

CHAPTER 3 LABOR STANDARDS COMPLIANCE AND ENFORCEMENT
PROGRAM: CONSTRUCTION PHASE

3-1 INTRODUCTION

- a. Compliance. There are several important aspects of an effective labor standards compliance program. Preventive measures which can be undertaken prior to the start of construction reduce the commission of violations after construction begins. The preconstruction conference (See paragraph 2-11) should address all questions related to the labor standards provisions and the applicable wage decision posed by contractors and subcontractors. Where confusion or misunderstanding is allowed to exist, serious contract violations may result in fraud, waste, and mismanagement of Federal funds.
- b. Enforcement. The enforcement procedures set forth in the following paragraphs stress prevention in order to minimize the seriousness and scope of potential violations and abuses and to avoid possible project disruption. They are comprised of two basic elements: (1) job-site inspections, including on-site job interviews of workers and (2) the review of contractor payrolls and other basic records, especially in the context of specific information developed by the job-site inspections.

SECTION 1 ON-SITE INSPECTION

3-2 JOB INSPECTIONS. The project inspector should understand that the enforcement of labor standards provisions is as important as other requirements of the contract specifications, and that failure to comply with such labor standards must be corrected by contractors and subcontractors. In addition, failure to comply may result in the imposition of serious sanctions and penalties. The project inspector should know that maintaining compliance during the course of construction will save time, trouble, and expense to both the contractor and the local or State agency involved or HUD, as well as serve the interest of the public in the enforcement of these statutory provisions.

- a. Posting. The project inspector should assure that the wage determination and other required material are posted by the contractor at the site of the work in a prominent

and accessible place where they can be easily read by the workers. A poster (WH-1321) shall also be conspicuously

displayed which informs employees of their rights (Exhibit 4) and indicates that complaints will be received by the project inspector. This also serves to put the subcontractors on additional notice of labor standards provisions. For a project covering large areas, these posters shall be placed at several locations.

- b. Employee Interviews. Employee interviews must be sufficient to establish the degree of compliance and to indicate the nature and extent of violations, if any. They must also be representative of all classifications of employees on the project. Every effort should be made, within existing staffing levels, to interview up to 10% of the workers in all trades on long term projects (more than six months). A representative sample of all trades on short term projects should be interviewed. Employees shall be encouraged to produce pay stubs or pay envelopes which document the wages received. The employee shall be informed that the information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission, and that he/she is being interviewed by an employee of the Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development Agency, or Coinsuring Lender, or HUD on a project assisted by the U.S. Department of Housing and Urban Development. Disclosure of employee statements are governed by the provisions of the Freedom of Information Act and the Privacy Act of 1974.

- (1) Place of Interview. Employees currently employed may be interviewed during working hours on the job, provided that the interview can be properly and privately conducted on the premises. In cases of possible falsification of records, fear of reprisals, or intimidation, it may be more advisable to conduct the interview elsewhere, such as in the employee's home, at the agency's office, or another suitable place.
- (2) Initiating the Interview. The Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development Agency, or Coinsuring Lender inspector or HUD official shall

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begin the interview by identifying himself/herself to the worker. He/she shall confirm identity by showing the worker his/her credentials. He/she shall explain that the project is being constructed

with assistance or mortgage insurance from the Federal Government, that the payment of prevailing wages on construction projects with Federal assistance or mortgage insurance is required by law, and that the purpose of the interview is to obtain information for use in determining whether the required wages are being paid. He/she shall inform the worker of the specific location at which the applicable wage determination decision is posted at the project site.

- (3) Mail Interviews. Employees and former employees may be interviewed by mail.
- (4) Interview Time. If the interview is conducted on the job site, it shall be arranged causing the least inconvenience to the employer and employee.
- (5) Oral Interview Statements. An employee interview need not be recorded in a signed statement when it serves merely to confirm what the records reveal, and is not otherwise indicative of a violation, assuming no violation has been alleged and the records are adequate. For compliance review purposes, however, the number of such interviews should be recorded.
- (6) Interview Form. Employee interviews may be recorded on Form HUD-11, Record of Employee Interview (See Exhibit 7). This form has been prepared as a convenient format for recording interviews. The following describes the HUD-11 and provides guidance in completing it:
 - (a) Project Number. Include the number of the project. Include project name.
 - (b) Contractor or Employer. Enter the name of the contractor or employer.
 - (c) Employee's Name. Enter the employee's full name. Note any name variation entered on the

payrolls if known to the employee, to facilitate comparison of the interview statement with the payroll entries (if necessary).

- (d) Permanent Mail Address. Many construction workers have only a temporary address in the locality of the project and a more permanent address elsewhere from which mail may be

forwarded to them. It is desirable to have a record of the more permanent address in case there is occasion to contact the worker after he/she leaves the job. If the worker does not want to give such an address, the inspector should not insist.

- (e) Last date worked on project before today (day of interview) and number of hours on project on that date. The inspector shall make it clear to the worker that these items relate only to project work, not to other work. As a check on the number of hours worked on the project, the inspector should ask the worker the time he/she started work on the project on the day in question, the time he/she stopped, and the time out for lunch. It is not necessary to record these details, but the questions may help the worker to remember the number of hours worked.
- (f) Hourly Rate of Pay. The inspector should determine what the worker is being paid. Do not be concerned if the worker is being paid a higher rate, but if the hourly rate of pay stated by the worker is lower than the required rate, the construction inspector should immediately question the worker further in an effort to determine whether the worker is mistaken or is really being underpaid. For example, has the worker actually received at least one wage payment for work performed on project, or is his/her statement based on the rate received for other work? If the latter, the inspector should ask the worker to check his/her next pay to determine his/her rate of pay for work on the project. The inspector

should either arrange to reinterview the worker during the following week or ask the worker to mail the information. If the worker states that he/she received wages less than the required rate, the inspector shall obtain substantiating evidence from the worker. Does the worker receive pay envelopes, pay slips, pay check stubs, or any other forms which show the hourly wage rate or hours worked and earnings? Does he/she have any available? If not, will he/she bring them if the inspector arranges to reinterview? Or will they be mailed to the inspector?

- (g) Classification. The worker may not be familiar with the classifications used on the wage determination and thus may use a descriptive term which may not be found on the determination, e.g., Rodman. Further questioning will probably elicit the information that he/she installs reinforcing bars and, depending on the area and wage determination, the worker will agree that his/her work is that of an ironworker or laborer. The correct title may then be entered on the form.
- (h) Duties and Tools Used. If the classification stated by the worker is included in the applicable wage determination decision and the hourly rate of pay stated by the worker equals or exceeds the rate required by the decision, and the worker agrees that he/she is performing the duties of and using the tools of the stated classification, the inspector may enter the word "trade" across both items to signify duties and tools of the trade. On the other hand, if there are any discrepancies in or doubts about any of the foregoing, the worker's statements of duties performed and tools used should be entered in detail. Detailed statements are required in all interviews with employees classified as apprentices or trainees. Their status will be in doubt until records have been checked to determine whether the alleged apprentice or

trainee is individually registered in an approved apprenticeship or trainee program. If the finding is negative, the information regarding duties performed and tools used will be necessary for a determination of the correct classification and wage rate for the worker who was misclassified as an apprentice or trainee. See Paragraph 7-6 for further guidance on resolving classification questions.

- (i) Inspector's Comments. The inspector shall report any discrepancies or questionable items encountered in the interview. Examples:
- The inspector shall observe the duties performed and the tools used by the worker

and shall report any conflict between his/her observations and worker's statements regarding the duties and tools.

- If the classification stated by the worker does not appear to be correct classification for the work performed, the inspector shall state the classification which, in his/her opinion, is applicable.
- If the hourly rate of pay stated by the worker does not equal or exceed the rate required by the applicable wage determination decision, the inspector's comments shall direct attention to that fact.
- If there are no discrepancies or questionable items and the inspector finds no need for comments, he/she shall write the word "None" in the space provided for his comments.
- The inspector shall not notify the contractor of any discrepancies or questionable items disclosed by the employee wage interviews. The inspector should forward the interview records to the payroll examiner. Wage underpayments

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may then be calculated once it has been determined that workers have been underpaid.

- (j) Inspector's Signature. Self-explanatory.
- (k) Date of Interview. The exact date that the worker is interviewed shall be entered. Ordinarily, interviews are made during working hours on the job and it is natural, therefore, for the payroll for the date of the interview to be checked.
- (l) Payroll Examiner's Comments. The payroll examiner shall check the information of the interview form against the applicable wage determination and applicable payroll, and shall record any discrepancies or questionable items not previously reported by the inspector. Appropriate action shall then be initiated to clear discrepancies and

questionable items, those noted both by inspectors and by the payroll examiner. When the necessary action has been completed, the results thereof shall be noted on the interview form. If no discrepancies or questionable items were reported by the inspector, the payroll examiner finds none, and finds no need for comments, he/she shall write the word "None" in the space provided for comments.

- (m) Payroll Examiner's Signature and Data. The examiner shall sign and date the interview form at the conclusion of the payroll review process.

SECTION 2 WEEKLY PAYROLL REVIEW

3-3 WEEKLY PAYROLL REVIEW. Contractor weekly payrolls and other basic records should be reviewed during routine compliance enforcement activity on every construction project. Submitted payrolls shall be examined to assure compliance with labor standards. In examining payrolls, see that only classifications appearing on the wage determination are used and check for disproportionate employment of laborers, helpers, apprentices or trainees. Such payrolls and

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statements shall be produced at the request of the Secretary of Labor at any time during the normal three year term in which records must be maintained.

- a. Payroll Forms. Contractors shall be urged to use the optional Department of Labor Optional Form WH-347, Payroll (Exhibit 5). The text of the "Weekly Statement with Respect to the Payment of Wages," which is required by regulations of the Secretary of Labor, appears on the reverse side of this payroll form. A contractor may use an appropriate payroll form of his/her own choice but must report all required items of information and must also submit a copy of the weekly statement, using either Department of Labor Form WH-348, Statement of Compliance (Exhibit 6), which contains the weekly statement and related instructions, or any form containing the identical wording contained in Optional Form WH-347 and WH-348. These forms are available from the Superintendent of Documents, U. S. Government Printing Office. These forms may also be reproduced.
- b. Fringe Benefits. The required weekly statement of compliance, Form WH-348, includes statements concerning the payment of fringe benefits in addition to statements

concerning the payment of the basic hourly wage rates.

- c. Payrolls Must Be Obtained and Examined Promptly - Payroll Retention. The Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development Agency, or Coinsuring Lender contact or labor standards compliance person or HUD, whichever is administering the construction contract, shall insist upon prompt, preferably within seven work days, submission of all payrolls. The Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development Agency, or Coinsuring Lender, or HUD compliance person shall withhold funds from the contractor if excessively delinquent in the submission of payrolls. Payrolls should be dated upon receipt and dated and initialed upon review. The payrolls shall be examined upon receipt so that any necessary corrective action may be initiated before the problem multiplies, and may be accomplished while the workers are still available. Special attention should be given each project by the compliance officer during the early stages of construction in order to determine whether the

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principal contractor is meeting his/her responsibilities regarding payrolls. Spot checking of payrolls is permissible after the initial review of four to five weeks of payrolls indicates no significant problems. Payrolls must be retained for three years by the Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development Agency, or Coinsuring Lender, or HUD, whichever is applicable, following completion of the project and then may be destroyed unless an investigation, disputed compliance action, or appeal remains outstanding. Clearance shall be obtained from the HUD Field Office Labor Relations Staff prior to such destruction. Contractors and subcontractors must retain their basic payroll records (payroll register, individual earning cards, etc.) for the same three (3) year period.

- d. Addresses and Social Security Numbers. Each worker's address and social security number must be reported for each worker on the first payroll on which his/her name appears. It is permissible for the contractor to omit the worker's social security number on subsequent payrolls if the contractor reports the worker's name on all payrolls in the identical form in which it was reported on the first payroll, and the contractor has no other worker with the same name. It is permissible for the contractor to omit the worker's address on subsequent payrolls if the contractor will report the worker's new

address if and when an address change occurs.

- e. Incomplete Payrolls. Payrolls shall be examined to determine if they include all of the required items of information. Except where falsification is suspected, an incomplete payroll shall be returned to the prime contractor for completion. In most cases it will be better to request the prime contractor to supply the missing information by means of a new or supplemental payroll or a supplemental statement. If a payroll is false, it shall not be returned to the contractor. A report of such findings shall be referred to the HUD Field Office Labor Relations Staff.
- f. Classification and Wage Rates. Classification and wage rates reported on the payroll shall be compared with the corresponding items on the applicable wage determination decision to determine whether the rate reported is at least equal to the rate required by the decision. If a

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lesser wage rate is found, request the contractor in writing to begin paying the required wage rate immediately and to make restitution to workers for past underpayments.

- g. Computations. Payroll computations shall be spot-checked to determine whether the payrolls are accurate. Scattered minor errors may be ignored. If such errors are numerous, however, the contractor should be requested in writing to exercise more care in preparing the payrolls.
- h. Deductions. Deductions shall be reviewed for any non-permissible deductions. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, or accident insurance, vacation or holiday pay, defraying costs of apprenticeship or similar programs. (See Section 7-1 (o),(p),(q)). Questions concerning permissibility of fringe benefits must be referred to the Department of Labor for determination.
- i. Signature. The statement of compliance must be signed by the owner, officer, or designated employee of the contractor. Written authority must be furnished by the owner or officer of the contractor where a designated employee signs the payrolls.
- j. Requests by Outside Parties for Payrolls. In order to protect the personal privacy interests of employees,

copies of weekly payrolls containing the individual's salary, work hours, claimed exemptions and tax status, address and social security number shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act unless any identifiers are first deleted. When payrolls are in the possession of State or local government, then the applicable State law will govern the release of payroll information.

SECTION 3 VIOLATIONS

- 3-4 CORRECTING VIOLATIONS, WITHHOLDING MONEYS, AND MAKING RESTITUTION. When any violation of labor standards requirements results in an underpayment of wages to employees, the Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development Agency, or Coinsuring

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Lender compliance officer, or HUD, whichever is administering the construction contract, shall take necessary action. Where wage adjustments become necessary, the compliance officer shall notify the prime contractor (who is responsible for the correction of all violations) in writing to make such adjustments. Contractor confirmation of wage restitution amounting to less than \$10 per worker is not required. Amounts in excess of \$10 per worker require copies of signed statements by employees and corrected payrolls to be supplied to the compliance officer by the contractor as confirmation of payment to all affected employees. Should the violations not be corrected within thirty (30) calendar days of notification, the compliance officer upon written notice to the contractor may withhold or cause to be withheld from the contractor so much of the amounts due the contractor as may be considered necessary to ensure payment of laborers and mechanics the rates of pay which should have been received by such laborers and mechanics and to cover liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA), if any and if applicable. Only an amount necessary to ensure payment of back wages and/or liquidated damages shall be withheld. If it is necessary to estimate such an amount, every action shall be taken to promptly determine an exact amount and to return any excess to the contractor.

- a. Withheld Funds. Where Public Housing Agencies, Indian Housing Authorities, Local or State Housing and Community Development Agencies, or Coinsuring Lenders are directly administering construction contracts, they shall establish where applicable a special account for depositing funds withheld for wage restitution.
- b. Payment of Wage Restitution Where Funds Have Been Withheld. The Public Housing Agency, Indian Housing

Authority, Local or State Housing and Community Development Agency, or Coinsuring Lender labor standards compliance person shall provide in the written notice to the prime contractor information specifying the reasons for the withholding or suspension or intended withholding or suspension of contract payments. That information may include the failure to submit weekly payrolls promptly, the identity of underpaid workers, their correct classifications and wage rates, and the amounts of underpayments which have been computed. The contractor will then proceed to comply and to make the required payments and compute taxes owed, fringe benefits, and

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overtime accordingly. The contractor will supply the labor standards compliance person with signed employee statements as confirmation of payment as well as corrected payrolls. Should the contractor refuse to make such restitution as requested, the labor standards compliance person may disburse or cause to be disbursed out of withheld funds for and on account of the contractor or the subcontractor sufficient moneys to the respective employees to whom they are due. Should the contractor dispute the basis of the findings, see "e" below. Such funds should not be disbursed whenever the contractor is appealing the restitution or during the time allowed for instituting an appeal.

- c. Procedure for Disbursement of Wages Due By A Public Housing Agency, An Indian Housing Authority, A Local Or State Housing and Community Development Agency, or Coinsuring Lender. In order to avoid drawing a check to a worker only to find that it cannot be delivered, the labor standards compliance person shall address a letter to each worker at his/her last known address and ask the worker to give a current address and Social Security number in order that arrangements may be made for the payment of additional wages found due. Upon receipt of a reply, the Social Security number must be checked with one on file (Form HUD-11 or payrolls if available in order to avoid delivery of a check to a false claimant). The net amount of wages found due shall be computed. The net amount is the gross amount minus deductions for the Federal Income Withholding Tax and the employee's share of the Social Security (FICA) Tax. Other itemized deductions which may be applicable (State and/or City) shall also be computed prior to determining the net due and remitted to such agencies. Prepare a Form W-2 for the employees. The checks shall be mailed to the employees, together with the employee's copy of the Form W-2, registered or certified mail, return receipt requested. Upon receiving receipts, a check payable to

the Internal Revenue Service for the total of the amount of the wages withheld from the employees who have received payment shall be prepared. A tax return, Form 941, Employer's Quarterly Federal Tax Return, shall be prepared and forwarded with the check. The "taxpayer" shall be identified on the return as:

(Appropriate local or State agency or HUD)
Agent for _____ Contractor on Project

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(describe name and location of project)

(Note On Return: "One - Time Return")

In the transmittal letter to Internal Revenue Service, the following statement may be helpful:

"This return covers only the taxes withheld from wages due employees engaged in the construction of (identify project). The wages were paid out of funds withheld from the contractor to assure payment of the wages. This return does not include the employer portion of FICA tax."

Note: Davis-Bacon Act Wage Restitution Disbursal. The Comptroller General reserves the right to disburse withheld funds to workers where violations of the Davis-Bacon Act occur and the contractor refuses to make payment. The only HUD program under which such disbursal would take place is Property Disposition where HUD or its agents have contracted for the work.

- d. Unfound Workers. If all workers cannot be located and restitution made either by the contractor directly or through the use of withheld funds, sufficient funds shall be reserved in the account described in subparagraph "a" above for subject employees. Efforts should continue to be made to locate such workers. Should the workers not be located within three years from the date of creation of such an account, the funds shall be forwarded to HUD and credited to the appropriate U. S. Government account.
- e. Disputes Over Findings. Should the contractor dispute the findings, the situation shall be reported promptly to the HUD Field Office Labor Relations Staff for its consideration and appropriate action. Should the HUD Field Office Labor Relations Staff or the Regional Office (where Labor Relations is regionalized) be unable to resolve the situation, the contractor shall be advised of his/her right to appeal to the Department of Labor under 29 CFR Section 5.11(a). Also see paragraph 4-6.
- f. Overtime Violations and Liquidated Damages

- (1) The prime contractor is responsible under the Contract Work Hours and Safety Standards Act (CWHSSA) for proper overtime payments to all laborers and mechanics (and watchmen and guards) employed on a covered project, including those employed by subcontractors and lower tier contractors; all subcontracts must contain clauses imposing the statutory overtime requirements.

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- (2) CWHSSA requires covered contractors and subcontractors, including Public Housing Agencies and Indian Housing Authorities, to pay laborers and mechanics not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 in a workweek; failure to do so subjects the contractor or subcontractor to liability for the unpaid wages as well as for liquidated damages in the sum of \$10 for every calendar day each employee was required or permitted to work more than 40 hours in a workweek. Thus, the day an employee works the 41st hour within a workweek, and any subsequent day in that week, liquidated damages are assessed at \$10 per day.
- (3) In every case where it is necessary to compute liquidated damages, the contractor shall be notified of the amount and the basis for the computations. Where a Department of Labor or HUD investigation has disclosed the potential overtime violation, the HUD Field Office Labor Relations compliance person will issue a written Notice of Determination of Liquidated Damages. (A HUD-issued Notice shall not be signed by the Regional Labor Relations Officer in cases involving \$500 or less in liquidated damages, or Labor Relations Directors in cases involving \$100 or less in liquidated damages, because those officials must decide whether to grant requests for waiver or reduction of liquidated damages.) (see par. (4), below).

Where Public Housing Agency, Indian Housing Authority, or Local or State Housing and Community Development Agency monitoring has disclosed the potential overtime violation, that agency's compliance person will issue the written Notice of Determination of Liquidated Damages.

The Notice shall state that the contractor has 60 days to file a written request for waiver or reduction of liquidated damages; that any such request shall be accompanied by a written statement of reasons why waiver or reduction is justified; that the only grounds for requesting waiver or reduction are that the computation of liquidated damages is incorrect or that the violation occurred inadvertently notwithstanding the exercise of due care; and that absent a timely waiver or reduction request, the determination shall be final.

Where contract monies remain available, the Notice shall

further state that funds equal to the computed amount of liquidated damages are being withheld pending final determination, waiver, or reduction of damages.

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- (4) Where a contractor requests a waiver or reduction of liquidated damages in a DOL- or HUD-investigated case involving \$500 or less in damages, the HUD Regional Labor Relations Officer, upon review of the request and supporting statement of reasons, and any other pertinent correspondence, documents, or information, shall issue a final order affirming, or waiving or reducing, the amount of liquidated damages. (HUD Field Office Directors of Labor Relations shall have the same authority in cases involving \$100 or less.)
- (5) Where a contractor requests a waiver or reduction of liquidated damages in a DOL- or HUD-investigated case involving more than \$500 in damages, the HUD Regional Labor Relations Officer shall forward copies of the Notice of Determination of Liquidated Damages, the contractor's request and supporting statement of reasons, and any other pertinent correspondence, documents, or information, together with a recommendation whether to affirm, or waive or reduce, the amount of liquidated damages, to Headquarters Office of Labor Relations. After review of the file, Headquarters Office of Labor Relations shall either issue a final order affirming the determination of liquidated damages, or transmit a recommendation for waiver or reduction to the Department of Labor for final decision.
- (6) Where a contractor requests a waiver or reduction of liquidated damages in a case disclosed by Public Housing Agency, Indian Housing Authority, or Local or State Housing and Community Development Agency monitoring, that agency's compliance person shall submit a report to the Field Office Labor Relations staff. The report shall contain copies of the Notice of Determination of Liquidated Damages, the contractor's request and supporting statement of reasons, and any other pertinent correspondence, documents, or information, together with a recommendation whether to affirm, or waive or reduce, the amount of liquidated damages.

If the case involves liquidated damages of \$500 or less, the Regional Labor Relations Officer shall, upon review of the report, issue a final order affirming, or waiving or reducing, the amount of liquidated damages. (HUD Field Office Directors of Labor Relations shall have the same authority in cases involving \$100 or less.)

If the case involves liquidated damages of more than \$500, the Regional Labor Relations Officer shall transmit the report, together with a recommendation whether to issue a final order

affirming, or waiving or reducing, the amount of liquidated damages, to Headquarters Office-of Labor Relations. After review of the report, Headquarters Office of Labor Relations shall either issue a final order affirming the determination of liquidated damages, or transmit a recommendation for waiver or reduction to the Department of Labor for final decision.

- (7) Each final order affirming or reducing a determination of liquidated damages shall state that the contractor may appeal the order to the U. S. Claims Court, Washington, D. C., within 60 days.
 - (8) Where a final order affirming or reducing a determination of liquidated damages has been issued, or a determination has become final absent a request for waiver or reduction, the required amount shall be satisfied, to the extent possible, by retention of withheld funds. If withheld funds are insufficient, the contractor shall submit the appropriate amount by wire transfer, and furnish the bank's acknowledgment as proof of payment to the HUD Field Office Labor Relations staff, or the Public Housing Agency, Indian Housing Authority, or Local or State Housing and Community Development Agency compliance person. The HUD Field Office Labor Relations staff shall furnish instructions for payment of liquidated damages by wire transfer to contractors and Public Housing Agencies, Indian Housing Authorities, and Local and State Housing and Community Development Agency compliance personnel.
 - (9) Where the computed amount of liquidated damages is waived or reduced, withheld funds in excess of the amount, if any, determined due shall be immediately released to the contractor. Withheld funds shall also be released immediately to the contractor where required by a final judicial order.
- g. Reporting Wage Restitution Made. The Public Housing Agency, Indian Housing Authority, Local or State Housing and Community Development, Agency or Coinsuring

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Lender labor standards compliance person shall prepare a Labor Standards Enforcement Report to be submitted to the appropriate HUD Field Office Labor Relations Staff indicating actions taken with respect to wage restitution and any other violations. The report should contain:

- (1) Project name, location, and contract number
- (2) Identity of the general contractor and names of affected employees and any restitution

- (3) Identity of subcontractors and names of their employees and any restitution
 - (4) Detailed narrative as to violations leading to the restitution
 - (5) Liquidated damages computed under the Contract Work Hours and Safety Standards Act. Should there be such a computation, sufficient information must be provided to the HUD Field Office Labor Relations Staff concerning the nature of the overtime violations to allow for any appropriate adjustment which may be indicated and requested by the contractor and final action or recommendations by HUD to the Department of Labor. (See Subparagraph (f) above).
 - (6) Where appropriate, a recommendation and justification as to sanctions, if any, recommended against the contractor involved. Should there be such a recommendation, further documentation may be required.
- h. Deposit of Funds on HUD Insured and Coinsured Projects. A project mortgage shall not be finally endorsed or a final advance thereon shall not be approved while labor standards violations have not been fully resolved, unless the contractor executes a "Deposit Agreement" and submits funds by certified check to ensure the payment of any required wage restitution. A certified check payable to HUD in the appropriate amount should be attached to the executed deposit agreement. A Deposit Agreement in the format presented in the Appendix (Exhibit 8) shall be executed under the following conditions:

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- (1) Without awaiting receipt of evidence that all workers have received the wages due them;
- (2) Without awaiting administrative-investigative determination of the wages which may be due and unpaid for work performed in the construction of the project;
- (3) Without awaiting the outcome of the appeal which has been filed, or is to be filed, with the Department of Labor by or on behalf of the contractor contesting the findings of HUD or the Department of Labor that wages for work performed in the construction of the project are due and unpaid to the workers.

When the amount of unpaid wages has been finally determined by HUD or the Department of Labor, funds sufficient to pay the total gross amount of the wages shall be held by HUD and the balance of the funds deposited, if any, shall be returned to the contractor; provided, that if the contractor appeals or has appealed such final HUD/DOL determination, then when the contractor has exhausted all administrative and any other rights of appeal, funds sufficient to pay the total gross amount of the wages found due by the highest authority, which has ruled in the matter, shall be held by HUD, and the balance of the funds deposited, if any, shall be returned to the contractor. The wages found due in all cases shall be paid directly to the workers to whom due from the funds submitted and held for that purpose by HUD.

The Deposit Agreement shall be executed in an original and two copies. A schedule of the unpaid wage adjustments in an original and two copies is to accompany the Deposit Agreement. The schedule shall bear the project number, name and location (city), contractor's name, and the following information for each worker to whom a wage adjustment is due:

- (1) Name of worker
- (2) Address
- (3) Social Security Number
- (4) Hour amount of wages due

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- (5) Amount of employee withholding taxes applicable
 - Federal income tax
 - FICA
 - State
- (6) Other permissible deductions, itemized
- (7) Net wages due employee

The HUD Field Office Labor Relations Staff shall retain one copy and transmit the original and one copy with the certified check on a collection register to the Field Office Collection Officer for Deposit. The Field Office Collection Officer shall transmit these documents with the accounting copy of the deposit ticket to: HUD Office of Finance and Accounting, Cash and Securities Section, Washington, D. C. 20410. Immediately upon receipt, send to the Cash and Securities Section the confirmed deposit ticket upon which the collection schedule number has been recorded. Refunds to contractors and payments to workers will be processed in the same manner using Standard Form 1047 (Public Voucher for Refunds) and Standard Form 1034 (Public Voucher for Purchases Other Than Personal)

whichever is applicable. Vouchers shall be mailed to HUD, General Ledger Section, Office of Finance and Accounting, Washington, D. C. 20410.

- i. Suspension or Withholding of Insured Draws and Advances. Withholding of funds may be recommended by the HUD Field Office Labor Relations Staff during the course of construction where there has been a failure by the contractor to comply with labor standards provisions after a written request by HUD to the contractor to comply has been made and the contractor has not complied within a thirty-day period. The recommendation shall contain a narrative justification for such action. Withholding from a draw or advance should not exceed sufficient amounts to cover actual or estimated wage underpayment. Suspension of a draw or advance is a drastic action which shall be taken only when a contractor continues to violate labor standards provisions (e.g., continues to underpay employees) after notification to desist. The suspension of an entire draw or advance shall not take place because one or more subcontractors have failed to comply. If there is sufficient cause, payments of line items attributed to the work of the subcontractors in violation should be deleted from the advance, and if the sum is insufficient

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to cover the estimated wage underpayments, an additional amount may be withheld. Suspension or withholding may also be requested by the Department of Labor. The failure by the contractor to execute the HUD Form 92448, Contractors Requisition Project Mortgages or continued failure to submit weekly payrolls over a substantial period of time is particularly serious.

- j. Escrow Accounts for Labor Standards Violations - Section 8 Program. Moneys sufficient to cover any underpayments to employees shall be placed in escrow, as determined by the HUD Field Office Labor Relations Staff, in an account established by the owner under conditions stipulated by HUD controlling disbursement or in an account established directly by HUD and approved by the HUD Field Office Counsel. No Certification of Completion will be accepted by HUD in the presence of claims of underpayment or alleged violations of the labor standards provisions of the Agreement without a statement and proof that the owner has placed a sufficient amount in escrow to ensure payment of any contested underpayment in accordance with the above stipulations. Such accounts may bear interest and interest earned on the escrow moneys shall be paid to the prevailing party or parties.

- k. Escrow Accounts for Labor Standards Violations - Section 202. Moneys sufficient to cover any underpayments to employees shall be placed in escrow prior to or concurrent with final closing of the loan agreement. The HUD Field Office Labor Relations Staff must provide prior written notice to HUD Field Office Council and to the Developer/Owner before closing. The notice must show the amount to be escrowed and list the unresolved violation and/or underpayments. The escrow account must be established with the Developer's/Owner's lender for a fixed period of time (e.g. 6 months, one year), approved by the HUD Field Office Council, and the release of funds from the escrow determined by the HUD Field Office of Labor Relations.

Such accounts may bear interest and interest earned on the escrow moneys shall be paid to the prevailing party or parties.