
Chapter 5 LABOR STANDARDS ADMINISTRATION AND BASIC ENFORCEMENT

5-1 **Introduction.** This chapter addresses the administration and enforcement of the Davis-Bacon and Related Acts' labor standards in HUD programs and assumes that a proper Davis-Bacon wage decision(s) has been assigned for the project(s) involved. (See Chapters 2 and 3 for guidance concerning Davis-Bacon applicability and wage decisions.) It is prepared in two sections: 1) Project Administration and 2) Basic Enforcement.

Labor standards administration and enforcement is conducted by:

- HUD Labor Standards Specialists (LSS) for certain multifamily programs (e.g., FHA-insured multifamily projects, Section 202 or 811 projects, and other HUD programs); and
- Local Contracting Agency (LCA) staff when performing delegated functions for HUD programs operated by that agency (e.g., CDBG, HOME, IHBG, NHHBG).

While the responsibilities are in many respects the same, the directions for LSS versus LCA vary in certain cases. This chapter differentiates and provides appropriate direction where there is such a variance.

5-2 **Field LSS/LCA Staff Responsibilities.**

- A. **Responsibilities/direction shared by LSS/LCAs.** For each project assigned to field LSS and LCA staff, the staff shall:
1. **Confirm** the labor standards provisions applicable to the project (e.g., Davis-Bacon wage and reporting requirements, CWHSSA).
 2. **Ensure** that the current applicable Davis-Bacon wage decision(s) and contract standards are incorporated into the contract for construction (e.g., contract specifications).
 3. **Ensure** that no contract is awarded to any contractor that is debarred or otherwise ineligible to participate in federal programs.
 4. **Provide** technical support to the prime contractor and subcontractors concerning prevailing wage and reporting requirements.
 5. **Identify** and process requests for additional classifications and wage rates for the construction of the project.
 6. **Perform** periodic "spot-check" reviews of certified payroll reports (CPRs) and related submissions. This includes comparison of on-site interview data against CPRs for compliance with the labor standards.
 7. **Notify** the employer and prime contractor of any labor standards deficiencies and required corrective actions.
 8. **Identify** potential willful violations through spot-check reviews and/or employee interviews. Follow-up on potential willful violations through employee questionnaires and other techniques to identify cases for investigation.

9. **Receive and screen** employee and other complaints or allegations of violation.
10. **Ensure** full correction of labor standards deficiencies or violations.
11. **Refer** through the Deputy Director cases for administrative hearing (29 CFR § 5.11) and/or make recommendations for debarment (29 CFR § 5.12) and/or CWHSSA liquidated damages assessment (29 CFR § 5.8).
12. **Prepare** reports on all enforcement activity.
13. **Dispose** of deposit/escrow accounts established for labor standards purposes.
14. **Establish and maintain**, for not less than 3 years after the completion of construction or final disposition of any compliance issues (whichever occurs last), full documentation of all labor standards administration and enforcement activities.

B. Responsibilities/direction for HUD Labor Standards Specialist.

1. **Recommend** to the Deputy Director cases where investigation appears to be warranted.
2. **Conduct** investigations of labor standards violations at the direction of the Deputy Director.
3. **Refer** to the Deputy Director cases for administrative hearing (29 CFR § 5.11) and/or make recommendations for debarment (29 CFR § 5.12) and/or CWHSSA liquidated damages assessment (29 CFR § 5.8).
4. **Recommend** to the Deputy Director the imposition of deposit requirements for outstanding labor standards violations and/or CWHSSA liquidated damages liabilities at final closing.

C. Responsibilities/direction for LCAs.

1. **Refer** to the LSS, after consultation, in cases where investigation appears to be warranted. LCAs may also confer and refer directly to DOL.
2. **Refer** to the LSS cases for administrative hearing (29 CFR § 5.11) and/or make recommendations for debarment (29 CFR § 5.12) and/or CWHSSA liquidated damages assessment (29 CFR § 5.8).
3. **Impose** escrow requirements for outstanding labor standards violations and/or CWHSSA liquidated damages liabilities, as appropriate, during the course of the project/contract.

Section I – Project Administration

- 5-3 **Contract wage decision and standards.** Each contract subject to Davis-Bacon prevailing wage and associated requirements **must contain** the applicable wage decision(s) and contract provisions with labor standards clauses. These are often inserted in the contract specifications.

Wage decisions list the work classifications approved for the project and the minimum wage rates that must be paid to individuals performing the corresponding work.

Contract clauses prescribe the responsibilities of the contractor and obligate them to comply with the labor requirements. Labor standards clauses also provide for remedies in the event of violations. This includes withholding from payments due to the contractor, to ensure the payment of wages or liquidated damages.

These contract clauses enable HUD or an LCA to enforce the federal labor standards applicable to the project/contract. (See paragraph 3-12(B) for references to HUD forms containing labor standards provisions for key HUD programs.)

- A. **LSS responsibilities - initial closing clearance.** The LSS shall provide initial closing clearance for each project. Initial closing clearance considers whether the current, applicable Davis-Bacon wage decision(s) and appropriate contract standards (typically, for multifamily development projects, form HUD-92554M) are incorporated into the contract for construction.

The LSS shall inspect the contract specifications or contact the responsible Office of Housing to establish whether the correct wage decision and contract standards are part of the contract.

The LSS shall provide written clearance to the Offices of Housing and Office of General Counsel confirming that:

1. The correct wage decision(s) and contract standards are present in the contract, so the closing may proceed; or
2. The closing may proceed, conditioned on the inclusion of the correct wage decision(s) and/or contract standards into the construction contract prior to initial closing. A copy of the correct wage decision(s) and/or contract standards shall be attached to a conditioned clearance.

- B. **LCA responsibilities.** The LCA is responsible for ensuring that the bid solicitation, if any, and the resulting contract for each project (subject to Davis-Bacon wage requirements) contain the applicable wage decision(s) and appropriate labor standards provisions. HUD does not prescribe specific actions for LCAs to achieve these results, only that the LCA successfully carry out its responsibilities.

- 5-4 **Mixed Sources of Funding.** In projects where federal funds are combined, it is important to know which organization (the contracting agency) created the contract for the project. Correspondence should mainly occur between DBLS staff and the contracting agency, since the contracting agency is responsible for monitoring the project for DBRA compliance. When a project has mixed sources of funding, the general rule is to follow the strictest of the regulations. For example, when Community Development Block Grants (CDBG) is mixed with Public Housing funds or CDBG is mixed with HOME, the strictest requirements prevail.

Some states have laws that are similar to DBRA, which are sometimes referred to as “little Davis-Bacon.” In these situations, the strictest of the two regulations will typically apply. If state prevailing rates are higher than the federal prevailing rates, the state prevailing rates will apply, and vice versa. DBLS staff are not responsible for enforcing state prevailing rate requirements. If a general contractor fails to pay state prevailing rates when needed, this issue would be referred to the state agency for enforcement.

Where there are many different sources of funds, it may be appropriate and advantageous to all parties involved to create a memorandum of agreement (MOA) or similar instrument that outlines which organization is responsible for which activities and may help with any questions later during construction.

- 5-5 **Verification of contractor eligibility and termination of ineligible contractors.** No contract may be awarded to any contractor that is debarred, suspended, or otherwise ineligible to participate in federal or federally assisted contracts/programs.

The labor standards clauses (e.g., forms HUD-4010; HUD-52531-B; HUD-5370; HUD-5370-EZ; HUD-5679; HUD-92554M) inserted in the contract include a certification of eligibility such that the holder of the contract, the prime contractor, and all subcontractors certify that they are eligible for award.

The LSS/LCA shall verify the eligibility of all prime contractors prior to initial closing or contract award by reviewing the Excluded Parties List available on-line at www.sam.gov.

The LSS/LCA shall make a record of verification in the project files. Any contract awarded to a prime contractor or subcontractor that is found to be ineligible for award must be terminated immediately.

Only the eligibility of the prime contractor must be verified and documented in the labor standards enforcement file. Confirmation of the subcontractor eligibility is the responsibility of the prime contractor and must be documented in the prime contractor’s file.

If the LSS/LCA has reason to believe that a subcontractor is ineligible, they must inquire further to learn the subcontractor's actual status. If the subcontractor is in fact ineligible, the LSS/LCA must notify the prime contractor immediately that the ineligible subcontractor must be terminated.

- 5-6 **Additional classifications and wage rates.** If the wage decision(s) does not include work classification(s) required for the construction of the project, the LSS/LCA may process additional classification(s) and wage rate(s) for approval through DOL.

Generally, additional classification and wage rates requests shall not be approved for apprentices, trainees, helpers or welders. (See Chapter 3, paragraph 3-17 for additional classification and wage rate guidance concerning Davis-Bacon wage decisions.)

- 5-7 **Labor standards administration and enforcement files.** The LSS/LCA is responsible for the creation, maintenance, and preservation of labor standards files for each prevailing wage project they administer. The files shall be kept up to date, maintained in a consistent manner throughout construction, and preserved for at least three (3) years following final closing or the final disposition of any compliance issues; whichever occurs last. At all times, the files must be safeguarded to prevent unwanted disclosure of sensitive information. The LSS/LCA shall establish a system of labor standards files for each covered project.

A. **LSS file system requirements.** At a minimum, the system must include a Project Lead File (*aka* Labor Standards "legal" or "docket" file). Other files may be established as needed, at the direction of the Deputy Director or at the discretion of the LSS.

1. **Project lead file.** The project lead file shall contain the applicable Davis-Bacon wage decision(s); the Project Wage Rate Sheet (if prepared); any additional classifications and wage rates processed; and primary project information including, for example, a copy of the application for HUD program assistance (Form HUD-92013 or equivalent); the initial closing clearance; prime contractor eligibility verification; confirmation of initial closing; start of construction date; 100% completion notice; final closing clearance; and confirmation of final closing date.
2. **Deposit/disbursement file.** A second lead file is necessary where a deposit account is established at final closing. This file shall contain the deposit agreement; deposit schedule; confirmation of deposit; copies of determinations and schedules of back wages due; copies of vouchers for refund or payment; and confirmations of payment.
3. **Other project files.** Other project files are established at the direction of the Deputy Director or the discretion of the LSS. Such files may include a

separate file for each employer submitting CPRs and correspondence files.

- B. **LCA file system requirements.** HUD does not prescribe for LCAs any particular file system, online system or components *except* that the system must demonstrate that the LCA has successfully carried out its labor standards responsibilities. LCAs may find LSS file system requirements (above) helpful in establishing a satisfactory file system.

At a minimum, these files/documentations must show evidence that the LCA:

1. Met the general requirements at paragraph 5-7(A).
2. Properly applied federal prevailing wage requirements.
3. Ensured that the applicable federal wage decision and labor standards provisions were incorporated into the contract bid documents.
4. Verified the eligibility of the prime contractor prior to award.
5. Ensured that the wage decision in effect at the relevant lock-in date was inserted in the contract and applied to the contract work.
6. Conducted CPR spot-checks, on-site employee interviews, and other actions, to assess the labor standards performance of the prime contractor and any subcontractors.
7. Detected labor standards discrepancies and other violations and took actions to ensure that all such discrepancies/violations were addressed and resolved.
8. Properly managed any labor standards escrow accounts established for the project.
9. Submitted to HUD any labor standards reports required relative to the project/contract.

- 5-8 **Final closing/close-out review.** The LSS/LCA shall conduct a final closing/close-out review for each project. Final closing/closeout review considers whether there are any labor standards issues that cannot or will not be resolved prior to final closing/closeout and, if so, whether a deposit or escrow requirement must be imposed in order for final closing/close-out to proceed. The LSS/LCA shall review the project files and compliance review records to determine the status of any noted discrepancies or enforcement actions and whether any further actions are needed.

- A. **LSS final closing clearance.** The LSS shall take actions as needed to provide written clearance to the Offices of Housing and General Counsel confirming that:
1. There are no outstanding issues and the project may proceed to final closing without condition; or
 2. Outstanding issues remain, and the closing may proceed conditioned on the deposit to the U.S. Treasury of funds sufficient to meet any wage restitution and/or CWHSSA liquidated damages that have been or may be found due.

Note: Deposit requirements must be approved in advance by the Deputy

Director.

3. If a deposit appears warranted, the LSS shall provide a recommendation to the Deputy Director to impose a deposit requirement, including a report describing the outstanding issues and a schedule for deposit detailing the issues and amounts that are required.
 4. The Deputy Director shall consider the issues presented in the report. Based upon their review, the Deputy Director may:
 - a. Approve the deposit requirement for the deposit amount recommended;
 - b. Approve the deposit requirement for an amount different than recommended by the LSS. The Deputy Director shall notify the LSS of the modified amount and the reasons so the LSS can modify the schedule, accordingly; or
 - c. Disapprove the recommended deposit. In such cases, the Deputy Director shall notify the LSS in writing of their decision and instruct the LSS to provide final closing clearance without condition.
 5. When a deposit requirement is approved by the Deputy Director, the LSS shall enter the deposit requirement in the Labor Standards Information System (LSIS) to generate a deposit ticket number, and prepare a *Deposit Agreement* (form HUD-4732), deposit schedule, and deposit ticket (form HUD-4733, *Wire Transfer Instructions for Labor Standards Deposit Accounts*). The LSS shall provide these documents with the conditional final closing to the Offices of Housing and General Counsel and courtesy copy Headquarters Davis-Bacon and Labor Standards (HQLS). (See also Chapter 9, *Deposits and Escrow Accounts*.) (**Note:** Only deposit ticket numbers generated in LSIS may be used.)
 6. The LSS shall record the final closing clearance in LSIS.
- B. **LCA final review requirements.** HUD imposes no particular protocols concerning a final review. LCAs must ensure that all labor standards issues have been fully resolved or that appropriate provisions (e.g., escrow account) have been or will be put in place to ensure full compliance.

Section II – Basic Enforcement

5-9 **Labor standards compliance monitoring.** Periodic monitoring of project CPRs and related documents is performed to ensure prime contractors and subcontractors (referred to as the employer or employers) comply with the applicable labor standards provisions. Monitoring is primarily focused on identifying willful violations, for example, those involving falsification of CPRs and/or related records. Periodic monitoring can also identify other discrepancies such as work classifications with wage rates that do not appear on the wage decision.

The two key aspects of periodic monitoring include spot-check reviews of project CPRs and on-site interviews with laborers and mechanics employed on the project. CPR reviews may disclose unsatisfactory patterns that warrant closer inspection such as targeted on-site interviews (see 5-9(B) and 5-9(C)(6), below).

- A. **CPR spot-check reviews.** The LSS/LCA shall monitor the labor standards performance of each prime contractor and subcontractors (referred to as employers), including timely CPR submission and reporting requirements. CPR reviews consist of random spot-checks for CPR completion and certification, obvious underpayments, unapproved work classifications, and indicators of falsification. The first CPR spot-check review for each project may provide a pattern of satisfactory labor standards performance on the part of employers, in which case subsequent reviews may be less frequent and/or less intensive.
- B. **Willful violations/payroll falsification.** Detecting willful violations/payroll falsification is a key element of a successful enforcement strategy. Falsification suggests an employer knows what is required to meet prevailing wage requirements; knows it is not meeting the requirements; and is falsifying payrolls to conceal the violations. Employers rarely resort to falsification to hide small wage underpayments; falsification is more typically an attempt to camouflage egregious violations. HUD has developed a list of warning signs to assist compliance monitors in identifying probable willful violations and payroll falsification. These are described in Appendix III-I, *Willful Violations/Falsification Indicators*. In most cases, employee statements, such as those obtained through on-site interviews and questionnaires, are necessary to properly address violations concealed by falsification.
- C. **On-site interviews.** Project inspectors/interviewers (collectively “inspectors”), whether HUD/LCA employees or fee/contract inspectors, are responsible for conducting on-site interviews with laborers and mechanics and recording the information gathered on form HUD-11, *Record of Employee Interview*. HUD DBLS staff shall provide training and technical assistance, as needed, to project inspectors concerning the conduct of such interviews. (*LCAs are encouraged, but not required, to provide inspector training.*) Inspectors are encouraged to utilize judgment in assessing whether and with whom on-site interviews should be conducted during any site visit.

1. **Confidentiality.** Each employee interviewed shall be informed that the information given during the interview is confidential, and that their identity will only be disclosed with the prior written consent of the employee. (See also 4-9, *Confidentiality*.)
2. **Place and timing of interview.** In accordance with DOL regulations at 29 CFR § 5.5(a)(3)(iii) (and relevant HUD contract provisions), all employees working on the site of the project shall be made available during working hours for interview by authorized representatives of HUD, the LCA, and DOL. The interview shall be conducted on the premises at a place that permits privacy for the employee; and of duration that causes the least amount of disruption to the on-going work.
3. **Completeness of information gathered.** The inspector shall ensure that all of the information requested on the HUD-11 interview form is complete and accurately reflects the project identification, date of interview, and employee statements.
4. **Observations and comments of the interviewer.** The on-site observations of the inspector are particularly important, especially where underpayments are indicated. The inspector shall make careful note of their observations on the job site, particularly with respect to the duties actually performed by the employee and any tools used. In addition, the inspector's comments shall indicate whether the employee's statements and the inspector's observations are consistent. Any discrepancies shall be noted by the interviewer on the HUD-11 in the spaces provided. The interviewer shall sign and date the HUD-11 at the completion of the interview.
5. **HUD-11 comparison to CPRs.** Fee/contract inspectors shall promptly forward the completed HUD-11s to the LSS/LCA so they can compare the HUD-11s to the corresponding CPR during regular project CPR reviews. The LSS/LCA should note the result of the comparison, including any discrepancies, in the Payroll Examination section under Remarks (field number 16). The LSS/LCA conducting the payroll examination shall sign and date each HUD-11 (field numbers 17a and 17b) at the completion of such comparison.
6. **Targeted interviews.** Where spot-check reviews and/or the comparison of HUD-11s to CPRs indicate that underpayments may exist, it is appropriate to target interviews to particular laborers or mechanics or to the employees of a certain employer(s). In such cases, the LSS shall prepare a memorandum to the appropriate HUD official describing the suspected violations and requesting targeted interviews appropriate to the violations indicated.

Note: LCAs are expected to target on-site interviews as circumstances warrant and to take actions, as needed, to accomplish this result.

- D. **Questionnaires.** Questionnaires are mailed to employees when the LSS/LCA has reason to doubt the accuracy of the payrolls and underpayments are suspected. These questionnaires are used to test the accuracy of the payrolls and/or to obtain the employees' versions of their working conditions. The information gathered through the use of questionnaires may be used to develop complaints of underpayment. (See *Federal Labor Standards Questionnaire*, form HUD-4730 or HUD-4730-SP for the Spanish version.)

5-10 **Compliance principles and common CPR problems and corrections.** The following paragraphs describe compliance principles and common problems that may surface during spot-check reviews, and the appropriate corrective measures. Regardless of the issues or problems involved, *in no case* should a submitted CPR be returned to the employer. In addition, all correction CPRs must be certified (i.e., accompanied by a properly executed Statement of Compliance).

- A. **Payroll submissions.** DOL regulations require that all employers submit CPRs promptly, generally within one week after the close of the payroll period. The non-submission of CPRs by any employer actively engaged on the project is a serious violation and shall be addressed promptly.

Non-submission corrections. The LSS shall promptly contact the prime contractor and the appropriate HUD office whenever CPRs have not been submitted. Further advances or payments on the prime contract may be reduced or suspended, after 30-days written notice, if CPRs are not submitted.

Note: LCAs shall promptly inform the prime contractor and take necessary action to alert appropriate personnel so that contract payments may be reduced or suspended, as needed.

- B. **Payroll format.** Employers are encouraged to use the HUD system in use for Electronic Payroll or use Payroll Form WH-347 which accounts for all required information and includes the "Statement of Compliance" certification on its reverse side. Employers may utilize any other payroll form if it contains all of the required information and is accompanied by the Statement of Compliance (reverse side of Form WH-347) or a statement containing wording identical to that on the reverse of the WH-347. (See also 4-3, *Certified payroll reports.*)

Unacceptable payroll format corrections. Employers who fail to use an acceptable payroll format or Statement of Compliance shall resubmit the payroll/Statement of Compliance for each such week in an acceptable form.

- C. **Employee identification numbers.** The first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last 4 digits of the employee's SSN. Afterward, the identifying

number does not need to be included unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Missing identification number corrections. Employers shall submit a correction CPR reflecting any missing identification numbers.

- D. **Payroll completion.** CPRs shall be examined to determine if they include all of the required payroll information.

Incomplete CPR Corrections. If information pertaining to wages earned or paid (e.g., work classification, hours, rate of pay, gross earnings, deductions, net pay) is missing, the contractor shall submit a correction CPR.

- E. **Work classifications.** The work classifications reported on the CPRs shall be compared against the wage decision to ascertain whether the classifications are contained therein.

Unapproved work classification corrections. Employers who report work classifications that are not contained in the wage decision shall classify employees in accordance with the wage decision (e.g., reclassifying “Journeyman” to the proper trade classification, or reclassifying “Tapers” as “Painters”). Otherwise, the employer may request an additional classification and wage rate.

- F. **Wage rates paid.** The wage rates reported on the CPRs shall be compared against the wage decision to ascertain whether the wage rates paid are at least equal to the prevailing wage rates required.

Underpayment of wages corrections. Employers who report wage rates paid at less than the prevailing rates shall make wage restitution to the affected employees. (See 5-11, *Restitution Process*.)

- G. **Apprentice and trainees.** The first CPR on which an apprentice or trainee appears shall be accompanied by a copy of that apprentice/trainee's individual registration in a bona fide apprenticeship or trainee program. In addition, the employer shall provide documentation relating to the allowable ratio of apprentices or trainees to journey-workers and the apprentice or trainee wage schedule permitted in the approved training program. The ratio of apprentices or trainees to journey-workers on the job site may not exceed the ratio permitted to the employer in the approved program. Compliance with the ratio shall be reviewed on a daily basis. In addition, each apprentice or trainee shall be compensated in accordance with the wage schedule in the approved program based upon their level of progress.

Apprentice/trainee problem corrections. Employers that fail to provide copies of apprentice/trainee registrations, or documentation pertaining to approved ratios and

wage rates shall submit such documentation with their next payroll submission. Unregistered apprentices or trainees and any apprentice or trainee employed on the job site in excess of the allowable ratio shall be entitled to the wage rate on the wage decision for the classification of work *actually performed* and shall be paid restitution accordingly. (See 5-11(B), *Computing restitution for apprentices or trainees.*)

- H. **Overtime compensation.** For projects subject to CWHSSA overtime provisions, all hours worked on the covered project over 40 hours in a workweek must be compensated at no less than one and one-half times the basic rate of pay plus the straight-time rate of any required fringe benefits. Only hours worked on the *CWHSSA-covered project(s)* are considered when calculating overtime. Any hours worked at other locations are not considered for CWHSSA purposes. However, overtime hours worked on other (non-CWHSSA) projects may be subject to Fair Labor Standards Act (FLSA) overtime requirements.

Under-compensated overtime corrections. Employers that fail to properly compensate CWHSSA overtime hours worked are required to make wage restitution to the affected employees. The employer may also be assessed liquidated damages for each CWHSSA overtime violation. (See 5-11(C) and (D), *Computing CWHSSA Overtime Restitution, and Calculating CWHSSA Liquidated Damages.*) For other, non-CWHSSA covered projects, the LSS or LCA should refer to DOL any potential FLSA overtime violations.

- I. **Payroll computations.** Payroll computations (hours worked times rate of pay) and extensions (deductions, net pay) should be spot checked to determine whether the computations are correct.

Incorrect payroll computation corrections. Errors shall be brought to the employer's attention with instructions to exercise greater care. Restitution shall be required and reported on a correction CPR where underpayments result from such errors.

- J. **Payroll deductions.** Deductions shall be reviewed for any impermissible, unauthorized, or otherwise unusual activity. Deductions may only be made in accordance with DOL Regulations at 29 CFR Part 3.

Questions on deductions. Contractors may send their questions in a scanned signed letter directly to DOL's deduction-specific determination e-mail address, DBAdeductions@dol.gov. The contractor will obtain a letter indicating whether DOL deems the deduction allowable, or not. The DOL decision letter shall be shared with the LSS/LCA.

Impermissible deduction corrections. Employers that report unauthorized deductions shall be required to submit documentation demonstrating the affected employee's consent. Wage restitution shall be made for any unauthorized or impermissible deductions. Questions concerning the permissibility of deductions

shall be referred through the DBLS hierarchy (i.e., LSS, Deputy Director, Hub Director, HQLS). Deputy Directors may also consult with counterpart DOL Regional Wage Specialists for additional guidance.

- K. **Payroll certification/signature.** Each CPR Statement of Compliance shall bear an *original* signature, in ink or other permanent marker, of the owner, corporate officer, or a designee authorized in writing by the owner or a corporate officer.

Missing/unauthorized signature corrections. Where any CPR is not signed by the owner/corporate officer/authorized designee, or does not bear an original signature, the employer shall be required to submit a corrected Statement of Compliance bearing a proper original signature and/or a written authorization for a designee.

- L. **Comparison of HUD-11 on-site interviews to CPRs.** The information recorded on HUD-11 interview forms should agree with information on the corresponding CPR. The LSS/LCA shall compare such information, note the results of the comparison, and sign and date the interview form.

Discrepancies between HUD-11 and CPR; corrections. Where discrepancies are noted, the LSS/LCA shall note them on the interview form. All such discrepancies shall be brought to the attention of the employer who shall be required to submit a correction CPR to resolve the differences. Only the name of the employee interviewed, the date of the interview, and the interviewer's observations may be released to the employer. Any statements of the employee cannot be disclosed without their prior written consent.

Note: The employee's name, date of the interview, and duties observed can be released because every employee must be made available for interview on the job site. This limited disclosure is a function of the interviewer's observation rather than a disclosure of the employee's statements.

- 5-11 **Restitution concepts.** When underpayments of wages have occurred, the employer shall be required to make restitution to the affected workers. Restitution shall be made promptly and in the full amounts due, less permissible and authorized deductions, and shall be documented on a correction CPR.

- A. **Computing Davis-Bacon restitution for laborers and mechanics.** Prevailing wages earned are based upon the wage rate for the classification of work actually performed, multiplied by the total number of covered hours worked.

Wage restitution may be computed as follows:

1. Total hours worked times (x) adjustment rate (DB rate – rate paid) = wage restitution due; or
2. Total wages earned minus total wages paid = wage restitution due.

- B. **Computing Davis-Bacon restitution for apprentices or trainees.** Wage restitution for apprentices or trainees who have been employed on the project in excess of the allowable ratio, or for unregistered apprentices or trainees, shall be computed based upon the wage rate(s) contained in the applicable wage decision for the type of work actually performed.

If a contractor or subcontractor employs apprentices or trainees in such a number that the permissible ratio is exceeded, all apprentices/trainees employed in excess of the ratio are considered to have been improperly employed and will be entitled to the wage rate for the classification of work actually performed. For example, if an employer is permitted to employ three apprentices under the approved plan and it is disclosed that they are employing five apprentices on the project, the first three apprentices employed on the project shall be considered within the quota; the last two apprentices shall be considered improperly employed and are entitled to wage restitution. As a practical matter, if it is impossible to determine which apprentices were first employed on the project for the purposes of back wage computation, any equitable formula will be acceptable. For example, in the preceding situation, it would be permissible and equitable to rotate three of the five apprentices and compute back wages for the remaining two apprentices in a manner that distributes the back wages as equally as possible.

- C. **Computing CWHSSA overtime restitution.** Overtime (O/T) wages are based upon one and one-half times the basic hourly rate of pay, plus the straight-time rate of any required fringe benefits, multiplied by the number of overtime hours worked. The premium pay (1/2 time pay) is not applied to fringe benefits.
- D. **Calculating CWHSSA liquidated damages.** Liquidated damages are calculated with respect to each employee at the published DOL rate¹ for each day on which the employee was required or permitted to work in excess of the standard (40 hour) workweek without payment of the premium O/T pay required by the Act. *Note:* Liquidated damages are also calculated in situations where an employee is paid O/T at an incorrect rate of premium pay.

For example, if an employee worked six 11-hour days in a single workweek and was not paid the O/T rate, \$81 in liquidated damages would be computed at \$27/day (in 2021 rates) for each of the three calendar days on which hours over 40 were worked and not paid at the O/T rate.

- E. **Correction CPRs.** The employer is required to report the restitution on a correction CPR, which shall reflect the previous CPRs or period of time for which restitution is due (e.g., Payroll numbers 1 through 6 or a beginning and ending date). A properly executed Statement of Compliance shall accompany the correction CPR.

¹ Per 40 USC 3702(c); Pub. L. 114-74, § 701. The following DOL page contains the current CWHSSA amount, which changes annually: <https://www.dol.gov/whd/govcontracts/cwhssa.htm>. The law requires DOL to adjust their penalties for inflation not later than January 15 of every year.

The correction CPR shall list:

1. each employee to whom restitution was paid;
2. the employee's work classification;
3. the total number of work hours involved;
4. the adjustment wage rate (the difference between the required wage rate and the wage rate paid);
5. the gross amount of restitution due;
6. deductions; and
7. the net amount paid.

Note: During basic enforcement and corrections, the employer need only submit a correction CPR to evidence wage restitution paid. Other documentation such as copies of checks, copies of cancelled checks, receipts signed by the employees, employee signatures on the correction CPR, etc., is not required.

- F. **Review of correction CPR.** The LSS/LCA shall compute the amounts of restitution due and compare their computations to the correction CPR to ensure that full restitution was made. The LSS/LCA shall notify the employer of any discrepancies. The employer shall be required to make additional payments, if needed, evidenced on a correction CPR, within 30 days.
- G. **Stipulation to future compliance.** Where the nature and/or scope of the violations are deemed substantial or serious, where the violating employer has been uncooperative, or where continued compliance is in question, the LSS/LCA may request that the employer provide a stipulation to future compliance. This is particularly important where a recurrence of labor standards violations is probable. The LSS may consult with the Deputy Director as to whether a stipulation is appropriate. The refusal of an employer to provide a stipulation when requested by LSS/LCA is deemed serious and may be cause for HUD to refer the matter to DOL for further consideration. LCAs shall make any such referrals through HUD.
- H. **Withholding from payments due the contractor.** If wage violations are not corrected within 30 days after notification to the prime contractor, the LSS/LCA may cause a withholding from payments due to the contractor of an amount necessary to ensure the full payment of restitution and, if applicable, to cover liquidated damages computed for CWHSSA overtime violations. Only the amounts necessary to meet the potential back wage and CWHSSA liquidated damages liabilities shall be withheld.
- I. **Unfound/unpaid workers.** The amount of wages due to any employee who is entitled to wage restitution and is not paid for any reason shall be placed in a deposit or labor standards escrow account as a condition for final closing/close-out.

5-12 **Restitution process.** When it is believed that underpayments have occurred, the LSS/LCA shall notify the employer of the apparent underpayments and request an explanation and/or correction. At each step and level of review, efforts should be made to resolve any dispute(s) and to correct the underpayments and any other violations or discrepancies.

Note: Except in the most extraordinary circumstances, it is always preferable that the employer pay any restitution found due directly to the affected employee(s).

A. **Initial notice to the employer.** Depending on the severity of the potential violations/underpayments, the LSS/LCA may contact the employer informally (e.g., by telephone or email) to secure resolution of the noted discrepancies.

1. If the employer's response/explanation is satisfactory, the LSS/LCA shall make appropriate notes to the file (the LSS shall record such notes in LSIS).
2. If employer's response/explanation does not negate back wage findings and the employer agrees to pay the back wages:
 - a. The LSS/LCA shall instruct the employer to compute and pay back wages to the affected employees and submit a corrected CPR within 30 days. When the corrected CPR is received, the LSS/LCA shall test and verify the back-wage computations and payments to the employees.
 - b. If amounts paid agree with the verification, the LSS/LCA shall record the restitution paid in file (the LSS shall record in LSIS).
 - c. If amounts paid do not agree with the verification, the LSS/LCA shall contact the employer for further corrective action.
 - d. The LSS/LCA shall calculate and inform the employer of any CWHSSA liquidated damages that may be assessed for overtime violations. Generally, a stipulation to future compliance is not warranted when violations are minor and/or where the employer is cooperative and corrects the violations promptly.

B. **Determination of back wages due.** If the employer's response/explanation does not negate the back-wage findings and the employer refuses to pay back wages, the LSS/LCA shall compute back wages and CWHSSA liquidated damages, as applicable, and shall transmit a written determination of back wages found due and right to appeal to the employer by receipted mail (e.g., certified mail or other service requiring acknowledgement of receipt).

Determinations shall include the:

1. Summary of findings;
2. Schedule of back wages found due; and
3. Notice of obligation to correct the underpayments and of the employer's right

to dispute (appeal) the findings within 30 days (see 7-4 *Notice of right to appeal*)

A copy of the determination shall be sent to the prime contractor with notice of its responsibility to ensure correction of the employer's violations. (The LSS shall send a copy of both the determination and the notice to the prime contractor to the Deputy Director.)

- C. **Adjustments to findings.** If the employer or prime contractor responds to the LSS/LCA determination and/or notice seeking resolution, the LSS/LCA shall adjust the findings of underpayment, as appropriate, based upon the employer's and/or prime contractor's response(s).

Note: LSS/LCA staff *do not* have the authority to enter into negotiations with the prime contractor, employer or any other entity concerning wage restitution liabilities, e.g., 75% of the total amount due; 50 cents on the dollar. However, reconstruction of the labor and wage payment history may involve estimations based on the best judgment of all available information.

These estimations may be adjusted because of additional information received, e.g., the percent of hours worked in one classification versus another. LSS/LCA staff must be careful to stay within the boundaries of adjustment based on information available and to not engage in negotiated settlements.

1. If agreement can be reached, the LSS/LCA shall direct the employer and/or prime contractor to pay and document wage restitution on a corrected CPR within 30 days.
 2. When the corrected CPR is received, the LSS/LCA shall test and verify the amounts of back wage paid to the employees.
 - a. If amounts paid agree with the verification: the LSS shall record the restitution paid in LSIS; the LCA shall maintain documentation of the restitution paid.
 - b. If amounts paid do not agree with the verification, the LSS/LCA shall contact the employer/prime contractor for further corrective action.
 3. The LSS/LCA shall calculate and inform the employer of any CWHSSA liquidated damages that may be assessed for overtime violations.
- D. **Failure to respond or appeal.** See Chapter 7, *Disputes Appeals Sanctions*, for details on the process.

5-13 **Assessing CWHSSA liquidated damages.** Contractors and subcontractors that violate the overtime provisions of the Contract Work Hours and Safety Standards Act (CWHSSA) are liable for the unpaid wages and liable to the United States for liquidated damages. Liquidated damages² are calculated at a rate set by DOL as a per day, per violation and changes annually (see 5-11(D)).

- A. **Notice of intent to assess.** In every case where overtime violations are disclosed, the LSS/LCA shall notify the employer in writing of the amount of liquidated damages computed, the bases for the computations, and the agency's intent to assess. A copy of the notice shall be sent to the prime contractor when the employer involved is a subcontractor. The notice shall inform the employer that it has 60 days to file a written request for a reduction or waiver of liquidated damages and that absent a timely reduction or waiver request, the determination is final.
- B. **Reduction or waiver of liquidated damages.** The employer may request a reduction or waiver of liquidated damages. The only grounds for approving a reduction or waiver are where the computation of liquidated damages is incorrect or that the violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer. The employer's request shall be made in writing within 60 days after the date of the notice and shall explain the reason(s) why a reduction or waiver is warranted. For LCAs, see number 5 below.
1. If the computed amount of liquidated damages is \$100 or less, the LSS may issue a final order affirming, reducing or waiving liquidated damages.
 2. If the computed amount of liquidated damages is greater than \$100 but no more than \$500, the Deputy Director may issue a final order affirming, reducing or waiving liquidated damages.
 3. If the computed amount of liquidated damages is greater than \$500, the matter must be forwarded to DOL through the Deputy Director and HQLS for disposition. The Deputy Director shall forward to HQLS a copy of the notice, the employer's request and any other pertinent documentation or information, together with a recommendation whether to affirm, reduce or waive the amount of liquidated damages. After review, HQLS will either issue a final order affirming the assessment of liquidated damages or transmit a recommendation for reduction or waiver to DOL for final decision.
 4. Final orders that affirm or reduce the amount of liquidated damages shall state that the employer may appeal the order to the U.S. Claims Court, Washington, D.C., within 60 days of the date of the order.
 5. LCAs shall refer any request for reduction or waiver to the appropriate LSS *except* that state agency LCAs may refer such requests directly to DOL.

² Per 40 USC 3702(c); Pub. L. 114-74, § 701.

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- C. **Implementing the final order.** The LSS/LCA shall take appropriate action to implement a final order affirming, reducing, or waiving the amount of liquidated damages assessed, or an assessment that has become final absent a request for reduction or waiver. All liquidated damages assessed must be paid over to HUD.
1. If funds have been withheld or placed in a deposit or labor standards escrow account and the amount in reserve is greater than the amount of the assessment, any excess funds shall be released to the depositor or to the entity to which the withheld/escrowed funds belong. (A full refund is likely appropriate when liquidated damages have been waived.)
 2. If the amount in reserve (e.g., withholding, deposit, labor standards escrow), if any, is less than the amount required, the additional amount needed is collected from the employer. If the employer is unable or unwilling to furnish additional funds, a demand shall be made on the prime contractor.
 3. In accordance with Miscellaneous Receipts Act, DBLS shall transfer semi-annually to the U.S. Treasury liquidated damages assessed to contractors during the previous six-month period.
 4. The LSS shall provide instructions to contractors and LCAs for payment of liquidated damages by wire transfer to the HUD U.S. Treasury account.
- 5-14 **Liquidated damages arising from a DOL enforcement action.** Where a DOL investigation or other enforcement action discloses CWHSSA overtime violations, DOL will transmit a report of the action and its computation of associated liquidated damages to the relevant federal agency for its disposition. If the violation occurred at an LCA, the LSS will contact the LCA and that agency will undertake the actions in paragraph 5-13; otherwise the LSS shall follow the instructions at paragraph 5-13 to assess and implement the final order regarding these liquidated damages.

Related Appendices

III-1 Willful Violations/Falsification Indicators