



JAN - 5 2010

Ms. Janet Barsy
Office of the General Counsel
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Ms. Barsy:

I am writing in response to your December 11, 2009 request for a determination that the Davis-Bacon Act (DBA) labor standards would not apply to individual homeowners who participate in and benefit from certain Department of Energy (DOE) programs described in your letter.

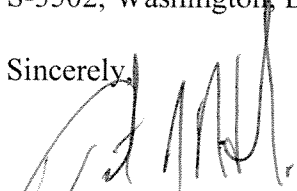
Specifically, your letter provided information concerning the following DOE programs: (1) an Appliance Rebate Program under which participating homeowners receive rebates for the purchase of residential Energy Star products; (2) EECBG consumer rebate programs under which States or units of local government (ULG) provide rebates directly to individual homeowners who have expended funds for qualifying construction activities associated with energy efficiency improvements to their own homes; (3) an SEP and EECBG grant program under which States and ULG establish ARRA-funded small grants that serve as "upfront" funding for energy efficiency and renewable energy projects by individual homeowners to their homes; and (4) SEP and EECBG energy improvement financing programs that consist of providing direct loans to individual homeowners for energy efficiency and renewable energy projects in their homes. You explained that these programs provide rebates, grants, loans or other benefits that directly benefit individual homeowners through energy efficiency, energy conservation, and/or renewable energy improvements to their homes. Your letter also noted that individual homeowners who receive benefits under these programs would not be regarded as "recipients" or "subrecipients" under the regulations issued by OMB in 2 C.F.R. 176.30. Finally, you explained the limited scope of DOE's request and acknowledged that the DBA labor standards would apply to utilities, small businesses, contractors, or other entities (including governmental entities) that receive ARRA-funded grants, rebates, discounts, or financing in connection with these DOE programs, and that qualify as "recipients," "subrecipients," or "subawardees" as defined under 2 C.F.R. 176.30.

Based on the information contained in your December 11, 2009 letter, we believe that individual homeowners who participate in and benefit from the programs described in your letter and this response are not responsible for compliance with DBA labor standards in connection with qualifying energy efficiency, energy conservation, and/or renewable energy improvements to their own homes under these programs, because OMB regulations make clear that individuals are not considered to be recipients or subrecipients of ARRA funds. 2 C.F.R. 176.30. *See also* Letter from Timothy J. Helm, Chief, Branch of Government Contracts Enforcement, Office of Enforcement Policy, Wage and Hour Division, U.S. Department of Labor, to Scott Harris, General Counsel,

Office of the General Counsel, U.S. Department of Energy (Nov. 19, 2009).¹ The Davis-Bacon standards in Section 1606 of ARRA continue to apply to any other entity that falls within the OMB definitions, including contractors and subcontractors employing laborers or mechanics on projects in excess of \$2,000 that are funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA.

Any request for further consideration of this matter should be sent to Ms. Nancy Leppink, Deputy Administrator, Wage and Hour Division, 200 Constitution Avenue, N.W., Room S-3502, Washington, D.C. 20210.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy J. Helm', written over the word 'Sincerely,'.

Timothy J. Helm
Chief, Branch of Government Contracts Enforcement
Office of Enforcement Policy

¹ To the extent that ARRA funds may be used “support” the Appliance Rebate Program or SEP and EECBG energy improvement financing programs, as your letter suggests, we cannot determine based on such a generalized statement whether the DBA labor standards would or would not apply in connection with such potential “support.”