

U.S. Department of Labor

Assistant Secretary for  
Occupational Safety and Health  
Washington, D.C. 20210



JUN 08 2011

Mr. Robert Matuga  
Assistant Vice President  
National Association of Home Builders  
1201 15<sup>th</sup> St. NW  
Washington, DC 20005

Dear Mr. Matuga:

Thank you and your colleagues for coming to the Occupational Safety and Health Administration (OSHA) to discuss your concerns about OSHA's directive *Compliance Guidance for Residential Construction* (STD 03-11-002). I know that the National Association of Home Builders (NAHB) is committed to protecting the safety of workers in the residential construction industry. I appreciate your continued commitment to safety and health, and I recognize that your members want to do the right thing. I am anxious to assist them in doing so.

I appreciate the positive and constructive working relationship between OSHA and NAHB. Our long-standing relationship is based on a history of regular and candid exchanges of information and views on issues that are critical to improving the safety and health of America's homebuilders. I believe it is fair to say, and I hope you agree, that this relationship has been of substantial mutual benefit.

As discussed during our meeting, the Agency has a variety of resources and guidance materials to assist the residential construction industry with compliance with the new residential construction fall protection directive. I encourage your members to take full advantage of OSHA's free on-site Consultation Program. There is also a Compliance Assistance Specialist (CAS) in most Area Offices. I urge NAHB member companies to contact their local Area Offices and to use the services of these OSHA resources to address the fall protection concerns the NAHB has raised.

I understand that the NAHB is concerned about OSHA's enforcement of 29 CFR 1926.501(b)(13), particularly insofar as that provision requires an employer to use conventional fall protection unless it can demonstrate that doing so is infeasible or would create a greater safety hazard. At our meeting we talked about some options for alleviating your concerns. On further deliberation, I have decided to take a slightly different approach than we discussed, but that will have a similar impact. I will be instructing OSHA's field staff that for the first three months that the new directive is in effect, OSHA will refrain from issuing fall protection citations to employers who are using the protective measures in the old directive (03-00-001).

Instead, during this period, field staff will focus on helping employers come into compliance with §1926.501(b)(13) and the new directive. I am confident that this will provide NAHB members, as well as other affected residential construction employers, the additional time and flexibility they need to alter their work practices in accordance with the requirements of the new directive. Please note, however, that OSHA will continue to cite residential construction employers that are not, at a minimum, adhering to the alternative protective measures that were set forth in the old fall protection directive, STD 03-00-001.

Therefore, from June 16, 2011 through September 15, 2011, if an employer engaged in residential construction is not using conventional fall protection (or is not using work methods such as ladders, scaffolds or aerial lifts that are not covered by Subpart M), and the employer claims that conventional fall protection is infeasible, the CSHO will take the following actions:

- 1) If conventional fall protection is feasible, the CSHO shall evaluate whether the employer is using the minimum protective measures described in the former directive, STD 03-00-001. If the employer is complying fully with the old directive, the CSHO shall not issue citations, but will instead work with his or her Area Director to issue a hazard alert letter informing the employer of the feasible methods he or she may use to comply with OSHA's fall protection standard. If the employer's practices do not adhere to even the old directive, the CSHO shall issue appropriate citations per the Field Operations Manual.
- 2) If conventional fall protection is infeasible, the CSHO shall evaluate whether the employer has either (i) developed a written, site specific fall protection plan, and used alternative protective measures, in accordance with 29 CFR 1926.501(b)(13) and 1926.502(k); or (2) implemented alternative measures that at a minimum comply with OSHA's prior enforcement policy for residential construction (STD 03-00-001). If the employer has complied with one of these options, no citations shall be issued. However, if the employer has not developed a written fall protection plan in accordance with §§1926.501(b)(13) and 1926.502(k), the CSHO shall work with his or her Area Director to issue a hazard alert letter informing the employer that a compliant fall protection plan must be developed. Moreover, if the employer has neither developed a compliant fall protection plan nor adhered to the minimum measures in STD 03-00-001, the CSHO shall issue appropriate citations.
- 3) If an employer fails to implement the fall protection measures outlined in a hazard alert letter issued in accordance with these instructions, and a subsequent inspection of one of the employer's workplaces finds violations involving the same hazards, the area office shall issue appropriate citations.

The Agency has always had an excellent working relationship with the NAHB. I look forward to furthering that relationship and working with you and your colleagues in the coming months to ensure a successful roll out of the new Directive. I'm sure that by doing so, we will prevent worker fatalities in the home building industry.

Sincerely,

David Michaels, PhD, MPH