
Chapter 9 DEPOSITS AND ESCROW ACCOUNTS

- 9-1 **Introduction.** HUD programs that include the payment of prevailing wage rates (i.e., Davis-Bacon or HUD-determined wage rates) require the principal contractor's and any subcontractors' full compliance before a project or contract is finally accepted.

Excluding this introduction, which is appropriate for all users, this chapter is organized into three sections that are targeted towards specific audiences:

- Section I is for HUD Davis-Bacon and Labor Standards (DBLS) staff
- Section II is for HUD Headquarters Labor Standards (HQLS) staff
- Section III is for Local Contracting Agency (LCA) staff

In some situations, certain labor standards issues are not or cannot be resolved in time to meet project close-out schedules. In order to permit a final closing/close-out to proceed while certain labor issues are outstanding, a deposit account (HUD-administered projects, e.g. Multifamily Housing insured and grant programs) or an escrow account (Local Contracting Agency-administered projects, e.g., CDBG, HOME, HOPE VI) may be established as a guarantee to ensure the payment of any wages which have been or may be found due to workers that were employed in the construction of the project. Deposit and escrow accounts may also hold fringe benefits payments that are due to plans or programs and/or liquidated damages that are assessed for violations of Contract Work Hours and Safety Standards Act (CWHSSA) overtime provisions.

General Guidelines

- A. Every effort should be made to fully resolve all labor standards issues early on to avoid imposition of deposit/escrow accounts. Investigations involving misclassification, falsification, or understatement of material facts may be difficult to estimate. HUD and Local Contracting Agency (LCA) staff will need to make a best effort to estimate the value of necessary withholding and ensure that withholding does not exceed that amount. Deposit/escrow accounts are necessary to ensure a corrective action. They are not imposed as a punishment or penalty.

At seventy-five percent (75%) construction completion (and well before the milestone of project acceptance or the "substantial project completion milestone"), a risk assessment should be performed to assess potential labor claims and wage liabilities relative to the project's construction closeout procedures.

- B. Generally, only one deposit/escrow account is established per project; however, more than one deposit may be made to any deposit/escrow account.
- C. Once a deposit or escrow account is created, it is critical that the assigned HUD or LCA staff continue to address any issues that led to its creation and, ultimately, dispose of the deposit/escrow account. The best disposition in all cases is disbursing all of the funds from the account to the appropriate parties and bringing it to a zero balance.

Necessary actions may include:

1. Completing reviews to determine exact amounts of wage restitution due and communicating the findings to the prime contractor and employer(s) involved;
 2. Verifying restitution payments or making such payments to underpaid workers;
 3. Preparing cases that are in dispute for referral to the U.S. Department of Labor (DOL); and
 4. Assessing and collecting liquidated damages for CWHSSA overtime violations.
- D. Final payment to the prime contractor should only occur after the settlement/resolution of all labor standards issues or potential issues with deposit accounts prepared for any actual or potential back wage liabilities.
- E. Arrangements must be made for underfunded fringe benefit contributions and/or the assessment of liquidated damages where CWHSSA overtime violations have occurred.
- F. All HUD deposit accounts, including disbursements, must be recorded and managed in the Labor Standards Information System (LSIS).
- G. This chapter only addresses deposits and escrows established for labor standards violations and does not pertain to withholdings or retainages that may be established for other purposes.

Section I – Different Types of HUD Initiated Deposit Accounts – HUD Staff

- 9-2 **HUD-initiated deposits.** HUD-initiated deposits are typically created for projects that are directly administered by DBLS staff (e.g., MFH insured and grant programs). These deposit procedures allow the employer to remedy back wage liabilities/claims while simultaneously allowing the lender/sponsor to move forward with a final closing/endorsement.

HUD-initiated deposit requirements may be imposed only with the approval of the Deputy Director. The Labor Standards Specialist/Staff (LSS) assesses when a deposit appears necessary and recommends to the Deputy Director that a deposit be imposed with the amount that will be required to satisfy an estimated liability. The principal contractor or another party (e.g., sponsor, owner, developer) shall make a deposit to the U.S. Treasury by means of wire transfer to an account specified by HUD. The deposit must occur prior to final closing/endorsement.

HUD will not accept alternate arrangements (e.g., escrow accounts held by a mortgagee or other financial institution) to ensure resolution of labor standards issues on HUD-administered projects.

- 9-3 **DOL-initiated deposits.** DOL-initiated deposits are typically created concurrently with investigational referrals from HUD or an LCA to DOL. It is possible for HUD to retain funds until DOL has finalized back wage liability calculations and has issued a letter requesting funds. HUD may redirect funds to DOL for disposition of wage claims. The benefits of this methodology are that once the deposit has been transferred to DOL for disposition, HUD staff or the LCA may proceed with routine closeout procedures without needing to directly manage a deposit account. Once the funds are provided to DOL, HUD staff can expect DOL to directly manage any administrative appeals or disposition of deposit accounts.

It is highly recommended, when possible, for funds to be directly wired to DOL. This will save both HUD and DOL an administrative burden.

- 9-4 **LCA-initiated deposits.** Local Contracting Agencies may also initiate HUD deposit accounts. In these cases, LCAs are turning over to HUD wage restitution that has been found due and collected on behalf of underpaid workers who could not be located after three years (*aka* unfound worker accounts) and/or liquidated damages that have been assessed and collected for CWHSSA overtime violations. HUD requires LCAs to continue searching for unfound workers for three years before funds are transferred. At the time of referral of the deposit account to HUD, the LCA must notify HUD of its intent to initiate a deposit account and obtain a deposit ticket and banking instructions to accomplish the wire transfer of funds to the U.S. Treasury. Note that fund transfers initiated by an LCA to a HUD deposit account will always be from an escrow account established by the LCA under Section 3.

Once at HUD, these funds will be transferred out of HUD's account into the general fund of the U.S. Treasury for permanent retention.

9-5 **Purposes for deposit accounts.** There are four defined purposes for deposit requirements, each with remedies and disposition.

- A. **Deposit purpose 1:** To proceed to closeout/final closing *without awaiting receipt of evidence that workers have received wages determined to be due them* in the respective amounts listed on a Schedule of Back Wages Due attached to the Deposit Agreement (see paragraph 9-8 for more information about deposit agreements and schedules).

Deposit purpose 1 applies to cases where there are no disputes about the amounts due to the employees, but the contractor/employer is not yet able to produce evidence that all affected workers have received wage restitution. For example, the contractor or subcontractor may not have submitted a certified correction payroll report or has not been able to locate all affected workers. The process includes:

1. **Deposit amount.** The LSS determines the deposit amount by calculating (or the contractor may calculate and the LSS will confirm) the total gross amount of wages and fringe benefits due and, as yet, undocumented or unpaid.
2. **Worker information.** At the time of the deposit, the contractor/employer *must* provide the last known mailing address, phone number, email, and full Social Security Number for each worker with back wages due. The contractor/employer will need to fill out the *Supplier Entry Request Form* provided by the LSS, which includes the routing instructions for any returned funds.
3. **Disposition.** After the deposit is made, the contractor/employer continues to pay the workers that can be located. As the contractor/employer produces evidence of such payments to workers and the corrected certified payroll report(s), amounts equal to the payments are released back to the depositor.

If the contractor cannot locate certain employees (unfound workers), HUD continues to hold enough funds to pay the wage restitution due to the unfound workers and continues attempts to locate such workers for a period of three (3) years after the date the deposit was established. After this three-year period, HUD is not obligated to continue the search for unfound workers and any funds remaining in the deposit account are turned over to the general fund of the U.S Treasury.

- B. **Deposit purpose 2:** To proceed *without awaiting an administrative determination of the wages which may be due and unpaid* for work performed in the construction of the project.

In these cases, the underpaid workers and the amounts of wage restitution due have not yet been determined. For example, an investigation by HUD or DOL may be ongoing, or restitution calculations may not be complete.

1. **Deposit amount.** To determine the amount required for deposit, the LSS will estimate as closely as possible the full amount of wages, including any fringe benefits which may be due, and the amount of liquidated damages that may be computed for any CWHSSA overtime violations. DOL will supply the estimate where it is conducting the investigation. The deposit schedule indicates which employer or employers are involved and the amount estimated due each employee.
2. **Disposition.** When HUD (or DOL, as appropriate) determines the amounts of wages due and/or liquidated damages, HUD will continue to hold sufficient funds to pay the total amount due and release any excess funds to the depositor.

- a. **Conversion to purpose “1”:** If the contractor/employer agrees with the determination of wages due, the deposit converts to a Purpose 1 (above). The contractor pays the affected workers in accordance with the schedule of wages due and submits certified correction payroll reports as evidence of such payments.

Amounts are released to the depositor as evidence of payments to workers is produced. It is always preferable for the *employer* to make the restitution payments directly to the employees. However, if the employer is unable to do so, HUD may make disbursements from the account directly to the underpaid workers (in accordance with the schedule). Restitution for unfound workers is retained as described above with the 3-year period beginning on the date that agreement on the determination of wages due is reached.

Note: For cases involving DOL investigations, DOL will generally secure a release from the depositor permitting DOL to collect from HUD the deposited funds and to pay the workers directly from those funds. Upon receipt of such release and written instruction from DOL, HUD shall pay over to DOL the total amount authorized by the depositor. Any amounts secured for CWHSSA liquidated damages are retained by HUD. Any excess funds will be released to the depositor. DOL may also obtain funds directly from the contractor or sponsor. In such circumstances, HUD will await confirmation from DOL on receipt of the funds prior to providing closing clearance for final closing.

- b. **Conversion to purpose “3”:** If the contractor/employer appeals the determination of wages due, the deposit converts to a Purpose 3 (below).
- C. **Deposit purpose 3:** To proceed *without awaiting the outcome of an appeal* that has been filed or is to be filed with DOL by the contractor or employer contesting the finding of HUD or DOL, as the case may be, that wages for work performed in the construction of the project are due and unpaid to workers as named and in amounts shown on a schedule of wages due attached to the Deposit Agreement.

For these cases, HUD or DOL has rendered a final determination and the contractor or employer has requested a hearing with DOL concerning the findings.

1. **Deposit maintenance.** HUD will maintain the deposit pending the outcome of all administrative appeals.
2. **Disposition.** When a final decision is reached, and/or all administrative appeals are exhausted, HUD will disburse funds from the deposit account in accordance with the judgment rendered. The agreement will convert to a Purpose 1 for the total amount of wage restitution found due. The excess balance, if any, will be returned to the depositor unless ordered otherwise in the judgment, or unless the funds are required to ensure payment of other wage restitution.

D. **Deposit purpose 4:** Where *liquidated damages* have been calculated and/or assessed for violations pertaining to CWHSSA overtime provisions.

In these cases, an investigation or determination of wages due involving CWHSSA overtime violations resulted in calculations for liquidated damages.

1. **Deposit amount.** HUD has issued or will issue a notice of intent to assess the liquidated damages. An amount equal to the liquidated damages calculated is placed on deposit.
2. **Disposition.** If the liquidated damages amount has been assessed and the contractor/employer has not contested the assessment, the full amount is retained by HUD.

If the contractor requests a reduction in whole or in part of the liquidated damages assessed, the calculated amount is retained until a final decision on the assessment is reached. Once the final decision is made, the damages (if any) are retained and any excess is returned to the depositor provided that the funds are not required to ensure payment of other CWHSSA liquidated damages or wage restitution.

9-6 **Mixed deposits.** Some projects may approach final closing with a variety of issues pending and may require a *mixed deposit* as a result. A mixed deposit means that funds are needed to ensure payment of wage restitution (and liquidated damages, where applicable) arising out of different kinds of situations. For example, there may be a subcontractor that agrees with a finding of underpayment but cannot locate all of the underpaid employees (i.e., unfound workers) which would require a Purpose 1 deposit, while another subcontractor has appealed a determination of wages due requiring a Purpose 3 deposit.

In these cases, only one deposit agreement and schedule are prepared, and one account is established. Differentiations between multiple purposes of a mixed deposit account are delineated on the deposit schedule (see paragraph 9-8, below).

- 9-7 **Cross-withholding on projects subject to Davis-Bacon requirements.** Cross-withholding may be used when there are two covered contracts with the same prime contractor and HUD needs to hold funds on Contract A for labor standards violations, but Contract A has been paid out. In such cases, HUD can withhold the funds from Contract B for violations on Contract A. The Davis-Bacon Act regulations permit cross-withholding for labor standards issues where the same prime contractor is involved in two or more projects.

In such cases, the deposit schedule shall provide information showing that cross-withholding parameters are met (i.e., that the prime is involved in all projects relating to the cross withholding) and shall clearly delineate the amount(s) associated with all projects and employers involved.

9-8 **Procedures for Deposit Accounts.**

- A. **Approval for imposition of deposit requirement.** The Deputy Director shall approve in advance all deposit requirements and the deposit schedule.
1. The LSS shall provide to the Deputy Director an explanation of the conditions that warrant a deposit and the proposed deposit schedule.
 2. The Deputy Director may approve, modify, or disapprove the deposit requirement proposed by the LSS and shall notify the LSS in writing of their decision.
 3. The Deputy Director may impose a deposit requirement on their own accord. In such cases, the Deputy Director will determine the purposes and amounts for the deposit schedule.
- B. **Notification of deposit requirement.** Following Deputy Director approval, the LSS (or Deputy Director or their designee) shall provide written notice of the deposit requirement to HQLS (see paragraph 9-15), the Offices of Housing and General Counsel, and the prime contractor. Such notice may occur by email and may also occur as part of the DBLS final closing clearance. A deposit agreement, deposit schedule, and deposit ticket specific to the project will be provided to these parties prior to final closing.
- C. **Depositor.** The depositor is the entity (firm, business, person) whose money is being used to fund the deposit. Usually, the depositor is the prime contractor; however, the depositor may be the developer or owner of the project.

It is critical that the depositor is accurately named on the Deposit Agreement and Schedule. The banking information for any refund payments shall be obtained from the depositor at the time that the deposit is made inclusive of contact name, address, phone number, and email address. A U.S. Treasury Administrative Resource Center *Supplier Entry Request Form* will need to be filled out by the depositor (unless already on file).

- D. **Instructions on completing deposit agreements, schedules, and tickets.** Each deposit must have its own deposit agreement, deposit schedule, deposit ticket, and *Supplier Entry Request Form*. No deposit agreement is complete without a schedule that accounts for the exact and full amount placed on deposit. Each deposit ticket must carry identifiers so that the deposit can be readily matched to the transaction at the U. S. Treasury.

Accuracy and completeness of the data within the deposit agreement, schedule, and ticket are critical for DBLS to manage deposit accounts. Typically, these documents are prepared by the LSS, with the exception of the Supplier Entry Request Form, which is completed by the Depositor.

1. **Deposit agreements.** The deposit agreement identifies the project involved, the purpose(s), amount, and the depositor. The LSS shall use form HUD-4732, *Labor Standards Deposit Agreement*, (available at HUDClips) and shall complete the blocks on the form relating to the project number and name; the amount required for deposit; the purpose(s) involved; depositor name, contact information, tax identification number, address; and the deposit ticket number obtained from the Labor Standards Information System (LSIS). The deposit agreement form may not be altered in any way without the prior approval of the National Director of DBLS.
2. **Deposit schedules.** The deposit schedule delineates for each employer involved, the purpose(s) for the deposit and accounts for the exact and total amount placed on deposit. The deposit schedule header must carry the project name, number, and location; the prime contractor name and address, and, if the depositor is other than the prime contractor, the depositor name and address; and the page number and total number of pages (e.g., Page 1 of 4). The LSS shall prepare the schedule following the sample provided in Appendix III-2, *Sample Deposit Schedule*. *Note:* Deposit schedules *shall not* include any person's social security number.
3. **Deposit tickets.** The deposit ticket provides instructions for the depositor's banking institution so that the required sum will be deposited to the correct U.S. Treasury account. In addition, the deposit ticket carries identifiers (i.e., control number and deposit number) so that the deposit is properly matched by HUD to the exact U.S. Treasury transaction and validated within LSIS. The LSS will use form HUD-4733, *Wire Transfer Instructions for Labor Standards Deposit Accounts*, (available at HUDClips). Deposit ticket identifiers are generated in LSIS as data is entered by the LSS.
4. **Supplier Entry Request Form.** This form is used by the Office of the Chief Financial Officer, as the U.S. Treasury requires this form when payments are made. If collected early, it will make it easier when returning funds. Page 1 is for internal use by the U.S. Treasury. Page 2 needs to be filled out by the depositors.

- 9-9 **Deposit verification.** All deposits must be documented and verified to HUD's satisfaction prior to final closing conclusion and/or disbursement from a deposit account.
- A. **Final closing.** If a deposit is required as a condition for final closing, a receipt from the financial institution that completed the required deposit must be provided before the closing is concluded. DBLS will not lift a final closing condition without such documentation.
- B. **Verification in LSIS.** Deposits must be verified in LSIS prior to any disbursement from a deposit account.
- C. **Aged deposits.** Aged deposits are defined as deposits that are over three (3) years old. It is the responsibility of the Deputy Director and LSS to ensure all funds are paid to the appropriate person(s) before three (3) years. If longer than three (3) years is needed, consult with the HQLS and update notes in LSIS. Otherwise, after three (3) years, the funds will be cleared from HUD's account and added to the general fund of the U.S. Treasury.
- 9-10 **Disbursements.** Payments from deposit accounts are made for one or more purposes:
1. Wage restitution payments to underpaid workers;
 2. Refunds to the depositor as outstanding issues are resolved;
 3. Payments to trust funds or other entities having a legitimate claim to the funds;
 4. Transfer of funds to DOL;
 5. Unclaimed funds due to unfound workers or depositors sent to U.S. Treasury; and/or
 6. CWHSSA liquidated damages sent to the U.S. Treasury.

No disbursement will be made from a deposit account without prior verification that the deposit has been received (see 9-9 above) and there is sufficient documentation that shows how the proposed payment amount was calculated. A copy of the deposit schedule must be submitted to HQLS prior to any disbursement.

Disbursements for Depositor refunds are requested by a Refund Voucher (VR) and are made through an Automated Clearing House (ACH) direct deposit. Voucher Payments (VP) for wage restitution are made by ACH/direct deposit or check at the payee's discretion. Transfers to DOL or other federal agencies are typically accomplished via an inter-agency transfer (IPAC). Disbursements are based on allocations that are calculated and entered into LSIS; then vouchers can be generated from the allocations.

- 9-11 **Paying Wage Restitution to Workers.** No disbursement for wage restitution shall be made unless the payee's address and identity have been verified. The LSS shall not disclose the amount of wage restitution due during this process because the calculations may not be complete. Worker verification information may be provided via return mail, telephone or email, at the worker's preference. The SSN provided by the worker must be

matched to the SSN on file to avoid payment to a false claimant. If the worker declines to provide a full SSN or if the SSNs do not match, the LSS should consult with their Deputy Director for further guidance.

The LSS must validate the legitimacy of persons claiming entitlement to wage restitution payments for deceased or incarcerated workers or for making wage restitution payments to anyone other than the worker.

- A. **In case of death of the worker who is owed back wages.** The LSS can ask the contractor to provide beneficiary documentation. Once that information is verified, the employer pays the wages based on that designation and obtains documentation that wages were paid appropriately.

If there is no beneficiary and the person dies intestate, then payment follows the hierarchy established by each state's intestacy laws and those laws determine distribution of assets upon a person's death. In such cases, contact HQLS to involve OGC in this process.

- B. **In case of incarceration of the worker who is owed back wages.** The LSS shall validate the legitimacy of persons claiming entitlement to wage restitution payments for incarcerated workers.

Any claim for payment to be made to someone other than the worker must be accompanied by documentation to substantiate the individual's rights to the worker's restitution payment, e.g., records of incarceration and any additional legal document necessary to prove familial relationship.

- 9-12 **Wage Restitution Payment Amounts.** Vouchers for wage restitution payments shall be made for the gross amount of wages due. CFO will issue a 1099 payment to the wage restitution payee and it is the responsibility of the payee and the contractor to satisfy their tax obligations. The LSS shall issue a notice to each payee stating that a wage restitution payment has been ordered and it is the payee's responsibility to fulfill their tax obligations. A sample notice is provided in Appendix III-3, *Sample Wage Restitution Payment Notice*.

- 9-13 **Preparing vouchers.** Generally, the DBLS staff member assigned to dispose of the deposit is the person who initiates the allocation and vouchers for payment or refund. To seek payment request approval, the LSS prepares a memorandum outlining the reason(s) for the payment request. For refunds to the depositor, a sample memorandum is provided in Appendix III-5, *Refund of Deposit Memorandum Template*. Note that:

1. If an LSS initiates the voucher, both the Deputy Director and the National Director of DBLS must approve it.
2. If HQLS staff initiates the voucher, the National Director of DBLS must approve it.

Vouchers carry identifiers (e.g., control number and voucher number) so the

disbursement can be properly matched by HUD to the correlating U.S. Treasury transaction and validated within the LSIS. The identifiers are generated by the LSIS as data are entered; DBLS staff then can prepare a paper voucher using form HUD-4734, *Labor Standards Deposit Account Voucher* (available online at HUDClips).

In order to request any wage restitution payment or refund, the payee shall provide a tax identification number (TIN); e.g., employer identification number (EIN) or social security number (SSN). Tax identification numbers shall be recorded in LSIS.

However, the HUD-4734 submitted to HQLS *shall not* include the TIN. The LSS or Deputy Director shall retrieve the TIN from LSIS and provide it on a password protected worksheet provided by HQLS. Payments shall also include page 2 of the *Supplier Entry Request Form* (if not already on file), see 9-8 4.D. for more information.

Once the U.S. Treasury has received the payment request, they will contact the person on the *Supplier Entry Request Form* to confirm payment details.

- A. **ACH/direct deposit.** To request an ACH/direct deposit, the DBLS staff must obtain banking information for the funds to be sent to the proper account. This information includes the name and location of the bank; the bank's ABA routing number for ACH/direct deposit transactions (this is *always* a 9-digit number); the account number and name on the account. The voucher identifiers and the payee banking information are entered in the appropriate boxes on form HUD-4734. HQLS will add the TIN to the form.
 - B. **Check.** If a check is ordered for a wage restitution payment, the payee must provide a mailing address and tax identification number. The voucher identifiers, and the payee address are entered into the appropriate boxes on form HUD-4734. HQLS will add the TIN to the form. *A Supplier Request Form is not needed in this situation. A statement of why ACH/direct deposit is a hardship for the payee is required for CFO to process check payments.*
 - C. **Inter-agency transfer (IPAC).** Transfers to other federal agencies are made within the U.S. Treasury. The receiving agency must supply the bank name (usually TREAS NYC), ABA routing number, agency name (e.g., U.S. Department of Labor), Agency Location Code and Disbursement Office Identification Number, if applicable.
- 9-14 **Disposing of Aged Deposits/Unclaimed Funds Disposition.** The LSS is responsible for tracking the age and balance of the deposit accounts they initiated. In situations where workers or depositors cannot be found and the three-year waiting period has expired, the funds are turned over to the general fund of the U.S. Treasury for permanent retention. Prepare a payment form as outlined in paragraph 9-13. Before doing so, renew efforts to find workers or depositors. If this fails, prepare a schedule of wages due to unfound workers. A template is available in Appendix III-4, *Unfound Worker Schedule*.
1. Prepare a memo for each deposit outlining the history of the deposit and the efforts

that have been taken to locate the underpaid workers. This memo will document the known history and your efforts.

2. Send the memo, signed by the Deputy Director, a copy of the deposit agreement, deposit schedule, any confirmation or receipt of deposit, documentation of any prior disbursements, and the unfound worker schedule to HQLS.
3. Update the LSIS, to reflect allocation in the Deposit Module and Voucher requesting the funds be transferred to Unclaimed Funds; the Deputy Director will need to approve the voucher request.

Section II – HUD Headquarters Responsibilities

- 9-15 **HUD receives funds from contractor/lender.** The LSS/Deputy Director will send to HQLS the items identified in paragraph 9-8(D) and will have funds wire transferred to HUD. In addition:
1. HQLS will contact the Office of the Chief Financial Officer (CFO) to confirm receipt of funds and inform the Deputy Director/LSS.
 2. HQLS will update LSIS to confirm receipt of funds.
 3. HQLS will add this information to the Deposit/Payment Log to reconcile later against the CFO's statement of DBLS' account.
- 9-16 **Funds sent by LCAs to HUD.** LCAs will send funds to HUD either for liquidated damages for CHWSSA overtime violations or for back wages due to unfound workers. LCA staff will send items identified in paragraph 9-26. In addition:
1. HQLS will contact the CFO to verify receipt of funds and show verification in the LSIS.
 2. HQLS will add this information to the Deposit/Payment Log to reconcile later against the CFO's statement of DBLS' account.
 3. HQLS will send these funds on its regular schedule to the general fund of the U.S. Treasury. See paragraph 9-18 for this process.
- 9-17 **Payments or return of deposit.** Deputy Directors will send to HQLS a signed form HUD-4734, a *Supplier Entry Request Form* (if not already on file), and other appropriate documentation, including cover memo for the return of a deposit.
1. The National Director of DBLS will need to approve the form HUD-4734. Once approved, the HQLS will send the form to CFO for processing. The CFO will verify that the funds are available and process the refund or wage restitution.
 2. HQLS will verify with the CFO that payment has occurred and will notify staff and update LSIS.
- Note:* Payments are handled by the CFO and ARC at U.S. Treasury. This adds a layer of complexity and time delay in processing payments. Experience has shown that payments can take as long as two months to occur, although they can also occur in a matter of days. This requires staff vigilance to ensure payment occurs.
- 9-18 **Disposing of aged deposits per the Miscellaneous Receipts Act.** The primary objective in disposing of aged deposits is to complete all follow-up actions necessary to achieve resolution of any outstanding issues. Ideally, this would result in full disbursement bringing the deposit to a zero balance. However, there are instances where all follow-up actions have been competently taken and a balance remains.
- A. **Unfound workers.** Where workers could not be located and paid, the deposit converts to an unfound workers account. The LSS shall prepare an unfound workers schedule following the example provided in Appendix III-4, *Unfound Worker Schedule*, and send it to the HQLS. *Note:* Unfound workers schedules *shall not* include any person's SSN. If the SSN is known, it must be recorded in LSIS.

- B. **Unfound depositor.** Where a refund to the depositor is deemed appropriate but the refund cannot be made because the depositor cannot be located, the Deputy Director will request conversion to an unfound depositors account.
- C. **Unclaimed funds.** Where no information is available to indicate the proper disposition for the deposit, for example, if there are no records showing the purpose of the deposit or the identity of the depositor, the Deputy Director may request that HQLS transfer the deposit to unclaimed funds. The Deputy Director will need to follow procedures outlined in 9-13.
- D. **Miscellaneous Receipts Act.** In accordance with the Miscellaneous Receipts Act and procedures established by the Chief Financial Officer, DBLS, and the Office of General Counsel, DBLS shall transfer semi-annually to the U.S. Treasury:
1. all unclaimed funds and deposits for unfound depositors and unfound workers that have reached the three-year retention period during the previous six-month period; and
 2. all deposits for CWHSSA liquidated damages assessed during the previous six-month period.

To comply with the Act, HQLS will maintain a spreadsheet of all deposits and payments that are older than three years and include on the document the labor relations number from the LSIS and the amount. HQLS staff must obtain the signature and date from the National Director of DBLS and send the file to the Office of the Chief Financial Officer for processing in addition to completing the following:

1. Update the LSIS to show status change of these funds.
 2. Verify with CFO that these funds are removed.
 3. Keep records for potential reconciliation activity by CFO.
 4. Attach documentation from paragraph 9-13 process.
- 9-19 **Reconciliation of Deposit Account.** The HQLS staff, no less than quarterly (depending upon activity), will reconcile the deposit account by requesting from the CFO a statement of activity in the account. Typically, this is available the second week of each month. HQLS staff can also use this information to verify that the LSIS is up to date.

Section III – LCA Escrow Accounts for Labor Standards Purposes

- 9-20 **LCA escrow accounts.** LCAs may establish or require a labor standards escrow account in order to address a variety of contract deficiencies. This account is intended to permit the project/contract to proceed to close-out without waiting for resolution of prevailing wage and reporting issues. LCA staff must calculate the amount that is necessary to satisfy any wage restitution found due and any liquidated damages assessed for CWHSSA overtime violations. Wage restitution may also involve HUD-determined prevailing wages applicable to maintenance work. Only the amount calculated as necessary for wage restitution and liquidated damages is required for labor standards escrows.

Typically, escrows are funded from contract payments due to the prime contractor for work performed. It may be necessary for the prime contractor to contribute additional funds to the escrow. For ease in reference, this section uses the term “prime contractor” to represent the entity whose funds are used to fund the escrow.

Note: DOL-initiated deposit accounts are discussed in paragraph 9-3.

- 9-21 **Purposes for escrow accounts.** The purposes, remedies, and dispositions for labor standards escrow accounts are essentially the same as those for HUD deposits (as described in paragraph 9-5). LCAs may find HUD’s deposit agreement and schedule formats helpful in developing appropriate escrow documents (see paragraph 9-8 for more information).

- A. **Escrow purpose 1:** To proceed to closeout/final closing *without awaiting receipt of evidence that workers have received wages determined to be due them* in the respective amounts listed on a schedule attached to an escrow agreement.

Escrow purpose 1 applies to cases where there are no disputes about the amounts due and to whom the amounts are due, but the contractor/employer is not yet able to produce evidence that all affected workers have received wage restitution. For example, the contractor or subcontractor may not have submitted a certified corrected payroll report or has not been able to locate all affected workers.

1. **Escrow amount.** The LCA determines the escrow amount by calculating (or the contractor may calculate and the LCA will confirm) the total gross amount of wages, including any fringe benefits due and, yet, undocumented or unpaid.
2. **Disposition.** After the escrow is established, the prime contractor continues to pay the workers that can be located. As the prime contractor produces evidence of such payments to workers and certified corrected payroll reports, amounts equal to the payments are released to the prime contractor.

If the prime contractor cannot locate certain employees (unfound workers), the LCA continues to hold an amount sufficient to pay the wage restitution due to the

unfound workers and continues attempts to locate such workers for a period of three (3) years after the date the deposit was established. At this point, the LCA *must* require the prime contractor to provide the last known mailing address and full Social Security Number for each unfound worker.

After this three-year period, the LCA transmits the funds to HUD along with a schedule indicating the names, last known mailing addresses, social security numbers and the gross amounts due to the effected workers and the employer(s) for whom they worked. LCAs should contact the LSS for their area for further instructions on transmitting funds to HUD.

- B. **Escrow purpose 2:** To proceed *without awaiting an administrative determination of the wages which may be due and unpaid* for work performed in the construction of the project on account of employers named on a schedule attached to the escrow agreement.

In these cases, the underpaid workers and the amounts of wage restitution due have not yet been determined. For example, a compliance review by the LCA, HUD or DOL may be ongoing, or restitution calculations may not be complete.

1. **Escrow amount.** To determine the amount required for the escrow, the LCA will estimate as closely as possible the full amount of wages, including any fringe benefits, which may be due and the amount of liquidated damages that may be computed for any CWHSSA overtime violations. HUD or DOL will supply the estimate when it is conducting the review. The escrow schedule indicates which employer or employers are involved and the amount estimated due relative to each employee.
2. **Disposition.** When the amounts of wages (and any liquidated damages) have been finally determined by the LCA (or HUD or DOL, as appropriate), the LCA will continue to hold enough funds to pay the total amounts determined due. Any excess funds that are not otherwise required to ensure proper payment for other employers will be released to the prime contractor provided that the funds are not required to ensure payment of other CWHSSA liquidated damages or wage restitution.
 - a. **Conversion to purpose “1”:** If the prime contractor agrees with the determination of wages due, the escrow converts to a Purpose 1 (above). The contractor pays the effected workers in accordance with the schedule of wages due and submits certified corrected payroll reports as evidence of such payments.

Amounts are released to the prime contractor as evidence of payments to workers is produced. It is always preferable for the *employer* to make the restitution payments directly to the employees. However, if the employer is unable to do so, the LCA may make disbursements from the

account directly to the underpaid workers (in accordance with the schedule). Restitution for unfound workers is retained as described above with the three-year period beginning on the date that agreement on the determination of wages due is reached.

Note: For cases involving DOL investigations, DOL will generally secure a release from the contractor and any subcontractor involved, permitting DOL to collect the escrow funds from the LCA, and to pay the workers directly from those funds. Upon receipt of such release and written instruction from DOL, the LCA shall pay over to DOL the total amount authorized by the prime contractor. Any excess funds not otherwise required to ensure wage restitution may be released to the prime contractor.

- b. **Conversion to purpose “3”:** If the contractor/employer appeals the determination of wages due, the deposit converts to a Purpose 3 (below).
- C. **Escrow purpose 3:** To proceed *without awaiting the outcome of any appeal* which has been filed, or is to be filed, with HUD or DOL by the contractor or employer contesting the findings of the LCA, HUD or DOL that wages for work performed in the construction of the project are due and unpaid to workers as named and in amounts shown on a schedule of wages due attached to the escrow agreement.

For these cases, a final determination has been rendered by the LCA, HUD, or DOL, and the contractor or employer has sought review and determination by HUD or DOL, as appropriate, concerning the findings.

1. **Escrow maintenance.** The LCA will maintain the escrow pending the outcome of all administrative appeals.
 2. **Disposition.** When a final decision is reached, and/or all administrative appeals are exhausted, the LCA will disburse funds from the escrow account in accordance with the judgment rendered. The agreement will convert to a Purpose 1 for the total amount of wage restitution found due. The excess balance, if any, shall be returned to the depositor unless ordered otherwise in the judgment, or unless the funds are required to ensure payment of other wage restitution.
- C. **Escrow purpose 4:** Where *liquidated damages* have been calculated and/or assessed for violations pertaining to CWHSSA overtime provisions.

In these cases, a determination of wages due involving CWHSSA overtime violations has resulted in calculations for liquidated damages.

1. **Escrow amount.** The LCA has issued or will issue a notice of intent to assess the liquidated damages calculated. An amount equal to the liquidated damages calculated is placed on deposit.

2. **Disposition.** If the liquidated damages amount has been assessed and the contractor/employer has not contested the assessment, the LCA sends the full amount assessed to HUD. If the contractor requests a reduction in whole or in part of the liquidated damages assessed, the calculated amount is retained until a final decision on the assessment is reached. Once a final decision is rendered, the final amount assessed (if any) is sent to HUD and any excess shall be returned to the prime contractor provided that the funds are not required to ensure payment of other CWHSSA liquidated damages or wage restitution.

9-22 **Mixed escrows.** Some projects may approach final close-out with a variety of labor standards issues pending and may require a *mixed escrow* as a result. A mixed escrow means that funds are needed to ensure payment of wage restitution (and liquidated damages, where applicable) arising out of different kinds of situations. For example, there may be a subcontractor that agrees with a finding of underpayment but cannot locate all underpaid employees (i.e., unfound workers) which would require a Purpose 1 escrow, while another subcontractor has appealed a determination of wages due requiring a Purpose 3 escrow. In these cases, only one escrow agreement and schedule are prepared, and one account is established. Differentiations between multiple purposes of a mixed escrow account are delineated on the deposit schedule (see 9-8).

9-23 **Cross-withholding on projects subject to Davis-Bacon requirements.** Cross-withholding may be used when there are two covered contracts with the same prime contractor and the LCA needs to hold funds on Contract A for labor standards violations, but it has been paid out. In such cases, the LCA can withhold the funds from Contract B for violations on Contract A. The Davis-Bacon Act regulations permit cross-withholding for labor standards issues where the same prime contractor is involved in two or more projects.

In such cases, the deposit schedule shall provide information showing that cross-withholding parameters are met (i.e., that the prime is involved in all projects relating to the cross withholding) and shall clearly delineate the amount(s) associated with all projects and employers involved.

9-24 **Disbursements.** Disbursements from escrow accounts are made for wage restitution payments to underpaid workers, refunds to the prime contractor as outstanding issues are resolved, payments to trust funds or other entities having a legitimate claim to the funds, and for the transfer of funds to HUD or DOL.

9-25 **Paying Wage Restitution to Workers.** No disbursement for wage restitution shall be made unless the payee's address and identity have been verified. The worker may provide verification information via return mail, telephone or email, at the worker's preference. The SSN provided by the worker must be matched to the SSN on file to avoid payment to a false claimant. If the worker declines to provide a full SSN or if the SSNs do not match, the LCA should consult with the LSS for their area.

The LCA shall validate the legitimacy of persons claiming entitlement to wage restitution payments for deceased or incarcerated workers or for making wage restitution payments to

anyone other than the worker.

Any claim for payment to be made to someone other than the worker must be accompanied by documentation to substantiate the individual's rights to the worker's restitution payment, e.g., certified death certificates, certified marriage licenses, or such records issued by the state; records of incarceration or any other legal document necessary to document the occurrence of the event claimed; or to prove familial relationship. Other records such as the will of the decedent and/or other documentation demonstrating entitlement to payment are acceptable. In the event a will is not available, payment shall be disbursed in accordance with the estate laws of the state in which the worker lived. Whenever sufficiency of the supporting documentation is uncertain, the LCA should seek the guidance of their attorneys or other appropriate authority.

9-26 **Transferring funds to HUD.** LCAs must transmit to HUD wage restitution due but not paid because the intended payees could not be located (*aka* unfound workers) within the three-year timeframe despite the LCAs efforts, and liquidated damages assessed for CWHSSA overtime violations. (See 9-21A(2) and D(2).) All such transfers must be made by wire transfer.

A. **Wire transfer instructions.** LCAs must contact the LSS for their area to obtain wire transfer instructions before any transfer is made. These instructions are critical because it allows HUD to track and verify the funds.

B. **Supporting documentation.** LCAs must provide supporting documentation explaining the reason(s) for the transfer.

1. **Letter or Memorandum.** A letter or memorandum stating all efforts to find workers have been exhausted and how long it has been since the deposit was created.
2. **Restitution for unfound workers.** The LCA must provide an unfound workers schedule identifying the project, the employer, the underpaid workers, and the gross amount due each person.
3. **Liquidated damages.** The LCA must provide documentation containing the project name, number and location; the employer; the number of employees underpaid; the total amount of CWHSSA wage restitution due; and the amount of liquidated damages assessed.

Related Appendices

III-2 Sample Deposit Schedule

III-3 Sample Wage Restitution Payment Notice

III-4 Sample Unfound Worker Schedule

III-5 Refund of Deposit Memorandum Template