

**Congress of the United States**  
**Washington, DC 20515**

July 11, 2014

The Honorable Thomas Perez  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Secretary Perez:

We write to request the Department of Labor (department) reverse its attempt to unilaterally extend the *Davis-Bacon Act* (hereinafter referred to as “Davis-Bacon”) to survey technicians. It is clear from witness testimony before the Committee on Education and the Workforce as well as documents produced by the department there was no transparency, comprehensive stakeholder input, or outreach to affected parties regarding this matter. As such, the department should immediately reverse this course of action and withdraw All Agency Memorandum (AAM) No. 212 and the accompanying guidance letter.

When the department’s Wage and Hour Division (WHD) issued AAM No. 212 along with a guidance letter on March 22, 2013, survey technicians were included under Davis-Bacon for the first time in the act’s history.<sup>1</sup> For over 50 years, both Republican and Democrat administrations have consistently *excluded* survey technicians from Davis-Bacon requirements.<sup>2</sup> However, after receiving unsolicited input from the International Union of Operating Engineers (IUOE), the department proceeded to make this unprecedented policy change based solely on information from the IUOE without consulting any other stakeholders. To make matters worse, the department made this change through an agency memorandum, rather than public rulemaking process. The department’s action in this case has resulted in confusion as to what work is covered by the memorandum and when the change in policy officially began.

On July 11, 2013, we wrote to then-Acting WHD Deputy Administrator Mary Beth Maxwell requesting information about these actions.<sup>3</sup> After nearly five months of delay, on December 4,

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<sup>1</sup> Wage and Hour Division All Agency Memorandum No. 212, March 22, 2013.

<sup>2</sup> Letter of Interpretation concerning survey crews from Mr. James Baird, Acting-Assistant Solicitor, U.S. Dep’t of Labor (Sept. 14, 1955) and a letter from the Hon. Arthur Goldberg, Sec’y, U.S. Dep’t of Labor, attached to AAM No. 39 (Aug. 2, 1962).

<sup>3</sup> Letter from the Hon. John Kline, Chairman, H. Comm. on Education and the Workforce, the Hon. Sam Graves, Chairman, H. Comm. on Small Business, and the Hon. Tim Walberg, Chairman, Subcomm. on Workforce Protections, to the Ms. Mary Beth Maxwell, Acting-Deputy Administrator of the Wage and Hour Division, U.S. Dep’t of Labor (July 11, 2013) *available at*:

<http://edworkforce.house.gov/news/DocumentSingle.aspx?DocumentID=342185>.

2013, the department responded.<sup>4</sup> Not only was the department's response late, but it also failed to provide all the documents and communications requested in our letter. Therefore, a second request was made to the department resulting in a limited number of additional materials being provided more than four months later.

Based on the most recent documents provided to the committee, it is clear the department worked exclusively with the IUOE to make this significant policy change. The entire process appears to have started on May 4, 2011, when an assistant for William Waggoner, Business Manager, IUOE Local 12, contacted the department stating that Mr. Waggoner had discussed this issue with then-Secretary Solis at a luncheon, and would like to meet in Washington, D.C. to discuss the matter.<sup>5</sup>

As established at a June 2013, Subcommittee on Workforce Protections hearing, no one from the surveying community was contacted about the policy change during the nearly two years the department considered the change.<sup>6</sup> Curtis Sumner, executive director for the National Society of Professional Engineers, testified that to his knowledge no one from the department had contacted anyone within the surveying community regarding this policy change.<sup>7</sup> Information received by the committee confirms no stakeholders, besides IUOE, were contacted by the department. It is very troubling that a well-established policy was changed based on the concerns of one organization representing less than one percent of the nation's survey technicians.

As a result, confusion and uncertainty for the construction industry persists. Contracting officers do not know when the application for this new category of workers became effective, and the department has still not issued an actual wage rate for this newly created classification, making it impossible for federal contractors to comply. Finally, it is unclear even which contracts this new policy will cover. A more transparent, open process would have avoided the administrative nightmare that construction companies, surveyors, and federal contracting officers presently face because of the department's actions in this area.

We urge you to withdraw AAM No. 212 and revoke the guidance letter. Please confirm in writing the receipt of this letter and the department's intended actions in response.

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<sup>4</sup> Letter from the Hon. Brian V. Kennedy, Assistant Sec'y for the Office of Congressional and Intergovernmental Affairs, U.S. Dep't of Labor, to the Hon. John Kline, Chairman, H. Comm. on Education and the Workforce, the Hon. Sam Graves, Chairman, H. Comm. on Small Business, and the Hon. Tim Walberg, Chairman, Subcomm. on Workforce Protections (Dec. 4, 2013) (on file with author).

<sup>5</sup> DOL\_Survey Techs Bates #00127. Document production March 10, 2014.

<sup>6</sup> *Promoting the Accuracy and Accountability of the Davis-Bacon Act*. Subcommittee on Workforce Protections. Committee on Education and the Workforce. Tuesday, June 18, 2013. Printed Hearing: Serial No. 113-23.

<sup>7</sup> *Id.*

The Honorable Thomas Perez  
July 11, 2014  
Page 3

Should you have any questions regarding this request, please contact Loren Sweatt, House Committee on Education and the Workforce, at (202) 225-7101 or Viktoria Ziebarth, at (202) 225-5821 with the House Committee on Small Business.

Sincerely,



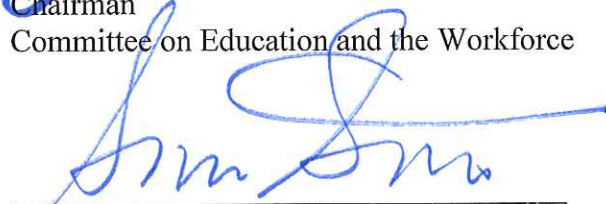
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JOHN KLINE  
Chairman  
Committee on Education and the Workforce



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TIM WALBERG  
Chairman  
Subcommittee on Workforce Protections



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SAM GRAVES  
Chairman  
Committee on Small Business