



OFFICE OF FIELD POLICY
AND MANAGEMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0050

Special Attention of:
Regional and Field Davis-Bacon and Labor
Standards Staff;
Office of Community Planning and
Development Directors;
CDBG and HOME Grantees;
Public Housing Regional and Office
Directors;
Public Housing Agencies;
Office of Native American Programs
Administrators;
Tribes; Tribally Designated Housing Entities;
Indian Housing Authorities

Notice: LR-06-02

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Expires: This Notice is effective until it is
amended, superseded, or
rescinded.

Cross References: HUD Handbooks 1344.1
Rev 1, Chg 1, and 2225.6 Rev 1, Chg 60; 29
CFR Part 5, Section 5.7; Labor Relations
Letter 92-02

SUBJECT: Custody, security and disposal of Federal labor standards compliance documents
and investigative records

- I. Purpose.
- II. Definitions.
- III. Custody, security, and disposal of Federal labor standards compliance
documents and investigative records.

I. PURPOSE

The purpose of this Letter is to reiterate HUD policy and to provide guidance for HUD staff and program participants regarding the custody, security, and disposal of Federal labor standards compliance documents and investigative records.

The Department of Housing and Urban Development (HUD), and State, local, and tribal agencies as well as non-profit and some for-profit recipient organizations that administer HUD programs, collect, generate, and retain labor standards compliance documents and investigative records related to work subject to Federal prevailing wage requirements (e.g., Davis-Bacon wage and reporting requirements, and HUD-determined maintenance wage rates). These include payroll reports and other compliance documents, and investigative records such as employee interview statements. These documents and records contain highly sensitive and confidential information. For example, payroll reports contain workers' personal information such as their names, Social Security Numbers (SSNs), home addresses, earnings, and net wages; and may contain the employer tax identification numbers (EINs). Employee interview statements record the identity and statements made by persons who are ensured confidentiality. With the growing rise in identity theft and fraud, it is critical that HUD and agencies administering HUD programs carefully guard this sensitive information so that the person(s) or firm(s) to which that information pertains is not unduly exposed to financial or personal risk.

II. DEFINITIONS

For the purposes of the policy and guidelines expressed in this Letter:

HUD program participants shall mean State, local, and tribal agencies as well as non-profit and some for-profit organizations that administer HUD programs and are responsible for Federal labor standards administration, compliance, and enforcement requirements applicable to the HUD programs they administer. This term also includes any contractors, consultants or others that participate in such labor standards activities on a participant's behalf, including subgrantees or others if they are in possession of labor standards compliance documents or investigative records.

Informant shall mean any person who provides information relating to labor standards compliance or enforcement. An informant may be a laborer or mechanic who files a complaint of underpayment. An informant may also be a person who is not a complainant, or is not a laborer or mechanic, but who provides information relating to labor standards compliance or enforcement.

Investigative records shall mean documents assembled and/or created during the course of labor standards compliance reviews. Such documents include Records of On-site Interview (HUD-11s); employee questionnaires; interview statements; records and notes from informant interviews; complaints; records supplied by complainants such as pay stubs, W-2s, and work calendars; back wage computations; determinations of wages due; schedules of wages due; and enforcement reports (required by Department of Labor regulations at 29 CFR Part 5, Section 5.7¹).

Labor standards compliance documents shall mean documents relating to labor standards administration and employer compliance. These documents include employer records such as payroll reports; time cards; fringe benefit statements and reports; employee authorizations for deduction; and apprenticeship/trainee registrations; and other documents pertaining to labor standards compliance.

Sensitive information shall mean the names, SSNs, and addresses of individuals reported on payrolls and other compliance documents; EINs; and the identity of any informant who makes or provides a statement in written or oral form relating to labor standards activities and any portion of such statement(s) that may reveal that informant's identity.

III. CUSTODY, SECURITY AND DISPOSAL OF FEDERAL LABOR STANDARDS COMPLIANCE DOCUMENTS AND INVESTIGATIVE RECORDS.

HUD staff and program participants are required to collect, preserve, and retain labor standards compliance documents and investigative records for a period of three (3) years following the completion of the covered work, after which these documents and records may be destroyed

¹ See DOL Regulations 29 CFR 5.7(a); and Labor Relations Letter 92-02.

provided there are no outstanding investigations, enforcement activities, or appeals.² In addition, HUD staff and program participants create and transmit documents, in hard copy and in media records (e.g., computer files, storage disks, email, facsimile), concerning labor standards compliance and enforcement actions that relate to, or contain, sensitive information. Examples include review notes; back wage computations; notices to employers concerning compliance discrepancies; schedules of wages found due; and 5.7 enforcement reports relating to enforcement actions, referrals for administrative review of findings in dispute, and recommendations for debarment. Because of the sensitive nature of the information contained in these documents and records, HUD staff and program participants must exercise care that sensitive information is not disclosed except to persons authorized to access the information and that documents and records that are created contain sensitive information only as necessary. The following guidelines will minimize the risk of improper and/or unnecessary disclosure.

- A) Keep sensitive materials secure at all times. HUD staff and program participants must ensure that documents and records containing sensitive information are secured while in their custody. Aggressive steps must be taken to prevent unintended disclosure of this sensitive information. For example, such materials must not be left in areas accessible to the public or left unattended in open settings; store these materials in a secure location (e.g., locked file cabinets) at all times when not in use; lock computers when unattended; and do not leave sensitive documents on computer display screens in the view of persons who are not authorized access.

- B) Do *not* include SSNs on documents and records unless it is absolutely necessary. Many times, SSNs are not relevant or not needed for the document or record purposes. Examples include review notes, back wage computation sheets, notices or schedules of back wages due that are sent to contractors or employers, and 5.7 reports concerning completed enforcement actions or referring cases in dispute or recommending debarment. Notes and computation sheets may need to distinguish between the workers that are involved, but such distinctions can usually be made by the workers' names, alone. For notices and schedules, the employer will need to know which employees have been underpaid and how much is due to each, but the employer should already have the SSNs of the affected workers. SSNs add no value to enforcement reports where no further action is required or recommended. If the enforcement report concerns findings of underpayment in dispute, the supporting documents that must accompany the report should contain the SSNs

Recommendations for debarment, generally, are not supported by facts associated with SSNs.

SSNs *must* be included on very few documents. Employers must include the SSN on the first payroll report on which an employee's name appears. Program participants that transmit to HUD wage restitution that has been collected but not paid because underpaid workers could not be located must provide a schedule to HUD that includes the name, last known address and SSN for each unlocated worker.

² See DOL Regulations 29 CFR 5.6(a)(2); and HUD Handbooks 1344.1, Rev 1, Chg 1, Para 3.3(c); and 2225.6, Rev 1, Chg 60, Appendix 49.

- C) Do not disclose the identity of any informant unless it is necessary and *only* if authorized by the informant. Informants may offer information alleging labor standards violations. Often, the allegations can be substantiated, independently, such that the identity of the informant(s) is not crucial to defending any findings of violation that may result. In such cases, then, it is not necessary to reveal the identity of any informants to defend the findings in presentations to the employer or to resolve the violations. In those instances where it is necessary to disclose the identity of the informant(s) in order to pursue resolution, the informant(s) must authorize the disclosure, in writing, in advance.
- D) Dispose of documents and records containing sensitive information, responsibly. HUD staff and program participants must ensure that any documents and records, including media files, which contain sensitive information are shredded or otherwise destroyed at disposal. Documents and records that do not contain sensitive information may be discarded with other waste. HUD encourages recycling of waste materials whenever possible.

If you have questions about this Notice, contact the DBLS staff with jurisdiction in your area.

/S/

Edward L. Johnson
Director
Office of Labor Relations