FLSA-298

October 13, 1981

Your correspondence of August 5, 1981, addressed to President Reagan has recently been forwarded to this office for reply. You are primarily concerned with the application of the Fair Labor Standards Act to employees engaged in the rehabilitation of inner-city housing.

The Fair Labor Standards Act applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. An employee whether covered on an individual basis or on an enterprise basis, must be paid a minimum wage of at least $3.35 an hour and overtime pay of not less than one and one-half times his or her regular rate of pay for all hours worked in excess of 40 in a workweek, unless specifically exempt.

The 1966 amendments to the Act extended its coverage to all employees of construction or reconstruction enterprises, provided the enterprise has at least two 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. Interpretative Bulletin, Part 776, to which you refer, interprets the Act with respect to its application to employees who are individually covered by its provisions. It is inappropriate to take out of context interpretations from this bulletin and attempt to apply them to situations that are concerned with enterprise coverage under the law.

It is your contention that work such as updating electrical wiring to meet existing code standards, building new closets, installing new cabinets, re-roofing apartment houses, etc. is in the realm of general maintenance work and consequently not construction or reconstruction activities. We disagree. It has consistently been our position that activities that go beyond the normal maintenance of a building and which involve activities such as the replacement of walls and ceilings, electrical wiring, plumbing, roofing and other extensive remodeling projects such as renovating kitchens and bathrooms are reconstruction activities under the Act. An enterprise that has <u>at least</u> two employees engaged in such activities would be covered under section 3(s)(4) of the Act as an enterprise engaged in construction or reconstruction, and would be required to pay all its employees in accordance with the Act's minimum wage and overtime pay provisions.

Time spent in the normal cleaning and maintenance of an apartment house and its grounds or in the preparation of an apartment for rent (which may include such activities as cleaning, painting, and minor repairs) would not normally qualify as covered construction or reconstruction activities under the Act. However, where such activities are an integral part of construction or reconstruction activities of an employer a different conclusion may very well be reached. In reaching such a conclusion it is difficult to specify precise rules and standards, as each case must be judged on its individual merits. Therefore, to compile an all-inclusive list as to what activities constitute construction or

reconstruction work as opposed to maintenance work, as you propose, would not be feasible.

You state in your correspondence that an employee could spend as little as 30 minutes in a workweek in covered construction work and be entitled to overtime pay for that workweek. It should be noted that where the employee is engaged in both covered and non-covered work during the same workweek, the employee is entitled to the benefits of the Act for the entire week, regardless of the amount of covered activities performed.

We hope this satisfactorily responds to your inquiry. However, if you have any further questions on this matter please do not hesitate to let us know.

Sincerely,

William M. Otter
Administrator

Enclosure