

SCA-101

January 31, 1973 (est.)

This is in reply to your letter of December 22, 1972 requesting a reconsideration of our position regarding wage rates and fringe benefits due employees working on temporary assignments.

We have carefully reviewed this matter, and reaffirm the position taken in our letter of October 31, 1972 that the wage rates and fringe benefits payable to employees on temporary assignments are the prevailing wage rates and fringe benefits contained in the Service Contract Act wage determination applicable to the contract work performed in a particular geographic locality. This position is in full accord with the express language of sections 2(a)(1) and (2) of the Act.

With respect to your question whether per diem (subsistence) allowances for room and board furnished employees on temporary assignment may be used to offset any wage differential, it is the position of the Department of Labor that the furnishing of subsistence payments for travel expenses incurred by the employee on the employer's behalf are primarily for the benefit or convenience of the employer, and as such, cannot be considered or credited as a part of "wages" within the meaning of the Fair Labor Standards Act or the Service Contract Act. Such payments are not compensation for services rendered. These payments are excludable from the employees regular or basic rate of pay for purposes of the computation of overtime pay. See section 778.217 of Interpretative Bulletin, Part 778.

However, in situations where the amount of payment or reimbursement exceeds a reasonable approximation of expenses incurred, the employer may take credit for the excess.

Sincerely,

Warren D. Landis
Assistant Administrator

Enclosure