

FLSA-7

April 15, 1981

Thank you for your letters of January 28 and February 6, 1981, providing additional information about a proposed training program which is to be sponsored by ***. This program, which will actually be operated by the ***, is designed to achieve certain social objectives of the low-income public housing program of *** and to equip the tenant-participants with skills in areas of management. Stipends of \$100 per week will be provided to the participants, who would be working 35 hours a week. You wish to know whether the monetary provisions of the Fair Labor Standards Act (FLSA) apply to the participants of this program.

In order for the FLSA to apply, there must exist an employment relationship. As discussed on pages 4 and 5 of the enclosed publication WH 1297, six criteria must be met in order for the trainees not to be considered employees within the meaning of the FLSA. Please note the sixth criterion on page 5 states that "the employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training."

After carefully reviewing the information submitted, it is our opinion that the stipends of \$100 a week would be considered wages under the FLSA. We consider such payments to be compensation for work performed. Therefore, an employment relationship would exist since one of the six criteria is not met.

The FLSA applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. Employees of organizations, such as the one you represent, who regularly order or receive goods or materials from outside the State or who regularly communicate across State lines by telephone, telegraph or the mail are individually covered under the law, and are entitled to a minimum wage of \$3.35 an hour and overtime premium pay for all hours worked over 40 in a workweek, unless specifically exempt.

Enterprise coverage under section 3(s)(1) of the FLSA would apply to enterprises that have employees engaged in commerce or in the production of goods for commerce, or employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and the enterprise has an annual dollar volume of sales made or business done of not less than \$250,000, exclusive of excise taxes. The dollar volume that is attributable to educational and charitable activities of a nonprofit organization is not included in determining whether or not the annual dollar volume test discussed above is met, since such activities are not considered to be performed for a business purpose. In this regard, the \$144,000 provided by the *** Housing Authority for the training program would not be included in determining the annual dollar volume.

Please note that even though enterprise coverage may not apply to some nonprofit enterprises, employees may be covered on an individual basis and subject to the FLSA's monetary provisions if they are individually engaged in or producing goods for interstate commerce, as discussed above.

We hope this satisfactorily responds to your inquiry. However, if you have any further questions concerning the application of the FLSA to this situation, please do not hesitate to contact us. Also enclosed for your information is a copy of the "Handy Reference Guide to the Fair Labor Standards Act."

Sincerely,

Henry T. White, Jr.
Deputy Administrator

Enclosures