

Chapter 7 DISPUTES, APPEALS, SANCTIONS

7-1 **Introduction.** This Chapter concerns disputes that may arise in the course of the administration and enforcement of the Davis-Bacon and Related Acts (DBRA) labor standards in HUD programs and sanctions that may be imposed for DBRA labor standards violations.

Disputes may involve differences of opinion in the application of prevailing wage standards or wage determination, the wages determined to prevail, the permissibility of additional classifications and wage rates, the payment or underpayment of wages, or a combination of reasons.

Sanctions may include assessment of penalties/liquidated damages for Contract Work Hours and Safety Standards Act overtime violations, suspension of contract payment, withholding of federal assistance, contract termination, debarment from participation in federal programs, and for falsification, a conviction resulting in monetary fine, imprisonment, or both.

This chapter highlights the important provisions related to disputes, appeals, and sanctions. It is divided into three sections:

- Section I covers disputes and appeals to HUD and/or the U.S. Department of Labor (DOL).
- Section II covers matters relating to Local Contracting Agency administration and enforcement of labor standards.
- Section III covers the range of sanctions that may be imposed for DBRA-associated alleged, suspected, or known labor standards violations.

Section I Disputes and Appeals to HUD and/or DOL

- 7-2 **Rulings and interpretations unrelated to findings of underpayment.** The U.S. Department of Labor (DOL) is the authority for rulings and interpretations unrelated to findings of underpayments. This includes disputes concerning the prevailing wage rates as determined by DOL, Davis-Bacon and Related Acts (DBRA) applicability, character of work decisions, and interpretation and application of DOL regulations at 29 CFR Parts 1, 3, and 5. These and other such matters must be referred to the DOL Wage and Hour Administrator for their ruling and/or interpretation per 29 CFR § 5.13. Any request for a ruling or an interpretation from the DOL Administrator via DBLS must be submitted through HQLS with a copy to the local HUD Labor Standards Specialist (LSS). (See also Chapter 3, paragraphs 3-17(C)(7) and 3-18.)
- 7-3 **Disputes concerning findings of underpayment.** Underpayments usually occur when a contractor or subcontractor does not properly pay wages according to the approved wage determination and it has been identified as part of a Davis-Bacon and Labor Standards (DBLS) enforcement action. There may be other situations that also create underpayments and they can originate from the employer, prime contractor, or any other interested party. Any underpayment decision by DBLS will include a formal decision letter with a Notice of Right to Appeal.
- 7-4 **Disputes concerning findings in monitoring.** Local Contracting Agencies (LCAs) are the primary party for disputes in monitoring findings. The LCA may appeal to the DBLS staff who conducted the review. Appeal of Monitoring Findings is described in Chapter 12, paragraph 12-22(L), *Opportunity to contest findings*.
- 7-5 **Notice of right to appeal.** When DBLS issues a determination of wages due, it shall include a notice of the involved parties' right to appeal the determination. A proper notice shall state the following:
1. The level of appeal, including the name and address of the person to whom the appeal must be made;
 2. Appeals will only be considered if submitted by receipted mail (e.g., certified mail or other method requiring receipt of delivery.);
 3. Appeals must be received or postmarked within 30 days of the notice;
 4. Failure to appeal within 30 days makes the last decision final;
 5. LSS determinations are subject to review by the respective Deputy Director; Deputy Director determinations are subject to review by Hub Directors; Hub Director determinations are subject to review by Headquarters Davis-Bacon and Labor Standards (HQLS). (See Chapter 5, paragraphs 5-11(B), (C) and (D).); and
 6. The appealing party must identify the dispute in question in its appeal, why the determination was incorrect or improper, and provide supporting documentation to support the appeal.

- 7-6 **Submission of appeal.** Appeals must meet the following requirements to be considered:
1. Submitted in writing by mail with return receipt requested;
 2. Directed to the attention of the appropriate person for the appeal;
 3. Postmarked or received no later than 30 days after the date of the notice;
 4. Include supporting documentation; and
 5. Follow any additional information provided in the notice of right to appeal.

- 7-7 **Case file preparation for wage underpayment.** When the LSS knows that an appeal has been or will be filed, they shall prepare the case file for submission to the Deputy Director, *except* where the Deputy Director has issued or reviewed the original determination of wages due. When a case is referred to HQLS, a case file must be prepared if one is not already completed. All case files must contain a narrative report of the enforcement activity, status, and disposition, plus the following information:

1. Project name, number, and location;
2. Applicability (e.g., labor standards clause of HUD statute);
3. Wage decision number, modification number, and effective date;
4. Confirmation that the wage decision and labor standards clauses are in the contract for construction;
5. Construction progress;
6. Prime contractor and employer found in violation;
7. Alleged violations, number of affected employees, and total amount found due;
8. Documentation and any other evidence supporting the conclusions; and,
9. Back wage computations.

The report must be accompanied by supporting documentation including a copy of all applicable wage decisions, copies of certified payroll reports and other related employer submissions, copies of any other documentation or evidence upon which the conclusions are based, back wage computations, copies of related correspondence, and the schedule of wages due.

- 7-8 **Preparation of the case file for monitoring findings.** At a minimum, the case file shall include the following information:

1. LCA name and location;
2. Applicability (e.g., identify which labor standards clauses of the HUD Davis-Bacon and Related Acts apply);
3. Monitoring report;
4. Reason for appeal; and
5. Documentation and any other evidence supporting the conclusions.

- 7-9 **Case review.** The Deputy Director, and if necessary HQLS, shall review the case file. At each level of review, efforts should be made to resolve the dispute(s) and to correct the underpayments and any other violations.

The purposes of the case file review are to:

1. Validate the findings presented and/or back wage computations;
2. Adjust the findings/calculations, as appropriate;
3. Consider the appellant's arguments against the findings/calculations;
4. Work with the parties to resolve the findings and try to come to a mutual agreement on the case;
5. If agreement to pay is not reached, ensure the sufficiency of the findings and evidence to continue the appeal process; and
6. Issue a determination to the contractor.

A. **Deputy Director review.**

1. The Deputy Director shall consider the appellant's arguments and documentation against the findings and advise the appellant of their determination.
2. If an agreement is reached, the Deputy Director shall confirm the agreement in writing to the appellant, and (if appropriate) return the case file to the LSS with instructions to implement the agreement and verify compliance with its terms.
3. If an agreement or resolution of finding(s) is not reached:
 - a. The Deputy Director shall submit the case file with a memorandum to HQLS explaining the issues in dispute and request review.
 - b. The Deputy Director shall advise the appellant in writing of the referral and request to HQLS.

B. **HQLS review.**

1. The National Director or their designee shall consider the appellant's arguments and documentation against the Deputy Director's decision and findings.
2. If an agreement can be reached, the National Director or designee shall confirm the agreement in writing to the appellant and return the case file to the Deputy Director with instructions to implement the agreement and verify compliance with its terms.
3. If an agreement cannot be reached, the National Director shall issue his or her decision and advise the appellant of their determination and right to appeal.
4. For appeals of maintenance wage rates or monitoring findings, HQLS is the last step. For anything else, if an agreement is not reached, the National Director/designee shall refer the case to the DOL Regional Administrator for that region (per [All Agency Memorandum 182](#)) for a hearing and shall advise the appellant in writing.

Section II Disputes and Appeals to LCA Decisions and Enforcement Actions

- 7-10 **Disputes over wage rates issued by the LCA.** Disputes from the employer, prime contractor, or other interested parties over wage rates issued by the LCA may be appealed to HUD. The process is very similar to what is covered in Section I regarding DBLS wages due determination appeals, but it is specific to LCA determinations.
- 7-11 **Notice of right to appeal.** When an LCA issues a determination of wages due, it shall include a notice concerning the right of the parties involved to appeal the determination to the next level of authority. Wage rates are subject to review by the respective LSS (follow Chapter 5, paragraphs 5-11(B), (C), and (D)). The LCA shall prepare the notice in the following manner:
1. Include the name and address of the DBLS staff to whom the appeal should be addressed;
 2. Include a statement that the appeal must be postmarked or received within 30 days after the date of the notice;
 3. Advise that the appeal must identify the findings in dispute and why; and,
 4. Advise that the appeal must include supporting documentation.
- 7-12 **Failure to respond or appeal.** If the employer fails to respond or appeal the case, the LSS/LCA shall notify the prime contractor by receipted mail (e.g., certified mail or other service requiring acknowledgement of receipt) of the employer's failure to correct.
1. The notification shall include:
 - a. Summary of findings;
 - b. Schedule of back wages due;
 - c. Notice of prime contractor's obligation to correct and its right to appeal (See Chapter 7, paragraph 7-5, *Notice of right to appeal*); and
 - d. Notice that failure to respond within the time allotted will result in a final letter of determination being issued to the prime and subcontractors with the Deputy Director taking appropriate action to ensure the LCA pays the back wages.
 2. The LCA shall take actions necessary to withhold a sufficient amount from contract payments to cover the back wages computed, if warranted.
 3. The LSS shall send a copy of the notice to the prime contractor to the Deputy Director.
 4. The Deputy Director shall instruct the LCA to pay the back wages if there is no response by the parties to the notice and shall issue a final letter of determination to both the prime and the subcontractors.
- 7-13 **Preparation of the case file for underpayment.** When it is known that an appeal has been or will be filed, the LCA will work with the LSS to prepare the case file for submission to the Deputy Director in accordance with sections 7-7 and 7-8 as appropriate.

- 7-14 **Case review.** The LSS or Deputy Director, and if necessary HQLS, shall review the case file in accordance with section 7-9 with the additional instructions below.

In addition to the review process in section 7-8, the LSS or Deputy Director shall, provided an agreement is reached, confirm the agreement in writing to the appellant, and (if appropriate) return the case file to the LCA with instructions to implement the agreement and verify compliance with its terms. This includes the Deputy Director issuing instructions to the LCA to ensure back wage payments have been made.

Section III Sanctions

- 7-15 **General.** There is a range of sanctions that may be imposed for DBRA-associated alleged, suspected, or known labor standards violations and they are described below by statute. Violations (alleged, suspected, or known) may result in any of the following sanctions:
- A. **Sanctions under Davis-Bacon and Related Act provisions/standards.**
 - 1. Reduction or suspension of contract payments.
 - 2. Denial of federal assistance.
 - 3. Suspension or debarment from participation in federal programs.
 - B. **Sanctions under Contract Work Hours and Safety Standards Act (CWHSSA).** In addition to the sanctions described above at 7-16(A):
 - 1. Liquidated damages accruing per day per violation (see DOL website for the amount, which changes annually).
 - 2. Potential for criminal charges for intentional violations under CWHSSA, a federal misdemeanor, punishable for each and every offense by a fine of not more than \$5,000 or imprisonment for not more than six (6) months, or both.
 - C. **Sanctions under the Copeland Act.** There are three levels of Copeland Act violations. In addition to the sanctions described above at 7-16 (A):
 - 1. **Unauthorized deductions.** Same as 7-16(A) *unless* associated with certified payroll falsification or kickbacks (see below.)
 - 2. **Payroll falsification.** Criminal prosecution resulting in monetary fines up to \$250,000 for a person or \$500,000 for a corporation and/or imprisonment for up to five (5) years.
 - 3. **Kickbacks.** Criminal prosecution *only* where the nature of federal assistance is more than a loan guarantee or insurance. **Note:** In every instance where such kickbacks are alleged, suspected, or known, the issue must be referred to DOL immediately.
- 7-16 **Referrals/recommendations regarding sanctions.** Any referrals or recommendations for sanction must be submitted to the appropriate authority, through appropriate channels. In all cases, states may submit any such referral or recommendation to the DOL Regional Administrator directly (per DOL [All Agency Memorandum 182](#)).
- A. **Reduction or suspension of contract payments.** The LSS/LCA may request or impose restrictions on contract payments. An LSS should consult with and secure the concurrence of the Deputy Director for the jurisdiction involved and send a notice of intent to withhold funds to the prime contractor if the decision is made to proceed. An LCA does not need DBLS concurrence to reduce or suspend contract payments. An LCA should follow whatever protocols are in place at the respective agency.

-
- B. **Suspension or debarment from participation in federal programs.** DOL has the sole authority to impose suspension and/or debarment relating to violations of the DBRA labor standards provisions on contractors, subcontractors, and any firm, corporation, partnership, or association in which a contractor or subcontractor has a substantial interest, where aggravated or willful violations of DBRA labor standards have been committed.

DBLS/LCA staff must submit any suspension/debarment recommendations through the established hierarchy:

1. LCA to LSS
2. LSS to Deputy Director
3. Deputy Director to HQLS
4. HQLS to DOL

- C. **Criminal prosecution.** The DOL shall determine any case involving alleged, suspected, or known DBRA violations that may involve criminal prosecution (i.e., falsification of certified payrolls or kickbacks).

1. **Payroll falsification.** Cases that involve certified payroll falsification may be referred to DOL for its investigation at the outset or referred to DOL for administrative review/hearings or other sanctions. All referrals suggesting consideration for criminal prosecution must be submitted through the established hierarchy as identified above at 7-17(B). States may submit any such recommendation to the DOL directly.
2. **Kickbacks.** As indicated at 7-16(C)(3) above, every instance of alleged, suspected, or known kickbacks where the nature of federal assistance is more than a loan guarantee or insurance must be referred to DOL immediately upon such recognition.