

Section II Production

Appendix 4.1

HUD Labor Standards and Enforcement Protocol Section 232 and 241(a)

Protocols set forth herein are applicable when Davis-Bacon applies, as indicated in Section II, Chapter 2.

A. Early Commencement of Construction Processing

1. When an application for Early Commencement of Construction is submitted, the U/W will contact ~~the Regional Davis-Bacon~~ Labor Standards ~~and Enforcement Officer (RLSEO)(DBLS) Deputy Director~~ in the manner specified below in the Firm Commitment Processing section. If the application is acceptable, ORCF will issue an Early Commencement Approval Letter, which will include language requiring Davis-Bacon compliance. The wage decision(s) effective date is the construction start date. The FHA Lender's ~~pre-construction conference coordinator~~ PreConstruction Conference Coordinator (PCCC) must notify the ~~RLSEO DBLS Deputy Director and the HUD Construction Manager (CM)~~ of the actual date of start of construction.

B. Firm Commitment Processing

1. When the Firm application is submitted, the ORCF Underwriter (U/W) will contact the ~~RLSEO DBLS Deputy Director~~ via email to initiate coordination with the Office of ~~Davis-Bacon and Labor Relations (OLR Standards (DBLS))~~. A list of the ~~RLSEO's DBLS Deputy Directors~~ and their contact information ~~is~~are posted at:

~~http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/laborrelstfh~~

~~https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/laborrelstf#R8~~

2. The U/W shall furnish to the ~~RLSEO DBLS Deputy Director~~ (or his/her designee) via email the Lender's Narrative (the Memo for Post-Commitment Early Start of Construction Request should also be included, when applicable),

and Division I (when using the MasterFormat 1995) or Division 00 73 00 (when using the MasterFormat 2010), of the Specifications, which includes the Davis-Bacon Wage Decision, and the Supplementary Conditions of the Contract for Construction. The Lender's Narrative will contain the following information:

- a. Project location.
- b. Number of stories.
- c. Details on ~~any~~ commercial areas (square footage, percentage of gross floor area and description).
- d. -A statement as to whether all units have both a kitchen~~^~~ or kitchenette and bathroom. For purposes herein, a kitchen can include a kitchenette consisting of a sink, countertop, microwave and refrigerator. A bathroom must consist of a sink, toilet (water closet) and a shower or tub.
- e. -The contact information (name, phone number and email address) for the PCCC.

2.3. The ~~RLSEODBLS~~ Deputy Director /designee shall review the Narrative and specifications and determine whether the specifications contain the correct Davis-Bacon wage decision based upon the project description. The ~~RLSEODBLS~~ Deputy Director /designee shall notify the U/W via email either confirming the wage decision is correct, or advising the wage decision must be changed. The ~~RLSEODBLS~~ Deputy Director /designee shall attach an electronic copy of the correct wage decision if a change is required. Upon receipt, the U/W will email a copy to the OHP Construction Manager (CM) and to the PCCC.

The wage decision(s) is/~~are~~ subject to modification and must be verified as current by ~~OLRDBLS~~ during initial closing clearance. The effective date of the wage decision(s) is the date of initial endorsement provided that construction starts within 90 days.- For projects utilizing a Post-Commitment Early Start of Construction (Early Start), the wage decision(s) effective date will be the construction start date. On Early Start projects, the PCCC must notify the ~~RLSEODBLS~~ Deputy Director of the actual date of start of construction to verify the most current applicable Davis-Bacon wage rate-~~(s)~~.

3.-The Firm Commitment will include language requiring Davis-Bacon compliance, as follows:

The borrower(s), its contractors and subcontractors, shall comply with all applicable Federal labor standards provisions as expressed in the Supplementary Conditions of the Contract for Construction, in connection with the construction of said Project.

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89 **C. Initial Closing Clearance**
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- 91 1. The PCCC shall notify via email the RLSEODBLS Deputy Director /designee, the ORCF
92 Closing Coordinator (Closer) and the CM of the proposed location, date and time of the
93 Pre-ConstructionPreConstruction Conference and Initial Closing. Such email shall attach
94 the most recent version of Division I of the Specifications.
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96 2. The RLSEODBLS Deputy Director /designee shall review the contract specifications to
97 determine whether the current and correct Davis-Bacon wage decision(s) and the
98 Supplementary Conditions of the Contract for Construction are incorporated. The
99 RLSEODBLS Deputy Director /designee shall provide initial closing clearance via email
100 which shall include the contact information for the Labor RelationsStandards Specialist
101 (LRSLS) that will be responsible for Davis-Bacon technical support, compliance
102 monitoring, and enforcement.
103 Initial closing clearance may be conditioned upon the incorporation of a corrected wage
104 decision (e.g., updated) and/or the Supplementary Conditions of the Contract for
105 Construction in the contract specifications. If so, the RLSEODBLS Deputy Director
106 /designee shall attach an electronic copy of the current/correct wage decision(s) to the
107 clearance email.
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109 3. At the Pre-ConstructionPreConstruction Conference the PCCC will notify all appropriate
110 parties (general contractor, architect and borrower) of the contact information for the
111 LRSLS staff.
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113 4. The PCCC shall notify the LRSLS of the actual date of initial endorsement.
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116 **D. Construction Phase**
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- 118 1. The project architect and the PCCC shall notify, via email (followed by a hard copy), the
119 CM of the date of construction start, and the CM will then notify the LRSLS via email
120 of the date construction started. Construction must start promptly after initial closing to
121 avoid cost over-runs and expiration of the wage decision. In the event construction did
122 not begin within 90 days after initial endorsement, the LRSLS shall determine whether
123 the wage decision had been modified and whether any updates must be incorporated into
124 the Contract. The LRSLS shall promptly notify the CM via email if the contract wage
125 decision must be updated and will attach an electronic copy of the required wage
126 decision.
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128 2. During construction, the CM will provide the LRSLS with electronic versions of the
129 Record of Employee Interview (HUD-11) and HUD Representative's Trip Report (Form
130 HUD-95379-ORCF) completed by the HUD Inspector.
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- 132 3. During construction and should an investigation occur, the LRSLS will provide electronic
133 notice and summaries of said investigations and findings (excluding confidential
134 information) to the CM.
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- 136 4. Should the LRSLS or the U.S. Department of Labor instruct withholding of
137 requisitions/advances, the CM shall be notified via email of such instructions (including a
138 copy of the proposed notice to the contractor and the withholding amount required). The
139 CM shall work with the LRSLS or the U.S Department of Labor staff to implement such
140 instructions or address the concerns (if at all possible). Should requisitions/advances be
141 withheld, the CM shall work with the LRSLS or the U.S Department of Labor staff to
142 determine when or if the requisitions/advances shall be resumed.
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- 144 5. At approximately 70% construction completion, the CM shall notify the LRSLS via
145 email, to encourage the LRSLS to address any labor relationsstandards issues well in
146 advance of construction completion.
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- 148 6. The CM shall notify the LRSLS via email of any requests for retainage reductions. The
149 CM and LRSLS will recommend approval/disapproval of such request in an expeditious
150 manner.
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152 **E. Final Closing Clearance**

- 153 1. For each new construction, substantial rehabilitation, or 241(a) project subject to labor
154 standards provisions, the LRSLS must ensure that any/all labor standards issues are
155 resolved or that provisions are made to ensure the payment of wage restitution that may
156 be found due. At the earlier of at least 10 days prior to Final Closing or when the Final
157 Closing documents are received, the Closer will request via email OLRDBLS clearance
158 to proceed with the Final Closing.
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- 160 2. The LRSLS shall perform a final project review and shall provide final closing clearance
161 based on the results of this review.
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163 If there are no labor standards issues outstanding the LRSLS shall provide final closing
164 clearance without conditions via email to the Closer. The Closer will notify the Closing
165 Attorney and lender of such clearance via email.
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167 If there are outstanding labor standards issues the LRSLS shall provide conditional final
168 closing clearance via email to the Closer. The Borrower or general contractor will be
169 required to deposit to a specified U.S. Treasury account, via Fedwire, funds sufficient to
170 satisfy any deficiencies. The LRSLS shall attach wire transfer instructions; a deposit
171 agreement and a schedule detailing the purpose(s) and amount(s) to the conditional
172 clearance email. The Closer shall forward this email to the Closing Attorney. The
173 LRSLS shall likewise notify the Borrower or general contractor of the deposit
174 requirement.
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178 3. No later than the day of the final closing and before the closing concludes, the depositor
179 must furnish evidence of deposit in the amount required (e.g., bank receipt, wire transfer
180 advice) and the depositor must execute the deposit agreement. The Closer shall promptly
181 deliver to the LRSLSS the original, signed deposit agreement and the deposit evidence.

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