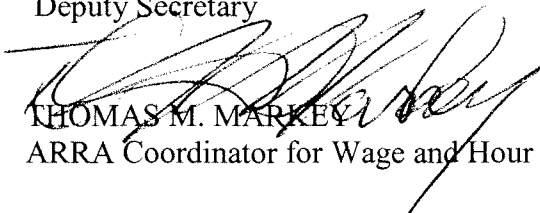


July 30, 2009

MEMORANDUM FOR SETH HARRIS

Deputy Secretary

FROM:

  
THOMAS M. MARKEY  
ARRA Coordinator for Wage and Hour

We understand that questions have been raised about whether the special project wage surveys currently being conducted by the Labor Department to collect residential weatherization wage rates will be applicable to multi-family units, such as apartment buildings and/or public housing units. We thought it would be helpful to address this question as quickly as possible so that we can take whatever action is necessary to assure that the Weatherization Assistance Grantees (WAPs) understand which wage rates will apply to weatherization activities in these structures.

Weatherization activities on structures that are five stories or more in height are subject to the existing “building construction” general wage determinations rather than the “residential construction” wage determinations that are being applied to the weatherization program until the special project wage determinations are concluded. Like the residential wage determinations, the building wage determinations are arrayed by state and county on [www.wdol.gov](http://www.wdol.gov). The application of building construction rates rather than residential rates is consistent with a long-standing practice (since at least 1977) to issue building wage determinations for construction, renovation, or repair of apartment buildings five stories or more. This practice has been upheld for many years by the Administrative Review Board which has final authority to decide challenges to the Wage & Hour Administrator’s Davis-Bacon Act coverage decisions.

The rationale for applying building wage determinations rather than residential wage determinations is rooted in the statutory language of the Davis-Bacon Act, which refers to projects of a character similar, not similar work, as a basis for determining the applicable Davis-Bacon category. Since the 1935 amendments to the Act, the focus has always been upon the construction characteristics of the project itself rather than on who will be employed on the project. Construction techniques used on structures greater than four stories are more akin to commercial building construction and are generally undertaken by commercial or light commercial contractors rather than residential contractors that traditionally perform construction work on single family homes and smaller residential buildings. The mechanical systems, doors and windows, and insulation requirements and standards in these larger multi-unit buildings are different from those in single-family and mobile homes, and the work on such is much more likely to be performed by the existing construction crafts.

Fortunately, the building wage determinations—unlike residential wage determinations—are based on more recent survey data and are more likely to reflect weatherization activities. The average age of building wage determinations is 2.6 years compared to

residential wage determinations which are 7.8 years old on average. The reason for this difference is that the union wage rate prevails much more often in building construction than in residential construction. We collect union wage rates from collective bargaining agreements and these agreements typically have a term of three years or less; as a result, updating these rates more frequently does not require a full survey. For the same reason, no special project wage determination should be required. If weatherization work is underway in building construction, the existing wage determinations should reflect that fact.

I hope you find this information helpful.