



OFFICE OF FIELD POLICY
AND MANAGEMENT

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

Special Attention of:
Office of Davis-Bacon and Labor Standards
Regional and Field Staff
Office of Community Planning and
Development Directors
CDBG Grantees

Notice: LR-21-03
Issued: August 9, 2021
Expires: This Notice is effective
amended, superseded, o
rescinded.

Cross References: Section 110 of
Housing and Community Developr
1974; HUD Handbook 1344.1 REV
Chapter 3; DOL AAMs 130, 131, a

SUBJECT: HUD Guidance on Transitional Housing and DBRA Applicability

I. PURPOSE

This Notice provides local contracting agencies (LCAs) and other clients technical guidance on activities supporting transitional housing funded under the Community Development Block Grant (CDBG) program and whether a transitional housing activity is “residential” for purposes of Davis-Bacon and Related Acts (DBRA) applicability.

II. BACKGROUND

The CDBG DBRA provision in Section 110 of the Housing and Community Development Act of 1974 applies DBRA wage rates on construction and/or rehabilitation for residential property if the property contains 8 units or more, or if the property is non-residential, where the construction work is financed in whole or in part with CDBG assistance and is greater than \$2,000. For additional information, see HUD’s [Factors of Labor Standards Applicability](#).

III. DETERMINING DBRA APPLICABILITY AND CONDUCTING A WAGE DETERMINATION ANALYSIS

The Housing and Community Development Act of 1974 does not offer a precise time limit for determining what length of stay will qualify a property as residential. To define whether a project may be considered residential for the purposes of DBRA applicability, the Office of Davis-Bacon and Labor Standards has set a standard of a 60-day stay for what may be considered residential use of a dwelling. This does not apply to non-residential structures, even if stays over 60 days are allowed. Thus, if the property is residential by design and allows stays of 60 days or longer, the property would be considered residential for purposes of DBRA applicability.

To assign a Davis-Bacon wage decision to a CDBG-funded transitional housing project, three separate analyses must occur in the following order:

1. Determine if the project is residential as defined by HUD (covered in steps 1 and 2 below),
2. If so, determine if there are 8 units or more (covered in step 3), and
3. If so, determine which type of Davis-Bacon wage decision would be applicable (covered in step 4).

These analyses are done in four steps, as described below and as displayed in the diagram at the end of this document.

Step 1. Determine if the transitional housing project is residential by design:

- a. **Residential by design.** If a project consists of apartments, single room occupancy (SRO) units, single family, or group homes, etc.; it is considered residential by design; proceed to step two.
- b. **Not Residential by design.** If a project does not consist of apartments, single room occupancy (SRO) units, single family or group homes, etc., it is not residential, regardless of how long the residents may live there. For example, jails, dormitories, or athletic centers with cots for emergency shelter are not residential. DBRA applies and the category of construction is Building.

Step 2. Determine if the residential by design project has a residential purpose as defined by HUD:

- a. **Short Term Stays, No Residential Purpose.** If a project's purpose is for transitional housing, but its intended use is not residential (meaning people can only stay less than 60 days), then it is not considered residential and thus DBRA applies regardless of the number of units involved; proceed to step four.
- b. **Long Term Stays, Residential Purpose.** If a project's purpose is to house people and allows stays of 60 days or longer, then it is considered to have a residential purpose; proceed to step three.

Step 3. Determine number of units.

After the project is determined to have a **residential purpose**, establish if there are 8 units or more on the property (on CDBG number of units, see HUD Handbook 1344.1 REV-2, Appendix II-5).

To determine units, look for factors such as:

- a. Are there distinct living units each with their own kitchen/bath? If so, each would be its own unit;

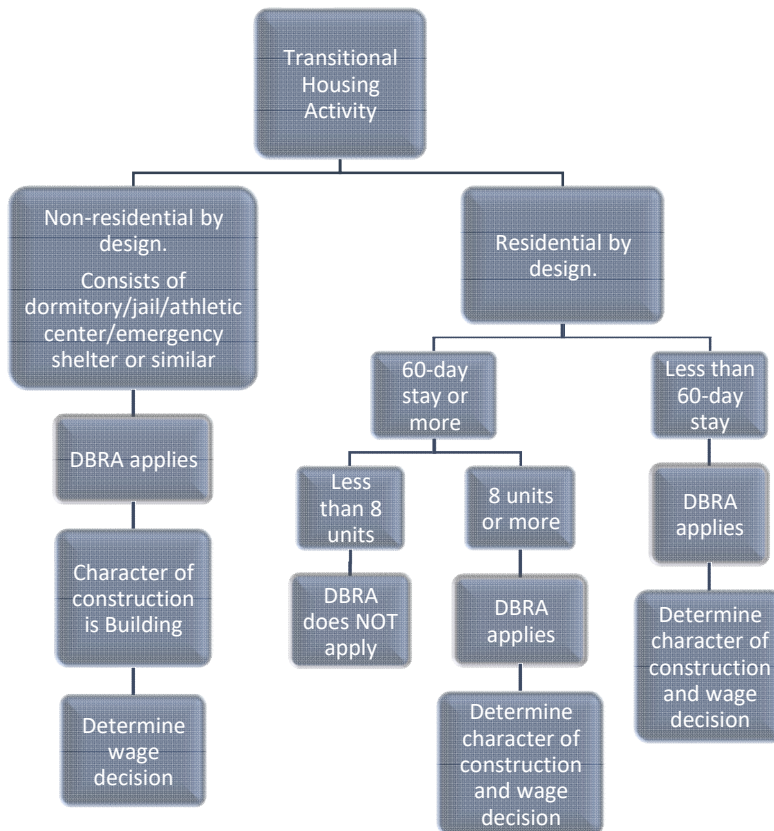
- b. Is the building(s) designed in a manner physically like a single-family residence (both in layout and in scale) and are the residents expected to live as a single group or “family” with a shared kitchen and general shared bathrooms? If so, then each building would likely be considered a single unit.
- c. SROs are normally considered one unit (one person per room), even though they lack individual kitchens and bathrooms.
- d. The number of units in conversions of churches, schools, etc. will depend upon the design of the renovated facility rather than its original design.

If there are eight units or more on the property, DBRA is applicable; proceed to step four. If there are less than eight units on the property, DBRA does not apply and no further analysis is necessary.

Step 4: Determine Davis-Bacon wage rate.

Since DBRA applies to the project, determine the character of construction that is applicable to the project, as per the U.S. Department of Labor All Agency Memoranda 130, 131, and 236, and HUD Handbook 1344.1 REV-2, Chapter 3. Then determine the applicable DOL Davis-Bacon wage decision based on the character of construction.

Transitional Housing Analysis Diagram:



IV. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (PRA) and its attendant regulations require an agency to consider its need for any information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. This Notice does not contain a collection of information subject to Office of Management and Budget approval under the PRA.

V. CONTACTS

If you have questions about this Notice, contact the DBLS staff with jurisdiction in your area. A list of DBLS contacts is available on the national webpage.¹

Michele P. Perez
Assistant Deputy Secretary
Office of Field Policy and Management

¹ Find your local DBLS contact at https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/laborrelstf